



# City of Tukwila Transportation and Infrastructure Services Committee

- ❖ Tosh Sharp, Chair
- ❖ Kate Kruller
- ❖ Mohamed Abdi

<b>Distribution:</b> K. Kruller C. Hougardy T. Sharp H. Ponnekanti S. Kim (email) G. Lerner (email)	City Attorney (email) Clerk File Copy  Share pkt pdf on SharePoint to A. Le, C. O'Flaherty, A. Youn  Email cover to: F. Ayala, A. Le, C. O'Flaherty, A. Youn, L. Humphrey
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## AGENDA

MONDAY, APRIL 3, 2023 – 5:30 PM

HYBRID MEETING – ONSITE AND VIRTUAL


DUWAMISH CONFERENCE ROOM, 6300 BUILDING, 2<sup>ND</sup> FLR

MS Teams: [Click here to join the meeting](#)

**Virtual Meeting - Members of the public may listen by dialing 1-253-292-9750 and entering conference ID 439818817#**

Item	Recommended Action	Page
<b>1. PRESENTATIONS</b>		
<b>2. BUSINESS AGENDA</b>		
a) NTCP On-call Engineering Services Contract On-call Design Consultant Agreement (C. Knighton)	a) Forward to the 04/17/23 Regular Consent Agenda	Pg. 1
b) 2022 Annual Small Drainage Program Project Completion and Acceptance (J. Hopkins)	b) Forward to the 04/17/23 Regular Consent Agenda	Pg. 15
c) East Marginal Way Stormwater Outfalls Project Project Completion and Acceptance (M. Perfetti)	c) Forward to the 04/17/23 Regular Consent Agenda	Pg. 21
d) Franchise Agreement with the City of Tukwila and Highline Water District (S. Kim)	d) Forward to the 04/10/23 Committee of the Whole and 04/17/23 Regular Consent Agenda	Pg. 27
e) Tukwila Municipal Code (TMC) 11.04 & 11.28 Amendment Request (J. Hartley)	e) Forward to the 04/10/23 Committee of the Whole and 04/17/23 Regular Consent Agenda	Pg. 55
f) S 152nd Street Safe Routes to School Project Undergrounding Discussion (A. Cox)	f) Discussion only	Pg. 89
<b>3. MISCELLANEOUS</b>		

**Next Scheduled Meeting:** April 17, 2023

 *The City of Tukwila strives to accommodate individuals with disabilities. Please contact the Public Works Department at **206-433-0179** for assistance.*





# INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**  
 FROM: **Hari Ponnekanti, Public Works Director/City Engineer**  
 BY: **Cyndy Knighton, Senior Program Manager**  
 CC: **Mayor Ekberg**  
 DATE: **March 31, 2023**  
 SUBJECT: **NTCP On-call Engineering Services Contract**  
**Project No. 82310301**  
**On-call Design Consultant Agreement**

## ISSUE

Execute a contract with KPG, Inc. (KPG) to provide on-call engineering and design services for the Neighborhood Traffic Calming Program (NTCP).

## BACKGROUND

Staff have been working on completing projects identified in the Top-10 Recommended NTCP Projects list that was presented to the Council during discussions on where to allocate ARPA funding. Three projects have been fully completed:

1. Allentown Neighborhood Speed & Safety Study
2. Tukwila Community Center Pedestrian Crossing Safety Improvements
3. S 144<sup>th</sup> Street/46<sup>th</sup> Avenue S ADA Ramps.

Three others are currently in progress in collaboration with the schools:

1. Tukwila Elementary School Safety Improvements
2. Cascade View Elementary School Safety Improvements
3. Impact Charter School Safety Improvements. Of the remaining 4 projects to be started, one will be addressed in a separate CIP project, Southcenter Boulevard/65<sup>th</sup> Avenue S Pedestrian Safety Improvements, will be replaced with a full traffic signal with design starting this year.

## DISCUSSION

The remaining projects on the Top-10 list will be addressed as part of this contract, as well as addressing other needs or requests that have either already been identified or arise throughout the year. This on-call services agreement will allow staff to address specific needs through a pre-determined fee structure without entering into individual agreements for each task. Work will be assigned on an as-needed basis. The consultant will be authorized by issuance of written task order. Each task order will identify the scope of work to be performed, the period of performance and the not-to-exceed amount.

## FINANCIAL IMPACT

The total amount of this contract shall not exceed \$100,000.00. Funding for the On-call Engineering services agreement will be provided by the 2023 NTCP design budget.

	<u>Cost Estimate</u>	<u>2023 Design Budget</u>
KPG Contract	\$100,000.00	\$155,000.00

## RECOMMENDATION

Council is being asked to approve the contract with KPG, Inc for on-call engineering services in the amount not-to exceed \$100,000.00 for the Neighborhood Traffic Calming Program and consider this item on the Consent Agenda at the April 17, 2023 Regular Meeting.

ATTACHMENTS: 2023 CIP, Page 3  
 Consultant Agreement  
 Top-10 Recommended NTCP Projects  
 Project Map

# CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2023 to 2028

**PROJECT:** **Traffic Calming/Residential Safety Improvements** Project No. 80010301

**DESCRIPTION:** Programmatic approach to addressing neighborhood traffic concerns through a variety of methods. Residential street improvements with sidewalks, safety improvements, and bike facilities.

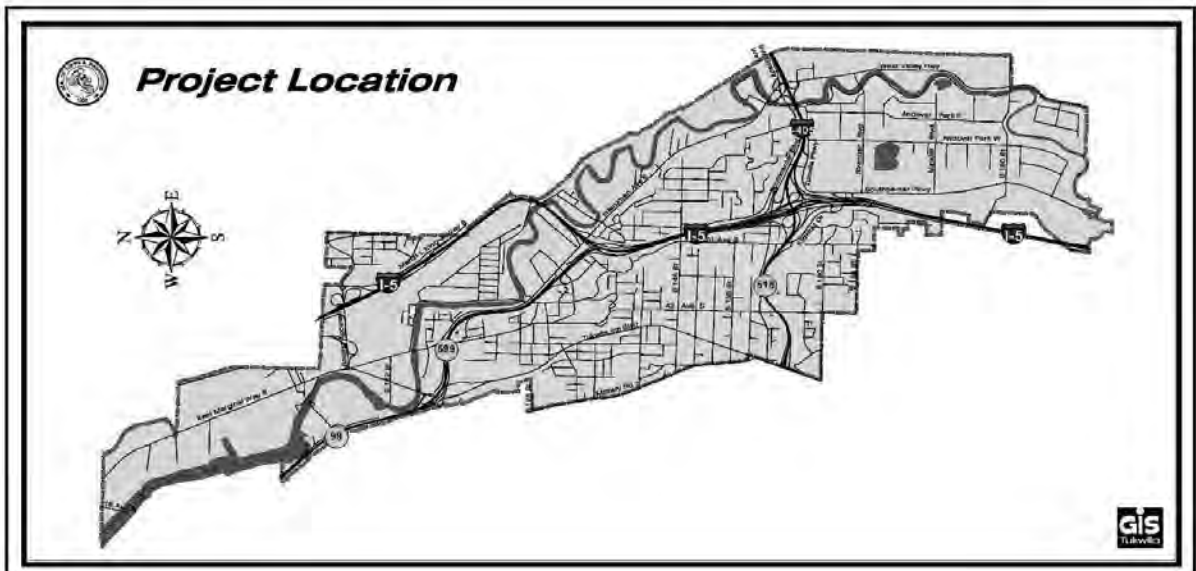
**JUSTIFICATION:** Neighborhood revitalization by improving residential streets.

**STATUS:** Future candidates are listed in the citywide comprehensive update and safety-based prioritization of residential street improvements, sidewalks, and bike lanes.

**MAINT. IMPACT:** Varies, depends on treatment(s) used.

**COMMENT:** Residential improvements and traffic calming features to reduce speeds and improve pedestrian and bicycle safety such as the speed cushions, RRFB crossings, LED enhanced signs, Radar driver feedback signs, etc.

FINANCIAL (in \$000's)	Through		Estimated								TOTAL
	2021	2022	2023	2024	2025	2026	2027	2028	BEYOND		
<b>EXPENSES</b>											
Design	7	100	155	155	155	155	155	155	155	155	1,192
Land (R/W)											0
Const. Mgmt.											0
Construction	93	300	495	420	495	495	495	495	495	495	3,783
<b>TOTAL EXPENSES</b>	<b>100</b>	<b>400</b>	<b>650</b>	<b>575</b>	<b>650</b>	<b>650</b>	<b>650</b>	<b>650</b>	<b>650</b>	<b>650</b>	<b>4,975</b>
<b>FUND SOURCES</b>											
ARPA	100	400	400	400							500
Awarded Grant											0
Proposed Grant			250	175	250	250	250	250	250	250	1,675
Mitigation Expected											0
City Operating Funds			0	0	400	400	400	400	400	400	2,000
<b>TOTAL SOURCES</b>	<b>100</b>	<b>400</b>	<b>650</b>	<b>575</b>	<b>650</b>	<b>650</b>	<b>650</b>	<b>650</b>	<b>650</b>	<b>650</b>	<b>5,475</b>





**PROFESSIONAL SERVICES AGREEMENT**

*(Includes consultants, architects, engineers, accountants, and other professional services)*

**THIS AGREEMENT** is entered into between the City of Tukwila, Washington, hereinafter referred to as “the City”, and **KPG Psomas Inc.**, hereinafter referred to as “the Consultant”, in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. **Project Designation.** The Consultant is retained by the City to perform **engineering and construction support** services in connection with the project titled **Neighborhood Traffic Calming Program**.
2. **Scope of Services.** The Consultant agrees to perform the services, identified on Exhibit “A” attached hereto, including the provision of all labor, materials, equipment and supplies.
3. **Duration of Agreement; Time for Performance.** This Agreement shall be in full force and effect for a period commencing upon execution and ending **December 31, 2024**, unless sooner terminated under the provisions hereinafter specified. Work under this Agreement shall commence upon written notice by the City to the Consultant to proceed. The Consultant shall perform all services and provide all work product required pursuant to this Agreement no later than **December 31, 2024** unless an extension of such time is granted in writing by the City.
4. **Payment.** The Consultant shall be paid by the City for completed work and for services rendered under this Agreement as follows:
  - A. Payment for the work provided by the Consultant shall be made as provided on Exhibit “A” attached hereto, provided that the total amount of payment to the Consultant shall not exceed **\$100,000** without express written modification of the Agreement signed by the City.
  - B. The Consultant may submit vouchers, in the form of Exhibit “B” hereto, to the City once per month during the progress of the work for partial payment for that portion of the project completed to date. Such vouchers will be checked by the City and, upon approval thereof, payment shall be made to the Consultant in the amount approved.
  - C. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this Agreement and its acceptance by the City.
  - D. Payment as provided in this section shall be full compensation for work performed, services rendered, and for all materials, supplies, equipment and incidentals necessary to complete the work.
  - E. The Consultant’s records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the City and the state of Washington for a period of three (3) years after final payments. Copies shall be made available upon request.

5. **Ownership and Use of Documents.** All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with the Consultant's endeavors. The Consultant shall not be responsible for any use of the said documents, drawings, specifications or other materials by the City on any project other than the project specified in this Agreement.
6. **Compliance with Laws.** The Consultant shall, in performing the services contemplated by this Agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services rendered under this Agreement.
7. **Indemnification.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant 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 Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

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

A. **Minimum Amounts and Scope of Insurance.** Consultant shall obtain insurance of the types and with the limits described below:

1. **Automobile Liability** insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Automobile Liability insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. **Commercial General Liability** insurance with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.
3. **Workers' Compensation** coverage as required by the Industrial Insurance laws of the State of Washington.

4. **Professional Liability** with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit. Professional Liability insurance shall be appropriate to the Consultant's profession.
  - B. **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.
  - C. **Other Insurance Provision.** The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not be contributed or combined with it.
  - D. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
  - E. **Verification of Coverage.** Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the City, the Consultant shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.
  - F. **Notice of Cancellation.** The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
  - G. **Failure to Maintain Insurance.** Failure on the part of the Consultant 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 Consultant 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 Consultant from the City.
9. **Independent Contractor.** The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Consultant nor any employee of the Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant.
10. **Covenant Against Contingent Fees.** The Consultant warrants that he has not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the City shall have the right to annul this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. **Discrimination Prohibited.** Contractor, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, religion, creed, color, national origin, age, veteran status, sex, sexual orientation, gender identity, marital status, political affiliation, the presence of any disability, or any other protected class status under state or federal law, in the selection and retention of employees or procurement of materials or supplies.
12. **Assignment.** The Consultant shall not sublet or assign any of the services covered by this Agreement without the express written consent of the City.
13. **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.
14. **Termination.**
  - A. The City reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to the Consultant.
  - B. In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this Agreement, if requested to do so by the City. This section shall not be a bar to renegotiations of this Agreement between surviving members of the Consultant and the City, if the City so chooses.
15. **Applicable Law; Venue; Attorney's Fees.** This Agreement shall be subject to, and the Consultant shall at all times comply with, all applicable federal, state and local laws, regulations, and rules, including the provisions of the City of Tukwila Municipal Code and ordinances of the City of Tukwila. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in King County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit. Venue for any action arising from or related to this Agreement shall be exclusively in King County Superior Court.
16. **Severability and Survival.** If any term, condition or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Agreement, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement, shall survive termination of this Agreement.
17. **Notices.** Notices to the City of Tukwila shall be sent to the following address:

City Clerk  
City of Tukwila  
6200 Southcenter Boulevard  
Tukwila, WA 98188

Notices to Consultant shall be sent to the following address:

KPG Psomas Inc.  
3131 Elliott Ave, Suite 400  
Seattle, WA 98121
18. **Entire Agreement; Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements written or oral. No amendment or modification of this Agreement shall be of any force or effect unless it is in writing and signed by the parties.



DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**\*\* City signatures to be obtained by  
City Clerk's Staff ONLY. \*\***

**\*\* Consultant signature to be obtained by  
sponsor staff. \*\***

CITY OF TUKWILA

CONSULTANT:

\_\_\_\_\_  
Allan Ekberg, Mayor

By:  \_\_\_\_\_

Printed Name: Sessyle Asato

ATTEST/AUTHENTICATED:

Title: Vice President

\_\_\_\_\_  
Christy O'Flaherty, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the City Attorney

**EXHIBIT A**  
**City of Tukwila**  
**2023 Neighborhood Traffic Calming Program On-Call**  
**Scope of Work**  
**February 2023**

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The purpose of this on-call contract is to support the City of Tukwila with transportation analysis, engineering and design services to assist with the Neighborhood Traffic Calming Program. This work will be conducted on as-needed basis up to the budget allowances assigned for this project. The Consultant will not proceed with a task until authorized by the City.

The anticipated scope of services includes, but is not limited to:

- Traffic calming evaluation, analysis and design for corridors, neighborhoods, schools or specific sites
- RRFB evaluation, analysis and design
- Illumination analysis, including brief summary report (if required)
- Surveying, if required (use of GIS maps shall be preferred)
- Signage and channelization design
- Sidewalks, median islands and pedestrian facilities repair design
- Drainage facilities modifications and TESC plans (if required)
- Bicycle facilities improvements
- Associated landscaping improvements design
- Structural design for elements such as pole foundations and retaining walls (if required)
- Geotechnical engineering support (if required)
- Construction documents (plans, specifications and cost estimate)
- Services during bid advertisements
- Other engineering services as directed by the City

Work on on-call contracts will be on as-needed basis, and the Consultant understands the City does not guarantee any minimum amount of work. The Consultant will be authorized to perform work under this contract by issuance of a written task order executed between the City and Consultant. Each task order will identify the Scope of Work to be performed, the period of performance, and the not-to-exceed amount.



Exhibit A

**KPG Psomas Inc.**  
**Summary of Negotiated Costs**  
**Effective January 1, 2023 through December 31, 2023**

<b>Classification</b>	<b>2023 Inclusive Rate (Rounded to \$1)</b>
Principal	285
Engineering Manager	251
Senior Engineer	215
Senior Project Engineer	203
Project Engineer III	188
Project Engineer II	175
Project Engineer I	149
Design Engineer II	140
Design Engineer I	133
Engineering Technician	114
Technician	102
Engineering Assistant	92
Senior Project Manager Survey	251
Survey Crew II (W/Equip)	260
Survey Crew I (W/Equip)	205
Field Surveyor I	92
Field Surveyor II	122
Field Surveyor III	145
Survey Assistant	92
Project Surveyor	164
Surveyor I	91
Surveyor II	121
Surveyor III	137
Urban Design Manager	200
Project Landscape Architect	155
Landscape Technician	102
Landscape Assistant	90
Senior Transportation Planner	190
Transportation Planner	114
Senior Construction Manager	245
Construction Manager	185
Senior Resident Engineer	172
Resident Engineer	155
Assistant Resident Engineer	144
Senior Construction Observer	191
Construction Observer III	143
Construction Observer II	130
Construction Observer I	106
Construction Technician	92
Document Control Specialist II	143
Document Control Specialist I	121
Document Control Admin	104
Construction Assistant	76
CAD Manager	180
Senior CAD Technician	138
CAD Technician	124
Business Manager	178
Senior Admin	133
Office Admin	103
Office Assistant	82
Subs billed at cost plus 5%.	
Reimbursables billed at actual costs.	
Mileage billed at the current approved IRS mileage rate.	

EXHIBIT "B"

Billing Voucher

To: City of Tukwila  
6200 Southcenter Boulevard  
Tukwila, WA 98188

Contractor: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Specific Program: \_\_\_\_\_

Contract Period: \_\_\_\_\_ Reporting Period: \_\_\_\_\_

Amount Requested This Invoice: \$ \_\_\_\_\_

Invoice Number: \_\_\_\_\_ Date of Invoice: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

Budget Summary:

Total Contract Amount: \$ \_\_\_\_\_

Previous Payments: \$ \_\_\_\_\_

Current Request: \$ \_\_\_\_\_

Total Requested This Contract to Date \$ \_\_\_\_\_

Total Contract Amount: \$ \_\_\_\_\_

**Staff Top-10 Recommended NTCP Projects**

*Modified 11/2/2022*

Project	Details	Potential Treatment Options	Status	Complete?	Original Cost Range Estimate	Updated Cost Estimate	Updated Cost Range
A <b>Allentown Neighborhood Speed and Safety Study</b>	<i>Since 2018, five individual requests for traffic calming have been recorded in the NTCP list of requests; however, traffic complaints have been made to the City over prior years. Addressing traffic safety concerns in Allentown is a top priority for the City.</i>		PW Staff reviewing recommendations and developing scope of work for future projects.	Yes	\$50,000-80,000	\$20k for study \$640k for CN of study recommendations	\$680,000.00
	Study neighborhood-wide volume, speed, classification and safety issues. Design plan for Level 1 and Level 2 treatments throughout Allentown.	Level 1: Improved signage; radar feedback signs; pavement marking modifications Level 2: Curb extensions					
B <b>Tukwila Elementary School Safety Improvements</b>	<i>Since 2018, 12 traffic calming requests have been made in the Cascade View neighborhood, with a significant number of them near Tukwila Elementary School. Common complaints have been over speeding and crosswalk or pedestrian safety. Additionally, the Council has asked for proactively addressing or anticipating concerns, specifically around school zones. Some improvements have been made around Tukwila Elementary School already but more improvements are needed.</i>		Have reached out to Tukwila School District/Tukwila Elementary School staff to gain understanding of operations and challenges. Improvements will be made in 2023.	Underway	\$30,000-80,000	TBD	\$30,000-80,000
	Address speeding and crosswalk safety concerns.	Level 1: Improved signage; radar feedback signs; pavement marking modifications Level 2: Curb extensions; RRFB installation; ADA ramp upgrades; improved illumination					
C <b>Impact Charter School Safety Improvements</b>	<i>A request specific to the newly opened Impact Charter School was received in 2019. The request was to provide a signed school zone, which Tukwila has provided along with signs marking school crossings on S 148th Street. ADA-compliant ramps have not been installed at the marked school crossings. The charter school has expanded their site to the north with a need for consideration of a school zone on S 146th Street and other potential improvements for children's safety. Additionally, the Council has asked for proactively addressing or anticipating concerns, specifically around school zones.</i>		Awaiting a proposed private development for possible ADA ramp improvement.	Underway	\$8,000-15,000	TBD	\$8,000-15,000
	Provide school crossing improvements, establish school zone on S 146th Street, if needed. Provide school crossing improvements, observe operating speeds, if necessary establish speed zone.	Level 1: Improved signage for school zones on S 148th Street and S 146th Street; crosswalk installation Level 2: ADA ramp improvements; curb extensions					
D <b>Cascade View Elementary School Safety Improvements</b>	<i>Since 2018, the Tukwila Hill neighborhood has seen 9 requests for traffic calming. Four of the locations are around the speeding, school crossing and pedestrian safety around the Cascade View Elementary School. 85th Percentile speeds of ~30MPH in the 25MPH zones have been recorded, but analysis to separate whether the speeding is even more than the posted school zone has not been done. Additionally, the Council has asked for proactively addressing or anticipating concerns, specifically around school</i>		Study for improved signage and crosswalk underway Design for ADA improvements later in year with construction likely in 2023	Underway	\$8,000-15,000	TBD	\$8,000-15,000
	Upgrade School Zone signing, design and install pedestrian crossing improvements.	Level 1: Improved signage for school zones on S 148th Street and S 146th Street; crosswalk installation Level 2: ADA ramp improvements; curb extensions					
E <b>Tukwila Community Center Pedestrian Crossing Safety Improvements</b>	<i>The City Council has expressed desire for the NTCP to have a proactive element in addressing traffic calming and safety needs throughout the City. The TCC is a well-utilized facility by the Allentown neighborhood as well as the entire City and surrounding area. Concerns over the pedestrian crossings on S 124th Street have been raised by staff and residents in the past, along with the larger complaints of speeding in Allentown. Increasing pedestrian visibility to improve safety in this high-use area is a recommended top priority for the NTCP.</i>		Complete	Yes	\$80,000-100,000	\$15k PE \$47k RRFB units \$78k RRFB Installation	\$110,000.00
	Design and install mid-block pedestrian safety improvements on S 124th Street.	Level 1: Improve pedestrian crossing signage Level 2: RRFB installations; upgrade ADA ramps; curb extensions; improved illumination					

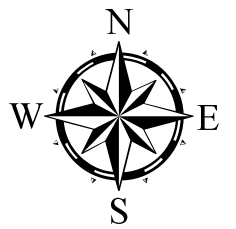
Project		Details	Potential Treatment Options	Status	Complete?	Original Cost Range Estimate	Updated Cost Estimate	Updated Cost Range
F	Macadam Road Speed and Safety Improvements	<i>At least five requests for traffic calming, specific to speeding (and some secondary reasons) have been made since 2018. A radar feedback sign was placed near the 13700 block in 2019 but requests have continued to be made. Additional analysis is warranted to determine what other improvements could be used to address the speeding, especially where Macadam has extremely limited sight distance due to the curvy nature of the roadway.</i>		Individual Project to begin design 1Q 2023.		\$10,000 - 30,000	TBD	\$10,000 - 30,000
		Design and install treatments addressing speeding and curve safety north of S 144th Street.	Level 1: Improved signage; LED chevron signs; channelization modifications Level 2:					
G	Southcenter Boulevard/65th Avenue S Pedestrian Safety Improvements	<i>Staff identified the need for improvement pedestrian safety at this location several years ago. Southcenter Boulevard is a 5-lane roadway with known speeding issues along with curves that restrict sight distance. A high pedestrian usage at this intersection accessing the King County Metro bus stop that services both the Rapid Ride F-Line and Route 150, both workhorses of the south County transit network, justifies improving pedestrian crossing safety. This intersection is slated for full signalization in the future, but interim pedestrian safety improvements should be considered sooner.</i>		Funding available for design of full signal in 2022 CIP. Design to begin in 2022. Recommended improvements will be incorporated into signal project in the CIP.		\$50,000-\$90,000	TBD	\$50,000-\$90,000
		Design and install pedestrian safety improvements	Level 1: Improved signage for pedestrian crossing Level 2: RRFB installation; ADA ramp upgrades; improved illumination					
H	City-wide Residential Speed Limit Review	<i>As part of the City Council's expressed desire to proactively look at traffic calming needs, a full review of the residential street posted speed limits is recommended by staff. State law establishes city speed limits at 25MPH unless an engineering study is completed to justify higher speed limits. Most residential streets are posted at 25MPH today, but there are many that are posted at 30MPH or 35MPH. Likely, those speed limits are legacies of past annexation areas, where a speed study was completed by King County. The general impression Staff has is that most residents and elected officials would be happier with lower speed limits. City of Seattle has also recently lowered all speed limits nearly city-wide to be 25MPH.</i>		Reviews to begin in early 2023.		\$5,000-8,000	TBD	\$5,000-8,000
		Identify residential streets with speed limits currently above 25MPH. Conduct volume, speed and safety review. Recommend changes to speed limits, as necessary.	Level 1: Modify speed limit ordinance; as needed; install new signs; as needed. Level 2:					
I	S Ryan Way Pedestrian Safety Improvements	<i>Two requests for traffic calming to address speeding and pedestrian crossing safety in the Ryan Hill area have been made in 2021. New developments are coming forward that will increase the residential population of this part of the City with multi-family developments. The speed concerns, especially along S Ryan Way, coupled with the new housing developments increasing the likelihood of increased pedestrian activity, warrants this analysis be recommended as a top priority.</i>		Planning and Design to begin in early 2023. Will be stand alone project based on recommendations provided by the designer.		\$10,000-100,000	TBD	\$10,000-100,000
		Safety study on S Ryan Way from MLK Jr. Way to east city limits, focusing on speeding and pedestrian safety. Recommend Level 1 and Level 2 improvements. Design and construct improvements.	Level 1: Improved signage Level 2: Curb extension, improved illumination					
J	S 144th Street/46th Avenue S ADA Ramps	<i>The Tukwila School District requested school crossing safety improvements at this intersection in 2017. A new Rectangular Rapid Flashing Beacon was installed in early 2019. At the time the RRFB was installed, the City was also submitting a grant application for the 46th Avenue S Safe Routes to School project, which would improve pedestrian safety between this intersection south to S 150th Street, and would include either a raised pedestrian crosswalk at the RRFB or install ADA-compliant curb ramps. The grant was not awarded. State law requires ADA ramps be brought up to current standards anytime a new signal, including the RRFB, is installed. Since grant monies for the larger improvement are not expected in the short term, staff recommends this as a priority to comply with all state and federal laws regarding Americans with Disabilities Act requirements.</i>		Complete	Yes	\$15,000-20,000	\$15k PE \$90k Construction	\$105,000.00
		Design and install ADA-compliant ramps at the intersection.	Level 1: Level 2: ADA upgrades to ramps at RRFB (not done at time of RRFB installation due to budget constraints)					
<b>Total</b>						<b>\$266,000 - \$538,000</b>	<b>\$808,000</b>	<b>\$1,016,000 - \$1,233,000</b>

Project Complete  
Project Underway  
Project for On-Call Contract



# City of Tukwila

## Top 10 Staff Recommended NTCP Projects (April 3, 2023)

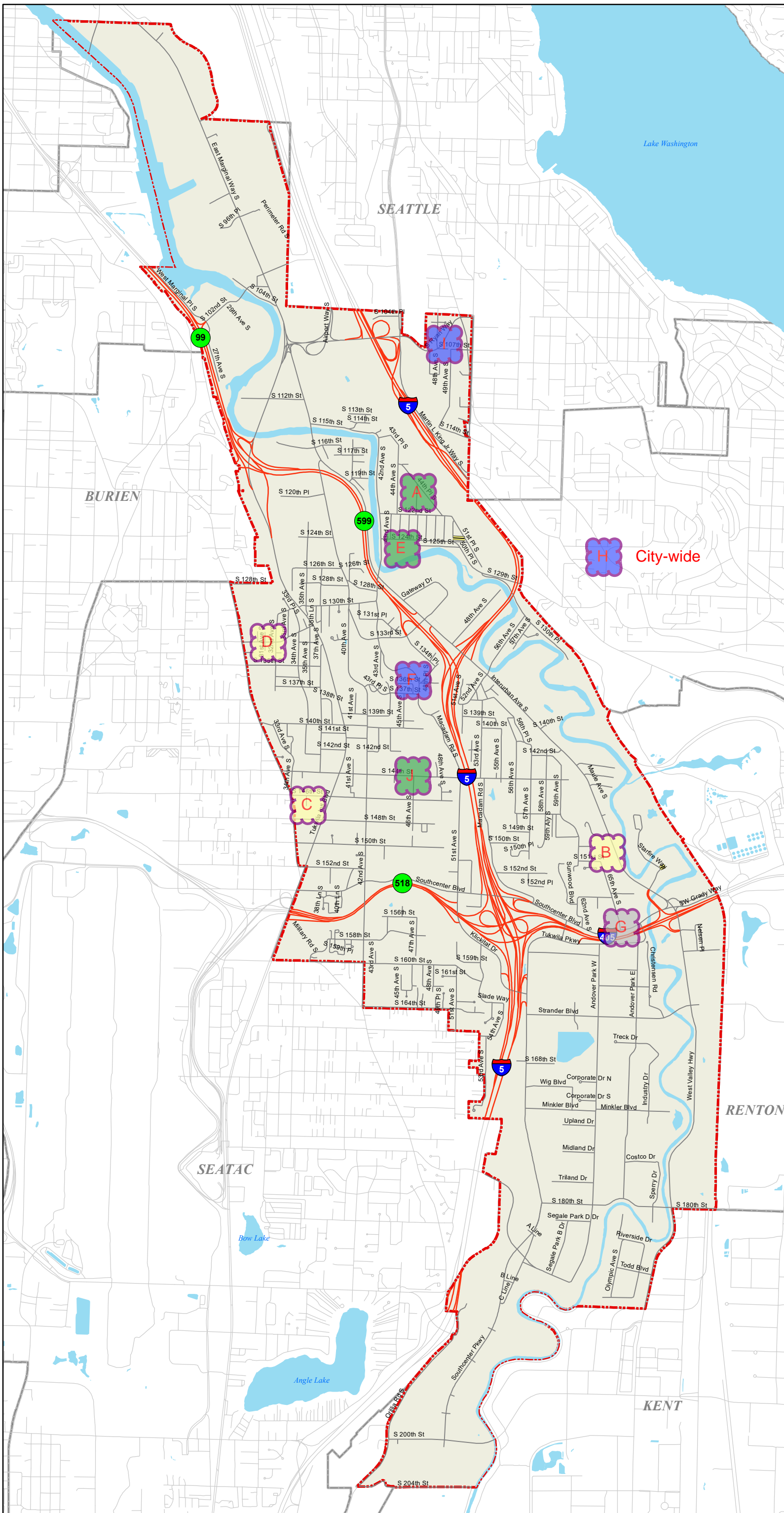


Not to Scale

### Vicinity Map



Disclaimer: The location of features and boundaries are approximate and are intended for reference only. Data is based on best information available.









# INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**  
 FROM: **Hari Ponnekanti, Public Works Director/ City Engineer**  
 BY: **Joshua Hopkins, Surface Water Project Manager**  
 CC: **Mayor Ekberg**  
 DATE: **March 31, 2023**  
 SUBJECT: **Surface Water Fund - 2022 Annual Small Drainage Program**  
**Project No. 80041201, Contract No. 22-070**  
**Project Completion and Acceptance**

### ISSUE

Accept construction contract as complete and authorize release of retainage.

### BACKGROUND

The Small Drainage Program constructs drainage projects throughout the City that are too large for City staff to complete but are smaller than a typical Capital Improvement Project.

### DISCUSSION

The Notice to Proceed for Contract Number 22-070 with Titan Earthwork, LLC was issued on June 28, 2022, and construction was physically completed on October 13, 2022.

The 2022 Annual Small Drainage Program provided drainage improvements at these three locations:

- 37<sup>th</sup> Ave S (S 126<sup>th</sup> St – S 128<sup>th</sup> St)
- 48<sup>th</sup> Ave S (S 124<sup>th</sup> St – S 122<sup>nd</sup> St)
- 49<sup>th</sup> Ave S (S 124<sup>th</sup> St – S 122<sup>nd</sup> St)

### FINANCIAL IMPACT

The original contract amount was \$547,980.00, and the 2022 Small Drainage work came in under budget at \$452,790.06. A retainage of \$22,639.50 is being held for this project. All project costs are covered by the surface water utility fund.

	<u>Expenses</u>	<u>2022 Budget</u>
Construction Contract Amount	\$547,980.00	\$700,000
Overruns/ (Underruns)	<u>(95,189.94)</u>	
<b>Total Contract Amount</b>	<b>\$452,790.06</b>	

### RECOMMENDATION

Council is being asked to formally accept the 2022 Annual Small Drainage Program with Titan Earthwork, LLC. as complete and authorize the release of the \$22,639.50 retainage, subject to standard claim and lien release procedures, and to consider this item on the Consent Agenda at the April 17, 2023 Regular Council Meeting.

Attachments: Project Photos  
2021 CIP, page 78  
Notice of Completion, Contract #22-070

Photos – 2022 Small Drainage Program



## CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

**PROJECT:** Annual Small Drainage Program

Project No. 9xx41201  
81241207

**DESCRIPTION:** Select, design, and construct small drainage projects throughout the City.

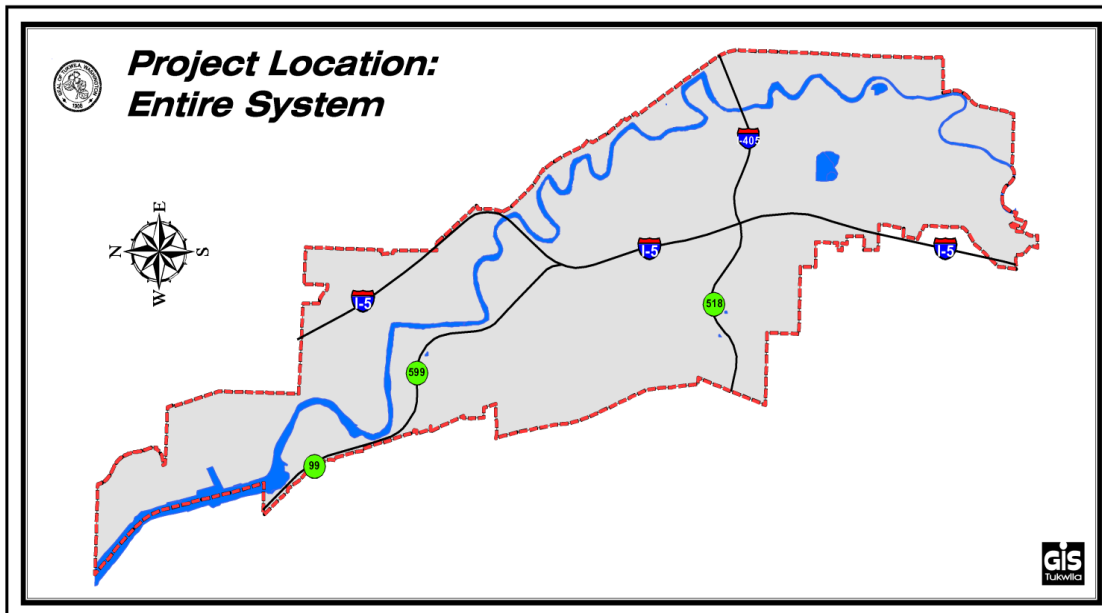
**JUSTIFICATION:** Provide drainage corrections for existing/ongoing drainage problems throughout the City, including culvert replacements, drain extensions, and pavement upgrades.

**STATUS:** Projects for this annual program are taken from Small Drainage Project List.

**MAINT. IMPACT:** Reduces maintenance.

**COMMENT:** Ongoing project, only one year shown in first column. Construction expenses may occur over two calendar years.

FINANCIAL (in \$000's)	Through Estimated									TOTAL
	2019	2020	2021	2022	2023	2024	2025	2026	BEYOND	
<b>EXPENSES</b>										
Design	74	92	100	100	100	100	110	110	80	866
Const. Mgmt.	40	68	100	100	100	100	110	110	80	808
Construction	108	515	700	700	700	700	750	750	513	5,436
<b>TOTAL EXPENSES</b>	<b>222</b>	<b>675</b>	<b>900</b>	<b>900</b>	<b>900</b>	<b>900</b>	<b>970</b>	<b>970</b>	<b>673</b>	<b>7,110</b>
<b>FUND SOURCES</b>										
Awarded Grant										0
Proposed Grant	65									65
Mitigation Actual										0
Mitigation Expected										0
Utility Revenue	157	675	900	900	900	900	970	970	673	7,045
<b>TOTAL SOURCES</b>	<b>222</b>	<b>675</b>	<b>900</b>	<b>900</b>	<b>900</b>	<b>900</b>	<b>970</b>	<b>970</b>	<b>673</b>	<b>7,110</b>





# NOTICE OF COMPLETION OF PUBLIC WORKS CONTRACT

Department Use Only	
Assigned to:	Date Assigned:

Date 03/08/2023	Form Version Original	Revision Reason
-----------------	-----------------------	-----------------

Awarding Agency Information		Prime Contractor Information	
Name TUKWILA, CITY OF	UBI 604225872	Name TITAN EARTHWORK LLC	UBI 602605763
Address 6300 S CENTER BLVD #101 TUKWILA,WA-98188		Address 1585 VALENTINE AVE SE PACIFIC,WA-98047	
Email Address joshua.hopkins@tukwilawa.gov		Email Address accounting@titanearth.com	
Contact Name Joshua Hopkins	Phone 206-890-6380 x_____	Contact Name TITAN EARTHWORK LLC	Phone 206-325-3004

Project Information			
Project Name 2022 Small Drainage Program		Contract # 80041201	Affidavit ID 1185139
Jobsite Address 3 locations throughout the City of Tukwila			
Date Awarded 06/13/2022	Date Work Commenced 07/29/2022	Date Work Completed 09/29/2022	Date Work Accepted 10/13/2022
Federally Funded Transportation Project <i>If yes, attach Contract Bond Statement.</i> <input type="checkbox"/>			
Bond Waived?	Retainage Waived?	Subcontractors Used? <i>If yes, complete Addendum A.</i> <input checked="" type="checkbox"/>	

**Detailed Description of Work Completed** Drainage improvements at up to (3) locations, all within the City of Tukwila. Specific tasks may include storm conveyance installation, removing and replacing HMA, relocating and adjusting hydrant assemblies and water meter services, restoration, revegetation, and providing temp erosion/water pollution control.

DOR Tax Information			
<i>*Right-click on the total field and select <u>Update Field</u> to auto-calculate.</i>			
Contract Amount	\$547,980.00	Liquidated Damages	\$ 0.00
Additions (+)	\$ 0.00	Amount Disbursed	\$430,150.56
Reductions (-)	\$95,189.94	Amount Retained	\$22,639.50
<b>Sub-Total*</b>	<b>\$452,790.06</b>	Other	\$ 0.00
Sales Tax Amount	\$ 0.00	Sales Tax Rate <i>If multiple rates, attach a list.</i>	0.00%
<b>TOTAL*</b>	<b>\$452,790.06</b>	<b>TOTAL*</b>	<b>\$452,790.06</b>
<i>These two totals must be equal.</i>			

Apprentice Utilization Information	
Was Apprentice Utilization Required? <i>If yes, complete this entire section.</i> <input checked="" type="checkbox"/>	Engineer's Estimate \$ 0.00
Utilization % 20.24%	Was a Good Faith Effort approved?

**Comments**

The Disbursing Officer must submit this completed notice immediately after acceptance of the work done under this contract. NO PAYMENT SHALL BE MADE FROM THE RETAINED FUNDS until receipt of all release certificates and affidavits.

**Submitting Form:** Submit the completed form by email to all three agencies below.



**Addendum A: Please List all Subcontractors and Sub-tiers Below**

This addendum can be submitted in other formats.

Provide known affidavits at this time. No L&I release will be granted until all affidavits are listed.

<b>Subcontractor's Name:</b>	<b>UBI Number: (Required)</b>	<b>Affidavit ID*</b>
ALL CITY SAWING & DRILLING LLC	602372903	<b>1169898</b>
BEN'S DOZER SERVICES INC	601432463	<b>1169981</b>
LAKESIDE INDUSTRIES INC	601106847	<b>1159304</b>
LAKESIDE INDUSTRIES INC	601106847	<b>1164018</b>
NORTHWEST DATUM & DESIGN, INC.	601868527	<b>1164907</b>
OLSON BROTHERS PRO-VAC LLC	602170975	<b>1169777</b>
PAPE' MACHINERY, INC.	602189602	<b>1164867</b>





## INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**  
 FROM: **Hari Ponnekanti, Public Works Director/ City Engineer**  
 BY: **Mike Perfetti, Surface Water Sr. Program Manager**  
 CC: **Mayor Ekberg**  
 DATE: **March 31, 2023**  
 SUBJECT: **Surface Water Fund – East Marginal Way Stormwater Outfalls Project**  
**Project No. 91041204, Contract No. 20-118**  
**Project Completion and Acceptance**

### **ISSUE**

Accept construction contract as complete and authorize release of retainage.

### **BACKGROUND**

This project constructed drainage improvements along the northern portion of East Marginal Way South by reestablishing a drainage connection to the Duwamish River and adding water quality treatment for a portion of East Marginal Way S. Prior to the project, drainage along the northern portion of East Marginal Way South was conveyed to the Duwamish River through four separate outfalls. The outfalls are owned by Jorgensen Forge, the Boeing Company, and two by the King County International Airport. The Jorgensen Forge outfall was abandoned in 2012 under an order from the Environmental Protection Agency (EPA) and flows had been temporarily diverted to a King County Airport outfall.

### **DISCUSSION**

This project was awarded on October 19, 2020, and construction began on March 8, 2021. The construction was physically completed on July 27, 2022. The final affidavits of wages paid have since been received and the notice of completion submitted to State L&I.

### **FINANCIAL IMPACT**

The original contract amount was \$1,035,201.00, including tax, and four change orders were executed for \$348,280.03 and a total contract value of \$1,383,481.03, which were approved by Council on August 16, 2021.

Some cost overruns and project delays resulted from underground utility conflicts: first, a previously unknown fiber optic utility and later an unmarked 4” steel conduit were found to conflict with the alignment of the new drainage system. Construction was put on hold to accommodate alignment design revisions. Of the total contract award, \$71,494.76 in retainage is being held by the City.

The project received \$1,106,250 in design and construction funding from the Department of Ecology Municipal Stormwater Capacity grant and \$100,000 in construction funding from the King County Opportunity Fund. The remaining project costs were funded through storm water utility revenue, including savings from the design and construction management portions of the project.

	<b><u>Expenses</u></b>	<b><u>Fund Source</u></b>	<b><u>Construction Budget</u></b>
Construction Contract Amount	\$1,035,201.00	DOE Grant	\$1,106,250.00
Change Order Nos. 1-4	348,280.03	KC Grant	100,000.00
Net Unit Price Overruns	<u>46,414.18</u>	Surface Water Fund	<u>223,645.21</u>
<b>Total Contract Amount</b>	<b>\$1,429,895.21</b>	<b>Total</b>	<b>\$1,429,895.21</b>

**RECOMMENDATION**

Council is being asked to formally accept the East Marginal Way Stormwater Outfalls contract with Marshbank Construction as complete and authorize the release of the \$71,494.76 retainage, subject to standard claim and lien release procedures, and to consider this item on the Consent Agenda at the April 17, 2023 Regular Council Meeting.

**Attachments:** Project Photos  
2021 CIP, page 84  
Notice of Completion, Contract #20-118



East Marginal Way South Photos



Bioretention planter, late summer 2022



Stormwater media filter unit installation

# CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2021 to 2026

**PROJECT:** East Marginal Wy S Stormwater Outfalls

Project No. 91041204

**DESCRIPTION:** Establish legal drainage connections from East Marginal Way South to the Duwamish River.

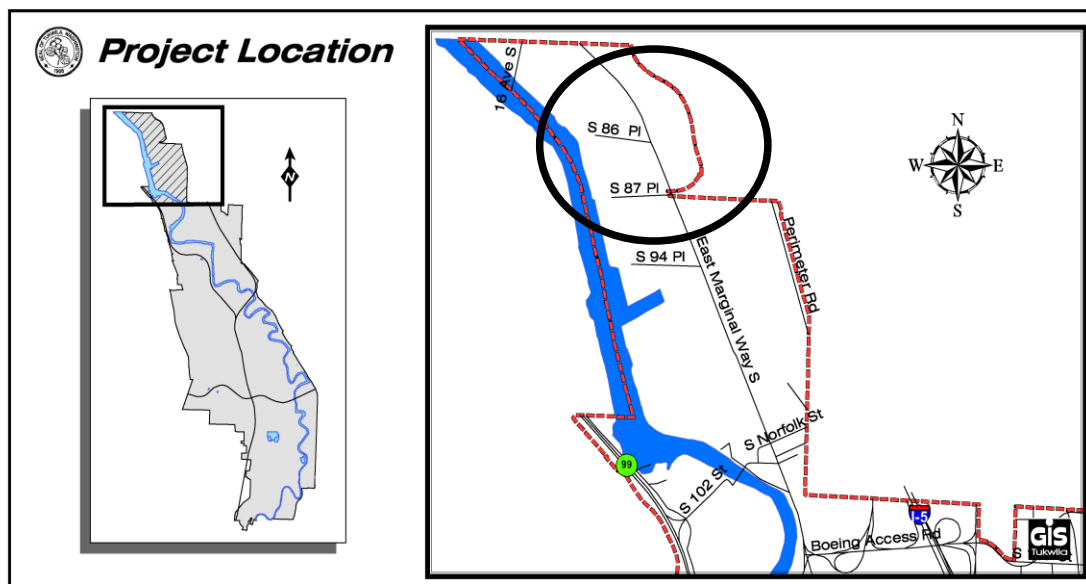
**JUSTIFICATION:** Drainage from E Marginal Wy S is discharged through outfalls owned and operated by the Boeing Co., Jorgensen Forge, and two King County Airport storm systems without easements.

**STATUS:** Design completed and approved by the Department of Ecology. Construction is anticipated to begin in September 2020.

**MAINT. IMPACT:** Clarifies maintenance responsibility and will ensure reliability of system.

**COMMENT:** City adopted the Z Line in 2015. Construction includes pipe lining, installation of water quality and connecting the Jorgenson drainage area to Boeing's Z Line. DOE design and construction grant awarded in 2018 for \$1.1m.

FINANCIAL (in \$000's)	Through		Estimated								TOTAL
	2019	2020	2021	2022	2023	2024	2025	2026	BEYOND		
<b>EXPENSES</b>											
Design	265	45									310
Monitoring	31	11	11								53
Const. Mgmt.		50	265								315
Construction		300	1,000								1,300
<b>TOTAL EXPENSES</b>	<b>296</b>	<b>406</b>	<b>1,276</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,978</b>
<b>FUND SOURCES</b>											
Awarded Grant RCO	164	100	842								1,106
KCFCD		50									50
Proposed Grant											0
Mitigation Expected											0
Utility Revenue	132	256	434	0	0	0	0	0	0	0	822
<b>TOTAL SOURCES</b>	<b>296</b>	<b>406</b>	<b>1,276</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,978</b>





# NOTICE OF COMPLETION OF PUBLIC WORKS CONTRACT

Department Use Only	
Assigned to:	Date Assigned:

Date 03/09/2023	Form Version Original	Revision Reason
-----------------	-----------------------	-----------------

Awarding Agency Information		Prime Contractor Information	
Name TUKWILA, CITY OF	UBI 916001519	Name MARSHBANK CONSTRUCTION INC	UBI 601649423
Address 6300 S CENTER BLVD #101 TUKWILA,WA-98188		Address PO BOX 97 LAKE STEVENS,WA-98258	
Email Address mike.perfetti@tukwilawa.gov		Email Address rachelle@marshbankconst.com	
Contact Name Mike Perfetti	Phone 206-550-4930	Contact Name MARSHBANK CONSTRUCTION INC	Phone 425-377-9708

Project Information			
Project Name East Marginal Way Outfall Stormwater Retrofit Project		Contract # 20-118	Affidavit ID 1181422
Jobsite Address			
Date Awarded 11/16/2020	Date Work Commenced 03/08/2021	Date Work Completed 07/14/2022	Date Work Accepted 07/22/2022
Federally Funded Transportation Project <i>If yes, attach Contract Bond Statement.</i> <input type="checkbox"/>			
Bond Waived?	Retainage Waived?	Subcontractors Used? <i>If yes, complete Addendum A.</i> <input checked="" type="checkbox"/>	

**Detailed Description of Work Completed** Construction of approximately 1600 linear feet of drainage improvements within the right-of-way of East Marginal Way, including but not limited to stormwater pump station installation, gravity and force main storm sewer, stormwater treatment vaults, cured in place pipe lining, bioretention planters, permeable pavement and paving, roadway, curb and gutter restoration, and other work necessary to complete the Work as specified and shown in the Contract Documents.

DOR Tax Information			
<i>*Right-click on the total field and select Update Field to auto-calculate.</i>			
Contract Amount	\$1,035,201.00	Liquidated Damages	\$ 0.00
Additions (+)	\$348,280.03	Amount Disbursed	\$1,358,400.45
Reductions (-)	-\$46,414.18	Amount Retained	\$ 0.00
<b>Sub-Total*</b>	<b>\$1,429,895.21</b>	Other	\$71,494.76
Sales Tax Amount	\$ 0.00	Sales Tax Rate <i>If multiple rates, attach a list.</i>	10.10%
<b>TOTAL*</b>	<b>\$1,429,895.21</b>	<b>TOTAL*</b>	<b>\$1,429,895.21</b>
<i>These two totals must be equal.</i>			

Apprentice Utilization Information	
Was Apprentice Utilization Required? <i>If yes, complete this entire section.</i> <input checked="" type="checkbox"/>	Engineer's Estimate \$1,300,445.00
Utilization % 15.29%	Was a Good Faith Effort approved?

Comments

The Disbursing Officer must submit this completed notice immediately after acceptance of the work done under this contract. NO PAYMENT SHALL BE MADE FROM THE RETAINED FUNDS until receipt of all release certificates and affidavits.

**Submitting Form:** Submit the completed form by email to all three agencies below.

**Addendum A: Please List all Subcontractors and Sub-tiers Below**

This addendum can be submitted in other formats.

Provide known affidavits at this time. **No L&I release will be granted until all affidavits are listed.**

<b>Subcontractor's Name:</b>	<b>UBI Number: (Required)</b>	<b>Affidavit ID*</b>
APPLY-A-LINE LLC	600553941	<b>1107197</b>
EVERGREEN CONCRETE CUTTING INC	601605667	<b>1072424</b>
GARY MERLINO CONST CO INC	600584952	<b>1077806</b>
GREEN CITY INC	601196371	<b>1164597</b>
INSITUFORM TECHNOLOGIES LLC	601880220	<b>1062187</b>
MAK'S DUMP TRUCK LLC	602671980	<b>1065712</b>
NORTHLINE SURVEYING, INC	604206249	<b>1159632</b>
OLSON BROTHERS PRO-VAC LLC	602170975	<b>1051546</b>
PUGET PAVING & CONST INC	600403309	<b>1097298</b>
SALINAS SAWING & SEALING INC	601717158	<b>1100545</b>
SERVICE ELECTRIC CO INC	179023787	<b>1139247</b>
SILVERSTREAK INC	600432781	<b>1097123</b>
STRONG TRUCKING, INC.	601777166	<b>1028061</b>
VENTILATION POWER CLEANING INC	578089188	<b>1063879</b>
WILSON CONCRETE CONST INC	602168956	<b>1120200</b>



**TO: Transportation and Infrastructure Services Committee**  
**FROM: Hari Ponnekanti, Public Works Director/ City Engineer**  
**BY: Seong Kim, Deputy Public Works Director-Utilities**  
**CC: Mayor Ekberg**  
**DATE: March 31, 2023**  
**SUBJECT: Franchise Agreement with the City of Tukwila and Highline Water District**

## ISSUE

Approve the Franchise Agreement with the City of Tukwila (The City) and the Highline Water District (HWD).

## BACKGROUND

The Highline Water District (HWD) approached the City of Tukwila (The City) to explore the possibility of franchise agreement. The HWD's main goal was to find a way to mitigate the City's permit process for efficient and time-saving operation and maintenance activities. It was sometimes difficult and time-consuming for the HWD to acquire necessary permits from the City, especially for routine maintenance activities. HWD requested a "Blanket Activities" for routine maintenance activities. The City staff viewed merits of this approach and entered into extensive discussions on this subject.

## DISCUSSION

The Highline Water District, (formerly King County Water District 75 prior to 1991), incorporated in 1946, and currently serves 620 residential and business accounts located within the City of Tukwila. The majority are residential. The City finds that the entire water system operated and maintained by the HWD is reasonably stable and reliable. We are in the process of establishing franchise agreements with external utilities that serve within our city limits. Thus far, we have successfully secured a franchise agreement with WD125 and staff have entered into negotiations with Valley View Sewer as well.

The City's staff found that establishing a franchise agreement which allows for "Blanket Activities" will be a win-win situation for both parties because HWD can carry out efficient operation and maintenance activities for the City's residents by acquiring time-saving permit process from the City, thus saving the City and HWD both time and costs. The City doesn't anticipate any negative impacts on the City's operation by allowing "Blanket Activities". "Blanket Activities" will be specifically determined every year.

"Blanket Activities" means:

- Routine maintenance activities which include simple service disconnects for customers, accessing existing vaults, maintaining hydrants/vaults, adjusting valves, vegetation management, replacing above-ground meters, installing water sampling stations, flushing activities, and lining pipes.
- Does not include cutting, removing, or disturbing the pavement surface. These activities are required to get permits from the City.

The City Attorney's office formulated this draft and completed it. The HWD also agreed upon the draft for execution.

## FINANCIAL IMPACT

The HWD's revenue of \$526,000 came from residents and businesses within the City of Tukwila in 2022. The annual franchise fee of 6%, will provide a revenue of \$31,560 to the City annually.

## RECOMMENDATION

The Council is being asked to approve the franchise agreement with the City of Tukwila and Highline Water District and consider this item at the April 10, 2023 Committee of the Whole meeting and subsequent Consent Agenda at the April 17, 2023 Regular Council Meeting.

**ATTACHMENTS:** Draft Franchise Agreement  
Tukwila Water District Map

**DRAFT**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, GRANTING HIGHLINE WATER DISTRICT A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF TUKWILA, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.**

**WHEREAS**, Highline Water District, a Washington special purpose municipal corporation ("District"), owns water facilities ("Facilities") located in the City of Tukwila, a Washington non-charter municipal code city ("City"), and a portion of such Facilities are located within the City right-of-way as hereinafter defined; and

**WHEREAS**, RCW 57.08.005(3) authorizes the District to conduct water throughout the District and any city and town therein, and construct and lay facilities along and upon public highways, roads and streets within and without the District; and

**WHEREAS**, RCW 35A.47.040 authorizes the City to grant non-exclusive franchises for the use of the public streets above or below the surface of the ground by publicly owned and operated water facilities; and

**WHEREAS**, the City and the District have prepared this Franchise Agreement to provide for the operation of District Facilities within the City right-of-way;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:**

**Section 1. Definitions.** Where used in this franchise (the "Franchise") these terms have the following meanings:

A. "Blanket Activities" means work that does not include cutting, removing, or disturbing the pavement surface which includes but is not limited to the following activities: simple service disconnects for customers, accessing existing vaults, maintaining hydrants/vaults, raising/adjusting valves, vegetation management, replacing above-ground meter, installing water sampling stations, flushing activities, and lining pipes.

B. "City" means the City of Tukwila, a Washington municipal corporation, and its respective successors and assigns.

C. "District" means the Highline Water District, a Washington municipal corporation, and its respective successors and assigns.

D. "Facility" or "Facilities" means tanks, reservoirs, water treatment facilities, meters, pipes, mains, services, valves, blow offs, vaults, fire suppression water facilities, risers, generators, electrical control panels, power meters, telephone connections, pressure reducing valves ("PRVs"), pump stations, meter stations, lines, and District-owned service lines located in the Franchise Area as defined below, and all other necessary or convenient facilities and appurtenances thereto for the purpose of operating a water utility system, whether the same be located over, on, or underground.

E. "Franchise Area" means every and all of the public roads, streets, avenues, alleys, highways and rights-of-way of the City as now or hereafter laid out, platted, dedicated or improved; and any and all public City roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved in the District's service area, within the present corporate boundaries of the City (as depicted in Exhibit B, attached hereto, which is by this reference incorporated as if fully set forth herein), and as such corporate boundaries may be extended within District's service area by annexation or otherwise, but shall not include private roads, streets, avenues, alleys or private property. The Franchise Area shall not include or convey any right to the District to install facilities on, or to otherwise use, City owned or leased properties.

F. "Ordinance" means this Ordinance No. \_\_\_\_\_, which sets forth the terms and conditions of this Franchise.

G. "Party" or "Parties" means the City or the District individually, or collectively as addressed in this Franchise.

H. "Revenue" means income received by the District from the sale of metered water to direct retail customers whose properties receiving such service from the District's water system are located within the City. Revenue shall not include: late fees; shut-off and reconnect fees; delinquent service charge collection costs and expenses; surcharges; impact or mitigation fees; permit fees and costs; any type of connection charges, general facilities charges, or local facilities charges; local improvement district and utility local improvement district assessments and payments; grants; contributed assets (contributions in aid of construction); income to recover the cost of fire suppression facilities and to pay for the provision of fire suppression services; loans; income from legal settlements not related to water sales to District customers; income from telecommunication leases or licenses; income from real property or from real property sales; income from the sale of surplus equipment, tools, or vehicles; interest income; penalties; hydraulic modeling fees; water system extension agreement fees and charges; income from street lights; labor, equipment and materials charges; or any other fees and charges.

## **Section 2. Franchise.**

A. In addition to the authority granted by State law to the District to locate, operate, and maintain its Facilities in public roads and streets, the City does hereby grant to the District the non-exclusive right, privilege, authority and franchise to construct, install, lay, support, attach, maintain, repair, renew, replace, remove, enlarge, operate and use Facilities in, upon, over, under, along, through, and across the Franchise Area for purposes of its water utility functions as defined in Title 57 RCW.

B. Nothing contained in this ordinance is to be construed as granting permission to the District to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City and may require lease or rental payments as a condition of such use.

C. In addition to the rights granted to the District to undertake and perform activities within the Franchise Area as provided herein, the District shall have the right to discharge District water supply to and into the City's storm water system while performing water system flushing and other District activities, provided any District water discharged to the City's storm water system must comply with all applicable federal and state water quality standards and the City's NPDES permit relating to the City's storm water system.

D. At all times during the term of this Franchise, the District shall fully comply with all applicable federal, state and local laws and regulations and required permits, including, but not limited to, RCW 39.04.180 for construction trench safety systems, chapter 19.122 RCW for utility damage prevention, the State Environmental Policy Act, the State of Washington Pollution Control Law, and the Federal Clean Water Act.

E. The terms, conditions, and provisions of Tukwila Municipal Code ("TMC") Title 11, as currently written, or hereafter modified, are incorporated herein by reference. In the event that a conflict exists between the terms of this Franchise and the terms of the TMC, the terms of this Franchise shall control.

F. The terms of this Franchise shall not impair or interfere with the District's rights under any easements that cover areas within any existing or future City rights-of-way. The District's easement rights shall remain in effect unless formally relinquished by the District or condemned by the City.

## **Section 3. Non-interference of Facilities.**

A. The District's Facilities shall be located, relocated, and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian, bicycle, and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City of Tukwila. Nothing herein shall preclude the District from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided the District receives prior City approval through an appropriate permit, which shall not be unreasonably withheld, and, provided further, the District shall have the right to effect temporary road closures in the



event of emergencies to maintain, repair and replace its Facilities without prior City approval but the District shall obtain City approval of such road closures as soon as reasonably possible.

B. Whenever it is necessary for the District, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, the District shall, upon completion of such excavation, restore the surface of the Franchise Area to City standards, as nearly as reasonably possible to its condition prior to any such excavation, installation, construction, relocation, maintenance or repair and, except as provided under Section 4, shall do so, at no expense to the City; PROVIDED, HOWEVER, that no such work shall be done prior to the obtaining of a permit therefor issued by the City, which permit shall set forth conditions pertaining to the work to be done and specifications for the restoration of the Franchise Area.

C. If the City determines that the District has failed to restore the right-of-way in accordance with the conditions set forth in this Franchise, the City shall provide the District with written notice, which shall include a description of actions the City believes necessary to restore the right-of-way. If the right-of-way is not restored in accordance with the City's notice within fifteen (15) days of that notice, or such longer period as may be specified in the notice, the City, or its authorized agent, may restore the right-of-way and the District shall, except as provided in Section 4, be responsible for all reasonable costs and expenses incurred by the City in restoring the right-of-way in accordance with this section. The rights granted to the City under this section shall be in addition to those otherwise provided by this Franchise.

D. The District shall, except as provided in Section 4, at no expense to the City, expeditiously repair all existing Facilities that it owns, operates and maintains within the Franchise Area, including any damage caused directly or indirectly by its Facilities. The District shall also coordinate and manage the repair of service lines in the Franchise Area connecting its system to users.

E. Survey monuments shall not be removed or destroyed without the District first obtaining the required Department of Natural Resources (DNR) permit in accordance with RCW 58.09.130 and WAC 332-120-030, and as such statute and regulation may be modified and amended. A Professional Land Surveyor (PLS) shall be responsible for perpetuating and documenting existing monuments in compliance with the Application Permit to Remove or Destroy a Survey Monument in accordance with WAC 332-120. Following approval by the Public Land Survey Office, copies of the approved permits shall be forwarded to the City. All survey monuments, which have been distributed or displaced by such work, shall be restored pursuant to all federal, state, and local standards and specifications. The District agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole expense.

#### **Section 4. Relocation of Facilities.**

A. Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of City-owned utilities, storm drainage lines, lighting, signalization, sidewalk improvements, pedestrian and bicycle amenities, or other public street improvements (collectively, "Public Improvement Projects") and the Public Improvement Project requires relocation of the District's then-existing Facilities within such Franchise Area, the City shall:

1. Pursuant to RCW 35.21.905, or as amended, consult with the District in the predesign phase of any Public Improvement Project in order to coordinate the project's design with the District Facilities within such project's area; and

2. Provide the District, at least one hundred eighty (180) days prior to the advertisement for bid of construction of such project, written notice that a project is expected to require the relocation of District Facilities, together with reasonably accurate and specific plans and specifications for such grading, widening, or construction and a proposed new location within the Franchise Area for the District's Facilities. This period of time shall be extended to three hundred sixty (360) days prior notice if the Public Improvement Project exceeds Five Hundred Thousand Dollars (\$500,000); and

3. Coordinate and work diligently with the District to minimize conflicts between existing Facilities and the project improvements, where possible, and to avoid having the District relocate its Facilities, whenever possible. The District acknowledges and agrees that there are situations and circumstances where no other feasible alternatives are available and that relocation may be necessary.

B. After receipt of such notice and such plans and specifications, District shall relocate its Facilities within the Franchise Area to accommodate street and city improvement projects; provided, however, the District may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocations. Such written notice must be received by the City within ninety (90) days of receipt of the notice described in Section 4.A.2 above. Within a reasonable time, the City shall evaluate such alternatives and advise the District in writing whether one or more of the alternatives is suitable to accommodate work that would otherwise necessitate relocation of the Facilities. If requested by the City, the District shall submit such additional information as is reasonably necessary to assist the City in making such evaluation. The City shall give each alternative full and fair consideration. If the City reasonably determines that there is no other feasible alternative, the City shall provide the District with further written notice ("Secondary Notice") to that effect, and the District shall then relocate its Facilities by its own forces, by separate public works contract or by participating in the City's public works project in accordance with Section 4.G. The City shall cooperate with the District to designate a substitute location for its Facilities within the Franchise Area. The City will establish a date by which Facilities will be relocated, which date will be not less than one hundred eighty (180) days after receipt of the Secondary Notice by the District as to the Facility to be relocated. The District must finish relocation of each such Facility by the date so established.

C. The cost of relocating such Facilities existing within the Franchise Area shall be paid as follows:

1. If the relocation occurs within ten (10) years after the District or a third party on the District's behalf constructed such Facility, then the City shall pay fifty percent (50%) of the cost of such relocation and the District shall pay the remaining fifty percent (50%).

2. If the relocation occurs more than ten (10) years after the District or a third party on the District's behalf constructed such Facility, then the relocation shall be at the District's sole cost.

3. However, if the City requires the relocation of Major Facilities defined as water mains of twelve (12) inch diameter or greater, supply stations, pump stations, or vault structures ("Major Facilities" or "Major Facility") to accommodate a City project, where such facility cannot reasonably be supported, disconnected, relocated or removed, then the City shall pay fifty percent (50%) of the cost of the relocation of the Major Facility and the District shall pay the remaining fifty percent (50%) without limitation on the age of the facility; provided, the City and District agree to give full and fair consideration to any lower-cost alternatives to relocating the Major Facility meeting the minimum operational requirements of the Parties, and the City and the District shall each pay fifty percent (50%) of the lower-cost alternative.

4. For the purposes of this Section 4, the date of the Facility's acceptance by the District Board of Commissioners, or the date of final contract payment for the facility's installation (whichever occurs first), shall determine the age of the Facility.

5. Whenever any State or Federal Agency with legal authority within the Franchise Area requires the relocation of District Facilities, the relocation shall be at the District's sole cost. This provision does not limit the District's rights to seek reimbursement for the costs of such relocation from the State or Federal Agency requiring the relocation.

6. Subsections 4.C.1 and 4.C.3 of this Section 4 shall not apply to relocations of District Facilities required as part of a formal declaration of emergency as defined in RCW 39.04.280(3) by the City, which is ratified by resolution of the City Council. In such cases, relocation, if necessary, shall be at the District's sole cost.

D. Whenever the City is undertaking a road or City-owned utility project or improvement, the City will not use its authority to require the District to relocate water facilities (excluding water services and hydrants) for third party franchise utilities (private utilities) on City-initiated aerial-to-underground conversion projects. If conflicts between the aerial-to-underground joint-trench and the District Facilities cannot be resolved, and relocation of District Facilities is necessary, the District shall have the right as a pre-condition of such relocation to require payment to the District for any and all costs and expenses incurred by the District in the relocation of such District Facilities. On City-initiated projects requiring aerial-to-aerial relocation of third party franchise utilities (private utilities), the District shall relocate that portion of its Facilities which are in direct conflict with the new locations of the third party franchise utility facilities, such as utility poles, or participate in securing the necessary easements where no reasonable

alternative location for the third party franchise utility facilities exist within the then existing right-of-way.

E. For the purpose of this Section 4, a project or improvement is considered to be caused by the City (as described in Section 4.A above) if the project is City-initiated and is part of the City's annually adopted Capital Improvement Project (CIP) Program, and can include projects or improvements where a third party has made an in lieu payment for a portion of the City's capital improvement project, provided, the City is responsible for the majority of the cost of the project or improvement, which, if applicable, includes any grant funding received by the City from any federal, state or local agency. A project or improvement is not considered to be caused by the City if the project or improvement is constructed by the City on behalf of a third party, where the third party is responsible for the majority of the project or improvement cost and makes payment to the City in lieu of performing the project or improvement.

F. Whenever any person or entity, other than the City, requires the relocation of District Facilities to accommodate the work of such person or entity within the Franchise Area (excluding State and Federal agencies with legal authority within the Franchise Area), the City agrees not to use its authority to require the District to relocate the existing Facilities. The District shall have the right as a pre-condition of such relocation to require such person or entity to:

1. Make payment to District at a time and upon terms acceptable to the District for any and all costs and expense incurred by the District in the relocation of District Facilities; and

2. Protect, defend, indemnify and hold the District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of District Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity requesting the relocation of District Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the relocation of District Facilities.

G. If a City project requires the relocation of then existing Facilities within the Franchise Area, the District shall have the right by interlocal agreement with the City to include the relocation of any Facilities as required by the City as part of the City's public works project. Such interlocal agreement shall include and provide for, but not be limited to, the following terms and conditions:

1. The inclusion of the District's work as part of the City's project; and

2. The District to provide plans and specifications of the District's work to the City in a timely manner for inclusion as a separate bid schedule in the City project, whether such District plans and specifications are prepared by the District at the District's expense, or the City prepares the plans and specifications for the District's work at the District's expense; and

3. The City bidding the project, including the District's work by separate bid schedule, and the District's approval of the contractor's bid for the District's work in the

separate bid schedule, or, alternatively, the District's rejection of the contractor's bid for the District work and the District's right to perform the District's work through a District contractor, provided that in so doing the City's project is not unreasonably delayed; and

4. The City's contractor to install both the City work and the District work, the City's obligation to pay the City's contractor for both the City work and the District work, and the District's obligation to reimburse the City for the cost of the District work performed by the City contractor; and

5. The District's obligation to reimburse the City for District project administration and inspection fees and costs based on a time and materials basis, provided the City and the District may negotiate a lump sum payment on a per project basis, or a percentage of the total District project construction cost, and provided the District shall not be required to pay for any City-issued permits related to the City work and the District work.

H. The Parties expressly agree that this Section 4 shall not survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

#### **Section 5. Right-of-Way Management.**

A. **Permit Requirements.** Whenever the District excavates in any right-of-way for the purpose of installation, construction, operation, maintenance, repair or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with this Franchise and the ordinances and regulations of the City requiring permits to operate in City right-of-way. Except for emergencies or as otherwise provided for in this Franchise and applicable City ordinance, no District excavation work shall occur within any City right-of-way without a permit. All work shall be done to the City's reasonable satisfaction.

B. **Blanket Permits.** The District may obtain a Blanket Activities Permit for Blanket Activities, as defined in Section 1, performed in the City's rights-of-way. The permit will be charged at the fee as identified in the City's Fee Schedule and hourly inspection fees shall be paid monthly. Blanket Activities require submittal of typical traffic control measures consistent with the MUTCD. Permits for Blanket Activities shall be valid for no longer than twelve (12) months.

C. **Restoration after Construction.** The District shall, after any installation, construction, relocation, operation, maintenance or repair of Facilities within the Franchise Area, restore the right-of-way to City standards as nearly as reasonably possible to its condition prior to any such work. The District agrees to promptly complete all restoration work and to promptly repair any damage to the right-of-way caused by such work at its sole cost and expense. The District further agrees to repair or replace any defective restoration work performed by the District or on its behalf consistent with the City's Infrastructure Design and Construction Standards. If it is determined the District has failed to restore the right-of-way in accordance with this Franchise and other applicable City regulations or if the District's restoration work is subsequently determined to be defective, the City shall provide the District with written notice. Any notice issued by the City shall include a description of the actions the City believes necessary to restore the right-of-way or repair or replace the work. The Parties agree the District shall not be

required to pay the City any pavement mitigation fees or similar charges relating to cutting, removing or disturbing pavement within the right-of-way if the District's pavement cutting, removing, or disturbing is in connection with a Public Improvement Project.

D. **Bonding Requirement.** The District, as a public agency, shall not be required to comply with the City's standard bonding requirement for working in the City's rights-of-way.

E. **Emergency Work, Permit Waiver.** In the event of an emergency where any District Facilities located in the right-of-way are broken or damaged, or if the District's construction area for the District's Facilities is in a condition as to place health or safety of any person or property in imminent danger, the District shall immediately take any necessary emergency measures to repair, replace or remove its Facilities without first applying for and obtaining a permit as required by this Franchise; provided the District shall notify the City as soon as reasonably possible relative to such emergency activity and shall immediately obtain a permit for such activity if required by this Franchise or City ordinance.

F. **City Work Zones.** The District shall not be required to obtain a City right-of-way permit to undertake utility work when the District has included its work as part of a City public works project in accordance with Section 4.G.

G. **City Invoices.** The City shall invoice the District for all City fees and charges relating to the issuance of any City right-of-way permit to the District, including inspection fees and charges, on a monthly basis, and the City's final fees and charges within thirty (30) days of the completion of any District work in City right-of-way subject to a City permit, and the City's final acceptance of any District work.

H. **Contractors and Subcontractors.** The District's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by the District. The District shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by the District and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

## **Section 6. Planning Coordination.**

A. The Parties agree to participate in the development of, and reasonable updates to, the other Party's planning documents as follows:

1. For the District's service area within the City limits, the District will participate in a cooperative effort with the City to develop City's Comprehensive Plan Utilities Element that meets the requirements described in RCW 36.70A.070(4).

2. The District will participate in a cooperative effort with the City to ensure that the Utilities Element of the City's Comprehensive Plan is accurate as it relates to the District's operations and is updated to ensure continued relevance at reasonable intervals.

3. The District shall submit information related to the general location, proposed location, and capacity of all existing and proposed Facilities within the City as requested by the City within a reasonable time, not exceeding twenty (20) days from receipt of a written request for such information, provided that such information is in the District's possession, or can be reasonably developed from the information in the District's possession.

4. The City will provide information relevant to the District's operations within a reasonable period of written request to assist the District in the development or update of the District's Comprehensive Water System Plan(s), provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

B. The District and the City shall each assign a representative whose responsibility shall be to coordinate planning for capital improvement plan projects including those that involve undergrounding. At a minimum, such coordination shall include:

1. For the purpose of planning, the District and the City shall provide each other with a copy of their respective current adopted Capital Improvement Plan annually and upon request by the other Party.

2. By February 1st of each year, the District shall provide the City with a schedule of the District's planned capital improvements which may affect the rights-of-way for that year.

3. By February 1st of each year, the City shall provide the District with a schedule of City's planned capital improvements which may affect the rights-of-way for that year including but not limited to street overlays and repairs, storm drainage improvements and construction, and all other rights-of-way activities that could affect District capital improvements and infrastructure.

4. The District shall meet with the City, and other franchisees and users of the right-of-way, as necessary, to schedule and coordinate construction activities.

5. All construction locations, activities, and schedules shall be coordinated to minimize public inconvenience, disruption or damages.

6. The City and the District agree to cooperate in the planning and implementation of emergency operations response procedures.

7. Without charge to either Party, both Parties agree to provide each other with as-built plans, maps and records in electronic format as available that show the location of their respective facilities within rights-of-way.

## **Section 7. Indemnification.**

A. To the extent permitted by law, the District shall indemnify, defend and hold the City, its agents, officers, officials (elected and appointed) employees, volunteers and assigns harmless from and against any and all third party claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or

negligent acts, failures and/or omissions of the District or its agents, officers, officials (elected and appointed) servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted to the District in this Franchise; excluding claims relating to known or classified hazardous substances (chemical or waste) which are covered in subsection E, below; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the sole negligence or willful misconduct of the City, its agents, officers, officials (elected and appointed), employees, volunteers or assigns. Inspection or acceptance by the City of any work performed by the District at the time of completion of construction shall not be grounds for avoidance by the District of any of its indemnification obligations.

B. The City shall indemnify, defend and hold the District, its agents, officers, officials (elected and appointed), employees, volunteers and assigns harmless from and against any and all third party claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of City or its agents, officers, officials (elected and appointed), employees, contractors, subcontractors or assigns in the City's performance, administration and operation of this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the District, its agents, officers, officials (elected and appointed), employees, volunteers or assigns.

C. In the event any claim or demand is presented to or filed with the District or the City arising out of or relating to the acts or omissions in whole or in part of the other Party, the indemnified Party shall promptly notify the other Party, and the notified Party shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand.

D. 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 City and the District, their officers, officials (elected and appointed), employees and agents, the District's liability hereunder shall be only to the extent of the District's negligence and the City's liability shall be only to the extent of the City's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.

E. The District shall not introduce or use any known or classified hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall the District allow any of its agents, contractors, subcontractors or any person under its control to do the same. The District will be solely responsible for and will defend, indemnify, and hold the City, its officers, officials (elected and appointed), employees, agents, and volunteers harmless from and against any and all claims, costs, and liabilities including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the Franchise Area to the extent caused by the District's use, storage, or disposal of known or classified hazardous substances, whether or not



intentional, and the use, storage, or disposal of such substances by the District's agents, contractors, subcontractors, or other persons acting under the District's control, whether or not intentional.

F. Notwithstanding any other provisions of this Section 7, the District assumes the risk of damage to its Facilities located in the rights-of-way and upon City-owned property from activities conducted by the City, its officers, officials (elected and appointed), agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any sole negligence, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, officials (elected and appointed), or contractors. The District releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, officials (elected and appointed), or contractors.

G. The provisions of this Section 7 shall survive the expiration, revocation, or termination of this Franchise.

### **Section 8. Default.**

A. If the District fails to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon the District a written order to so comply within thirty (30) days from the date such order is received by the District. If the District is not in compliance with this Franchise after expiration of the thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to the District. The City may act without the thirty (30) day notice in case of an emergency and may charge the costs and expenses of such action to the District. The City may in addition, by ordinance adopted no sooner than five (5) days after notice of the City Council hearing (at which the District will have an opportunity to be heard) on the impending ordinance, declare an immediate forfeiture of this Franchise, provided, however, if any material failure to comply with this Franchise by the District cannot be corrected with due diligence within said thirty (30) day period, the District's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control, in which case the time within which the District may so comply shall be extended for such time as may be reasonably necessary and so long as the District commences promptly and diligently to effect such compliance, provided a good faith dispute does not exist concerning such compliance. All rights and remedies shall be in addition to and cumulative with any and all other rights and remedies available to either the City or the District. Such rights and remedies shall not be exclusive, 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.

B. In addition to other remedies provided herein, if the District is not in compliance with requirements of this Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending District right-of-way use permits until compliance is achieved.

**Section 9. Non-exclusive Franchise.** This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit

the City from granting other franchises over, upon, and along the Franchise Area which do not interfere with District's rights under this Franchise. This Franchise shall not prohibit or prevent the City from constructing, altering, maintaining, or using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

**Section 10. Jurisdiction.** This Franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which the City has an actual interest within the Franchise Area. It is not a warranty of title or of interest in City rights-of-way.

**Section 11. Franchise Term.** This Franchise shall have a term of fifteen (15) years from its Effective Date as defined in Section 37 herein, provided this Franchise shall be automatically extended for one additional five (5) year period unless either Party, at least one hundred eighty (180) days prior to the termination date of the Franchise provides written notice to the other Party of its intent to terminate the Franchise at the end of the then current Franchise term (collectively, the "Term").

**Section 12. Administrative Fee.** As compensation to the City for its costs of creating and administering this Franchise, the District shall pay to the City a one-time administrative fee ("Administrative Fee") of Two Thousand Five Hundred Dollars (\$2,500.00). The Administrative Fee shall be paid by the District to the City within thirty (30) days of the Effective Date of the Franchise.

**Section 13. Non-assumption.** In consideration of the District's payment of the Franchise Fee and Administrative Fee to the City as provided in Sections 12 and 14 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear its statutory authority pursuant to chapter 35.13A RCW or other statutes to attempt to assume jurisdiction over all or part of the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise. The City's agreement and forbearance includes not facilitating or cooperating with any other city or town to attempt, pursuant to RCW 35.13A.060 or as such statute may be amended or superseded, to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the Term of this Franchise; provided, that this provision shall not be construed to prohibit or prevent the City from responding to requests for public records related to such attempts by other cities or towns .

#### **Section 14. Franchise Fee.**

A. In consideration of the rights granted to the District under this Franchise, the District shall pay to the City a franchise fee ("Franchise Fee") beginning the first day of the first month occurring at least thirty (30) days after the Effective Date of this Franchise, subject to the provisions of Section 14.B herein, as follows:

Six percent (6%) of the District's Revenue derived from the provision of retail water service billed to its customers after the date established in Section 14(A) and thereafter until the termination of this Franchise, including any extension of the term of this Franchise. In the event the City decides to adopt a utility, business and occupation tax, public utility tax, privilege tax, excise tax or any

other similar tax (collectively “utility tax”) upon the District based on the District’s revenues, gross receipts, or gross income during the term of this Franchise, then the District’s Franchise Fee payments under this Franchise shall be credited against any such utility tax the City may impose.

B. The Franchise Fee shall be paid to the City in bi-monthly installments due and payable within thirty (30) days following the end of the bi-monthly period.

C. Should the District be prevented by judicial or legislative action from paying any or all of the Franchise Fee, the District shall be excused from paying that portion of the Franchise Fee. Should a court of competent jurisdiction declare the Franchise Fee invalid, in whole or in part, then the District's obligation to pay the Franchise Fee to the City under this section shall be terminated in accordance with and to the degree required to comply with such court action, provided, the Parties agree to amend this Franchise to require the District submit payment of a six percent (6%) utility tax.

D. In consideration of the District’s payment of a Franchise Fee and Administrative Fee to the City as provided herein, and the District’s acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise, and to forbear, any legal authority it may have to impose compensation or a rental fee (collectively, “Rental Fee”) upon the District for the District’s use of the Franchise Area as provided for in this Franchise.

E. The District shall have the right to recover the Franchise Fee from the District’s ratepayers residing within the City and may identify the Franchise Fee as a separate billing item on utility customer billings.

F. The District agrees while this Franchise is in effect that it will not pursue or support any legal challenge to the Franchise Fee set forth herein.

G. If the District determines to bill the City for fire suppression water facilities as defined in RCW 70A.145.020(1) during the term of this Franchise, the City shall have the right, at its sole discretion, to terminate this Franchise, including the right to receive the Franchise Fee Payments from the District.

H. If the District fails to pay any fee required under this Franchise within ninety (90) days after the due date thereof, there shall be added to such fee a penalty of 1.5 percent (1.5%) of the amount of such fee.

## **Section 15. Compliance with Codes and Regulations.**

A. The rights, privileges and authority herein granted are subject to and governed by this ordinance and all other applicable City ordinances and codes, including the City’s Road Standards, as they now exist or may hereafter be amended, provided the City shall not unreasonably affect or modify any portion of this Franchise without the District’s written approval. Nothing in this ordinance limits the City’s lawful power to exercise its police power to protect the safety and welfare of the general public or deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City rights-of-way covered by this Franchise. Any location,

relocation, erection or excavation by District shall be performed by District in accordance with applicable federal, state and City rules and regulations, including the City public works policies and pre-approved plans, and any required permits, licenses or regulatory fees, and applicable safety standards then in effect or any Memorandum of Understanding with District.

B. If any territory served by District is annexed to the City after the Effective Date of this Franchise, this Franchise shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then required under that statute or the remaining time left under this Franchise for the Franchise Area, whichever is longer. Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation. The first Franchise Fee for any annexed area shall be calculated pro rata from the effective date of the annexation to the end of the next bi-monthly billing period and paid to the City at the same time as the fee for the Franchise Area is paid for that bi-monthly billing period.

C. The District shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all Facilities, equipment, and connections in, over, under, and upon the rights of way, wherever situated or located, shall at all times be kept and maintained in a safe condition. The District shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Upon reasonable notice to the District, the City reserves the general right to inspect the Facilities covered by this Franchise to evaluate if they are constructed and maintained in a safe condition.

D. If an unsafe condition or a violation of Section 15.C is found to exist, and becomes known to the City, the City agrees to give the District timely written notice of such condition and afford the District a reasonable opportunity to repair the same. If the District fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by the District and reimbursed to the City.

E. The District shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable federal, state, county and City statutes, rules, regulations, ordinances, orders and codes as presently constituted or as may be subsequently amended. The District's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The District shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the District's work relating to the Franchise is not intended to include review of the adequacy of the District's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such Franchise

Area or job site. The District shall provide reasonable and appropriate access for the City and its inspectors to adequately inspect the work and its conformance with applicable statutes, ordinances, rules, regulations, and the Franchise.

F. Additional safety standards required include the following:

1. All installations of Facilities shall be installed in accordance with industry-standard engineering practices.

2. Any opening or obstruction in the rights-of-way or other public places made by the District in the course of its operations shall be protected by the District at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

G. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. 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 the District by overnight delivery or personally delivered to the District;
4. Indicate the nature of the alleged violation or unsafe condition; and
5. Establish conditions under which work may be resumed.

**Section 16. Location of Facilities and Equipment.** With the exception of components that are traditionally installed above ground such as fire hydrants, blow offs, vault lids, risers, pump stations, generators, electrical control panels, power meters, telephone connections, automated reading equipment and appurtenances, and utility markers, all Facilities and equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such Facilities may be installed above ground if so authorized by the City, which authorization shall not be unreasonably withheld, conditioned or delayed, consistent with the provisions of the City's land use and zoning code and applicable development pre-approved plans.

**Section 17. Record of Installations and Service.**

A. With respect to excavations by the District and the City within the Franchise Area, the District and the City shall each comply with their respective obligations pursuant to chapter 19.122 RCW, and as such statute may be modified and amended, and any other applicable state law. Further, upon request from a third party or the City's contractor, the District shall locate its Facilities consistent with the requirements of chapter 19.122 RCW.

B. Upon written request of the City, the District shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the

Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

C. Upon written request of District, the City shall provide District with the most recent update available of any plan of potential improvements to its Facilities located within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

D. As-built drawings of the location of any Facilities placed by the District in the Franchise Area, shall be made available to the City within twenty (20) working days of request.

### **Section 18. Shared Use of Excavations.**

A. The District and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Area informed of its intent to undertake such construction work. The District and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

B. If at any time, or from time to time, either the District, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the others, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

1. No statutes, laws, regulations, ordinances or District safety policies prohibit or restrict the proximity of other utilities or facilities to District's Facilities installed or to be installed within the area to be excavated;

2. Such joint use shall not unreasonably delay the work of the Party causing the excavation to be made;

3. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties. The Parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

C. The City reserves the right to not allow open trenching within any City street within five (5) years following a street overlay or improvement project; however, the District may open a trench provided it grinds and overlays the excavation area in accordance with the City written and adopted street overlay policy. In addition to the requirements of Section 6.B.3, the City shall provide the District with written notice of not less than one hundred eighty (180) days prior to the commencement of any street overlay or improvement project.

## **Section 19. Insurance.**

The District shall procure and maintain for the duration of the Franchise and as long as District has Facilities in the rights-of-way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Franchise and use of the rights-of-way.

A. **No Limitation.** The District's maintenance of insurance as required by the Franchise shall not be construed to limit the liability of the District to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

B. **Minimum Scope of Insurance.** The District shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the District's Commercial General Liability insurance policy with respect to this Franchise using ISO endorsement CG 20 12 05 09 or CG 20 26 07 04, or substitute endorsement providing at least as broad coverage.

2. 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.

3. Contractors Pollution Liability insurance shall be in effect throughout the entire Franchise covering losses caused by pollution conditions that arise from the operations of the District. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

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

5. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the District's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the District's Excess or Umbrella Liability insurance policy.

C. **Minimum Amounts of Insurance.** The District shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

3. Contractors Pollution Liability insurance shall be written in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$1,000,000.

4. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through District's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

**D. Other Insurance Provisions.** The District's Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, Contractors Pollution Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the District's insurance and shall not contribute with it.

**E. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII or a recognized risk management pool that complies with the standards adopted by the Washington State Risk Manager.

**F. Verification of Coverage.** The District shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement if available, evidencing the insurance requirements of the Franchise. Upon request by the City, the District shall furnish certified copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all contractors' coverage.

**G. Contractors.** The District shall cause each and every contractor to provide insurance coverage that complies with all applicable requirements of the District-provided insurance as set forth herein, except the District shall have sole responsibility for determining the limits of coverage required to be obtained by contractors.

**H. Notice of Cancellation.** The District shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

**I. Failure to Maintain Insurance.** Failure on the part of the District to maintain the insurance as required shall constitute a material breach of Franchise, upon which the City may, after giving five business days' notice to the District to correct the breach, terminate the Franchise 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.

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



**K. District – Self-Insurance.** The District may fulfill the insurance obligations contained herein by maintaining membership in a joint self-insurance program authorized by chapter 48.62 RCW. In this regard, the City understands that as a member of such a program the District is not able to name the City as an “additional insured” under the liability coverage provided by the joint self-insurance program. If the District is self-insured or becomes self-insured during the term of the Franchise, the District or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of the District’s or its parent company’s most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) the District or its parent company is responsible for all payments within the self-insured retention; and (iii) the District assumes all defense and indemnity obligations as outlined in Section 7.

### **Section 20. Abandonment and/or Removal of District Facilities.**

The Parties agree that the standard practice will be to abandon underground District Facilities in-place whenever practical, subject to the following conditions:

1. The District shall continue to own and be responsible for any such Facilities abandoned within the Franchise Area.

2. The City shall have the right to require the District to remove any Facilities abandoned within the Franchise Area if the City reasonably determines the removal of the abandoned Facility is required to facilitate the construction or installation of a City project within the Franchise Area and the City determines there is no other feasible alternative to the removal of the Facility. The City will make reasonable efforts to avoid conflicts with abandoned Facilities whenever possible, however, whenever a conflict cannot be resolved except by removal from the right-of-way of previously abandoned District Facilities, then the District shall, at the District’s expense, remove such abandoned Facilities by its own forces, by contract or by participating in the City’s public works project. When necessary, removal of abandoned Facilities shall be limited to the area of direct conflict. In removing such material, the District shall conform to all local, state, and federal regulations applicable to asbestos abatement, when applicable.

3. If the District becomes aware that removal of any abandoned Facilities within the Franchise Area is required to eliminate or prevent an emergency or hazardous condition that endangers the property, life, health or safety of any person or entity, the District shall promptly, at no cost to the City, remove such decommissioned Facilities.

4. Within one hundred and eighty days (180) of the District’s permanent cessation of use of its Facilities as determined by the District, or any portion thereof, the District shall provide the City with record drawings showing the location of the Facilities to be abandoned.

5. District Facilities that are abandoned in-place shall be abandoned pursuant to City standards, to the satisfaction of the City Public Works Director or designee.

6. The Parties expressly agree that this section shall survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

**Section 21. Vacation of Franchise Area.** If the City processes an application and/or determines to vacate any right-of-way which is part of the Franchise Area, the City

may, after giving thirty (30) days written notice ("Vacation Notice") to the District, terminate this Franchise with respect to any City rights-of-way so vacated. However, should the District notify the City that an easement is required for existing Facilities within the proposed vacation area, the City shall require the applicant for a vacation to prepare and provide to the District the necessary easement documentation, at no cost to the District. The City shall withhold approval of such vacation until the District has notified the City that the necessary easement documentation has been secured, or provisions otherwise made acceptable to the District to maintain the viability and use of existing Facilities, provided that the District provides such notice to the City within one hundred eighty (180) days following the City's Vacation Notice to the District.

**Section 22. Assignment.** All of the provisions, conditions, and requirements herein contained shall be binding upon the District, and no right, privilege, license or authorization granted to the District hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay, provided that a merger or consolidation of District with or into another Title 57 water-sewer district shall not be considered an assignment for the purposes of this provision and shall not be subject to the City's approval.

**Section 23. Reservation of Rights.** The City reserves the right, upon thirty (30) days written notice to the District, to amend or modify the provisions or conditions of this Franchise to conform to any state, county, or federal statute, rule, regulation, or ordinance adopted pursuant to the City's legitimate police power to protect the safety and welfare of the general public; provided that the City shall not unreasonably affect or modify any portion of this Franchise without the District's written approval. Unless otherwise mandated by state or federal law, if any term or condition of this Franchise and any term or condition of any City code, ordinance, resolution, or regulation are in conflict, the terms of this Franchise shall control.

**Section 24. Notice.** Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any Party (collectively, "notices") shall be in writing and shall be validly given or made to another Party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent by e-mail with electronic confirmation. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three (3) business days after the deposit thereof in the United States Mail. If such notice is sent by email, it shall be deemed given at the time of the sender's receipt of electronic confirmation. Each such

notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

To City: City Clerk  
City of Tukwila  
6200 Southcenter Boulevard  
Tukwila, WA 98188

To District: General Manager  
Highline Water District  
23828 30<sup>th</sup> Ave S  
Kent, WA 98032

Any Party may change its contact information and address for the purpose of receiving notices as herein provided by a written notice given in the manner required by this Section to the other Party.

**Section 25. Severability.** If any term, provision, condition or portion of this Franchise shall be held to be invalid by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect.

**Section 26. Non-Waiver.** The failure of either Party to enforce any breach or violation by the other Party or any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver by the non-breaching Party of any subsequent breach or violation of the same or any other provision of this Franchise.

**Section 27. Alternate Dispute Resolution.** If the Parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the Parties may submit the dispute to mediation or other non-binding alternate dispute resolution process agreed to by the Parties. Unless otherwise agreed upon between the Parties or determined herein, the cost of that process shall be shared equally by the Parties.

**Section 28. Attorney Fees.** All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. In any claim or lawsuit for damages arising from the parties' performance of this Franchise, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit either Party's right to indemnification under Section 7 of this Franchise.

**Section 29. Governing Law/Venue.** This Franchise shall be governed by the laws of the State of Washington. Any suit to enforce or relating to this Franchise shall only be filed in King County Superior Court, King County, Washington.

**Section 30. Entire Agreement.** This Franchise constitutes the entire understanding and agreement between the Parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the Parties upon execution and acceptance hereof.

**Section 31. Amendment.**

A. This Franchise may be amended only by written instrument, signed by both Parties, which specifically states that it is an amendment to this Franchise, and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 7, "Indemnification," above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by the District of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

1. References this Franchise; and
2. States that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

B. In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document that does not comply with Subsections A.1 and A.2 referenced above, the provisions of this Franchise shall control.

**Section 32. Directions to City Clerk.** The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the District as set forth in this ordinance. The District shall have thirty (30) days from the receipt of the certified copy of this ordinance to accept in writing the terms of the Franchise granted to the District by this ordinance and file with the City Clerk the Statement of Acceptance, attached hereto as Exhibit A and incorporated by reference.

**Section 33. No Third-Party Beneficiaries.** There are no third-party beneficiaries of this Franchise.

**Section 34. Survival.** All of the provisions, conditions, and requirements of Section 7, Section 15, Section 18, Section 20, and Section 27 of this Franchise shall, in addition to any and all other obligation and liabilities the District may have to the City at common law, by statute, or by contract, survive this Franchise, and any renewals or extensions, to the extent provided for in those sections.

**Section 35. District Acceptance of Franchise.** The District shall have no rights under this Franchise nor shall the District be bound by the terms and conditions of this Franchise unless the District shall, within thirty (30) days after the effective date of the ordinance, file with the City its written acceptance of this Franchise.

**Section 36. Effective Date of Ordinance.** This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

**Section 37. Effective Date of Franchise.** The terms and conditions of this ordinance shall not be binding on the City and the District unless the District Board of Commissioners within thirty (30) days of the effective date of this ordinance adopts a resolution accepting this Franchise, and the date of the adoption of such resolution by the District Board of Commissioners shall be the effective date ("Effective Date") of the Franchise.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Christy O'Flaherty, MMC, City Clerk

\_\_\_\_\_  
Allan Ekberg, Mayor

APPROVED AS TO FORM BY:

Filed with the City Clerk: \_\_\_\_\_

Passed by the City Council: \_\_\_\_\_

Published: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Ordinance Number: \_\_\_\_\_

\_\_\_\_\_  
Office of the City Attorney

Attachment: Exhibit A, Acceptance of Franchise form  
Exhibit B, Depiction of City Corporate Boundaries

**EXHIBIT A**

**ACCEPTANCE OF FRANCHISE**

The undersigned authorized representative of Highline Water District hereby declares on behalf of Highline Water District the acceptance of the nonexclusive franchise to Highline Water District approved by the Tukwila City Council on \_\_\_\_\_, 2023, by the adoption of Tukwila City Ordinance No. \_\_\_\_\_.

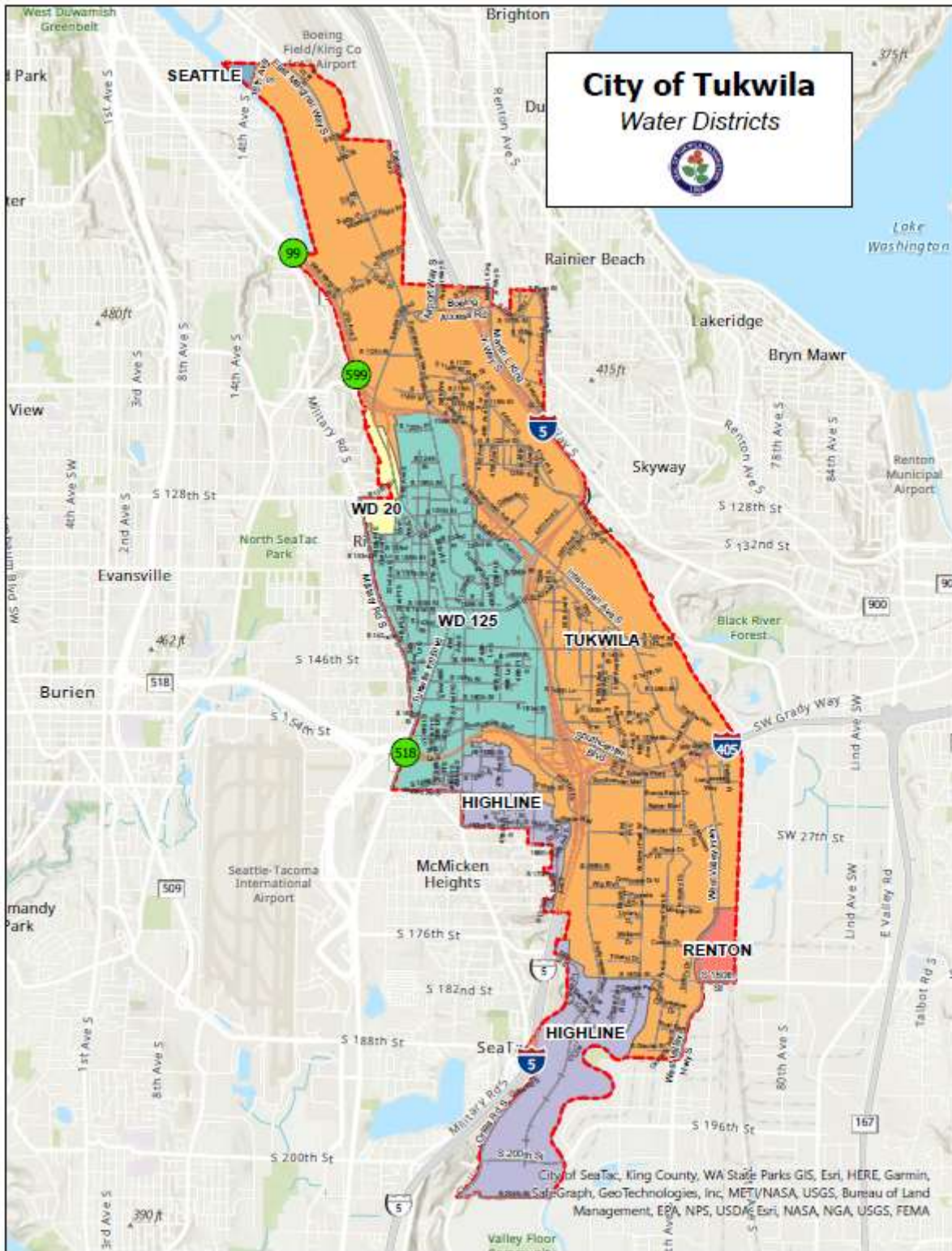
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Highline Water District

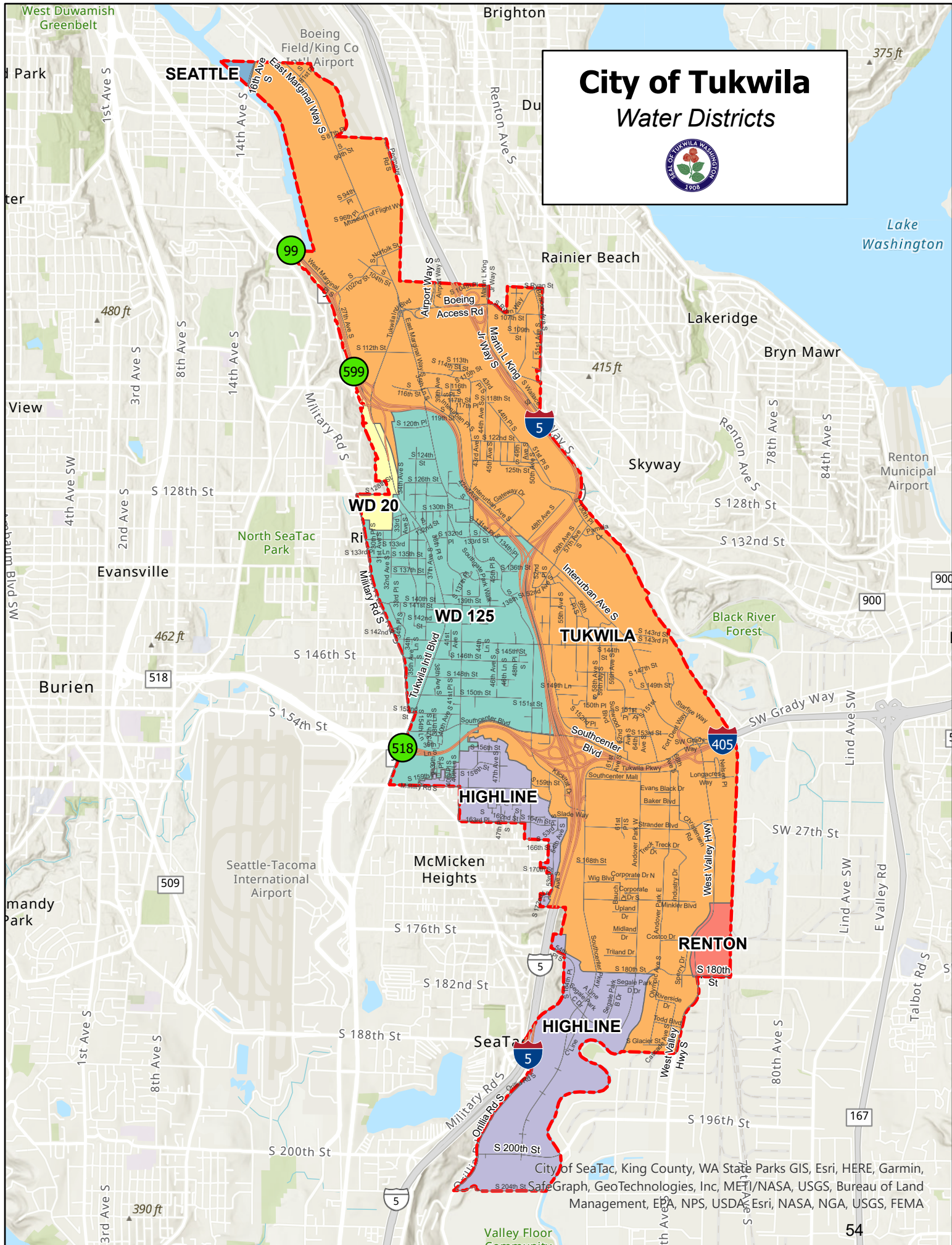
By: \_\_\_\_\_  
Its: \_\_\_\_\_

# EXHIBIT B

## DEPICTION OF CITY CORPORATE BOUNDARIES



# City of Tukwila Water Districts



City of SeaTac, King County, WA State Parks GIS, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA, Esri, NASA, NGA, USGS, FEMA





## INFORMATIONAL MEMORANDUM

TO: **Transportation & Infrastructure Services Committee**  
FROM: **Hari Ponnekanti, Public Works Director/City Engineer**  
BY: **Josh Hartley, Public Works Deputy Director Transportation**  
CC: **Mayor Ekberg**  
DATE: **March 31, 2023**  
SUBJECT: **Tukwila Municipal Code (TMC) 11.04 & 11.28 Amendment Request**

### **ISSUE**

Revisions are being requested to sections 11.04.040 – Definitions and 11.28 – Utility Undergrounding to provide updates and clarity to the existing code language.

### **BACKGROUND/DISCUSSION**

The City's goal for telecommunication providers is to underground most infrastructure, where feasible, to make the City's neighborhoods and street corridors more aesthetically pleasing. Over the last few decades, the existing TMC codes have been misinterpreted by both external and internal agencies resulting in fewer opportunities to underground telecommunication utilities. Only a handful of corridors have been undergrounded thus far (i.e., 42<sup>nd</sup> Ave., portions of TIB, etc.). To maximize opportunities for undergrounding telecommunication utilities, a revision to the TMC code will be required.

TMC 11.28 – Utility Undergrounding has not been revised since 2002, with most of the language dating back to 1995. To provide clarification and critical updates to the code, Public Works is hereby requesting that the attached ordinance be approved as it outlines specific requirements, particularly as it relates to overloading and upgrade services, that specify undergrounding requirements in more detail. As part of the revised language, telecommunication providers can no longer request waivers to undergrounding based on financial impacts alone. A new deviations section has been added that outlines when a company may request for an exemption to the ordinance.

Language has been added that explicitly exempts the City from the undergrounding requirement due to the majority of city-owned utilities are already constructed underground. With that said, Public Works is committed to working with telecommunication providers to underground their service lines when feasible. To help with this, new franchise agreements will utilize project descriptions that specify project scopes and when undergrounding will be triggered. More information on this can be found in the attached PowerPoint presentation and will be discussed in further detail at the formal meeting.

### **FINANCIAL IMPACT**

There are no immediate financial impacts approving the revised codes requested above.

### **RECOMMENDATION**

The council is being asked to approve an ordinance that revises TMC codes 11.04.040 and 11.28 and consider this item at the April 10, 2023 Committee of the Whole Meeting, and subsequent Consent Agenda at the April 17, 2023 Regular Council Meeting.

**ATTACHMENTS:** TMC 11.04 & 11.28 Revised Code Ordinance  
TMC 11.04 & 11.28 Revised Code Amendment PowerPoint Presentation

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING ORDINANCE NO. 1995 §1 (PART), AS CODIFIED IN TUKWILA MUNICIPAL CODE (TMC) SECTION 11.04.040, "DEFINITIONS"; REPEALING ORDINANCE NO. 1995 §1 (PART), AS CODIFIED IN TMC CHAPTER 11.28; REENACTING TMC CHAPTER 11.28, "UNDERGROUNDING OF UTILITIES," TO UPDATE DEFINITIONS AND ADOPT NEW REGULATIONS RELATED TO UNDERGROUNDING OF UTILITIES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City is engaged in an ongoing effort to streamline code processes and improve permitting procedures; and

**WHEREAS**, the City desires to provide clarification on regulations related to undergrounding utilities; and

**WHEREAS**, the proposed revisions to Tukwila Municipal Code (TMC) Chapter 11.28 will align the TMC with current engineering industry standards and practices; and

**WHEREAS**, the City Council finds that the adoption of this ordinance for updating regulations related to undergrounding of utilities prevents harm to the health or safety of the public, and promotes the public health, safety and general welfare;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:**

**Section 1. Adoptions of Findings of Fact.** The City Council hereby adopts the foregoing recitals and incorporates them herein as support for these amendments.

**Section 2.** Ordinance No. 1995 §1 (part), as codified at TMC Section 11.04.040, "Definitions," is hereby amended to read as follows:

**11.04.040 Definitions**

As used in this title, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this chapter shall have the indicated meanings.

1. “*Abutting Property*” means all property having a frontage upon the sides or margins of any public right-of-way.

2. “*Affiliate*” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

3. “*Applicant*” shall mean any owner or developer, or duly authorized agent of such owner or developer, who has submitted an application for a permit under this title.

4. “*Assessment Reimbursement Area*” means all real properties that will benefit from the street and/or utility system improvements.

5. “*Banner*” means a sign consisting of fabric and containing a public service message or event announcement which is hung above or across a public right-of-way.

6. “*Business Registration*” means a requirement of all telecommunications and cable providers who are not otherwise required to license or franchise with the City.

7. “*Cable Act*” means the Federal Cable Communications Policy Act of 1984, as amended by the Federal Cable Television Consumer Protection and Competition Act of 1992, as amended by portions of the Federal Telecommunications Act of 1996, and hereafter amended.

8. “*Cable Facilities*” – see “*Facilities*.”

9. “*Cable Operator*” shall have the same meaning as defined in the Cable Acts.

10. “*Cable Service*” shall have the same meaning as defined in the Cable Acts.

11. “*Campus*” means a development site under a single public or private ownership, upon which a structure or structures exist. By way of illustration and not limitation, a campus includes a public or private school, a multifamily development, a retirement housing facility, a nursing home facility, a continuing care retirement community, a boarding home, a hospital, a recreational facility, a business park, and a shopping center.

12. “*City*” means the City of Tukwila, Washington, in King County, and all the territory within the corporate boundaries of Tukwila, as these may change from time to time.

13. “*City Council*” means the City of Tukwila Council acting in its official capacity.

~~14. “*City inspector*” means the Director’s designated employee(s) responsible for inspecting the installation of warning and safety devices in the public right-of-way and restoration of public rights-of-way disturbed by work.~~

~~15. “*Cost of Construction*” means those costs incurred for design, acquisition for right-of-way and/or easements, construction, materials and installation required in order to create an improvement that complies with City standards. Until such time as RCW Chapter 35.91 is amended to expressly authorize inclusion of interest charges or other financing costs, such expenses shall not be included in the calculation of construction costs. In the event of a disagreement between the City and the applicant concerning the cost of improvement, the Public Works Director’s determination shall be final.~~

~~16. “Criminal Citation” means a written document initiating a criminal proceeding issued by an authorized peace officer.~~

~~17.~~ 14. “Curb” means a cement, concrete or asphaltic concrete raised structure designed to delineate the edge of the street and to separate the vehicular area of the public right-of-way from the area provided for pedestrians.

4815. “Department” means the City of Tukwila Public Works Department.

4916. “Deposit” shall mean any bond, cash deposit, or other security provided by the applicant in accordance with TMC Section 11.08.110.

2017. “Developer” means the owner and/or building permit applicant who is required – by any ordinance of the City, as the result of the review under State Environmental Policy Act, or in connection with any decision of the City Council – to construct street system and/or utility system improvements which abut the development site.

2418. “Development” means a private improvement to real property requiring electrical and/or communication services including, but not limited to, such services being distributed to subdivisions, short plats, planned unit developments, or single-family or commercial building sites.

2219. “Development Site” means the lot or lots upon which real property improvements are proposed to be constructed.

~~23. “Development Standards” are those standards set forth in Chapter 11.08.130 of the Tukwila Municipal Code and the Department’s Infrastructure Design and Construction Standards.~~

~~24. “Directive Memorandum” means a letter from the City to a right-of-way use permittee, notifying the recipient of specific nonconforming or unsafe conditions and specifying the date by which corrective action must be taken.~~

2520. “Director” means the Director of the Public Works Department or ~~his or her~~ designee.

2621. “Electrical or Communication Systems” means facilities carrying electrical energy, including but not limited to, electric power, telephone, telegraph, telecommunication, fiber optics, and cable television services.

2722. “Emergency” shall mean any unforeseen circumstances or occurrence, the existence of which constitutes an immediate danger to persons or property, or which causes interruption of utility or public services.

2823. “Excavation” shall mean any work in the surface or subsurface of the public right-of-way, including, but not limited to, opening the public right-of-way for installing, servicing, repairing, or modifying any facility or facilities in or under the surface or subsurface of the public right-of-way.

~~2924.~~ *“Excess Capacity”* means the volume or capacity in any existing or future duct, conduit, manhole, handhold or other utility facility within the right-of-way that is or will be available for use for additional telecommunications or cable facilities.

~~3025.~~ *“Facilities” or “Facility”* means the plant, equipment, ~~structures and/or~~ property, ~~including, but not limited to, overhead and underground water, gas, electric, and telecommunication facilities and appurtenance such as cables, wires, conduits, transformers, substation, pad-mounted J-boxes, switch cabinets, ducts, pedestals, antennas, electronics, vaults, poles, meter boxes, sewers, pipes, drains, and tunnels.~~ ~~within the City used to transmit, receive, distribute, provide or offer telecommunications or cable service.~~

~~3426.~~ *“FCC” or “Federal Communications Commission”* means the Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and cable operators on a national level.

~~3227.~~ *“Franchise”* is an agreement required with ~~any telecommunications carrier or cable operator a right-of-way user~~ who desires to construct, install, operate, maintain or otherwise locate facilities in rights-of-way, ~~and to also provide telecommunications or cable services to persons or areas in the City.~~

~~33.~~ *“Franchised Utilities”* means ~~utilities that have City Council approval to use City rights-of-way for the purpose of providing their services within the City.~~

~~3428.~~ *“Frontage”* means that portion of the development site abutting public right-of-way; provided, however, in the case of developments sites which are not substantially rectangular, such as “pipe-stem” lots, the frontage shall be equal to the greatest linear distance of the lot which is parallel to the public right-of-way. In the case of corner lots, “frontage” means any portion of the development site abutting any public right-of-way.

~~3529.~~ *“Fronting”* means abutting a public right-of-way or public rights-of-way.

~~3630.~~ *“Grantee”* means the holder of a franchise or a right-of-way ~~license~~ permit.

~~3731.~~ *“Hazardous Waste”* includes any and all such materials as defined by RCW ~~43.200.015~~ ~~70A.384.005~~ (radioactive wastes) and RCW ~~70.105.010~~ ~~70A.300.010~~(5), (6) and (15) (other hazardous wastes), now or as hereafter amended.

~~3832.~~ *“Installer”* means the person or organizations who actually and physically hangs the banner over the public right-of-way and who has the required skill and equipment to properly and safely hang the banner. The Director will maintain a list of approved installers having the required skill and equipment to properly and safely hang banners.

~~39.~~ *“License”* is an agreement with ~~any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in rights-of-way and to also provide telecommunications services exclusively to persons and areas outside the City.~~

4033. “*Maintain or Maintenance*” means mowing, trimming, pruning (but not including topping or tree removal), edging, root control, cultivation, reseeding, fertilization, spraying, control of pests, insects and rodents by nontoxic methods whenever possible, watering, weed removal, and other actions necessary to assure normal plant growth.

~~41. “*Minor Addition, Replacement, or Relocation*” includes the installation of secondary conductors, changing wire size or type, pole replacement, relocation of poles at a distance of not more than 50 feet, replacing secondary wire with primary wire to serve not more than two new customers, hardware replacement on existing poles, and the like.~~

~~42. “*Municipal Excavator*” shall mean any agency, board, commission, department or subdivision of the City that owns, installs, or maintains a facility or facilities in the public right-of-way.~~

4334. “*New Electrical or Communication Service*” means installation of service lines to a building where none existed before, and shall not include overlashing, restorations and repairs.

4435. “*Nonconforming Paved Street Surface*” means asphaltic concrete or cement concrete street surface that does not conform to the current “City of Tukwila Infrastructure Design and Construction Standards,” but that the Director finds to be adequate for projected vehicular traffic.

~~45. “*Nonprofit*” means not for monetary gain.~~

~~46. “*Notice and Order*” means a written document initiating a civil proceeding in accordance with TMC Chapter 8.45.~~

4736. “*Occupant*” means a person who is occupying, controlling or possessing real property, or his or her agent or representative.

~~48. “*Off-Site Street System and/or Utility System Improvements*” means such improvements as are defined in TMC 11.12.030.~~

~~49. “*On-Site Street System Improvements*” means street system improvements that are required to be constructed on public right-of-way adjacent to the frontage of the development site and extending to the centerline of the public right-of-way.~~

5037. “*Open Video System*” means those systems defined and regulated as Open Video Systems by the FCC, pursuant to Section 653 of the Federal Communications Act of 1934, as amended, 47 U.S.C. 573.

~~51. “*Oral Directive*” means a directive given orally by City personnel to correct or discontinue a specific condition.~~

~~52. “*Ordinance*” means the City of Tukwila Telecommunication Ordinance, TMC Chapter 11.32.~~

5338. “*Overhead Facilities*” means ~~telecommunications and/or cable~~ facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

~~5439.~~ “Owner” shall mean any developer or person, including the City, who owns any facility or facilities that are, or are proposed to be, installed or maintained in the public right-of-way.

~~5540.~~ “Paved Street Surface” means street surface that is either standard street surface or nonconforming paved street surface.

~~5641.~~ “Permit” means a document issued by the City granting permission to engage in an activity that involves the use of the public right-of-way.

~~57. “Permit Center” means the central location for applying for permits.~~

~~5842.~~ “Permittee” shall mean the applicant to whom a permit to use the public right-of-way has been granted and thereby has agreed to fulfill the requirements of TMC Title 11.

~~5943. “Person” shall mean any person, corporation, partnership, municipal excavator, or any governmental agency means, and includes: corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals, and includes their lessors, trustees and receivers, but excludes the City.~~

~~64. “Personal Wireless Services” means commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services as defined by Federal laws and regulations.~~

~~6045.~~ “Private Use” means use of the public right-of-way – other than as a thoroughfare for ordinary transit of vehicles, pedestrians, or equestrians – for the benefit of a particular person or entity.

~~6146.~~ “Procedure” means a procedure adopted by the Director to implement this title, or to carry out other responsibilities as may be required by this title or by other codes, ordinances, or resolutions of the City or other agencies as they may apply.

~~6247.~~ “Real Property Improvements” means:

- a. Construction of a structure on an unimproved lot;
- b. Additions, alterations, or repairs to an existing structure other than one single-family residence, where square footage is added to the structure, or the construction of accessory buildings; or
- c. Construction of an additional structure or structures on a campus.

~~63. “Rebuilds” means a placement of overhead facilities for a distance of three or more spans (four poles) or 500 feet exclusive of replacements due to casualty damage.~~

~~6448.~~ “Recently Improved Street” shall mean any street that has been reconstructed or resurfaced by the Department or any other owner or person in the preceding three-year period.

~~6549.~~ “Reimbursement Agreement” means contracts authorized by RCW Chapter 35.91, as presently constituted or as may be subsequently amended, for utility

system improvements, and may be referred to from time to time in this title as “Latecomer Agreements.”

~~66. “Relocations” means removal of existing facilities with subsequent reinstallation at an adjacent location, generally necessitated by roadway improvements or widening projects.~~

~~67. “Removal” means the act of cutting down or removing any vegetation, or causing the effective removal through damaging, poisoning, or other direct or indirect actions resulting in the death of vegetation.~~

~~6850. “Replacement Vegetation” means vegetation of equal species, size, quality and number to that which has been removed.~~

~~6951. “Restoration” means all work including, but not limited to, backfilling, compacting, replacing street pavement, replacing sidewalks, or other public right-of-way to like-new condition in the manner prescribed by the Department’s Design and Infrastructure Design and Construction Manual. (See TMC Section 11.08.230-270 for more details.)~~

~~7052. “Right-of-Way” means all public streets, alleys and property granted, reserved for, or dedicated to public use for streets and alleys, together with all public property granted, reserved for, or dedicated to, public use including, but not limited to, walkways, sidewalks, trails, shoulders, drainage facilities, bike ways and horse trails, whether improved or unimproved, including the air rights, subsurface rights, and easements related thereto, but does not include:~~

- ~~1. State highways;~~
- ~~2. Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public;~~
- ~~3. Structures, including poles and conduits, located within the right-of-way;~~
- ~~4. Federally granted trust lands or Forest Board trust lands;~~
- ~~5. Lands owned or managed by the Washington State Parks and Recreation Commission; or~~
- ~~6. Federally granted railroad rights-of-way acquired under 43 U.S.C. 912 and related provisions of federal law that are not open for motor vehicle use.~~

~~53. “Right-of-Way User” means any person with any facility in the right-of-way, including but not limited to, persons who have been granted City approval via franchise or other agreement to be in the right-of-way.~~

~~71. “Security Device” means any and all types of bonds, deeds of trust, security agreements, or other similar instruments.~~

~~7254. “Service Connection” means a connection made to a telecommunications facility and/or cable facility for the purpose of providing telecommunications or cable services.~~



~~7355.~~ “*Service Connections*” are facilities extending from a distribution system and terminating on private property and/or for the specific purpose of servicing one (1) customer.

~~7456.~~ “*Sidewalk*” means that property between the curb and the abutting property, set aside and intended for the primary use of pedestrians, but may include mixed uses such as pedestrians and bicyclists, improved by paving with cement concrete or asphaltic concrete, including all driveways.

~~75.~~ “*Sidewalk Routes*” means sidewalk routes shown on a map prepared by the Director and adopted by the City Council by resolution or by ordinance pursuant to the comprehensive plan.

~~7657.~~ “*Standard Street Surface*” means street surface that is paved in accordance with the “City of Tukwila Infrastructure Design and Construction Standards.”

~~7758.~~ “*State*” means the State of Washington.

~~7859.~~ “*Stop Work Notice*” means a notice authorized by the Director or his/her designee, posted at the site of an activity that requires all work to be stopped until the City approves continuation of work.

~~7960.~~ “*Street*” means any street, road, boulevard, alley, lane, way or place, or any portion thereof within the City limits.

~~80.~~ “*Street Assessment and/or Utility Assessment Agreement*” means contracts authorized by RCW Chapter 35.72 and RCW Chapter 35.91, as presently constituted or as may be subsequently amended, for system improvements, and may be referred to from time to time in this chapter as “*Latecomer Agreements*.”

~~8161.~~ “*Street System Improvements*” include half street section of street pavement (including appropriate sub paving preparation), surface water drainage facilities, sidewalks where required, curbs, gutters, utility undergrounding, street lighting, right-of-way landscaping (including street trees where required), and other similar improvements.

~~8262.~~ “*Street System Improvements*” means such improvements as are defined in TMC [Section 11.12.030](#).

~~8363.~~ “*Street Trees*” means any trees located on any street or public right-of-way.

~~84.~~ “*Street Use Official*” means the Director’s designated employees responsible for inspecting the installation of warning and safety devices in the public right-of-way and restoration of public rights-of-way disturbed by work.

~~8564.~~ “*Surface Water Drainage Facilities*” means ditches, piped and covered surface water drainage, including catch basins, and such detention, retention, and biofiltration as the Director shall require in accordance with sound engineering principles and the adopted ordinances and policies of the City.

~~8665.~~ “*Surplus Space*” means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and

regulations of the Washington Utilities and Transportation Commission, to allow its use by a telecommunications carrier for a pole attachment.

~~8766.~~ *“Telecommunications Carrier”* for the purposes of this chapter includes every person that directly or indirectly owns, controls, operates or manages plant, equipment, structures, or property within the City, used or to be used for the purpose of offering telecommunication service. Provided, however, this does not include lessees that solely lease bandwidth (and do not own telecommunication facilities within the City of Tukwila).

~~8867.~~ *“Telecommunication Facilities”* – see “Facilities.”

~~8968.~~ *“Telecommunication Service”* means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of voice, data, image, graphic or video programming information or service(s) between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

~~9069.~~ *“TMC”* means the Tukwila Municipal Code adopted by the City Council.

~~9170.~~ *“Topping”* means the severe cutting of the top of a street tree resulting in stubs beyond the branch collar in the crown or severe cutting which removes a substantial portion of the normal canopy, disfigures the street tree, and reduces the height.

~~9271.~~ *“Underground Facilities”* means ~~telecommunication and/or cable~~ facilities located under the surface of the ground, alone or in combination, direct buried or in utility tunnels or conduits, excluding the underground foundations or supports for overhead facilities.

~~9372.~~ *“Unpaved Street Surface”* means street surface that is neither standard nor nonconforming paved street surface.

~~9473.~~ *“Unsafe Condition”* means any condition that the Director reasonably determines is a hazard to health, endangers the safe use of the right-of-way by the public, or does or may impair or impede the operation or functioning of any portion of the right-of-way, or may cause damage thereto.

~~95.~~ *“Utility Excavator”* shall mean any owner whose facility or facilities in the public right-of-way are used to provide electricity, gas, information services, sewer service, steam, storm drains, telecommunications, traffic controls, transit service, video, water, or other services to customers regardless of whether such owner is deemed a public utility.

~~9674.~~ *“Utility System Improvements”* means water and/or sewer facilities as specified in RCW 35.91.020 as it now reads, or as hereafter amended.

~~9775.~~ *“Vegetation”* means all trees, plants, shrubs, groundcover, grass, and other vegetation.

~~9876.~~ *“Wire”* means a guided transmission medium, consisting of either one strand or a group of stands insulated together, which are used to power and/or send multiple transmission signals.

77. “Washington Utilities and Transportation Commission” or “WUTC” means the State administrative agency, or lawful successor, authorized under Title 80 of the Revised Code of Washington to regulate and oversee telecommunications carriers, services and telecommunications providers in the State of Washington to the extent prescribed by law.

**Section 3. Repealer.** Ordinance No. 1995 §1 (part), as codified at TMC Chapter 11.28, “Undergrounding of Utilities,” is hereby repealed.

**Section 4. TMC Chapter 11.28 Reenacted.** TMC Chapter 11.28 is hereby reenacted to read as follows:

## **CHAPTER 11.28 UNDERGROUNDING OF UTILITIES**

Sections:

11.28.010	Policy
11.28.020	Purpose
11.28.030	<u>Undergrounding – Scope</u>
11.28.040	Facilities <del>Excepted</del> <u>Exempted</u>
11.28.050	<del>Cost</del> <u>Undergrounding Requirements</u>
11.28.060	<del>Permits and Fees</del> <u>Deviations</u>
11.28.070	<del>Undergrounding Requirements</del> <u>Overlapping</u>
11.28.080	<del>Service Connection Requirements</del> <u>Upgraded Service</u>
11.28.090	<del>Street Lighting Connections and Disconnections of Affected Service</del>
11.28.100	<del>Connections and Disconnections of Affected Service</del> <u>Service Connection Requirements</u>
<del>11.28.110</del>	<del>Site Screening</del>
<del>11.28.120</del>	<del>As-built Drawings</del>
<del>11.28.130</del>	<del>Joint Trenches</del>
<del>11.28.140</del>	<del>Request for Waiver</del>

**Section 5.** TMC Section 11.28.010 is hereby reenacted to read as follows:

### **11.28.010 Policy**

It is the policy of the City to require the underground installation of all new electrical and communication facilities, with certain exceptions noted in this chapter. The City Council finds that the convenience, health, safety, and general welfare of the residents of the community require that all new facilities specified in this chapter be installed underground.

**Section 6.** TMC Section 11.28.020 is hereby reenacted to read as follows:

### **11.28.020 Purpose**

The purpose of ~~TMC Chapter 11.28 this chapter~~ is to establish minimum requirements and procedures for the underground installation ~~and relocation~~ of electric and communication facilities within the City.

**Section 7.** TMC Section 11.28.030 is hereby reenacted to read as follows:

**11.28.030 Undergrounding – Scope**

This chapter shall apply to ~~anyone~~any person or entity, other than the City, who owns electrical or communication facilities, and to all new electrical and communication systems, including but not limited to electric power, telephone, telecommunication, and cable television facilities within the corporate City limits.

**Section 8.** TMC Section 11.28.040 is hereby reenacted to read as follows:

**11.28.040 Facilities ExceptedExempted**

~~A.~~ The following facilities are ~~excepted~~exempted from the undergrounding requirements of this chapter:

1. Electric utility substations, pad-mounted transformers, and switching facilities not located on the public right-of-way where site screening is or will be provided in accordance with TMC ~~11.28.110~~Chapter 18.54.

2. Electric transmission systems of a voltage of 115 kV or more (including poles and wires) and equivalent communication facilities.

3. Ornamental street lighting standards, as defined by the ~~Public Works~~ Director.

4. Telephone pedestals, cross connect terminals, repeaters, cable warning signs, and other equivalent communication facilities.

5. Municipal Government equipment, including but not limited to: traffic control equipment and police and fire sirens.

6. Temporary services for construction.

7. Replacement of existing overhead facilities due to damage by natural or man-made causes.

8. ~~Secondary wiring for street lighting.Overlashing onto existing facilities installed, subject to the limitations and restrictions set forth in TMC Section 11.28.070.~~

9. ~~Cable television cables to the extent that such cables are to be hung on existing utility poles in areas of the City where electrical facilities under 115kV or other distribution facilities are primarily overhead.~~Secondary wiring for street lighting.

10. Upgrade or replacement service of existing facilities pursuant to TMC Section 11.28.080.

11. Other facilities as determined by the Director.

~~B. The Director shall decide if a facility qualifies for an exception. The decision is determinative and final.~~

**Section 9.** TMC Section 11.08.050 is hereby reenacted to read as follows:

**11.28.07011.28.050 Undergrounding Requirements**

~~— A. **New Facilities:**~~

~~— 1. New electrical or communication service to a building where no service previously existed shall be constructed underground. Does not include restorations and/or repairs.~~

~~— 2. All major additions of new facilities (three or more spans and/or 500 feet or more) shall be underground.~~

~~— 3. Minor additions of new facilities may be constructed aerially where existing services are aerial.~~

~~— B. **Rebuilds, Replacements and Additions:**~~

~~— 1. A relocation necessitated by a public works project, including, but not limited to, road realignment or widening, sewer and water main projects, a major rebuild or replacement of existing aerial facilities (three or more spans and/or 500 feet or more) shall be underground, and a permit from the Department shall be required; except undergrounding shall not be required in those cases where the Director finds that undergrounding will not be in the best interest of the public.~~

~~— 2. A minor rebuild, replacement or relocation of existing aerial facilities that does not alter the essential system configuration may be constructed aerially.~~

~~— 3. When there is casualty damage to an overhead service system or other major service outage, the facilities may be restored aerially.~~

~~— 4. Installation of additional conductors to provide one three-phase circuit is allowed on existing aerial facilities.~~

~~— 5. Reconductoring for routine maintenance that does not constitute a major rebuild is allowed on existing aerial facilities. Routine maintenance is also allowed on existing facilities for pole replacements and replacement of miscellaneous hardware.~~

~~— 6. No work permitted by this subsection shall result in an increase in the number of utility poles, except an additional pole may be installed if an existing pole that is suitable as a termination for underground installation is not available within 300 feet of the closest property line of the development site.~~

Except for wireless communication facilities specifically permitted, pursuant to TMC Chapter 18.58, all new facilities shall be constructed, installed, and located in accordance with the following terms and conditions, unless otherwise specified in a franchise. Right-of-way users shall be responsible for all costs associated with undergrounding its facilities except as otherwise provided herein or within Federal or State law.

1. The right-of-way user shall install its new facilities underground, unless otherwise approved by the City, pursuant to TMC Section 11.28.060.

2. The right-of-way user shall install its new facilities within an existing underground duct or conduit whenever excess capacity exists within such facility and the right-of-way user is able to access such underground duct or conduit for a commercially reasonable fee; otherwise, the right-of-way user shall place its new facilities within its own new underground duct or conduit. The right-of-way user is encouraged to place conduit underground that can accommodate both the new facilities and future facilities, including any existing above ground facilities that may be relocated underground at a later date.

3. Whenever any new or existing electric utilities are being located underground, or upon a City project within a public right-of-way, the right-of-way user, with permission to occupy the same right-of-way, shall also relocate its facilities underground or along an alternative public way, consistent with the requirements of RCW 35.99.060 and TMC Section 11.08.300.

4. If requested, the right-of-way user shall provide the City with additional ducts and conduits, at the right-of-way user's cost, and related structures necessary to access the ducts and conduits; provided, that the terms and conditions under which such additional ducts and/or conduits are provided shall be consistent with RCW 35.99.070.

5. These locational requirements shall apply even if the right-of-way user is providing services to a wireless communication facility in the right-of-way, and such wireless communication facility is allowed to remain above ground.

**Section 10.** TMC Section 11.28.060 is hereby reenacted to read as follows:

**11.28.060 Permits and Fees Deviations**

~~— A. Unless as otherwise provided in any existing franchise agreement, a permit for underground construction shall be obtained from the Department prior to construction of facilities in the public right-of-way.~~

~~— B. An appropriate fee shall be charged for this permit, consistent with the schedule on file with the Department.~~ A. The right-of-way user may request that the Director allow a deviation from the requirements in this section by establishing that such compliance would be an undue hardship to the right-of-way user, a user of the facilities, or any other affected person. The term "undue hardship" shall mean either:

1. The installation would be technologically unfeasible; or

2. The impact of the underground construction outweighs the general welfare consideration in requiring underground construction; or

3. Delay of the installation of the underground facilities would better coordinate the project with other private improvements which are in the permitting process or public improvements shown on the Capital Improvement or Transportation Improvement elements of the Comprehensive Plan; or

4. Strict application of this chapter would materially inhibit or would have the effect of materially inhibiting a right-of-way user's ability to provide telecommunication services; or

5. For existing or new single-family residences only, the requirement to underground new facilities constitutes a financial hardship.

B. The Director may also deviate from these requirements if a statute or tariff prohibits the enforcement thereof or requires the City or rate payers to pay for such undergrounding.

C. Deviations shall be requested in writing by the applicant, which shall include how the applicant meets the criteria of TMC Section 11.28.060.A or B. The Director shall determine, in writing, if the undue hardship criteria are sufficiently established such that the applicant is not required to underground the new facilities. The Director's decision shall be final.

**Section 11.** TMC Section 11.28.070 is hereby reenacted to read as follows:

#### **11.28.070 Overlashing**

Existing right-of-way users may overlash to their existing wires, subject to all applicable local, state, and federal regulations; and further provided that existing right-of-way users may only overlash a total of two additional new wires per existing wire owned by the right-of-way users on a given pole, not to exceed three wires in total for any given right-of-way user. The overlashed wire(s) shall be limited to like-in-kind only, meaning that it shall not exceed the same size, weight and diameter of the original wire that is being overlashed to.

**Section 12.** TMC Section 11.28.080 is hereby reenacted to read as follows:

#### **11.28.080 Upgraded Service**

Existing wires may be replaced or upgraded for increased service capacity provided that no additional wires are added (i.e., a new wire can be added but the existing wires shall be removed). The new upgrade or replacement wires shall be limited to like-in-kind only, meaning that it shall not exceed the size, weight, and diameter of the original wire that the applicant proposes to remove.

**Section 13.** TMC Section 11.08.090 is hereby reenacted to read as follows:

#### **11.28.100**11.28.090 Connections and Disconnections of Affected Service****

The owner of real property abutting an underground project shall be responsible, at his or her expense, for converting to underground service and disconnecting his or her aerial services within 30 days following notice in writing of availability of such underground service. Time in consummating such connection and disconnection is of the essence, and such notice to the property owner, customer or subscriber may be mailed, postage prepaid, or delivered in person. In the event that such conversion and disconnection is not accomplished within 30 days of receipt of notice, the City may order the work done and the

actual cost shall constitute a lien against the real property, subject to enforcement as provided by law.

**Section 14.** TMC Section 11.28.100 is hereby reenacted to read as follows:

**11.28.100 Service Connection Requirements**

A. **Single-Family Residential Areas.** All electrical or communication service lines from either existing overhead or underground facilities to the service connection of new structures shall be installed underground.

B. **Non-Single Family Residential Areas.** All new electrical or communication service lines from either existing overhead or underground facilities to the service connection of new and existing structures shall be installed underground.

**Section 15. Repealer.** Per the repealer in Section 3 of this ordinance, the following sections of the Tukwila Municipal Code are hereby eliminated:

- 11.28.110 Site Screening
- 11.28.120 As-built Drawings
- 11.28.130 Joint Trenches
- 11.28.140 Request for Waiver

**~~11.28.110 Site Screening~~**

~~Where a permit for the underground project is required by this chapter, plans for all above-ground facilities shall be submitted to the Department of Community Development for approval of site screening and setbacks, prior to issuance of a permit by the Public Works Department.~~

**~~11.28.120 As-built Drawings~~**

~~A drawing of a completed underground project in a form acceptable to the Department and conforming to generally accepted engineering practices shall be submitted in duplicate to the Public Works Department within 30 days of the completion of any underground project within the City. No bond money, deposit or fee shall be released to the developer until the Department receives the drawings.~~

**~~11.28.130 Joint Trenches~~**

~~Where several utilities are planned or required in the same corridor, every effort shall be made by the utilities to use joint trenches for such facilities.~~

**~~11.28.140 Request for Waiver~~**

~~A. All applications for waivers from the foregoing underground requirements shall be first filed with the Director.~~

~~B. A waiver shall not be granted by the Director unless the Director finds that the utility owner or user or other affected parties can demonstrate that it would be an undue~~



~~hardship to place the facilities concerned underground. For purposes of this chapter, undue hardship is intended to mean:~~

~~1. A technological or environmental difficulty associated with the particular facility or with the particular real property involved that would render the installation unfeasible; or~~

~~2. The cost of the underground construction outweighs the general welfare consideration in requiring underground construction.~~

~~C. The Director may grant a deferral of the requirement for undergrounding if the current underground construction would not be in the best interests and welfare of the public. A deferral is predicated upon the applicant's willingness to sign a no-protest LID agreement for future installation. The Director's decision is determinative and final.~~

**Section 16. Corrections by City Clerk or Code Reviser Authorized.** Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of scrivener's errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

**Section 17. Severability.** If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

**Section 18. Effective Date.** This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Christy O'Flaherty, MMC, City Clerk

\_\_\_\_\_  
Allan Ekberg, Mayor

APPROVED AS TO FORM BY:

Filed with the City Clerk: \_\_\_\_\_

Passed by the City Council: \_\_\_\_\_

Published: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Ordinance Number: \_\_\_\_\_

\_\_\_\_\_  
Office of the City Attorney

# City of Tukwila



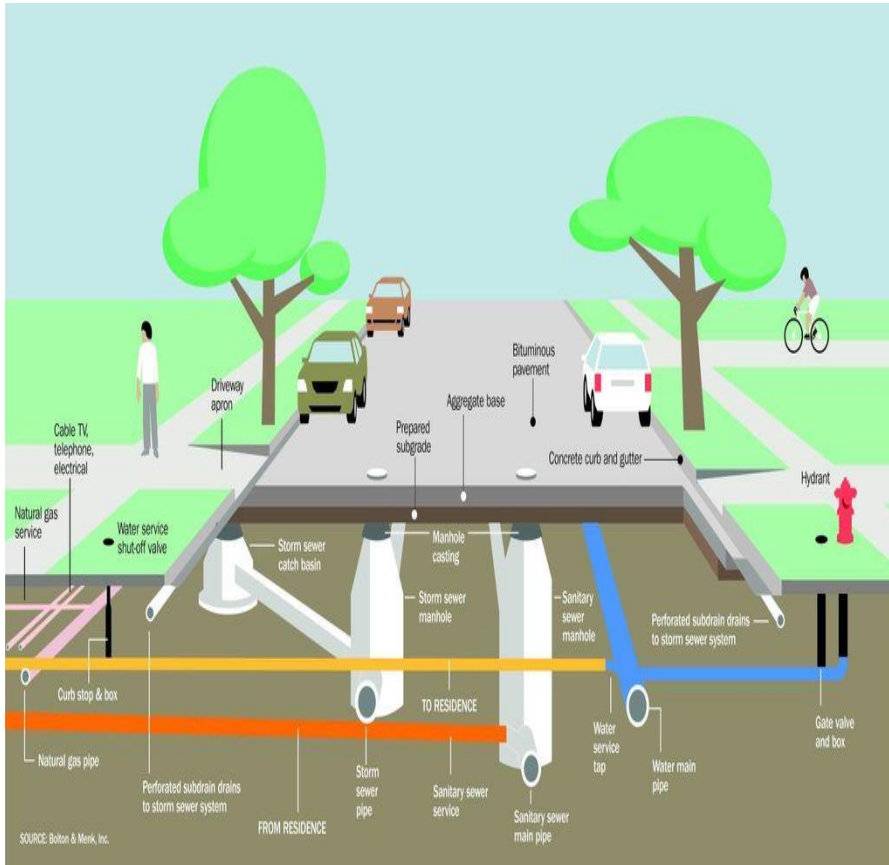
## TMC 11.04 & 11.28 Revised Code Amendment

Josh Hartley, P.E.  
April 3, 2023



S. 144<sup>th</sup> St (TIB – 42<sup>nd</sup> Ave. S)

# Purpose of Amendments

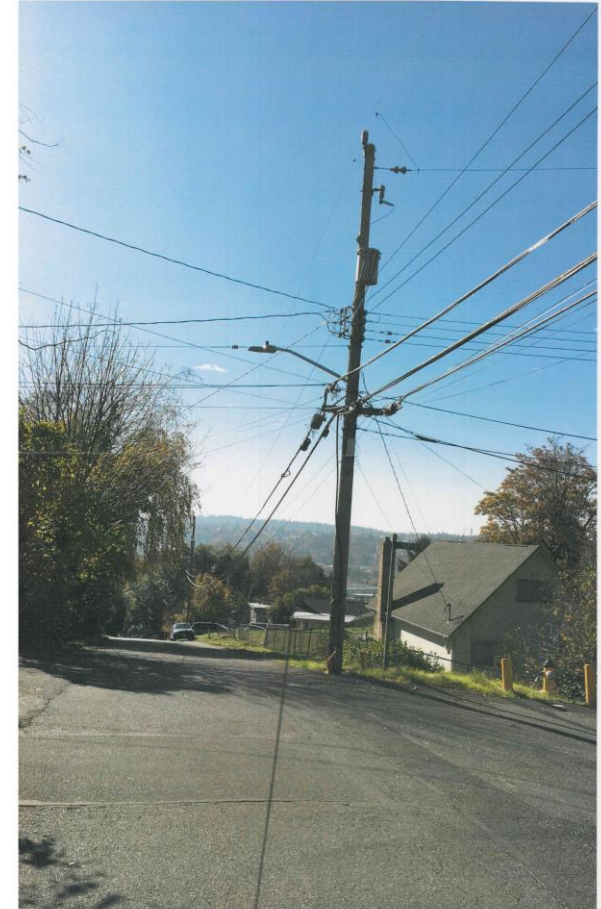


- To externally and internally re-affirm and clarify City's existing policy as it relates to undergrounding.
- Discuss New Deviations Section
- Provide examples of typical permits requested.
- City CIP projects that trigger or don't trigger undergrounding.
- Jurisdiction Code Comparisons

# Old Code Requirements

## Old code: underground all new facilities

- Per plain language of code, “new facilities” means communication and electric facilities. City does not have “facilities” because it doesn’t own communication nor electric lines, thus old code never actually applied to require City to underground any of its facilities.
- Only time undergrounding was required was placement of new facilities (i.e. stringing a new electric or communication line between poles, or connecting a building to service, where no service had previously existed).
  - Only facilities that had to be undergrounded were the facilities that were new, the existing facilities could remain above ground.
  - Facility owner could seek waiver from requirement to underground if it was too expensive



# New Code Requirements



## New code: Underground all new facilities

- Definitions revised and/or added to TMC 11.04.
- Clarifies explicitly that code does not apply to City by excluding chapter from applying to City.
- Clarifies that overlashing (wrapping a new overhead line around an existing overhead line) is limited to two cables in like kind only meaning not to exceed same size, weight, and diameter.
- Clarifies that deviations from code requirements are only allowed if in undergrounding is technologically unfeasible (i.e., Small Wireless Facilities can't be undergrounded) or if the installation coordinates with a CIP project, or if the impact to undergrounding outweighs the benefit.

# Typical Service Request Examples

**Installation of Comcast and SCL service to a new housing development:**

Undergrounding of new lines required. Existing lines in a block would remain overhead, but new lines received by the new development would be required to be placed underground.



46<sup>th</sup> Ave. S (144<sup>th</sup> – 146<sup>th</sup> )

# Typical Service Request Examples

Repair or replacement of **SCL existing service line:**

No undergrounding required.  
This is general maintenance and upkeep and not considered a new service line.



E. Marginal Way near Museum of Flight

# Typical Service Request Examples (cont.)



## Overlashing on existing lines:

Two extra cables are allowed and must be like in-kind, meaning it shall not exceed the same size, weight, or diameter of existing cable. If three or more cables are being requested, undergrounding will be required. This applies to upgraded service lines also (i.e. changing material to fiber from electric line).



# Typical Service Request Examples (cont.)



Installation of a *new* telecommunication company's service lines in the City:

Undergrounding of new lines required. With new restrictions on overlanding and upgraded services for existing providers, this requirement shall not limit competition.

# Typical Service Request Examples (cont.)



S. 122<sup>nd</sup> St at 44<sup>th</sup> Ave S. Intersection

Installation of new cable service to a single house:

Undergrounding of new service line required if two or more overlashed lines already exist on a given pole. However, code allows for deviation to this requirement if requested by property owner.

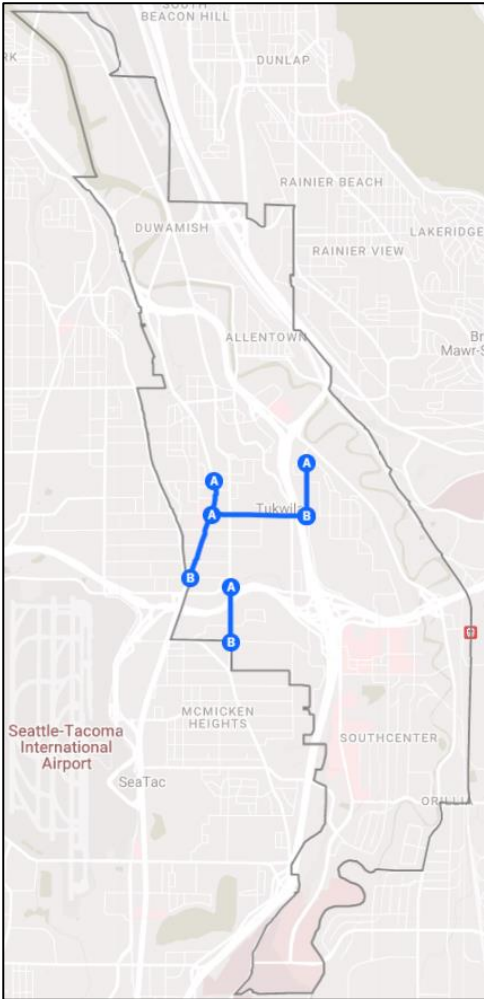
# City Capital Projects Undergrounding Requirements

Both existing and amended TMC 11.28 codes do not require undergrounding of existing telecommunication service lines. Only newly installed lines require undergrounding.

For future CIP Projects the City constructs, the following project definitions will determine undergrounding requirements:

- **Major Project:** A public project constructing and/or replacing two or more City-owned utilities (i.e. sewer, water, stormwater) or fully reconstructing the roadway cross-section. **Undergrounding will be required.**
- **Minor Project:** A public project constructing fewer than two City utilities (i.e. sewer, water, stormwater) and/or partial roadway reconstruction, sidewalk construction, etc. **Undergrounding will NOT be required.**

# CIP Projects with Undergrounded Utilities



The City has four (4) projects to date that have required telecommunication companies to underground their infrastructure:

- 42<sup>nd</sup> Ave. S Phase II (Southcenter Blvd. – S. 160<sup>th</sup> St.)
- 53<sup>rd</sup> Ave S. (S. 137<sup>th</sup> St. – S. 144<sup>th</sup> St.)
- S. 144<sup>th</sup> St. (TIB – 42<sup>nd</sup> Ave. S)
- TIB Phase I (S. 140<sup>th</sup> St. –S. 152<sup>nd</sup> St.)

# 53<sup>rd</sup> Ave. S CIP Project (S. 137<sup>th</sup> – S. 144<sup>th</sup>)



**BEFORE: August 2017**



**AFTER: August 2021**

# 42<sup>nd</sup> Ave. S CIP Project (Southcenter – 160<sup>th</sup>)



**BEFORE: Oct. 2015**



**AFTER: September 2022**

# TIB Phase I CIP Project (S. 140<sup>th</sup> St. –S. 152<sup>nd</sup> St.)



TIB near S. 130<sup>th</sup> St.



TIB near S. 144<sup>th</sup> St.

# Comparisons

- Burien Municipal Code Chapter 12.40: ... it is the policy of the city to require the underground installation of *all new electrical and communication facilities*, with certain exceptions noted in this chapter.
- SeaTac Municipal Code Chapter 11.20: it is the policy of the city to require the underground installation of *all new electrical and communication facilities*, subject to certain exceptions noted hereafter.’
- Issaquah Municipal Code 12.60: *All new facilities must be placed underground....* For purposes of clarity, new facilities include but are not limited to all new wireline facilities and over-lashing on existing facilities.





Questions and/or Comments?





## INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**  
FROM: **Hari Ponnekanti, Public Works Director/City Engineer**  
BY: **Adam Cox, Transportation Project Manager**  
CC: **Mayor Ekberg**  
DATE: **March 31, 2023**  
SUBJECT: **S 152<sup>nd</sup> Street Safe Routes to School Project**  
**Project No. 91710303**

### **ISSUE**

Discussion on undergrounding utilities for the 152<sup>nd</sup> St Safe Routes to School (SRTS) project.

### **BACKGROUND**

The S 152<sup>nd</sup> Street SRTS project will design new curb, gutter, and sidewalks along the stretch of road between Tukwila International Boulevard and 42<sup>nd</sup> Avenue S. Additionally, improvements to the existing storm drainage system will be included to improve operation and water quality in the Gilliam Creek basin.

### **ANALYSIS**

KPG-Psomas, Inc. (KPG) was selected to perform the design of the project in April 2022. The 30% plans and estimate (P&E) were submitted to the City in December 2022 and comments/review was submitted back to KPG to incorporate. The initial scope of work did not include undergrounding overhead utilities as the focus for the project was establishing pedestrian facilities, stormwater, and roadway improvements. During future discussions, undergrounding of overhead utility requirements/codes warrants further examination for this project.

Undergrounding overhead utilities for this project would require additional funds of at least \$3.2 million. In addition to the added design and construction costs, it is estimated that the construction start would be delayed a year due to the added scope of the undergrounding. The undergrounding could also double the calendar days to close out the project - not contract working days, but total time the contract is open due to pole removals, comm wire installation, and service conversion.

### **FINANCIAL IMPACT**

The rough order of magnitude (ROM) provided by KPG for the additional design and construction to underground the overhead utilities is \$3.2 million, borne by the general fund with minimal support from grants.

Sound Transit is currently funding 100% the design of the pedestrian and roadway facilities. The City has also applied to the Washington State of Transportation (WSDOT) for SRTS funding. Unfortunately, we were not selected to receive funding, however, the project is first on the list to receive funding if additional funding becomes available or other awarded projects do not continue.

### **RECOMMENDATION**

The Council is being asked to accept a deviation as described in TMC 11.28 for not requiring undergrounding overhead utilities on the project to allow the project to move forward toward the 60% design.

**Attachments:** 2023 CIP, Page 4  
S 152<sup>nd</sup> Utility Undergrounding Memorandum

## CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2023 to 2028

**PROJECT:** S 152nd St Safe Routes to School

Project No. 91710303

**DESCRIPTION:** Install curb, gutter, and sidewalks on both sides of S 152nd St, including widening pavement width by three feet to construct an on-street parking lane as a buffer between the roadway and sidewalk on the north side.

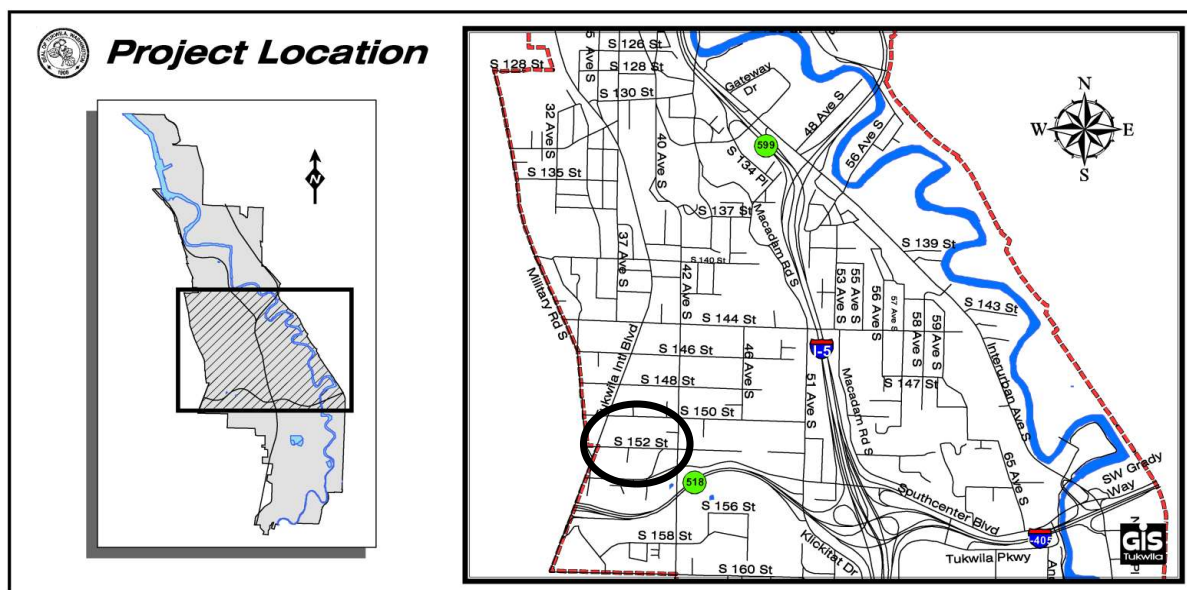
**JUSTIFICATION:** Enhance safety for students walking to Foster High School, Showalter Middle School, and Thorndyke Elementary School and encourage transportation choices for the neighborhood.

**STATUS:** Design funded, construction pending SRTS grant funding.

**MAINT. IMPACT:** New sidewalk and pavement will need to be maintained.

**COMMENT:** Sound Transit System Access Fund Grant of \$369k for design. Apply for SRTS grant in 2021 for construction.

FINANCIAL (in \$000's)	Through		Estimated							TOTAL
	2021	2022	2023	2024	2025	2026	2027	2028	BEYOND	
<b>EXPENSES</b>										
Design		453								453
Land (R/W)			15							15
Const. Mgmt.			400							400
Construction			3,600							3,600
<b>TOTAL EXPENSES</b>	<b>0</b>	<b>453</b>	<b>4,015</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4,468</b>
<b>FUND SOURCES</b>										
Awarded Grant		369								369
Proposed Grant			3,200	-						3,200
Solid Waste Utility Tax			100							100
Surface Water Fund		84								84
103 Fund Balance	0		715	0	0	0	0	0	0	715
<b>TOTAL SOURCES</b>	<b>0</b>	<b>453</b>	<b>4,015</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4,468</b>



## Memorandum

**To:** Public Works Department, City of Tukwila  
Cyndy Knighton – Project Manager

**From:** KPG Psomas  
Bryce Corrigan, PE

**Date:** 5/17/2022

**Re:** S 152<sup>nd</sup> St Utility Undergrounding

The City of Tukwila has selected KPG Psomas to perform design of non-motorized improvements along S 152<sup>nd</sup> St from Tukwila International Boulevard to 42<sup>nd</sup> Ave S, about 1,600 linear feet. The purpose of this memorandum is to provide a budget estimate for power and communication utility undergrounding with the project corridor. Figure 1 shows the project location highlighted in blue:

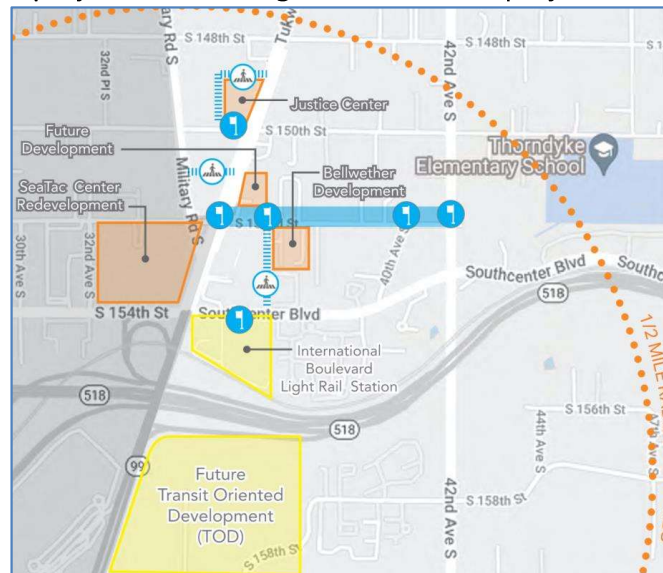


Figure 1: Project Location

### Background

Pursuant to City Code 11.28.010 the City's desire is to underground all overhead electrical power and communication wires. The City has consistently enforced this practice upon themselves as part of Public Works' CIP projects where (per 13.08.085) the City desires to install any new utilities, street improvements (sidewalk, widening, etc) or change the grade of any roadway or alley. The boundary streets, Tukwila International Boulevard and 42<sup>nd</sup> Ave S both currently have the power and communication utilities underground.

## Current S 152nd St Project

At this time there is not utility undergrounding being proposed for the S 152<sup>nd</sup> St Corridor as part of the non-motorized connection project. The extent of utility work on this project is a new drainage system, utility pole relocations, and surface adjustment of structures for the various providers within the project limits. The City requested of KPG Psomas to prepare a budget amount that undergrounding S 152<sup>nd</sup> St would cost. Below is that discussion.

First KPG PSomas evaluated the mean cost of the 53<sup>rd</sup> Project (2,100 linear feet) completed in 2019 which undergrounded Seattle City Light’s power infrastructure and Comcast and Lumen (Century Link) communication infrastructure. That Project’s undergrounding effort was completed for roughly **\$1,325 per linear foot, or \$440/linear foot/provider**. Second, we added 130% cost increase to that total to account for inflation and various worldly events that have taken place since then. We then compared this escalated cost to current 2022 estimates and bid tabulations from project of similar size and scope. The escalation and comparison yielded a 2023 projected cost of roughly **\$1,725/linear foot, or \$575/linear foot/provider** (assuming three providers). We then applied that to the S 152<sup>nd</sup> St Project and an approximate construction cost to underground the utilities is **\$2,800,000**. Engineering for this effort is approximately \$415,000. The total effort for utility undergrounding of S 152<sup>nd</sup> St would be roughly **\$3,215,000**. Please see the summary table below:

53RD AVE S SCHEDULE C	
2018	
Linear Feet	2100
No. Services	36
Total (avg of bidders)	\$ 2,781,966.00
\$/Service	\$ 77,276.83
\$/LF	\$ 1,325.00
2023 Inflation + Other Cost Impacts 130%	
Total in 2023	\$ 3,616,555.80
Total \$/Service in 2023	\$ 100,459.88
Total \$/LF in 2023	\$ 1,722.17
	<b>use \$ 1,725.00</b>
S 152nd St	
Linear Feet	1600
No. Services	28
Budget Estimate	\$ 2,760,000.00
\$/LF	\$ 1,725.00
\$/Service	\$ 98,571.43
Engineering + Final Design (15%)	\$ 414,000.00
RECOMMENDED BUDGET AMOUNT	
<b>Total, Eng+Const (Rounded)</b>	<b>\$ 3,215,000.00</b>
<b>\$/LF</b>	<b>\$ 2,010.00</b>
Est Total No Undergrounding	\$ 4,500,000.00
Est Total with Undergrounding	\$ 7,700,000.00

