



# City of Tukwila Transportation and Infrastructure Services Committee

- ❖ Armen Papyan, Chair
- ❖ Dennis Martinez
- ❖ Hannah Hedrick

<b>Distribution:</b> D. Martinez A. Papyan H. Hedrick P. Mayer G. Lerner (email)	Clerk File Copy  Share pkt pdf on SharePoint to A. Le, A. Youn, M. McCormick
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## AGENDA

**MONDAY, JULY 22, 2024 – 5:30 PM**  
**HYBRID MEETING – ONSITE AND VIRTUAL**  
**DUWAMISH CONFERENCE ROOM, 6300 BUILDING, 2<sup>ND</sup> FLOOR**

**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 252508487#

Item	Recommended Action	Page
<b>1. PRESENTATIONS</b>		
<b>2. BUSINESS AGENDA</b>		
a) Franchise Agreement with Wholesail Networks (Eric Compton)	a) Forward to the 08/05/2024 Regular Consent Agenda	Pg. 1
b) Large Meter Water Replacement Purchase Agreement (Adib Altallal)	b) Forward to the 08/05/2024 Regular Consent Agenda	Pg. 47
c) Sewer Lift Station 5 Retrofit – Construction Management Supplement, Amend #1 (Adib Altallal)	c) Forward to the 08/05/2024 Regular Consent Agenda	Pg. 53
d) Sewer Lift Stations 12 Upgrade Design Services Agreement (Adib Altallal)	d) Forward to the 08/05/2024 Regular Consent Agenda	Pg. 74

**Next Scheduled Meeting: 08/26/2024**





## **INFORMATIONAL MEMORANDUM**

TO: Transportation & Infrastructure Committee

FROM: Joel Bush, Chief Information Officer

BY: **Eric Compton, Franchise Analyst**

CC: **Thomas McLeod**

DATE: **07/03/2024**

SUBJECT: **Franchise Agreement with Wholesail Networks**

### **ISSUE**

Approve and ordinance granting Wholesail Networks a Franchise Agreement with a term of five (5) years.

### **BACKGROUND**

State law provides cities the authority to establish franchises to telecommunication providers who wish to occupy city owned rights-of-way. Tukwila Municipal Code 11.32.060 requires all telecommunication providers to obtain franchise agreements with the City prior to approval to construct, maintain and operate within the City limits.

### **DISCUSSION**

Wholesail Networks, doing business as Ziplly Fiber, is a local internet service provider providing competition to incumbent providers like Century Link and Comcast. They do not have a consumer presence in the City yet but they are looking to expand their coverage. They also provide back-haul services to connect regions across the northwest. Wholesail is seeking to upgrade the infrastructure they have in place, as well as expand into the consumer market in Tukwila.

### **FINANCIAL IMPACT**

Under the terms of the Franchise, Wholesail is required to pay the City a \$5000 administrative fee.

### **RECOMMENDATION**

Council is being asked to approve the Ordinance granting Wholesail Networks a Franchise Agreement and forward this item to the consent agenda at the August 05, 2024 Regular Council Meeting.

### **ATTACHMENTS**

Wholesail Networks Franchise Agreement

DRAFT

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, GRANTING TO WHOLESAIL NETWORKS, LLC, AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY IN THE CITY OF TUKWILA; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, Wholesail Networks, LLC (the “Franchisee” or “Wholesail”) has requested that the City Council grant a nonexclusive franchise (this “Franchise”) for purposes of operating and maintaining a telecommunications network; and

**WHEREAS**, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040; and

**WHEREAS**, the Tukwila Municipal Code requires persons who are seeking to operate and maintain wireline telecommunications facilities in City rights-of-way to obtain a franchise to do so; and

**WHEREAS**, the City is willing to grant the rights requested by Franchisee for a wireline franchise subject to certain terms and conditions, which are acceptable to both parties.

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

**Section 1. Franchise.** The franchise agreement, attached and incorporated herein as Attachment A, is hereby approved and adopted by the Tukwila City Council. The term of the franchise shall be for five (5) years, commencing on the date the last party executes the franchise.

**Section 2. Terms & Conditions.** The terms and conditions governing the franchise specified in Section 1 shall be those set forth on Attachment A to this Ordinance and incorporated herein by this reference as if set forth in full.

**Section 3. Deadline for Acceptance.** The rights and privileges granted pursuant to this Ordinance shall not become effective until its terms and conditions are accepted by Wholesail Networks, LLC. Such acceptance shall contain any required letter of credit, evidence of insurance, all applicable fees pursuant to Section 14 of the Franchise, and shall be filed with the City Clerk within sixty (60) days after the effective date of this Ordinance. Such instrument shall conform substantially to Attachment B, and evidence the unconditional acceptance of the terms hereof and a promise to comply with and abide by the provisions, terms and conditions hereof.

**Section 4. 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 clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

**Section 5. 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 6. 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 \_\_\_\_\_, 2024

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Andy Youn, CMC, City Clerk

\_\_\_\_\_  
Thomas McLeod, 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

Attachments: Attachment A – Wholesail Networks, LLC, Franchise Agreement  
Attachment B – Wholesail Networks, LLC, Statement of Acceptance

## **ATTACHMENT A**

*[See attached.]*

**TELECOMMUNICATIONS FRANCHISE**  
**Between**  
**CITY OF TUKWILA, WASHINGTON**  
**and**  
**WHOLESAIL NETWORKS, LLC**

This Telecommunications Franchise is entered into by and between the City of Tukwila, Washington a municipal corporation, hereinafter (“the City”) and Wholesail Networks, who is hereinafter known as (the “Franchisee”). The City and Franchisee are sometimes referred to hereinafter collectively as the “parties.”

**Section 1. Franchise Granted.**

Section 1.1. Pursuant to RCW 35A.47.040, the City hereby grants to Franchisee a non-exclusive franchise (the “Franchise”) under the terms and conditions contained in this franchise ordinance (the “Franchise Ordinance”).

Section 1.2. This Franchise grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, acquire, sell, lease and use all necessary Facilities for a telecommunications network, in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City of Tukwila, as approved pursuant to City permits issued pursuant to this Franchise and in accordance with all applicable federal, state, and local codes.

(a) “Facilities” as used in this Franchise means one or more elements of Franchisee’s telecommunications network, with all necessary cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary appurtenances; provided that placement by Franchisee of new utility poles is specifically excluded unless otherwise specifically approved by the City. Equipment enclosures with air conditioning or other noise generating equipment are also excluded from “Facilities,” to the extent such equipment is located in zoned residential areas of the City. For the purposes of this Franchise the term Facilities excludes “microcell” facilities, “minor facilities,” “small cell facilities,” all as defined by RCW 80.36.375, and “macrocell” facilities, including towers and new

base stations and other similar facilities (except for fiber optic cables) used for the provision of “personal wireless services” as defined by RCW 80.36.375.

(b) Public “Rights-of-Way” means land acquired or dedicated to the public or that is hereafter dedicated to the public and maintained under public authority, including, but not limited to, public streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks, utility easements and similar public property located within the franchise area but does not include: State highways; land dedicated for road, streets, highways not opened and not improved for motor vehicle use by the public; structures including poles and conduits located within the right-of-way; federally granted trust lands or forest board trust lands; lands owned or managed by the State Parks and Recreation Commission; federally granted railroad rights-of-way acquired under 43 USC § 912 and related provisions of federal law that are not open for vehicular use; or leasehold or City-owned property to which the City holds fee title or other title and which is utilized for park, utility or a governmental or proprietary use (for example, buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned or leased by the City not reserved for transportation purposes).

## **Section 2. Authority Limited to Occupation of the Public Rights-of-Way**

Section 2.1. The authority granted pursuant to this Franchise is a limited authorization to occupy and use the Rights-of-Way throughout the City (the “Franchise Area”). No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner’s consent, or upon any public or privately owned utility poles or conduits is granted herein. Franchisee hereby represents that it expects to provide the following services within the City: high speed data and fiber optic services, internet protocol-based services, internet access services, conduit and dark fiber leasing, telephone, exchange access service, data transport and other telecommunications and information services (the “Services”). Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing the Services, nor to subordinate the primary use of the Right-of-Way



as a public thoroughfare. Franchisee may not offer Cable Services as defined in 47 U.S.C. § 522(6) or personal wireless services, without obtaining a new franchise or an amendment to this Franchise approved by the City Council.

Section 2.2. Notwithstanding the existence of this Franchise, the installation, construction, maintenance, use, operation, replacement and removal by Franchisee of any one or more Franchise Facilities will be subject to all applicable provisions of Title 11 TMC, including, but not limited to, the City's Infrastructure, Design, and Construction Standards, adopted by the City's Public Works Department of Public Works, the terms and conditions of City right-of-way use permits issued pursuant to Title 11 TMC, the terms and conditions of City building permits issued pursuant to Title 16 TMC, and all other applicable laws, rules and regulations.

Section 2.3. Upon sixty (60) days' written notice to the City, Franchisee shall have the right to offer or provide capacity or bandwidth to its customers consistent with this Franchise, provided:

- (a) Franchisee at all times retains exclusive ownership over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;
- (b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise, provided that leases or other commercial arrangements for the use of the Facilities installed pursuant to this Franchise may extend beyond the term of the Franchise;
- (c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and
- (d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise, unless such rights are otherwise granted by the City.

### **Section 3. Non-Exclusive Franchise.**

Section 3.1. This Franchise is granted to the Franchisee upon the express condition and understanding that it shall be a non-exclusive Franchise which shall not in any manner prevent or hinder the City from granting to other parties, at other times and under such terms and conditions as the City, in its sole discretion, may deem appropriate, other franchises or similar use rights in, on, to, across, over, upon, along, under or through any Public Rights-of-Way. Additionally, this Franchise shall in no way prevent, inhibit or prohibit the City from using any of the roads, Public Rights-of-Way or other public properties covered or affected by this Franchise, nor shall this Franchise affect the City's jurisdiction, authority or power over any of them, in whole or in part. The City expressly retains its power to make or perform any and all changes, relocations, repairs, maintenance, establishments, improvements, dedications, or vacations of or to any of the roads, Public Rights-of-Way or other public properties covered or affected by the Franchise as the City may, in its sole and absolute discretion, deem fit, including the dedication, establishment, maintenance and/or improvement of new Public Rights-of-Way, thoroughfares and other public properties of every type and description.

### **Section 4. Term; Early Termination.**

Section 4.1. The initial term of the Franchise shall be for a period of five (5) years (the "Initial Term"), beginning on the Effective Date of the Franchise, and continuing until the date that is one day prior to the fifth anniversary of the Effective Date (the "Initial Term Expiration Date"), unless earlier terminated, revoked or modified pursuant to the provisions of this Franchise.

Section 4.2. The Franchise granted by this Ordinance shall automatically renew on the fifth anniversary of the Effective Date with the same terms and conditions as set forth in this Franchise, for one (1) additional five (5) year (the "Renewal Term," and, together with the Initial Term, the "Term"), unless either party provides one hundred twenty (120) days written notice to the other party to request an amendment to the Franchise.

## **Section 5. Location of Facilities.**

Section 5.1. Franchisee is maintaining a telecommunications network, consisting of Facilities within the City. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Infrastructure, Design and Construction standards and the Tukwila Municipal Code and subject to the City's applicable permit requirements. Franchisee shall not commence any construction or other similar work within a Public Right-of-Way until (i) a right-of-way use permit authorizing such work has been issued by the City pursuant to Title 11 TMC for a site-specific location or installation, including, but not limited to, relocations, and (ii) if required by Title 16 TMC, a building permit authorizing such work has been issued by the City.

Section 5.2. To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways"), are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Franchisee specifically agrees that:

- (a) any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;
- (b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and
- (c) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

## **Section 6. Relocation of Facilities**

Section 6.1. The Franchisee agrees and covenants that, upon reasonable notice, it will promptly, at its sole cost and expense, protect, support, temporarily disconnect, relocate, or remove from any Public Right-of-Way any portion of the Franchisee Facilities when so required by the City due to any of the following reasons: (i) traffic conditions,

(ii) public safety, (iii) dedications of new rights-of-way and the establishment and/or improvement thereof, (iv) widening and/or improvement of existing rights-of-way, (v) right-of-way vacations, (vi) freeway construction, (vii) change or establishment of road grade, or (viii) the construction of any public improvement or structure by any governmental agency acting in a governmental capacity; PROVIDED that the Franchisee shall generally have the privilege to temporarily bypass, in the authorized portion of the same Public Right-of-Way, upon approval by the Public Works Director, any Franchisee Facilities required to be temporarily disconnected or removed. The provisions of this Section 6 apply to all Franchisee Facilities wheresoever situated within any Public Right-of-Way, regardless of whether the Franchisee Facility at issue was originally placed in such location under the authority of an easement or other property interest prior to the property becoming a Public Right-of-Way. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, and not primarily for the benefit of a private entity, and shall not include, without limitation, any other improvements or repairs undertaken by or for the sole benefit of third party private entities. Collectively all such projects described in this Section 6.1 shall be considered a "Public Project". Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 6.1 shall be borne by Franchisee. Nothing contained within this Franchise shall limit Franchisee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

Section 6.2. Upon the request of the City and in order to facilitate the design of City improvements to Public Rights-of-Way, Franchisee agrees, at its sole cost and expense, to locate and, if reasonably determined necessary by the City, to excavate and expose, at its sole cost and expense, portions of the Franchisee Facilities for inspection so that the location of the facilities may be taken into account in the Public Project design; PROVIDED, that Franchisee shall not be required to excavate and expose the Franchisee Facilities for inspection unless Franchisee's record drawings and maps of the Franchisee Facilities submitted pursuant to Section 13 of this Franchise are reasonably determined by the Public Works Director to be inadequate for the City's planning purposes. The

decision to require relocation of any Franchisee Facilities in order to accommodate Public Projects shall be made by the Public Works Director upon review of the location and construction of the Franchisee Facilities at issue. Where the City incurs additional costs in performing any maintenance, operation, or improvement of or to public facilities due to measures taken by the City to avoid damaging or to otherwise accommodate one or more Franchisee Facilities, Franchisee shall reimburse the City for the full amount of such additional costs promptly upon receiving the City's invoice for same.

Section 6.3. Any condition or requirement imposed by the City upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals for permits for zoning, land use, construction or development) which reasonably necessitates the relocation of any Franchisee Facilities shall constitute a required relocation for purposes of this Section 6.

Section 6.4. If the City determines that the Public Project necessitates the relocation of Franchisee's Facilities, the City shall provide Franchisee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). In calculating the Relocation Date, the City shall consult with Franchisee and consider the extent of facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the City's overall project construction sequence and constraints, to safely complete the relocation, and the City shall endeavor to provide Franchisee at least sixty (60) days' notice prior to the Relocation Date. Franchisee shall complete the relocation by the Relocation Date, unless the City or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2). To provide guidance on this notice process, the City will make reasonable efforts to involve Franchisee in the predesign and design phases of any Public Project. After receipt of the written notice containing the Relocation Date, Franchisee shall relocate such facilities to accommodate the Public Project consistent with the timeline provided by the City and at no charge or expense to the City. Such timeline may be extended by a mutual agreement.

Section 6.5. If Franchisee fails to complete this work within the time prescribed above and to the City's satisfaction, the City may cause such work to be done and bill the

cost of the work to Franchisee, including all costs and expenses incurred by the City due to Franchisee's delay. In such event, the City shall not be liable for any damage to any portion of Franchisee's Facilities. Within thirty (30) days of receipt of an itemized list of those costs, Franchisee shall pay the City. In any event, if Franchisee fails to timely relocate, remove, replace, modify or disconnect Franchisee's facilities and equipment, and that delay results in any delay damage accrued by or against the City, Franchisee will be liable for all documented costs of construction delays attributable to Franchisee's failure to timely act. Franchisee reserves the right to challenge any determination by the City of costs for construction delays related to an alleged failure to act in accordance with this Section 6.5.

Section 6.6. Franchisee will indemnify, defend, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 19 against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities in a timely manner; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

Section 6.7. In the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City which will result in severe financial consequences to the City, which necessitates the relocation of Franchisee's Facilities, Franchisee shall relocate its Facilities within the time period specified by the City.

Section 6.8. The provisions of this Section 6 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 6.9. Whenever any person shall have obtained permission from the City to use any Right-of-Way for the purpose of moving any building, Franchisee, upon thirty

(30) days' written notice from the City, shall raise, remove, or relocate to another part of the Right-of-Way, at the expense of the person desiring to move the building, any of Franchisee's Facilities that may obstruct the removal of such building.

Section 6.10. The provisions of this Section 6 shall survive the expiration, revocation, abandonment or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

### **Section 7. Undergrounding of Facilities.**

Section 7.1. Except as specifically authorized by permit of the City, Franchisee shall not be permitted to erect poles. All Facilities shall be installed underground. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its Facilities at the time of permit application, the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to underground installation at Franchisee's expense; provided that the City requires all other wireline utilities, except electrical utilities, with aerial facilities in the area to convert such facilities to underground installation at the same time. Unless otherwise permitted by the City, Franchisee shall underground its Facilities in all new developments and subdivisions, and any development or subdivision where all utilities, other than electrical utilities, are currently underground.

Section 7.2. Whenever the City may require the undergrounding of the aerial utilities (other than electrical utilities and personal wireless services facilities) in any area of the City, Franchisee shall underground its aerial facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of Franchisee's

Facilities being undergrounded in comparison to the total number and size of all other utility facilities being undergrounded.

Section 7.3. To the extent Franchisee is providing Services to personal wireless services facilities, Franchisee shall adhere to the design standards for such personal wireless services facilities, and shall underground its Facilities and/or place its Facilities within the pole as may be required by such design standards. For the purposes of clarity, this Section 7.3 does not require undergrounding or interior placement of Facilities within the pole to the extent that the personal wireless services facilities are located on utility poles that have pre-existing aerial wireline facilities and provided such construction of Franchisee's Facilities continue to comply with Section 7.1 or Section 7.2.

Section 7.4. Franchisee shall not remove any underground cable or conduit that requires trenching or other opening of the Rights-of-Way along the extension of cable to be removed, except as provided in this Section 7.4. Franchisee may remove any underground cable and other related facilities from the Right-of-Way that has been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way along the extension of cable to be removed, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 6. When the City determines, in the City's sole discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove the cable or conduit at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 9, prior to any such removal of underground cable, conduit and other related facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 13.1.

Section 7.5. Both the City and Franchisee shall be entitled to reasonable access to open utility trenches, provided that such access does not interfere with the other party's placement of utilities or increase such party's actual costs. Franchisee shall pay to the City the actual cost to the City resulting from providing Franchisee access to an open trench, including without limitation the pro rata share of the costs to access the open trench and any costs associated with the delay of the completion of a public works project.



The City shall pay to the Franchisee the incremental costs of providing such access to the open trench.

Section 7.6. The provisions of this Section 7 shall survive the expiration, revocation, abandonment or termination of this Franchise. Nothing in this Section 7 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

### **Section 8. Emergency Work/Dangerous Conditions.**

Section 8.1. In the event of any emergency in which any of Franchisee's Facilities located in or under any street endangers the property, life, health or safety of any person, or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which the Tukwila City Hall is open for business. The City retains the right and privilege to cut or move any Facilities located within the Rights-of-Way of the City, in response to any public health or safety emergency and Franchisee shall be liable to the City for the costs thereof.

Section 8.2. The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by sole negligence, intentional misconduct or criminal actions of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 8 except to the extent caused by the sole negligence, intentional misconduct or criminal actions of the City, its employees, contractors, or agents.

Section 8.3. Whenever the construction, installation or excavation of Facilities conducted by Franchisee as authorized by this Franchise has caused or materially contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the property and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

**Section 9. Work in the Rights-of-Way.**

Section 9.1. During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

Section 9.2. Whenever Franchisee shall commence work in any Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its cable or equipment, it shall apply to the City for a permit to do so and, in addition, shall give the City at least ten (10) working days prior notice (except in the case of an emergency) of its intent to commence work in the Rights-of-Way. The City shall only

issue permits that are in compliance with the TMC and the City's generally applicable design standards. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

Section 9.3. If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section 9.3, the Franchisee shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

- (a) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;
- (b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
- (c) Franchisee may deny such request for safety reasons.

Section 9.4. Except for emergency situations, Franchisee shall give at least seven (7) days' prior notice of intended construction to residents in the affected area prior to any underground construction or disturbance. Such notice shall contain the dates, contact number, nature and location of the work to be performed. At least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property, Franchisee shall physically post a notice on the property indicating the nature and location of the work to be performed. Door hangers are permissible methods of notifications to residents. Franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Following performance of the work, Franchisee shall restore the private property as nearly as possible to its condition prior to construction, except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee,

be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

Section 9.5. Upon receipt of a permit (except in emergency situations), Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 9.5 shall only apply to the extent necessary to protect above ground Facilities. Franchisee's tree trimming activities shall protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming shall be at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth not owned by the City except to the extent it is necessary that Franchisee trims trees or vegetation upon, overhanging, or encroaching on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent such vegetation from coming in contact with Franchisee's Facilities. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Public Works Director or designee.

Section 9.6. Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon written notice as determined by the City, to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities,

and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 9.7. Franchisee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070 and TMC 11.32.090(C)(1).

Section 9.8. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request from a third party or the City, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 9.9. The provisions of this Section 9 shall survive the expiration, revocation, abandonment, or termination of this Franchise.

## **Section 10. Restoration.**

Section 10.1. Franchisee shall, after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 22, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee. The Public Works Director or designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and

specifications.

Section 10.2. Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards.

Section 10.3. If conditions (e.g. weather) make the complete restoration required under Section 10 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 10.4. In the event Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way within the time reasonably directed to by the Public Works Director, or designee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee in accordance with the provisions of Section 14.3 and Section 14.4. In addition, and pursuant to Section 14.3 and Section 14.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with Section 24.

Section 10.5. The provisions of this Section 10 shall survive the expiration, revocation, abandonment, or termination of this Franchise.

## **Section 11. Safety Requirements.**

Section 11.1. Franchisee 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 lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee 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. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 11.2. If an unsafe condition or a violation of Section 11.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee 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 Franchisee and reimbursed to the City pursuant to Section 14.3 and Section 14.4.

Section 11.3. Additional safety standards include:

- (a) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities.
- (b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.
- (c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee 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.

Section 11.4. Stop Work Order. 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:

- (a) Be in writing;
- (b) Be given to the person doing the work or posted on the work site;
- (c) Be sent to Franchisee by overnight delivery;
- (d) Indicate the nature of the alleged violation or unsafe condition; and
- (e) Establish conditions, consistent with the applicable laws, regulations, ordinances or generally applicable standards under which work may be resumed.

## **Section 12. Work of Contractors and Subcontractors.**

Section 12.1. Franchisee'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 are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

## **Section 13. Maps and Records.**

Section 13.1. The Franchisee agrees and covenants that it shall, within 10 days of substantial completion of any construction project involving a Public Right-of-Way, provide to the City, at no cost to the City, accurate copies of as-built plans and maps stamped and signed by a professional land surveyor or engineer in a form and content acceptable to the Public Works Director or designee.

Section 13.2. Within thirty (30) days of a written request from the Public Works Director, the Franchisee shall furnish the City with information sufficient to demonstrate:



(1) that the Franchisee has complied with all applicable requirements of this Franchise; and (2) that all taxes, including but not limited to sales, utility and/or telecommunications taxes, due the City in connection with the Franchisee's services and Facilities provided by the Franchisee have been properly collected and paid by the Franchisee.

Section 13.3. Books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way and which are reasonably necessary to demonstrate compliance with the terms of this Franchise, shall, after reasonable prior notice from the City, be made available for inspection by the City at reasonable times and intervals but no more than one time each calendar year or upon the City's reasonable belief that there has been a violation of this Franchise by Franchisee; provided, however, that nothing in this Section 13.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 13.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this Section 13.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

Section 13.4. Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit, or in the event the City is permitted to charge franchise fees as further described in Section 15.1, or as otherwise required in this Franchise. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential, trade secret, or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee may take

appropriate steps to protect its interests. Nothing in this Section 13.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

Section 13.5. On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Franchisee's records reasonably related to the administration or enforcement of this Franchise and the collection of utility taxes, in accordance with GAAP. If the audit shows that tax payments have been underpaid by three percent (3%) or more, Franchisee shall pay the total cost of the audit.

#### **Section 14. Costs and Fees.**

Section 14.1. Franchisee shall pay a one-time fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise, not to exceed \$5,000. No construction permits shall be issued for the installation of Facilities authorized until such time as the City has received payment of this fee; further, this Franchise shall be considered void if the fee is not paid within ninety (90) days of receipt of the invoice. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established,

Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 14.3.

Section 14.2. In addition to Section 14.1, Franchisee shall promptly reimburse the City in accordance with the provisions of Section 14.3 and Section 14.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City.

Section 14.3. Consistent with state law, Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Right-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Right-of-Way as the result of the presence of Franchisee's Facilities in the Right-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation or rerouting of Franchisee's Facilities for any City public works project.

Section 14.4. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. Billing will be made on a monthly basis.

## **Section 15. City's Reservation of Rights**

Section 15.1. Franchisee hereby represents that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a Franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a Franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of

RCW 35.21.860 no longer apply or, if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

Section 15.2. Franchisee acknowledges that its operation with the City constitutes a telecommunications business subject to the utility tax imposed pursuant to the TMC Chapter 3.50. Franchisee stipulates and agrees that certain of its business activities are subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable services under TMC Chapter 3.50, and consistent with state and federal law. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend TMC Chapter 3.50 as may be permitted by law. Nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may be lawfully assessed on Franchisee's Services.

#### **Section 16. Police Powers and City Ordinances.**

Section 16.1. Nothing in this Franchise Ordinance shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of the Franchise granted by this Franchise Ordinance, including, but not limited to, any valid ordinance made in the exercise of the City's police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations, including design standards and utility accommodation policies, the location, elevation, manner of construction, and maintenance of any Franchisee Facilities located within any Public Right-of-Way or affecting any Public Right-of-Way, and the Franchisee shall promptly conform with all such regulations, unless compliance would cause the Franchisee to violate other requirements of law or be deemed discriminative under the Telecommunication Act of 1996. In the event of a conflict between the regulatory provisions of this Franchise Ordinance and any other ordinance(s) enacted under the

City's police power authority, such other ordinance(s) shall take precedence over the regulatory provisions set forth herein.

**Section 17. Limitation of City's Liability.**

Section 17.1. Administration by the City of the Franchise granted by this Franchise Ordinance shall not be construed to create the basis for any liability to any third party on the part of the City, its elected and appointed officials, officers, employees, and agents for any injury or damage from the failure of the Franchisee to comply with the provisions of this Franchise Ordinance; by reason of any plan, schedule or specification review, inspection, notice and order, permission, or other approval or consent by the City; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of the Franchise by the City; or for the accuracy of plans submitted to the City.

**Section 18. Compliance with All Applicable Laws.**

Section 18.1. Each party agrees to comply with all present and future federal, state and local laws, ordinances, rules and regulations. Neither the City nor Franchisee waive any rights they may have under any such laws, rules or regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. Franchisee further agrees to remove all liens and encumbrances arising as a result of said use or work. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner reasonably suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation when such statute, regulation, or ordinance necessitates this Franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment.

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

## **Section 19. Indemnification**

Section 19.1. Franchisee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise.

Section 19.2. Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 19. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

Section 19.3. The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 19.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including

costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

Section 19.4. The parties acknowledge that this Franchise may be subject to RCW 4.24.115. Accordingly, 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 Franchisee and the City, its officers, officials, employees, and volunteers, Franchisee's liability shall be only to the extent of Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 19.5. Notwithstanding any other provisions of this Section 19, Franchisee 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, 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, intentional misconduct or criminal actions on the part of the City, its officers, agents, employees,

volunteers, or elected or appointed officials, or contractors. In no event shall the City be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors except to the extent any such damage or destruction is caused by or arises from the sole negligence or intentional misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

Section 19.6. The provisions of this Section 19 shall survive the expiration, revocation, termination, or abandonment of this Franchise.

## **Section 20. Insurance.**

Section 20.1. Franchisee shall procure and maintain for the duration of the Franchise and as long as Franchisee 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. Franchisee's maintenance of insurance as required by the Franchise shall not be construed to limit the liability of Franchisee 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. Franchisee shall obtain insurance of the types and coverage described below:



(i) 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 contractual liability arising out of “insured contract” as defined in the ISO CG 00 01. 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 Franchisee’s Commercial General Liability insurance policy with respect 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.

(ii) Business 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.

(iii) Contractors Pollution Liability insurance shall be in effect throughout the entire Franchise covering losses caused by pollution conditions that arise from the operations of Franchisee. 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.

(iv) Workers’ Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

(v) Excess or Umbrella Liability insurance shall be excess over Franchisee’s Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Contractor’s Excess or Umbrella Liability insurance policy.

(c) Minimum Amounts of Insurance. Franchisee shall maintain the following insurance limits:

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

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

(iii) Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

(iv) 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 Franchisee's Commercial General Liability and Business Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

(d) Other Insurance Provisions. Franchisee's Commercial General Liability, Business 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 the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of Franchisee'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.

(f) Verification of Coverage. Franchisee shall furnish the City with certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Franchise. Upon request by the City, Franchisee shall furnish certified copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all subcontractors' coverage.

(g) Subcontractors. Franchisee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of Franchisee-provided insurance as set forth herein, except Franchisee shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors.

(h) Notice of Cancellation. Franchisee 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 Franchisee 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 Franchisee 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 Franchisee Limits. If Franchisee 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 Franchisee, irrespective of whether such limits maintained by Franchisee 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 Franchisee.

(k) Franchisee – Self-Insurance. If Franchisee is self-insured or becomes self-insured during the term of the Franchise, Franchisee or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Franchisee or its parent company is responsible for all payments within the self-insured retention; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in Section 19.

## **Section 21. Bonds.**

Section 21.1. Construction Performance Bond. Upon an application for a permit involving excavation, installation, construction, restoration or relocation of the Facilities and if required by the City, Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City in an amount equal to 150% of the construction cost, which should not be less than \$2,000. The amount of the Performance Bond may be reduced during construction as determined by the City. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction;

(5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in Section 21.2.

Section 21.2. Maintenance Bond. Following excavation, installation, construction, restoration or relocation of the Facilities and if required by the City, Franchisee shall furnish a two (2) year maintenance bond (“Maintenance Bond”), or other surety acceptable to the City, at the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of the construction work. The Maintenance Bond in this Section 21.2 must be in place prior to City’s release of the bond required by Section 21.1.

Section 21.3. Franchise Bond. Franchisee shall provide City with a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) (“Franchise Bond”) running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 21 shall constitute a material breach of this Franchise. The amount of the bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

## **Section 22. Abandonment of Franchisee's Facilities.**

Section 22.1. Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within thirty (30) days of receiving written notice from the Public Works Director or designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Right-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such removal provided Franchisee shall not be responsible for any changes to the Right-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 22.2. Notwithstanding Section 22.1 above, the City may permit Franchisee's improvements to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

Section 22.3. Any Facilities which are not removed within one hundred twenty (120) days of either the date of termination or revocation or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 22 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.

Section 22.4. If Franchisee leases a structure in the Right-of-Way from a landlord and such landlord later replaces, removes or relocates the structure, for example by building a replacement structure, Franchisee shall remove or relocate its Facilities within the Right-of-Way within ninety (90) days of such notification from the landlord at no cost to the City.

Section 22.5. The provisions of this Section 22 shall survive the expiration, revocation, abandonment, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

**Section 23. Forfeiture and Revocation.**

Section 23.1. If Franchisee willfully violates or fails to comply with any of the provisions of this Franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given Franchisee by the City under the provisions of this Franchise, then Franchisee shall, at the election of the Tukwila City Council, forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Council after a hearing held upon notice to Franchisee.

Section 23.2. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. This hearing does not give the right to either the City or Franchisee to conduct discovery, subpoena witnesses, or take depositions. Within thirty (30) days after the hearing, the Tukwila City Council, on the basis of the record and TMC 11.32.120(2), will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Tukwila City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Tukwila City Council does not grant any additional period, the Tukwila City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

**Section 24. Remedies to Enforce Compliance.**

Section 24.1. The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any

remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. In addition to any other remedy provided in this Franchise, Franchisee reserves the right to pursue any remedy available at law or in equity to compel or require the City, its officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms of this Franchise. Further, all rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to either the City or Franchisee. 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. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to effect any such waiver. The parties agree that in the event a party obtains injunctive relief, neither party shall be required to post a bond or other security and the parties agree not to seek the imposition of such a requirement.

Section 24.2. If either party (the “Defaulting Party”) shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to such party under the provisions of this Franchise, the other party (the “Non-Defaulting Party”) shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of any such breach and the Defaulting Party shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the Non-Defaulting Party may specify a longer cure period, and condition the extension of time on the Defaulting Party’s submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Defaulting Party does not comply with the specified conditions, the Non-Defaulting Party may pursue any available remedy at law or in equity as provided in Section 24.1 above, or in the event Franchisee has failed to timely cure or

commence cure of the breach, the City may, at its discretion, (1) revoke this Franchise with no further notification pursuant to this Section 24, (2) refuse to grant additional permits, or (3) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the Franchisee or Franchise Bond set forth in Section 21.3.

**Section 25. Non-Waiver.**

Section 25.1. The failure of either party to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.

**Section 26. Acceptance.**

Section 26.1. Within sixty days of the approval of this Franchise Ordinance, the Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as Attachment B. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 20, any applicable construction Performance Bond pursuant to Section 21.1, the Franchise Bond required pursuant to Section 21.3, and the administrative fee pursuant to Section 14.1.

**Section 27. Survival.**

Section 27.1. All of the provisions, conditions, and requirements of Section 6, Section 7, Section 9, Section 10, Section 19, Section 20, Section 22, Section 33, Section 35.3 and Section 35.4 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its



heirs, successors and assigns equally as if they were specifically mentioned where Franchisee is named herein.

### **Section 28. Assignment.**

Section 28.1. This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless prior written consent is provided to the City within sixty (60) days following the assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 28.1, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise. In the event that a transfer, assignment, or disposal of Franchisee's ownership is approved by the Washington Utilities and Transportation Commission ("WUTC"), the City will be deemed to have consented to such transfer. Grantee will provide City with a copy of any such approval.

Section 28.2. Any transactions which singularly or collectively result in a change of 50% or more of the (i) ownership or working control (for example, management of Franchisee or its Telecommunications facilities) of the Franchisee; or (ii) ownership or working control of the Franchisee's Telecommunications facilities within the City; or (iii) control of the capacity or bandwidth of the Franchisee's Telecommunication facilities within the City, shall be considered an assignment or transfer requiring notice to the City pursuant to this Franchise. Such transactions between affiliated entities are not exempt from notice requirements. A Franchisee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee within sixty (60) days following the closing of the transaction.

### **Section 29. Entire Agreement.**

Section 29.1. 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 of this Franchise.

### **Section 30. Extension.**

Section 30.1. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

- (a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or
- (b) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 22.

### **Section 31. Eminent Domain.**

Section 31.1. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

### **Section 32. Vacation.**

Section 32.1. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. If Franchisee has Facilities in the vacated portion of the Right-of-Way, the City shall use reasonable efforts to reserve an appurtenant easement for Franchisee within the vacated portion of the Right-of-Way within which Franchisee may continue to operate existing Facilities under the terms of this Franchise for the remaining period of the term set forth in Section 4. Notwithstanding the preceding sentence, the City shall incur no liability for failing to reserve such easement. The City shall notify the Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area, in which Franchisee is located. The City may, after sixty (60) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

### **Section 33. Hazardous Substances.**

Section 33.1. Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property to the extent caused by Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage or disposal of such substances by Franchisee's agents, contractors or other persons acting under Franchisee's control, whether or not intentional.

Section 33.2. The obligations of the Franchisee under this Section 33 shall survive the expiration, revocation, abandonment, earlier termination of the Franchise granted by this Franchise Ordinance.

### **Section 34. Notice**

Section 34.1. Any Notice or information required or permitted to be given to the parties under this Franchise agreement may be sent to the following addresses unless otherwise specified:

CITY OF TUKWILA  
Public Works Director  
6200 Southcenter Blvd.  
Tukwila, WA 98188

FRANCHISEE  
Wholesail Networks, LLC  
Attn: Legal Department  
135 Lake Street South, Suite 155  
Kirkland, WA 98033  
legal@ziplay.com

Section 34.2. The Franchisee's current emergency contact shall be the Network Operations Center and is reachable via the following number (509) 823-1886, and shall be available 24 hours a day, seven days a week. The Franchisee shall promptly notify the City of any change in the notice address or emergency contact (or title) and phone number.

## **Section 35. Miscellaneous.**

Section 35.1. Prior to constructing any Facilities, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.

Section 35.2. City and Franchisee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this Franchise.

Section 35.3. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

Section 35.4. This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or King County Superior Court.

Section 35.5. Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 35.6. Where the context so requires, the singular shall include the plural and the plural include the singular.

Section 35.7. Franchisee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or have been obtained by Franchisee by any person or entity.

Section 35.8. This Franchise may be enforced at both law and equity.

Section 35.9. Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Section 35.10. This Franchise is subject to all current and future applicable federal, State and local laws, regulations and orders of governmental agencies as amended, including but not limited to the Communications Act of 1934, as amended, the Telecommunications Act of 1996, as amended and the Rules and Regulations of the FCC. Neither the City nor Franchisee waive any rights they may have under any such laws, rules, or regulations.

Section 35.11. There are no third party beneficiaries to this Franchise.

**Attachment B**

STATEMENT OF ACCEPTANCE

\_\_\_\_\_, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

\_\_\_\_\_

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

Date:

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

)ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared, \_\_\_\_\_ of \_\_\_\_\_, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of \_\_\_\_\_,  
Residing at \_\_\_\_\_  
MY COMMISSION EXPIRES: \_\_\_\_\_.







## INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**

FROM: **Pete Mayer, Interim Public Works Director**

BY: **Adib Altallal, Utilities Engineer**

CC: **Mayor Thomas McLeod**

DATE: **July 19, 2024**

SUBJECT: **Large Meter Water Replacement - Purchase**  
**Project No. 92340101**  
**Purchase Agreement**

### **ISSUE**

Approve the purchase agreement of eleven Sensus Large Water Meters from Ferguson.

### **BACKGROUND**

Water meters provide the City accurate information about usage and potential leaks. Each water meter has a useful life of 10 to 15 years. As meters reach the end of their useful life, tracking of water usage and leakage becomes less accurate. The City might be missing out on a large revenue or even in rare cases overcharging customers. As technology advances, replacing old meters becomes even more essential.

### **DISCUSSION**

The City uses Sensus water meters due to their reliability and availability. The City entered into a sole-source agreement with Ferguson as they are the only supplier of Sensus meters in the region. With smaller water meters, such as 1", City crew performs that work routinely. The City is looking to replace two 8" meters, seven 6" meters, and two 4" meters at large businesses throughout the City. Since it is a like-for-like replacement, the City crew will attempt to perform the work in-house to save a large sum of money. The requested amount of \$123,531.27 is strictly for the purchasing of those water meters; no labor is included in that cost.

### **FINANCIAL IMPACT**

The purchase agreement is for \$123,531.27. The project costs are within budget and are 100% funded by the water enterprise fund.

	<b><u>Cost Estimate</u></b>	<b><u>2023-2024 Budget</u></b>
Ferguson Meters Cost	<b>\$123,531.27</b>	<b>\$200,000.00</b>

### **RECOMMENDATION**

Council is being asked to approve the purchase agreement with Ferguson in the amount of \$123,531.27 for the purchase of two 8" meters, seven 6" meters, and two 4" meters as part of the Large Meter Water Replacement Project and consider this item on the Consent Agenda at the August 5, 2024, Regular Council Meeting.

**Attachments:** 2023 CIP, Page 61  
Ferguson Quote  
Resolution 1864

# CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2023 to 2028

**PROJECT:** Large Meter Water Replacement

Project No. 92340101

**DESCRIPTION:** Upgrade and replace the City's existing large water meters.

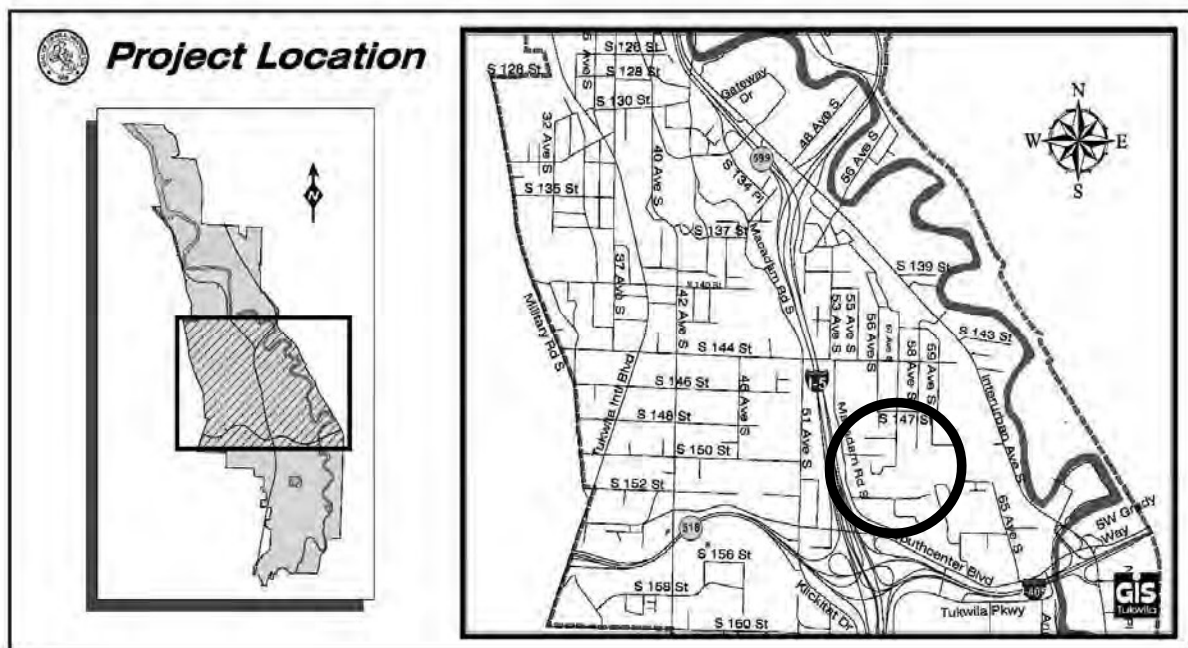
**JUSTIFICATION:** The new meters will enable easier and safer access to the meters. A potential leak would also be detected much quicker.

**STATUS:** Project scheduled for 2023 through 2027.

**MAINT. IMPACT:** New equipment will slightly reduce maintenance needs.

**COMMENT:** As most of the large water meters are within the CBD area, the construction will be phased out over several years to minimize disruption.

FINANCIAL (in \$000's)	Through		Estimated							TOTAL
	2021	2022	2023	2024	2025	2026	2027	2028	BEYOND	
<b>EXPENSES</b>										
Design			50	50	50	50				200
Land (R/W)										0
Const. Mgmt.										0
Construction				100	100	100	100	100	600	1,100
<b>TOTAL EXPENSES</b>	<b>0</b>	<b>0</b>	<b>50</b>	<b>150</b>	<b>150</b>	<b>150</b>	<b>100</b>	<b>100</b>	<b>2,000</b>	<b>1,300</b>
<b>FUND SOURCES</b>										
Awarded Grant										0
Proposed Grant										0
Mitigation Actual										0
Mitigation Expected										0
Utility Revenue	0	0	50	150	150	150	100	100	600	1,300
<b>TOTAL SOURCES</b>	<b>0</b>	<b>0</b>	<b>50</b>	<b>150</b>	<b>150</b>	<b>150</b>	<b>100</b>	<b>100</b>	<b>600</b>	<b>1,300</b>



<b>Deliver To:</b> <b>From:</b> Doug Schrock <b>Comments:</b>
---

FERGUSON WATERWORKS #3156

Price Quotation

Phone: 253-538-8275

Fax: 253-531-9909

**Bid No:** B016621  
**Bid Date:** 06/04/24  
**Quoted By:** DGS

**Cust Phone:** 206-433-1800  
**Terms:** NET 10TH PROX

**Customer:** CITY OF TUKWILA  
METER ACCOUNT  
600 MINKLER BLVD  
TUKWILA, WA 98188

**Ship To:** CITY OF TUKWILA  
METER ACCOUNT  
600 MINKLER BLVD  
TUKWILA, WA 98188

**Cust PO#:** LARGE OMNI METERS

**Job Name:** OMNI C2 METERS

Item	Description	Quantity	Net Price	UM	Total
SF6XCXXBF1SXXXND	6 OMNI+ F2 100CF AMR 1FPL 45LL ----	4	11655.370	EA	46621.48
SC6X3XXBF1SXXXND	6 OMNI+ C2 100CF AMR 1FPL 24LL ----	3	6813.580	EA	20440.74
SC4X3XXBF1SXXXND	4 OMNI+ C2 100CF AMR 1FPL 20LL ----	2	3944.710	EA	7889.42
SF8XCCXXBF1SXXXND	8 OMNI+ F2 100CF AMR 1FPL 53LL	2	18496.660	EA	36993.32
			<b>Net Total:</b>		\$111944.96
			<b>Tax:</b>		\$11586.31
			<b>Freight:</b>		\$0.00
			<b>Total:</b>		\$123531.27

Quoted prices are based upon receipt of the total quantity for immediate shipment (48 hours). SHIPMENTS BEYOND 48 HOURS SHALL BE AT THE PRICE IN EFFECT AT TIME OF SHIPMENT UNLESS NOTED OTHERWISE. QUOTES FOR PRODUCTS SHIPPED FOR RESALE ARE NOT FIRM UNLESS NOTED OTHERWISE.

CONTRACTOR CUSTOMERS: IF YOU HAVE DBE/MBE/WBE/VBE/SDVBE/SBE GOOD FAITH EFFORTS DIVERSITY GOALS/ REQUIREMENTS ON A FEDERAL, STATE, LOCAL GOVERNMENT, PRIVATE SECTOR PROJECT, PLEASE CONTACT YOUR BRANCH SALES REPRESENTATIVE IMMEDIATELY PRIOR TO RECEIVING A QUOTE/ORDER.

Seller not responsible for delays, lack of product or increase of pricing due to causes beyond our control, and/or based upon Local, State and Federal laws governing type of products that can be sold or put into commerce. This Quote is offered contingent upon the Buyer's acceptance of Seller's terms and conditions, which are incorporated by reference and found either following this document, or on the web at <https://www.ferguson.com/content/website-info/terms-of-sale>  
Govt Buyers: All items are open market unless noted otherwise.



**HOW ARE WE DOING? WE WANT YOUR FEEDBACK!**

Scan the QR code or use the link below to complete a survey about your bids:

<https://survey.medallia.com/?bidsorder&fc=1539&on=1224>



# City of Tukwila

Washington

Resolution No. 1864

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, WAIVING THE BIDDING REQUIREMENTS AND AUTHORIZING SOLE-SOURCE PURCHASE OF THE RUGID PUMP CONTROL SYSTEM PANELS AND SENSUS WATER METERS WITH AUTOMATIC METER READING.**

**WHEREAS**, RCW 39.04.280(1)(a) provides for exemption from competitive bidding requirements when purchases are clearly and legitimately limited to a single source of supply; and

**WHEREAS**, the City's water, sewer, and surface water utility systems are equipped with matching equipment and control systems for consistent operational uniformity; and

**WHEREAS**, the City currently has 10 sewer lift stations, 5 storm lift stations, 1 two-MG reservoir tank and pump station, and 4 wholesale water supply taps; and

**WHEREAS**, the City's existing control system consists of pumping control panels manufactured by Rugid Computer; and

**WHEREAS**, the City uses Sensus water meters with automatic meter reading capability compatible with the City's Eden utility billing system;

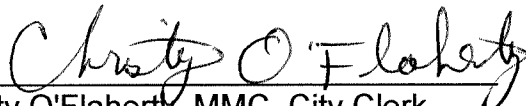
**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** It has been determined that the City's water meters and sewer pump control panels are limited to a sole source. The competitive bidding requirements for the City's purchase of pumping control panels and water meters are hereby waived in order to ensure compatibility with the existing system.

**Section 2.** The Public Works Department is authorized to purchase equipment from Rugid Computer and Sensus for the City's water, sewer and surface water utility systems to match current needs and maintain operational consistency in accordance with the waiver authorization denoted under RCW 39.04.280(2)(a)


PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at  
a Regular Meeting thereof this 21<sup>ST</sup> day of September, 2015.

ATTEST/AUTHENTICATED:

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

  
\_\_\_\_\_  
Kate Kruller, Council President

APPROVED AS TO FORM BY:

  
\_\_\_\_\_  
Rachel B. Turpin, City Attorney

Filed with the City Clerk: 9-16-15  
Passed by the City Council: 9-21-15  
Resolution Number: 1864





## INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Services Committee**  
 FROM: **Adib Altallal, Utilities Engineer**  
 CC: **Mayor Thomas McLeod**  
 DATE: **July 19, 2024**  
 SUBJECT: **Sewer Lift Station 5 Retrofit – Construction Management Supplement**  
**Project No. 92340201**  
**Contract No. 23-019, Amendment #1**

### **ISSUE**

Approve supplemental agreement for Contract No. 23-019 with PACE Engineers for the Sewer Lift Station 5 Retrofit project.

### **BACKGROUND**

Sewer Lift Station 5 is located near the I-405 ramps at Interurban Ave S, along Fort Dent Way. The sewer lift station was originally constructed in 1980 and later updated in 2000. No significant improvements have taken place since. The pumps, fittings, and electrical components have neared their useful life and have resulted in an increased need for maintenance. The existing pumps are obsolete, and the electrical components will need to be brought up to code to prevent unsafe access by City staff. Rebuilding Sewer Lift Station 5 will reduce maintenance costs and reduce the risk of failure.

### **DISCUSSION**

The Sewer Lift Station 5 design portion of the project went according to plan and was under budget and on time. We were also successful in advertising the project as the bids came in below the allocated budget. To save further money, our Capital Improvement Inspector will act as the primary inspector for the Sewer Lift Station 5 project. Due to the complex nature of lift stations, we will also need the services of specialty inspectors, such as electrical and geotechnical inspectors. We will also require the services of the project engineer from PACE if assistance is needed in interpreting the project documents.

### **FINANCIAL IMPACT**

The contract supplement is for \$129,476.30, which will bring the contract total to \$366,277.55 for the construction management services portion of the Sewer Lift Station 5 Retrofit project. The project costs are within budget and are 100% funded by the sewer enterprise fund.

	<b><u>PACE Contract</u></b>	<b><u>2023-2024 Design Budget</u></b>
Original Contract	\$236,801.25	\$550,000.00
Supplement Contract	<b><u>129,476.30</u></b>	
Total	\$366,277.55	

### **RECOMMENDATION**

Council is being asked to approve a supplemental agreement for construction management services with PACE in the amount of \$129,476.30 for the Sewer Lift Station 5 project and consider this item on the Consent Agenda at the August 5, 2024 Regular Meeting.

**Attachments:** 2023 CIP, Page 67  
PACE Supplemental Agreement



# City of Tukwila

6200 Southcenter Boulevard, Tukwila WA 98188

Agreement Number:

## CONTRACT FOR SERVICES

### Amendment #1

#### Between the City of Tukwila and PACE Engineers

That portion of Contract No. 23-019 between the City of Tukwila and PACE Engineers is hereby amended as follows:

**Section 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, 2025, 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, 2025 unless an extension of such time is granted in writing by the City.

**Section 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 "B" attached hereto, provided that the total amount of payment to the Consultant shall not exceed \$366,277.55 without express written modification of the Agreement signed by the City.

All other provisions of the contract shall remain in full force and effect.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024.





**City of Tukwila**

6200 Southcenter Boulevard, Tukwila WA 98188

Agreement Number:

CITY OF TUKWILA

PACE ENGINEERS:

\_\_\_\_\_  
Thomas McLeod, Mayor

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

Printed Name: Kenneth H Nilsen

ATTEST/AUTHENTICATED:

Title: President

\_\_\_\_\_  
Andy Youn, City Clerk

APPROVED AS TO FORM:

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



**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 PACE Engineers, 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 design services in connection with the project titled Sewer Lift Station No. 5 Rebuild.
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 "B" attached hereto, provided that the total amount of payment to the Consultant shall not exceed \$236,801.25 without express written modification of the Agreement signed by the City.
  - B. The Consultant may submit vouchers 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:

PACE Engineers  
11255 Kirkland Way #300  
Kirkland, WA 98033
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 17th day of February, 2023.

CITY OF TUKWILA

eSigned via SeamlessDocs.com  
*Allan Ekberg*

Key: d02b8ff5-c13-45a0-9148-33034e9a12ba

Allan Ekberg, Mayor 2/17/23

PACE Engineers:

By: *Kenneth H Nilsen*

Printed Name: Kenneth H Nilsen

Title: President

ATTEST/AUTHENTICATED:

eSigned via SeamlessDocs.com  
*Christy O'Flaherty*

Key: 57b2d63a-f67e-40e6-bc0d-f86c37b2c3a1

Christy O'Flaherty, City Clerk

APPROVED AS TO FORM:

eSigned via SeamlessDocs.com  
*Kari L. Sand*

Key: 80674a0e-8033-4778-931f-1b42f05f0e

Office of the City Attorney

## EXHIBIT A

### **Scope of Services Professional Civil Engineering Services Lift Station No. 5 Design Retrofit**

June 1, 2022

#### **Project Understanding**

The City of Tukwila would like to retrofit the existing sanitary sewer Lift Station No. 5. The existing lift station is a wet/drywell station that is reaching its useful life. Due to the fact that the existing wetwell does not have sufficient space to allow for electrical upgrades that will meet current regulatory requirements, the City would like to abandon the existing drywell and construct an above ground electrical shelter with new electrical controls, construct a new meter vault and install new submersible pumps, rehab the existing wet well and install miscellaneous site improvements.

#### **Scope of Work**

A detailed proposal consisting of fourteen (14) tasks follows. This proposal includes necessary civil, structural, survey, electrical and geotechnical services through the design phase of this project. A separate scope of work and budget for construction administration will be prepared prior to bidding the work and will be based on the City's needs.

PACE will be the prime consultant for the entire Scope of Work and will oversee and administer all work on the project. PACE will complete all civil, survey and permitting services in-house and will subcontract with Follett Engineering for electrical engineering and AESI for geotechnical evaluations. Quality Coating Inspections and Consulting will also be utilized in the preparation of coating specifications for the Lift Station wet well upgrade and for inspection of coating applications during the construction phase.

#### **Task 1 –Project Management**

PACE will provide administration and coordination of the project. The following items are included in this task:

1. Attend coordination meetings with the City. It is anticipated that up to 4 meetings will be held. Major design review meetings will be held in-person with other review meetings to be done via Teams. The following major review meetings are anticipated:
  - a. Schematic Design Review
  - b. 30% Design Development Review
  - c. 60% Design Development Review
  - d. 90% Design Development Review
2. Conduct one field reconnaissance of site with the design team and City staff.
3. Review existing information provided by the City – as-builts, maintenance records, etc.
4. Coordination with subconsultants.
5. In-house project administration, scheduling, and direction of design team staff.
6. Preparation of monthly progress reports.

### **Task 2 – Topographic Survey**

PACE will provide a topographic and boundary map showing all locatable utilities and surface conditions, environmental constraints and other relevant items at the following locations:

The following items are included in this task:

1. Research and confirm primary control points for use on the project.
2. Establish horizontal and vertical control work points along the route.
3. Survey the corridor locating surface improvements, type of material and changes in elevation.
4. All identifiable underground utilities will be surveyed, based on surface indications, radio frequency locating and readily available maps from the service provider.
5. The rights of way and adjoining properties will be calculated from record information and recovered monuments.
6. The survey / base map will be prepared in AutoCAD at a scale of 1" = 20', showing the rights of way and lot lines, two-foot contours, and surveyed features. Other features from City GIS data (sensitive areas, setbacks, etc. will may be included to augment the survey).

PACE will provide the City with an AutoCad drawing and pdf of the basemap.

### **Task 3 - Geotechnical Evaluation**

AESI will provide a geotechnical evaluation of the LS No. 5 site. This evaluation will include one soil boring 12-feet deep in the vicinity of the new meter vault and prepare a geotechnical design memorandum (See the attached Scope of Work from AESI for more details on the geotechnical evaluation)

### **Task 4 - Easement Preparation and Acquisition**

It is assumed that the project will not require any permanent or temporary construction easements. If that is not the case any required work will be on a time and expense basis.

### **Task 5 – Public Involvement**

PACE will provide support to the City for the public involvement process. This includes preparing information for and attending one community meeting. The community meeting will be for the businesses in the project vicinity. The City will be responsible for setting up the meeting time and location and notifying the businesses. PACE will prepare a written summary of the community meeting. Additional public involvement may be required for the SEPA process and is included in Task 10.

### **Task 6 – Conceptual Design**

Based on the site survey, PACE will prepare up to 3-conceptual alternatives for LS No. 5 for City review and comment. Specific items requested by the City include:

- Replace the two existing vertical turbine pumps from the drywell, with two submersible pumps located within the wetwell
- Painting of the wet well
- A new electrical control and instrumentation building
- Additional site lighting



- Potential relocation of the existing generator based on the site layout
- Replace the existing lawn within the median with a hard surface that does not require frequent maintenance
- Paint the curb around the median (it is assumed it can be retained). The City will provide covers over the existing bollards
- Remove the irrigation meter and upsize the second water meter to a 2-inch meter for greater capacity. This may require a new PRV and backflow preventor
- Evaluate the antenna for the telemetry
- Replace the existing flow meter within a new vault, preferably outside of the travel lane if possible.
- Install a new yard hydrant for washdown of the facility

#### **Task 7 – Schematic Design (30 % design)**

Based on the City's selection of the preferred layout based on the conceptual designs, PACE will prepare a schematic design of the proposed improvements for the lift station retrofit. PACE will also prepare an estimate of probable construction costs for City review and comment. This work includes:

1. Schematic layout of the new meter vault
2. Schematic retrofit of the existing wet well
3. Schematic layout of the new electrical control shelter
4. Schematic layout of proposed improvements
5. Prepare budget-level construction cost estimate.

#### **Task 8 – Design Development Plans (60% Plans, Specifications and Estimates)**

Based on City comments on the Schematic Design, PACE will prepare Design Development Plans (60%) of the improvements. We will also prepare an outline of the specifications and prepare an estimate of probable construction costs for City review and comment. This work includes:

1. Recommendations for bypassing the flow during construction.
2. Design of the new meter vault
3. Design of the new wet well retrofit
4. Design of the electrical control shelter
5. Design of the site improvements discussed in Task 6
6. Outline of the proposed specifications using APWA/WSDOT format.
7. Prepare budget-level construction cost estimate.

#### **Task 9– Electrical Plans/Telemetry and Specifications**

Follett Engineering will evaluate the project and will provide plans and specifications for site power needs as well as the required communications and controls for Lift Station No .5. It is assumed that we will utilize the existing generator. Specific items are as follows:

### Electrical Pre-Design

Follett Engineering will prepare the following electrical design and evaluation:

- Determine/confirm the adequacy of the existing generator for the new submersible pump design
- Work closely with City for design and installation of Calvert Technical Services controls.
- Prepare preliminary electrical drawings.
- Prepare a preliminary construction cost estimate of the above items.
- Summarize the above items in a Technical Memorandum.

### Final Electrical Design

Follett Engineering will prepare the final electrical design and appurtenances based upon review comments from the City. The final electrical design includes the demolition of all electrical and I&C equipment and replacement with all new electrical equipment including the motor control center and ATS and all new controls and instrumentation and provide a Technical Memorandum outlining the various options including costs to the City for their review and approval of the recommended alternative. Follett Engineering will prepare construction level plans and specifications based upon City review comments.

### Task 10 - SEPA

PACE will prepare a SEPA checklist for the proposed work. It is assumed that the City will act as its own lead agency and will issue the Determination. It is assumed that the City will mail and post the SEPA documents in accordance with SEPA requirements. PACE will assist the City with a public hearing to solicit comment on the SEPA determination if required.

### Task 11 – Permitting

PACE will coordinate with the required permitting agencies and prepare all necessary permit applications. This task will be initiated early in the design process, based on the 60% Design Development plans. It is assumed that the City of Tukwila Park Right-of-Way Use Permit will be the only permit required for this project.

We assume that all permit fees to be paid directly by the City.

### Task 12- Construction Document Development (100% Plans, specifications and estimates)

PACE will provide construction level documents based upon City comments from the Design Development (60% plan review). At this stage we will also have developed fairly complete project specifications. We will utilize contract documents and general provisions from past City projects and will create specific technical specifications as needed. We anticipate the project will bid as one schedule and that the bid documents will be based on the most recent Washington State Department of Transportation “Standard Specifications for Road, Bridge and Municipal Construction”, It is assumed that based on the City’s review of these documents there will be one set of revisions to get the documents “Bid-Ready”

### Task 13 - QA (Quality Assurance)

In order to assure that the final plans and specifications are complete, accurate and appropriate, PACE will conduct a Quality Assurance review of the documents prior to each submittal to the City. The review will consist of a complete sheet-by-sheet and contract document review to assure the City that the documents meet the “standard level of care” of our industry.

#### **Task 14 – Management Reserve Fund**

If directed by the City, PACE will provide services needed to assist the City with tasks related to this project that were not specifically addressed in this scope of work. When requested by the City, PACE will provide a scope and budget for the task identified by the City. PACE will not proceed with the task until written authorization has been provided by the City.

#### **Task 15 - Construction Services**

This task includes management of the project during the bidding and construction period. We have not included a budget herein for construction services; however, PACE is available to provide construction services as needed. PACE will prepare a construction administration proposal following completion of design and once the City's needs are known. Some of the services that could be provided under this task include the following:

1. Bid the project through a bidding service such as Builders Exchange.
2. Answer questions during the bidding period.
3. Issue addenda as necessary.
4. Attend a pre-bid meeting as required.
5. Attend the bid opening.
6. Conduct reference checks of the low bidder and prepare recommendation of award.
7. Attend and direct the pre-construction conference and provide meeting minutes to all attendees.
8. Review material submittals for compliance with contract documents.
9. Provide construction staking for the improvements.
10. Review, approve and prepare contract pay estimates.
11. Prepare change orders as necessary, including all documentation and coordination with the contractor.
12. Attend and conduct construction meetings as required and prepare and distribute meeting notes.
13. Monitor construction to determine contractor compliance and prepare all letters and documentation regarding same. We assume that the City would provide an inspector for the project and PACE staff would visit the site as necessary.
14. Address construction questions as they arise.
15. Prepare punch lists and conduct final inspection, and prepare recommendation of project acceptance.
16. Prepare As-Built drawings.

#### **PROJECT COSTS**

The costs associated with the above described work are shown on the attached spreadsheet.

# EXHIBIT B

**PACE Engineers**      **Project Name** Project Budget Worksheet - 2023 Washington Standard Rates      **Task #:** Tukwila - Fort Dent      **Location:** KHN      **Date:** 12/20/2022

**Project #:** \_\_\_\_\_      **Billing Group #:** \_\_\_\_\_      **Prepared By:** \_\_\_\_\_      **Date:** \_\_\_\_\_

Labor Hours by Classification												
Staff Type # (See Labor Rates Table)	1	12	33	14	66	74	19	41	43	58	113	118
Staff Type Hourly Rate	\$272	\$225	\$182	\$195	\$195	\$156	\$210	\$225	\$210	\$238	\$156	\$142
Drawing/Task Title	Sr. Principal Engineer	Project Manager	Sr. Planner	Project Engineer	Sr. Project GIS Analyst	CAD Tech III	Sr. Structural Engineer	Principal Surveyor	Survey/Project Manager	Two-Person Crew	Survey Tech V	Sr. Project Administrator
Task 1 - Project Management	8	8										
Coordination Meetings (4-total)	2	4		4								
Field Review/Records Research	12	8										
Team Coord incl subs/invoicing		1										
Task 2 - Topographic Survey	1	2						2	11	20	16	
Task 3 - Geotechnical Evaluation												
Task 4 - Easements (NIC)	8	8	16									
Task 5 - Public Involvement	4	16		16	2							
Task 6 - Conceptual Design	4	12		16			4					
Task 7 - Schematic Design (30%)	4	24		24			12					
Task 8 - 60% Plans	8	8		8								
Specifications	1	2		6								
Cost Estimates	1	8		6								
Task 9 - Electrical & Telemetry	2	8	24	6	4							
Task 10 - SEPA	1	4	12									
Task 11 - Permitting	16	48	8	48		64	24				24	
Task 12 - Construction Documents							4					
Task 13 - QA												
Task 14 - Management Reserve Fund												
Task 15 - Construction Services (NIC)												
<b>Hours Total</b>	76.0	161.0	60.0	128.0	6.0	176.0	44.0	2.0	11.0	20.0	16.0	44.0
<b>Labor Total</b>	\$20,672	\$36,225	\$10,920	\$24,960	\$1,170	\$27,456	\$9,240	\$450	\$2,310	\$4,760	\$2,496	\$6,248

Hour	16.0	10.0	20.0	50.0	3.0	40.0	54.0	76.0	112.0	40.0	9.0	15.0	42.0	17.0	220.0	20.0
Dollar	\$3,976	\$2,224	\$5,064	\$10,241	\$722	\$8,136	\$10,694	\$13,988	\$21,176	\$7,808	\$1,892	\$3,242	\$8,060	\$3,356	\$41,136	\$5,192

Please note this project is budgeted as a whole and not by task.

Expenses	rate/unit	Quantity	Reimbursable Cost
Postage/Courier			
Printing Costs			
Photo/Video			
Mileage/Travel/Per Diem			
Miscellaneous			\$500.00
<b>Total</b>			\$500.00

Subconsultants	rate/unit	Quantity	Subconsultant Subtotal
Utility Locate	\$2,000		
Geotechnical Engineer	\$9,750		
Electrical Engineer	\$44,245		
I & C (City Provided - Calvert)			
<b>Subconsultant Subtotal</b>			\$5,995.00
Markup	15%		
<b>Total</b>			\$64,394.25

PACE Billed Labor Total	\$146,907.00
Reimbursable Expenses	\$500.00
Subconsultants	\$64,394.25
Management Reserve Fund	\$15,000.00
Budget Reconciliation LS 4&12	\$10,000.00
<b>Total Project Budget</b>	<b>\$236,801.25</b>

## CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2023 to 2028

**PROJECT:** Sewer Lift Station No. 5 Rebuild

Project No. 92340201

**DESCRIPTION:** Rebuilding of sewer lift station 5 will reduce maintenance costs and reduce the risk of failure.

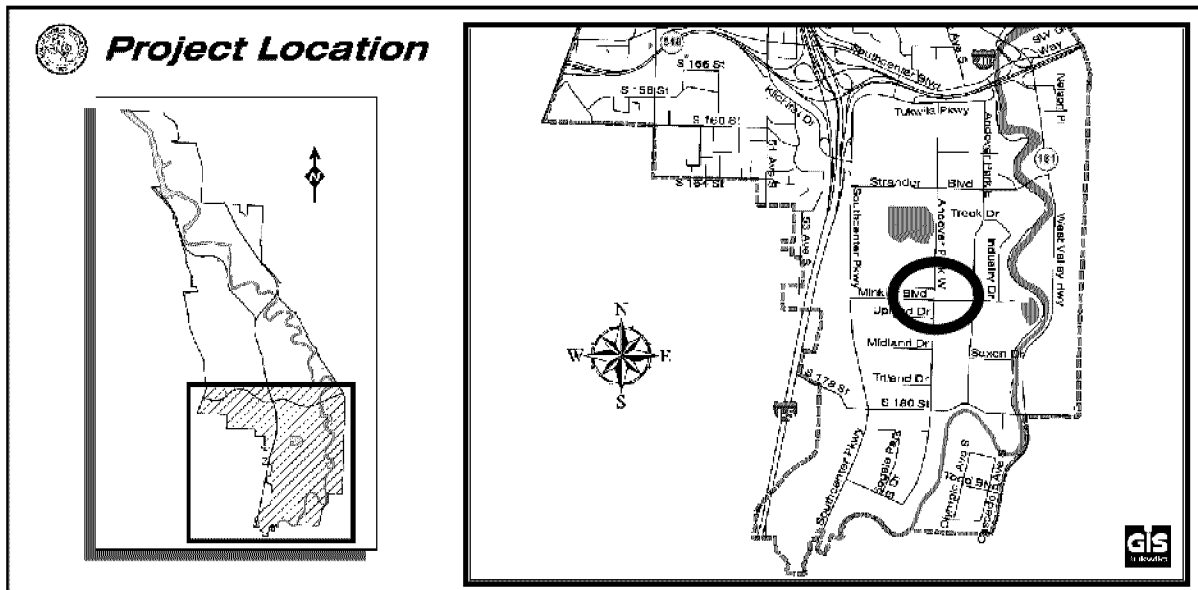
**JUSTIFICATION:** Aging sewer lift station requires the replacement of motors, pumps, and controls at older lift stations to reduce maintenance.

**STATUS:** The sewer lift station has been seeing a lot of issues with maintenance of pumps and motors. The existing panels and valves are in a confined space and will need to be moved to grade for safer access.

**MAINT. IMPACT:** New pumps will reduce the liability of the existing pumps that are obsolete and prone to fail.

**COMMENT:** Additional right-of-way or property will be required for the new backup generators to be installed.

FINANCIAL (in \$000's)	Through Estimated									TOTAL
	2021	2022	2023	2024	2025	2026	2027	2028	BEYOND	
<b>EXPENSES</b>										
Design			250	50						300
Land (R/W)										0
Const. Mgmt.			50	200						250
Construction			1,000	1,000						2,000
<b>TOTAL EXPENSES</b>	<b>0</b>	<b>0</b>	<b>1,300</b>	<b>1,250</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		<b>2,550</b>
<b>FUND SOURCES</b>										
Awarded Grant										0
Proposed Bond/ULID										0
Mitigation Actual										0
Mitigation Expected										0
Utility Revenue	0	0	1,300	1,250	0	0	0	0		2,550
<b>TOTAL SOURCES</b>	<b>0</b>	<b>0</b>	<b>1,300</b>	<b>1,250</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,550</b>



Project Name: **Lift Station #5 Retrofit - CE Services** Location: **Tukwila, WA** Prepared By: **K Nilsen**  
 Project #: **23415** Billing Group #:  Task #:  Date: **6/20/2024**

Staff Type # (See Labor Rates Table) Staff Type Hourly Rate Staff Name  Drawing/Task Title	Labor Code  Job Title	Labor Hours by Classification										Hour Total	Dollar Total	
		1	12	16	75	19	118							
		\$288	\$238	\$166	\$151	\$222	\$151							
		Sr. Principal Engineer	Project Manager	Engineering Staff II	CAD Tech II	Sr. Structural Engineer	Sr. Project Administrator							
<b>Task 1 - Project Management</b>														
Bid Assistance		5	8	8			2						23.0	\$4,974.00
Addenda		2	4	8			6						20.0	\$3,762.00
Team Coord/Invoicing (assumes 8 months)		4		8									12.0	\$2,480.00
<b>Task 2 - Construction Administration</b>														
Pre-Construction Meeting		2	2	4									8.0	\$1,716.00
Shop Drawing & Submittal Review (25 Reviews)		8	12	24		8							52.0	\$10,920.00
RFI Review and Responses (10 RFIs)		6	6	16	2	4							34.0	\$7,002.00
Pay Application Review & Preparation (assumes 8)		4	6	16									26.0	\$5,236.00
Change Order Review & Preparation (assumes 2)		2	6	12	4		2						26.0	\$4,902.00
<b>Task 3 Construction Inspections</b>														
Construction Meetings			8	24									32.0	\$5,888.00
Site Visits (max. 10 visits)		5	12	28									45.0	\$8,944.00
<b>Task 4 Geotechnical Support</b>														
		2		4									6.0	\$1,240.00
<b>Task 5 Electrical Support (see costs below)</b>														
		2		4									6.0	\$1,240.00
<b>Task 6 Project Closeout</b>														
Punchlist & Final Inspection		2	8	16		4							30.0	\$6,024.00
As-Builts		2	2	8	12	2							26.0	\$4,636.00
Hours Total		46.0	74.0	180.0	18.0	18.0	10.0						346.0	
Labor Total		\$13,248	\$17,612	\$29,880	\$2,718	\$3,996	\$1,510							<b>\$68,964.00</b>

Expenses	rate/unit	Reimbursable	
		Quantity	Cost
Project Administration	\$60.00	8	\$480.00
Postage/Courier			
Printing Costs			
Photo/Video			
Mileage/Travel/Per Diem			
Miscellaneous			
<b>Total</b>			<b>\$480.00</b>

Subconsultants	
Utility Locate	
Mechanical Engineer	
Electrical Engineer	\$37,000
Geotechnical Engineer	\$15,202
I & C Engineer	
<b>Subconsultant Subtotal</b>	<b>52,202.00</b>
Markup	15%
<b>Total</b>	<b>\$60,032.30</b>

PACE Billed Labor Total	\$68,964.00
Reimbursable Expenses	\$480.00
Subconsultants	\$60,032.30
<b>Total Project Budget</b>	<b>\$129,476.30</b>

## **PROJECT DESCRIPTION**

This project will provide construction support to the City of Tukwila for the PACE-designed improvements to the Sanitary Lift Station #5 near Fort Dent Park. Construction of an above ground electrical building with new controls and installation of a new meter vault and new submersible pumps, piping, and valves. The project includes rehab work (demolition, cleaning, and coating) in the existing wet well, installation of miscellaneous site improvements, relocation of the existing generator, and other work necessary to complete the Work as specified and shown in the Contract Documents. The project also includes the relocation of existing gravity sewer, installation of approximately 55 lineal feet of new 4-inch ductile iron forcemain, and connection of the new forcemain to the existing forcemain.

## **SCOPE OVERVIEW**

Specific tasks under this contract are shown below:

### **TASK 1 - PROJECT MANAGEMENT**

PACE will be responsible for conducting ongoing coordination between the CITY and the contractor as needed as well as overall project management.

#### **Deliverables:**

- PACE will assist the CITY during the construction bid process, prepare up to 2-addenda and attend the bid opening. It is assumed that the CITY will manage the bid opening meeting.
- PACE will prepare and provide a monthly status/progress reports itemized by task and subtask, to the CITY, describing work performed by the PACE's project team during the current reporting period.

### **TASK 2 - CONSTRUCTION ADMINISTRATION**

#### **Material Submittal Review**

PACE will review contractor-provided material submittals to assure the proposed materials are in accordance with the project's specifications. Copies of the submittal review documents will be furnished to the CITY, the Contractor, and the Inspector.

#### **Assumptions:**

The time it takes to conduct the required material submittal/review process can vary widely depending on the Contractor's chosen material submittal process. This scope and associated fee assume a maximum of 25 items to review. Any additional hours that are necessary due to multiple rounds of contractor submittals may be billed on a time and expense basis.

**Deliverables:**

- One (1) pdf copy of initial contractor-provided material submittals with PACE comments along with master submittal log.
- One (1) pdf copy of resubmittal contractor-provided material submittals with PACE comments along with updated master submittal log.

**Preconstruction Conference**

PACE will work with the CITY to prepare a draft preconstruction meeting agenda for the CITY. It is assumed that the CITY will facilitate and lead the preconstruction meeting, prepare meeting minutes and distribute the minutes to attendees.

**Deliverables:**

- One (1) pdf copy of draft construction conference meeting agenda

**Responding to Requests for Information (RFIs)**

PACE will respond to RFIs from the Contractor as they pertain to design elements and existing conditions shown on the contract plans and in the contract specifications as necessary.

**Assumptions:**

- The time it takes to conduct the required RFI reviews can vary widely depending on the Contractor. For budgeting purposes PACE has estimated ten (10) RFI responses. Any additional RFI responses that are necessary may be billed on a time and expense basis.
- All RFI responses shall be provided to the contractor directly by the PACE through email while cc'ing CITY staff.
- RFI's that are a result from a change of conditions in the field or outside the original project design will be billed on a time and expense basis

**Deliverables:**

- Up to ten (10) RFI responses in pdf format.

**Preparing Change Orders**

PACE shall prepare all required Change Orders for CITY issuance as defined in the contract specifications.

**Assumptions:**

- PACE shall coordinate with CITY on all proposed CHANGE ORDERS regardless of size or scope. While PACE shall coordinate with CONTRACTOR on executing any required change orders, CITY will approve prior to issuance.



- For budgeting purposes PACE has estimated two (2) Change Orders. Any additional Change Order required responses that are necessary may be billed on a time and expense basis.

**Deliverables:**

- Up to two (2) change orders in pdf format for execution by the CITY and the Contractor in accordance with the project specifications.

**Preparing Contractor Pay Requests**

PACE will prepare Progress Payment Requests from the Contractor and transmit them to the CITY's Project Manager for processing by the CITY. These payment requests will cover all aspects of the work as outlined in the bid proposal. PACE's inspector will review and coordinate with the CITY the actual quantities for payment for the requested work by CITY staff.

**Assumptions:**

- For budgeting purposes PACE has estimated 8 contractor pay requests processed on a monthly basis based on the proposed schedule and allowable working days in the contract. Any additional contractor pay requests that are necessary may be billed on a time and expense basis.

**Deliverables:**

- Up to eight (8) contractor pay requests in pdf format.

**TASK 3 - CONSTRUCTION INSPECTION**

PACE will provide limited construction inspection at critical stages of the project. It is assumed there will be a maximum of 10 site visits to the project site. Inspection reports will be provided in pdf format to the CITY and Contractor following each site visit.

**TASK 4 - GEOTECHNICAL CONSTRUCTION SUPPORT**

AESI will provide limited construction inspection at critical stages of the project

**TASK 5 - ELECTRICAL CONSTRUCTION SUPPORT**

Follet Engineers will provide limited construction inspection at critical stages of the project

**TASK 6 - PROJECT CLOSEOUT**

The PACE will assist the CITY in formal closeout of the project. Specific tasks include:

- Final site visit with CITY to develop final punch list to be provided to the contractor.
- Provide all required Substantial Completion correspondence in accordance with the project specifications.

- Create record drawings of the project based on the redlined construction drawings provided by the contractor as well as the PACE's field records. Record drawings will meet CITY formatting requirements.
- Production of a Recommendation of Project Acceptance letter provided to the CITY.

The PACE team will perform the above-described services on a Time and Expense basis at their 2024 Rates with a not to exceed amount of \$129,476, as shown on the attached spreadsheet. The project budget will be tracked on the overall budget not by tasks which are for budget purposes only.

**END SCOPE OF WORK**





## INFORMATIONAL MEMORANDUM

TO: **Transportation & Infrastructure Services Committee**  
 FROM: **Pete Mayer, Interim Public Works Director**  
 BY: **Adib Altallal, Utilities Engineer**  
 CC **Mayor Thomas McLeod**  
 DATE: **July 19, 2024**  
 SUBJECT: **Sewer Lift Stations 12 Upgrade**  
**Project 90440207**  
**Design Services Agreement**

### **ISSUE**

Approve design services agreement with Parametrix for the Sewer Lift Station 12 Upgrade project.

### **BACKGROUND**

The aging electrical and physical assets of Sewer Lift Station 12 prompted further investigative work in 2016 and 2020. In 2021, minor repairs were made to extend the life of the assets until a comprehensive repair or a rebuild can be completed. The City is now beginning a comprehensive repair, starting with an alternatives study and subsequently design.

### **DISCUSSION**

Parametrix was selected as the primary design consultant after reviewing list of 9 other well-qualified consultants due to their familiarity with the sewer lift station and their proactive work to help the City find a solution long before it becomes a catastrophic failure.

### **FINANCIAL IMPACT**

The Parametrix design services contract is proposed in the amount of \$221,304.48. Although previously identified as project to be completed in a future biennium, further degradation of the Lift Station has moved the project up in priority. The funds required to complete the design will be from provided by cost savings from the 2023 Annual Sewer Repair Project.

	<u>Contract</u>	<u>2023 Cost Savings</u>
Parametrix Contract	\$221,304.58	\$ 698,454.11

### **RECOMMENDATION**

Council is being asked to approve the design agreement with Parametrix in the amount of \$221,304.58 for the Sewer Lift Station 12 Upgrade project and to consider this item on the Consent Agenda at the August 5 Regular Meeting.

Attachments: 2023 CIP Page  
Parametrix Scope and LOE

# CITY OF TUKWILA CAPITAL PROJECT SUMMARY

2023 to 2028

**PROJECT:** Sewer Lift Station No. 12 Project No. 90440207

**DESCRIPTION:** Rebuild sewer lift station 12 to better serve the northeast corner of the Commercial Business District.

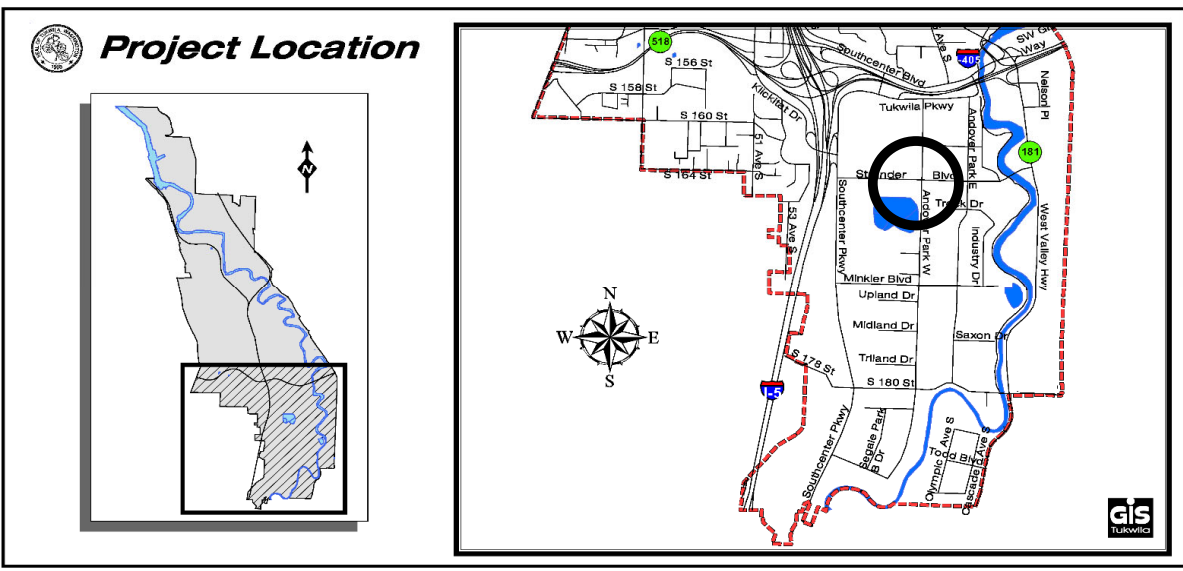
**JUSTIFICATION:** Lift Station No. 12 is at capacity due to its limited wetwell size. If substantial growth occurs in the basin due to the expansion of the mall or other large projects, the existing lift station will need to be upgraded.

**STATUS:** A study to repair the wet well is being conducted in 2022.

**MAINT. IMPACT:** None at this time.

**COMMENT:** A Sewer bond issue is proposed to cover financing of this project. Coordinate with Southcenter Blvd Sewer Upgrade and future LS13.

FINANCIAL (in \$000's)	Through Estimated		2023	2024	2025	2026	2027	2028	BEYOND	TOTAL	
	2021	2022									
<b>EXPENSES</b>											
Design										300	300
Land (R/W)										500	500
Const. Mgmt.										350	350
Construction										2,500	2,500
<b>TOTAL EXPENSES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3,650</b>	<b>3,650</b>
<b>FUND SOURCES</b>											
Awarded Grant											0
Proposed Grant											0
Bond											0
Mitigation Actual											0
Mitigation Expected											0
Utility Revenue	0	0	0	0	0	0	0	0	0	3,650	3,650
<b>TOTAL SOURCES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3,650</b>	<b>3,650</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 Parametrix, 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 design services in connection with the project titled Sewer Lift Station 12 Upgrade.
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 31 December 2025, 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 31 December 2025 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 “B” attached hereto, provided that the total amount of payment to the Consultant shall not exceed 221,304.58 without express written modification of the Agreement signed by the City.
  - B. The Consultant may submit vouchers 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:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_
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 \_\_\_\_\_, 2024.

CITY OF TUKWILA

CONSULTANT:

\_\_\_\_\_  
Thomas McLeod, Mayor

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

Printed Name: \_\_\_\_\_

ATTEST/AUTHENTICATED:

Title: \_\_\_\_\_

\_\_\_\_\_  
Andy Youn, City Clerk

APPROVED AS TO FORM:

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

**City of Tukwila  
Lift Station 12 Upgrade  
Alternatives Analysis and Preliminary Design**

**Introduction**

This scope of work (SOW) describes the services to be provided by Parametrix, Inc. (Parametrix) for the Lift Station 12 Upgrade Project for the City of Tukwila (City). The City seeks to upgrade Lift Station 12 to improve reliability, provide renewed longevity, enhance operational efficiency, and bring the station into compliance with current codes. The City tasked Parametrix to provide alternatives on how to address these concerns.

List Station 12 was initially built in 1972 and serves Drainage Basins 4 and 8. Upgrades to the lift station were completed between 2001 and 2003, including pump replacements and a new on-site generator. According to the City's 2014 Comprehensive Sanitary Sewer Plan (Carollo 2014), the average annual flow for List Station 12 is approximately 0.19 million gallons per day (MGD) and peak day average flow is approximately 0.72 MGD. Peak instantaneous flows were estimated to reach approximately 1.18 MGD with infiltration and inflow contributing to approximately 0.57 MGD.

As identified in the City's 2014 Comprehensive Sanitary Sewer Plan (Carollo 2014), it was anticipated that the pumps and the lift station structure would reach their useful life by 2023. The City has considered alternative options to serve Drainage Basin 4 and currently, the pumps at the existing lift station have not been able to keep up with the variable flows due to wear.

On June 5, 2024, City staff and the Parametrix team conducted a site visit at Lift Station 12 to discuss the project. Alternatives initially discussed at the site visit with City staff included upgrades to the existing station, converting the station to a submersible pump station, or building a new wet well.

The Lift Station 12 Upgrade Project includes developing and evaluating potential upgrade alternatives through collaborative workshops with City personnel, conducting an alternatives analysis, and determining a preferred design alternative for improvements at the existing lift station. Subsequently, a preliminary design submittal will be prepared, including 30% design plans, an outline of technical specifications, and a construction cost estimate.

This SOW does not include the Final Design Phase, which will be determined during the Preliminary Design Phase, encompassing final design plans, specifications, construction cost estimates, and necessary permit applications. This SOW also does not include bid support or services during construction, which will be provided under a separate task order.

**Document Organization**

- Exhibit A: Scope of Work
- Exhibit B: Limits of Survey
- Exhibit C: Preliminary Sheet List – Preliminary Design
- Exhibit D: Rates and Fee Estimate
- Exhibit E: Subconsultant Proposals

- Exhibit F: Projected Project Schedule

## Scope Work Breakdown Structure

Work Breakdown Summary:

- Task 01 Project Management and Quality Control
- Task 02 Data Collection and Review
- Task 03 Develop Alternatives
- Task 04 Alternatives Analysis
- Task 05 Preliminary Design
- Task 06 Subconsultant Allocation
- Task 07 Management Reserve

## Task 01 – Project Management and Quality Control

### Objective

Task 01 provides tracking scope, schedule, and budget for the project; overseeing project administration (filing, invoicing, etc.); coordination and communication with the City; and ensuring that Parametrix properly implements quality assurance/quality control (QA/QC) procedures over the duration of this project.

### Subtask 01.1 – Project Management

Subtask 01.1 includes project start-up and establishing a project SharePoint site; documenting and communicating the scope of work, budget, and schedule as a road map for the project team; coordinating with the project team and addressing issues throughout the project; tracking the project budget using Parametrix in-house tools to verify that progress aligns with spending; and conducting check-in meetings with the City’s project manager (PM) to discuss and review information and issues that may affect the work’s progress.

### Subtask 01.2 – Invoicing & Progress Reports

Subtask 01.2 includes preparing monthly progress reports to accompany each monthly invoice. Progress reports will include a narrative of work completed, anticipated work for the next period, and a description of issues affecting project progress and proposed resolutions if necessary.

### Subtask 01.3 – Correspondence and Coordination with the City

Subtask 01.3 includes regular communication with the City’s PM to discuss and review information and issues that may affect the progress of the work. Communication may include phone conversations, scheduled meetings, and electronic communication.

### Subtask 01.4 – Coordination with the Parametrix Team

Subtask 01.4 includes regular communication with the Parametrix team to discuss and review information needs, project information, and issues that may affect the progress of the work.

Communication may include phone conversations, scheduled meetings, and electronic communication.

### **Subtask 01.5 – Project QAQC**

Subtask 01.5 includes time to perform quality assurance to verify quality checks have been completed and addressed, and time to review design as contract plans and specifications are being prepared. QA/QC will be performed to ensure that City comments have been thoroughly addressed and internal reviews have been completed prior to delivery of all work products to verify consistency with internal standards of practice and care.

### **Task 01 Assumptions**

- Project duration is eight (8) months.
- Budget assumes up to six PM check-in meetings to be attended virtually by up to two Parametrix staff for up to 0.5 hours each.
- Budget assumes up to 10 design team meetings to be attended virtually by up to three Parametrix staff for up to 0.5 hours each.

### **Task 01 Deliverables**

- Miscellaneous correspondence to document project management issues.
- Monthly progress reports enclosed with invoices (in PDF file format).
- Project Schedule (in PDF file format).

## **Task 02 – Data Collection and Review**

### **Objective**

Task 02 includes the collection, review, and assessment of available information and mapping prior planning efforts before beginning the alternatives analysis and preliminary design. The Parametrix team will provide comprehensive written request for information (RFI) lists, which may include record drawings and relevant planning studies.

### **Subtask 02.1 – Data Collection and Review**

Subtask 02.1 includes collecting and reviewing available historical data, design specifications, performance metrics, and maintenance records as they pertain to the existing lift station, as well as collecting and reviewing available technical specifications, performance data, and cost estimates for submersible pumps, dry pit pumps, and new wet well designs.

### **Subtask 02.2 – Survey and Mapping**

Subtask 02.2 includes determining the right-of-way for Andover Park W, as delineated in Exhibit A. Parametrix will provide topographic mapping for the lift station located near the southeast corner of the Westfield Shopping Center, as delineated in Exhibit A. The topographic limits will include the location of the lift station and the surrounding parking lot of Key Bank. Parcel boundaries will be limited to within the area to be surveyed and easements of record depicted on the subject property's

binding site plan will be plotted on the basemap. The setting of any survey monuments at any of the exterior boundary points of the subject properties.

All physical improvements—such as signs, guardrails, fences, driveways, utility poles, water features, telecommunication features, storm drainage features, sewer manholes, and other features—will be mapped during the survey within the right-of-way as well. All storm drainage and sewer structure invert elevations will be included within the scope of work. Trees will be mapped on-site but will be limited to trees that have trunk diameters of 6 inches or larger

Parametrix will coordinate with Applied Professional Services (APS) to have the utilities marked out. Conductible utilities will be mapped per the locate company's markings. Potholing is not included.

### **Subtask 02.3 – 3D Scanning**

Subtask 02.3 includes 3D laser scanning of the site property, building structure exterior and internals, and existing equipment. This will include both wet well and dry well locations. Laser scanning provided will initially only be used to confirm and view structure and component locations and dimensional relevance to each other. Scanning performed will not be to any survey coordinate system but will be tied into surveyed temporary benchmarks so it can later be combined with the survey basemap during Task 05 Preliminary Design. Scanning will require physical access to areas and spaces needed to complete this project and owner shall provide access as required to complete this effort.

### **Task 02 Assumptions**

- Up to three RFIs will be prepared and provided to the City.
- City response for each RFI list is 7 business days.
- RFIs and shared documents will be shared and accessed via an established Project SharePoint site.
- Parametrix survey crews will be provided reasonable access to all areas requiring surveys.
- Parametrix will be omitting topographic mapping with Andover Park. The topographic survey will extend to the west face of the curb within the right-of-way of Andover Park.
- All electronic mapping standards will be based on Parametrix drafting standards.
- Parametrix survey crews have client permission to perform minor brushing with machetes to conduct this survey, if needed, for field crews to perform work described within this SOW.
- Unless otherwise specified by the client, horizontal datum shall be North American Datum (NAD) 83/11 Washington Coordinate System, North Zone, and vertical datum shall be North American Vertical Datum of 1988 (NAVD 88).
- The boundary of the property will be merged into the topographic mapping, as appropriate, and shown for graphical purposes only. This service can be provided if required at a later date; however, any setting of property corners, and filing of a record of survey (if required) will be considered Additional Services and billed separately as described below.
- For safety reasons, Parametrix survey crews are not allowed to enter subsurface vaults. Parametrix work will be conducted from the surface, using measure-down techniques. Parametrix survey crews will also not open any structure covers over 80 pounds.

- Site scanning will be approximately 20 to 35 scans. Once complete, scans will then be combined and stitched together providing a single site scan.
- Budget assumes up to six hours of scanning time shall be required and up to eight hours to combine all scans into a single site scan.

## Task 02 Deliverables

- RFI lists (provided electronically).
- One PDF copy of the topographic survey.
- An electronic drawing file of the topographic survey in AutoCAD Civil 3D 2020 format in one drawing file.

## Task 03 –Develop Alternatives

### Objective

Task 03 provides developing and evaluating viable alternatives for upgrading Lift Station 12, ensuring improved performance and compliance with current standards while minimizing bypass pumping. Initial concept alternatives include:

- Alternative 1: Upgrade Existing Station
- Alternative 2: Convert to Submersible Pump Station
- Alternative 3: Build New Wet Well

### Subtask 03.1 – Determine Alternatives

Subtask 03.1 includes providing technical evaluation and support in preparation for Workshop 1 (see Task 03) in support of a concept screening to determine the two design alternative types to develop for refinement, selected from the three concept alternatives: submersible, dry pit, and new wet well. Parametrix will assess available information to determine the practicality of implementing each alternative. This subtask includes developing a description of each of the three alternatives as listed above, a concept feasibility layout, a brief list of advantages and disadvantages, and a Class 5 engineer’s opinion of construction cost. If initial evaluation determines the alternative has a fatal flaw, the concept layout and opinion of construction cost will not be developed.

### Subtask 03.2 – Refine Alternatives

Subtask 03.2 includes providing technical evaluation and support to refine two design alternatives in preparation for Workshop 2 (see Task 04). This subtask includes developing a detailed description of two design alternatives and identifying potential risks and challenges for each alternative, including technical, financial, and operational. This subtask includes developing confirmation layouts for each alternative and an evaluation of real estate needs, including staging area, traffic impacts during construction, construction feasibility, as well as a Class 4 engineer’s opinion of construction cost. Estimate of property purchase costs are not included.

### Task 03 Assumptions

- The number of evaluated alternatives will remain as listed in this task.

- No computer sewer model development will be included in this task.
- Sufficient data on the current pump station’s performance, maintenance, and operational history, and technical specifications will be available to evaluate and prepare cost estimates for submersible, dry pit, and new wet well alternatives for accurate comparison and evaluation.
- The three concept feasibility layouts will be one page each.
- The two planning-level confirmation layouts will be one page each.
- Subtasks 03.1 and 03.2 engineer’s opinion of construction costs will be prepared to the Association for the Advancement of Cost Engineering (ACE) Classes 5 and 4, respectively. Typical accuracy ranges for ACE classes vary depending on the technological complexity of the project, appropriate reference information, and the inclusion of an appropriate contingency determination.

### Task 03 Deliverables

- Information and documentation to support Alternative Analysis Workshops. See Task 03 (various file formats).
- Three concept layouts (in PDF file format).
- Two feasibility layouts (in PDF file format).
- Class 5 and Class 4 engineer’s opinion of construction costs (in PDF file format).

## Task 04 – Alternatives Analysis

### Objective

Task 04 provides a holistic evaluation of viable options for upgrades to Lift Station 12 with City staff. Two workshops will be conducted: the first to screen initially identified alternatives, and the second to evaluate alternatives using a Triple Bottom Line (TBL) Analysis to determine a preferred upgrade design option. This task also includes a technical memorandum (tech memo) summarizing the decision process in determining the preferred alternative.

### Subtask 04.1 – Alternatives Analysis Workshops

Subtask 04.1 includes providing key services to prepare for and conduct two Alternative Analysis Workshops, including the development of presentation materials, facilitating the workshops, providing technical expertise during the workshop, and providing documentation of discussion, decisions, and action items.

Parametrix will meet with City personnel to evaluate the identified alternatives, as well as discuss the information collected and analyzed in Task 03. These workshops include:

- **Workshop 1:** Review project goals and preferences with City staff to conduct a concept screening of the three identified concept alternatives to determine two alternatives to further refine and evaluate.
- **Workshop 2:** Conduct an alternatives comparison (TBL Analysis) of two identified alternatives to determine one preferred design alternative.



## Subtask 04.2 – Alternatives Analysis Tech Memo

Subtask 04.2 includes documenting and summarizing the alternatives and decisions made during the Alternatives Analysis Workshops into a tech memo, ensuring clear communication of the selection process, alternative descriptions, and supporting exhibits.

### Preliminary Alternative Analysis Tech Memo sections include:

- Project Introduction and Background.
- Workshop 1 and Alternative Descriptions.
- Workshop 2 and Alternative Descriptions.
- Preferred Alternatives and Recommendations.
- Attachments:
  - Concept and Confirmation Layouts.
  - Engineer’s opinions of construction cost.
  - Workshop Agendas and Summaries.
  - Presentation Materials.

## Task 04 Assumptions

- Budget assumes each Alternative Analysis Workshop will be attended to three Parametrix staff (two in-person and one virtually) for up to 1.5 hours each. Budget includes travel time to the City of Tukwila Public Works Office/Conference Room from the Parametrix Puyallup office and mileage.
- Each Alternative Analysis Workshop may be attended by up to five City personnel.
- Criteria for the TBL Analysis will be developed with the City via check-in meetings with the City PM (see Subtask 01.3). The criteria for evaluation shall include financial, environmental, and social benefits, impacts, and risks.
- Workshop materials may include tables, charts, and a decision matrix to facilitate discussion and engagement.
- The Alternative Analysis Tech Memo will be up to 15 pages with up to approximately four attachments, as described above.
- The Draft Alternative Analysis Tech Memo review comments will be collected and consolidated by the City PM and returned to the Parametrix team within 10 business days of Draft Tech Memo delivery.
- Budget assumes that review comments will not involve changes to decision made in the workshops, and will include limited tracked edit suggestions and margin comments provided by the City on the Draft Alternative Analysis Tech Memo.
- Parametrix will finalize the Alternative Analysis Tech Memo within 10 business days after receiving City review comments.

## Task 04 Deliverables

- An agenda for each Alternative Analysis Workshop (in PDF File Format).

- Workshop presentation materials (various File Formats).
- Alternative Analysis Workshop Summaries (in PDF File Format).
- Alternative Analysis Tech Memo (Draft and Final in PDF File Format).

## Task 05 – Preliminary Design

### Objective

Task 05 provides initiating the Preliminary Design Phase of the preferred alternative determined in Task 04. This task includes an initial design meeting with City staff, preparation and submission of the Preliminary Design (30%) Submittal, including plans, specification outline, and engineer’s opinion of construction cost, as well as a design review workshop with City staff.

### Subtask 05.1 – Initial Design Meeting

Subtask 05.1 includes kicking off the preliminary design phase with City staff and ensuring stakeholders are aligned with the identified preferred alternative in Task 04, project goals, design requirements, and project expectations for producing the 30% Design Submittal for Lift Station 12 upgrades. This meeting will focus on reviewing and confirming project goals and requirements; revisiting the project schedule, including milestones and deliverables; and addressing any initial questions or concerns from stakeholders.

### Subtask 05.2 – Preliminary Design

Subtask 05.2 includes developing preliminary design plans for the proposed upgrades to Lift Station 12 based on the preferred alternative determined in Task 04, generating a proposed list of Construction Specifications Institute (CSI) and Washington State Department of Transportation (WSDOT) technical specifications for the project, and preparing a 30% engineer’s opinion of construction cost.

A preliminary Drawing Sheet List is included as Exhibit C.

### Subtask 05.3 – Preliminary Design Review Meeting

Subtask 05.3 includes a Preliminary Design Review Meeting with City staff to review City comments and feedback on the Preliminary Design Submittal.

### Task 05 Assumptions

- Budget assumes the Initial Design Meeting will be attended by up to four Parametrix staff (two in-person and one virtually) for up to 1.0 hours each. Budget includes travel time to the City of Tukwila Public Works Office/Conference Room from the Parametrix Puyallup office and mileage.
- Budget assumes up to 12 sheets will be developed as part of the Preliminary Design Submittal, as listed in Exhibit C. Should the preferred alternative determined in Task 04 require more Preliminary Design Plans than assumed, an amendment may be required.
- The preliminary cost estimate will be prepared to the AACE Class 3. Typical accuracy ranges for AACE classes vary depending on the technological complexity of the project, appropriate reference information, and the inclusion of an appropriate contingency determination.

- The preliminary cost estimate will generally be estimated as single lump sum prices, with unit prices for earthwork and underground piping as appropriate.
- The City review of the Preliminary Design Submittal is 10 business days.
- The City will provide review comments and feedback to Parametrix prior to the Preliminary Design Review Meeting.
- Budget assumes the Preliminary Design Review Meeting will be attended by up to four Parametrix staff (two in-person and one virtually) for up to 2.0 hours each. Budget includes travel time to the City of Tukwila Public Works Office/Conference Room from the Parametrix Puyallup office and mileage.
- City review comments and feedback of the Preliminary Design Submittal will be incorporated into the Final Design Phase.

## Task 05 Deliverables

- Agenda and meeting summary for Initial Design Meeting (draft and final in PDF file format).
- Preliminary Design Plans, half-size, 11 by 17 inches (in PDF file format).
- Preliminary Design Specification Outline (in PDF file format).
- Class 3 engineer's opinion of construction cost (in PDF file format).
- Meeting summary for Preliminary Design Review Meeting (draft and final in PDF file format).
- Revised Project Schedule (in PDF file format).

## Task 06 – Subconsultant Allocation

### Objective

Task 06 provides a budgetary allocation for subconsultant services that will be required for the Alternatives Analysis and Preliminary Design of the Lift Station 12 Upgrade Project.

### Subtask 06.1 – Utility Locate Services

Subtask 06.1 includes a detailed proposal for utility locate services, prepared by subconsultant, APS, included in Exhibit E. In general, APS will locate and mark known utilities within the project boundaries and will sweep the project boundary areas to attempt to identify any unknown or abandoned utilities. Utility potholing not included.

### Task 06 Assumptions

- The City will review subconsultant's scope and fee proposals in advance of contract execution between prime consultant (Parametrix) and subconsultant. Once proposals are acceptable to the City, authorization will be issued in writing to allow the subconsultant to be added to the prime consulting contract and provide authorization to proceed with the scoped work.
- Work will not proceed for any of the subconsulting efforts until the City has provided authorization for the subcontractor to be added to the primary contract, has approved of the subconsultant's scope and fee, and has issued NTP for the work.

## Task 06 Deliverables

- See Exhibit E, Subconsultant Proposals, for detailed deliverables.

## Task 07 – Management Reserve

### Objective

Task 07 is a budgetary allocation so that the City has a discretionary budget to cover professional services that are not defined in this SOW and are unknown at the time of the scope development. Parametrix will provide a written scope and fee estimate for any additional services requested prior to execution for the City’s consideration. This task will remain unused unless the City issues a written (email) authorization for work to be completed under this Task.

### Assumptions

- The budget for this work may be used by the Consultant, as authorized by the City.
- The City will authorize the use of funds in this task in writing (email) prior to the Consultant starting the work.

### Deliverables

- Documentation for professional services not defined in this SOW, as required or requested by the City.

## Rates and Fee Estimate

Rates and fee estimate for this scope of work (SOW) is included as Exhibit D. This budget is reflective of this SOW, known information, and previous experience regarding the level of effort on similar projects.

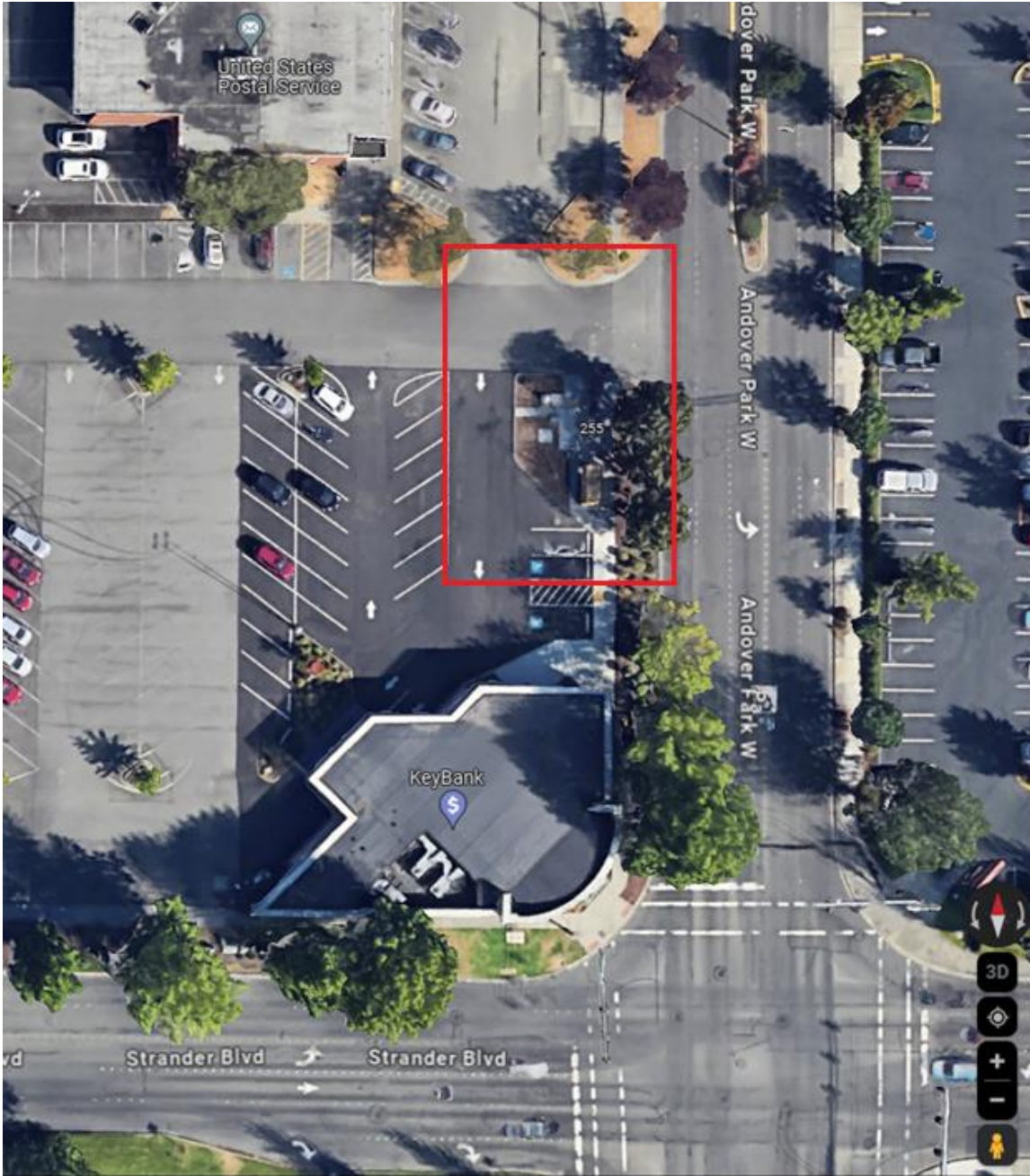
## Projected Project Schedule

The schedule below summarizes project tasks based on anticipated notice to proceed (NTP) on or around August 5, 2024. Receipt of NTP after this day may result in a corresponding delay in the following projected schedule for tasks included in this SOW. A projected Project Schedule is included as Exhibit F.

Task	Start	Finish
Task 01 Project Management and Quality Control	08/2024	03/2025
Task 02 Data Collection and Review	08/2024	08/2024
Task 03 Develop Alternatives	08/2024	10/2024
Task 04 Alternatives Analysis	09/2024	12/2024
Task 05 Preliminary Design	10/2025	03/2025

## References

Carollo (Carollo Engineers). 2014. City of Tukwila, WA, Final Comprehensive Sanitary Sewer Plan, .  
Carollo Engineers, Seattle, WA.



**The Preliminary Drawing Sheet List includes:**

- General
  - Title Sheet, Vicinity Map, and Index
  - Symbols and Legend
  - Abbreviations
- Civil
  - Site Layout Plan and Survey Control
  - Plan and Elevations
  - Section and Details
- Mechanical
  - Pump and Piping Floor Plan
  - Pump and Piping Sections
- Electrical
  - Legend and Abbreviations
  - One-Line Diagram
  - Site Plan
- Piping and Instrumentation Diagram (P&ID)
  - Piping and Instrumentation Diagram (P&ID)

**Exhibit D - Rates and Project Fee Estimate**  
**City of Tukwila**  
**Lift Station 12 Upgrade**  
**Alternatives Analysis and Preliminary Design**

				Nickel, Ray	Jakubowich, Andy	Linke, Joel	Cosgrove, Sandy	Crackenberger, Sarah	Carlson, Cameron	Ortega, JJ	Taylor, Kathy	Cost Estimator	Planner IV - Cost Estimator	Publications Supervisor	Lucas, Amanda	Survey Supervisor	Emory, Justin	Survey	Van Cleave, Ken	Printz, Whitney	Wilson, Stephen	Wittman, Connor	Merth, Joe	Linke, Jake	Mark Molinow	Denise Peterson	Cliff West	
				PIC	PM	SME/QAQC	PC	Acct	Electrical	Support	CAD	Cost Estimator	Pubs	Survey	Survey	Survey	Survey	Survey	Survey	Survey	Survey	Survey	Survey	Survey	Survey	Survey	Survey	
				Senior Consultant	Senior Engineer	Senior Engineer	Sr Project Control Specialist	Senior Project Accountant	Electrical Engineer VI	Engineer I	Senior Designer	Planner IV - Cost Estimator	Publications Supervisor	Survey Supervisor	Senior Survey	Project Coordinator	Surveyor III	Senior Electrical Engineer	Senior Consultant	Engineer VI	Electrical Designer II	Electrical Designer III	Senior Designer					
<b>Burdened Rates:</b>				\$319.48	\$226.56	\$249.50	\$147.52	\$132.47	\$212.06	\$125.00	\$202.77	\$147.39	\$147.39	\$210.50	\$153.99	\$105.95	\$136.50	\$279.37	\$317.00	\$194.09	\$157.53	\$171.31	\$221.72					
Phase	Task	Description	Labor Hours	Labor Dollars																								
			<b>1106</b>	<b>\$220,612.58</b>	<b>65</b>	<b>200</b>	<b>32</b>	<b>8</b>	<b>7</b>	<b>91</b>	<b>215</b>	<b>72</b>	<b>56</b>	<b>13</b>	<b>4</b>	<b>40</b>	<b>24</b>	<b>60</b>	<b>5</b>	<b>5</b>	<b>59</b>	<b>20</b>	<b>40</b>	<b>73</b>				
<b>1</b>		<b>Project Management &amp; Meetings</b>	<b>102</b>	<b>\$22,977.14</b>	<b>9</b>	<b>36</b>	<b>16</b>	<b>8</b>	<b>7</b>	<b>6</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
	1.1	Project Management	13	\$2,663.01		10			3																			
	1.2	Invoice and Progress Reports	16	\$2,616.28		4		8	4																			
	1.3	Correspondence and Coordination with the City	21	\$4,618.56	1	16			2	2																		
	1.4	Coordination with the Consultant Team	19	\$4,165.04	3	6	2		4	4																		
	1.5	Project QA/QC	33	\$8,914.25	5		14							4					5	5								
<b>2</b>		<b>Data Collection and Review</b>	<b>197</b>	<b>\$30,229.70</b>	<b>2</b>	<b>12</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>40</b>	<b>24</b>	<b>60</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>20</b>	<b>0</b>	<b>6</b>				
	2.1	Data Collection and Review	47	\$8,856.38	2	12	1		8	16											8							
	2.2	Survey and Mapping	124	\$16,892.40											40	24	60											
	2.3	3D Scanning	26	\$4,480.92																		20			6			
<b>3</b>		<b>Develop Alternatives</b>	<b>302</b>	<b>\$59,574.40</b>	<b>20</b>	<b>56</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>24</b>	<b>48</b>	<b>40</b>	<b>36</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>24</b>	<b>0</b>	<b>16</b>	<b>32</b>			
	3.1	Determine Alternatives	153	\$30,083.20	10	28	3	0	0	14	24	16	20	0	0	0	0	0	0	0	0	14	0	8	16			
		Concept Feasibility Layouts	123	\$24,777.90	8	24	3			12	24	16										12		8	16			
		Cost Estimates	30	\$5,305.30	2	4				2		20										2						
	3.2	Refine Alternatives	149	\$29,491.20	10	28	3	0	0	10	24	24	16	0	0	0	0	0	0	0	0	10	0	8	16			
		Confirmation Layouts	123	\$24,775.46	8	24	3			8	24	24										8		8	16			
		Cost Estimates	26	\$4,715.74	2	4				2		16										2						
<b>4</b>		<b>Alternatives Analysis</b>	<b>168</b>	<b>\$30,628.86</b>	<b>16</b>	<b>40</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>14</b>	<b>72</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>			
	4.1	Alternatives Analysis Workshop	56	\$10,456.20	10	14	0	0	0	28	0	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0		
		Workshop 1 Prep	16	\$2,919.15	2	5				8			1															
		Workshop 1 and Summary	12	\$2,308.95	3	2				6			1															
		Workshop 2 Prep	16	\$2,919.15	2	5				8			1															
		Workshop 2 and Summary	12	\$2,308.95	3	2				6			1															
	4.2	Alternatives Analysis Tech Memo	112	\$20,172.66	6	26	0	0	0	14	44	0	8	0	0	0	0	0	0	0	0	14	0	0	0			
		Draft	69	\$12,389.03	4	16				8	28		5									8						
		Final	43	\$7,783.63	2	10				6	16		3									6						
<b>5</b>		<b>Preliminary Design</b>	<b>337</b>	<b>\$65,954.62</b>	<b>18</b>	<b>56</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>39</b>	<b>73</b>	<b>32</b>	<b>20</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>24</b>	<b>35</b>			
	5.1	Initial Design Meeting	19	\$3,662.48	3	3				3	8											2						
	5.2	Preliminary Design	301	\$58,395.00	15	53	9	0	0	36	65	32	20	1	0	0	0	0	0	0	0	11	0	24	35			
		Drawings	261	\$50,886.32	12	45	9			31	65	32										8		24	35			
		Specification Outline	10	\$2,203.38	1	4				3			1									1						
		Cost Estimate	30	\$5,305.30	2	4				2		20										2						
	5.3	Preliminary Design Review Meeting	17	\$3,897.14	4	5				4	2											2						
<b>6</b>		<b>Subconsultant Allocation (Includes 10% Markup)</b>	<b>0</b>	<b>\$742.50</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
	5.1	Utility Locate Services	0	\$742.50																								
<b>7</b>		<b>Management Reserve (5%)</b>	<b>0</b>	<b>\$10,505.36</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
	7.1	Management Reserve	0	\$10,505.36																								

**Project Expenses \$692.00**

Mileage (assumes 800 mi for site visits and survey @ \$0.665/mile) \$532.00  
 Survey Equipment (assumes 1 use @ \$160/use) \$160.00

**Total Fee Estimate \$221,304.58**



Utility Locating



**Applied Professional Services, Inc.**

43530 SE North Bend Way  
North Bend, WA 98045

“Solutions that exceed expectations”

Date	Project Address/Job Number:	Services Performed For:
7/16/2024	275 Andover Park W, Tukwila	Parametrix
		Justin Emery
	Design Survey Locating	<a href="mailto:jemery@parametrix.com">jemery@parametrix.com</a> 253-785-3028

**Scope of Work**

- A. APS, Inc. will employ all industry and best practices to designate and mark the known conductible and/or non-conductible utilities within the project boundaries.
- B. APS, Inc. will sweep the area, after the known utilities have been marked, to attempt to identify any unknown or abandoned utilities.
- C. The project boundaries are defined by civil drawings or maps provided by the Client.

**Cost Estimate**

LABOR DESCRIPTION	HOURS	RATE	AMOUNT
RM™ Conductible Locates	5	\$135.00	\$675.00
		<b>Total</b>	\$675.00

## Invoicing

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Net 30 days on all billing unless specified otherwise under a separate contract or negotiation.

## Disclaimer

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APS, Inc, and or its employees cannot guarantee that all conductible and/or non-conductible utilities within the project boundaries can or will be found.

## Project Estimate

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### **NOT TO EXCEED WITHOUT WRITTEN CLIENT APPROVAL:**

This hourly / not to exceed project estimate is based on the estimated number of hours it will take to perform the Scope of Work. If the project requires additional time or costs to complete the Scope of work, then written approval to exceed the original cost estimate is required.

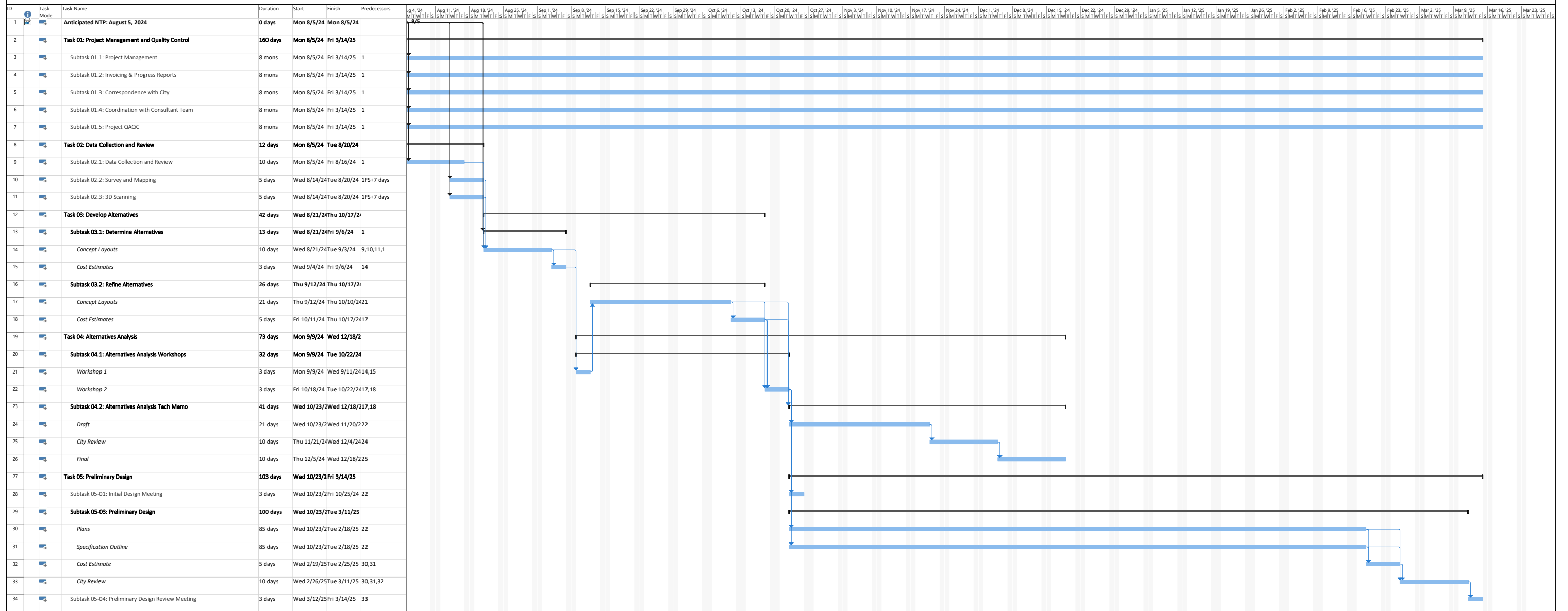
## Parametrix

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

City of Tukwila  
Lift Station 12 Upgrade  
Alternatives Analysis and Preliminary Design  
Exhibit F - Projected Project Schedule



Project: LS 12 Project Schedule Date: Thu 7/11/24

█ Task  
█ Milestone  
█ Summary  
█ Project Summary  
█ Inactive Task  
█ Inactive Summary  
█ Manual Task  
█ Duration-only  
█ Manual Summary Rollup  
█ Manual Summary  
█ Start-only  
█ Finish-only  
█ External Tasks  
█ External Milestone  
█ Deadline  
█ Progress  
█ Manual Progress