



City Council, Regular Meeting

AGENDA **REVISED**

May 5, 2015

6:30 pm – 9:30 pm
Council Chambers

Call to Order

Roll Call

Pledge of Allegiance

Approval of Agenda

Student Liaison Reports

Presentations/Proclamations

- WRIA 8 Salmon Recovery
- Astound (WAVE) Broadband Telecommunications Franchise Agreement
- Finance Department Update
 - Impact Fee Report
 - Year End Report

Public Comment

Note: *This is an opportunity for the public to address the Council. Three-minutes limit per person or five-minutes if representing the official position of a recognized community organization. If you would like to show a video or PowerPoint, it must be submitted or emailed by 5 pm, the end of the business day, to the City Clerk, Melonie Anderson at manderson@sammamish.us*

Consent Agenda

- Payroll for period ending April 15, 2015 for pay date April 20, 2015 in the amount of \$ 305,789.53
- Proclamation: National Prevention Week

City Council meetings are wheelchair accessible. American Sign Language (ASL) interpretation is available upon request. Please phone (425) 295-0500 at least 48 hours in advance. Assisted Listening Devices are also available upon request.

1. **Approval:** Claims for period ending May 5, 2015 in the amount of \$970,064.62 for Check No. 40205 through 40311
2. **Contract:** 212 Ave Non-Motorized/DEA
3. **Contract:** Sahalee Way Pre-Design/Perteet
4. **Contract:** Development Review/Stantec
5. **Contract:** Plan Review/Eagle Eye Consulting

Public Hearings - None

Unfinished Business - None

New Business

6. **Ordinance:** First Reading Amending Ordinance No. O2014-381, The 2015-2016 City Budget, For The Purpose Of Revising The 2015-2016 Biennial Budget.
7. **Ordinance:** Granting To Astound Broadband, LLC, A Limited Liability Company, A Nonexclusive Telecommunications Franchise To Install, Construct, Maintain, Repair, And Operate A Telecommunications System Within The Public Rights Of Way; Providing For Severability; And Establishing An Effective Date

Council Reports

City Manager Report

- Letter to King County Regarding Transfer Station Plan

Executive Session – If needed

Adjournment

AGENDA CALENDAR

May 2015			
Tues 5/12	6:30 pm	Study Session	2015 Comp Plan Update (Transportation, Environment)
Mon 5/18	6:30 pm	COW Meeting	2015 Comp Plan Update To remain in reserve
Tues 5/19	6:30 pm	Regular Meeting	Ordinance: Second Reading 2015 Carry Forwards Ordinance: Second Reading Franchise Agreement Astound (WAVE) Broadband
June 2015			
Tues 6/2	6:30 pm	Regular Meeting	Presentation: Boys and Girls Club Operations Report Community Development Department Report Public Hearing/first reading: 2015 Comp Plan Update
Tues 6/9	6:30 pm	Study Session	2015 Comp Plan
Mon 6/15	6:30 pm	COW Meeting	Discussion: Initiative and Referendum 2015 Comp Plan Update (If needed)
Tues 6/16	6:30 pm	Regular Meeting	Flag Ceremony: Boy Scout Troop Ordinance: Second Reading 2015 Comp Plan Update
July 2015			
Tues 7/7	6:30 pm	Regular Meeting	Presentation: Volunteer Recognition Bid Award: Big Rock Park Phase I/TBD Bid Award: Lower Commons ADA Trail/TBD
Tues 7/14	6:30 pm	Study Session	
Mon 7/20	6:30 pm	COW Meeting	
Tues 7/21	6:30 pm	Regular Meeting	
August 2015			
			NO MEETINGS
Sept 2015			
Tues 9/1	6:30 pm	Regular Meeting	
Tues 9/8	6:30 pm	Study Session	YMCA Property Development Discussion
Tues 9/15	6:30 pm	Regular Meeting	
Mon 9/21	6:30 pm	COW Meeting	
Oct 2015			
Tues 10/6	6:30 pm	Regular Meeting	Presentation: LWSD STEM School/Big Rock Park Project
Tues 10/13	6:30 pm	Study Session	
Mon 10/19	6:30 pm	COW Meeting	
Tues 10/20	6:30 pm	Regular Meeting	
Nov 2015			
Tues 11/3	6:30 pm	Regular Meeting	
Tues 11/10	6:30 pm	Study Session	
Mon 11/16	6:30 pm	COW Meeting	
Tues 11/17	6:30 pm	Regular Meeting	
Dec 2015			
Tues 12/1	6:30 pm	Regular Meeting	

If you are looking for facility rentals, please click [here](#).

<< April

May 2015

June >>

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2 10 a.m. Sammamish Walks - Haiku in the Woods
3 7:30 a.m. Sammamish-Redmond Boys & Girls Club 10K/5K Fun Run	4	5 5 p.m. City Council Office Hour 6:30 p.m. City Council Meeting	6 1:30 p.m. Transportation Committee Meeting 6:30 p.m. Parks and Recreation Commission Meeting	7 10 a.m. "Block Printing" Senior Art Workshop 6:30 p.m. Planning Commission Meeting	8	9 1 p.m. "Au-some Artists" Special Arts Sammamish
10	11	12 6:30 p.m. City Council Study Session	13	14	15 7 p.m. "Opera Ole"	16 10 a.m. Volunteer at Lower Commons Park 10 a.m. Sammamish Walks - Pine Lake Park History 12 p.m. Rig-A-Palooza
17 5 p.m. "Call to Artists"	18 6:30 p.m. Committee of the Whole 6:30 p.m. Arts Commission Meeting	19 6:30 p.m. City Council Meeting	20 4 p.m. Sammamish Chamber of Commerce Farmer's Market 6 p.m. Sammamish Youth Board Meeting	21 10 a.m. "Pushing the Puddle" watercolor workshop 6:30 p.m. Planning Commission Meeting	22	23
24	25 Memorial Day City offices closed	26	27 4 p.m. Farmer's Market	28	29	30 6:30 a.m. Flying Wheels Bike Ride
31						

If you are looking for facility rentals, please click [here](#).

<< May

June 2015

July >>

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2 5 p.m. City Council Office Hour 6:30 p.m. City Council Meeting	3 4 p.m. Farmer's Market 6:30 p.m. Parks and Recreation Commission Meeting	4 6:30 p.m. Planning Commission Meeting	5 4 p.m. Teen Fest Skate Competition	6 7 a.m. Issaquah Triathlon
7	8	9 6:30 p.m. City Council Special Study Session	10 4 p.m. Farmer's Market	11 10 a.m. Family Volunteering: Native Plant Garden	12	13
14	15 6:30 p.m. Committee of the Whole	16 6:30 p.m. City Council Meeting	17 4 p.m. Farmer's Market	18 6:30 p.m. Planning Commission Meeting	19	20 10 a.m. Sammamish Walks - Hazel Wolf and Beaver Lake Preserves
21	22 6:30 p.m. Arts Commission Meeting	23	24 4 p.m. Farmer's Market	25 10 a.m. Family Volunteering: Native Plant Garden	26	27
28	29	30				



MEMORANDUM

TO: Melonie Anderson/City Clerk
FROM: Marlene/Finance Department
DATE: April 30, 2015
RE: Claims for May 5, 2015

\$ 111,445.49
 842,020.77
 14,418.49
 2,179.87

Over \$10,000 Payments

Pellco Construction	\$413,911.93	Sammamish Landing Parking Lot
Kenyon Disend	\$61,846.08	Attorney Services - April 2015
City Of Bellevue	\$56,648.47	Human Services Pooled Program & MBP Surcharge 1st Qtr
King County Finance	\$55,514.28	Road Services January/February 2015
Eversons Econo Vac	\$45,749.35	Vactor & Jetting
NW Landscape	\$26,354.22	ROW & Park Maintenance
Columbia Ford	\$25,376.86	Ford Escape V-047
48 North Solutions	\$21,591.82	Bio & Water Monitoring - Ebright Creek
Wa State Employment Security	\$20,027.82	1st Qtr 2015 Unemployment
Western Systems	\$19,970.52	Radar Trailer
NC Machinery	\$18,455.55	Air Compressor
U.S. Bank Visa Card	14,418.49	Visa Card Purchases – City Wide
Top To Bottom Janitorial	\$10,687.06	Janitorial Services

TOTAL \$ 970,064.62

Checks # 40205 – 40311

111,445.49 +
 842,020.77 +
 14,418.49 +
 2,179.87 +
 970,064.62G+

Accounts Payable
 Check Register Totals Only

User: mdunham
 Printed: 4/20/2015 - 9:48 AM



Check	Date	Vendor No	Vendor Name	Amount	Voucher
40205	04/20/2015	CENTLIN2	Century Link	46.63	40,205
40206	04/20/2015	FLEXPLAN	Flex-Plan Services Inc	1,702.66	40,206
40207	04/20/2015	ICMA401	ICMA 401	40,807.18	40,207
40208	04/20/2015	ICMA457	ICMA457	10,754.44	40,208
40209	04/20/2015	IDHW	Idaho Child Support Receipting	326.50	40,209
40210	04/20/2015	KINGFI	King County Finance A/R	55,514.28	40,210
40211	04/20/2015	PSE	Puget Sound Energy	1,803.30	40,211
40212	04/20/2015	WASUPPOR	Wa State Support Registry	490.50	40,212
Check Total:				111,445.49	

Accounts Payable

Check Register Totals Only

User: mdunham
 Printed: 4/29/2015 - 4:39 PM



Check	Date	Vendor No	Vendor Name	Amount	Voucher
40213	05/05/2015	48NORTH	48 North Solutions, Inc	21,591.82	40,213
40214	05/05/2015	AGREEMEN	Agreement Dynamics, Inc	3,000.00	40,214
40215	05/05/2015	AIRWATCH	Airwatch, LLC	643.86	40,215
40216	05/05/2015	ATHLETES	Athletes for Kids	2,500.00	40,216
40217	05/05/2015	ATOMIC	Atomic Art Services, Inc	360.00	40,217
40218	05/05/2015	ATWORK	At Work!	787.50	40,218
40219	05/05/2015	BACKGROU	Background Source Intl	312.00	40,219
40220	05/05/2015	BELLCITY	City Of Bellevue	56,648.47	40,220
40221	05/05/2015	BEST	Best Parking Lot Cleaning, Inc	3,532.77	40,221
40222	05/05/2015	BHC	BHC Consultants, LLC	2,080.00	40,222
40223	05/05/2015	BMC	BMC West Corp	664.76	40,223
40224	05/05/2015	BMI	Broadcast Music, Inc	335.00	40,224
40225	05/05/2015	BOFAPC	Bank of America Petty Cash	301.18	40,225
40226	05/05/2015	CADMAN	Cadman, Inc.	1,210.07	40,226
40227	05/05/2015	CALPORT	CalPortland Company	1,175.35	40,227
40228	05/05/2015	CODEPUB	Code Publishing Inc	133.99	40,228
40229	05/05/2015	COLUMBIA	Columbia Ford	25,376.86	40,229
40230	05/05/2015	COMCAST2	Comcast	129.13	40,230
40231	05/05/2015	DAY	Day Wireless Systems	459.90	40,231
40232	05/05/2015	DEERE	John Deere Landscapes	4,091.48	40,232
40233	05/05/2015	DELL	Dell Marketing L.P.	5,105.25	40,233
40234	05/05/2015	EASTFRIE	Eastside Friends of Seniors	2,500.00	40,234
40235	05/05/2015	ENCOMPAS	Encompass	1,875.00	40,235
40236	05/05/2015	ENGBUS	Engineering Business Systems Inc	470.85	40,236
40237	05/05/2015	EVANS	David Evans & Associates, Inc	1,903.61	40,237
40238	05/05/2015	EVERSONS	Everson's Econo Vac, Inc.	45,749.35	40,238
40239	05/05/2015	FASTENAL	Fastenal Industrial Supplies	65.14	40,239
40240	05/05/2015	FASTSIGN	Fastsigns Bellevue	1,637.03	40,240
40241	05/05/2015	GALT	John E. Galt	5,067.50	40,241
40242	05/05/2015	GIANINI	Chris Gianini	73.76	40,242
40243	05/05/2015	HDFOWL	H. D. Fowler Company	947.82	40,243
40244	05/05/2015	HOMEDE	Home Depot	1,848.81	40,244
40245	05/05/2015	HONEY	Honey Bucket	2,222.48	40,245
40246	05/05/2015	HOPEEMSV	Hopelink Emergency Financial	1,250.00	40,246
40247	05/05/2015	IBSEN	IBSEN Towing	198.20	40,247
40248	05/05/2015	IIMC	Int Inst of Municipal Clerks	95.00	40,248
40249	05/05/2015	ISSAQI	Issaquah Press, Inc.	57.20	40,249
40250	05/05/2015	ISSCHURC	Issaquah Community Services	250.00	40,250
40251	05/05/2015	ISSFOOD	Issaquah Food & Clothing Bank	1,250.00	40,251
40252	05/05/2015	ISSIGNS	Issaquah Signs	213.53	40,252
40253	05/05/2015	JIRSA	Barbara Jirsa	124.93	40,253
40254	05/05/2015	KCRADIO	King Cty Radio Comm Svcs	526.69	40,254
40255	05/05/2015	KEENEY	Keeney's Office Plus	21.88	40,255
40256	05/05/2015	KENYON2	Kenyon Disend PLLC	61,846.08	40,256
40257	05/05/2015	KINGFI	King County Finance A/R	3,587.52	40,257
40258	05/05/2015	KINGGIS	King County Finance	472.00	40,258
40259	05/05/2015	LAKESIDE	Lakeside Industries	1,105.72	40,259
40260	05/05/2015	LESSCHWA	Les Schwab Tire Center	107.31	40,260
40261	05/05/2015	maren	Mareneos Rock Center	474.72	40,261
40262	05/05/2015	MATIAS	Elizabeth Matias	200.00	40,262

Check	Date	Vendor No	Vendor Name	Amount	Voucher
40263	05/05/2015	MINUTE	Mike Immel	2,926.05	40,263
40264	05/05/2015	MQP	St. Vincent de Paul Society	2,000.00	40,264
40265	05/05/2015	NAMI	NAMI Eastside	750.00	40,265
40266	05/05/2015	NC MACH	NC Machinery Co	18,455.55	40,266
40267	05/05/2015	NWENVTEC	NW Envirotech LLC	1,556.70	40,267
40268	05/05/2015	NWLSVC	NW Landscape Services of WA LLC	26,354.22	40,268
40269	05/05/2015	NWNUISAN	Willard's Pest Control Company	89.24	40,269
40270	05/05/2015	OCONNELP	Paullette O'Connell	12.98	40,270
40271	05/05/2015	PACPLANT	Pacific Plants	1,689.04	40,271
40272	05/05/2015	PACRIM	Pacific Rim Equipment Rental	1,287.80	40,272
40273	05/05/2015	PELLCO	Pelleco Construction Inc	413,911.93	40,273
40274	05/05/2015	PERRON	Scott Perron	111.11	40,274
40275	05/05/2015	PIEDMONT	Piedmont Directional Signs	350.00	40,275
40276	05/05/2015	PLATT	Rexel, Inc.	49.28	40,276
40277	05/05/2015	PRISM	Prism Microsystems, Inc	2,882.00	40,277
40278	05/05/2015	PROSTAMP	Pro Stamps	26.94	40,278
40279	05/05/2015	PROTH	Prothman Company	1,524.40	40,279
40280	05/05/2015	QBS	Quality Business Systems Inc.	42.28	40,280
40281	05/05/2015	RED-D-AR	Red-D-Arc Inc.	569.40	40,281
40282	05/05/2015	SAM	Sammamish Plateau Water Sewer	280.70	40,282
40283	05/05/2015	SAMMI	Sammamish Award Foundation	3,750.00	40,283
40284	05/05/2015	SAMSYMPH	Sammamish Symphony Orchestra	3,750.00	40,284
40285	05/05/2015	SB&MAC	Stewart MacNichols & Harmell Inc	9,978.00	40,285
40286	05/05/2015	SEAKING	Seattle King County Dept of Public H	10.00	40,286
40287	05/05/2015	SEATIM	Seattle Times	1,799.28	40,287
40288	05/05/2015	SEQUOYAH	Sequoyah Electric, LLC	1,284.84	40,288
40289	05/05/2015	SMARTLIN	Smartlink LLC	1,191.00	40,289
40290	05/05/2015	SPATIAL	Spatial Development Int LLC	6,480.00	40,290
40291	05/05/2015	staples	Staples Advantage	5,942.01	40,291
40292	05/05/2015	STETTLER	Patricia Stettler	500.00	40,292
40293	05/05/2015	SUNBELT	Sunbelt Rentals	93.19	40,293
40294	05/05/2015	SWIFTTRE	Swift Tree Care	1,752.00	40,294
40295	05/05/2015	THERAPEU	Therapeutic Health Services	1,250.00	40,295
40296	05/05/2015	TOPTOBOT	Top To Bottom Janitorial, Inc	10,687.06	40,296
40297	05/05/2015	ULINE	ULINE	2,397.41	40,297
40298	05/05/2015	UNITRENT	United Rentals NA, Inc	2,202.54	40,298
40299	05/05/2015	UPROAR	Uproar, Inc.	5,100.00	40,299
40300	05/05/2015	USHEALTH	U S Healthworks	48.00	40,300
40301	05/05/2015	WAAUDIOL	Washington Audiology Services	845.20	40,301
40302	05/05/2015	WAEMP	State of Wa Employment Security Dep	20,027.82	40,302
40303	05/05/2015	WAPOISON	Wa Poison Center	625.00	40,303
40304	05/05/2015	WAWORK	Washington Workwear Stores Inc	197.08	40,304
40305	05/05/2015	WESTERNS	Western Systems Inc.	19,970.52	40,305
40306	05/05/2015	WHITLOCK	John Whitlock	52.90	40,306
40307	05/05/2015	ZUMAR	Zumar Industries, Inc.	635.78	40,307
				<hr/> <hr/>	
				Check Total:	842,020.77
				<hr/> <hr/>	

Accounts Payable

Check Register Totals Only

User: mdunham
 Printed: 4/30/2015 - 9:27 AM

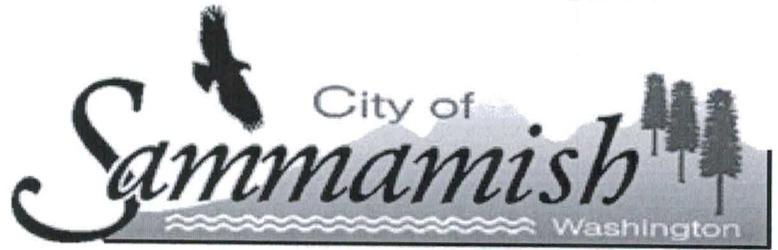


Check	Date	Vendor No	Vendor Name	Amount	Voucher
40308	05/05/2015	US BANK	U. S. Bank Corp Payment System	14,418.49	40,308
				14,418.49	
Check Total:				14,418.49	

Accounts Payable

Check Register Totals Only

User: mdunham
 Printed: 4/30/2015 - 9:44 AM



Check	Date	Vendor No	Vendor Name	Amount	Voucher
40309	05/05/2015	ENGBUS	Engineering Business Systems Inc	927.86	40,309
40310	05/05/2015	GEREND	Donald Gerend	1,166.22	40,310
40311	05/05/2015	SAM	Sammamish Plateau Water Sewer	85.79	40,311
Check Total:				2,179.87	



Meeting Date: May 5, 2015

Date Submitted: 4/29/2015

Originating Department: Public Works

Clearances:

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Attorney | <input type="checkbox"/> Community Development | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Admin Services | <input type="checkbox"/> Eastside Fire and Rescue | <input type="checkbox"/> Police |
| <input checked="" type="checkbox"/> City Manager | <input type="checkbox"/> Finance & IT | <input checked="" type="checkbox"/> Public Works |

Subject: 212th Avenue SE Gap Project – Design Contract

Action Required: Authorize the City Manager to execute a Contract Agreement with David Evans and Associates, Inc. for Engineering and Professional Services for design of the 212th Ave SE Sidewalk Gap project.

Exhibits: 1.Contract and Scope

Budget: Contract is for \$117,710 within a budget of \$650,000 in the 2015 Transportation Capital Improvement Fund

Summary Statement:

This contract agreement will provide engineering design for non-motorized improvements across wetlands on 212th Avenue SE from SE 24th Street northward to improvements constructed by the Crossings at Pine Lake subdivision. The purpose of the project is to complete a gap in existing non-motorized improvements on this corridor.

Background:

This project is included in the 2015-2020 Six Year Transportation Improvement Program. The design will include construction of pedestrian and bike accommodations immediately adjacent to a wetland and a stream. The length of improvements is approximately 650 feet.

Staff presented design alternatives to Council on February 10th that included widening only on the west side. Council directed staff to increase the scope by also providing a widened shoulder to accommodate bicyclists on the east side, and follow the design alternative that was most compatible with that objective. Therefore, this design will include widened shoulders on both sides of the road, with sidewalk and limited planter strip on the west side only, in an effort to minimize construction impacts in the wetland.

This project fills a gap between previously constructed improvements. These include a gravel trail constructed by City crews between SE 24th Street and SE 32nd, and full half-street improvements to the

north constructed by the Crossings at Pine Lake subdivision, completed in 2010 and 2007, respectively. Eliminating this existing non-motorized gap will expand the safe walking route for students of Creekside Elementary School, and provide a much needed widened shoulder for bicyclists on both sides.

Financial Impact:

The 2015 Transportation Capital Improvement Fund includes \$650,000 for this project.

The scope and fee negotiated with David Evans and Associates, Inc. is within the range customary for a project of this size and complexity. The contract includes \$5,000 for a management reserve fund to cover unforeseen tasks. The management reserve fund is not utilized without written authorization by the City. The budget for the current scope is as follows:

<u>212th Ave SE Non-Motorized</u>	<u>Total Project Costs</u>	
Preliminary Design and Alternatives	\$	42,602
Design Contract	\$	117,710
Construction Estimate	\$	371,522
Planning Level Contingency (10%)	\$	37,152
Construction Engineering (10%)	\$	37,152
Construction Testing & Misc. (6%)	\$	22,291
Wetland Mitigation Monitoring (5-year)	\$	20,000
TOTAL ESTIMATED PROJECT COST:	\$	648,430
Existing Budget	\$	650,000
Project Budget Surplus	\$	1,570

Recommended Motion:

Move to authorize the City Manager to execute a contract with the David Evans and Associates, Inc. in the amount of \$117,710 for Engineering and Professional Services in association with the 212th Avenue SE Gap project.

**CITY OF SAMMAMISH
AGREEMENT FOR SERVICES**

Consultant: David Evans and Associates Inc.

This Agreement is entered into by and between the City of Sammamish, Washington, a municipal corporation, hereinafter referred to as the "City," and David Evans and Associates, Inc., hereinafter referred to as the "Consultant."

WHEREAS, the City desires to have certain services performed for its citizens; and

WHEREAS, the City has selected the Consultant to perform such services pursuant to certain terms and conditions;

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the parties hereto agree as follows:

1. **Scope of Services to be Performed by Consultant.** The Consultant shall perform those services described in Exhibit "A" of this agreement. In performing such services, the Consultant shall comply with all federal, state, and local laws and regulations applicable to the performance of such services. The Consultant shall perform services diligently and completely and in accordance with professional standards of conduct and performance.

2. **Compensation and Method of Payment.** The Consultant shall submit invoices for work performed using the form set forth in Exhibit "B".

The City shall pay Consultant:

[Check applicable method of payment]

According to the rates set forth in Exhibit "D"

A sum not to exceed \$117,710

Other (describe): _____

The Consultant shall complete and return to the City Exhibit "C," Taxpayer Identification Number, prior to or along with the first invoice submittal. The City shall pay the Consultant for services rendered within ten days after City Council approval.

3. **Duration of Agreement.** This Agreement shall be in full force and effect for a period commencing upon execution and ending December 31, 2016, unless sooner terminated under the provisions of the Agreement. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

4. **Ownership and Use of Documents.** Any records, files, documents, drawings, specifications, data or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the City, shall be the property of the City whether the project for which they were created is executed or not

5. **Independent Contractor.** The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. The Consultant will solely be responsible for its acts and for the acts of its agents, employees, subconsultants, or representatives during the performance of this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto.

6. **Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney

Exhibit 1

fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant, in performance of this Agreement, except for injuries and damage caused by the sole negligence of the City.

7. Insurance.

A. 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.

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 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Contractor'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.

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.

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 shall not be cancelled by either party except after thirty (30) days prior written notice has been given to the City

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.

8. Record Keeping and Reporting.

Exhibit 1

A. The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Consultant shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.

B. The foregoing records shall be maintained for a period of seven years after termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14 and by the City.

9. **Audits and Inspections.** The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review, or audit by the City during the performance of this Agreement.

10. **Termination.**

A. This City reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon seven days prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports or other materials prepared by the Consultant pursuant to this Agreement shall promptly be submitted to the City

B. In the event this Agreement is terminated or suspended, the Consultant shall be entitled to payment for all services performed and reimbursable expenses incurred to the date of termination.

C. This Agreement may be cancelled immediately if the Consultant's insurance coverage is canceled for any reason, or if the Consultant is unable to perform the services called for by this Agreement.

D. The Consultant reserves the right to terminate this Agreement with not less than fourteen days written notice, or in the event that outstanding invoices are not paid within sixty days.

E. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

11. **Discrimination Prohibited.** The Consultant shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Consultant under this Agreement, on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.

12. **Assignment and Subcontract.** The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

13. **Conflict of Interest.** The City insists on the highest level of professional ethics from its consultants. Consultant warrants that it has performed a due diligence conflicts check, and that there are no professional conflicts with the City. Consultant warrants that none of its officers, agents or employees is now working on a project for any entity engaged in litigation with the City. Consultant will not disclose any information obtained through the course of their work for the City to any third party, without written consent of the "City". It is the Consultant's duty and obligation to constantly update its due diligence with respect to conflicts, and not the City's obligation to inquire as to potential conflicts. This provision shall survive termination of this Agreement.

14. **Confidentiality.** All information regarding the City obtained by the Consultant in performance of this Agreement shall be considered confidential. Breach of confidentiality by the Consultant shall be grounds for immediate termination.

15. **Non-appropriation of funds.** If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. This Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the City in the event that the terms of the provision are effectuated.

Exhibit 1

16. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the parties. Either party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

17. **Notices.** Notices to the City of Sammamish shall be sent to the following address:

Jed Ireland
City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075
Phone number: 425-295-0563
e-mail: jireland@sammamish.us

Notices to the Consultant shall be sent to the following address:

Scott Soiseth
David Evans and Associates, Inc.
415-118th Avenue SE
Bellevue, WA 98005
Phone number: 425-519-6590
e-mail: sbs@deainc.com

18. **Applicable Law; Venue; Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case and such fee, shall be included in the judgment.

19. **Severability.** Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

CITY OF SAMMAMISH, WASHINGTON

CONSULTANT

By: _____

By: Scott B. Soiseth

Michael Clark

Print Name: Ben Yazici

Print Name: SCOTT B. SOISETH

Michael Clark

Title: City Manager

Title: SR. Associate

Vice President

Date: _____

Date: 4/29/15

4/29/15

Attest/Authenticated:

Approved As To Form:

City Clerk

City Attorney

EXHIBIT A

CITY OF SAMMAMISH 212TH AVENUE SE NON-MOTORIZED IMPROVEMENTS

Phase 2

Scope of Services

Prepared by:

**David Evans and Associates, Inc.
415 118th Avenue SE
Bellevue, WA 98005**

April 2, 2015

TABLE OF CONTENTS

TASK 1.00	PROJECT DESCRIPTION, DESIGN CRITERIA, AND DELIVERABLES.....	1
1.01	Project Description.....	1
1.03	Project Deliverables Furnished by the CONSULTANT.....	1
1.04	Responsibilities and Services Provided by the CLIENT.....	1
1.05	Project Assumptions.....	2
TASK 2.00	PROJECT MANAGEMENT AND QUALITY CONTROL.....	2
2.01	Project Management.....	2
2.02	Develop Project Schedule.....	2
2.03	Monthly Invoices/Progress Reports.....	2
2.04	Progress Meetings.....	2
2.05	Quality Control/Quality Assurance Review.....	3
2.06	Change Management.....	3
TASK 3.00	SURVEY.....	3
3.01	Field Review.....	3
3.02	Data Collection.....	3
3.03	Horizontal and Vertical Control Network.....	3
3.04	Establish Road Centerline Alignments and Rights-of-Way (Base Map).....	4
3.05	Topographic Survey.....	4
TASK 4.00	ENVIRONMENTAL DOCUMENTATION.....	5
4.01	Section 106 Compliance.....	5
4.02	Section 7 ESA Compliance.....	5
4.03	SEPA.....	6
4.04	Wetland Delineation and Classification.....	6
4.05	Environmental Permitting.....	6
4.06	Local Permits.....	8
TASK 5.00	DESIGN.....	8
5.01	Project Site Visits (2 Total).....	8
5.02	Storm Drainage.....	8
5.03	Preliminary and Final Design (60% and 95% Completion).....	8
5.04	Prepare Ad Ready Documents.....	9
5.05	Assistance During Bid Period.....	9
TASK 6.00	UTILITY COORDINATION.....	9
6.01	Utility Coordination.....	9
6.02	Utility Conflict Resolution.....	10
TASK 7.00	CONSTRUCTION SUPPORT SERVICES (IF REQUESTED).....	10
7.01	Construction Support Services.....	10

TASK 1.00 PROJECT DESCRIPTION, DESIGN CRITERIA, AND DELIVERABLES

1.01 Project Description

The City of Sammamish (CLIENT) is requesting professional services from David Evans and Associates, Inc. (CONSULTANT) for preparation of Plans, Specifications, and Estimate (PS&E) documents for the 212th Avenue SE Non-Motorized Improvements. This project includes the final design of Alternative 1 identified in Phase 1 of the project, and the addition of shoulder widening on the east side. The Project consists of bike lanes and sidewalks along 212th Avenue SE from SE 24th Street to 670 feet north of SE 24th Street on the west side, and shoulder widening on the east side. The project will construct curb, gutter, sidewalk, storm drainage, bike lanes, landscaping, and wetland mitigation.

The major features of the project include:

- Design of bike lanes, sidewalk, drainage, and landscaping.
- Environmental documentation.
- Preliminary and final submittals of contract documents.

1.03 Project Deliverables Furnished by the CONSULTANT

The CONSULTANT shall maintain a project file for pertinent work items. The CLIENT review sets will be returned with each subsequent revision, illustrating that each review comment has been addressed as stated, or how/why it was not addressed. The CONSULTANT shall deliver the following documents and products to the CLIENT as part of this agreement:

- 3 copies each of the draft and final Cultural Resources Assessment
- 3 copies each of the draft and final Biological Evaluation
- 3 copies each of the draft and final SEPA checklist
- 3 copies each of the draft and final JARPA
- 3 copies each of the draft and final Critical Areas Study
- 3 copies each of the final design Mitigation Plans
- 3 copies each of the draft and final Drainage TIR
- 3 copies of the 60% PS&E (11"x17" at 1"=40' scale and electronic PDF) for review by the CLIENT
- 3 copies of the 95% PS&E (11"x17" at 1"=40' scale and electronic PDF) for review by the CLIENT
- 1 electronic copy of the PS&E bid set
- 1 unbound copy of the final set of specifications
- 1 copy of the stamped and signed final plan set
- Electronic bid documents to Builders Exchange
- 3 copies each of the draft and final Geotechnical Report
- Potential subsurface conflicts spreadsheet

1.04 Responsibilities and Services Provided by the CLIENT

The CLIENT will:

- Provide all available existing as-built plans, right-of-way (ROW) plans, horizontal and vertical monument information, G.I.S. maps, and other mapping information as available to the CONSULTANT.
- Provide all City standard specifications and City bid forms in Microsoft Word format.

Exhibit 1

- Review all submittals made to the CLIENT within 15 working days, or as agreed, and return them to the CONSULTANT with consolidated written comments regarding changes needed or revisions.

1.05 Project Assumptions

- All drawings will be prepared in AutoCAD 2012 format, utilizing the CONSULTANT's CADD standards, and drawn at one inch equals forty feet for 11" x 17" plans. Only 11"x17" plans will be developed for this Scope of Services.
- Specifications will follow WSDOT/APWA Standard Specifications 2014 and the City of Sammamish's General Special Provisions.
- The project duration for final design is assumed to be six (6) months.

TASK 2.00 PROJECT MANAGEMENT AND QUALITY CONTROL

2.01 Project Management

Direction of the CONSULTANT staff and review of their work over the course of the project shall be provided. This work element includes preparing monthly progress reports, including the status of individual work elements, number of meetings attended, outstanding information required, and work items planned for the following month.

Periodic monitoring of the CONSULTANT'S design budget will occur over the course of the project. This work element is intended to help monitor costs and budgets, and to propose corrective actions. These actions may include formal requests for increases, modifications, or reductions in scope and/or budget.

Drawings and documents received and generated over the course of the project require review, coordination, and file management. The status of requested information will also be maintained.

2.02 Develop Project Schedule

The CONSULTANT and the CLIENT will jointly develop an overall project schedule showing all major and supportive activities. The schedule shall be prepared to reflect a 6-month design completion of the project. The schedule shall be arranged to meet key target dates. The CONSULTANT shall update the schedule monthly to reflect the current status of the project.

Deliverables: Project Schedule and Monthly Updates.

2.03 Monthly Invoices/Progress Reports

Monthly invoices will be prepared by the CONSULTANT per CLIENT requirements for work activities for the prior month. These invoices shall also include SUBCONSULTANT work and will be accompanied by monthly progress reports. Invoices will include back-up material for all expenses and will show approved budget and amount expended to date.

Deliverables: Monthly Invoices and Progress Reports (7 total).

2.04 Progress Meetings

This work element provides for the preparation, attendance, follow-up, and documentation of meetings during the length of the project. These meetings will be the forums for agencies to provide input and guidance for the direction of the project. They will also be used to discuss project issues, approve submittals, and develop potential solutions.

Exhibit 1

The CONSULTANT shall prepare for, attend, and document up to four (4) meetings with CLIENT staff. Meetings will be required for coordination with the CLIENT and other affected agencies. The CONSULTANT will attend one meeting every month with the CLIENT's project manager for the duration of the project. The meetings will be held via conference call.

Deliverables: Meeting Minutes (4 total).

2.05 Quality Control/Quality Assurance Review

This work element is for the QC/QA review of CONSULTANT deliverables by a designated QC/QA staff member of the CONSULTANT team. The review will cover documents, reports, PS&Es, and pertinent information on an on-going basis. The program entails the periodic review of study criteria, design, and assumptions, as well as concepts and presentation of product format, and assures that the overall project objectives are being fulfilled.

2.06 Change Management

Project Managers from the CLIENT and the CONSULTANT are responsible for managing changes to the scope and schedule. The CLIENT is responsible for the authorization of any changes to the scope, budget, and/or schedule. Team members must ensure that work within their areas remains within the defined project scope, schedule, and budget. When issues, actions, or circumstances occur that could cause a change in scope, personnel, cost, or schedule, team members must communicate potential changes to the Project Manager as early as possible. Project Managers will determine whether the potential change issue will lead to a change in scope, cost, or schedule.

The CONSULTANT shall obtain written authorization from the CLIENT before implementing any change to this scope of work, schedule, or budget. All changes shall be documented using the Project Change Form.

TASK 3.00 SURVEY

3.01 Field Review

The CONSULTANT and project team will conduct a field review at the outset of the project to identify key field conditions that may impact the design including the location and/or presence of driveways and roadways, trees, mail boxes, on-street parking, ADA compliance, utilities (underground and overhead), potential intersection site distance and clear zone issues, and drainage issues.

3.02 Data Collection

The CONSULTANT has performed a survey adjacent to the project site and will recover and utilize monuments previously surveyed that control the site.

The CONSULTANT will research and collect existing roadway, right-of-way, and utility information from the CLIENT and respective utility agencies for inclusion in the mapping.

3.03 Horizontal and Vertical Control Network

The CONSULTANT shall establish supplemental horizontal and vertical control points as needed throughout the project limits for the purpose of performing surveying services. Horizontal and vertical control points shall be based upon at least two local control monuments which will then be referenced on the final drawings. These monuments shall serve as the basis of the horizontal coordinates and control of the site.

Exhibit 1

The CONSULTANT shall locate and set reference points outside of the proposed construction area for visible street survey monuments along the street corridor.

3.04 Establish Road Centerline Alignments and Rights-of-Way (Base Map)

The CONSULTANT shall utilize previously established centerlines and rights-of-way within the project limits for preparation of the right-of-way base map for this project. Parcel lines for adjacent properties will be shown as near as possible to their actual locations, but will be solely based upon readily available public records and maps. No additional survey work is proposed to perform boundary surveying on any parcel, unless requested at a later date. The base map will be used to validate the location of existing improvements located by the topographic survey. The base map will show located street monuments and property corner markers found that were used to create this map.

3.05 Topographic Survey

The CONSULTANT shall prepare a project topographic base map. This base map will incorporate City and franchise utility 'as-built' information, right-of-ways and road centerlines, property lines, and other existing features within the project limits including:

- a. Pavement limits
- b. Driveways
- c. Fences
- d. Storm drainage structures with pipe invert elevations
- e. Sanitary sewer manholes with pipe invert elevations
- f. Water valves, fire hydrants, and associated features with nut elevations
- g. Electrical power vaults and associated surface features
- h. Telephone manholes and pedestals
- i. Natural gas valves, meters, and warning markers
- j. Cable TV pedestals
- k. Street lighting
- l. Signage
- m. Utility poles
- n. Overhead wires, guy wires
- o. Meters
- p. Road channelization
- q. Trees
- r. Street markings
- s. Ordinary high water mark of stream crossing

The limits of the project area surveyed will be defined as the westerly limits being the existing edge of pavement on the east side of the roadway and the easterly limits being 20 feet easterly of the westerly limits.

The CONSULTANT will contract with an underground utility locate service to set paint marks as the surface location of the underground utilities. The CONSULTANT will use these marks as evidence to depict the underground location of these utilities.

The CONSULTANT will prepare the final topographic survey map with a one-foot contour within the paved surfaces of the roadway prism and a two-foot contour on non-paved surfaces outside the roadway prism. The mapping shall be plotted at a scale of one inch equals forty feet (1"=40') with a one-foot contour interval.

Exhibit 1

Deliverables: Electronic copy of the topographic base map, right-of-way centerline, parcel lines, and data points in AutoCAD.

TASK 4.00 ENVIRONMENTAL DOCUMENTATION

This Scope of Services includes preparation of environmental documentation and permits in compliance with local, state, and federal regulations. The Scope of Services identifies this and other key assumptions that the CONSULTANT has relied upon in determining the CONSULTANT's effort, fee, scope, and schedule for the project. The CONSULTANT and the CLIENT agree to renegotiate these terms in the event a key assumption becomes invalid.

4.01 Section 106 Compliance

Section 106 compliance typically requires an archaeological/historic analysis of the site and adjacent land, and consultation with the State Historic Preservation Officer (SHPO) and the tribes. Data will be collected from the City, County, and local agencies, and National and State Historic Registers will be reviewed. The CONSULTANT will contact the cultural resources staff of tribes that may have an interest in the project area. A cultural resources survey will be conducted to identify potential archaeological and historical resources. Newly identified sites will be recorded on Washington Archaeological Inventory forms. A draft Cultural Resources Assessment will be prepared consistent with Washington Department of Archaeology and Historic Preservation (DAHP) reporting standards, and will be submitted to the CLIENT for review. A revised report will be submitted to the Corps and SHPO for concurrence.

Assumptions:

- This scope assumes that no more than one unrecorded archaeological site or one unrecorded historic site will be identified within the project area.
- No more than five (5) shovel test probes will be excavated.

Deliverables: Draft Cultural Resources Assessment for CLIENT review.
Final Cultural Resources Assessment for Corps and SHPO concurrence.

4.02 Section 7 ESA Compliance

Compliance with Section 7 of the ESA will require preparation of a Biological Evaluation (BE) report, as described in further detail in the following sub-tasks.

Preliminary Data and Background Review – The CONSULTANT shall review project maps and a description of proposed activities, and will coordinate with project engineers to clarify the extent of the proposed project activities. The CONSULTANT shall research existing literature and scientific data to determine species distribution, habitat requirements, and other pertinent biological requirements for the target species. Also, biologists from the Washington Department of Fish and Wildlife (WDFW), U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS) may be consulted for further information on species occurrence, habitat requirements, and vulnerability to project-related activities. To the greatest extent practicable, the CONSULTANT shall depend on existing information readily available in the public domain to prepare the document.

Site Visit – The CONSULTANT shall conduct one on-site investigation of the project area by one biologist to evaluate existing habitat conditions and the potential for species presence. The CONSULTANT shall identify significant habitat features such as suitable roosting and perching trees, nests, spawning areas, migration corridors, feeding areas, cover, and other important habitat.

Exhibit 1

Report Preparation – The CONSULTANT shall document the findings from the previous tasks in a BE report. The CONSULTANT shall assess species’ general requirements and habits, such as timing of nesting or spawning, wintering activities, and vulnerability to disturbance. The CONSULTANT shall also discuss the documented and potential occurrence of each species and the level of use within the project area. The CONSULTANT will describe the potential project impacts for each species. The BE report will provide recommendations for impact avoidance and/or minimization, if appropriate, and will include an impact determination for each species addressed. The CONSULTANT will analyze direct and indirect impacts to the species, as well as impacts to potential habitat, using the information compiled in the above tasks. The CONSULTANT will consider long-term impacts including physical impacts to nests, roosts, perches, spawning areas, migration corridors, feeding areas, cover, and other important habitat. The CONSULTANT will also evaluate effects from interrelated and interdependent actions. The CONSULTANT will consider potential temporary impacts, including visual and audible disturbance to listed and proposed species from construction activities. The BE will be consistent with the most current version of WSDOT’s Biological Assessment preparation guidance.

Agency Coordination – The CONSULTANT will respond to Corps comments on the BE.

Deliverables: Draft Biological Evaluation Report for CLIENT review.
Final Biological Evaluation Report.

Assumptions:

- CLIENT will review all draft documents prior to being provided the final documents.
- The following information will be provided by the project team in order to complete the BE:
 - A detailed project description and preliminary design plans and specifications.
 - Existing and proposed stormwater treatment methods.
 - List of temporary erosion and sediment control best management practices.

4.03 SEPA

The CLIENT shall prepare the SEPA Checklist.

4.04 Wetland Delineation and Classification

The CONSULTANT shall delineate and classify the wetland along the east side of 212th Avenue SE within the project limits. The wetland and buffer area will be included in the topographic survey under Task 3.00. Results of this task will be combined with results of earlier wetland delineation efforts and reported in the Critical Area Study (see Task 4.05 below).

Assumptions:

- The CONSULTANT assumes that there is no more than one wetland to delineate along the east side of SE 24th Street within the project limits.

4.05 Environmental Permitting

The CONSULTANT shall prepare applications for the following environmental permits:

- Section 404 Clean Water Act (CWA) Nationwide Permit
- CWA Section 401 Certification
- Hydraulic Project Approval (HPA)
- Critical Areas Review

Exhibit 1

The CONSULTANT has estimated the level of effort for preparing permit applications and consulting with the agencies through the permit process. However, the level of effort may vary from this estimate due to agency requests for additional information or changes in design requiring additional coordination. The CONSULTANT reserves the opportunity to submit a supplemental request to cover additional costs associated with unforeseen circumstances.

JARPA

Section 404 Permit

The CONSULTANT shall prepare a Joint Aquatic Resource Permits Application (JARPA) for submittal to the Corps for the CWA Section 404 permit. The CONSULTANT has assumed that impacts will be limited to wetlands on either side of 212th Avenue SE.

The JARPA shall be submitted along with the Critical Areas Report, Cultural and Historic Resources Report, and project design drawings. The CONSULTANT shall circulate the JARPA to the CLIENT for review prior to submitting it to the Corps.

Section 401 Certification

The CONSULTANT shall coordinate with the Washington State Department of Ecology (Ecology) to obtain a CWA Section 401 Water Quality Certification. The JARPA will be submitted to Ecology in order to comply with the state water quality standards. For most wetland and stream mitigations, the project must demonstrate consistency with Ecology's Stormwater Manual or its approved equivalent. If the water body is also included on Ecology's 303(d) list, then the project must also demonstrate that it will not contribute to any further exceedance of the listed parameters.

Hydraulic Project Approval

The CONSULTANT shall submit the JARPA to the WDFW for review under the Hydraulic Project Approval (HPA) process. The JARPA shall be submitted with complete site plans, as required by WAC Chapter 220-110. The CONSULTANT shall meet up to two times with WDFW biologists to review the JARPA and design plans.

Meetings:

- Up to two (2) meetings are estimated between the CONSULTANT and WDFW biologists.

Deliverables: Preliminary JARPA for review by CLIENT.
Final JARPA.

Assumptions:

- The project will not require an individual permit from the Corps.

Critical Areas Study

The CONSULTANT shall prepare a Critical Areas Study consistent with Sammamish Municipal Code (SMC) Chapter 21A.50. The Critical Areas Study will summarize the results of the wetland delineation, including any streams, wetlands, or fish and wildlife habitat areas encountered in the project area. The study includes preparation of a conceptual mitigation plan, which will be included with the Critical Areas Study, as well as a final mitigation plan to be prepared as part of the final design process. Mitigation plans will be prepared according to City of Sammamish, Washington Department of Ecology, and U.S. Army Corps of Engineers guidelines.

Deliverables: Draft Critical Areas Study with Draft Conceptual Mitigation Plan (3 copies).
Final Critical Areas Study with Final Conceptual Mitigation Plan (3 copies).

Exhibit 1

Final Design Mitigation Plan (two rounds of review) – estimated to be three full-size sheets, reviewed and stamped by a registered landscape architect (3 copies).

Assumptions:

- The CONSULTANT assumes that there will not be more than one round of review of the Critical Areas Study.
- At this time, mitigation plan level of effort is based on impacts to two Class IV wetlands and buffer.
- Mitigation plans are anticipated to be for wetland and buffer enhancement.

4.06 Local Permits

The CLIENT shall prepare all permits for the project.

TASK 5.00 DESIGN

5.01 Project Site Visits (2 Total)

The CONSULTANT shall conduct up to two (2) site visits during the project to resolve design issues. CLIENT staff shall be present at the site visits, if requested.

5.02 Storm Drainage

The new impervious area is greater than 2,000 square feet; therefore a drainage report is required. The CONSULTANT shall:

- Determine the new pervious and impervious areas.
- Evaluate project requirements for detention and water quality design.
- Determine the existing drainage systems and drainage basins for the project area.
- Develop drainage system improvements for this project, including detention and water quality treatment if required.
- Prepare a drainage technical information report (TIR) that summarizes the efforts of this task and includes any calculations.
- Submit the TIR for CLIENT review.
- Assume there will be one set of comments on the TIR and one revision.

Deliverables: Draft Drainage TIR.
Final Drainage TIR.

Assumptions:

- Detention pipe or LID French drain or medial filter drain will be evaluated for flow control.
- Water quality will consist of catch basin biofiltration or stormfilter canisters if required.

5.03 Preliminary and Final Design (60% and 95% Completion)

The CONSULTANT shall bring the design to a 100% completion level with intermediate milestones at the 60% and 95% completions, and shall participate in a review coordination meeting to respond to CLIENT staff questions and comments at each of the two stages. Review comments will be responded to and incorporated as directed by the CLIENT Project Manager. The preliminary and final design will include the following elements, at a minimum, prepared by the CONSULTANT for each milestone as noted:

- Cover sheet including a vicinity map (60% and 95%).
- Roadway sections (typical and special) (60% and 95%).

Exhibit 1

- Roadway plans and profiles (60% and 95%).
- Roadway details (60% and 95%).
- Drainage conveyance plan, profiles, and details (60% and 95%).
- Channelization and signing plans (60% and 95%).
- Driveway plan/profiles (60% and 95%).
- Landscaping plans (60% and 95%).
- Landscaping details (60% and 95%).
- Temporary erosion control plans (TESC) (60% and 95%).
- Contract documents and specifications (60% and 95%).
- Cost estimate (60% and 95%).

Deliverables: Three (3) hard copies of the 60% and 95% PS&Es and electronic PDF (11"x17").

5.04 Prepare Ad Ready Documents

The CONSULTANT shall prepare the following in accordance with the CLIENT's review comments from the 95% final design and coordination meeting and in accordance with regulatory agency permit conditions:

- Modifications and/or revisions in response to CLIENT review comments from the 95% design and coordination meeting.
- Final design of project elements.
- Special provisions and listing of CLIENT standard specifications, with fill-ins, to be incorporated in the construction contract documents.
- Preparation of a final (100% completion) list of bid items, quantities, and a construction cost estimate for a set of signed and reproducible construction contract documents.

The CONSULTANT will assemble all plan sheets, general and special provisions, cost estimates, and associated documentation for submittal as an Ad Ready PS&E package.

Deliverables: Electronic submittal of Ad Ready PS&E to Builders Exchange.
One (1) unbound set of contract specifications.
One (1) set of reproducible 11"x17" signed plan sheets.

5.05 Assistance During Bid Period

The CONSULTANT shall provide assistance during the bid and award of the construction contract. The following tasks will be provided by the CONSULTANT on an as-needed basis. The CONSULTANT shall obtain written authorization from the CLIENT prior to providing any of the following services:

- If requested, the CONSULTANT shall assist the CLIENT during the bid period to answer any questions that arise concerning the PS&E documents, and will assist the CLIENT in preparing any addenda required to the level of budget provided in this agreement

Deliverables: Prepare response to bidder questions and bid document addenda.

TASK 6.00 UTILITY COORDINATION

6.01 Utility Coordination

The CLIENT will transmit two copies of the roll plot/plans at major milestone submittals (30% and 60%) to utility providers. The need for utility relocations (if any) will be identified. Utility agencies will be

Exhibit 1

asked to verify the accuracy and location of their respective facilities. Communications with the utility providers will be documented by the CLIENT and provided to the CONSULTANT. The CLIENT will request that the utilities determine if they have improvements that they would prefer to have relocated prior to, or coincident with, this project. The CLIENT will prepare meeting notes and distribute them to participants.

6.02 Utility Conflict Resolution

The CONSULTANT will provide identification, documentation, and resolution of potential subsurface conflicts between utilities and proposed CLIENT facilities. The CONSULTANT will also provide identification, documentation, and resolution of potential surface and above-ground conflicts between utilities and proposed CLIENT facilities.

A subsurface utility investigation will be conducted, if necessary, to better identify potential utility conflicts. A maximum of four (4) potholes is assumed. The CONSULTANT shall coordinate with the utility potholing vendor if requested. This work is to be funded from the Management Reserve if requested.

Deliverables: Potential subsurface conflict spreadsheet.

TASK 7.00 CONSTRUCTION SUPPORT SERVICES (IF REQUESTED)

7.01 Construction Support Services

If requested as part of this agreement, the CONSULTANT will provide construction support throughout the project to respond to RFIs, and will attend construction progress and coordination meetings as directed by CLIENT staff. Services may range from an on-call basis to complete construction documentation and administration. Construction assistance duties may include the following:

- Assist with/coordinate the Pre-Bid conference.
- Coordinate and review shop drawings and catalogue cuts with CLIENT staff.
- Review material certifications and coordinate with CLIENT staff.
- Respond to RFIs from the Contractor and CLIENT Project Manager.
- Provide construction engineering.
- Attend site visits as requested by the CLIENT.
- Provide on-site observation and quality control.
- Review Contractor's request for changes.
- Attend meetings as requested by the CLIENT and provide meeting minutes.
- Provide construction surveying and monumentation, as requested by the CLIENT.
- Provide construction administration.
- Project close-out.

Assumptions:

- The CONSULTANT will assist on this task to the level of budget provided in this agreement.

EXHIBIT B



REQUEST FOR CONSULTANT PAYMENT

To: City of Sammamish
 801 228th Avenue SE
 Sammamish, WA 98075
 Phone: (425) 295-0500
 FAX: (425) 295-0600

Invoice Number: _____ Date of Invoice: _____

Consultant: David Evans and Associates, Inc.

Mailing Address: 415- 118th Avenue SE
 Bellevue, WA 98005

Telephone: 425-519-6590

Email Address: sbs@deainc.com

Contract Period: _____ Reporting Period: _____

Amount requested this invoice: \$ _____

Specific Program: 212th Ave SE Gap Project

 Authorized signature

ATTACH ITEMIZED DESCRIPTION OF SERVICES PROVIDED

For Department Use Only

Total contract amount	
Previous payments	
Current request	
Balance remaining	

Authorization to Consultant: \$
Account Number: 340-409-595-30-63-00
Date:

Approved for Payment by: _____ Date: _____

Finance Dept.

Check # _____ Check Date: _____

EXHIBIT C



TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Sammamish, the must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Sammamish prior to or along with the submittal of the first billing invoice.

Please check the appropriate category:

- Corporation Partnership Government Consultant
- Individual/Proprietor Other (explain)

TIN No.: _____

Social Security No.: _____

Print Name: _____

Title: _____

Business Name: _____

Business Address: _____

Business Phone: _____

Date

Authorized Signature (Required)

**Attachment B
CITY OF SAMMAMISH
212TH AVENUE SE NON-MOTORIZED IMPROVEMENTS
Cost Estimate**

David Evans and Associates, Inc.

Classification	Hrs.	x	Rate	=	Cost
1 Project Manager (PMGR)	133.5		\$ 194.91	\$	26,021
2 QA/QC Manager (MGPE)	16		\$ 194.91	\$	3,119
3 Sr. Professional Engineer (SPEN)	9		\$ 201.00	\$	1,809
4 Design Engineer (DEEN)	247		\$ 88.32	\$	21,815
5 Sr. CADD Technician (SCAD)	81.5		\$ 126.39	\$	10,301
6 Survey Manager (SVYM)	4		\$ 185.78	\$	743
7 Sr. Prof. Land Surveyor (PLSU)	9		\$ 163.12	\$	1,468
8 Survey Technician (SVTE)	20		\$ 94.11	\$	1,882
9 Party Chief (PCHF)	16		\$ 109.79	\$	1,757
10 Instructment Person (INST)	16		\$ 81.56	\$	1,305
11 Scientist (SCI)	60		\$ 83.75	\$	5,025
12 Sr. Scientist (SSCI)	73		\$ 134.00	\$	9,782
13 Sr. Landscape Architect (SLAN)	36		\$ 146.18	\$	5,263
14 Sr. Landscape Designer (SLAD)	96		\$ 108.42	\$	10,408
15 Administrative Assistant (ADMA)	55		\$ 91.37	\$	5,025
16 Project Administrator (PADM)	10		\$ 103.24	\$	1,032
17 Engineering Mgr (ENGM)	2		\$ 268.00	\$	536
Total Hrs.	884				

Salary Cost \$ 107,290

Direct Expenses	No.	Unit	Each	Cost
Reproduction Costs				
Reports	6		\$70 est.	\$ 420
Potholing	4	@	\$500	\$ 2,000
Mail/Deliveries/Fed Ex	2		\$30 est.	\$ 60
Underground Utility Locates	4	hours @	\$90	\$ 360
Mileage	400	miles @	\$0.575 /mile	\$ 230

Subtotal \$ 3,070

DEA Subtotal \$ 110,360

Subconsultants				
Cultural Resource Consultants, Inc.				\$ 2,350
Subconsultant Total				\$ 2,350

DEA & Subconsultants Subtotal \$ 112,710

Management Reserve				
David Evans and Associates				\$ 5,000
Management Reserve Total				\$ 5,000

Total Contract Amount \$ 117,710

**Attachment B
CITY OF SAMMAMISH
212TH AVENUE SE NON-MOTORIZED IMPROVEMENTS
Hour Estimate**

David Evans and Associates, Inc.		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	DEA	DEA	Cultural Resources Consultants	DEA and Sub-consultants Total
Item No.	Work Item	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total hrs	Total \$	Total \$	Total \$
2.00	Project Management and Quality Control																					
2.01	Project Management (2 hrs/week for 6 mo)	48																	48	\$9,356		\$9,356
2.02	Develop Project Schedule	4																	4	\$780		\$780
2.03	Monthly Invoices/Progress Reports (7 Total)	7																	7	\$2,671		\$2,671
2.04	Progress Meetings (4 total Conference Calls)	4			4								4						14	\$1,852		\$1,852
2.05	Quality Control/Quality Assurance Review		16															2	18	\$3,655		\$3,655
2.06	Change Management	4															4		8	\$1,145		\$1,145
	Work Item 2.00 Total	67	16		4								4			9	10	2	112	\$19,458		\$19,458
3.00	Survey																					
3.01	Field Review						1	1											2	\$349		\$349
3.02	Data Collection						1	1	2	12	12								28	\$2,833		\$2,833
3.03	Horizontal and Vertical Control Network							1	2	4	4								11	\$1,117		\$1,117
3.04	Establish Road Centerline Alignments and Right-of-Way (Base Map)						1	4											5	\$838		\$838
3.05	Topographic Survey	1		1			1	2	16										21	\$2,414		\$2,414
	Work item 3.00 Total	1		1			4	9	20	16	16								67	\$7,551		\$7,551
4.00	Environmental Documentation																					
4.01	Section 106 Compliance												16	24				4	44	\$4,922	\$2,350	\$2,350
4.02	Section 7 ESA Compliance																					
4.03	SEPA																					
4.04	Wetland Delineation and Classification																					
4.05	Environmental Permitting												12	1					13	\$1,139		\$1,139
4.05.1	JARPA												12		16	4			32	\$3,708		\$3,708
4.05.1.1	Section 404 Permit												4			1			5	\$627		\$627
4.05.1.2	Section 401 Certification												4			1			5	\$627		\$627
4.05.1.3	Hydraulic Project Approval												8			2			10	\$1,255		\$1,255
4.05.2	Critical Areas Study (Draft and Final)	0.5											32	12			4		48.5	\$4,751		\$4,751
4.0.3.2	Mitigation Plans																					
	Conceptual (Draft)	0.5												2	4	12			18.5	\$2,251		\$2,251
	Final	0.5												2	12	30			44.5	\$5,372		\$5,372
4.06	Local Permits																					
	Work Item 4.00 Total	1.5										60	69	16	58	16			220.5	\$24,653	\$2,350	\$27,003
5.00	Design																					
5.01	Project Site Visits (2 Total)	4			4											2			10	\$1,350		\$1,350
5.02	Storm Drainage																					
5.02.1	Draft TIR	1		6	40	6											4		57	\$6,057		\$6,057
5.02.2	Final TIR	1		2	12	2											2		19	\$2,092		\$2,092
	Work Item 5.02 Subtotal	2		8	52	8										6			76	\$8,150		\$8,150
5.03	Preliminary and Final Design (60% and 95% Completion)																					
5.03.1	Preliminary Design (60% Completion)																					
5.03.1.1	Cover Sheet				0.5	1													1.5	\$171		\$171
5.03.1.2	Roadway Typical Sections				6	2													8	\$783		\$783
5.03.1.3	Roadway Plans and Profiles				24	6													30	\$2,878		\$2,878
5.03.1.4	Roadway Details				8	4													12	\$1,212		\$1,212
5.03.1.5	Storm Drainage Plan/ Profiles				12	4													16	\$1,565		\$1,565
5.03.1.6	Storm Drainage Details				6	2													8	\$783		\$783
5.03.1.7	Channelization and Signing Plans				2	1													3	\$303		\$303
5.03.1.8	Driveway Plan/Profiles				4	2													6	\$606		\$606
5.03.1.9	Landscaping Plans													2	8				10	\$1,160		\$1,160
5.03.1.10	Landscaping Details													1	2				3	\$363		\$363
5.03.1.11	TESC Plans				3	1													4	\$391		\$391
5.03.1.12	Contract Specifications	24												2		8			34	\$5,701		\$5,701
5.03.1.13	Construction Cost Estimate				8										2	1			11	\$1,015		\$1,015
5.03.1.14	Deliverable Assembly				2	2										1			5	\$521		\$521
	Work Item 5.03.1 Subtotal	24			75.5	25								5	12	10			151.5	\$17,451		\$17,451
5.03.2	Preliminary Design (95% Completion)																					
5.03.2.1	Cover Sheet				0.5	0.5													1	\$107		\$107
5.03.2.2	Roadway Typical Sections				4	2													6	\$606		\$606
5.03.2.3	Roadway Plans and Profiles				20	8													28	\$2,777		\$2,777
5.03.2.4	Roadway Details				4	2													6	\$606		\$606
5.03.2.5	Storm Drainage Plan/ Profiles				8	4													12	\$1,212		\$1,212
5.03.2.6	Storm Drainage Details				4	2													6	\$606		\$606
5.03.2.7	Channelization and Signing Plans				1	1													2	\$215		\$215
5.03.2.8	Driveway Plan/Profiles				2	2													4	\$429		\$429
5.03.2.9	Landscaping and Final Mitigation Plans													6	12				18	\$2,178		\$2,178
5.03.2.10	Landscaping and Final Mitigation Details													4	8				12	\$1,452		\$1,452
5.03.2.11	TESC Plans				2	1													3	\$303		\$303
5.03.2.12	Contract Specifications	16												4		8			28	\$4,434		\$4,434
5.03.2.13	Construction Cost Estimate				8										2	1			11	\$1,015		\$1,015
5.03.2.14	Deliverable Assembly				2	2										1			5	\$521		\$521
	Work Item 5.03.2 Subtotal	16			55.5	24.5								14	22	10			142	\$16,462		\$16,462
5.04	Prepare Ad Ready Documents																					
5.04.1	Incorporate 95% Comments				12	6													18	\$1,818		\$1,818
5.04.2	Final Plans				8	6								1	2				17	\$1,828		\$1,828
5.04.3	Final Specifications	4															2		6	\$962		\$962
5.04.4	Final Construction Estimate				2												1		3	\$268		\$268
5.04.5	Upload Ad-Ready Documents to Builder Exchange website					2											1		3	\$344		\$344
	Work Item 5.04 Subtotal	4			22	14								1	2	4			47	\$5,221		\$5,221
5.05	Assistance During Bid Period																					
5.05.1	Prepare Addenda	2			2	4													8	\$1,072		\$1,072
5.05.2	Respond to Bidder Questions	2			2	2													6	\$819		\$819
	Work Item 5.05 Subtotal	4			4	6													14	\$1,891		\$1,891
	Work Item 5.00 Total	54		8	213	77.5								20	38	30			440.5	\$50,525		\$50,525
6.00	Utility Coordination																					
6.01	Utility Coordination																					
6.02																						



Meeting Date: May 5, 2015

Date Submitted: 4/29/2014

Originating Department: Public Works

Clearances:

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Attorney | <input type="checkbox"/> Community Development | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Admin Services | <input type="checkbox"/> Eastside Fire and Rescue | <input type="checkbox"/> Police |
| <input checked="" type="checkbox"/> City Manager | <input type="checkbox"/> Finance & IT | <input checked="" type="checkbox"/> Public Works |

Subject: Sahalee Way Widening Project – Preliminary Design

Action Required: Authorize the City Manager to execute a Contract Agreement with Perteeet, Inc. for Engineering and Professional Services for preliminary design of the Sahalee Way Widening project.

Exhibits: 1.Contract and Scope

Budget: Contract is for \$89,306 within a budget of \$1.1 M in the 2015 Transportation Capital Improvement Fund

Summary Statement:

This contract agreement provides for the development of a preliminary design report for the Sahalee Way corridor. The purpose of the project is to widen Sahalee Way NE from NE 25th Way north to the northern City Limits (the traffic analysis will continue north to SR 202). This preliminary design report is intended to determine the major elements necessary to satisfy concurrency requirements, and analyze P.M. peak traffic forecasts provided by the updated Comprehensive Plan. The analysis will include design options ranging from 3-lane to 5-lane configurations, as well as planning-level cost estimates. Additionally, the intersection at NE 28th Place will be analyzed for signalization or a roundabout.

Background:

This project is included in the 2015-2020 Six Year Transportation Improvement Program and has a planning level estimate of \$16.6 million for a 3-lane configuration. All lane configurations considered will include sidewalk and bike lanes on both sides, and a center turn lane or island where needed. The consultant will provide support to City staff in hosting two open houses for the public to provide feedback. These are tentatively scheduled for June and October this year.

Staff intends to return to Council in late fall of this year with a preliminary design report recommendation and a summary of public input before entering into a final design contract.

Financial Impact:

The 2015 Transportation Capital Improvement Fund includes \$1,100,000 for this project.

The scope and fee negotiated with Perteet, Inc. is within the range customary for a scope of this size and complexity, and is not to exceed \$89,306.

Recommended Motion:

Move to authorize the City Manager to execute a contract with the Perteet, Inc. in the amount of \$89,306 for Engineering and Professional Services in association with the Sahalee Way Widening project.

**CITY OF SAMMAMISH
AGREEMENT FOR SERVICES**

Consultant: Perteet, Inc.

This Agreement is entered into by and between the City of Sammamish, Washington, a municipal corporation, hereinafter referred to as the "City," and Perteet Inc., hereinafter referred to as the "Consultant."

WHEREAS, the City desires to have certain services performed for its citizens; and

WHEREAS, the City has selected the Consultant to perform such services pursuant to certain terms and conditions;

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the parties hereto agree as follows:

1. **Scope of Services to be Performed by Consultant.** The Consultant shall perform those services described in Exhibit "A" of this agreement. In performing such services, the Consultant shall comply with all federal, state, and local laws and regulations applicable to the performance of such services. The Consultant shall perform services diligently and completely and in accordance with professional standards of conduct and performance.

2. **Compensation and Method of Payment.** The Consultant shall submit invoices for work performed using the form set forth in Exhibit "B".

The City shall pay Consultant:

[Check applicable method of payment]

According to the rates set forth in Exhibit "A-1"

A sum not to exceed \$89,306

Other (describe): _____

The Consultant shall complete and return to the City Exhibit "C," Taxpayer Identification Number, prior to or along with the first invoice submittal. The City shall pay the Consultant for services rendered within ten days after City Council approval.

3. **Duration of Agreement.** This Agreement shall be in full force and effect for a period commencing upon execution and ending February 28, 2016 unless sooner terminated under the provisions of the Agreement. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

4. **Ownership and Use of Documents.** Any records, files, documents, drawings, specifications, data or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the City, shall be the property of the City whether the project for which they were created is executed or not

5. **Independent Contractor.** The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. The Consultant will solely be responsible for its acts and for the acts of its agents, employees, subconsultants, or representatives during the performance of this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto.

6. **Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant, in performance of this Agreement, except for injuries and damage caused by the sole negligence of the City.

Exhibit 1

7. Insurance.

A. 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.

B. 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 such services, or 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, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

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 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Contractor'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.

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.

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 shall not be cancelled by either party except after thirty (30) days prior written notice has been given to the City

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.

Exhibit 1

8. Record Keeping and Reporting.

A. The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Consultant shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.

B. The foregoing records shall be maintained for a period of seven years after termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14 and by the City.

9. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review, or audit by the City during the performance of this Agreement.

10. Termination.

A. This City reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon seven days prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports or other materials prepared by the Consultant pursuant to this Agreement shall promptly be submitted to the City

B. In the event this Agreement is terminated or suspended, the Consultant shall be entitled to payment for all services performed and reimbursable expenses incurred to the date of termination.

C. This Agreement may be cancelled immediately if the Consultant's insurance coverage is canceled for any reason, or if the Consultant is unable to perform the services called for by this Agreement.

D. The Consultant reserves the right to terminate this Agreement with not less than fourteen days written notice, or in the event that outstanding invoices are not paid within sixty days.

E. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

11. Discrimination Prohibited. The Consultant shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Consultant under this Agreement, on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.

12. Assignment and Subcontract. The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

13. Conflict of Interest. The City insists on the highest level of professional ethics from its consultants. Consultant warrants that it has performed a due diligence conflicts check, and that there are no professional conflicts with the City. Consultant warrants that none of its officers, agents or employees is now working on a project for any entity engaged in litigation with the City. Consultant will not disclose any information obtained through the course of their work for the City to any third party, without written consent of the "City". It is the Consultant's duty and obligation to constantly update its due diligence with respect to conflicts, and not the City's obligation to inquire as to potential conflicts. This provision shall survive termination of this Agreement.

14. Confidentiality. All information regarding the City obtained by the Consultant in performance of this Agreement shall be considered confidential. Breach of confidentiality by the Consultant shall be grounds for immediate termination.

15. Non-appropriation of funds. If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. This Agreement will terminate

Exhibit 1

upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the City in the event that the terms of the provision are effectuated.

16. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the parties. Either party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

17. **Notices.** Notices to the City of Sammamish shall be sent to the following address:

City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075
Phone number: (425) 295-0500

Notices to the Consultant shall be sent to the following address:

Company Name Perteet, Inc.
Contact Name Dan Hansen, P.E.
Street Address 2707 Colby Avenue, Suite 900
City, State Zip Everett, WA 98201
Phone Number (425) 252-7700
Email danh@perteet.com

18. **Applicable Law; Venue; Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case and such fee, shall be included in the judgment.

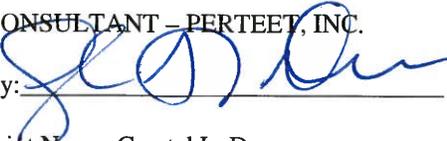
The Contractor will be required to obtain a City of Sammamish business license prior to performing any services and maintain the business license in good standing throughout the term of its agreement with the City. A city business license application can be found at: <http://www.bls.dor.wa.gov/cities/sammamish.aspx>."

19. **Severability.** Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

CITY OF SAMMAMISH, WASHINGTON

CONSULTANT - PERTEET, INC.

By: _____

By:  _____

Print Name: Ben Yazici

Print Name: Crystal L. Donner

Title: City Manager

Title: President

Date: _____

Date: 04/29/15

Attest/Authenticated: _____

Approved As To Form: _____

City Clerk

City Attorney

Exhibit "A"
Scope of Services

City of Sammamish
Sahalee Way Corridor Improvements Pre-Design Report
(N.E. 25th Way to SR 202)

INTRODUCTION

This project is for a pre-design Report for the Sahalee Corridor Improvements project for the purpose of defining where improvements need to be focused in the corridor, how those improvements might be phased, and to determine a range of construction cost. Two preliminary channelization and horizontal alignment alternatives will be developed for the corridor. The project limits extend from NE 25th Way to SR 202 and lies with the City limits and unincorporated King County. The primary focus will be on the improvements within the City limits, NE 25th Way to NE 37th Way. The portion with King County will also be defined to ensure route continuity and future improvement cost.

This pre-design report is anticipated to determine the major elements necessary for the improvements in the corridor. This pre-design report will evaluate the merits of a 3-lane and 5-lane section. Narrowing of the roadway to a 2-lane or 4-lane section will be considered where left turn channelization is not needed. The improvements will include bicycle and pedestrian facilities. Pedestrian facilities are to consist of sidewalks on both sides of the roadway, separated from the roadway by planter strips where feasible. Also analyzed will be the addition of a signal or roundabout at the intersections at NE 28th Way.

The City will supply aerial photography and GIS data including parcel lines for the project vicinity in electronic form that will be used as a basemap for the Pre-Design Report efforts. Storm drain information will also be included and will be supplied by the City in a combination of paper and electronic data. Other information to be incorporated includes utility information obtained directly from the utilities, and pavement limits via the City aerial photos. This information will be supplemented with LiDAR dated from King County.

The Pre-Design Report will define a preferred corridor alignment and roadway section to assist the City and County in programming and prioritizing improvements to the corridor. This phase of the project is expected to be completed by the end of December 2015.

Task 1 – Project Management

1. Provide project management including preparation of invoices and progress reports throughout the project duration (estimated at no more than 8 months for this phase).
2. Prepare and maintain a project schedule in Microsoft Project. Monitor project budget.
3. Attend monthly meetings and prepare meeting minutes (assume 8 meetings). It is assumed that the meetings will be conducted at the City offices
4. Conduct QA/QC review of Pre-Design Report by senior staff.
5. The City will lead all coordination with outside agencies, unless otherwise directed. The level of services to be provided for this coordination will be in accordance with other sections of this scope of services and limited to the hours and expenses detailed in the fee proposal.

Exhibit 1

6. Prepare a work plan at the start of the project including communication plan, deliverables, quality control plan and procedures for change management.

Task 2 - Traffic Analysis

Assumptions:

- *It is assumed for the purposes of this scope that the City will supply the Consultant with all of the necessary peak hour turning movement counts for the base year (2014), as well as for the future year projects and/or growth factors to develop 2035 traffic analysis. These will be derived from the City's recently completed Comprehensive Plan.*
 - *The City will provide existing signal timing for establishing the existing condition.*
 - *The weekday p.m. peak hour will be analyzed. If, after closer investigation, the weekday a.m. peak hour and/or any other peak periods require analysis, it will be considered extra work.*
 - *Up to 3 channelization scenarios will be analyzed for the intersections of NE 25th Way and NE 28th Way. One scenario will include a roundabout*
 - *Analysis will be performed using Synchro software*
1. Conduct a site reconnaissance to review existing channelization, traffic control, signal timing and phasing, pedestrian crosswalks, and turn pocket lengths. Visible utilities that could create conflicts with potential improvements will also be noted. City supplied aerials will also be used to help evaluate site conditions in areas of heavy traffic.
 2. PM peak hour traffic counts, and existing 24-hour counts will be provide from the City. The Consultant will conduct an existing conditions capacity analysis for the Sahalee Way corridor from NE 25th Way to SR 202. The capacity analysis will be conducted using SYNCHRO. Determine if a signal is warranted at NE 28th Pl. Results from SYNCHRO will be presented in SimTraffic for use in public meetings and council presentations.
 3. Use p.m. peak hour 2035 turning movement traffic forecasts provided by the City from their recently completed Comprehensive plan to analyze the corridor using the 3-lane and 5-lane configurations developed in task 3. (Roundabout analysis @ NE 28th Pl)
 4. Present the results of the capacity analysis conducted in Work Element 2.3 to the City.
 5. Document the traffic analysis results and recommendations in the Pre-Design Report.

Task 3 - Preliminary Roadway Design

1. Develop a brief Design Criteria Memorandum describing proposed lane widths, posted and design speeds, drainage requirements, and other principal design criteria for review and approval by the City's Project Manager.
2. Evaluate up to two horizontal alignment options, for comparing the cost of a three lane and five lane section. Meet with the City and County to discuss the horizontal alignment alternatives. Items to be taken into consideration during the discussion include environmental sensitive areas, safety, wall types, size and locations, stormwater conveyance, detention and water quality, roadway standards, the existing developments located on the roadway, existing right of way and property constraints, channelization, and general concepts of construction sequencing. Goal of the meeting will be to identify a level of magnitude cost for each alternative to help the City in selection of a preferred alternative.
3. Prepare preliminary roadway design to a 5 percent design level based on a typical cross-section and available aerial and GIS information. Planter strips will be eliminated in areas where they are not feasible due to adjacent wetlands or significant right of way impacts. (Right-of-way will be drawn off roadway centerline based on assessor map information). Definition of the proposed right-of-way needs will be included in the drawings, with consideration given to roadway requirements, and

Exhibit 1

detention/water quality pond sites. It is anticipated that there will be 28 plan sheets (22-inch by 34-inch) using the City provided aerial photography as a base. These plan sheets will be at 1"=20' scale and one sheet showing the typical section(s). Plans will include:

- (1) Horizontal alignments (A relative Vertical alignment will be considered in order to determine relative wall heights only.
- (2) Proposed right-of-way needs (Roadway improvements and detention/water quality pond sites).
- (3) Roadway widening, including, in schematic format, Allen Creek vicinity retaining wall locations and the replacement of a portion or all of the existing Allen Creek culvert.
- (4) Channelization improvements

Task 4 - Conceptual Storm Drainage

1. Identify Existing Drainage Patterns - Conduct a one-day site visit to evaluate existing drainage patterns and general configurations of the existing storm drainage system in the corridor. Utilizing available basin mapping that the City can provide, identify conceptual contributing roadway areas for potential water quality/detention sites. Off-site contribution and outlets to the roadway will be identified to the extent possible using the best available information with the use of City supplied basemaps.
2. Site Preliminary Drainage Facilities - Based on engineering judgment and experience, site and size the potential conveyance, detention/infiltration, and water quality treatment facilities. Sizing of facilities will take a conservative approach, and be based on similar projects. No calculations will be conducted to size the facilities.

Assumptions:

- *No quantitative analysis will be conducted to size conveyance systems, water quality/detention systems.*
- *Assumes Evans Creek basin for analysis*
- *Facilities will be approximately sized to accommodate the requirements of city drainage standards and identify Right-of-Way needs.*

Task 5 - Planning Level Project Opinion of Cost

1. Prepare a planning level opinion of probable project cost for both the 3-lane and 5-lane configuration of the corridor. Detailed vertical analysis of the corridor will not be conducted, and therefore the planning level estimate will rely on approximately 30% contingencies to cover elements for which engineering analysis has not been conducted. The product of this Work Element effort will provide the City an order of magnitude budget range for the project.

Task 6 - Pre-Design Report

1. Pre-Design Report - Prepare a pre-design report that describes the alternatives considered for the corridor improvements, and identifies a costs for the alternatives. Provide typical roadway sections, a plan showing conceptual roadway, channelization, wall locations, and stormwater facility location. Include a preliminary opinion of probable cost for the alternatives and the identified intersections. A

Exhibit 1

drawing showing existing drainage patterns will be included in the report. It is assumed that this report will be no more 15-20 pages, in addition to plans developed in Work Element 3.

2. Product Delivery - Provide the draft Pre-Design Report for review and comment by the City. Incorporate City comments and deliver the final Pre-Design Report to the City. It is assumed that the City will compile all comments into a single document before returning to the Consultant in order to avoid any conflicting comments.

Task 7 - Public Outreach

The CONSULTANT will support City staff in facilitating two open houses. The first open house, in June, is expected to be focused on gathering information from the local residents to help identify areas of focus for the study. The second open house, likely in October, will be used to share the findings from the traffic analysis and magnitude of cost analysis.

CONSULTANT support is expected to include preparation of materials for the open houses, including roll plots (up to 2 for each open house), schedule graphics and information for the City to prepare other materials. Up to 2 members of the CONSULTANT team will attend each open house.

ITEMS TO BE FURNISHED BY THE CONSULTANT

1. Copies of minutes of meeting.
2. Monthly progress reports and invoices.
3. Copies of QA/QC documents for submittals.
4. Design Criteria Memorandum
5. Draft and Final Pre-Design Report (PDF Format)

ITEMS TO BE FURNISHED BY THE CITY

1. Available "As-Built" and utility information (preferably in electronic format)
2. Existing and Design Year Average Daily Traffic (ADT) counts.
3. Existing and Design Year turning movement counts for the intersections of Sahalee Way with NE 25th Way, NE 28th Place, Sahalee Drive E, NE 37th Way, and SR 202.
4. Drafting standards for preparation of right-of-way and PS&E plans. Standards include CADD layer/line-type/symbol conventions, title blocks, line weights, plot setups, CADD project file naming conventions.
5. Combined set of City comments for any submittals

DESIGN CRITERIA

Reports and plans, to the extent feasible, shall be developed in accordance with the latest edition and amendments of the following:

1. King County, "2007 Road Design and Construction Standards".
2. City of Sammamish "Interim Public Works Standards".
3. King County WA Surface Water Design Manual 2009
4. City of Sammamish Surface Water Design Manual Addendum, current edition and all appendices.
5. Washington State Department of Transportation, "Standard Specifications for Road and Bridge Construction".

Exhibit 1

6. Washington State Department of Transportation, "Standard Plans for Road and Bridge Construction (M 21-01)".
7. Washington State Department of Transportation, "Design Manual."
8. Washington State Department of Transportation, "Materials Laboratory Outline".
9. Washington State Department of Transportation, "Construction Manual".
10. Washington State Department of Transportation, "Local Agency Guidelines".
11. Highway Research Board's Manual entitled "Highway Capacity".
12. FHWA and Washington State Department of Transportation, "Manual on Uniform Traffic Control Devices for Streets and Highways".
13. AASHTO 2001, "A Policy of Geometric Design of Highways and Streets."

OPTIONAL SERVICES

The following optional services can be provided as needed or requested. Scope of services and fee determination will be negotiated separately as a supplement to this Agreement. The following optional services can be provided:

1. Topographic survey services.
2. Grant application assistance.
3. Public involvement assistance.
4. Traffic counts
5. Environmental documentation and permitting assistance.
6. Preparation of special studies (wetlands, stream, etc.)
7. Environmental site assessments.
8. Cultural resource investigations.
9. Geotechnical investigations.
10. Preparation of design deviations.
11. Preparation of additional intersection options beyond what is described in this scope of services.
12. Analysis and reports pertaining to areas of NE 88th Street outside the project limits described in the introduction of this scope of services.
13. Quantitative analysis to size conveyance, water quality or detention.
14. Detailed offsite drainage analysis not included or specified in this scope of services.
15. Detention or water quality options in addition to that specified in this scope of services.
16. Downstream hydraulics analysis.
17. Additional hydrologic analysis not included in this scope of services.
18. Preparation of Design Report, or Contract Documents (PS&E).
19. Construction observation services.

TIME OF COMPLETION

It is assumed that Notice to Proceed will be received as late as May 26, 2015. Services associated with this Agreement shall be completed by January 2016.



Project Sahalee Way Corridor Improvements
 Client City of Sammamish
 PM Dan Hansen

Contract Start Date 5/5/2015
 Contract End Date 12/31/2015
 Contract Duration: 7 Months

Last Update date 4/30/2015
 Perteet Project No. 20140224.000

Task	Billing Rate	Lead Technician/ Designer	Planner II	Principal	Sr. Associate	Sr. Associate	Sr. Associate	Accountant	Clerical	Engineer II	Total Hours	Labor Dollars
Project Management		\$114.63	\$99.34	\$220.45	\$183.40	\$183.40	\$183.40	\$91.70	\$67.25	\$95.52		
Invoicing and Progress Reports				8.00				8.00			16.00	2,498.00
Schedule						4.00					4.00	734.00
Meetings				16.00		16.00					32.00	6,461.00
QA/QC				8.00	4.00						12.00	2,498.00
Work Plan				4.00		4.00					8.00	1,616.00
Total Project Management				36.00	4.00	24.00		8.00			72.00	13,807.00
Traffic Analysis												
Site Recon							4.00			8.00	12.00	1,498.00
Existing and Model setup							12.00			32.00	44.00	5,258.00
3-lane and 5-lane Model							12.00			24.00	36.00	4,494.00
Traffic meeting				4.00		4.00	4.00				12.00	2,350.00
Traffic Section of Pre-Design Repor							8.00			8.00	16.00	2,231.00
Total Traffic Analysis				4.00		4.00	40.00			72.00	120.00	15,831.00
Preliminary Roadway Design												
Design Criteria Memo							2.00			4.00	6.00	749.00
Alternatives Evaluation							4.00			8.00	12.00	1,498.00
Alternatives Design	40.00			4.00		16.00				40.00	100.00	12,222.00
Total Preliminary Roadway Design	40.00			4.00		22.00				52.00	118.00	14,469.00
Conceptual Storm Drainage												
Task 4 By Osborne Consulting												
Total Conceptual Storm Drainage											0.00	
Planning Level Project Opinion of Costs												
Opinion of Cost - 2 Alternatives							8.00			32.00	40.00	4,524.00
Total Planning Level Project Opinion of Costs							8.00			32.00	40.00	4,524.00
Pre-Design Report												
Draft Report							24.00		8.00	24.00	56.00	7,233.00
Final Report							8.00		2.00	8.00	18.00	2,365.00
Total Pre-Design Report							32.00		10.00	32.00	74.00	9,598.00
Public Outreach												
Material Preparation	8.00	4.00				2.00				4.00	18.00	2,063.00
Attend Open houses (2)				10.00		10.00					20.00	4,038.00
Total Public Outreach	8.00	4.00		10.00		12.00				4.00	38.00	6,101.00
Total Hours	48.00	4.00	54.00	4.00	102.00	40.00	8.00	10.00	192.00	462.00		
Total Dollars	\$5,502.00	\$397.00	\$11,905.00	\$734.00	\$18,708.00	\$7,337.00	\$734.00	\$672.00	\$18,341.00			\$64,330.00

Expenses:	
Aerial Surveys/Photography	4,000
Mileage - \$.585	176
Totals:	4,176

Subconsultant Fees:	Cost	Markup	Bill
Jacobs Engineering Group, Inc.	10,400		10,400
Osborn Consulting, Inc.	10,400		10,400
Totals:	20,800		20,800

SUMMARY

Labor	64,330.00
Expenses	4,176.00
Subconsultants	20,800.00
CONTRACT TOTAL	89,306.00

Exhibit "A-1a"
Subconsultant Fee Determination – Jacobs Engineering Group



600 108th Avenue N.E., Suite 700
Bellevue, Washington 98004 USA
1.425.452.8000 www.jacobs.com

April 27, 2015

Perteet, Inc.
2707 Colby Ave. Suite 900
Everett, WA 98201
Attention: Dan Hansen, PE

**Subject: Sahalee Way NE Improvements – Conceptual Level Engineering
Scope and Fee Proposal for Structural Walls**

Dear Dan:

We are pleased to provide structural engineering services for the conceptual level design of the Sahalee Way NE Improvements Project. Specifically, we will perform the following tasks:

- Review the available information pertaining to the project including, but not limited to, existing topographic maps, aerials, as-built roadway plans, geotechnical reports, and other technical information
- Coordinate with the Design Team during development and evaluation of the preliminary roadway alternatives
- Identify the need for structural walls in two roadway alternatives by the Design Team (3-lane and 5-lane) and develop the most feasible structural wall types at each location (2 types per location)
- Develop planning level construction cost estimate for each wall alternative
- Prepare a technical memorandum summarizing the evaluation of structural walls and construction cost estimates. Provide recommendation for wall type at each location, which will be shown in the preliminary roadway plan sheets.
- Project management and administration.

We will provide the above services at the following fees:

Sr. Project Manager	10 Hours	x	\$232	=	\$2,320
Structural Engineer	24 Hours	x	\$115	=	\$2,760
Design Engineer	40 Hours	x	\$72	=	\$2,880
CADD Technician	12 Hours	x	\$108	=	\$1,728
Project Control/Contract Admin	1 Hours	x	\$140	=	\$140
<u>Project expenses:</u>					<u>\$150</u>
TOTAL	87 Hours				\$9,978

Our work is contingent on the timely and successful negotiation of contact terms and conditions between the Design Team (Perteet and Jacobs) and the City of Sammamish. Our efforts for this phase of work will be limited to the fees as approved based on this document,

If you have any questions or need further information, please feel free to contact me. Thank you and we look forward to working with your team.

Sincerely,

Kevin S. Kim, PE, SE
Sr. Project Manager

Exhibit 1

Exhibit "A-1b"
 Subconsultant Fee Determination – Osborn Consulting, Inc.

Fee Estimate						
Classification	PM/Sr.PE	PE	EIT	CAD	Admin	Cost Estimate
Hourly Rate	\$143.00	\$127.00	\$106.00	\$95.00	\$81.00	
Project Tasks						
Site Visit	0	4	4	0	0	
Review/verify existing info and basin boundary	2	6	8	2	0	
Site preliminary drainage facilities	4	8	16	4	0	
Design Documentation - Draft	2	4	4	0	2	
Design Documentation - Final	2	2	4	0	1	
Status reporting and internal PM	4	0	0	0	4	
Total Hours	14	24	36	6	7	\$ 10,003

EXHIBIT B



REQUEST FOR CONSULTANT PAYMENT

To: City of Sammamish
 801 228th Avenue SE
 Sammamish, WA 98075
 Phone: (425) 295-0500
 FAX: (425) 295-0600

Invoice Number: _____ Date of Invoice: _____

Consultant: _____

Mailing Address: _____

Telephone: _____

Email Address: _____

Contract Period: _____ Reporting Period: _____

Amount requested this invoice: \$ _____

Specific Program: _____

 Authorized signature

ATTACH ITEMIZED DESCRIPTION OF SERVICES PROVIDED

For Department Use Only

Total contract amount	
Previous payments	
Current request	
Balance remaining	

Authorization to Consultant: \$
Account Number:
Date:

Approved for Payment by: _____ Date: _____

Finance Dept.

Check # _____ Check Date: _____

EXHIBIT C



TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Sammamish, you must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Sammamish prior to or along with the submittal of the first billing invoice.

Please check the appropriate category:

Corporation Partnership Government Consultant
 Individual/Proprietor Other (explain)

TIN No.: 91-1505037

Social Security No.: _____

Print Name: Crystal L. Donner

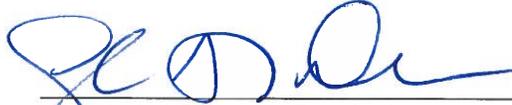
Title: President

Business Name: Perteet, Inc.

Business Address: 2707 Colby Avenue, Suite 900, Everett, WA 98201

Business Phone: (425) 252-7700

04/29/15
Date



Authorized Signature (Required)



Meeting Date: May 5, 2015

Date Submitted: 4/29/2015

Originating Department: Public Works

Clearances:

- | | | |
|--|---|--|
| <input type="checkbox"/> Attorney | <input type="checkbox"/> Community Development | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Admin Services | <input type="checkbox"/> Eastside Fire and Rescue | <input type="checkbox"/> Police |
| <input checked="" type="checkbox"/> City Manager | <input type="checkbox"/> Finance & IT | <input checked="" type="checkbox"/> Public Works |

Subject: Professional Engineering Development Review Assistance Services On-Call Contract

Action Required: Authorize the City Manager to execute a contract with Stantec for Professional Engineering development review services on an on-call basis, not to exceed \$150,000.

Exhibits: 1.Contract and Scope

Budget: Contract is for \$150,000 within the budget of \$230,000 in the adopted 2015-2016 Public Works Budget for Professional and Engineering Services.

Summary Statement:

With current and projected development activity, Public Works staff anticipates the need for additional Professional Engineering services to provide assistance with development review and incidental related engineering services. The proposed on-call agreement does not commit the City to any expenses.

Background:

Due to the large volume of development activity, Public Works' (PW) development review staff are struggling to keep up with reviewing and processing development applications in a timely manner. A portion of the work is for certain review tasks that cannot be performed in-house due to workload or specialized engineering review. Expected on-call work may include performing survey review for final plats and boundary line adjustments, geotechnical and structural review, and engineering development review.

The proposed on-call agreement does not commit the City to any expenses and all work will be authorized individually. This arrangement provides the flexibility to provide for the variability in land development applications while eliminating the need to hire additional permanent staff. This on-call contract will provide PW the ability to bring in experienced and specialized resources on an as-needed basis and is an efficient model that provides results while minimizing costs. It also help provide timely response and excellent customer service to the applicants.

Financial Impact:

The total contract amount is not to exceed \$150,000. Developer-paid review fees pay the cost of this work. A portion of this amount will be covered within the existing Council approved budget amounts within the Public Works Professional and Engineering budget line items. As this is an on-call agreement, there is no guarantee the full contract amount will be needed or expended.

Recommended Motion:

Authorize the City Manager to execute a contract with Stantec to provide Professional Engineering development review services on an on-call basis not to exceed \$150,000.

**CITY OF SAMMAMISH
AGREEMENT FOR SERVICES**

Consultant: Stantec

This Agreement is entered into by and between the City of Sammamish, Washington, a municipal corporation, hereinafter referred to as the "City," and Stantec, hereinafter referred to as the "Consultant."

WHEREAS, the City desires to have certain services performed for its citizens; and

WHEREAS, the City has selected the Consultant to perform such services pursuant to certain terms and conditions;

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the parties hereto agree as follows:

1. **Scope of Services to be Performed by Consultant.** The Consultant shall perform those services described in Exhibit "A" of this agreement. In performing such services, the Consultant shall comply with all federal, state, and local laws and regulations applicable to the performance of such services. The Consultant shall perform services diligently and completely and in accordance with professional standards of conduct and performance.

2. **Compensation and Method of Payment.** The Consultant shall submit invoices for work performed using the form set forth in Exhibit "B".

The City shall pay Consultant:

[Check applicable method of payment]

According to the rates set forth in Exhibit "D"

A sum not to exceed \$150,000

Other (describe): _____

The Consultant shall complete and return to the City Exhibit "C," Taxpayer Identification Number, prior to or along with the first invoice submittal. The City shall pay the Consultant for services rendered within ten days after City Council approval.

3. **Duration of Agreement.** This Agreement shall be in full force and effect for a period commencing upon execution and ending December 31, ²⁰¹⁵ ~~2014~~, unless sooner terminated under the provisions of the Agreement. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

4. **Ownership and Use of Documents.** Any records, files, documents, drawings, specifications, data or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the City, shall be the property of the City whether the project for which they were created is executed or not

5. **Independent Contractor.** The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. The Consultant will solely be responsible for its acts and for the acts of its agents, employees, subconsultants, or representatives during the performance of this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto.

6. **Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney

Exhibit 1

fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant, in performance of this Agreement, except for injuries and damage caused by the sole negligence of the City.

7. Insurance.

A. 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.

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 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Contractor'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.

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.

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 shall not be cancelled by either party except after thirty (30) days prior written notice has been given to the City

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.

8. Record Keeping and Reporting.

A. The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended

Exhibit 1

and services performed pursuant to this Agreement. The Consultant shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.

B. The foregoing records shall be maintained for a period of seven years after termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14 and by the City.

9. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review, or audit by the City during the performance of this Agreement.

10. Termination.

A. This City reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon seven days prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports or other materials prepared by the Consultant pursuant to this Agreement shall promptly be submitted to the City

B. In the event this Agreement is terminated or suspended, the Consultant shall be entitled to payment for all services performed and reimbursable expenses incurred to the date of termination.

C. This Agreement may be cancelled immediately if the Consultant's insurance coverage is canceled for any reason, or if the Consultant is unable to perform the services called for by this Agreement.

D. The Consultant reserves the right to terminate this Agreement with not less than fourteen days written notice, or in the event that outstanding invoices are not paid within sixty days.

E. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

11. Discrimination Prohibited. The Consultant shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Consultant under this Agreement, on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.

12. Assignment and Subcontract. The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

13. Conflict of Interest. The City insists on the highest level of professional ethics from its consultants. Consultant warrants that it has performed a due diligence conflicts check, and that there are no professional conflicts with the City. Consultant warrants that none of its officers, agents or employees is now working on a project for any entity engaged in litigation with the City. Consultant will not disclose any information obtained through the course of their work for the City to any third party, without written consent of the "City". It is the Consultant's duty and obligation to constantly update its due diligence with respect to conflicts, and not the City's obligation to inquire as to potential conflicts. This provision shall survive termination of this Agreement.

14. Confidentiality. All information regarding the City obtained by the Consultant in performance of this Agreement shall be considered confidential. Breach of confidentiality by the Consultant shall be grounds for immediate termination.

15. Non-appropriation of funds. If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. This Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the City in the event that the terms of the provision are effectuated.

16. Entire Agreement. This Agreement contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either

Exhibit 1

of the parties. Either party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

17. **Notices.** Notices to the City of Sammamish shall be sent to the following address:

City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075
Phone number: (425) 295-0500

Notices to the Consultant shall be sent to the following address:

Company Name Stantec
Contact Name Erik Brodahl, P.E.
Street Address 11130 N.E. 33rd Place, Suite 200
City, State Zip Bellevue, WA 98004
Phone Number 425.289.7329
Email ebrodahl@stantec.com

18. **Applicable Law; Venue; Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case and such fee, shall be included in the judgment.

19. **Severability.** Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

CITY OF SAMMAMISH, WASHINGTON

CONSULTANT

By: _____

By: 

Print Name: Ben Yazici

Print Name: Erik Brodahl

Title: City Manager

Title: Principal

Date: _____

Date: April 29th, 2015

Attest/Authenticated:

Approved As To Form:

City Clerk

City Attorney

Exhibit 1

EXHIBIT A – SCOPE OF SERVICES

General Scope of Work

The CONSULTANT agrees to furnish all labor, materials, equipment and supplies to perform the following services:

Plan checking and design review of development application documents for compliance with CITY requirements:

- a) Perform review of plans and supporting documents submitted to the CITY in conjunction with development applications for compliance with the CITY Standard Specifications and Details for Public Works Construction, Clearing, Grading and Stormwater Management Technical Notebook, ordinances, special project conditions and other adopted criteria indicated by the CITY and made available to the CONSULTANT.
- b) Provide to the CITY, within two weeks of receipt, plan redlines and written comments, as appropriate to indicate non-conformance items or issues.
- c) Meet to discuss review comments with CITY representative and/or development proponents as necessary.
- d) Respond to telephone inquiries from CITY staff, developer's engineer, or others as necessary.
- e) Review and provide subsequent plan review redlines and written comments, as necessary, to indicate non-conformance items or issues of re-submittals within two weeks of receipt.
- f) Advise CITY in writing at such time as plans are in compliance with those aspects of the development documents under review by the CONSULTANT.
- g) Meet with CITY staff periodically to evaluate process and performance of CONSULTANT.
- h) Provide feedback to CITY staff relative to adequacy, appropriateness, and thoroughness of CITY standard specifications and details.
- i) Perform other incidental engineering services in connection with plan checking.

Consultant will be paid on a time and materials basis in accordance with the rates presented in Exhibit D.

It is anticipated that the task assignments may vary in scope, complexity and location. Specific scopes of work will be developed as individual task assignments are requested.

Authorization of Work

Work requested by the CITY shall be issued in writing. The request by the CITY should include the following information, which may be furnished in coordination with the CONSULTANT:

1. Task Order title (project name)
2. Technical approach to the task (if complex enough to require this)
3. Specific deliverables
4. Schedule with milestones and deliverables
5. Cost/hour estimate
6. Due date of work

Exhibit 1

All of the above items may be brief, but will be sufficiently detailed to understand the work being authorized and the amount it will cost.

The CITY will review and approve the CONSULTANT'S submittal for any work requested, or at the CITY'S option, negotiate various elements of the work requested prior to authorizing work to begin and issuing a Notice to Proceed. If, after work has begun, the CONSULTANT cannot meet the agreed schedule or cost, the CONSULTANT shall immediately notify the CITY. Authorization of additional time or cost for approved work will be at the sole option of the CITY and will be made in writing. New budgets for any new requests or extensions of previous work will be approved in writing by the CITY prior to beginning new work.

Work may begin when the Notice to Proceed is sent to the CONSULTANT by the CITY, except that emergency actions requiring a 24-hour response can be handled by an oral authorization. Such oral authorization shall be followed up with a written confirmation within 24 hours with the information listed above included.

EXHIBIT B



REQUEST FOR CONSULTANT PAYMENT

To: City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075
Phone: (425) 295-0500
FAX: (425) 295-0600

Invoice Number: _____ Date of Invoice: _____

Consultant: Stantec
Contact Name Erik Brodahl
Street Address 11130 N.E. 33rd Place, Suite 200
City, State Zip Bellevue, WA 98004
Phone Number 425.289.1465
Email EBrodahl@stantec.com

Contract Period: _____ Reporting Period: _____

Amount requested this invoice: \$ _____

Specific Program: _____

Authorized signature

ATTACH ITEMIZED DESCRIPTION OF SERVICES PROVIDED

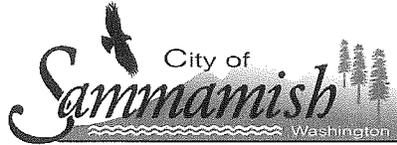
For Department Use Only

Total contract amount	
Previous payments	
Current request	
Balance remaining	

Authorization to Consultant: \$
Account Number:
Date:

Approved for Payment by: _____ Date: _____

<i>Finance Dept.</i>	
Check # _____	Check Date: _____



TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Sammamish, you must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Sammamish prior to or along with the submittal of the first billing invoice.

Please check the appropriate category:

Corporation Partnership Government Consultant
 Individual/Proprietor Other (explain)

TIN No.: _____

Social Security No.: _____

Print Name: _____

Title: _____

Business Name: _____

Business Address: _____

Business Phone: _____

Date

Authorized Signature (Required)

**EXHIBIT D
SCHEDULE OF HOURLY RATES**

Stantec Consulting Services Inc. fee schedule by staff and reimbursable
expense classification as of January 1, 2015. Rates are subject to
modification.

Staff Time

<u>Classification</u>	<u>Hourly Billing Rate Range</u>	
EIT / Sr. Designer	\$91.00	- \$108.00
Civil Specialist	\$103.00	- \$184.00
Engineer	\$107.00	- \$187.00
Project Manager	\$180.00	- \$230.00
Planner	\$120.00	- \$141.00
Geotechnical Engineer	\$150.00	- \$231.00
CAD (includes mapping and GIS)	\$76.00	- \$121.00
Engineering Geologist	\$146.00	- \$171.00
Construction Representative	\$104.00	- \$122.00
Surveyor	\$77.00	- \$117.00
Project Surveyor (PLS)	\$140.00	- \$164.00
Administrative	\$31.00	- \$104.00
Administrative Lead	\$95.00	- \$141.00
Director / Principal / Sr. Engineering Consultant	\$196.00	- \$295.00

Reimbursable ExpensesTravel

Vehicle Mileage	IRS Standard Rate: (Currently \$0.575)
Airfare	Actual cost without markup
Miscellaneous Travel - Parking, Tolls, Taxi Fares, etc.	Actual cost without markup

Project Specific Supplies & Outside Reproduction

Actual cost without markup

Prints

Black & White Prints (up to 11x17)	\$1.25	per sheet
Color Prints (up to 11x17)	\$1.50	per sheet
Large Format Prints	\$7.50	per sheet
CD Production	\$2.00	per cd

Computer Station

\$10.00 per hour

Map/Drawing Scanning

\$5.00 per sheet

Field Equipment

Survey - Digital Level	\$5.00	per hour
Total Station	\$10.00	per hour
Robotic Total Station	\$15.00	per hour
GPS/RTK	\$20.00	per hour

No charges are billed for the following items:

1. Long distance phone calls
2. Fax services
3. Postage

Exhibit 1



Meeting Date: May 5, 2015

Date Submitted: April 29, 2015

Originating Department: Community Development

Clearances:

- | | | |
|--|---|---|
| <input type="checkbox"/> Attorney | <input checked="" type="checkbox"/> Community Development | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Admin Services | <input type="checkbox"/> Eastside Fire and Rescue | <input type="checkbox"/> Police |
| <input checked="" type="checkbox"/> City Manager | <input checked="" type="checkbox"/> Finance & IT | <input type="checkbox"/> Public Works |

Subject: Approving a professional services contract for building plan reviews with Eagle Eye Consulting Engineers

Action Required: Authorize the City Manager to sign the professional services contract

Exhibits: 1. Contract

Budget: Contract is for \$60,000 with the 2015-2016 – General Fund/Community Development Department Budget
(Professional Services Account Number 001-558-559-20-41-00)

Summary Statement: The Community Development Department is seeking to enter into a professional consultant contract with Eagle Eye Consulting Engineers for building plan review services. This contract will be in effect through December 31, 2016 in the amount not to exceed \$60,000.

Background: Building plan review is required for permitting when any owner or authorized agent intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure. The City relies on outside professional services consultants to perform building plan reviews in periods of workload surges beyond the capacity of our 2.0 FTE Plans Examiner positions.

Financial Impact: The total contract amount is not to exceed \$60,000. Sufficient appropriation exists within the 2015-2016 General Fund / Community Development Department operating budget. The total contract amount may not be needed or expended as work tasks are assigned to the consultant on an as needed basis and will be offset by the plan review fees paid by applicants.

Recommended Motion: Authorize the City Manager to execute the professional services contract with Eagle Eye Consulting Engineers.

**CITY OF SAMMAMISH
AGREEMENT FOR SERVICES**

Consultant: Eagle Eye Consulting Engineers

This Agreement is entered into by the City of Sammamish, Washington, a municipal corporation, hereinafter referred to as the "City," and Eagle Eye Consulting Engineers, hereinafter referred to as the "Consultant."

WHEREAS, the City desires to have certain services performed for its citizens; and

WHEREAS, the City has selected the Consultant to perform such services pursuant to certain terms and conditions;

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the parties hereto agree as follows:

1. **Scope of Services to be Performed by Consultant.** The Consultant shall perform those services described in Exhibit "A" of this agreement. In performing such services, the Consultant shall comply with all federal, state, and local laws and regulations applicable to the performance of such services. The Consultant shall perform services diligently and completely and in accordance with professional standards of conduct and performance.

2. **Compensation and Method of Payment.** The Consultant shall submit invoices for work performed using the form set forth in Exhibit "B".

The City shall pay Consultant:

[Check applicable method of payment]

According to the rates set forth in Exhibit "A"

A sum not to exceed

Other (describe): _____

The Consultant shall complete and return to the City Exhibit "C," Taxpayer Identification Number, prior to or along with the first invoice submittal. The City shall pay the Consultant for services rendered within ten days after City Council approval.

3. **Duration of Agreement.** This Agreement shall be in full force and effect for a period commencing upon execution and ending December 31, 2016, unless sooner terminated under the provisions of the Agreement. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

4. **Ownership and Use of Documents.** Any records, files, documents, drawings, specifications, data or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the City, shall be the property of the City whether the project for which they were created is executed or not

5. **Independent Contractor.** The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. The Consultant will solely be responsible for its acts and for the acts of its agents, employees, subconsultants, or representatives during the performance of this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto.

6. **Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the negligent acts, errors or omissions of the Consultant, in performance of this Agreement, except for injuries and damage caused by the sole negligence of the City.

Exhibit 1

7. Insurance.

A. 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.

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 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Contractor'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.

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.

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 shall not be cancelled by either party except after thirty (30) days prior written notice has been given to the City

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.

8. Record Keeping and Reporting.

A. The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended

Exhibit 1

and services performed pursuant to this Agreement. The Consultant shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.

B. The foregoing records shall be maintained for a period of seven years after termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14 and by the City.

9. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review, or audit by the City during the performance of this Agreement.

10. Termination.

A. This City reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon seven days prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports or other materials prepared by the Consultant pursuant to this Agreement shall promptly be submitted to the City

B. In the event this Agreement is terminated or suspended, the Consultant shall be entitled to payment for all services performed and reimbursable expenses incurred to the date of termination.

C. This Agreement may be cancelled immediately if the Consultant's insurance coverage is canceled for any reason, or if the Consultant is unable to perform the services called for by this Agreement.

D. The Consultant reserves the right to terminate this Agreement with not less than fourteen days written notice, or in the event that outstanding invoices are not paid within sixty days.

E. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

11. Discrimination Prohibited. The Consultant shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Consultant under this Agreement, on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.

12. Assignment and Subcontract. The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

13. Conflict of Interest. The City insists on the highest level of professional ethics from its consultants. Consultant warrants that it has performed a due diligence conflicts check, and that there are no professional conflicts with the City. Consultant warrants that none of its officers, agents or employees is now working on a project for any entity engaged in litigation with the City. Consultant will not disclose any information obtained through the course of their work for the City to any third party, without written consent of the "City". It is the Consultant's duty and obligation to constantly update its due diligence with respect to conflicts, and not the City's obligation to inquire as to potential conflicts. This provision shall survive termination of this Agreement.

14. Confidentiality. All information regarding the City obtained by the Consultant in performance of this Agreement shall be considered confidential. Breach of confidentiality by the Consultant shall be grounds for immediate termination.

15. Non-appropriation of funds. If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. This Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the City in the event that the terms of the provision are effectuated.

16. Entire Agreement. This Agreement contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either

of the parties. Either party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

17. **Notices.** Notices to the City of Sammamish shall be sent to the following address:

City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075
Phone number: (425) 295-0500

Notices to the Consultant shall be sent to the following address:

Company Name Eagle Eye Consulting Engineers (a West Coast Code Consultants Inc. company)
Contact Name Hoyt Jeter, NW Regional Manager
Street Address 708 Broadway, Suite 105
City, State Zip Tacoma, WA 98402
Phone Number 206-356-7790
Email hoyt@eece-wc3.com

18. **Applicable Law; Venue; Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case and such fee, shall be included in the judgment.

19. **Severability.** Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

CITY OF SAMMAMISH, WASHINGTON

CONSULTANT

By: _____

By: Hoyt W. Jeter

Title: City Manager

Title: NW REGIONAL Manager

Date: _____

Date: 4/30/15

Attest/Authenticated:

Approved As To Form:

City Clerk

City Attorney

[INSERT EXHIBIT A – SCOPE OF SERVICES]

(Provided by consultant or Vendor)

Scope of Work: When requested by The City, Consultant shall perform services in accordance with the terms and conditions of this agreement.

Full Plan Review: Upon request by the City, the Consultant shall review all contract documents which consist of plans, specifications and engineering data to determine whether the items comply with all applicable ordinances and state building code; in addition, all local codes and regulation required by the city. The Consultant shall issue a formal written document for each set of plans reviewed.

Partial Plan review: Upon request by the City, the Consultant shall review partial elements of contract documents which consist of plans, specifications and engineering data to determine whether the items comply with all applicable ordinances and state building codes; in addition to, all local codes and regulation required by the city. Contract documents may consist of the items listed below. The definitions of a partial plan review are the review of any one of these items or selected multiple items.

- I. **Structural Review**
- II. **Architectural Review (Ordinance and Barrier Free)**
- III. **Energy Review**
- IV. **Barrier Free Accessibility Review**
- V. **Fire Suppression Review**
- VI. **LEEDS Review**
- VII. **Mechanical Review**
- VIII. **Plumbing Review**
- IX. **Fire Alarm Review**

The Consultant shall provide maximum of two rechecks without additional fees.

Additional Reviews: The Consultant shall perform additional reviews beyond (2) rechecks when authorized by the City, at an hourly rate as described in **Attachment B**.

Miscellaneous Engineering: Upon request of the city the Consultant shall provide miscellaneous engineering services, at an hourly rate as described in **Attachment B**, but shall not exceed an agreed amount.

Inspection: Upon request by the City, the Consultant shall inspect all structures as defined by the permitted documents on an hourly basis as described in **Attachment B**.

Attachment B

Compensation & Turn Around Time

BUILDING CODE REVIEW FEE STRUCTURE

Commercial/Multi-Family Non-Structural Fire/Life Safety and Structural review only:

Valuation of Construction	Eagle Eye Consulting Plan Review Fee (% of Building Department Plan review fee)	Hourly rate (Reviews in excess of 2)
\$1 to \$500,000	80%	\$110
\$500,001 to \$2,500,000	75%	\$110
\$2,500,001 and above	65%	\$110

Commercial/Multi-Family Non-Structural, Fire/Life Safety, Mechanical, LEED, Plumbing or Structural review only

Valuation of Construction	Eagle Eye Consulting Plan Review Fee (% of Building Department Plan review fee)	Hourly rate (Reviews in excess of 2)
\$1 to \$500,000	75%	\$110
\$500,001 to \$2,500,000	65%	\$110
\$2,500,001 and above	55%	\$110

Single Family Residence Full Review

Eagle Eye Consulting Plan Review Fee (% of Building Department Permit Fee)	Hourly rate (Reviews in Excess of 2)
50%	\$110

Fire Suppression and/or fire alarm review is based off hourly fees at a rate of \$110 per hour.

The Consultant shall provide maximum of two rechecks without any additional fees.

The above fees include all labor, material and expenses required for completion of these service

Hourly Rate Schedule

Personnel Description	Hourly Billing Rates
Principal	\$140
Building Official	\$120
Professional Licensed Engineer	\$110
Professional Licensed Architect	\$110
Land Use Planner	\$100
Certified Code Review Personnel	\$100
Certified Building Inspector	\$85
Electrical Specialty	\$95
Permit Technician	\$60
Administration Support	\$45

If prevailing wages are required on a project, then EECE's rates will be adjusted to accommodate prevailing rate payroll rules.

In addition, EECE's rates will be adjusted to accommodate for overtime, evening and night shift premiums with authorization by the City

Inspections a trip fee shall be charged mutually agreed with the city.

Invoicing

- Invoices shall be submitted on a monthly basis with all supporting documents required by the City and the Consultant.
- Invoices shall be submitted electronically to the City by the 5th day of each month.
- The City shall notify the Consultant of any discrepancy, and the Consultant shall correct accordingly.
- Invoices shall be paid within a maximum of 30 days of receipt, unless agreed differently by the City and Consultant.

Turn around

Schedule for Plan Review

Single Family

First Review	8 Working Days
Recheck Reviews	5 Working Days

Commercial, Industrial and Multi-Family

Under 5 million per Building Department Valuation

First Review	15 Working Days
Recheck Reviews	10 Working Days

Commercial, Industrial and Multi-Family

Over 5 million per Building Department Valuation

First Review	20 Working Days
Recheck Reviews	15 Working Days

EXHIBIT B



REQUEST FOR CONSULTANT PAYMENT

To: City of Sammamish
 801 228th Avenue SE
 Sammamish, WA 98075
 Phone: (425) 295-0500
 FAX: (425) 295-0600

Invoice Number: _____ Date of Invoice: _____

Consultant: _____

Mailing Address: _____

Telephone: _____

Email Address: _____

Contract Period: _____ Reporting Period: _____

Amount requested this invoice: \$ _____

Specific Program: _____

 Authorized signature

ATTACH ITEMIZED DESCRIPTION OF SERVICES PROVIDED

For Department Use Only

Total contract amount	
Previous payments	
Current request	
Balance remaining	

Authorization to Consultant: \$
Account Number:
Date:

Approved for Payment by: _____ Date: _____

Finance Dept.

Check # _____ Check Date: _____

EXHIBIT C



TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Sammamish, the must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Sammamish prior to or along with the submittal of the first billing invoice.

Please check the appropriate category:

- | | | |
|--|--|--|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Partnership | <input type="checkbox"/> Government Consultant |
| <input type="checkbox"/> Individual/Proprietor | <input type="checkbox"/> Other (explain) | |

TIN No.: _____

Social Security No.: _____

Print Name: _____

Title: _____

Business Name: _____

Business Address: _____

Business Phone: _____

Date

Authorized Signature (Required)

Exhibit 1



Meeting Date: May 5, 2015

Date Submitted: April 29, 2015

Originating Department: Finance IT

Clearances:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> Attorney | <input type="checkbox"/> Community Development | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Admin Services | <input type="checkbox"/> Eastside Fire and Rescue | <input type="checkbox"/> Police |
| <input checked="" type="checkbox"/> City Manager | <input checked="" type="checkbox"/> Finance & IT | <input type="checkbox"/> Public Works |

Subject: 1st Reading of an ordinance amending the 2015-2016 City Biennial Budget to update 2015 beginning fund balances based on actual 2014 ending fund balances, carry forward expenditures from 2014 to 2015, and make technical adjustments to the 2015-2016 budget.

Action Required: This is the 1st Reading. No action is required.

Exhibits:

1. Ordinance
2. Table A, 2015-2016 Biennial Budget Summary
3. Budget Carryforward and Technical Adjustments Summary

Budget: \$212,072,340 for 2015-2016 with Transfers and Ending Fund Balance.

Summary Statement:

This ordinance increases total Beginning Fund Balance by \$12,705,069 to reflect the actual 2014 activity through the end of 2014, allows for carry forward requests of \$4,946,850, and technical adjustments of \$6,200,000. The carry forward requests include \$2,259,982 for the Community Center, \$1,000,000 for Town Center stormwater expenditures in partnership with private developers, and funds to complete work that was budgeted in the 2013-2014 Biennial Budget but not completed by the end of 2014. The technical adjustments include increasing the budget for the purchase of the Mars Hill Church property. The end result of this update to the 2015-2016 Biennial Budget is a net increase in total budgeted Ending Fund Balance of \$1,558,219.

Background:

2014 expenditures were \$19,137,099 below budgeted levels. \$4,946,850 reflects costs that were budgeted in 2014 but are not anticipated to be incurred until 2015. The remaining \$14,190,249 reflects savings realized across all funds.

The City Council's decision to purchase the Mars Hill Church property was reached after the 2015-2016 Biennial Budget was adopted. The technical adjustments include a \$6,200,000 transfer from the

General Fund to the General Government CIP Fund and a corresponding increase in the expenditure budget in the General Government CIP Fund for the purchase.

The 2015-2016 Biennial Budget was adopted by Council on November 17, 2014 (Ordinance No. O2014-381). The adjustments proposed would update the current biennial budget with the amended 2015-2016 Biennial Budget outlined in Table A.

Financial Impact:

The total 2015-2016 Biennial Budget with Transfers and Ending Fund Balance will increase from \$193,035,271 to \$212,072,340.

Recommended Motion:

None required at this time. This is the 1st Reading of the ordinance.

**CITY OF SAMMAMISH
WASHINGTON
ORDINANCE No. O2015-XXX**

**AN ORDINANCE OF THE CITY OF SAMMAMISH,
WASHINGTON, AMENDING ORDINANCE NO. O2014-381,
THE 2015-2016 CITY BUDGET, FOR THE PURPOSE OF
REVISING THE 2015-2016 BIENNIAL BUDGET.**

WHEREAS, the City Council adopted Ordinance No. O2014-381, establishing the City's Biennial Budget for the years 2015-2016; and

WHEREAS, the City budget set forth anticipated revenues and expenditures for the forthcoming years; and

WHEREAS, during 2014, certain budgeted revenues and expenditures have increased or decreased and the City Council wishes to amend the City Budget to reflect the 2014 actual beginning fund balances resulting from the revenues and expenditures as received and incurred; and

WHEREAS, certain commitments were made as part of the 2013-2014 Biennial Budget for projects that were not completed by December 31, 2014 and funds related to these commitments need to be carried forward for payment into 2015; and

WHEREAS, the decision was made to purchase real property after the 2015-2016 budget was adopted and certain technical adjustments are needed related to the property purchase;

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

Section 1. Ordinance No. O2014-381, adopted November 17, 2014, relating to the City of Sammamish's 2015-2016 budget, is hereby amended to adopt the revised budget for the 2015-2016 biennium in the amounts and for the purposes as shown on the attached Table A.

Section 2. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 3. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**PASSED BY THE CITY COUNCIL OF THE CITY OF SAMMAMISH,
WASHINGTON ON THIS _____ DAY OF MAY 2015.**

CITY OF SAMMAMISH

Mayor Thomas E. Vance

Attest:

Melonie Anderson, City Clerk

Approved as to form:

Michael R. Kenyon, City Attorney

Filed with the City Clerk: April 29, 2015
First Reading: May 5, 2015
Passed by the City Council:
Date of Publication:
Effective Date:

**CITY OF SAMMAMISH
ORDINANCE O2015-XXX
2015-2016 BIENNIAL BUDGET AMENDMENT: TABLE A**

FUND	2015-2016 BIENNIAL BUDGET = \$212,072,340										
	BEGINNING BALANCE 2015-2016		REVENUES & OTHER SOURCES 2015-2016				EXPENDITURES & OTHER USES 2015-2016				ENDING BALANCE 2015-2016
	Original	Revised	Original	Revised	Original	Revised	Original	Revised	Original	Revised	
001 General Fund	\$ 20,085,806	\$ 22,244,298	\$ 67,156,220	\$ 67,156,220	\$ 75,546,057	\$ 82,306,513	\$ 11,695,969	\$ 11,695,969	\$ 7,094,005	\$ 7,094,005	
101 Street Fund	5,523,474	6,130,211	12,573,000	12,573,000	11,536,035	11,546,691	6,560,439	6,560,439	7,156,520	7,156,520	
201 G.O. Debt Service Fund	-	-	1,101,333	1,101,333	1,101,333	1,101,333	-	-	-	-	
301 CIP General Fund	8,793,778	8,793,748	1,698,750	7,898,750	8,580,000	14,780,000	1,912,528	1,912,528	1,912,498	1,912,498	
302 CIP Parks Fund	9,197,609	13,950,775	21,463,000	21,463,000	28,180,500	30,713,482	2,480,109	2,480,109	4,700,293	4,700,293	
340 CIP Transportation	17,509,147	21,262,384	10,130,000	10,130,000	19,691,333	20,155,294	7,947,814	7,947,814	11,237,090	11,237,090	
408 Surface Water Management-Operating Fund	1,304,506	1,675,280	7,224,897	7,224,897	7,090,800	7,101,456	1,438,603	1,438,603	1,798,721	1,798,721	
438 Surface Water Management-CIP Fund	1,797,069	2,783,783	2,754,000	2,754,000	3,609,968	5,026,542	941,101	941,101	511,241	511,241	
501 Equipment Replacement Fund	746,396	761,778	745,666	745,666	328,658	343,758	1,163,404	1,163,404	1,163,686	1,163,686	
502 Information Services Replacement Fund	327,989	339,113	1,952,000	2,084,000	2,155,900	2,224,365	124,089	124,089	198,748	198,748	
503 Risk Management Fund	153,831	203,304	796,800	796,800	836,325	836,325	114,306	114,306	163,779	163,779	
2015-2016 TOTAL BIENNIAL BUDGET	\$ 65,439,605	\$ 78,144,674	\$ 127,595,666	\$ 133,927,666	\$ 158,656,909	\$ 176,135,759	\$ 34,378,362	\$ 34,378,362	\$ 35,936,581	\$ 35,936,581	

2015 ANNUAL BUDGET FOR REFERENCE PURPOSES

FUND	2015 ANNUAL BUDGET FOR REFERENCE PURPOSES									
	FY 2015		FY 2015		FY 2015		FY 2015		FY 2015	
	Original	Revised	Original	Revised	Original	Revised	Original	Revised	Original	Revised
001 General Fund	\$ 12,224,491	\$ 7,622,527	\$ 33,313,440	\$ 33,313,440	\$ 41,174,755	\$ 47,935,211	\$ 12,224,491	\$ 12,224,491	\$ 7,622,527	\$ 7,622,527
101 Street Fund	5,983,299	6,579,380	6,286,500	6,286,500	5,826,675	5,837,331	5,983,299	5,983,299	6,579,380	6,579,380
201 G.O. Debt Service Fund	-	-	552,000	552,000	552,000	552,000	-	-	-	-
301 CIP General Fund	8,793,778	8,793,748	899,750	7,099,750	8,555,000	14,755,000	1,138,528	1,138,528	1,138,498	1,138,498
302 CIP Parks Fund	9,197,609	13,950,775	18,653,000	18,653,000	23,980,500	26,513,482	3,870,109	3,870,109	6,090,293	6,090,293
340 CIP Transportation	17,509,147	21,262,384	6,105,000	6,105,000	5,817,000	6,280,961	17,797,147	17,797,147	21,086,423	21,086,423
408 Surface Water Management-Operating Fund	1,304,506	1,675,280	3,556,354	3,556,354	3,458,775	3,469,431	1,402,085	1,402,085	1,762,203	1,762,203
438 Surface Water Management-CIP Fund	1,797,069	2,783,783	1,304,000	1,304,000	989,984	2,406,558	2,111,085	2,111,085	1,681,225	1,681,225
501 Equipment Replacement Fund	746,396	761,778	372,833	372,833	175,879	190,979	943,350	943,350	943,632	943,632
502 Information Services Replacement Fund	327,989	339,113	976,000	1,108,000	1,102,300	1,170,765	201,689	201,689	276,348	276,348
503 Risk Management Fund	153,831	203,304	380,000	380,000	379,500	379,500	154,331	154,331	203,804	203,804
TOTAL BUDGET	\$ 65,439,605	\$ 78,144,674	\$ 72,398,877	\$ 78,730,877	\$ 92,012,368	\$ 109,491,218	\$ 45,826,114	\$ 45,826,114	\$ 47,384,333	\$ 47,384,333

2016 ANNUAL BUDGET FOR REFERENCE PURPOSES

FUND	2016 ANNUAL BUDGET FOR REFERENCE PURPOSES									
	FY 2016		FY 2016		FY 2016		FY 2016		FY 2016	
	Original	Revised	Original	Revised	Original	Revised	Original	Revised	Original	Revised
001 General Fund	\$ 12,224,491	\$ 7,622,527	\$ 33,842,780	\$ 33,842,780	\$ 34,371,302	\$ 34,371,302	\$ 11,695,969	\$ 11,695,969	\$ 7,094,005	\$ 7,094,005
101 Street Fund	5,983,299	6,579,380	6,286,500	6,286,500	5,709,360	5,709,360	6,560,439	6,560,439	7,156,520	7,156,520
201 G.O. Debt Service Fund	-	-	549,333	549,333	549,333	549,333	-	-	-	-
301 CIP General Fund	1,138,528	1,138,498	799,000	799,000	25,000	25,000	1,912,528	1,912,528	1,912,498	1,912,498
302 CIP Parks Fund	3,870,109	6,090,293	2,810,000	2,810,000	4,200,000	4,200,000	2,480,109	2,480,109	4,700,293	4,700,293
340 CIP Transportation	17,797,147	21,086,423	4,025,000	4,025,000	13,874,333	13,874,333	7,947,814	7,947,814	11,237,090	11,237,090
408 Surface Water Management-Operating Fund	1,402,085	1,762,203	3,668,543	3,668,543	3,632,025	3,632,025	1,438,603	1,438,603	1,798,721	1,798,721
438 Surface Water Management-CIP Fund	2,111,085	1,681,225	1,450,000	1,450,000	2,619,984	2,619,984	941,101	941,101	511,241	511,241
501 Equipment Replacement Fund	943,350	943,632	372,833	372,833	152,779	152,779	1,163,686	1,163,686	1,163,686	1,163,686
502 Information Services Replacement Fund	201,689	276,348	976,000	976,000	1,053,600	1,053,600	124,089	124,089	198,748	198,748
503 Risk Management Fund	154,331	203,804	416,800	416,800	456,825	456,825	114,306	114,306	163,779	163,779
TOTAL BUDGET	\$ 45,826,114	\$ 47,384,333	\$ 55,196,789	\$ 55,196,789	\$ 66,644,541	\$ 66,644,541	\$ 34,378,362	\$ 34,378,362	\$ 35,936,581	\$ 35,936,581

Exhibit 2

2014 to 2015 CarryforwardsOperating Expense CommitmentsGeneral Fund

\$ 37,723,441	2014 Budgeted Expenditures-includes 2013 to 2014 carry forwards
31,154,983	2014 Actual Expenditures
<u>\$ 6,568,458</u>	2014 Expenditure Savings

\$ 184,000	One time bonus for Police Sergeants and Officers included in the union contract settlement reached in early 2015.
10,656	Public Works Standards update. Tetra Tech contract awarded at the 4/7/2015 City Council meeting.
112,500	Comprehensive Plan, Environmentally Critical Area, Shoreline Master Plan Amendment, FEMA.
111,000	Trails, bikeways, and paths plan update.
10,300	Community Garden Gate project and Nest project to coincide with the opening of Big Rock Park. Partly grant funded.
<u>\$ 428,456</u>	General Fund Commitments

\$ 10,656	Public Works Standards. Tetra Tech contract awarded at the 4/7/2015 City Council meeting.
-----------	---

\$ 10,656 Street Fund Commitments

\$ 10,656	Public Works Standards. Tetra Tech contract awarded at the 4/7/2015 City Council meeting.
-----------	---

\$ 10,656 SWM Operating Fund Commitments

\$ 15,100	Replacement of Toro Workman equipment.
-----------	--

\$ 15,100 Equipment Rental Fund Commitments

\$ 68,465	Consultant contract to install the Asset Management System. Timmons contract approved at the 9/16/2014 City Council meeting.
-----------	--

\$ 68,465 Technology Fund CommitmentsCapital Expense Commitments

\$ 50,000	Beaver Lake Park Preserve. Project deferred to 2015. \$200,000 is re-budgeted in the 2015 budget for this project.
2,259,982	Ongoing Community Center project. This is the unspent portion of the 2014 budget.
78,000	Parks capital replacement. The ADA trail improvement project in the Lower Commons was scheduled for 2014 but deferred to 2015.
145,000	construction administration at the December 2, 2014 City Council meeting.
296,297	ITS project delayed by federal funding requirements. Pioneer Construction contract approved at the 3/17/2015 City Council meeting.
167,664	SE 14th St. extension construction.
83,238	Contract for stormwater improvements received zero bids in 2014. Re-bid in early 2015. Contract approved at the 4/7/2015 City Council meeting.
38,247	Stormwater Comprehensive Plan.
295,089	Design work on Inglewood Neighborhood Drainage project.
1,000,000	Waiting to expend funds in partnership with Towncenter development
<u>\$ 4,413,517</u>	Subtotal Capital Expenditure Commitments

\$ 4,946,850 Grand Total

\$19,137,099 TOTAL available (all funds)

\$14,190,249 NET Savings

Exhibit 3

2014 Fiscal Year

		Savings NET		
	<u>Bgt-Act</u>	<u>of CF Request</u>	<u>Major Savings Component</u>	
101	\$ 278,986	\$ 268,330	Operating contingency, engineering prof. svcs.	
201	-	-		
301	3,620,000	3,620,000	Town Center contingency-re budgeted in 2013	
302	2,706,506	173,524	Project expenditures	
340	3,827,515	3,363,554	Contingencies, ITS on 228th, 218th project, 212th project.	
408	157,584	146,928	M&O personnel & professional services.	
438	1,897,074	480,500	TC regional stormwater & small capital projects	
501	18,578	3,478	Vehicle replacements, R&M exp.	
502	11,612	(56,853)	Equipment purchases	
503	50,786	50,786	Insurance premium	
Subtotal	\$ 12,568,641	\$ 8,050,247		

GF	\$ 6,568,458	\$ 6,140,002
TOTAL	\$ 19,137,099	\$ 14,190,249

Savings by Area

\$ 337,000	Personnel
1,035,000	GF operating contingency
500,000	Development revenue contingency
2,034,900	Fire Department start up costs
1,500,000	GF capital contingency
733,102	Other GF Savings not carried forward
\$ 6,140,002	Subtotal General Fund Savings

2015 Technical Adjustments

General Fund

\$ 132,000	Transfer to Technology Fund to cover the amount the Council Chambers AV upgrade was over the 2014 budgeted amount.
6,200,000	Transfer to General Government CIP to purchase Mars Hill Church.
\$ 6,332,000	General Fund Adjustments

General Government CIP Fund

\$ (6,200,000)	Transfer from the General Fund to purchase Mars Hill Church
\$ 6,200,000	Purchase of Mars Hill Church

Technology Replacement Fund

\$ (132,000)	Transfer from General Fund to cover Council Chambers AV upgrade in excess of 2014 budgeted amount. Brings Tech Fund EFB to desired balance.
\$ (132,000)	Technology Fund Revenue Adjustment



Meeting Date: May 5, 2015

Date Submitted: 4/30/2015

Originating Department: Admin Services

Clearances:

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Attorney | <input type="checkbox"/> Community Development | <input type="checkbox"/> Public Safety |
| <input checked="" type="checkbox"/> Admin Services | <input type="checkbox"/> Finance & IT | <input type="checkbox"/> Public Works |
| <input checked="" type="checkbox"/> City Manager | <input type="checkbox"/> Parks & Recreation | |

Subject: An ordinance granting Astound Broadband, LLC, d/b/a "Wave" a nonexclusive franchise to install, construct, maintain, repair and operate a telecommunications system within the City of Sammamish's public rights of way

Action Required: 1st reading. No action required

Exhibits: 1. Ordinance

Budget: Budget neutral

Summary Statement:

An ordinance that, if approved by the City Council, would grant a nonexclusive franchise authorizing Astound Broadband, LLC, d/b/a "Wave" to install, construct, maintain, repair and operate a telecommunications system in public rights of way within the City of Sammamish.

Background:

Company Overview: Wave is a Kirkland-based limited liability company that provides cable and telecommunications services from the Canadian border to northern California (e.g. Bay Area and Sacramento). The company was formed in 2003. While Wave started as a cable service provider and still has a presence in a number of regions, its primary focus today is in providing commercial telecommunications services.

The Proposal: Wave is looking to install a backhaul fiber network along the west coast to expand telecommunications services to local, regional, and national customers. Wave is seeking franchise agreements from those cities along the west coast, including Sammamish, where franchise agreements are not already in place.

Wave plans on installing roughly 85,000 feet of fiber in public rights of way within the City of Sammamish. Wave intends on using overhead routes wherever possible and estimates that roughly 80% of the fiber laid will be along aerial routes. It will only lay fiber underground where no aerial path

exists. Where undergrounding is required, Wave will use trenching or directional boring to bury the fiber. Wave will return all property to pre-existing conditions upon completion of its work.

Potential Benefits to the City of Sammamish: While Wave's work in Sammamish is motivated primarily by its obligations lay fiber optics cable along the west coast to support enhanced telecommunications services, Wave intends on laying additional fiber capacity to its new fiber optic network that would allow it in the future to potentially serve businesses and residents in Sammamish with high speed broadband services. In addition, Wave may also be in a position to provide broadband capacity to the City and other public sector entities operating in Sammamish at a discounted rate. Staff is currently in discussions with Wave about how the City might benefit from this opportunity. These discussions are separate from the franchise agreement currently before Council.

The Process for Approving a Telecommunications Franchise Agreement: State law dictates that cities must approve or deny telecommunications franchise agreements within 120 days of receipt of the application. Wave submitted its application to the City on January 28, 2015. Staff and the City Attorney have been negotiating the terms of the proposed franchise agreement in the period since the application was received. Federal law prohibits cities from regulating telecommunications services. However, cities can ensure that the applicant complies with all permitting and right-of-way regulations. In addition, cities may charge applicants for the cost of processing the permit. Wave has provided the City with a \$5,000 deposit to cover costs associated with processing the franchise application.

Highlights of the Franchise Agreement: The telecommunications franchise agreement presented for City Council consideration includes the following features:

Basic Features:

- The Franchise Ordinance authorizes Wave to construct, maintain, operate, and repair a fiber-optic broadband telecommunications system using the public rights-of-way within city limits. The Franchise is non-exclusive, meaning the City remains free to grant a similar franchise to another qualified telecommunications system operator during the same time period, so long as the terms are competitively neutral and nondiscriminatory consistent with federal law.
- The Franchise does not include the right to install or operate cable television or commercial mobile radio (i.e., cellular) services, and Wave expressly disclaims any right to provide cable service without a separate franchise or an amendment to this one. The City may impose additional compensation requirements for use of public rights-of-way to provide services beyond those specifically authorized in the Franchise Ordinance.
- The Franchise Ordinance does not exempt Wave from having to obtain other licenses, easements, or agreements needed to place devices on other City or private property (e.g., on utility poles, pipelines, or buildings), nor does it exempt Wave from having to comply with applicable land-use or development regulations (e.g., conditional use permits or zoning variances).

Conditions of Acceptance:

If the City Council approves the Franchise Ordinance, Wave has 30 days to accept the Franchise by paying certain administrative costs of the City, submitting proof of financial security, submitting required insurance certificates, and paying the costs of publication of the Franchise Ordinance. Otherwise, the Franchise will be deemed rejected by Wave.

Transferability of Franchise

With prior notice to the City, Wave is permitted to transfer the Franchise to another provider, so long as the transferee agrees in writing to assume and be responsible for all of Wave's obligations and guarantees their performance. The transferee must also supply the required insurance certificates, security fund, and performance bond.

Term of Franchise and Renewal

The Franchise runs for a term of 10 years following acceptance by Wave. Within 180 days of expiration, and with the agreement of the parties, the City Manager may renew the Franchise for an additional 5 years without further action by the City Council.

Powers Retained by City

The City retains full authority to use the public rights-of-way, including construction of sanitary and storm sewers; paving, widening, or altering rights-of-way; laying down water mains; etc. The City also retains its full police powers to make and enforce laws, although it may not enact new ordinances or amendments that unilaterally alter or impair material rights or benefits granted to Wave under this Franchise Ordinance.

Liability Protections

- The City has disclaimed liability to Wave (and its contractors) for any damages relating to the design, condition, or safety of the public rights-of-way within the Franchise area, except for damages due to gross negligence or willful misconduct by the City.
- Wave has also agreed to a very broad indemnification of the City and its officials and employees for claims by third parties that arise out of or relate to Wave's occupation and use of the public rights-of-way, its operation of the Telecommunications System, environmental contamination that Wave causes or contributes to, and any acts or omission of Wave or its contractors, agents, and employees in connection with its work in the rights-of-way. The City retains liability for third-party damages caused by its own gross negligence or intentional misconduct.
- Wave is required to obtain a performance bond in the amount of \$50,000 to ensure full and faithful performance of Wave's obligations under the Franchise.
- Wave and its subcontractors are required to maintain commercial general liability insurance with minimum coverage limits. For Wave, the applicable limits are \$2,000,000 per occurrence,

\$4,000,000 general aggregate, and \$1,000,000 products/completed operations aggregate. For subcontractors, the applicable limits are \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$1,000,000 products/completed operations aggregate. Wave is also required to maintain umbrella or excess liability insurance with limits of at least \$5,000,000.

Reimbursement of City Costs

- Wave is required to reimburse the City for costs (including labor, materials, equipment, and consultant fees) it incurs in approving and inspecting Wave's work on its facilities (e.g., the City's review of design documents and inspections for compliance with the City's Design Standards) to the extent such costs are not included in the issuance of regulatory permits (construction permits, street excavation permits, clearing and grading permits, etc.). Any required work that the City has to perform after Wave has failed to perform it will be charged to Wave. The City is required to invoice Wave for such costs.
- Additionally, Wave is required to reimburse the City up to \$3,000 per year for costs incurred in administering the Franchise or amending the Ordinance at Wave's request or for its benefit. Finally, Wave must pay the costs of publication of the Franchise Ordinance and any other public notices prior to any public hearings on the Franchise Ordinance.

Construction Standards, Permit Application, and Approval Process

- Wave may not commence work without the City's prior approval of its design documents. The City may require Wave to install facilities at a particular time, or in a particular place or manner as a condition of access, and may require removal of any facilities not installed in compliance with the current edition of the City Standards for Public Work Engineering and Construction, or any of the other federal, state, and City standards and codes specified in Section 7.3 of the Franchise Ordinance.
- The City may review and approve Wave's design documents with respect to, among other things: location, alignment, and depth; any measures needed to preserve the free flow of traffic; structural integrity, functionality, and compatibility with roadways, sidewalks, traffic signals, etc.; ease of road maintenance; appearance; and compatibility with the City's longer-term plans.
- Before performing any work in public rights-of-way, Wave must apply for and obtain all regulatory permits required by City ordinance or rule, at Wave's expense.
- Any contractors or subcontractors of Wave must adhere to the conditions and limitations of the Franchise Ordinance, and Wave must ensure that they are familiar with the Franchise Ordinance and that all work performed by them is in compliance with it.
- Wave is required to use suitable barricades, flags, lights, and other measures as required for the safety of the general public and to prevent accidents and injuries to persons, vehicles, or other property due to work done in public rights-of-way.

Right of Inspection

Upon 72 hours' notice, or without notice in case of emergency, the City may inspect Wave's facilities to determine compliance with the Franchise Ordinance or other applicable requirements. The City retains the power to immediately stop all work that the City learns or determines is non-compliant or is being performed in an unsafe or dangerous manner, and may compel Wave to take actions necessary to correct the unsafe condition or otherwise bring the work into compliance.

Facility Relocations

- The City may require Wave to alter, adjust, or relocate any facilities when reasonably necessary for the construction, repair, or improvement of any public rights-of-way in furtherance of the public health, safety, or welfare. The City must give 180 days' notice, and must make reasonable efforts to provide an alternate location for Wave's facilities. The City also must, within budgetary constraints, consider any alternative designs proposed by Wave to mitigate the impact on its facilities. Wave may seek reimbursement of its relocation costs when authorized by law to do so.
- If there is an immediate threat to public health or safety, the City may require Wave, at Wave's expense, to shut down, relocate, remove, or modify its facilities in a public right-of-way, without regard to fault. A party seeking alteration, adjustment or temporary relocation of Wave facilities for something other than a public improvement project must compensate Wave for its time, engineering, design, and material costs.
- After construction of any facilities, or upon request by the City, Wave must provide up-to-date maps showing the horizontal and vertical location and configuration of located or relocated facilities in the public rights-of-way. Wave does not, however, warrant the accuracy of such maps; it represents only that its Telecommunications Systems are shown in approximate locations.

Duty of Restoration

Wave has a duty to leave the public rights-of-way and other property disturbed by its work in as good or better condition as it was before commencement of construction. Wave must complete restoration work to the reasonable satisfaction of the City, as determined by the City Engineer, and warrant restoration work for at least two years. Restoration work for adjacent private property disturbed or damaged by Wave must be performed to the private owner's reasonable satisfaction.

Revocation of Franchise

Upon an uncured default by Wave, the City may give notice of intent to revoke the Franchise. If Wave objects to the revocation, it may object in writing and provide its rationale. The City may then conduct a public hearing, at which evidence and witness may be examined, before deciding whether to terminate or revoke the Franchise. The City Council's decision is final, subject only to other appeal rights provided by law.

Financial Impact:

Because the requirements on Astound Broadband to reimburse the City's costs associated with developing, implementing and monitoring this Franchise Agreement, the financial impact of approving the Franchise agreement is budget neutral.

Recommended Motion:

1st reading. No action required.

**CITY OF SAMMAMISH
WASHINGTON
ORDINANCE NO. ____**

**AN ORDINANCE OF THE CITY OF SAMMAMISH,
WASHINGTON, GRANTING TO ASTOUND
BROADBAND, LLC, A LIMITED LIABILITY
COMPANY, A NONEXCLUSIVE
TELECOMMUNICATIONS FRANCHISE TO
INSTALL, CONSTRUCT, MAINTAIN, REPAIR, AND
OPERATE A TELECOMMUNICATIONS SYSTEM
WITHIN THE PUBLIC RIGHTS OF WAY;
PROVIDING FOR SEVERABILITY; AND
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, Astound Broadband, LLC, a Washington limited liability company d/b/a Wave (hereinafter “Franchisee”) has made application to the City to construct, install, maintain, repair and operate a fiber optic-based telecommunications system with the public rights-of-way of the City; and

WHEREAS, Franchisee represents that it has the legal, technical and financial qualifications to operate in the rights-of-way of the City as a wireline telephone business and a telecommunications company within the meaning of Title 80 RCW; and

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

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

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

Table of Contents.

ARTICLE 1. DEFINITIONS

ARTICLE 2. FRANCHISE GRANT

- 2.1 Public Right-of-Way Use Authorized
- 2.2 Authorized Services

- 2.3 No Rights Shall Pass to Franchisee by Implication
- 2.4 Interest in the Public Right-of-Way; Release; Indemnity
- 2.5 Rights Subordinate
- 2.6 Condition of Franchise Area
- 2.7 Franchise Nonexclusive
- 2.8 Transfer
- 2.9 Street Vacation
- 2.10 Reservation of City Use of Public Right-of-Way

ARTICLE 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE

- 3.1 Alteration of Material Terms and Conditions
- 3.2 Compliance with Laws
- 3.3 Reservation of Rights/Wavier
- 3.4 Change in Form of Government

ARTICLE 4. ACCEPTANCE

- 4.1 Acceptance
- 4.2 Failure to Timely File Acceptance
- 4.3 Effective Date; Term
- 4.4 Effect of Acceptance
- 4.5 Effect of Expiration/Termination

ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC

- 5.1 Limitation of Liability
- 5.2 Insurance Requirements – Attached Exhibit D
- 5.3 Financial Security – Attached Exhibit E
- 5.4 Contractors/Subcontractors
- 5.5 Liens
- 5.6 Financial Conditions

ARTICLE 6. ENFORCEMENT AND REMEDIES

- 6.1 Communications and Discussion
- 6.2 Remedies
- 6.3 Right to Cure Default
- 6.4 Termination/Revocation
- 6.5 Receivership

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

- 7.1 Regulatory Permit
- 7.2 Submission; Approval of Design Documents
- 7.3 Compliance with Standards/Codes

Exhibit 1

- 7.4 Conditions Precedent to Work
- 7.5 Work in the Public Rights-of-Way
- 7.6 Alterations
- 7.7 General Conditions
- 7.8 Facility Relocation at Request of the City
- 7.9 Movement of Facilities for Others
- 7.10 Movement of Facilities During Emergencies
- 7.11 Record of Installations
- 7.12 Restoration of Public Rights-of-Way, Public and Private Property
- 7.13 Approvals
- 7.14 Abandonment of Facilities

ARTICLE 8. MISCELLANEOUS

- 8.1 Headings
- 8.2 Entire Agreement
- 8.3 Incorporation of Exhibits
- 8.4 Calculation of Time
- 8.5 Time Limits Strictly Construed
- 8.6 No Joint Venture
- 8.7 Approval Authority
- 8.8 Binding Effect upon Successors and Assigns
- 8.9 Waiver
- 8.10 Severability
- 8.11 Signs
- 8.12 Discriminatory Practices Prohibited
- 8.13 Notice
- 8.14 Survival of Terms
- 8.15 Force Majeure
- 8.16 Attorneys' Fees
- 8.17 Venue/Choice of Law
- 8.18 Publication

EXHIBITS:

- A. Form of Acceptance of Franchise
- B. Form of Transfer Agreement
- C. Description of Franchise Area
- D. Insurance Requirements
- E. Financial Security
- F. Contractor/Subcontractor Insurance Requirements

ARTICLE 1. DEFINITIONS.

Exhibit 1

For the purposes of this Franchise and the Exhibits attached hereto, the following terms, phrases, words and their derivations where capitalized shall have the meanings given herein. Words not defined herein shall have the meaning given in Title 14 of the Sammamish Municipal Code. Words not defined herein or in Title 14 of the Sammamish Municipal Code, shall have the meaning given pursuant to such federal statutes, rules, or regulations that apply to and regulate the services provided by the Franchisee. Words not otherwise defined, shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word “shall” is always mandatory and not merely directory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision.

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

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

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

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

“Design Document(s)” shall mean the plans and specifications for the Construction of the Facilities meeting the minimum applicable general plan submittal requirements for engineering services plan review as set forth in the City’s Design Standards manual, illustrating and describing the refinement of the design of the Telecommunications System Facilities to be Constructed, establishing the scope, relationship, forms, size and appearance of the Facilities by means of plans, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

“Direct Costs” shall mean and include all costs and expenses incurred by the City and 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

Exhibit 1

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.

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

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

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

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

"Facility" or "Facilities" means any part or all of the facilities, equipment and appurtenances of Franchisee whether underground or overhead and located within the Public Rights-of-Way as part of the Franchisee's Telecommunications 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, anchors, transmitters, receivers, antennas, and signage.

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

"Franchisee" shall mean Astound Broadband, LLC d/b/a Wave and any of its Affiliates.

"Franchise Area" shall mean collectively or individually the Public Rights-of-Way located within the area described in Exhibit "C".

“Franchise Ordinance” shall mean the Ordinance authorizing the Franchise.

“Hazardous Substance” means 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 as its component thereof or therein, asbestos or lead-based paint; and petroleum oil and any of its fractions; and as such has been defined, listed or regulated under any Environmental Law.

“Law(s)” shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, environmental standards, orders, decrees and requirements of all federal, state, and local governments, the departments, bureaus or commissions thereof, or other governmental authorities, including the City acting in its governmental capacity. 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.

“Noticed Party” shall mean the Party in receipt of notice that it is in Default.

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

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

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

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

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

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

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

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

“Telecommunications Service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications Service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications Service excludes, radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include but are not limited to cable service as defined in 47 U.S.C. Sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in section 20.3, Title 47 C.F.R.

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

“Telecommunications System” shall mean collectively the Facilities that together with other facilities, appurtenances and equipment of Franchisee or other Persons are used to provide Telecommunications Services.

“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, maintain, repair and operate Facilities in, along, among, upon, across, above, over, and under the Public Rights-of-Ways located within the Franchise Area.

2.2 Authorized Services. The grant given herein expressly authorizes Franchisee to use the Public Rights-of-Way to Construct, maintain, repair and operate its Facilities as part of its Telecommunications System to provide Telecommunications Services. 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 herein. This Franchise shall not be interpreted to prevent the City from lawfully imposing additional conditions, including additional compensation conditions, if authorized by applicable law for use of the Public Rights-of-Way, should Franchisee provide Service other than Service specifically authorized herein. However, this Franchise shall not be read as a concession by the Franchisee that it needs authorization to provide any services not otherwise authorized herein. Notwithstanding the foregoing, this Franchise does not authorize Franchisee to provide cable service as defined in 47 U.S.C. Sec. 522(6). Franchisee understands and acknowledges that a separate franchise, or amendment to this Franchise, is required for the provision of cable service.

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

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

2.3.2 Any Regulatory Permit required by the City for Public Rights-of-Way users in connection with operations on or in Public Rights-of-Way or public property; or

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

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

2.4 Interest in the Public Right-of-Way/Release/Indemnity. This Franchise shall not operate or be construed to convey title, equitable or legal, in the Public Rights-of-Way. This Franchise shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give. The grant given herein does not confer rights other than as expressly provided in the grant hereof and is subject to the limitations in applicable

Law. Such right may not be subdivided or subleased to a person other than the Franchisee except as set forth in Section 2.8 below.

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

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 Rights Subordinate. Franchisee further acknowledges that Franchisee's rights under this Franchise to Construct Facilities in the Franchise Area, are subject and subordinate to all outstanding rights and encumbrances on the City's Public Rights-of-Way.

2.6 Condition of Franchise Area. Franchisee has inspected or will inspect the Franchise Area described on the attached Exhibit C, and enters upon each such Franchise Area with knowledge of its physical condition and the danger inherent in operations conducted in, on or near any Franchise Area. Franchisee acknowledges that Hazardous Substances or other adverse matters may affect the Franchise Area that were not revealed by Franchisee's inspection.

CITY HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE FRANCHISE AREA, INCLUDING THE ENVIRONMENTAL CONDITION OF THE FRANCHISE AREA, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE PUBLIC RIGHT-OF-WAY, OR THE CONFORMITY OF ANY PART OF THE PUBLIC RIGHT-OF-WAY TO ITS INTENDED USES. CITY SHALL NOT BE RESPONSIBLE TO FRANCHISEE OR ANY OF FRANCHISEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PART OF THE PUBLIC RIGHT-OF-WAY PRESENT ON OR CONSTITUTING ANY FRANCHISE AREA, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES, EXCEPT TO THE EXTENT ANY DAMAGES RELATING TO THE CONDITION, QUALITY, OR SAFETY OF ANY PART OF THE PUBLIC RIGHT-OF-WAY ARISE FROM THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

2.7 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 on terms and conditions that are competitively neutral and nondiscriminatory among similarly situated franchisees; provided that, no other Person holding a valid franchise shall have superior rights to Franchisee to use and occupy the space within the Public Right-of-Way lawfully occupied by Franchisee Facilities, except as provided pursuant to Section 7.8 (Facility Relocation) hereof.

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

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

Franchisee may, without the prior written notice to or consent of the City: (i) lease the Telecommunications System, or any portion thereof, to another Person; (ii) grant an Indefeasible Right of User Interest in the Telecommunications System, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Telecommunications System to another Person; provided that, Franchisee at all times retains exclusive control over its Telecommunications System and remains responsible for Constructing its Facilities pursuant to the terms and conditions of this Franchise, and provided further that, Franchisee may grant no rights to any such Person that are greater than any rights Franchisee has pursuant to this Franchise; such Persons shall not be construed to be a third-party beneficiary hereunder; and, no such Person may use the Telecommunications System for any purpose not authorized herein.

2.9 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 to occupy 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. Nothing herein is intended to operate as a waiver of Franchisee's right or entitlement under state law or City ordinance to receive notice of or to object to vacation of the Public Right-of-Way occupied by Franchisee Facilities.

2.10 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, widening or otherwise 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 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 or impaired by the City through subsequent amendments to, or enactment of, any ordinance, regulation, resolution or other enactment of the City. Notwithstanding the foregoing, the City specifically reserves its right to make and enforce those laws that are within the lawful exercise of the City's police power.

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

3.3 Reservation of Rights/Wavier. The City expressly reserves all of its rights, authority and control arising from any relevant provisions of federal, State or local Laws granting the City rights, authority or control over the Public Rights-of-way or the activities of the Franchisee.

3.4 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.

ARTICLE 4. ACCEPTANCE.

4.1 Acceptance. Within thirty (30) days after the passage and approval of this Franchise by the City Council, this Franchise shall be accepted by Franchisee by filing with the City Clerk during regular business hours, or to the City Attorney, three originals of this Franchise with its original signed and notarized written acceptance of all of the terms, provisions and conditions of this Franchise in conformance with Exhibit "A", 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 5.6 herein.

4.1.2 Submission of proof of financial security in accordance with Section 5.3 herein.

4.1.3 Submission of an insurance certificate in accordance with Section 5.2 herein.

4.1.4 Payment of the costs of publication of this Franchise Ordinance in conformance with the requirements of Section 8.18 herein.

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

4.2 Failure to Timely File Acceptance. 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.

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 day following Franchisee's acceptance under Section 4.1 and not later than the 31st day following passage and approval of this Franchise by the City Council. This Franchise and the rights, privileges, and authority granted hereunder and the 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 one hundred eighty (180) days prior to expiration, the Parties may mutually agree in writing to extend the term of this Franchise for an additional five (5) year term upon the same terms and conditions as provided herein. The City Manager is authorized to execute such an extension on behalf of the City without further action or approval by the City Council.

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

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

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

4.4.3 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; and

4.4.4 Warrants that Franchisee has full right and authority to enter into and accept this Franchise in accordance with the terms hereof, 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, revocation or termination of the Franchise without renewal or other authorization, Franchisee shall no longer be authorized to operate the Facilities within the Franchise Area and shall, to the extent it may lawfully do so, cease operation of the Facilities. Forthwith thereafter, except as provided in this Section, or as otherwise provided by ordinance, Franchisee shall: (1) remove its Facilities from the Public Rights-of-Ways and restore the Public Right-of-Way in accordance with Section 7.12.1 (Restoration of Public Rights-of-Way) hereof; (2) sell its Facilities to another entity authorized to operate Facilities within the Franchise Area (which may include the City) in accordance with the transfer provisions under Section 2.8; or (3) abandon any Facilities in place in the Public Rights-of-Way in accordance with Section 7.14 (Abandonment of Facilities) hereof.

ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC.

5.1 Limitation of Liability.

5.1.1 INDEMNITY/RELEASE/DEFENSE. TO THE FULLEST EXTENT PERMITTED BY LAW, FRANCHISEE SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS (ELECTED OR APPOINTED), EMPLOYEES, AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM, AND AGAINST CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, REASONABLE ATTORNEYS' FEES, AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

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

5.1.1.2 FRANCHISEE'S OPERATION OF THE TELECOMMUNICATIONS SYSTEM;

5.1.1.3 ENVIRONMENTAL CONTAMINATION OF THE PUBLIC RIGHTS-OF-WAY CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY FRANCHISEE OR ITS CONTRACTORS, SUBCONTRACTORS, OR AGENTS (BUT ONLY TO THE EXTENT OF SUCH AGGRAVATION OR CONTRIBUTION); OR

5.1.1.4 ANY ACT OR OMISSION OF FRANCHISEE OR FRANCHISEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS AND SERVANTS, OFFICERS OR EMPLOYEES IN CONNECTION WITH WORK IN THE PUBLIC RIGHTS-OF-WAY.

THE ONLY LIABILITIES WITH RESPECT TO WHICH FRANCHISEE'S OBLIGATION TO RELEASE AND INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF AN INDEMNITEE OR FOR LIABILITIES THAT BY LAW THE INDEMNITEES CANNOT BE INDEMNIFIED FOR.

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

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. 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. Franchisee's indemnification obligations do not apply to any lawsuit, claim, or proceeding, including any settlement or compromise of a claim that is not reduced to a suit, if the City fails to provide timely notice to Franchisee, or if City enters into a settlement or compromise, or consents to entry of judgment, without Franchisee's prior written consent.

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

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

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

5.2 Insurance Requirements. See Attached Exhibit "D".

5.3 Financial Security. See Attached Exhibit "E".

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

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

5.6 Financial Conditions.

5.6.1 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 in good faith endeavor to negotiate a reasonable Franchise fee or other fee or other consideration in lieu of a Franchise fee, consistent with federal and/or state Law. The fee or other consideration shall be comparable to Franchise or similar fees received by the City, or other cities of comparable population or assessed property value, for other similar uses of the Public Rights-of-Way by similar users.

5.6.2 Reimbursement of Direct Costs of Amendment, Administration, and Renewal. Franchisee shall reimburse the City for the City's Direct Costs relating to the amendment (if requested by or for the benefit of the Franchisee), administration of this Franchise; provided, however, such reimbursement shall not exceed \$3,000 in any calendar year of the initial ten (10) year term of this Franchise. In the event of renewal, the Parties shall renegotiate the annual reimbursement cap on the City's Direct Costs.

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

5.6.4 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.

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

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

5.6.7 Taxes and Fees. Nothing contained in this Franchise Agreement shall exempt Franchisee from Franchisee's obligation to pay any utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on Franchisee. Any fees, charges and/or fines provided for in the City Municipal Code or any other City ordinance,

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.

5.6.8 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.

5.6.9 Time for Payment. All non-contested amounts owing shall be due and paid within sixty (60) days of receipt of invoice, or itemized invoice if requested; 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 sixty (60) days of receipt of the itemized invoice.

5.6.10 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 lower of (x) the maximum interest rate allowed by law, and (y) a rate of twelve (12%) percent per annum.

5.6.11 Contesting charges. Franchisee may contest all or parts of amounts owed within sixty (60) days of receipt of any invoice. The City will investigate Franchisee's contest and will make appropriate adjustments to the invoice, if necessary, and resubmit the invoice to Franchisee. Franchisee shall pay any amounts owing as itemized in the resubmitted invoice which amounts shall be due within thirty (30) days of receipt of the resubmitted invoice. However, Franchisee does not waive its rights to further dispute resolution processes pursuant to Section 6.1 of this Franchise. Submittal of a dispute over amounts owing pursuant to Section 6.1 does not relieve the Franchisee of its obligation to pay amounts due under the resubmitted invoice.

5.6.12 Receivables. Either Party hereto may assign any monetary receivables due them under this Franchise upon notice to the other; provided, however, (i) such transfer shall not relieve the assignor of any of its rights or obligations under this Franchise, and (ii) Franchisee shall have no such notice obligation with respect to any receivables other than those owed by the City.

ARTICLE 6. ENFORCEMENT AND REMEDIES.

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

The Parties further agree that in the event a Dispute arises, they will attempt to resolve any such Disputes through discussions between representatives of each Party.

Each Party will exchange relevant information that will assist the Parties in resolving the Dispute.

6.2 Remedies. The Parties have the right to seek any and all remedies, in equity, at law or in contract. 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 to commence an action for equitable or other relief, and/or proceed against the other Party and any guarantor for all direct monetary damages, costs and expenses arising from the Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

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 Default.

6.3.1 Notice. If a Party believes that the other Party is in default, such Party shall give written notice to the Noticed Party stating with reasonable specificity the nature of the alleged default. The Noticed Party shall have thirty (30) days, or such greater time as specified in the notice or such lesser time as specified in the event that there is an imminent threat of harm to the public health, safety or welfare resulting from the default, from the receipt of such notice to:

6.3.1.1 Respond to the other Party, contesting that Party's assertion that a Default has occurred; or

6.3.1.2 Cure the default; or

6.3.1.3 Notify the other Party that the Noticed Party cannot cure the default within the time provided in the notice, because of the nature of the Default. In the event the Default cannot be cured within the time provided in the notice, the Noticed Party shall promptly take all reasonable steps to begin to cure the Default 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 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 Default, the nature and scope of the work required to cure the Default, whether the Default 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 implementing a cure will result in a violation of Law or Default of contract.

6.3.3 Failure to Cure. If the Noticed Party fails to promptly commence and diligently pursue cure of a Default 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 Default, then the parties may pursue any remedies available to them.

6.4 Termination/Revocation. In addition to the remedies available to the City as provided at Law, in equity or in this Franchise, upon a Default without cure, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in accordance with the following:

6.4.1 Notice. Prior to termination of the Franchise, the City shall give written notice to the Franchisee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the Default. If Franchisee objects to such termination, Franchisee shall object in writing and state its reasons for such objection and provide any explanation.

6.4.2 Hearing. The City may then seek a termination/revocation of the Franchise in accordance with this Subsection.

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

6.4.2.2 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. The public hearing notice shall be provided to Franchisee in accordance with Section 8.13 hereof and public notice of the hearing shall be provided in the same manner as notice is provided for regular meetings of the City Council.

6.4.2.3 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. Any appeal to which the Franchisee may be entitled (e.g., constitutional or statutory writ of review) shall be filed within 30 calendar days of issuance of the final decision of the City Council.

6.4.3 Decision to Terminate. The City Council may consider one or more of the following when determining whether or not to terminate/revoke the Franchise based upon the material Default:

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

6.4.3.2 Whether other remedies will achieve compliance with this Franchise;

6.4.3.3 Whether the Franchisee has acted in good faith;

6.4.3.4 Whether the acts or omissions that gave rise to the Default were willful or indifferent to the requirements that gave rise to the Default;

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

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

6.4.3.7 The impact or potential impact of the Default upon the public health, safety and welfare;

6.4.3.8 The economic risk the City is exposed to as a result of the Default;

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

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

6.5 Receivership. At the option of the City, subject to applicable law and lawful orders of courts of competent 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:

6.5.1 The receivership or trusteeship is timely vacated; or

6.5.2 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 Regulatory Permit. If Franchisee has submitted an application for a Regulatory Permit to perform work in the Public Rights-of-Way, the City shall, to the extent practicable, consider such application contemporaneously with the design review requirements hereunder.

7.2 Submission/Approval of Design Documents.

7.2.1 Submission. At the time of application for a Regulatory Permit, or in the event that Franchisee seeks to alter or change the location of Facilities in a Franchise Area, Franchisee shall submit its Design Documents to the City for review and approval in accordance with the City's plan review process.

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 the proposed Franchise Area and may deny access if Franchisee is not willing to comply with such requirements; and, may require removal of any Facility that is not installed in compliance with the Standards (defined in Section 7.3 below) 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 Design Documents submitted by the Franchisee, which approval will not be unreasonably withheld, conditioned or delayed. The City may review and approve the Franchisee's 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 Rights-of-Way;

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

7.2.3.6 Compliance with applicable Standards (as defined below) and codes; and

7.2.3.7 Compliance and compatibility with the City's comprehensive plan, 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 Standards for Public Works Engineering and Construction. The most current edition of the City Standards for Public Works Engineering and Construction as adopted from time to time by the City. This document includes the City Design Standards Manual, Design Standards Detail, and appendixes, and the most recently City adopted 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 additional conditions in a Regulatory Permit.

7.3.4 City Regulations. City ordinances, codes, and regulations establishing standards for placement of Facilities in Public Rights-of-Way, including by way of example and not limitation, the specific location of Facilities in the Public Rights-of-Way.

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. Except in the event of an Emergency, prior to performing any Work in the Public Right-of-Way requiring a Regulatory Permit, Franchisee shall apply for, and obtain, in advance, such appropriate Regulatory Permits from the City as are required by ordinance or rule. Franchisee shall pay all generally applicable and lawful fees for the requisite City Regulatory Permits.

7.4.2 Compliance with Franchise. Franchisee shall be in material compliance with the Franchise.

7.5 Work in the Public Rights-of-Way.

7.5.1 Least Interference. Work in the Public Rights-of-Way shall be done in a manner that does not unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property and which causes the least interference with the rights and reasonable convenience of property owners, businesses and residents along the Public Rights-of-Way. Franchisee Facilities shall be designed, located, aligned and Constructed so as not to disturb or impair the use or operation of any street improvements, utilities, and related facilities of City or City's existing lessees, licensees, permittees, 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.

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

7.5.4 Notice to the Public. Except in the case of an Emergency, City retains the right to require the Franchisee to 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.

7.5.5 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 Rights-of-Way on behalf of the Franchisee shall be deemed servants and agents of the Franchisee for the purposes of this Franchise and are subject to the same restrictions, limitations and conditions as if the Work were performed by Franchisee. Franchisee shall be responsible for all Work performed by its contractors and subcontractors and others performing Work on its behalf as if the Work were performed by it, and shall ensure that all such Work is performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractors or other Persons performing Work on Franchisee's behalf are familiar with the requirements of this Franchise and other applicable Laws governing the Work performed by them.

7.5.6 Emergency Permits. In the event that Emergency repairs are necessary, Franchisee shall perform such Work, provide such notices, and obtain Regulatory Permits in conformance with applicable Standards.

7.5.7 Stop Work. On notice from the City that any Work does not comply with the Franchise, the approved 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 reasonably 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 in its reasonable discretion. The City has the right to inspect, repair and correct the unsafe condition if Franchisee fails to do so, and to reasonably charge Franchisee for the costs incurred to perform such inspection, repair or correction. Payment by Franchisee will be made in accordance with Section 5.6.9. The authority and remedy set forth herein in this section is in addition to, and not a substitute for, any authority the City may otherwise have to take enforcement action for violation of City Codes or Standards.

7.5.8 Discovery of Hazardous Substances/Indemnity. In the event that the Work of the Franchisee in, on, and upon the Franchise Area results in the discovery of the presence of Hazardous Substances ("**Discovered Matters**") in, on or upon the areas excavated or otherwise opened or exposed by Franchisee within the Franchise Area (the "**Excavated Areas**"), the Franchisee shall immediately notify the City and, take whatever

other reporting action is required by applicable Environmental Law as it relates to the Discovered Matters in the Excavated Areas.

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

7.6 Alterations. Except as may be shown in the Design Documents or Regulatory Permits approved by the 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 the 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. If Franchisee desires to change either the location of any Facilities or otherwise materially deviates from the approved design of any of the Facilities, Franchisee shall submit such change to the 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 the 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 Telecommunications System.

7.7.2 Compliance Inspection. Franchisee's Facilities shall be subject to the City's right of periodic inspection upon at least seventy-two (72) hours' notice, or, in case of an emergency, upon demand without prior notice, to determine compliance with the provisions of this Franchise or other applicable Law over which the City has jurisdiction. Franchisee shall respond to reasonable requests for information regarding its Telecommunications System as the City may from time to time issue in writing to determine compliance with this Franchise, including requests for information regarding the Franchisee's plans for Construction and the purposes for which the Facility is being Constructed.

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

7.7.4 Graffiti Removal. Within 5 business days after notice from the City, Franchisee shall remove any graffiti on any part of its Telecommunications System, including, by way of example and not limitation, equipment cabinets. If either the Franchisee fails to do so within 5 business days or in the City's discretion and subject to advance communication with the Franchisee, the City may remove the graffiti and bill the Franchisee for the reasonable cost thereof.

7.7.5 Dangerous Conditions, Authority for City to Abate. Whenever Construction of Facilities has caused or contributed to a condition that in the reasonable opinion of the City Engineer, substantially impairs the lateral support of the adjoining Public Right-of-Way, street, or public place, or endangers the public, any utilities, or City-owned property, the City may reasonably require the Franchisee to take action to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities. Such action may include compliance within a prescribed time. In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if Emergency conditions exist which require immediate action, the City may, to the extent it may lawfully do so, take such actions as are necessary to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the reasonable costs thereof to the extent Franchisee is determined to be the proximate cause of such condition.

7.7.6 No Duty. Notwithstanding the right of the City to inspect the Work, issue a stop work order, and order or make repairs or alterations, the 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 Design Documents, the Standards, and applicable Law. Neither the exercise nor the failure by the 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, the Franchisee shall take corrective action. 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, following written notice explaining with reasonable specificity the nature of any such matter and a reasonable

opportunity to cure of not less than thirty (30) days, the Franchisee shall take corrective action; provided that, nothing herein shall relieve the Franchisee from keeping its Facilities at all times in safe and hazard-free condition.

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 (defined below), the Franchisee agrees to locate, and if reasonably determined necessary by the City, to excavate and expose portions of its Facilities for inspection so that the location of same may be taken into account in the Public Improvement design; PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless the Franchisee's record drawings and maps of its Facilities submitted pursuant to Section 7.11 of this Franchise are reasonably determined by the City to be inadequate for purposes of this paragraph.

7.8 Facility Relocation at Request of the City.

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

7.8.2 Alternatives. If the City requires Franchisee to relocate its Facilities, the City shall make a reasonable effort to provide Franchisee with an alternate location within the Public Right-of-Way. The Franchisee may, after receipt of written notice

requesting a relocation of its Facilities, propose design alternatives that would mitigate or lessen the impact upon Franchisee's Facilities. The City shall provide a full and fair evaluation of such proposed design alternatives that, in the reasonable judgment of the City, would not impair, interfere with, or materially alter the scope, purpose or functioning of the Public Improvement and would not increase the anticipated public costs of the Public Improvement. If so requested by the City, Franchisee shall submit additional information to assist the City in making such evaluation. In the event that the City reasonably determines that it does not have available resources within the existing Public Improvement budget to fully and fairly evaluate Franchisee's proposal, the City shall not be obligated to further consider such proposal unless and until the Franchisee funds the additional costs to the City to complete its evaluation.

7.8.3 Notice. The City shall notify Franchisee in writing as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of Emergency such notice shall be no less than one hundred and eighty (180) days. In calculating the date that relocation must be completed, City shall consult with Franchisee and consider the extent of Facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the date specified, unless the City, or a reviewing court, establishes a later date for completion, after a showing by the Franchisee that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

7.8.4 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 Improvement, and result in damage to the City and/or its contractors, including but not limited to, delay and disruption 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, or disruption of such project.

7.8.5 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 Section 7.10 of this Franchise.

7.8.6 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 by Law, including in statute. Further, if the City reimburses or pays the relocation costs of a similarly situated franchisee for a given Public Improvement project, the City shall reimburse or pay Franchisee's relocation costs on the same basis

7.9 Movement of Facilities for Others.

7.9.1 Private Benefit. If any alteration, adjustment, temporary relocation, or protection in place of the Telecommunications 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 one hundred eighty (180) days advance written notice, take action to effect the necessary changes requested by the responsible Person; provided that, (a) the Person requesting the same pays for the Franchisee's time, design, engineering 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) Franchisee's services are not interrupted; and (d) such alteration, adjustment, or relocation is not requested for the purpose of obtaining a competitive advantage over the Franchisee.

7.9.2 Temporary Changes for Other Franchisees. At the request of any Person holding a valid permit and upon reasonable advance notice, Franchisee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder. Franchisee shall be given not less than thirty (30) days' advance notice to arrange for such temporary wire changes.

7.10 Movement of Facilities During Emergencies.

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

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

7.10.3 Notice. During Emergencies the City shall endeavor to, as soon as practicable, provide notice to Franchisee of such Emergency at a designated Emergency response contact number, to allow Franchisee the opportunity to respond and rectify the problem without disrupting Telecommunications 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 Telecommunications System located within the Public Rights-of-Way in accordance with this Section 7.10.

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 Telecommunications 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 reasonably prescribed by the City reflecting the horizontal and vertical location and configuration of its Telecommunications System within the Public Rights-of-Way and upon City property in a format reasonably acceptable to the City. Franchisee shall provide the City with updated record drawings and maps within a reasonable period of time following receipt of written 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 Telecommunications System is shown, such Telecommunications System is shown in its approximate location.

7.11.2 Maps/Record Drawings of Improvements. After Construction involving the locating or relocating of Facilities, the Franchisee shall provide the City with accurate copies of all record drawings and maps showing the horizontal and vertical location and configuration of all located or relocated Facilities within the Public Rights-of-Way. These record-drawings and maps shall be provided at no cost to the City, and shall include hard copies and digital copies in a format reasonably 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 Telecommunications System is shown, such Telecommunications 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 Telecommunications 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 conformance with City Standards, including by way of example and not limitation, backfilling and restoration requirements as set forth in City Standards.

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, the Franchisee shall promptly notify the property owner within twenty-four (24) hours.

7.12.3 Duty to Restore. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-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 reasonable satisfaction of the City and in accordance with City Standards.

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 City Engineer, or designee, 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 Rights-of-Way or on other public property for two (2) years, unless a longer period is required by applicable City Standards. If restoration is not satisfactorily and timely performed by the Franchisee, the City may, after prior notice to the Franchisee, or without notice where the disturbance or damage may create an imminent risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from the Franchisee. Franchisee shall pay the City for such costs in accordance with Section 5.6.9.

7.12.8 Restoration of Private Property. When Franchisee does any Work in the Public Rights-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 reasonable 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 Design Documents 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 Design Documents, 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 Telecommunications 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. The City is under no obligation or duty to supervise the design, Construction, or operation of the Telecommunications 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 180 days of the receipt of notice of abandonment from the Franchisee, that the safety, appearance, functioning, or use of the Public Rights-of-Way and other facilities in the Public Rights-of-Way, including without limitation, utilities and related facilities, will be adversely affected, the operator must remove its abandoned Facilities by a date specified by the City and restore the Public Rights-of-Way in accordance with City Standards. Franchisee shall be and remain responsible in perpetuity for any Facilities abandoned in the Public Rights-of-Way.

ARTICLE 8. MISCELLANEOUS.

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

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

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

8.4 Calculation of Time. Except where a period of time refers to “business days,” 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 Default of this Franchise.

8.6 No Joint Venture. It is not intended by this Franchise to, and nothing contained in this Franchise shall, create any partnership, joint venture, or principal-agent

relationship or other arrangement between Franchisee and the City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other. The Parties intend that the rights, obligations, and covenants in this Franchise and the collateral instruments shall be exclusively enforceable by the City and Franchisee, their successors, and assigns. No term or provision of this Franchise is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, the Franchisee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. Nothing in this Section 8.6 shall be construed to prevent an assignment as provided for at Sections 2.8 or 7.8.5 of this Franchise.

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

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

8.9 Waiver. No failure by either Party to insist upon the performance of any of the terms of this Franchise or to exercise any right or remedy consequent upon a Default thereof, shall constitute a waiver of any such Default or of any of the terms of this Franchise. None of the terms of this Franchise to be kept, observed or performed by either Party, and no Default thereof, shall be waived, altered or modified except by a written instrument executed by the injured Party. No waiver of any Default 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 Default 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 Default of the same covenant, term or conditions.

8.10 Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence set forth herein, 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.

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

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

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

Franchisee's address: Astound Broadband, LLC
401 Kirkland Parkplace
Suite 500
Kirkland, WA 98033
Attention: Steve Weed, CEO, and Jim Penney, EVP

The City's Address: City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075
Attention: Director of Administrative Services

And to the City Attorney Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027
Attention: Michael R. Kenyon

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

8.14 Survival of Terms. Upon the expiration, termination, revocation or forfeiture of the Franchise, the Franchisee shall no longer have the right to occupy the Franchise Area for the purpose of providing services authorized herein. However, the Franchisee's obligations under this Franchise to the City shall survive the expiration, termination, revocation or forfeiture of these rights according to its terms for so long as the Franchisee's Telecommunications System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, or until such time as the Franchisee transfers ownership

of all Facilities in the Franchise Area to the City or a third-Party, or until such time as 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's 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, severe weather conditions, employee strikes and unforeseen labor conditions not attributable to Franchisee's employees, Franchisee shall not be deemed in Default of provisions of this Franchise.

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

8.16 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, whether in contract or in tort or both, is instituted to enforce any word, article, section, subsection, paragraph, provision, condition, clause or sentence of this Franchise or its application to any person or circumstance, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys, paralegals, accountants, and other experts fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as allowed by Washington law and as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by Law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law. This provision shall not apply to 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 by, and construed in accordance with, the laws of the State of Washington. Any action brought relative to enforcement of this Franchise, or seeking a declaration of rights, duties or obligations herein, shall be initiated in the Superior Court of the County in which the City is located,

and shall not be removed to a federal court, except as to claims over which such Superior Court has no jurisdiction. Removal to federal court shall be to the Federal Court of the Western District of Washington.

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

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING
THEREOF ON THE _____ DAY OF _____ 2015.**

CITY OF SAMMAMISH

Thomas E Vance, Mayor

ATTEST/AUTHENTICATED:

Melonie Anderson, City Clerk

Approved as to form:

Michael R Kenyon, City Attorney

Filed with the City Clerk: April 30, 2015

First Reading: May 5, 2015

Passed by the City Council:

Date of Publication:

Effective Date:

EXHIBIT "A"

(Acceptance of Franchise)

Franchise issued pursuant to Ordinance No. _____.

I, _____, am the _____, and am the authorized representative to accept the above-referenced Franchise on behalf of _____. In my capacity as _____, and not individually, I certify that this Franchise and all terms and conditions thereof are accepted by _____, without qualification or reservation and that _____ unconditionally guarantee(s) performance of all such terms and conditions.

DATED this ____ day of _____, 20__.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____ |
CITY OF _____ | ss.

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

Dated this ____ day of _____, _____.

(Signature of Notary)

Print Name
Notary public in and for the state of _____, residing at _____
My appointment expires _____

EXHIBIT “B”

(Form of Transfer Agreement)

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

1. PARTIES.

1.1 City of Sammamish, a legal subdivision of the state of Washington (“City”).

1.2 _____ (“Franchisee”).

1.3 _____ (“Transferee”).

RECITALS

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

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

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

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

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

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

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

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

2.1 Receipt by the City of the fully executed acceptance of Franchise attached hereto as Exhibit B-1 together with all required certificates of insurance, security fund and performance bond;

2.2 Payment to the City of the Transfer fees; and

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

3. ACCEPTANCE OF FRANCHISE OBLIGATIONS.

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

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

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

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

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

representation by the City that Franchisee is in compliance with all of Franchisee's obligations under the Franchise.

3.6 Franchisee and Transferee acknowledge and agree that the City's approval and acceptance of this Agreement and the resulting transfer is made in reliance upon the representations, documents, and information provided by the Franchisee and Transferee in connection with the request for Transfer.

4. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

4.7 Notice. Pursuant to Section 8.13 of the Franchise, Notices to Transferee shall be delivered to:

Transferee's address: **
 **
 **
 **

And to:

**
**
**
**

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

CITY:

FRANCHISEE:

By: City Manager

By: _____
Title: _____

TRANSFeree:

By: _____
Title: _____

Tax Id. No. _____

TRANSFER EXHIBIT B-1

Acceptance of Franchise

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

I, _____, am the _____, and am the authorized representative to accept the above-referenced Franchise on behalf of _____. In my capacity as _____, and not individually, I certify that this Franchise and all terms and conditions thereof are accepted by _____, without qualification or reservation and that _____ unconditionally guarantee(s) performance of all such terms and conditions.

DATED this _____ day of _____, 20____.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____ |
CITY OF _____ | ss.

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

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name
Notary public in and for the state of _____, residing at _____
My appointment expires: _____

EXHIBIT “C”

(Description of Franchise Area)

The incorporated area (entire existing territorial limits) of the City of Sammamish and such additional areas as may be included in the corporate (territorial) limits of the City of Sammamish during the term of this Franchise.

EXHIBIT “D”

(Insurance Requirements)

1. General Requirement. Franchisee shall 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 the Work, the Facilities, or the activities of Franchisee, its employees, agents, representatives, contractors, subcontractors and their employees, within the Franchise Area.

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, and shall provide coverage for any and all costs, including reasonable defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Such insurance shall include broad form and blanket contractual coverage, including coverage for the Franchise as now or hereafter amended. Coverage must be written with the following limits of liability:

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

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

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

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

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

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

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

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

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

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

3.6 The insurance coverages and limits provided herein shall not be canceled without thirty (30) days' prior written notice first being given to the City, with the exception that ten (10) days' notice shall be required for cancellation resulting from non-payment of premium. 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 copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Automobile Liability, Commercial General Liability and Umbrella or Excess insurance of the Franchisee upon acceptance of this Franchise. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

6. Deductible. Commercial General Liability Insurance policies and coverage required herein may include a deductible; 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

Exhibit 1

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.

EXHIBIT “E”

(Financial Security)

1. Performance Bond.

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

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

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

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

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

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

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

Franchisee may, at its election substitute an equivalent cash deposit with an escrow agent approved by the City or an irrevocable letter of credit in form and content reasonably approved by the City Attorney, instead of a performance and payment bond. This cash deposit or irrevocable letter of credit shall ensure the full and faithful performance of all of Franchisee’s responsibilities hereto under this Franchise and all applicable Laws. This

Exhibit 1

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.

In the event that the Franchisee fails to cure a Default as provided in Section 6 of the Franchise, the City may, at its option, draw upon the cash deposit or letter of credit up to the amount of the City's costs incurred to cure Franchisee's default. Upon the City's cure of Franchisee's default, the City shall notify Franchisee in writing of such cure.

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

EXHIBIT “F”

(Contractor/Subcontractor Insurance Requirements)

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

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

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

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

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

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

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

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

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

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

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

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

3.6 The insurance coverages and limits provided herein shall not be canceled without thirty (30) days written notice first being given to the City, with the exception that ten (10) days' notice shall be required for cancellation resulting from non-payment of premium. If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4. Acceptability of Insurers. Each insurance policy required herein shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "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, Contractor shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

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

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

**Sammamish City Council
Finance Committee Report
Submitted By: Kathleen Huckabay**

Meeting Date: City Hall 4/27

Attendees: Tom Odell, Tom Vance, Kathleen Huckabay, Joe Guinasso, Chris Gianini and Ben Yazici.

The purpose of the meeting was to review the 2014-2015 Carryforward Process and to create a process for identifying and quantifying future liabilities prior to presenting the same to the whole city council and public.

The carryforward report will be presented to the council on the 5/5. It is anticipated that the Quantifying Future Liability and Associated Revenue Report will be presented at the 7/14 study session.

Next Meeting Tentatively Schedule at 4 p.m. on July 14th.

Kathleen Huckabay

Deputy Mayor

