Note: Governor Inslee's Proclamation 20-28 prohibits Council meetings from being conducted in person. For this meeting, Council will meet remotely and only take action on necessary and routine matters, or matters specific to the City's COVID-19 response, until such time as regular public participation is possible. The public may attend this meeting remotely by calling the phone numbers provided.

Agenda
City Council Regular Meeting
Tuesday, June 2, 2020
Public Telephone Access: 1-888-788-0099 or1-833-548-0276 Meeting ID No. 931 6184 3157

This meeting will be conducted remotely via Zoom and will be broadcasted live on CityView Channel 192 and online at ci.richland.wa.us. If you wish to submit written comments for the Public Hearing and/or Public Comment or provide oral comments during Public Comments, please register here by 4:00 p.m. on June 2, 2020. Only those who register by the 4:00 p.m. deadline will be permitted to speak or have their comments read into the record during the meeting.

City Council Regular Meeting - 6:00 p.m. (Zoom remote meeting)

Welcome and Roll Call

Pledge of Allegiance

Approval of Agenda: (Approved by Motion)

Presentations:

Public Hearing: Please limit public hearing comments to 3 minutes. Comments must speak only to the item for which the hearing is convened. Records intended for Council consideration must be given to the City Clerk.

1. Authorizing a Franchise Agreement with ExteNet Systems, Inc., Ordinance No. 09-20
   - Heather Kintzley, City Attorney

2. Authorizing a Franchise Agreement with Cellco Partnership d/b/a Verizon Wireless, Ordinance No. 12-20
   - Heather Kintzley, City Attorney

Public Comments: Please limit public comments to 2 minutes. The public comment period is not an opportunity for dialogue with councilmembers, or for posing questions with the expectation of an immediate answer. Many questions require an opportunity for information-gathering and deliberation. For this reason, Council will accept comments, but will not directly respond to comments, questions or concerns during public comment. Records intended for Council consideration must be given to the City Clerk.

Consent Calendar: Approved by single vote; Councilmembers may transfer individual items to Items of Business for deliberation before voting.

Minutes:

3. Approval of the May 5, 2020 City Council Regular Meeting Minutes and the May 20, 2020 City Council Special Meeting Minutes
   - Heather Kintzley, City Attorney

Ordinances - First Reading:

4. Ordinance No. 09-20, Authorizing a Franchise Agreement with ExteNet Systems, Inc.
   - Heather Kintzley, City Attorney

5. Ordinance No. 12-20, Authorizing a Franchise Agreement with Cellco Partnership, d/b/a Verizon Wireless
   - Heather Kintzley, City Attorney

Ordinances - Second Reading & Passage:

6. Ordinance No. 10-20, Amending the 2020 Budget in the Community Development Block Grant Fund for Coronavirus Response
   - Kerwin Jensen, Development Services Director

Resolutions - Adoption:

7. Resolution No. 75-20, Authorizing an Award of Bid to Intermountain Slurry Seal, Inc. for the 2020 Microsurfacing Project
   - Pete Rogalsky, Public Works Director

8. Resolution No. 76-20, Authorizing a Third Amendment to the Agreement with RH2 Engineering, Inc. for the Columbia River Intake Screen Upgrade Project
   - Pete Rogalsky, Public Works Director

9. Resolution No. 77-20, Authorizing a Consultant Agreement with J-U-B Engineers, Inc. for Design of 1st Street
   - Kerwin Jensen, Development Services Director

10. Resolution No. 78-20, Authorizing a Contract with Paymentus Corporation for Merchant Services and Payment Processing
    - Cathleen Koch, Administrative Services Director

11. Resolution No. 79-20, Authorizing an Increase to the Administrative Contract Change Order Threshold for the George Washington Way Pavement Preservation Project
    - Pete Rogalsky, Public Works Director

12. Resolution No. 80-20, Authorizing a First Amendment to the 2018 Second Amended and Restated Interlocal Agreement for Benton County Emergency Services
    - John Bruce, Chief of Police

13. Resolution No. 81-20, Authorizing a Contract with Systems Design West, LLC for Ambulance Billing Services
    - Tom Huntington, Fire & Emergency Services Director

14. Resolution No. 83-20, Authorizing a VHF Radio Antenna Co-location Agreement with Walla Walla County
    - Tom Huntington, Fire & Emergency Services Director

15. Resolution No. 84-20, Authorizing a Purchase and Sale Agreement with Friends of Badger Mountain
    - Joe Schiessl, Parks & Public Facilities Director

Items - Approval:

Expenditures - Approval:

Items of Business:

Reports and Comments:

1. City Manager

2. City Council

3. Mayor

Adjournment

City Council meetings are broadcast live on CityView Channel 192 and online at ci.richland.wa.us

Richland City Hall is ADA accessible. Requests for sign interpreters, audio equipment, and/or other special services must be received 48 hours prior to the meeting by calling the City Clerk's Office at 942-7389.

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020

Agenda Category: Public Hearing

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:
Authorizing a Franchise Agreement with ExteNet Systems, Inc., Ordinance No. 09-20

Department:	Ordinance/Resolution Number:	Document Type:
City Attorney		Public Hearing Item

Recommended Motion:
None.

Summary:
RMC 28.04.020 requires a public hearing before Council may grant a franchise (also known as a master permit) to a telecommunications company. ExteNet Systems, Inc. is seeking a franchise agreement to provide small cell technology in the City's rights-of-way.

Fiscal Impact: None.

Attachments:

COUNCIL AGENDA ITEM COVERSHEET

Richland Washington

Council Date: 6/2/2020 | Agenda Category: Public Hearing

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:
Authorizing a Franchise Agreement with Cellco Partnership d/b/a Verizon Wireless, Ordinance No. 12-20

Department:	Ordinance/Resolution Number:	Document Type:
City Attorney		Public Hearing Item

Recommended Motion:
None.

Summary:
RMC 28.04.020 requires a public hearing before Council may grant a franchise (also known as a master permit) to a telecommunications company. Cellco Partnership d/b/a Verizon Wireless is seeking a franchise agreement to provide small cell technology in the City's rights-of-way.

Fiscal Impact: None.

Attachments:

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020 | Agenda Category: Minutes

Core Focus Area 1 - Promote Financial Stability & Operational Effectiveness

Subject:
Approval of the May 5, 2020 City Council Regular Meeting Minutes and the May 20, 2020 City Council Special Meeting Minutes

Department:	Ordinance/Resolution Number:	Document Type:
City Attorney		Minutes

Recommended Motion:
Approve the minutes of the Council meetings held on May 5, 2020 and May 20, 2020.

Summary:
Draft minutes from the May 5, 2020 City Council Regular Meeting and May 20, 2020 City Council Special Meeting are presented for Council's consideration and approval.

Fiscal Impact:
None.

Attachments:
1. Draft May 5, 2020 City Council Regular Meeting Minutes
2. Draft May 20, 2020 City Council Special Meeting Minutes

MINUTES

RICHLAND CITY COUNCIL REGULAR MEETING
Zoom - Public Telephonic Access: (253) 215-8782
or (346) 248-7799 Meeting ID No. 935-0626-3210
Tuesday, May 5, 2020 – 6:00 p.m.

City Council Regular Meeting - 6:00 p.m.
Mayor Lukson called the Council meeting to order at 6:00 p.m.

Welcome and Roll Call
Mayor Lukson welcomed those attending the virtual council meeting, which was held remotely to comply with Governor Inslee's directive that no municipal meetings be held in person.

The following Councilmembers were present and participated remotely: Mayor Lukson, Mayor Pro Tem Kent, and Councilmembers Alvarez, Christensen, Lemley and Thompson. Councilmember Anderson was absent at the start of the meeting.

COUNCILMEMBER THOMPSON MOVED AND COUNCILMEMBER ALVAREZ SECONDED THE MOTION TO EXCUSE COUNCILMEMBER ANDERSON. THE MOTION CARRIED 6-0.

Also (remotely) present were City Manager Reents, Assistant City Manager Amundson, City Attorney Kintzley, Chief of Police Bruce, Fire & Emergency Services Director Huntington, Development Services Director Jensen, Administrative Services Director Koch, Public Works Director Rogalsky, Parks & Public Facilities Director Schiessl, Energy Services Director Whitney and City Clerk Rogers.

Pledge of Allegiance
Mayor Lukson led the Council and remote attendees in the Pledge of Allegiance.

Approval of Agenda
COUNCILMEMBER THOMPSON MOVED AND COUNCILMEMBER CHRISTENSEN SECONDED A MOTION TO APPROVE THE AGENDA AS PUBLISHED. THE MOTION CARRIED 6-0.

Presentations

1. **COVID-19 Update**

City Manager Reents announced that Governor Inslee has extended the *Stay Home - Stay Healthy* mandate until May 31, 2020. The Governor's Office also released *Safe Start*, a four-phase plan outlining Governor Inslee's approach to reopening Washington State's economy.

Certain business industries and smaller counties will have the opportunity to apply for a variance, which will allow them to resume business as early as this week.

City Manager Reents announced that city managers in neighboring cities will submit a joint letter to the Governor's Office seeking clarification on certain sections of the S*afe Start* plan. The joint letter will also include a request to receive additional funding through the federal CARES Act to help alleviate lost revenue associated with the pandemic.

The city managers continue to meet regularly, and have discussed the mental, physical and economic concerns stemming from the S*tay Home – Stay Healthy* mandate and its extension.

City Manager Reents provided an update on city operations and events and how the pandemic has affected operations. It is likely that the full financial impact of the pandemic will not be known for several months. Funds are being monitored and preparations for the 2021 budget have begun.

City Attorney Kintzley provided a high level report on the legality of Governor Inslee's multiple proclamations. She explained that during a state of emergency, the Washington State Governor has emergency powers that authorize the prohibition of certain acts and waiver or suspension of certain laws.

Once a state of emergency is declared, the emergency does not cease until the governor so determines. Governor Inslee's *Stay Home - Stay Healthy* proclamation, as extended, falls within his legal authority. Further, Governor Inslee's proclamation concerning suspension of portions of the Open Public Meetings Act has been lawfully extended by the Governor with approval from the Washington State Legislature. In summary, the City Attorney opined that the City, as a municipal corporation, has no authority to overturn or disobey Governor Inslee's proclamations. City Attorney Kintzley briefly shared repercussions relating to violations of the proclamations.

Councilmember Anderson joined the meeting.

Mayor Lukson inquired if the City has the authority to not enforce the order from a law enforcement perspective. City Attorney Kintzley replied that it would be inappropriate for our law enforcement agency to selectively enforce certain laws.

City Manager Reents added that an enforcement guideline to Governor Inslee's proclamation is available on Governor's Inslee's website.

Councilmembers provided statements and opinions regarding the *Stay Home - Stay Healthy* mandate and its effect on residents, businesses and the economy.

Mayor Lukson stated that the joint letter addressed to the Governor should also include a request to lift the *Stay Home – Stay Healthy* mandate at the end of May, or include an avenue to navigate through the plan at a faster rate than outlined in the plan.

Mayor Pro Tem Kent stated that limited COIVID-19 testing has been performed in the community, and suggested that additional testing supplies are needed. Mayor Pro Tem Kent further stated that additional options are needed to ensure that people who are susceptible to the virus can protect themselves more aggressively.

City Manager Reents shared that, in her weekly conference call with the Benton-Franklin Health District, a discussion was had on whether the Tri-Cities can request additional testing since the Tri-Cities area was experiencing a higher number of confirmed cases per capita than the rest of the state.

Councilmembers provided additional comments regarding implications of the *Stay Home – Stay Healthy* mandate, including expressing frustration that Tri-Cities small businesses are suffering the most from the actions taken at the state level in response to COVID-19.

Public Hearing
City Clerk Rogers read the Public Comments procedure.

Development Services Director Jensen provided a summary of the three resolutions presented for public hearing. Approval related to the three public hearing items will allow nearly $374,000 to be utilized to assist individuals, families and various small businesses suffering economic loss due to the COVID-19 pandemic.

2. Proposed Substantial Amendments to the Community Development Block Grant (CDBG) 2017, 2018 and 2019 Annual Action Plans Allocating Additional Funding to the 2020 Economic Development Small Business Stabilization Loan Program Activity, Resolution No. 63-20

Mayor Lukson opened the hearing for public comments at 6:47 p.m. Richard Smith (2153 Cascade) registered to speak telephonically in support of this item. No other comments were received. Mayor Lukson closed the public hearing at 6:47 p.m.

3. Proposed Amendment to the Home Investment Partnerships Program (HOME) 2020 Annual Action Plan allocating Community Housing Development Organization (CHDO) 15% Set-aside for use with Emergency and Short-term Tenant-Based Rental Assistance Activity, Resolution No. 64-20

Mayor Lukson opened the hearing for public comments at 6:48 p.m. No comments were received. Mayor Lukson closed the public hearing at 6:48 p.m.

4. Proposed Amendment to the Community Development Block Grant Annual Action Plan to Allocate New Funds Related to Coronavirus Response, Resolution No. 65-20

Mayor Lukson opened the hearing for public comments at 6:48 p.m. No comments were received. Mayor Lukson closed the public hearing at 6:48 p.m.

Public Comments

City Clerk Rogers read public comments submitted via email from the following individuals: Aaron Pickett, 206 Edgewood Drive and Tina Gregory, 277 Jackrabbit Lane. The sentiment from both was that the actions taken at the state level violate the Washington State Constitution, and the Richland City Council should direct reopening of the City.

Tim Bush - 950 Aaron Drive - Mr. Bush stated his appreciation to City Manager Reents for her helpfulness. Mr. Bush agreed with statements made by Councilmember Thompson. He then stated concerns relating to the number of businesses that have closed as a result of the *Stay Home – Stay Healthy* mandate. Lastly, Mr. Bush urged Council to reopen the City despite Governor Inslee's directives.

Lillian Randy Slovic - 74 Newcomer - Ms. Newcomer compared the COVID-19 statistics of the Tri-Cities to other locations in the state. She asked councilmembers to consider the statistics as they consider reopening the city. She thanked the City for allowing the public to provide comments.

Consent Calendar

City Clerk Rogers read the Consent Calendar.

COUNCILMEMBER THOMPSON MOVED AND COUNCILMEMBER CHRISTENSEN SECONDED A MOTION TO APPROVE THE CONSENT AGENDA AS PUBLISHED. THOSE IN FAVOR: ALVAREZ, ANDERSON, CHRISTENSEN, KENT, LEMLEY, LUKSON AND THOMPSON. THOSE OPPOSED: NONE. THE MOTION CARRIED 7-0.

Minutes

5. Approval of the April 7, 2020 Regular Council Meeting Minutes and April 20, 2020 Special Council Meeting Minutes

Ordinances - First Reading

6. Ordinance No. 10-20, Amending the 2020 Budget in the Community Development Block Grant Fund for Coronavirus Response

Ordinances - Second Reading & Passage

None.

Resolutions - Adoption

7. Resolution No. 57-20, Setting a Public Hearing Date related to the Vacation of a Portion of Brantingham Road

8. Resolution No. 59-20, Authorizing Award of Bid to Booth and Sons Construction, Inc. for the Horn Rapids Landfill Disposal Capacity Improvements, Phase 1C - Scale House Project

9. Resolution No. 60-20, Authorizing Award of Bid to Siefken and Sons Construction, Inc. for the Wastewater Treatment Plant Lab Rebuild Project

10. Resolution No. 61-20, Authorizing Award of Bid to Allstar Construction Group, Inc. for the 2020 ADA Ramp with Water Treatment Plant Frontage Sidewalk Project

11. Resolution No. 62-20, Authorizing an Amendment to an Agreement with Architects West for Construction Administration Services related to the Horn Rapids Landfill Disposal Capacity Improvements Phase 1C - Scale House Project

12. Resolution No. 63-20, Approving a Substantial Amendment to the Community Development Block Grant (CDBG) 2017, 2018 and 2019 Annual Action Plans Allocating Additional Funding to the 2020 Economic Development Small Business Stabilization Loan Program Activity

13. Resolution No. 64-20, Approving an Amendment to the 2020 Home Investment Partnerships Program Annual Action Plan to reallocate Community Housing Development Organization 15% Set-aside Funds to the Emergency and Short- term Tenant-Based Rental Assistance Activity

14. Resolution No. 65-20, Approving an Amendment to 2020 Community Development Block Grant Annual Action Plan to Allocate New Funds Related to Coronavirus Response

15. Resolution No. 66-20, Approving the Final Plat of Clearwater Creek Phase 9 & 10

16. Resolution No. 67-20, Authorizing Acquisition of Real Property and Execution of a Financing Contract, Site Lease and Related Documentation in Support of Public Safety Response Stations 73 and 75

17. Resolution No. 68-20, Authorizing the Use of Electronic Signatures and Electronic Records in the City of Richland

18. Resolution No. 69-20, Amending the 2004 Master Lease with the U.S. Army Corps of Engineers

19. Resolution No. 70-20, Amending the 2020 George Prout Pool Capital Improvement Project Narrative

20. Resolution No. 71-20, Authorizing Amendments to the City's Governmental Money Purchase Plans & Trusts and 457 Deferred Compensation Plans to Implement Provisions of the Coronavirus Aid, Relief and Economic Security Act

Items - Approval

None.

Expenditures - Approval

21. Expenditures from March 30, 2020 - April 24, 2020 for $22,080,044.32 including Check Nos. 278160-278953, Wire Nos. 8079-8116, Payroll Check Nos. 163318-164367, Payroll Wire/ACH Nos. 11442-11485, and Pension Check Nos. 5419-5449.

Items of Business

None.

Reports and Comments

City Manager

City Manager Reents shared that during a phone call with the Benton-Franklin Health District, it was made known that COVID-19 deaths reported by the Tri-City Herald in a recent publication did not report accurate numbers as not all deaths were COVID-19 related.

City Council

Councilmember Anderson stated that every job is essential, and shared some thoughts about individuals and businesses who are struggling financially as a result of the *Stay Home – Stay Healthy* mandate. He also encouraged citizens to continue supporting the military, first responders, law enforcement and small business.

Councilmember Lemley spoke of balancing the risks betwen reopening the city and remaining closed.

Councilmember Thompson shared his thoughts regarding the pandemic and the impacts it has had on individuals and the community.

Councilmember Christensen agreed with statements made by Councilmembers Anderson and Thompson, and shared his thoughts on the effects of the COVID-19 virus on the community and economy. He requested that during the upcoming mayoral joint public service announcement, Mayor Lukson convey to the citizens that Council is working together for them and will continue to support them.

Councilmember Christensen stated that he would like Council to pursue updating the City's charter this year. Lastly, he briefly mentioned Referendum 90, Sex Education in Public Schools.

Mayor Pro Tem Kent reiterated the importance of reaching out to the appropriate entities to obtain additional testing for COVID-19. She encouraged everyone to continue to care for each other during this pandemic, and to follow the rules of the mandate, regardless of political stance regarding Governor Inslee's orders.

Lastly, Ms. Kent encouraged those who are not currently working, and have the ability, to seek volunteer opportunities for various organizations and non-profits who are in need of volunteers.

Mayor

Mayor Lukson confirmed his agreements with statements made by councilmembers. He announced that to the best of their ability, he and the entire Council will continue to lobby to reopen the economy by safely reopening the City and local businesses.

Adjournment

Mayor Lukson adjourned the meeting at 7:29 p.m.

APPROVED: ATTESTED:

Ryan Lukson, Mayor

Jennifer Rogers, City Clerk

DATE APPROVED:

DATE PUBLISHED:

MINUTES

RICHLAND CITY COUNCIL SPECIAL MEETING
Zoom- Public Telephonic Access: (206) 337-9723 or (253) 215-8782; Meeting ID No. 983 0012 0210
Wednesday, May 20, 2020 – 1:00 p.m.

City Council Special Meeting - 1:00 p.m.
Mayor Lukson called the Council meeting to order at 1:05 p.m.

Attendance: Mayor Lukson, Mayor Pro Tem Kent, and Councilmembers Alvarez, Christensen, Lemley and Thompson were present. Councilmember Anderson was absent.

Also present (remotely) were City Manager Reents, Assistant City Manager Amundson, City Attorney Kintzley, Chief of Police Bruce, Fire & Emergency Services Director Huntington, Development Services Director Jensen, Administrative Services Director Koch, Public Works Director Rogalsky, Parks & Public Facilities Director Schiessl, Energy Services Director Whitney and City Clerk Rogers.

Welcome and Roll Call
Mayor Lukson welcomed the remote participants and expressed appreciation for their attendance.

MAYOR LUKSON MOVED AND COUNCILMEMBER THOMPSON SECONDED THE MOTION TO EXCUSE COUNCILMEMBER ANDERSON. THE MOTION CARRIED 6-0.

Pledge of Allegiance
Mayor Lukson led the Council and the remote participants in the Pledge of Allegiance.

Public Comments
No timely requests were received online through the City's website by the 9:00 a.m. deadline for submission of written public comment or requests to speak during the public comment period.

Consent Calendar
City Clerk Rogers read the Consent Calendar.

COUNCILMEMBER THOMPSON MOVED AND COUNCILMEMBER CHRISTENSEN SECONDED A MOTION TO APPROVE THE CONSENT AGENDA AS PUBLISHED. THE MOTION CARRIED 6-0.

Resolutions - Adoption

1. Resolution No. 72-20, Authorizing the Award of Bid to Apollo, Inc. for the Duportail

Bridge - Phase 2 Project

2. Resolution 73-20, Authorizing a Purchase and Sale Agreement with Kreme Properties, LLC for Right-of-Way Acquisition in Support of the Duportail Street-Queensgate Drive Intersection Improvements

3. Resolution No. 74-20, Authorizing the Acquisition of Real Property Interests from the Tri-City Railroad Company, LLC in Support of the Center Parkway Extension Project

Items of Business

4. COVID-19 Council Discussion

City Manager Reents provided Council with information on how the City is handling business complaints received through the Governor's Office hotline. Chief of Police Bruce provided a response to Councilmember Christensen's inquiry into how a recent local business complaint was handled by the Richland Police Department.

City Manager Reents shared that the Governor's Office has released new guidance clarifying requirements needed to progress to the next phase of the *Safe Start* plan. Councilmembers provided comments and opinions relating to the *Stay Home – Stay Healthy* mandate and how to advocate within parameters to safely advance to the next phase of the plan. The City is actively seeking ways to re-open Richland's economy to prevent more businesses from permanently closing.

Discussion ensued regarding the data published on the number of people tested for the COVID-19 virus, the lack of numbers published for those who tested negative for the virus, and the need to better communicate where people can go to be tested for the virus.

Mayor Pro Tem Kent left the meeting at 2:00 p.m.

MAYOR LUKSON MOVED AND COUNCILMEMBER THOMPSON SECONDED THE MOTION TO DIRECT THE CITY MANAGER TO WORK WITH BENTON AND FRANKLIN COUNTIES AND NEIGHBORING CITIES TO REQUEST A VARIANCE ALLOWING THE CITY TO MOVE TO THE NEXT PHASE BASED ON ANOMOLIES IN THE DATA. THE MOTION CARRIED 5-0.

Reports and Comments

City Manager

City Manager Reents outlined specific actions taken by the City to advocate on behalf of local businesses. Some efforts include writing letters to Governor Inslee and contacting Governor Inslee's local representatives to work through the process. Funding is also available through various small business loans and grants. Continued partnerships with

TRIDEC and Visit Tri-Cities are being leveraged to work toward assisting small businesses and finding a path forward to open in a safe manner.

City Council

Councilmember Christensen thanked City Manager Reents for being proactive in assisting local businesses where possible. He also commented that we have lost quite a few businesses during the *Stay Home – Stay Healthy* mandate. He informed City Manager Reents that during a recent visit to the Jim House basketball court, no hoops were on the backboards. City Manager Reents replied that she will look into the issue.

Mayor

Mayor Lukson stated that the Duportail Bridge project is moving forward and should be completed this fall. Likewise, the Center Parkway Extension Project will continue to progress, and generations to come will be able to reap the benefits of the years of planning from long-serving councilmembers.

Adjournment

Mayor Lukson adjourned the meeting at approximately 2:12 p.m.

APPROVED: ATTESTED:

________________________________ ________________________________

Ryan Lukson, Mayor Jennifer Rogers, City Clerk

DATE APPROVED:

DATE PUBLISHED:

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020 | Agenda Category: Ordinances - First Reading

Core Focus Area 1 - Promote Financial Stability & Operational Effectiveness

Subject:
Ordinance No. 09-20, Authorizing a Franchise Agreement with ExteNet Systems, Inc.

Department:	Ordinance/Resolution Number:	Document Type:
City Attorney	09-20	Ordinance

Recommended Motion:
Give first reading, by title only, to Ordinance No. 09-20, granting a ten-year franchise agreement to ExteNet Systems, Inc. for fiber-optic, small wireless facilities and other related facilities.

Summary:
The City is authorized through state and federal statutes to grant and renew telecommunications franchises for the installation, operation, and maintenance of telecommunication systems. The City's authority to grant franchises for the use of its streets and other public properties is found in RCW 35A.47.040, the Richland City Charter, and Title 28 RMC, specifically Chapter 28.14. The franchise enables the City to govern usage by telecommunications operators of the City's rights-of-way.

ExteNet Systems, Inc. ("ExteNet") has requested a non-exclusive telecommunications franchise for fiber-optic cable, small wireless facilities, and other related facilities. ExteNet desires to provide telecommunications services, and to construct, operate and maintain a telecommunications system within the City's rights-of-way, which requires a telecommunications franchise.

ExteNet is an infrastructure provider that will provide both the backhaul fiber/cable to small wireless facilities as well as construct the infrastructure for a third-party carrier, for example Sprint, to operate small wireless facilities. Prior to performing any construction in the right-of-way, ExteNet must apply for and receive permits from the City.

This franchise does not permit ExteNet to operate a broadcast cable system or macro wireless facilities within the city right-of-way. Further, this franchise does not allow ExteNet to attach to City-owned poles or use the City's infrastructure (including fiber or conduit) without a separate lease or license agreement with the City.

Staff recommends approval of Ordinance No. 09-20 for first reading, by title only.

Fiscal Impact:
Administrative costs are paid by ExteNet from a deposit required at the time of application.

Attachments:
1. Ordinance No. 09-20

ORDINANCE NO. 09-20

AN ORDINANCE OF THE CITY OF RICHLAND granting to ExteNet Systems, Inc., and its successors and assigns, the right, privilege, authority and non-exclusive franchise for ten (10) years to construct, maintain, operate, replace and repair a telecommunications network in, across, over, along, under, through and below certain designated public rights-of-way of the City of Richland, Washington.

WHEREAS, Richland was incorporated as a city of the first class on December 10, 1958; and

WHEREAS, Article 11, Section 11 of the Washington State Constitution provides that the City of Richland “may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws”; and

WHEREAS, the Richland City Council, as provided in RCW 35.22.570, has any authority ever given to any class of municipality or to all municipalities of this state, and all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law, which may be exercised in regard to the regulation or use of public ways and property of all kinds and improvements thereto; and

WHEREAS, the City of Richland, a Washington first-class charter city, by Section 2.07(F) of its Charter, has granted to the Richland City Council the authority to grant franchises by ordinance; and

WHEREAS, ExteNet Systems, Inc. (hereinafter the “Franchisee”) has applied to the City of Richland for a non-exclusive franchise (“Franchise”) to enter, occupy, and use public ways to construct, install, operate, maintain, and repair telecommunication facilities to offer and provide telecommunications services for hire, sale, or resale in the City of Richland (hereinafter the “City”); and

WHEREAS, the 1934 Communications Act, as amended by the 1996 Telecommunications Act, 47 USC § 151, et seq., relating to telecommunications providers, recognizes and provides state and local governments with the authority to manage the public rights-of-way, and to require fair and reasonable compensation on a competitively neutral and non-discriminatory basis; and

WHEREAS, Washington’s Telecommunications Services Act, codified as Chapter 35.99 RCW and relating to telecommunications providers, recognizes and provides Washington cities with authority to require franchises and use permits for constructing, installing, operating, maintaining, repairing, or removing telecommunication facilities in the public rights-of-way; and

WHEREAS, a franchise is a legislatively approved master permit, as defined in Chapter 35.99 RCW and Title 28 of the Richland Municipal Code (RMC), granting general permission to a service provider to enter, use, and occupy the public ways for the purpose of locating facilities, subject to requirements that a franchisee must also obtain separate use permits from the City for use of each and every specific location in the public ways in which the franchisee intends to construct, install, operate, maintain, repair or remove identified facilities; and

WHEREAS, a franchise does not include, and is not a substitute for, any other permit, agreement, or other authorization required by the City, including, without limitation, permits required in connection with construction activities in public rights-of-way which must be administratively approved by the City after review of specific plans; and

WHEREAS, no ordinance shall be finally passed unless it is approved by a majority of all members of Council, nor shall any ordinance relating to a franchise be finally passed less than six days following its introduction and first reading, and every ordinance granting a franchise shall become effective at the expiration of thirty days following its first publication, or on any day thereafter fixed by Council; and

WHEREAS, the City Council finds that the franchise terms and conditions contained in this ordinance are in the public interest.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Definitions. For purposes of this Ordinance, the following terms, phrases, words, and their derivations will have the meanings given herein, regardless of whether or not they are capitalized herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will have the meaning ascribed to those words in Title 28 RMC, Chapter 23.62 RMC, or elsewhere in the Richland Municipal Code, unless inconsistent herewith.

"Cable Television Service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

"Conduit" means optical cable housing, jackets, or casing, and pipes, tubes, or tiles used for receiving and protecting wires, lines, cables, and communication and signal lines.

"Costs" means costs, expenses, and other financial obligations of any kind whatsoever.

“Effective Date” means the thirty-first day following the publication of this Franchise (or a summary thereof) in an official newspaper of the City as provided by law.

"Existing" means a physical structure or facility in existence prior to the effective date of this Franchise.

“Facilities” means small wireless facilities and wireline telecommunication services, including but not limited to wireline broadband transmission services, dark fiber, and wireline backhaul.

"Force Majeure Event” is defined for purposes of this Franchise as strikes, lockouts, sit-down strikes, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and any other similar Act of God event.

"Governmental Use" means use by the City, State, or agencies or departments of the United States for the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means both internally and externally within or between their various agencies, departments and divisions.

"Incremental Costs" means the actual and necessary costs incurred which exceed costs which would have otherwise been incurred. Incremental costs shall not include any part, portion, or pro-ration of costs, of any kind whatsoever, including, without limitation, overhead or labor costs, which would have otherwise been incurred.

"Information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Optical Cable" means wires, lines, cables and communication and signal lines used to convey communications by fiber optics.

"Public Way" or “Right-of-Way” means land acquired or dedicated for public roads and streets, but does not include: WSDOT-managed state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; federally granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use. Rights-of-Way, for the purpose of this Franchise, do not include: buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City.

"Street Tree" means any tree located in, or that portion over-hanging, any Public Way and any tree planted on private property near a Public Way at the direction of the City.

"Underground Facilities" means facilities located under the surface of the ground, other than underground foundations or supports for overhead facilities.

"Utility Poles" means poles, and crossarms, devices, and attachments directly affixed to such poles which are used for the transmission and distribution of electrical energy, signals, or other methods of communication. Utility Poles also includes metal light standards.

“Small Wireless Facilities” or “Facilities” means small wireless facilities as defined in 47 CFR Section 1.6002, as may be amended. Small Wireless Facilities shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceeds the noise limits allowed in the Codes, or associated permit, are excluded from “Small Wireless Facilities.”

Section 2. Franchise.

A. The City grants to Franchisee, subject to the terms and conditions of this Franchise, a non-exclusive franchise and master permit to enter, occupy, and use public ways of the City of Richland for constructing, installing, operating, maintaining, repairing, and removing small wireless facilities and wireline facilities necessary to provide telecommunications services. Except as expressly provided herein, Franchisee shall construct, install, operate, maintain, repair, and remove its facilities at its expense.

B. Nothing in this Franchise grants authority to Franchisee to enter, occupy, or use public ways for constructing, installing, operating, maintaining, repairing, or removing those personal wireless services and associated facilities that fall outside of the definition of small wireless facilities (i.e. macro facilities).

C. Nothing in this Franchise grants authority to Franchisee to enter, occupy, or use City property, including any City-owned conduit, pole(s) or structure(s). A separate lease or pole attachment agreement is necessary prior to such attachment.

D. Any rights, privileges, and authority granted to Franchisee under this Franchise are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and nothing in this Franchise excuses Franchisee from its obligation to comply with all applicable general laws enacted by the City pursuant to such power. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the exercise of the City's police power.

E. Nothing in this Franchise excuses Franchisee of its obligation to identify its facilities and proposed facilities, and their location or proposed location, in the public ways and to obtain use and/or development authorization and permits from the City before entering, occupying, or using public ways to construct, install, operate, maintain, repair, or remove such facilities.

F. Nothing in this Franchise excuses Franchisee of its obligation to comply with applicable codes, rules, regulations and standards subject to verification by the City of such compliance.

G. Nothing in this Franchise shall be construed to limit any taxing authority or other lawful authority to impose charges or fees, or to excuse Franchisee of any obligation to pay lawfully imposed charges or fees.

H. Nothing in this Franchise grants authority to Franchisee to impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.

I. Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of facilities, or to modify public ways to accommodate Franchisee's facilities.

J. Nothing in this Franchise grants authority to Franchisee to provide or offer a Cable System or Cable Services as those terms are defined in 47 U.S.C. § 522(6).

K. Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third party user of Franchisee's facilities, or to otherwise recognize or create third party beneficiaries to this Franchise.

L. Nothing in this Franchise shall be construed to permit Franchisee to unlawfully enter or construct improvements upon the property or premises of another.

M. Nothing in this Franchise authorizes Franchisee to enter or construct improvements on, in, under, over, across, or within any property or right-of-way of any third party without that third party's permission.

N. Franchisee is authorized to place its facilities in the rights-of-way only consistent with this Franchise, the Richland Zoning Code, the Comprehensive Plan, the Design and Construction Standards and the Richland Municipal Code (collectively the “Codes”).

Section 3. Term. Authorization granted under this Franchise shall be for a period of ten (10) years from the Effective Date of this Franchise. Each of the provisions of this Franchise shall become effective upon the Effective Date and shall remain in effect for ten (10) years thereafter.

Section 4. Location of Facilities.

A. Franchisee must place its facilities underground, except as otherwise expressly provided herein and where other similarly situated utilities are permitted overhead. Franchisee shall not be permitted to erect poles unless permitted by the City pursuant to Section 13.C and the Codes. Franchisee acknowledges and agrees that if the City allows the placement of small wireless facilities above ground, the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to an underground installation or relocation at Franchisee's expense if the existing poles on which Franchisee's facilities are located are designated for removal. This Franchise does not place an affirmative obligation on the City to allow the relocation of such facilities on public property or in the rights-of-way, nor does it relieve Franchisee from any code provision related to the siting of wireless facilities. Franchisee shall not be required to place underground any portion of the facility that must, for technological reasons, remain above-ground to operate. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's facilities to remain above ground, then Franchisee shall cooperate with the City and modify the affected facilities to incorporate the placement of wireline services underground (and internal to the pole if the replacement pole is hollow, for example electrical and fiber) or otherwise consistent with a design plan agreed to by the City and Franchisee, at no cost to the City.

B. Franchisee may place optical cable, optical cable housing, and splicing connections on existing utility poles as overhead facilities if approved by the owner of the utility poles. All other wireline facilities, including, without limitation, facilities required to operate or maintain such optical cable and optical cable housing, and splicing connections must be placed underground if they are located in a public way where other similarly situated utilities are required underground.

C. Franchisee shall not remove any underground facilities that require trenching or other opening of the rights-of-way, except as provided in this section. Franchisee may remove any underground facilities from the right-of-way that have been installed in such a manner that it can be removed without trenching or any other opening of the right-of-way, or if otherwise permitted by the City. When the City determines, in the City's reasonable discretion, that Franchisee's underground facilities must be removed in order to eliminate or prevent a hazardous condition, then Franchisee shall remove such facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 12, prior to any such removal of underground facilities from the right-of-way and must provide as-built plans and maps pursuant to Section 6.L.

D. Franchisee's facilities shall not unreasonably interfere with the use of public ways or City property by the City, the general public, or other persons authorized to enter, occupy, or use public ways or City property. Whenever new facilities will exhaust the capacity of a public way to reasonably accommodate future users or facilities, the Franchisee shall provide non-discriminatory access to its facilities to future users and facilities.

E. Franchisee shall not impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.

F. Franchisee shall provide the City with information in such form requested by the City which accurately reflects the horizontal and vertical location and configuration of all of Franchisee's facilities. Franchisee shall provide the City with updated information annually, or upon request by the City.

G. 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, or 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. Without limitation of the foregoing, Franchisee specifically agrees that:

(1) any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(2) 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

(3) 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.

H. Franchisee shall maintain all above ground improvements that it places on City rights-of-way pursuant to this Franchise. In order to avoid interference with the City’s ability to maintain the rights-of-way, Franchisee shall provide a clear zone to meet the Design and Construction Standards. If Franchisee fails to comply with this provision, and by its failure property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.

I. Franchisee must obtain written approval from the owners of utility poles, structures and property not owned by Franchisee prior to attaching to, or otherwise using, such poles, structures or property, and provide proof of such approval to the City. In the case where the City owns the utility poles or structures, the Franchisee shall comply with Title 14 of the Richland Municipal Code as preparation for a specific project plan and permit submittal. The City makes no representation, and assumes no responsibility, for the availability of utility poles, structures, and property owned by third parties for the installation of Franchisee's facilities. The City shall not be liable for the unavailability of utility poles, structures, and property owned by the City or third parties for any reason whatsoever. The installation of facilities by Franchisee on or in the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use public ways. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the public ways either expires, terminates, or is cancelled, the authority of Franchisee to construct, install, operate, maintain, and repair Franchisee's facilities at such locations may be immediately cancelled at the sole option of the City. The City shall not be liable for the costs for removal of facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use public ways for any reason whatsoever.

Section 5. Relocation.

A. The City may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove and/or temporarily disconnect its facilities within the right-of-way when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, and/or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Franchisee shall have the privilege to temporarily bypass in the authorized portion of the same rights-of-way upon approval by the City (which approval shall not unreasonably be withheld or delayed), any facilities required to be temporarily disconnected or removed. 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, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third party private entities. Collectively all such projects described in this Section 5.A 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 5.A shall be borne by Franchisee. Franchisee shall complete the relocation of its facilities at no charge or expense to the City.

B. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its facilities as required by the City, and at no cost to the City, subject to the procedure in Section 5.E. Franchisee acknowledges and agrees that the placement of small wireless facilities on third party-owned structures does not convey an ownership interest in such structures. Franchisee acknowledges and agrees that, to the extent Franchisee’s small wireless facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests arising out of a Public Project.

C. The cost of relocation of any Franchisee owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3)(b), provided, however, that the Franchisee may opt to pay for the cost of relocating its small wireless facilities in order to provide consideration for the City’s approval to site a small wireless facility on Franchisee-owned structures or poles in a portion of the right-of-way designated or proposed for a Public Project. For this Section 5.C, designation of the right-of-way for a Public Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of Chapter 36.70A RCW. The Comprehensive Plan includes, but is not limited to, the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element, and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the small wireless facility at a particular site because of the cost impact of such relocation and the conflict with the City's Comprehensive Plan.

D. Upon request of the City (or of a third party performing work in the right-of-way), and in order to facilitate the design of City street and right-of-way improvements, Franchisee agrees, at its sole cost and expense, to locate, and, if reasonably determined necessary by the City, to excavate and expose its facilities for inspection so that the facilities' location may be taken into account in the improvement design. The decision as to whether any facilities need to be relocated in order to accommodate the Public Projects shall be made by the City upon review of the location and construction of Franchisee's facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of facilities.

E. Third Party Requests. If any person (not including the City or an entity performing an Improvement Project) authorized to place facilities in the rights-of-way requests Franchisee to protect, support, temporarily disconnect or remove or relocate its facilities to accommodate the construction, operation, or repair of the requesting person's facilities, Franchisee shall, after thirty (30) days' advance written notice, take action to effect the necessary changes requested; provided, however, unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the facility that is being requested to move was not properly installed, the reasonable cost of the same shall be borne by the person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the City, even if the City makes the request for such action.

F. Notice and Relocation Process. If the City determines that the project necessitates the relocation of Franchisee's existing 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. 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 engage in the following recommended process, absent an emergency posing a threat to public safety or welfare, or an emergency beyond the control of the City that will result in severe financial consequences to the City:

(1) The City will consult with Franchisee in the pre-design phase of any Public Project in order to coordinate the project's design with Franchisee's facilities within such project's area.

(2) Franchisee shall participate in pre-design meetings until such time as (i) both parties mutually determine that Franchisee's facilities will not be affected by the Public Project, or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (4) below.

(3) Franchisee shall, during the pre-design phase, evaluate and provide comments to the City related to any alternatives to possible relocations. The City will give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

(4) The City will provide Franchisee with its decision regarding the relocation of Franchisee's facilities as soon as reasonably possible, endeavoring to provide no less than ninety (90) days prior to the commencement of the construction of such Public Project; provided, however, that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.E, the City will notify the Franchisee during the pre-design meetings and the process mandated by the grant funding will control.

(5) After receipt of such written notice, 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.

(6) 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, that necessitates the relocation of Franchisee's facilities, Franchisee shall relocate its facilities within the time period specified by the City.

G. The provisions of this Section 5 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.

H. Franchisee shall be solely responsible for the actual costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event, or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties). Such costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorney fees incurred by the City to the extent directly attributable to Franchisee’s cause of delay in the Public Project.

I. Franchisee will indemnify, hold harmless, and pay the costs of defending the City (in accordance with the provisions of Section 14), 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 as provided in this Section 5; provided, however, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

J. If Franchisee fails, neglects, or refuses to remove or relocate its facilities as directed by the City following the procedures outlined in Section 5.A through Section 5.E, then upon at least ten (10) days’ written notice to Franchisee, the City may perform such work (including removal), or cause it to be done, and the City’s costs shall be paid by Franchisee pursuant to Section 18, and the City shall not be responsible for any damage to the facilities.

K. The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have facilities in the rights-of-way.

Section 6. Construction and Installation Requirements.

A. Except as to emergency repairs, Franchisee shall, prior to excavating within any street, alley or other public place, or installing any conduit, overhead facilities or equipment therein, or relocating, constructing, or performing maintenance within the rights-of-way, file with the City Engineer plans and specifications thereof showing the work to be done, the location and nature of the installation to be made, repaired or maintained, as well as a schedule showing the times of beginning and completion and shall secure a permit from the City before proceeding with any such work. Franchisee shall comply with the permit requirements and conform to all requirements of Chapter 12.08 RMC regarding right-of-way construction, as it currently exists or as it may be amended.

B. The technical performance of the facilities must meet or exceed all applicable technical standards authorized or required by law, regardless of the transmission technology utilized. The City has the full authority permitted by applicable law to enforce compliance with these technical standards.

C. All installations of facilities will be durable, and installed in accordance with good engineering, construction, and installation practices.

D. All facilities shall be constructed and installed in such a manner and at such points so as not to inconvenience public use of the public ways (or to adversely affect the public health, safety or welfare) and in conformity with plans approved by the City, except in instances in which deviation may be allowed by the City.

E. The construction plans shall conform to all federal, state, local, and industry codes, rules, regulations and standards. Franchisee must cease work immediately if the City determines that Franchisee is not in compliance with such codes, rules, regulations or standards, and may not begin or resume work until the City determines that Franchisee is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.

F. Neither approval of plans by the City nor any action or inaction by the City shall relieve Franchisee of any duty, obligation, or responsibility for the competent design, construction, and installation of its facilities. Franchisee is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, agents, or assigns.

G. All construction and/or maintenance work shall be performed in conformity with the plans and specifications filed with the City and with the permit or permits issued, except in instances in which deviation may be allowed thereafter in writing, pursuant to an application submitted by the Franchisee.

H. In the event of an emergency requiring immediate action by Franchisee for the protection of the facilities, City's property or other persons or property, Franchisee may proceed without first obtaining the normally required permits. In such event, Franchisee must: (1) take all necessary and prudent steps to protect, support, and keep safe from harm the facilities or any part thereof, City's property, or other persons or property, and to protect the public health and safety; and (2) as soon as possible thereafter, obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.

I. The City retains the right and privilege to cut, move, or remove any facilities located within the rights-of-way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. The City shall 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 subsection, except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents.

J. Unless such condition or regulation is in conflict with a federal or state requirement, the City may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the public right-of-way or the City's property, including, by way of example and not limitation, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic, and protecting rights-of-way improvements, private facilities and public safety.

K. Whenever necessary, after construction or maintaining any of Franchisee's facilities within the rights-of-way, Franchisee shall, without delay, and at Franchisee's sole expense, remove all debris and restore the surface disturbed by Franchisee as nearly as possible to as good or better condition as it was in before the work began. Franchisee shall replace any property corner monuments, survey reference, or hubs that were disturbed or destroyed during Franchisee's work in the rights-of-way. Such restoration shall be done in a manner consistent with applicable codes and laws, and to the City's satisfaction, and, where applicable, to City specifications.

L. Following any construction, excluding modifications that meet the same or substantially similar dimensions of the small wireless facility, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors for all existing small cell facilities in the Franchise Area. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Franchisee shall provide such maps within thirty (30) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps, and as-builts provided to the City. Franchisee shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the Franchise Area, including safety of all persons and property during the performance of any work.

M. Franchisee shall, at all times, keep up-to-date maps and records showing the location and sizes of all Franchisee's facilities installed by it in the City. Such maps and records shall be kept in Franchisee's district operating office and shall be subject to inspection at all reasonable times by proper officials or agents of the City. Franchisee shall provide, at the City's request, a copy of facilities maps for the City's use. All books, records, maps, and other documents maintained by Franchisee, with respect to its facilities within the rights-of-way, shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

N. All Franchisee's underground facilities shall be placed in accordance with current City regulations and project permit requirements. Unless otherwise approved by the City Engineer, underground facilities must maintain (parallel) five (5) feet separation from City water and sewer mains. Franchisee shall restore the public way to pre-construction condition or better. Franchisee agrees to pay all costs and expenditures required on rights-of-way as a result of settling, subsidence, or any other need for repairs or maintenance resulting from excavations made by Franchisee for a period of five (5) years after the excavation. Favorable weather conditions permitting, Franchisee agrees to repair rights-of-way as a result of settling, subsidence, or other needed repairs or maintenance resulting from excavations made by the Franchisee within the prior five (5) years upon forty-eight (48) hours' notice excluding weekends and holidays. If Franchisee fails to undertake such repairs as herein provided, the City may perform the repairs at Franchisee's expense.

O. The City reserves the right to limit or exclude Franchisee's access to a specific route, public right-of-way or other location when, in the judgment of the Public Works Director, there is inadequate space (including, but not limited to, compliance with ADA clearance requirements and maintaining a clear and safe passage through the rights-of-way), a pavement cutting moratorium, unnecessary damage to public property, public expense, interference with City utilities, or for any other reason determined by the City Engineer.

P. Franchisee may trim trees which are upon and/or overhang 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 way shall only apply to the extent necessary to protect above ground facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for removal of all debris resulting from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services. However, any firm or individual so retained must first receive City permit 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 encroaching into the public rights-of-way. 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, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the City Engineer or his/her designee.

Section 7. Coordination of Construction and Installation Activities and Other Work.

A. Franchisee shall coordinate its construction and installation activities and other work with the City and other users of the public ways at least annually or as determined by the City.

B. All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.

C. If required by permit, at least twenty four (24) hours prior to entering a public way to perform construction and installation activities or other work, Franchisee shall give notice, at its cost, to owners and occupiers of properties adjacent to such public ways indicating the nature and location of the work to be performed. Such notice shall be physically posted by door hanger. Franchisee shall make a good faith effort to comply with the property owner or occupier's preferences, if any, on location or placement of underground facilities, consistent with sound engineering practices.

D. Franchisee shall make available, and accept, the co-location of property of others within trenches excavated or used by Franchisee in the public ways, provided the costs of the work are fairly allocated between the parties.

E. By February 1 of each year, Franchisee shall provide the City with a schedule of its proposed construction or installation activities and other work in, around, or that may affect the public ways or City property.

F. The City shall give reasonable advance notice to Franchisee of plans to open public ways for construction or installation of facilities; provided, however, the City shall not be liable for damages for failure to provide such notice. When such notice has been given, Franchisee shall provide information requested by the City regarding Franchisee's future plans for use of the public way to be opened. When notice has been given, Franchisee may only construct or install facilities during such period that the City has opened the public way for construction or installation.

Section 8. Temporary Removal, Adjustment or Alteration of Facilities.

A. Franchisee shall temporarily remove, adjust or alter the position of its facilities (at its cost) at the request of the City for public projects, events, or other public operations or purposes.

B. Prior to doing any work in the rights-of-way, Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and complying with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request by the City or a third party, Franchisee shall locate the precise horizontal and vertical location of its underground facilities by excavating its facilities consistent with the requirements of Chapter 19.122 RCW, and shall complete this service within fourteen (14) days from the date of the City or third party’s request, at no cost to the City. If the City’s request is in support of a third party’s project, Franchisee shall be entitled to recover its cost from the project sponsor. 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 or not the City issued a permit.

C. If any person requests permission from the City to use a public way for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Franchisee for the temporary removal, adjustment or alteration of Franchisee's facilities to accommodate the moving or removal of said building or other object. In such event, Franchisee shall, at the cost of the person desiring to move or remove such building or other object, remove, adjust or alter the position of its facilities which may obstruct the moving or removal of such building or other object, provided that:

(1) The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Franchisee's business, consistent with the maintenance of proper service to Franchisee's customers;

(2) Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with the operations of Franchisee, as determined in the sole discretion of the City;

(3) The person obtaining such permission from the City to move or remove such building or other object may be required to indemnify and hold Franchisee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of, or in conjunction with, the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person moving or removing such building or other object or the negligence of the agents, servants or employees of the person moving or removing such building or other object; and

(4) Completion of notification requirements by a person who has obtained permission from the City to use a public way for the moving or removal of any building or other object shall be deemed to be notification by the City.

D. The City may require Franchisee to temporarily remove, adjust or alter the position of Franchisee's facilities as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The

City shall not be liable to Franchisee or any other party for any direct, indirect, or other damages suffered as a direct or indirect result of the City's actions.

E. The temporary removal, adjustment or alteration of the position of Franchisee's facilities shall not be considered relocation for any purpose whatsoever.

Section 9. Safety and Maintenance Requirements.

A. All work authorized and required under this Franchise will be performed in a safe, thorough, and workmanlike manner, so as to minimize interference with the free passage of traffic, and the free use of adjoining property, whether public or private.

B. Franchisee, in accordance with applicable federal, state, and local safety requirements, shall at all times employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the City, the City may, after discussions with Franchisee, establish a reasonable time for Franchisee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself at the cost of the Franchisee, or have them made at the cost of Franchisee.

C. Franchisee, and any person acting on its behalf, shall provide a traffic control plan that conforms to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Said plan shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in public ways to prevent injury or damage to any person, vehicle, or property. Franchisee shall implement and comply with its approved traffic control plan during execution of its work.

D. Franchisee shall maintain its facilities in proper working order. Franchisee shall restore its facilities to proper working order upon receipt of notice from the City that facilities are not in proper working order. The City may, after discussions with Franchisee, establish a reasonable time for Franchisee to restore its facilities to proper working order. If the facilities are not restored to proper working order within the established time frame, the City may restore the facilities to proper working order, or have them restored at the cost of Franchisee.

E. Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles or extraneous wires used for the connection of aerial facilities (e.g., connecting equipment boxes to antennas). All installation of facilities shall be installed in accordance with industry standard engineering practices, and shall comply with all federal, state, and local regulations, ordinances and laws.

F. 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 10. Removal of Unauthorized Facilities.

A. Any small wireless facilities installations in the right-of-way that were not authorized under this Franchise ("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Franchisee. The City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff, and Franchisee shall either: (i) establish that the site was authorized, or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Upon notice of the Unauthorized Facility, Franchisee shall be charged an amount of Five Hundred and 00/100 Dollars ($500.00) per day per Unauthorized Facility ("Unauthorized Facility Fee"). The Unauthorized Facility Fee shall be waived in its entirety if Franchisee can establish that the site was in fact authorized. The Unauthorized Facility Fee shall be suspended upon the submission of a complete application to the City requesting approval of the Unauthorized Facility. If the application for such Unauthorized Facilities is denied as the final decision, then the Unauthorized Facility Fee will resume until the Unauthorized Facilities are removed. In which case, Franchisee shall remove the Unauthorized Facilities from the City's right-of-way within thirty (30) days after the expiration of all appeal periods for such denial. Upon the conclusion of any matter involving an Unauthorized Facility, City shall provide Franchisee an invoice detailing the total amount of the Unauthorized Facility Fee, if any, which penalty Franchisee shall pay within thirty (30) days after receipt of notice thereof. This Franchise remedy is in addition to any other remedy available to the City at law or equity. Notwithstanding the foregoing, an Unauthorized Facility Fee pursuant to this Franchise shall not be assessed if Franchisee received City approval for the small wireless facilities but such small wireless facilities are technically inconsistent with the City approval; provided, however, that Franchisee is still required to fix any inconsistencies with the permit requirements, and that this provision does not restrict the City's other enforcement rights.

B. Where any facilities or portions of facilities are no longer needed, and their use is to be discontinued, the Franchisee shall immediately report such facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in Section 13.F. Deactivated Facilities, or portions thereof, shall be completely removed within ninety (90) days, and the site, pole or infrastructure restored to its pre-existing condition.

C. If Franchisee leases a structure from a landlord and such landlord later abandons the structure, Franchisee shall remove its facilities from the abandoned structure within the timeline provided by the landlord, but not more than ninety (90) days after such notification from the landlord, at no cost to the City, and shall remove the pole if so required by the landlord. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in Section 5 above shall apply.

D. 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 ninety (90) days of receiving written notice from the Public Works Director or his/her 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 his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore 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, however, that Franchisee shall not be responsible for any changes to the rights-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.

E. The City may permit Franchisee's facilities 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.

F. Any facilities which are not removed within one hundred and eighty (180) days of either: (i) the date of termination or revocation of this Franchise; or (ii) 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 10 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.

G. The provisions of this Section 10 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has facilities in rights-of-way.

Section 11. Restoration of Public Ways and Other Property.

A. When Franchisee, or any person acting on its behalf, does any work in or affecting any public way or other property, it shall, at its own expense, promptly remove any obstructions therefrom and restore, at Franchisee's cost, such ways and property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

B. If weather or other conditions do not permit the complete restoration required by this section, Franchisee shall temporarily restore the affected ways or property.

Such temporary restoration shall be at Franchisee's cost, and Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. All restoration work is subject to inspection and final approval by the City. If restoration is not made to the satisfaction of the City within the established timeframe, the City may make the restoration itself at the cost of Franchisee, or have such restoration made at the cost of Franchisee.

D. The provisions of this Section 11 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has facilities in rights-of-way.

Section 12. Use and/or Development Authorization and Permits. Franchisee shall obtain use, right-of-way construction, and/or development authorization and required permits from the City and all other appropriate regulatory authorities prior to constructing or installing facilities or performing other work in a public way.

A. In addition to any permitting requirements of the City specific to facilities found in Title 28 RMC and Chapter 23.62 RMC, Franchisee must provide the information described in Section 12.B below.

B. Franchisee shall provide the following information for all facilities that it proposes to construct or install:

(1) Engineering plans, specifications and a network map of the proposed facilities and their relation to existing facilities, in a format and media requested by the City in sufficient detail to identify:

a. The location and route of the proposed facilities;

b. When requested by the City, the location of all overhead and underground public utility, telecommunication, cable, water, sewer, drainage and other facilities in the public way along the proposed route;

c. When requested by the City, the location(s), if any, for interconnection with the telecommunication facilities of others;

d. The specific trees, structures, improvements, facilities and obstructions, if any, that Franchisee proposes to temporarily or permanently alter, remove or relocate.

(2) If Franchisee is proposing to install overhead facilities, evidence of Franchisee’s authorization to use each utility pole along the proposed route, together with any conditions of use imposed by the pole owner(s) for each pole. If the overhead facilities are subsequently relocated underground, Franchisee shall relocate its facilities consistent with the requirements of this Franchise. If Franchisee proposes to install overhead facilities on City-owned poles or structures, the Franchisee shall comply with all applicable provisions of Title 14 RMC.

(3) If Franchisee is proposing to install underground facilities in existing ducts or conduits within the public ways, information in sufficient detail to identify:

a. Evidence of ownership or authorization to use such ducts or conduits;

b. Conditions of use imposed by the owner(s) of the ducts or conduits;

c. If known to Franchisee, or reasonably ascertainable to Franchisee, the total capacity of such ducts or conduits; and

d. If known to Franchisee, or reasonably ascertainable to Franchisee, amount of the total capacity within such ducts or conduits which will be occupied by Franchisee's facilities.

(4) If Franchisee is proposing to install underground facilities in new ducts or conduits within the public ways:

a. The location proposed for new ducts or conduits;

b. The total capacity of such ducts or conduits; and

c. The initial listing of collocated facilities located within Franchisee constructed or installed ducts or conduits.

(5) A preliminary construction schedule and completion date together with a traffic control plan in compliance with the Manual on Uniform Traffic Control Devices (MUTCD) for any construction.

(6) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities.

(7) Such other documentation and information regarding the facilities requested by the City.

C. The requirements of this section do not apply to installation of optical cable necessary to connect a customer of Franchisee to a previously approved facility; provided that neither excavation nor trenching in the public right-of-way is required, that the optical cable does not cross a distance of more than twenty (20) feet from its point of connection to the approved facility and the point where it exits the public right-of-way, that the optical cable connection meets or exceeds all applicable technical standards required by law, that the optical cable connection is durable and installed in accordance with good engineering, construction, and installation practices and does not interfere with the public use of the public ways, or adversely affect public health safety or welfare, that the optical cable connection is constructed and installed to conform to all federal, state, local, and industry codes, rules, regulations and standards, and that the optical cable connection does not damage or impair the City's urban forest.

D. Franchisee shall not be granted development authorization, or issued permits for construction or installation of new facilities, unless Franchisee is in full compliance with the provisions of this Franchise, and all of Franchisee's existing facilities have been permitted.

Section 13. Small Wireless Facilities.

A. City Retains Approval Authority. The City shall have the authority at all times to control by appropriately exercised police powers (through ordinance or regulation consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7), and the laws of the State of Washington), the location, elevation, manner of construction, and maintenance of any small wireless facilities by Franchisee, and Franchisee shall promptly conform with all such requirements, unless compliance would cause Franchisee to violate other requirements of law. This Franchise does not prohibit the City from exercising its rights under federal, state or local law to deny or give conditional approval to an application for a permit to construct any individual small wireless facility.

B. City Approvals and Permits. The granting of this Franchise is not a substitute for any other City-required approvals to construct Franchisee's facilities in the rights-of-way ("City Approvals"). The parties agree that such City Approvals (except right-of-way use permits as described in Section 12) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the rights-of-way but rather grant Franchisee permission to build its specific small wireless facilities. Therefore, City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the Codes, and with state and federal laws governing wireless communication facility siting, and may be in addition to any permits required under Section 12. This Section does not affect the thirty (30) day issuance requirement described in RCW 35.99.030 required for use permits such as right-of-way use permits and traffic control permits.

C. Preference for Existing Infrastructure; Site Specific Agreements.

(1) Franchisee shall utilize existing infrastructure in the City whenever possible and consistent with the design, concealment and siting regulations of the Codes. The erection of new poles or structures in the right-of-way may only be permitted if no other alternative space feasible for the installation of the facility is available. In the event that existing infrastructure is not available or feasible for a small wireless facility, or if the City prefers new poles or infrastructure in a particular area of the City, then Franchisee may request the placement of new or replacement structures in the rights-of-way consistent with the requirements of the Codes.

(2) Franchisee acknowledges and agrees that if Franchisee requests to place new structures or replacement structures that are higher than the replaced structure, and the overall height of the replacement structure and the facility are over 60 feet in the rights-of-way, then Franchisee may be required to enter into a site-specific agreement consistent with RCW 35.21.860 in order to construct such facilities in the right-of-way. Such

agreements may require a site-specific charge paid to the City. The approval of a site-specific agreement is separate from this Franchise and must be approved and executed by the City Manager or his/her designee.

(3) Unless otherwise required by the Codes, replacement poles or structures which remain substantially similar to existing structures (or deviate in height or design as permitted within the Codes) are permissible, provided that Franchisee, or the pole owner at the Franchisee’s request, removes the old pole or structure promptly, but no more than ninety (90) days after the installation of the replacement pole or structure.

(4) This Section 13.C does not place an affirmative obligation on the City to allow the placement of new infrastructure on public property or in the rights-of-way, nor does it relieve Franchisee from any Code provision related to the siting or design of small wireless facilities.

D. Concealment. Franchisee shall construct its facilities consistent with the concealment or stealth requirements as described in the Codes, as the same exist or are hereafter amended, or in the applicable permit(s), lease, site specific agreement, or license agreement, in order to minimize the visual impact of such facilities.

E. Eligible Facilities Requests. The parties acknowledge that it is the intent of this Franchise to provide general authorization to use the rights-of-way for small wireless facilities. The designs, as illustrated in a small wireless permit, including the dimensions, number of antennas, equipment boxes and the pole height, are intended and stipulated to be concealment features when considering whether a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

F. Inventory. Franchisee shall maintain a current inventory of small wireless facilities throughout the Term of this Franchise. Franchisee shall provide to the City a copy of the inventory report no later than one hundred eighty (180) days after the Effective Date of this ordinance, and shall provide the City with an updated copy of the inventory report within thirty (30) days of request by the City. The inventory report shall include GIS coordinates, date of installation, type of pole used for installation, description/type of installation for each small wireless facility installation, and photographs taken before and after the installation of the small wireless facility, as well as photos taken from the public street. Small wireless facilities that are considered Deactivated Facilities shall be included in the inventory report, and Franchisee shall provide the same information as is provided for active installations, as well as the date the facilities were deactivated and the date the Deactivated Facilities were removed from the right-of-way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Franchisee is not required to report on future inventory reports any Deactivated Facilities that were removed from the right-of-way since the last reported inventory, and may thereafter omit reference to the Deactivated Facilities.

G. Graffiti Abatement. As soon as practical, but not later than thirty (30) days from the date Franchisee receives notice or is otherwise aware, Franchisee shall remove all graffiti on any of its small wireless facilities of which it is the owner of the pole or structure, or on the small wireless facilities themselves attached to a third-party pole (i.e., graffiti on the shrouding protecting the radios). The foregoing shall not relieve Franchisee from complying with any City graffiti or visual blight ordinance or regulation.

H. Emissions Reports.

(1) Franchisee is obligated to comply with all applicable laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the rights-of-way, including all applicable FCC standards. Franchisee shall comply with the RF emissions certification requirements under applicable Law.

(2) Nothing in this Franchise prohibits the City from requiring periodic testing of Franchisee's facilities, which the City may request no more than once per year, unless as otherwise required by a permit due to a modification of the facility. The City may inspect any of Franchisee's facilities and equipment located in the rights-of-way. If the City discovers that the emissions from a facility exceeds the FCC standards, then the City may order Franchisee to immediately turn off the facility, or portion thereof committing the violation, until the emissions exposure is remedied. Such order shall be made orally by calling **866-892-5327** and also by written notice pursuant to Section 26. Franchisee is required to promptly turn off that portion of the facility that is in violation, but in no event later than forty-eight (48) hours after receipt of oral notice. Franchisee shall reimburse the City for any costs incurred by the City for inspecting the facility and providing notice as described in Section 18.

I. Interference with Public Facilities. Franchisee’s small wireless facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR 15.3(m), with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure), or with the emergency communications operation or equipment. If the small wireless facilities cause such harmful interference, Franchisee shall respond to the City’s request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Franchisee power down the specific small wireless facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) days after receipt of such written notice from the City of such interference, Franchisee has not abated such interference in a manner that is consistent with federal guidelines, such small wireless facility may be deemed an Unauthorized Facility and subject to the provisions of Section 13.I or removal by the City consistent with Section 6.I. The small wireless facility, or interfering portion thereof, must remain powered down (except for testing purposes) during the abatement period; otherwise the City may take more immediate action consistent with Section 6.I to protect the public health, safety, and welfare.

J. Interference with Other Facilities. Franchisee is solely responsible for determining whether its small wireless facilities interfere with telecommunications facilities of other utilities and franchisees within the rights-of-way. Franchisee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its small wireless facilities within the Franchise Area. Franchisee, in the performance and exercise of its rights and obligations under this Franchise, shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable law or this Franchise.

Section 14. Hold Harmless and Assumption of Risk.

A. Franchisee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents and representatives 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. This indemnification obligation 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.

B. 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 14.

C. 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 14.C. 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, also 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.

D. Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees, or agents, the obligations of Franchisee under the indemnification provisions of this Section 14, and any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees or agents and the Franchisee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. 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, relating solely to indemnity claims made by the City directly against the Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.

E. Notwithstanding any other provisions of this Section 14**Error! Reference source not found.**, 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, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, elected or appointed officials, or contractors. In no event shall either party 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 third party claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by 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.

F. The provisions of this Section 14 shall survive the expiration, revocation, or termination of this Franchise.

Section 15. Insurance.

A. Franchisee shall procure and maintain for so long as Franchisee has facilities in the rights-of-way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the acts or omissions of Franchisee. Franchisee shall require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Franchisee. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-, VII. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(1) Automobile Liability insurance with limits of $5,000,000 combined single limit each accident for bodily injury and property damage;

(2) Commercial General Liability insurance, written on an occurrence basis with limits of $5,000,000 per occurrence for bodily injury and property damage and $5,000,000 general aggregate including personal and advertising injury, blanket contractual; premises;-operations; independent contractors; products and completed operations; broad form property damage; explosion, collapse and underground (XCU);

(3) Pollution liability shall be in effect throughout the entire Franchise term, with a limit of one million dollars ($1,000,000) per occurrence, and two million dollars ($2,000,000) in the aggregate

(4) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of $1,000,000 each accident/disease/policy limit. Evidence of qualified self-insurance is acceptable; and

(5) Excess Umbrella liability policy with limits of $10,000,000 per occurrence and in the aggregate. Franchisee may use any combination of primary and excess to meet required total limits.

B. Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 15. Franchisee's umbrella liability insurance policy shall be at least as broad as its primary coverage.

C. The required insurance policies, with the exception of Workers' Compensation and Employer's Liability obtained by Franchisee shall include the City, its officers, officials, and employees ("Additional Insureds") as additional insureds as their interests may appear under this Franchise, with coverage at least as broad as Additional Insured Managers Lessors of Premises ISO form CG 20 11. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City, upon acceptance, a certificate of insurance and blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's required Commercial General and Automobile Liability insurance shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Franchisee's required insurance and shall not contribute with it.

D. Upon receipt of notice from its insurer(s), Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy required pursuant to this Section 15**Error! Reference source not found.**. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 15**Error! Reference source not found.**. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 15**Error! Reference source not found.** shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 25 below. Notwithstanding the cure period described in Section 25.B, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

E. Franchisee's maintenance of insurance as required by this Section 15**Error! Reference source not found.** 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 equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

F. The City may review all insurance limits once every three (3) years during the term, and upon prior written notice to and review by Franchisee, may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Franchisee. Franchisee shall provide a certificate of insurance to the City showing compliance with these adjustments and the additional insured endorsement

G. As of the Effective Date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, 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-insurance program; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 16. Security Fund.

A. Franchisee shall establish and maintain a security fund in the amount of fifty thousand dollars ($50,000), at its cost, with the City by depositing such monies, bonds, letters of credit, or other instruments in such form and amount acceptable to the City. No sums may be withdrawn from the fund by Franchisee without consent of the City. The security fund shall be maintained at the sole expense of Franchisee so long as any of the Franchisee's facilities occupy a public way.

  (1) The fund shall serve as security for the full and complete performance of this Franchise, including any claims, costs, damages, judgments, awards, or liability, of any kind whatsoever, the City pays or incurs, including civil penalties, because of any failure attributable to Franchisee to comply with the provisions of this Franchise or the codes, ordinances, rules, regulations, standards, or permits of the City.

B. Before any sums are withdrawn from the security fund, the City shall give written notice to Franchisee:

  (1) Describing the act, default or failure to be remedied, or the claims, costs, damages, judgments, awards, or liability which the City has incurred or may pay by reason of Franchisee's act or default;

  (2) Providing a reasonable opportunity for Franchisee to first remedy the existing or ongoing default or failure, if applicable;

  (3) Providing a reasonable opportunity for Franchisee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and

  (4) Franchisee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

C. Franchisee shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.

D. Insufficiency of the security fund shall not release or relieve Franchisee of any obligation or financial responsibility. The amount of the fund 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 17. Construction and Maintenance Bonds.

A. If required by permit, Franchisee shall furnish a performance bond (“Performance Bond”) written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee’s facilities within the rights-of-way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. 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 17.B. Compliance with the Performance Bond requirement of the City’s current Design and Construction Standards shall satisfy the provisions of this Section 17.A. In lieu of a separate Performance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the City’s bond requirements by posting a single on-going performance bond in an amount approved by City.

B. Maintenance Bond. 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 17.B must be in place prior to City’s release of the bond required Section 17.A. Compliance with the Maintenance Bond requirement of the City’s current Design and Construction Standards shall satisfy the provisions of this Section 17.B. In lieu of a separate Maintenance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the Maintenance Bond requirement by posting a single on-going Maintenance Bond in an amount approved by City.

Section 18. Taxes, Charges, and Fees.

A. Franchisee shall pay and be responsible for: (i) all charges and fees imposed to recover actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise; (ii) any use and/or development authorizations which may be required; or (iii) any permit which may be required, inspecting plans and construction, or the preparation of a detailed statement pursuant to Chapter 43.21C RCW. Regular application and processing charges and fees imposed by the City shall be deemed to be attributable to actual administrative expenses incurred by the City, but shall not excuse Franchisee from paying and being responsible for other actual administrative expenses incurred by the City.

(1) Franchisee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to 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.

(2) Franchisee shall pay fees according to applicable sections of the Richland Municipal Code, including but not limited to Title 28, Title 12, and Title 14.

B. Franchisee shall pay and be responsible for taxes permitted by law. Franchisee acknowledges that certain of its business activities may be subject to taxation as a telephone business, and that Franchisee shall pay to the City the rate applicable to such taxable services under Title 5 RMC, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments, the process in Title 5 RMC shall control. In that event, the City may not enforce remedies under Section 25.A or Section 25.B or commence a forfeiture or revocation process pursuant to Section 25.C until the dispute is finally resolved either consistent with Title 5 RMC or by judicial action, and then only if the Franchisee does not comply with such resolution. 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 Title 5 RMC as may be permitted by law.

C. 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 18(E).

D. Franchisee shall promptly reimburse the City in accordance with the provisions of Section 18.E and Section 18.F 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. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

E. Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an billing for 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 rights-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 rights-of-way as the result of the presence of Franchisee's facilities in the rights-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 of Franchisee's facilities, or the routing or rerouting of any utilities so as not to interfere with Franchisee's facilities.

F. 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. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

G. Franchisee hereby warrants that its operations, as authorized under this Franchise, are those of a telephone business as defined in RCW 82.16.010, or a 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 19. Shared Excavations; Additional Ducts and Conduits.

A. If Franchisee shall, at any time, plan to make excavations in any area covered by this Franchise, Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, provided that:

(1) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;

(2) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties;

(3) To the extent reasonably possible, Franchisee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the right-of-way, as well as to minimize traffic-related impacts: and

(4) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.

B. 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.

C. Except as expressly provided in this section, Franchisee shall not charge the City for any costs, of any kind whatsoever, for facilities provided by Franchisee in accordance with this Section 19.

Section 20. Access to Facilities. Franchisee shall provide access to its facilities by hire, sale, or resale on a non-discriminatory basis. If Franchisee purports to serve the general public, it shall make its telecommunications services available to any customer within the City who shall request such service whenever feasible, without discrimination, as to the terms, conditions, rates or charges for the Franchisee's services; provided, however, that nothing in this section shall prohibit Franchisee from making any reasonable classifications among differently situated customers.

Section 21. Acquisition of Facilities. Upon Franchisee's acquisition of any facilities in the public way, or upon any addition or annexation to the City of any area in which Franchisee has facilities, such facilities shall immediately be subject to the terms of this Franchise without further action of the City or Franchisee.

Section 22. Vacation of Public Ways. 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. The City shall notify the Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City may, after sixty (60) days' written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 23. Records; Duty to Provide Information.

A. Within thirty (30) days of a written request from the City, Franchisee shall furnish the City with all requested information sufficient to demonstrate:

(1) That Franchisee has complied with all requirements of this Franchise;

(2) That taxes, fees, charges, or other costs owed or payable by Franchisee have been properly collected and paid; and

(3) Franchisee's obligations under this section are in addition to those provided in Section 6.K, Section 6.M and subsection (B) below.

B. Franchisee will manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City will have access to, and the right to inspect, any documents and records of Franchisee and its affiliates that are reasonably necessary for the enforcement of this Franchise or to verify Franchisee's compliance with terms or conditions of this Franchise. Franchisee will not deny the City access to any of Franchisee's records on the basis that Franchisee's documents or records are under the control of any affiliate or a third party.

(1) All documents and records maintained by Franchisee shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require Franchisee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

C. One copy of documents and records requested by the City will be furnished to the City at the cost of Franchisee. If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Franchisee may request, in writing and within ten (10) calendar days of the City's request, that the City inspect them at Franchisee's local office. If any documents or records of Franchisee are not kept in a local office and/or are not made available in copies to the City, and if the City determines that an examination of such documents or records is necessary or appropriate for the enforcement of this Franchise, or to verify Franchisee's compliance with terms or conditions of this Franchise, then all reasonable travel and related costs incurred in making such examination shall be paid by Franchisee.

D. Nothing in this Franchise 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. Franchisee shall indemnify, defend, and hold the City harmless against any claims, liabilities, penalties, costs and attorneys’ fees that the City incurs based on public records that are in the possession or under the dominion and control of Franchisee, including, but not limited to, Franchisee’s failure or declination to retain or conduct a reasonable search in compliance with law, withhold in whole or in part, or timely provide the public records to the City, or based upon any and all actions of Franchisee in seeking to prevent disclosure of a record in whole or in part that is in the possession of the City. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any 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 24. Assignment or Transfer. Franchisee's rights, privileges, and authority under this Franchise, and ownership or working control of facilities constructed or installed pursuant to this Franchise, may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any transfer, assignment or disposal of Franchisee's rights, privileges, and authority under this Franchise, or ownership or working control of facilities constructed or installed pursuant to this Franchise, may be subject to reasonable conditions as may be prescribed by the City.

A. No rights, privileges, or authority under this Franchise shall be assigned, transferred, or disposed of in any manner within twelve (12) months after the effective date of this Franchise.

B. Absent extraordinary and unforeseeable circumstances, no facility shall be assigned, transferred, or disposed of before construction of the facility has been completed and restoration has been performed to the satisfaction of the City.

C. Franchisee and the proposed assignee or transferee shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of assignment, transfer, or disposal:

(1) Complete information setting forth the nature, terms and condition of the proposed assignment, transfer, or disposal;

(2) Any other information reasonably required by the City; and

(3) A transfer application fee in an amount to be determined by the City to recover actual administrative costs directly related to receiving and approving the proposed assignment, transfer, or disposal.

D. No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this Franchise and to comply with the terms and conditions of this Franchise.

E. Any transfer, assignment, or disposal of rights, privileges, and authority under this Franchise or ownership or working control of facilities constructed or installed pursuant to this Franchise, without prior written approval of the City pursuant to this section, shall be void and is cause for termination of this Franchise.

F. Any transactions which singularly or collectively result in a change of fifty percent (50%) or more of the ownership or working control of the Franchisee, of the ownership or working control of affiliated entities having ownership or working control of Franchisee, or of control of the telecommunications capacity or bandwidth of Franchisee, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are exempt from City approval; provided that Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. City approval shall not be required for mortgaging purposes or if said transfer is from Franchisee to another person controlled by Franchisee.

G. Franchisee may, without prior consent from the City: (i) lease the facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its facilities to another person, provided that Franchisee shall at all times retain exclusive control over its facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, evidence of: (a) the entity leasing such facilities; (b) evidence that Franchisee maintains full control and responsibility over such facilities; and (c) declaration that the lease or agreement requires that the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable Codes. In lieu of such documentation, Franchisee may provide a copy of any such lease or agreement which contains elements (a)-(c) above.

H. All terms and conditions of this Franchise shall be binding upon all successors and assigns of Franchisee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Franchise.

Section 25. Violations, Non-Compliance, and Other Grounds for Termination or Cancellation.

A. 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. 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 affect any such waiver.

B. If Franchisee 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 Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying, with reasonable particularity, the nature of any such breach, and Franchisee 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 City may specify a longer cure period, and condition the extension of time on Franchisee'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 Franchisee does not comply with the specified conditions, the City may, at its discretion: (1) commence revocation proceedings pursuant to Section 25.C; or (2) claim damages of two hundred fifty dollars ($250.00) per day against the security fund set forth in Section 16; or (3) suspend the issuance of additional permits; or (4) pursue other remedies as described in Section 25.A above.

C. This Franchise, and any right, privilege or authority of Franchisee to enter, occupy or use public ways may be terminated or cancelled by the City for any of the following reasons:

(1) Violation of or non-compliance with any term or condition of this Franchise by Franchisee;

(2) Violation of or non-compliance with the material terms of any use and/or development authorization or required permit by Franchisee;

(3) Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any public way without Franchisee first obtaining use and/or development authorization and required permits from the City and all other appropriate regulatory authorities;

(4) Unauthorized construction, installation, operation, maintenance, or repair of facilities on City property;

(5) Misrepresentation or lack of candor, by or on behalf of, Franchisee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any right, privilege or authority to Franchisee;

(6) Abandonment of facilities;

(7) Failure of Franchisee to pay taxes, fees, charges or costs when and as due; or

(8) Insolvency or bankruptcy of Franchisee.

D. In the event that the City believes that grounds exist for termination or cancellation of this Franchise or any right, privilege or authority of Franchisee to enter, occupy or use public ways, Franchisee shall be given written notice, and provided a reasonable period of time not exceeding thirty (30) calendar days to furnish evidence:

(1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, non-compliance, or other grounds for termination or cancellation;

(2) That rebuts the alleged violation, non-compliance, or other grounds for termination or cancellation; or

(3) That it would be in the public interest to impose some penalty or sanction less than termination or cancellation.

E. In the event that Franchisee fails to provide evidence reasonably satisfactory to the City as provided in subsection (D) of this section, the City shall refer the apparent violation, non-compliance, or other grounds for termination or cancellation to the City Council. The City Council shall provide the Franchisee with notice and a reasonable opportunity to be heard concerning the matter.

F. If the City Council determines that the violation, non-compliance, or other grounds for termination or cancellation arose from willful misconduct or gross negligence by Franchisee, then Franchisee shall, at the election of the City Council, forfeit all rights, privileges and authority conferred under this Franchise or any use and/or development authorization or permit granted by the City, and this Franchise and any such use and/or development authorization or permit may be terminated or cancelled by the City Council. The City Council may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Franchisee into compliance or to take corrective action, or to recover damages and costs incurred by the City by reason of Franchisee's actions or omissions. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the actions or omissions of Franchisee:

(1) Whether the misconduct was egregious;

(2) Whether substantial harm resulted;

(3) Whether the violation was intentional;

(4) Whether there is a history of prior violations of the same or other requirements;

(5) Whether there is a history of overall compliance; and

(6) Whether the violation was voluntarily disclosed, admitted or cured.

E. The City Council's choice of remedy shall not excuse Franchisee from compliance with any term or condition of this Franchise or the material terms of any use and/or development authorization or required permit by Franchisee. Franchisee shall have a continuing duty to remedy any violation, non-compliance, or other grounds for termination or cancellation. Further, nothing herein shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of this Franchise and any use and/or development authorization or permit granted to Franchisee.

Section 26. Notices.

A. Any regular notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

The City: City of Richland
Attn: City Manager
625 Swift Boulevard
Richland, WA 99352

Franchisee: ExteNet Systems, Inc.
Attn: CFO
3030 Warrenville Road, Suite 340
Lisle, Illinois 60532

With a copy to: ExteNet Systems, Inc.
Attn: General Counsel
3030 Warrenville Road, Suite 340
Lisle, Illinois 60532
Copy email to: NOTICE@extenetsystems.com

B. Franchisee shall additionally provide a phone number and designated responsible officials to respond to emergencies. After being notified of an emergency, Franchisee shall cooperate with the City and make best efforts to immediately respond to minimize damage, protect the health and safety of the public and repair facilities to restore them to proper working order. Annually, on request of the City, Franchisee will meet with City emergency response personnel to coordinate emergency management operations and, at least once a year, at the request of the City, actively participate in emergency preparations.

Section 27. Non-Waiver. The failure of the City to exercise any rights or remedies under this Franchise, or to insist upon compliance with any terms or conditions of this Franchise, shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the City, and shall not prevent the City from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

Section 28. Eminent Domain. This Franchise is subject to the power of eminent domain and the right of City Council to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 29. Limitation of Liability. Administration of this Franchise may not be construed to create the basis for any liability on the part of the City, its elected officials, officers, employees, servants, agents, and representatives for any injury or damage from the failure of the Franchisee to comply with the provisions of this Franchise; 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 this Franchise by the City; or for the accuracy of plans submitted to the City.

Section 30. Damage to Facilities. Unless directly and proximately caused by the active sole negligence of the City, the City shall not be liable for any damage to, or loss of, any facilities as a result of, or in connection with, any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within a public way done by or on behalf of the City.

Section 31. Governing Law and Venue. This Franchise and use of the applicable public ways will be governed by the laws of the State of Washington, unless preempted by federal law. Franchisee agrees to be bound by the laws of the State of Washington, unless preempted by federal law, and subject to the jurisdiction of the courts of the State of Washington. Any action relating to this Franchise must be brought in the Superior Court of Washington for Benton County, or in the case of a federal action, the United States District Court for the Eastern District of Washington at Richland, Washington, unless an administrative agency has primary jurisdiction.

Section 32. Severability. If any section, sentence, clause or phrase of this Franchise or its application to any person or entity should be held to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of any other section, sentence, clause or phrase of this Franchise nor its application to any other person or entity.

Section 33. Miscellaneous.

A. Equal Employment and Non-discrimination. Throughout the term of this Franchise, Franchisee will fully comply with all equal employment and non-discrimination provisions and requirements of federal, state, and local laws, and in particular, FCC rules and regulations relating thereto.

B. Local Employment Efforts. Franchisee will use reasonable efforts to utilize qualified local contractors, including minority business enterprises and woman business enterprises, whenever the Franchisee employs contractors to perform work under this Franchise.

C. Descriptive Headings. The headings and titles of the sections and subsections of this Franchise are for reference purposes only, and do not affect the meaning or interpretation of the text herein.

D. Costs and Attorneys’ Fees. If any action or suit arises in connection with this Franchise, the substantially prevailing party will be entitled to recover all of its reasonable costs, including attorneys' fees, as well as costs and reasonable attorneys’ fees on appeal, in addition to such other relief as the court may deem proper.

E. No Joint Venture. Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

F. Mutual Negotiation. This Franchise was mutually negotiated by the Franchisee and the City and has been reviewed by the legal counsel for both parties. Neither party will be deemed to be the drafter of this Franchise.

G. Third-Party Beneficiaries. There are no third-party beneficiaries to this Franchise.

H. Actions of the City or Franchisee. In performing their respective obligations under this Franchise, the City and Franchisee will act in a reasonable, expeditious, and timely manner. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

I. Entire Agreement. This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter and supersedes all prior oral and written negotiations between the parties.

J. Modification. The parties may alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification. Nothing in this subsection shall impair the City's exercise of authority reserved to it under this Franchise.

K. Non-exclusivity. This Franchise does not confer any exclusive right, privilege, or authority to enter, occupy or use public ways for delivery of telecommunications services or any other purposes. This Franchise is granted upon the express condition that it will not in any manner prevent the City from granting other or further franchises in, on, across, over, along, under or through any public way.

L. Rights Granted. This Franchise does not convey any right, title or interest in public ways, but shall be deemed only as authorization to enter, occupy, or use public ways for the limited purposes and term stated in this Franchise. Further, this Franchise shall not be construed as any warranty of title. This Franchise may be enforced by both law and equity.

M. Contractors and Subcontractors. Franchisee's contractors and subcontractors must be licensed and bonded in accordance with the City's ordinances, rules, and regulations. Work by contractors and subcontractors is 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.

N. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and Franchisee shall not 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 and its officers, officials, employees, agents, and representatives harmless from and against any and all claims, costs, and liabilities, including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and/or with 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.

O. Licenses, Fees and Taxes. Prior to constructing any improvements, 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.

P. FAA and FCC. 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 non-compliance 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 non-compliance at the Franchisee's expense.

Q. Acceptance. Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as **Exhibit A**. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 15**Error! Reference source not found.**, any Performance Bond, if applicable, pursuant to Section 17.A, and the security fund required pursuant to Section 16.

R. Survival. All of the provisions, conditions, and requirements of Section 5, Section 10, Section 11, Section 14**Error! Reference source not found.**, Section 15**Error! Reference source not found.**, Section 31 and Section 33.R 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.

S. Expiration. If this Franchise expires without renewal, the City may, subject to applicable law:

(1) 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

(2) The City may order the removal of any and all facilities at Franchisee's sole cost and expense consistent with Section 10.

Section 34. Publication. The City Clerk is authorized and directed to publish this ordinance in accordance with the Richland City Charter.

Section 35. Effective Date. This ordinance shall become effective on the thirty-first (31st) day after its first publication as required by law, but if, and only if, the Franchisee has endorsed this ordinance and accepted the terms and conditions thereof.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the ___ day of _______________, 2020.

____
Ryan Lukson, Mayor

Attested by:

____
Jennifer Rogers, City Clerk

Approved as to form:

____
Heather Kintzley, City Attorney

Date Published: ________________

EXHIBIT A

ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, Franchisee covenants and agrees to perform, and be bound by, each and all of the terms and conditions imposed by the franchise and the municipal code and ordinances of the City.

By: ________________________________

Printed Name: ________________________

Title: _______________________________

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: 1) the Franchisee returned a signed copy of this Franchise to the Richland City Council in accordance with this Franchise; 2) the Franchisee has presented to the City acceptable evidence of insurance and security as required in this Franchise; and 3) the Franchisee has paid all applicable processing costs set forth in the Franchise.

The effective date of this Franchise ordinance is: _______________.

____
Jennifer Rogers, City Clerk

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020 | Agenda Category: Ordinances - First Reading

Core Focus Area 1 - Promote Financial Stability & Operational Effectiveness

Subject:
Ordinance No. 12-20, Authorizing a Franchise Agreement with Cellco Partnership d/b/a Verizon Wireless

Department:	Ordinance/Resolution Number:	Document Type:
City Attorney	12-20	Ordinance

Recommended Motion:
Give first reading, by title only, to Ordinance No. 12-20, granting a ten-year franchise agreement to Cellco Partnership d/b/a Verizon Wireless for fiber-optic, small wireless facilities and other related facilities.

Summary:
The City is authorized through state and federal statutes to grant and renew telecommunications franchises for the installation, operation, and maintenance of telecommunication systems. The City's authority to grant franchises for the use of its streets and other public properties is found in RCW 35A.47.040, the Richland City Charter, and RMC Title 28, specifically Chapter 28.14. The franchise enables the City to govern the usage by telecommunications operators of the City's rights-of-way.

Cellco Partnership d/b/a Verizon Wireless ("Verizon") has requested that City Council grant it a nonexclusive telecommunications franchise for fiber-optic cable, small wireless facilities, and other related facilities. Verizon desires to provide telecommunications services and to construct, operate and maintain a telecommunications system within the City's rights-of-way, and therefore, the City requires a telecommunications franchise. Verizon is a provider of wireless services, and has requested to place small wireless facilities within the City's rights-of-way. Prior to performing any construction in the right-of-way, Verizon must apply for and receive permits from the City.

This franchise does not permit Verizon to operate a broadcast cable system or macro wireless facilities within the right-of-way of the city. Further, this franchise does not allow Verizon to attach to City-owned poles or use the City's infrastructure (including fiber or conduit) without a separate lease or license agreement with the City.

Staff recommends approval of Ordinance No. 12-20 for first reading, by title only.

Fiscal Impact: Administrative costs are paid by Verizon from a deposit required at the time of application.

Attachments:
1. Ordinance No. 12-20

ORDINANCE NO. 12-20

AN ORDINANCE OF THE CITY OF RICHLAND granting to Cellco Partnership d/b/a Verizon Wireless, and its successors and assigns, the right, privilege, authority and non-exclusive franchise for ten years to construct, maintain, operate, replace and repair a telecommunications network in, across, over, along, under, through and below certain designated public rights-of-way of the City of Richland, Washington.

WHEREAS, Richland was incorporated as a city of the first class on December 10, 1958; and

WHEREAS, Article 11, Section 11 of the Washington State Constitution provides that the City of Richland “may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws”; and

WHEREAS, the Richland City Council, as provided in RCW 35.22.570, has any authority ever given to any class of municipality or to all municipalities of this state, and all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law, which may be exercised in regard to the regulation or use of public ways and property of all kinds and improvements thereto; and

WHEREAS, the City of Richland, a Washington first-class charter city, by Section 2.07(F) of its Charter, has granted to the Richland City Council the authority to grant franchises by ordinance; and

WHEREAS, Cellco Partnership d/b/a Verizon Wireless (hereinafter the “Franchisee”) has applied to the City of Richland for a non-exclusive franchise (“Franchise”) to enter, occupy, and use public ways to construct, install, operate, maintain, and repair telecommunication facilities to offer and provide telecommunications services for hire, sale, or resale in the City of Richland (hereinafter the “City”); and

WHEREAS, the 1934 Communications Act, as amended by the 1996 Telecommunications Act, 47 USC § 151, et seq., relating to telecommunications providers, recognizes and provides state and local governments with the authority to manage the public rights-of-way, and to require fair and reasonable compensation on a competitively neutral and non-discriminatory basis; and

WHEREAS, Washington’s Telecommunications Services Act, codified as Chapter 35.99 RCW and relating to telecommunications providers, recognizes and provides Washington cities with authority to require franchises and use permits for constructing, installing, operating, maintaining, repairing, or removing telecommunication facilities in the public rights-of-way; and

WHEREAS, a franchise is a legislatively approved master permit, as defined in Chapter 35.99 RCW and Title 28 of the Richland Municipal Code (RMC), granting general permission to a service provider to enter, use, and occupy the public ways for the purpose of locating facilities, subject to requirements that a franchisee must also obtain separate use permits from the City for use of each and every specific location in the public ways in which the franchisee intends to construct, install, operate, maintain, repair or remove identified facilities; and

WHEREAS, a franchise does not include, and is not a substitute for, any other permit, agreement, or other authorization required by the City, including, without limitation, permits required in connection with construction activities in public rights-of-way which must be administratively approved by the City after review of specific plans; and

WHEREAS, no ordinance shall be finally passed unless it is approved by a majority of all members of Council, nor shall any ordinance relating to a franchise be finally passed less than six days following its introduction and first reading, and every ordinance granting a franchise shall become effective at the expiration of thirty days following its first publication, or on any day thereafter fixed by Council; and

WHEREAS, the City Council finds that the franchise terms and conditions contained in this ordinance are in the public interest.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Definitions. For purposes of this Ordinance, the following terms, phrases, words, and their derivations will have the meanings given herein, regardless of whether or not they are capitalized herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will have the meaning ascribed to those words in Title 28 RMC, Chapter 23.62 RMC, or elsewhere in the Richland Municipal Code, unless inconsistent herewith.

"Cable Television Service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

"Conduit" means optical cable housing, jackets, or casing, and pipes, tubes, or tiles used for receiving and protecting wires, lines, cables, and communication and signal lines.

"Costs" means costs, expenses, and other financial obligations of any kind whatsoever.

“Effective Date” means the thirty-first day following the publication of this Franchise (or a summary thereof) in an official newspaper of the City as provided by law.

"Existing" means a physical structure or facility in existence prior to the effective date of this Franchise.

“Facilities” means small wireless facilities and wireline telecommunication services, including but not limited to wireline broadband transmission services, dark fiber, and wireline backhaul.

"Force Majeure Event” is defined for purposes of this Franchise as strikes, lockouts, sit-down strikes, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and any other similar Act of God event.

"Governmental Use" means use by the City, State, or agencies or departments of the United States for the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means both internally and externally within or between their various agencies, departments and divisions.

"Incremental Costs" means the actual and necessary costs incurred which exceed costs which would have otherwise been incurred. Incremental costs shall not include any part, portion, or pro-ration of costs, of any kind whatsoever, including, without limitation, overhead or labor costs, which would have otherwise been incurred.

"Information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Optical Cable" means wires, lines, cables and communication and signal lines used to convey communications by fiber optics.

"Public Way" or “Right-of-Way” means land acquired or dedicated for public roads and streets, but does not include: WSDOT-managed state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; federally granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use. Rights-of-Way, for the purpose of this Franchise, do not include: buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City.

"Street Tree" means any tree located in, or that portion over-hanging, any Public Way and any tree planted on private property near a Public Way at the direction of the City.

"Underground Facilities" means facilities located under the surface of the ground, other than underground foundations or supports for overhead facilities.

"Utility Poles" means poles, and crossarms, devices, and attachments directly affixed to such poles which are used for the transmission and distribution of electrical energy, signals, or other methods of communication. Utility Poles also includes metal light standards.

“Small Wireless Facilities” or “Facilities” means small wireless facilities as defined in 47 CFR Section 1.6002, as may be amended. Small Wireless Facilities shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceeds the noise limits allowed in the Codes, or associated permit, are excluded from “Small Wireless Facilities.”

Section 2. Franchise.

A. The City grants to Franchisee, subject to the terms and conditions of this Franchise, a non-exclusive franchise and master permit to enter, occupy, and use public ways of the City of Richland for constructing, installing, operating, maintaining, repairing, and removing facilities necessary to provide telecommunications services. Except as expressly provided herein, Franchisee shall construct, install, operate, maintain, repair, and remove its facilities at its expense.

B. Nothing in this Franchise grants authority to Franchisee to enter, occupy, or use public ways for constructing, installing, operating, maintaining, repairing, or removing those wireless services and associated facilities that fall outside of the definition of small wireless facilities (i.e. macro facilities). Further, nothing in this Franchise grants authority to Franchisee to enter, occupy, or use public ways for constructing, installing, operating, maintaining, repairing, or removing wireline facilities (e.g., wireline backhaul, wireline broadband transmission services, or any other wire-based services, whether provided by a third-party provider, Franchisee, or a corporate affiliate of Franchisee).

C. Nothing in this Franchise grants authority to Franchisee to enter, occupy, or use City property, including any City-owned conduit, pole(s), or structure(s). A separate lease or pole attachment agreement is necessary prior to such attachment or use.

D. Any rights, privileges, and authority granted to Franchisee under this Franchise are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and nothing in this Franchise excuses Franchisee from its obligation to comply with all applicable general laws enacted by the City pursuant to such power. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the lawful exercise of the City's police power.

E. Nothing in this Franchise excuses Franchisee of its obligation to identify its facilities and proposed facilities, and their location or proposed location, in the public ways and to obtain use and/or development authorization and permits from the City before entering, occupying, or using public ways to construct, install, operate, maintain, repair, or remove such facilities.

F. Nothing in this Franchise excuses Franchisee of its obligation to comply with applicable codes, rules, regulations, and standards subject to verification by the City of such compliance.

G. Nothing in this Franchise shall be construed to limit any taxing authority or other lawful authority to impose charges or fees, or to excuse Franchisee of any obligation to pay lawfully imposed charges or fees.

H. Nothing in this Franchise grants authority to Franchisee to impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.

I. Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of facilities, or to modify public ways to accommodate Franchisee's facilities.

J. Nothing in this Franchise grants authority to Franchisee to provide or offer a Cable System or Cable Services as those terms are defined in 47 U.S.C. § 522(6).

K. Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third party user of Franchisee's facilities, or to otherwise recognize or create third party beneficiaries to this Franchise.

L. Nothing in this Franchise shall be construed to permit Franchisee to unlawfully enter or construct improvements upon the property or premises of another.

M. Nothing in this Franchise authorizes Franchisee to enter or construct improvements on, in, under, over, across, or within any property or right-of-way of any third party without that third party's permission.

N. Franchisee is authorized to place its facilities in the rights-of-way only consistent with this Franchise, the Richland Zoning Code, the Comprehensive Plan, the Design and Construction Standards and the Richland Municipal Code (collectively the “Codes”).

Section 3. Term. Authorization granted under this Franchise shall be for a period of ten (10) years from the Effective Date of this Franchise. Each of the provisions of this Franchise shall become effective upon the Effective Date and shall remain in effect for ten (10) years thereafter.

Section 4. Location of Facilities.

A. Franchisee must place its facilities underground, except as otherwise expressly provided herein. Franchisee shall not be required to place underground any portion of the facility that must, for technological reasons, remain above-ground to operate. Franchisee shall not be permitted to erect poles unless permitted by the City pursuant to Section 13.C and the Codes. Franchisee acknowledges and agrees that the City may, at any time in the future, require the relocation at Franchisee's expense if the existing poles on which Franchisee's facilities are located are designated for removal or undergrounding project. This Franchise does not place an affirmative obligation on the City to allow the relocation of such facilities on public property or in the rights-of-way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's facilities to remain above ground, then Franchisee shall cooperate with the City and modify the affected facilities to incorporate the placement of wireline services underground (or internal to the pole if the replacement pole is hollow, for example electrical and fiber), or otherwise consistent with a design plan agreed to by the City and Franchisee, at no cost to the City.

B. Franchisee shall not remove any underground facilities that require trenching or other opening of the rights-of-way, except as provided in this section. Franchisee may remove any underground facilities from the right-of-way that have been installed in such a manner that it can be removed without trenching or any other opening of the right-of-way, or as otherwise permitted by the City. When the City determines, in the City's reasonable discretion, that Franchisee's underground facilities must be removed in order to eliminate or prevent a hazardous condition, then Franchisee shall remove such facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 12, prior to any such removal of underground facilities from the right-of-way and must provide as-built plans and maps pursuant to Section 6.L.

C. Franchisee's facilities shall not unreasonably interfere with the use of public ways or City property by the City, the general public, or other persons authorized to enter, occupy, or use public ways or City property.

D. Franchisee shall not impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.

E. Franchisee shall provide the City with information as requested by the City which accurately reflects the horizontal and vertical location and configuration of all of Franchisee's facilities. Franchisee shall provide the City with updated information upon request by the City.

F. To the extent that any rights-of-way 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. Without limitation of the foregoing, Franchisee specifically agrees that:

(1) any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(2) 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

(3) 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.

G. Franchisee shall maintain all above ground improvements that it places on City rights-of-way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the rights-of-way, Franchisee shall provide a clear zone in compliance with Design and Construction Standards. If Franchisee fails to comply with this provision, and by its failure property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.

H. Franchisee must obtain written approval from the owners of utility poles, structures and property not owned by Franchisee prior to attaching to, or otherwise using, such poles, structures or property, and provide proof of such approval to the City in the permit application. In the case where the City owns the utility poles or structures, the Franchisee shall comply with Title 14 of the Richland Municipal Code as preparation for a specific project plan and permit submittal. The City makes no representation, and assumes no responsibility, for the availability of utility poles, structures, and property owned by third parties for the installation of Franchisee's facilities. The City shall not be liable for the unavailability of utility poles, structures, and property owned by the City or third parties for any reason whatsoever. The installation of facilities by Franchisee on or in the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use public ways. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the public ways either expires, terminates, or is cancelled, Franchisee may no longer be permitted to continue to use that specific pole, structure or property, unless expressly authorized by the City. The City shall not be liable for the costs for removal of facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use public ways for any reason whatsoever.

Section 5. Relocation.

A. The City may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove and/or temporarily disconnect its facilities within the right-of-way when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, and/or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Franchisee shall have the privilege to temporarily bypass in the authorized portion of the same rights-of-way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any facilities required to be temporarily disconnected or removed. 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, but shall not include, without limitation, any other improvements or repairs undertaken primarily for the private benefit of third party private entities. Collectively all such projects described in this Section 5.A 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 5.A shall be borne by Franchisee. Franchisee shall complete the relocation of its facilities at no charge or expense to the City.

B. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its facilities as required by the City, and at no cost to the City, subject to the procedure in Section 5.E. Franchisee acknowledges and agrees that the placement of small wireless facilities on third party-owned structures does not convey an ownership interest in such structures. Franchisee acknowledges and agrees that, to the extent Franchisee’s small wireless facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests arising out of a Public Project.

C. The cost of relocation of any Franchisee-owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3)(b), provided, however, that in such event and to the extent permissible, Franchisee may opt to pay for the cost of relocating its small wireless facilities in order to provide consideration for the City's approval to site a small wireless facility on Franchisee-owned structures or poles in a portion of the right-of-way designated or proposed for a Public Project. For this Section 5.C, designation of the right-of-way for a Public Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of Chapter 36.70A RCW. The Comprehensive Plan includes, but is not limited to, the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, Utilities element, and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the facility at a particular site if the cost impact of such relocation is excessive and conflicts with the City's Comprehensive Plan.

D. Upon request of the City (or of a third-party performing work in the right-of-way), and in order to facilitate the design of City street and right-of-way improvements, Franchisee agrees, at its sole cost and expense, to locate, and, if reasonably determined necessary by the City, to excavate and expose its facilities for inspection so that the facilities' location may be taken into account in the improvement design. The decision as to whether any facilities need to be relocated in order to accommodate the Public Projects shall be made by the City upon review of the location and construction of Franchisee's facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of facilities.

E. Notice and Relocation Process. If the City determines that the Public Project necessitates the relocation of Franchisee's existing 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. 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 engage in the following recommended process, absent an emergency posing a threat to public safety or welfare, or an emergency beyond the control of the City that will result in severe financial consequences to the City:

(1) The City will consult with the Franchisee in the pre-design phase of any Public Project in order to coordinate the project's design with Franchisee's facilities within such project's area.

(2) Franchisee shall participate in pre-design meetings until such time as: (i) both parties mutually determine that Franchisee's facilities will not be

affected by the Public Project; or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (4) below.

(3) Franchisee shall, during the pre-design phase, evaluate and provide comments to the City related to any alternatives to possible relocations. The City will give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

(4) The City will provide Franchisee with its decision regarding the relocation of Franchisee's facilities as soon as reasonably possible, endeavoring to provide no less than ninety (90) days prior to the commencement of the construction of such Public Project; provided, however, that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.E, the City will notify the Franchisee during the pre-design meetings and the process mandated by the grant funding will control.

(5) After receipt of such written notice, 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.

(6) 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, that necessitates the relocation of Franchisee's facilities, Franchisee shall relocate its facilities within the time period specified by the City.

F. The provisions of this Section 5 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.

G. Franchisee shall be solely responsible for the actual costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event, or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties). Such costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorney fees incurred by the City to the extent directly attributable to such Franchisee's cause of delay in the Public Project.

H. Franchisee will indemnify, hold harmless, and pay the costs of defending the City (in accordance with the provisions of Section 14), against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects only to the extent caused by, or arising out of, the failure of Franchisee to remove or relocate its facilities as provided in this Section 5; provided, however, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

I. If Franchisee fails, neglects, or refuses to remove or relocate its facilities as directed by the City following the procedures outlined in Section 5.A through Section 5.E, then upon at least ten (10) days written notice to Franchisee, the City may perform such work (including removal), or cause it to be done, and the City's costs shall be paid by Franchisee pursuant to Section 18, and the City shall not be responsible for any damage to the facilities.

J. The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the rights-of-way.

Section 6. Construction and Installation Requirements.

A. Except as to emergency repairs, Franchisee shall, prior to excavating within any street, alley or other public place, or installing any conduit, overhead facilities or equipment therein, or relocating, constructing, or performing maintenance within the rights-of-way, file with the City Engineer plans and specifications thereof showing the work to be done, the location and nature of the installation to be made, repaired or maintained, as well as a schedule showing the times of beginning and completion, and shall secure a permit from the City before proceeding with any such work. The Franchisee shall comply with the permit requirements and conform to all requirements of Chapter 12.08 RMC regarding right-of-way construction, as it currently exists or as it may be amended.

B. The technical performance of the facilities must meet or exceed all applicable technical standards authorized or required by law, regardless of the transmission technology utilized. The City has the full authority permitted by applicable law to enforce compliance with these technical standards.

C. All installations of facilities will be durable, and installed in accordance with good engineering, construction, and installation practices.

D. All facilities shall be constructed and installed in such a manner and at such points so as not to impede public use of the public ways (or to adversely affect the public health, safety or welfare), and in conformity with plans approved by the City, except in instances in which deviation may be allowed by the City.

E. The construction plans shall conform to all federal, state, local, and industry codes, rules, regulations and standards. Franchisee must cease work immediately if the City determines that Franchisee is not in compliance with such codes, rules, regulations or standards, and may not begin or resume work until the City determines that Franchisee is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.

F. Neither approval of plans by the City nor any action or inaction by the City shall relieve Franchisee of any duty, obligation, or responsibility for the competent design, construction, and installation of its facilities. Franchisee is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, agents, or assigns.

G. All construction and/or maintenance work shall be performed in conformity with the plans and specifications filed with the City and with the permit or permits issued, except in instances in which deviation may be allowed thereafter in writing, pursuant to an application submitted by the Franchisee.

H. In the event of an emergency requiring immediate action by Franchisee for the protection of the facilities, City's property or other persons or property, Franchisee may proceed without first obtaining the normally required permits. In such event, Franchisee must: (1) take all necessary and prudent steps to protect, support, and keep safe from harm the facilities (or any part thereof), City's property, or other persons or property, and to protect the public health and safety; and (2) as soon as possible thereafter, obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.

I. The City retains the right and privilege to cut, move, or remove any facilities located within the rights-of-way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. The City shall 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 subsection, except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents.

J. Unless such condition or regulation is in conflict with a federal or state requirement, the City may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the public right-of-way or the City's property, including, by way of example and not limitation, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic, and protecting rights-of-way improvements, private facilities and public safety.

K. Whenever necessary, after construction or maintaining any of Franchisee's facilities within the rights-of-way, the Franchisee shall, without delay, and at Franchisee's sole expense, remove all debris and restore the surface disturbed by Franchisee as nearly as possible to as good or better condition as it was in before the work began, reasonable wear and tear excepted. Franchisee shall replace any property corner monuments, survey reference, or hubs that were disturbed or destroyed during Franchisee's work in the rights-of-way. Such restoration shall be done in a manner consistent with applicable codes and laws, and to the City's satisfaction, and, where applicable, to City specifications.

L. Following any construction, excluding modifications that meet the same or substantially similar dimensions of the small wireless facility, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors for all existing small cell facilities in the Franchise Area. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Franchisee shall provide such maps within thirty (30) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps, and as-builts provided to the City. Franchisee shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the Franchise Area, including safety of all persons and property during the performance of any work.

M. Franchisee shall, at all times, keep up-to-date maps and records showing the location and sizes of all Franchisee's facilities installed by it in the City. Franchisee shall provide, at the City's request, a copy of facilities maps for the City's use. All books, records, maps, and other documents maintained by Franchisee, with respect to its facilities within the rights-of-way, shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

N. All Franchisee's underground facilities shall be placed in accordance with current City regulations and project permit requirements. Unless otherwise approved by the City Public Works Director, underground facilities must maintain (parallel) five (5) feet separation from City water and sewer mains. Franchisee shall restore the public way to pre-construction condition or better, reasonable wear and tear excepted. Franchisee agrees to pay all costs and expenditures required on rights-of-way as a result of settling, subsidence, or any other need for repairs or maintenance reasonably determined by the Public Works Director to be resulting from excavations made by Franchisee for a period of five (5) years after the excavation. Favorable weather conditions permitting, Franchisee agrees to perform any repairs required under this Section upon seven (7) days' notice, excluding weekends and holidays, unless such period of time is mutually extended. If Franchisee fails to undertake such repairs as herein provided, then after notice to Franchisee, City may perform the repairs at Franchisee's expense.

O. The City reserves the right to limit or exclude Franchisee's access to a specific route, public right-of-way or other location when, in the judgment of the Public Works Director, there is inadequate space (including, but not limited to, compliance with ADA clearance requirements and maintaining a clear and safe passage through the rights-of-way), a generally applicable pavement cutting moratorium, unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reason determined by the Public Works Director, provided that such additional reasons are not prohibited under state or federal law or effectively prohibit the deployment of facilities in the right-of-way.

P. Franchisee may trim trees which are upon and/or overhang on public ways, 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 way shall only apply to the extent necessary to protect above ground facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for removal of all debris resulting from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services. However, any firm or individual so retained must first receive City permit 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 encroaching into the public rights-of-way. 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, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the City Engineer or his/her designee.

Section 7. Coordination of Construction and Installation Activities and Other Work.

A. Franchisee shall coordinate its construction and installation activities and other work with the City and other users of the public ways at least annually or as determined by the City; provided that Franchisee's construction will not be unreasonably delayed.

B. All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.

C. If required by permit, at least twenty four (24) hours prior to entering a public way to perform construction and installation activities or other work, Franchisee shall give notice, at its cost, to owners and occupiers of properties adjacent to such public ways indicating the nature and location of the work to be performed. Such notice shall be physically posted by door hanger, or by other form of notice reasonably acceptable to City. Franchisee shall make a good faith effort to comply with the property owner or occupier's preferences, if any, on location or placement of underground facilities, consistent with sound engineering practices.

D. Franchisee shall make available, and accept, the co-location of property of others within trenches excavated or used by Franchisee in the public ways, provided the costs of the work are fairly allocated between the parties, and such co-location does not materially or harmfully interfere with Franchisee's use.

E. By February 1 of each year, Franchisee shall provide the City with a schedule of its proposed construction or installation activities and other work in, around, or that may affect the public ways or City property, to the extent that such information is available or known to Franchisee.

F. The City shall give reasonable advance notice to Franchisee of plans to open public ways for construction or installation of facilities; provided, however, the City shall not be liable for damages for failure to provide such notice. When such notice has been given, Franchisee shall provide information requested by the City regarding Franchisee's future plans for use of the public way to be opened. When notice has been given, Franchisee may only construct or install facilities during such period that the City has opened the public way for construction or installation, unless the City explicitly waives this provision.

Section 8. Temporary Removal, Adjustment or Alteration of Facilities.

A. Upon thirty (30) days' notice, Franchisee shall temporarily remove, adjust, turn off, or alter the position of its facilities (at its cost) at the request of the City for public projects, events, or other public operations or purposes. The City shall provide notice to Franchisee immediately upon completion of the public project, event, or other public purpose so that Franchisee may return its facilities to the original location.

B. Prior to doing any work in the rights-of-way, Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and complying with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by the City or a third party, Franchisee shall locate the horizontal and vertical location of its underground facilities by excavating its facilities consistent with the requirements of Chapter 19.122 RCW, and shall complete this service within fourteen (14) days from the date of the City or third party's request, at no cost to the City. If the City's request is in support of a third party's project, Franchisee shall be entitled to recover its cost from the project sponsor. 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 or not the City issued a permit.

C. If any person requests permission from the City to use a public way for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Franchisee for the temporary removal, adjustment or alteration of Franchisee's facilities to accommodate the moving or removal of said building or other object. In such event, Franchisee shall, at the cost of the person desiring to move or remove such building or other object, remove, adjust or alter the position of its facilities which may obstruct the moving or removal of such building or other object, provided that:

(1) The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Franchisee's business, consistent with the maintenance of proper service to Franchisee's customers;

(2) Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with the operations of Franchisee, as determined in the sole discretion of the City;

(3) The person obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and hold Franchisee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of, or in conjunction with, the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person moving or removing such building or other object or the negligence of the agents, servants or employees of the person moving or removing such building or other object; and

(4) Completion of notification requirements by a person who has obtained permission from the City to use a public way for the moving or removal of any building or other object shall be deemed to be notification by the City.

D. The City may require Franchisee to temporarily remove, adjust or alter the position of Franchisee's facilities as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall provide Franchisee notice as soon as the public health or safety emergency is addressed so as to allow Franchisee to return its facilities to the original locations or positions. The City shall not be liable to Franchisee or any other party for any direct, indirect, or other damages suffered as a direct or indirect result of the City's actions.

E. The temporary removal, adjustment or alteration of the position of Franchisee's facilities shall not be considered relocation for any purpose whatsoever.

Section 9. Safety and Maintenance Requirements.

A. All work authorized and required under this Franchise will be performed in a safe, thorough, and workmanlike manner, so as to minimize interference with the free passage of traffic, and the free use of adjoining property, whether public or private.

B. Franchisee, in accordance with applicable federal, state, and local safety requirements, shall at all times employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the City, the City may, after discussions with Franchisee, establish a reasonable time for Franchisee to make necessary repairs. If the repairs are not made within the established timeframe, the City may make the repairs itself at the cost of the Franchisee, or have them made at the cost of Franchisee.

C. If required by the permit, Franchisee, and any person acting on its behalf, shall provide a traffic control plan that conforms to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Said plan shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in public ways to prevent injury or damage to any person, vehicle, or property. Franchisee shall implement and comply with its approved traffic control plan during execution of its work.

D. Franchisee shall maintain its facilities in proper working order. Franchisee shall restore its facilities to proper working order within thirty (30) days after receipt of notice from the City that facilities are not in proper working order, or such longer period of time as approved by City and Franchisee. Notwithstanding the above, if the City determines that the facilities are a public safety concern (e.g., the equipment box is detached), then Franchisee shall repair such facility immediately, but no less than forty-eight (48) hours after notice, unless such time period is extended by the City.

E. Franchisee shall endeavor to maintain all facilities in an orderly manner, including, but not limited to, the removal of all bundles or extraneous wires used for the connection of aerial facilities (e.g., connecting equipment boxes to antennas). All installation of facilities shall be installed in accordance with industry standard engineering practices, and shall comply with all federal, state, and local regulations, ordinances, and laws.

F. 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 10. Removal of Unauthorized Facilities.

A. Any small wireless facilities installations in the right-of-way that were not authorized under this Franchise ("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Franchisee. The City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall either: (i) establish that the site was authorized; or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Upon notice of the Unauthorized Facility, Franchisee shall be charged an amount of Five Hundred and 00/100 Dollars ($500.00) per day per Unauthorized Facility ("Unauthorized Facility Fee"). The Unauthorized Facility Fee shall be waived in its entirety if Franchisee can establish that the site was in fact authorized. The Unauthorized Facility Fee shall be suspended upon the submission of a complete application to the City requesting approval of the Unauthorized Facility. If the application for such Unauthorized Facilities is denied as the final decision, then the Unauthorized Facility Fee will resume until the Unauthorized Facilities are removed. In which case, Franchisee shall remove the Unauthorized Facilities from the City's right-of-way within thirty (30) days after the expiration of all appeal periods for such denial. Upon the conclusion of any matter involving an Unauthorized Facility, City shall provide Franchise an invoice detailing the total amount of the Unauthorized Facility Fee, if any, which penalty Franchisee shall pay within thirty (30) days after receipt of notice thereof. This Franchise remedy is in addition to any other remedy available to the City at law or equity. Notwithstanding the foregoing, an Unauthorized Facility Fee pursuant to this Franchise shall not be assessed if Franchisee received City approval for the small wireless facilities but such small wireless facilities are technically inconsistent with the City approval; provided, however, that Franchisee is still required to fix any inconsistencies with the permit requirements, and that this provision does not restrict the City's other enforcement rights.

B. Where any facilities or portions of facilities are no longer needed, and their use is to be discontinued, the Franchisee shall immediately report such facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in Section 13.F. Deactivated Facilities, or portions thereof, shall be completely removed within ninety (90) days and the site, pole or infrastructure restored to its pre-existing condition.

C. If Franchisee leases a structure from a third party and such third party later abandons the structure, Franchisee shall remove its facilities from the abandoned structure within the timeline provided by the third party, but not more than ninety (90) days after such notification from the third party, at no cost to the City, and shall remove the pole if so required by the third party. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in Section 5 above shall apply.

D. 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 ninety (90) days of receiving written notice from the Public Works Director or his/her 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 his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore 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, however, that Franchisee shall not be responsible for any changes to the rights-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.

E. The City may permit Franchisee's facilities 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.

F. Any facilities which are not removed within one hundred and eighty (180) days of either: (i) the date of termination or revocation of this Franchise; or (ii) 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 10 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.

G. The provisions of this Section 10 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has facilities in rights-of-way.

Section 11. Restoration of Public Ways and Other Property.

A. When Franchisee, or any person acting on its behalf, does any work in or affecting any public way or other property, it shall, at its own expense, promptly remove any obstructions therefrom and restore, at Franchisee's cost, such ways and property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

B. If weather or other conditions do not permit the complete restoration required by this section, the Franchisee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the Franchisee's cost, and Franchisee lessee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. All restoration work is subject to inspection and final approval by the City. If restoration is not made to the satisfaction of the City within the established timeframe, the City shall outline the issues that must be corrected by Franchisee. Franchisee shall then have seven (7) days to correct such issues, unless such period is otherwise extended by the City. If the issues are not resolved within that timeframe, the City may make the restoration itself at the cost of Franchisee, or have such restoration made at the cost of Franchisee.

D. The provisions of this Section 11 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has facilities in rights-of-way.

Section 12. Use and/or Development Authorization and Permits. Franchisee shall obtain use, right-of-way construction, and/or development authorization and required permits from the City and all other appropriate regulatory authorities prior to constructing or installing facilities or performing other work in a public way.

A. In addition to any permitting requirements of the City specific to small wireless facilities found in Title 28 RMC and Chapter 23.62 RMC, the Franchisee must provide the information described in Section 12.B below.

B. Franchisee shall provide the following information for all facilities that it proposes to construct or install:

(1) Engineering plans, specifications and a network map of the proposed facilities and their relation to existing facilities, in a format and media requested by the City in sufficient detail to identify:

a. The location and route of the proposed facilities;

b. When requested by the City, the location of all overhead and underground public utility, telecommunication, cable, water, sewer, drainage and other facilities in the public way along the proposed route;

c. When requested by the City, the location(s), if any, for interconnection with the telecommunication facilities of others;

d. The specific trees, structures, improvements, facilities and obstructions, if any, that Franchisee proposes to temporarily or permanently alter, remove or relocate.

(2) If Franchisee is proposing to install overhead facilities, evidence of Franchisee's authorization to use each utility pole along the proposed route together with any conditions of use imposed by the pole owner(s) for each pole. If the overhead facilities are subsequently relocated underground, Franchisee shall relocate its facilities consistent with the requirements of this Franchise. If Franchisee proposes to install overhead facilities on City-owned poles or structures, the Franchisee shall comply with all applicable provisions of Title 14 RMC.

(3) If Franchisee is proposing to install underground facilities in existing ducts or conduits within the public ways, information in sufficient detail to identify:

a. Evidence of ownership or authorization to use such ducts or conduits;

b. Conditions of use imposed by the owner(s) of the ducts or conduits;

c. If known to Franchisee, or reasonably ascertainable to Franchisee, the total capacity of such ducts or conduits; and

d. If known to Franchisee, or reasonably ascertainable to Franchisee, amount of the total capacity within such ducts or conduits which will be occupied by Franchisee's facilities.

(4) If Franchisee is proposing to install underground facilities in new ducts or conduits within the public ways:

a. The location proposed for new ducts or conduits;

b. The total capacity of such ducts or conduits; and

c. The initial listing of any collocated facilities located within Franchisee constructed or installed ducts or conduits.

(5) A preliminary construction schedule and completion date together with a traffic control plan in compliance with the Manual on Uniform Traffic Control Devices (MUTCD) for any construction.

(6) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities.

(7) Such other documentation and information regarding the facilities requested by the City.

C. Franchisee shall not be granted development authorization, or issued permits for construction or installation of new facilities, unless Franchisee is in full compliance with the provisions of this Franchise, and all of Franchisee's existing Facilities have been permitted.

Section 13. Small Wireless Facilities.

A. City Retains Approval Authority. The City shall have the authority at all times to control by appropriately exercised police powers (through ordinance or regulation consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7), and the laws of the State of Washington), the location, elevation, manner of construction, and maintenance of any small wireless facilities by Franchisee, and Franchisee shall promptly conform with all such requirements, unless compliance would cause Franchisee to violate other requirements of law. This Franchise does not prohibit the City from exercising its rights under federal, state or local law to deny or give conditional approval to an application for a permit to construct any individual small wireless facility.

B. City Approvals and Permits. The granting of this Franchise is not a substitute for any other City-required approvals to construct Franchisee's facilities in the rights-of-way ("City Approvals"). The parties agree that such City Approvals (except right-of-way use permits as described in Section 12) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the rights-of-way but rather grant Franchisee permission to build its specific small wireless facilities. Therefore, City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the Codes, and with state and federal laws governing wireless communication facility siting, and may be in addition to any permits required under Section 12. This Section does not affect the thirty (30) day issuance requirement described in RCW 35.99.030 required for use permits such as right-of-way use permits and traffic control permits.

C. Preference for Existing Infrastructure; Site Specific Agreements.

(1) Franchisee shall utilize existing infrastructure in the City whenever possible and consistent with the design, concealment and siting regulations of the Codes. The erection of new poles or structures in the right-of-way may only be permitted if no other alternative space feasible for the installation of the Facility is available. In the event that existing infrastructure is not available or feasible for a small wireless facility, or if the City prefers new poles or infrastructure in a particular area of the City, then Franchisee may request the placement of new or replacement structures in the rights-of-way consistent with the requirements of the Codes.

(2) Franchisee acknowledges and agrees that if Franchisee requests to place new structures or replacement structures that are higher than the replaced structure, and the overall height of the replacement structure and the facility is over 60 feet in the rights-of-way, then Franchisee may be required to enter into a site-specific agreement consistent with RCW 35.21.860 in order to construct such facilities in the right-of-way. Such agreements may require a site-specific charge paid to the City. The approval of a site-specific agreement is separate from this Franchise and must be approved and executed by the City Manager or his/her designee.

(3) Unless otherwise required by the Codes, replacement poles or structures which remain substantially similar to existing structures (or deviate in height or design as permitted within the Codes) are permissible, provided that Franchisee, or the pole owner at the Franchisee's request, removes the old pole or structure promptly, but no more than ninety (90) days after the installation of the replacement pole or structure.

(4) This Section 13.C does not place an affirmative obligation on the City to allow the placement of new infrastructure on public property or in the rights-of-way, nor does it relieve Franchisee from any Code provision related to the siting or design of small wireless facilities.

D. Concealment. Franchisee shall construct its facilities consistent with the concealment or stealth requirements as described in the Codes, as the same exist or are hereafter amended, or in the applicable permit(s), lease, site specific agreement, or license agreement, in order to minimize the visual impact of such facilities.

E. Eligible Facilities Requests. The parties acknowledge that it is the intent of this Franchise to provide general authorization to use the rights-of-way for small wireless facilities. The designs, as illustrated in a small wireless permit, including the dimensions, number of antennas, equipment boxes and the pole height, are intended and stipulated to be concealment features when considering whether a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

F. Inventory. Franchisee shall maintain a current inventory of small wireless facilities throughout the Term of this Franchise. Franchisee shall provide to the City a copy of the inventory report no later than thirty (30) days after request by the City. The inventory report shall include GIS coordinates, date of installation, type of pole used for installation, description/type of installation for each small wireless facility installation, and photographs taken before and after the installation of the small wireless facility, as well as photos taken from the public street. Small wireless facilities that are considered Deactivated Facilities shall be included in the inventory report, and Franchisee shall provide the same information as is provided for active installations, as well as the date the facilities were deactivated and the date the Deactivated Facilities were removed from the right-of-way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Franchisee is not required to report on future inventory reports any Deactivated Facilities that were removed from the right-of-way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities.

G. Graffiti Abatement. As soon as practical, but not later than thirty (30) days from the date Franchisee receives notice or is otherwise aware, Franchisee shall remove all graffiti on any of its small wireless facilities of which it is the owner of the pole or structure or on the small wireless facilities themselves attached to a third-party pole (i.e., graffiti on the shrouding protecting the radios). The foregoing shall not relieve Franchisee from complying with any City graffiti or visual blight ordinance or regulation.

H. Emissions Reports.

(1) Franchisee is obligated to comply with all applicable laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the rights-of-way, including all applicable FCC standards. Franchisee shall comply with the RF emissions certification requirements under applicable Law.

(2) Nothing in this Franchise prohibits the City from requiring periodic testing of Franchisee's facilities, which the City may request on no more than five (5) facilities per year, and no more than once per year, unless an issue with the RF emissions is found, or as otherwise required by a permit due to a modification of the facility. The City may inspect any of Franchisee's facilities and equipment located in the rights-of-way. If the City discovers that the emissions from a facility exceeds the FCC standards, then the City may order Franchisee to immediately turn off the facility, or portion thereof committing the violation, until the emissions exposure is remedied. Such order shall be made orally by calling **1-800-264-6620** and also by written notice pursuant to Section 26. Franchisee is required to promptly turn off that portion of the facility that is in violation, but in no event later than forty-eight (48) hours after receipt of oral notice. Franchisee shall reimburse the City for any costs incurred by the City for inspecting the facility and providing notice as described in Section 18.

I. Interference with Public Facilities. Franchisee’s small wireless facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR 15.3(m), with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure), or with the emergency communications operation or equipment. If the small wireless facilities cause such harmful interference, Franchisee shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Franchisee power down the specific small wireless facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) days after receipt of such written notice from the City of such interference, Franchisee has not abated such interference in a manner that is consistent with federal guidelines, such small wireless facility may be deemed an Unauthorized Facility and subject to the provisions of Section 13.I or removal by the City consistent with Section 6.I. The small wireless facility, or interfering portion thereof, must remain powered down (except for testing purposes) during the abatement period; otherwise the City may take more immediate action consistent with Section 6.I to protect the public health, safety, and welfare.

J. Interference with Other Facilities. Franchisee is solely responsible for determining whether its small wireless facilities interfere with telecommunications facilities of other utilities and franchisees within the rights-of-way. Franchisee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its small wireless facilities within the Franchise Area. Franchisee, in the performance and exercise of its rights and obligations under this Franchise, shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable law or this Franchise.

Section 14. Hold Harmless and Assumption of Risk.

A. Franchisee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property to the extent 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. This indemnification obligation 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.

B. 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 14.

C. 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 14.C. 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, also 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, as mutually agreed by City and Franchisee, 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.

D. Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees, or agents, the obligations of Franchisee under the indemnification provisions of this Section 14, and any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees or agents and the Franchisee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. 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, relating solely to indemnity claims made by the City directly against the Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.

E. Notwithstanding any other provisions of this Section 14**Error! Reference source not found.**, 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, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, elected or appointed officials, or contractors. In no event shall either party 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 third party claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by 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.

F. The provisions of this Section 14 shall survive the expiration, revocation, or termination of this Franchise.

Section 15. Insurance.

A. Franchisee shall procure and maintain for so long as Franchisee has facilities in the rights-of-way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the acts or omissions of Franchisee. Franchisee shall require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Franchisee. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-, VII. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement (or blanket endorsement) to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(1) Automobile Liability insurance with limits of $5,000,000 combined single limit each accident for bodily injury and property damage;

(2) Commercial General Liability insurance, written on an occurrence basis with limits of $5,000,000 per occurrence for bodily injury and property damage and $5,000,000 general aggregate including personal and

advertising injury, blanket contractual; premises;-operations; independent contractors; products and completed operations; broad form property damage; explosion, collapse and underground (XCU);

(3) Pollution liability shall be in effect throughout the entire Franchise term, with a limit of One Million Dollars ($1,000,000) per occurrence, and Two Million Dollars ($2,000,000) in the aggregate

(4) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of $1,000,000 each accident/disease/policy limit. Evidence of qualified self-insurance is acceptable; and

(5) Excess Umbrella liability policy with limits of $10,000,000 per occurrence and in the aggregate. Franchisee may use any combination of primary and excess to meet required total limits.

B. Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 15. Franchisee's umbrella liability insurance policy shall be at least as broad as its primary coverage.

C. The required insurance policies, with the exception of Workers' Compensation and Employer's Liability obtained by Franchisee shall include the City, its officers, officials, and employees ("Additional Insureds"), as additional insureds as their interests may appear under this Franchise, with coverage at least as broad as ISO form CG 20 11 or CG 20 26 04 13, or their equivalent. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City, upon acceptance, a certificate of insurance and blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's required Commercial General and Automobile Liability insurance shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Franchisee's required insurance and shall not contribute with it.

D. Upon receipt of notice from its insurer(s), Franchisee shall provide the City with thirty (30) days' prior written notice of any cancellation of any insurance policy required pursuant to this Section 15**Error! Reference source not found.**. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 15**Error! Reference source not found.**. Failure to provide the insurance cancellation notice, and to furnish to the City replacement insurance policies meeting the requirements of this Section 15,**Error! Reference source not found.** shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 25 below. Notwithstanding the cure period described in Section 25.B, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

E. Franchisee's maintenance of insurance as required by this Section 15**Error! Reference source not found.** 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 equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

F. The City may review all insurance limits once every three (3) years during the term, and upon prior written notice to and review by Franchisee, may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Franchisee. Franchisee shall provide a certificate of insurance to the City showing compliance with these adjustments and the additional insured endorsement.

G. As of the Effective Date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, 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-insurance program; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 16. Security Fund.

A. Franchisee shall establish and maintain a security fund in the amount of Fifty Thousand Dollars ($50,000), at its cost, with the City by depositing such monies, bonds, letters of credit, or other instruments in such form and amount acceptable to the City and running or renewable for the term of this Franchise. No sums may be withdrawn from the fund by Franchisee without consent of the City. The security fund shall be maintained at the sole expense of Franchisee so long as any of the Franchisee's facilities occupy a public way.

(1) The fund shall serve as security for the full and complete performance of this Franchise, including any claims, costs, damages, judgments, awards, or liability, of any kind whatsoever, the City pays or incurs, including civil penalties, because of any failure attributable to Franchisee to comply with

the provisions of this Franchise or the codes, ordinances, rules, regulations, standards, or permits of the City.

B. Before any sums are withdrawn from the security fund, the City shall give written notice to Franchisee:

(1) Describing the act, default or failure to be remedied, or the claims, costs, damages, judgments, awards, or liability which the City has incurred or may pay by reason of Franchisee's act or default;

(2) Providing a reasonable opportunity for Franchisee to first remedy the existing or ongoing default or failure, if applicable;

(3) Providing a reasonable opportunity for Franchisee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and

(4) Franchisee will be given an opportunity to review the act, default or failure described in the notice with the City Manager or his/her designee.

C. Franchisee shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.

D. Insufficiency of the security fund shall not release or relieve Franchisee of any obligation or financial responsibility. 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 17. Construction and Maintenance Bonds.

A. If required by permit, Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee's facilities within the rights-of-way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. 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 17.B. Compliance with the Performance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 17.A. In lieu of a separate Performance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the City's bond requirements by posting a single on-going Performance Bond in an amount approved by City.

B. Maintenance Bond. 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 17.B must be in place prior to City's release of the bond required in Section 17.A. Compliance with the Maintenance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 17.B. In lieu of a separate Maintenance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the Maintenance Bond requirement by posting a single on-going Maintenance Bond in an amount approved by City.

Section 18. Taxes, Charges, and Fees.

A. Franchisee shall pay and be responsible for: (i) all charges and fees imposed to recover actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise; (ii) any use and/or development authorizations which may be required; or (iii) any permit which may be required, the inspecting of plans and construction, or the preparation of a detailed statement pursuant to Chapter 43.21C RCW. Regular application and processing charges and fees imposed by the City shall be deemed to be attributable to actual administrative expenses incurred by the City, but shall not excuse Franchisee from paying and being responsible for other actual administrative expenses incurred by the City.

(1) Franchisee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to 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.

(2) Franchisee shall pay fees according to applicable sections of the Richland Municipal Code, including but not limited to Title 28, Title 12, and Title 14.

B. Franchisee shall pay and be responsible for taxes permitted by law. Franchisee acknowledges that certain of its business activities may be subject to taxation as a telephone business, and that Franchisee shall pay to the City the rate applicable to such taxable services under Title 5 RMC, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments, the process in Title 5 RMC shall control. In that event, the City may not enforce remedies under Section 25.A or Section 25.B, or commence a forfeiture or revocation process pursuant to Section 25.C, until the dispute is finally resolved either consistent with Title 5 RMC or by judicial action, and then only if Franchisee does not comply with such resolution. 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 Title 5 RMC as may be permitted by law.

C. 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 18.E.

D. Franchisee shall promptly reimburse the City in accordance with the provisions of Section 18.E and Section 18.F 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. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

E. Franchisee shall reimburse the City within sixty (60) days of submittal by the City of a billing for 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 rights-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 rights-of-way as the result of the presence of Franchisee’s facilities in the rights-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 of Franchisee’s facilities, or the routing or rerouting of any utilities so as not to interfere with Franchisee’s facilities.

F. 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. At the City’s option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City’s itemization of costs, in writing, at the conclusion of each project for information purposes.

G. Franchisee hereby warrants that its operations, as authorized under this Franchise, are those of a telephone business as defined in RCW 82.16.010, or a 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 19. Shared Excavations; Additional Ducts and Conduits.

A. If Franchisee shall, at any time, plan to make excavations in any area covered by this Franchise, Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, provided that:

(1) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;

(2) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties;

(3) To the extent reasonably possible, Franchisee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the right-of-way, as well as to minimize traffic-related impacts; and

(4) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.

B. 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.

C. Except as expressly provided in this section, Franchisee shall not charge the City for any costs, of any kind whatsoever, for facilities provided by Franchisee in accordance with this Section 19.

Section 20. Access to Facilities. Franchisee shall provide access to its facilities by hire, sale, or resale on a non-discriminatory basis. If Franchisee purports to serve the general public, it shall make its telecommunications services available to any customer within the City who shall request such service whenever feasible, without discrimination, as to the terms, conditions, rates or charges for the Franchisee's services; provided, however, that nothing in this section shall prohibit Franchisee from making any reasonable classifications among differently situated customers.

Section 21. Acquisition of Facilities. Upon Franchisee's acquisition of any facilities in the public way, or upon any addition or annexation to the City of any area in which Franchisee has facilities, such facilities shall immediately be subject to the terms of this Franchise without further action of the City or Franchisee.

Section 22. Vacation of Rights-of-Way. 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. The City shall notify the Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City may, after sixty (60) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 23. Records; Duty to Provide Information.

A. Within thirty (30) days of a written request from the City, Franchisee shall furnish the City with all requested information sufficient to reasonably demonstrate that the Franchisee has complied with all applicable requirements of this Franchise:

(1) That Franchisee has complied with all requirements of this Franchise;

(2) That taxes, fees, charges, or other costs owed or payable by Franchisee have been properly collected and paid; and

(3) Franchisee's obligations under this section are in addition to those provided in Section 6.K, Section 6.M and subsection (B) below.

B. Franchisee will manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City will have access to, and the right to inspect, any documents and records of Franchisee and its affiliates that are reasonably necessary for the enforcement of this Franchise, or to verify Franchisee's compliance with terms or conditions of this Franchise. Franchisee will not deny the City access to any of Franchisee's records on the basis that Franchisee's documents or records are under the control of any affiliate or a third party.

C. All books, records, maps and documents maintained by Franchisee with respect to its facilities within the rights-of-way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 23.C shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 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 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, that

Franchisee may redact identifying information including but not limited to 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.

D. One copy of documents and records requested by the City will be furnished to the City at the cost of Franchisee. If the requested documents and records are too voluminous, or for security reasons cannot be copied or removed, the parties will promptly meet and discuss how Franchisee shall produce the documents.

E. Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, that Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential 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 can take appropriate steps to protect its interests.

F. Nothing in this Franchise 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. Franchisee shall indemnify, defend, and hold the City harmless against any claims, liabilities, penalties, costs and attorneys' fees that the City incurs based on public records that are in the possession or under the dominion and control of Franchisee, including, but not limited to, Franchisee's failure or declination to retain or conduct a reasonable search in compliance with law, withhold in whole or in part, or timely provide the public records to the City, or based upon any and all actions of Franchisee in seeking to prevent disclosure of a record in whole or in part that is in the possession of the City. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any 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 24. Assignment or Transfer. Franchisee's rights, privileges, and authority under this Franchise, and ownership or working control of facilities constructed or installed pursuant to this Franchise, may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any transfer, assignment or disposal of Franchisee's rights, privileges, and authority under this Franchise, or ownership or working control of facilities constructed or installed pursuant to this Franchise, may be subject to reasonable conditions as may be prescribed by the City.

A. Franchisee and the proposed assignee or transferee shall provide and certify the following information to the City not less than one hundred and twenty (120) days prior to the proposed date of assignment, transfer, or disposal:

   (1) Complete information setting forth the nature, terms and condition of the proposed assignment, transfer, or disposal;

   (2) Any other information reasonably required by the City; and

   (3) A transfer application fee in an amount to be determined by the City to recover actual administrative costs directly related to receiving and approving the proposed assignment, transfer, or disposal.

B. No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this Franchise and to comply with the terms and conditions of this Franchise.

C. Any transfer, assignment, or disposal of rights, privileges, and authority under this Franchise or ownership or working control of facilities constructed or installed pursuant to this Franchise, without prior written approval of the City pursuant to this section, shall be void and is cause for termination of this Franchise.

D. Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 24.C below, or to an entity that acquires all or substantially all of Franchisee’s assets located in the area defined by the Federal Communications Commission in which the facilities are located, or for collateral security purposes.

E. 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 facilities) of the Franchisee; or (ii) ownership or working control of the Franchisee's facilities within the City; or (iii) control of the capacity or bandwidth of the Franchisee's facilities within the City, shall be considered an assignment or transfer requiring notice to and consent by 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.

F. All terms and conditions of this Franchise shall be binding upon all successors and assigns of Franchisee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Franchise.

Section 25. Violations, Non-compliance, and Other Grounds for Termination or Cancellation.

A. 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. 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 affect any such waiver.

B. If Franchisee 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 Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying, with reasonable particularity, the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine that the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee'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 Franchisee does not comply with the specified conditions, the City may, at its discretion: (1) commence revocation proceedings, pursuant to Section 25.C; or (2) claim damages of Two Hundred Fifty Dollars ($250.00) per day against the security fund set forth in Section 16; or (3) suspend the issuance of additional permits; or (4) pursue other remedies as described in Section 25.A above.

C. This Franchise, and any right, privilege or authority of Franchisee to enter, occupy or use public ways may be terminated or cancelled by the City for any of the following reasons:

(1) Violation of or non-compliance with any term or condition of this Franchise by Franchisee;

(2) Violation of or non-compliance with the material terms of any use and/or development authorization or required permit by Franchisee;

(3) Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any public way without Franchisee first obtaining use and/or development authorization and required permits from the City and all other appropriate regulatory authorities;

(4) Unauthorized construction, installation, operation, maintenance, or repair of facilities on City property;

(5) Misrepresentation or lack of candor, by or on behalf of, Franchisee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any right, privilege or authority to Franchisee;

(6) Abandonment of facilities;

(7) Failure of Franchisee to pay taxes, fees, charges or costs when and as due; or

(8) Insolvency or bankruptcy of Franchisee.

D. In the event that the City believes that grounds exist for termination or cancellation of this Franchise or any right, privilege or authority of Franchisee to enter, occupy or use public ways, Franchisee shall be given written notice, and providing Franchisee a reasonable period of time not exceeding thirty (30) calendar days to furnish evidence:

(1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, non-compliance, or other grounds for termination or cancellation;

(2) That rebuts the alleged violation, non-compliance, or other grounds for termination or cancellation; or

(3) That it would be in the public interest to impose some penalty or sanction less than termination or cancellation.

E. In the event that Franchisee fails to provide evidence reasonably satisfactory to the City as provided in subsection (D) of this section, the City shall refer the apparent violation, non-compliance, or other grounds for termination or cancellation to the City Council. The City Council shall provide the Franchisee with notice and a reasonable opportunity to be heard concerning the matter.

F. If the City Council determines that the violation, non-compliance, or other grounds for termination or cancellation arose from willful misconduct or gross negligence by Franchisee, then, Franchisee shall, at the election of the City

Council, forfeit all rights, privileges and authority conferred under this Franchise or any use and/or development authorization or permit granted by the City, and this Franchise and any such use and/or development authorization or permit may be terminated or cancelled by the City Council. The City Council may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Franchisee into compliance or to take corrective action, or to recover damages and costs incurred by the City by reason of Franchisee's actions or omissions. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the actions or omissions of Franchisee:

(1) Whether the misconduct was egregious;

(2) Whether substantial harm resulted;

(3) Whether the violation was intentional;

(4) Whether there is a history of prior violations of the same or other requirements;

(5) Whether there is a history of overall compliance; and

(6) Whether the violation was voluntarily disclosed, admitted or cured.

E. The City Council's choice of remedy shall not excuse Franchisee from compliance with any term or condition of this Franchise or the material terms of any use and/or development authorization or required permit by Franchisee. Franchisee shall have a continuing duty to remedy any violation, non-compliance, or other grounds for termination or cancellation. Further, nothing herein shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of this Franchise and any use and/or development authorization or permit granted to Franchisee.

Section 26. Notices.

A. Any regular notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

The City:
City of Richland
Attn: City Manager
625 Swift Boulevard
Richland, WA 99352

Franchisee:
Cellco Partnership d/b/a Verizon Wireless
Attn: Network Real Estate
180 Washington Valley Road
Bedminster, New Jersey 07921

With a copy to: Cellco Partnership d/b/a Verizon Wireless
Attn: Pacific Market General Counsel
15505 Sand Canyon Avenue
Irvine, CA 92618

B. In case of emergencies, the City may contact ______________ to request immediate repair or shutoff. After being notified of an emergency, Franchisee shall cooperate with the City and make commercially reasonable efforts to immediately respond to minimize damage, protect the health and safety of the public and repair facilities to restore them to proper working order. Annually, on request of the City, Franchisee will meet with City emergency response personnel to coordinate emergency management operations and, at least once a year, at the request of the City, actively participate in emergency preparations.

C. Additionally, Franchisee shall designate a Franchise manager or government affairs liaison, and shall use reasonable efforts to periodically update the City with contact information for a Franchise manager or government affairs liaison to act as a resource for the City for Franchise-related questions, including but not limited to questions related to Franchise compliance, scheduling and construction. Failure to periodically update the City with the contact information will not be considered a breach of this Franchisee.

Section 27. Non-Waiver. The failure of the City to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the City, and shall not prevent the City from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

Section 28. Eminent Domain. This Franchise is subject to the power of eminent domain and the right of the City Council to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 29. Limitation of Liability. Administration of this Franchise may not be construed to create the basis for any liability on the part of the City, its elected officials, officers, employees, servants, agents, and representatives for any injury or damage from the failure of the Franchisee to comply with the provisions of this Franchise; 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 this Franchise by the City; or for the accuracy of plans submitted to the City.

Section 30. Damage to Facilities. Unless directly and proximately caused by the active sole negligence of the City, the City shall not be liable for any damage to, or loss of, any facilities as a result of, or in connection with, any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within a public way done by or on behalf of the City.

Section 31. Governing Law and Venue. This Franchise and use of the applicable public ways will be governed by the laws of the State of Washington, unless preempted by federal law. Franchisee agrees to be bound by the laws of the State of Washington, unless preempted by federal law, and subject to the jurisdiction of the courts of the State of Washington. Any action relating to this Franchise must be brought in the Superior Court of Washington for Benton County, or in the case of a federal action, the United States District Court for the Eastern District of Washington at Richland, Washington, unless an administrative agency has primary jurisdiction.

Section 32. Severability. If any section, sentence, clause or phrase of this Franchise or its application to any person or entity should be held to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of any other section, sentence, clause or phrase of this Franchise, nor its application to any other person or entity.

Section 33. Miscellaneous.

A. Equal Employment and Non-discrimination. Throughout the term of this Franchise, Franchisee will fully comply with all equal employment and non-discrimination provisions and requirements of federal, state, and local laws, and in particular, FCC rules and regulations relating thereto.

B. Descriptive Headings. The headings and titles of the sections and subsections of this Franchise are for reference purposes only and do not affect the meaning or interpretation of the text herein.

C. Costs and Attorneys' Fees. If any action or suit arises in connection with this Franchise, the substantially prevailing party will be entitled to recover all of its reasonable costs, including attorneys' fees, as well as costs and reasonable attorneys' fees on appeal, in addition to such other relief as the court may deem proper.

D. No Joint Venture. Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

E. Mutual Negotiation. This Franchise was mutually negotiated by the Franchisee and the City and has been reviewed by legal counsel for both parties. Neither party will be deemed to be the drafter of this Franchise.

F. Third-Party Beneficiaries. There are no third-party beneficiaries to this Franchise.

G. Actions of the City or Franchisee. In performing their respective obligations under this Franchise, the City and Franchisee will act in a reasonable, expeditious, and timely manner. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

H. Entire Agreement. This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter and supersedes all prior oral and written negotiations between the parties.

I. Modification. The parties may alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification. Nothing in this subsection shall impair the City's exercise of authority reserved to it under this Franchise.

J. Non-exclusivity. This Franchise does not confer any exclusive right, privilege, or authority to enter, occupy or use public ways for delivery of telecommunications services or any other purposes. This Franchise is granted upon the express condition that it will not in any manner prevent the City from granting other or further franchises in, on, across, over, along, under or through any public way.

K. Rights Granted. This Franchise does not convey any right, title or interest in public ways, but shall be deemed only as authorization to enter, occupy, or use public ways for the limited purposes and term stated in this Franchise. Further, this Franchise shall not be construed as any warranty of title. This Franchise may be enforced by both law and equity.

L. Contractors and Subcontractors. Franchisee's contractors and subcontractors must be licensed and bonded in accordance with the City's ordinances, rules, and regulations. Work by contractors and subcontractors is 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.

M. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and Franchisee shall not 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 and its officers, officials, employees, agents, and representatives harmless from and against any and all claims, costs, and liabilities, including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee’s use, storage, or disposal of hazardous substances, whether or not intentional, and/or with 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. Notwithstanding the foregoing, or any and other provision in this Franchise, Franchisee shall not be liable or responsible for any environmental condition except to the extent Franchisee causes the condition or exacerbates the condition of which it has reason to be aware.

N. Licenses. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City.

O. FAA and FCC. 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 Franchisee's equipment is not in compliance, and should Franchisee fail to cure the conditions of non-compliance 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 non-compliance at Franchisee's expense.

P. Acceptance. Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as **Exhibit A**. In addition, Franchisee shall submit proof of insurance obtained and the additional insured endorsement pursuant to Section 15**Error! Reference source not found.**, any Performance Bond, if applicable, pursuant to Section 17.A, and the security fund required pursuant to Section 16.

Q. Survival. All of the provisions, conditions, and requirements of Section 5, Section 10, Section 11, Section 14**Error! Reference source not found.**, Section 15**Error! Reference source not found.**, Section 31 and Section 33.Q 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.

R. Expiration. If this Franchise expires without renewal, the City may, subject to applicable law:

(1) 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

(2) The City may order the removal of any and all facilities at Franchisee's sole cost and expense consistent with Section 10.

Section 34. Publication. The City Clerk is authorized and directed to publish this ordinance in accordance with the Richland City Charter.

Section 35. Effective Date. This ordinance shall become effective on the thirty-first (31st) day after its first publication as required by law, but if, and only if, Franchisee has endorsed this ordinance and accepted the terms and conditions thereof.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the ___ day of June, 2020.

____
Ryan Lukson, Mayor

Attested by:

____
Jennifer Rogers, City Clerk

Approved as to form:

____
Heather Kintzley, City Attorney

Date Published: ______________

EXHIBIT A

ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, Franchisee covenants and agrees to perform, and be bound by, each and all of the terms and conditions imposed by the franchise and the municipal code and ordinances of the City.

By: ________________________________

Printed Name: ________________________

Title: _______________________________

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the Franchisee returned a signed copy of this Franchise to the City Council in accordance with this Franchise; (2) the Franchisee has presented to the City acceptable evidence of insurance and security as required in this Franchise; and (3) the Franchisee has paid all applicable processing costs set forth in the franchise.

The effective date of this Franchise ordinance is: ________________________, 2020.

____
By: Jennifer Rogers, City Clerk

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020

Agenda Category: Ordinances - Second Reading & Passage

Core Focus Area 3 - Increase Economic Vitality

Subject:
Ordinance No. 10-20, Amending the 2020 Budget in the Community Development Block Grant Fund for Coronavirus Response

Department:	Ordinance/Resolution Number:	Document Type:
Development Services	10-20	Ordinance

Recommended Motion:
Give second reading and pass Ordinance No. 10-20, amending the budget in the Community Development Block Grant fund to receive and allocate additional federal funding for Coronavirus response.

Summary:
The U.S. Department of Housing and Urban Development (HUD) granted an additional $179,543 to the Community Development Block Grant (CDBG) program for Coronavirus response.

Several approved uses have been identified, including additional rental assistance for low and moderate income individuals and families, and support to small businesses and public service organizations that serve low and moderate income residents.

A budget adjustment is necessary to properly accept and appropriate the federal funds for local use. Ordinance No. 10-20 provides for additional appropriations in the CDBG budget.

Staff recommends approval of Ordinance No. 10-20 for second reading and passage.

Fiscal Impact:	Ordinance No. 10-20 will increase the funds available in the Community Development Block Grant (CDBG) fund by $179,543 for 2020. The federal dollars are provided by the U.S. Department of Housing and Urban Development (HUD).

Attachments:
1. Ordinance No. 10-20

ORDINANCE NO. 10-20

AN ORDINANCE of the City of Richland amending the 2020 Budget to provide for additional appropriations in the Community Development Block Grant Fund for Coronavirus Response.

WHEREAS, on November 19, 2019, the Richland City Council approved Ordinance No. 55-19 approving the 2020 Budget; and

WHEREAS, in response to the impacts of the novel Coronavirus (COVID-19) pandemic, the U.S. Department of Housing and Urban Development has granted an additional $179,543 to the City of Richland's Community Development Block Grant (CDBG) program for the purpose of Coronavirus response; and

WHEREAS, the City has identified community needs, and amended its 2020 Annual Action Plan through Resolution No. 65-20 to allocate the additional funding for Coronavirus relief and response; and

WHEREAS, when the 2020 Budget was approved, no funds were appropriated in the Community Development Block Grant Fund for Coronavirus response.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Amendment of the 2020 Budget. The 2020 Budget is hereby amended to provide additional appropriations in the Community Development Block Grant Fund from the U.S. Department of Housing and Urban Development as follows:

Fund	
Current Appropriation:	$ 474,246
Increase in Appropriation:	$ 179,543
Amended Appropriation:	$ 653,789

Section 2. This ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

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PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 2nd day of June, 2020.

Ryan Lukson, Mayor

Attested by:	Approved as to form:
Jennifer Rogers, City Clerk	Heather Kintzley, City Attorney

Date Published: June 7, 2020

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020 Agenda Category: Resolutions - Adoption

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:
Resolution No. 75-20, Authorizing an Award of Bid to Intermountain Slurry Seal, Inc. for the 2020 Microsurfacing Project

Department:	Ordinance/Resolution Number:	Document Type:
Public Works	75-20	Resolution

Recommended Motion:
Adopt Resolution No. 75-20, authorizing the City Manager to sign and execute a construction contract with Intermountain Slurry Seal, Inc. for the 2020 Microsurfacing project.

Summary:
Richland's Pavement Preservation Program (the "Program") is included in the 2020-2025 Capital Improvement Plan. Each year, the Program is implemented using a variety of resurfacing technologies selected to cost-effectively preserve the City's street surfaces. Microsurfacing is one such technology that has been successful in Richland, and was selected for the bulk of this year's Program.

The 2020 Program is impacted by the recent passage of I-976. I-976 eliminated more than $500,000 in Transportation Benefit District car tab revenue. Based on this reduced revenue, staff structured the microsurface project with bid alternatives to allow adjusting the scope to available budget. In addition, other planned work was eliminated from the Program.

All project development and design work required to advance the project to construction has been completed. An interlocal agreement with the City of Kennewick for a portion of Gage Boulevard has also been executed. Richland's project will resurface a segment of Gage Boulevard adjacent to Kennewick.

On May 18, 2020, three bids were received and opened. Boswell Asphalt Paving Solutions, Inc. ("Boswell") was identified as the apparent low bidder. Upon detailed review of its bid proposal, Boswell was deemed non-responsive. The second lowest bidder, Intermountain Slurry Seal, Inc., successfully met all project specifications and is now considered the lowest responsive bid. The project budget is adequate to complete the project's base bid and alternative 1 using Intermountain Slurry Seal, Inc.'s bid. Staff recommends adoption of Resolution No. 75-20.

Fiscal Impact:	The current available balance in the Pavement Preservation Program budget, after reducing the budget to account for lost car tab revenue, is $1,073,276. The interlocal agreement with Kennewick provides $33,000 to fund work completed in Kennewick as part of this project. $50,000 from the Columbia Park Trail - East budget is also included to accomplish striping work. Total project funding is $1,153,276. Total estimated costs, including construction, construction contingency, and construction management, are $1,067,749.

Attachments:
1. Resolution No. 75-20
2. 2020 Microsurfacing - Bid Tab.Rev1
3. 2020 Pavement Preservation Microsurfacing Vicinity Map

RESOLUTION NO. 75-20

A RESOLUTION of the City of Richland authorizing the award of bid to Intermountain Slurry Seal, Inc. for the 2020 Microsurfacing project.

WHEREAS, the 2020-2025 Capital Improvement Plan (CIP) includes the Pavement Preservation Program; and

WHEREAS, as a result of the passage of I-976 in 2019, the 2020 Pavement Preservation Program has been reduced in scope with the elimination of more than $500,000 in Transportation Benefit District car tab revenue; and

WHEREAS, the Pavement Preservation Program is implemented each year using a variety of resurfacing technologies selected to most cost-effectively preserve the City's street surfaces; and

WHEREAS, microsurfacing is a resurfacing technology that has been successful in Richland, and was selected for the bulk of this year's program; and

WHEREAS, all project development and design work required to advance the project to construction has been completed; and

WHEREAS, staff solicited bids in accordance with the City's purchasing policies, receiving and opening three (3) bids on May 18, 2020; and

WHEREAS, Intermountain Slurry Seal, Inc. submitted the lowest responsible bid of the three (3) bids received; and

WHEREAS, the project budget is adequate to complete the base bid and alternative 1 of the project using the lowest responsible bid; and

WHEREAS, the City's best interests are served by completing the project in accordance with the Capital Improvement Plan, project design and lowest responsible bid.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute a construction contract with Intermountain Slurry Seal, Inc. in the amount of $952,748.60, and to execute change orders in an aggregate amount not to exceed $100,000 to fulfill the project's design intent.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

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ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 2nd day of June, 2020.

Ryan Lukson, Mayor

Attested by:

Jennifer Rogers, City Clerk

Approved as to form:

Heather Kintzley, City Attorney

City of Richland

DATE BIDS OPENED: May 18, 2020	ITB # 20-0028
2020 MICROSURFACING	

Item	Description	Qty	Unit	ENGINEER'S ESTIMATE Unit Price	Total Price	BOSWELL ASPHALT PAVING SOLUTIONS, INC MERIDIAN, ID Unit Price	Total Price	INTERMOUNTAIN SLURRY SEAL, INC RENO, NV Unit Price	Total Price	VSS INTERNATIONAL, INC WEST SACRAMENTO, CA Unit Price	Total Price
	SCHEDULE A: MICROSURFACING BASE BIDS & MISC STRIPING CHANGES										
A-1	Mobilization (all schedules).	1	LS	$50,000.00	50,000.00	130,000.00	130,000.00	85,000.00	85,000.00	53,150.00	53,150.00
A-2	SPCC plan (all schedules).	1	LS	1,000.00	1,000.00	2,500.00	2,500.00	10,000.00	10,000.00	3,500.00	3,500.00
A-3	Project temporary traffic control (this schedule only).	1	LS	25,000.00	25,000.00	41,000.00	41,000.00	109,016.85	109,016.85	128,213.12	128,213.12
A-4	Portable changeable message sign (all schedules).	160	HR	15.00	2,400.00	5.50	880.00	10.00	1,600.00	36.75	5,880.00
A-5	Tree trimming.	1	LS	5,000.00	5,000.00	2,000.00	[illegible]	2,000.00	2,000.00	11,025.00	11,025.00
A-6	Micro-surfacing, Type III.	78,184	SY	2.75	215,006.00	3.00	[illegible]	4.25	332,282.00	3.35	261,916.40
A-7	Temporary pavement markings - short duration.	124,000	LF	0.30	37,200.00	[illegible]	[illegible]	0.28	34,720.00	0.29	35,960.00
A-8	Roadway surveying (this schedule only).	1	LS	10,000.00	10,000.00	[illegible]	[illegible]	15,000.00	15,000.00	7,497.00	7,497.00
A-9	Plastic line.	116,080	LF	1.05	121,884.00	[illegible]	[illegible]	0.80	92,864.00	0.84	97,507.20
A-10	Plastic wide lane line.	58,164	LF	1.35	78,521.40	[illegible]	72,705.00	1.04	60,490.56	1.09	63,398.76
A-11	Plastic Stop line (preformed).	484	LF	12.00	5,808.00	[illegible]	5,082.00	8.80	4,259.20	9.24	4,472.16
A-12	Plastic crosswalk line (preformed).	2,176	SF	7.50	16,320.00	6.80	14,796.80	5.60	12,185.60	5.88	12,794.88
A-13	Plastic traffic arrow (preformed).	58	EA	110.00	6,380.00	115.00	6,670.00	85.00	4,930.00	89.25	5,176.50
A-14	Plastic bicycle symbol (performed).	44	EA	175.00	7,700.00	210.00	9,240.00	175.00	7,700.00	183.75	8,085.00
A-15	Removing plastic line.	64,817	LF	0.40	25,926.80	0.35	22,685.95	0.27	17,500.59	0.28	18,148.76
A-16	Removing crosswalk & Stop bar.	6,165	SF	7.00	43,155.00	1.32	8,137.80	8.00	49,320.00	8.40	51,786.00
A-17	Removing plastic traffic markings.	14	EA	75.00	1,050.00	79.00	1,106.00	52.00	728.00	54.60	764.40
	SCHEDULE A SUBTOTAL				**$652,351.20**		**$658,327.55**		**$839,596.80**		**$769,275.18**
	0% SALES TAX				**-**		**-**		**-**		**-**
	SCHEDULE A TOTAL				**$652,351.20**		**$658,327.55**		**$839,596.80**		**$769,275.18**
	ADDITIONAL ALTERNATIVE 1: KEENE ROAD MICRO (ELEMENTARY TO ENGLEWOOD)										
A1-1	Project temporary traffic control (this schedule only).	1	LS	$5,000.00	5,000.00	14,700.00	[illegible]	10,000.00	10,000.00	19,913.75	19,913.75
A1-2	Micro-surfacing, Type III.	27,663	SY	3.25	89,904.75	[illegible]	[illegible]	2.20	60,858.60	3.35	92,671.05
A1-3	Temporary pavement markings - short duration.	45,300	LF	0.30	13,590.00	[illegible]	[illegible]	0.28	12,684.00	0.29	13,137.00
A1-4	Roadway surveying (this schedule only).	1	LS	3,500.00	3,500.00	[illegible]	[illegible]	1,000.00	1,000.00	1,470.00	1,470.00
A1-5	Plastic line.	20,985	LF	1.05	22,034.25	[illegible]	13,640.25	0.40	8,394.00	0.84	17,627.40
A1-6	Plastic wide lane line.	6,330	LF	1.35	8,545.50	[illegible]	7,912.50	0.50	3,165.00	1.09	6,899.70
A1-7	Plastic Stop line (preformed).	88	LF	12.00	1,056.00	[illegible]	924.00	4.40	387.20	9.24	813.12

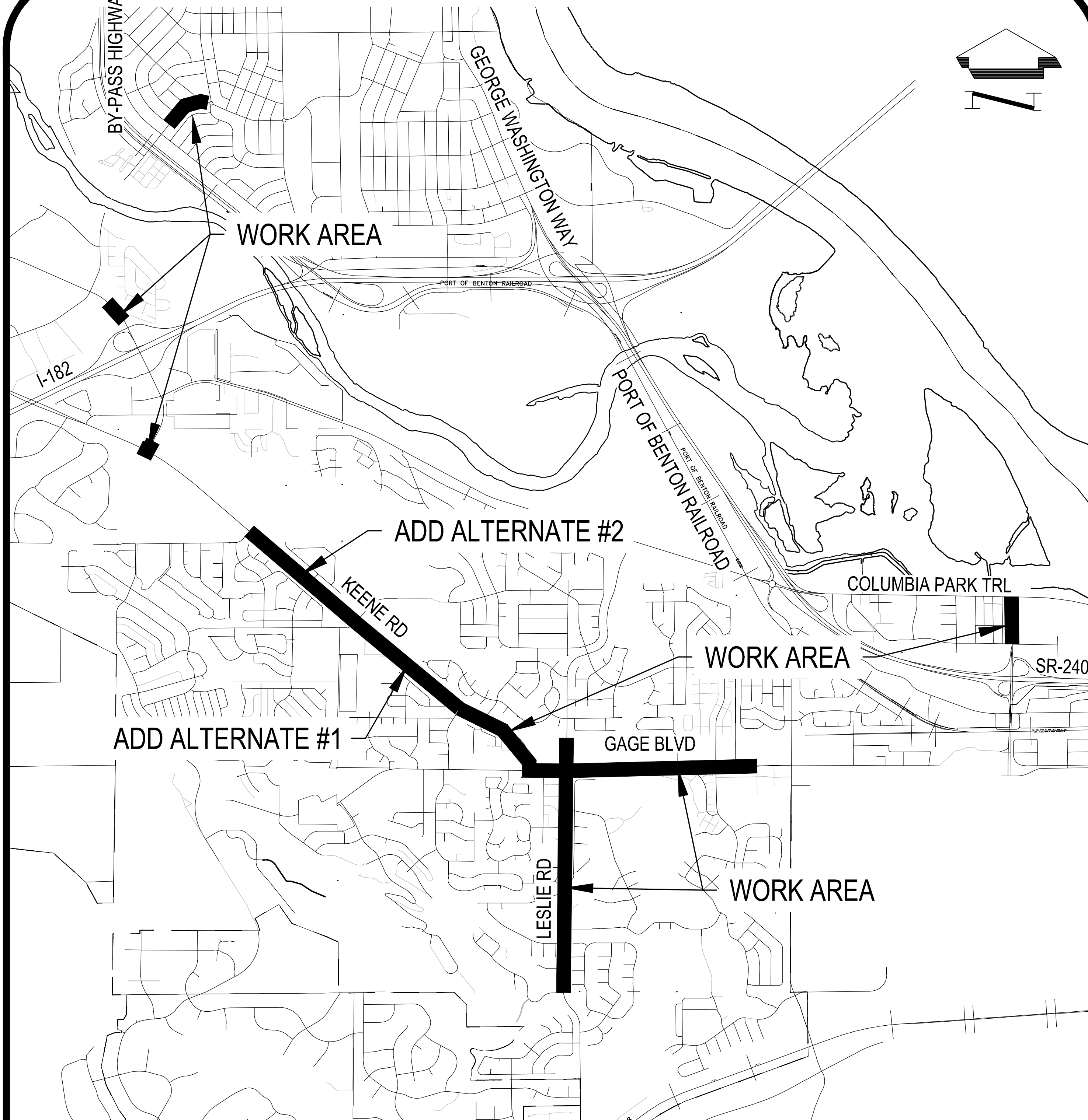
NON-RESPONSIVE

NON-RESPONSIVE

Item	Description	Qty	Unit	ENGINEER'S ESTIMATE		BOSWELL ASPHALT PAVING SOLUTIONS, INC MERIDIAN, ID		INTERMOUNTAIN SLURRY SEAL, INC RENO, NV		VSS INTERNATIONAL, INC WEST SACRAMENTO, CA	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
A1-8	Plastic crosswalk line (preformed).	1,440	SF	7.50	10,800.00	6.80	9,792.00	2.80	4,032.00	5.88	8,467.20
A1-9	Plastic traffic arrow (preformed).	8	EA	110.00	880.00	115.00	920.00	42.00	336.00	89.25	714.00
A1-10	Plastic bicycle symbol (performed).	13	EA	$175.00	2,275.00	210.00	2,730.00	75.00	975.00	183.75	2,388.75
A1-11	Removing plastic line.	45,300	LF	0.40	18,120.00	0.35	15,855.00	0.15	6,795.00	0.28	12,684.00
A1-12	Removing crosswalk & Stop bar.	1,100	SF	7.00	7,700.00	1.32	1,452.00	4.00	4,400.00	8.40	9,240.00
A1-13	Removing plastic traffic markings.	5	EA	75.00	375.00	79.00	395.00	25.00	125.00	54.60	273.00
	ADDITIONAL ALTERNATIVE 1 SUBTOTAL				$183,780.50		$161,363.75		$113,151.80		$186,298.97
	0% SALES TAX				-		-		-		-
	ADDITIONAL ALTERNATIVE 1 TOTAL				$183,780.50		$161,363.75		$113,151.80		$186,298.97
	ADDITIONAL ALTERNATIVE 2: KEENE ROAD MICRO (ENGLEWOOD TO SHOCKLEY)										
A2-1	Project temporary traffic control (this schedule only).	1	LS	$5,000.00	5,000.00	14,700.00	14,700.00	5,000.00	5,000.00	19,913.75	19,913.75
A2-2	Micro-surfacing, Type III.	23,042	SY	3.25	74,886.50	3.00	69,126.00	2.20	50,692.40	3.35	77,190.70
A2-3	Temporary pavement markings - short duration.	39,300	LF	0.30	11,790.00	0.18	[illegible]	0.28	11,004.00	0.30	11,790.00
A2-4	Roadway surveying (this schedule only).	1	LS	2,500.00	2,500.00	1,900.00	[illegible]	1,000.00	1,000.00	1,470.00	1,470.00
A2-5	Plastic line.	23,035	LF	1.05	24,186.75	0.65	[illegible]	0.40	9,214.00	0.84	19,349.40
A2-6	Plastic wide lane line.	7,220	LF	1.35	9,747.00	[illegible]	[illegible]	0.50	3,610.00	1.09	7,869.80
A2-7	Plastic Stop line (preformed).	54	LF	12.00	648.00	[illegible]	[illegible]	4.40	237.60	9.24	498.96
A2-8	Plastic crosswalk line (preformed).	448	SF	7.50	3,360.00	[illegible]	3,046.40	2.80	1,254.40	5.88	2,634.24
A2-9	Plastic traffic arrow (preformed).	4	EA	110.00	440.00	[illegible]	460.00	42.00	168.00	89.25	357.00
A2-10	Plastic bicycle symbol (performed).	4	EA	$175.00	700.00	[illegible]	840.00	75.00	300.00	183.75	735.00
A2-11	Removing plastic line.	39,300	LF	0.40	15,720.00	0.35	13,755.00	0.15	5,895.00	0.28	11,004.00
A2-12	Removing crosswalk & Stop bar.	217	SF	7.00	1,519.00	1.32	286.44	4.00	868.00	8.40	1,822.80
A2-13	Removing plastic traffic markings.	2	EA	75.00	150.00	79.00	158.00	25.00	50.00	54.60	109.20
	ADDITIONAL ALTERNATIVE 2 SUBTOTAL				$150,647.25		$135,910.59		$89,293.40		$154,744.85
	0% SALES TAX				-		-		-		-
	ADDITIONAL ALTERNATIVE 2 TOTAL				$150,647.25		$135,910.59		$89,293.40		$154,744.85

NON-RESPONSIVE

	Engineer's Estimate	Boswell Asphalt	Intermountain Slurry Seal	VSS International
SCHEDULE A	**$652,351.20**	**$658,327.55**	**$839,596.80**	**$769,275.18**
ADDITIONAL ALTERNATIVE 1	**183,780.50**	**161,363.75**	**113,151.80**	**186,298.97**
ADDITIONAL ALTERNATIVE 2	**150,647.25**	**135,910.59**	**89,293.40**	**154,744.85**
GRAND TOTAL	**$986,778.95**	**$955,601.89**	**$1,042,042.00**	**$1,110,319.00**



LEGEND

— — — CITY LIMITS

Richland Washington

City of Richland

VICINITY MAP

2020 PAVEMENT PRESERVATION

DATE: 05-01-2020
DRAWN BY: EY
SCALE: NTS
CAD DWG: O:\CIVIL_PROJECTS - CIVIL 3D\2020 PAVEMENT PRESERVATION_SAW_CP190013\01_ENGINEERING\6.0_DRAWINGS\2020 PAVEMENT PRESERVATION_MICRO_COVER

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020 Agenda Category: Resolutions - Adoption

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:
Resolution No. 76-20, Authorizing a Third Amendment to the Agreement with RH2 Engineering, Inc. for the Columbia River Intake Screen Upgrade Project

Department:	Ordinance/Resolution Number:	Document Type:
Public Works	76-20	Resolution

Recommended Motion:
Adopt Resolution No. 76-20, authorizing the City Manager to sign and execute a third amendment to the consultant agreement with RH2 Engineering, Inc. (Richland Contract No. 223-18) for the Columbia River Intake Screen project.

Summary:
The Columbia River Intake Screen Upgrade is a fully funded project included in the 2020-2025 Capital Improvement Plan. The project is intended to achieve compliance with federal water pumping facility screening criteria for the protection of endangered fish. Compliance will enable the City's continued permission from the U.S. Army Corps of Engineers to occupy Corps property for the City's water intake pumping plant.

On July 17, 2018, Richland City Council authorized a consultant agreement with RH2 Engineering, Inc. to perform preliminary engineering and permitting work in support of this project. In 2019, two amendments to the original agreement were executed to advance the project to construction readiness.

Staff recommends authorization for a third amendment to the agreement, which would retain RH2 Engineering, Inc.'s services in the form of construction management support once project construction commences in July.

Staff recommends adoption of Resolution No. 76-20.

Fiscal Impact: The total cost of the proposed contract amendment is $99,568. $4,390,989 is currently available in the project budget through approval of the 2020 - 2025 Capital Improvement Plan.

Attachments:
1. Resolution No. 76-20
2. Columbia River Intake Screen Upgrade - AMD 3 - RH2

RESOLUTION NO. 76-20

A RESOLUTION of the City of Richland authorizing a Third Amendment to the consultant agreement with RH2 Engineering, Inc. for the Columbia River Intake Screen Upgrade project.

WHEREAS, the 2020 – 2025 Capital Improvement Plan (CIP) includes a project titled Columbia River Intake Screen Upgrade (the “Project”); and

WHEREAS, on July 17, 2018, City Council adopted Resolution No. 108-18, authorizing a consulting agreement with RH2 Engineering, Inc. to perform preliminary engineering and permitting work in support of the Project; and

WHEREAS, on March 26, 2019, the City executed a First Amendment to the consulting agreement, adding a dive inspection to the original scope of work and compensating for the additional services; and

WHEREAS, on October 1, 2019, City Council adopted Resolution No. 124-19, authorizing a Second Amendment to the consulting agreement, finalizing the design and bid document preparation, as well as permitting assistance and services during bidding and award; and

WHEREAS, additional consulting services are needed to include construction management services once project construction commences in July; and

WHEREAS, a proposed Third Amendment with RH2 Engineering, Inc. to perform the required additional engineering and construction management services has been negotiated; and

WHEREAS, the City’s best interests are served by amending the agreement with RH2 Engineering, Inc. to add additional scope.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute a Third Amendment to the consultant agreement with RH2 Engineering, Inc. related to the Columbia River Intake Screen Upgrade project.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

This space intentionally left blank.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 2nd day of June, 2020.

____
Ryan Lukson, Mayor

Attested by:

____
Jennifer Rogers, City Clerk

Approved as to form:

____
Heather Kintzley, City Attorney

CITY OF RICHLAND
AGREEMENT WITH RH2 ENGINEERING INC.
CONTRACT NO. 223-18

AMENDMENT NO. 3

I. RECITALS

There is now in full force and effect between the parties a professional services agreement, Contract No. 223-18, related to ***the Columbia River Intake Screen Upgrade***. The agreement was fully executed on **8/14/2018**. The expiration date of the agreement is **5/31/2021**. The parties desire to amend the agreement as provided in Section II below.

II. AGREEMENT

In exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend Contract No. 223-18 as follows:

1. The Consultant shall provide services described in the attached **Exhibit A**, which is hereby incorporated into Contract No. 223-18.

2. Fees.
   a. ☐ The contract value remains unchanged.
   b. ☒ Compensation for the additional services rendered pursuant to this amendment shall be $99,568.00. The new contract value is now $365,638.00.

3. The contract period shall: ☒ remain unchanged; ☐extend to date.

4. It is understood and agreed that all other terms and conditions of the agreement shall be and remain the same.

III. SIGNATURES

City:

By: ______________________________
Cynthia D. Reents
Richland City Manager

Date: ______________________________

APPROVED AS TO FORM:

____
Heather Kintzley, City Attorney

RH2 Engineering, Inc.

By: ______________________________

Name: ______________________________

Title: ______________________________

Date: ______________________________

EXHIBIT A
Scope of Work
Amendment No. 3
City of Richland
Columbia River Intake Screen Upgrade

April 2020

Background

The City of Richland (City) retained RH2 Engineering, Inc., (RH2) in July 2018 to perform the preliminary design and provide permitting assistance relating to proposed screening upgrades at the City's existing Snyder Street Intake Facility. The City subsequently retained RH2 in August 2019 to perform the detailed design, ongoing permitting assistance, and services during bidding and award.

This contract amendment includes incorporating additional design elements into the construction documents as requested by the City, services during construction, the preparation of project record drawings, and project closeout.

Task 9 – Additional Detailed Design Elements

Objective: Incorporate additional design elements into the plans and specifications as requested by the City that were not included in the August 2019 detailed design contract amendment.

Approach:

9.1 Update design plans and specifications to include the replacement of canvas and insulation panels on the intake structure top deck, and the replacement of the facility gate and security fencing.

Provided by City:

- Access to the facility to review the existing infrastructure identified for replacement (provided by City on March 2, 2020).

RH2 Deliverables:

- Incorporation of the replacement infrastructure into the construction documents.

Task 10 – Services During Construction

Objective: Provide professional engineering services for the City during construction of the intake screen improvements.

Approach:

10.1 Review and respond to submittals, resubmittals, shop drawings, plans, and other substitutions for conformance with the intake screen design.

10.2 Review and respond to the contractor's requests for information (RFIs).

10.3 Review and respond to the contractor's change order requests.

10.4 Attend administrative meetings with the contractor and City. *The Fee Estimate reflects a total of three (3) administrative meetings, including an initial kick-off meeting following construction contract award, a construction kick-off meeting prior to initial construction activities, and an in-water work window kick-off meeting anticipated to take place in early to mid-December 2020. All meetings are assumed to take place at City Hall or the project site. It is assumed that the City will provide meeting agenda and minutes.*

10.5 Perform on-site construction observation services and attend construction meetings to monitor construction progress and conformance with the intake screen design. Construction observations also will occur as required by construction progress or as requested by the City. Provide construction observation reports for each site visit. *The Fee Estimate reflects a total of three (3) hours per week of on-site observation for a twenty-two (22) week construction period. All on-site observations are assumed to take place at the project site.*

10.6 Perform off-site construction observations for items constructed or assembled offsite and planned to arrive onsite via a barge for installation. *The Fee Estimate reflects a total of ten (10) hours of off-site observation, including travel time, and is assumed to include the review of concrete anchors, high-density polyethylene (HDPE) piping, and other proposed in-water improvements. Off-site construction observations are assumed to take place within 20 miles of Richland, Washington.*

10.7 Coordinate with regulatory agencies during construction. *The Fee Estimate reflects ten (10) hours of regulatory agency coordination during construction.*

10.8 Attend hydroburst system testing and assist the contractor and City with incorporation of hydroburst statuses into the City's supervisory control and data acquisition (SCADA) system.

10.9 Prepare contractor punch list, including performing a preliminary and final project walkthrough with the contractor and the City.

Assumptions:

- *The City will be the contractor's primary contact, and will facilitate regular daily communication with the contractor, review and processing of pay estimates, daily inspections for conformance with the intake screen design plans and specifications, and* *other administrative and contractual tasks not specifically identified to be performed by RH2 in Task 10.*

- *Special inspections and materials testing for concrete and epoxy anchors will be performed by a certified materials testing laboratory. Materials testing coordination, scheduling, and payment will be the responsibility of the City.*
- *RH2 is not responsible for site safety or for directing any contractor in their work.*

Provided by City:

- Regular contractor communication.
- Administrative meeting agendas and minutes.
- Daily inspections for conformance with the design plans and specifications.
- Review and processing of all contractor pay estimates.
- Administrative and contractual oversight and management of the contractor.

RH2 Deliverables:

- Submittal and shop drawings review and documentation in electronic format (PDF).
- RFI responses and documentation in electronic format (PDF).
- Change order responses and documentation in electronic format (PDF).
- Attendance at three (3) administrative meetings at City Hall or the project site.
- Construction observation reports, including relevant photographs in electronic format (PDF).
- Attendance at hydroburst system testing.
- Contractor punch list in electronic format (PDF).

Task 11 – Project Record Drawings and Closeout

Objective: Prepare the project record drawings and assist the City with project closeout.

Approach:

11.1 Prepare record drawings of the constructed improvements by reviewing field records provided by the City and contractor.

11.2 Prepare project completion documentation and submit to relevant regulatory agencies. *The Fee Estimate reflects the preparation of documentation as required by the Washington State Department of Health, the United States Army Corps of Engineers, the National Marine Fisheries Services, the Washington Department of Fish and Wildlife, and the United States Fish and Wildlife Service.*

Assumptions:

- *RH2 will not be providing full-time on-site observations. RH2 will rely upon information provided by the contractor and City in preparing record drawings for the project.*

Provided by City:

- Payment of all project closeout fees (if applicable).

RH2 Deliverables:

- One (1) PDF of the construction record drawings.
- Electronic submittal of project completion documentation to regulatory agencies (PDF).
- Records of agency correspondence in electronic format (PDF).

Schedule

Services during construction are anticipated to occur between July 2020 and May 2021.

EXHIBIT B
Fee Estimate
Amendment No. 3
City of Richland
Columbia River Intake Screen Upgrade
Apr-20

Description / Classification		Total Hours	Total Labor	Total Subconsultant	Total Expense	Total Cost
Task 9	Additional Detailed Design Elements	45	$ 9,730	$ -	$ 243	$ 9,973
9.1	Update design plans and specifications for canvas and security gate	45	$ 9,730	$ -	$ 243	$ 9,973
Task 10	Services During Construction	430	$ 76,522	$ -	$ 3,028	$ 79,550
10.1	Review and respond to submittals	202	$ 34,718	$ -	$ 1,252	$ 35,970
10.2	Review and respond to RFIs	74	$ 13,074	$ -	$ 464	$ 13,538
10.3	Review and respond to change order requests	16	$ 2,772	$ -	$ 124	$ 2,896
10.4	Attend three administrative meetings	8	$ 1,724	$ -	$ 278	$ 2,002
10.5	Perform on-site construction observation	66	$ 13,040	$ -	$ 464	$ 13,504
10.6	Perform off-site construction observation	10	$ 1,440	$ -	$ 103	$ 1,543
10.7	Coordinate with regulatory agencies	10	$ 1,960	$ -	$ 107	$ 2,067
10.8	Attend hydroburst system testing and assist with integration	12	$ 2,040	$ -	$ 63	$ 2,103
10.9	Prepare contractor punch list and attend walkthrough	32	$ 5,754	$ -	$ 173	$ 5,927
Task 11	Project Record Drawings and Closeout	53	$ 9,375	$ -	$ 670	$ 10,045
11.1	Prepare record drawings	29	$ 4,787	$ -	$ 537	$ 5,324
11.2	Prepare project completion documentation for regulatory agencies	24	$ 4,588	$ -	$ 133	$ 4,721
	PROJECT TOTAL	528	$ 95,627	$ -	$ 3,941	$ 99,568

EXHIBIT C

RH2 ENGINEERING, INC.

2020 SCHEDULE OF RATES AND CHARGES

RATE LIST	RATE	UNIT
Professional I	$144	$/hr
Professional II	$157	$/hr
Professional III	$171	$/hr
Professional IV	$184	$/hr
Professional V	$196	$/hr
Professional VI	$212	$/hr
Professional VII	$227	$/hr
Professional VIII	$235	$/hr
Professional IX	$235	$/hr
Control Specialist I	$130	$/hr
Control Specialist II	$141	$/hr
Control Specialist III	$155	$/hr
Control Specialist IV	$168	$/hr
Control Specialist V	$178	$/hr
Control Specialist VI	$191	$/hr
Control Specialist VII	$206	$/hr
Control Specialist VIII	$214	$/hr
Technician I	$106	$/hr
Technician II	$118	$/hr
Technician III	$135	$/hr
Technician IV	$145	$/hr
Technician V	$157	$/hr
Technician VI	$172	$/hr
Technician VII	$187	$/hr
Technician VIII	$196	$/hr
Administrative I	$72	$/hr
Administrative II	$83	$/hr
Administrative III	$98	$/hr
Administrative IV	$118	$/hr
Administrative V	$138	$/hr
CAD/GIS System	$27.50	$/hr
CAD Plots - Half Size	$2.50	price per plot
CAD Plots - Full Size	$10.00	price per plot
CAD Plots - Large	$25.00	price per plot
Copies (bw) 8.5" X 11"	$0.09	price per copy
Copies (bw) 8.5" X 14"	$0.14	price per copy
Copies (bw) 11" X 17"	$0.20	price per copy
Copies (color) 8.5" X 11"	$0.90	price per copy
Copies (color) 8.5" X 14"	$1.20	price per copy
Copies (color) 11" X 17"	$2.00	price per copy
Technology Charge	2.50%	% of Direct Labor
Mileage	$0.575	price per mile (or Current IRS Rate)
Subconsultants	15%	Cost +
Outside Services	at cost	

Rates listed are adjusted annually.

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020

Agenda Category: Resolutions - Adoption

Core Focus Area 3 - Economic Vitality

Subject:
Resolution No. 77-20, Authorizing a Consultant Agreement with J-U-B Engineers, Inc. for Design of 1st Street

Department:	Ordinance/Resolution Number:	Document Type:
Development Services	77-20	Expenditures

Recommended Motion:
Adopt Resolution No. 77-20, authorizing the City Manager to sign and execute a consulting agreement with J-U-B Engineering, Inc. for design of 1st Street in the Horn Rapids Industrial Park.

Summary:
The City's Development Services Department/Business & Economic Development manages the City's undeveloped properties. This includes industrial property within the Horn Rapids Industrial Park. The Business & Economic Development Office is responsible for developing this property by installing roads and utilities and developing salable lots. The extension of 1st Street, west of Kingsgate Way, will provide access to several additional vacant properties, and allow industrial properties to continue to be sold and developed.

The City followed its competitive Request for Qualifications (RFQ) process to find an engineering consultant to design the project. The City received three (3) responses. J-U-B Engineers, Inc. was selected as the most qualified vendor to design the improvements. An acceptable scope of work and budget with J-U-B Engineers, Inc. has been negotiated.

Staff recommends adoption of Resolution No. 77-20.

Fiscal Impact:
The total cost to design and build the extension of 1st Street is estimated at $1.2 million. The estimated revenue from sales of newly created industrial lots is $3.0 million. The proposed contract with J-U-B Engineers, Inc. will not exceed $101,167.07.

Attachments:
1. Resolution No. 77-20
2. 1st Street Site Map
3. Proposed Agreement J-U-B Engineers, Inc. - 1st Street Design

RESOLUTION NO. 77-20

A RESOLUTION of the City of Richland authorizing a consultant agreement with J-U-B Engineers, Inc. for design of improvements to 1st Street in the Horn Rapids Industrial Park.

WHEREAS, the City's Development Services Department manages the City's undeveloped properties, including approximately 100 acres of commercial property in the Horn Rapids Industrial Park; and

WHEREAS, Business & Economic Development is responsible for developing this property by installing roads and utilities and creating salable lots; and

WHEREAS, a competitive Request for Qualifications (RFQ) process was conducted in compliance with city purchasing policies to design an extension of 1st Street, which will allow access to 100 acres for future development; and

WHEREAS, the City received three (3) responses to the RFQ; and

WHEREAS, J-U-B Engineers, Inc. was selected as the most qualified vendor to complete the design of improvements to 1st Street; and

WHEREAS, a scope of work and budget with J-U-B Engineers, Inc. has been negotiated.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute a consultant agreement with J-U-B Engineers, Inc. to provide engineering services for design of improvements to 1st Street right-of-way and its utilities.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 2nd day of June, 2020.

____
Ryan Lukson, Mayor

Attested by:	Approved as to form:
___________________________	___________________________
Jennifer Rogers, City Clerk	Heather Kintzley, City Attorney


TEMPORARY CUL-DE-SAC
2000 FT ROAD EXTENSION
WSDOT RIGHT-TURN
CORNER DESIGN
CURVE RADII MEETING
AASHTO LOW SPEED
URBAN STREET DESIGN
GUIDANCE
KINGSGATE WAY
1ST STREET
0
100
200
SCALE IN FEET
N

Contract No. ___________

AGREEMENT BETWEEN CITY AND CONSULTANT

1st Street Extension Design

This Agreement is entered into this ______ day of May, 2020 ("Effective Date") by and between the **City of Richland** ("**City**"), a Washington municipal corporation located at 625 Swift Blvd. Richland, WA 99352, and **J-U-B Engineers, Inc.** ("**Consultant**"), a Washington for-profit corporation with service at 2801 W. Clearwater Avenue, Suite 201, Kennewick, WA 99336. **City** and **Consultant** are referred to individually herein as a "Party" and collectively herein as the "Parties."

WITNESSETH:

1. SCOPE OF WORK

a. Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work outlined in Exhibit A. In performing these services, Consultant shall at all times comply with all federal, state and local statutes, rules and ordinances applicable to the performance of such services. In addition, these services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City.

b. This Agreement consists of this Agreement and other documents listed below. These form the entire Agreement between the Parties, and are fully integrated into this Agreement as if stated or repeated herein. In the event of a conflict between documents, the order of precedence will be the order listed below. An enumeration of the Agreement documents is set forth below (mark all that apply):

1. ☒City of Richland Agreement No. ___________
2. ☒Exhibit A: Scope of Work
3. ☒City Richland Solicitation No. RFQ 20-0031
4. ☒Exhibit B: Solicitation No. RFQ 20-0031 proposal response submitted by Consultant dated March 3, 2020.
5. ☐Additional Documents – n/a.

2. TIME FOR COMPLETION

Consultant shall not begin any work under the terms of this Agreement until authorized in writing by the City. Consultant agrees to use best efforts to complete all work described under this Agreement by December 31, 2020.

3. TERM

The term of this Agreement shall commence on the Effective Date identified above and end at midnight on December 31, 2020.

4. PAYMENT

a. Services rendered by Consultant under this Agreement will be paid at the rate set forth in Exhibit A Scope of Work, but in no event shall the total compensation for services rendered under this Agreement exceed **one hundred one thousand-one hundred sixty-seven dollars and seven cents** ($**101,167.07**), including all fees and those reimbursable expenses listed in Exhibit A.

b. City shall pay Consultant for services rendered after receipt of a detailed invoice. Invoices not in dispute by the City will be paid net thirty (30) days and shall reference the contract number and/or purchase order applicable to the work. The invoice shall provide sufficient detail on the work being billed and include detailed receipts for any invoices.

c. Partial payments to cover the percentage of work completed may be requested by Consultant. These payments shall not be more than one (1) per month.

d. Pre-approved travel, meals and lodging will be reimbursed at cost and only when consultant travels at least 150 miles per one way trip. Reimbursable expenses are limited to the following: coach airfare, ground transportation (taxi, shuttle, car rental), hotel accommodations as provided below, personal or company vehicle use at the then-current federal mileage rate, and meals at the current federal per-diem meal allowance or up to the current federal per-diem with detailed receipts, no alcohol, and a 20% maximum gratuity.

   i. Hotel accommodations: eligible lodging expenses include the room cost only; itemized receipts must be provided for hotel reimbursements.

   ii. Hotel reimbursement is limited to the single room rate. If two or more consultants are sharing a room, reimbursement is allowable for only one consultant at the double room rate.

   iii. The maximum reimbursement should be limited to the best discount rate available and allowable that meets traveler's business needs and basic needs for health, safety and cleanliness. Non-smoking rooms are authorized even if they are more expensive.

e. Reimbursement for extra services/reimbursable expenses are not authorized under this Agreement unless detailed in the Scope of Work or agreed upon in writing as a modification to this Agreement.

f. Consultant will allow access to the City, State of Washington, Federal Grantor Agency, Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Unless otherwise provided, said records must be retained for three (3) years from the date of receipt of final payment. If any litigation, claim, or audit arising out of, in connection with, or relating to this Agreement is initiated before the expiration of the three-year period, the records shall be retained until such litigation, claim, or audit involving the records is completed.

5. INDEPENDENT CONTRACTOR

Consultant, and any and all employees of Consultant or other persons engaged in the performance of any work or services required of Consultant under this Agreement, are independent contractors and shall not be considered employees of the City. Any and all claims that arise at any time under any Workers' Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of Consultant's employees or other persons engaged in any of the work or services required to be provided herein, shall be the sole obligation and responsibility of Consultant.

6. OWNERSHIP OF DOCUMENTS

Any and all data, analyses, documents, photographs, plans, designs, drawings, specifications, surveys, films, documents, reports and other work products created, prepared, produced, constructed, assembled, made, performed, or otherwise produced by Consultant or Consultant's subcontractors for delivery to the City pursuant to this Agreement shall become the sole and absolute property of the City upon completion of the services and payment in full of all payment due to Consultant of the fees set forth in this Agreement. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the City at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which Consultant uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the City is owned by Consultant and is not "work made for hire" within the terms of this Agreement. Consultant will ensure that all independent contractors have written agreements in place that transfers ownership of all Intellectual Property created by them or provided by them to the City.

The City may make or permit to be made any modifications to the plans and specifications without the prior written authorization of Consultant. The City agrees to waive any claim against Consultant arising from any unauthorized reuse of the plans and specifications, and to indemnify and hold Consultant harmless from any claim, liability or cost arising or allegedly arising out of any reuse of the plans and specifications by the City or its agent not authorized by Consultant.

7. TERMINATION

a. This Agreement may be terminated by either Party upon thirty (30) days' written notice. In the event this Agreement is terminated by Consultant, the City shall be entitled to reimbursement of costs occasioned by such termination. In the event the City terminates this Agreement, the City shall pay Consultant for the work performed, which shall be an amount equal to the percentage of completion of the work as mutually agreed between the City and Consultant.

b. If any work covered by this Agreement shall be suspended or abandoned by the City before Consultant has completed the assigned work, Consultant shall be paid an amount equal to the costs incurred up to the date of termination or suspension as mutually agreed upon between the City and Consultant.

8. AVAILABILITY OF RECORDS FOR PUBLIC INSPECTION

a. As a public contract, all records prepared, generated or used by Consultant or its agents, employees and subcontractors relating to this Agreement and associated work (hereinafter "public records") may be subject to disclosure under the Washington State Public Record Act, Chapter 42.56 RCW.

b. Contractor shall maintain and retain all such public records in a manner that is readily accessible for a minimum term of no less than three (3) years following completion of the contract work. City shall have the right to timely review all such public records upon request. Contractor shall provide copies of any public records requested by City within thirty (30) calendar days of City's request. If City requests that copies of public records be provided to City in an electronic format, said records shall be provided at no cost to City. If paper copies are requested by City, City shall pay $.10 per page. Payment for paper copies shall be rendered to Consultant within twenty (20) calendar days of receipt.

c. All records subject to a public disclosure request will be provided to a requester unless exempted from disclosure by law. The City's decision to exempt or redact any public record shall be based only upon valid exemptions that apply to the City. City will not refrain from disclosing any record under an exemption that may be personal to Consultant. In the event Consultant objects to release of any public record under this Agreement, Consultant may seek judicial approval to prevent such disclosure at Consultant's sole expense. City shall neither aid nor interfere with Consultant's request for an injunction to prevent disclosure of any public record under this Agreement.

d. Consultant shall insert this provision in all contracts with subcontractors or agents providing services relating to this Agreement.

9. <u>DISPUTE RESOLUTION</u>

a. The City and Consultant agree to negotiate in good faith for a period of thirty (30) days from the date of notice of all disputes between them prior to exercising their rights under this Agreement, or under law.

b. All disputes between the City and Consultant not resolved by negotiation between the Parties may be arbitrated only by mutual agreement of the City and Consultant. If not mutually agreed to resolve the claim by arbitration, the claim will resolve by legal action.

10. <u>DEBARMENT CERTIFICATION</u>

Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this contract by any federal or state department or agency. Further, Consultant agrees not to enter into any arrangements or contracts related to completion of the work contemplated under this Agreement with any party that is on the "General Service Administration List of Parties Excluded from Federal Procurement or Non-Procurement Programs" which can be found at:

www.sam.gov and
http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/default.asp

11. <u>VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION</u>

In the event that either Party deems it necessary to initiate a legal action to enforce any right or obligation under this Agreement, the Parties agree that any such action shall be initiated in the Superior Court of the State of Washington situated in Benton County. The Parties agree that all questions shall be resolved by application of Washington law, and that the Parties to such action shall have the right of appeal from such decision of the Superior Court in accordance with the laws of the State of Washington. Consultant hereby consents to the personal jurisdiction of the Superior Court of the State of Washington situated in Benton County.

12. <u>ATTORNEY'S FEES</u>

The Parties agree that should legal action be necessary to enforce any of the provisions of this Agreement, that the substantially prevailing Party will be awarded its reasonable attorney's fees and costs in action, including costs and attorney's fees on appeal if appeal is taken.

13. INSURANCE

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 Consultant, its agents, representatives, or employees.

a. No Limitation. Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Consultant 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. Consultant shall obtain insurance of the types described below:

   1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

   2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an 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 CG 20 26.

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

   4. Professional Liability, Errors or Omissions insurance appropriate to the Consultant's profession. Coverage shall be provided if Consultant is providing services under this Agreement as a licensed professional, including, but not limited to, engineers, architects, accountants, surveyors, and attorneys.

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

   1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

   2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

   3. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim and $1,000,000 policy aggregate limit.

d. Other Insurance Provisions. 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 self-insured pool coverage maintained by the City shall be excess of Consultant'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. 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 Consultant before commencement of the work.

g. Notice of Cancellation. Consultant shall provide the City with written notice of any policy cancellation within two (2) business days of Consultant's receipt of such notice.

h. Failure to Maintain Insurance. Failure on the part of Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to 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 Consultant from the City.

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

14. INDEMNIFICATION / HOLD HARMLESS

a) 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 willful or negligent acts, or alleged willful or alleged negligent acts, errors or omissions of the Consultant or the Consultant's employees or agents in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

b) Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of 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, including the duty and cost to defend, 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.

15. STANDARD OF CARE

The professional services will be furnished in accordance with the care and skill ordinarily used by members of the same profession practicing under similar conditions at the same time and in the same locality.

16. SUCCESSORS OR ASSIGNS

All of the terms, conditions and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto, and their respective successors and assigns; provided, however, that no assignment of the Agreement shall be made without written consent of the non-assigning Party, which may be given in the non-assigning Party's sole discretion.

17. NOTICES

Any notices required under this Agreement will be in writing, addressed to the appropriate Party at the address which appears below (as modified in writing from time to time by such party), and given by electronic submission, by facsimile personally, by registered or certified mail, return receipt requested, or by nationally recognized overnight courier service. All notices shall be effective upon the date sent.

Purchasing Manager		Contact Name:	Travis A. Marden, PE
City of Richland		Name of Firm:	2810 W. Clearwater Avenue
625 Swift Blvd., MS-11		Address:	Suite 201
Richland, WA 99352		Address:	Kennewick, WA 99336
Email: purchasing@ci.richland.wa.us		Email:	tmarden@jub.com
Phone: (509) 942-7710		Phone Number:	(509) 783-2144
Fax: (509) 942-7397		Fax Number:	n/a

18. EQUAL OPPORTUNITY AGREEMENT

Consultant agrees that Consultant will not discriminate against any employee or job applicants for work under this Agreement for reasons of race, sex, nationality, religious creed, or sexual orientation.

19. SEVERABILITY

If any provision of this Agreement conflicts with applicable law, or its application is found to be invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected, and to this end, the terms of this Agreement are declared to be severable.

20. AMENDMENTS

All amendments must be in writing and be approved and signed by both Parties.

21. CHANGE IN LAW

The Parties hereto agree that in the event legislation is enacted or regulations are promulgated, or a decision of court is rendered, or any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation is published that affects or may affect the legality of this Agreement or any part thereof or that materially and adversely affects the ability of either Party to perform its obligations or receive the benefits intended hereunder ("Adverse Change in Law"), then within fourteen (14) calendar days following written notice by either Party to the other Party of such adverse change in law, the Parties shall meet to negotiate in good faith an amendment which will carry out the original intention of the Parties to the extent possible. If, despite good faith attempts, the Parties cannot reach agreement upon an amendment within sixty (60) calendar days after commencing negotiation, then this Agreement may be terminated by either Party as of the earlier of: (i) the effective date of the adverse change in law, or (ii) the expiration of a period of sixty (60) days following written notice of termination provided by one Party to the other.

22. CONFIDENTIALITY

In the course of performing under this Agreement, Consultant, including its employees, agents or representatives, may receive, be exposed to, or acquire confidential information. Confidential information may include, but is not limited to, patient information, contract terms, sensitive employee information, or proprietary data in any form, whether written, oral, or contained in any computer database or computer readable form. Consultant shall: i) not disclose or sell confidential information except as permitted by this Agreement; (ii) only permit use of such confidential information by employees, agents and representatives having a need to know in connection with performance under this Agreement; and (iii) advise each of its employees, agents, and representatives of their obligations to keep such information confidential.

23. CHANGES OF WORK

a. When required to do so, and without any additional compensation, Consultant shall make such changes and revisions in the completed work of this Agreement as necessary to correct or revise any errors, omissions, or other deficiencies in the design, drawings, specifications, reports, and other similar documents which Consultant is responsible for preparing or furnishing under this Agreement.

b. Should the City find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, Consultant shall make such revisions as directed by the City. This work shall be considered as Extra Work and will be paid for as herein provided under Section 24, Extra Work.

24. EXTRA WORK

The City may desire to have Consultant perform work or render additional services within the general scope of this Agreement. Such work shall be considered as extra work and will be specified in a written supplement to this Agreement which will set forth the nature of the scope, schedule for additional work, additional fees and the method of payment. Work under a supplemental Agreement shall not proceed until authorized in writing by the City.

25. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties hereto and supersedes all previous understandings and agreements, written and oral, with respect to this transaction. Neither Party shall be liable to the other for any representations made by any person regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement.

(Signature page to follow)

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

CITY OF RICHLAND, WASHINGTON	CONSULTANT
______________________________ Cynthia D. Reents, City Manager	______________________________ Signature
	______________________________ Printed Name
ATTEST:	______________________________ Title
______________________________ Jennifer Rogers, City Clerk	
APPROVED AS TO FORM:	
______________________________ Heather Kintzley, City Attorney	

EXHIBIT A: Detailed Scope of Work

Exhibit A to follow

J-U-B ENGINEERS, INC.

J-U-B ENGINEERS, Inc.
AGREEMENT FOR PROFESSIONAL SERVICES

Attachment 1 – Scope of Services, Basis of Fee, and Schedule

PROJECT NAME: 1st Street Extension West of Kingsgate Way

CLIENT: City of Richland

J-U-B PROJECT NUMBER: 30-20-043

CLIENT PROJECT NUMBER: Click or tap here to enter text.

ATTACHMENT TO:

☒ **AGREEMENT DATED:** Click or tap to enter a date.**; or**

☐ **AUTHORIZATION FOR ADDITIONAL SERVICES #X; DATED:**

The referenced Agreement for Professional Services executed between J-U-B ENGINEERS, Inc. (J-U-B) and the CLIENT is amended and supplemented to include the following provisions regarding the Scope of Services, Basis of Fee, and/or Schedule:

PART 1 - PROJECT UNDERSTANDING

J-U-B's understanding of this project's history and CLIENT's general intent and scope of the project are described as follows:

The City of Richland's (City) objective in this Agreement is to obtain consulting engineering services for the extension of 1st Street west of Kingsgate Way, approximately 2000 feet in length. The project design includes street stormwater treatment and disposal, underground utilities (water, sewer, and potentially irrigation), and grading 100 feet north and south of the new roadway. The design will also include the layout of electrical conduits, vaults, streetlights, and fiberoptic conduits. The Consultant shall prepare plans, specifications and estimates for the City to bid the project. The Consultant shall coordinate, as required, with: City staff from Development Services, Energy Services, and Public Works. All work & documents provided by the consultant shall be in compliance with the City of Richland Standard Details and Specifications, and WSDOT Standard Details and Specifications.

PART 2 - SCOPE OF SERVICES BY J-U-B

J-U-B's Services under this Agreement are limited to the following tasks. Any other items necessary to plan and implement the project, including but not limited to those specifically listed in PART 3, are the responsibility of CLIENT.

A. Task 1: Project Management

1. Set up project into J-U-B's financial and record keeping systems for document retention and project controls.
2. Conduct project planning and risk assessment.
3. Coordinate quality assurance / quality control (QA/QC) processes.
4. Communicate and coordinate J-U-B team activities with kickoff and progress meetings as required.
5. Regularly monitor project status, budget and schedule.
6. Attend 4 client meetings to report project status.
7. During periods of project activity, provide a regular report to CLIENT on project status, budget and schedule.
8. Provide a monthly invoice including budget status.
9. Provide ongoing document handling and filing.

B. **Task 2: QC Reviews**

1. Conduct internal reviews at appropriate phases for quality control and assurance.
    a. 50% Design Level Internal QC Review of Plans and Estimate
    b. 95% Design Level Internal QC Review of Plans, Specifications, and Estimate
    c. Final Design Level Internal QC Review of Plans, Specifications, and Estimate

C. **Task 3: Verify Initial Roadway Alignment and Intersection Improvements**

1. Facilitate a kick-off meeting between the City of Richland and the Consultant team.
2. Confirm basis of design, City needs, project issues, impacts to agricultural irrigation system, utilities and illumination goals.
    a. Deliverables:
    i. Email summarizing design assumptions
3. Confirm roadway alignment, roadway section, storm drainage collection/treatment methods, and intersection improvements.
    a. Assumptions:
    i. Roadway alignment, typical section, and intersection improvements will be established prior to beginning of final design.
    b. Deliverables:
    i. 11x17 exhibit depicting alignment, lane/shoulder/sidewalk, and intersection improvement layout.

D. **Task 4: Data Collection/Coordination**

1. Review City provided survey data, any binding site plans/plats, lot layouts, and utility information available.
    a. Assumptions:
    i. City to provide all environmental permitting applications, permits, studies, and coordination.
    ii. A project hydrogeologic study is not required.
2. Subconsultant shall provide on-site exploration and/or testing as required to provide the following:
    a. Soils data necessary for preparation of the required grading permit and certification of the grading post construction.
    b. Infiltration rates for planned stormwater collection and treatment.
    a. Assumptions:
    i. City shall determine preferred method of stormwater collection, conveyance and treatment prior to geotechnical field work.
    ii. All stormwater improvements shall be designed to comply with the Department of Ecology's Stormwater Management Manual for Eastern Washington.
3. Review Geotechnical Report, Submit Draft to City of Review, Submit Final Report
    a. Assumptions:
    i. City Review time will not exceed two working days for draft report
    b. Deliverables:
    i. Draft Geotechnical Investigation Report and Recommendations
    ii. Final Geotechnical Investigation Report and Recommendations

E. **Task 5: [Final Design]**

1. Create project basemap in Civil3D in J-U-B drafting standards using survey data provided by City.
2. Develop roadway horizontal and vertical alignments/geometry to blend with adjacent property and proposed grading 100' outside of right-of-way.

3. Design the proposed sanitary sewer main, sanitary sewer service stubs to adjacent lots, and connection to the existing main located in Kingsgate Way.
    a. Assumptions:
    i. Shoring design is not included in this scope of work.
    ii. Sizing of all proposed sanitary sewer pipes will be provided by the City.
4. Design the westerly extension of City water from the existing waterline located in Kingsgate Way, including water service stubs to the adjacent lots.
    a. Assumptions:
    i. Sizing and locations of all water pipes will be provided by the City
5. The Consultant shall design the extension of one irrigation main line from Kingsgate Way along 1st Street to the westerly project limits.
    a. Assumptions:
    i. City staff will provide the locations, sizes, flows, and pressures of existing irrigation pipes to be connected to, and for all proposed mains and service stub sizes.
6. Provide illumination design required to satisfy City of Richland street lighting standards.
    a. Coordinate connections and service location with power company.
    b. Photometric analysis: includes modeling of the proposed illumination system in AGi32 software to provide conformance with City of Richland street lighting standards
    c. Assumptions:
    i. Two iterations and one City review of analysis in between.
7. Prepare grading plan for City owned property adjacent to the new 1st Street per extension per City comments.
    a. A grading plan will be prepared for the project limits, including the extension of 1st Street west of Kingsgate Way and out to 100 feet each side of right-of-way and provided to the City for their preparation and submittal of the Grading Permit Application.
8. Prepare drainage design and calculations for the collection, treatment, and disposal of stormwater from the new roadway.
    a. Prepare and submit the final Engineers drainage report.
    b. Assumptions:
    i. Method of stormwater collection, conveyance and treatment will be determined by the City prior to geotechnical field work.
    c. Deliverables:
    i. Final Engineer's Drainage Report in PDF format.
9. Coordination with Existing Site Utilities (Phone, Power) on impacts and relocations.
    a. Deliverables:
    i. Correspondence with Utilities
10. Coordination with Proposed Site Utilities (Power and Fiber Conduits/Vaults)
    a. Deliverables:
    i. Correspondence with Utilities

F. **Task 6: Plans, Specifications, and Estimate Preparation**

1. Prepare 50% design level plans, submittal to City
    a. Assumptions:
    i. Contract Specifications will not be prepared for this submittal
    ii. City Review, scheduled for 2 weeks
    b. Deliverables:
    i. 50% Design Level Plans in PDF format
    ii. Meeting with City to review comments
2. Prepare 95% design level plans, specifications, and opinion of probable costs, submit to City
    a. Assumptions:

i. Complete Technical Specifications will be prepared, including amendments, general special provisions, and applicable City of Richland Standard Specifications and Details.
ii. City Review, scheduled for 2 weeks

b. Deliverables:
i. 95% Design Level Plans and Opinion of Probable Costs in PDF format
ii. Meeting with City to review comments

3. Prepare Final Plans, Specifications and Estimate (PS&E) package ready for Public Works advertisement and bidding.
   a. Assumptions:
   i. City will compile final bid ready contract documents including Invitation to Bid and the City's standard construction contract.
   b. Deliverables:
   i. Final Bid Ready Plans, Specifications, and Opinion of Probable Costs in PDF format

G. **Task 7: Project Closeout**

1. Prepare record drawings, if necessary.
   a. The record drawings will be prepared based on information gathered during field observations as well as information provided by others. The accuracy or completeness of information provided by others will not be verified by J-U-B.
   b. If the record drawings will be a public record, J-U-B will grant the public entity with jurisdiction the right to copy and disseminate the hard copy or digital image to those who legitimately request the information in writing. Any release, use, or reuse by the public entity, any individual, or organization, shall be at the public entity's, individual's, and/or organization's sole risk and without liability or legal exposure to J-U-B.
   c. Any seals of the registrants included on the record drawings will represent that the drafting of the record drawing information was completed by staff under the registrants' responsible charge
2. Archive paper and electronic files and records.
3. Communicate the project completion to CLIENT and other affected agencies and stakeholders, as required.
4. Close financial billing and accounting records in J-U-B's financial and record-keeping systems.

PART 3 - CLIENT-PROVIDED WORK AND ADDITIONAL SERVICES

A. **CLIENT-Provided Work -** CLIENT is responsible for completing, or authorizing others to complete, all tasks not specifically included above in PART 2 that may be required for the project including, but not limited to:

1. Provide AutoCAD drawings of existing topography, utilities, boundary, and property lines.
2. Preparation of City Grading Permit Application
3. Preparation and Submittal of all environmental permitting applications, Construction Stormwater Permit, any required studies (hydrogeologic if required), research, and coordination.
4. Assistance in coordinating with Public Works and Energy Services staff for meetings and reviews.
5. Project oversight and direction

B. **Additional Services** - CLIENT reserves the right to add future tasks for subsequent phases or related work to the scope of services upon mutual agreement of scope, additional fees, and schedule. These future tasks, to be added by amendment at a later date as Additional Services, may include:

1. Project advertisement and bidding assistance
2. Responding to Contractor Questions during Bidding Process
3. Construction administration and observation, submittal reviews
4. Geotechnical Subconsultant involvement during construction phase for Grading Permit Certification.

PART 4 - BASIS OF FEE AND SCHEDULE OF SERVICES

A. CLIENT shall pay J-U-B for the identified Services in PART 2 as follows:
   1. For Time and Materials fees:
      a. For all services performed on the project, Client shall pay J-U-B an amount equal to the cumulative hours charged to the Project by each class of J-U-B's personnel times J-U-B's standard billing rates.
      b. Client shall pay J-U-B for Reimbursable Expenses times a multiplier of 1.1
      c. Client shall pay J-U-B for J-U-B's Consultants' charges times a multiplier of 1.1.
   2. J-U-B may alter the distribution of compensation between individual tasks to be consistent with services actually rendered while not exceeding the total project amount.

B. Period of Service: If the period of service for the task identified above is extended beyond 12 months, the compensation amount for J-U-B's services may be appropriately adjusted to account for salary adjustments and extended duration of project management and administrative services.

C. CLIENT acknowledges that J-U-B will not be responsible for impacts to the schedule by actions of others over which J-U-B has no control.

D. The following table summarizes the fees and anticipated schedule for the services identified in PART 2.

Task Number	Task Name	Fee Type	Amount	Anticipated Schedule
1	Project Management	Time and Materials (Ceiling Amount Shown)	$xx,xxx	Concurrent with work progress
2	QC Reviews	Time and Materials (Ceiling Amount Shown)	$xx,xxx	50%, 95%, and Final Submittals
3	Initial Roadway Alignment and Intersection Improvements	Time and Materials (Ceiling Amount Shown)	$xx,xxx	May 4, 2020 to May 29, 2020
4	Data Collection/Coordination	Time and Materials (Ceiling Amount Shown)	$xx,xxx (Incl. Geotech)	May 18, 2020 To June 30, 2020
5	Final Design	Time and Materials (Ceiling Amount Shown)	$xx,xxx (Incl. Expenses)	June 15, 2020 To September 30, 2020
6	Plans, Specifications, and Estimate Preparation	Time and Materials (Ceiling Amount Shown)	$xx,xxx	July 31, 2020 To October 15, 2020
7	Project Closeout	Time and Materials (Ceiling Amount Shown)	$x,xxx	At end of project
		Total:	**$xx,xxx**	

Exhibit(s):

- Exhibit 1-A: Proposal for Geotechnical Engineering Evaluation dated February 19, 2020, including Phase 1 Lump Sum Cost and anticipated Phase 2 fee estimate (not authorized at this time).

For internal J-U-B use only:

PROJECT LOCATION (STATE): Washington

TYPE OF WORK: City

R&D: Yes

GROUP: Transportation

PROJECT DESCRIPTION(S):

1. Highway/Interstate/Roadway (H07)
2. Traffic/Transportation (T03)

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020

Agenda Category: Resolutions - Adoption

Core Focus Area 1- Financial and Operational

Subject:
Resolution No. 78-20, Authorizing a Contract with Paymentus Corporation for Merchant Services and Payment Processing

Department:	Ordinance/Resolution Number:	Document Type:
Administrative Services	78-20	Resolution

Recommended Motion:
Adopt Resolution No, 78-20, authorizing the City Manager to sign and execute an agreement for merchant services and payment processing with Paymentus Corporation for a three-year term.

Summary:
The City currently utilizes NCR to process card payments and provide merchant services. The City received notification from NCR that it will be switching to a new platform beginning on June 30, 2020. The new platform does not meet business needs.

The City has reviewed the available vendors that are compatible with the current utility system and determined that Paymentus Corporation is the only viable option that can meet the City's requirements.

Staff recommends approval of Resolution No. 78-20.

Fiscal Impact: The contract with Paymentus will replace existing services. Adequate funding is included in the 2020 Budget.

Attachments:
1. Resolution No. 78-20

RESOLUTION NO. 78-20

A RESOLUTION of the City of Richland authorizing the an agreement with Paymentus Corporation to provide merchant services and payment processing services to the City of Richland.

WHEREAS, the City of Richland currently utilizes NCR to process credit and debit card transactions and provide merchant services; and

WHEREAS, on June 30, 2020, NCR will switch to a new platform that does not meet the needs of the City of Richland; and

WHEREAS, the City of Richland has reviewed the available vendors for compatibility with the current system, and determined that Paymentus Corporation is the only viable option that can meet the City's requirements; and

WHEREAS, the funding necessary for payment of this contract is budgeted in the 2020 General Fund.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute an agreement with Paymentus Corporation, in substantially the form attached hereto as **Exhibit A**, to provide payment processing and merchant services to the City of Richland.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 2nd day of June, 2020.

____
Ryan Lukson, Mayor

Attested by:

____
Jennifer Rogers, City Clerk

Approved as to form:

____
Heather Kintzley, City Attorney

MASTER SERVICES AGREEMENT

Client:	City of Richland, WA
Client Address:	625 Swift Boulevard, Richland, WA 99352
Contact for Notices to Client:	purchasing@ci.richland.wa.us
Estimated Yearly Bills / Invoices:	500,000

This Master Services Agreement ("Agreement") is entered into as of the date of the last of the signatures set forth below ("Effective Date"), by and between the Client identified above and Paymentus Corporation, a Delaware Corporation with a principal place of business at 13024 Ballantyne Corporate Parkway, Suite 400, Charlotte, North Carolina 28277.

STATEMENT OF PURPOSE

Paymentus desires to provide and Client desires to receive electronic bill payment services as more particularly described in this Agreement under the terms and conditions set forth herein.

AGREEMENT

In consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows. This Agreement consists of the following documents:

(i) this signature page
(ii) the General Terms and Conditions; and
(iii) the following Schedules:
Schedule A: Paymentus Service Fee Schedule.

This Agreement represents the entire agreement between the parties with respect to its subject matter, supersedes all prior written or oral agreements or understandings related to the subject matter hereof, and may be changed only by agreements in writing signed by the authorized representatives of each of the parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

CLIENT:

By: ___________________________________

NAME: ________________________________

TITLE: ________________________________

DATE: ________________________________

PAYMENTUS CORPORATION:

By: ___________________________________

NAME: ________________________________

TITLE: ________________________________

DATE: ________________________________

GENERAL TERMS AND CONDITIONS

1 **Definitions**:

For the purposes of the Agreement, the following terms and words have the meaning ascribed to them, unless the context clearly indicates otherwise.

1.1 “Agreement “or “Master Agreement” means the Master Services Agreement between the parties, as amended from time to time.

1.2 “Average Bill Amount” means the total amount of Payments processed through Paymentus in a given month divided by the number of the Payments for the same month.

1.3 “Effective Date” means the date the last party to execute the Agreement does so, or if the Agreement is submitted to Client for acceptance in a manner that does not call for Paymentus to execute it, the date Client agrees to the Agreement.

1.4 “Excess Payment Amount” means the amount by which the total of all Payment Amounts from Non-Qualified Transactions processed in a calendar month exceeds 5% of the total of the Payment Amounts of all card Payments processed that month.

1.5 “Fee Assumptions” means information used to calculate the Paymentus Fee (as defined in Section 3.2), including (i) the projected Average Bill Amount, (ii) the projected payment method mix (credit vs debit vs e-check) and (iii) an assumption by Paymentus that the total Payment Amount processed each month resulting from Non-Qualified Transactions shall not exceed five percent (5%) of the total Payment Amount of all card Payments processed that month.

1.4 “Initial Setup” means the first personalization and activation of the standard service with respect to each channel described on Schedule A as specified during the implementation process.

1.5 “IPN” or “Instant Payment Network™” means the network developed by Paymentus to enable customer engagement, bill presentment and receipt of payments by businesses through multiple channels as enabled from time to time by Paymentus.

1.6 “Launch Date” means the date on which Client completes the introduction to Users of all Services selected by Client as of the Effective Date.

1.8 “Non-Qualified Transaction” means (i) a Payment made with a card or payment method generally issued for business use that results in interchange fees or other processing charges assessed by a Paymentus Authorized Processor or card payment association that are higher than those charged for transactions with cards payment methods issued for consumer use; or (ii) a Payment that does not qualify for reduced interchange fees under programs in which is then currently participating. These high-cost cards payment methods may include, among others, corporate cards, virtual cards, purchase cards, business cards, and travel and entertainment cards.

1.7 “Payment” means payment by a User through the Platform for Client’s services, Client’s bills, or other amounts owed to Client.

1.8 “Payment Amount” means the amount of a Payment.

1.9 “Paymentus Authorized Processor” means a Paymentus authorized merchant account provider or payment processing intermediary or gateway.

1.10 “Paymentus Fee” is defined in Section 3.2.

1.11 “Platform” is defined in Section 2.1.

1.12 “Reversed or Chargeback Transactions” means cancelled transactions due to (i) User error, (ii) a User’s challenge to Payment authenticity, or (iii) an action by a financial institution or a Paymentus Authorized Processor (commonly referred to as ACH or eCheck returns or credit/debit card chargebacks).

1.13 “Services” means the performance by Paymentus of the payment and related services selected by Client as set forth in Schedule A and as provided in Section 2.3.

1.14 “User” means a user of Client’s services.

2 **Description of Services to be Performed**

2.1 **Scope of Services**

When selected on Schedule A, Paymentus will provide Users the opportunity to view and receive bills, make Payments using the payment methods provided under Schedule A and other payment methods and wallets as offered by Paymentus from time to time. The payment methods and other services provided may be used within the channels described on Schedule A or on other websites or mobile/web apps or chatbots or voice assistants that are part of the Instant Payment Network™, (collectively referred to as the “Platform”). Paymentus will provide a mechanism by which Client may select channels and payment methods it wishes to offer Users. Paymentus will be the exclusive provider to Client of services included in the Services.

2.2 **Professionalism**

Paymentus will perform in a professional manner all Services required to be performed under the Agreement.

2.3 **New or Enhanced Services**

From time to time Paymentus may offer Client new or enhanced services, such as new functionality within the IPN, the ability to accept other payment methods, methods of bill presentment, the ability to access alternative payment processors or other service providers or Paymentus Authorized Processors or otherwise modify the terms and conditions under which the Services are provided (“Service Enhancements”). Paymentus will provide Client with notice by email to the person designated as provided in Section 7.2 disclosing the terms, including any contracts or contract amendments, under which the Service Enhancements will be made available. If the Service Enhancements will result in additional fees to or impose additional obligations on Client or Users, Client will have at least thirty (30) days after the date of the notice to opt-out of the Service Enhancements in the manner provided in the notice. If Client does not opt-out, then when the Service Enhancements are introduced they will form part of the Services and Client will be bound by the additional terms as disclosed in the notice, and Schedule A will be deemed amended to reflect changes in the Services and fees.

3 <u>**Compensation**</u>

3.1 **No Fee Installation**

Paymentus will charge no fees related to the Initial Setup of standard service.

3.2 **Paymentus Fee**

Client will be billed the fees as provided in Schedule A (“Paymentus Fee”), unless a fee is User paid, in which case Paymentus will charge each User the Paymentus Fee as provided in Schedule A to be collected in addition to the corresponding Payment as part of the transaction. Paymentus will pay the corresponding processing and related fees (“Transaction Fees”) except for fees related to Reversed or Chargeback Transactions.

The Paymentus Fee is based on the Fee Assumptions. Client will be billed additional Paymentus Fees equal to 3.5% of the Excess Payment Amount for each month during which there is an Excess Payment Amount. Paymentus may amend Schedule A upon prior written notice to Client if there are changes in the card or payment system rules or changes in payment processing fees or other events that increase the cost of processing transactions, such as changes in the average Payment Amount, the mix of payment methods or of interchange rates applied to transactions. The amended Paymentus Fee will take effect 30 days after written notice to Client.

4 <u>**Payment Processing**</u>

4.1 Integration with Client’s Billing System

At no charge from Paymentus to Client, Paymentus will develop one (1) file format interface with Client’s billing system using Client’s existing text file format currently used to post payments to Client’s billing system. Client will be responsible to provide Paymentus with the one file format specification and will fully cooperate with Paymentus during the development of the said interface. If Client chooses to create an automated file integration process to download the posting file, due to Paymentus security requirements, Client will use Paymentus specified integration process. As such, the Paymentus platform does and can function independent of any billing system integration. A payment posting file can be emailed or downloaded from the Paymentus Agent Dashboard. If Client chooses to have the Paymentus platform integrated with its billing system, Paymentus offers two options:

(i) Paymentus standard integration specification that Client can use to integrate its billing systems with Paymentus platform (“Standard Integration”); or

(ii) Paymentus to either customize or configure its platform to integrate with Client using file specification or APIs supported by Client’s billing system (“Client Specific Integration”).

If Client chooses Standard Integration, Paymentus agrees to fully cooperate with Client and provide its specification to Client. Paymentus also agrees to participate in meetings with Client’s software vendor to provide any information or clarifications needed to understand Standard Integration. Paymentus agrees to provide all integration/interface specifications within 30 days from the Effective Date. Client will take commercially reasonable steps to develop the integration within 60 days from the date on which Client has received all integration specifications from Paymentus.

If Client chooses Client Specific Integration, Paymentus agrees to develop that integration at no charge from Paymentus to Client, provided however, Client agrees to fully cooperate with Paymentus and cause its software vendors and other service providers to fully cooperate with Paymentus. Client agrees to provide all specifications required for Client Specific Integration. Client further agrees to participate in testing with

Paymentus and if needed, cause its billing software vendors and other service providers to participate in testing. Client agrees to provide or make available all integration/interface specifications within 30 days from the Effective Date. Paymentus will take commercially reasonable steps to develop the integration within 60 days from the date on which Paymentus has received all the integration specifications from Client or its vendors.

Parties agree that if the parties do not cooperate fully, it can lead to each party being unable to perform its duties to deliver the integration in time.

Based on Client's use of the Platform and its respective modules selected under the Agreement, Paymentus will require the following integration points:

MODULE	INTEGRATION POINT
One-time payment Module	Customer Information: Text File or Real Time Payment Posting: Text File or Real Time
Recurring Payment Module	Text File
E-billing Module for Billing Data	Text File or Real-time link to billing data
Out-bound Notification-Audience File	Text File for customer engagement messages

Each of these can be based on Standard Integration or Client Specific Integration.

The Initial Setup for the Web or IVR interface will be considered complete when the first Standard Integration or Client Specific Integration, as applicable, is completed such that Paymentus and Client are able to exchange files relevant to that interface, as contemplated in this Section 4.1. In the event the Services are implemented without integration, the Initial Setup will be considered complete when a User is able to access the Platform to process a payment.

4.2 **Enhancements**

The parties agree that the Services are provided on a "platform as a service" basis, and not as a result of custom software development. Paymentus' standard Platform will be personalized to achieve certain additional functional requirements of Client, as clarified and agreed during implementation ("Enhancements"). Enhancements may include some or all of the features included in any technical requirements or similar document provided to Paymentus. The parties will fully co-operate with one another to: a) ensure that requirements with respect to Enhancements are clarified as needed; b) accept Paymentus proposed reasonable alternatives to achieve Client's functional objectives within the limits of the Paymentus platform; and c) accept Paymentus' reasonable estimates of time for completion, designs and plans with respect to agreed Enhancements. There will be no fee charged by Paymentus to Client for Enhancements, provided Paymentus designs and plans are accepted by Client. If the Services are to be offered at multiple locations, or if the Services include multiple Enhancements, the parties will agree to a phased implementation.

4.3 **PCI Compliance**

To the extent that either party receives payment card information subject to the Payment Card Industry Data Security Standards ("PCI-DSS") in connection with providing the Services, it will comply with all requirements of the PCI-DSS with respect to storage, transmission and disclosure of payment card information.

4.4 **Explicit User Confirmation**

Paymentus will confirm the dollar amount of all Payments, and when paid by the User, the corresponding Paymentus Fee to be charged and electronically obtain the User's approval of the charges prior to initiating payment authorizations transaction. Paymentus will provide User with electronic confirmation of all transactions.

4.5 **Merchant Account**

Paymentus will arrange for Client to have a merchant account with the Paymentus Authorized Processor for processing and settlement of transactions.

4.6 **Payment Authorization**.

For authorization purposes, Paymentus will electronically transmit all card or other payment transactions to the appropriate processing center, in real time as the transactions occur or as provided in applicable rules. In its discretion, Paymentus may refuse to process any transaction that is submitted in violation of its terms of use or to protect Client, Users, itself or others from potentially illegal, fraudulent or harmful transactions.

4.7 **Settlement**

Paymentus together with a Paymentus Authorized Processor will forward the payment transactions, and when paid by User, the corresponding Paymentus Fee to the appropriate organizations for settlement (other than the Paymentus Fee) directly to Client's depository bank account previously designated by Client ("Client Bank Account"). When Client pays the Paymentus Fee, Paymentus will invoice Client and debit the fees from the Client Bank Account on a monthly basis.

Paymentus together with the Paymentus Authorized Processor will continuously review its settlement and direct debit processes for its simplicity and efficiencies. Client and Paymentus agree to fully co-operate with each other if Paymentus were to change its settlement and invoicing processes.

4.8 **Reversed or Chargeback Transactions**

With respect to all Reversed or Chargeback Transactions Client authorizes Paymentus and Paymentus Authorized Processor (and/or the respective payment organizations) to debit the Client Bank Account for the Payment Amount and Paymentus will refund to the payment organization for credit back to the User the corresponding Paymentus Fee, if any.

Paymentus together with Paymentus Authorized Processor will continuously review its processes for Reversed or Chargeback Transactions for simplicity and efficiencies. Client and Paymentus agree to reasonably co-operate with each other if Paymentus requires any change to its settlement and invoicing processes for these transactions.

5 **General Conditions of Services**

5.1 **Service Reports**

Paymentus will provide Client with reports summarizing use of the Services by Users for a given reporting period.

5.2 **User Adoption Communication by Client**

Client will communicate the Services as a payment option to its customers wherever Client usually communicates its other payment options.

Client will make the Services known or available to its customers by different means of customer communication including a) through bills, invoices and other notices; b) if direct payments have been activated, by providing IVR and Web payment details on Client's website including a "Pay Now" or similar link on a mutually agreed prominent place on the web site; c) if IVR payments have been activated, through Client's general IVR/Phone system; and d) other channels deemed appropriate by Client.

Paymentus will provide Client with logos, graphics and other marketing materials for Client's use in its communications with its customers regarding the Services and/or Paymentus.

5.3 **Independent Contractor**

Paymentus is an independent contractor.

5.4 **Client's Responsibilities**

In order for Paymentus to provide the Services outlined in the Agreement, Client will co-operate with Paymentus by:

(i) Entering into (and authorizing Paymentus to do so on its behalf) all applicable merchant processing, cash management, ACH origination, or kiosk agreements, provided that Client is given notice of and approves any additional fees associated with those agreements, and providing information and consents reasonably requested in connection with the agreements.

(ii) Keeping throughout the duration of the Agreement during which direct payments via the web is activated, a bill payment link connecting to the Paymentus Platform at a prominent and mutually agreed location on Client's website. If the IVR channel is activated, the phone number for IVR payments will also be added to the web site and as an option as part of Client's general phone system.

(iii) Sharing User Adoption marketing as described in Section 5.2.

(iv) Launching the Service within 30 days of Paymentus making the system available.

(v) Dedicating sufficient and properly trained personnel to support the implementation process and its use of the Services in compliance with all laws applicable to its use of the Services.

(vi) Providing Paymentus with the file format specification currently used to post payments to the billing system to allow Paymentus to provide Client with a posting file for posting to Client's billing system.

(vii) Fully cooperating with Paymentus and securing the cooperation of its software and service providers and providing the information required to integrate with Client's billing system.

(viii) Fully cooperating with Paymentus to integrate its systems with the Paymentus Platform through the use of Paymentus' APIs to enable Client's access to the IPN, if selected.

6 **Indemnification and Limitation of Liability**

6.1 **Paymentus Indemnification and Hold Harmless**

Paymentus shall defend, indemnify and hold Client, its officers, officials, employees and volunteers harmless from any and all third party claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the gross negligence or intentional misconduct of Paymentus in performance of this

Agreement, except for injuries and damages caused by the sole negligence of Client.

6.2 **Client Indemnification and Hold Harmless**

Client shall defend, indemnify and hold Paymentus, its officers, officials, employees and volunteers harmless from any and all third party claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the gross negligence or intentional misconduct of Client in performance of this Agreement, except for the injuries and damages caused by the sole negligence of Paymentus.

6.3 **Indemnification Procedure**

The indemnified party will give the indemnifying party prompt written notice of any claim for which indemnification is sought. The indemnifying party will have the right to control the defense and settlement of any claim, provided that any settlement that adversely affects the indemnified party requires the indemnified party's consent, which will not be unreasonably delayed or withheld. The indemnified party will not settle any claim without the consent of the indemnifying party, which will not be unreasonably delayed or withheld.

6.4 **Warranty Disclaimer**

Except as expressly set forth in the Agreement, Paymentus disclaims all other representations or warranties, express or implied, made to Client or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness, for a particular purpose or otherwise of any services or any good provided incidental to the Services provided under the Agreement.

6.5 **Limitation of Liability**

Notwithstanding the foregoing, Paymentus will not be liable for any lost profits, lost savings or other special, indirect or consequential damages, even if it has been advised of or could have foreseen the possibility of these damages. In no event will Paymentus be liable for any losses or damages resulting from the acts, omissions or errors of third parties or of Client or for providing agreements, instructions or information to Users as instructed by Client. Paymentus' total liability for damages for any and all actions associated with the Agreement or the Services will in no event exceed (i) for an error or other action affecting the processing of one or more Payments, the amount of the Paymentus Fee associated with each Payment, (ii) for other claims, the amount of the Paymentus Fee (net of direct processing and other fees paid by Paymentus) paid to Paymentus ("Net Fees") in the six (6) months before the events given rise to the claim or claims arising from the same circumstances; and (iii) in no event more than the lesser of $1,000,000.00 or the Net Fees under the Agreement.

7 **<u>Term and Termination</u>**

7.1 **Term**

The term of the Agreement will commence on the Effective Date and continue for a period of 5 (five) years ("Initial Term") from the Launch Date.

At the end of the Initial Term, the Agreement will automatically renew for successive three (3) year periods unless either Client or Paymentus provide the other party with not less than 6 (six) months prior written notice before the automatic renewal date that it elects not to automatically renew the term of the Agreement.

7.2 **Material Breach**

A material breach of the Agreement will be cured within 90 business days ("Cure Period") after a party notifies the other of the breach. In the event the material breach has not been cured within the Cure Period, the non-breaching party can terminate the Agreement by providing the other party with a 30 business days' notice.

7.3 **Upon Termination**

Upon termination of the Agreement, the parties agree to cooperate with one another to ensure that all Payments are accounted for and all refundable transactions have been completed. Upon termination, Paymentus will cease all Services being provided hereunder unless otherwise directed agreed in writing.

8. **<u>Use by Other Localities.</u>**

8.1 The parties agree that this Master Services Agreement may be extended, with the authorization of Client, to other public entities or public agencies or institutions of the United States ("Other Public Customers") to permit their use of the Master Services Agreement at the same prices and/or discounts and terms and conditions of this Master Services Agreement. If any other public entity decides to use the Master Services Agreement, Paymentus must deal directly with that public entity concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payment. Client acts only as the "Contracting Agent" for these public entities. It is Paymentus' responsibility to notify the public entities of the availability of this Master Services Agreement. Other public entities desiring to use this Master Agreement must make their own legal determination as to whether the use of this Master Services Agreement is consistent with their laws, regulations, and other policies. Each public entity has the option of executing a separate contract with Paymentus. Public entities may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the Master Services Agreement's General Terms and Conditions. If, when preparing such a contract, the general terms and conditions of the public entity are unacceptable to Paymentus, Paymentus may withdrawal its extension of the award to that public entity. Client shall not be held liable for any costs or damages incurred by an Other Public Customer as a result of any award extended to that Other Public Customer by Paymentus.

9 Miscellaneous

9.1 Authorized Representative

Each party will designate an individual to act as its representative, with the authority to transmit instructions and receive information. The parties may from time to time designate other individuals or change the individuals.

9.2 Notices

All notices of any type hereunder will be in writing and sent to the addresses indicated on the signature page, and except as otherwise provided in these Terms and Conditions will be given by certified mail or a national courier or by hand delivery.

Notices will be considered to have been given or received on the date the notice is physically received. Any party by giving notice in the manner set forth herein may unilaterally change the name of the person to whom notice is to be given or the address at which the notice is to be received.

9.3 Interpretation

It is the intent of the parties that no portion of the Agreement will be interpreted more harshly against either of the parties as the drafter.

9.4 Governing Law

The Agreement will be governed by the laws of the state of Washington, without giving effect to any principles of conflicts of law.

9.5 Severability

If a word, sentence or paragraph herein is declared illegal, unenforceable, or unconstitutional, that word, sentence or paragraph will be severed from the Agreement, and the Agreement will be read as if that word, sentence or paragraph did not exist.

9.6 **Attorney's Fees.** Should any litigation arise concerning the Agreement between the parties hereto, the parties agree to bear their own costs and attorney's fees.

9.7 Confidentiality

Except as required by law, Client will not for any purpose inconsistent with the Agreement disclose to any third party or use any confidential or proprietary non-public information it has obtained during the procurement process or during the term of the Agreement about Paymentus' business, including the terms of the Agreement, operations, financial condition, technology, systems, know-how, products, services, suppliers, clients, marketing data, plans, and models, and personnel. Paymentus will not for any purpose inconsistent with the Agreement or its privacy policy in effect from time to time disclose to any third party or use any confidential User information it receives in connection with its performance of the services.

9.8 Intellectual Property

In order that Client may promote the Services and Paymentus' role in providing the Services, Paymentus grants to Client a revocable, non-exclusive, royalty-free, license to use Paymentus' logo and other service marks (the "Paymentus Marks") for this purpose only. Client does not have any right, title, license or interest, express or implied in and to any object code, software, hardware, trademarks, service mark, trade name, formula, system, know-how, telephone number, telephone line, domain name, URL, copyright image, text, script (including, without limitation, any script used by Paymentus on the IVR or the Website) or other intellectual property right of Paymentus ("Paymentus Intellectual Property"). All Paymentus Marks, Paymentus Intellectual Property, and the Platform and all rights therein (other than rights expressly granted herein) and goodwill pertain thereto belong exclusively to Paymentus.

9.9 **Force Majeure**

Paymentus will be excused from performing the Services to the extent its performance is delayed, impaired or rendered impossible by acts of God or other events that are beyond Paymentus' reasonable control and without its fault or judgment, including without limitation, natural disasters, war, terrorist acts, riots, acts of a governmental entity (in a sovereign or contractual capacity), fire, storms, quarantine restrictions, floods, explosions, labor strikes, labor walk-outs, extra-ordinary losses utilities (including telecommunications services), external computer "hacker" attacks, and/or delays of common carrier.

9.10 **Entire Agreement**

The Agreement represents the entire agreement between the parties with respect to its subject matter and supersedes all prior written or oral agreements or understandings related to its subject matter and except as provided in the Agreement may be changed only by agreements in writing signed by the authorized representatives of the parties.

9.11 **Counterparts**

The Agreement and any amendment or other document related to the Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement. The Agreement and any amendment or other document related to the Agreement may be signed electronically. A photographic or facsimile copy of the signature evidencing a party's execution of the Agreement will be effective as an original signature.

Paymentus

SCHEDULE A – PAYMENTUS FEE SCHEDULE
UTILITY PAYMENTS

The Services will initially consist of those indicated by a check box on the following table. The Paymentus Fee will be as specified below, and will be paid by the Client, unless designated as a User paid fee.

Check to Select the Channel	Channels	Advanced Services	Payment Methods & Channels	Paymentus Fee per transaction– Utility Payments, Absorbed	Check if User Paid Fee
☒	Instant Payment Network™	Ebill Presentment and Customer Engagement	All payment channels and methods offered under IPN such as PayPal, Venmo, PayPal Credit ,Secure PDF Push, Chatbot, Advanced Notification Service (ECM), Text 2 Pay, Voice Assistants,	Qualified Credit/Debit: **$1.65** per Visa, MasterCard, Discover, American Express Non-qualified Credit: **2.75%** of the sales volume on Visa, MasterCard, Discover, American Express **$0.40** per echeck/ACH **$9.95** per chargeback/ returned checks **5,000** phone, email and text notifications per month at no cost; additional usage is invoiced at **$0.20** per message.	☐
☒	Direct Payments (Web, IVR, Recurring, Agent Assisted)	Ebill Presentment and Customer Engagement	Credit, Debit, ACH		☐

Note: Average Bill Amount: **$236.00**. Maximum Amount per Payment is **$1,000.00**. Multiple payments may be made.

Paymentus

SCHEDULE A – PAYMENTUS FEE SCHEDULE
CITY DEPARTMENT PAYMENTS

The Services will initially consist of those indicated by a check box on the following table. The Paymentus Fee will be as specified below, and will be paid by the Client, unless designated as a User paid fee.

Check to Select the Channel	Channels	Advanced Services	Payment Methods & Channels	Paymentus Fee per transaction – Government Payments, Absorbed or Convenience Fee	Check if User Paid Fee
☒	Instant Payment Network™	Ebill Presentment and Customer Engagement	All payment channels and methods offered under IPN such as PayPal, Venmo, PayPal Credit ,Secure PDF Push, Chatbot, Advanced Notification Service (ECM), Text 2 Pay, Voice Assistants,	**2.75%** of the sales volume on Visa, MasterCard, Discover, American Express **$0.40** per echeck/ACH **$9.95** per chargeback/ returned checks	☐
☒	Direct Payments (Web, IVR, Recurring, Agent Assisted)	Ebill Presentment and Customer Engagement	Credit, Debit, ACH		☐

Note: Average Bill Amount: **$VARIES**. Maximum Amount per Payment is **$25,000.00**. Multiple payments may be made.

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020 | Agenda Category: Resolutions - Adoption

Core Focus Area 1 - Promote Financial Stability & Operational Effectiveness
Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:
Resolution No. 79-20, Authorizing an Increase to the Administrative Contract Change Order Threshold for the George Washington Way Pavement Preservation Project

Department:	Ordinance/Resolution Number:	Document Type:
Public Works	79-20	Resolution

Recommended Motion:
Adopt Resolution No. 79-20, authorizing an increase to the administrative contract change order capacity authorized for the George Washington Way Pavement Preservation Project from $200,000 to $450,000.

Summary:
Richland's 2019-2024 Capital Improvement Plan includes a fully-funded project titled Pavement Preservation Project - GWW Resurfacing & Streetscape (the "Project"). This project was funded primarily by a grant from WSDOT under the National Highway System Asset Management Program.

On June 4, 2019, Council awarded the Project construction contract to Total Site Services, LLC, in the amount of $4,347.953.68, and authorized the City Manager to sign and execute change orders up to the amount of $200,000. In July, 2019, Council passed Ordinance No. 34-19, accepting additional funds offered from WSDOT, and enabling the City to expand the scope of work to include all available bid alternatives. Ordinance No. 34-19 increased the project's budget by $1,677,900, but did not increase the authority to administratively execute change orders.

Thanks to skillful project management, grant capacity is currently available to add pedestrian safety features recommended by the City's Traffic Engineer but not originally included in the project design. This additional scope and other adjustments to designed work will result in change orders exceeding the original $200,000 authority, while remaining within the grant funding capacity. Council action is necessary to increase the administrative contract change order threshold from $200,000 to $450,000. Resolution No. 79-20 will accomplish this outcome.

Staff recommends adoption of Resolution No. 79-20.

Fiscal Impact: The total estimated costs of this project, including change orders authorized by this action, is $5,754,002. The total budget for the project is $6,305,605.

Attachments:
1. Resolution No. 79-20

RESOLUTION NO. 79-20

A RESOLUTION of the City of Richland authorizing an increase to the administrative contract change order threshold for the George Washington Way Pavement Preservation project.

WHEREAS, the 2019-2024 Capital Improvement Plan (CIP) includes a fully-funded project titled Pavement Preservation Project (GWW Resurfacing & Streetscape)(the “Project”); and

WHEREAS, this Project was funded in large part by a grant provided by the Washington State Department of Transportation under the National Highway System (NHS) Asset Management Program; and

WHEREAS, on June 4, 2019, City Council adopted Resolution No. 76-19, awarding the George Washington Way Pavement Preservation construction contract to Total Site Services, LLC in the amount of $4,347,953.68; and

WHEREAS, Resolution No. 76-19 authorized the City Manager to sign and execute change orders up to the amount of $200,000 to fulfill the Project’s design intent; and

WHEREAS, on July 16, 2019, City Council passed Ordinance No. 34-19, accepting additional funds offered from the Washington State Department of Transportation, and enabling the City to expand the scope of the construction contract to include all available bid alternatives; and

WHEREAS, Ordinance No. 34-19 increased the Project scope and budget by $1,677,900, but did not increase the authority to administratively execute change orders; and

WHEREAS, the additional grant funds allow the City to add pedestrian safety improvements to the Project scope that were not part of the original design, but are recommended by the City’s Traffic Engineer; and

WHEREAS, the increased scope of work, including the additional pedestrian safety improvements, will result in change orders exceeding the original $200,000 authorization; and

WHEREAS, the project funding is adequate to complete the recommended changes in contract scope; and

WHEREAS, the City’s best interests are served by increasing the project scope and value in order to accomplish the original design intent of the Project, and adding improvements as recommended by the City’s Traffic Engineer.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute change orders in an amount up to $450,000 to complete the George Washington Way Pavement Preservation Project consistent with the Project's design intent and the City Traffic Engineer's recommendation.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 2nd day of June, 2020.

____
Ryan Lukson, Mayor

Attested by:

____
Jennifer Rogers, City Clerk

Approved as to form:

____
Heather Kintzley, City Attorney

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020 Agenda Category: Resolutions - Adoption

Core Focus Area 1 - Promote Financial Stability & Operational Effectiveness

Subject:
Resolution No. 80-20, Authorizing a First Amendment to the 2018 Second Amended and Restated Interlocal Agreement for Benton County Emergency Services

Department:	Ordinance/Resolution Number:	Document Type:
Police Services	80-20	Resolution

Recommended Motion:
Adopt Resolution No. 80-20, authorizing the City Manager to sign and execute a First Amendment to the 2018 Second Amended and Restated Interlocal Agreement for Benton County Emergency Services related to the Red Mountain Communications Site.

Summary:
For the past several years, BCES has been studying ways to improve coverage of the 800MHz system and, from such studies, Benton County has determined to add a communication site on Red Mountain that will be integrated into BCES's existing simulcast system, and includes the necessary hardware, software, and services to upgrade the Golgotha ASTRO 25 Repeater site.

Benton County will reimburse up to $3,000,000 for costs incurred by BCES, by and through its Administrative Jurisdiction (Richland), to render the identified communication site initially operable.

Benton County will also expend additional funds associated with the cost of a County-owned access easement providing access to the site. Costs to be borne directly by Benton County for the access easement include property interest acquisition, design, construction, and provision of utilities to the site.

Richland, as the Administrative Jurisdiction for BCES, will serve as the project manager of the project. A First Amendment to the 2018 Amended and Restated Interlocal Agreement for Benton County Emergency Services has been prepared to establish the funding and ownership obligations of the involved parties.

Staff recommends approval of Resolution No. 80-20.

Fiscal Impact:	Benton County will pay up to $3,000,000 to render the proposed communication site on Red Mountain initially operable. In addition, Benton County will pay the actual costs associated with acquisition, design and construction of an access easement providing ingress and egress to the site, as well as costs associated with bringing utilities (specifically electric) to the site.

Attachments:
1. Resolution No. 80-20

RESOLUTION NO. 80-20

A RESOLUTION of the City of Richland authorizing a First Amendment to the 2018 Second Amended and Restated Interlocal Agreement for Benton County Emergency Services.

WHEREAS, for the past several years, BCES has been studying ways to improve coverage of the 800MHz system and, from such studies, Benton County has determined to add a communication site on Red Mountain that will be integrated into BCES's existing simulcast system, and includes the necessary hardware, software, and services to upgrade the Golgotha ASTRO 25 Repeater site; and

WHEREAS, Benton County will reimburse up to $3,000,000 for costs incurred by BCES, by and through its Administrative Jurisdiction, to render the identified communication site initially operable; and

WHEREAS, Benton County will expend additional funds associated with the cost of a County-owned access easement providing access to the site. Costs to be borne directly by Benton County for the access easement include property interest acquisition, design, construction, and provision of utilities to the site; and

WHEREAS, because Benton County will directly bear the costs associated with acquisition, design and construction of the County-owned access easement, and the provision of utilities (specifically electric), Benton County will not provide reimbursement for any access easement-related costs otherwise incurred by BCES by and through its Administrative Jurisdiction; and

WHEREAS, Amendment No. 1 to the existing 2018 Amended and Restated Interlocal Agreement sets forth the financing and ownership terms with respect to the proposed additional communication site on Red Mountain and the Golgotha Upgrade.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute a First Amendment to the 2018 Second Amended and Restated Interlocal Agreement for Benton County Emergency Services in substantially the form attached hereto as **Exhibit A**.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

This space intentionally left blank.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 2nd day of June, 2020.

Ryan Lukson, Mayor

Attested by:

Jennifer Rogers, City Clerk

Approved as to form:

Heather Kintzley, City Attorney

AMENDMENT NO. 1 TO THE 2018 SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR BENTON COUNTY EMERGENCY SERVICES FOR FUNDING AN ADDITIONAL COMMUNICATION SITE

THIS AMENDMENT NO. 1 TO THE 2018 SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT is made and entered into by and between the following entities (collectively, the "Parties"):

Benton County, a political subdivision of the State of Washington;
Franklin County, a political subdivision of the State of Washington;
City of Kennewick, a Washington municipal corporation;
City of Richland, a Washington municipal corporation;
City of West Richland, a Washington municipal corporation;
City of Prosser, a Washington municipal corporation;
City of Benton City, a Washington municipal corporation;
City of Pasco, a Washington municipal corporation;
Benton County Fire Protection District Nos. 1, 2 and 4, all of which are Washington special purpose districts; and
Public Utility District #1 of Benton County, a Washington special purpose district.

WHEREAS, several of the above-referenced entities were parties to a 2009 Interlocal Agreement to fund the acquisition of a digital 800MHz radio system to provide enhanced public safety communications; and

WHEREAS, since execution of that 2009 Interlocal Agreement, Franklin County, the City of Pasco and PUD #1 joined with the previously existing entities to participate in certain aspects of the operations of Benton County Emergency Services (BCES); and

WHEREAS, in 2018, the Parties executed a Second Amended and Restated Interlocal Agreement for Benton County Emergency Services (the "2018 Interlocal Agreement") to reflect the rights and responsibilities of all BCES participants; and

WHEREAS, for the past several years, BCES has been studying ways to improve coverage of the 800MHz system, and based on such studies Benton County has agreed to add one (1) communication site to be located on Red Mountain that will be integrated into BCES's existing simulcast system, and the necessary hardware, software, and services to upgrade the Golgotha ASTRO 25 Repeater site to integrate that communication site into the system; and

WHEREAS, Benton County will reimburse up to $3,000,000 for costs incurred by BCES, by and through its Administrative Jurisdiction, to render the identified communication site initially operable; and

WHEREAS, Benton County will expend additional funds associated with the cost of constructing a County-owned access easement to the communication site terminating on a parcel agreed to by Benton County, provided BCES will not be reimbursed for such costs as Benton

County will directly incur and pay such costs for the easement, including acquisition, design, construction, and provision of utilities to the site (specifically electric); and

WHEREAS, the Parties enter into this Amendment No. 1 to set forth the financing and ownership terms with respect to the proposed additional communication site on Red Mountain.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and in accordance with RCW 39.34.030 and Section 8 of the 2018 Interlocal Agreement for Benton County Emergency Services, the Parties agree to amend the 2018 Interlocal Agreement as follows:

1. Section 4.C. of the FINANCES section of the 2018 Interlocal Agreement is deleted and replaced in its entirety with the following language:

   <u>800MHz Fund</u>. The 800MHz Fund shall be used for the maintenance and operation of any 800MHz radio system, whether analog or digital, utilized by BCES. The Executive Board is authorized to levy annual radio assessments upon all Parties who use radios under the 800MHz system, and to impose contract fees upon any contracting agencies for use of the same. Assessments shall be determined annually by the Executive Board for inclusion in the Parties' annual budgets. Assessments shall be paid in periodic installments on a schedule determined by the Executive Board. In the event an unforeseen exigent circumstance or uninsured civil judgment results in costs to the Organization in excess of the budgeted expenses for operation and administration of the 800MHz system, the Executive Board is authorized to proportionately levy, by percentage of the Parties' total 800MHz budget responsibility, additional fees to cover the unexpected liability. Such excess costs shall be promptly remitted, upon demand, to Benton County Emergency Services. If the cost overrun is attributable to a single agency's action or inaction, the entire cost overrun shall be borne by that agency.

   In order to improve coverage of the 800MHz radio system maintained and operated by BCES in certain areas of unincorporated Benton County, one (1) communication site on Red Mountain will be constructed consisting of a trunked simulcast repeater; one (1) microwave; an equipment shelter; a tower; a generator; a fuel tank; and batteries (the "Communication Site"). To integrate the new Communication Site into the existing system, the Golgotha ASTRO 25 Repeater Site must be upgraded with certain hardware, software and services (the "Golgotha Upgrade"). To facilitate construction of the Communication Site and the Golgotha Upgrade, Benton County agrees to: 1) reimburse BCES, by and through its Administrative Jurisdiction, in an amount equal to the lesser of: a) Three Million Dollars ($3,000,000); or b) the actual costs to purchase and install the Communication Site and Golgotha Upgrade; and 2) directly pay the costs of easement acquisition, design, and construction of a means of ingress and egress, along with provision of utilities (specifically electric) to a parcel agreed upon by Benton County on which the Communication Site will be located. All operational costs of the Communication Site shall be paid by the Parties hereto in the same manner as other operational costs paid from the 800MHz fund.

   The Administrative Jurisdiction is responsible for compliance with applicable procurement laws respecting the purchase and installation of the Communication Site and Golgotha

Upgrade. Benton County is responsible for compliance with applicable procurement laws respecting the access easement to the Communication Site.

Benton County shall deposit One Million Dollars ($1,000,000) into the 800MHz Fund within thirty (30) days of the full execution of this Amendment No. 1 to the 2018 Interlocal Agreement. The Administrative Jurisdiction will place the deposit in an interest bearing account, and interest will accrue to the benefit of BCES and may be expended on the Communication Site. Beginning on the thirtieth (30^{th}) day after the initial deposit, and occurring every thirty (30) days thereafter until the Communication Site is completed, the Administrative Jurisdiction will send to Benton County a written summary of the expenses incurred for the purchase and installation of the Communication Site. Upon thirty (30) days' written notice from the Administrative Jurisdiction that less than Two Hundred Fifty Thousand Dollars ($250,000) of Benton County's deposited funds under this section remain in said account, Benton County will deposit another Two Hundred Fifty Thousand Dollars ($250,000). The account will continue to be replenished by Benton County in this manner until $3,000,000 in the aggregate has been deposited by Benton County, or BCES has been fully reimbursed, by and through its Administrative Jurisdiction, for the actual costs of the purchase and installation of the Communication Site and Golgotha Upgrade, whichever occurs first. Within thirty (30) days of release of retainage to the contractor for the Communication Site work, the Administrative Jurisdiction will return to Benton County the balance of all deposits made by Benton County for the Communication Site that were not expended.

Parties to this Agreement who use the 800MHz system will continue to contribute to its operation and maintenance costs, including costs for operation and maintenance of the Communication Site, through annual radio assessments.

2. Section 5.C. of the PROPERTY AND EQUIPMENT section of the 2018 Interlocal Agreement is deleted and replaced in its entirety with the following language:

   <u>Specific Property Owned Solely by Benton County, Richland and Kennewick</u>. All Parties hereto acknowledge that the federal government may have ownership interests or rights with respect to equipment purchased with funds provided by the federal government. All Parties further acknowledge and agree that the Communication Site on Red Mountain as referenced in Section 4.C above shall be owned exclusively by Benton County. All Parties further acknowledge and agree that the remainder of the digital 800MHz radio system, the real property and improvements located at 651 Truman Avenue in Richland, Washington, the leasehold interests and other 800MHz equipment used by Benton County Emergency Services and the Parties hereto at the several existing sites and the Benton County Microwave System used by Benton County Emergency Services shall be owned exclusively by Benton County and the cities of Richland and Kennewick as follows: fifty percent (50%) ownership by Benton County; twenty-five percent (25%) ownership by Kennewick; twenty-five percent (25%) ownership by Richland. The contributions by Pasco and Franklin County required pursuant to section 4.G above do not create any ownership interests in the above assets by those entities.

3. All remaining terms, conditions and provisions of the 2018 Interlocal Agreement shall remain in full force and effect.

4. This Amendment shall be construed in accordance with, and governed by, the laws of the state of Washington.

5. The headings contained in this Amendment are for ease of reference only and shall not be considered in construing this Amendment.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates identified next to their signatures below.

BENTON COUNTY, WASHINGTON

JAMES BEAVER, Chairman Date

SHON SMALL, Member Date

JEROME DELVIN, Member Date

Constituting the Board of County Commissioners of Benton County, Washington.

Attest:

Clerk of the Board

Approved as to Form:

Ryan K. Brown, Benton County Chief Deputy Prosecuting Attorney

FRANKLIN COUNTY, WASHINGTON

ROBERT E. KOCH, Chairman Date

BRAD PECK, Chairman Pro-Tem Date

CLINT DIDIER, Member Date

Constituting the Board of County Commissioners of Franklin County, Washington.

Attest:

Clerk of the Board

Approved as to Form:

Jennifer Johnson, Franklin County Deputy Prosecuting Attorney

[Signatures continue below]

CITY OF PASCO

DAVE ZABELL Date
Pasco City Manager

Attest:

Debby Barham, City Clerk

Approved as to Form:

Eric Ferguson, Kerr Ferguson Law, PLLC
City Attorney for Pasco

CITY OF KENNEWICK

MARIE E. MOSLEY Date
Kennewick City Manager

Attest:

Terri L. Wright, City Clerk

Approved as to Form:

Lisa Beaton
Kennewick City Attorney

CITY OF RICHLAND

CYNTHIA D. REENTS Date
Richland City Manager

Attest:

Jennifer Rogers, City Clerk

Approved as to Form:

Heather Kintzley
Richland City Attorney

CITY OF WEST RICHLAND

BRENT GERRY Date
West Richland Mayor

Attest:

Julie Richardson, City Clerk

Approved as to Form:

Bronson Brown, Bell Brown & Rio, PLLC
City Attorney for West Richland

[Signatures continue below]

CITY OF PROSSER

RANDY TAYLOR Date
Prosser Mayor

Attest:

Rachel Shaw, City Clerk

Approved as to Form:

Howard Saxton
Prosser City Attorney

CITY OF BENTON CITY

LINDA LEHMAN Date
Benton City Mayor

Attest:

Stephanie Haug, City Clerk

Approved as to Form:

Eric Ferguson, Kerr Ferguson Law, PLLC
City Attorney for Benton City

BENTON COUNTY FIRE PROTECTION DISTRICTS 1, 2, AND 4

DAVID M. JENKINS Date
BCFPD #1 Commission Chair

Attest:______________________________

BARRY ORTH Date
BCFPD #2 Commission Chair

Attest:______________________________

GREGG COUCH Date
BCFPD #4 Commission Chair

Attest:______________________________

[Signatures continue below]

PUBLIC UTILITY DISTRICT #1 OF BENTON COUNTY (BENTON PUD)

__________________________________ Attest:______________________________

RICK DUNN Date
General Manager

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020

Agenda Category: Resolutions - Adoption

Core Focus Area 1- Financial and Operational

Subject:

Resolution No. 81-20, Authorizing an Agreement with Systems Design West, LLC for Ambulance Billing Services

Department:	Ordinance/Resolution Number:	Document Type:
Fire & Emergency Services	81-20	Contract/Agreement/Lease

Recommended Motion:

Adopt Resolution No. 81-20, authorizing the City Manager to sign and execute an agreement for ambulance billing and collection services from Systems Design West, LLC to and through December 31, 2024.

Summary:

In 2018, the City outsourced its ambulance billing functions by signing an agreement with the third-party billing service, Systems Design West, LLC (SDW). The original agreement was the result of "piggybacking" onto a cooperative purchase agreement with Mid-Columbia Fire and Rescue.

The current agreement is due to expire on June 30, 2020. Richland's best interests are served by continuing to contract with SDW for ambulance billing services. At this time, a direct agreement between Richland and the vendor using the City's standard consulting services contract is preferred.

Staff recommends approval of Resolution No. 81-20.

Fiscal Impact: The cost for this billing service is based on a $22.50 per-transport fee and will likely total between $78,000 and $90,000 annually, depending upon patient transport volume.

Attachments:

1. Resolution No. 81-20
2. Proposed Systems Design West, LLC Consultant Agreement

RESOLUTION NO. 81-20

A RESOLUTION of the City of Richland approving a Consulting Services Agreement with Systems Design West, LLC for ambulance billing services.

WHEREAS, since May 2018, the City of Richland has used Systems Design West, LLC ("SDW") for ambulance billing and collection services; and

WHEREAS, the City anticipates continued outsourcing of its ambulance billing functions to a third-party billing vendor; and

WHEREAS, the City's current contract with SDW will expire on June 30, 2020; and

WHEREAS, the City desires to continue contracting with SDW for ambulance billing; and

WHEREAS, Policy No. 2220, Exemptions to Competitive Solicitation Requirements, exempts services related to utility billing from the competitive solicitation process; and

WHEREAS, RMC 3.04.060 requires City Council approval for all service contracts greater than $50,000.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign a consultant agreement with Systems Design West, LLC for ambulance billing services to and through December 31, 2024.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 2nd day of June, 2020.

Ryan Lukson, Mayor

Attested by:

Jennifer Rogers, City Clerk

Approved as to form:

Heather Kintzley, City Attorney

Contract No. _________

AGREEMENT BETWEEN CITY AND CONSULTANT

Third-Party Ambulance Billing & Collection Services

This Agreement is entered into this ______ day of June, 2020 ("Effective Date") by and between the **City of Richland** ("**City**"), a Washington municipal corporation located at 625 Swift Blvd. Richland, WA 99352, and **Systems Design West, LLC** ("**Consultant**"), a foreign for-profit corporation with service at 19265 Powder Hill Place NE, Poulsbo, WA 98370. **City** and **Consultant** are referred to individually herein as a "Party" and collectively herein as the "Parties."

WITNESSETH:

1. SCOPE OF WORK

a. Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work outlined in Exhibit A. In performing these services, Consultant shall at all times comply with all federal, state and local statutes, rules and ordinances applicable to the performance of such services. In addition, these services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City.

b. This Agreement consists of this Agreement and other documents listed below. These form the entire Agreement between the Parties, and are fully integrated into this Agreement as if stated or repeated herein. In the event of a conflict between documents, the order of precedence will be the order listed below. An enumeration of the Agreement documents is set forth below (mark all that apply):

1. ☒City of Richland Agreement No. _________
2. ☒Exhibit A: Scope of Work
3. ☐City Richland Solicitation No. N/A
4. ☐Exhibit B: Solicitation No. N/A proposal response submitted by Consultant dated N/A
5. ☒Additional Documents – Attachment A – Business Associate Agreement

2. TIME FOR COMPLETION

Consultant shall not begin any work under the terms of this Agreement until authorized in writing by the City. Consultant agrees to use best efforts to complete all work described under this Agreement by December 31, 2024.

3. TERM

The term of this Agreement shall commence on the Effective Date identified above and end at midnight on December 31, 2024.

4. PAYMENT

a. Services rendered by Consultant under this Agreement will be paid at the rate set forth in Exhibit A Scope of Work, but in no event shall the total compensation for services rendered under this Agreement exceed **One Hundred Thousand Dollars and No/Cents** ($**100,000**) on an annual basis, including all fees and those reimbursable expenses listed in Exhibit A.

b. City shall pay Consultant for services rendered after receipt of a detailed invoice. Invoices not in dispute by the City will be paid net thirty (30) days and shall reference the contract number and/or purchase order applicable to the work. The invoice shall provide sufficient detail on the work being billed and include detailed receipts for any invoices.

c. Partial payments to cover the percentage of work completed may be requested by Consultant. These payments shall not be more than one (1) per month.

d. Pre-approved travel, meals and lodging will be reimbursed at cost and only when consultant travels at least 150 miles per one way trip. Reimbursable expenses are limited to the following: coach airfare, ground transportation (taxi, shuttle, car rental), hotel accommodations as provided below, personal or company vehicle use at the then-current federal mileage rate, and meals at the current federal per-diem meal allowance or up to the current federal per-diem with detailed receipts, no alcohol, and a 20% maximum gratuity.

    i. Hotel accommodations: eligible lodging expenses include the room cost only; itemized receipts must be provided for hotel reimbursements.

    ii. Hotel reimbursement is limited to the single room rate. If two or more consultants are sharing a room, reimbursement is allowable for only one consultant at the double room rate.

    iii. The maximum reimbursement should be limited to the best discount rate available and allowable that meets traveler's business needs and basic needs for health, safety and cleanliness. Non-smoking rooms are authorized even if they are more expensive.

e. Reimbursement for extra services/reimbursable expenses are not authorized under this Agreement unless detailed in the Scope of Work or agreed upon in writing as a modification to this Agreement.

f. Consultant will allow access to the City, State of Washington, Federal Grantor Agency, Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Unless otherwise provided, said records must be retained for three (3) years from the date of receipt of final payment. If any litigation, claim, or audit arising out of, in connection with, or relating to this Agreement is initiated before the expiration of the three-year period, the records shall be retained until such litigation, claim, or audit involving the records is completed.

5. INDEPENDENT CONTRACTOR

Consultant, and any and all employees of Consultant or other persons engaged in the performance of any work or services required of Consultant under this Agreement, are independent contractors and shall not be considered employees of the City. Any and all claims that arise at any time under any Workers' Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of Consultant's employees or other persons engaged in any of the work or services required to be provided herein, shall be the sole obligation and responsibility of Consultant.

6. OWNERSHIP OF DOCUMENTS
Omitted.

7. TERMINATION

a. This Agreement may be terminated by either Party upon sixty (60) days' written notice. In the event this Agreement is terminated by Consultant, the City shall be entitled to reimbursement of costs occasioned by such termination. In the event the City terminates this Agreement, the City shall pay Consultant for the work performed, which shall be an amount equal to the percentage of completion of the work as mutually agreed between the City and Consultant.

b. If any work covered by this Agreement shall be suspended or abandoned by the City before Consultant has completed the assigned work, Consultant shall be paid an amount equal to the costs incurred up to the date of termination or suspension as mutually agreed upon between the City and Consultant.

8. AVAILABILITY OF RECORDS FOR PUBLIC INSPECTION

a. As a public contract, all records prepared, generated or used by Consultant or its agents, employees and subcontractors relating to this Agreement and associated work (hereinafter "public records") may be subject to disclosure under the Washington State Public Record Act, Chapter 42.56 RCW.

b. Contractor shall maintain and retain all such public records in a manner that is readily accessible for a minimum term of no less than three (3) years following completion of the contract work. City shall have the right to timely review all such public records upon request. Contractor shall provide copies of any public records requested by City within thirty (30) calendar days of City's request. If City requests that copies of public records be provided to City in an electronic format, said records shall be provided at no cost to City. If paper copies are requested by City, City shall pay $.10 per page. Payment for paper copies shall be rendered to Consultant within twenty (20) calendar days of receipt.

c. All records subject to a public disclosure request will be provided to a requester unless exempted from disclosure by law. The City's decision to exempt or redact any public record shall be based only upon valid exemptions that apply to the City. City will not refrain from disclosing any record under an exemption that may be personal to Consultant. In the event Consultant objects to release of any public record under this Agreement, Consultant may seek judicial approval to prevent such disclosure at Consultant's sole expense. City shall neither aid nor interfere with Consultant's request for an injunction to prevent disclosure of any public record under this Agreement.

d. Consultant shall insert this provision in all contracts with subcontractors or agents providing services relating to this Agreement.

9. DISPUTE RESOLUTION

a. The City and Consultant agree to negotiate in good faith for a period of thirty (30) days from the date of notice of all disputes between them prior to exercising their rights under this Agreement, or under law.

b. All disputes between the City and Consultant not resolved by negotiation between the Parties may be arbitrated only by mutual agreement of the City and Consultant. If not mutually agreed to resolve the claim by arbitration, the claim will resolve by legal action.

10. DEBARMENT CERTIFICATION

Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this contract by any federal or state department or agency. Further, Consultant agrees not to enter into any arrangements or contracts related to completion of the work contemplated under this Agreement with any party that is on the "General Service Administration List of Parties Excluded from Federal Procurement or Non-Procurement Programs" which can be found at:

www.sam.gov and
http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/default.asp

11. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

In the event that either Party deems it necessary to initiate a legal action to enforce any right or obligation under this Agreement, the Parties agree that any such action shall be initiated in the Superior Court of the State of Washington situated in Benton County. The Parties agree that all questions shall be resolved by application of Washington law, and that the Parties to such action shall have the right of appeal from such decision of the Superior Court in accordance with the laws of the State of Washington. Consultant hereby consents to the personal jurisdiction of the Superior Court of the State of Washington situated in Benton County.

12. ATTORNEY'S FEES

The Parties agree that should legal action be necessary to enforce any of the provisions of this Agreement, that the substantially prevailing Party will be awarded its reasonable attorney's fees and costs in action, including costs and attorney's fees on appeal if appeal is taken.

13. INSURANCE

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 Consultant, its agents, representatives, or employees.

a. No Limitation. Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Consultant 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. Consultant shall obtain insurance of the types described below:

   1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an 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 CG 20 26.

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

4. Professional Liability, Errors or Omissions insurance appropriate to the Consultant's profession. Coverage shall be provided if Consultant is providing services under this Agreement as a licensed professional, including, but not limited to, engineers, architects, accountants, surveyors, and attorneys.

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

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim and $1,000,000 policy aggregate limit.

d. Other Insurance Provisions. 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 self-insured pool coverage maintained by the City shall be excess of Consultant'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. 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 Consultant before commencement of the work.

g. Notice of Cancellation. Consultant shall provide the City with written notice of any policy cancellation within two (2) business days of Consultant's receipt of such notice.

h. Failure to Maintain Insurance. Failure on the part of Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to 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 Consultant from the City.

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

14. INDEMNIFICATION / HOLD HARMLESS

a) 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 willful or negligent acts, or alleged willful or alleged negligent acts, errors or omissions of the Consultant or the Consultant's employees or agents in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

b) City shall defend, indemnify, and hold Consultant, 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 willful or negligent acts, or alleged willful or alleged negligent acts, errors or omissions of the City or the City's employees or agents in performance of this Agreement, except for injuries and damages caused by the sole negligence of Consultant.

c) 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, including the duty and cost to defend, 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.

15. STANDARD OF CARE

The professional services will be furnished in accordance with the care and skill ordinarily used by members of the same profession practicing under similar conditions at the same time and in the same locality.

16. SUCCESSORS OR ASSIGNS

All of the terms, conditions and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto, and their respective successors and assigns; provided, however, that no assignment of the Agreement shall be made without written consent of the non-assigning Party, which may be given in the non-assigning Party's sole discretion.

17. NOTICES

Any notices required under this Agreement will be in writing, addressed to the appropriate Party at the address which appears below (as modified in writing from time to time by such party), and given by electronic submission, by facsimile personally, by registered or certified mail, return receipt requested, or by nationally recognized overnight courier service. All notices shall be effective upon the date sent.

Purchasing Manager	Contact Name:	Jennifer Braus
City of Richland	Name of Firm:	Systems Design West, LLC
625 Swift Blvd., MS-11	Address:	19265 Powder Hill Place NE
Richland, WA 99352	Email:	JennB@sdwems.com
Email: purchasing@ci.richland.wa.us	Phone Number:	(360) 394-7082
Phone: (509) 942-7710	Fax Number:	N/A
Fax: (509) 942-7397		

18. EQUAL OPPORTUNITY AGREEMENT

Consultant agrees that Consultant will not discriminate against any employee or job applicants for work under this Agreement for reasons of race, sex, nationality, religious creed, or sexual orientation.

19. SEVERABILITY

If any provision of this Agreement conflicts with applicable law, or its application is found to be invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected, and to this end, the terms of this Agreement are declared to be severable.

20. AMENDMENTS

All amendments must be in writing and be approved and signed by both Parties.

21. CHANGE IN LAW

The Parties hereto agree that in the event legislation is enacted or regulations are promulgated, or a decision of court is rendered, or any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation is published that affects or may affect the legality of this Agreement or any part thereof or that materially and adversely affects the ability of either Party to perform its obligations or receive the benefits intended hereunder ("Adverse Change in Law"), then within fourteen (14) calendar days following written notice by either Party to the other Party of such adverse change in law, the Parties shall meet to negotiate in good faith an amendment which will carry out the original intention of the Parties to the extent possible. If, despite good faith attempts, the Parties cannot reach agreement upon an amendment within sixty (60) calendar days after commencing negotiation, then this Agreement may be terminated by either Party as of the earlier of: (i) the effective date of the adverse change in law, or (ii) the expiration of a period of sixty (60) days following written notice of termination provided by one Party to the other.

22. CONFIDENTIALITY

In the course of performing under this Agreement, Consultant and City, including their respective employees, agents or representatives, may receive, be exposed to, or acquire confidential information. Confidential information may include, but is not limited to, patient information, contract terms, sensitive employee information, or proprietary data in any form, whether written, oral, or contained in any computer database or computer readable form. Consultant and City each shall: i) not disclose or sell confidential information except as permitted by this Agreement or as required by law; (ii) only permit use of such confidential information by employees, agents and representatives having a need to know in connection with performance under this Agreement; and (iii) advise each of its employees, agents, and representatives of their obligations to keep such information confidential.

23. CHANGES OF WORK

a. When required to do so, and without any additional compensation, Consultant shall make such changes and revisions in the completed work of this Agreement as necessary to correct or revise any errors, omissions, or other deficiencies in the design, drawings, specifications, reports, and other similar documents which Consultant is responsible for preparing or furnishing under this Agreement.

b. Should the City find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, Consultant shall make such revisions as directed by the City. This work shall be considered as Extra Work and will be paid for as herein provided under Section 24, Extra Work.

24. EXTRA WORK

The City may desire to have Consultant perform work or render additional services within the general scope of this Agreement. Such work shall be considered as extra work and will be specified in a written supplement to this Agreement which will set forth the nature of the scope, schedule for additional work, additional fees and the method of payment. Work under a supplemental Agreement shall not proceed until authorized in writing by the City.

25. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties hereto and supersedes all previous understandings and agreements, written and oral, with respect to this transaction. Neither Party shall be liable to the other for any representations made by any person regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement.

(Signature page to follow)

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

CITY OF RICHLAND, WASHINGTON

____
Cynthia D. Reents, City Manager

ATTEST:

____
Jennifer Rogers, City Clerk

APPROVED AS TO FORM:

____
Heather Kintzley, City Attorney

CONSULTANT

____
Signature

____
Printed Name

____
Title

EXHIBIT A: Detailed Scope of Work

1. **SCOPE OF SERVICES.** The Consultant shall provide to the Ambulance Provider specific services related to the billing and payment processing of EMS patient transport services that are provided to the general public by the Ambulance Provider. The following Scope of Services shall be incorporated into this contract as general services performed by the Ambulance Provider and the Consultant under this agreement.

1.1 The Ambulance Provider, with assistance from Consultant, shall apply for Provider Status or updated Status with Medicare, Medicaid, and all public and private insurances which will be billed as a part of this Scope of Services. The Ambulance Provider shall assist the Consultant to obtain the necessary certifications, numbers and documentation needed for Consultant to provide the services identified in sections 1.2 and 1.3 below. The Ambulance Provider agrees to furnish and assist the Consultant with the following:

(a) The Ambulance Provider agrees to provide a complete and legible "PCR" (Patient Care Report) to the Consultant including patient name, address and pertinent billing and insurance information from the field, including a copy of the patient signature for authorization of benefits and responsibility for payment, authorizing billing of Medicare, Medicaid and any insurance the patient is a subscriber to. The original patient signature must be maintained by the Ambulance Provider and made available to the Consultant and/or insurance payers upon request. The amounts to be billed will be determined by the Ambulance Provider in the form of a resolution or ordinance to be incorporated into this agreement as an attachment exhibit.

(b) The Ambulance Provider agrees to furnish the Consultant with hospital ER forms (face/admit sheets) with demographic and insurance information attached to the PCR if requested by Consultant. Copies of any payments made directly to the Ambulance Provider will be forwarded to the Consultant for accounting purposes in a timely manner. The Ambulance Provider agrees to generate any refund checks due to overpayments identified by the Consultant directly to the payer to which the refund is due, based on detailed information provided by the Consultant. The Ambulance Provider shall provide additional information as may be required by insurance companies or other agencies in order to facilitate the Consultant's obligations to the Ambulance Provider.

(c) The Ambulance Provider agrees to furnish to the Consultant to be made part of this agreement as an attachment: resolutions pertaining to this Scope of Services; specific write off policies; collections procedures; rates and fees to be charged by the Ambulance Provider and administered by Consultant as part of the Scope of Services performed under this agreement.

1.2 Upon receipt of the PCRs and Batch Log from the Ambulance Provider, the Consultant shall: set up a patient account in Consultant's proprietary software application and create a patient record; perform all billing operations including follow up statements and any necessary rebilling of EMS patient transport services provided by the Ambulance Provider to the subscriber's medical insurances, Medicare, Medicaid and any and all known secondary insurance providers; produce and forward CMS 1500 forms and/or electronic medical claims per payer's rules and regulations within the legal boundaries of all federal and state laws; produce and mail an initial invoice and subsequent statements to all private patient accounts on behalf of the Ambulance Provider; file any applicable appeals to insurance payers and/or Medicare and Medicaid on behalf of the patient if necessary to pursue the claim.

1.3 The Consultant shall: receive at its facilities all payments (except those directly deposited into the Ambulance Provider's account by insurances and Medicare/Medicaid via EFT) Explanations of Benefits and Electronic Remittance Advices; account for all payments; deposit all funds directly into the Ambulance Provider's "deposit only" account; forward deposit information to the Ambulance Provider within 24 hours of such deposit; initiate and forward refund information and adjustments made on behalf of the patient's account to the Ambulance Provider. The Consultant shall provide to the Ambulance Provider a minimum of four (4) standard reports each month including: a) Aged Accounts Receivable b) Month End Summary c) Annual Collection Statistics d) Transaction Journal. These reports will include information related to amounts billed, amounts collected and uncollected, insurance and Medicare/Medicaid allowable and disallowable.

1.4 The Consultant shall provide live customer service to Ambulance Provider's patients via toll free phone numbers to answer patient billing questions Monday through Friday from 8:00am through 6:00 pm, Pacific Standard Time (except Federal holidays).

1.5 The Consultant shall provide all labor, materials and equipment necessary to perform the work specified in the above scope of services.

2. CONFIDENTIAL INFORMATION:

2.1 Treatment of Confidential Information. Ambulance Provider's Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient to any third party except to those third parties operating under non-disclosure provisions no less restrictive than in this Section and who have a justified business "need to know". Ambulance Provider shall protect the deliverables resulting from Services with the same degree of care. This agreement imposes no obligation upon the Parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Ambulance Provider; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the Ambulance Provider and provided further that diligent efforts are undertaken to limit disclosure.

2.2 Confidentiality and Disclosure of Patient Information. Use and Disclosure of Protected Health Information*.* The parties hereto agree that in order for the Consultant to perform its duties as expected by the Ambulance Provider, it will be necessary for the Consultant to use and disclose Protected Health Information ("PHI"), as such term is defined at 45 CFR §164.501. The parties of this agreement further acknowledge and make part of this agreement as an attachment (Attachment A) to this agreement a "Business Associate Agreement" to be maintained and updated whenever applicable by either party of this agreement.

3. FEES, EXPENSES AND PAYMENT:

3.1 Fees. For and in consideration of the services provided by the Consultant identified above, the Ambulance Provider shall pay to the Consultant an amount not to exceed $22.50 per transport. In addition, the Ambulance Provider will pay actual postage for patient invoices and statements per the Scope of Services performed under this agreement. A $10.00 surcharge will be applied to any accounts transferred from a prior billing service. The Ambulance Provider shall remit payment for services rendered under this agreement to the Consultant within 30 days from receipt of Consultant's monthly invoice to the Ambulance Provider. Fees may be changed only via written amendment signed by both parties.

3.2 Payment of Taxes. The Consultant shall be liable for any and all federal, state, and local sales, excise taxes and assessments as a result of the payment for services rendered under this agreement.

Business Associate Agreement
Between the City of Richland and Systems Design West, LLC

This Business Associate Agreement ("Agreement") between the City of Richland and Systems Design West, LLC is executed to ensure that Systems Design West, LLC will appropriately safeguard protected health information {"PHI") that is created, received, maintained, or transmitted on behalf of the City of Richland in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F -Administrative Simplification, Sections 261, *et seq.,* as amended ("HIPAA"), and with the Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D - Privacy, Sections 13400, *et seq.,* the Health Information Technology and Clinical Health Act, as amended (the "HITECH Act").

A. General Provisions

1. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.

2. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.

3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA .

B. Obligations of Business Associate

Systems Design West, LLC agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;

2. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information ("e-PHI") and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;

3. Report to the City of Richland any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to the City of Richland without unreasonable delay but in no case later than 60 days after discovery of the breach;

4. In accordance with 45 CFR 164.502(e)(l)(ii) and 164.308{b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of

Systems Design West, LLC agree to the same restrictions, conditions, and requirements that apply to Systems Design West, LLC with respect to such information;

5. Make PHI in a designated record set available to the City of Richland and to an individual who has a right of access in a manner that satisfies the City of Richland's obligations to provide access to PHI in accordance with 45 CFR §164.524 within 30 days of a request;

6. Make any amendment(s) to PHI in a designated record set as directed by the City of Richland, or take other measures necessary to satisfy the City of Richland's obligations under 45 CFR §164.526;

7. Maintain and make available information required to provide an accounting of disclosures to the City of Richland or an individual who has a right to an accounting within 60 days and as necessary to satisfy the City of Richland's obligations under 45 CFR §164.528 .

8. To the extent that Systems Design West, LLC is to carry out any of the City of Richland's obligations under the HIPAA Privacy Rule, Systems Design West, LLC shall comply with the requirements of the Privacy Rule that apply to the City of Richland when it carries out that obligation;

9. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Systems Design West, LLC on behalf of the City of Richland, available to the Secretary of the Department of Health and Human Services for purposes of determining Systems Design West, LLC and the City of Richland's compliance with HIPAA and the HITECH Act;

10. Restrict the use or disclosure of PHI if the City of Richland notifies Systems Design West, LLC of any restriction on the use or disclosure of PHI that the City of Richland has agreed to or is required to abide by under 45 CFR §164.522; and

11. If the City of Richland is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.),* Systems Design West, LLC agrees to assist the City of Richland in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 CFR §681.2); (b) taking all steps necessary to comply with the policies and procedures of the City of Richland's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of the City of Richland agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity

theft; and (d) alerting the City of Richland of any Red Flag incident (as defined by the Red Flag Rules) of which **it** becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to the City of Richland of any threat of identity theft as a result of the incident.

12. Comply with all current rules and regulations pertaining to the OIG Compliance Program for ambulance suppliers and special bulletin regarding LEIE recommended screening of employees and any subcontractors.

C. Permitted Uses and Disclosures by Business Associate

The specific uses and disclosures of PHI that may be made by Systems Design West, LLC on behalf of the City of Richland include:

1. The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by the City of Richland to its patients;

2. Preparation of reminder notices and documents pertaining to collections of overdue accounts;

3. The submission of supporting documentation to carriers, insurers and other payers to substantiate the healthcare services provided by the City of Richland to its patients or to appeal denials of payment for the same; and

4. Other uses or disclosures of PHI as permitted by HIPAA necessary to perform the services that Systems Design West, LLC has been engaged to perform on behalf of the City of Richland.

D. Termination

1. The City of Richland may terminate this Agreement if the City of Richland determines that Systems Design West, LLC has violated a material term of this Agreement.

2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement, if feasible.

3. Upon termination of this Agreement for any reason, Systems Design West, LLC shall return to the City of Richland or destroy all PHI received

from the City of Richland, or created, maintained, or received by Systems Design West, LLC on behalf of the City of Richland that Systems Design West, LLC still maintains in any form. Systems Design West, LLC shall retain no copies of the PHI. If return or destruction is infeasible, the protections of this Agreement will extend to such PHI.

Agreed to this ____day of ____________, 2020

Systems Design West, LLC	**City of Richland**
______________________________	______________________________
Signature	*Signature*
______________________________	______________________________
Title	*Title*
_____________________	_____________________
Date	*Date*

COUNCIL AGENDA ITEM COVERSHEET

Richland Washington

Council Date: 6/2/2020 | Agenda Category: Resolutions - Adoption

Core Focus Area 1 - Promote Financial Stability & Operational Effectiveness
Core Focus Area 6 - Enhance Neighborhood & Community Safety

Subject:
Resolution No. 83-20, Authorizing a VHF Radio Antenna Colocation Sublease Agreement with Walla Walla County

Department:	Ordinance/Resolution Number:	Document Type:
Fire & Emergency Services	83-20	Contract/Agreement/Lease

Recommended Motion:
Adopt Resolution No. 83-20, authorizing the City Manager to sign and execute a colocation sublease agreement for placement of a VHF radio system antenna at the Wallula communications tower site.

Summary:
The proposed colocation sublease agreement with Walla Walla County provides access to the Wallula communications tower for placement of an antenna supporting the VHF radio system used by Fire, EMS, PUD and other agencies in south and east areas of Benton County.

Placement of an antenna at the Wallula site will significantly improve coverage in south and east Benton County, which in turn provides significant benefit to the coordination of Fire and EMS resources in the areas south of Kennewick and along the I-82 and Columbia River corridors in south Benton County.

Richland is responsible for administering the VHF radio system in Benton County through its Fire & Emergency Services Department. Technical support is provided by Richland's Energy Services Department. Costs for installation, maintenance and lease payments are shared across all agencies who utilize the VHF system.

Staff recommends approval of Resolution No. 83-20.

Fiscal Impact: Rent for the antenna space is $2,250 per year. This cost will be apportioned to the participating agencies who utilize the VHF radio system in Benton County.

Attachments:
1. Resolution No. 83-20
2. Proposed Wallula VHF Colocation Sublease Agreement

RESOLUTION NO. 83-20

A RESOLUTION of the City of Richland authorizing a VHF Radio System Antenna Colocation Agreement with Walla Walla County.

WHEREAS, the VHF radio system provides communication infrastructure for fire, EMS, and public utility district agencies in Benton County; and

WHEREAS, the City of Richland, as the Administrative Jurisdiction for Benton County Emergency Services, provides administrative oversight to the VHF radio system within Benton County; and

WHEREAS, radio signal coverage will be significantly improved in east and south Benton County by relocating antenna equipment to the Wallula tower site in Walla Walla County; and

WHEREAS, Walla Walla County has agreed to provide tower space and access through a colocation agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is hereby authorized to sign and execute a Radio System Antenna Colocation Agreement with Walla Walla County.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 2nd day of June, 2020.

____
Ryan Lukson, Mayor

Attested by:

____
Jennifer Rogers, City Clerk

Approved as to form:

____
Heather Kintzley, City Attorney

<u>ANTENNA CO-LOCATION AGREEMENT</u>

Re: Wallula Site

THIS ANTENNA CO-LOCATION LEASE AGREEMENT (the “Agreement”) is effective May 1, 2020 (the “Effective Date”) and entered into by and between the **City of Richland**, a Washington municipal corporation (“Lessee”), and the County of Walla Walla, a political subdivision of the State of Washington (“Lessor”). References in this Agreement to Walla Walla County include the Walla Walla County Board of Commissioners and Walla Walla County’s designated public safety communications management entity, WESCOM, managed by the City of Walla Walla. Lessee and Lessor are referred to individually herein as a “Party” and collectively as the “Parties.”

I. RECITALS

Whereas, Lessor leases the real property located in Walla Walla County, State of Washington, as described and depicted in **Exhibit A** to this Agreement (the “Property”); and

Whereas, Lessor has the right to sublease the Property to Lessee with consent of the Landlord, the Whitman College Board of Trustees; and

Whereas, Lessee operates a Transmitter system that serves the area in which the Property is located, and desires to construct upon a portion of the Property a radio communication antenna facility, including but not limited to a base station, antennas, transmitters, associated communication equipment and utilities as described in **Exhibits B** in this Agreement (the “Facility”); and

Whereas, Lessor and Lessee desire to enter this Agreement for the purpose of permitting Lessee to construct, operate, and maintain the Facility, and for conducting any other lawful activities on that portion of the Property which is subject to this Agreement; and

Whereas, the Parties may review additional opportunities to co-locate radio facilities in the future, with additional agreements being executed on a case-by-case basis.

Now, therefore, in consideration of the mutual covenants and promises contained herein, the Parties hereby agree as follows:

II. AGREEMENT

1. LEASE ACCESS.

1.1 Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, on the terms and conditions of this Agreement that portion of the Property which is occupied by Lessee to include a location on the Property to install, maintain and replace the Facilities.

1.2 Lessor hereby grants to Lessee during the term of this Agreement, including any renewals of this Agreement, an access license over the Property for use by Lessee for motor vehicle access to the Property for the purposes of installing, operating, maintaining and repairing the Facilities.

1.3 Lessee shall have, as appurtenant to the Premises, right to use the common areas relating to the Premises ("Common Areas") throughout the Initial Term or any Extended Term. The uses to be made of the Common Areas shall, unless otherwise agreed by the Parties, conform to the uses made of such Common Areas prior to the commencement of the Agreement Term. Lessee agrees not to utilize Common Areas as storage facilities or an overnight parking area.

2. TERM, COMMENCEMENT AND EXPIRATION.

This Agreement shall commence on the Effective Date first identified above, and the term of this Agreement shall be governed by the underlying lease between Walla Walla County and Whitman College Board of Trustees which expires October 31, 2023 (the "Lease Term"). So long as authorized by the underlying lease, this Agreement may be renewed in writing with similar terms and a rental fee adjustment. Any extension or modifications to the underlying lease may be executed at the sole option of the County. This Agreement may be terminated by either Party with upon twelve (12) months' written notice.

3. RENT.

3.1 In consideration of Lessee's rent, Lessee shall be entitled to the use of the Property at the Wallula Tower Site. Lessee's rent shall be $2,250 per year for the Agreement term. Rent for the upcoming year shall be paid on or before October 1 for the Term of the Agreement. Rent for the months of June, July, August and September 2020 shall be prorated at $187.50 per month, and due on October 1, 2020 in addition to the one-year payment.

3.2 In the event that a substantial change in either Party's antennae design, operating frequencies or power output occurs, a computer analysis by an engineering consultant may be necessary. The Party proposing the antennae design change is solely responsible for commissioning the analysis and paying all related expenses.

3.3 Lessor will provide Lessee with sufficient space on the Tower and on the Transmitter Site to install necessary base station radio cabinet(s) and to accommodate microwave equipment used by Lessee in the operation of its radio equipment.

4. POSSESSION.

If Lessor is unable to deliver possession of the Property at the commencement of this Agreement, Lessee shall not be liable for any rent until possession is delivered. Lessee may immediately terminate this Agreement if possession is not delivered within ninety (90) days of the Effective Date hereof.

5. CLEAN-UP.

Lessee shall maintain the Property it occupies in a clean and neat condition.

6. LESSOR'S RIGHT OF ENTRY.

Lessor agrees to permit Lessee and Lessee's agents and representatives to enter upon the Property at reasonable times for the purpose of inspecting the same.

7. USES.

7.1 The Property is to be used only in connection with operation of Lessee's communications equipment and for no other business or purpose without the prior written consent of Lessor. Lessee agrees not to occupy or use, or permit any portion of the Property to be used, for any purpose which is unlawful or deemed to be hazardous.

7.2 Lessee shall install and operate transmission equipment (the "Transmission Equipment") as described in **Exhibit B**. Lessee shall update **Exhibit B** as and when there are changes in transmission equipment installation configuration. Updated **Exhibit B** lists shall be mailed to Lessor.

7.3 The Parties mutually agree to comply with all laws, ordinances, orders, rules and regulations (municipal, county, state, and federal) relating to the use, condition or occupancy of the Property.

8. ENVIRONMENTAL MATTERS.

8.1 Lessor represents that it is not aware of any release of Hazardous Substances (as defined below) on the Property. Lessor will indemnify, protect, defend and hold harmless Lessee from and against all claims, suits, actions, causes of action, assessments, losses, penalties, costs, including clean-up costs, damages and expenses, including, without limitation, reasonable attorney's fees, sustained or incurred by Lessee pursuant to any federal, state or local laws, implementing regulations, common law or otherwise, relating to the release by Lessor or its agents, employees or contractors of any hazardous substances, toxic substances and/or contamination of any type whatsoever (collectively, Hazardous Substances) in, upon or beneath the Property.

8.2 With the exception of Hazardous Substances that are legally used in the normal course of its business, neither Lessor nor Lessee will bring to, transport across or dispose of any Hazardous Substances on the Property without the other's prior written approval, which approval will not be unreasonably withheld, except Lessee may keep on the Property substances used in back-up power units (such as batteries and diesel generators) commonly used in the wireless communications industry. Lessees' use of any approved substances constituting Hazardous Substances must comply with all applicable laws, ordinances and regulations governing such use.

9. INSURANCE; INDEMNIFICATION.

Lessee agrees to provide and maintain general liability and property damage coverage, which shall include motor vehicle liability and property damage coverage, with limits of not less than $2,000,000 per occurrence. Lessee shall provide a letter from its insurer documenting the particulars of this process. Said coverage shall not be discontinued or reduced without thirty (30) days prior written notice to Lessor. Lessee is obligated to defend, indemnify and hold Lessor harmless from all liabilities resulting from its use of the Property and work performed by Lessee or persons performing under Lessee's direction and authority at this Property.

10. ASSIGNMENT AND SUBLETTING.

Lessee may not assign this Agreement without prior written consent of Lessor. Lessee will not sublease any portion of the Property.

11. SURRENDER OF PREMISES.

Within thirty (30) days of expiration or termination of this Agreement, Lessee shall, at its expense: (i) remove its Facilities located at the Property; and (ii) quit and deliver up the Property to Lessor peaceably and quietly in as good order and condition as the same was on the date hereof, ordinary wear and tear excepted. Lessee shall repair any damage to the Site resulting from the removal of Lessee's property.

12. QUIET ENJOYMENT.

Lessor covenants that Lessee shall, and may peacefully have, hold and enjoy the Property, subject to the provisions of this Agreement, provided Lessee pays the Rent herein recited and performs all of Lessee's covenants and agreements herein contained.

13. COSTS AND ATTORNEYS FEES.

If by reason of any default on the part of Lessee it becomes necessary for Lessor to employ an attorney, or in case Lessor shall bring suit to recover any Rent due hereunder, or for breach of any provision of this Agreement or to recover possession of the Property, or if Lessee shall bring any action for any relief against Lessor, declaratory or otherwise, arising out of this Agreement, then the non-prevailing Party in such action shall pay the other Party's reasonable attorney's fees and all reasonable costs incurred by it in connection with such default or action.

14. DEFAULT.

If Lessee defaults in the payment of Rent, or defaults in the performance of any other covenants or conditions hereof, Lessor may give Lessee written notice of such default and if Lessee does not cure any such default within thirty (30) days (or commence reasonable efforts to cure), then Lessor may treat such occurrence as a breach of this Agreement.

15. INTERFERENCE.

15.1 Lessee shall not cause, by its transmission or activities at the Property, interference of any kind whatsoever to the activities or facilities of Lessor or others who have entered into an Agreement with Lessor prior to the execution of this Agreement (unless the other party has modified its transmission or activities after Lessee has executed the Agreement). If such interference occurs and cannot be reduced to levels reasonably acceptable to Lessor, Lessee must immediately cease such transmissions from the Property upon notice from Lessor until such interference is eliminated. If such interference cannot be eliminated within a reasonable time as shall be reasonably established by Lessor's consulting engineer, which shall not be less than ten (10) business days, then Lessor may elect to terminate this Agreement by giving ten (10) days prior written notice to Lessee. As used in this Agreement, "interference" means a condition existing which causes degradation of a transmission signal or otherwise constitutes interference within the meaning of the provisions of the recommended practices of the Electronics Industries Association and the rules and regulations of the FCC then in effect.

15.2 Lessee shall be afforded, and Lessor shall provide, the same interference protection described in 15.1 from any party that becomes a Lessee after execution of this Lease.

16. NOTICES.

Except as otherwise specifically set forth herein, any demand, request or notice which either Party hereto desires, or may be required to make or deliver to the other, shall be in writing and shall be deemed given when personally delivered, or when delivered by private courier service that customarily delivers on the next business day and issues receipts (such as Federal Express), or three (3) days after being deposited in the United States mail, in registered or certified form, return receipt requested, addressed as follows:

To Lessor:
Walla Walla County
Clerk of the Board
314 West Main Street
Room 203
Walla Walla, WA 99362

To Lessee:
City Manager
City of Richland
625 Swift Boulevard, MS-04
Richland, WA 99352

And to:
City Manager
City of Walla Walla
15 N. Third Avenue
Walla Walla, WA 99362

or to such other address, and/or person as either Party may communicate to the other by like written notice.

17. MISCELLANEOUS.

17.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit of Lessor, its successors and assigns, and shall be binding upon and inure to the benefit of Lessee, its successors and assigns.

17.2 Severability. Lessor and Lessee intend for this Agreement to comply with FCC rules, regulations and policies, the applicable state and local laws and regulations, and any covenants or restrictions of record. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect. The Parties agree that if any provisions are deemed unenforceable, they shall be deemed modified to the extent necessary to make them enforceable.

17.3 Authorized Signatories. The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated.

17.4 Law and Venue. The terms hereof shall be construed according to the laws of Washington State. Venue shall be Walla Walla County.

17.5 Captions. The captions in the Agreement are for convenience only and are not part of this Agreement.

17.6 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

17.8 Authority. Lessor covenants that it has the authority to enter into this Agreement, and agrees to pay rents due to Lessor hereunder.

17.9 Electronic Signatures. Consistent with Chapter 19.360 RCW as amended or recodified, execution of this Agreement may be by electronic signature, and the fact of such execution shall in no way negate or otherwise affect the Agreement's enforceability.

18. COMPLETE AGREEMENT.

This Agreement represents the entire agreement between Lessor and Lessee with respect to the subject matter addressed herein. No representations have been made by either Party that are not fully contained herein.

[Signature pages to follow]

LESSEE: City of Richland, WA

By: ______________________________
Cindy Reents, Richland City Manager

Landlord Consent:

____
Peter Harvey, Chief Financial Officer
Whitman College Board of Trustees

LESSOR: County of Walla Walla, WA

By: _______________________________
Todd L. Kimball, Chair
Walla Walla Board of County Commissioners

ACKNOWLEDGEMENTS

STATE OF WASHINGTON)
) ss.
COUNTY OF BENTON)

I certify that I know or have satisfactory evidence that **Cynthia D. Reents, Richland City Manager**, personally appeared before me and acknowledged that she signed this instrument and acknowledged it as her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: ______________

____
Printed Name: ____________________________
NOTARY PUBLIC in and for the State of
Washington, residing in Richland, WA

STATE OF WASHINGTON)
) ss.
COUNTY OF WALLA WALLA)

I certify that I know or have satisfactory evidence that **Todd L. Kimball, Chair of the Walla Walla County Commission,** personally appeared before me and acknowledged that he signed this instrument and acknowledged it as his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: ______________

____
Printed Name: ____________________________
NOTARY PUBLIC in and for the State of
Washington, residing in Walla Walla, WA

EXHIBIT A
DESCRIPTION OF PROPERTY

The premises referenced in the November 5, 1998 lease between the City of Walla Walla and the Whitman College Board of Trustees, which was assigned to Walla Walla County on May 24, 2011. The Premises is described as: A 50’ by 50’ piece of property in the Northwest Quarter of Section 6, Township 6 North, Range 32 E W.M., in Walla Walla County, State of Washington.

EXHIBIT B
WALLULA SITE EQUIPMENT

1ea 19” Equipment rack with cable management.

2ea Harris Mastr III Receiver chassis.

1ea Daniels rack mount chassis with 2 receivers. (initially, may expand to two chassis.)

1ea Astron rack mount 12VDC power supply and fuse distribution rack.

1ea Seismic support for rack.

All radio cabinet equipment will be installed in the 19” rack.

Tower Equipment:

1ea Multi-antenna mount. Currently holds 1ea VHF antenna and 2ea 900 MHz Enclosed Radome antennas. Will eventually have 3ea 900MHz antennas

4ea Antenna coax feed lines to antennas. (Initial coax count)

COUNCIL AGENDA ITEM COVERSHEET

Council Date: 6/2/2020

Agenda Category: Resolutions - Adoption

Core Focus Area 4 - Manage our Natural Resources
Core Focus Area 5 - Maximize Community Amenities

Subject:
Resolution No. 84-20, Authorizing a Purchase and Sale Agreement with Friends of Badger Mountain

Department:	Ordinance/Resolution Number:	Document Type:
Parks & Public Facilities	84-20	Resolution

Recommended Motion:
Adopt Resolution No. 84-20, authorizing the City Manager to sign and execute a purchase and sale agreement with Friends of Badger Mountain to acquire Tract E within Phase 1A of the Plat of Westcliffe Heights.

Summary:
The City's 2019-2024 Parks and Recreation Master Plan includes a multi-phase project to acquire property and construct an open space and trail corridor on Little Badger Mountain. The open space and trail corridor will ultimately connect the Benton County Badger Mountain Centennial Preserve with the City of Richland Amon Preserve.

The City's current 2020 Capital Improvement Plan (CIP) includes a project to acquire property on Little Badger Mountain. Friends of Badger Mountain (FOBM) have acquired 55,000 square feet (1.2626 acres) of vacant land from Pahlish Homes, known as Tract E within Phase 1A of the Plat of Westcliffe Heights, in an area where the City is planning an open space and trail corridor.

FOBM proposes to sell the land to the City for long-term ownership and management as open space. The purchase price of $225,000 ($4.09/sf) represents a price below fair market value based on area comparable sales.

By written agreement, FOBM will be responsible for maintaining the future trail surface.

Staff recommends approval of Resolution No. 84-20.

Fiscal Impact: The City will pay half of the closing costs and the full purchase price for the property, which is $225,000. This amount is budgeted and identified in the 2020 Capital Improvement Plan.

Attachments:
1. Resolution No. 84-20
2. Purchase and Sale Agreement

RESOLUTION NO. 84-20

A RESOLUTION of the City of Richland authorizing a Purchase and Sale Agreement with Friends of Badger Mountain for property on Little Badger Mountain.

WHEREAS, the City's 2019-2024 Parks and Recreation Master Plan includes a multi-phase project to acquire property and construct an open space and trail corridor on Little Badger Mountain; and

WHEREAS, the open space and trail corridor will ultimately connect the Benton County Badger Mountain Centennial Preserve with the City of Richland Amon Preserve; and

WHEREAS, the City's current 2020 Capital Improvement Plan (CIP) includes a project to acquire property on Little Badger Mountain; and

WHEREAS, Friends of Badger Mountain, a Washington non-profit corporation dedicated to preservation of the region's local ridges, has acquired 55,000 square feet (1.2626 acres) of vacant land known as Tract E in the Plat of Westcliffe Heights – Phase 1A; and

WHEREAS, this property is in an area where the City is planning an open space and trail corridor; and

WHEREAS, Friends of Badger Mountain proposes to sell the land to the City for long-term ownership and management as open space; and

WHEREAS, pursuant to an agreement with the City, Friends of Badger Mountain will construct and maintain public trails on the property; and

WHEREAS, based on area comparators, the purchase price of $225,000 ($4.09/sf) is below fair market value.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute a purchase and sale agreement and all necessary documents to acquire Tract E of the Plat of Westcliffe Heights – Phase 1A from Friends of Badger Mountain for the purchase price of $225,000.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

This space intentionally left blank.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 2nd day of June, 2020.

Ryan Lukson, Mayor

Attested by:	Approved as to form:
Jennifer Rogers, City Clerk	Heather Kintzley, City Attorney

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

Re: WestCliffe Heights, Phase 1A, Tract E

2282 SKYVIEW LOOP RICHLAND, WA 99352

This Agreement for Purchase and Sale of Real Property (the "Agreement") is made and entered into between the **CITY OF RICHLAND**, a Washington municipal corporation ("Purchaser"), and **FRIENDS OF BADGER MOUNTAIN** a Washington non-profit corporation ("Seller"). The Effective Date of this Agreement shall be determined pursuant to the terms of Section 3.2 herein.

1. Purchase and Sale of Property. Seller agrees to sell and Purchaser agrees to purchase, on the terms hereafter stated, the unimproved real property, located at 2282 Skyview Loop (WestCliffe Heights Development), City of Richland, Benton County, Washington which is legally described in **Exhibit A** attached hereto (hereinafter referred to as the "Property").

1.1. Laws and Rights. Purchaser acknowledges and agrees that the sale and conveyance of the Property to be made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws, orders, rules and regulations, and any and all outstanding rights of record or which are open and obvious on the ground.

1.2. Timing of Conveyance. The Property shall be conveyed to Purchaser at Closing by a Statutory Warranty Deed ("Deed") subject to the Exceptions accepted or deemed accepted by Purchaser pursuant to Section 4.1 below. The Deed shall contain the following restriction: Use of the property conveyed hereby is limited to natural open space preserve and non-motorized recreation (e.g. hiking, mountain biking, trail running, walking, and other similar uses) by the public; provided, however, such restriction shall not be interpreted to prevent other uses necessary to support and facilitate natural open-space preserve and non-motorized recreation, including, but not limited to construction and maintenance trails, trail features, and amenities for non-motorized public recreation (e.g., basalt benches, sun shelter, kiosks, or basalt donor monuments, and other similar structures) using motorized equipment as necessary for such construction and maintenance.

2. Purchase Price. The total purchase price for the Property shall be **Two Hundred and Twenty-Five Thousand Dollars and No Cents ($225,000)** (the "Purchase Price"). The Purchase Price shall be paid by Purchaser to Seller in the form of all cash to be deposited in an escrow account with Cascade Title Insurance Company (the "Title Company") at Closing (as defined in Section 6 below).

2.1. Earnest Money Deposit. As consideration for Seller's execution and delivery of this Agreement, Purchaser will deposit with the Title Company a certified or cashier's check or wire transfer in the amount of **Ten Thousand Dollars ($10,000)** within five (5) business days of the Effective Date (as defined in Section 3.1 below) (the "Earnest Money Deposit"). The Earnest Money Deposit shall be credited against the Purchase Price at Closing. Purchaser shall be entitled to direct the Title Company to place the Earnest Money Deposit in an interest bearing account of Purchaser's choice. The Earnest Money Deposit will be returned if Purchaser terminates this Agreement during the Due Diligence Period (as defined in Section 5 below) or as otherwise expressly provided in this Agreement. However, should Purchaser default or terminate this

Agreement at any time following the expiration or waiver of the Due Diligence Period, (a) the Earnest Money Deposit shall be disbursed to Seller pursuant to Section 9 herein, but only after any outstanding obligations for Title Company services as specified in 4.1 have been deducted and paid from the Earnest Money Deposit; (b) the escrow shall be canceled; and (c) neither party shall have any rights or responsibilities to the other except as otherwise expressly provided herein.

3. <u>Conditions Precedent to Sale</u>. This Agreement is made and executed by the parties hereto subject to the following conditions precedent:

3.1. <u>City Approval</u>. The execution and delivery of this Agreement by Purchaser is contingent upon approval of this Agreement by the City Council of the City of Richland in its sole discretion. In the event the Richland City Council does not approve this Agreement, this Agreement shall immediately terminate and be without any further force and effect, and without further obligation of either party to the other.

3.2. <u>Executed Contract</u>. The "Effective Date" of this Agreement is the date upon which both parties have signed this Agreement. If this Agreement is signed on different days, the "Effective Date" of this Agreement is the date of the last signing party. Notwithstanding the foregoing, Purchaser and Seller must sign this Agreement within fifteen (15) business days of approval from the City Council of the City of Richland. If signatures are not obtained from both parties within fifteen (15) business days, this Agreement shall automatically terminate and be without any further force and effect, and without further obligation of either party to the other.

4. <u>Title Matters</u>.

4.1. <u>Preliminary Title Report; Title Review</u>. Within five (5) business days after the Effective Date, Purchaser, at its sole cost and expense, shall order from the Title Company a preliminary title commitment for the Property, and copies of all documents referred to therein (the "Preliminary Commitment"), and upon receipt, furnish same to Seller.

(a) Purchaser shall have fifteen (15) days after receipt of the Preliminary Commitment to advise Seller in writing of any encumbrances, restrictions, easements or other matters contained in the Preliminary Commitment (the "Exceptions") to which Purchaser objects. All Exceptions to which Purchaser does not object in writing within the fifteen (15) day period shall be deemed accepted by Purchaser.

(b) If Purchaser objects to any Exceptions within the fifteen (15) day period, Seller shall advise Purchaser in writing within five (5) days of receipt of Purchaser's written objections (i) which Exceptions Seller will remove at Closing, (ii) which Exceptions the Title Company has agreed to insure around in the title policy to be issued at Closing (together with the proposed form of endorsement) and (iii) which Exceptions will not be removed or insured around.

(c) Within ten (10) days of receipt of Seller's response to Purchaser's written objections, and assuming Seller has not agreed to remove all exceptions to which Purchaser objects, Purchaser shall notify Seller in writing of Purchaser's election to either (i) terminate this Agreement, in which event the Earnest Money Deposit shall be returned to Purchaser, or (ii) waive its objections to the Exceptions the Title Company has agreed to insure around and the Exceptions

Seller will not remove or insure around, in which event such Exceptions shall be deemed accepted by Purchaser.

4.2. Title Insurance. Seller shall cause the Title Company to be prepared to deliver to Purchaser at Closing an Owner's ALTA Standard Coverage policy of title insurance issued by Title Company in the face amount of the Purchase Price, dated the date of Closing, insuring Purchaser's title subject to no exceptions other than the standard printed exceptions and the Exceptions deemed accepted by Purchaser pursuant to Section 4.1 above. The policy of title insurance shall also include such endorsements as Purchaser may reasonably request.

5. Due Diligence. Purchaser is granted a due diligence period until and including sixty (60) days after receipt of the Preliminary Commitment described in Section 4.1 above (the "Due Diligence Period"). Said Due Diligence Period may be extended an additional thirty (30) days upon written mutual agreement by both Purchaser and Seller. Purchaser may conduct, at its own expense, a full review of legal, title, environmental, archaeological and any other related issues subject to the terms of this Section 5. If the results of said review are unsatisfactory in Purchaser's sole discretion, Purchaser may, at its option, elect to terminate this Agreement by giving Seller written notice of termination prior to the end of the Due Diligence Period (the "Due Diligence Termination Notice"). In the event of termination by Purchaser under this section, this Agreement shall immediately terminate and be without any further force and effect, the Earnest Money Deposit shall be returned to Purchaser pursuant to Section 2.1; and neither party shall have any rights or responsibilities to the other except as otherwise expressly provided herein. If Purchaser fails to provide a Due Diligence Termination Notice to Seller on or before the expiration of the Due Diligence Period, the due diligence contingency set forth under this Section 5 shall be deemed waived by Purchaser, and this Agreement shall continue in full force and effect.

5.1. Reasonableness Required. All inspections of the Property shall occur at reasonable times agreed upon by Seller and Purchaser and shall be conducted so as not to unreasonably interfere with the use of the Property by Seller. Purchaser shall not do any invasive testing, sampling or drilling at the Property without first obtaining Seller's prior written consent (which may be conditioned or denied in Seller's sole and absolute discretion). Purchaser shall promptly restore the Property to substantially the same condition which existed prior to any such investigations, tests, surveys and other analyses, at Purchaser's sole cost and expense. Seller shall be entitled to have a representative present at all times while Purchaser or its representatives or agents are physically on the Property. Purchaser hereby agrees that it shall carry, and shall cause all representatives and agents of Purchaser entering the Property on behalf of Purchaser in furtherance of the right of access granted under this Agreement to carry, commercial general liability insurance with limits of not less than One Million and No/100 Dollars ($1,000,000) combined single limit and providing that such coverages are primary and naming Seller as an additional insured. Prior to any entry onto the Property by Purchaser or its agents, employees, consultants or representatives, Purchaser shall provide to Seller certificates evidencing such insurance coverage. Purchaser agrees to indemnify and hold Seller harmless of and from any claim for damages or injuries arising from Purchaser's inspections of the Property; such obligations shall survive Closing or any termination of this Agreement.

6. Closing. Closing shall occur in the office of the Title Company on or before the date that is thirty (30) days after the expiration or waiver of the Due Diligence Period. Purchaser and Seller shall deposit in escrow with Title Company all instruments and documents reasonably necessary to complete the transaction in accordance with this Agreement, including, but not limited to, the Deed. As used herein, "Closing" or "date of Closing" means the date on which all appropriate documents are recorded and the proceeds of sale are available for disbursement to Seller.

6.1. Closing Costs; Prorations. At Closing, Seller shall pay (i) the premium for the standard coverage policy of title insurance and the endorsements required to insure around the Exceptions the Title Company agreed to insure around in accordance with Section 4 above, (ii) deed or real property transfer taxes, and (iii) one-half of Title Company's escrow fees and charges. Purchaser shall pay (i) the costs of the extended coverage portion of the policy of title insurance and any title insurance endorsements required by Purchaser (other than the costs of the title insurance endorsements to be provided by Seller pursuant to the first sentence of this Section 6.1), and (ii) one-half of Title Company's escrow fees and charges. Real property taxes, assessments, surface water management charges, utilities and other expenses of the Property shall be prorated as of the date of Closing with Purchaser bearing the costs of the date of Closing. All other closing costs shall be paid and allocated in accordance with the custom in the county in which the Property is located. Each party shall be responsible for its own legal, accounting and consultant fees.

7. Covenants, Representations and Warranties.

7.1. Seller's Covenants. Seller hereby covenants and agrees as follows:

(a) From the Effective Date through the Closing Date, Seller shall not make any material alterations to the Property or to any of the licenses, permits, legal classifications or other governmental regulations relating to the Property, nor enter into any leases or agreements pertaining to the Property which are not terminable, without penalty, on 30 days' notice, without Purchaser's prior written consent. Construction of a gravel surfaced trails for public recreation use shall not constitute a material alteration for purposes of this section.

(b) From the Effective Date through the Closing Date, Seller shall not voluntarily cause to be recorded any encumbrance, lien, deed of trust, or easement against the title to the Property without Purchaser's prior consent.

(c) From the Effective Date through the Closing Date, Seller will operate and maintain the Property in a manner consistent with Seller's past practices relative to the Property and so as not to cause waste to the Property.

7.2. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties to Purchaser, each of which shall be true on the Effective Date and on the date of Closing. Seller shall immediately provide Purchaser with written notice of any event which would make any representation or warranty set forth below materially incorrect or untrue, and upon receipt of such notice, Purchaser may elect to terminate this Agreement. Upon Purchaser's election to terminate, this Agreement shall be without any further force and effect, and without further obligation of either part to the other. If this Agreement is terminated under this section, the Earnest Money Deposit shall be returned to Purchaser.

(a) Seller has full power and authority to enter into and carry out the terms and provisions of this Agreement and to execute and deliver all documents which are contemplated by this Agreement, and all actions of Seller necessary to confer such authority upon the persons executing this Agreement and such other documents will have been, or will be, taken.

(b) Seller has not received any written notice from any governmental authorities or regulatory agencies that eminent domain proceedings for the condemnation of the Property are pending or threatened.

(c) Seller has not received any written notice of pending or threatened investigation, litigation or other proceeding before a local governmental body or regulatory agency which would materially and adversely affect the Property.

(d) Seller has not received any written notice from any governmental authority or regulatory agency that Seller's use of the Property is presently in violation of any applicable zoning, land use or other law, order, ordinance or regulation affecting the Property.

(e) To Seller's knowledge, no special or general assessments have been levied against the Property except those disclosed in the Preliminary Title Report, and Seller has not received written notice that any such assessments are threatened.

(f) Seller is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

7.3. <u>Purchaser's Representations</u>. Purchaser hereby makes the following representations to Seller, each of which shall be true on the Effective Date hereof and on the date of Closing.

(a) Purchaser is a Washington municipal corporation, duly formed and organized, validly existing and in good standing under the laws of the State of Washington, and has full power and authority to enter into and carry out the terms and provisions of this Agreement, and to execute and deliver all documents which are contemplated by this Agreement, and all actions of Purchaser necessary to confer such authority upon the persons executing this Purchase Agreement and such other documents have been, or will be, taken.

(b) Purchaser represents that it has sufficient funds to close this transaction.

(c) Purchaser further represents that the Property will be developed and held by Purchaser as open space for public, non-motorized recreation.

8. <u>Casualty and Condemnation</u>.

8.1. <u>Material Casualty or Condemnation</u>. If prior to the Closing Date: (i) the Property shall sustain damage caused by casualty which would cost ten thousand dollars ($10,000) or more to repair or replace; or (ii) if a taking or condemnation of any portion of the Property has occurred, or is threatened, which would materially affect the value of the Property, either Purchaser or Seller may, at its option, terminate this Agreement by written notice to the other party given within two (2) business days after notice of such event. If prior to the Closing Date neither party provides said termination notice within such two (2) business day period, the Closing shall take place as provided herein with a credit against the Purchase Price in an amount equal to any insurance proceeds or condemnation awards actually collected by Seller and an assignment to Purchaser at Closing of all Seller's interest in and to any insurance proceeds or condemnation awards which may be due but unpaid to Seller on account of such occurrence.

8.2. Immaterial Casualty or Condemnation. If prior to Closing Date, the Property shall sustain damage caused by casualty which is not described in Section 8.1, or a taking or condemnation has occurred, or is threatened, which is not described in Section 8.1, neither Purchaser nor Seller shall have the right to terminate this Agreement. Closing shall take place as provided herein with a credit against the Purchase Price equal to (i) the cost to repair that portion of the Property so damaged by insured casualty, or (ii) an amount equal to the anticipated condemnation award, as applicable. At Closing, Purchaser shall assign to Seller all rights or interest in and to any insurance proceeds or condemnation awards which may be due on account of any such occurrence.

9. Purchaser's Remedies. If Seller fails without legal excuse to complete the sale of the Property in accordance with the terms of this Agreement, Purchaser may elect one of the following remedies (Purchaser hereby waiving any and all other remedies): (a) specific performance of this Agreement (provided an action thereon is commenced with thirty (30) days of Seller's failure to perform), or (b) terminate this Agreement and receive a refund of the Earnest Money Deposit.

10. Liquidated Damages. IN THE EVENT OF DEFAULT BY PURCHASER IN THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, SELLER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT FORTHWITH AND WITHOUT FURTHER OBLIGATION TO PURCHASER, AND TO KEEP THE EARNEST MONEY DEPOSIT AS LIQUIDATED DAMAGES. PURCHASER AGREES THAT IT IS DIFFICULT TO ASSESS THE AMOUNT OF DAMAGES INCURRED BY THE SELLER IN THE EVENT OF A DEFAULT BY THE PURCHASER. AS OF THE ENTRY OF THIS CONTRACT, THE AMOUNT OF THE EARNEST MONEY DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES.

11. Miscellaneous.

11.1. Time of the Essence. Time is of the essence of every provision of this Agreement.

11.2. Notices. Whenever any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal delivery (including delivery by written electronic transmission) or by certified, registered or Express United States Mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:

If to Purchaser: City of Richland
Attn: Parks and Public Facilities Director
625 Swift Boulevard
Richland, Washington 99352
(509) 942-7578

If to Seller: Friends of Badger Mountain
P.O. Box 24
Richland, WA 99352
Phone: (509) 521-8226

Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof or two (2) business days after having been mailed as provided above, as the case may be.

11.3. Assignments and Successors. Purchaser may not assign this Agreement without Seller's written consent. Any assignment made without Seller's consent is null and void, and does not relieve the Purchaser of any liability or obligation hereunder.

11.4. Captions. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

11.5. Exhibits. All exhibits attached hereto shall be incorporated herein by reference as if set out herein in full.

11.6. Binding Effect. Regardless of which party prepared or communicated this Agreement, this Agreement shall be of binding effect between Purchaser and Seller only upon its execution by an authorized representative of each such party.

11.7. Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Purchase and Sale Agreement or any amendment or exhibits hereto.

11.8. Counterparts. This Agreement may be executed in several counterparts, including by portable document format (.pdf), each of which shall be an original, but all of such counterparts shall constitute one such Agreement.

11.9. Time. Any extension of time granted for the performance of any duty under this Agreement shall not be considered as an extension of time for the performance of any other duty under this Agreement. As used in this Agreement, "business day" refers to any day which is not a Saturday, Sunday or a holiday in the State of Washington. In the event the time for performance of any obligation hereunder shall fall on a Saturday, Sunday or a holiday, such time for performance shall be extended to the next business day.

11.10. Merger. The delivery of the Deed and any other documents and instruments by Seller and the acceptance and recordation thereof by Purchaser shall effect a merger, and be deemed the full performance and discharge of every obligation on the part of Purchaser and Seller to be performed hereunder, except those clauses, covenants, warranties and indemnifications specifically provided herein to survive the Closing.

11.11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. The parties agree that Benton County is the appropriate venue for filing of any civil action arising out of this Agreement, and both parties expressly agree to submit to personal jurisdiction in Benton County Superior Court.

11.12. Scrivener. Both Seller and Purchaser have participated in the drafting of this Agreement. The Agreement shall not be construed for or against any party based on their participation in drafting.

[*Signature Page to Follow*]

IN WITNESS WHEREOF, Purchaser has executed this Agreement on the date shown below its signature, and Seller has accepted on the date shown below its signature.

CITY OF RICHLAND – PURCHASER

By: Cynthia D. Reents
Its: City Manager

Date

FRIENDS OF BADGER MOUNTAIN – SELLER

By:
Its:

5-22-2020
Date

APPROVED AS TO FORM:

By: Heather Kintzley, City Attorney

Exhibit A

Legal Description:

WESTCLIFFE HEIGHTS PHASE 1A TRACT E RECORDED IN VOLUME 15 OF PLATS AT PAGE 629, RECORDS OF BENTON COUNTY, WASHINGTON. AF#2018-037403, 12/21/2018