



Anacortes City Council
Municipal Building Council Chambers
904 6th Street

March 9, 2020
6:00 p.m.

PRELIMINARY AGENDA

[Packet Materials](#) / [Watch Meeting](#)

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Executive Session (30 Minutes)**
 - a. Potential Litigation or Litigation per RCW 42.30.110 (i)
4. **Announcements and Committee Reports**
 - a. Housing Affordability & Community Services Committee
 - b. Community Center/Pool Committee
 - c. Planning Committee
5. **Public Comment**
6. **Consent Agenda (Action)**
 - a. Minutes of March 2, 2020
 - b. Approval of Claims in the amount of: \$268,020.05
 - c. Contract Award: Trenchless Outfall Rehabilitation #20-088-SEW-001
 - d. Contract Award: ADA Curb Ramp Improvements #20-083-TRN-001
 - e. Interlocal Agreement for Joint Establishment of Skagit County Tourism Promotion Area
7. **Public Hearings**
 - a. * Public Hearing: Approval of a Master Permit for Telecommunications Use of Right of Way for City of Anacortes/ACCESS Anacortes Fiber Internet Installation in accordance with AMC Chapter 5.38.040 (Discussion/Possible Action)
8. **Other Business**
 - a. Thompson Train Purchase Proposal (Discussion)
 - b. * Ordinance 3067: Comcast Franchise Agreement (Discussion/Possible Action)
 - c. * Access - Anacortes Municipal Fiber Update (Discussion/Possible Action)
 - d. MOA with Fidalgo Park and Recreation District on Community Center (Discussion/Possible Action)
9. **Adjournment**

Per Resolution 2044, citizens wishing to comment on items not on the agenda may do so under the Public Comment portion of the agenda. Citizens wishing to comment on agenda items indicated with an asterisk () may do so as those items are considered by Council during the course of the meeting. Citizens wishing to speak will please sign in at the back of the Council Chambers prior to the start of the meeting. The Mayor may limit comments to those who have signed in, and may limit the time allotted to each speaker to facilitate the orderly progress of the meeting.*



Anacortes City Council

Proposed Agenda Items for the Next Eight Weeks Beginning March 16, 2020

Subjects listed below have been tentatively suggested for consideration by the Anacortes City Council on the dates indicated. Items may be added to, removed from or rearranged on this list. Routine business such as approval of minutes and vouchers are not included. The complete Preliminary Agenda for each meeting is published at 3:00 on the Wednesday prior to the meeting. Published Agendas are subject to change and may be updated following the posting period. For additional information on agenda topics, please contact the City Clerk's office at 360-299-1960 to be directed to the sponsoring staff member.

March 16, 2020

- Public Hearing: Ordinance 3064 Updating Critical Areas Regulations - General Provisions & Review Procedures (Exemptions, Outdoor Recreation and Bikes) (Discussion)

March 23, 2020

- Public Hearing: Ordinance 3065: Sewer Capital Facility Plan Update (Discussion/Possible Action)
- Contract Award: Skagit River Raw Water Pipeline and Clearwell Project #20-048-WTR-001 (Action)
- Pavement Management Plan Update Presentation (Discussion)

April 6, 2020

- Continued Public Hearing: Ordinance 3064 Updating Critical Areas Regulations - Wetlands and Fish, Wildlife, Habitat Conservation Areas (ACFL & Herons) (Discussion)
- CDBG 2020 Annual Action Plan Review

April 13, 2020

April 20, 2020

- Continued Public Hearing: Ordinance 3064 Updating Critical Areas Regulations - Geologically Hazardous, Critical Aquifer, Frequently Flooded Areas, and Definitions (Discussion)
- CDBG 2020 Annual Action Plan Review and Approval (Discussion/Possible Action)

April 27, 2020

May 4, 2020

May 11, 2020

Upcoming City Council Committee Meetings

The public is welcome to attend City Council Committee Meetings.

- Planning, Monday, Mar 9, 2020, 5:00 PM, Main Conference Room, City Hall
- Port/City Liaison, Tuesday, Mar 10, 2020, 8:30 AM, Port of Anacortes
- Finance, Wednesday, Mar 11, 2020, 5:00 PM, Main Conference Room, City Hall
- Fiber, Thursday, Mar 12, 2020, 2:30 PM, Third Floor Conference Room, City Hall
- Public Works, Monday, Mar 16, 2020, 5:00 PM, Main Conference Room, City Hall
- Community Center/Pool, Thursday, Mar 19, 2020, 3:30 PM, Third Floor Conference Room, City Hall
- Planning, Monday, Mar 23, 2020, 5:00 PM, Main Conference Room, City Hall
- Finance, Wednesday, Mar 25, 2020, 5:00 PM, Main Conference Room, City Hall
- Fiber, Thursday, Mar 26, 2020, 2:30 PM, Third Floor Conference Room, City Hall

CR 2A SETTLEMENT AGREEMENT

Young and Mulcahy v. City of Anacortes, et al.
Skagit County Superior Court No. 18-2-00646-29

THIS CR 2A SETTLEMENT AGREEMENT (hereinafter, “Agreement”) is made between Anthony Young and Joseph Mulcahy, a married couple (hereinafter “Mulcahy/Young”), and the City of Anacortes, a Washington municipal corporation (hereinafter “City”), (collectively referred to as the “Parties”) this _____ day of February, 2020.

I. RECITALS

- A. The parties are involved in litigation initiated by Mulcahy/Young against the City and Todd and Erinn Welliver (“Welliver”) which is pending before the Washington Court of Appeals, Division I, Case No. 80002-7-I, regarding drainage issues impacting the Mulcahy-Young Property, located at 2020 27th Place in Anacortes, Washington, and the Welliver Property, located at 2102 27th Place in Anacortes, Washington (“the Dispute”). The causes of action by Mulcahy/Young against Welliver have been settled, and that portion of the litigation, by agreement of Mulcahy/Young and Welliver, was dismissed on December 24, 2019.
- B. In 2005, the east 40 feet of “E” Avenue—a public right-of-way that was originally 80 feet wide—was vacated to the Plat of Pleasant Slope. The legal description of the Plat does not include the west half (the west 40 feet) of “E” Avenue located between the original 27th Street right-of-way and the newly-platted 27th Place. This remaining portion of “E” Avenue is currently situated between the Mulcahy-Young Property and the Welliver Property. It is bounded by 27th Avenue to the south, and a Native Growth Protection Area to the north. For purposes of this Agreement, that remaining portion of the “E” Avenue right-of-way between the two homes is referred to as “the west 40 feet of ‘E’ Avenue.”
- C. The west 40 feet of “E” Avenue remains unvacated, but it is not and has not been used by the public as a right-of-way. Mulcahy/Young do not believe that it is necessary, suitable, or useful for use as a public right-of-way as it abuts only the Mulcahy/Young and Welliver properties and it does not abut any other opened right of way to the north.
- D. Under Anacortes Municipal Code (AMC) 12.50, a petition to vacate a public right-of-way must be signed by the owners of two-thirds of abutting property owners. Further, in the case of a city council-initiated vacation, the City is prohibited from proceeding with a vacation if fifty percent or more of the abutting owners file written objections.
- E. Over a period of several years, fill-and-grade activities have been undertaken within the unvacated City right-of-way without required permits, and no enforcement action has been undertaken by the City to require a permit, address drainage issues, or restore the right-of-way. Since the fill-and-grade activities began, the Mulcahy/Young property has experienced damages, including drainage issues related to excess water and earth

movement. Mulcahy/Young believe that the drainage issues and resulting damage are the result of the fill-and-grade activities within the unvacated City right-of-way, which resulted in the litigation described in Recital A.

- F. As stated herein, Mulcahy/Young and Welliver have resolved their portion of the Dispute, and Mulcahy/Young believe that Welliver will support a vacation of the west 40 feet of “E” Avenue. Expeditious vacation of said right-of-way will allow mitigation measures to correct the drainage issues and prevent further damage to the Mulcahy/Young property.
- G. Mulcahy/Young agree to resolve all their claims against the City related to the Dispute, based on certain terms as outlined below, subject to necessary approvals by the Anacortes City Council, including the City’s vacation of the west 40 feet of “E” Avenue.
- H. Resolution of the Dispute includes dismissal of the pending appeal, which benefits the City. The City will be further benefitted by the vacation of the west 40 feet of “E” Avenue since such vacation will relieve the City from future liability including maintenance obligations relating to the “E” Avenue right-of-way and the vacation will add the area to the City’s tax base.

THEREFORE, in consideration for and as a condition of the following covenants, the Parties agree, as follows:

II. AGREEMENTS

1. The Anacortes City Council (pursuant to AMC 12.50.020) agrees to initiate, by resolution, a petition to vacate the west 40 feet of “E” Avenue between the Mulcahy/Young property and the Welliver property.¹ The City Council further agrees that (pursuant to AMC 12.50.060(F)), it will elect via motion *not* to refer the vacation to the Board of Adjustment.
2. The proposed resolution to initiate the vacation shall call for a hearing on said vacation, pursuant to AMC 12.50.100, within 30 days from the date of the resolution’s passing, and the Council shall consider the petition and vote to approve or deny it immediately following the public hearing. If approved, the west 25 feet of “E” Avenue shall become part of the Welliver property, and the east 15 feet shall become part of the Mulcahy-Young property (with the exception of the south one (1) foot of “E” Avenue, which will be part of the Welliver property subject to an easement in favor of Mulcahy/Young over the east 15 feet thereof. The easement will be executed separately from the vacation process and will not involve the City).

¹ That portion of the “E” Avenue right-of-way located south of the southerly line of the Mulcahy/Young property (as extended westward) will remain unvacated, retaining the minimum lot/road frontage to 27th Place as required by City code/ordinance.

3. Pursuant to AMC 12.50.130(B), neither Mulcahy/Young nor Welliver shall be required to pay compensation for the area to be vacated, and accordingly no appraisal shall be required.
4. The survey and information required under AMC 12.50.050 shall be provided by Mulcahy/Young, at Mulcahy/Young's expense.
5. Upon final vacation of the west 40 feet of "E" Avenue as outlined herein, the pending appeal of the City's dismissal from Cause No. 18-2-00646-29 (which appeal is pending under Case No. 80002-7) will be withdrawn by Mulcahy-Young within ten calendar days of completion of the vacation.
6. Nothing in this Agreement requires the Council to approve the petition for vacation of the west 40 feet of "E" Avenue. However, Mulcahy/Young's dismissal of the pending appeal is contingent upon the Council's approval of the petition.
7. Effective upon approval of the vacation, as outlined above, Young/Mulcahy and the City agree to mutually release the other party (and any insurer of the other party) from any and all claims that were or could have been brought in Skagit County Cause No. 18-2-00646-29 (the superior court action underlying the current appeal referenced in Recital A).
8. The Parties shall each be responsible for their own costs and attorney's fees.
9. It is acknowledged that all of the terms of this Agreement are in settlement of a disputed claim and nothing in this Agreement or the performance thereof will be construed as an admission of liability by any Party.
10. A copy of this Agreement and any subsequent amendments hereto may be introduced into evidence in any proceeding to enforce the terms of this Agreement pursuant to CR 2A and RCW 2.44.010.
11. Notices pursuant to this Agreement shall be sent to the parties' attorneys of record at their current addresses as set forth in the pleadings.
12. No waiver or estoppel on any other issues is to be inferred.
13. The Parties' signatures below bind them to the above terms pursuant to CR 2A.
14. This Agreement is governed by and shall be construed in accordance with the laws of the State of Washington. In the event that any dispute arises concerning this Agreement, the substantially prevailing party shall be entitled to its reasonable attorney fees and costs.
15. Any suit brought concerning this Agreement shall be brought in Skagit County, Washington.

16. This Agreement (and Mulcahy/Young's obligations and releases hereunder) are subject to approval of this Agreement by the Anacortes City Council, and contingent upon final vacation as outlined herein.

DATED THIS _____ day of February, 2020.

Anthony Young

Joseph Mulcahy

City of Anacortes

By: _____
(Print Name and Title)

APPROVED BY:

Dannon Traxler, WSBA #37158
Langabeer & Traxler, P.S.
Attorneys For Plaintiffs

Kathleen Goodman, WSBA #46653
Williams, Kastner & Gibbs PLLC
Attorneys For Defendant
City of Anacortes

Bryan Telegin, WSBA #46686
Bricklin & Newman, LLP
Attorneys For Defendants Welliver

3/5/20

Anna Fahey discussion

Below are thoughts from Planning Staff & Councilmembers for consideration by Ms. Fahey:

Libby Grage:

Can a broader perspective of region-wide growth and how other communities are dealing with the challenges of change be discussed?

How can we improve our messaging about housing issues?

How can we change the narrative about development from "big Seattle developers" ruining the town, to making Anacortes a place where all kinds of people at all income levels have opportunities to live and work?

How can we encourage more participation by renters and local businesses in the housing discussion?

Tess Cooper:

How do we change our messaging? Focus on societies current issues of sustainability and income equality/social justice.

How can we spin the message to this change being Anacortes looking for solutions to society's biggest problems, and invite the community to be innovators in problem solving housing issues. Switch the citizen focus away from the idea of this being about developers taking over Anacortes.

What innovative outreach techniques can we employ using methods of social marketing to change the public's perceptions and influence behavior change?

Help people understand that we need to prepare for the future population. How do we help the community get a good understanding of this concept – density does not destroy a community.

More housing helps everyone in all incomes – how to readily convey that – supply and demand

Christine Cleland-McGrath:

How does an increase in density benefit our environment? Our businesses?

With our vacancy rate of less than one percent, how does this impact our current residents and citizens? How do we account for those that have been displaced in our conversation?

How do we articulate the various housing needs? Young professionals, retirees, and single people may not fall into the parameters of AMI assisted housing, but options lack for

them. Service, healthcare, and other workers likely qualify for AMI assistance housing. How do we accommodate for both?

How do we connect the two conversations- the need for increased housing and the NIMBY mindset?

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March 9, 2020
6:00 p.m.

Please print your name legibly so we can recognize you correctly in the minutes. Thank you!

Name

Topic

Arlene Stadler

DOUG LAMBER

Wild LIFE

VIRUS + (PARASITIC/HIVUSING)

Continue on back of sheet as needed

City Council Minutes – March 2, 2020

Mayor Laurie Gere called to order the Anacortes City Council meeting of March 2, 2020 at 6:00 p.m. Councilmembers Jeremy Carter, Anthony Young, Ryan Walters, Christine Cleland-McGrath and Matt Miller were present. Councilmember Bruce McDougall participated in the meeting via telephone. Councilmember Carolyn Moulton and was absent.

Ms. Cleland-McGrath moved, seconded by Mr. Walters, to excuse the absence of Ms. Moulton. The motion carried unanimously by voice vote.

The assembly joined in the Pledge of Allegiance.

Announcements and Committee Reports

Finance Committee: Mr. Walters reported from the committee meeting the prior week. He said the committee members met with citizen Ward MacKenzie to learn about Seattle City Light's Capital Facilities Planning process.

Mr. Young reported that the Museum Committee had held its first meeting at which it had discussed the Thompson Train.

Fiber Committee: Mr. McDougall reported from the committee meeting the prior week, sharing statistics on customers in service and customer pre-orders. He reported on a brief damage outage and on design of next areas after the pilot zones.

Public Works Committee: Mr. Walters reported from the committee meeting earlier in the evening. He indicated that the committee had reviewed Public Works Director Fred Buckenmeyer's proposal for an intrusion and leak detection system for the water utility, making use of the fiber optic cable already installed in the pipes. Mr. Walters added that the group had briefly discussed the Port's proposed event center at Cap Sante marina.

Mayor Gere reported on her conversations with state and regional leaders about the Coronavirus disease 2019 (COVID-19). The mayor read the community press release that had been issued earlier in the afternoon. The press release was added to the packet materials for the meeting. Mayor Gere then introduced Island Hospital CEO Charles Hall who addressed the COVID-19 outbreak and steps being taken to keep the community informed and control risk of infection.

Mr. Walters reported from the public meeting between City Council Planning Committee and a Planning Commission committee the prior Tuesday on the bonus height provision in the R4 zone implemented in the recent Development Regulation updates and the moratorium on same. Ms. Cleland-McGrath added that the public boards displayed at that meeting were posted on the city website and said additional public feedback could be submitted there.

Mr. Walters reported that the prior Wednesday the City Council Planning Committee had met with BYK in Sedro Woolley to learn about affordable housing options being pursued there. He concluded that multifamily housing is clearly a more affordable option.

Public Comment

Lori Maul, 711 Commercial Ave, thanked the city for considering public comment on the proposed event center presented by the Port of Anacortes at the February 24, 2020 City Council meeting. Ms. Maul said she was excited by the plan, which would provide better access and parking than the current gravel lot. She said the

event center would also boost accessibility for the disabled. Ms. Maul urged Council to move ahead quickly with the required land swap at the five-way intersection. She encouraged connectivity to bring waterfront visitors into downtown and vice versa.

Doug Thurber also addressed the Cap Sante event center proposed by the Port of Anacortes at the February 24, 2020 City Council meeting. Mr. Thurber noted separate concerns about the event center's impact on 9th Street view corridors, about truck traffic in the R Avenue corridor, and about the 11th to 13th Street intersection improvements currently being studied. Mr. Thurber suggested incentivizing Safeway to move its store to R Avenue and 17th Street or R Avenue and 21st Street, vacating its current site which could then serve as an alternative location for an event center that would more naturally connect to the downtown business district.

Brian Wetcher, 814 26th Street, reported that at recent ACFL Advisory Board meetings members of the public had requested more information regarding progress on the Critical Areas Ordinance update and the schedule for updating the ACFL comprehensive plan. Mr. Wetcher inquired of Mr. Walters about progress on the CAO and how that might impact the ACFL comprehensive plan update. Mr. Walters invited the public to contact him directly for more information.

Consent Agenda

Mr. Miller moved, seconded by Ms. Cleland-McGrath, to approve the following Consent Agenda items. The motion carried unanimously by voice vote.

- a. Minutes of February 21, 2020 and February 24, 2020
- b. Approval of Claims in the amount of: \$362,319.75
- c. Interlocal #20-084-LEG-001 Cooperative Purchasing Agreement with Snohomish County

The following vouchers/checks were approved for payment:
EFT numbers: 96406 through 96462, total \$187,782.91
Check numbers: 96463 through 96481, total \$145,029.72
Wire transfer numbers: 264420 through 264861, total \$17,670.97

OTHER BUSINESS

Public Works GIS Demonstration

Mr. Buckenmeyer introduced Rob Hoxie, GIS Manager, to provide an update on the city's mapping and asset tracking services. Mr. Hoxie's slides were added to the packet materials for the meeting. He summarized the history of asset tracking and mapping in the city, tracing the evolution of paper records to electronic records management to provide better access to and security for critical information. Mr. Hoxie demonstrated several of the many interactive searchable maps available to the public on the city website, including Grand View Cemetery interments and building permits. Councilmembers encouraged coordination of all city utilities including the new fiber utility in the Cartegraph asset management system.

Mayor Gere invited members of the audience to comment on this agenda item. No one present wished to address the Council.

Stormwater Management Program Plan 2020

Mr. Buckenmeyer introduced Diane Hennebert, Stormwater Program Manager, to present the draft 2020 Stormwater Management Program Plan. Ms. Hennebert's slide presentation was added to the packet materials for the meeting. She discussed the requirements of the city's National Pollution Discharge Elimination System (NPDES) permit and how the city was meeting those requirements. Ms. Hennebert invited public comment on the plan through the end of the week.

Ms. Hennebert provided an overview of the components of the plan including comprehensive stormwater planning, public education and outreach, public involvement and participation, mapping and documentation, illicit discharge detection and elimination, controlling runoff from development and construction sites, municipal operations and maintenance, and source control.

Mayor Gere invited members of the audience to comment on this agenda item.

Brian Wetcher commended the city on its stormwater program but noted that infrastructure cannot remove pollutants from herbicides once they are in stormwater. Mr. Wetcher urged the SWMP to require the city to reduce or cease use of glyphosate and to encourage citizens to reduce or eliminate private use of that substance.

There being no further business, at approximately 7:20 p.m. the Anacortes City Council meeting of March 2, 2020 was adjourned.

The following claims against the City of Anacortes have been preaudited and certified by the Clerk-Treasurer as ready for City Council approval at the March 9, 2020 City Council meeting:
[Download this file in OpenDocument spreadsheet format.](#)

Invoice Doc #	Transaction Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
265158	12/19/2019	29946	REICHHARDT & EBE ENGINEERING	SHIP HARBOR & SR20 INTERSECTION - 9/22/19-11/13/19	\$ 14,064.90	pw1
265285	1/1/2020	101412	ASSOCIATION OF WASHINGTON	SUPPLEMENTAL LIFE INSURANCE	\$ 34.20	hr
265281	1/5/2020	1639239577	SMILES DENTAL GROUP	DENTAL SERVICES, LEOFF1 RETIREE	\$ 82.00	hr
264867	1/13/2020	400002353946	PUGET SOUND ENERGY INC	PUGET SOUND ENERGY TSUNAMI SIREN SKYLINE	\$ 611.12	pw1
262927	1/13/2020	1997027	WASHINGTON TRACTOR, INC	BRUSHCUTTER	\$ 565.20	dshop
265043	2/4/2020	13230138	WILBUR-ELLIS COMPANY, LLC	FERTILIZER AND GRASS SEED	\$ 2,712.50	parks1
264560	2/5/2020	ReimbTesch	TESCH, NICOLE	TRAVEL EXPENSES NT	\$ 60.00	pw1
264874	2/6/2020	30948	MIKE HAWKINGS TRUCKING, LLC	HEAVY HAUL OF DEPOT BOXCAR	\$ 1,400.00	pkrec
265263	2/7/2020	S6920613.003	CODALE ELECTRIC SUPPLY, INC.	MUNICIPAL BROADBAND INSTALLATION - AERIAL MATERIALS PURCHASE	\$ 18,156.14	fiber
264705	2/7/2020	11830692	HACH COMPANY	FLOW REGULATOR	\$ 106.80	dwtp
265087	2/10/2020	300000290035	PUGET SOUND ENERGY INC	MUSEUM 1/8-2/5/20	\$ 375.66	museum
265169	2/10/2020	300000305007	PUGET SOUND ENERGY INC	STREET LIGHTS- 01/03/2020- 01/1/31/2020	\$ 432.80	dshop
263820	2/10/2020	February	SKAGIT LAW GROUP PLLC	PROSECUTION SERVICES FEBRUARY 2020	\$ 6,305.00	legal
265131	2/14/2020	5062178	CARDINAL HEALTH 110, INC.	ACCU-CHEK, PHARMACEUTICALS	\$ 332.87	medic
264873	2/14/2020	199005	SETINA MANUFACTURING CO INC	BLAC-RAC #008B	\$ 524.16	dshop
265126	2/18/2020	0188-507834	CONSOLIDATED ELECTRICAL	LED LAMPS FOR FIRE STATION I	\$ 160.88	pwfac
265026	2/18/2020	0843681	FERGUSON ENTERPRISES, INC	LF 3/4S 1 CF TRPL METERS FOR INVENTORY	\$ 3,456.40	wdist
265111	2/18/2020	5357	WASHINGTON RECREATION	CERTIFIED ARBORIST EXAM AND MATERIALS	\$ 649.00	parks1
264709	2/19/2020	0247957	REISNER DISTRIBUTOR INC	OILS, GREASE ETC FOR STOCK	\$ 5,809.04	dwtp
264710	2/19/2020	0249482	REISNER DISTRIBUTOR INC	DRUM	\$ 2,309.33	dwtp
265122	2/20/2020	IN0397731	AM CONSERVATION GROUP, INC.	OUT REACH MATERIAL	\$ 465.13	pwfac
265272	2/20/2020	SO11124328	DAY WIRELESS SYSTEMS INC	PORTABLE RADIO BATTERIES	\$ 526.31	apd
265046	2/20/2020	1110618589	FERRELLGAS, LP	PROPANE - WA PARK CARETAKER'S HOUSE	\$ 158.91	parks1
265270	2/20/2020	02/20/2020	FIDALGO CLEANING	CLEANING	\$ 140.00	museum
265039	2/20/2020	IN-135472	GLOBAL DIVING & SALVAGE INC	BOOM MARINA STORMWATER OUTFALL	\$ 1,479.00	dwwtp
265127	2/20/2020	77733390	MCKESSON MEDICAL-SURGICAL	PHARMACEUTICALS	\$ 13.91	medic
264871	2/20/2020	001-458399	PISTON SERVICE OF ANACORTES	AIR FILTER- SHOP INVENTORY	\$ 110.46	dshop
265093	2/20/2020	9502270891	TELEFLEX LLC	ASSORTED SIZES EZ-IO NEEDLES	\$ 2,215.50	medic
265022	2/22/2020	116251	LAKESIDE INDUSTRIES, INC.	GRAVEL- WATER DEPT	\$ 376.15	wdist
265023	2/22/2020	116199	LAKESIDE INDUSTRIES, INC.	5/8" & 3/4" ROCK SALES- STREET DEPT	\$ 361.21	dshop

Invoice Doc #	Transaction Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
265025	2/22/2020	116250	LAKESIDE INDUSTRIES, INC.	1 1/4" & 1 1/2" ROCK SALES- DECEPTION FIBER	\$ 1,437.52	wdist
265156	2/24/2020	24796	ALLMAX SOFTWARE, INC.	ANTERO SOFTWARE WWTP AND WTP ANNUAL SUPPORT	\$ 3,155.00	pw1
265040	2/24/2020	1991642649	ARAMARK	LAUNDRY SERVICE FOR WWTP	\$ 76.31	dwwtp
265088	2/24/2020	105640	CASCADE FIRE EQUIPMENT CO	HOSE BAG FOR SABA EQUIPMENT	\$ 187.57	medic
265102	2/24/2020	015090123	GALLS, LLC.	UNIFORM PANTS; SGT PRUIETT	\$ 124.68	apd
265284	2/24/2020	1255576864	IVERSEN, ROBERT	DENTAL SERVICES, ROBERT IVERSEN, LEOFF1 RETIREE	\$ 280.00	hr
264870	2/24/2020	001-458760	PISTON SERVICE OF ANACORTES	BRAKE PADS, SHOES, OIL SEAL- #204	\$ 231.91	dshop
265036	2/25/2020	8498 30 017 0487207	COMCAST	CITY HALL INTERNET CONNECTION 3/5-4/4/20	\$ 191.15	finance
264872	2/25/2020	183877	NAPA	SPINDLE NUT SOCKET- #204	\$ 32.60	dshop
265020	2/25/2020	001-458838	PISTON SERVICE OF ANACORTES	BATTERY- #9-911	\$ 456.43	dshop
265021	2/25/2020	001-458872	PISTON SERVICE OF ANACORTES	MISC FILTERS- SHOP STOCK	\$ 257.78	dshop
264914	2/25/2020	303618	SMILEY'S INC	2 SPEED JACK, BATTERY KIT #861	\$ 589.81	dshop
265107	2/25/2020	00004	WEST COAST FIRE TRAINING, LLC	2 DAYS LIVE FIRE BURN TRAINING	\$ 3,200.00	medic
265089	2/26/2020	1991646828	ARAMARK	STA 3 MAT/MOP SERVICE - 2/26/20	\$ 21.74	medic
265175	2/26/2020	91671	BLYTHE PLUMBING & HEATING, INC	MUSEUM FURNANCE REPAIR	\$ 575.18	pwfac
265092	2/26/2020	5095100	CARDINAL HEALTH 110, INC.	PHARMACEUTICALS	\$ 83.87	medic
265176	2/26/2020	6374-45517	DETECTION INSTRUMENTS CORP	PUMP STATION MAINTENANCE	\$ 547.55	dwwtp
265320	2/26/2020	5005455473	FERRELLGAS, LP	FEB PROPANE INVOICE - AUTOGAS ACCOUNT	\$ 208.72	finance
264876	2/26/2020	#4 (2018 CDBG)	HOUSING AUTHORITY OF THE CITY	CDBG HOUSING AUTHORITY 2017-18 REHAB	\$ 8,844.43	plan
265267	2/26/2020	ReimbMoriwaki	MORIWAKI, CLARENCE	PER DIEM EXPENSES - SPEAKER PRESENTATION	\$ 194.38	museum
264915	2/26/2020	001-458930	PISTON SERVICE OF ANACORTES	SENSORS #204A	\$ 284.79	dshop
265018	2/26/2020	001-458975	PISTON SERVICE OF ANACORTES	DOOR GUARD- #9911	\$ 3.72	dshop
265260	2/26/2020	02/26/2020	SCOTT MILO GALLERY/FRAMEMAKER	ARTWALK FEBRUARY 2020	\$ 54.50	parks1
265142	2/26/2020	1201573	SKAGIT PUBLISHING LLC	PUBLISH AA-1996688 AA-1996729 AA-1996738 AA-1996744	\$ 571.32	finance
265168	2/26/2020	112930	THE HOSE SHOP, INC	VEG COUPLER, PLUG CAP- #426	\$ 631.51	dshop
265035	2/27/2020	1991648839	ARAMARK	OPS & PARKS LAUNDRY SVC FOR	\$ 77.76	finance
265037	2/27/2020	1991648840	ARAMARK	OPS: MAT CLEANING	\$ 34.96	dshop
265090	2/27/2020	1991648830	ARAMARK	STA 2 MAT/MOP SERVICE - 2/27/20	\$ 21.74	medic
265091	2/27/2020	1991648831	ARAMARK	STA 1 MAT/MOP SERVICE - 2/27/20	\$ 21.74	medic
265098	2/27/2020	1991648834	ARAMARK	APD NYLON MATS CLEANED	\$ 16.31	apd
265174	2/27/2020	2272	CASCADE HOOD SERVICE	ASAC KITCHEN HOOD FAN INSPECTIN AND CLEANING	\$ 298.93	pwfac
265019	2/27/2020	073186	EVERGREEN SAFETY COUNCIL	FLAGGER RE-CERT COURSE	\$ 936.25	dshop
265167	2/27/2020	850371	KARMART	FILTER TRANSMISSION OIL- #204A	\$ 172.73	dshop

Invoice Doc #	Transaction Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
265014	2/27/2020	001-459066	PISTON SERVICE OF ANACORTES	RADIATOR & GREEN COOLANT #142 / WATER PUMP #122	\$ 217.96	dshop
265016	2/27/2020	001-459018	PISTON SERVICE OF ANACORTES	SAFETY PINS- #9911	\$ 6.49	dshop
265151	2/27/2020	001-459026	PISTON SERVICE OF ANACORTES	AUTO TRANS FILTER KIT #204A	\$ 25.94	dshop
265160	2/27/2020	001-459025	PISTON SERVICE OF ANACORTES	FILTER- #204	\$ 25.94	dshop
265161	2/27/2020	001-459092	PISTON SERVICE OF ANACORTES	OIL- SHOP STOCK	\$ 60.50	dshop
265164	2/27/2020	1685056	WOOD'S LOGGING SUPPLY, INC	CLUTCH CUP & KIT, MUD FLAT, GLOVE- #6901	\$ 540.41	dshop
265286	2/28/2020	101412	ASSOCIATION OF WASHINGTON	SUPPLEMENTAL LIFE INSURANCE - ADD ROSALBA TREJO-CUEVAS	\$ 23.00	hr
265041	2/28/2020	WAANA123936	FASTENAL COMPANY	MAINTENANCE SUPPLIES	\$ 2.93	dwwtp
265103	2/28/2020	124073	FASTENAL COMPANY	SAFETY GLASSES, FIRE GLOVES, BATTERIES,	\$ 773.88	medic
265042	2/28/2020	0848735	FERGUSON ENTERPRISES, INC	DATA LOGGER CALIBRATION AND REPAIR	\$ 434.80	dwwtp
265045	2/28/2020	RefundFirCrest	FIR CREST HOMEOWNERS ASSOCIATI	REFUND SENIOR CENTER RENTAL FEE	\$ 54.00	parks1
265114	2/28/2020	360-293-6427-0218975	FRONTIER COMMUNICATIONS	CITY HALL 911 2/28-3/27/20	\$ 78.97	finance
265120	2/28/2020	360-299-3674-0214175	FRONTIER COMMUNICATIONS	OPS BACK UP PHONE LINE	\$ 71.48	dshop
265129	2/28/2020	360-293-9063-0926075	FRONTIER COMMUNICATIONS	STA 3: 2/28 - 3/27	\$ 80.59	medic
265133	2/28/2020	360-588-9248-0619005	FRONTIER COMMUNICATIONS	APD BACKUP LINE (2/28/20-3/27/20)	\$ 207.96	apd
265134	2/28/2020	360-293-4900-0912865	FRONTIER COMMUNICATIONS	APD BAC LINE (2/28/20-3/27/20)	\$ 85.38	apd
265135	2/28/2020	360-588-1422-0822015	FRONTIER COMMUNICATIONS	APD BUSINESS LINE (2/28/20-3/27/20)	\$ 302.69	apd
265136	2/28/2020	360-299-6615-0615165	FRONTIER COMMUNICATIONS	APD 911 LINE (2/28/20-3/27/20)	\$ 72.62	apd
265269	2/28/2020	360-299-2484-0726025	FRONTIER COMMUNICATIONS	LIBRARY PHONE (2-28 TO 3-27-2020)	\$ 57.39	publib
265165	2/28/2020	0163528	GEOENGINEERS, INC.	COMMERCIAL AVE CORRIDOR PLAN - 11-13 ST GEOTECH ENG - 2/21/20-2/21/20	\$ 2,709.38	pw1
265044	2/28/2020	116188	LAKESIDE INDUSTRIES, INC.	GRAVEL	\$ 632.99	parks1
265094	2/28/2020	42200	MICRO DATA BUSINESS FORMS	WARNING CORRECTION NOTICES	\$ 495.24	apd
265282	2/28/2020	10243361	NAVIA BENEFIT SOLUTIONS, INC	FEBRUARY, FLEXIBLE SPENDING PARTICIPANT FEE	\$ 112.05	hr
265178	2/28/2020	001-459150	PISTON SERVICE OF ANACORTES	HUB ASSEMBLY- #204	\$ 315.18	dshop
265179	2/28/2020	001-459183	PISTON SERVICE OF ANACORTES	SOCKET SET- #204	\$ 21.73	dshop
265017	2/28/2020	20-049	PRECISION FIBER INC.	FUSION SPLICING SERVICES	\$ 1,650.00	fiber
265038	2/28/2020	3681	RAINIER ENVIRONMENTAL LAB	LAB TESTING	\$ 600.00	dwwtp
265149	2/28/2020	0250104-IN	REISNER DISTRIBUTOR INC	DIESEL FOR SHOP #90009	\$ 363.67	dshop

Invoice Doc #	Transaction Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
265183	2/28/2020	200247	T-SHIRTS BY DESIGN	REFEREE SHIRTS FOR STUDENT REC ASSISTANTS	\$ 858.73	pkrec
265145	2/29/2020	SIN006528	CARTEGRAPH SYSTEMS LLC	ORANGE ADVANTAGE 36 HOURS	\$ 5,407.83	pw1
265159	2/29/2020	2020-03	CURTIS EMERGENCY SERVICES LLC, RICHARD	EMERGENCY MANAGEMENT SERVICES - FEBRUARY 2020	\$ 608.30	medic
265276	2/29/2020	116986	LAKESIDE INDUSTRIES, INC.	ROCK / QUARRY SPALLS	\$ 1,345.87	wdist
265277	2/29/2020	116714	LAKESIDE INDUSTRIES, INC.	WA CLASS G ASPHALT	\$ 832.47	wdist
265278	2/29/2020	116938	LAKESIDE INDUSTRIES, INC.	DUMP FEES	\$ 95.76	wdist
265264	2/29/2020	IN934688	NOANET	MUNICIPAL FIBER NETWORK COORDINATED SERVICES - FEB 2020	\$ 3,495.00	fiber
265279	2/29/2020	2110	ORCA INFORMATION, INC	ORCA BACKGROUND CHECK - MERRIMAN & JONES	\$ 102.00	hr
265287	2/29/2020	CL02238	REISNER DISTRIBUTOR INC	VEHICLE FUEL - FEBRUARY	\$ 17,233.66	finance
265100	2/29/2020	00005W5A83090	UNITED PARCEL SERVICE, INC	UPS SHIPPING CHARGES; WEEK ENDING 2-29-20	\$ 26.40	apd
265024	3/1/2020	997627	GUARDIAN SECURITY SYSTEMS INC	ALARM MONITORING - FIRE STATION 1 4/1-6/30/20	\$ 179.36	medic
265027	3/1/2020	998922	GUARDIAN SECURITY SYSTEMS INC	ALARM MONITORING - CITY HALL 4/1-6/30/20	\$ 179.36	finance
265028	3/1/2020	997633	GUARDIAN SECURITY SYSTEMS INC	ALARM MONITORING - LIBRARY 4/1-6/30/20	\$ 179.36	publib
265029	3/1/2020	997634	GUARDIAN SECURITY SYSTEMS INC	ALARM MONITORING - MUSEUM 4/1-6/30/20	\$ 179.36	museum
265030	3/1/2020	997631	GUARDIAN SECURITY SYSTEMS INC	ALARM MONITORING - WT PRESTON 4/1-6/30/20	\$ 179.36	museum
265031	3/1/2020	997632	GUARDIAN SECURITY SYSTEMS INC	ALARM MONITORING - FIDALGO CENTER 4/1-6/30/20	\$ 179.36	parks1
265032	3/1/2020	997628	GUARDIAN SECURITY SYSTEMS INC	CLOUD STORAGE/VIDEO FEED - SHOP 4/1-6/30/20	\$ 714.16	dshop
265033	3/1/2020	997629	GUARDIAN SECURITY SYSTEMS INC	ALARM MONITORING - INTERPRETIVE CTR 4/1-6/30/20	\$ 179.36	museum
265097	3/1/2020	997630	GUARDIAN SECURITY SYSTEMS INC	ALARM MONITORING - APD	\$ 179.36	apd
265143	3/1/2020	3790	NW CLEANERS	LTAC HEART OF ANACORTES RESTROOM CLEANING	\$ 550.00	plan
265119	3/1/2020	5058951656	RICOH USA, INC	S/N C86111493 COURT 12/1-2/29/20	\$ 97.40	finance
265121	3/1/2020	5058951736	RICOH USA, INC	S/N C86150637 CARNEGIE 12/1-2/29/20	\$ 175.98	museum
265124	3/1/2020	5058952000	RICOH USA, INC	S/N C86079893 LIBRARY PUBLIC 12/1-2/29/20	\$ 929.12	publib
265125	3/1/2020	5058952487	RICOH USA, INC	S/N C86152062 HR COPIES 2/1-2/29/20	\$ 9.30	finance
265137	3/1/2020	5058951880	RICOH USA, INC	S/N C86138599 APD FRONT OFFICE COPIES (2/1/20-2/29/20)	\$ 33.93	apd
265138	3/1/2020	5058951544	RICOH USA, INC	S/N C86138600 APD HALLWAY (12/1/19-2/29/20)	\$ 53.27	apd
265128	3/1/2020	1080	THE CLEAN TEAM	LTAC RESTRM CLEANING 22ND & R AVE	\$ 600.00	plan

Invoice Doc #	Transaction Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
265140	3/1/2020	3005119410	THYSSENKRUPP ELEVATOR CORP	CITY HALL ELEVATOR 3/1-5/31/20	\$ 639.97	finance
265268	3/1/2020	3005119412	THYSSENKRUPP ELEVATOR CORP	LIBRARY ELEVATOR MAINTENANCE 3/1-5/31/20	\$ 639.97	publib
265259	3/1/2020	120553	VENTEK INTERNATIONAL	MAR SERVER HOSTING AND CELL CARRIER	\$ 135.00	parks1
265262	3/1/2020	102853701-0008009	WAVE	FIBER LEASE WTP TO CITY HALL 3/1-3/31/20	\$ 326.20	finance
265319	3/1/2020	102958801-0008009	WAVE	DIRECT INTERNET ACCESS (DIA) SERVICE - LIBRARY 3/1-3/31/20	\$ 1,469.82	fiber
265154	3/2/2020	1991652596	ARAMARK	LAUNDRY SERVICE FOR WWTP	\$ 76.31	dwwtp
265095	3/2/2020	RENEWAL	DEPARTMENT OF HEALTH	DRUG DOG HANDLERS K9 REGISTRATION WITH DOH	\$ 55.00	apd
265099	3/2/2020	43892	FIDALGO CLEANING	APD CLEANING & SUPPLIES	\$ 700.00	apd
265118	3/2/2020	360-293-3725-0501135	FRONTIER COMMUNICATIONS	DEPOT PHONE 2-28 TO 3-27-2020	\$ 62.22	parks1
265132	3/2/2020	360-299-0813-1017915	FRONTIER COMMUNICATIONS	COMMUNICATION BILLING	\$ 311.98	dwwtp
265139	3/2/2020	121819	ISLAND HOSPITAL	JUVENILE FIT FOR JAIL - APD CASE 20-A00432	\$ 188.00	apd
265150	3/2/2020	001-459314	PISTON SERVICE OF ANACORTES	WIPER FOR #160	\$ 23.81	dshop
265110	3/2/2020	347037	REECE, STORMIE	CLEANING OF DEPOT FEBRUARY 2020	\$ 704.00	parks1
265171	3/3/2020	276379A	BAY CITY SUPPLY	FACILITY SUPPLIES	\$ 265.74	pwfac
265261	3/3/2020	Pay App 1	C JOHNSON CONSTRUCTION, INC	BASE FIBER PROJECT	\$ 128,376.52	pw1
265184	3/3/2020	364244	NATIONAL RECREATION & PARK	MEMBERSHIP NATIONAL REC AND PARKS ASSOC	\$ 110.00	pkrec
265273	3/3/2020	001-459398	PISTON SERVICE OF ANACORTES	BRAKE CLEANER- SHOP	\$ 234.55	dshop
265274	3/3/2020	001-459400	PISTON SERVICE OF ANACORTES	HYDRAULIC HOSES- #704	\$ 90.02	dshop
265275	3/3/2020	001-459419	PISTON SERVICE OF ANACORTES	BATTERY- #128	\$ 122.78	dshop
265182	3/3/2020	331 0507484	UNIFIRST CORPORATION	WATER CREW LAUNDRY	\$ 56.96	wdist
265266	3/15/2020	20-025-FBR-0011	PRECISION FIBER INC.	RETAINAGE RELEASE	\$ 986.50	pw1

Total **\$268,020.05**



City Council Contract Agenda Bill

Meeting Date: 3/9/2020 **Agenda Item:** 6c **Subject:**

Contract Award – Trenchless Outfall Rehabilitation 20-088-SEW-001 **Staff**

Contact: Fred Buckenmeyer

Approved for Submittal to Council by:
Darcy Swetnam, City Attorney

Action Type: Contract Award

Summary Statement: City staff seeks City Council consent to award a contract in the amount of \$73,058.51 to Allied Plumbing and Pumps, LLC dba/Allied Trenchless to perform the Trenchless Outfall Rehabilitation. The work provided for this project will include all materials, equipment, labor and related items necessary to replace the leaking section of the outfall pipe with new pipe, new couplings and a liner inside the pipe. Project includes excavating the outfall manhole, removing the lid and riser to gain safe access to the leaking pipe. During construction the outfall pipe will be plugged to facilitate repair work.

Background:

1. **History:** On February 6th the WWTP was experiencing high flows due to the storm event and wet weather over the past several days. The plant was near the maximum flow limit and pumping effluent due to high tides at the time. The increased flow and pressure on the outfall pipe resulted in separation at a coupling in the outfall manhole on the Port of Anacortes property. The pipe began leaking and flooding the Port of Anacortes and areas of Dakota Creek Shipyard. The couplings and compromised section of pipe must be repaired to prevent further separation in the pipe and the potential for complete failure of the outfall pipe at the manhole.
2. **Key Terms:**
 - Contract is for a fixed price of \$73,058.51 which includes \$5,847.37 in sales tax.
 - All physical construction activities shall be completed by May 1, 2020.
3. **Competitive Bidding:** In accordance with competitive bid requirements set forth under RCW 35.23.352 the project cost is under the competitive requirements and thus the Project Manager evaluated contractors and chose to contract with Allied Plumbing and Pumps, LLC dba/Allied Trenchless.

Previous Council/Committee Action: N/A

Competing Viewpoints Considered: N/A

Recommended Motion: I move that City Council authorize the Mayor to sign contract 20-088-SEW-001 with Allied Plumbing and Pumps, LLC dba/Allied Trenchless in the amount of \$73,058.51 to perform the Trenchless Outfall Rehabilitation.

Alternative Actions: Not award the contract

Attachments: Map, Contract 20-088-SEW-001

Contractor	Allied Plumbing and Pumps, LLC dba/Allied Trenchless
Contract Amount	\$73,058.51
Earmarked Funds	\$1,000,000.00
BARS #	440.000.594.35.63
Budget Amendment Required?	No
Start Date	Notice to Proceed
End Date	5/1/20





CONTRACT 20-088-SEW-001

AGREEMENT WITH

**Allied Plumbing and Pumps, LLC
dba/Allied Trenchless**

This contract agreement is between the City of Anacortes, Washington, ("City") a Municipal Corporation and Allied Plumbing and Pumps, LLC dba/Allied Trenchless, ("Contractor") a private contractor at 246 W Manson Hwy #124, Chelan, WA 98816.

PROJECT

Trenchless Outfall Rehabilitation

1. **Scope of Work:** Contractor shall furnish all materials, equipment and labor to excavate manhole SC-997, remove risers and lid, install plug from upstream manhole WWTP-02 to downstream of SC-997, remove tee in SC-997, install straight section of pipe (supplied by public works), install pipe stands under section of pipe, install point repair overlapping hole tapped in top of pipe, inspect installation, remove plug, and replace manhole SC-997 risers and lid. Work is subject to the 2018 City of Anacortes Engineering Standards, which is hereby incorporated by reference and made a part hereof.

2. **Contract Price:** The Contractor will perform the scope of work above for a firm fixed price of **Seventy Three Thousand Fifty-Eight Dollars and Fifty-One Cents (\$73,058.51)**, which includes \$5,847.37 in 8.7% sales tax. Before any payment is made by the City of Anacortes of sums under this contract, the contractor must provide a copy of the statement of *Intent to Pay Prevailing Wage* approved by the Department of Labor and Industries. Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the contractor will be retained.

3. **Bonds:** Pursuant to RCW 39.08.010, the Contractor shall provide the City a performance bond and payment bond for the full contract amount to be in effect as detailed in the incorporated General Provisions. The City may at its option release the bonds once all the conditions of RCW 39.08.010-1a have been discharged.

4. **Time of Completion:** The Contractor shall complete the work by May 1, 2020.

5. **Job Safety:** Contractor shall comply with all WA Department Labor & Industries safety standards.

6. **Contract Requirements:** Contractor must have a contractor license number, insurance, and City of Anacortes business license. **Prevailing Wage Law Applies.** Forms Needed: 1) Proof of Insurance with Additional Insured Endorsement; 2) Intent to Pay Prevailing Wage; 3) Affidavit of Wages Paid; 4) Performance Bond; 5) Payment Bond; 6) Certification of Compliance with Wage Payment Statutes.

7. **Contract Documents:** The attached General Conditions are included in this Contract Agreement.

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that s/he or it is signing with full and complete authority to bind the party on whose behalf of whom s/he or it is signing, to each and every term of this Agreement.

Owner:

City of Anacortes

Laurie Gere, Mayor

Date

Contractor:

Allied Plumbing and Pumps, LLC
dba/Allied Trenchless

Date

Contractor License #

1. WASHINGTON STATE PREVAILING WAGES

Washington State Prevailing Wages apply to all Work. The Contractor and any of its Subcontractors are required to pay their laborers and mechanics minimum wage in compliance with Washington State Prevailing Wage Laws. Before any payment is made by the City of Anacortes of any sums under this contract, the contractor and each subcontractor must provide the City with a copy of the statement of *Intent to Pay Prevailing Wages* approved by the Washington State Department of Labor and Industries (L&I). Following contract completion, the City will not release any funds retained, according to the provisions of RCW 60.28.010, until the contractor and each subcontractor has provided the City a copy of the *Affidavit of Wages Paid* approved by L&I. L&I provides the wage forms. Payment by the contractor or subcontractor of any fees are incidental to the project and all costs shall be included in other pay items of the project.

For contracts in excess of \$10,000, the contractor must post in a conspicuous place at the job site, a copy of the statement of *Intent to Pay Prevailing Wages* approved by L&I and the address and phone number of the Industrial Statistician where complaints or inquiries may be made. The City will refer any dispute regarding the prevailing rate of wage to L&I for arbitration.

The State of Washington prevailing wage rates applicable for this public works project, which is located in Skagit County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvwagelookup.aspx>. The prevailing wage schedule in effect for the work under the contract will be the one in effect upon the date of execution of the contract. A copy of the applicable prevailing wage rates are also available for viewing at the office of the Owner, located at 904 6th Street, Anacortes, WA. Upon request, the Owner will mail a hard copy of the applicable prevailing wages for this project.

2. Delivery. Advance coordination of the work shall be made with the Project Manager Becky Fox (360) 299-1501.

3. Subcontracts. The Contractor shall give notice reasonably in advance of placing any subcontract; preferably the Contractor shall identify subcontracts before subcontracted work begins. "Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of the prime Contractor or a subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders. The following information shall be included (i) a description of the supplies or services to be subcontracted, (ii) identification of the type of subcontract to be used (iii) identification of the proposed subcontractor, (iv) proposed subcontract price. Unless consent or approval specifically provides otherwise, consent by the City shall not constitute a determination

- (1) of the acceptability of any subcontract terms or conditions;
- (2) of the allowability of any cost under this contract, or
- (3) to relieve the Contractor of any responsibility for performing this Contract.

As required by RCW 39.06.020, the Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification is to include that, at the time of subcontract execution, each subcontractor meets the responsibility criteria listed in RCW 39.04.350(1) and additionally - if applicable - possesses an electrical contractor license or an elevator contractor license. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier. The Contractor shall give immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the City.

4. Taxes. The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

5. Invoicing. All invoices shall include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, Invoice Period, Contract Title, Agreement Number and Price, or Amended Price. The Contractor must invoice **MONTHLY** for quantities delivered during the invoice period. Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to accountspayable@cityofanacortes.org. Contractors may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution. The City shall notify the Contractor within fifteen (15) calendar days from receipt of invoice if there are any objections or disputes with the invoice. The Contractor shall then resubmit a new invoice less the disputed amount and payment shall be made within 30 calendar days. Any disputed amounts may be submitted under the Disputes clause contained herein.

6. Withholding Payment. In the event the City determines that the Contractor has failed to perform any obligation under this Contract within the times set forth in this Contract, then the City may withhold from amounts otherwise due and payable to Contractor the amount determined by the City as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to terminate or damages, provided that the City promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the Public Works Director set forth in such notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Contract. The

City may act in accordance with any determination of the Public Works Director which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the City under this clause.

7. Final Payment: Waiver Of Claim The contractor's acceptance of final payment (excluding withheld retainage) shall constitute a waiver of claims, except those previously and properly made and identified by the contractor as unsettled at the time request for final payment is made.

8. Inspection.

A. Of the Work

All materials furnished and work done shall be subject to inspection. The City Project Manager administering the Contract shall at all times have access to the work wherever it is in progress or being performed, and the Contractor shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Contractor of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of the Contract. All material or work approved and later found to be defective shall be replaced without cost to the City.

B. Project Manager's Authority

The Project Manager shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Contractor may appeal to the City Attorney whose decision shall be final. The Contract shall be carried out under the general control of the representative of the City administering the Contract, who may exercise such control over the conduct of the work as may be necessary, in his or her opinion, to safeguard the interest of the City. The Contractor shall comply with any and all orders and instructions given by the representative of the particular Department administering the Contract in accordance with the terms of the Contract. Nothing herein contained, however, shall be taken to relieve the Contractor of his/her obligations or responsibilities under the Contract.

9. New and Unused. All units, equipment, parts and material shall be new, unused, manufacturer's current model year and in current production. All materials shall have physical and chemical properties to withstand the intended purpose. Equipment design shall have sufficient excess capacity for durability and safety.

10. Warranty. The Contractor shall return to the project and repair or replace all defects in workmanship and material discovered within one year after Final Acceptance of the Work, including any necessary labor and materials. The Contractor shall start work to remedy any such defects within 7 calendar days of receiving City's written notice of a defect, and shall complete such work within the time stated in the City's notice. In case of an emergency, where damage may result from delay or where loss of services may result, such corrections may be made by the City's own forces or another contractor, in which case the cost of corrections shall be paid by the Contractor. In the event the Contractor does not accomplish corrections within the time specified, the work will be otherwise accomplished and the cost of same shall be paid by the Contractor. When corrections of defects are made, the Contractor shall then be responsible for correcting all defects in workmanship and materials in the corrected work for one year after acceptance of the corrections by City. In addition, the Contractor shall obtain and submit to the City any necessary documentation to secure any extended manufacturer's warranty and warranty terms. This guarantee is supplemental to and does not limit or affect the requirements that the Contractor's work comply with the requirements of the Contract or any other legal rights or remedies of the City.

11. Defense and Indemnity Agreement. The Contractor shall defend, indemnify and hold the City, its appointed and elective officers, officials, employees and volunteers harmless from any and all claims, injuries, including death at any time resulting there from, damages, losses or suits including attorney fees, to the extent caused by negligent acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Clause shall survive the expiration or termination of this Agreement.

12. Insurance.

A. Insurance Term: The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

B. No Limitation: The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance: The Contactor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. **The City of Anacortes and its officers, elected officials, employees, agents, and volunteers 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 using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
3. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

D. Minimum Amounts of Insurance: The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

E. Public Entity Full Availability of Contractor Limits: If the Contractor maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Contractor.

F. Other Insurance Provision: The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

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

H. Verification of Coverage: The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

I. Subcontractors' Insurance: The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

J. Notice of Cancellation: The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two (2) business days of their receipt of such notice.

K. Failure to Maintain Insurance: Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

13. Acceptance. Contractor acknowledges and agrees that these General Provisions are incorporated in, and are a part of, each purchase order or other agreement relating to the provision of goods and/or related services by Contractor. These General Provisions supersede all conflicting or additional terms pre-printed on any purchase order, quote, invoice, or otherwise set forth on any release, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and similar document or communication.

14. Registered or Licensed Contractor. The City is prohibited by RCW 39.06.010 from executing an Agreement with a Contractor who is not registered or licensed as required by the laws of the state. In addition, a City of Anacortes business

license is required for any business working inside the city limits whose annual value of products, gross proceeds of sales, or gross income of the business in the city is more than \$2,000. Business licenses can be obtained through the State of Washington Department of Revenue (DOR) Business Licensing Service (BLS) at bls.dor.wa.gov.

15. Discrimination Prohibited. During the performance of this Agreement, the Contractor and subcontractors shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of age, sex, race, creed, religion, color, national origin, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, gender identity, or any other classification protected under federal, state, or local law. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement. Contractor agrees to comply with the applicable provisions of State and Federal Equal Employment Opportunity and Nondiscrimination statutes and regulations.

16. Contractor is an Independent Contractor. The parties intend that an independent Contractor relationship will be created by this Agreement. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. Contractor shall be solely responsible for all acts of its agents, employees, representatives and Sub-Contractors during the performance of this Agreement.

17. No Third Party Beneficiary Rights. This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except as otherwise expressly provided for in this Agreement.

18. The City's Right to Terminate Agreement.

A. Termination for Default: If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until the Scope of Services under this Agreement has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

B. Termination for Public Convenience: The City may terminate the Agreement in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit Agreement prices for completed items of work through the date of termination. An equitable adjustment in the Agreement price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Agreement by the City.

19. Changes/Additional Work. The City may engage Contractor to perform services in addition to those listed in this Agreement, and Contractor will be entitled to additional compensation for authorized additional services or materials. The City shall not be liable for additional compensation until and unless any and all additional work and compensation is approved in advance in writing and signed by both parties to this Agreement. If conditions are encountered which are not anticipated in the Scope of Services, the City understands that a revision to the Scope of Services and fees may be required. Provided, however, that nothing in this paragraph shall be interpreted to obligate the Contractor to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this Agreement is approved in writing by both parties.

20. Non-waiver. Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

21. Covenant Against Contingent Fees. The Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

22. Disputes

A. **General:** Differences between the Contractor and the City, arising under and by virtue of this Agreement shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The provisions of this Clause shall survive the expiration or termination of this Agreement.

B. **Notice of Potential Claims:** The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Contractor has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the Work performed, labor and all costs and additional time claimed to be additional.

C. **Detailed Claim:** The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the City, the Contractor has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

D. **Dispute Resolution:** In the event of a dispute between the City and the Contractor arising out of this Agreement, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Contractor to have oversight over the administration of this Agreement. Said representatives shall meet within thirty (30) calendar days of receipt of detailed claim, and the parties shall make a good faith effort to achieve a resolution of the dispute. In the event the parties are unable to resolve the dispute under the procedure set forth above, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties. If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

23. Force Majeure. Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the City.

24. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Washington. Any action brought under the Agreement or relating to the Project shall be brought in the Superior Court of the State of Washington in Skagit County Washington.

25. Compliance with Laws. The Contractor in the performance of this Agreement shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the Agreement to assure quality of services. Contractor will follow all applicable laws and requirements for excavation and disposal of material.

26. Notices. Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mail, with proper postage and properly addressed. Notices shall be sent to the following addresses:

CITY:

City of Anacortes
Tiffany Matson
904 6th Street
PO Box 547
Anacortes, WA 98221

CONTRACTOR:

Allied Trenchless
Ron Smiley
246 W Manson Hwy #124
Chelan, WA 98816

27. Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

28. Survival of Contract Termination. The provisions of the following paragraphs, the provisions of the non collusion affidavit, and the liability of the Contractor for default during the term of the Contract shall survive, notwithstanding the termination or invalidity of this Contract for any reason: Taxes; Warranty; The City's Right to Terminate Contract; Governing Law; Defense & Indemnity Agreement; Disputes.

29. Performance and Payment Bonds. The City is required by RCW 39.08.010, with limited exceptions, to obtain both a Performance and a Payment bond for each public works project. The City requires separate Performance and Payment bonds for 100% of the contract amount furnished on bond forms standardized by the City Attorney's office. The bonds must meet the following provisions:

- Be for the full amount of the project, including tax.
- Name City of Anacortes as the obligee.
- List the correct Project Name and Project Number.
- Be signed by both the surety (the Attorney in Fact) and the Contractor.
- Be issued by a surety authorized to do business in the State of Washington (listed on the Insurance Commissioners website) and which meets the AM Best Rating required in the Contract Documents. If no requirement exists, a minimum of AM Best Rating A-7 or better will be required.

Release of Bonds

Bonds will not be released until the project has been completed and finally accepted.

Performance Bonds – Performance Bonds will be released at the end of the warranty period or six months after the date of final acceptance, whichever is later. The City may at its option release the bond once all the conditions of RCW 39.08.010-1a have been discharged.

Payment Bonds – Payment Bonds will be released either 45 days after final acceptance of the project or upon receipt of releases from the Department of Revenue, Department of Employment Security and the Department of Labor and Industries, whichever is later. Release is contingent on the fact that no claims against the bond have been filed prior to the 45 day mark. If claims have been filed against the bond, it will not be released until the claims have been resolved.

Exceptions – On projects \$150,000 and under, the Contractor can, in lieu of providing a performance and payment bond, request to have the City withhold 10% of monies earned on the project for a period of 30 days after final acceptance of the completed work or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later. This exception is dependent on pre-approval by the City Attorney, and the City reserves the right to reject requests to waive the bond requirements.

30. Retainage. Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the Contractor will be retained. The Contractor may elect to execute a Retainage Bond. The bond must be furnished on a bond form standardized by the City Attorney's office and issued by a surety currently authorized by the State Insurance Commissioner to do business in Washington State. Retainage will be released **45 days after final acceptance**, provided that the following has occurred:

- 1) All liens placed against the project have been released. For projects over \$35,000, releases from the Department of Labor and Industries, Department of Employment Security and the Department of Revenue will also be required.
- 2) Affidavits of Wages paid for the final correct contract amount are approved and on file for the Contractor and any subcontractors.
- 3) Worker's Compensation Premiums for the Contractor and any subcontractors are current.

Note: If the City has approved the Contractor's request to waive the bond requirements, the City will withhold a total of 10% of the monies earned for a period of 30 days after final acceptance of the completed work or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.



City Council Contract Agenda Bill

Meeting Date: 3/9/2020 **Agenda Item:** 6d

Subject: Contract Award – ADA Curb Ramp Improvements 20-083-TRN-001

Staff Contact: Fred Buckenmeyer

Approved for Submittal to Council by:
Darcy Swetnam, City Attorney

Action Type: Contract Award

Summary Statement: City staff seeks City Council consent to award a contract in the amount of \$88,922.61 to Schwetz Construction, Inc. to perform the ADA Curb Ramp Improvements. The work provided for this project will include the replacement of the curb ramps at the SW and SE corners of 7th Street and O Avenue.

Background:

1. **History:** This project is part of an ongoing 4-year effort to make better pedestrian connections at major intersections connection Downtown to Old Town.
2. **Key Terms:**
 - Contract is for a fixed price of \$88,922.61. \$45,222.00 will be reimbursed by HUD CDBG.
 - All physical construction activities shall be completed by April 15, 2020.
3. **Competitive Bidding:** In accordance with competitive bid requirements set forth under RCW 35.23.352 the project cost is under the competitive requirements and thus the Project Manager evaluated contractors and chose to contract with Schwetz Construction, Inc.

Previous Council/Committee Action: N/A

Competing Viewpoints Considered: N/A

Recommended Motion: I move that City Council authorize the Mayor to sign contract 20-083-TRN-001 with Schwetz Construction, Inc. in the amount of \$88,922.61 to perform the ADA Curb Ramp Improvements.

Alternative Actions: Not award the contract

Attachments: Contract 20-083-TRN-001

Contractor	Schwetz Construction, Inc.
Contract Amount	\$88,922.61
Earmarked Funds	\$100,000.00
	\$42,222.00 reimbursed by HUD CDBG
BARS #	105.720.595.61.63
Budget Amendment Required?	No
Start Date	Notice to Proceed
End Date	4/15/20



CONTRACT 20-083-TRN-001
AGREEMENT WITH
Schwetz Construction, Inc.

This Contract is between the City of Anacortes, Washington, a Municipal Corporation (herein after referred to as "City") and Schwetz Construction, Inc., a private contractor at PO Box 449, Sedro Woolley WA, 98284 (herein after referred to as "Contractor").

PROJECT
ADA Curb Ramp Improvements

1. **Scope of Work:** Contractor shall furnish all materials, equipment and labor to replace the curb ramps at the SW and SE corners of 7th Street and O Avenue, Anacortes, WA 98221, as detailed in Exhibit A, which is hereby incorporated by reference and made a part hereof. Work is subject to the current Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction M 41-10 and Amendments, except as modified by the attached Special Provisions, which are hereby incorporated by reference and made a part hereof.

Contract Price: The Contractor will perform the scope of work above for a firm fixed price of **Eighty-Eight Thousand Nine Hundred Twenty-Two Dollars and Sixty-One Cents (\$88,922.61)**, rule 171 applies. The per item prices are detailed in Exhibit B, which is hereby incorporated by reference and made a part hereof. This includes all labor, materials, tax, and standard freight for the project. This project is subject to both state and federal prevailing wages as detailed in the General Provisions. The Davis Bacon Wage determined for this contract is General Decision Number: WA20200001 02/28/2020 which is detailed here: <https://tinyurl.com/urs4epu>. If the Davis Bacon Wage determined for this contract changes before contract execution, the wages in effect are those at contract execution date. Before any payment is made by the City of Anacortes of sums under this contract, the contractor must provide a copy of the statement of Intent to Pay Prevailing Wage approved by the Department of Labor and Industries. Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the contractor will be retained.

2. **Bonds:** Pursuant to RCW 39.08.010, the Contractor shall provide the City a performance bond and payment bond for the full contract amount to be in effect as detailed in the incorporated General Provisions. The City may at its option release the bonds once all the conditions of RCW 39.08.010-1a have been discharged.

3. **Time of Completion:** The Contractor shall complete the work by April 15, 2020.

4. **Job Safety:** Contractor shall comply with all Washington Department Labor & Industries safety standards.

5. **Contract Requirements:** Contractor must have a contractor license number, insurance, and City of Anacortes business license. **Prevailing Wage Law Applies.** Forms Needed: 1) Proof of Insurance with Additional Insured Endorsement (see General Provisions); 2) Weekly Certified Payroll Reports; 3) Weekly "No Work Reports" if applicable; 4) Intent to Pay Prevailing Wage; 5) Affidavit of Wages Paid; 6) Payment Bond; 7) Performance Bond; 8) Certification of Compliance with Wage Payment Statutes.

6. **Contract Documents:** The attached General Provisions, Exhibits A and B, and Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction M 41-10 and Amendments, except as modified by the attached Special Provisions, are included in this Contract Agreement.

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that s/he or it is signing with full and complete authority to bind the party on whose behalf of whom s/he or it is signing, to each and every term of this Agreement.

Owner:

City of Anacortes

Mayor

Date

Contractor:

Schwetz Construction, Inc.

Date

Contractor License #

1. Federal Prevailing Wages (a.k.a. Davis Bacon Act). This project is funded using federal dollars and is subject to both state and federal prevailing wages. The Contractor and all subcontractors are required to pay the higher of the two prevailing wages. The Department of Labor (DOL) sets the federal prevailing wages which can be found on their website at: <https://beta.sam.gov/>. This website also contains compliance information (federal laws, posters, etc.).

Basic Federal Prevailing Wage Provisions/Requirements

- a) Contractors and subcontractors must pay laborers and mechanics employed directly upon the site of work **weekly** and at least the local prevailing wages (including fringe benefits) listed in the Davis Bacon Wage determined in the contract or the State prevailing wage, whichever is higher.
The State of Washington prevailing wage rates applicable for this public works project, which is located in Skagit County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvwagelookup.aspx>. The state prevailing wage schedule in effect for the work under the contract will be the one in effect upon the date of execution of the contract.
- b) The Contractor and each subcontractor must complete a certified payroll report weekly and submit it to the City's representative Joann Stewart at joanns@cityofanacortes.org. An example of a certified payroll report which satisfies all the federal requirement can be found at: <http://www.dol.gov/whd/forms>. The DOL payroll form (WH-347) does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations.
- c) A Statement of Compliance must be completed and submitted in conjunction with the payroll form (or alternate equivalent payroll documentation).
- d) Contractors need to submit "No Work Reports" for the weeks there is no contract work being performed to Joann Stewart at joanns@cityofanacortes.org.
- e) Contractors are required to post the applicable Davis-Bacon wage determination with the Davis Bacon Poster (WH-1321) on the jobsite in a prominent and accessible place where the posting can be easily seen by the workers.

This work falls under the "Highway projects" Davis Bacon classification which includes construction, alteration or repair of roads, streets, highways, runways, parking areas, sidewalks and most other paving work not incidental to building or heavy construction.

- If a work classification that is needed for the project does not appear on the wage decision that will be used, the Contractor must **immediately** submit a request to Joann Stewart at joanns@cityofanacortes.org, (360) 293-1907. The City then must request an additional classification and wage rate from HUD. Requests must be made in writing through the City and must meet certain criteria to be approved. HUD will consider whether the requested classification and wage rate may be approved. All requests are forwarded to DOL for final determination.

Before any payment is made by the City of Anacortes of any sums under this contract, the contractor and each subcontractor must provide the City with a copy of the statement of *Intent to Pay Prevailing Wages* approved by the Washington State Department of Labor and Industries (L&I). Following contract completion, the City will not release any funds retained, according to the provisions of RCW 60.28.010, until the contractor and each subcontractor has provided the City a copy of the *Affidavit of Wages Paid* approved by L&I. L&I provides the wage forms. Payment by the contractor or subcontractor of any fees are incidental to the project and all costs shall be included in other pay items of the project.

For contracts in excess of \$10,000, the contractor must post in a conspicuous place at the job site, a copy of the statement of *Intent to Pay Prevailing Wages* approved by L&I and the address and phone number of the Industrial Statistician where complaints or inquires may be made. The City will refer any dispute regarding the prevailing rate of wage to L&I and DOL for arbitration.

2. Davis Bacon and Related Acts. The Contractor shall comply with the requirements of the Davis-Bacon and Related Acts (DBRA) as outlined in 29 CFR parts 1-7 when the contract for construction, alteration, and/or repair exceeds \$2,000, is federally assisted, and involves the employment of laborers and/or mechanics to perform the work. The prime or general contractor is responsible for full compliance with applicable requirements, including all employers/subcontractors on the project.

3. Copeland Anti-Kickback Act (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3) requires that workers be paid weekly, that deductions from workers' pay be permissible, and that contractors and subcontractors maintain and submit weekly certified payrolls.

4. Contract Work Hours and Safety Standards Act (CWHSSA) (40 USC, Chapter 5, Sections 326-332; and 29 CFR Part 4, 5, 6 and 8; 29 CFR Part 70 to 240) applies to prime contracts over \$100,000 and any subcontracts let under the covered prime contract. CWHSSA requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty (\$10 per day per violation).

5. Non-Discrimination in Employment and Purchasing. The Contractor shall comply with Executive Order 11246 as amended by Executive Order 12086 and the regulations issued pursuant thereto (41 CFR Chapter 60) which provide that

no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts. The Contractor shall take affirmative action to ensure fair treatment in employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

- a. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- b. The Contractor will send to each labor union or representative of workers with which he had a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contractor contracting officer, advising the labor union of workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- c. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and order of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting Contractor and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- d. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- e. The Contractor will include the provisions of this Section (Article III (4)) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

6. Debarment and Suspension. Contractor and all subcontractors must not be debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" at the time of contract execution and must have a valid Dun & Bradstreet D-U-N-S Number.

7. Documentation. Contractor and sub-contractors shall keep record of all contract and project documentation for a period of three (3) years following project closeout, and will cooperate in any program audits by City of Anacortes, HUD, or their designees.

8. Delivery. Advance coordination of the work shall be made with the Project Manager Gunnar Christiansen (360) 299-1989.

9. Subcontracts. The Contractor shall give notice reasonably in advance of placing any subcontract; preferably the Contractor shall identify subcontracts before subcontracted work begins. "Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of the prime Contractor or a subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders. The following information shall be included (i) a description of the supplies or services to be subcontracted, (ii) identification of the type of subcontract to be used (iii) identification of the proposed subcontractor, (iv) proposed subcontract price. Unless consent or approval specifically provides otherwise, consent by the City shall not constitute a determination

- (1) of the acceptability of any subcontract terms or conditions;
- (2) of the allowability of any cost under this contract, or
- (3) to relieve the Contractor of any responsibility for performing this Contract.

As required by RCW 39.06.020, the Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification is to include that, at the time of subcontract execution, each subcontractor meets the responsibility criteria listed in RCW 39.04.350(1) and additionally - if applicable - possesses an electrical contractor license or an elevator contractor license. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier. The Contractor shall give immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the City.

10. Taxes. The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

11. Invoicing. All invoices shall include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, Invoice Period, Contract Title, Agreement Number and Price, or Amended Price. The Contractor must invoice **MONTHLY** for quantities delivered during the invoice period. Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to accountspayable@cityofanacortes.org. Contractors may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution. The City shall notify the Contractor within fifteen (15) calendar days from receipt of invoice if there are any objections or disputes with the invoice. The Contractor shall then resubmit a new invoice less the disputed amount and payment shall be made within 30 calendar days. Any disputed amounts may be submitted under the Disputes clause contained herein.

12. Withholding Payment. In the event the City determines that the Contractor has failed to perform any obligation under this Contract within the times set forth in this Contract, then the City may withhold from amounts otherwise due and payable to Contractor the amount determined by the City as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to terminate or damages, provided that the City promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the Public Works Director set forth in such notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Contract. The City may act in accordance with any determination of the Public Works Director which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the City under this clause.

13. Final Payment: Waiver Of Claim The contractor's acceptance of final payment (excluding withheld retainage) shall constitute a waiver of claims, except those previously and properly made and identified by the contractor as unsettled at the time request for final payment is made.

14. Inspection.

A. Of the Work

All materials furnished and work done shall be subject to inspection. The City Project Manager administering the Contract shall at all times have access to the work wherever it is in progress or being performed, and the Contractor shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Contractor of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of the Contract. All material or work approved and later found to be defective shall be replaced without cost to the City.

B. Project Manager's Authority

The Project Manager shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Contractor may appeal to the City Attorney whose decision shall be final. The Contract shall be carried out under the general control of the representative of the City administering the Contract, who may exercise such control over the conduct of the work as may be necessary, in his or her opinion, to safeguard the interest of the City. The Contractor shall comply with any and all orders and instructions given by the representative of the particular Department administering the Contract in accordance with the terms of the Contract. Nothing herein contained, however, shall be taken to relieve the Contractor of his/her obligations or responsibilities under the Contract.

15. New and Unused. All units, equipment, parts and material shall be new, unused, manufacturer's current model year and in current production. All materials shall have physical and chemical properties to withstand the intended purpose. Equipment design shall have sufficient excess capacity for durability and safety.

16. Warranty. The Contractor shall return to the project and repair or replace all defects in workmanship and material discovered within one year after Final Acceptance of the Work, including any necessary labor and materials. The Contractor shall start work to remedy any such defects within 7 calendar days of receiving City's written notice of a defect, and shall complete such work within the time stated in the City's notice. In case of an emergency, where damage may result from delay or where loss of services may result, such corrections may be made by the City's own forces or another contractor, in which case the cost of corrections shall be paid by the Contractor. In the event the Contractor does not accomplish corrections within the time specified, the work will be otherwise accomplished and the cost of same shall be paid by the Contractor. When corrections of defects are made, the Contractor shall then be responsible for correcting all defects in workmanship and materials in the corrected work for one year after acceptance of the corrections by City. In addition, the Contractor shall obtain and submit to the City any necessary documentation to secure any extended manufacturer's warranty and warranty terms. This guarantee is supplemental to and does not limit or affect the requirements that the Contractor's work comply with the requirements of the Contract or any other legal rights or remedies of the City.

17. Defense and Indemnity Agreement. The Contractor shall defend, indemnify and hold the City, its appointed and elective officers, officials, employees and volunteers harmless from any and all claims, injuries, including death at any time resulting there from, damages, losses or suits including attorney fees, to the extent caused by negligent acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Clause shall survive the expiration or termination of this Agreement.

18. Insurance.

A. Insurance Term: The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

B. No Limitation: The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance: The Contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. **The City of Anacortes and its officers, elected officials, employees, agents, and volunteers 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 using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
3. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

D. Minimum Amounts of Insurance: The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

E. Public Entity Full Availability of Contractor Limits: If the Contractor maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Contractor.

F. Other Insurance Provision: The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

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

H. Verification of Coverage: The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

I. Subcontractors' Insurance: The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

J. Notice of Cancellation: The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two (2) business days of their receipt of such notice.

K. Failure to Maintain Insurance: Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

19. Acceptance. Contractor acknowledges and agrees that these General Provisions are incorporated in, and are a part of, each purchase order or other agreement relating to the provision of goods and/or related services by Contractor. These General Provisions supersede all conflicting or additional terms pre-printed on any purchase order, quote, invoice, or otherwise set forth on any release, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and similar document or communication.

20. Registered or Licensed Contractor. The City is prohibited by RCW 39.06.010 from executing an Agreement with a Contractor who is not registered or licensed as required by the laws of the state. In addition, a City of Anacortes business license is required for any business working inside the city limits whose annual value of products, gross proceeds of sales, or gross income of the business in the city is more than \$2,000. Business licenses can be obtained through the State of Washington Department of Revenue (DOR) Business Licensing Service (BLS) at bls.dor.wa.gov.

21. Discrimination Prohibited. During the performance of this Agreement, the Contractor and subcontractors shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of age, sex, race, creed, religion, color, national origin, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, gender identity, or any other classification protected under federal, state, or local law. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement. Contractor agrees to comply with the applicable provisions of State and Federal Equal Employment Opportunity and Nondiscrimination statutes and regulations.

22. Contractor is an Independent Contractor. The parties intend that an independent Contractor relationship will be created by this Agreement. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. Contractor shall be solely responsible for all acts of its agents, employees, representatives and Sub-Contractors during the performance of this Agreement.

23. No Third Party Beneficiary Rights. This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except as otherwise expressly provided for in this Agreement.

24. The City's Right to Terminate Agreement.

A. Termination for Default: If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until the Scope of Services under this Agreement has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

B. Termination for Public Convenience: The City may terminate the Agreement in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit Agreement prices for completed items of work through the date of termination. An equitable adjustment in the Agreement price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Agreement by the City.

25. Changes/Additional Work. The City may engage Contractor to perform services in addition to those listed in this Agreement, and Contractor will be entitled to additional compensation for authorized additional services or materials. The City shall not be liable for additional compensation until and unless any and all additional work and compensation is approved in advance in writing and signed by both parties to this Agreement. If conditions are encountered which are not anticipated in the Scope of Services, the City understands that a revision to the Scope of Services and fees may be required. Provided, however, that nothing in this paragraph shall be interpreted to obligate the Contractor to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this Agreement is approved in writing by both parties.

26. Non-waiver. Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

27. Covenant Against Contingent Fees. The Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

28. Disputes

A. General: Differences between the Contractor and the City, arising under and by virtue of this Agreement shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The provisions of this Clause shall survive the expiration or termination of this Agreement.

B. Notice of Potential Claims: The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Contractor has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the Work performed, labor and all costs and additional time claimed to be additional.

C. Detailed Claim: The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the City, the Contractor has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

D. Dispute Resolution: In the event of a dispute between the City and the Contractor arising out of this Agreement, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Contractor to have oversight over the administration of this Agreement. Said representatives shall meet within thirty (30) calendar days of receipt of detailed claim, and the parties shall make a good faith effort to achieve a resolution of the dispute. In the event the parties are unable to resolve the dispute under the procedure set forth above, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties. If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

29. Force Majeure. Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the City.

30. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Washington. Any action brought under the Agreement or relating to the Project shall be brought in the Superior Court of the State of Washington in Skagit County Washington.

31. Compliance with Laws. The Contractor in the performance of this Agreement shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the Agreement to assure quality of services. Contractor will follow all applicable laws and requirements for excavation and disposal of material.

32. Notices. Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mail, with proper postage and properly addressed. Notices shall be sent to the following addresses:

CITY:

City of Anacortes
Tiffany Matson
904 6th Street
PO Box 547
Anacortes, WA 98221

CONTRACTOR:

Schwetz Construction, Inc.
Donna Schwetz
PO Box 449
Sedro Woolley, WA 98284

33. Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

34. Survival of Contract Termination. The provisions of the following paragraphs, the provisions of the non collusion affidavit, and the liability of the Contractor for default during the term of the Contract shall survive, notwithstanding the termination or invalidity of this Contract for any reason: Taxes; Warranty; The City's Right to Terminate Contract; Governing Law; Defense & Indemnity Agreement; Disputes.

35. Performance and Payment Bonds. The City is required by RCW 39.08.010, with limited exceptions, to obtain both a Performance and a Payment bond for each public works project. The City requires separate Performance and Payment bonds for 100% of the contract amount furnished on bond forms standardized by the City Attorney's office. The bonds must meet the following provisions:

- Be for the full amount of the project, including tax.
- Name City of Anacortes as the obligee.
- List the correct Project Name and Project Number.
- Be signed by both the surety (the Attorney in Fact) and the Contractor.
- Be issued by a surety authorized to do business in the State of Washington (listed on the Insurance Commissioners website) and which meets the AM Best Rating required in the Contract Documents. If no requirement exists, a minimum of AM Best Rating A-7 or better will be required.

Release of Bonds

Bonds will not be released until the project has been completed and finally accepted.

Performance Bonds – Performance Bonds will be released at the end of the warranty period or six months after the date of final acceptance, whichever is later. The City may at its option release the bond once all the conditions of RCW 39.08.010-1a have been discharged.

Payment Bonds – Payment Bonds will be released either 45 days after final acceptance of the project or upon receipt of releases from the Department of Revenue, Department of Employment Security and the Department of Labor and Industries, whichever is later. Release is contingent on the fact that no claims against the bond have been filed prior to the 45 day mark. If claims have been filed against the bond, it will not be released until the claims have been resolved.

36. Retainage. Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the Contractor will be retained. The Contractor may elect to execute a Retainage Bond. The bond must be furnished on a bond form standardized by the City Attorney's office and issued by a surety currently authorized by the State Insurance Commissioner to do business in Washington State. Retainage will be released **45 days after final acceptance**, provided that the following has occurred:

- 1) All liens placed against the project have been released. For projects over \$35,000, releases from the Department of Labor and Industries, Department of Employment Security and the Department of Revenue will also be required.
- 2) Affidavits of Wages paid for the final correct contract amount are approved and on file for the Contractor and any subcontractors.
- 3) Worker's Compensation Premiums for the Contractor and any subcontractors are current.

**SPECIAL PROVISIONS
CONTRACT 20-083-TRN-001
ADA Curb Ramp Improvements**

(August 14, 2013 APWA GSP)

The work on this project shall be accomplished in accordance with the *Standard Specifications for Road, Bridge and Municipal Construction*, current edition, as issued by the Washington State Department of Transportation (WSDOT) and the American Public Works Association (APWA), Washington State Chapter (hereafter "Standard Specifications"). The Standard Specifications, as modified or supplemented by the Amendments to the Standard Specifications and these Special Provisions, all of which are made a part of the Contract Documents, shall govern all of the Work.

These Special Provisions are made up of both General Special Provisions (GSPs) from various sources, which may have project-specific fill-ins; and project-specific Special Provisions. Each Provision either supplements, modifies, or replaces the comparable Standard Specification, or is a new Provision. The deletion, amendment, alteration, or addition to any subsection or portion of the Standard Specifications is meant to pertain only to that particular portion of the section, and in no way should it be interpreted that the balance of the section does not apply.

The project-specific Special Provisions are not labeled as such. The GSPs are labeled under the headers of each GSP, with the effective date of the GSP and its source. For example:

(March 8, 2013 APWA GSP)
(April 1, 2013 WSDOT GSP)

Also incorporated into the Contract Documents by reference are:

- *Standard Plans for Road, Bridge and Municipal Construction*, WSDOT/APWA, current edition
- Current City of Anacortes EDS Construction Standards
(<https://www.anacorteswa.gov/460/Engineering-Standards>)
- Engineering Drawings Pages – General Notes 20-010-WTR-001, BP-01, CC-01, OA-01 through OA-04, K-01, M-01 & M-02, FBR-01 through FBR-04, AO-01, ST-01 & ST-02, WA-01 & WA-02, WA-08 & WA-09, WSDOT Traffic Control Plans – TC3, TC5, TC10 & TC11.

Contractor shall obtain copies of these publications, at Contractor's own expense.

DIVISION 2 – EARTHWORK

DIVISION 2: To be used in its entirety and to include the following changes:

2-02 REMOVAL OF STRUCTURES AND OBSTRUCTIONS

**2-02.3(4) Sawcutting
(March 2007, COA GSP)**

New

Description

"Saw cutting asphalt and concrete sidewalks/streets."

Construction Requirement

"The sawcutting shall be done in accordance with the 2011 Public Works Engineering Development Standards and current Department of Ecology requirements. The Contractor performing the saw cutting shall vacuum the hazardous material and dispose of properly. The slurry is not allowed to enter into the City's Storm Water Conveyance System.

It is the Contractors responsibility to maintain the asphalt edge between the excavation work and the actual placement pavement.

This bid item should anticipate up to 12-inches of concrete thickness and 8-inches of asphalt thickness.

**2-02.4 Measurement
(March 2007, COA GSP)**

Supplement

This section is supplemented with the following:

“Sawcutting Concrete”, shall be measured by the Linear Foot.”

**2-02.5 Payment
(March 2007, COA GSP)**

Supplement

This Section is supplemented with the following:

“**SAWCUTTING CONCRETE**”, per linear foot, shall be full compensation for all materials, labor, tools, and equipment necessary to saw cut the existing asphalt pavement and concrete to the depths specified.

Removal of Pavement, Sidewalks, Curbs and Gutters will be paid under “Roadway Excavation, Including Haul”.

<u>DIVISION 7 – DRAINAGE STRUCTURES, SEWERS, WATER MAINS & CONDUITS</u>
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DIVISION 7: To be used in its entirety and to include the following changes:

**7-04.5 Payment
(November 5, 2009, COA)**

Supplement

This section shall be supplemented as follows:

“**CORRUGATED POLYETHYLENE STORM SEWER PIPE, 12 IN. DIAM.**” per Linear Foot, shall include in the full pay for trench excavation with haul and disposal of native material, furnishing and installing and compaction of Crushed Surfacing Top Course, conforming to section 9-03.9(3), for trench zone backfill and adjustments of inverts to catch basins and manholes.

“**TESTING STORM SEWER PIPE**, No Pay for this item.”

7-05 MANHOLES, INLETS, CATCH BASINS AND DRYWELLS

**7-05.3 Construction Requirements
(April 16, 2013, COA)**

Supplement

This section shall supplement the first paragraph with a second sentence that reads as follows:

The excavation for the structure shall be sufficient to provide for a 1-foot crushed surfacing top course, conforming to section 9-03.9(3), compacted, base below for the structure that extends 1-foot from the outer surface of the structure and the earth bank.

**7-05.5 Payment
(April 16, 2013, COA)**

Supplement

This section shall be supplemented as follows:

“**CATCH BASIN, TYPE 1**”, per Each, shall include in the full pay for structure excavation with haul and disposal of native material, furnishing and installing and compaction of Crushed Surfacing Top Course, conforming to Section 9-03.9(3) for the structure base and for backfill around the structures.

7-07 CLEANING EXISTING DRAINAGE STRUCTURES

**7-02.3 Construction Requirements
(31 December 2015, COA)**

New

This section is supplemented with the following:

All catch basins, manholes, and inlet structures shall be kept clean of all debris associated with grinding, paving, or other operations associated with the work. Existing drainage facilities containing debris from the Contractors operations shall be cleaned prior to final acceptance of the work.

7-07.5 Payment

Section 7-07.5 is deleted in its entirety and replaced with the following:

Cleaning existing drainage structures shall be incidental to the contract price of other items in the contract.

7-08 GENERAL PIPE INSTALLATION REQUIREMENTS

7-08.1 Description Supplement **(April 16, 2013, COA)**

This section shall be supplemented the end of the first sentence with the following:

“...and the hauling and disposal of native material from the trench excavation.”

7-08.2 Materials Supplement **(April 16, 2013, COA)**

This section shall be supplemented with the following:

Crushed Surfacing Top Course 9-03.9(3)

7-08.3(1)A Trenches Supplement

This section is supplemented with the following:

“Trench width shall be defined as being 6 feet wide.”

7-08.3(3) Backfilling Supplement **(April 16, 2013, COA)**

This section shall be supplemented with the following:

The backfill material used above the pipe zone, both inside the traveled way and outside the traveled way, shall be Crushed Surfacing Top Course, conforming to section 9-03.9(3).

7-08.3(4) Plugging Existing Pipe Supplement **(February 2007, COA)**

This section is supplemented with the following:

“The Contractor shall plug pipe ends by furnishing and installing 3000 PSI concrete in all pipe under the full diameter of the pipe and place in the pipe, a distance equal to two pipe diameters or 12 inches, whichever is greater. All costs for plugging openings of abandoned pipe shall be considered incidental to the project and as such merged in the various prices bid. The Contractor shall carefully examine the Plans to ascertain the scope and nature of this work.”

DIVISION 8 – MISCELLANEOUS CONSTRUCTION

DIVISION 8: To be used in its entirety and to include the following changes:

8-01 EROSION CONTROL AND WATER POLLUTION CONTROL

8-01.1 Description Supplement **(September 17, 2010, COA GSP)**

This section shall be supplemented with the following:

“.....inlet protection and street cleaning.”

8-01.2 Materials Supplement **(September 17, 2010, COA GSP)**

This section shall be supplemented with the following:

“Prefabricated Below Grate Inlet Device, Per WSDOT Standard – Storm Drain Inlet Protection (I-40.20-00).”

8-04 CURBS, GUTTERS AND SPILLWAYS

8-04.2 Materials

Supplement

This section shall be revised to include the following:

“Lampblack or other similar approved tinting admixture shall be added to darken the concrete to a color similar to other adjacent curbs and/or sidewalks. The Contractor shall, at the Engineer’s request, provide a sample of the proposed mix for approval prior to placement of the concrete.”

8-04.3 Construction Requirements (January 2011, COA)

Supplement

This section shall be supplemented with the following:

Lamp Black (2 lbs per sack mix):

This item is considered “Incidental” to the installation of the “Cement Concrete Traffic Curb and Gutter”.

“The asphalt adjacent to the project shall be cut with a neat vertical saw cut, and the edge shall be maintained until the curbing is placed. Where the asphalt edge is suitable for use as a side form, as approved by the Engineer, the exposed edge of the asphalt shall be used as the face of gutter form, and shall be edged with a small-radius bull nose to provide a neat, finished appearance. Concrete will not be allowed to flow onto the surface of the asphalt. Where the asphalt edge is not used as the side form, a minimum separation of 8” shall be maintained.

The height of the curb may need to be adjusted to provide both continuity of the face of gutter and positive drainage from the back of walk to curb. The adjustments, if necessary, shall be considered incidental to the installation of the curb/gutter. The City of Anacortes, if requested by the Contractor, will also help in establishing curb and gutter elevations. The City of Anacortes needs a minimum of 24-hours notice of such work taking place to ensure staffing.

8-04.4 Measurement

Modification

This section shall be revised to include the following:

“All curb/gutter on this project will be measured by the linear foot along the line and slope of the flow line of the gutter, and will include the width of driveways and wheelchair ramps.”

Excavation is not included under these items, and is to be measured under “ROADWAY EXCAVATION INCLUDING HAUL” per 2.02.5.

8-04.5 Payment (August 6, 2013 COA GSP)

Supplement

This section shall be supplemented with the following:

“**CEMENT CONC. TRAFFIC CURB AND GUTTER**”, per Linear Foot shall include the 3-day Mix and Lamp Black add mix in the full pay, per Section 8-04.3 of these Special Provisions.

“**CEMENT CONC. PEDESTRIAN CURB**”, per Linear Foot shall include the 3-day Mix and Lamp Black add mix in the full pay, per Section 8-04.3 of these Special Provisions.

This section is revised to include the following:

STR-06.5 Curb/Gutter and Sidewalk Workmanship and Aesthetics per City Of Anacortes, Public Works Department Engineering Standards, Chapter 3, Streets.

8-14 CEMENT CONCRETE SIDEWALKS

8-14.2 Materials

Supplement

This section shall be supplemented with the following:

Concrete Curing Materials and Admixtures

9-23

Lampblack or other similar approved tinting admixture shall be added to the concrete mix to darken the concrete to a color similar to other adjacent curb and/or sidewalks.

3-day Mixture added to the concrete mix for “Cement Concrete sidewalk”

**8-14.3 Construction Requirements
(June 29, 2012, COA)**

Supplement

This section shall be supplemented to include the following:

3-Day Mixture and Lamp Black (2 lbs per sack mix):

These items are considered "Incidental" to the installation of the "Cement Concrete Sidewalk".

This section shall be revised to include the following:

"Trowelling, edging, scoring, jointing and finishing shall be performed to match existing, historic sidewalk patterns in this neighborhood, as approved or directed by the Engineer."

8-14.3(3) Placing and Finishing Concrete

Supplement

This section is revised to include the following:

"The Contractor shall coordinate the placing and finishing of concrete sidewalks to minimize the impacts to local businesses, including coordinating the time of placement to coincide with scheduled business closures and/or off-peak times. The Engineer reserves the right to mandate that the Contractor alter his schedule to accommodate businesses. This may include performing work in evenings and on weekends. The Contractor shall not seek claims, damages or extra compensation associated with these directives."

This section is revised to include the following:

STR-06.5 Curb/Gutter and Sidewalk Workmanship and Aesthetics per City Of Anacortes, Public Works Department Engineering Standards, Chapter 3, Streets.

- Cracking resulting from sub-base failure or construction site damage shall be immediately removed and replaced to the nearest expansion joint.
- Minor hair line stress cracks may, at the discretion of the Engineer, be monitored and re-evaluated for possible removal at the end of the maintenance period.

8-14.3(4) Curing

Modification

The third sentence of this section shall be revised to read as follows:

"Pedestrian traffic shall be allowed within 12 hours of finishing"

**8-14.3(5) Detectable Warning Surfaces Supplement
(June 29, 2012 COA)**

8-14.3(5)A General Requirements

Color shall be white.

See Appendix B of these Contract Plans and Specifications for specifications.

The Engineer will review for acceptance "or equal" submittals regarding specifications in Appendix B.

8-14.4 Measurement

Modification

This section shall be revised to read as follows:

"CEMENT CONCRETE FHWA BLENDED TRANSITION ADA RAMP", measured per each.

"CEMENT CONCRETE SIDEWALK", measured by the Square Yard of finished surface.

"DETECTABLE WARNING SURFACE", measured by Square Foot of finished surface.

Excavation is not included under these items, and is to be measured under "ROADWAY EXCAVATION INCLUDING HAUL" per 2.02.5.

8-14.5 Payment

Modification

This section shall be revised to include the following:

"CEMENT CONCRETE FHWA BLENDED TRANSITION ADA RAMP", per Each, shall include the 3-day Mix and Lamp Black add mix in the full pay, per Section 8-04.3 of these Special Provisions.

"CEMENT CONCRETE SIDEWALK", per Square Yard, shall include the 3-day Mix and Lamp Black add mix in the full pay, per Section 8-04.3 of these Special Provisions.

"DETECTABLE WARNING SURFACE", by Square Foot.

CITY OF ANACORTES

CONTRACT 20-083-TRN-001
EXHIBIT A



HUD COMMUNITY DEVELOPMENT BLOCK GRANT ADA CURB RAMP IMPROVEMENTS

FILE 20-083-TRN

JUSTIN P SYMONDS (360) 661-3547 MOBILE
PUBLIC WORKS INSPECTOR

GUNNAR H CHRISTIANSEN (360) 299-1989 OFFICE
PUBLIC WORKS PROJECT MANAGER

ERIC G SHJARBACK (360) 299-1980 OFFICE
CITY ENGINEER

WASHINGTON UTILITY LOCATING SERVICE 811
"CALL BEFORE YOU DIG"
SEE UNIFORM COLOR CODE

SHEET INDEX

- 1 COVER SHEET
- 2 GENERAL NOTES
- 3 EXISTING CONDITIONS
- 4 IMPROVEMENT PLAN

PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
P O BOX 547
ANACORTES WA 98221
OFFICE: 904 6TH STREET, 3RD FLOOR

COVER SHEET
PROJECT LOCATION
7TH STREET + O AVENUE
SOUTHWEST & SOUTHEAST CORNERS

WORK HOURS:

THE CITY OF ANACORTES MUNICIPAL CODE ALLOWS WORK FROM 7:00 AM TO 10:00 PM, SEVEN DAYS PER WEEK (COA ORD. #2316). THE PROJECT DESIGNATED FIELD SUPERVISOR IN CHARGE SHALL BE ON-SITE AT ALL TIMES WHEN WORK IS IN PROGRESS. IF WORK IS ACCOMPLISHED ON WEEKENDS, PLEASE INFORM THE PROJECT MANAGER SEVEN DAYS IN ADVANCE SO THAT THE CITY OF ANACORTES CAN HAVE AN INSPECTOR ON-SITE. CONTRACTOR WILL BE BILLED FOR CITY OF ANACORTES OVERTIME.

CALL 48-HOURS BEFORE THE FOLLOWING:

FOR INSPECTION CONTACT (360) 299-1989 GUNNAR CHRISTIANSEN, PUBLIC WORKS PROJECT MANAGER
PRIOR TO:
A. WORK START UP.
B. ANY UTILITY CONSTRUCTION IN THE RIGHT-OF-WAY.
C. PLACING CAST-IN-PLACE CONCRETE STRUCTURES.
D. PLACING ANY CRUSHED ROCK ON ROADWAY SUBGRADE.
E. PLACING CURB, GUTTERS AND SIDEWALKS.
F. ASPHALT PAVING.

MATERIALS AND WORKMANSHIP:

- A. ALL MATERIALS USED, MUST MEET WSDOT, APWA AND CITY OF ANACORTES SPECIFICATIONS
- B. ALL WORK AND MATERIALS THAT DO NOT MEET THE ABOVE SPECIFICATIONS, MUST BE REMOVED AS DIRECTED BY THE PROJECT INSPECTOR.
- D. INSPECTIONS: ALL ASPECTS OF THIS PROJECT WILL BE INSPECTED INCLUDING PIPING, BACKFILL, SUB-GRADE, CONCRETE AND ASPHALT, AS WELL AS FORMS, CURB, GUTTER AND SIDEWALK. IF A PORTION GETS BACKFILLED BEFORE INSPECTION, THE CONTRACTOR WILL DIG UP THAT PORTION FOR INSPECTION. 24-HOUR NOTICE REQUIRED. KNOW THE SCHEDULE AND LET THE CITY KNOW.
- F. ALL COMPACTION TEST SHALL BE APPROVED BY THE CITY OF ANACORTES ENGINEER AND PROJECT MANAGER PRIOR TO PLACING OF CRUSHED SURFACING, ASPHALT, CURB, GUTTER AND SIDEWALK (INCLUDING TRENCH RESTORATION WHEN TEST MAY BE REQUIRED IN EACH LIFT).
- G. CITY OF ANACORTES MAY REQUIRE ADDITIONAL TESTS ON SUBGRADE, TRENCHES, CONCRETE, OR ASPHALT. THE COST OF TESTING SHALL BE PAID FOR AS INDICATED IN THE CONTRACT DOCUMENTS.

TRAFFIC CONTROL AND PUBLIC SAFETY:

- B. SIGNAGE: ALL SIGNAGE MUST BE PER THE MANUAL UNIFORM TRAFFIC CONTROL DEVICES (MUTCD). BEFORE WORK ON-SITE BEGINS, PROPER SIGNAGE MUST BE IN PLACE.
- C. TRAFFIC CONTROL PLAN: MUST BE SUBMITTED AND APPROVED BY THE CITY ENGINEER PRIOR TO CONSTRUCTION START. TRAFFIC CONTROL PLAN SHALL INCLUDE THE LOCATION OF SIGNAGE, WORK ZONE, SAFE ZONE, AND TRAFFIC FLOW AND NEEDED DIMENSIONS. NO DETOURS ALLOWED WITHOUT APPROVAL FROM THE PUBLIC WORKS DIRECTOR.
- D. FOR STREET CLOSURE: CONTRACTOR TO WRITE A LETTER ACCEPTING THE TRAFFIC CONTROL PLAN OR SUBMIT A DIFFERENT PLAN.
- E. CONSTRUCTION SAFETY: IS THE RESPONSIBILITY OF THE CONTRACTOR.

RESTORATION OF RIGHT-OF-WAY:

- A. CONTRACTOR MUST LEAVE THE RIGHT-OF-WAY, EQUAL TO EXISTING OR BETTER CONDITION.
- B. PLACE COMPACTED TOPSOIL (SECTION 9-14.1(1), (2) AND (3)) AND SEED ALL AREAS DISTURBED BY EXCAVATION. (SECTION 9-14.2)
- C. ALL DRAINAGE SYSTEMS MUST BE FULLY CLEANED, RESTORED AND OPERATIONAL BEFORE FINAL ACCEPTANCE. (SECTION 7-07.3)

TEMPORARY EROSION and SEDIMENTATION CONTROL (T.E.S.C.):

- D. THE EROSION CONTROL SHALL BE INSPECTED ONCE A DAY AND MODIFIED TO MEET THE SURROUNDING CONDITIONS AS NEEDED.
- F. THE STORM DRAIN SYSTEM AND EXISTING DITCHES SHALL BE CLEANED DAILY (SECTION 7-07.3). ALL DRAINAGE SYSTEMS SHALL BE CLEANED TO THE ACCEPTANCE OF THE CITY OF ANACORTES PRIOR TO THE ACCEPTANCE OF THE PROJECT.
- G. STABILIZED CONSTRUCTION ENTRANCES AND ROADS SHALL BE INSTALLED AT THE BEGINNING OF CONSTRUCTION AND MAINTAINED DURING THE DURATION OF THE PROJECT. ADDITIONAL MEASURES MAY BE REQUIRED SUCH AS WASH PADS TO ENSURE THAT ALL PAVED AREAS ARE KEPT CLEAN. NO MUD IS ALLOWED TO ENTER ONTO CITY STREETS.
- H. ANY SOILS EXPOSED THAT WILL NOT BE DISTURBED FOR TWO (2) DAYS DURING THE WET SEASON OR SEVEN (7) DAYS IN THE DRY SEASON SHALL BE IMMEDIATELY STABILIZED WITH APPROVED ESC METHODS (SEEDING, MULCHING, PLASTIC COVERING, ETC.)
- I. TWO (2) WEEKS PRIOR TO THE BEGINNING OF THE WET SEASON (OCTOBER 1), ALL DISTURBED AREAS SHALL BE REVIEWED TO IDENTIFY WITHCH ONES CAN BE SEEDED IN PREPARATION FOR THE WINTER RAINS. DISTURBED AREAS SHALL BE SEEDED WITHIN ONE (1) WEEK OF THE BEGINNING OF THE WET SEASON. A SKETCH MAP OF THOSE AREAS TO BE SEEDED AND THOSE AREAS TO REMAIN UNCOVERED SHALL BE SUBMITTED TO THE PROJECT MANAGER. THE PROJECT MANAGER CAN REQUIRE ADDITIONAL AREAS IN ORDER TO PROTECT SURFACE WATERS, ADJACENT PROPERTIES OR DRAINAGE FACILITIES.
- J. PENALTIES FOR AN EROSION CONTROL VIOLATION ARE SUBJECT TO A \$300 TO \$1,000 FINE UNDER CHAPTER 17.66 - PENALTIES FOR VIOLATION (AMC). EACH DAY IS CONSIDERED A FINE PER VIOLATION.

CONCRETE CONSTRUCTION:

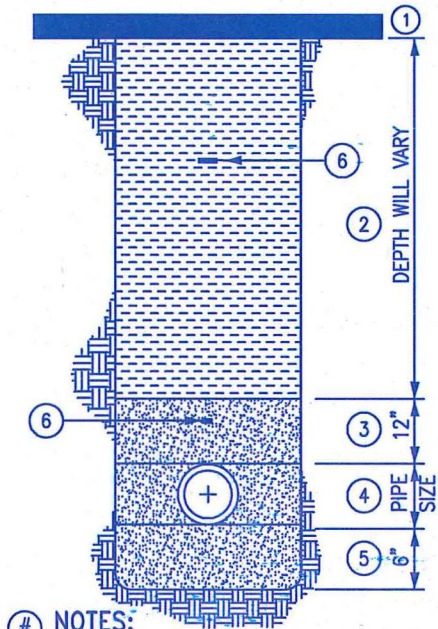
- SECTION 8-04 AND 8-14 OF THE CURRENT WSDOT SPECIFICATION FOR ROAD, BRIDGE AND MUNICIPAL CONSTRUCTION.
- A. CALL FOR FORM INSPECTIONS BEFORE PLACING CONCRETE. CALL (360) 661-3547 TO SCHEDULE.
- B. NO MONOLITHIC POURS ALLOWED PER THE CITY OF ANACORTES CITY ENGINEER. IN OTHER WORDS, THE SIDEWALK, CURB AND GUTTER, DRIVEWAYS, DRIVEWAY APRONS, WHEELCHAIR RAMPS, ETC. ARE TO BE INDIVIDUAL POURS AND SEPERATED BY A FABRIC EXPANSION JOINT.
- C. PROTECTING THE CONCRETE IS THE RESPONSIBILITY OF THE CONTRACTOR. NO GRAFFITI, FOOTPRINTS, FINISHING BLEMISHES OR OTHER OBJECTIONABLE MARKS ALLOWED. IF ANY OF THIS TAKES PLACE, THE SECTION THAT IS DAMAGED WILL BE REPLACED.
- D. CONCRETE SHALL BE A 5.5 SACK MIX WITH A 28-DAY STRENGTH OF 3000 PSI. ANY DEVIATION FROM THIS SPECIFICATION SHALL BE IN WRITING 48-HOURS BEFORE CONCRETE IS PLACED.
- E. CURB RAMPS AND LANDINGS SHALL BE STAMPED. USE OF 3/4 INCH PLASTIC POULTRY FENCING IS ACCEPTABLE. ROLLING IS NOT AN OPTION.
- F. DURING THE FIRST 14-DAYS OF CURING, THE CONTRACTOR MUST PROTECT FROM FREEZING.

CURB, GUTTER, AND SIDEWALK WORKMANSHIP AND AESTHETICS:

1. CURB/GUTTER AND SIDEWALK CONSTRUCTION SHALL FOLLOW A TRUE AND UNIFORM HORIZONTAL AND VERTICAL ALIGNMENT.
2. THE VERTICAL AND HORIZONTAL SURFACE SHALL BE A SMOOTH BROOM FINISH WITH NO DETECTABLE FINISHING BLEMISHES, UNDULATIONS, RIPPLES, SWELLS, WAVES, RUTS, FURROWS, GRAFFITI OR OTHER OBJECTIONABLE MARKS. THE END RESULT SHALL BE A NEAT AND PROFESSIONALLY FINISHED APPEARANCE.
3. THE EDGE FINISH ADJACENT TO THE EXPANSION JOINT MATERIAL SHALL BE CLEAN AND FREE OF EXCESS SLURRY. THE EXPANSION JOINT MATERIAL SHALL BE TRIMMED TO A LEVEL EVEN WITH THE ADJACENT CONCRETE RESULTING IN A NEAT AND PROFESSIONALLY FINISHED APPEARANCE.
4. THE CITY ENGINEER IN HIS SOLE DISCRETION RESERVES THE AUTHORITY TO ORDER THE REMOVAL OF SECTIONS OF CURB/GUTTER AND SIDEWALK THAT DO NOT MEET THE WORKMANSHIP AND AESTHETIC STANDARDS OF THE CITY OF ANACORTES.
5. SECTIONS OF NEWLY CONSTRUCTED CURB/GUTTER AND SIDEWALK THAT EXHIBIT CRACKING FOLLOWING THE CURING, SHALL BE SUBJECT TO REMOVAL AND REPLACEMENT.
- CRACKING RESULTING FROM SUB-BASE FAILURE OR CONSTRUCTION SITE DAMAGE SHALL BE IMMEDIATELY REMOVED AND REPLACED TO THE NEAREST EXPANSION JOINT.
 - MINOR HAIR LINE STRESS CRACKS MAY, AT THE DISCRETION OF THE PROJECT MANAGER, BE MONITORED AND RE-EVALUATED FOR POSSIBLE REMOVAL AT THE END OF THE MAINTENANCE PERIOD.

STORM SEWER NOTES:

- O. CATCH BASINS AT THE CURB LINE SHALL BE RECESSED 0.1 FEET.
- Q. ALL CATCH BASIN GRATES SHALL INCLUDE THE STAMPING "OUTFALL TO STREAM, DUMP NO POLLUTANTS"
- S. CATCH BASINS MUST BE SET TO LINE GRADE USING NO MORE THAN TWO (2) ADJUSTMENT RINGS
- T. THE CAST IRON FRAME MAY BE PLACED FLANGE DOWN ON THE ADJUSTMENT BLOCKS IN LIEU OF PRECAST COLLAR. THE INSTALLATION OF CATCH BASINS SHALL INCLUDE FINAL ADJUSTMENT AS MAY BE REQUIRED TO FINISH GRADE. INSTALLATION WITH THE PAVED ROADWAY SHALL BE PER THE CITY OF ANACORTES TYPE I CATCH BASIN WITH 18-INCH BARRIER CURB DETAIL UNLESS SPECIFIED AS A THRU-CURB INLET.
- U. CAST IRON FRAME FOR TYPE 1 CATCH BASIN SHALL ACCOMMODATE A 20-INCH X 24-INCH GRATE.
- V. A LOW PRESSURE AIR TEST AT 5 PSI FOR 15 MINUTES FOR SEWER MAINS IS REQUIRED. THE CITY OF ANACORTES MAINTENANCE CAMERA CREW WILL VIDEO SANITARY SEWER AND STORM SEWER MAINS. CALL (360) 293-1921 TO SCHEDULE APPOINTMENT. 48-HOUR NOTICE REQUIRED. (SECTION 7-17.3(2)H).
- W. THE CONTRACTOR SHALL BE REQUIRED TO PLACE METALLIC TAPE OVER ALL NON-METALLIC PIPES. THE METALLIC TAPE SHALL BE A MINIMUM OF 2-INCHES IN WIDTH AND PLACED CONTINUOUSLY THE LENGTH OF THE STORM SEWER TRENCH.
- X. ALL TRENCHES FOR STORM SEWERS SHALL BE IN ACCORDANCE WITH THE SECTION 7 OF THE CURRENT WSDOT SPECIFICATIONS FOR ROAD, BRIDGES, AND MUNICIPAL CONSTRUCTION M 41-10
- AA. QUARRY ROCK MUST BE SOUND "HARD" DURABLE ROCK. NO RECYCLED MATERIAL



NOTES:

1. HOT MIX ASPHALT, CONFORMING TO SECTION 5-04.
2. CRUSHED SURFACING TOP COURSE, CONFORMING TO SECTION 9-03.(9)3.
3. GRAVEL BACKFILL FOR PIPE ZONE BEDDING, CONFORMING TO SECTION 9-03.12(3).
4. GRAVEL BACKFILL FOR PIPE ZONE BEDDING, CONFORMING TO SECTION 9-03.12(3).
5. GRAVEL BACKFILL FOR PIPE ZONE BEDDING, CONFORMING TO SECTION 9-03.12(3).
6. LAY ALUMINUM LOCATE TAPE A MINIMUM OF 12 INCHES BELOW FINISHED GRADE AND 12 INCHES ABOVE PIPE.

STORM SEWER TRENCH BACKFILL DETAIL

NO SCALE

THE PUBLIC WORKS PROJECT MANAGER IS THE KEY PERSON TO CONTACT AT THE CITY OF ANACORTES REGARDING TECHNICAL AND ENGINEERING MATTERS.

THE PUBLIC WORKS INSPECTOR IS THE KEY PERSON TO CONTACT AT THE CITY OF ANACORTES FOR MATTERS OF QUALITY ASSURANCE, SAFETY, FIELD COORDINATION, AND INSPECTION.

ANY OTHER CITY PERSONNEL SHOWING IMPLIED AUTHORITY ON-SITE MUST BE DIRECTED TO THE PROJECT MANAGER. IF THE PROJECT MANAGER IS UNAVAILABLE, FOLLOW THE LINE OF COMMUNICATION PROVIDED ON THE COVER SHEET 1.



			DATE	28 FEB 2020
			DESIGNED	CHRISTIANSEN
			DRAWN	CHRISTIANSEN
			CHECKED	SHJARBACK
ISSUE	DATE	DESCRIPTION	PROJECT NUMBER	20-083-TRN



CITY OF ANACORTES
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
904 6TH ST
ANACORTES WA 98221
(360) 293-1920

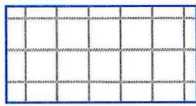
HUD COMMUNITY DEVELOPMENT
BLOCK GRANT

CONTRACT 20-083-TRN

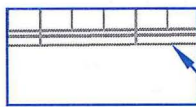
GENERAL NOTES

FILE:	SCALE:	SHEET:
PLANS 20-000-TRN.DWG	GRAPHIC	2 of 4

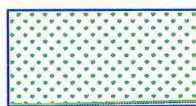
LEGEND



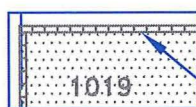
SIDEWALK PATTERN



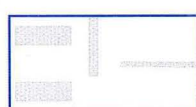
BACK
TRAFFIC CURB & GUTTER
FACE & FLOW-LINE
EDGE OF PAVEMENT



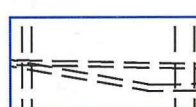
SOD LAWN



BUILDING & ADDRESS
EXTERIOR WALL



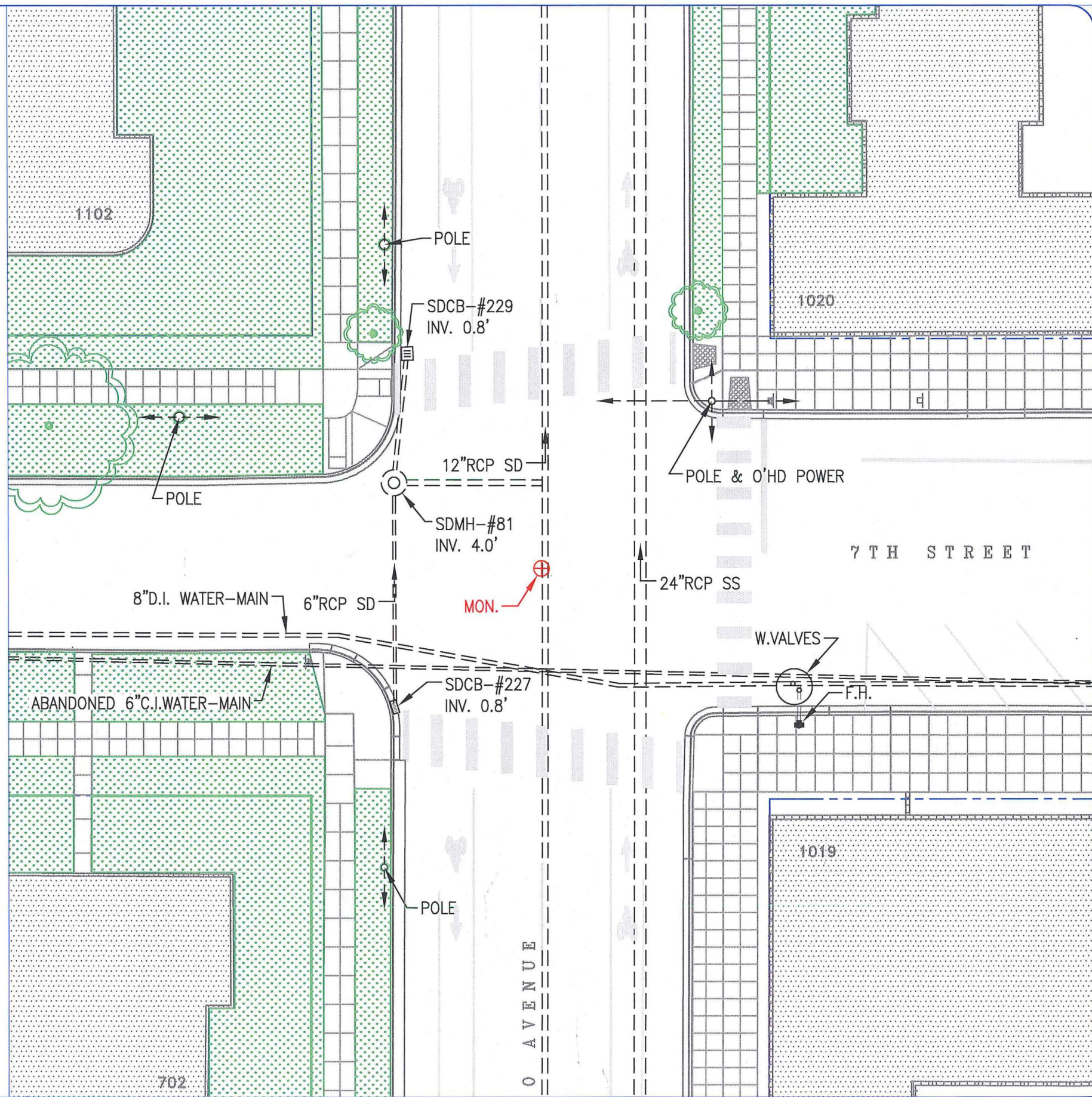
PAVEMENT MARKINGS



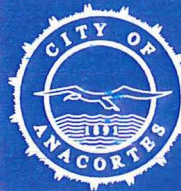
UNDERGROUND & OVERHEAD UTILITY LINES



MUNICIPAL RIGHT-OF-WAY



			DATE	21 FEB 2020
			DESIGNED	CHRISTIANSEN
			DRAWN	CHRISTIANSEN
			CHECKED	SHJARBACK
ISSUE	DATE	DESCRIPTION	PROJECT NUMBER	20-000-TRN



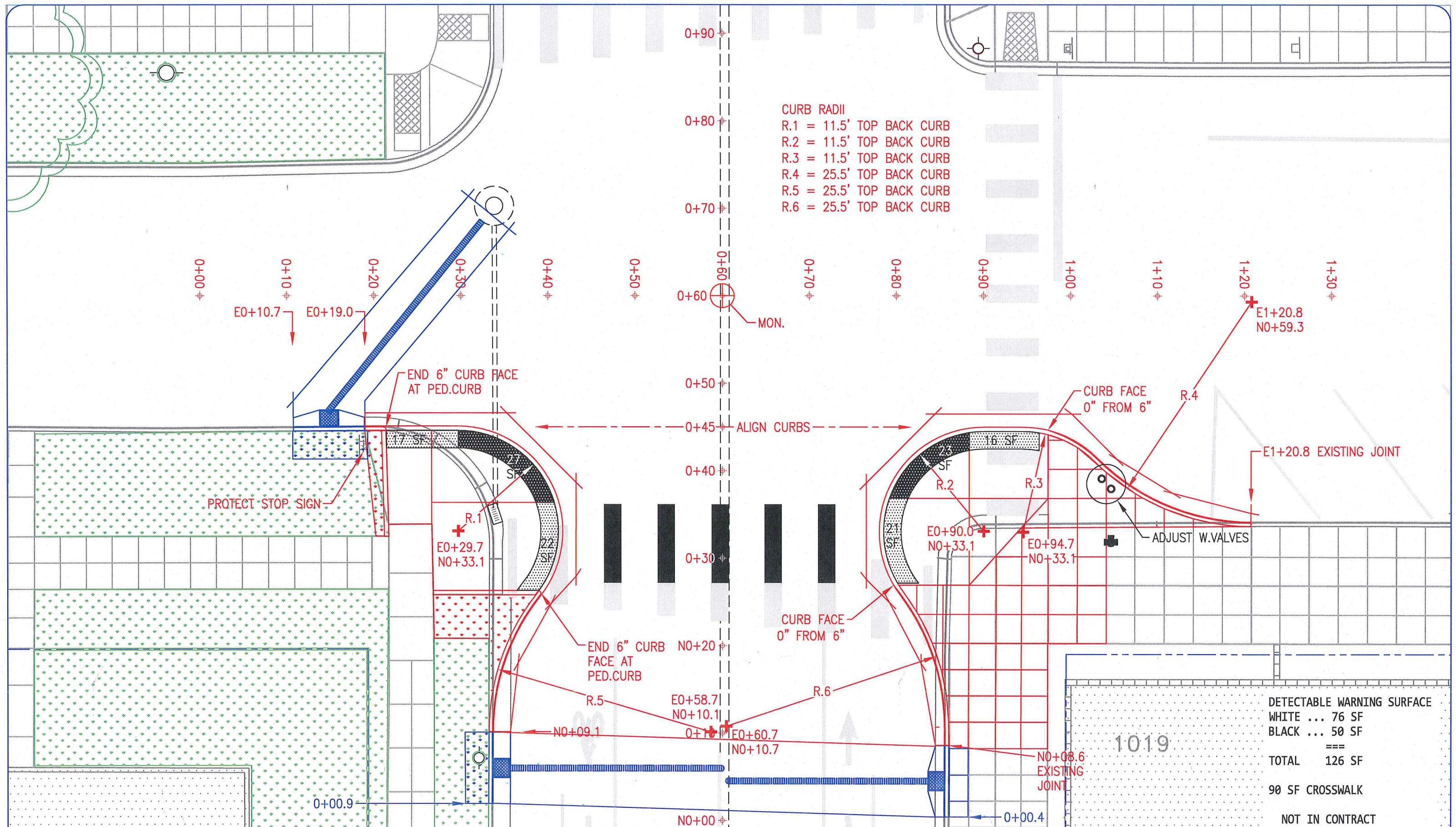
CITY OF ANACORTES
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
904 6TH ST
ANACORTES WA 98221
(360) 293-1920

HUD COMMUNITY DEVELOPMENT
BLOCK GRANT

CONTRACT 20-083-TRN

EXISTING CONDITIONS
7TH STREET + O AVENUE

FILE:	SCALE:	SHEET:
PLANS 20-000-TRN.DWG	GRAPHIC	3 of 4



CURB RADII
R.1 = 11.5' TOP BACK CURB
R.2 = 11.5' TOP BACK CURB
R.3 = 11.5' TOP BACK CURB
R.4 = 25.5' TOP BACK CURB
R.5 = 25.5' TOP BACK CURB
R.6 = 25.5' TOP BACK CURB

DETECTABLE WARNING SURFACE
WHITE ... 76 SF
BLACK ... 50 SF
==
TOTAL 126 SF

90 SF CROSSWALK

NOT IN CONTRACT



COLOR RED = HUD FUND		DATE	28 FEB 2020
COLOR BLUE = CITY FUND		DESIGNED	CHRISTIANSEN
		DRAWN	CHRISTIANSEN
		CHECKED	SHJARBACK
ISSUE	DATE	DESCRIPTION	PROJECT NUMBER
			20-083-TRN



CITY OF ANACORTES
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
904 6TH ST
ANACORTES WA 98221
(360) 293-1920

HUD COMMUNITY DEVELOPMENT
BLOCK GRANT

CONTRACT 20-083-TRN

IMPROVEMENT PLAN
7TH STREET + O AVENUE
SW CORNER

FILE: PLANS 20-000-TRN.DWG	SCALE: GRAPHIC	SHEET: 4 of 4
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CITY OF ANACORTES

WASHINGTON

COMBINED HUD FUNDING & CITY FUNDING 21 FEBRUARY 2020

PUBLIC WORKS CONSTRUCTION PROJECT ENGINEERING ESTIMATE

curb ramps 7+0 SE, 7+0 SW

CURB RAMP IMPROVEMENTS : HUD GRANT				LUMP SUM BREAKDOWN	
ITEM	DESCRIPTION	QTY	UNIT	UNIT \$	TOTAL \$
1	Mobilization	1.00	LS	\$ 10,801.17	\$ 10,801.17
2	Force Account Unanticipated Site Work	1	LS	\$ -	\$ -
3	S.P.C.C. Plan	1.00	LS	\$ 500.00	\$ 500.00
4	Inlet Protection	3	EA	\$ 45.00	\$ 135.00
5	Project Temporary Traffic Control	1.00	LS	\$ 3,000.00	\$ 3,000.00
6	Sawcutting Concrete up to 12"	507	LF	\$ 10.00	\$ 5,070.00
7	Removing Cem. Conc. Curb and Gutter	128	LF	\$ 14.00	\$ 1,792.00
8	Removing Cem. Conc. Sidewalk	63.2	SY	\$ 12.00	\$ 758.67
9	Removing Asphalt Conc. Pavement	150	SY	\$ 22.00	\$ 3,307.33
10	Removing Cement Conc. Pavement 6"	176	SY	\$ 67.00	\$ 11,812.84
11	Structure Excavation Cl. B Inclu Haul	96	CY	\$ 40.00	\$ 3,840.00
12	Roadway Excavation Incl. Haul	14.2	CY	\$ 40.00	\$ 566.49
13	Shoring & Extra Excavation Class B	912	SF	\$ 3.00	\$ 2,736.00
14	Gravel Backfill for Drain	109	CY	\$ 44.00	\$ 4,796.00
15	Plugging Existing Pipe	1	EA	\$ 200.00	\$ 200.00
16	Connection To Drainage Structure	3	EA	\$ 500.00	\$ 1,500.00
17	Crushed Surfacing Top Course	32.3	TN	\$ 30.00	\$ 969.00
18	HMA Cl. 3/8-inch PG58H-22	11.48	TN	\$ 425.00	\$ 4,879.00
19	Adjust Water Valve Casing to Grade	2	EA	\$ 300.00	\$ 600.00
20	Solid Wall PVC Storm Sewer Pipe 6 inch diam	84	LF	\$ 52.00	\$ 4,368.00
21	Catch Basin Type 1	3	EA	\$ 1,700.00	\$ 5,100.00
22	Cem. Conc. Traffic Curb and Gutter	161	LF	\$ 75.00	\$ 12,075.00
23	Cem. Conc. Pedestrian Curb	12	LF	\$ 45.00	\$ 540.00
24	Cem. Conc. Sidewalk	54.1	SY	\$ 55.00	\$ 2,976.11
25	Cem. Conc. Curb Ramp Type FHWA Blended Transition	2	EA	\$ 3,000.00	\$ 6,000.00
26	Detectable Warning Surface = NOT USED	0.0	SF	\$ 52.00	\$ -
27	Removing Plastic Line = NOT USED	0.0	SF	\$ 2.00	\$ -
28	Plastic Crosswalk Line= NOT USED	0	SF	\$ 13.00	\$ -
29	Roadside Restoration	1	LS	\$ 600.00	\$ 600.00

SUBTOTAL

\$ 88,922.61

Rule 171 8.7% Sales Tax included in unit prices.

\$ -

TOTAL

\$ 88,922.61



City Council Agenda Bill

Meeting Date: 3/9/2020 **Agenda Item:** 6e

Subject: Interlocal Agreement for Joint Establishment of Skagit County Tourism Promotion Area

Staff Contact: Don Measamer

Approved for Submittal to Council by	
x	Laurie Gere, Mayor
x	Steve Hoglund, Finance Director
x	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
x	Contract
	Public Hearing
	Staff Report

Summary Statement: Staff recommends approval of the Interlocal Cooperative Agreement between Skagit County and the Cities and Towns in Skagit County for the Joint Establishment of the Skagit County Tourism Promotion Area.

Background: Leadership and staff from Skagit County and each of the Cities and Towns in Skagit County have worked together to develop the attached interlocal, which creates a Tourism Promotion Area within Skagit County. This action is authorized by the Tourism Promotion Area Act at Chapter 35.101 RCW and is intended to allow the TPA to levy lodging charges to fund tourism promotion within the area. This ILA has been reviewed by City legal and other key staff members.

Budget Impact	
Amount Budgeted	
Budget Account (BARS)	
Proposed Expenditure	
Budget Amendment Required?	
Revenue Source	

Proposed Contract	
Contractor	
Amount	
Start Date	
End Date	

Previous Council/Committee Action: N/A

Competing Viewpoints Considered:

Recommended Motion: I move that City Council authorize Mayor Gere to execute the Interlocal Cooperative Agreement between Skagit County and the Cities and Towns in Skagit County for the Joint Establishment of the Skagit County Tourism Promotion Area.

Alternative Actions: Decline to move forward with the ILA

Attachments (listed in order presented): Proposed ILA

DOCUMENT TITLE: Interlocal Cooperative Agreement between Skagit County and the Cities and Towns in Skagit County for the Joint Establishment of the Skagit County Tourism Promotion Area

DATE SIGNED: _____ (“Effective Date”)

PARTIES: Skagit County, a political subdivision of the State of Washington
City of Anacortes, a Washington municipal corporation
City of Burlington, a Washington municipal corporation
City of Mount Vernon, a Washington municipal corporation
City of Sedro-Woolley, a Washington municipal corporation
Town of La Conner, a Washington municipal corporation
Town of Hamilton, a Washington municipal corporation
Town of Concrete, a Washington municipal corporation
Town of Lyman, a Washington municipal corporation

SKAGIT COUNTY CONTRACT NO.: _____

**INTERLOCAL COOPERATIVE AGREEMENT
FOR THE JOINT ESTABLISHMENT OF THE SKAGIT COUNTY
TOURISM PROMOTION AREA**

THIS INTERLOCAL COOPERATIVE AGREEMENT FOR THE JOINT ESTABLISHMENT OF A TOURISM PROMOTION AREA ("Agreement") is made and entered into by and among Skagit County, a political subdivision of the State of Washington ("Skagit County"), the City of Anacortes, a municipal corporation of the State of Washington, the City of Burlington, a municipal corporation of the State of Washington, the City of Mount Vernon, a municipal corporation of the State of Washington, and the City of Sedro-Woolley, a municipal corporation of the State of Washington (collectively "Cities"), and the Town of La Conner, a municipal corporation of the State of Washington, the Town of Hamilton, a municipal corporation of the State of Washington, the Town of Concrete, a municipal corporation of the State of Washington, and the Town of Lyman, a municipal corporation of the State of Washington (collectively "Towns"), under the Interlocal Cooperation Act, chapter 39.34 RCW, and the Tourism Promotion Area Act, chapter 35.101 RCW, for the purpose of establishing a joint tourism promotion area. The purpose of the joint tourism promotion area is to levy lodging charges to fund tourism promotion in the area of Skagit County, the Cities, and the Towns. Skagit County, the Cities, and the Towns are collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, the tourism and recreation industry is a vital and substantial component of Skagit County's economy and tourism promotion increases the number of visitors to the region, increasing regional sales and supporting the local economy; and

WHEREAS, the Legislature of the State of Washington has recognized the importance of tourism promotion in the State of Washington. In 2003 the Legislature passed Engrossed Substitute Senate Bill No. 6026, codified at chapter 35.101 RCW (the "TPA Act"), authorizing counties, cities, and towns to enter into interlocal agreements under chapter 39.34 RCW to establish tourism promotion areas. The purpose of tourism promotion areas is to generate revenue to be used exclusively to promote tourism in the specific promotion area; and

WHEREAS, the Operators of Lodging Businesses, as those terms are defined below, who would pay sixty percent (60%) or more of the proposed Lodging Charges throughout the Cities, Towns, and Skagit County, are preparing to initiate the formation of a tourism promotion area pursuant to the TPA Act. The Operators of Lodging Businesses expect to commence the process by presenting to Skagit County an Initiation Petition, as provided for in RCW 35.101.020, to form the Skagit County TPA. The proposed boundaries of the area will be Skagit County, Anacortes, Burlington, Mount Vernon, Sedro-Woolley, La Conner, Hamilton, Concrete, and Lyman (the "Skagit County TPA"); and

WHEREAS, depending on occupancy rates, the Operators of the Lodging Businesses project that on an annual basis, the proposed Skagit County TPA will generate approximately \$500,000.00 in revenue for tourism promotion. This amount is an estimate. The amount will vary from year to year depending upon the fluctuating occupancy rates of Lodging Businesses; and

WHEREAS, the revenue stream from the Lodging Charges, as defined below, will establish and promote a Skagit County tourism promotion program to bring more visitors to the area, bolster occupancy at Lodging Businesses, retain current jobs and create new jobs, increase business at restaurants and retail stores, and increase patronage in the arts, cultural, recreational, entertainment, and sporting venues in an increasingly competitive marketplace; and

WHEREAS, Skagit County, as the Legislative Authority as defined below, will impose the Lodging Charges. Skagit County will also contract with the State of Washington, Department of Revenue for the administration and collection of the Lodging Charges; and

WHEREAS, Lodging Charges received from the proposed Skagit County TPA will be remitted to Skagit County as provided for in chapter 35.21 RCW. These resources, under the advisement of the Skagit TPA Advisory Board, will be used by Skagit County to contract with tourism destination marketing organizations, and other such organizations, to promote the area of Skagit County, the Cities, and the Towns, with an increase in tourism throughout the area. The promotion of the region is expected to provide economic benefit to businesses and industries that are connected to the Lodging Business industry and important to the health of the local economy; and

WHEREAS, the Parties now wish to enter into this Agreement for the purpose of appointing a Legislative Authority to receive the Initiation Petition and otherwise carry out the terms of the TPA Act and this Agreement, in order to facilitate the formation and operation of the Skagit County TPA.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises contained herein, the Parties agree:

AGREEMENT

1. Definitions.

In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

1.1 “Agreement” means this Interlocal Agreement for the Joint Establishment of a Tourism Promotion Area within the boundaries of Skagit County, Burlington, Mount Vernon, Sedro-Woolley, La Conner, Concrete, Hamilton, and Lyman by

and among the Parties entered into pursuant to the TPA Act and the Interlocal Cooperation Act, as they may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed that if Hamilton, Concrete, or Lyman (“Small Towns”) elect not to enter into this Agreement, it shall not nullify this Agreement. Rather, in the event one or more of the Small Towns opt not to enter into this Agreement, the Agreement will continue in full force and effect except to the extent: 1) those Small Towns that do not enter into this Agreement shall not be a party to this Agreement; 2) the Skagit County Tourism Promotion Area shall not include the geographic area of those Small Towns, if any, that are not a party to this Agreement; and 3) the Small Towns not a party to this Agreement will not be eligible to be a representative, or appoint a designee, to the Skagit TPA Advisory Board.

1.2 “Anacortes” means the City of Anacortes, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.3 “Annual Budget” means the annual budget approved pursuant to Section 8 of this Agreement.

1.4 “Annual Business Plan” means the annual business plan approved pursuant to Section 8 of this Agreement.

1.5 “Burlington” means the City of Burlington, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.6 “Concrete” means the Town of Concrete, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.7 “Consultant” mean one or more consultants, organizations including tourism destination marketing organizations or other similar organizations, that Skagit County, as the Legislative Authority of the Skagit County TPA, may contract with and/or consult with, under the advisement of the Skagit TPA Advisory Board, on matters relating to the Skagit County TPA, including but not limited to the operation and management of the Skagit County TPA. When used in this Agreement, the defined term Consultant refers to the particular consultant(s) that Skagit County, as the Legislative Authority, contracts with for the operation and management of the Skagit County TPA.

1.8 “Hamilton” means the Town of Hamilton, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.9 “Initiation Petition” means the initiation petition presented to the Legislative Authority pursuant to the TPA Act meeting the requirements set forth in RCW 35.101.020.

1.10 “Interlocal Cooperation Act” means chapter 39.34 RCW, as may be amended from time to time.

1.11 “La Conner” means the Town of La Conner, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.12 “Legislative Authority” means the Legislative Authority of the Skagit County TPA appointed pursuant to Section 3 of this Agreement and having the duties and responsibilities as set forth in the TPA Act.

1.13 “Lodging Business” means a business located within the Skagit County TPA that furnishes lodging taxable by the State under chapter 82.08 RCW that has 40 or more lodging units. Lodging facilities with fewer than 40 rooms are not considered a Lodging Business for the purpose of this Agreement and are exempt from any charges imposed under chapter 35.101 RCW or this Agreement.

1.14 “Lodging Charges” means the charges set forth in the Lodging Businesses’ Initiation Petition to the Legislative Authority as provided for in RCW 35.101.020 and .050, and adopted by the Legislative Authority. The Legislative Authority will, in turn, impose the Lodging Charges on the Operators of Lodging Businesses within the Skagit County TPA. These charges will be passed on by the Operators to the guests of the Lodging Businesses, under the authority of the TPA Act, for the purpose of providing funding for tourism promotion in the boundaries of the Skagit County TPA.

1.15 “Lyman” means the Town of Lyman, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.16 “Management Agreement” means the agreement(s) for the operation and management of the Skagit County TPA, including but not limited to, agreements entered into between Skagit County and Consultant.

1.17 “Mount Vernon” means the City of Mount Vernon, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.18 “Operator” or “Operator of a Lodging Business” means an operator of a Lodging Business, whether in the capacity of owner, general manager, lessee, sublessee, mortgagee in possession, licensee, or any other similar capacity that has the authority to act on behalf of, and bind, the Lodging Business.

1.19 “Partners” means a third-party partner that the Skagit County TPA may collaborate and partner with, share resources with, and advance common goals, consistent with the objectives of the Skagit County TPA and considering the recommendations and input from the Skagit TPA Advisory Board all as set forth in this Agreement. Skagit County, as the Legislative Authority, shall be authorized to enter into Memoranda of Understanding and other agreements with such Partners, after considering the recommendations and input from the Skagit TPA Advisory Board. Partners may include, but are not limited to: a) any of the Parties to this Agreement; b) Tribal Communities located within Skagit County, including, but not limited to

the Swinomish Tribe, Samish Indian Nation, the Upper Skagit Indian Tribe, and the Sauk-Suiattle Indian Tribe; c) the Port of Skagit, the Port of Anacortes, and other ports that may be established within Skagit County; and d) individuals, businesses and organizations.

1.20 Sedro-Woolley” means the City of Sedro-Woolley, a municipal corporation of the State of Washington, organized under the laws and statutes of the State.

1.21 “Skagit County” means Skagit County, a political subdivision of the State of Washington.

1.22 “Skagit County Lodging Association PS” means the nonprofit professional service corporation formed March 17, 2017 comprised of lodging business professionals in Skagit County for the purpose of providing tourism industry and marketing expertise, or its successor;

1.23 "Skagit County Tourism Promotion Area" means the geographic area identified in the Initiation Petition, subject to the provisions of Section 1.1.

1.24 “Skagit County TPA” means the Skagit County Tourism Promotion Area.

1.25 “Skagit TPA Advisory Board” means an advisory board created by the Legislative Authority pursuant to Section 7 of this Agreement.

1.26 "State" means the State of Washington.

1.27 “Tourism Promotion” means actions and expenditures designed to increase domestic and international tourism and convention business, including, but not limited to, promotion, branding, advertising, publicizing, marketing, and the preparation and distribution of information for the purpose of encouraging and welcoming travelers, visitors, and tourists to the Skagit County TPA. Such activities include, but are not limited to, strategic planning, market research, creative development, media placement, metrics, sales activities, and designing, hosting and communicating about events relating to promotion and marketing of the Skagit County TPA, operating tourism destination marketing organizations, or contracting with such organizations or other similar organizations, to administer the operation of the Skagit County TPA, and administration, operation, start-up costs, and management support for such services, including, but not limited to, overhead costs (including office rent, supplies, equipment and administrative costs incurred by the Legislative Authority arising out of its role as the Legislative Authority for the Skagit County TPA), staff costs, public notice advertising, legal and accounting costs, and auditing costs, including audits of the Parties and Consultant relating to or arising from this Agreement.

2. Purpose of Agreement.

The purpose of this Agreement is to: (1) promote tourism within the boundaries of the

Skagit County TPA by appointing a Legislative Authority for the purpose of accepting an Initiation Petition for the formation of the Skagit County TPA; (2) memorialize the agreement among the Parties relating to the Skagit County TPA; and (3) provide for the structure, governance, and administration of the Skagit County TPA. Once created, the Skagit County TPA will permit the collection of Lodging Charges from Lodging Businesses in order to fund Tourism Promotion. As provided for in RCW 35.101.020, the Initiation Petition must describe the boundaries of the proposed tourism promotion area, the proposed uses and projects to which the proposed revenue from the Lodging Charges will be used and the total estimated costs, the estimated rate for the Lodging Charges with a proposed breakdown by class of Lodging Businesses, if such classification is to be used, and the signatures of the Operators of the Lodging Businesses in the proposed area who would pay sixty percent or more of the proposed Lodging Charges.

3. Appointment of Legislative Authority.

Skagit County is hereby appointed as the Legislative Authority of the Skagit County TPA for purposes of this Agreement and the TPA Act. References in this Agreement to the Legislative Authority shall mean Skagit County, serving in its capacity as the Legislative Authority of the Skagit County TPA. Skagit County shall, in turn, act through its legislative authority, the Board of County Commissioners (“Commissioners”).

It is hereby understood and agreed by the Parties that Skagit County, serving in its capacity as the Legislative Authority, shall, after receiving the Initiation Petition, proceed with considering and adopting a resolution of intention, as provided for in RCW 35.101.030, to establish the Skagit County Tourism Promotion Area designated to include the jurisdictional boundaries of Skagit County, the Cities, and the Towns, subject to the provisions of Section 1.1, and hold a public hearing to consider the establishment of the Skagit County TPA, as provided for in RCW 35.101.030(1), after providing proper notice under the terms of the TPA Act, including those set forth in RCW 35.101.060.

It is understood and agreed to by the Parties that the purpose of forming the Skagit County TPA is to provide an additional source of revenue to be used to fund Tourism Promotion within the boundaries of the Skagit County TPA.

Notwithstanding anything herein to the contrary, if the Skagit County TPA is not formed by September 1, 2020, this Agreement shall terminate and shall be of no further force or effect. Provided the Skagit County TPA is formed by September 1, 2020, Skagit County shall proceed in the manner described in this Agreement and as provided for in the TPA Act, acting as the Legislative Authority of the Skagit County TPA.

4. Powers and Obligations of the Legislative Authority.

The Parties acknowledge and agree Skagit County is being appointed solely to serve as the Legislative Authority for purposes of the TPA Act. The day to day operations of the

Skagit County TPA, including but not limited to, the management, planning, and expenditure of collected Lodging Charges, shall be governed and administered as provided for in this Agreement and shall be managed by a Consultant appointed by, and contracted with Skagit County, as manager and operator of the Skagit County TPA, as provided for in Section 8 below. Skagit County, when acting in its capacity as Legislative Authority, shall have the authority to:

a) Receive the Initiation Petition from the Lodging Businesses, adopt a resolution of intent to form the Skagit County TPA, hold a public hearing as required by the TPA Act, and otherwise carry out the terms of the TPA Act;

b) Pursuant to the authority of chapter 35.101 RCW, by ordinance establish and form a Tourism Promotion Area, known as the Skagit County Tourism Promotion Area, to include the unincorporated area of Skagit County and the entire area within the corporate limits of the Cities and Towns, establish rates of Lodging Charges and levy Lodging Charges pursuant to the terms of this Agreement, the Initiation Petition, and the TPA Act;

c) In accordance with RCW 35.101.130(1), may create a Skagit TPA Advisory Board to make recommendations to Skagit County as the Legislative Authority regarding the use of Lodging Charges collected pursuant to this Agreement;

d) As provided for in RCW 35.101.130(2), enter into agreements with third parties, including Consultant and Partners, as necessary or appropriate to fully implement the purposes of this Agreement and the Skagit County TPA, including but not limited to, agreements with tourism destination marketing organizations, or other similar organizations, to administer the operation of the Skagit County TPA;

e) Adopt an Annual Budget and an Annual Business Plan for the Skagit County TPA. The Annual Budget and Annual Business Plan shall be prepared and proposed by the Consultant and presented to the Skagit TPA Advisory Board for review and consideration and recommendation to the Legislative Authority, Skagit County, as provided for in Section 8;

f) Conduct regular and special meetings regarding the Skagit County TPA;

g) Enter into agreements with the State of Washington, Department of Revenue, as provided for in RCW 35.101.090, and receive funds from federal, state or local agencies and distribute such funds to parties and organizations administering the operation of the Skagit County TPA;

h) Receive and account for all funds allocated to the Skagit County TPA; and

i) Engage in any and all other acts necessary or appropriate to further the goals of this Agreement and to form the Skagit County TPA.

5. Levy of Lodging Charges on Lodging Businesses within the Skagit County TPA.

5.1 *Adoption of Ordinance.* By adoption of ordinance, Skagit County as the Legislative Authority under the authority of chapter 35.101 RCW, will levy Lodging Charges on the Operators of Lodging Businesses within the Skagit County TPA in accordance with the classifications as set forth in the Initiation Petition. The Parties acknowledge and agree, Lodging Charges shall not apply and shall not be imposed upon rooms: a) in which the occupant has stayed 30 or more continuous days as provided for in WAC 58-20-166, as may be amended; b) in which the United States government is directly paying for the rooms as provided for in WAC 458-20-166(5)(h), as may be amended; and c) as provided for in RCW 35.101.055, consisting of temporary medical housing exempt under RCW 82.08.997, as may be amended.

5.2 *Contract with the Department of Revenue.* The Legislative Authority shall contract with the State Department of Revenue for the administration and collection of the Lodging Charges pursuant to the provisions of RCW 35.101.090. As provided for in RCW 35.101.100, Lodging Charges shall be deposited into the local tourism promotion account created in the custody of the State Treasurer. In accordance with the provisions of RCW 35.101.100, the State Treasurer will have the authority to distribute the revenue allocable to the Skagit County TPA, to the Legislative Authority, on a monthly basis. Skagit County, as the Legislative Authority, shall act as fiscal agent for the Skagit County TPA and shall be responsible for receiving Lodging Charges from the State Treasurer and holding such funds in a segregated account(s) until remitted to the Skagit County TPA and/or its Consultant pursuant to Section 8 of this Agreement.

5.3 *Change in Rates.* Any change in the Lodging Charges rates, or classification as set in the resolution of the Legislative Authority, shall be made only by amendment of the ordinance by the Legislative Authority, and only upon written request by the Operators of Lodging Businesses in the proposed area who would pay sixty percent or more of the proposed charges.

5.4 *Nature of Lodging Charges.* It is understood and agreed by the Parties that the Lodging Charges imposed in the Skagit County TPA are not a tax on the "sale of lodging" for the purposes of chapter 82.14 RCW. It is further understood and agreed by the Parties the Lodging Charges imposed under this Agreement are in addition to the special assessments that may be levied under chapter 35.87A RCW.

6. Use of Revenue Generated.

The revenue generated from the Lodging Charges collected by the State Department of Revenue and remitted to the Legislative Authority will be held in a designated account to

fund Tourism Promotion of the Skagit County TPA in accordance with the Annual Budget and Annual Business Plan adapted by the Legislative Authority. Included within the scope of Tourism Promotion is the administration, operation, formation, and start-up costs associated with the Skagit County TPA and the ongoing management and maintenance of the Skagit County TPA.

7. Establishment of a Skagit TPA Advisory Board. The Parties to this Agreement agree that Skagit County, as the Legislative Authority, has the authority under the TPA Act to establish the Skagit TPA Advisory Board as provided for herein. The Skagit TPA Advisory Board may make recommendations to the Legislative Authority regarding the way in which revenue derived from the Lodging Charges is to be used to promote tourism within the Skagit County TPA and work with the Consultant in reviewing, considering, and recommending the Annual Budget and Annual Business Plan to the Legislative Authority for consideration and adoption.

a) The members of the Skagit TPA Advisory Board will include, to the extent practical, the following: (i) a representative, or designee, recommended by each of the Parties to this Agreement except that the towns of Lyman, Hamilton, and Concrete shall jointly recommend one member to the Skagit TPA Advisory Board, subject to the provisions of Section 1.1; (ii) seven members recommended by the Skagit County Lodging Association PS or its successor; (iii) one member recommended by the Economic Development Alliance of Skagit County (“EDASC”) or its successor; (iv) one member recommended by the Skagit County Chamber Executive Directors’ Association (“SCCEDA”) or its successor; and (v) one additional member selected by the Legislative Authority. In the event Skagit County Lodging Association PS, EDASC, or SCCEDA no longer exist and do not have a successor, the Legislative Authority will designate other designees to serve on the Skagit TPA Advisory Board representative of the interests of the original member that is no longer in existence.

b) The initial members of the Skagit TPA Advisory Board shall serve staggered terms, with one-third of the members serving one-year terms, one-third of the members serving two-year terms, and one-third of the members serving three-year terms as set by Resolution of the Legislative Authority. At the initial meeting of the Skagit TPA Advisory Board, its Members shall appoint a chair to provide and coordinate notice of future meetings of the Skagit TPA Advisory Board and to chair the meetings. The Skagit TPA Advisory Board will consider and adopt standing rules, intended to supplement those set out herein, regarding notices, meetings, attendance, member terms, minutes, and decision-making of the Skagit TPA Advisory Board. The affirmative vote of a majority of a quorum of the Skagit TPA Advisory Board will be required to carry any motion, to adopt any rule, or to pass any measure. A quorum shall consist of forty percent (40%) of the appointed membership.

c) Each member of the Skagit TPA Advisory Board will serve to the best of their ability, working on behalf of the goals and objectives of the Skagit County TPA. The Skagit County TPA and the Skagit TPA Advisory Board will develop a conflict of interest policy that each member of the Skagit TPA Advisory Board will execute. The members’ work on behalf of the Skagit TPA Advisory Board, and the Skagit County TPA, will be without charge or payment.

8. Management of Skagit County TPA; Annual Budget and Business Plan; Reporting Requirements.

8.1 *Contract.* Skagit County, as the Legislative Authority, may contract, with input and recommendations from the Skagit TPA Advisory Board, with Consultant pursuant to one or more Management Agreements for the management and operation of the Skagit County TPA. The Parties acknowledge and agree Consultant will advise and make recommendations to the Skagit TPA Advisory Board and Skagit County, as the Legislative Authority, on all matters related to the Skagit County TPA and to carry out its purposes as set forth in this Agreement. Such services shall include administering the activities and programs of the Skagit County TPA and preparing a proposed Annual Budget and Annual Business Plan for the Skagit County TPA for the review and consideration of the Skagit TPA Advisory Board and Skagit County, as provided for in more detail in Section 8.2 below.

8.2 *Annual Budget and Annual Business Plan.* The Consultant shall prepare and propose an Annual Budget and Annual Business Plan to the Skagit TPA Advisory Board for its review, consideration and input. The Skagit TPA Advisory Board will, in turn, propose to Skagit County, as the Legislative Authority, a recommended Annual Budget and Annual Business Plan. Skagit County, as the Legislative Authority, will either adopt the recommended Annual Budget and Annual Business Plan as submitted, or return the Annual Budget and Annual Business Plan to the Skagit TPA Advisory Board for further review and consideration before again presenting the Annual Budget and Annual Business Plan to Skagit County, as the Legislative Authority, for review and adoption. In the event the Skagit TPA Advisory Board does not present a recommended Annual Budget and Annual Business Plan to the Legislative Authority by the date annual budgets are due to the County Auditor as established annually by resolution signed by the Board of County Commissioners, then the Legislative Authority may create an Annual Business Plan and Annual Budget with or without the assistance of the Consultant. The TPA Advisory Board may request budget amendments in conjunction with the Legislative Authority's regularly scheduled quarterly budget amendment process. In the first year of the Skagit County TPA operation and after collection of revenues derived from Lodging Charges, the Skagit TPA Advisory Board may recommend a partial year Annual Budget and Annual Business Plan for Lodging Charges expenditures for the Legislative Authority's consideration as part of the Legislative Authority's regularly scheduled quarterly budget amendment process.

Skagit County, as the Legislative Authority, will consider the proposed Annual Budget and Annual Business Plan recommended by the Skagit TPA Advisory Board, setting forth the anticipated revenues from the Lodging Charges for the upcoming fiscal year and providing for the proposed use of such revenue, for the purposes set forth in this Agreement, for the upcoming fiscal year, and once approved, will provide a copy of the Annual Budget and Annual Business Plan to the Parties. The Annual Budget shall consist of:

- a) A list of the Lodging Businesses subject to Lodging Charges and

an estimate of the projected aggregate revenue to be received from all such Lodging Businesses (this projection shall be based on a collective basis rather than that projected by individual Lodging Businesses); and

b) A statement of the proposed budget for all Skagit County TPA activities and programs to be funded from Lodging Charges during the ensuing fiscal year.

8.3 *Fiscal Agent.* All Lodging Charges received by Skagit County, as fiscal agent for the Skagit County TPA, from the State Department of Revenue, and any interest thereon, shall be deposited by Skagit County in a special account, for the benefit of the Skagit County TPA. Payments to Consultant will be made as provided for in contracts executed by Skagit County and Consultant. Provided, however, no revenue from the Lodging Charges shall be transferred in any fiscal year until after the adoption of that year's fiscal Annual Budget.

8.4 *Other Marketing Efforts.* The Parties acknowledge and agree that revenue derived from the Lodging Charges is intended to enhance, supplement, and extend the existing tourism marketing efforts of the Parties and to attract more visitors, both business and leisure visitors, to Skagit County, bolster Lodging Business occupancy, retain current jobs and create new jobs, increase business at restaurants and retail stores, and increase patronage at arts, cultural, and sporting venues within the Skagit County TPA in an ever increasingly competitive marketplace.

9. Meetings.

9.1 *Meetings.* All meetings of the Legislative Authority and the Skagit TPA Advisory Board shall be held in full compliance with the Washington Open Public Meetings Act, chapter 42.30 RCW, as may be amended.

9.2 *Quorum.* A quorum for a meeting of the Skagit TPA Advisory Board shall consist of forty percent (40%) of the appointed membership, as provided for in Section 7. In the absence of a quorum at any such meeting, the meeting may be adjourned as allowed by and pursuant to RCW 42.30.090, as may be amended.

10. Initial Duration; Withdrawal of a Party and Termination.

10.1 *Initial Term.* The initial duration of this Agreement shall be for a period of ten years from its Effective Date ("Initial Term"), subject to amendment as provided for in Section 13.9. The Parties agree, however, that in the fifth year of the Initial Term, they will review the Agreement, and its terms, and consider whether they wish to make any amendments to the Agreement as provided for in Section 13.9.

10.2 *Withdrawal from Agreement; Termination by the Parties.* Any Party to this Agreement may withdraw its participation in this Agreement, and in the Skagit County TPA, by providing written notice, and serving that notice to the Legislative Authority, all as

provided herein. No Party is permitted to withdraw, however, until this Agreement has been in force at least three years from the Effective Date. Once this Agreement has been in force for three years, any Party may withdraw by providing at least one year notice of its intent to withdraw. By requiring at least one year notice prior to withdrawing from the Skagit County TPA, the Parties acknowledge and agree the importance of notice well in advance of the Skagit County TPA's budget and planning cycle. The Party giving notice of intent to withdraw may revoke its notice by giving written notice of revocation to the Legislative Authority, provided such revocation is provided within forty-five days of the original notice.

Within 90 days after receiving proper notice from a Party that it wishes to withdraw its participation in this Agreement, as provided for in RCW 35.101.140, as may be amended, the Legislative Authority shall disestablish the requested area by ordinance following a hearing to receive public comment regarding the proposed boundary revision and/or disestablishment of an area of the Skagit County TPA. As provided for in RCW 35.101.140, as may be amended, and as applicable, before adopting such an ordinance, the Legislative Authority shall adopt a resolution of intention: (i) identifying the Party that has given notice of withdrawal, (ii) stating that Skagit County TPA may be modified or terminated, as applicable, (iii) describing the change or changes proposed, or indicating it is the intention to revise the boundaries or disestablish the Skagit County TPA, and (iv) providing the time and place of a public hearing to be held by the Legislative Authority on the proposed action; provided, the public hearing shall be at least 15 days prior to consideration of the proposed action. Unless the written notice of withdrawal has been revoked by the withdrawing Party and accepted by the Legislative Authority, the revision or disestablishment of the affected area of the Skagit County TPA shall become effective on the date specified by the Legislative Authority, however, such effective date shall not exceed 45 days from the completion of the public hearing considering the revision of TPA boundaries or disestablishment.

For the sake of clarity, it is the intention of the Parties that this Section 10 provides for a method of withdrawal and/or termination of this Agreement that is initiated solely by a Party to this Agreement. This Section 10 is intended to be in addition to the method of modification and/or disestablishment of the Skagit County TPA as provided in Section 11 below.

11. Modification or Disestablishment of the Skagit County TPA by Petition.

11.1 *Modification or Disestablish.* Upon receipt of a petition expressing the wish to revise the boundaries, or disestablish some or part of the Skagit County TPA, bearing the signatures of the Operators of Lodging Businesses in the Skagit County TPA who pay 60% or more of the total Lodging Charges in the area proposed to be disestablished, as provided for in RCW 35.101.020(4), as may be amended, the Legislative Authority may disestablish the requested area by ordinance following a hearing before the Legislative Authority, as provided for in RCW 35.101.140, as may be amended. In doing so, as provided for in RCW 35.101.140, as may be amended, the Legislative Authority shall adopt a resolution of intention to revise the boundaries or disestablish the Skagit County TPA, and shall state the time and place of a public hearing to be held by the Legislative Authority to consider the

proposed action, provided, the public hearing shall be at least 15 days prior to consideration of the proposed action.

11.2 *Action.* After conducting a public hearing to take public comment on the proposed action as required under Section 11.1 above, the Legislative Authority may, by ordinance, disestablish the requested area of the Skagit County TPA resulting in a revision of boundaries. Notwithstanding the foregoing, if at a hearing held pursuant to Section 11.1 above a petition objecting to the boundary revision or disestablishment is presented, with the signatures of Operators of Lodging Businesses in the Skagit County TPA who pay 60% or more of the Lodging Charges within the area proposed to be removed from the Skagit County TPA, the Skagit County TPA shall not be altered or disestablished. If such a petition objecting to the proposed boundary revision or disestablishment of the affected area is not presented at the hearing, and provided the statutory requirements of the Act, as may be amended, are met, the Legislative Authority shall proceed by ordinance to disestablish an area of the Skagit County TPA.

11.3 *No Obligation.* Notwithstanding anything to the contrary in this Agreement, in no case shall any of the Parties be obligated to satisfy the outstanding obligations of the Skagit County TPA from such Party's moneys, funds, or other sources of revenue unless it otherwise agrees to in writing.

12. Accounting, Books, and Records.

12.1 *Funds and Audit.* As provided for in RCW 35.101.090, as amended, the Lodging Charges shall be administered by the State of Washington, Department of Revenue and shall be collected by Lodging Businesses from those persons who are taxable by the State of Washington under chapter 82.08 RCW. As provided for in RCW 35.101.09(3) the Lodging Charges authorized by RCW chapter 82.08, as amended, and this Agreement that are collected by the State of Washington, Department of Revenue ("DOR"), shall be deposited by the DOR in to a separate Skagit County TPA tourism promotion account, as provided for in RCW 35.101.090 and .100. These monies shall be subject to the same audit and fiscal controls as other funds held by the designated County Treasury and in full compliance with record-keeping and accounting methods required by Washington law and/or the Washington State Auditor and Washington State Treasurer in compliance with the requirements of any applicable state program. Interest on investment of the Skagit County TPA funds shall accrue to the benefit of the Skagit County TPA.

12.2 *Records, Audits and Reports: Public Records Requests.* At the expense of the Skagit County TPA, the Legislative Authority shall maintain records and accounts of all operations and expenditures of the Skagit County TPA. All records shall be maintained and be available for inspection and photocopying under the provisions of the Washington Public Records Act, chapter 42.56 RCW ("PRA"), as amended, subject to any exemptions or limitations on disclosure.

13. Miscellaneous Provisions.

13.1 *Waiver.* No elected official, officer, employee, or agent of Skagit County, the Cities, or the Towns has the power, right, or authority to waive any of the conditions or provisions of this Agreement. No waiver of any breach of this Agreement by the Parties shall be held to be a waiver of any other or subsequent breach. Failure of the Parties to enforce any of the provisions of this Agreement, or to require performance of any of the provisions herein, shall in no way be construed to be a waiver of such conditions, nor in any way effect the validity of this Agreement or any part hereof, or the right of the Parties to enforce each and every such provision.

13.2 *Records.* All records prepared, owned, used, or retained by Consultant in conjunction with operating or administering the activities and programs of the Skagit County TPA as provided for under the terms of this Agreement shall be made available by Consultant, upon request, to the Parties.

13.3 *Property and Equipment.* Except as otherwise agreed by Skagit County and Consultant, Skagit County shall be the owner of all property and equipment purchased in furtherance of this Agreement from the revenue generated by the Lodging Charges. In the event of the termination of the Management Agreement with Consultant, Consultant shall make the property and equipment owned by Skagit County available to the successor manager for its use in conjunction with providing similar services to the Skagit County TPA. Provided further, in the event of disestablishment of the Skagit County TPA, all property and equipment purchased by Consultant from revenue generated by the Lodging Charges shall be retained by Skagit County and used for any lawful purpose.

13.4 *Complete Agreement; Supersedure.* This Agreement contains the complete and integrated understanding and agreement between the Parties and supersedes, repeals, and replaces in whole any understanding, agreement, or negotiation whether oral or written not set forth herein including but not limited to any previous agreement adopted by a Party concerning the establishment of the Skagit County TPA. All the terms and conditions agreed upon by the Parties concerning the establishment of the Skagit County TPA and the collection of Lodging Charges from Operators of Lodging Businesses. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto. The Parties have read and understand each of the terms of this Agreement, and affirm that no representation, promise, or agreement not expressed in this Agreement has been made to induce the officials of Skagit County, the Cities, or the Towns, to execute this Agreement.

13.5 *Severability.* In the event any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not, in any way, be affected or impaired thereby.

13.6 *Each Party Responsible for Own Negligence.* Each Party to this Agreement will be responsible for the acts and omissions of its own elected officials, officers, employees, and agents in the performance of this Agreement. None of the Parties will be considered the agent of the other and none of the Parties will assume any responsibility to the other Parties for the consequences of any act or omission of any person, firm, governmental authority or agency or entity not a Party to this Agreement. The Parties shall each indemnify and hold harmless one another, and their respective elected officials, officers, employees, and agents, from any and all liabilities, damages, fees, costs, and expenses, including but not limited to, claims, judgments, or awards of damages arising out of the acts or omissions of any of them or of their respective elected officials, officers, employees, and agents, and shall process and defend at their own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against any of them, arising out of, in connection with, or incident to this Agreement and/or any of their performance, or failure to perform, any aspect of this Agreement.

13.7 *Filing of Agreement.* This Agreement shall become effective immediately after it is duly adopted and executed by the Board of the Skagit County Commissioners, City Council of the City of Anacortes, City Council of the City of Burlington, City Council of the City of Mount Vernon, City Council of the City of Sedro-Woolley, Town Council of the Town of La Conner, and provided they enter into this Agreement, the Town Council of the Town of Hamilton, Town Council of the Town of Concrete, and Town Council of the Town of Lyman, and shall be filed and/or posted as required by RCW 39.34.040 of the Interlocal Cooperation Act.

13.8 *Notice.* Any formal notice or communication to be given among the Parties to this Agreement shall be deemed properly given, if delivered either by physical or electronic means, or if mailed postage prepaid and addressed to:

Skagit County
1800 Continental Place, Suite 100
Mount Vernon, WA 98273

City of Anacortes
Post Office Box 410
Anacortes, WA 98221

City of Burlington
833 S. Spruce Street
Burlington, WA 98233

City of Mount Vernon
Post Office Box 809
Mount Vernon, WA 98273

City of Sedro-Woolley
325 Metcalf Street
Sedro-Woolley, WA 98284

Town of La Conner
Post Office Box 400
La Conner, WA 98257

Town of Hamilton
Post Office Box 528
Hamilton, WA 98255

Town of Concrete
Post Office Box 39
Concrete, WA 98237

Town of Lyman
Post Office Box 1248
Lyman, WA 98263

13.9 *Amendment.* This Agreement may be amended by the mutual consent of all of the Parties. No additions to or alterations of the terms of this Agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of all Parties.

13.10 *No Separate Entity.* It is not the intention that a separate legal entity be established to conduct this cooperative undertaking, and no separate legal entity is established by this Agreement.

13.11 *Neutral Authorship.* Each of the terms and provisions of this Agreement have been reviewed and negotiated, and represents the combined work product of the Parties. No presumption of other rules of construction that would interpret the provisions of this Agreement in favor of, or against, a Party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement. The Parties each represent they have had a full and fair opportunity to seek legal advice with respect to the terms of this Agreement and have either done so, or have voluntarily chosen not to do so. The Parties represent and warrant they have fully read this Agreement, understand its meaning and effect, and enter into this Agreement with full knowledge of its terms.

13.12 *Counterparts.* This Agreement may be executed in any number of counterparts, each of whom shall be an original, but those counterparts will constitute one and the same instrument.

Signatures on next page.

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

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

RON WESEN, Commissioner

KEN DAHLSTEDT, Commissioner

LISA JANICKI, Commissioner

Recommended:

By: _____
Trisha Logue, County Administrator

Approved as to Indemnification:

By: _____
Donnie LaPlante, Risk Manager

Approved as to Form:

By: _____
Melinda Miller, Deputy Prosecuting Attorney

Attest:

By: _____
Clerk of the Board

Date: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Ron Wesen, Ken Dahlstedt and Lisa Janicki are the persons who appeared before me, and each person acknowledged that she or he signed this instrument, on oath stated that she or he was authorized to execute the instrument and acknowledged it as Commissioners of Skagit County, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

Dated this ____ day of _____, 2020

Notary Public in and for the State of Washington
Residing at _____
My Commission Expires: _____

LAURIE GERE, Mayor

Date_____

Approved as to form only:

Darcy Swetnam, Anacortes City Attorney

STATE OF WASHINGTON)) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Laurie Gere is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Anacortes, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

Dated this ____ day of _____, 2020

Notary Public in and for the State of Washington
Residing at _____
My Commission Expires: _____

CITY OF BURLINGTON

STEVE SEXTON, Mayor

Date_____

Mailing Address:
City of Burlington
833 S. Spruce Street
Burlington, WA 98233

Approved as to form only:

Leif Johnson, Burlington City Attorney

STATE OF WASHINGTON)

) ss.

COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Steve Sexton is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Burlington, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

Dated this ____ day of _____, 2020

Notary Public in and for the State of Washington
Residing at _____
My Commission Expires: _____

CITY OF SEDRO-WOOLLEY

JULIA JOHNSON, Mayor

Date_____

Mailing Address:
City of Sedro-Woolley
325 Metcalf Street
Sedro Woolley, WA 98284

Approved as to form only:

Eron Berg, Sedro-Woolley City Attorney

STATE OF WASHINGTON) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Julia Johnson is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Sedro-Woolley, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

Dated this _____ day of _____, 2020

Notary Public in and for the State of Washington
Residing at _____
My Commission Expires: _____

TOWN OF HAMILTON

CARLA R. VANDIVER, Mayor

Date_____

Mailing Address:
Town of Hamilton
548 Maple Street
Hamilton, WA 98255

STATE OF WASHINGTON)) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Carla R. Vandiver is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Mayor of the Town of Hamilton, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

Dated this ____ day of _____, 2020

Notary Public in and for the State of Washington
Residing at _____
My Commission Expires: _____

TOWN OF CONCRETE

JASON MILLER, Mayor

Date_____

Mailing Address:
Town of Concrete
Post Office Box 39
Concrete, WA 98237

STATE OF WASHINGTON)) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Jason Miller is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the Town of Concrete, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

Dated this _____ day of _____, 2020

Notary Public in and for the State of Washington
Residing at _____
My Commission Expires: _____

TOWN OF LYMAN

EDDIE HILLS, Mayor

Date_____

Mailing Address:
Town of Lyman
Post Office Box 1248
Lyman, WA 98263

STATE OF WASHINGTON)) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Eddie Hills is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the Town of Lyman, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

Dated this ____ day of _____, 2020

Notary Public in and for the State of Washington
Residing at _____
My Commission Expires: _____



City Council Contract Agenda Bill

Meeting Date: 3/9/2020

Agenda Item: 7a

Subject: Master Permit Application – ACCESS Anacortes Fiber Internet

Staff Contact: Fred Buckenmeyer

Approved for Submittal to Council by:
Darcy Swetnam, City Attorney

Action Type: City Council Approval
of Application

Summary Statement: City staff seeks City Council approval of Master Permit Application to allow for the deployment of a fiber optic network for every business and residence within the City of Anacortes.

Background:

1. City Council must examine each complete application submitted for review and approval to determine if it complies with the applicable provisions of newly-adopted Chapter 5.38 of the Anacortes Municipal code, which governs Public Utility and Telecommunications Right-of-Way Use. This application constitutes the first master permit application the City has received pursuant to the new code requirements.
2. The application was submitted for review on January 15, 2020.
3. City staff reviewed the application and determined the application to be complete on March 3, 2020 (AMC 5.38.070 and AMC 5.38.080).

Previous Council/Committee Action: N/A

Competing Viewpoints Considered:

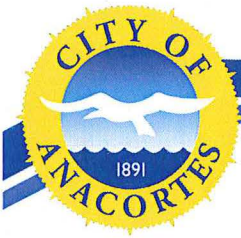
1. AMC 5.38.070, Item C.6 and C.8 will be included in the Construction Application (AMC 5.38.060) and Construction Permit (AMC 5.38.100) when applied for.

Recommended Motion: I move that City Council approve this Master Permit Application as presented

Alternative Actions: Not approve

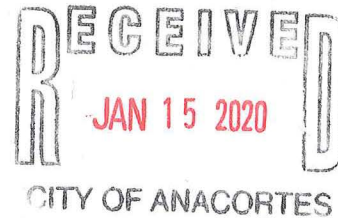
Attachments:

- Narrative from the applicant
- Master Permit Application
- Submittal Checklist – Reviewed
- Exhibit A – Areas served by Aerial Lateral Customer Drops
- Exhibit B – Pole Attachment Agreement with Puget Sound Energy
- Exhibit C – Evidence of Insurance with WCIA
- Exhibit D – Washington Utilities and Transportation Commission Website
- Exhibit E – Performance Bond



Emily Schuh
Director, Administrative Services

January 15, 2020



Planning, Community, & Economic Development Department
City of Anacortes
904 Sixth Street
Anacortes, Washington

To whom it may concern:

ACCESS Anacortes Fiber Internet, operating as a subunit of the City of Anacortes, is pleased to submit the enclosed Submittal Packet requesting a Master Permit for Telecommunications Use of Right of Way.

In summary, we wish to deploy a fiber optic network passing every business and residence within Anacortes. We plan to deploy backbone cables and customer drops in two broad stages: (1) the areas highlighted in blue on Exhibit A and (2) the areas not highlighted in blue on Exhibit A. The first stage deployment will occur during 2020-21 and the second stage deployment will occur during the period of approximately 2021-23. Our annual Master Permit renewal applications will further address the second stage deployments.

The backbone cables in our network will be primarily deployed aerially. We anticipate possibly needing to trim tree branches in some areas to deploy those aerial backbone cables, but we do not anticipate removing any trees or structures. Our network will require deployment of several pad-mounted cabinets (roughly 24" d x, 36" w x 36" h) either in the public right of way (outside of the lane of travel) or on private property (under appropriate easements). Public safety will be the primary criteria for cabinet site selection.

Exhibit A provides a map depicting in blue highlight areas in which the majority of lateral customer drops will be aerial. We anticipate deploying backbone cables and customer drops in those areas during 2020. The majority of customer lateral drops in areas not indicated in blue highlight on Exhibit A will be underground.

Exhibit B provides a copy of our pole attachment agreement with Puget Sound Energy.

Exhibit C provides an Evidence of Insurance from the Washington Cities Insurance Authority.

Exhibit D provides a screenshot from the State of Washington Utilities and Transportation Commission website indicating that a city-owned network (such as ACCESS Anacortes Fiber Internet) that provides telecommunications is not required to register with the Commission.

Exhibit E provides a copy of an email thread between myself and Scot Buchanan in which he opines that one City department's obtaining a performance bond protecting the City as a whole against that department's failure to perform a particular undertaking would be in effect a circular arrangement and therefore inadvisable and implicitly unnecessary.

I will be pleased to answer any questions that the Department might have about our Submittal Packet.

We also understand that Section 5.38.040 of the City's municipal code requires that we obtain a construction permit prior to deploying any portion of our network. We plan to deploy our network in several phases and will submit a construction permit application for each such construction phase.

Very truly yours,

Emily Schuh
Director, Administrative Services

enclosures (6)



PLANNING, COMMUNITY, & ECONOMIC DEVELOPMENT DEPARTMENT

Mailing Address: P.O. Box 547, Anacortes, WA 98221

Office Location: 904 6th Street, Anacortes WA 98821

Phone: (360) 293-1901

Master Permit for Telecommunications Use of Right of Way Submittal Packet



CITY OF ANACORTES

A master permit must be obtained from the Anacortes City Council prior to construction, placement, maintenance, or operation of any pipes, ducts, utility tunnels, vaults, maintenance holes, poles, fixtures, wires, utility facilities, wireless facilities, or any appurtenances necessary for the purpose of providing wireless service, or to conduct any public utility business, on, over, or under the public right-of-way.

([AMC 5.38.040](#))

MASTER PERMIT APPLICATION FOR TELECOMMUNICATIONS USE OF RIGHT OF WAY

1. TYPE OF APPLICATION

☒ NEW

☐ RENEWAL (Existing Agreement #: _____)

2. APPLICANT INFORMATION

Name of Applicant:
City of Anacortes / ACCESS Anacortes
Fiber Internet

Phone:
360-588-8361

Address (Street, City, State, Zip):
PO Box 547
Anacortes, WA 98221

Email Address:
IanH@cityofanacortes.org

Name of Person Filing This Application:
Emily Schuh

Title:
Director of Administrative Services

Address (Street, City, State, Zip):
PO Box 547
Anacortes, WA 98221

Company:
City of Anacortes

Email Address:
EmilyS@cityofanacortes.org

Phone
360-299-1941

3. AFFILIATES INFORMATION

List all affiliates of the applicant who will be authorized to work in the right-of-way under the agreement:
none



PLANNING, COMMUNITY, & ECONOMIC DEVELOPMENT DEPARTMENT

Mailing Address: P.O. Box 547, Anacortes, WA 98221

Office Location: 904 6th Street, Anacortes WA 98821

Phone: (360) 293-1901

4. DESCRIPTION OF SERVICES

a. Brief description of nonconfidential, nonproprietary utility or wireless telecommunications services that are or will be offered or provided by the applicant over its facilities:

1. Residential Internet service
2. Business-class Internet service
3. Dark fiber
4. Point-to-point Ethernet service
5. Dedicated Internet Access service

b. Brief description of nonconfidential, nonproprietary transmission medium that will be used to offer or provide such services:

Optical fiber

c. The area or areas of the city the applicant desires to serve and a schedule for building out (offering service to) the entire area encompassed by the master permit:

We intend to offer service to every residence and business within the city limits of the City of Anacortes.

We anticipate beginning customer installations in Q1 2020.

We anticipate completing customer installations by Q4 2023.

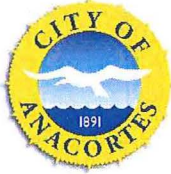
5. SIGNATURE

I declare under penalty of perjury under the laws of the State of Washington that all of the statements and answers contained herein, and the information submitted with this application form is in all respects, true, correct, and complete to the best of knowledge and belief.

ecsh
Signature

1/15/2020
Date

Emily Schuh
Printed Name



PLANNING, COMMUNITY, & ECONOMIC DEVELOPMENT DEPARTMENT

Mailing Address: P.O. Box 547, Anacortes, WA 98221

Office Location: 904 6th Street, Anacortes WA 98821

Phone: (360) 293-1901

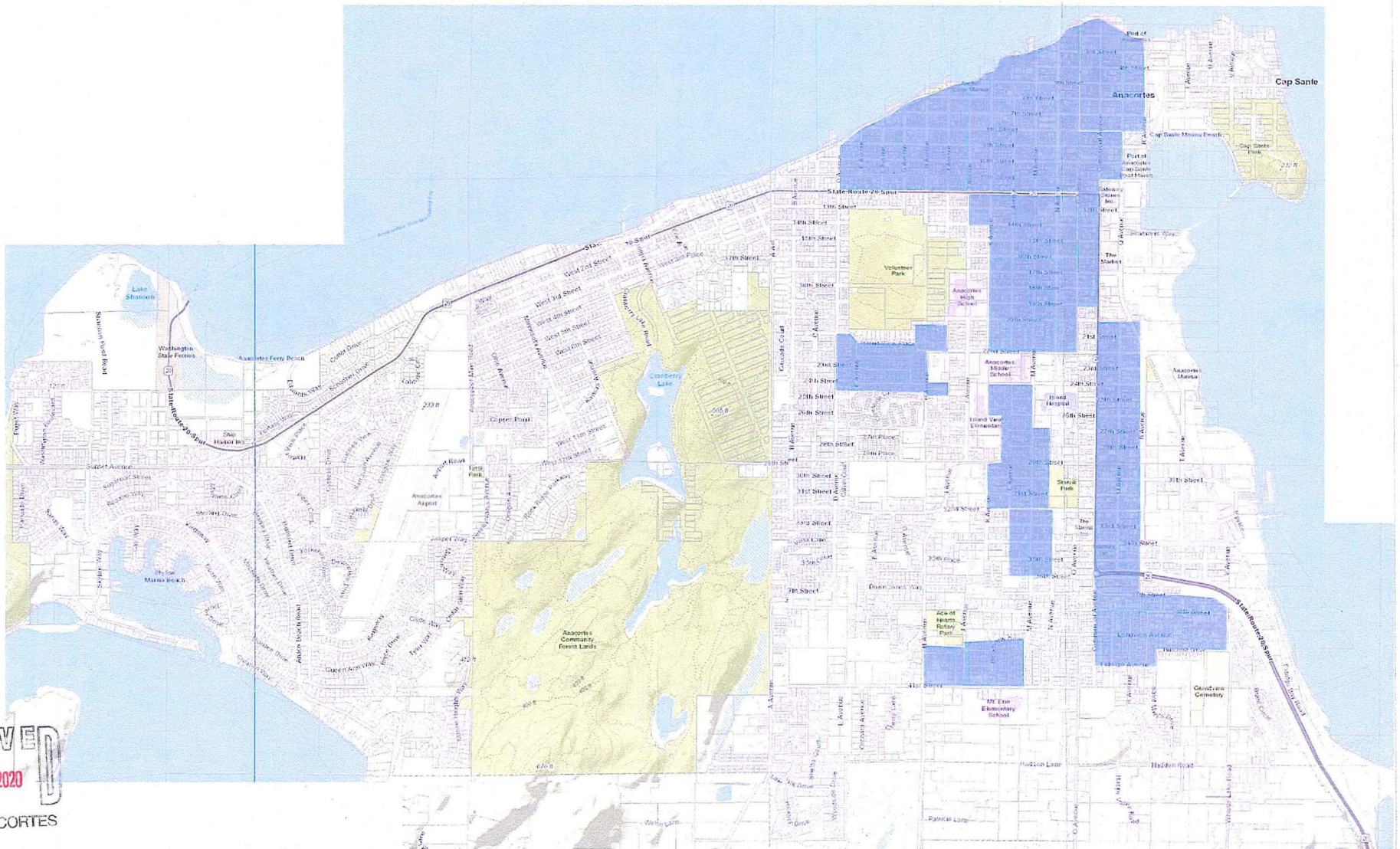
SUBMITTAL CHECKLIST

Applicant Checklist	Submittal Requirement Checklist	For office use:
	Master Permit Application for Telecommunications Use of Right-of-Way Application Form (attached)	✓ <i>Reviewed</i>
	Preliminary engineering plans, specifications, and maps, including (but not limited to): - The location of any existing utilities and/or wireless telecommunications facilities in the city that the applicant intends to use or lease - Facilities to be located within the public right-of-way (in sufficient detail to identify the location and route of the proposed facilities within the public right-of-way) - The location of the applicant's existing facilities within the right-of-way, if any - Specific trees, structures, facilities, and /or obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate	<i>Part of Conf. Permit Application AND APPROVAL</i>
	Will the applicant be constructing wireless facilities on another service provider's facilities? ☐ YES ☒ NO If yes, provide a notarized statement that the applicant has permission to use such facilities, or a signed agreement with the service provider to that effect.	X
	Does the application involve a small wireless facility? ☐ YES ☒ NO If yes, provide preliminary engineering plans showing all dimensions of the wireless facility.	X
	Is installation of overhead facilities proposed? ☒ YES ☐ NO If yes, provide evidence that surplus space is available for locating the facilities on existing utility poles along the proposed route.	<i>EXHIBIT D</i>
	Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities, and to offer or provide the services, including, but not limited to, evidence that the applicant has registered with the Washington Utilities and Transportation Commission.	<i>EXHIBIT D</i>
	Proof of compliance with other the provisions of AMC Ch. 5.38, including but not limited to the indemnity, insurance, and bond requirements	✓ <i>EXHIBIT E EXHIBIT C</i>
	Required Number of Copies and Plan Size 1 paper copy of each item above Plans must be <u>minimum</u> 8 1/2" x 11", to scale, and legible.	Application Fee See the Unified Fee Schedule

Reviewed BY STEVEN LANGE 03.03.20
[Signature]

EXHIBIT A

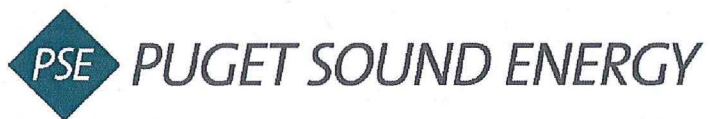
Areas Served by Aerial Lateral Customer Drops



RECEIVED
JAN 15 2020
CITY OF ANACORTES

EXHIBIT B
Pole Attachment Agreement
With
Puget Sound Energy

RECEIVED
JAN 15 2020
CITY OF ANACORTES



POLE ATTACHMENT AGREEMENT

BETWEEN

PUGET SOUND ENERGY, INC.

AND

CITY OF ANACORTES

Date: 10/16/2019

TABLE OF CONTENTS

SECTION 1. SCOPE AND DEFINITIONS.....	3
SECTION 2. ATTACHMENT.....	5
SECTION 3. MAINTENANCE	8
SECTION 4. EMERGENCIES	8
SECTION 5. RELOCATION, REPLACEMENT, AND REMOVAL OF POLES.....	9
SECTION 6. FEES	10
SECTION 7. DEFAULT AND REMEDIES	12
SECTION 8. PERFORMANCE OF WORK	13
SECTION 9. PROTECTION OF PROPERTY AND PERSONS	14
SECTION 10. COOPERATION AND COORDINATION.....	14
SECTION 11. LIENS.....	15
SECTION 12. COMPLIANCE WITH LAWS.....	15
SECTION 13. TAXES	15
SECTION 14. PERMITS AND PROTECTION OF EXISTING RIGHTS.....	16
SECTION 15. EXAMINATION OF RECORDS	16
SECTION 16. STATUS OF CITY.....	16
SECTION 17. RELEASE, INDEMNITY, HOLD HARMLESS AND LIMITATION OF LIABILITY.....	16
SECTION 18. WORKER'S COMPENSATION, INSURANCE AND BONDS.....	17
SECTION 19. RISK OF LOSS	18
SECTION 20. REIMBURSEMENT AND PAYMENT.....	18
SECTION 21. ATTORNEY'S FEES.....	19
SECTION 22. LATE CHARGES AND INTEREST	19
SECTION 23. NONWAIVER	19
SECTION 24. ASSIGNMENT; SUCCESSORS AND ASSIGNS.....	19
SECTION 25. NOTICES AND OTHER COMMUNICATIONS	20
SECTION 26. VOLUNTARY EARLY TERMINATION	21
SECTION 27. SURVIVAL.....	21
SECTION 28. REGULATORY APPROVALS.....	21
SECTION 29. MISCELLANEOUS	21
SECTION 30. APPLICABLE LAW	22
 SIGNATURES	 22
APPENDICES.....	A

POLE ATTACHMENT AGREEMENT FOR CITY OF ANACORTES

This Agreement, dated as of 10/16/2019, is made by and between **Puget Sound Energy, Inc.**, a Washington corporation ("PSE"), and **City of Anacortes**, a Washington municipal corporation ("City"). In this Agreement PSE and City are sometimes referred to individually as a "Party" and collectively as the "Parties."

PSE and City agree as follows:

SECTION 1. SCOPE AND DEFINITIONS

- 1.1 This Agreement governs all attachments of City's fiber optic communications system (the "System") and related Equipment now or hereafter made in relation to any utility poles owned in whole by PSE (individually a "Pole", collectively the "Poles"), with or without PSE's consent.
- 1.2 The Parties hereby acknowledge a Pole Attachment Agreement dated 12/21/2016 between Puget and the City, providing for the attachment of City communication cable to approximately 265 PSE Poles. Said Pole Attachment Agreement is hereby incorporate by reference and any conflicts between this Agreement and the 2016 Agreement shall be controlled by this Agreement. The Parties also acknowledge existing Attachments in the City Central Business District. It is the Parties' intention that any existing Attachments that predate execution of this Agreement be governed by this Agreement.
- 1.3 When used in this Agreement with the initial letter capitalized, the following terms shall have the following specified meanings:

"Agreement" means this Pole Attachment Agreement between PSE and City together with all exhibits attached hereto.

"Annual Rental Fee" means the fees described in the attached Appendix III.

"Arm" means any wood, fiberglass or steel extension from a Pole used to support Equipment.

"Assignment" as described in Section 24 of this Agreement.

"Attach" (or any conjugation thereof) means to affix, fasten or otherwise attach Equipment to a Pole, either directly or indirectly, including, without limitation, by overlashing or attaching any Equipment to other equipment, cables, attachments or devices affixed, fastened or otherwise attached to a Pole.

"Attachment" will have the meaning given to it on Section 2.1 of the Agreement.

"Attachment Application" a written or electronic application form(s) requesting permission to attach any Equipment to any Pole.

"Attachment Permit" or "Permitted Attachment" will mean a completed permit in the form of Appendix II attached hereto that has been duly and properly executed by PSE or an Attachment authorized in such permit.

"Calendar Year" means any period from January 1 through December 31 of any given year.

"Certificate of Insurance" means a standard ACORD certificate or documentation from an agent authorized by the insurer(s) demonstrating insurance carriers, policy numbers, effective dates, limits of liability and deductible amounts.

"Electronic Notice" will have the meaning given to it in Section 25.2 of the Agreement.

"Equipment" means any coaxial and fiber optic cables, messenger strand, conduit or risers, span guys, down guys, anchors, service drops, mainline, overlash (i.e., any conductor that is overlash on an existing conductor after the initial permit), a configuration of equipment attached to the Pole that includes one or more of the following: power supplies, equipment enclosures, amplifiers and terminal boxes or other similar equipment, other attachments and related equipment made in relation to a utility pole.

"Event of Default" will have the meaning given to it in Section 7.1 of the Agreement.

"Facilities" means any poles, towers, arms, transformers, down guys and anchors, vaults, conduits, handholds, and/or electric system appendices.

"First Trip Costs" means any expenses and costs incurred by PSE for transfer of City's Attachment(s) to a replacement Pole (at the same time PSE is transferring its own facilities to the replacement Pole).

"Indemnitees" means PSE, its successors and assigns, and the respective directors, officers, employees, and agents of PSE and its lawful successors and assigns.

"Make-ready" means any and all work relating to the installation of additional Poles, Poles of greater height or strength, additional guying, or re-arrangements of PSE's Equipment or the Equipment of any other party licensed by PSE to use the Poles as required in order for PSE to provide City with access to the Poles.

"NESC" means, at any given point in time, the then-current version of the National Electric Safety Code.

"NJUNS" means the National Joint Utility Notification System or a substantially comparable electronic communication system agreed upon in writing by the Parties.

"Notice of Termination" means any one hundred-eighty (180) calendar day Written Notice by Party requesting Termination of the Agreement to non-terminating Party.

"Plan of Correction" means a mutually agreeable plan to correct any Unauthorized Attachment.

"Pole" will have the meaning given to it in Section 1.1 of the Agreement.

"PSE Pole Attachment Specifications" means, at any given point in time, the then current version of the specifications set forth in the attached Appendix V.

"Return Trip Costs" means any fee assessed by PSE to City when PSE must return to job site to perform transfer work.

"System" will have the meaning given to it in Section 1.1 of the Agreement.

"Termination" cancellation and/or voidance of this Agreement or any Attachments made pursuant thereto.

"Termination of Attachment Notice" means any Written Notice by Party requesting Termination of the Attachment to non-terminating Party.

"Topping Fee" means any fee assessed by PSE to City for removal of the upper portion of any replaced Pole in the event PSE does not transfer City's Attachment(s) to the replacement Pole.

"Unauthorized Attachment" means any Attachment(s) to any Pole(s) by City in violation of the terms and conditions of this Pole Attachment Agreement.

"Work" means any work relating to the attachment, maintenance, repair, relocation, replacement or removal of Equipment and other work performed by City in connection with this Agreement, or the attachment of Equipment to Poles performed by City in connection with this Agreement.

"Written Notice" will have the meaning given to it in Section 25.1 of the Agreement.

SECTION 2. ATTACHMENT

2.1 Any piece of Equipment that occupies space on a Pole will be considered an "Attachment." Any and all City Attachments are subject to this Agreement. Attachments are limited to:

- coaxial and fiber optic cables
- messenger strand
- conduit or risers
- span guys
- down guys
- anchors
- service drops
- mainline
- a configuration of equipment attached to the Pole that includes one or more of the following: power supplies, equipment enclosures, amplifiers and terminal boxes or other similar equipment

2.2 City shall not attach any Equipment to any Pole without PSE's prior written consent in accordance with paragraph 2.3 below, regardless of whether or not City has a valid permit

for Attachments previously attached on such Pole. This Agreement shall not in itself constitute any such consent. Should City fail to obtain a valid permit prior to attaching Equipment to any Pole, in accordance with Section 2.3, City shall be liable for an Unauthorized Attachment in accordance with Section 6.

- 2.3** If City desires to attach any Equipment to any Pole, City shall submit to PSE an "Attachment Application", via the written application form in Appendix II or an "Electronic Notification" as outlined in paragraph 25.2. At a minimum, the pole Attachment Application shall include the information specified in Appendix II, which is attached and incorporated by reference. PSE retains sole discretion to modify the information required in the Attachment Application, upon thirty (30) days Written Notice to City, and such modification shall be effective on the date referenced in the notification.

The Attachment shall be deemed installed on the date the Attachment Permit is approved. However, should City fail to install an Attachment on a Pole for which an Attachment Permit has been granted within six (6) months from the approval date of the Attachment Permit, that Permit shall expire and no Attachment shall be made on that Pole by City until a new Attachment Permit is granted.

If City wishes to remove an Attachment, it must submit a "Termination of Attachment Notice" to PSE via "Electronic Notification" as outlined in paragraph 25.2. If City wished to assign an Attachment to a third party, City must comply with the requirement of Section 24 (Assignment). If City does not submit a Termination of Attachment Notice (and thereafter timely remove the affected Attachment) or an assignment is not made in accordance with Section 24 (Assignment), prior to the beginning of a Calendar Year, the applicable Attachment Permit shall be considered active and City shall be assessed the appropriate Annual Rental Fee.

An Attachment Permit does not relieve City of obligations or liabilities due under this Agreement. Any Attachment made without an Attachment Permit or not in accordance with the specifications listed in the Attachment Permit shall be considered an Unauthorized Attachment.

- 2.4** Unless otherwise directed by PSE, City shall submit each Attachment Application to:

Puget Sound Energy, Inc. | 3380 146th PL SE #310 | Bellevue | WA | 98007 | Pole Services

- 2.5** PSE may deny any Attachment Application for the following reasons:

- (a) insufficient capacity (when all potential accommodations have been reviewed by PSE and communicated to City);
- (b) Facilities are necessary for PSE's sole utility business use;
- (c) City's proposed Attachment violates the National Electrical Safety Code (NESC) or any other applicable code, law, rule or regulation, or unduly compromises safety;
- (d) City's proposed Attachment threatens the reliability of PSE's system;
- (e) City's proposed Attachment does not comply with general applicable engineering standards; or
- (f) City's account is not in good standing.

In the event that PSE gives its written or electronic consent for any Equipment to be Attached to a Pole, City shall Attach such Equipment only in strict accordance with:

- a) such Application;
- b) any conditions or qualifications set forth in PSE's consent; and
- c) the provisions of this Agreement.

City shall have the right to make Attachments to PSE Facilities in accordance with the terms of the Attachment Permit and this Agreement. No application shall be deemed approved without Written Notice or Electronic Notice indicating approval from PSE.

2.6 City shall reimburse PSE for any and all costs and expenses incurred by PSE in connection with the processing and review of each Application (including but not limited to the cost of identifying and estimating the cost of required changes under paragraph 2.7) and in connection with services performed by PSE at the request of City (whether prior to or after the submittal of an Application), including, without limitation, any of the following:

- a) Field engineering review of proposed routes to identify potential problems with the proposed Attachment;
- b) Preparation and provision of drawings or other documents relating to the Poles or any facilities on the Poles;
- c) Engineering review of proposed Attachments to determine the consequences of additional strain on the Poles;
- d) Review of proposed routes to identify easement problems that may limit or preclude the proposed Attachment;
- e) Rights-of-Way services to obtain easements or other rights from private land owners to enable Equipment to be Attached to the Pole;
- f) Transmission poles with no communication attachment or distribution underbuild are not available to attach to;
- g) Transmission pole requests must have a structural pole analysis completed prior to review of approval of attachment at the cost of the applicant; and
- h) PSE may require distribution pole attachment requests have a structural analysis completed prior to review of approval of attachment at the cost of the applicant.

Amounts recoverable by PSE hereunder shall consist of fully allocated costs for labor (including but not limited to all payroll costs and overhead and all applicable engineering, supervision, and administrative overheads), transportation, employee expenses, attorney's fees, reprographic services, supplies, telephone service and other expenses. This paragraph 2.6 shall not obligate or be construed to obligate PSE to perform any service or to take any action whatsoever with respect to an Attachment, an Attachment Application, or any request made by City.

2.7 City understands and acknowledges that nothing in this Agreement grants or purports to grant to City any right or interest of any kind in or to the real property on which any Pole is located and, subject to applicable law, City is solely responsible for seeking and

obtaining all permits, licenses, easements, franchise rights and other rights required from the owner of the underlying property (including, without limitation, PSE) for City to Attach, maintain, repair, relocate or remove any Equipment in relation to any Pole. In no event, however, shall such actions in any way limit or relieve City of its obligations under Section 14 or any other provision of this Agreement.

- 2.8** If, in the judgment of PSE, the accommodation of any proposed Attachment requires the replacement of an existing Pole to provide adequate Pole facilities, PSE will inform City of the required changes and the estimated cost of such changes based on PSE's engineering work standards. If City desires to Attach such Equipment and so notifies PSE within thirty (30) days after PSE informs City of the required changes and estimated cost, PSE shall perform such work and City shall reimburse PSE for the entire expense thereby incurred. If City decides that it does not wish to Attach such Equipment after receiving notification of the required change(s) and estimated cost(s) of such changes, City may decline to do so; provided, however, that City shall still be required to pay the reasonable cost(s) incurred by PSE with respect to providing the change information and estimated cost(s) for the proposed Attachment(s).
- 2.9** Unless otherwise directed by PSE, City shall install guys and anchors necessary to support the additional strain imposed on any Pole by any Attachment in a manner satisfactory to PSE. If PSE installs or replaces guys or anchors to support the strain imposed by such Attachment, City shall reimburse PSE for the entire cost and expense of such installation or replacement (including, but not limited to, the cost of installing or transferring guys to such anchors).
- 2.10** City shall clearly identify all new Attachments at each Pole in distinctive color marking or number marking and as otherwise agreed to by the Parties. In the event that City performs general maintenance to existing Attachments, or takes such other action affecting such existing Attachments, City shall clearly identify such existing Attachments in distinctive color marking or number marking and as otherwise agreed to by the Parties.

In the event City acquires another entity's Equipment, or enters this Agreement with existing Equipment on PSE Facilities, City shall properly identify the newly acquired Equipment in distinctive orange marking and as otherwise agreed to by the Parties within twelve (12) months or within a mutually agreeable earlier timeframe.

If City removes some or all of its Equipment from a Pole, City shall remove all corresponding identification tags, pole tags, and any other method of identification from the Pole.

SECTION 3. MAINTENANCE

City shall maintain all Equipment Attached to any Pole in good and safe condition. City shall maintain current and accurate location maps and records of all such Attachments.

SECTION 4. EMERGENCIES

In the event of an emergency, PSE may relocate any Attachments and take such other action affecting such Attachments, as PSE deems appropriate in the circumstances. The

Parties' respective emergency phone numbers are as follows:

Puget Sound Energy, Inc. | 1-888-225-5773

City of Anacortes | 1-360-428-1598

Each Party shall promptly notify the other of any change in such Party's emergency phone number.

SECTION 5. RELOCATION, REPLACEMENT, AND REMOVAL OF POLES

- 5.1** City understands and agrees that PSE Facilities are essentially for PSE's exclusive use. PSE reserves the right at any time, without City's knowledge or consent, to add to its Facilities, raise the voltage on its circuits or change their character or to remove, replace, or relocate the Facilities. In the event PSE modifies, removes, replaces or relocates its Facilities and such change requires City to remove or relocate City's Equipment, PSE shall provide City with either Written Notice or Electronic Notice. City shall relocate or remove its Equipment, at City's sole expense, within thirty (30) days from the date of PSE's Written Notice or Electronic Notice requesting the relocation or removal of City's Equipment. Following the thirty (30) days, at PSE's discretion, PSE may remove or relocate the Equipment and bill City for the cost of such removal or relocation. If City performs the removal or relocation work, City shall be responsible for any liability or additional costs associated with removing the old Facilities and relocating them.
- 5.2** PSE may in an emergency, relocate, replace, or remove such Attachment and perform any other work in connection with such Attachment that may be required for the maintenance, relocation, replacement, or removal of said Poles, or the facilities thereon or which may be placed thereon, or for the service needs of PSE. All such work shall be performed at City's sole risk and expense and City shall reimburse PSE for the entire expense thereby incurred.
- 5.3** If, in the judgment of PSE, an existing Attachment on any Pole interferes with or prevents the attachment of any additional facilities of PSE or any other person or entity having a joint ownership interest with PSE in such Pole, and if such additional facilities could be attached to such Pole by removing the Attachment or by rearranging existing facilities thereon, PSE will so notify City. Such notice shall state what rearrangement of facilities or Pole replacement and transfer of facilities is required to continue the accommodation of the Attachment. If City desires to continue to maintain the Attachment on such Pole and so notifies PSE within thirty (30) days after PSE gives notice to City, City shall make such rearrangement at the sole risk and expense of City. If City does not so notify PSE prior to the end of such thirty (30) day period, PSE shall make such rearrangement at the sole risk and expense of City, and City shall reimburse PSE for the entire expense thereby incurred. If City does not desire to continue to maintain the Attachment on such Pole, City shall remove the Attachment from such Pole within thirty (30) days from the date of PSE's original notice to City. If the Attachment is not removed from the Pole at the end of the thirty (30) day period, PSE may remove the Attachment at City's sole risk and expense and City shall reimburse PSE for the entire expense thereby incurred.
- 5.4** If PSE replaces or relocates an existing Pole, PSE will be responsible for transferring its Facilities to the replacement Pole. PSE may, in its discretion, also transfer City's Attachment(s) to the replacement Pole, provided that City has given its prior approval. The

physical transfer will be made at the sole risk and expense of City. If PSE transfers City's Attachment(s) to the replacement Pole at the same time PSE is transferring its own facilities to the replacement Pole, City shall reimburse PSE for any and all costs and expense thereby incurred in connection with such transfer in accordance with Appendix IV, "First Trip Costs" which may be amended from time to time upon written notice to City from PSE.

If PSE replaces or relocates an existing Pole on which there is an Attachment, and PSE does not have City's approval or for any other reason does not transfer City's Attachment(s) to the replacement Pole, then PSE may remove the upper portion of the replaced Pole approximately one (1) foot above the highest communication attachment and City shall transfer its Attachment(s) to the replacement Pole within thirty (30) days and reimburse PSE the "Topping Fee" in accordance with Appendix IV, which may be amended from time to time. If City fails after thirty (30) days' notice to transfer its Attachment(s) from the replaced Pole to the replacement Pole, PSE may have such work performed by a licensed contractor competent to perform such work, and PSE will charge City for such work in accordance with Appendix IV, "Return Trip Costs".

- 5.5 PSE may, in its sole discretion, choose to install an Arm to support facilities on a Pole, whether such Pole is solely owned by PSE or is jointly owned by PSE and another owner. In such case, PSE may require City to relocate any of its Attachments to the Arm in accordance with paragraph 5.2 above.
- 5.6 If at any time PSE determines, in its reasonable judgment, that a Pole is required for the sole use of PSE or is no longer suitable for attachment of City's Equipment because of safety or the other factors set forth in Section 2.5, PSE may require City to remove its Attachments from such Pole upon sixty (60) days' advance notice. In the event City fails to remove its Attachments from the Pole within such sixty (60) day period, PSE may remove such Attachments at City's sole risk and expense and City shall reimburse PSE for the entire expense thereby incurred.

SECTION 6. FEES

- 6.1 City shall pay PSE "Annual Rental Fees" when due, in accordance with and incorporated by reference as Appendix III. PSE may adjust the Annual Rental Fee payable by City under this Agreement at any time and from time to time by notice submitted in accordance with Section 25.1
- 6.2 Payment from City for Annual Rental Fees for each Calendar Year and all other PSE invoices are due within thirty (30) days of receipt of the invoice from PSE.
- 6.3 Annual Rental Fees for Attachments permitted on or after the beginning of the current Calendar Year shall be billed after the Attachment Permits for those attachments are approved by PSE; provided, however, that the foregoing will not relieve City from any liability for Attachments made without PSE approval, including, without limitation, payment of any and all Annual Rental Fees with respect thereto. There shall be no abatement or reduction in such fees for Attachments in place for less than the full Calendar Year, for Attachments permitted but not yet actually made or Attachments that are acquired, assigned, or purchased by City during the Calendar Year from another entity.

6.4 Fees for Transferring Communication Equipment (Appendix IV) may be adjusted by PSE from time to time. PSE shall provide to City at least sixty 60 days prior Written Notice before the effective date of the new fees.

6.5 City may overlash its Equipment onto existing Equipment owned by it and such overlash shall not be considered a separate Attachment for purposes of assessing the PSE Annual Rental Fee. City must submit a new Attachment Application prior to overlashing. Such overlash cable shall be subject to all other terms and conditions of the Pole Attachment Agreement including inspection by PSE prior to City overlashing.

In the event of an emergency or for general maintenance purposes, City may overlash its Equipment without submitting a new Attachment Application prior to overlashing. City must promptly notify PSE pursuant to City overlashing. Such overlash cable shall not exceed four (4) Pole span lengths and shall be subject to all other terms and conditions of the Pole Attachment Agreement including inspection by PSE pursuant to City overlashing.

In addition, PSE may recover its administrative, engineering and inspection costs associated with approving City's overlashing. Under no circumstances shall City overlash its Equipment onto existing Equipment that is not owned by City, nor shall City allow third parties to overlash its existing Equipment. PSE shall assume that the strand owner also owns the overlash cable, unless otherwise notified by City or a third party. Any overlash that does not comply with this Section shall be considered an Unauthorized Attachment.

6.6 City may attach guy wires to PSE anchors with PSE's prior approval according to paragraph 2.9 above using the method described in the PSE Attachment Specifications.

6.7 Unauthorized Attachments shall be addressed as follows:

- a) within sixty (60) days of receipt of notice specifying the Unauthorized Attachment, City shall correct the Unauthorized Attachment in accordance with this Agreement and send Written Notice to PSE of its compliance; or
- b) within thirty (30) days of receipt of notice specifying the Unauthorized Attachment, City shall submit to PSE a mutually agreeable plan to correct the Unauthorized Attachment ("Plan of Correction") and thereafter City complies with the plan, if accepted by PSE or with another plan approved by PSE. City's Plan of Correction shall, at a minimum, set out the completion date, as well as reasons to support that date.
- c) Notwithstanding Section 6.7 (a & b) above, should PSE determine that the Unauthorized Attachment poses an immediate hazard, PSE may require a shorter period of time to correct the Unauthorized Attachment.
- d) If City has failed to meet the timeline specified in Section 6.7 (a or b) by sixty (60) days or more, PSE may
 - (i) Correct the Unauthorized Attachment and City shall be liable for all costs associated with this correction, or
 - (ii) remove City's Attachments and City shall be liable for all costs associated with this removal.

- 6.8 If the rearrangement of PSE's Facilities or the Equipment of any other party licensed by PSE to use the Facilities are required in order for PSE to provide City with access to the Facilities ("Make-ready"), the costs for such additional Facilities and Make-ready, including, but not limited to, special inspections, pre-construction, engineering, make ready, change out, rearrangement work, shall be at the sole expense of the City, and City agrees to pay all invoices when due.
- 6.9 For the purposes of this Agreement, an account is in good standing if all invoices are paid in accordance with Article 6 (Fees).

SECTION 7. DEFAULT AND REMEDIES

- 7.1 PSE expects City to respond to PSE notices, including timely payment of invoices, and to remove abandoned Equipment, identify Equipment, and provide prior Written Notice of any proposed assignment of Equipment or entity. The occurrence of any one or more of the following events constitutes an "Event of Default" by City:
- a) City fails to pay any amount due under this Agreement within ten (10) days after receipt of Written Notice of such failure from PSE.
 - b) City fails to provide prior Written Notice to PSE of intent to assign this Agreement or the Equipment attached to PSE Facilities.
 - c) City assigns this Agreement, in violation of the terms and conditions of this Agreement, without prior written consent from PSE.
 - d) A petition is filed by or against City under the Federal Bankruptcy Code or any similar law or statute of the United States or any state (and with respect to any petition filed against City, such petition is not dismissed within sixty (60) days after the filing thereof) or City is adjudged a bankrupt or insolvent, or receiver, custodian or trustee is appointed for City or for any of the assets of City which appointment is not vacated within thirty (30) days of the date of appointment, or City becomes insolvent, is unable to pay its debts and they become due, or makes a transfer in fraud of creditors.
 - e) City fails to perform or observe any other term or condition of this Agreement and such failure continues for thirty (30) days after Written Notice from PSE; provided, however that if such failure is capable of being cured, but not within such 30-day period, PSE may extend such period as approved in writing by PSE, so long as City commences appropriate curative action and diligently prosecutes such cure to completion.
- 7.2 So long as an Event of Default applicable to this Agreement continues beyond the specified period or, if no period is specified, beyond thirty (30) days, PSE may terminate this Agreement without notice or demand except as expressly required above, revoke all PSE Attachment Permits issued to City, and pursue any other remedy it may have under applicable law. In the event PSE terminates this Agreement pursuant to this Article, City shall disconnect City's Equipment from PSE Facilities within nine (9) months. Should City fail to remove its Equipment within the nine (9) month period, or should City fail to begin such removal promptly after termination and thereafter work diligently and continuously to effect such removal, PSE may remove City's Equipment at City's expense.

SECTION 8. PERFORMANCE OF WORK

- 8.1** The Attachment, maintenance, repair, relocation, replacement, and removal of Equipment and other work performed by City in connection with this Agreement or the Attachment of Equipment to Poles is sometimes collectively referred to herein as the "Work."
- 8.2** City shall furnish all personnel, supervision, labor, transportation, tools, equipment and materials for performance of the Work. City shall expeditiously and efficiently perform the Work in accordance with the provisions of this Agreement. City shall ensure that all personnel who perform its Work shall be fully experienced and properly qualified to perform the same. City shall not hire any employee of PSE to perform any of the Work.
- 8.3** City shall perform the Work in a workmanlike and skillful manner. City shall ensure that the Work and the Equipment is in all respects (a) safe, (b) of first-class quality, (c) free from all faults and defects in workmanship, material and design, and (d) in conformance with such requirements of the current PSE Pole Attachment Specifications (Appendix V) and all laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals pertaining to Pole line construction, operation and maintenance, including without limitation, the requirements of the latest edition of the National Electrical Safety Code.
- 8.4** City shall promptly and satisfactorily correct or replace any Work or Equipment found to be defective or not in conformity with the requirements of this Agreement (including, but not limited to, the requirements of paragraph 8.3). If City fails or refuses to perform any Work required by this Agreement or to make any such corrections or replacements, PSE may perform such Work and make such corrections and replacements at City's expense.
- 8.5** City shall ensure that all personnel who perform the Work shall be fully experienced and properly qualified to perform the same. City shall, if so requested by PSE, remove from performance of the Work any personnel whom PSE finds to be incompetent, careless or otherwise objectionable.
- 8.6** Whenever City has knowledge of any actual or potential labor dispute involving its employees which may in any way affect, delay or arise in connection with or as a result of the performance of the Work or this Agreement, City shall immediately notify and submit all relevant information to PSE.
- 8.7** City shall, at all times, keep its work areas cleared of rubbish, refuse and other debris and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, City shall promptly remove all rubbish, refuse and other debris and all of its equipment and surplus materials.
- 8.8** City shall give immediate attention to, and shall use its best efforts to promptly, courteously and equitably respond to, adjust and settle (without obligating PSE in any way), all complaints received by City from third parties arising out of or in connection with performance of the Work. City shall promptly notify PSE of all such complaints and any action taken (or to be taken) in connection therewith. In handling any complaints, City shall use its best efforts to maintain and promote good public relations for PSE.

SECTION 9. PROTECTION OF PROPERTY AND PERSONS

- 9.1 City shall take all precautions necessary to prevent bodily injury (including death) to persons and damage to any property or environment arising in connection with performance of the Work or the operation of the Equipment. Without limiting the generality of the foregoing, City shall erect and maintain such barricades, signs, flags, flashers, and other safeguards as are required from time to time by PSE. City shall inspect all goods, materials, tools, equipment, and other items to discover any conditions which involve a risk of bodily injury (including death) to persons, or a risk of damage to any property or environment, and shall be solely responsible for discovery and correction of, and protection against, all such conditions.
- 9.2 All property damaged, altered or removed in connection with City's performance of the Work or the operation of the Equipment shall be promptly repaired, replaced or otherwise restored by City to at least as good quality and condition as existed prior to such damaging, alteration or removal.
- 9.3 City shall ensure that no utility (including all supply, disposal, distribution and communication systems, and all similar or related facilities, equipment and other property) is damaged, altered, removed or interrupted in connection with the performance of the Work or the operation of the Equipment. If City requires the temporary shutoff of any of PSE's electric circuits or other elements of its or a third party's utility system, City shall request PSE's approval thereof at least forty-eight (48) hours in advance of the time it requires the shutoff. City shall perform the Work requiring the shutoff only after such approval has been obtained and on such days and at such hours as PSE may direct.
- 9.4 Prior to performing any of the Work, City shall obtain from PSE all relevant information as to the nature of the electric circuits attached to the Poles to which such Work relates. City shall ensure that such circuits continue in normal operation at all times during performance of the Work. Without limiting paragraph 9.1, City shall take all precautions which are necessary to prevent bodily injury (including death) and property damage resulting from such circuits in the course of performing the Work.

SECTION 10. COOPERATION AND COORDINATION

- 10.1 City acknowledges and anticipates that the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by PSE or others. City shall fully cooperate with PSE and others and coordinate the Work with such other work so as to minimize any delay or hindrance of any work.
- 10.2 If any part of the Work depends upon the results of other work by PSE or others, City shall, prior to commencing such Work, notify PSE in writing of any actual or apparent deficiencies or defects in such other work that renders it unsuitable for performance of the Work. Failure of City to so notify PSE shall constitute an acceptance by City of such other work as suitable for performance of the Work, except as to latent defects which may subsequently be discovered in such other work.

SECTION 11. LIENS

City shall timely pay all (and shall promptly secure the discharge of any liens asserted by any) persons and entities furnishing labor, equipment, materials or other items in connection with the Work. City shall furnish to PSE such releases of claims and other documents as may be requested by PSE from time to time to evidence such payment (and discharge). If any such persons or entities are not timely paid (or if any of such liens are not promptly discharged), PSE may make such payments (and secure such discharge) at City's expense and City shall reimburse PSE for the entire expense thereby incurred.

SECTION 12. COMPLIANCE WITH LAWS

12.1 In the performance of the Work and this Agreement, City shall comply and shall ensure that all contractors of any tier comply with all applicable:

- a) Laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority;
- b) Industry standards and codes; and
- c) PSE Pole Attachment Specification, which is attached and incorporated by reference as Appendix V and may be modified by PSE from time to time.

City shall furnish such documents as may be required to effect or evidence compliance. All laws, regulations, and orders required to be incorporated in agreements of this character are hereby incorporated herein by this reference.

12.2 If applicable, City shall comply with Executive Order No. 11246, Executive Order No. 11701, the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Rehabilitation Act of 1973, and all orders, rules and regulations promulgated thereunder (including, but not limited to 41 C.F.R. Part 60-1, 41 C.F.R. Part 60-250 and 41 C.F.R. Part 60-741), all as the same may have been or may be amended. The "equal opportunity clause" of 41 C.F.R. § 60-1.4(b), the "Affirmative Action Obligations for Disabled Veterans and Veterans of the Vietnam Era" clause of 41 C.F.R. § 60-250.4 and the "Affirmative Action for Handicapped Workers" clause of 41 C.F.R. § 60-741.4 are incorporated herein by this reference. By signing the Agreement, City certifies that segregated facilities (within the meaning of 41 C.F.R. § 60-1.8) are not and will not be maintained or provided for City's employees and that City will not permit its employees to perform Work at any location under City's control where segregated facilities are maintained. City shall obtain a similar certification from any of its subcontractors or suppliers as required by 41 C.F.R. § 60-1.8. This paragraph 12.2 shall apply only if and to the extent required by law or by any agreement now or hereafter entered into between PSE and the United States of America.

SECTION 13. TAXES

City shall pay (except as otherwise required by law) all taxes applicable to or incurred in connection with the Work, the Equipment, or the System of which the Equipment constitutes a part.

SECTION 14. PERMITS AND PROTECTION OF EXISTING RIGHTS

- 14.1** City shall obtain and comply (and shall ensure that all of City's suppliers and subcontractors of any tier comply) with all permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and operate the Equipment and the System in accordance with this Agreement. City shall furnish to PSE such evidence thereof as PSE may request. Compliance with this paragraph 14.1 shall be the sole responsibility of City and a continuing condition of the use of the Poles by City.
- 14.2** City shall release and defend, indemnify and hold harmless PSE, its successors and assigns, and the respective directors, officers, employees, and agents of PSE and its successors and assigns (collectively referred to hereafter as the "Indemnitees") from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with any violation (or alleged violation) of any contract, permit, license, franchise, right-of-way, easement or other rights of PSE that is based on or relates to any Attachment. Upon the request of PSE, City shall immediately remove any Attachment that violates, is alleged to violate or, in the judgment of PSE, jeopardizes any contract, permit, license, franchise, right-of-way, easement or other rights of PSE. If City fails to remove the Attachment within fifteen (15) days after PSE makes its request, PSE may remove the Attachment at City's sole risk and expense and City shall reimburse PSE for the entire expense thereby incurred.

SECTION 15. EXAMINATION OF RECORDS

City shall promptly furnish PSE with such information related to the Work or the Equipment as may from time to time be requested by PSE. Until the expiration of three (3) years after the termination of the Term, PSE shall have access to examine all of City's books, documents, papers and records which are related to the Work, the Equipment, or this Agreement, provided the City is required to retain such records pursuant to the Public Records Act at RCW 42.56.

SECTION 16. STATUS OF CITY

- 16.1** City represents and warrants that it is, and that at all times during the Term it shall be properly authorized, licensed, organized, equipped and financed to perform the Work and to operate the Equipment and the System.
- 16.2** City shall be and operate as an independent entity (not a contractor, agent or representative of PSE) in the performance of the Work and the operation of the Equipment and City's System. In no event shall City be authorized to enter into any agreements or undertakings for or on behalf of PSE or to act as or be an agent or representative of PSE.

SECTION 17. RELEASE, INDEMNITY, HOLD HARMLESS AND LIMITATION OF LIABILITY

- 17.1** City releases and shall defend, indemnify and hold harmless the Indemnitees from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising (whether before or after termination of the Term) out of or in connection with any Attachment, the performance of the Work, the operation of the Equipment or the System by City, the enforcement of this Agreement by PSE, any

default under or breach of this Agreement by City or the acts or omissions of City or any of its suppliers or subcontractors of any tier, the respective successors and assigns of City or any such suppliers or subcontractors, the directors, officers, employees and agents of each of the foregoing, or anyone acting on City's behalf in connection with this Agreement. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply regardless of any act, omission, fault, negligence or strict liability of the Indemnitees; provided, however, that City shall not be required to so indemnify any Indemnitee(s) against any claim, loss, cost, liability, damage or expense to the extent the same is caused by or results from the negligence of any Indemnitee(s). In connection with any action to enforce this Section 17, City waives any immunity, defense, or protection under any workers' compensation, industrial insurance, or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington). PSE is willing to permit Attachments for the fees described in Section 6 only in consideration of and in reliance upon such release, indemnity and hold harmless. Consequently, such release, indemnity, and hold harmless shall be construed broadly in favor of the Indemnitees.

- 17.2** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, PSE SHALL NOT HAVE ANY LIABILITY TO CITY FOR ANY: LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR THE SYSTEM, CLAIMS OF CUSTOMERS OF CITY FOR SERVICE INTERRUPTIONS, OR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, ANY ATTACHMENT, OR THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF PSE HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

SECTION 18. WORKER'S COMPENSATION AND INSURANCE

- 18.1 Insurance Required.** At all times during the term of this Agreement, City and all persons performing the Work, City or its suppliers or subcontractors, shall keep in force and effect insurance policies as described below:

- a) **Workers Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits as required for all employees by Title 51 of the Revised Code of Washington and Employer's Liability Insurance, including Occupational Disease coverage, in the amount of \$1,000,000 for each accident, each employee, and policy limit. City shall require subcontractors to obtain and maintain such insurance.
- b) **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$ 2,000,000 general aggregate, \$ 2,000,000 products/completed operations aggregate, \$ 2,000,000 personal injury, \$ 2,000,000 each occurrence.
- c) **Automobile Liability Insurance.** Commercial automobile policy covering all owned, hired and non-owned autos and commercial vehicles to be used in the performance of the Work. Limits of liability not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage.

- d) Umbrella/Excess Liability Insurance. Coverage is to be responsible in excess of the sum employers' liability, commercial general liability, and auto liability. Limits of liability not less than \$ 4,000,000 each occurrence/ \$ 4,000,000 aggregate.
- e) Property Insurance. Each party will be responsible for costs associated with maintaining their own property.

- 18.2 City shall ensure compliance with insurance requirements as outlined above such as will protect the Indemnitees from any and all claims, losses, harm, costs, liabilities, damages and expenses arising out of personal injury (including death) or property damage that may result from performance of the Work or this Agreement or the operation of the Equipment or the System, whether such performance or operation is by City or any of its suppliers or subcontractors of any tier.
- 18.3 No policies of insurance required to be obtained by City or its subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with PSE except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage from injuries to PSE's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by City's subcontractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- 18.4 Within thirty (30) days after any notice of termination, cancellation, expiration or alteration in any policy of insurance required under this Agreement, City shall deliver to PSE a Certificate of Insurance acceptable to PSE with respect to any replacement policy.
- 18.5 The requirements of this Agreement as to insurance and acceptability to PSE of insurers and insurance to be maintained by City are not intended to and shall not in any manner limit or qualify the liabilities and obligations of or assumed by City under this Agreement.
- 18.6 The Parties acknowledge that the City's participates in a municipal risk pool. City shall provide evidence or confirmation that the coverage provided by such participation provides coverage at least as broad as the requirements outlined in this Section 18.

SECTION 19. RISK OF LOSS

City shall be responsible for and shall bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the System and anything used (or to be used or consumed) in connection with the Work.

SECTION 20. REIMBURSEMENT AND PAYMENT

PSE shall invoice City for all amounts payable by City to PSE under this Agreement (including, without limitation, the payments described in Section 6 and all reimbursable costs and expenses described elsewhere in this Agreement) as they become due. City shall pay each such invoice in full within thirty (30) days after City's receipt thereof.

SECTION 21. ATTORNEY'S FEES

The prevailing Party in any suit, action, or arbitration filed or held concerning this Agreement shall be entitled to recover, in addition to all other relief, its reasonable attorney's fees incurred in connection therewith, both at trial and on any appeal.

SECTION 22. LATE CHARGES AND INTEREST

- 22.1** City acknowledges that late payment of any fee or other amounts due to PSE under this Agreement will cause PSE to incur certain administrative, processing accounting costs not otherwise contemplated by this Agreement, the exact amount of which will be extremely difficult, if not impossible, to ascertain. Accordingly, if any fee or other amounts shall not be received by PSE within thirty (30) days after such amounts shall first become due, City shall pay to PSE a late charge, as liquidated damages and not as a penalty, equal to two percent (2%) of such overdue amounts as a reasonable estimate of the administrative, processing and accounting costs PSE will incur by reason of late payment by City. Such late charge is intended to be in lieu of City's liability for such costs, but shall not relieve or release City from liability for any other costs or damages suffered by PSE by reason of late payment. Payment of such late charge shall in no event excuse or cure any default under or breach of this Agreement by City.
- 22.2** In addition to any late charge under paragraph 22.1, City shall pay to PSE interest, compounded daily, at the rate of one percent (1%) per month or the maximum rate permitted by applicable law, whichever is less, on any fees or other amounts not paid to PSE when due under this Agreement, from the date due until the date paid. Payment of such interest shall not excuse or cure any breach of or default under this Agreement by City.

SECTION 23. NONWAIVER

The failure of PSE to insist upon or enforce strict performance by City of any of the provisions of this Agreement, or to exercise any rights under this Agreement, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

SECTION 24. ASSIGNMENT; SUCCESSORS AND ASSIGNS

City shall not assign, apportion, delegate or sublease any of its rights or obligations under this Agreement or assign this Agreement in whole or in part, by operation of law or otherwise, without the prior written consent of PSE, which consent shall not be unreasonably withheld. Any apportionment, delegation, sublease or assignment or purported apportionment, delegation, sublease or assignment without the prior written consent of PSE shall be voidable by PSE. In any event, no sublease or assignment of this Agreement shall relieve City from any of its liabilities or obligations under this Agreement. Subject to the foregoing restrictions on assignments without the prior written consent of PSE, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the successors and assigns of the respective Parties hereto.

SECTION 25. NOTICES AND OTHER COMMUNICATIONS

25.1 Written Notice. As referenced elsewhere in this Agreement, PSE and City shall provide notice, approval, consent, instruction, direction or other communication to each other in writing ("Written Notice"). The following notices, requests, demands and other communications hereunder shall be in writing, and shall be deemed given if personally delivered, sent via overnight delivery, or within five days of being deposited in the US Mail with appropriate postage:

- a) Notice of adjustment of the Annual Rental Fee (Appendix III).
- b) Notice of code violation: City's Equipment fails to comply with the requirements of NESC.
- c) Notice of permit violation: City's Equipment fails to comply with the requirements of Appendix V.
- d) Notice of termination of Agreement by either Party.
- e) Notice of failure to respond to an invoice.
- f) Notice in lieu of payment of an invoice.
- g) Notice of consent of assignment of Agreement to a third party.
- h) Notice of rearrangement of City's Equipment by PSE.
- i) Notice of City failure to perform or observe any other term or condition of this Agreement.

Written Notice shall be made to the following addresses and either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this section:

If to:

Puget Sound Energy, Inc.: 3380 146th PL SE #310, Bellevue, WA 98007 / Pole Services

City of Anacortes: 904 6th Street, PO Box 547, Anacortes, WA 98221 / Municipal Fiber Manager

25.2 Electronic Notice. As referenced in this Agreement, PSE and City may provide notice to each other electronically ("Electronic Notice"). The following notices, requests, demands and other communications hereunder shall be in electronic format, via the Internet or NJUNS (National Joint Use Notification System); or other mutually agreed to Joint-Use Notification System:

- a) Attachment Applications
- b) Notice of denial or approval of Attachment Applications
- c) Notice of pole transfers or other work on PSE Facilities
- d) Other notifications and communications as approved by PSE
- e) Termination of Attachment Notice

SECTION 26. VOLUNTARY EARLY TERMINATION

Either Party shall have the right to terminate this Agreement or any Attachment/s made pursuant hereto, for any reason and at any time, upon providing the non-terminating Party with one hundred and eighty (180) calendar days prior Written Notice. Where City or PSE exercises such right, City will remove the impacted Attachments and Equipment from PSE's Facilities at City's expense, within six (6) months from the date of Termination as specified in the Notice of Termination. City will return the poles utilized by City to their original condition, with the exception of normal wear and tear.

SECTION 27. SURVIVAL

The obligations imposed on City under Sections 6, 11, 15, 17, 20, 21, 22, 23, 24, 25, 28, 29, and 30, and paragraph 7.2, and all provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement, shall survive the completion, termination or cancellation of this Agreement.

SECTION 28. REGULATORY APPROVALS

This Agreement and any transfers of property pursuant to this Agreement are subject to the authority of regulatory agencies having jurisdiction over the Parties, or either of them, with respect thereto. Each Party shall promptly submit this Agreement to the regulatory agencies having such jurisdiction over such Party and shall take such additional action as may reasonably be required to promptly obtain any required approvals or other action by such agencies.

SECTION 29. MISCELLANEOUS

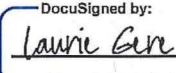
- 29.1 The rights and obligations of the Parties hereunder shall be subject to and governed by this Agreement. This Agreement sets forth the entire agreement of the Parties, and supersedes any and all prior agreements, with respect to Attachments.
- 29.2 This Agreement may not be modified except by a writing executed contemporaneously herewith or subsequent hereto signed by both Parties.
- 29.3 Each Party shall take such action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.
- 29.4 The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 29.5 The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

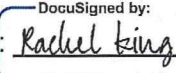
SECTION 30. APPLICABLE LAW

This Agreement shall in all respects be interpreted, construed, and enforced in accordance with the laws of the State of Washington.

City /Accepted and Agreed:
City of Anacortes

PSE /Accepted and Agreed:
Puget Sound Energy, Inc.

By  _____
DocuSigned by:
9C8EE8989EBA4F7...

By  _____
DocuSigned by:
09D1500FDC76473...

Title: Mayor

Title: Supervisor, Account Management

Date: 10/14/2019

Date: 10/16/2019

Address:

904 6th Street (PO Box 547)
Anacortes, WA 98221
Attn: Municipal Fiber Manager

Address:

3380 146th PL SE #310
Bellevue, WA 98007
Attn: Pole Services

APPENDICES

- I** Certificate of Insurance, referenced in § 18 of the Agreement
- II** Pole Attachment Application, referenced at § 2.3 of the Agreement
- III** Annual Rental Fee, referenced at § 6.1 of the Agreement
- IV** Fees for Transferring Communication Equipment, referenced at § 5.4 of the Agreement
- V** PSE Pole Attachment Specifications

Appendix I

INSURANCE REQUIREMENTS

**Attach Certificate of Insurance of
Puget Sound Energy, Inc. Mandatory Requirements**

Appendix II**APPLICATION FOR ATTACHMENT**Application or
Job Number

Date

TO: Puget Sound Energy**Licensee:****Name:****Address:****Email/Phone #:**

Please grant permission to occupy your poles in accordance with the conditions set forth in Pole Attachment Agreement, dated _____

- ☐ Application for rental on _____ distribution poles
- ☐ Application for rental on _____ transmission poles

DESCRIPTION OF WORK:

Overlashing

New Cable

- | | |
|--------------------------|---|
| ☐ | PSE Universal maps attached with requested poles highlighted. |
| ☐ | Licensee's work sketch showing PSE grid numbers is attached. |
| ☐ | Appendix A Attached |
| ☐ | Fiber Specs Attached |
| ☐ | Photos Attached (Optional up to 10 poles) |

POWER _____ Will be installed. Pole list is attached and power
SUPPLIES _____ supply specifications are included.

Failure to supply requested information may delay acceptance of the application.

- ☐ Application or notification accepted.
- ☐ Billing of new contacts to be effective _____

LICENSOR PUGET SOUND ENERGY
BY _____

PSE Joint Use Coordinator

Date

Appendix III

ANNUAL RENTAL FEE Computation of Annual Rate for Poles Owned by PSE

A.	Net Cost of Bare Pole Calculation	PV
	1. Gross Distribution Plant	
	2. Gross Pole Investment (Acct. 364)	
	3. Distribution Plant Accumulated Depreciation	
	4. Depreciation Reserve (Poles)	
	5. Gross Plant Investment (Electric)	
	6. Accumulated Deferred Taxes (Electric) (190, 281-3)	
	7. Accumulated Deferred Taxes (Accts. 190, 281-3) (Poles)	
	8. Net Pole Investment	
	9. Appurtenances Factor	0.85
	10. Net Pole Investment Allocable to Attachments	
	11. Total Number of Poles	
	Net Cost of a Bare Pole	
B.	Carrying Charge Calculation	CC
	1. Total General and Administrative	
	2. Gross Plant Investment (Electric)	
	3. Depreciation Reserve (Electric)	
	4. Accumulated Deferred Taxes (Electric) (190, 281-3)	
	Administrative Carrying Charge	
	5. Account 593 (Maintenance of Overhead Lines)	
	6. Investment in Accts. 364, 365 & 369	
	7. Depreciation (Poles) related to Accts. 364, 365 & 369	
	8. Accumulate Deferred Income Taxes for 364, 365 & 369	
	Maintenance Carrying Charge	
	9. Gross Pole Investment (Acct. 364)	
	10. Net Pole Investment	
	11. Depreciation Rate for Gross Pole Investment	
	Depreciation Carrying Charge	
	12. Taxes (Accts. 408.1 + 409.1 + 410.1 + 411.4 - 411.1)	
	13. Gross Plant Investment (Total Plant)	
	14. Depreciation Reserve (Total Plant)	
	15. Accumulated Deferred Taxes (Total Plant) (190, 281-3)	
	Taxes Carrying Charge	
	16. Rate of Return	
	Return Carrying Charge	
	Total Carrying Charge	
C.	Space Factor Calculation	PR
	1. Occupied Space	1
	2. Usable Space	13.5
	3. Space Factor	
D.	Annual Pole Attachment Rental Rate Calculation	
	1. Net Cost of a Bare Pole	(PV)
	2. Total Carrying Charges	(CC)
	3. Space Factor	(PR)
	Pole Attachment Rental Rate	(PR*CC*PR)

Appendix IV

FEES FOR TRANSFERRING COMMUNICATIONS EQUIPMENT

FIRST TRIP COSTS – Fees for performing transfer work while PSE is in the process of doing its own work.

Crossarms, all types	\$ 145.00
Anchor strand or overhead guy	145.00
Sidewalk anchor guy and pipe	155.00
Drop wire (no splicing)	145.00
Service Conduit	195.00
Messenger and cable bolted to pole or cable arm (no splicing)	150.00
Messenger dead-end	165.00
Cable riser (including pipe and molding – no splicing)	195.00
Cable terminal (no splicing)	155.00

RETURN TRIP COSTS - Cost of performing transfer work when PSE must return to the job site. The following amounts include travel time.

Crossarms, all types	\$ 235.00
Anchor strand or overhead guy	235.00
Sidewalk anchor guy and pipe	265.00
Drop wire (no splicing)	250.00
Service Conduit	385.00
Messenger and cable bolted to pole or cable arm (no splicing)	235.00
Messenger dead-end	295.00
Cable riser (including pipe and molding – no splicing)	385.00
Cable terminal (no splicing)	265.00

TOPPING FEE \$125.00

Appendix V

POLE ATTACHMENT SPECIFICATIONS

Attached

Conductor-to-Ground Clearances

0700.3001

Scope

This standard describes the requirements for vertical clearance of overhead conductors above ground, roadways, rail, and water.

Design Practice

Clearances for conductors that PSE owns and/or operates shall meet the requirements of WAC 468-34-290 and NESC 232.

Clearances shall be calculated with the conductor temperature and loading conditions that produce the maximum final sag.

See Standard 6450.3000 for information on conductor design temperature and design tensions.

See Standard 6550.6200 for information on how to measure conductor sag.

Joint Use Construction

In joint use construction, the lowest communication conductor shall be considered. Its required clearance, plus the required spacing between the communication and power conductors may force the power conductors to have more than the minimum amount of clearance.

New Construction

If the terrain will be altered under the power line that effect the grade (such as filling, repaving a street, installing sidewalks, or adding landscaping) the clearances required by this standard shall be increased so when the terrain is at final grade, the minimum clearances are met.

Clearance Requirements

Table 1 lists the requirements for most situations that will be encountered. In rare cases, the NESC may allow reduced clearances. If the conductor is at an elevation above 3000 feet and it operates at 115 kV or more, additional clearance is required.

Conductor-to-Ground Clearances**0700.3001****Table 1**

Clearance requirements (all measurements are in feet)

	CONDUCTORS							
	Communications and common neutral	Insulated service or secondary	Uninsulated service or secondary	Primary 4.0 kV thru 34.5 kV	55	66	115	230
	GUYS							
	Guys for structures carrying 0 thru 300 V		Guys for structures carrying 301 thru 750 V	Guys for systems carrying 751 V thru 34.5 kV				
Interstate highways, state highways, and bridges on those highways (crossing).	24.0 *	24.0	24.0	4 and 15 kV = 30 34.5 kV = 32	34.0	34.0	34.0	34.0
Interstate highways, state highways, and bridges on those highways (longitudinal).	20.0	24.0	24.0	4 and 15 kV = 27 34.5 kV = 32	32.0	32.0	32.0	32.0
Municipal roads, streets, parking lots, alleys, private driveways, horse trails and areas subject to truck traffic (including farmland, orchards, pastures, and forests).	15.5	16.0	16.5	18.5	18.9	19.1	20.1	22.4
Railroad tracks (except electrified railroads using overhead trolley conductors). †	23.5	24.0	24.5	26.5	26.9	27.1	28.1	30.4
Pedestrian ways where vehicles are prohibited by regulation or permanent obstructions and not reasonably expected to be used by vehicles.	9.5	12.0	12.5	14.5	14.9	15.1	16.1	18.4
Water areas not suitable for sailboating or where sailboating is prohibited.	14.0	14.5	15.0	17.0	17.4	17.6	18.6	20.9

* This value is 20' for communications cables on joint use structures.

† The railroad company may require greater clearance than shown here.

Continued on next page

Conductor-to-Ground Clearances**0700.3001**

	CONDUCTORS							
	Communications and common neutral	Insulated service or secondary	Uninsulated service or secondary	Primary 4.0 kV thru 34.5 kV	55	66	115	230
	GUYS							
	Guys for structures carrying 0 thru 300 V		Guys for structures carrying 301 thru 750 V	Guys for systems carrying 751 V thru 34.5 kV				
Water suitable for sailboating (including lakes, ponds, reservoirs, tidal waters, rivers, streams, and canals), that are less than 20 acres.	17.5	18.0	18.5	20.5	20.9	21.1	22.1	24.4
Water suitable for sailboating, but greater than 20 acres, but less than 200 acres.	25.5	26.0	26.5	28.5	28.9	29.1	30.1	32.4
Water suitable for sailboating, but greater than 200 acres, but less than 2000 acres.	31.5	32.0	32.5	34.5	34.9	35.1	36.1	38.4
Water suitable for sailboating, and greater than 2000 acres.	37.5	38.0	38.5	40.5	40.9	41.1	42.1	44.4
Boat ramps and rigging areas.	The clearance shall be 5 ft greater than that required for the water area being served by the boat ramp or rigging area.							

These values are from NESC Table 232-1, except for the state highway clearance that is from WAC 468-34-290.

References

The following Puget Sound Energy documents apply to this standard:

6450.3000	Overhead Distribution Line Design
6550.6200	Conductor Sag Measurement

Sources

**IEEE C2-2012
NESC**

Rule 232	Vertical clearances of wires, conductors, cables, and equipment above ground, roadway, rail, or water surfaces
----------	--

WAC

468-34-290	Vertical clearance
------------	--------------------

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Scope

This standard establishes the attachment, grounding, structural, and clearance requirements for communications cables and equipment attached to Puget Sound Energy-owned poles.

This standard does not address RF antenna equipment (see Standard 0700.8500).

In This Standard

This standard contains the following topics.

Topic	See Page
Definitions	1
Transmission Pole Loading	3
Cables	4
Guys and Anchors	4
Pole Drilling	6
Unused Facilities	6
Equipment Mounting	6
Risers	7
Underground Service Drops	9
Grounding Requirements	9
Clearance Requirements	10
Streetlight Clearances	15

Definitions

These are definitions of terms used in this standard. *Figure 1* illustrates these terms.

Term	Definition
Communication Worker Safety Zone	See Safety Space.
Communications Space	The space on a pole below the Communication Worker Safety Zone where communications lines are installed. The lower bound of the Communications Space is the lowest point on the pole where communications lines may be installed and maintain adequate pole-to-pole ground clearance.
Covered Streetlight Wire	Insulated streetlight conductor covered with protective molding.
Field Face Quadrant	The quarter section of a pole on the field side of the pole gain.

Continued on next page

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Definitions, *continued*

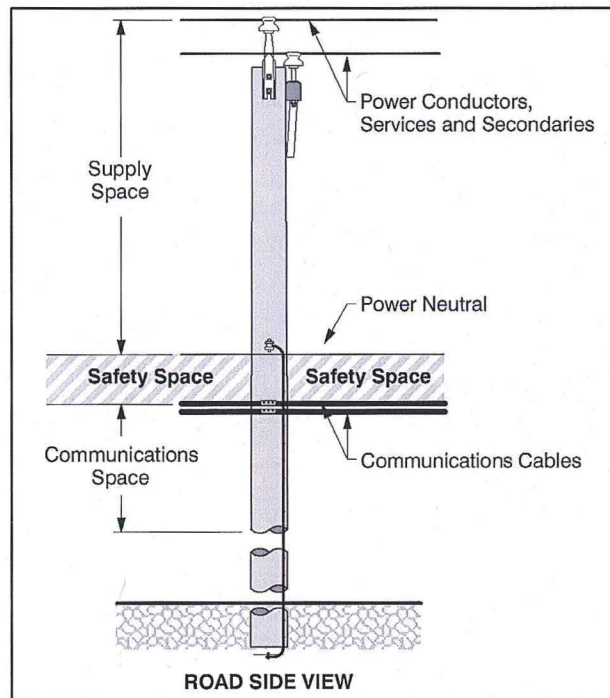
Term	Definition
Joint Utility	For the purposes of this standard, any entity (utility, public agency, communications company, or other) other than Puget Sound Energy that attaches to any Puget Sound Energy-owned facility.
Pole Face	The side or half of the pole that contains the pole gain.
Pole Gain	The notch in the pole that contains the pole manufacturing information. The pole gain is located 12 feet from the butt of the pole.
Road Face Quadrant	The quarter section of a pole on the road side of the pole gain.
Safety Space (or Communication Worker Safety Zone)	The vertical space on a pole below the supply space and above the communications space. This space is intended to provide a safe working clearance for workers in the communications space. It is defined in the NESC, Section 235C4. NOTE: The term “safety space” is used in this standard for purposes of clarity.
Supply Space	The space above the Communication Worker Safety Zone. Except for some streetlights, this is where electric supply equipment and electric supply lines (power lines) are installed. The Supply Space extends to the lower of: ▪ 120 inches down from a 115 or 230 kV transmission line conductor. ▪ 96 inches down from a 19.9/34.5 kV primary line conductor. ▪ 84 inches down from a 2.4/4.0 kV and 7.2/12.47 kV primary line conductor. ▪ The lowest attachment point of a secondary or neutral conductor.

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Figure 1

Space Allocation on a Pole



Approval Required

Joint utilities must receive written approval from Puget Sound Energy before attaching to Puget Sound Energy-owned poles. This includes overlashing cable to existing bundles on a strand. Joint utilities must also have a signed Joint Use Agreement with PSE. Joint Users must also refer to their Joint Use Agreement for any additional specific requirements.

Codes

All equipment and hardware shall be mounted on the pole in a way that provides adequate climbing and working space. In all cases, clearances and separations as required in the NESC shall be met, both at the pole and midspan.

All poles where attachments are made shall have sufficient structural capacity to support the loadings for all facilities attached. Poles should be reviewed for NESC strength compliance where new or modified facilities are proposed that would increase loading on the pole.

Transmission Pole Loading

PSE will structurally review all proposed attachments to PSE transmission poles. Attachment to transmission poles without distribution underbuild may not be approved.

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Cables

Joint utilities' cables shall:

- Attach to the same side of the pole as the power neutral conductor.
- Be installed on the road side of the pole if the power neutral conductor is on a primary crossarm.
- Be tensioned or guyed so the angle of existing structures is not altered and the sag characteristics of the power conductors do not change. All unbalanced tensions must be guyed.
- Meet all applicable NESC clearances at the time of installation or alteration.

When present, PSE-owned fiber shall take the uppermost position on the pole.

Guys and Anchors

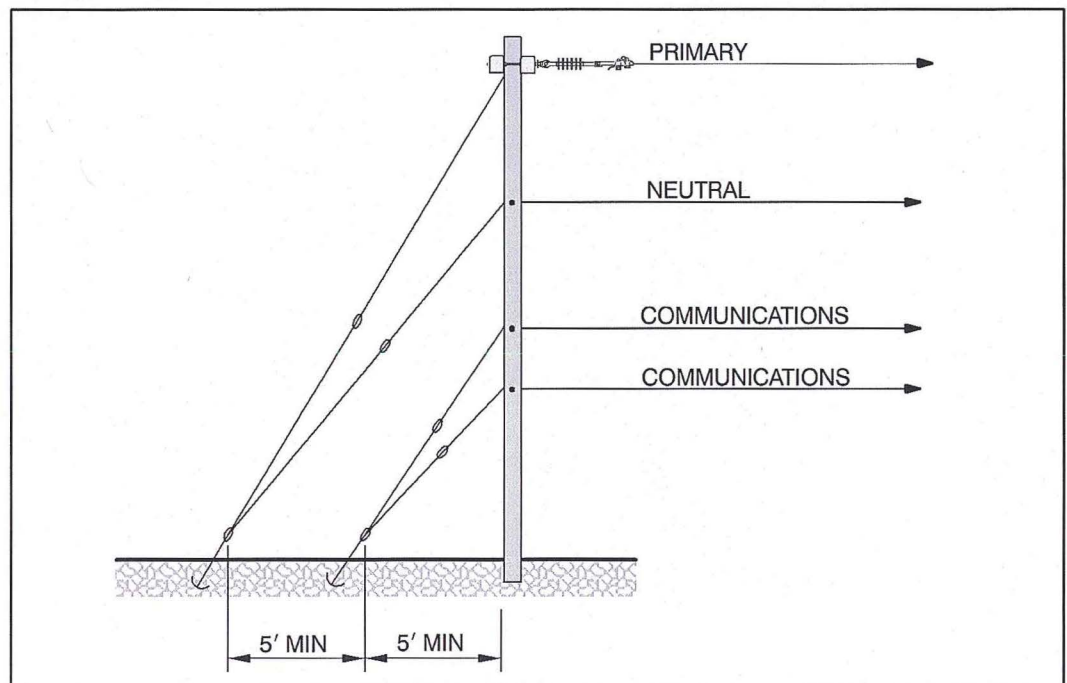
The following requirements apply to joint utilities' guys and anchors:

- Each company is responsible for installing the appropriate guying to balance the maximum horizontal tension of its cables/messengers. This includes at deadends, angles, taps, and other such locations. Service drops do not require guying unless deemed prudent by the attaching company.
 - Guys shall be installed with anchors provided and installed by the communications company. Existing PSE anchors may be used only with permission from PSE on a per location basis. Such requests may only be granted if:
 - The communication guy attachment is insulated or grounded.
 - The anchor has sufficient strength. PSE anchors have either 2 or 3 integral "eye" positions depending on the anchor type and this number of attachments shall not be exceeded. *Installing auxiliary eyes is also not permitted (see Figure 2).*
 - New anchors must be a minimum of 5 feet from existing PSE anchors and the pole (see *Figure 3*).
 - Crossing down guys or fastening two span guys together for ground clearance is not permitted.
 - Pole-to-pole span guying may not utilize a pole as an anchoring device unless a down guy meeting the requirements of this section is installed.
 - Guy markers shall be installed on all communication down guys.
 - Guys must be grounded or insulated.
-

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000
Figure 2

This type of installation is not permitted! PSE anchors have either 2 or 3 integral “eye” positions depending on the anchor type and this number of attachments may not be exceeded.


Figure 3
Anchor Placement


Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Pole Drilling

Existing holes shall be used for equipment mounting whenever possible.

When new holes must be drilled in wood poles, they shall be treated with PSE's current approved wood preservative. Treatment shall be applied using a pressure-type oil can or a bottle brush. All communication attachments on PSE steel poles must be banded to the pole unless factory predrilled holes are available. Field drilling is not allowed on steel poles unless approved by PSE on a per case basis.

Refer to PSE Standard 6450.7500 for field treatment requirements for wood poles.

Unused Facilities

Unused communication facilities that are not required for normal service, redundancy, or emergency use shall be removed.

Equipment Mounting

Joint utility-owned communications enclosures mounted more than 8 feet abovegrade on PSE-owned poles shall be no larger than 24 inches wide x 24 inches high x 18 inches deep (24" W x 24" H x 18" D). The joint utility shall provide and install all materials necessary to support a communications enclosure a minimum of **5 inches** from the face of the pole. If the enclosure is to be energized, then the joint utility shall also provide enough supply wire coiled at the weatherhead to reach the transformer secondary connections.

Communications enclosures shall be mounted directly above the pole gain. If this is not possible, they shall be mounted on the road face quadrant of the pole.

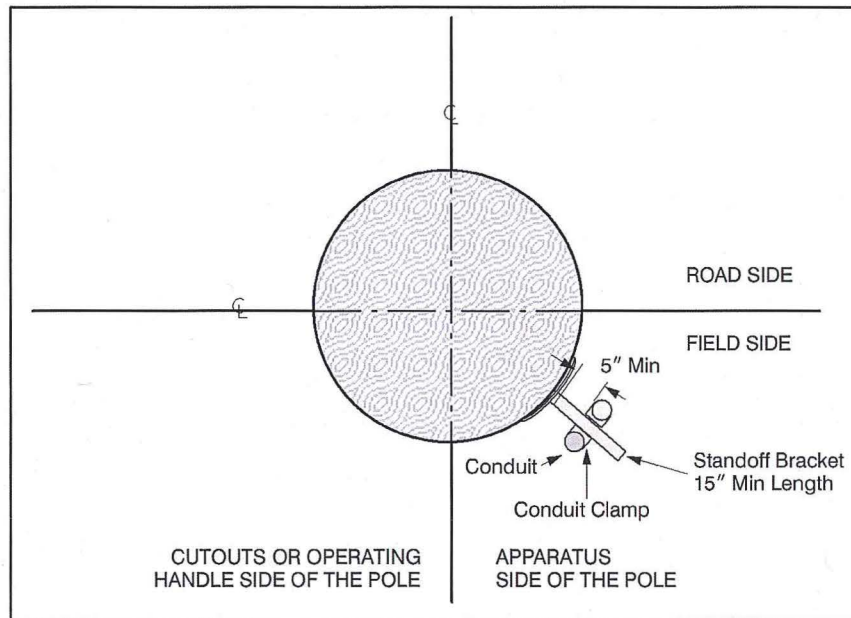
NOTE: A city or state electrical inspection is required before PSE connects communications power supply wires to power conductors.

Figure 4 illustrates the attachment requirements for risers and enclosures.

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000
Figure 4

Attachment Requirements for Risers and Enclosures



Risers

Communications risers shall be mounted:

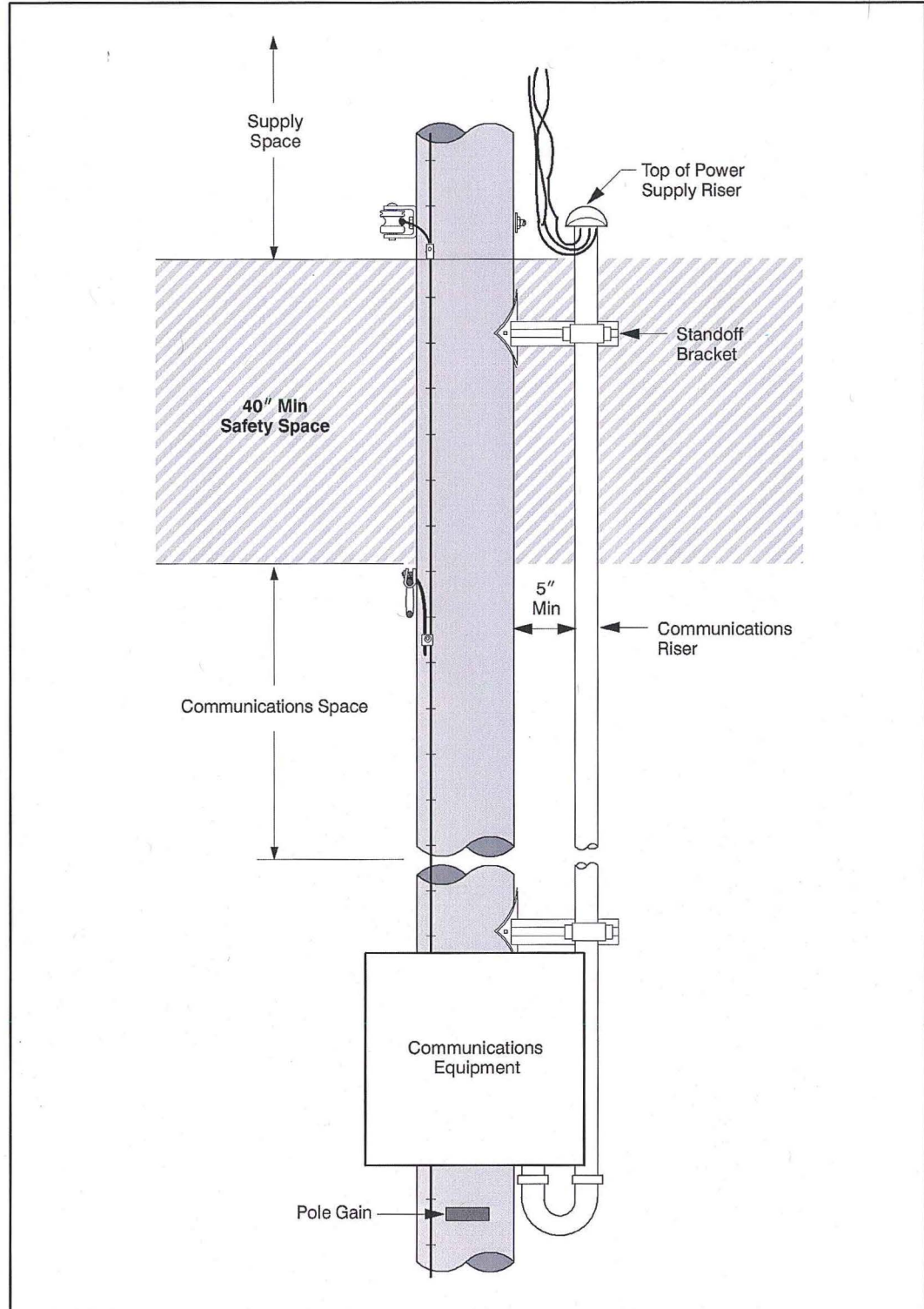
- Where they will not interfere with climbing space or the operation of pole-mounted equipment. The best position is on the field face side of the pole (see *Figure 4*); the exact location will depend on the position of obstructions and the direction of the cable or conduit run.
- On standoff brackets and provide a minimum **5-inch** clearance from the pole. Existing standoff brackets shall be used when available. If new brackets are needed, the communications company shall provide and install them.
- High enough on the pole to ensure the 40-inch safety space requirement is maintained between the bottom of the drip loop and the top of the communications space (see *Figure 5*). The bottom of the drip loop shall be no lower than the lowest piece of pole hardware in the supply space.

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Risers, *Continued*

Figure 5. Attachment Requirements for Communications Risers



Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Underground Service Drops

Communications drops less than 1/2-inch in diameter may be attached directly to a pole under the following circumstances:

- They shall be securely attached, in accordance with NESC 239D, from the ground to the communications level, using staples or other means to ensure that the cables cannot be pulled away from the pole and become a tripping or snagging hazard to the public or anyone climbing the pole.
- To minimize climbing hazards, they shall only run vertically; they shall not wrap around the pole.
- All vertical runs shall be installed on the same quadrant of the pole. If there are existing conduit risers on the pole, the vertical runs shall be placed within the same quadrant as the existing riser(s).
- Any coils of spare cable will be attached to the pole no less than 8 feet abovegrade.
- Connection blocks will be mounted on the pole in the same quadrant as the drop and shall be no larger than 20 square inches.

Grounding Requirements

Metallic Messenger Bonding

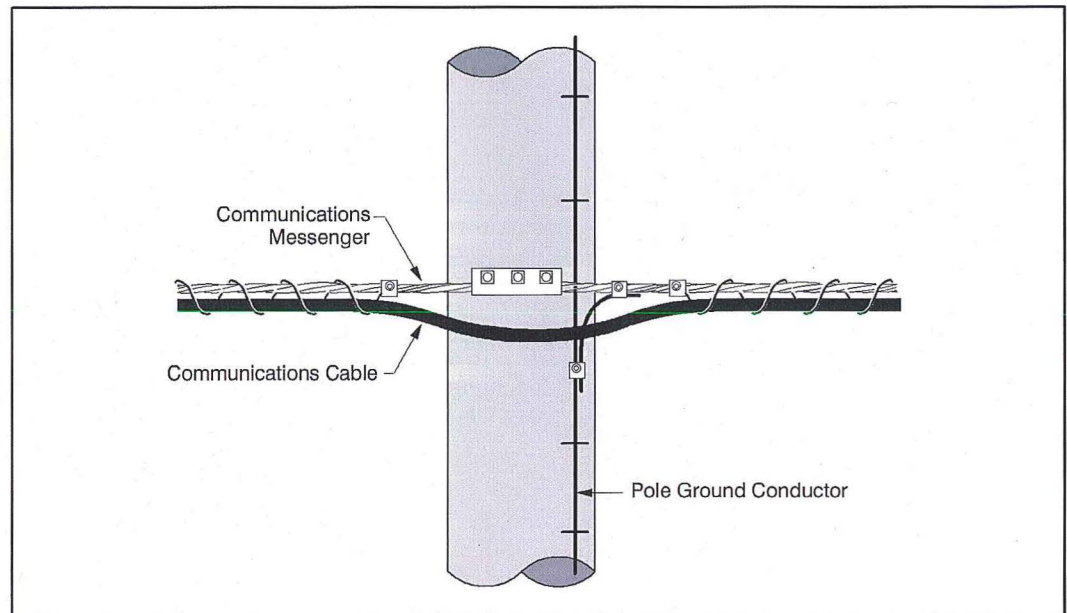
Communications metallic or conductive messengers may be bonded to the pole ground conductor, in accordance with NESC 97G, by the attaching company.

NOTE: Nonmetallic/nonconductive self-supporting messengers (i.e., Kevlar-type) do not require bonding.

Figure 6 illustrates how to construct the grounding.

Figure 6

Grounding Communications Messengers at Supports



Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Clearance Requirements

Transmission Clearances

PSE does not allow attachments to transmission poles above 100 kV unless the pole has distribution underbuild. For applications to transmission poles with existing distribution underbuild, PSE personnel will determine whether the attachment will be allowed and, if so, provide clearance requirements.

Distribution Clearances (up to and including 34.5 kV)

It is the responsibility of the joint utility to determine which clearance listed below applies, based upon the type of supply equipment or construction on the pole.

NOTE: All clearances are measured vertically.

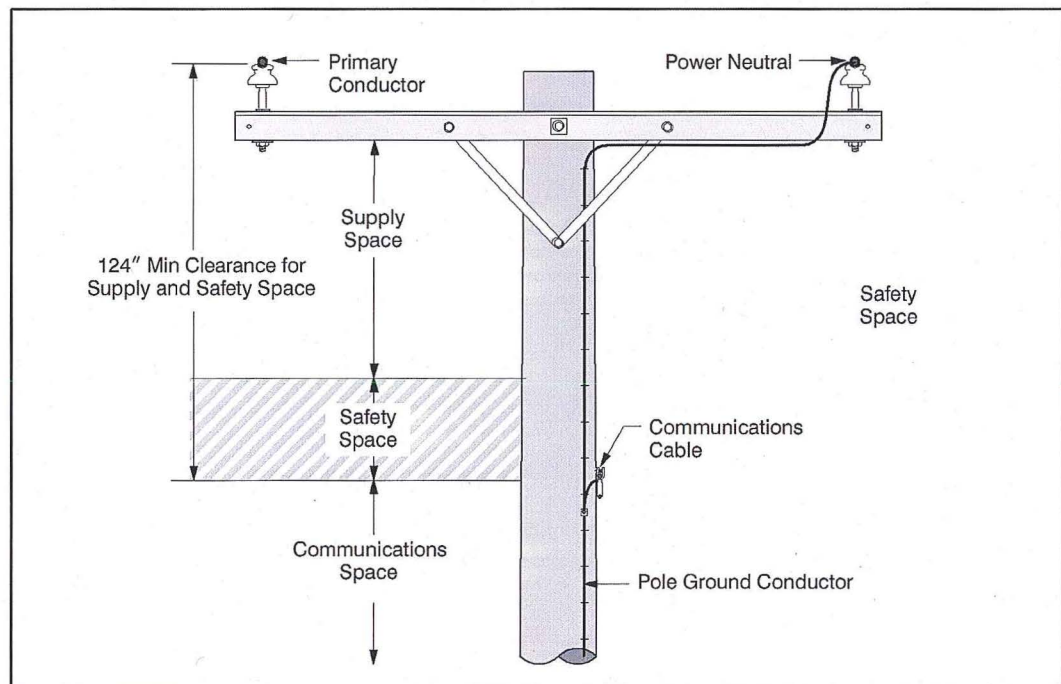
Clearance at Supports

The minimum clearance at supports between power company equipment and the top of the communications space depends upon the type of construction and equipment on the pole.

If ...	And ...	Then ...
All primary conductors are mounted on a crossarm at the same level (either single or double arm construction),	There is no additional power equipment mounted below the primary arm,	124-inch (10'-4") minimum clearance is required (<i>Figure 7</i> illustrates this clearance). NOTE: This clearance is measured from the tie wire or conductor clamp on the insulator to the top of the communications space. This distance encompasses the supply and safety space and provides room for future installation of supply equipment and/or service conductor.

Figure 7

Clearance Between Power Conductors and Communications Space



Attachment and Clearance Requirements for Overhead Joint Utility Construction

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Supply Equipment

If any of the following supply equipment is mounted on the pole, a minimum clearance of 40 or 30 inches is required, depending upon whether the supply equipment is ungrounded or grounded.

This clearance is measured from the **bottom of the lowest piece** of supply equipment to the top of the communications space.

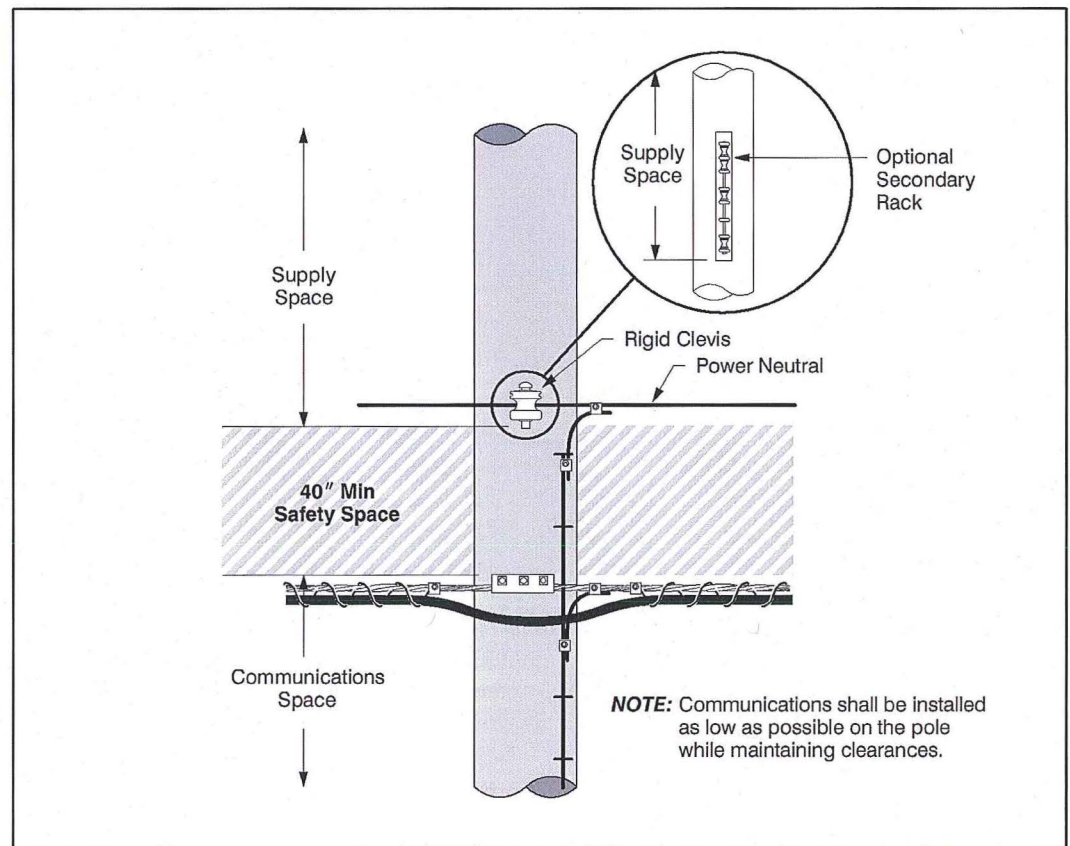
Ungrounded Equipment

Ungrounded equipment has a 40-inch clearance.

Equipment	See Illustration
Rigid clevis	Figure 8
Secondary rack	Figure 8
Exposed supply wire This does not apply to streetlight supply wire drip loops.	Figure 9 and Figure 10
Secondary crossarm brace	None

Figure 8

Clearance Between Ungrounded Supply Equipment and Communications Space



Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Clearance Requirements, *continued*

Figure 9

Clearance Between Supply Conductor Drip Loop and Communications Space

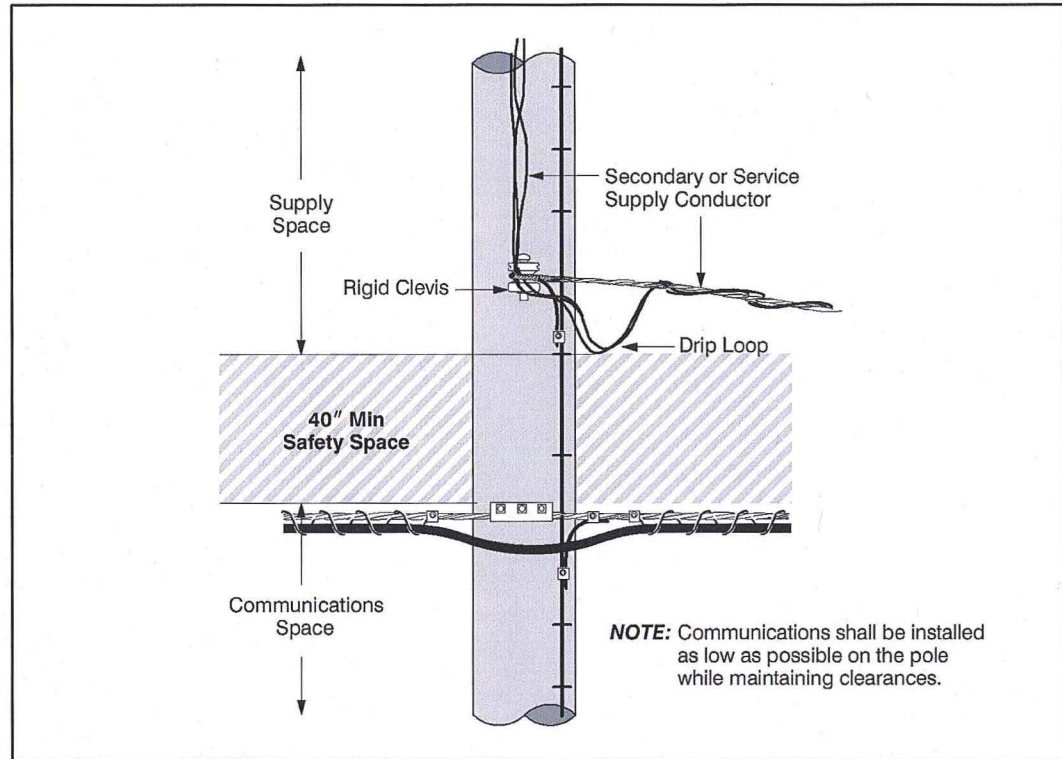
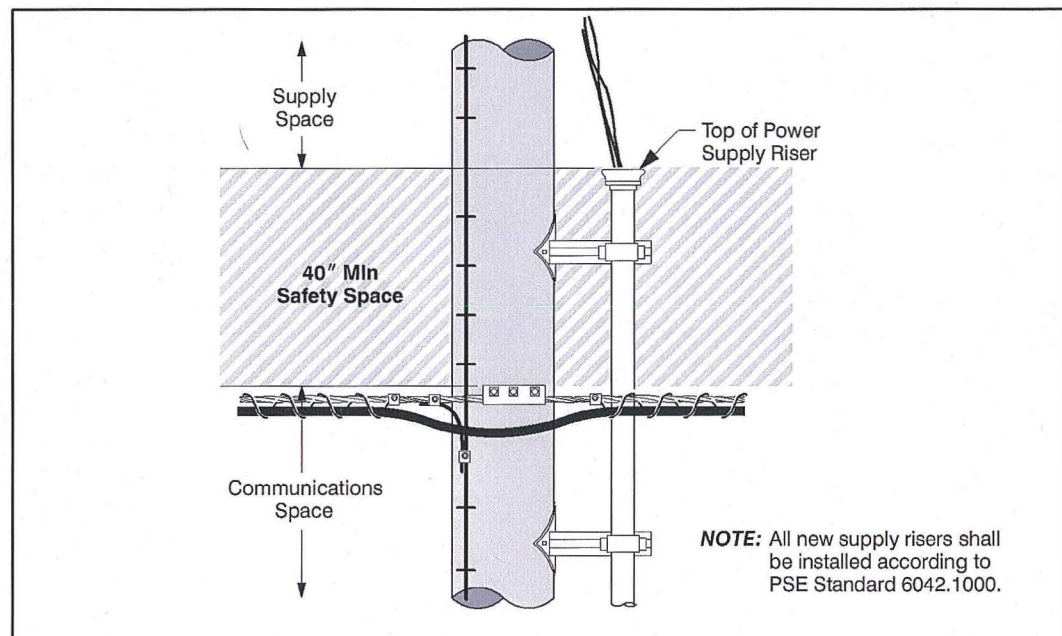


Figure 10

Clearance Between Top of Power Riser and Communications Space



Attachment and Clearance Requirements for Overhead Joint Utility Construction

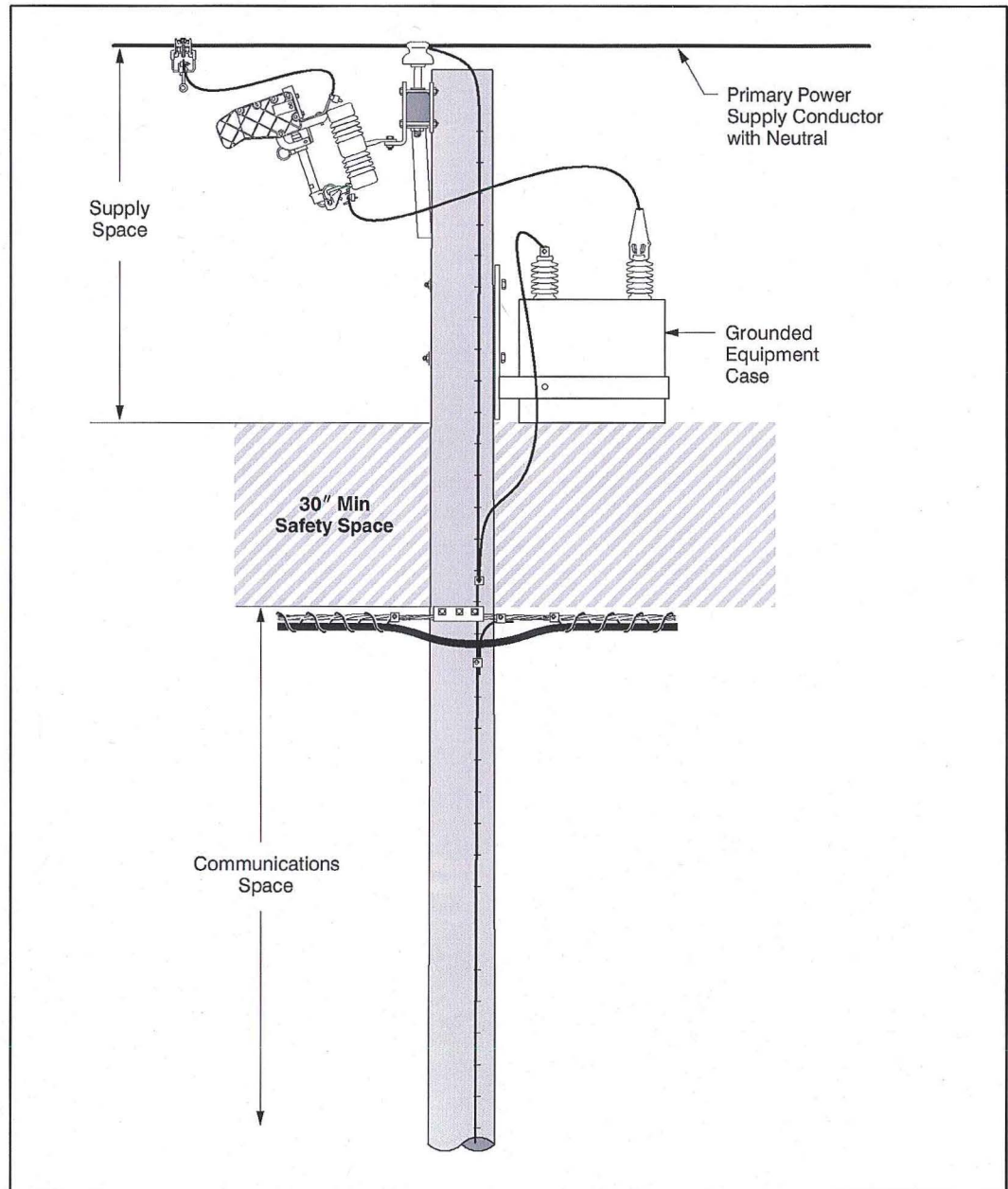
0700.8000

Grounded Equipment

Grounded equipment has a 30-inch clearance. *Figure 11* illustrates a typical (in this case a capacitor bank) equipment installations.

Figure 11

Clearance Between Grounded Supply Equipment and Communications Space



Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Clearance Requirements, *continued*

Midspan Clearance The minimum vertical clearance at any point in the span between power conductors and communications cables is **63, 40, or 30 inches**, depending upon the power line voltage. There are no horizontal clearance dimensions that can alleviate vertical clearance requirements between power conductors and communications cables jointly attached to PSE poles.

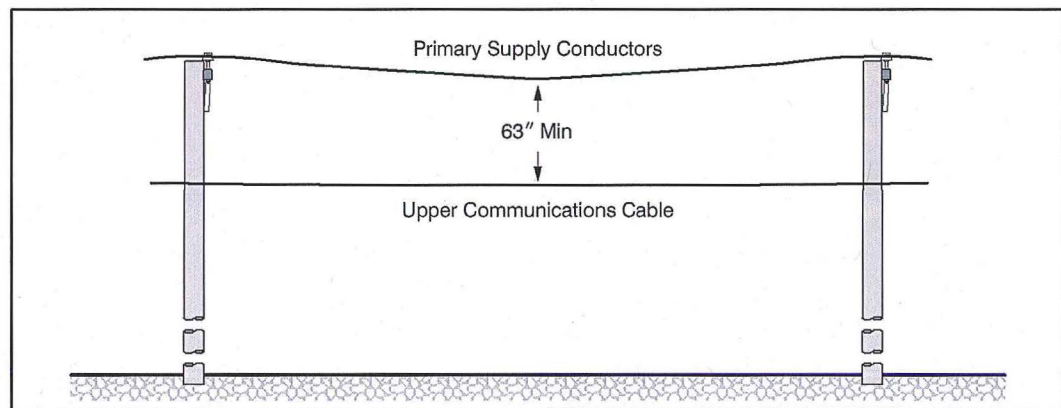
These midspan clearances must be met with the upper conductor (PSE) and the lower conductor (communications) at their final unloaded sag in the same ambient conditions and with the power conductor at its maximum design operating temperature (75°C for phase, 50°C for neutral, and 75°C for secondary).

NOTE: Meeting the midspan clearance requirements may require increasing the clearance distance at the supports (poles) beyond the minimum values.

Equipment	Voltage	Clearance
Primary supply conductors <i>Figure 12</i>	750 V to 34.5 kV	A 63-inch clearance is required.
Power neutral or triplex <i>Figure 13</i>	0-750 V	A 30-inch clearance is required
Open wire secondary	0-750 V	A 40-inch clearance is required

Figure 12

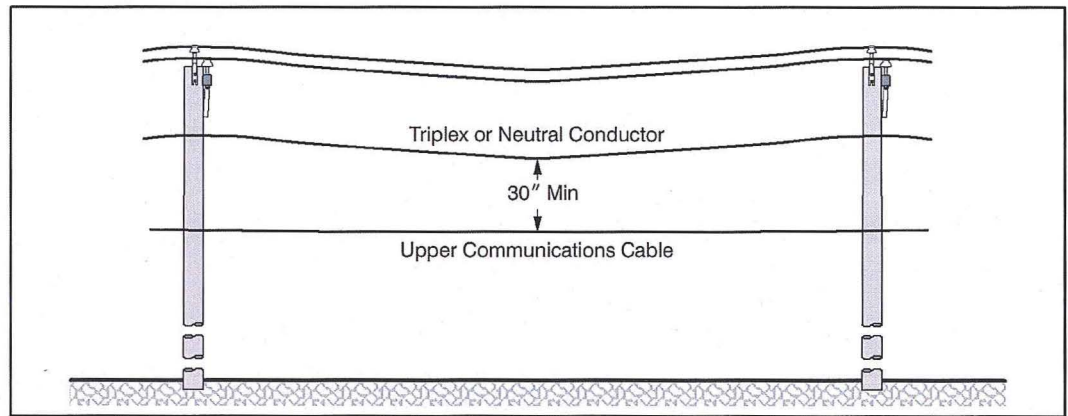
Midspan Clearance Between Primary Supply Conductors and Communications Cables



Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000
Figure 13

Midspan Clearance Between Secondary or Neutral Conductors and Communications Cables



Streetlight Clearances

Special clearances exist between streetlights and communications cables because:

- They may be installed anywhere on the pole, assuming all clearance requirements are met.
- Vertical runs of streetlight supply wire may or may not be covered with protective molding.

All clearances apply 360° around the entire pole.

Cables Installed Below Streetlights

When communication cables are installed below a streetlight on a pole, **all** of the following minimum clearance requirements shall be met:

Between the bottom of . . .	This clearance is required
Drip loop of the streetlight supply wire and the top of the communications space.	12 inches *
Supply space and the top of the communications space.	40 inches

* This may be reduced to 3 inches if the loop is covered by a suitable nonmetallic covering that extends at least 2 inches beyond the loop.

Figure 14 illustrates these clearance requirements.

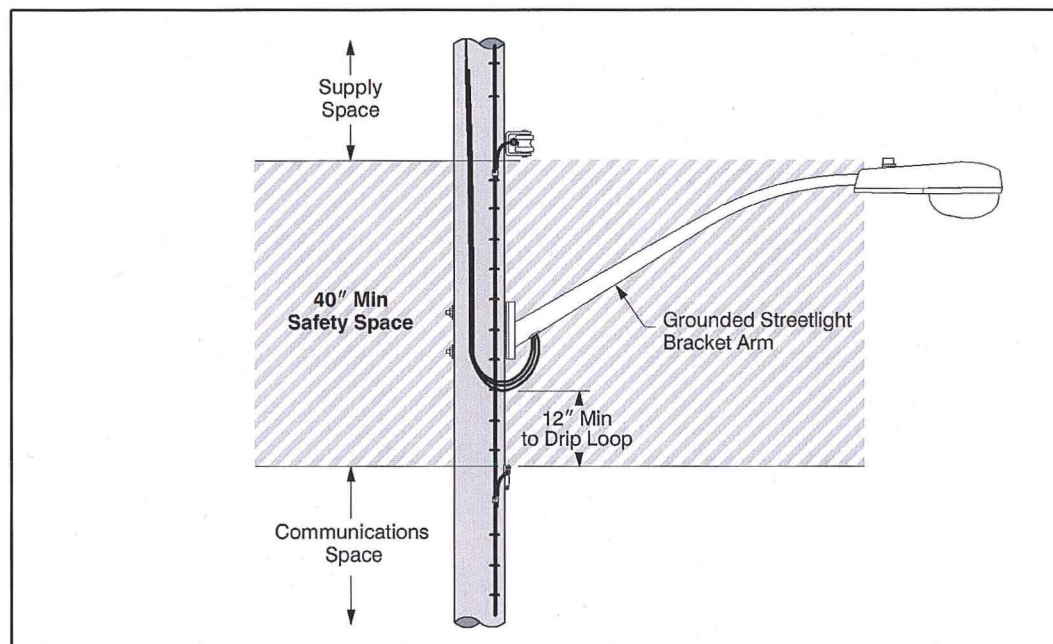
Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Streetlight Clearances, *Continued*

Figure 14

Clearances for Communications Cables Installed Below Streetlights



Streetlights Installed Beneath Communication Conductors

Proper streetlight mounting heights may require that the bracket be installed beneath the communication conductors.

When this is the case, *all* of the following minimum clearance requirements shall be met:

Between . . .	This clearance is required
Top of the streetlight bracket and the bottom of the communications space.	20 inches
Bottom of the streetlight supply wire molding (where wire is exposed at drip loop) and the bottom of the communications space.	40 inches
Top of the streetlight supply wire molding (where wire is exposed) and the top of the communications space.	40 inches

Figure 15 illustrates these clearance requirements.

⚠ CAUTION!

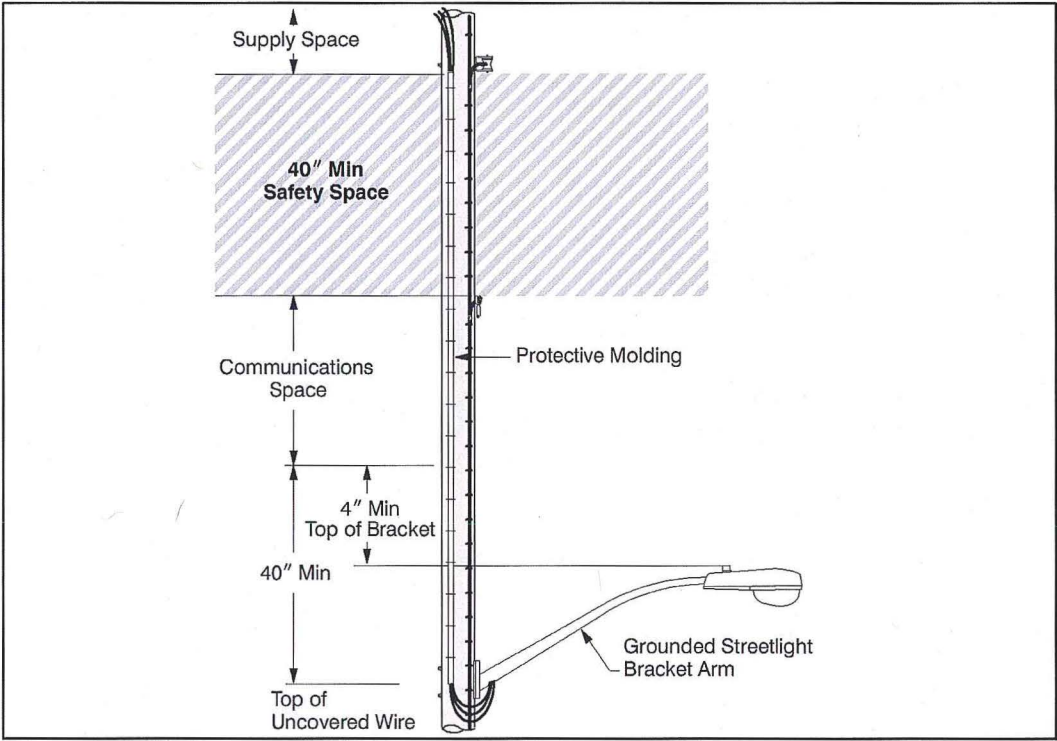
Communications cables shall not be installed above streetlights if the vertical run of streetlight supply wire is not covered with protective molding.

Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

Figure 15

Clearances for Communications Cables Installed Above Streetlights



References

- The following Puget Sound Energy documents relate to this standard:
- 0700.8500 RF Antenna Equipment on Power Poles
 - 6042.1000 Conduit Riser
 - 6450.3900 Wood Pole Information
 - 6450.7500 Field Drilling, Roofing, and Treating Wood Poles and Crossarms

Sources

ANSI	O5.1	Wood Poles: Specifications and Dimensions
IEEE C2-2012	Rule 97G	Bonding of communication systems to electric supply systems
NESC	Rule 235	Clearance for wires, conductors, or cables carried on the same supporting structure
	Rule 235C4	Communication worker safety zone
	Rule 238	Vertical clearance between certain communications and supply facilities located on the same structure
	Rule 239D	Guarding and protection near ground

List of Changes for 0700.8000

Date	Description of Revisions
04/26/19	▪ Added “Communication Worker Safety Zone” to the definitions.

EXHIBIT C
Evidence of Insurance
With
Washington Cities Insurance Authority

City of Anacortes - Liability

[Dashboards](#)[Claims](#)[Policies/Proposals](#)[Members](#)[Schedules](#)[Emily Schuh currently working in WCIA](#) [Help](#) [Sign Out](#)

Men

Cit

Ev

Me

EC

Is:

In:



P.O. Box 88030

Tukwila, WA 98138

Phone: 206-575-6046

Fax: 206-575-7426

www.wciapool.org

1/13/2020

Ref#: 12617

City of Anacortes
Attn: PCED Dept
904 6th St
Anacortes, WA 98221

Re: City of Anacortes
Public Utility & Telecommunications Right of Way Use Permit for Anacortes Access
Municipal Fiber Network.

Evidence of Coverage

The above captioned entity is a member of the Washington Cities Insurance Authority (WCIA), which is a self-insured pool of over 155 public entities in the State of Washington.

WCIA has at least \$4 million per occurrence limit of liability coverage in its self-insured layer that may be applicable in the event an incident occurs that is deemed to be attributed to the negligence of the member. Liability coverage includes general liability, automobile liability, stop-gap coverage, errors or omissions liability, employee benefits liability and employment practices liability coverage.

WCIA was created by an interlocal agreement among public entities and liability is self-funded by the membership. As there is no insurance policy involved and WCIA is not an insurance company, your organization cannot be named as an additional insured.

Sincerely,

Rob Roscoe
Deputy Director

cc: Emily Schuh
Jim Lemberg

Ty

Name 1 (1)

Jim
Lemberg

[Full Details](#)

Associated Policies

Effective Date	Coverage	Policy Number	Attach#	Description	Insured Entity	Member
01/01/2020	Crime and Fidelity, Cyber, Liability, Pollution Premises Liability	2020-AN-001	17239			Anacortes

EXHIBIT D

Screenshot from Washington Utilities and Transportation Commission Website

(accessed 1/13/2020, pertinent language highlighted)

Page 1 of 2

Washington Utilities and Transportation Commission

Search ...



[Home](#) > [Regulated Industries](#) > [Utilities](#) > [Telecommunications](#) > [Register as a Telecom Company](#)

Register as a Telecom Company

Who Must Register

The UTC regulates and registers companies that provide telecommunications services for hire, sale or resale within the state of Washington.

The following service providers do not need to register:

- City-owned networks and Public Utility Districts that provide telecommunications;
- Shared Telephone Providers in apartment buildings, resorts, etc.;
- Systems integrators, who re-sell some services as part of an equipment package; or
- Companies with some presence in Washington but no customers in the state.

When to Register

After registering the business, and before beginning operations in Washington state.

How to Register

1. Register the company as a business in Washington.
 - a. See the "Doing Business" web page at access.wa.gov.
 - b. If the company will be digging, hanging cable, etc. additional licenses such as a contractor's license may be necessary. The company may register with the UTC while obtaining other licenses.
2. Fill out the UTC's  [Registration Application](#)
 - a. Remember to check the right box under "Competitive Classification" if the company faces competition. Competitive companies are subject to minimal regulation, non-competitive companies are not.
 - b. Provide the UBI number from the [Business Licensing Services](#) at [1-800-451-7985](tel:1-800-451-7985)
3. Obtain or prepare a balance sheet and an annual report (if available) for the company.
 - a. Audited financials are not needed in order to be registered, but a balance sheet is required at a minimum.
 - b. The financial information filed should show that the company is financially capable of providing the services it plans to offer.
 - c. If the company is a new subsidiary, it can use the financial information of the parent company, if the parent also provides a letter guaranteeing the new company's obligations.

EXHIBIT D

Screenshot from Washington Utilities and Transportation Commission Website

(accessed 1/13/2020, pertinent language highlighted)

Page 2 of 2

4. Submit the information to the UTC electronically through the Records Center Web Portal. For more information on filing, visit our [Online Records Center](#). For assistance contact the Records Center at [\(360\) 664-1234](tel:3606641234) or records@utc.wa.gov.
5. If UTC staff have questions they will contact the company representative at the number listed on the application. If not, staff will send a letter and certificate within 30 days from application submission.
 - a. Upon receipt of the application, a confirmation certificate with a docket number will be sent to the company. Check the status of the registration or print a backup copy of the certificate by entering this docket number on our main web page.
6. Remember to file an [annual report](#) and pay the required annual regulatory fees.

Form

-  [Registration Application](#)

[Electronically File Form\(s\) and Cover Letter\(s\)](#)

Rules and Statutes

Washington State laws and rules governing telecommunications companies include:

- [Telecommunications Laws - RCW 80.36](#)
- [Tariff and Contract Rules - WAC 480-80](#)
- [Telephone Company Rules - WAC 480-120](#)
- [Registration and Classifications Rules - WAC 480-121](#)
- [Universal Service - WAC 480-123](#)

Price Lists

Note: Price Lists are No Longer Required

Companies providing competitively classified services in the state of Washington are no longer required to file price lists with the commission. [Senate Bill 6473](#) eliminated the use of price lists for competitively classified telecommunications services. Companies should communicate with customers using written contracts or customer service agreements.

Companies registering for the first time or adding new services should be sure to indicate what services they offer on their registration or annual report form - no other notification is required.



EXHIBIT E

Email Regarding Performance Bond

From: Scot Buchanan <scot@scottrichards.com>
Sent: Friday, January 10, 2020 2:39 PM
To: Schuh, Emily <emilys@cityofanacortes.org>
Subject: Performance Bond question/feedback from Scott Richards Insurance

Hi Emily,

Following up further on your e-mail below, I believe we have an impassable wall in regards to your inquiry for a Performance Bond. As I see it, the telecommunications entity being created/owned/operated BY THE CITY would be looking to become bonded to protect the city should the telecommunications entity fail to complete the project for the city. The "protection" would be for the city, so in effect the city would be trying to protect itself FROM itself. Or put another way, when we go to secure the financial background to support the bonding, that background would be from the owner of telecommunications entity; The City. Bonds are not insurance payouts, they are simply guarantees that the bonded entity has the financial background to clean up of a failed project, or to fund extra costs associated with having someone else finish the project for them.

I hope that helps. If you feel I'm missing some information that may amend my interpretation of the situation, please let me know.

Scot

Scot Buchanan

SCOTT RICHARDS, ANACORTES MARINE, & SMILEY INSURANCE

Partners of The Advantage Group, LLC.

1116 12th Street

Anacortes, WA 98221

360-293-5158

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From: Schuh, Emily <emilys@cityofanacortes.org>
Sent: Friday, January 10, 2020 8:16 AM
To: Sherri Bitterman <sherri@scottrichards.com>
Cc: Lemberg, Jim <jiml@cityofanacortes.org>
Subject: Performance Bond question

Good morning Sherri,

The city is entering a new business. We are providing internet services to residents and businesses in Anacortes. This puts us in a unique situation in which we are operating a startup business within the City of Anacortes municipality. We have determined that we must obtain a Master Permit for Telecommunications Right of Way from the City. One of the requirements is to post a performance bond. <https://anacortes.municipal.codes/AMC/5.38.210> Is Scott Richards able to provide a quote for this bond? The amount necessary is not yet determined, but likely in the \$1.5-3M range.

Thank you for looking into this for us.

Emily Schuh, Director | Anacortes Administrative Services | P.O. Box 547 | 904 6th Street | Anacortes, WA 98221
360.299.1941 | emilys@cityofanacortes.org | www.anacorteswa.gov

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City Council Agenda Bill

Meeting Date: 3/9/2020

Agenda Item: 8a

Subject: Presentation on Thompson Train purchase proposal by Bret Iwan

Staff Contact: Bret Lunsford, Museum Director

Approved for Submittal to Council by	
x	Laurie Gere, Mayor
	Steve Hoglund, Finance Director
	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
	Contract
	Public Hearing
	Staff Report

Summary Statement: The City wishes to have information presented by Mr. Iwan, who has submitted a proposal to purchase the Thompson Train from the City.

Background: Mr. Iwan has submitted a proposal, which appears to be consistent with criteria set out in the 2019 Thompson/City MOA, to purchase, invest in, and publically operate the Thomas G. Thompson, Jr. Train in California. Since 2012, city staff have worked to support the alignment of donor intent with city budget and planning considerations - and with community efforts to translate nonprofit visions into a feasible business plan. In 2018 the nonprofit Anacortes Railway Board of Directors ceased their efforts and stated a hope that the train might operate again, even if elsewhere. It was after this that Mr. Iwan approached the City about his proposed plans for the train.

Budget Impact	
Amount Budgeted	n/a
Budget Account (BARS)	n/a
Proposed Expenditure	n/a
Budget Amendment Required?	n/a
Revenue Source	n/a

Proposed Contract	
Contractor	n/a
Amount	n/a
Start Date	n/a
End Date	n/a

Previous Council/Committee Action: City Council authorized the [2019 Thompson/City MOA](#) on [December 2, 2019](#)

Competing Viewpoints Considered: A new Anacortes Railway Board of Directors has formed, with a new position opposing operation of the train elsewhere.

Recommended Motion: N/A – Information only

Alternative Actions: N/A – No action at this time

Attachments (listed in order presented): Train background information, Iwan Purchase Proposal, 2019 Train MOA: COA #19-203-MUS-001

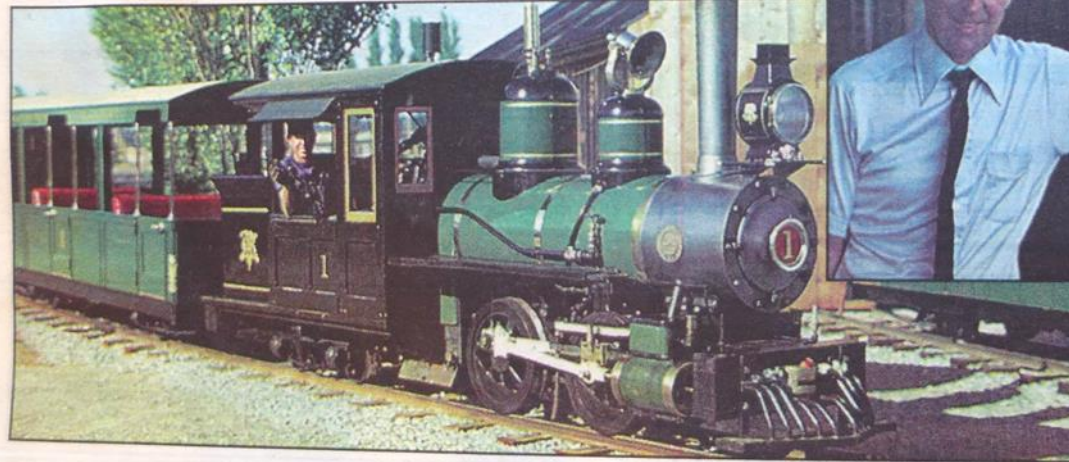
What's next for the Thomas G. Thompson, Jr. Train?

Community loses one of its star attractions, Tommy and his train

Saturday morning, Jan. 23, Anacortes lost one of its esteemed citizens. Thomas Thompson, owner and

operator of the downtown train, passed away at age 75. Thompson was a long time Anacortes citizen who

graduated from the University of Washington and worked as an engineer at Shell Refinery (now



Equilon) from 1955 to 1984.

"He was a doer and a very persistent man," said his surviving wife, Ann Thompson. "He didn't take no for an answer, he couldn't otherwise we wouldn't have the train in Anacortes."

His train was a popular tourist attraction, running in the summer time and on special events. Ann was unsure of its future.

"Thomas loved that train," she said.

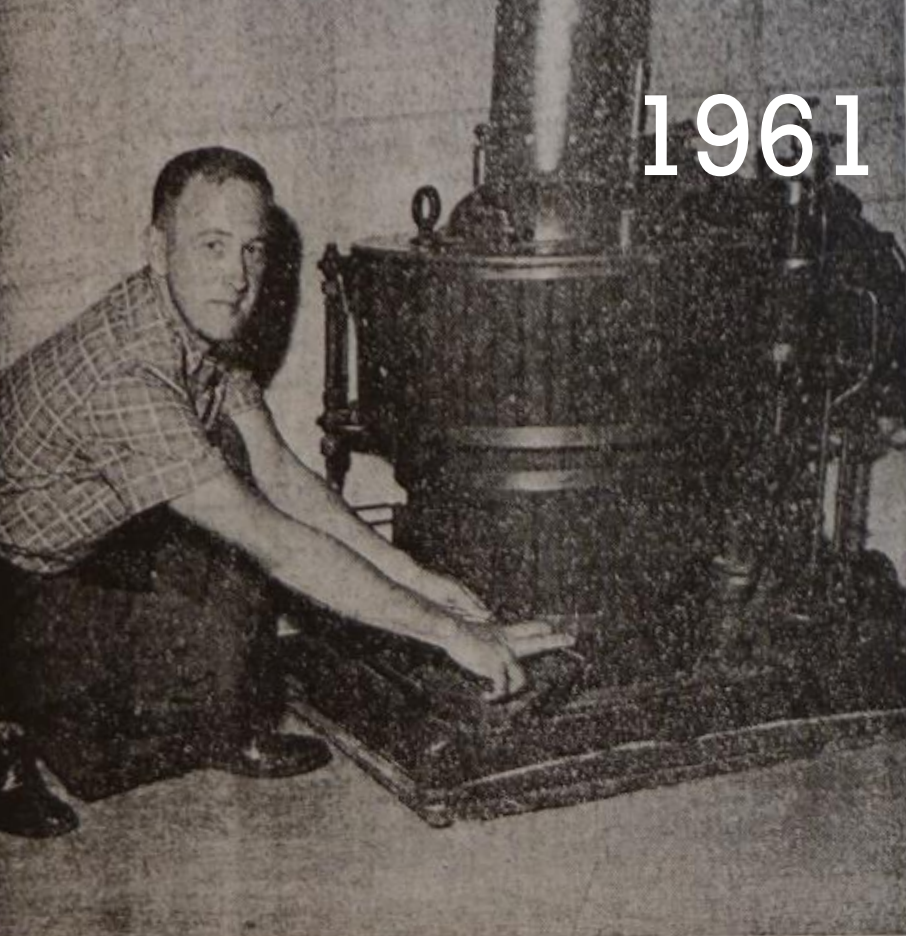
Thomas Thompson leaves behind his six children and a community that feels his loss.

2-5-99 Fid Mag.

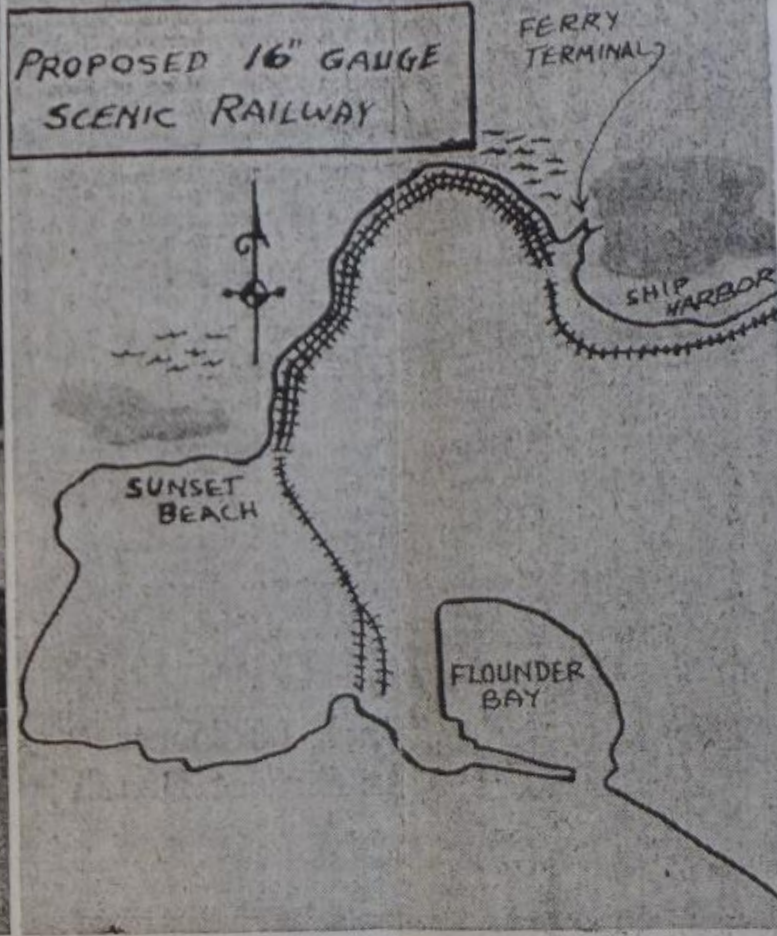
What's next for the Thomas G. Thompson, Jr. Train?

1. Thompson Train history in Anacortes
2. City ownership of the Thompson Train (2012 to present)
3. Past proposals made to the City about the Thompson Train
4. How the new City/Thompson agreement expands train possibilities
5. Discussion of Council goals and planning ideas about what's next for the Thomas G. Thompson, Jr. Train

1961



MUSEUM PIECE—T. G. "Tommy" Thompson is shown making adjustments on the 65-year-old burning English Steam Cane engine that serves as an entry-way decoration and conversation piece in the Thompson's Lake Campbell home.



RAIL ROUTE—The proposed Anacortes and Rosario Straits R.R. would travel this route between Ship Harbor and Sunset Beach, a waterfront ride planned to tempt tourists and residents into taking a closer look at the natural attractions of the Island Empire.

In Planning Stage— Shell Engineer Asks Okay For 6,000-Foot Rail Line

By JUNE HARDER

A railroad line bearing the name of Anacortes, the roseate dream of pioneers who strove to establish the port city as a major railroad terminus and "The New York of the West," now seems as close to reality as it ever was in those booming and optimistic times.

Now in the planning stage is the great "Anacortes and Rosario Straits R.R." which, if the necessary miles of red-tape can be unravelled and permission obtained from all authorities involved, may someday wend its way along a breathtakingly beautiful waterfront route in western Anacortes.

Thomas G. "Tommy" Thompson Jr., a steam-engine enthusiast with one miniature train already in operation, has blueprints for the narrow-gauge scenic railroad he's envisioned as a unique tourist attraction for Anacortes. The line would run between the Ship Harbor ferry terminal and Sunset Beach in the city's Washington Park, a grand total of 6000 feet. A steam locomotive patterned, as is the one he has previously built, on authentic engines of the 1880's, would be capable

of pulling five open passenger cars. Sixteen-inch gauge track would be laid on existing ties on what is still railroad right-of-way although no longer in use.

Does Thompson have the know-how to carry out such plans?

He built, and is now completing, a miniature narrow-gauge railroad on a tiny island in the San Juans owned by his family. This, though probably the dream of every youngster who ever played with model trains, is not just a toy. The sturdy quarter-sized line which so far includes a locomotive, ten tender and gondola car all designed and built by Thompson, carries supplies and driftwood from the beaches, and provides trans-island transportation.

Sleeping cars, planned as the next addition to the still-expanding line, will serve as snug camp-out beds for young Andrew, Headen, Kathy and Bradford, the Thompson children.

The first track for this island line, a nine-inch-gauge, authentically scaled, road, described by Thompson as "A composite of all the things I like best in all railroads of the late-nineteenth century," was laid in 1953. Ties constructed from beach-combed lumber have been used, and engine parts made from iron smelted on the site in a home-made foundry.

A steamboat that averages "a mile and a half per armload of driftwood" is another practical

ANACORTES



AMERICAN

The WEATHER

Western Washington — Generally fair tomorrow, except for patches of fog and clouds in the morning. High 76 to 87, except 40 to 70 along the coast. Low tonight 47 to 55. Coastal winds north to northeast 8 to 18 miles per hour tomorrow.

SWALLING'S SALES, INC.
Union Oil Distributors
CY 3-5622 Open Saturday mornings

Thompson Train history in Anacortes

1961 - 1964	Ship Harbor to Sunset Beach proposal
1965 - 1978	Anacortes city to Ship harbor proposal
1979 - 1982	Anacortes Arts and Crafts Festival runs
1982 - 1985	Foot of J Ave. to foot of Dakota Ave. proposals
1986 - 1988	From Depot north to 5 th Street runs
1989 - 1999	From Depot to 9 th Street, then to Commercial runs
2000 - 2012	Train stored in Georgetown Steam Plant in Seattle
2012 - 2020	Train stored in Railway Building in Anacortes

1979

Railway makes inaugural run



The project was begun in 1965, with the inaugural run in the summer of 1979

- Engine No. 1 is an 0-4-4 Forney type steam locomotive, weight 4 1/2 tons, and burns fir bark. The locomotive and three luxurious passenger cars were built in the Railway's backyard foundry and machine shop by Thomas G. Thompson, Jr. of Anacortes

Ship Harbor railway by '82 eyed

3-26-1980

By JOHN FORTMEYER
Editor, the American

It may not be 3.3 miles, but to Tommy Thompson, 3,500 feet is a good start.

That's why Thompson, local railroad enthusiast, is now concentrating his efforts on establishing the first segment of his proposed Anacortes steam railway in the Ship Harbor area by 1982.

"The first extension would operate solely as an attraction for ferry passengers waiting at Ship Harbor," Thompson wrote last week in a letter to Dick Berg, manager of Washington State Ferries. "The intent of this short operation is to establish credence and good financial base for the future three-mile extension, and to perfect engineering detail and operating procedure."

Thompson has long promoted his dream of a steam railway running the entire 3.3 miles along the Guemes Channel from Ship Harbor to downtown Anacortes.

That vision has amassed support throughout the community since Thompson's special four-block steam rail operation attracted huge crowds at last August's Anacortes Arts and Crafts Festival.

However, hopes of establishing the steam run the entire length of the channel were recently impaired when Burlington Northern Railroad said it would be unwilling to lease or sell any of its right-of-way in the area.

Thompson's letter was written to Berg in hopes of obtaining Washington State Ferries' approval for a Ship Harbor operation, which would run largely on property the state leases from the Port of Anacortes.

Thompson said he is also negotiating with the port for a possible lease of property by his railway, as well as with a private group planning to make public in the near future its development plans in the Ship Harbor area.

The rail operation could not be established at Ship Harbor before 1982, said Thompson, because sufficient time would be needed for him to build the full five-car train.

In the meantime, he said, a shortened

version of the train will run again on Commercial Avenue both this August and in August of 1981 in the annual arts festival.

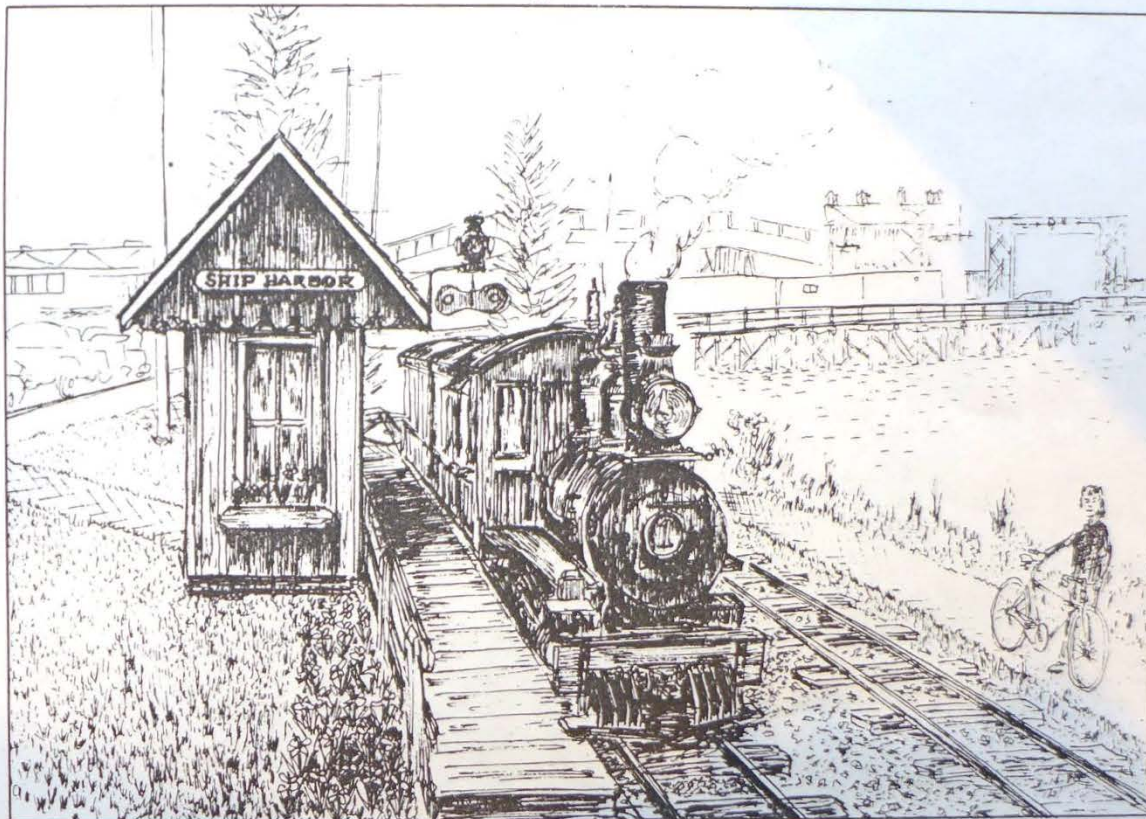
As envisioned by Thompson, the Ship Harbor operation would include a turntable at the end of the line, a small depot and a 20-foot by 70-foot carhouse in which the trains would be stored.

"The port has said that they might consider building the carhouse if it is designed as a multiple-use facility," said Thompson.

Thompson's proposal also received a significant boost last week when it was announced that the state legislature had approved a \$10,000 feasibility study of the steam railway plan.

That study will concentrate on the steam railway as a means of relieving overloaded conditions on San Juan ferry runs.

Operation of the train from the ferry terminal to the downtown area would, its proponents hope, eliminate the need for island residents to use cars when coming to Anacortes.



THE SKETCH above shows the depot and steam train envisioned by local railroad enthusiast Tommy Thompson for the Ship

Harbor area in front of the state ferry terminal. Thompson, now negotiating with those controlling property there, would like to see

the first segment of his Guemes Channel run going by 1982, with a five-car train.



Tommy Thompson's steam train is attracting popularity.

New plan pushed for steam train

By JOHN FORTMEYER
Editor, the American

Tommy Thompson, whose steam train carried a record number of passengers last weekend in a temporary run at the Anacortes Arts and Crafts Festival, is now presenting a revised plan for permanent operation of the railway.

Abandoning efforts to establish the narrow-gauge, steam-powered Anacortes Railway on port property at Ship Harbor, Thompson now proposes operating it on railroad right-of-way near downtown. The city is now negotiating with the Burlington Northern Railroad on acquisition of that right-of-way.

Thompson's proposal, which has the support of Mayor Jim Rice, has been submitted to the city. It calls for no expenditure of public monies.

The plan would see the train operated under a 10-year concession agreement with the city, effective June 1, 1985 and extending to Oct. 1, 1994. That schedule would enable the train to take advantage of the high tourist trade expected in this area in 1986, when Vancouver B.C. holds its World's Fair.

"By making Anacortes more inviting, it will spark the prosperous tourist boom, which is the ultimate destiny of Anacortes," Thompson writes in his

tion of also selling food and beverages on a planned "dining car," as well as souvenirs, books and merchandise.

The proposed J Avenue terminal would be located north of an existing Port of Anacortes warehouse, and would be designed to be hidden from the adjoining residential area.

The terminal, to be financed by Thompson, would include a station building with platform, a building for the storage of passenger cars and the locomotive, a spur track for the storage of work cars, a water tank, and a coal spur track from the Burlington Northern Railroad.

A turntable would be located at the end of the line to return the locomotive for its return trip. Thompson suggests that adjoining vacant land could be leased from the port for customer off-street parking.

The Dakota Avenue terminal would consist of a turntable at the end of the line with a run-around track.

Construction costs for the line would be low, said Thompson, because the existing Burlington Northern track could be re-gauged from 4-foot, 8 1/2 inch to 18 inches. The track now utilized at the arts festival would serve at the terminal and turnouts at each end of the line.

Thompson has abandoned efforts to establish the railway near the state ferry terminal at Ship Harbor because "I don't

think the port was really interested. And I think it can do more good by bringing activity to lower downtown."

Thompson estimates \$46,000 total material and labor cost to get the railway going. He foresees total first-year operating expenses of \$67,900, and anticipates revenues of \$87,000 in first-year ridership of 57,000 persons.

Subtracting cost for capital improvements from net return, Thompson predicts an annual return to the city of \$7,100.

Long-range plans call for extension of the railway from J Avenue to The Depot near Cap Sante, where the city proposes the U.S. Army Corps of Engineers' stern-wheeler "Preston" be located.

It's that possible link to tourism efforts here that now excites the mayor about the railway.

Rice, who only months ago told Thompson at a mayoral campaign meeting that public support for the railway "just isn't there," now says he has taken a new stand on the issue.

He now supports Thompson's plans, and believes the public is getting supportive, too.

"I think the feeling of the community has changed," said Rice. "I think the city's swaying more toward tourism."

1985 - City grants franchise for Anacortes Railway to operate on public land for 25 years

ORDINANCE NO. 1995

AN ORDINANCE OF THE CITY OF ANACORTES, GRANTING TO THE ANACORTES RAILWAY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND AUTHORITY TO LAY DOWN, CONSTRUCT, MAINTAIN AND OPERATE A RAILROAD TRACK OR TRACKS ON, ALONG OVER AND ACROSS R AVENUE, THIRD STREET, AND ON THE DEPOT GROUNDS IN THE CITY OF ANACORTES, AND GRANTING TO SAID COMPANY, ITS SUCCESSORS AND ASSIGNS, A RIGHT OF WAY FOR SUCH TRACK OR TRACKS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ANACORTES AS FOLLOWS:

Section 1. The City of Anacortes does hereby grant to the Anacortes Railway Company, its successors and assigns, the right, privilege and authority to lay down, construct, maintain and operate for a period of twenty five (25) years from the date of this grant, an 18 inch gauge railroad track or tracks, together with all buildings, turntables, yard, tracks, and station platforms along, over and across "R" Avenue, third Street, and the Great Northern Depot grounds, in the City of Anacortes, and also a right of way for said track or tracks, described as follows:

Thompson's train approved

By RON JUDD
American staff writer

Tommy Thompson's 23 tons of railway equipment won't be stashed away in a Port of Anacortes warehouse much longer.

The Anacortes City Council Monday unanimously approved the concept of Thompson's Anacortes Railway, laying the tracks for a construction start as early as September. Thompson, after a more than 20-year effort to see his home-built steam locomotive and three cars running up and down Anacortes streets, now only must work out construction details and an exact route with the city.

The proposed route for the railway begins at the old Great Northern Railway Depot, currently used in part as an office for the Anacortes Arts Foundation. Thompson hopes to use part of the depot for a ticketing and waiting area.

From there, the train would travel north on R Avenue to Third Street, then turn and follow Third Street to N Avenue. Turntables at each end of the route would allow the train to

turn around and reverse course, he said.

Thompson said he hopes his train will help revitalize the downtown area and draw more visitors to the historic depot and the nearby W.T. Preston.

Thompson now is working with the city building inspector designing an engine and car house to be located north of the Depot. The building, which would serve as a base for the train, will be styled in the architecture of the early 1900s.

Work on the building should begin by September, he said, and the train will be moved there when it is complete. In the mean time, Thompson said he will spend most of the summer at a San Juan Islands saw mill, sawing ties for the railway. The ties and the rails, dating to 1915, then will be laid in a 23-inch trough filled with concrete and foam rubber, which muffles noise and vibration.

The railway could be completed in time for Heritage Days next year, he said. Recruiting help shouldn't be difficult, he added.

"It's kind of like Tom Sawyer's fence," he said,

Thompson thanked council members for their help in getting the project rolling.

"You did a beautiful job," he said. "Now I'm determined to give you cause to be pleased with the results."

The council's action drew audience applause and three cheers from Bill Mitchell, whose historical murals will be visible along the route.

In other action Monday, the council:

— Approved the lease of an "underutilized and underdeveloped" park at 38th Street and H Avenue to local veteran's groups to serve as "Veteran's Park."

The park will be leased to veteran's groups for \$1 per year, and the veterans in return will maintain the park and construct a building for a public meeting place.

1985

7-17-1985 JV



In line for a train

Work on the Anacortes Railway is off to a "great start," says owner, operator and promoter Thomas Thompson, pictured above. Thompson along with a crew of family and friends have begun post-and-beam framing for an engine house just north of The Depot on R Avenue. He's also installed about 350 feet of narrow-gauge train track and four switches in the area of The Depot. Current plans are to have the steam-powered engine and three cars running from Seventh Street to Fourth Street along R Avenue this June. Last December, the city gave Thompson a franchise to operate his detailed replica train from The Depot to Third Street and then over to N Avenue. South and east of The Depot, Thompson has built a temporary ticket house and is forming a platform with old city street tiles in addition to a garden and walkway area. Working closely with local art foundation and the city museum, Thompson said he hopes his train will make The Depot and Preston area a popular "people place." Thompson hopes to have the train running daily this summer.

1989 - expansion

Tommy's railroad expands with additional track and turntable

By NANCY WALBECK
American staff writer

Tommy's train is moving uptown.

The Lilliputian tourist attraction now is expanding its tracks up to Ninth Street and Commercial Avenue, gracing a wide boulevard dotted with trees and marigolds. This current expansion now means a 3/4 mile round trip, with matching turntables at either end.

"Goodness only knows where it's going to go from here," conductor and railroad raconteur Tommy Thompson said, while ballasting the small-gauge tracks.

The Anacortes Railway, long a favorite of locals and tourists, now will get to come and go with the engine in front, Thompson pointed out. The turntables are exactly that, turning devices on slick ballbearings that allow the engine to swivel at the touch of a finger, Thompson added.

At the Ninth Street turnabout, Thompson plans to erect an ornamental steel pergola with a half-barrel shaped, translucent roof.

"It will have 4 1/2 tons of steel and we're going 7 feet, 6 inches," Thompson said, pointing skyward.

His helpmate and general assistant, Annie Thompson, added her opinion, too.

"He is creating it himself," she said.

Because the Thompsons are the administrators, laborers and management, the costs are minimal to maintain and operate the 18-inch, narrow-gauge railroad. The Port of Anacortes donates its debarked leavings to fuel the Forney-type steam engine and Thompson said the city and port have been generous with the use of their properties.

"We burn the bark from the waste of the log dump and the city gave the railroad a free franchise," Thompson said. "It allowed the railroad to be constructed on city property because it would enhance the whole economy."

The Thompsons put all railroad revenues back into maintenance and building programs. Thompson admits to being somewhat of a scavenger, bargaining and dickering for parts for his small line. He

designs and executes what he can't find in the marketplace in his own backyard — in his foundry, welding or machine shops.

For instance, the tracks date from the 1950s and he picked them up for scrap from the timber giant, Weyerhaeuser. For the warning gates for the current expansion, Thompson said he bought the flashing signal barriers from the Port Townsend Paper Co. for \$50. The bricks that decorate the Depot and will enhance the Ninth street turntable and pergola used to be part of Anacortes' city streets.

The Thompsons said the expansion will be finished soon, but they disagreed as to how quickly that will be.

"We're shooting for the Fourth of July," Tommy Thompson said.

Annie didn't agree.

"Let's say the Arts and Crafts Festival," she suggested, diplomatically.

But Tommy responded: "Mayor Rice said the Fourth of July," which seemed to temporarily settle the question.



Tommy Thompson, alongside the locomotive turntable on Ninth Street, describes how the engine will glide around on ballbearings at the mere touch of a finger. He predicts completion of the project by the Fourth of July.

Community loses one of its star attractions, Tommy and his train

Saturday morning, Jan. 23, Anacortes lost one of its esteemed citizens. Thomas Thompson, owner and operator of the downtown train, passed away at age 75. Thompson was a long time Anacortes citizen who graduated from the University of Washington and worked as an engineer at Shell Refinery (now



Equilon) from 1955 to 1984.

"He was a doer and a very persistent man," said his surviving wife, Ann Thompson. "He didn't take no for an answer, he couldn't otherwise we wouldn't have the train in Anacortes."

His train was a popular tourist attraction, running in the summer time and on special events. Ann was unsure of its future.

"Thomas loved that train," she said.

Thomas Thompson leaves behind his six children and a community that feels his loss.

2-5-99 Fid Mag.

1999 - conclusion

Seeking a successor to 'Tommy's Train'

Support sought to put a new train on tracks

BY JON BAUER
American staff writer

The whistle will blow at least once more, but the future of a narrow-gauge train running along the now city-managed railroad right-of-way will depend on community support and donations.

"Tommy's Train," the steam engine that for 18 years carried children and adults along a short course of track from The

Depot to a downtown turntable and back, will make its last journey in Anacortes later this spring during a public memorial service for Tommy Thompson. Thompson, the primary motivator and chief engineer behind the famous Anacortes attraction, died in January.

It was Thompson's wish, said long-time friend and fellow steam enthusiast Frank Orr, that the engine and its hand-built cars be preserved rather than used after Thompson could no longer man the throttle.

But Orr is hopeful that yet another engine and set of passenger cars can be built and eventually run not only on the

existing narrow-gauge track but on rails that would run from The Depot all the way to Weaverling Spit. That, too, was part of Thompson's dream, to see the rail line extended on the existing railroad right-of-way along the waterfront and to the city's southern limits.

And it was a goal that was nearing reality early this year when the city acquired the right-of-way and dubbed it the "Tommy Thompson Parkway." One proposal is to design the parkway with room for a walking trail and for a narrow-gauge railroad.

Just as Thompson had built his train from a old mining engine, Orr now wants to

find community support to build a new train and cars, re-gauge miles of track along the parkway and establish a group to run and manage a new tourist railroad.

Orr and others are calling those interested in the project to a special meeting at 7 p.m. Thursday, April 15 at the Fidalgo Center.

Just about any skill will be useful to the effort, Orr said, from welders to surveyors, to those with fund-raising skills and those willing to put in some simple labor or serve on a board of directors. The effort will even

See TRAIN on page A14

2000 – train retired / new group unsuccessful

City Editor: Mary Evitt 360-416-2147 / mevitt@skagitvalleyherald.com

Anacortes rail and trail cost put at \$1.8 million

Study gives hope to backers while some object to plan

By JENNI ODEKIRK
Staff Writer

ANACORTES — Residents who would like to see a small tourist train and recreational trail from Fourth Street to Weaverling Spit have new hope for their dream.

A feasibility study of the trail and rail line, to be named the Tommy Thompson Parkway after the man who operated a narrow-gauge

steam train for several years until his death last year, pegs the cost at \$1.8 million.

The study, conducted by landscape architect Robert W. Droll, suggests a 12-foot-wide trail with a two-foot shoulder and an 18-inch railroad track, along most of the route. The buffer between the trail and train would be an average of four feet.

The train would parallel the trail, some of which now exists, to Fidalgo Bay Resort, a recreational vehicle park. To make room for a trail, some of the existing train track would

have to be moved a few feet.

Anacortes City Council member Jeanne Robinette has said the \$1.8 million cost could be reduced by about \$500,000 through donated materials and volunteer labor.

Members of Anacortes Train and Rail, the group that wants to bring a narrow-gauge train back to Anacortes, and other residents have volunteered their labor for the project.

However, the plan is not without its doubters and dissenters, as expressed at an Anacortes City Council study session Mon-

day night.

Ross Barnes said he supports the plan in general but wondered if the city could obtain enough right-of-way for the parkway, especially between 11th and 22nd streets.

Tom O'Brian, who owns two houses in that area, said the amount of right-of-way the city would need for the trail and rail would affect his homes.

"That would make my houses almost uninhabitable," O'Brian said.

Anacortes City Engineer Dave Lervik

said the city would have to negotiate with property owners to gain further rights-of-way to construct the parkway in some areas.

Another difficult section of the trail-rail plan is the section that runs along the Fidalgo Bay shoreline for 1,600 feet, south of an abandoned plywood mill. The adjacent ditch would need to be partially filled to provide room for the rail, according to the study.

■ Jenni Odekirk can be reached at 360-416-2148 or by e-mail at (jodekirk@skagitvalleyherald.com) (no hyphen).

City ownership of the Thompson Train (2012 to present)

2000 - 2012	Train stored in Georgetown Steam Plant in Seattle
2012	Volunteers/museum staff bring train to Anacortes
2012 - 2020	Train stored in Railway Building in Anacortes
2013 - 2015	Feasibility of train exhibit building studied
2014	Train “steam up” demonstrates good condition
2015	Nonprofit group advocates running the train
2018	Nonprofit group disbands / MOA not reached
2018 -2019	More proposals made to City for use/acquisition
2019	City/Thompson MOA clarifies donor intent

Past proposals made to the City about the Thompson Train

Anacortes Railway Presentation

Brooks Middleton, 4419 H Avenue, and his colleague Per Kefgen reported on the project to reactivate the Tommy Thompson train and narrow gauge railway. Mr. Middleton displayed a map of the proposed Phase I route which followed the historic route of standard gauge trains from 4th to 11th Streets largely along Market Street. He said that part of the route was on Port of Anacortes property and part was on City of Anacortes property. He reported that Port Commissioners unanimously approved the train's use of their property the prior Thursday. Mr. Middleton shared a presentation summarizing his group's proposal and discussed the potential tourism draw of the train and the feasibility investigation already completed. He said the Anacortes Railway is a registered non-profit with a certified steam train operator and community support to maintain the train. He anticipated that the railway would be self-supporting including maintaining insurance. Mr. Middleton addressed concerns about the permanence of the infrastructure, saying that both the train and the tracks could relatively easily be moved if required. He cited widespread community support for the railway and the wealth of experience available locally. He requested permission to run the train on city property and also to construct a secure shelter for the train adjacent to the tracks, possibly east of the W.T. Preston.

Mayor Gere asked Planning Director Don Measamer what the next steps might be. Mr. Measamer discussed insurance requirements, a letter of understanding with the city addressing use of right of way

Councilmembers
would like staff to
“begin investigating a
memorandum of
agreement with the
Anacortes Railway”

- June 2016

April 2018: City offers agreement document to railway group creating process for co-planning on train

City staff were clear that the Anacortes Railway group had to put a number of pieces in place:

- a business model
- operating expenses
- insurance
- some guarantee that their operation of the train would fit with the original intent of the gift



AGREEMENT FOR ACCESS TO THE TOMMY THOMPSON TRAIN AND USE OF CAR HOUSE

This Agreement for Access to the Tommy Thompson Train and Car House Agreement (the "Agreement") is made effective as of _____, 2018 by and between the City of Anacortes, a Washington municipal corporation (the "City") and the Anacortes Railway Group, LLC, a Washington non-profit corporation ("Anacortes Railway"). (The City and Anacortes Railway together are referred to as the "Parties.")

Recitals

WHEREAS, the City owns the Tommy Thompson Car House located north of the Great Northern Train Depot on "R" Street in the City of Anacortes ("Car House"), which houses the Thomas G. Thompson, Jr. train steam engine and rail cars ("Train"), also owned by the City. The City additionally owns all tracks and hardware, whether

Anacortes Railway dissolved in 2018 before entering into an agreement with the City about the train

Railway Nonprofit Discontinues: Oct. 19, 2018

Subject: Anacortes Railway stepping down

Dear Friends,

We, the Anacortes Railway Non-Profit group, have concluded that, due to many factors, we will no longer be pursuing, as a group, the operation or maintenance of the Tommy Thompson Train / Anacortes Railway.

We thank you for all your efforts and energy spent working with us to make the railway operational, and hope that another group will step forward to care for and hopefully operate the train, whether that be in Anacortes or another location.

Sincerely,

The Anacortes Railway Board of Directors.

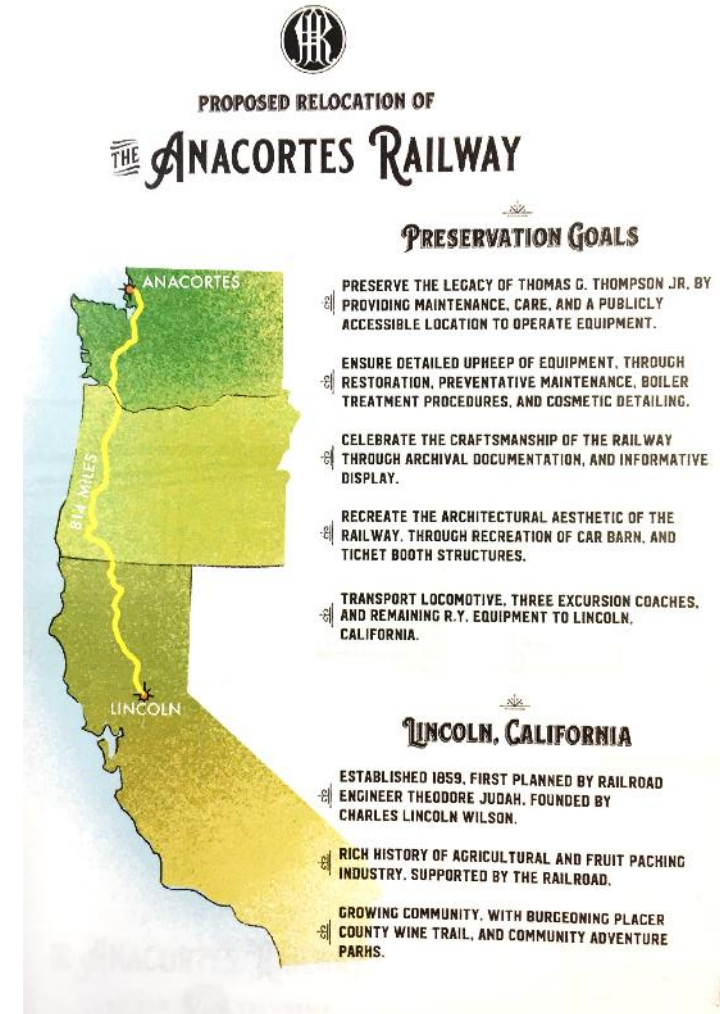
“hope that another group will step forward to care for and hopefully operate the train, whether that be in Anacortes or another location”

2018 – 2019: other train proposals heard

- Museum staff met with Anne Thompson and her son Headen to visit the train as stored and discuss static exhibit plans in train shed
- Former Anacortes Railway member contacts City to discuss possibility of moving the train out of Anacortes – no formal proposal made
- Another Anacortes Railroad enthusiast presented a concept paper: considers locations on north Whidbey Island or eastern Skagit County
- On June 30, 2019 the City of Anacortes received an email inquiry from Bret Iwan: “I am currently developing a venue, which centers around an operational railroad. If the City, would ever consider putting the locomotive, rolling stock, or leftover rails up for sale, please know I would be a motivated and interested buyer.”

2019 – 2020: Iwan Family Purchase Proposal

- **July: Mr. Iwan sends proposal to purchase train and equipment** - Mr. Iwan created a purchase proposal sent to the City, including a letter to the Thompson family.
- **August: Thompson family voices support for proposal** – After viewing the Iwan proposal, the Thompson family voiced collective support for the concept to make the train operational and open to the public, albeit in another state.
- **October: Iwan brothers visit the Thompsons, City staff and railway folks** – Plans presented and qualifications discussed. Iwans stated willingness to present plans to City Council.



2019 – 2020: Recent Council Action on Train

THOMAS G. THOMPSON JR. TRAIN DONATION

MEMORANDUM OF AGREEMENT



ORIGINAL DONATION

- Thomas G. Thompson Jr. Train was donated to the City by Anne Thompson in June of 2012.
- Train had been retired from operation.
- The original donation was made by letter.
- Letter provided:
 - Train to be transported to, cared for, and stored in Anacortes
 - Train to be used to establish a static display for the enjoyment of the community



CURRENT STATUS OF TRAIN

- Train currently stored in train shed on the Depot property.
- If the City retains ownership, City will move forward with development of static display of Train per the original donation.
- The City has received interest by outside parties to acquire the Train and bring it out of retirement.
- Current donation letter does not allow for the Train to be transferred or returned to operation.



PROPOSED MOA

- The MOA would provide more flexibility in future plans for the Train.
- The Proposed MOA has been discussed with and approved by the Thompson Family.
- The MOA provides the City may consider proposals to sell the Train if conditions are met:
 - Purchaser can demonstrate skills and knowledge to operate the Train
 - Purchaser can demonstrate plans for a location for the Train as a public attraction
 - Purchaser will commit not to significantly alter the Train
 - Purchaser will maintain and care for the Train
 - Proceeds from any sale will be used to interpret and memorialize the legacy of Thomas G. Thompson Jr. and his Train

MOA was approved by Council



Cost to meet 2019 MOA requirements

- Skills to operate the TrainSteam mechanic/engineer – amusement management
- Demonstrate plans for a location10+ acres or right of way – amusement infrastructure
- An attraction open to the publicStaff to market and operate with full insurance, permits
- Regular maintenance and upkeepHundreds of hours per month when operational
- Legacy of Thomas G. Thompson, Jr. ...Create interpretive exhibits on Thompson Train history

If the City decides to keep the train, what are costs to fulfill 2012 Donation Agreement

- Provide land for a train museum
- Plan for a train museum
- Construct a train museum
- Staff and maintain a train museum

(note: low community interest in developing a train museum / most interest is in an operational train)

2019 – Return of railway nonprofit

- **October:** Concerns raised by former “Anacortes Railway” members about possible relocation.
- **November:** City informed that the Anacortes Railway has not dissolved / was reforming.
- **December Letter:** “The Anacortes Railway Group would ask the City of Anacortes and the City Council to NOT enter into a purchase/sale agreement with any parties at this time.” Dave Sem, Anacortes Railway
- **January:** No indication of when/if the Anacortes Railway group will make a proposal to the City that meets the conditions established by the City and the Thompson family MOA.

Effort made to keep Tommy Thompson train in Anacortes

By Skagit

Publishing staff Jan 1, 2020



Steam pours from the Tommy Thompson train in December 2015 down a stretch of track in Anacortes.
Brandy Shreve / Skagit Valley Herald file photo

[Buy Now](#)

ANACORTES — The nonprofit Anacortes Railway hopes to buy the Tommy Thompson train and keep it in the city.



Dave Sem and Brooks Middleton are the key players behind the effort to buy the narrow-gauge steam train that ran in downtown Anacortes from 1979-99.



“It’s part of the history of the town, and if you can get it running again, it’s something everyone can be proud of and support,” Middleton said.



Ideas not on the table for City

- City retains ownership and allows others to operate the train
- City operates the train as a City financed attraction

2020: Considering Possible Steps

1. Council opts to hear Bret Iwan present his proposal for the train
2. Council opts to keep train as a static exhibit
3. Council opts to wait indefinitely for a local train proposal that meets conditions in 2019 Thompson agreement

1. Council opts to hear Iwan proposal

- Iwan proposal meets conditions of 2019 MOA
- Iwan brothers have met with and earned support of the Thompson family for the plan

2. Council opts to keep train as static exhibit

To fulfill 2012 Donation Agreement, City agreed

- The Train will be cared for and safely stored
- Raise funds for a display structure
- Establish static exhibit for the enjoyment of the community
- Staff and maintain all of the above

3. Council opts to wait indefinitely

- City has already waited 8 years since accepting Train
- Current Iwan proposal expires on March 31, 2020 with no assurance of another qualified plan being offered
- Continued closed storage is inconsistent with 2019 MOA and original 2012 donation agreement
- Various Anacortes train plans have not become operational over the last twenty years

Introduction

July 16, 2019

"Man never came so close to recreating himself in a machine as he did with the steam locomotive. I know it's just a piece of machinery, but I really get the feeling it's having fun."

Thomas G. Thompson

While working as a steam mechanic and engineer, I have learned first hand the truth behind this sentiment. When steamed up a locomotive comes alive. Breathing with temperament and drive.

The Anacortes Railway has been influential in my love of railroading, for as long as I can remember. As my collection of hand-punched tickets grew, so did my fascination. From the color scheme of the locomotive to the corbels of the engine shed, no detail went unnoticed.

I would love nothing more than to help provide a location for Tommy's creation to continue having fun while celebrating the heritage of a community I treasure.

Included in this proposal, is an outline of my offer to purchase the Anacortes Railway equipment, for use in a new business venture located in Northern California. Along with a proposed acquisition, I have listed several ways in which my design business, Bungalow Modern, and my families' business, Iwan Locomotive Works, could assist the museum in creating a space, honoring the history of the Railway's time in Anacortes.

I look forward to the opportunity to discuss further, and answer any questions that may accompany this submission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bret Iwan', with a long horizontal flourish extending to the right.

Bret Iwan

Owner, Bungalow Modern

Bungalow Modern LLC

1015 N OAKLAND AVE

PASADENA CA 91104

816.332.2156 Cell

626.344.7091 Office

Anacortes Railway Purchase Proposal ADDENDUM-3

JANUARY 20, 2020

For the Anacortes City Council's consideration, I wish to offer an extension beyond the initial expiration date of my July 16, 2019 proposal, with a new proposal expiration date of **March 31, 2020**.

All terms, pricing, and intent outlined in the original proposal apply, in good faith, that the Locomotive #1, and 3 Excursion Coaches remain unaltered.

In addition, Appendix B - 'STEAM RAILROAD Maintenance and Operating Cost Estimates' has been included to help better inform the investment necessary beyond the proposed acquisition, with regard to meeting all criteria outlined in the Anne Thompson MOA, dated December 10, 2019.

Sincerely,



Bret Iwan

Owner, Bungalow Modern LLC

Bungalow Modern LLC

1015 N OAKLAND AVE

PASADENA CA 91104

816.332.2156 Cell

626.344.7091 Office

Anacortes Railway Purchase Proposal

JULY 16, 2019 - REVISED JANUARY 20, 2020

OVERVIEW

Proposed purchase of Anacortes Railway Assets. To include:

- 0-4-4T, 18" Gauge, 4 ½ Ton, Forney Steam Locomotive, Anacortes Railway #1
- 3 Excursion Coaches (Amenable to excluding one coach, to remain in possession of Anacortes Museum)
- Rail & Equipment (Track Bolts, Turn-Outs, Turn-Tables, Switch Stands) *Excluding Public Grade Crossing*

GOALS

1. Celebrate the craftsmanship, heritage, and legacy of the Anacortes Railway, by relocating to an operational venue. With the added potential to tour rail enthusiast festivals and meet-ups.
2. Provide location and privately funded maintenance for continued longevity. *See *Appendix B for itemized maintenance and operating estimates**
3. Work closely with The Anacortes Museum, to provide assistance, design direction, or replica elements, in order to celebrate the story of Thomas G. Thompson's creation and contributions to the City of Anacortes, per the Thompson families request.

SPECIFICATIONS

Purchase of Anacortes Railway to be conducted between **Bret Iwan**, henceforth known as Buyer, and the **City of Anacortes**, henceforth known as Seller.

Buyer to assume all responsibility, and cost, associated with the removal of existing right of way, and the transportation of assets from current locations. Seller agrees to provide adequate time (*initially estimated at 6 months from contracted purchase date*), for the removal of rail, and equipment.

If elected by seller, offer to include the following options; value(s) to be discounted from Purchase Price:

- A. Design consultation and art direction, provided by buyer, for the conversion of existing car house display. Redeemable for a period of 5 years from purchase date. (\$10,000 Value)
- B. Fabrication of a replica locomotive for display purposes. Approximate 3 year fabrication lead time. (\$15,000 Value)
- C. Fabrication of scale model railway display, of original Anacortes Railway route and equipment. Approximate 1 year fabrication lead time. (\$3,000 Value)

Itemized Purchase Price to be as follows:

-Locomotive #1	\$75,000.00	
-Passenger Coach #21	\$9,500.00	
-Passenger Coach #22	\$9,500.00	
-Passenger Coach #23	\$8,500.00	
-Rail & Equipment	\$15,000.00	*See itemized list Appendix A.*
TOTAL	\$117,500.00	

REFERENCE INFORMATION

COMPARABLES

In determining the Purchase Price Offer, these comparable equipment listings were used:

- [15" Gauge, 1956 Crown Steam Locomotive](#), Northern California - Listed \$28,500

-
- [18" Gold Mining Railroad](#), San Diego CA - Listed \$185,000
-5 Locomotives, 22 Passenger Cars, 5 Utility Cars, 5 switches, ½ Mile of Rail
 - [24" Gauge, 10 Ton, Steam Locomotive](#), Italy - Listed \$168,000
-2001 Mogul Locomotive, Tender, 2 Flat Cars, 1 Utility Car, 2 Loco-tractors, 656' of Rail
 - [24" Gauge, 12 Ton, 1934 Henschel Steam Locomotive](#), Northeast Iowa - **SOLD** \$125,000
 - [36" Narrow Gauge, 21 Ton, 1940 HK Porter Locomotive](#), Buena Park, CA - **SOLD** \$40,630
 - [Standard Gauge Railroad, Wakefield Canada](#) - Listed \$421,340
-1907 Steam Locomotive, 1962 Diesel Electric Locomotive, 7 Coaches; climate controlled w/ lavatories, Dining car with kitchen, Gift Shop coach.

OPERATING COST ESTIMATES

See Appendix B - STEAM RAILROAD Maintenance and Operating Cost Estimates

TERMS

Proposal prepared by Bret Iwan, DBA Bungalow Modern LLC.

Pricing and Specifications outlined above, Expire March 31, 2020.

Payment to be delivered upon execution of Bill of Sale by Buyer and Seller.

Bungalow Modern LLC

1015 N OAKLAND AVE
PASADENA CA 91104
816.332.2156 Cell
626.344.7091 Office

Appendix A.

Anacortes Railway Purchase Itemized

OCTOBER 21, 2019 REVISED JANUARY 20, 2020

ITEMS

Proposal and Purchase Price determined, assuming possession of Anacortes Railway Equipment, as follows:

1. 0-4-4T, 18" Gauge, 4 ½ Ton, Forney Steam Locomotive, Anacortes Railway #1 (including Bell, Whistle, and Air Hoses)
2. 3 Excursion Coaches; #21 Magic City, #22 Annacopper Road, #23 Capsante
3. Approx 13,000 Feet of 20lb Rail, including rail joiners and track bolts
 - a. Track along R Ave, between 4th & 9th
 - b. Track along 9th, between Commercial & Q Ave
 - c. All Rail currently located at off site storage field
4. (4) Switch Stands
5. (5) Turnouts; each including switch, connection rod, frog, and guard rail.
 - a. *Assumed located at off site storage field*
6. (2) Turntables
 - a. (1) located at termination of ROW at 4th.
 - b. (1) currently located at off site storage field
7. (4) Sets Arch Bar Car Trucks *Currently located at off site storage field*

TERMS

Proposal prepared by Bret Iwan, DBA Bungalow Modern LLC.

Pricing and Specifications outlined above, Expire March 31st, 2020, per third Addendum dated January 20, 2020.

Bungalow Modern LLC

1015 N OAKLAND AVE
PASADENA CA 91104
816.332.2156 Cell
626.344.7091 Office

Appendix B.

STEAM RAILROAD Maintenance and Operating Cost Estimates

JANUARY 20, 2020

THIS INFORMATION COMPILED FOR THE MEANS OF ESTIMATING OPERATING COSTS WITH REGARD TO A STEAM RAILROAD AND EQUIPMENT BETWEEN 12" AND 18" GAUGE.

MAINTENANCE**1. LUBRICATION**

- a. HIGH TEMPERATURE GREASE - \$200 / operating month
- b. GEAR OIL - \$2700 / 55 Gallon (anticipated quarterly cost)
- c. STEAM OIL - \$1000 / 55 Gallon (anticipated quarterly cost)

2. WATER TREATMENT - Assumes water supply pre treated via Water Softener

- a. TERLYN LSB 4000 SCALE REMOVER - \$900 / 5 GALLON (bi-monthly cost)
- b. RUSTSTOP 85 OXYGEN ELIMINATOR - \$2450.00 / 55 Gallon (monthly)

3. RIGHT OF WAY (ROW)

- a. **NEW** 20lb/yd ASCE RAIL - \$2.00/lb (Based on previous ROW 14,000 Track Feet/9400 yards = \$752,000)
- b. Ballast Rock - \$27.00/ton (Approx. 2,500 ton/mile; \$180,000 previous ROW)
- c. Railroad Ties - \$25.00/creosote soaked tie 6" x 36" (ties spaced 18" on center)
\$230,000 approx for 14,000 Track Feet

4. ROUTINE BOILER REQUIRED MAINTENANCE PER FRA REGULATIONS

-
- a. Re-tubing - \$30,000 (required every 15 years)
 - b. Pressure Vessel Inspection Fees - Approx. \$75.00 (Every 2/4 years)
5. COSMETIC RESTORATION *Specific to Anacortes Railway Equipment*
- a. LOCOMOTIVE SMOKE BOX SURFACE RUST - \$300
 - b. LOCOMOTIVE PAINT REPAIR AND TOUCH UPS - \$5000
 - c. COACH REFURBISHMENT, EXTERIOR AND INTERIOR - \$10,000

OPERATION

6. WATER

- a. Rate Determined by Municipal Supply

7. ELECTRICITY

- a. Support Structures, including Engine Shed, Ticket Booth, Grade Crossing Signals, and Lighting for Night Time safety - Determined by Municipal Supply

8. FUEL

- a. Douglas Fir Bark - \$250 per cord (estimate 1 cord per month of operation)
- b. OPTIONAL CONVERSION TO OIL BURNING - 30k-75k

9. INSURANCE

- a. Equipment Insurance - *Unknown without proper evaluation*
- b. Liability - *Unknown without proper ROW and Location evaluation*

10. INFRASTRUCTURE

- a. Engine Shed Facilities - \$100k-\$300k Construction Costs depending on scope
- b. Ticketing Booth - \$15k-25k Construction Cost depending on scope
- c. Grade Crossing Signals & Gates - Starting at \$10,000
- d. Water Softener - \$2,000.00

11. LAND USAGE RIGHTS

-
- a. Property franchise fees or ROW approval depending on land ownership. *PLEASE NOTE: Proposal, as prepared by Bret Iwan, assumes all private property expenses as tied to business endeavors, excluded from Railway Operating costs.*

12. PERMITS

- a. PAR (PERMANENT AMUSEMENT RIDE) *Varied by State*

13. MARKETING

- a. \$4,000 annually - (Tickets, Web Hosting, Social Media Management, Advertising, etc)

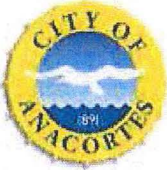
14. RAILROAD STAFF HOURS

- a. APPEARANCES: Approx 8-10 hours before each operating session, per Thomas Thompson guidelines.
- b. DAILY MAINTENANCE: Approx 3-4 hours *opening maintenance* and steam up procedures prior to operating day. Approx 1.5-2 hours for closing maintenance.
- c. NON OPERATIONAL and PREVENTATIVE MAINTENANCE: Approx 30-50 hours monthly, with an estimated increase of 15-20 hours during heavy operational season.

TERMS

Estimates prepared by and Copyright Bungalow Modern LLC. 2020

Pricing and Specifications outlined above, serve as estimates of assumed maintenance and operating costs for a steam railroad, with a gauge of 12" to 18". Market value and Location may influence totals.



MEMORANDUM OF AGREEMENT
between the
CITY OF ANACORTES
and
ANNE THOMPSON

This Memorandum of Agreement ("MOA"), executed this 10th day of December, 2019, is made by and between the City of Anacortes, a Washington Municipal Corporation (the "City"), and Anne Thompson, collectively referred to as "the Parties."

RECITALS

WHEREAS, Anne Thompson is the surviving spouse of Thomas G. Thompson, Jr., who constructed, owned and operated the Thomas G. Thompson, Jr. Train (the "Train") in Anacortes, Washington, which was a beloved community amenity; and

WHEREAS, after Thomas G. Thompson, Jr.'s passing, Anne Thompson donated the Train to the City, as commemorated in a certain letter dated June 21, 2012; and

WHEREAS, the terms of the gift dictated that the City would care for and store the Train in Anacortes and that the City would establish a static display for the Train for the enjoyment of the community; and

WHEREAS, the City has received a request recently from a potential purchaser and long-time admirer of the Train who proposes to acquire the Train from the City, relocate the Train out of state, and construct a track and event venue where the Train would be brought out of retirement to once again operate as a public amenity under the Anacortes Railway and Thomas G. Thompson, Jr. Train name; and

WHEREAS, the City wishes to honor the legacy of Thomas G. Thompson, Jr. and the Train and their importance to the Anacortes community and the Thompson family; and

WHEREAS, the Parties now wish to clarify the terms of the gift of the Train to the City;

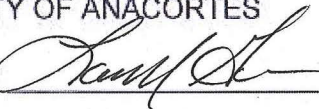
NOW THEREFORE, for and in consideration of the premises and mutual promises contained in this MOA, the City and Anne Thompson agree as follows:

AGREEMENT

1. Sale of the Train: The City may consider proposals to sell the Train and all necessary equipment and appurtenances for its operation; and such sale would be consistent with the Thompson family's intent in donating the Train to the City provided the following conditions are met:
 - a. The potential purchaser can demonstrate the requisite skills and knowledge to operate the Train.
 - b. The potential purchaser can demonstrate plans for a location for the Train as an attraction open to the public.
 - c. The potential purchaser makes a commitment to the City not to significantly alter the Train other than as needed for its maintenance and care.
 - d. The potential purchaser makes a commitment to care for the Train and provide for its regular maintenance and upkeep.
 - e. Any proceeds received by the City from the sale of the Train would be used to both interpret and memorialize the legacy of Thomas G. Thompson, Jr. and his Train and support the work of the Anacortes Museum.
2. Affirmation of Original Donation: If the City does not accept a proposal to sell the Train, it will adhere to all terms in the June 21, 2012 letter by which the original donation was made.

The Parties, by their authorized representatives, affix their authorized signatures hereto:

CITY OF ANACORTES

By: 

Date: 12-10-19

Laurie Gere, Mayor

ANNE THOMPSON

By: 

Date: 11-15-2019

ANACORTES RAILWAY PURCHASE PROPOSAL

BY BRET IWAN
ORIGINALLY PRESENTED JULY, 2019

Personal History with the Anacortes Railway

- *First visit in 1987*
- *Consecutive visits every summer until 1999*
- *Volunteered services in Jan 2016, to the Non-Profit Anacortes Railway Group.*
- *Presented purchase offer in July 2019*
- *Began communication with Thompson family, and met with Anne Thompson Oct 2019 (Received Family Approval).*

Proposal Specifics

- *Purchase Price: \$117,500*
- *Offer includes options for museum assistance: (Design Services, Model Building, or Replica Fabrication)*
- *Buyer to assume all responsibility for equipment Removal, Transportation, and Restoration.*

Proposal Specifics

Maintenance and Operation Estimates

- *Infrastructure Estimate: \$350K*
- *Initial Restoration Estimate: \$20K*
- *Right of Way Estimate: \$1.2M*
- *Weekend Operation Estimate: \$10K*

Proposal Specifics

Qualifications

A. Certified Steam Engineer and Mechanic

- Knotts Berry Farm Calico Railroad 2017-2020*
- Nevada Northern Railway Volunteer*
- Hillcrest Railroad Volunteer*
- Iwan Locomotive Works privately owned Railroad*

B. Current plan for public operation in Lincoln, CA.

C. Commitment to COA and Thompson family to keep equipment appearance unaltered.

D. Assume ALL maintenance under Private Ownership.

E. Promise to family to assist in efforts to celebrate Thomas G. Thompson legacy.

PLAN



PROPOSED RELOCATION OF THE ANACORTES RAILWAY

PRESERVATION GOALS

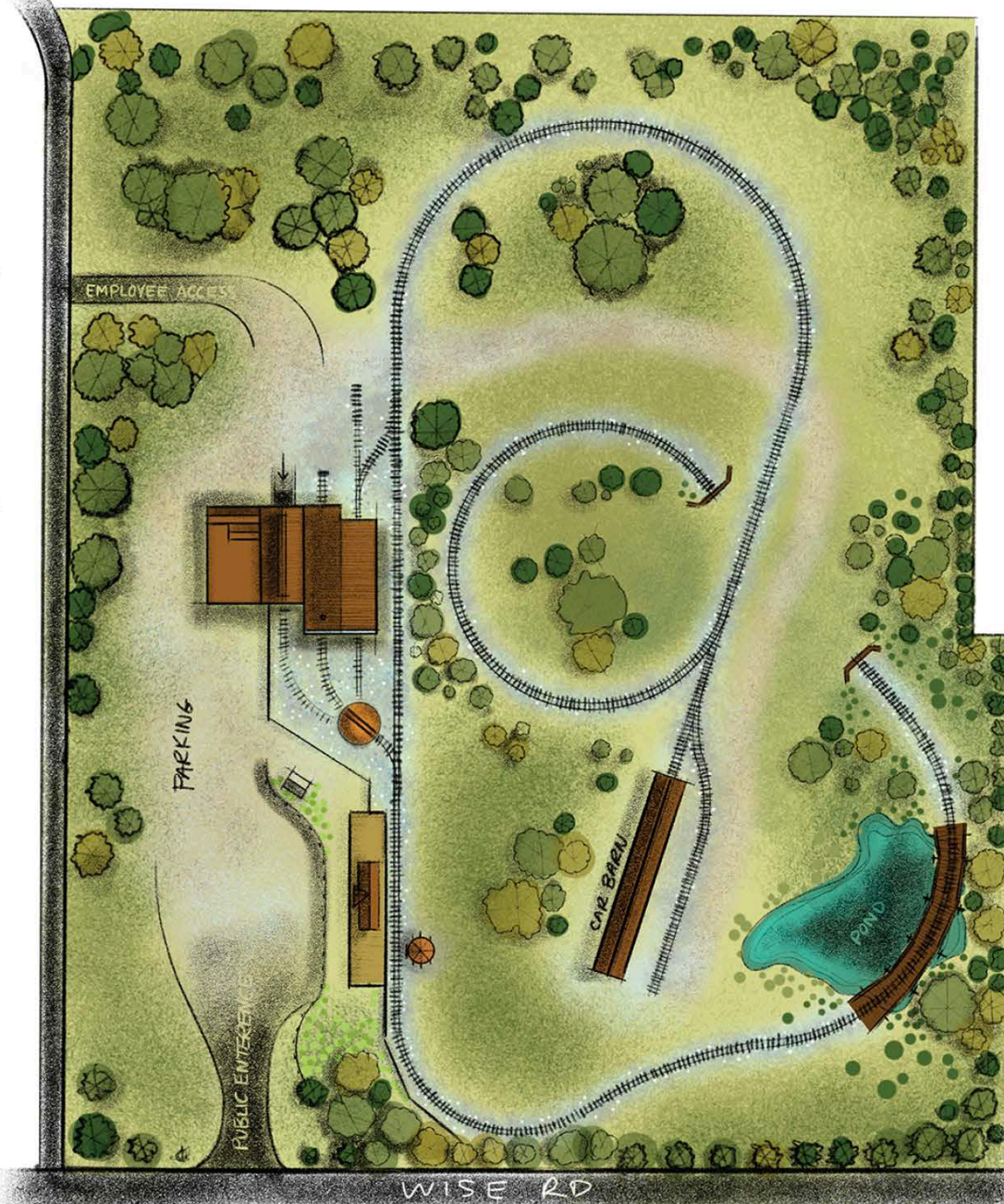
- PRESERVE THE LEGACY OF THOMAS G. THOMPSON JR, BY PROVIDING MAINTENANCE, CARE, AND A PUBLICLY ACCESSIBLE LOCATION TO OPERATE EQUIPMENT.
- ENSURE DETAILED UPKEEP OF EQUIPMENT, THROUGH RESTORATION, PREVENTATIVE MAINTENANCE, BOILER TREATMENT PROCEDURES, AND COSMETIC DETAILING.
- CELEBRATE THE CRAFTSMANSHIP OF THE RAILWAY THROUGH ARCHIVAL DOCUMENTATION, AND INFORMATIVE DISPLAY.
- RECREATE THE ARCHITECTURAL AESTHETIC OF THE RAILWAY, THROUGH RECREATION OF CAR BARN, AND TICKET BOOTH STRUCTURES.
- TRANSPORT LOCOMOTIVE, THREE EXCURSION COACHES, AND REMAINING R.Y. EQUIPMENT TO LINCOLN, CALIFORNIA.

LINCOLN, CALIFORNIA

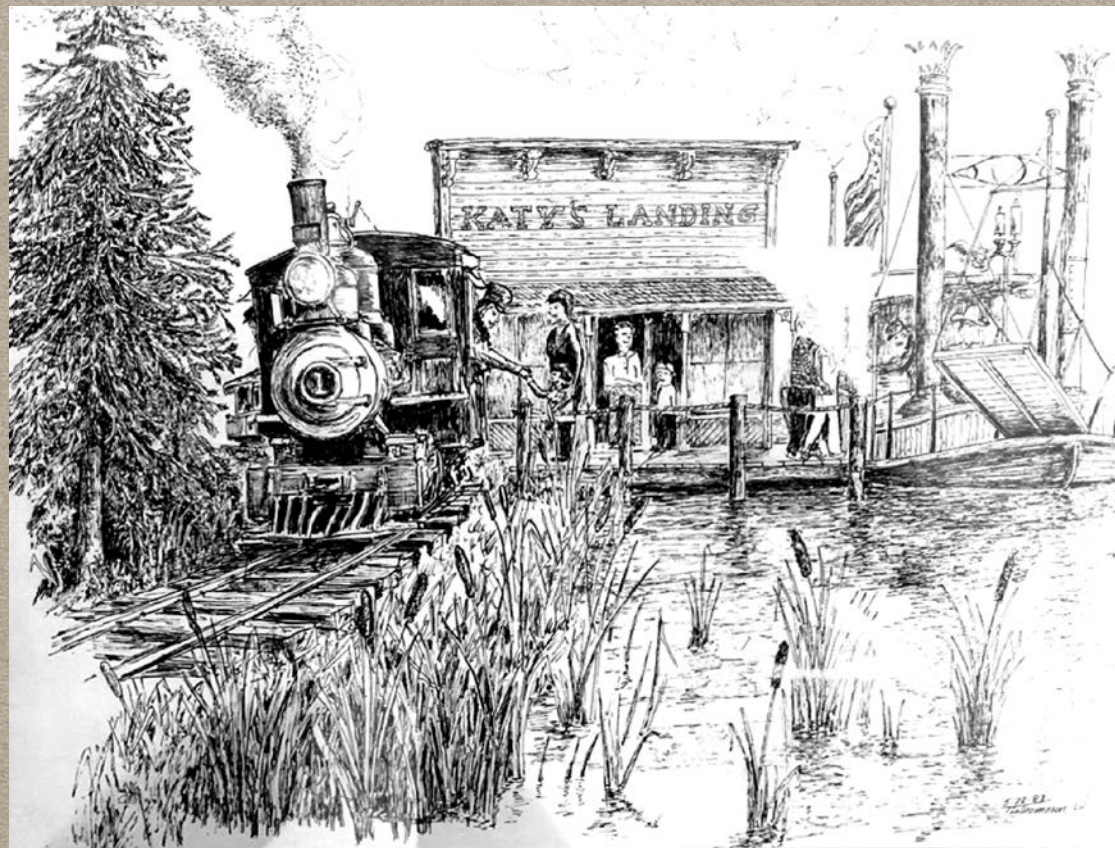
- ESTABLISHED 1859, FIRST PLANNED BY RAILROAD ENGINEER THEODORE JUDAH. FOUNDED BY CHARLES LINCOLN WILSON.
- RICH HISTORY OF AGRICULTURAL AND FRUIT PACKING INDUSTRY, SUPPORTED BY THE RAILROAD.
- GROWING COMMUNITY, WITH BURGEONING PLACER COUNTY WINE TRAIL, AND COMMUNITY ADVENTURE PARKS.



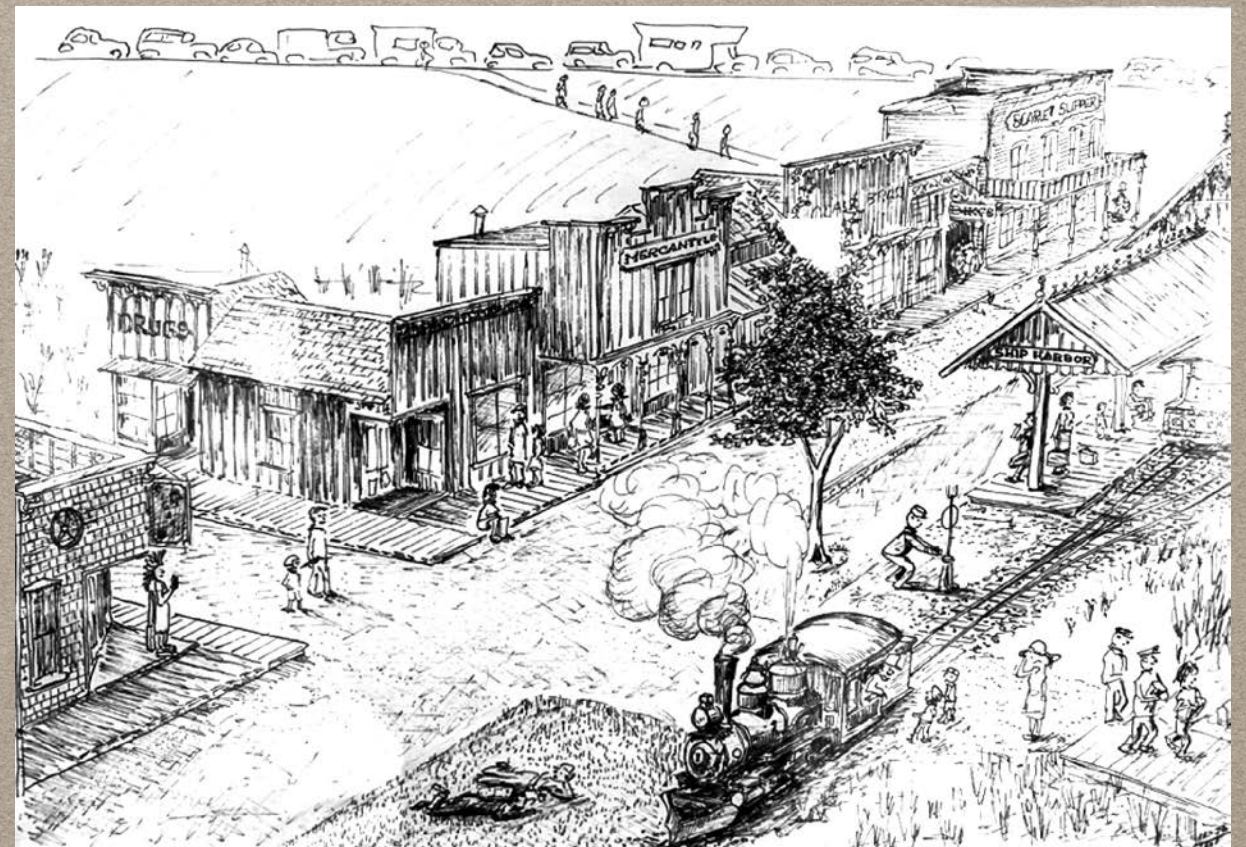
SITE CONCEPT



PLAN

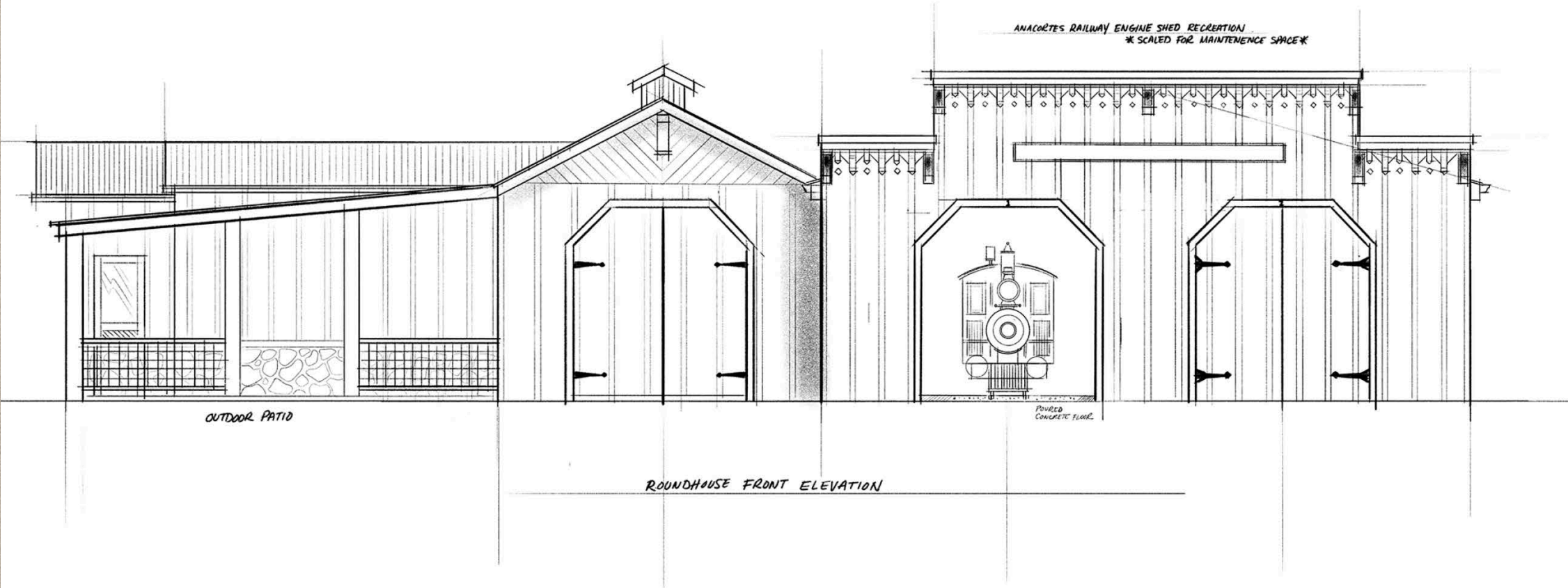


Original Thomas Thompson Artwork



PLAN

ROUNDHOUSE AND ANACORTES RAILWAY FACILITIES CONCEPT



THE ANACORTES RAILWAY
LINCOLN CALIFORNIA

SHEET NO. A-1 OF	PROJECT TITLE	DESIGN FIRM	DESIGNED BY	DATE
	ROUNDHOUSE AND ANACORTES RAILWAY	BUNGALOW MODERN 1015 NORTH OAKLAND AVE PASADENA, CA 91104 626.344.7091	DRAWN BY	10-17-19
	SHEET TITLE	CONSULTANT	CHECKED BY	PROJECT ID
	FRONT ELEVATION		REVIEWED BY	DRAWING CODE
			SUBMITTED BY	FILE NAME
			PROJECT MANAGER	PLLOT DATE
			NO.	DATE
				ISSUE NOTES

BUNGALOW MODERN
DESIGN & CONSULTATION
1015 NORTH OAKLAND AVE
PASADENA, CA 91104
626.344.7091
BRET@BUNGALOWMODERN.COM



PLAN



PLAN



- *Work with Thompson family to create documentary about Thomas G. Thompson.*

- *Offer free rides to Anacortes residents*
- *Create legacy displays*





City Council Agenda Bill

Meeting Date: 3/9/2020

Agenda Item: 8b

Subject: Comcast Franchise Agreement

Staff Contact: Darcy Swetnam, Steve Hoglund

Approved for Submittal to Council by	
x	Laurie Gere, Mayor
x	Steve Hoglund, Finance Director
x	Darcy Swetnam, City Attorney

Action Type	
x	Ordinance No. 3067
	Code Revision?
	Resolution No.
x	Contract
	Public Hearing
	Staff Report

Summary Statement: Updated franchise agreement with Comcast. The updated agreement has one difference from the existing agreement in that Comcast will temporarily increase PEG fees from 15 cents to 25 cents per subscriber per month the proceeds of which will be used to put in the infrastructure necessary to broadcast an HD signal across channel 10.

Background: The existing agreement expired and we've been operating under the expired agreement for roughly two years. There are no material differences between the new agreement and the old agreement other than the PEG fee and fiber infrastructure mentioned in the Summary Statement.

Budget Impact	
Amount Budgeted	
Budget Account (BARS)	
Proposed Expenditure	
Budget Amendment Required?	
Revenue Source	

Proposed Contract	
Contractor	Comcast
Amount	
Start Date	
End Date	

Previous Council/Committee Action: [Ordinance 2774](#) adopted 12/17/2007 executing current franchise agreement

Competing Viewpoints Considered: The City has been operating under an expired agreement for roughly 2 years, so there really isn't an alternative viewpoint.

Recommended Motion: I move to adopt Ordinance 3067 authorizing the franchise agreement with Comcast.

Alternative Actions: Do not authorize agreement

Attachments (listed in order presented): Ordinance 3067, proposed Franchise Agreement

**CITY OF ANACORTES
ORDINANCE NO. 3067**

**AN ORDINANCE OF THE CITY OF ANACORTES, WASHINGTON, GRANTING A
NON-EXCLUSIVE FRANCHISE TO COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC FOR THE CONSTRUCTION, OPERATION, AND
MAINTENANCE OF A CABLE SYSTEM WITHIN THE CITY LIMITS, PROVIDING
FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE**

Whereas, the City of Anacortes is authorized to grant nonexclusive franchises for the operation of cable systems within the City rights-of-way; and

Whereas, Comcast Cable Communications Management, LLC has applied for such a franchise to construct, operate, and maintain a cable system within the jurisdictional boundaries of Anacortes; and

Whereas, a public hearing has been conducted in accordance with Section 5.44.070 of the Anacortes Municipal Code, during which any interested parties were allowed to provide statements regarding the grant of the franchise rights contained herein; and

Whereas the terms, conditions, and obligations provided herein are necessary to protect the safety and welfare of the citizens of Anacortes and provide for the cable service needs of the community;

Now, therefore, the City Council of the City of Anacortes does ordain as follows:

Section 1. That a non-exclusive Franchise, which constitutes an agreement between the City of Anacortes and Comcast Cable Communications Management, LLC (hereinafter "Comcast"). Comcast agrees to construct, maintain, and operate a cable television system for the distribution of television and other electronic signals pursuant to the terms of the Franchise Agreement attached hereto and identified as Exhibit "A". The City agrees to grant to Comcast all necessary rights and privileges to use public rights of way pursuant to the terms of Exhibit "A". This Franchise Agreement shall, as of its effective date, supersede and replace all existing franchises previously granted by the City to Comcast or any of its predecessors, subsidiaries, or affiliated companies.

PASSED and APPROVED this ____ day of _____, 2020.

CITY OF ANACORTES:

Laurie Gere, Mayor

Attest:

Steve Hoglund, City Clerk-Treasurer

Approved as to Form:

Darcy Swetnam, City Attorney

EXHIBIT A

CABLE FRANCHISE

Between

ANACORTES, WASHINGTON

and

**COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC**

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITIONS	1
SECTION 2. GRANT OF FRANCHISE	5
2.1 Grant	5
2.2 Use of Public Streets and Ways	6
2.3 Term	6
2.4 Effective Date	7
2.5 Franchise Nonexclusive	7
2.6 Competitive Equity	7
2.7 Police Powers	8
2.8 Relations to Other Provisions of Law	8
2.9 Effect of Acceptance	8
SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS	9
3.1 Franchise Fee	9
3.2 Payments	9
3.3 Acceptance of Payment and Recomputation	9
3.4 Quarterly Franchise Fee Reports	9
3.5 Audits	10
3.6 Interest on Late Payments	10
3.7 Financial Records	10
3.8 Additional Commitments Not Franchise Fees	10
3.9 Costs of Publication	11
3.10 Tax Liability	11
3.11 Payment on Termination	11
SECTION 4. ADMINISTRATION AND REGULATION	11
4.1 Authority	11
4.2 Rates and Charges	12
4.3 Rate Discrimination	12
4.4 Filing of Rates and Charges	12
4.5 Time Limits Strictly Construed	13

SECTION 5.	FINANCIAL AND INSURANCE REQUIREMENTS	13
	5.1 Insurance Requirements	13
	5.2 Deductibles and Self-Insured Retentions	14
	5.3 Indemnification	15
	5.4 Performance Bond	16
SECTION 6.	CUSTOMER SERVICE	16
	6.1 Customer Service Standards	16
	6.2 Subscriber Privacy	17
	6.3 Emergency Broadcast	17
SECTION 7.	REPORTS AND RECORDS	17
	7.1 Open Records	17
	7.2 Confidentiality	17
	7.3 Copies of Federal and State Documents	18
	7.4 Inspection of Facilities	18
	7.5 False Statements	18
SECTION 8.	PROGRAMMING	18
	8.1 Broad Programming Categories	18
	8.2 Parental Control Device	19
	8.3 Continuity of Service	19
	8.4 Service for Disabled	19
SECTION 9.	EDUCATIONAL AND GOVERNMENTAL ACCESS	19
	9.1 Educational and Governmental Access	19
	9.2 Simulcast High Definition Channel	19
	9.3 Access Channel Location and Relocation	21
	9.4 Access Channel Interconnections	21
	9.5 Access Channel Signal	21
	9.6 Technical Quality	21
	9.7 Return Pathway	22
SECTION 10.	GENERAL STREET USE AND CONSTRUCTION	22
	10.1 Construction	22
	10.2 Location of Facilities	22
	10.3 Temporary Relocation	22
	10.4 Reservation of City Street Rights	23
	10.5 Restoration of Streets	24
	10.6 Maintenance and Workmanship	24
	10.7 Use of Conduits by City	25
	10.8 Street Vacation	25
	10.9 Discontinuing Use of Facilities	26
	10.10 Hazardous Substances	26
	10.11 Undergrounding of Cable	26
	10.12 Repair and Restoration of Property	27
	10.13 Codes	28
	10.14 Standards	28

10.15 Correction of Nonconforming Conditions	28
10.16 Contractors and Subcontractors	29
SECTION 11. SYSTEM DESIGN	29
11.1 Subscriber Network	29
SECTION 12. TEST AND COMPLIANCE PROCEDURES	29
SECTION 13. SERVICE EXTENSION, CONSTRUCTION AND INTERCONNECTION	30
13.1 Equivalent Service	30
13.2 Service Availability	30
13.3 Connection of Public Facilities	31
SECTION 14. STANDBY POWER	32
SECTION 15. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE	32
15.1 Enforcement	32
15.2 Revocation	33
15.3 Removal	35
15.4 Receivership and Foreclosure	35
15.5 No Monetary Recourse Against City	36
15.6 Non enforcement by City	36
15.7 Relationship of Remedies	36
SECTION 16. ABANDONMENT	36
16.1 Effect of Abandonment	36
16.2 What Constitutes Abandonment	37
SECTION 17. FRANCHISE RENEWAL AND TRANSFER	37
17.1 Renewal	37
17.2 Transfer of Ownership or Control	37
SECTION 18. SEVERABILITY	39
SECTION 19. MISCELLANEOUS PROVISIONS	39
19.1 Preferential or Discriminatory Practices Prohibited	39
19.2 Notices	39
19.3 Binding Effect	40
19.4 Authority to Amend	40
19.5 Governing Law and Venue	40
19.6 Captions	40
19.7 Construction of Franchise	40
19.8 No Joint Venture	41
19.9 Waiver	41
19.10 Cumulative Rights	41
19.11 Time Limits Strictly Construed	41
SIGNATURE PAGE	42

CABLE TELEVISION SYSTEM FRANCHISE

This Cable Television System Franchise ("Franchise") is entered into this _____ day of _____, 2020, by and between **ANACORTES, WASHINGTON** ("City"), and **COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC** ("Grantee").

WHEREAS, the City is authorized to grant one or more nonexclusive Franchises to construct, operate and maintain a cable television system within the municipal boundaries of the City; and

WHEREAS, the City has considered the financial condition, technical ability and legal qualifications of Grantee; and

WHEREAS, the City, after such consideration, analysis and deliberation as are required by applicable law, has approved and found sufficient the financial, technical and legal qualifications of Grantee to provide cable television service within the City; and

WHEREAS, the Grantee is willing to accept this Franchise subject to such terms and conditions, and to abide by those terms and conditions; and

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's application to provide cable television service within the City;

NOW, THEREFORE, in consideration of the mutual promises made herein, the receipt and the adequacy of which is hereby acknowledged, the City and Grantee do hereby agree as follows:

SECTION 1. DEFINITIONS

For the purposes of this Franchise and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. 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. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Access" means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including City and its designees, of the Cable System to acquire, create, receive, and distribute, Cable Service, as permitted under applicable law, including, but not limited to:

(B) **"Educational Access"** which means Access where Schools are the primary users of programming and service;

(C) **“Governmental Access”** which means Access where governmental institutions or their designees are the primary users of programming and service; and

(D) **“EG Access”** which means Educational Access, and Governmental Access, collectively.

1.2 “Access Channel” means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.

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

1.4 “Basic Service” means any service tier which includes the retransmission of local television broadcast signals. or as such service tier may be further defined by federal law.

1.5. “Cable Act” means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996 as amended.

1.6 “Cable Grantee” means any Person or groups of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.

1.7 “Cable Service” means the one-way transmission of video programming or other programming service to Subscribers, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.8 “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

- (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) a facility that serves Subscribers without using any public right-of-way;
- (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service;

- (4) an open video system that complies with federal statutes; or
- (5) any facilities of any electric utility used solely for operating its electric utility systems.

1.9 “Channel” means a portion of the electromagnetic spectrum which is used in a Cable System and is capable of delivering a television Channel, as television Channel is defined by the FCC in other applicable regulations.

1.10 “City” means the City of Anacortes, Washington, a municipal corporation of the State of Washington.

1.11 “Designated Access Provider” means the entity or entities designated by the City to manage or co-manage Educational or Governmental Access Channels and facilities. The City may be a Designated Access Provider.

1.12 “Downstream” means the transmission from the Headend to remote points on the Cable System.

1.13 “FCC” means the Federal Communications Commission.

1.14 “Franchise” means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System through use of the City’s public rights-of-ways, public utility easements, or other public ways in the Franchise Area such as is granted by this Franchise, whether such authorization is designated as a franchise, license, resolution, contract, certificate, or otherwise.

1.15 “Franchise Area” means the area within the jurisdictional boundaries of the City. SEE 2.1 F

1.16 “Grantee” means “Comcast Cable Communications Management, LLC

1.17 “Gross Subscriber Revenues” means all amounts derived by Grantee or an Affiliate operating within the Franchise Area in whatever form and from all sources, from the operation of Grantee’s Cable System to provide Cable Service within the Franchise Area, calculated in accordance with generally accepted accounting principles (GAAP). “Gross Subscriber Revenues” shall include, but shall not be limited to, all amounts for all Cable Services, including, but not limited to, Basic, expanded basic, premium, and pay-per-view services, and installation fees and charges. “Gross Subscriber Revenues” shall not include bad debt, sales taxes, or other taxes and fees that are collected by Grantee on behalf of, and for payment to, the local, State or federal government.

1.18 “Headend” means a facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and facilities.

1.19 “Leased Access Channel” means any Channel commercially available for programming for a fee or charge by Grantee to members of the general public.

1.20 “Locally Scheduled Original Programming” means Government Access or Educational Access programming that is created by the City or their designated access provider(s) including edited coverage of live programming. Such Locally Scheduled Original Programming shall not be considered as qualifying as such after three (3) cablecasts (initial, first repeat and second repeat). Automated Video Programming filler, such as cablecasts of highways and roads, or video bulletin boards does not constitute Locally Scheduled Original Programming that qualifies herein.

1.21 “Person” means any individual, natural Person, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.22 “School” means any State accredited K-12 educational institution, for example, public primary and secondary schools (K-12) or private, but not including home schools.

1.23 “Standard Installation” means within 125 aerial feet or 60 underground trench feet from Grantees distribution system to the building attachment point.

1.24 “Street” means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority and located within the Franchise Area: Streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas.

1.25 “Subscriber” means any Person who elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of, or in connection with, the Cable System, and whose premises are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System.

(A) “**Commercial Subscriber**” means any Subscriber other than Residential Subscriber.

(B) “**Residential Subscriber**” means any Person who receives Cable Service delivered to single or multiple dwelling units, excluding such multiple dwelling units billed on a bulk-billing basis.

1.26 “Upstream” means the carrying of a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee, a nonexclusive and revocable authorization to make reasonable and lawful use of the Streets within the Franchise Area, subject to the construction and street use requirements set forth in Section 10 hereof, to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing Cable Services. This grant is subject to the terms and conditions set forth in this Franchise, and applicable law. This Franchise shall constitute and be construed as a right and an obligation to provide Cable Service

(B) This Franchise is intended to convey limited rights and interests only as to those Streets in which the City has an actual interest in accordance with Section 621 of the Communications Act of 1934, as amended, 47 U.S.C. 541. It is not a warranty of title or interest in any right-of-way; it does not provide the Grantee any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant hereof. This franchise shall not be construed to authorize the Grantee to install equipment and facilities upon City property other than City Streets. This Franchise does not deprive the City of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the City's Streets covered by this Franchise, including without limitation the right to perform work on its roadways, right-of-way or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

(C) This Franchise is subject to the general lawful police power of the City affecting matters of municipal concern and not merely existing contractual rights of Grantee. Nothing in this Franchise shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by the City. This Franchise shall not be construed to prohibit the City from exercising its rights under Section 621 of the Communications Act of 1934, as amended, 47 U.S.C. 541.

(D) This Franchise authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6), as amended. This Franchise shall not be interpreted to prevent the City from imposing additional conditions for use of the Streets should Grantee provide service other than Cable Service as described herein and available within the City. However, this Franchise shall not be read as a concession by Grantee that it needs authorization to provide service other than Cable Service described herein.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in

the Franchise Area will also comply with the terms and conditions of this Franchise.

(F) Grantee's rights and obligations as established by this Franchise shall extend to any property annexed by the City during the term of this Franchise.

(G) No rights shall pass to the Grantee by implication. By way of illustration, the rights granted under this Franchise shall not include, nor be a substitute for:

(1) Any permit, authorization, or permission required by the City for users of the Streets in connection with operations on or in the Streets, including, by way of example and not of limitation, street cut permits; or

(2) Any permits, authorizations, or leases for occupying any other property of the City or other entities to which access is not specifically granted by this Franchise, including, without limitation, permits and agreements for placing infrastructure on poles, within conduits, or in or on other structures.

2.2 Use of Public Streets and Ways

Subject to City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public Streets, including rights-of-way and public easements within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures, now in effect or enacted hereafter, and must obtain any and all necessary permits from the Public Works Department prior to commencing any construction activities. Grantee shall be solely responsible for identifying and obtaining such additional permits as may be required by other governmental entities having jurisdiction, including by way of example and not of limitation, electrical permits issued by the State department of Labor and Industries. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using City's public rights-of-way and public utility easements within the Franchise Area in compliance with all applicable City construction codes and procedures. As trustee for the public, City is entitled to fair compensation to be paid for these valuable rights throughout the term of this Franchise.

2.3 Term

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be for ten (10) years from the effective date of this Franchise, then at any time during the three (3) year Franchise renewal period, Grantee may request an extension of the Franchise for an additional five (5) years, unless extended or terminated sooner as hereinafter provided.

2.4 Effective Date

The effective date of this Franchise shall be twenty (20 days) after publication following the adoption of this Franchise by the City's City Council, unless Grantee fails to file with the City an unconditional written acceptance of this Franchise and post the security required hereunder within ninety (90) days of the date of adoption of this Franchise by the City's City Council, in which event this Franchise shall be voidable at the option of the City, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Franchise may be terminated.

2.5 Franchise Nonexclusive

This Franchise shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by the City to any Person to use any Street, right-of-way, easement, or property for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the public rights-of-way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional Franchises for Cable Systems as the City deems appropriate, upon such terms and conditions as the City deems appropriate.

2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided the City agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of the Grantee's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; system build-out requirements; security instruments; Access Channel and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the City which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, the City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by City and Grantee.

(B) In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon the Grantee by registered or certified mail or via nationally recognized overnight courier service.

(C) In the event that a wireline multichannel video programming distributor provides video service to the residents of the City under the authority granted by federal or State legislation or other regulatory entity, the Grantee shall have a

right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The City shall not unreasonably withhold consent to the Grantee's petition.

2.7 Police Powers

Grantee's rights hereunder are subject to the lawful police powers of City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by City or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof.

2.8 Relations to Other Provisions of Law

This Franchise and all rights and privileges granted under the Franchise are subject to, and the Grantee must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the City's exercise of its police and other powers and applicable law. This Franchise does not confer rights or immunities upon the Grantee other than as expressly provided herein. In the case of any conflict between the express terms of this Franchise and the express terms of any ordinance of general application enacted pursuant to the City's police power, the ordinance shall govern. Grantee does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights. The Franchise issued and the Franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax, unless expressly stated herein.

2.9 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the City's intervening in any legal or regulatory proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Franchise; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, including the Cable Act, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fee

(A) As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use City's Streets, Grantee shall pay as a Franchise fee to City, throughout the duration of this Franchise, an amount equal to five percent (5%) (unless the maximum permissible percentage is modified by federal law as described below), of Grantee's Gross Subscriber Revenues. The Franchise fees are in addition to all other fees, assessments, taxes or payments of general applicability that the Grantee may be required to pay under any federal, State or local law. This Franchise and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge or tax.

(B) The parties acknowledge that, at present, applicable federal law limits City to collection of a maximum Franchise Fee of five percent (5%) of Gross Subscriber Revenues in any twelve (12) month period. In the event that at any time during the duration of this Franchise applicable federal law changes the maximum allowable Franchise Fee, to be collected in any twelve (12) month period, then this Franchise shall be amended by the parties with sixty (60) days written notice by either party to the other party. The City agrees that all Cable operators in the Franchise Area over which the City has jurisdiction will be treated in an equivalent manner.

3.2 Payments

Grantee's Franchise fee payments to City shall be computed quarterly for the preceding calendar quarter ending on March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the last day of the preceding calendar quarter. Late payments shall be subject to applicable interest.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a report to City, containing an accurate statement in summarized form, of the Grantee's Gross Subscriber Revenues and the computation of the payment amount.

3.5 Audits

Upon thirty (30) days' prior written notice, the City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, and to calculate any amounts determined to be payable under this Franchise, in accordance with generally accepted accounting principles, provided, however, that any such inspection shall take place within six (6) years from the date the City receives such payment after which period any such payment shall be considered final. The City may hire an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant. City will in good faith attempt to complete each audit within six (6) months. Any additional amounts due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the City, which shall include a copy of the audit findings. If the audit shows that Franchisee fees have been underpaid by four percent (4%) or more, Grantee shall pay the cost of the audit in an amount not to exceed five thousand dollars (\$5,000) per year being audited for a maximum of 3 years.

3.6 Interest on late Payments.

In the event any payment due quarterly is not received within thirty (30) days from the end of the preceding quarter, Grantee shall pay interest on the amount due at the prime rate as listed in the Wall Street Journal on the date the payment was due, compounded daily, until the date the City receives the payment.

3.7 Financial records.

The grantee agrees to meet with a representative of the City upon request to review the Grantee's methodology of record-keeping, financial reporting, the computation of Franchise Fees, and other procedures, the understanding of which the City deems necessary to review reports and records that are relevant to the enforcement of this Franchise.

3.8 Additional Commitments Not Franchise Fees

(A) No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay in full the Franchise Fee percentage listed in this Franchise. Although the total sum of Franchise Fee payments and additional Access capital contribution commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional Access capital contribution commitments are excluded from the definition of Franchise Fee herein and are not Franchise Fees, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees to be passed through to Subscribers.

(B) Any security fund, performance bond, or letter of credit shall not be offset against Franchise Fees. Furthermore, the City and Grantee agree that any utility

tax, business and occupation tax or similar generally applicable tax or fee shall be in addition to any Franchise Fees required herein and there shall be no offset against Franchise Fees subject to applicable law.

(C) If Grantee elects to offset certain non-cash commitments or initiatives against the Franchise Fee in accordance with applicable law, Grantee will provide the City ninety (90) days' advance written notice, to include a detailed schedule of the amount it intends to offset, and the cost basis for each schedule item.

3.9 Costs of Publication

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Franchise and any amendments thereto, as such notice or publication is reasonably required by City or applicable law.

3.10 Tax Liability

Payment of the Franchise fees under this Franchise shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by City.

3.11 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by a certified public accountant, showing the Gross Subscriber Revenues received by the Grantee since the end of the previous fiscal year. Within thirty (30) days of a final unappealable determination that payment is due, the Grantee shall pay any unpaid amounts as shown on the statement. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

The City is vested with the power and right to regulate the exercise of the privileges permitted by this Franchise in the public interest, and to delegate its administrative power to the extent permitted under State and local law, to any agent, in its sole discretion.

4.2 Rates and Charges

(A) The City may regulate rates for the provision of Basic Service and equipment as expressly permitted by applicable law.

(B) The Grantee may offer a discount to those low income (as determined by the Grantee) individuals permanently disabled or sixty-five years of age or older who are the legal owners or lessee/tenants of their residence. Such discounts will consist of thirty percent (30%) off of Basic Service or the Basic Service portion of expanded basic service when not discounted by inclusion in other promotional or programming package rates at which time the promotional or programming package rate will apply. The City acknowledges that discounted services reflect a voluntary initiative on the part of Grantee, and is not a requirement of this franchise. Subject to applicable law, should Grantee elect to discontinue the low income discount, Grantee shall first provide the City with ninety (90) days' prior notice.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published in the form of a publicly-available rate card, and shall be nondiscriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions in accordance with 47 USC Section 543. Grantee shall apply its rates in accordance with governing law, with similar rates and charges for all Subscribers receiving similar Cable Service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability, or geographic location in the Franchise Area. Grantee shall provide equivalent Cable Service to all residential Subscribers at similar rates and to commercial Subscribers as authorized by applicable laws. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;

(B) Grantee from establishing different and nondiscriminatory rates and charges and classes of service for commercial customers, as well as different nondiscriminatory monthly rates for classes of commercial customers as allowable by federal law and regulations;

(C) The offering of discounts to low income senior citizens or permanently disabled Persons as set forth herein; or

(D) Grantee from establishing different and nondiscriminatory rates and charges for residential Subscribers as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise, and upon request, Grantee shall maintain on file with City a complete schedule of applicable rates and charges for

Cable Service provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Grantee shall provide upon request from City a complete schedule of current rates and charges. The schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access Channels.

4.5 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a violation of this Franchise and sufficient grounds for City to invoke any relevant provision of this Franchise. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the reasonable control of Grantee, such as acts of God (for example, floods, tornadoes, earthquakes or unusually severe weather conditions), Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Franchise or procure a substitute for such obligation which is satisfactory to City.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Insurance Requirements

(A) General Requirement Grantee must have adequate insurance during the entire term of this Franchise to protect the City against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Franchise or involve Grantee, its agents, representatives, contractors, subcontractors and their employees.

(B) Initial Insurance Limits Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the City from time to time. The Grantee shall obtain policies for the following initial minimum insurance limits:

- (1) Commercial General Liability: Two-million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a two-and-one-half million dollars (\$2,500,000) aggregate limit;
- (2) Automobile Liability: Two-million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage;

- (3) Employer's Liability: Two-million dollars (\$2,000,000); and
- (4) Worker's Compensation in accordance with State requirements.

5.2 Deductibles and Self-Insured Retentions

If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the City. City's approval will be given if the self-insured retention is consistent with standard industry practices and provides equal protection. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the City.

(A) Endorsements

- (1) All policies shall contain, or shall be endorsed so that:

- (a) The City, its officers, officials, employees, and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or applicable law, or in the construction, operation or repair, or ownership of its Cable System;

- (b) The Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, employees, and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

- (c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

- (2) All policies shall contain, or shall be endorsed so that the policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after thirty (30) days prior written notice, return receipt requested, has been given to the City.

(B) Acceptability of Insurers The insurance obtained by Grantee shall be placed with insurers with a current Best's rating of no less than "-A:VII."

(C) Verification of Coverage The Grantee shall furnish the City with valid certificates of insurance and endorsements or a copy of the page of the policy reflecting additional insured status. . The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the City within sixty (60) days of commencement of activities associated with this

Franchise. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise and City laws.

5.3 Indemnification

(A) Scope of Indemnity Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City and its officers, boards, commissions, agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, operation or repair of its Cable System regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Franchise excepting only those claims, caused by the sole negligence of the City, provided, however, the Grantee will not be obligated to indemnify City should City intervene in any proceeding regarding the grant of this Franchise pursuant to Section 2.9 of this Franchise. Without limiting in any way the Grantee's obligation to indemnify the City and its officers, boards, commissions, agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

(1) To Persons or property, in any way arising out of or through the acts or omissions of the Grantee, its contractors, subcontractors and their officers, employees, or agents, or to which the Grantee's negligence shall in any way contribute;

(2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; or for violation of any other right of any Person, provided, however, that Grantee will not be required to indemnify City for any claims arising out of use of EG Access Channels by City and/or Designated Access Providers;

(3) Arising out of Grantee's failure to comply with the provisions of any federal, State or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Franchise applies; and

(4) Arising from any third party suit, action or litigation, whether brought by a competitor to Grantee or by any other Person or entity, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the City to issue this Franchise to Grantee; or (2) alleges that, in issuing this Franchise to Grantee, the City has acted in a disparate or discriminatory manner.

(B) Duty to Give Notice and Tender Defense The City shall give the Grantee written notice within 20 days after receipt by the City, of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity

in this Section. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the City shall cooperate fully therein. Grantee shall reimburse reasonable attorneys' fees and costs incurred by the City during the thirty (30) day period in which the Grantee accepts or declines tender. In the event that the Grantee declines defense of the claim in violation of Section 5.3, the City may defend such claim and seek recovery from Grantee its expenses for reasonable attorneys' fees, costs, and disbursements, incurred by City for defense and in seeking such recovery provided that the relevant market to be used to establish the reasonableness of such attorney's fees shall be Snohomish County, Washington.

5.4 Security

(A) The Grantee shall post a performance bond, in the amount of twenty-five Thousand Dollars (\$25,000) to ensure Grantee's faithful performance of the terms of this Franchise.

(B) In the event Grantee undertakes any work in the Streets, the City reserves the right to require Grantee to provide additional security in the form of a construction bond, consistent with the City's municipal code.

(C) Any bonds required by the City shall be in a form that is typically recognized and accepted. The Grantee shall pay all premiums or other costs incidental to securing and maintaining the bond(s), and shall keep the bonds in effect at all times during the term of this Franchise, provided that bonds securing the performance of construction work as described in subsection "B" above shall be maintained until all construction work secured by the bond(s) is completed, and may be released at the conclusion of construction in accordance with the City's standard policies and procedures.

(D) The Grantee agrees that the maintenance of the bonds described herein shall not limit the liability of the Grantee to the amount of the bond(s), or otherwise limit the City's ability to pursue any other lawful remedy in any regulatory or court proceeding.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2 Subscriber Privacy

Grantee will comply with privacy rights of Subscribers in accordance with federal, State and local law.

6.3 Emergency Broadcast

In accordance with, and at the time required by, the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, as such provisions may from time to time be amended, Emergency Alert System ("EAS") activation has been accomplished in compliance with the FCC approved Washington State EAS plan any Local Area EAS plan that applies to the City, that has been approved by the Washington State Emergency Communications Committee (WSECC).

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

City shall have access to, and the right to inspect, any books and records of Grantee that are necessary to the administration or enforcement of the terms of this Franchise and all such records shall remain in control of Grantee. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to City at the sole expense of Grantee. If for security reasons Grantee determines that the requested books or records cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that City inspect them at one of Grantee's local area offices. If any books or records of Grantee are not kept in a local area office and not made available in copies to City upon written request as set forth above, and if City determines that an examination of such records is necessary or appropriate to the performance of any of City's duties directly related to the administration or enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

The City agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes City aware of such confidentiality, and to the extent permitted by applicable law. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If City receives a demand from any Person for disclosure of any information designated

by Grantee as confidential, City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person, provided that Grantee shall defend, indemnify, and hold the City harmless from any claim or judgement including, but not limited to, any penalties or costs under RCW 42.56 or any other damages incurred by the City or consequences of a failure to release such confidential records.

7.3 Copies of Federal and State Documents

Grantee shall submit to City, upon request, a list, or copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporations or Affiliates to any federal, State or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall submit such list or documents to City no later than thirty (30) days after receipt of City's written request. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency. Any such confidential material determined to be exempt from public disclosure shall be retained in confidence by City and its authorized agents and shall not be made available for public inspection.

7.4 Inspection of Facilities

City may inspect upon request any of Grantee's facilities and equipment located in the public right-of-way to confirm performance under this Franchise during normal business hours upon at least twenty-four (24) hours prior notice.

7.5 False Statements

Any intentional false or misleading statement or representation in any report required by this Franchise may be deemed a material violation of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to City under this Franchise or otherwise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee's cable television system shall provide the widest diversity of programming possible. Grantee shall provide at least the following broad categories of programming to the extent such categories are reasonably available:

- (1) Educational programming;
- (2) Sports programming;
- (3) General entertainment (including movies);
- (4) Children/family-oriented;
- (5) National and local government programming;
- (6) News and information programming.

8.2 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

8.3 Continuity of Service

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the *force majeure* provisions of this Franchise, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.

(B) In the event of a change in ownership, or in the event a new Cable Grantee acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with City and such new Cable Grantee in maintaining continuity of service to all Subscribers.

8.4 Service for the Disabled

Grantee shall comply with applicable federal, State or local laws or regulations.

SECTION 9: EDUCATIONAL AND GOVERNMENTAL ACCESS

9.1 Educational and Governmental Access

Upon the effective date of this Franchise and throughout the term hereof, Grantee shall make available, for the City's use, one (1) EG Access Channel for EG programming purposes. The provision of Access Channel via digital or compressed video technology will not reduce or increase the total number of Access Channel required herein.

9.2 Simulcast High Definition Access Channel

The Grantee agrees to simulcast one (1) Government Access Channel in high-definition (HD EG Channel) format under the following conditions:

(A) Within one hundred and twenty (120) days of passage of this Franchise, Grantee shall activate one (1) simulcast HD EG Channel.

(B) The City acknowledges that the simulcast HD EG Channel will be available only to those Subscribers who elect to subscribe to Grantee's high-definition Cable Service, receive a high-definition set-top converter, and pay all fees associated therewith.

(C) The HD EG Channel will be assigned a number near other high definition local broadcast stations, or if that is not possible, near HD news/public affairs programming channels, or if that is not possible as reasonably close as available channel numbering will allow. Grantee shall have sole discretion to determine the Channel placement of the City's simulcast HD EG Channel within its HD channel line-up.

(D) Upon activation of the simulcast HD EG Channel, the Grantee shall own and maintain the encoder equipment used to transmit the high-definition signal from City Hall (the demarcation point).

(E) The City shall provide the HD EG Channel signal as specified by the Grantee's engineering standards, and as agreed upon by the Parties.

(F) Access Channel On Lowest Tier. The required standard digital Access Channel provided to subscribers under this Franchise shall be included on a tier of service available to all subscribers. This is not applicable to the simulcast HD EG Channel provided for under this Franchise.

(G) Capital Contribution for EG Equipment. Grantee shall provide an EG capital contribution to the City for Access purposes including, without limitation, EG equipment purchases and EG return pathway construction and relocation costs. Within forty-five (45) days after the acceptance date of this Franchise by the Grantee, the Grantee shall change the EG Fee to \$0.25 per month on Subscriber billing statements. From the total dollars received each month throughout the term of this Franchise, the Grantee will recoup and remit the monthly total as follows:

- (a) Recovery of the Grantee's capital engineering costs, with \$0.15 cents of overall \$0.25 EG Fee, until the final costs of construction is recovered in full for EG Access project implementing a fiber optic EG return pathway from the Grantee's Burlington head-end to City Hall (final construction cost will be provided to the City by Grantee at conclusion of project);
- (b) Until the Grantee's capital engineering costs is recouped completely, the Grantee will remit to the City, on a quarterly basis along with the franchise fee payments, an amount equal to ten cents (\$0.10) per Subscriber per month; and

- (c) After completion of the Grantee's capital engineering costs recovery, the Grantee will remit the total monthly dollars received to the City on the same quarterly schedule as franchise fee payments.

The City shall have discretion to allocate the Capital Contributions in accordance with applicable law, provided that the City submits a summary of capital expenditures from the Capital Contributions to Grantee within sixty (60) days of the end of each calendar year.

9.3 Access Channel Relocation.

The Grantee shall provide the City with a minimum of sixty (60) days notice prior to the relocation of any Access Channels, unless the change is required by federal law, in which case the Grantee shall provide the City the maximum notice possible.

9.4 Access Channel interconnections.

The City acknowledges that the Grantee's Cable System provides additional benefits to Access programming needs beyond the requirements listed above. This is accomplished through the inclusion of other regional Access programming within the regional channel line-up that services the franchise area, but are not controlled by the City. The Grantee will use best efforts to provide the Subscribers in the Franchise Area with the other regional Access channels so long as the programmers offer them for use on the Cable System.

9.5 Access Channel Signal

Grantee shall not exercise editorial control over the programming of any Access Channel. Grantee will not interrupt the signal provided on any Access Channel except during circumstances beyond Grantee's control or if necessary for testing or planned system maintenance purposes.

9.6 Technical Quality

Both parties agree that it is the responsibility of the designated access provider(s) to provide a quality EG signal, to the Grantee at the point of demarcation, which meets or exceeds any applicable FCC technical standards. Notwithstanding the forgoing, the Grantee agrees that it will deliver to subscribers an EG signal of the same quality it receives from the designated access provider(s) without degradation and in accordance with the FCC technical standards. The Grantee is not precluded from down-converting the received EG signals (i.e. HD to digital), all consistent with FCC technical standards. FCC technical standards shall be used for all testing and assessment of quality under this section.

9.7 Return Pathway

Upon one-hundred and twenty (120) days of the effective date of this Franchise, the Grantee shall replace the coax Access return pathway with a new fiber optic Access return pathway between the City Hall and the Grantee's Burlington Headend. The Grantee shall maintain this Access connection pathway for the term of the Franchise. If the City desires to relocate or expand the fiber optic return pathway(s) to new location(s) over the term of this Franchise, upon one hundred twenty (120) days written request by the City and at the City's cost for Grantee's reasonable time and materials, the Grantee shall construct the requested new fiber optic return pathway(s).

SECTION 10. GENERAL STREET USE AND CONSTRUCTION

10.1 Construction

(A) Subject to applicable laws, regulations and ordinances of City and the provisions of this Franchise, Grantee may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all facilities within Streets incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities within the Streets. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits.

(B) Prior to beginning any construction, Grantee shall provide the City with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Franchise and all applicable City Ordinances and Codes. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees and franchisees so as to reduce as far as possible the number of Street cuts.

10.2 Location of Facilities

Grantee shall abide by the State's "Underground Utilities" statutes (Chapter 19.122 RCW) and will further comply with and adhere to City regulations related to the one call locator service program.

10.3 Temporary Relocation

City shall have the right to require Grantee to temporarily change the location of any part of Grantee's Cable System within the Streets when the public convenience

requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by the City, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its facilities located within the Streets, the City shall make a reasonable effort to provide Grantee with an alternate location within the Streets. This Section does not apply when referencing overhead to underground conversions, see Section 10.11 "Undergrounding of Cable".

10.4 Reservation of City Street Rights

(A) Nothing in this Franchise shall prevent the City or utilities owned, maintained or operated by public entities other than City, from constructing sewers; grading, paving, repairing or altering any Street; repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable and in the sole discretion of the City, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of Grantee's Cable System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, Grantee's Cable System shall be removed or replaced to the location the City shall direct, and City shall in no event be liable for any damage to any portion of Grantee's Cable System. Except in an emergency as defined below, City shall provide a minimum of sixty (60) days written notice to Grantee of any planned projects as defined below. Should Grantee fail to remove, adjust or relocate its facilities by the date established by City's written notice to Grantee, City may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by City due to Grantee's delay.

(B) Movement of Cable System By City in an Emergency The City may remove, replace, modify, or disconnect Grantee's facilities and equipment located in the Streets or on any other property in the case of fire, disaster, or other emergency. The City shall attempt to provide notice to Grantee prior to taking action and shall, when feasible, provide Grantee with the opportunity to perform such action.

(C) Movement of Cable System For and By City Except during an emergency, the City shall attempt to provide reasonable notice to Grantee prior to taking any action to remove, replace, modify, or disconnect Grantee's facilities and equipment, and shall, when feasible, provide Grantee with the opportunity to perform such action. Following notice by the City, Grantee shall, at its sole expense for movement of its facilities, remove, replace, modify or disconnect any of its facilities or equipment within any Street, or on any other property of the City, except that the City shall provide at least sixty (60) days' written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Grantee's facilities or equipment. If the Grantee fails to complete this work within the time prescribed and to the

City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City.

(D) Movement for Other Franchise Holders If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Those Persons shall be solely responsible for costs associated with the removal or relocation.

(E) Movement for a third party At the request of any Person holding a valid permit and upon reasonable advance notice, the Grantee shall temporarily raise, lower or remove or relocate its wires as necessary to permit the moving of a building, vehicle, equipment or other purpose. The expense of such temporary or permanent changes must be paid by the requesting party, and the Grantee may require a reasonable deposit of the estimated payment in advance.

(F) Tree Trimming The Grantee shall have the authority to trim trees that overhang a public right-of-way only within the right-of-way area of the City so as to prevent the branches of such trees from coming in contact with its Cable System.

10.5 Restoration of Streets

(A) Whenever Grantee disturbs the surface of any Street for any purpose, Grantee shall promptly restore the Street to at least its prior condition. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall refill within twenty-four (24) hours the opening and restore the surface to a condition satisfactory to the City.

(B) If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration in accordance with applicable regulations of the City within the area affected by the excavation. The City may, after providing notice to Grantee, refill or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. The City may, after providing notice to Grantee, remove or repair any work done by Grantee which, in the determination of City, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Franchise, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of the City.

10.6 Maintenance and Workmanship

(A) Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the

City, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Streets by, or under, the City's authority.

(B) Grantee shall provide and use any equipment necessary to control and carry Grantee's cable television signals so as to prevent injury to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and presentable condition.

(C) Upon request by the City, Grantee shall provide reasonable notice to private property owners of construction work in adjacent Streets.

10.7 Use of Conduits by City

The City may install or affix and maintain wires and equipment owned by the City for municipal purposes in or upon any and all of the Grantee's ducts, conduits or equipment in the Streets and other public places, to the extent space therein or thereon is reasonably available, and pursuant to all applicable City ordinances and codes provided that: (a) such use by the City does not interfere with a current or future use by the Grantee; (b) the City holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorneys' fees and costs; and (c) at the Grantee's sole discretion, the City may be required either to pay a reasonable rental fee or otherwise reasonably compensate the Grantee for the use of such poles, conduits, or equipment; provided, however, that the Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the Franchise Area. For the purposes of this Subsection 10.7, "municipal purposes" includes, but is not limited to, the use of the structures and installations by City for fire, police, traffic, water, telecommunications, or signal systems, but not for Cable System or other purposes in competition with Grantee.

10.8 Street Vacation

(A) If any Street or portion thereof used by Grantee is vacated by City during the term of this Franchise, unless City specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without delay or expense to City, remove its facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by City. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by City, to restore, repair or reconstruct such Street, City may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by City, shall be paid by Grantee within thirty (30) days of receipt of an invoice.

(B) In no event shall the City be required to obtain easements for the Grantee.

10.9 Discontinuing Use of Facilities

Whenever the Grantee intends to discontinue using any facility within the Streets, the Grantee shall submit for the City's approval a complete description of the facility and the date on which the Grantee intends to discontinue using the facility. The Grantee may remove the facility or request that the City allow it to remain in place. Notwithstanding the Grantee's request that any such facility remain in place, the City may require the Grantee to remove the facility from the Street or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require the Grantee to perform a combination of modification and removal of the facility. The Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as the Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, the Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Street, in the same manner and degree as if the facility were in active use, and the Grantee shall retain all liability for such facility. If the Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, public, governmental, or educational purposes.

10.10 Hazardous Substances

- (A) The Grantee shall comply with all applicable local, State and federal laws, statutes, regulations and orders concerning hazardous substances relating to the Grantee's Cable System in the Streets.
- (B) The Grantee shall maintain and inspect its Cable System located in the Streets. Upon reasonable notice to the Grantee, the City may inspect the Grantee's facilities in the Streets to determine if any release of hazardous substances has occurred, or may occur, from or related to the Grantee's Cable System. In removing or modifying the Grantee's facilities as provided in this Franchise, the Grantee shall also remove all residue of hazardous substances related thereto.

10.11 Undergrounding of Cable

- (A) Wiring
 - (1) Where electric and telephone utility wiring is installed underground at the time of Cable System construction, or when such electric and telephone utility wiring was placed underground subsequent to the construction of the Cable System, or when such wiring is subsequently placed underground, all Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other wire line service at no additional expense to the City or Subscribers.

(2) In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(3) In the event of forced relocations that require conversion of overhead facilities to underground, such as projects that may include, but not be limited to; road widening, sidewalk installation, or beautification, the Grantee agrees to bear the costs of converting the Grantee's cable system from an overhead system to an underground system. This cost to include the labor and materials to relocate Grantee's cable system, but does not include costs related to; trenching, backfill, or restoration of any rights-of-way within the project area as defined by project engineering plans.

(4) In the event of a Local Improvement District (LID) project that requires relocation of Grantee's facilities, Grantee shall be reimbursed consistent with RCW 35.99.060 subsection (4).

(5) The Grantee shall utilize existing poles and conduit wherever possible.

(6) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the City upon demonstrated need and subject to protecting the Grantee's proprietary information from disclosure to third parties.

10.12 Repair and Restoration of Property

(A) The Grantee shall protect public and private property from damage. If damage occurs the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) If public or private property is disturbed or damaged, the Grantee shall restore the property to its former condition, normal wear and tear excepted. Public right-of-way or other City property shall be restored, in a manner and within a timeframe approved by the City's Director of Public Works. If restoration of public right-of-way or other property of the City is not satisfactorily performed within a reasonable time, the Director of Public Works may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at the Grantee's expense and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City. If suit is brought upon Grantee's

failure to pay for repair or restoration, and if judgment in such a suit is entered in favor of the City, then the Grantee shall pay all of the City's actual costs and expenses resulting from the non-payment, including damages, interest from the date the bill was presented, disbursements, attorneys' fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed and in no event later than seventy-two (72) hours.

(C) Prior to entering onto private property to construct, operate or repair its Cable System, the Grantee shall give the Person residing on or using the property adequate written notice (such as a door hanger which clearly identifies the anticipated construction) that it intends to work on the property, a description of the work it intends to perform and a name and phone number the Person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users

10.13 Codes

The Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect. The Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, the City may require the removal or relocation of the Grantee's lines, cables and other appurtenances from the property in question.

10.14 Standards

(A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

(B) The Grantee shall ensure that the drops are properly bonded to the electrical power ground at the home, consistent with the requirements of the National Electric Code and the National Electrical Safety Code. All non-conforming or non-performing drops shall be replaced by Grantee as necessary.

(C) The installation of all equipment shall be permanent in nature, and installed in accordance with federal and State standards so as not to interfere with the travel and use of public space by the public, and shall not impede or obstruct traffic.

10.15 Correction of Nonconforming Conditions

(A) On receipt of a stop work order from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe, unauthorized, or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, Grantee shall immediately stop such work.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

10.16 Contractors and Subcontractors

The Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on the Grantee's behalf, and shall ensure that all such work is performed in compliance with this Franchise and all applicable law.

SECTION 11. SYSTEM DESIGN

11.1 Subscriber Network

Design. Prior to the effective date of this Franchise, the Grantee undertook a voluntary upgrade of its Cable System to a fiber-to-the-node system architecture, with fiber-optic cable deployed from the Headend to the node and tying into a coaxial system already serving Subscribers. The Cable System is capable of delivering high quality signals that meet or exceed FCC technical quality standards regardless of a particular manner in which signal is transmitted. Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of the Franchise.

SECTION 12. TEST AND COMPLIANCE PROCEDURES

(A) Upon request, Grantee shall advise City of schedules and methods for testing the Cable System on a regular basis to determine compliance with the provisions of applicable FCC technical standards. Tests may be witnessed by representatives of City, and written test reports may be made available to City upon request.

(B) As required by FCC Rules, Grantee shall conduct proof of performance tests and cumulative leakage index tests designed to demonstrate compliance with FCC requirements. Grantee shall provide City summary written reports of the results of such tests upon request.

(C) Where there exists a pattern of poor technical performance or quality over the Cable System, the City may upon 30 days prior written notice require the Grantee to conduct an additional performance test within the City. The Grantee shall fully cooperate with the City in performing such testing and shall prepare the results of the test and a report within thirty (30) days of the testing, including the following information:

- (1) The nature of the complaint or problem that precipitated the special tests;
- (2) The Cable System component(s) tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method by which the complaint or problem was resolved; and
- (5) Any other information pertinent to the test.

SECTION 13. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

13.1 Equivalent Service

It is Grantee's general policy that all residential dwelling units in the Franchise Area have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions.

13.2 Service Availability

(A) Except as provided herein, the Grantee shall provide a Standard Installation of Cable Service within seven (7) days of a request by any person within the Franchise Area. For purposes of this Section 13, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request.

(B) New Construction Grantee shall provide Cable Service within sixty (60) days in newly constructed areas.

(C) Grantee shall provide Cable Service:

- (1) With no line extension charge except as specifically authorized elsewhere in this Franchise;
- (2) At a nondiscriminatory installation charge for a Standard Installation, with additional charges for non-Standard Installations

computed according to a nondiscriminatory methodology for such installations; and

(3) At nondiscriminatory monthly rates for residential Subscribers.

(D) Required Extensions of Service The Cable System, as constructed as of the date of the passage and final adoption of this Franchise, substantially complies with the material provisions hereof. Whenever the Grantee shall receive a request for service from at least fifteen (15) residences per 1320 cable-bearing strand feet of distribution cable, or twenty (20) residences per 1320 underground trench feet, it shall extend its Cable System to such Customers at no cost to said Customers for Cable System extension, other than the usual connection fees for all Customers within ninety (90) days, provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided under Section 2.6 of this Franchise.

(E) Customer Charges for Extensions of Service No Customer shall be refused service arbitrarily. However, for unusual circumstances, such as a Customer's request to locate his cable drop underground, the existence of more than a Standard Installation, or a density of less than fifteen (15) residences per 1320 cable-bearing strand feet of distribution cable, or twenty (20) residences per 1320 underground trench feet, service may be made available on the basis of a pro rata cost based upon the cost of construction, including cost of material, labor, and easements. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance.

13.3 Connection of Public Facilities

The City acknowledges that complimentary service reflects a voluntary initiative on the part of the Grantee. Grantee does not waive any rights it may have regarding complimentary services under federal law or regulation. The Parties acknowledge that such services are non-cash commitments and any election on the part of the Grantee to offset services against franchise fees shall be governed by Paragraph 3.8(C) (supra). The Grantee, upon request, may provide without charge, a Standard Installation and one outlet of Basic Service to the following buildings now existing or hereafter constructed and owned and occupied or leased and occupied by the City and located within the Franchise area: (1) fire station(s), (2) police station(s), and (3) other municipal buildings provided that they are currently served or are within a Standard Installation of its Cable System, and provided further that those buildings or portions of buildings that house or occupy prison/jail populations shall be excluded. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Grantee. In the case of leased facilities, the City is responsible for securing approval for appropriate right of entry suitable to the Grantee in its reasonable discretion. The Cable Service provided shall not be used for commercial purposes. The intent of the preceding provision is to ensure access to Cable Services for the benefit of the City. For new hookups, the Grantee shall not be required to provide an outlet to such

buildings where a non-Standard Installation is required, unless the City or building owner/occupant agrees to pay the fully allocated cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Cable Service are provided to such buildings beyond those required herein, the building owner/occupant shall pay the fully allocated costs associated with installation and the service fees, if any, associated therewith.

SECTION 14. STANDBY POWER

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration, throughout the trunk and distribution networks. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours.

SECTION 15. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE

15.1 Enforcement

(A) Notice of Violation In the event that the City believes that the Grantee has not complied with the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

(B) The Grantee's Right to Cure or Respond The Grantee shall have 30 days from receipt of the notice described in Section 15.1(A): (a) to respond to the City, contesting the assertion of noncompliance, or (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

(C) Public Hearing In the event that the Grantee fails to respond to the notice described in Section 15.1(A) pursuant to the procedures set forth in Section 15.1(B), or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to 15.1(B) above, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City which is scheduled at a time which is no less than five business days therefrom. The City shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

(D) Enforcement Subject to applicable federal and State law, in the event the City, after such public hearing, determines that the Grantee is in default of any provision of the Franchise, the City may:

- (1) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;
- (2) Commence an action at law for monetary damages or seek other equitable relief; or
- (3) In the case of a substantial default of a material provision of the Franchise, declare the Franchise to be revoked in accordance with the provisions set forth in Section 15.2.

15.2 Revocation

(A) The City reserves its right to revoke and terminate this Franchise and all rights and privileges of the Grantee in the event of a substantial violation or breach of its terms and conditions. A substantial violation shall include, but not be limited to, the following:

- (1) Any uncured substantial violation of any material provision of this Franchise, or any material rule, order or regulation of the City made pursuant to its power to protect the public health, safety and welfare.
- (2) An intentional evasion of any material provision of this Franchise or the practice of any fraud or deceit upon Subscribers or upon the City.
- (3) The willful violation of any orders or rulings of any regulatory body having jurisdiction over the Grantee relative to this Franchise;
- (4) Misrepresentation of material fact in the negotiations relating to this Franchise;
- (5) A continuous, willful, and uncured pattern of inadequate service or failure to respond to legitimate Subscriber complaints;
- (6) Failure to provide insurance or bonds as required by this Franchise;
or
- (7) An uncured failure to pay Franchise Fees as required by this Franchise.

(B) None of the foregoing shall constitute a substantial violation if the Grantee is without fault, or if the violation occurs as a result of circumstances beyond the Grantee's reasonable control, provided that the Grantee's substantial breach shall not be excused by economic hardship, nor by the nonfeasance or

malfeasance of the Grantee's directors, officers, employees, agents, or contractors.

(C) This Franchise may be terminated in accordance with the following procedures:

(1) The City shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to correct and cure such violation, or object in writing and state its reasons for such objection. In the event the City has not received a response satisfactory from the Grantee, it may then seek termination of the Franchise at a public meeting. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination.

(2) At the designated meeting, the City shall give the Grantee an opportunity to state its position on the matter. The determination as to whether a violation of this Franchise has occurred pursuant to this Section herein shall be within the sole discretion of the City. Any such determination by the City shall be accompanied by a record, to which the Grantee's contribution shall not be limited by the City (i.e., the City shall hear any interested Persons and shall allow the Grantee an opportunity to be heard, to cross examine witnesses, to present evidence and to make additions to the hearing record). Any such final determination shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate court shall be taken within thirty (30) days of the issuance of the determination of the City. The City shall receive notice from the Grantee of any appeal concurrent with any filing to a court of competent Jurisdiction.

(3) The City may, at its sole discretion, take any lawful action that it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

(D) Technical Violations The parties hereby agree that it is not the City's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise or local cable ordinance, which shall include but are not limited to the following:

(1) In instances or for matters where a violation or a breach by the Grantee of the Franchise was good faith error that resulted in no or minimal negative impact on the customers within the Franchise Area; or

- (2) Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

15.3 Removal

(A) In the event of termination, expiration, or revocation of this Franchise, and after all appeals from any judicial determination are exhausted and final, the City may order the removal of the above-ground Cable System facilities and such underground facilities as required by the City in order to achieve reasonable engineering or Street-use purposes, from the Franchise Area at the Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Streets, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.

(B) If the Grantee fails to complete any required removal to the satisfaction of the City, the City may cause the work to be done and the Grantee shall reimburse the City for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the Performance Bond provided by Grantee. Any expenses incurred in the collection by the City of such obligation shall be included in the monies due the City from the Grantee, including reasonable attorney's fees and expenses.

15.4 Receivership and Foreclosure

(A) At the option of City, subject to applicable law, this Franchise may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:

(1) The receivership or trusteeship is vacated within one-hundred twenty (120) days of appointment; or

(2) The receiver(s) or trustee(s) have, within one-hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all violations under the Franchise. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of the Grantee, the City may serve notice of revocation on the Grantee and to the purchaser at the sale, and the rights and

privileges of the Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

- (1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and
- (2) The purchaser has agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

15.5 No Monetary Recourse Against City

The Grantee shall not have any monetary recourse against the City or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law.

15.6 Non-enforcement by City

The Grantee is not relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance. The City's forbearance or failure to enforce any provision of this Franchise shall not serve as a basis to stop any subsequent enforcement. The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

15.7 Relationship of Remedies

The remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the City at law or equity.

SECTION 16. ABANDONMENT

16.1 Effect of Abandonment

If the Grantee abandons its System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may (1) operate the Cable System; or (2) designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City or until the Franchise is revoked and a new Franchisee is selected by the City; or (3) obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the

Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred, including reasonable attorney's fees and costs.

16.2 What Constitutes Abandonment

The City shall be entitled to exercise its options and obtain any required injunctive relief if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for seven (7) consecutive days, unless the City authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

SECTION 17. FRANCHISE RENEWAL AND TRANSFER

17.1 Renewal

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Acts, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Acts.

17.2 Transfer of Ownership or Control

In the event the Grantee's ownership or control of the Cable System is sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation during the term of this Franchise, the City may consider the Grantee's performance of its obligations under this Franchise over the life of the Franchise.

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any

Person or entity without the prior written consent of the City, which consent shall not be unreasonably withheld. Any such consent shall not be deemed to waive any rights the City may have to subsequently enforce the terms of this Franchise, including the enforcement of noncompliance issues.

(B) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders, but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to revocation unless and until the City shall have consented thereto as provided herein.

(C) The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all lawful information required by the City.

(D) The City shall render a final written decision on the request within one-hundred twenty (120) days of the request, provided it has received all requested information and has not challenged the accuracy of any information received. Subject to the foregoing, if the City fails to render a final decision on the request within one-hundred twenty (120) days, such request shall be deemed granted pursuant to 47 U.S.C. § 537 and 47 C.F.R. § 76.502. unless the Grantee and the City agree to an extension of time.

(E) In reviewing a request for sale or transfer, the City may inquire into, among other things, the legal, technical and financial qualifications of the prospective controlling party or transferee, and the Grantee shall assist the City in so inquiring. Pursuant to section 635 of the Cable Act, 47 U.S.C. § 555a, the Grantee acknowledge that the City's request for information, and subsequent evaluation of that information, shall constitute an incidental burden on the Grantee and the proposed transferee. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with State and federal law.

(F) The consent or approval of the City to any transfer by the Grantee shall not constitute a waiver or release of any rights of the City, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise. In accepting a transfer of this Franchise, the transferee shall agree in writing to assume all of the Grantee's obligations and liabilities under this Franchise, known and unknown.

(G) Notwithstanding anything to the contrary in this Section, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee as of the Effective Date of this Franchise provided that the proposed assignee or

transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all provisions of the Franchise.

(H) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, the Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.

(I) Upon transfer, the transferee shall implement changes as promptly as practicable in the operation of the Cable System to cure any violations or defaults then ongoing.

SECTION 18. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any State or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

SECTION 19. MISCELLANEOUS PROVISIONS

19.1 Preferential or Discriminatory Practices Prohibited

The Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Franchise, the Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, State and local law and, in particular, FCC rules and regulations relating thereto, provided that this provision shall not be construed to benefit any third person, and the City shall not be required to take any curative action.

19.2 Notices

Throughout the term of the Franchise, Grantee shall maintain and file with City a designated legal or local address for the service of notices by mail. A copy of all notices from City to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. At the effective date of this Franchise, such addresses shall be:

- (1) Attn: Government Affairs
Comcast Cable Communications Management, LLC
400 Sequoia Dr, STE 100
Bellingham, WA 98226
- (2) Attn: Government Affairs
Comcast Cable Communications Management, LLC
15815 25th Ave. W.
Lynnwood, WA 98087

All notices to be sent by Grantee to City under this Franchise shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise, such address shall be:

Attn: City Clerk
City of Anacortes
PO Box 547
Anacortes, WA 98221-0547

With a copy to:

Attn: City Attorney
City of Anacortes
PO Box 547
Anacortes, WA 98221-0547

19.3 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

19.4 Authority to Amend

This Franchise may be amended at any time by written agreement between the parties.

19.5 Governing Law and Venue

This Franchise shall be governed in all respects by the laws of the State of Washington, and local laws. The venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or the Skagit County Superior Court.

19.6 Captions

The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

19.7 Construction of Franchise

The provisions of this Franchise shall be liberally construed to promote the public interest.

19.8 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate such relationship with the other.

19.9 Waiver

The failure of either party at any time to require performance by the other of any provision herein shall in no way affect the right of the other party hereafter to enforce such provision, nor shall the waiver by either party of any breach of any provision of this Franchise be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

19.10 Cumulative Rights

Subject to applicable law, all rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

19.11 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by the Grantee, such time shall be deemed to be of the essence, and any failure of the Grantee to perform within the allotted time may be considered a breach of this Franchise, provided, however in the event that the Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the reasonable control of the Grantee, the Grantee shall have a reasonable time under the circumstances to perform the affected obligation under this Franchise or to procure a substitute for such obligation that is satisfactory to the City.

PASSED, and adopted this _____ day of _____, 2020, subject to applicable federal, State and local law.

CITY OF ANACORTES

By: _____
Laurie Gere, Mayor

Approved as to Form:

City Attorney

Attest:

City Clerk

ACCEPTED this _____ day of _____, 2020, subject to applicable federal, State and local law.

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC

By: _____

Name: _____

Title: _____

Attest:

Public Notary



Good evening Mayor Gere and Councilmembers.

My name is Vincent Buys, with Comcast Government Affairs. I appreciate the city taking the time this evening to consider our franchise renewal and ask for your support and approval. Thank you to Steve Hoglund, Darcy Swetnam, and others for their help in coming up with an agreement which we feel represents the best interests of the Anacortes residents, the City of Anacortes, and Comcast.

Comcast considers it a privilege to be able to provide the residents of Anacortes with the high-quality video, Internet, and other advanced products and services we offer. We are fully committed to continue providing and innovating these quality products to your residents throughout the next term of this franchise. Currently we serve over 4,500 homes within the City of Anacortes, providing the same suite of advanced services and programming here, as we do throughout our entire Washington system.

Specifically, under the new franchise, we look forward to working with the City to complete the addition of the City's Government access channel in full HD, so that city residents can enjoy watching their government in action.

Lastly, Comcast remains committed to growing our company throughout the city and region through continually investment in our infrastructure and capacity, enhancing our Customer Experience, and innovating our products to meet the needs of our customers.

Again, I appreciate you all taking the time this evening to consider our franchise renewal. I ask for you support and am available to answer any questions.

Thank You,

Vincent Buys | COMCAST

Manager, Government and Regulatory Affairs
Washington Region

400 Sequoia Dr STE 100, Bellingham, WA 98226

☎office 360-527-8242 | ☎cell 360-595-5947

Vincent_Buys@Comcast.com



City Council Contract Agenda Bill

Meeting Date: 3/9/2019

Agenda Item: 8c

Subject: Access- Anacortes Fiber Internet

Staff Contact: Emily Schuh

Approved for Submittal to Council by:

Action Type: Discussion/Possible
Action

Summary Statement: Fiber department to provide a monthly update. The update will include key metrics about status of network growth, installation status; staff transfers from public works to fiber; and information about an appropriate tool as the authoritative system for tracking the City's fiber infrastructure.

Background:

History: Council approved Resolution 2013 on May 29, 2018, directing that a business plan be developed for a fiber optic network to provide high-speed internet service to City residents and businesses. Council then approved slightly over \$3.1 million in the 2019-20 biennial budget for construction and operation of such a fiber optic network in three pilot areas.

Previous Council/Committee Action: Council approved [Resolution 2013](#) at the [May 29, 2018](#) meeting.

Competing Viewpoints Considered: N/A

Motion:

Alternative Actions: N/A

Attachments: Presentation

access
ANACORTES FIBER INTERNET



March 2020



MARCH 2020 UPDATE



GPON CUSTOMERS IN-SERVICE

Early March Compared to Early February

<u>SERVICE</u>	EARLY FEBRUARY		EARLY MARCH	
	<u>Qty</u>	<u>Monthly Revenue</u>	<u>Qty</u>	<u>Monthly Revenue</u>
Business class Internet, 100 Mbps	3	\$ 267	6	\$ 534
Business class Internet, 100 Mbps w/WiFi	0	\$ 0	5	\$ 495
Business-class Internet, 1 Gbps	5	\$ 745	10	\$ 1,490
Business-class Internet, 1 Gbps w/WiFi	1	\$ 159	2	\$ 318
Residential Internet, 100 Mbps	0	\$ 0	3	\$ 117
Residential Internet, 100 Mbps w/WiFi	0	\$ 0	3	\$ 147
Residential Internet, 1 Gbps	0	\$ 0	0	\$ 0
Residential Internet, 1 Gbps w/WiFi	<u>0</u>	\$ <u>0</u>	<u>1</u>	\$ <u>79</u>
Total	<u>9</u>	\$ <u>1,171</u>	<u>30</u>	\$ <u>3,180</u>

GPON CUSTOMER SIGN-UPS

Through Early March 2020

	Central Business District		Old Town		M Avenue		Rest of City		Total	
	Feb	Mar	Feb	Mar	Feb	Mar	Feb	Mar	Feb	Mar
Sign-ups	54	62	125	143	27	33	617	696	823	934
Potential customers	255		530		160		6,990 ^{note 1}		7,935	
Take-rate	21%	24%	24%	27%	17%	21%	9%	10%	10%	12%

NOTES

1. Wikipedia states that the 2010 census indicated that Anacortes had 7,680 housing units.
7,680 minus (530 + 160) = 6,990.

CUSTOMER SIGN-UPS

Customers Not on GPON Network

CITY OF ANACORTES - Internet

Access & CoA IT actively working

Tasks to be completed

FireEye security device

DNS configurations

One Comcast Internet service account cancelled

WAVE BROADBAND

Dark fiber

Wave waiting for customer to sign

Will require new vault

March / April estimated timeframe

\$4k - \$7k annual revenue

MARATHON REFINERY

Attempting to schedule initial meeting

CITY OF ANACORTES – Pt to Pt

2 dark fibers, Water Treatment Plant to Library

ISLAND HOSPITAL

Dark fiber

Hospital to Teen Clinic

Hospital to Sleep Center

Hospital to Mount Vernon

Requires some new aerial cables

April / May estimated timeframe

\$16k - \$29k annual revenue

NOANET

Customer #1

2 or 5 Gbps Ethernet circuit

NoaNet waiting for customer to sign

Some construction

March / April construction, July service

\$10k - \$18k annual revenue

Customer #2

1, 5 or 10 Gbps

NoaNet submitting proposal to its customer

\$8k - \$36k annual revenue

FINANCIAL UPDATE

Net Accrued Cashflow Through February 29 , 2019

	Current <u>Period</u>	Year <u>to Date</u>	From Project <u>Start</u>
Revenues			
Services	0	519	1,060
Purchase Card Rebate	129	129	129
County Grant	0	0	122,258
Expenditures	(<u>180,614</u>)	(<u>324,702</u>)	(<u>1,021,503</u>)
Net Cashflow in (out)	(<u>154,250</u>)	(<u>324,054</u>)	(<u>898,056</u>)

MISCELLANEOUS

Through Early March 2020

ADDITIONAL AREAS WITH AERIAL CUSTOMER DROPS

1,297 potential customers, goal of ≥ 455 customers

NoaNet onsite this week for outside plant design

Robinson Brothers Construction to install Library-to-MSTs infrastructure

OLD TOWN & M AVE, LIBRARY TO MST Construction

Pre-construction meeting March 16

Robinson Brothers Construction starts work March 16

Working 6 days per week

MISCELLANEOUS

Through Early March 2020

OSPINSIGHT & CARTEGRAPH

Cartegraph

Asset & Work management

Tracks \$\$ investment in network segments

Creates work orders

Approximate paths inputted by CoA

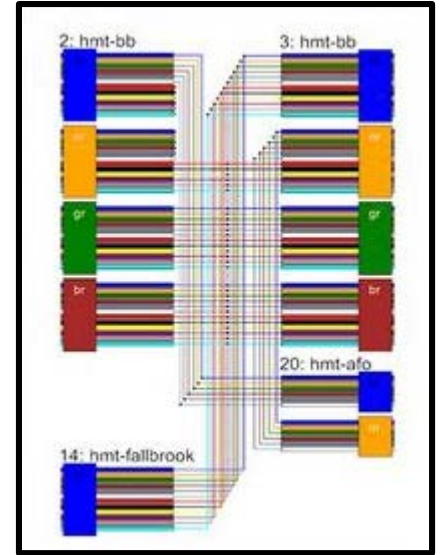
OSPInsight

Tracks location of cables

Tracks fiber connections

Inputted by NoaNet using CoA as-builts

Periodically downloaded by CoA GIS



SHOUT-OUT TO PUBLIC WORKS

Several MST-to-customer drop lines

Found field-installable connector

MISCELLANEOUS

Through Early March 2020

STAFFING

Through end of March 2020

Mike Ballard & John Norris from Streets assigned to Fiber

Beyond end of March 2020

Fiber happy to keep Mike Ballard & John Norris

Streets probably needs to backfill two headcount

MISCELLANEOUS

Through Early March 2020

CONNECTIVITY WITH MOUNT VERNON

Fiber from Water Treatment Plant to edge of City of Mount Vernon network

Agreement with Skagit County & City of Mount Vernon to share cost

Improves Skagit County connectivity to City of Anacortes first responders

Skagit County connectivity between Anacortes & Mount Vernon

NETWORKING MATTERS

Home routers & IPv6 addresses

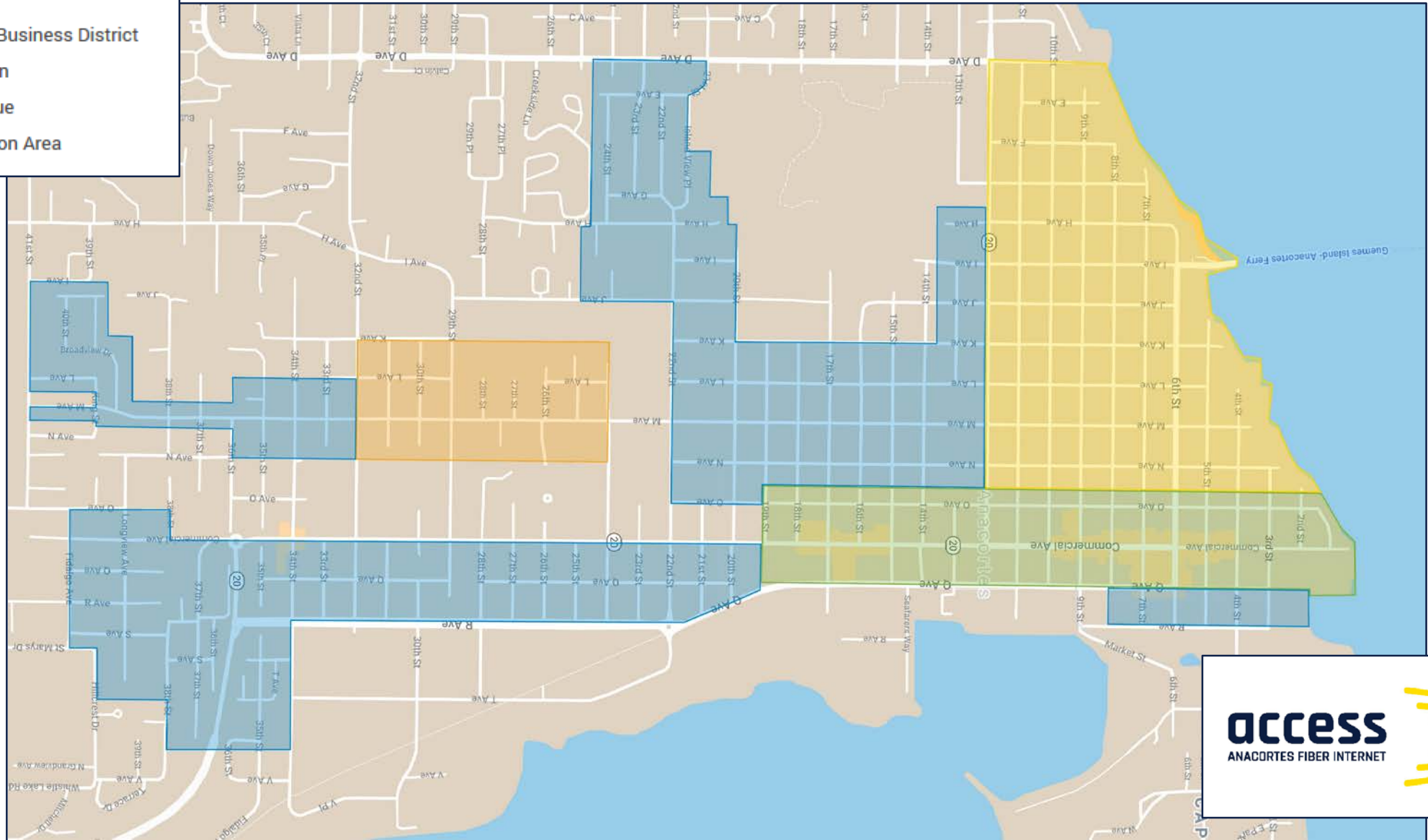
Most home routers require manual configuration

One more week of searching for solutions

MISCELLANEOUS

Fiber Installation Zones

-  Central Business District
-  Old Town
-  M Avenue
-  Expansion Area





City Council Agenda Bill

Meeting Date: 3/9/2020

Agenda Item: 8d

Subject: MOA with Fidalgo Park and Rec District on community center planning

Staff Contact: Jonn Lunsford

Approved for Submittal to Council by	
x	Laurie Gere, Mayor
x	Steve Hoglund, Finance Director
x	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
x	Contract
	Public Hearing
	Staff Report

Summary Statement: Staff recommends approval of the MOA between the Pool District and the City to continue discussions on the concept of developing a shared facility for the pool and the community center on the Pool District property.

Background: Representatives and staff from the Pool District and City have been meeting, along with a representative of the Anacortes School District and facilitator Marc Estvold, to evaluate the concept of a shared facility that could house both the proposed new pool and a community youth center. The proposed MOA is intended to provide some structure to those discussions without committing either party to anything more than continuing those discussions and sharing any costs identified as necessary by both parties to inform those discussions. Staff anticipate that, prior to any final design or project progress, subsequent agreements would be required.

Budget Impact	
Amount Budgeted	
Budget Account (BARS)	
Proposed Expenditure	
Budget Amendment Required?	
Revenue Source	

Proposed Contract	
Contractor	
Amount	
Start Date	
End Date	

Previous Council/Committee Action: N/A

Competing Viewpoints Considered:

Recommended Motion: I move we authorize Mayor Gere to execute the Memorandum of Agreement between the City of Anacortes and the Fidalgo Park and Recreation District to establish common goals and procedures for discussing and conceptualizing a facility capable of housing both the new Fidalgo Pool and a Community Center.

Alternative Actions: Decline to move forward with the MOA

Attachments (listed in order presented): Proposed MOA

MEMORANDUM OF AGREEMENT
between the
CITY OF ANACORTES
and the
FIDALGO PARK AND RECREATION DISTRICT

This Memorandum of Agreement ("MOA"), executed this 20th day of FEBRUARY, 2020, is made by and between the City of Anacortes, a Washington Municipal Corporation (the "City"), and Fidalgo Park and Recreation District, a Washington Municipal Corporation (the "District"), collectively referred to as "the Parties."

RECITALS

WHEREAS, the District is currently working on a capital campaign to fund a new pool facility that creates a multi-generational community resource ("Pool Project") on the District's existing property located at the corner of 22nd Street and J Avenue in Anacortes ("District Property"); and

WHEREAS, the City would like to develop a community center that would house the Boys and Girls Club, provide a place for Anacortes youth to call their own, and provide community gathering space ("City Project"); and

WHEREAS, the District has decided to pause its capital campaign and pursuit of public funding opportunities to provide time for the Parties to work cooperatively on the scope of work in this MOA. The Parties understand that the District needs to determine before the end of summer 2020 whether to take a bond request to the voters in February of 2021. It is therefore the desire of the Parties to work through this scope of work in a timely manner that supports the District's funding options; and

WHEREAS, the Parties have begun discussions about combining both facilities into a single facility, to be located on District Property; and

WHEREAS, the Parties now wish to lay out a framework to continue those discussions to most productively and effectively identify the best way to meet the community's needs;

NOW THEREFORE, for and in consideration of the premises and mutual promises contained in this MOA, the City and the District agree as follows:

AGREEMENT

1. Statement of Need

The Parties by this MOA seek to provide common goals and procedures for continuing discussions on the concept of developing a facility capable of housing both the Pool

Project and the City Project on District Property and to identify outcomes and commitments of each Party.

2. Objectives

a. District: The District's goal is to ensure the proposed facility includes the following:

- 1) Two pools, one slated for warm-water activities and the other for competition, lap-swim and deep-water activities.
- 2) Expanded and modernized locker room facilities, including family changing rooms, promoting increased privacy.
- 3) A meeting room to support community gatherings.
- 4) A commercial kitchen to support community gatherings.
- 5) Office and storage space.
- 6) An expanded, more flexible fitness area, accommodating all ages.
- 7) A Child Watch room, providing increased flexibility to parent schedules.
- 8) Improved safety and ADA accommodations.

b. City: The City's goal is to ensure that the proposed facility includes the following:

- 1) A secure location for the Boys and Girls Club so they can relocate out of the basement of City Hall.
- 2) A full-size gymnasium that will be open and available for the public.
- 3) Facility design that supports integration with the Anacortes Senior Activity Center ("ASAC") to meet ASAC patron needs.
- 4) A commercial kitchen to support community and youth programming.
- 5) Flex space to allow for community recreation and programming.
- 6) City Parks and Recreation Department office space.

3. Commitments:

a. Steering Group: The Parties agree to form a joint Steering Group tasked with delivering the scope of work in this MOA. The Steering Group will meet bi-weekly during the term of this MOA. Each Party will select at least one elected official and one staff member to serve on the Steering Group. By execution of this MOA, each Party empowers its representatives on the Steering Group to represent the agency. Steering Group members will be responsible for reporting back to their respective agencies.

b. Tasks: The Steering Group is tasked with the following:

- 1) Evaluating how the City Project and District Project could optimally be sited on District Property, incorporating a feasibility study focused on construction, programming, and management options.
 - 2) Establishing a construction budget and funding plan for the options identified.
 - 3) Determining whether a Joint Operating Agreement is necessary.
 - 4) Creating a timeline for project options.
- c. Facilitator: The Parties select Marc Estvold to serve as the Steering Group facilitator.
 - d. Costs: Any direct costs associated with carrying out the goals and work described in this MOA will be equitably split between the Parties. Such allocation will be agreed upon by the parties prior to initiation of any work.

4. General Terms and Conditions

- a. The initial term of this MOA shall be effective upon execution and run through July 31, 2020, unless amended by mutual written agreement.
- b. This agreement may be amended by written instrument approved by both Parties.
- c. No provision of this MOA shall be construed to create a partnership or joint venture or any other arrangement. Neither party will incur responsibility for any debts, losses, or liabilities of the other party to the MOA.

The Parties, by their authorized representatives, affix their authorized signatures hereto:

CITY OF ANACORTES

By: _____ Date: _____

Laurie Gere, Mayor

FIDALGO PARK AND RECREATION DISTRICT

By:  Date: 2/24/20

Mitch Everton, Executive Director

Resolution No. 2079

A Resolution Amending Council Procedures for Participation in Absentia

Whereas the City Council has adopted rules of procedure by Resolution 2044 (2019);

Whereas Section 4.3 of that resolution provides for participation by councilmembers *in absentia* but limits such participation to one councilmember per meeting;

Whereas, in the event of a pandemic or other disaster, it may become difficult to ensure a quorum of councilmembers is present in the council chambers to hold a meeting;

Now therefore be it resolved by the City Council that:

Section 4.3(d) of Resolution 2044 is amended as follows:

No more than one Councilmember may participate *in absentia* at each council meeting,
unless necessary to avoid the absence of a quorum.

PASSED by the City Council this 9th day of March, 2020.

CITY OF ANACORTES:

Laurie Gere, Mayor

ATTEST:

City Clerk/Treasurer

APPROVED AS TO FORM:

City Attorney



Anacortes City Council

Proposed Agenda Items for the Next Eight Weeks Beginning March 16, 2020

Subjects listed below have been tentatively suggested for consideration by the Anacortes City Council on the dates indicated. Items may be added to, removed from or rearranged on this list. Routine business such as approval of minutes and vouchers are not included. The complete Preliminary Agenda for each meeting is published at 3:00 on the Wednesday prior to the meeting. Published Agendas are subject to change and may be updated following the posting period. For additional information on agenda topics, please contact the City Clerk's office at 360-299-1960 to be directed to the sponsoring staff member.

March 16, 2020

- Public Hearing: Ordinance 3064 Updating Critical Areas Regulations - General Provisions & Review Procedures (Exemptions, Outdoor Recreation and Bikes) (Discussion)

March 23, 2020

- Public Hearing: Ordinance 3065: Sewer Capital Facility Plan Update (Discussion/Possible Action)
- Contract Award: Skagit River Raw Water Pipeline and Clearwell Project #20-048-WTR-001 (Action)
- Pavement Management Plan Update Presentation (Discussion)

April 6, 2020

- Continued Public Hearing: Ordinance 3064 Updating Critical Areas Regulations - Wetlands and Fish, Wildlife, Habitat Conservation Areas (ACFL & Herons) (Discussion)
- CDBG 2020 Annual Action Plan Review

April 13, 2020

April 20, 2020

- Continued Public Hearing: Ordinance 3064 Updating Critical Areas Regulations - Geologically Hazardous, Critical Aquifer, Frequently Flooded Areas, and Definitions (Discussion)
- CDBG 2020 Annual Action Plan Review and Approval (Discussion/Possible Action)

April 27, 2020

May 4, 2020

May 11, 2020

Upcoming City Council Committee Meetings

The public is welcome to attend City Council Committee Meetings.

- Planning, Monday, Mar 9, 2020, 5:00 PM, Main Conference Room, City Hall
- Port/City Liaison, Tuesday, Mar 10, 2020, 8:30 AM, Port of Anacortes
- Finance, Wednesday, Mar 11, 2020, 5:00 PM, Main Conference Room, City Hall
- Fiber, Thursday, Mar 12, 2020, 2:30 PM, Third Floor Conference Room, City Hall
- Public Works, Monday, Mar 16, 2020, 5:00 PM, Main Conference Room, City Hall
- Community Center/Pool, Thursday, Mar 19, 2020, 3:30 PM, Third Floor Conference Room, City Hall
- Planning, Monday, Mar 23, 2020, 5:00 PM, Main Conference Room, City Hall
- Finance, Wednesday, Mar 25, 2020, 5:00 PM, Main Conference Room, City Hall
- Fiber, Thursday, Mar 26, 2020, 2:30 PM, Third Floor Conference Room, City Hall
