

**YARROW POINT
TOWN COUNCIL MEETING AGENDA**

June 8, 2021

**7:00 p.m. via conference call at:
206-485-3849 Conference ID: 384 358 019#**

With the passage of the Town's Proclamation of Local Emergency, Town Hall is closed to the public. Council participation in this meeting will be by teleconference/online only. Members of the public may also participate by phone/online. Individuals wishing to speak live during the Virtual Town Council meeting should register their request with the Deputy Clerk at 425-454-6994 or email depclerk@yarrowpointwa.gov and leave a message before 4:30pm on the day of the June 8 Council meeting. Please reference Public Comments for June 8 Council Meeting on your correspondence. The Deputy Clerk will call on you by name or telephone number when it is your turn to speak. If you call in via telephone, please unmute yourself by dialing *6 when it is your turn to speak. If you have not registered, wait for the Deputy Clerk to ask for non-registered public comments, unmute your phone, and state your name and comment topic. Wait for the Deputy Clerk to call on you before making your comment. Speakers will be allotted 3-minutes for your comment and will be asked to stop when you reach the 3-minute limit.

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+1 206-485-3849,,384358019# United States, Seattle
Phone Conference ID: 384 358 019#

PLEDGE OF ALLEGIANCE

CALL TO ORDER: Mayor Dicker Cahill

COUNCIL ROLL CALL: Carl Scandella, Stephan Lagerholm, Andy Valaas, Mary Elmore, and Steve Bush

APPEARANCES:

Members of the public may speak concerning items that either are or are not on the agenda. The Council takes these matters under advisement. Please state your name and address and limit comments to 3 minutes. If you call in via telephone, please unmute yourself by dialing *6 when it is your turn to speak. Comments via email may be submitted to depclerk@yarrowpointwa.gov or regular mail to: Town of Yarrow Point 4030 95th Ave NE Yarrow Point, WA. 98004.

The Mayor will present legalities of how public meetings must be held and what essential business can be discussed during the COVID-19 Pandemic, in accordance with State proclamations and guidelines.

1. MINUTES

A. Minutes of regular meeting of May 11, 2021.

2. CONSENT CALENDAR

Consists of routine items for which Council discussion is not required. A Councilmember may request that an item be moved to Regular Business for discussion. Consent items are approved with one vote.

3. STAFF REPORTS

REGULAR BUSINESS:

- 4. AB 21-27 – Gray & Osborne change order & project summary**
- 5. AB 21-28 – Comcast Franchise/ Ordinance No. 710 – For approval**
- 6. AB 21-29 – CIP/TIP Plan – 2022-2027**
 - A. Public Hearing
 - B. Ordinance No. 712 – Ordinance Adopting CIP/TIP for 2021-2026
- 7. AB 21-30 – Update on process to reclassify Sally's Alley from a road into a park**
- 8. AB 21-31 – Appointment of Mayor Pro Tem**
- 11. MAYOR & COUNCIL REPORTS**
 - Discuss Town radar sign data collection statistics
- 12. ADJOURNMENT**

*To subscribe to our email list, email Town Hall at: townhall@yarrowpointwa.gov
Town of Yarrow Point, 4030 95th Ave. NE, Yarrow Point, WA 98004
425-454-6994, townhall@yarrowpointwa.gov*

**TOWN OF YARROW POINT
COUNCIL REGULAR MEETING (TELECONFERENCE) MINUTES
May 11, 2021
7:00 pm**

The following is a summary of the proceedings and is not a verbatim transcript.

CALL TO ORDER:

Mayor Dicker Cahill called the meeting to order at 7:03 pm

PRESENT:

Mayor: Dicker Cahill

Councilmembers: Stephan Lagerholm
Carl Scandella
Mary Elmore
Andy Valaas
Steve Bush

Staff: Bonnie Ritter – Clerk-Treasurer
Austen Wilcox – Deputy Clerk
Mona Green – Town Planner
Stacia Schroeder
Scott Missall – Town Attorney
Emily Miner – Town Deputy Attorney

Guests: Terry Davis – Comcast
Steve Fleming – Resident
Greg Hoyle – Resident
Laurie Bugbee – Resident
Gordon Webb – Resident

APPEARANCES:

Steve Fleming resident at 3798 94th Ave NE discussed a petition he submitted to the Town regarding Sally's Alley following the Park Board's unanimous vote at their regular April 27, 2021 meeting to reclassify Sally's Alley from a road to a park. The petition includes 136 signatures requesting that the Town Council, Mayor, and Planning Commission adopt a similar resolution designating Sally' Alley as a park, natural area, greenway, or other designation for the purpose of protecting and preserving the natural processes and/or features with an emphasis directed toward nature and the conversation of the trees, flora, fauna and other natural amenities of Sally's Alley. Please consider taking whatever action is necessary to protect and preserve Sally's Alley.

Greg Hoyle resident at 3817 95th Ave NE referenced late former resident Peter Swindley and his many architectural home designs in Yarrow Point including Town Hall. Mr. Hoyle suggests naming Town Hall after Peter Swindley to remember him.

Councilmember Scandella seconded Mr. Hoyle's idea and shared positive reflections on Peter Swindley.

Mayor Cahill thanked Mr. Hoyle for his suggestion and shared his own positive reflections on Peter Swindley. Mayor Cahill stated that Town Administration will consider the idea but must follow parameters of consistency as the Town currently does not have any buildings named after individuals.

Mayor Cahill addressed the petition and comments regarding Sally's Alley stating that there is no objection to the preservation of Sally's Alley, however, there will be no vote from the Council tonight as the Town needs to follow the correct course of action to put the reclassification in process. The Town's Attorney will work with Mayor and staff to formulate a plan to address legalities and the topic will be turned over to the Planning Commission to review and provide a recommendation to Council.

PUBLIC MEETING GUIDELINES

Attorney Missall presented legalities of how public meetings must be held and what essential business can be discussed during the COVID-19 Pandemic, in accordance with State proclamations and guidelines.

MOTION: Councilmember Valaas moved to reorder agenda items AB 21-25 and AB 21-24 after AB 21-20. Councilmember Scandella seconded the motion.

VOTE: 5 For, 0 Against. Motion carried.

1. MINUTES

Minutes of regular meeting April 13, 2021.

MOTION: Councilmember Valaas moved to approve the regular meeting minutes of April 13, 2021 as presented. Councilmember Bush seconded the motion.

VOTE: 4 For, 0 Against. 1 Abstained. Motion carried. Councilmember Lagerholm abstained as he was not present at the April 13, 2021 Council meeting.

2. CONSENT CALENDAR:

Mayor Cahill reported on the following large expenditure items for the month of April.

- Quarterly payment to CHPD.
- Fire – semiannual payment.
- PGH Construction.

MOTION: Councilmember Valaas moved to approve the Consent Calendar as presented including the Payment Approval Report dated 5/5/2021 approving payments as shown totaling \$28,596.11 plus payroll, benefits, and tax expenses of \$373,087.80 as shown on the attached payroll and benefits reports for a grand total of \$401,683.91. Councilmember Elmore seconded the motion.

VOTE: 5 For, 0 Against. Motion carried.

3. STAFF REPORTS:

A. Police Report

Mayor Cahill explained that CHPD could not attend the meeting as they were on call for a possible disruption in Bellevue.

Mayor Cahill stated that he and Councilmember Valaas will visit CHPD to better understand the way they create their police reports for the Council packet each month.

B. Engineer Reports

2019 NE 42nd Street/ 91st Ave NE Stormwater Upsizing & UGC Project

Town Engineer Schroeder reported that the Town is officially halfway through the underground conversion project. PGH's primary focus this week (5/3) is completing the NE 42nd Street joint utility trench in time for PSE's line crew scheduled to be on-site Monday 5/10. In the background, Mayor Cahill and she continue to work with the four individual property owners on this street that need to underground their overhead service lines (4205, 9035, 9030, and 9004).

The following activities are scheduled over the next month:

- PGH will focus on completing the joint utility trench on 91st Ave NE;
- PSE will install underground mainline on NE 42nd St starting the week of 5/10;
- Comcast will install underground mainline on NE 42nd Street beginning the week of 5/17;
- Lumen (CenturyLink) will install underground mainline on NE 42nd beginning the week of 5/24;
- PSE/Comcast/Lumen will reiterate same type of installation schedule on 91st Ave NE starting with PSE the week of 5/24.

There was a change to the original plan at the west end of NE 42nd Street. The original plan was to install a large underground PSE vault at the entry to the road end beach area (just off the asphalt). However, when PGH attempted to lower the vault on Monday 4/26 to make room for the sloped riser cap, they encountered the sanitary sewer main trunk line which was located in the field 5-ft farther south than what was shown on the plans. In the hours that followed Town staff evaluated several options with the help of PSE, PGH, and our project's civil engineer and inspector. Each scenario had drawbacks, but the Town felt our best option was to install a pad mount transformer (above-ground green box) just outside the park next to the new Lumen underground vault that was already installed just west of 9009's lower driveway. She and Mayor Cahill have reached out to the two affected property owners to alert them of the change.

Councilmember Bush discussed the ongoing storage of materials in the Town's ROW in front on residents' homes. The Town needs to communicate with the contractors of future capital construction projects to not allow long term storage in the ROW. Town Engineer Schroeder noted that the pipes should be removed soon.

C. Permit System Transition from Permit-N-Force to Caselle Community Development Module

Deputy Clerk Austen Wilcox reported that at the beginning of this year, the Town began a transition from the old permit system ‘Permit-N-Force’ (PNF), which the Town began using around 2008, to a new permit module. We learned at the start of this year that PNF is no longer supported and the license ran out.

Caselle, (the same electronic finance record keeping system that the Town uses), purchased PNF and offered their own permit module at no cost to us. Since January, it has been a slow transition as all of our contacts and permit forms had to either be recreated or implemented into the new system. All prior permit records are still in PNF as they were not able to transfer those over to Caselle but they are still accessible in PNF. At the end of April, training began, the system was initiated and the process of slowly phasing PNF out began. The Caselle module is working well and it includes a lot of the same functions that PNF had.

Councilmember Valaas suggested looking into the commonly used “My Building Permit” program and Mayor Cahill stated that he would inquire with Clyde Hill about their experience with it.

REGULAR BUSINESS

4. AB 21-20: Comcast Franchise/ Ordinance No. 710

Comcast is requesting a new franchise agreement. At the April 13, 2021 regular Council meeting, Town Deputy Attorney Emily Miner shared that Comcast and the Town are operating under an expired AT&T franchise that Comcast took over. The purpose of the new franchise is to set new terms and regulations. The Town is authorized, through state and federal statutes to grant and renew cable franchises for the installation, operation, and maintenance of cable systems. The authority to grant franchises for the use of its streets and other public properties is contained in RCW 35A.47.040. Council reviewed and Councilmember Valaas identified the following issues:

- Franchise contained the “now therefore” clause twice.
- Perceived discrepancy between the franchise and the letter clause.

Deputy Attorney Miner addressed the issues and has brought the Franchise back to Council for a second reading and request for approval. She discussed some grammatical/scrivener’s errors to fix.

Terry Davis, Senior Director, External-Government Affairs, provided further info on specifications listed in the Franchise.

Councilmember Valaas referenced language discussing the ability for Comcast to install aerial power whereas the Yarrow Point Municipal Code requires undergrounding.

Terry Davis suggested language to call out that service lines must be underground if power and phone are underground.

The discussion was tabled until the regular June Council meeting to allow the Town's attorney to clarify the underground requirement and correct the scrivener's errors.

5. AB 21-25: Park Board's vote to reclassify Sally's Alley from a road into a park; next steps

At the April 27, 2021 regular Park Board meeting, the Park Board discussed the future development of the lots located at the east and west ends of Sally's Alley. To prevent threats or opportunities to retain or improve Sally's Alley, the Park Board unanimously voted to reclassify Sally's Alley from a road into a park. The Park Board requests the Council's consideration including Town legal counsel's direction.

Mayor Cahill reiterated that Town staff and legal counsel need to formulate a plan of procedure for reclassifying Sally's Alley from a road into a park.

Attorney Scott Missall discussed legalities of how Town rights of ways are regulated. The Planning Commission will need to review and make a recommendation to the Town Council. The following items need to be addressed:

- Obtain title report.
- Locate boundaries. A survey engineer needs to identify them.
- Attorney and staff need to formulate a plan.

Laurie Bugbee resident at 9426 NE 37th Pl discussed when Dean Homes purchased a portion of Sally's Alley from the Town. The Town did not vacate Sally's Alley from being a road at that time.

6. AB 21-24: Sally's Alley Master Plan bid proposal from JGM Architects

At the April 27, 2021 regular Park Board meeting, the Park Board discussed improvements to Sally's Alley and creating a Master Plan. The Park Board solicited JGM Architects who has provided professional design services for several Town projects. JGM proposes to provide the design services described in the Scope of Services above on a time and materials basis to a maximum fee of \$3,000.00.

Council reviewed and discussed the following exhibits:

- Email from Park Board Chairman John McGlenn
- JGM Sally's Alley Master Plan – Scope of Work dated April 25, 2021

Council tabled the discussion until Town staff and legal Counsel formulate a plan to of procedure for reclassifying Sally's Alley from a road into a park.

Gordon Webb resident at 9420 NE 37th Pl stated that the process of reclassifying Sally's Alley from a road into a park should be expedited.

Mayor and Council responded to Mr. Webb acknowledging his request.

7. AB 21-21: Capital Improvement Plan/Transportation Improvement Plan 2022-2027

Town Engineer Stacia Schroeder reported on the latest information available from the updated 2020 Stormwater Management Plan.

The Council reviewed the following exhibits:

- Capital Improvement Plan – Transportation Plan (2022-2027)
- Capital Improvement Plan Funds Exhibit
- 2020 SWMP CIP Recommendations
- 2020 SWMP CIP Map

Council discussed the following projects to consider:

- ROW parking spot improvements.
- Garage for Public Works Department.

8. AB 21-22: Revisions to the Municipal Code to eliminate the contradiction between the Code and the Design Standards on driveway width/Ordinance No. 711

At the regular April 13, 2021 Council meeting, Councilmember Valaas stated that the Design Standards for driveway width do not match the Town's Municipal Code reference. Mayor Cahill noted that the reference of 20' width max (currently the Town's practice) should be kept. Mayor Cahill directed Town Planner Mona Green to work with the Town Attorney to eliminate the contradiction.

Attorney Scott Missall discussed the edits in proposed Ordinance No. 711.

MOTION: Councilmember Scandella moved to approve Ordinance No. 711, an Ordinance of the Town of Yarrow Point, Washington amending Yarrow Point Municipal Code sections 17.16.010 and 12.04.030 to correct inconsistencies regarding driveway width and requirements in the Municipal Code and adopted Town Design Standards. Councilmember Valaas seconded the motion.

VOTE: 5 For, 0 Against. Motion carried.

9. AB 21-23: Revisions to the Municipal Code to eliminate the contradiction between two section of the Code regarding the ability to count the area of pipe-stem driveway in lot area

The issues were addressed in AB 21-22.

10. AB 21-26: Roundabout Safety

Councilmember Lagerholm shared a list of vehicle accidents since last year in the roundabout.

Mayor and Council discussed the following measures to increase safety in the roundabout:

- Increase signage on existing poles.
- Staff will pull data from the Town's speed limit radar signs to check their effectiveness.

11. MAYOR AND COUNCIL REPORTS:

Mayor

Points 4th of July Celebration

Mayor Cahill reported that activities this year will be minimal due to Covid-19 restrictions. There may still be some smaller activities that take place. Attorney Missall will look into the possibility of a “spontaneous street dance.” Mayor Cahill has been in discussion with the Chair of the Points 4th Committee, and they are closely following the State guidelines for reopening. The Town will broadcast news to the residents as more details unfold.

Councilmember Valaas

Utility Tax Revenue

The Town is currently auditing utility tax intake revenue from its providers. Councilmember Valaas shared that Town code requires 6% on water and sewer utility tax however, City of Bellevue is paying 5%. Mayor Cahill responded that Town staff are researching it.

12. ADJOURNMENT:

MOTION: Councilmember Valaas moved to adjourn the meeting at 9:28pm. Councilmember Scandella seconded the motion.

VOTE: 5 For, 0 Against. Motion carried.

APPROVED:

ATTEST:

Dicker Cahill, Mayor

Bonnie Ritter, Clerk-Treasurer

**Business of The Town Council
Town of Yarrow Point, WA**

Consent Calendar
June 8, 2021

Consent Calendar	Proposed Council Action: Approve Consent Calendar
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Presented by: Clerk-Treasurer

Exhibits: Consent Calendar Items

Summary:

The Consent Calendar consists of items considered routine for which a staff recommendation has been prepared, and for which Council discussion is not required. A council member may request that an item be removed from the Consent Calendar and placed under Regular Business for discussion. Items on the Consent Calendar are voted upon as a block and approved with one vote.

The following document are included in this section:

- Payment Approval and Payroll Reports

Recommended Action:

Move to: Approve the Consent Calendar as presented including the Payment Approval Report dated 6/3/2021 approving payments as shown totaling **\$ 267,215.22** plus payroll, benefits, and tax expenses of **\$ 29,548.02** as shown on the attached payroll & benefits report for a total of **\$296,763.24**.

Vendor	Vendor Name	Description	Invoice Date	Amount Paid	YTD Payments
Banner Bank					
700	Banner Bank	ROW Maintenance Supplies	05/18/2021	138.55	
700	Banner Bank	Town cell phones	05/18/2021	277.43	
700	Banner Bank	Constant Contact	05/18/2021	77.07	
700	Banner Bank	Server warranty-1,954.32; AWS-497.58; misc.	05/18/2021	2,943.96	13,564.05
Total Banner Bank:				3,437.01	
CASELLE, INC.					
1300	CASELLE, INC.	Contract support and maintenance - June and July	05/01/2021	1,420.30	4,970.40
Total CASELLE, INC.:				1,420.30	
CINTAS					
274	CINTAS	Annual inspection of fire hydrants	05/28/2021	214.70	214.70
Total CINTAS:				214.70	
City of Bellevue Utilities					
213	City of Bellevue Utilities	AC Water Main 2020 Phase 1 - 401690136.369900.00	05/06/2021	9,358.50	
213	City of Bellevue Utilities	AC Waater Main 2020 Phase 2 - 401690137.369900.0	06/02/2021	61,788.12	71,146.62
Total City of Bellevue Utilities:				71,146.62	
Comcast					
301	Comcast	Internet and fax line - 2 months	05/24/2021	516.23	1,513.31
Total Comcast:				516.23	
Comcast Business- VoiceEdge					
1374	Comcast Business- VoiceE	Town Hall Phones	05/15/2021	505.59	1,510.95
Total Comcast Business- VoiceEdge:				505.59	
CRYSTAL AND SIERRA SPRINGS					
1046	CRYSTAL AND SIERRA S	Water cooler	05/08/2021	56.06	294.43
Total CRYSTAL AND SIERRA SPRINGS:				56.06	
DIGITAL REPROGRAPHICS					
256	DIGITAL REPROGRAPHIC	May Council packets	05/07/2021	389.89	
256	DIGITAL REPROGRAPHIC	Pring 42nd St Survey	05/28/2021	27.47	2,238.71
Total DIGITAL REPROGRAPHICS:				417.36	
Gaylynn Brien					
1151	Gaylynn Brien	Sales Tax reports for May	05/31/2021	50.00	250.00
Total Gaylynn Brien:				50.00	
Gray & Osborne, Inc.					
9043	Gray & Osborne, Inc.	42nd - 91st SW Upsizing and UGC Project	04/30/2021	12,139.24	77,399.53
Total Gray & Osborne, Inc.:				12,139.24	
ISOsource					
1301	ISOsource	Councilmember email issues	04/30/2021	306.00	
1301	ISOsource	Monthly billing for May	05/12/2021	55.05	2,743.01

Vendor	Vendor Name	Description	Invoice Date	Amount Paid	YTD Payments
		Total ISOOutsource:		361.05	
KING COUNTY FINANCE					
600	KING COUNTY FINANCE	2% Liquor Profits and Excise Tax - 1st Qtr 2021	05/24/2021	73.69	148.42
		Total KING COUNTY FINANCE:		73.69	
KIRKLAND MUNICIPAL COURT					
111	KIRKLAND MUNICIPAL C	Court Costs	05/17/2021	201.36	201.36
		Total KIRKLAND MUNICIPAL COURT:		201.36	
MONA H. GREEN					
219	MONA H. GREEN	Building permits	05/31/2021	607.50	
219	MONA H. GREEN	Pre-applications	05/31/2021	33.75	
219	MONA H. GREEN	Site development	05/31/2021	101.25	
219	MONA H. GREEN	SEPA	05/31/2021	810.00	
219	MONA H. GREEN	Mechanical permits	05/31/2021	101.25	
219	MONA H. GREEN	General Administration - Misc.	05/31/2021	1,620.00	
219	MONA H. GREEN	Shoreline Substantial Development	05/31/2021	33.75	18,393.75
		Total MONA H. GREEN:		3,307.50	
MUNICIPAL PERMIT SERVICE, LLC					
350	MUNICIPAL PERMIT SER	Code Enforcement	05/31/2021	132.00	
350	MUNICIPAL PERMIT SER	Building Permit inspections	05/31/2021	1,783.04	
350	MUNICIPAL PERMIT SER	Mechanical/plumbing permit inspections	05/31/2021	419.13	
350	MUNICIPAL PERMIT SER	Demolition Permit inspections	05/31/2021	31.25	
350	MUNICIPAL PERMIT SER	Fence permit inspections	05/31/2021	65.86	
350	MUNICIPAL PERMIT SER	Plan review	05/31/2021	4,625.00	29,752.68
		Total MUNICIPAL PERMIT SERVICE, LLC:		7,056.28	
NORTHWEST CIVIL SOLUTIONS					
450	NORTHWEST CIVIL SOLU	42nd - 91st Stormwater Upsize and UGC Project	05/31/2021	7,281.25	
450	NORTHWEST CIVIL SOLU	T-1 - 37th St Storm and Paving	05/31/2021	93.75	
450	NORTHWEST CIVIL SOLU	Plan Reviews	05/31/2021	1,031.25	
450	NORTHWEST CIVIL SOLU	Right of Way Use Permits	05/31/2021	187.50	
450	NORTHWEST CIVIL SOLU	General Administrtrion	05/31/2021	1,343.75	29,843.75
		Total NORTHWEST CIVIL SOLUTIONS:		9,937.50	
Ogden Murphy Wallace					
1390	Ogden Murphy Wallace	Clerk	05/29/2021	65.00	
1390	Ogden Murphy Wallace	Council	05/29/2021	1,495.00	
1390	Ogden Murphy Wallace	Land Use	05/29/2021	3,157.50	
1390	Ogden Murphy Wallace	Mayor/Executive	05/29/2021	422.50	
1390	Ogden Murphy Wallace	Comcast Franchise	05/29/2021	1,470.00	28,779.35
		Total Ogden Murphy Wallace:		6,610.00	
PGH Excavating, Inc.					
318	PGH Excavating, Inc.	NE 42nd St - 91st Ave Stormwater and UGC Project	06/02/2021	145,641.93	446,491.30
		Total PGH Excavating, Inc.:		145,641.93	

Vendor	Vendor Name	Description	Invoice Date	Amount Paid	YTD Payments
PUGET SOUND ENERGY					
604	PUGET SOUND ENERGY	Town Hall Service	05/24/2021	178.59	
604	PUGET SOUND ENERGY	Street Lights	05/24/2021	633.36	5,419.06
Total PUGET SOUND ENERGY:				811.95	
SEA-TAC SWEEPING SERVICE					
46	SEA-TAC SWEEPING SE	Street cleaning	05/10/2021	335.00	
46	SEA-TAC SWEEPING SE	Street cleaning	05/10/2021	335.00	2,725.00
Total SEA-TAC SWEEPING SERVICE:				670.00	
STATE AUDITOR'S OFFICE					
34	STATE AUDITOR'S OFFIC	Payment for 2019-2020 audit	05/12/2021	2,474.08	2,474.08
Total STATE AUDITOR'S OFFICE:				2,474.08	
THE SEATTLE TIMES					
192	THE SEATTLE TIMES	Publish Ord. 711	05/20/2021	38.25	
192	THE SEATTLE TIMES	Notice of App Shoreline Sub Development	05/20/2021	74.97	
192	THE SEATTLE TIMES	Notice of CIP public hearing	05/28/2021	53.55	1,193.67
Total THE SEATTLE TIMES:				166.77	
Grand Totals:				267,215.22	

Vendor	Vendor Name	Description	Invoice Date	Amount Paid	YTD Payments
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Certification of the Consent Calendar as presented including the Payment Approval Report dated 6/3/2021 approving payments as shown totaling \$267,215.22, plus payroll, tax, and benefit expenses of \$29,548.02; as shown on the attached payroll & tax and benefits report for a grand total of \$ 296,763.24.

I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished, the services rendered or the labor performed as described herein, and that the claim is a just, due and unpaid obligation against the Town of Yarrow Point, and that I am authorized to authenticate and certify to said claim.

Clerk/Treasurer: Bonnie Ritter _____

Dated: June 8, 2021

Mayor Dicker Cahill: _____

Councilmember Steve Bush: _____

Councilmember Mary Elmore: _____

Councilmember Stephan Lagerholm: _____

Councilmember Carl Scandella: _____

Councilmember Andy Valaas: _____

Report Criteria:

- Computed checks included
- Manual checks included
- Supplemental checks included
- Termination checks included
- Transmittal checks included
- Void checks included

Pay Period Date	Journal Code	Check Issue Date	Check Number	Payee	Payee ID	Description	GL Account	Amount
05/31/2021	CDPT		0	EMPLOYMENT SECURITY DEPT	5	Quarterly Employment Security P	001-2200000	44.69-
05/31/2021	CDPT		0	DEPT OF LABOR & INDUSTRY	6	Quarterly L & I Workers Compens	001-2200000	359.93-
05/31/2021	CDPT		0	EMPLOYMENT SECURITY DEPT	8	Quarterly WA FMLA WA Paid Fa	001-2200000	86.04-
05/31/2021	PC	05/30/2021	5954	Void			999-1010110	
05/31/2021	PC	05/30/2021	5955	Void			999-1010110	
05/31/2021	PC	05/30/2021	5956	Void			999-1010110	
05/31/2021	PC	05/30/2021	5957	Cahill, Richard	9030			
05/31/2021	PC	05/30/2021	5958	Benjamin Tobin	9043		999-1010110	378.79-
05/31/2021	PC	05/30/2021	5959	Dylan J Bear	9045		999-1010110	378.79-
05/31/2021	CDPT	05/19/2021	518201	Association of Washington Cities	9	Health and Dental Insurance Insu	001-2200000	1,711.75-
05/31/2021	CDPT	05/19/2021	518201	Association of Washington Cities	9	Health and Dental Insurance Hea	001-2200000	2,366.22-
05/31/2021	CDPT	05/19/2021	518201	Association of Washington Cities	9	Health and Dental Insurance Den	001-2200000	164.37-
05/31/2021	CDPT	05/19/2021	518201	Association of Washington Cities	9	Health and Dental Insurance Visi	001-2200000	36.06-
05/31/2021	CDPT	05/19/2021	518202	DEPT OF RETIREMENT SYSTE	1	State Retirement PERS II Pay P	001-2200000	1,481.90-
05/31/2021	CDPT	05/19/2021	518202	DEPT OF RETIREMENT SYSTE	1	State Retirement PERS II Pay P	001-2200000	2,432.93-
05/31/2021	CDPT	05/19/2021	518203	Federal Tax	2	941 Taxes Social Security Pay P	001-2200000	1,385.59-
05/31/2021	CDPT	05/19/2021	518203	Federal Tax	2	941 Taxes Social Security Pay P	001-2200000	1,385.59-
05/31/2021	CDPT	05/19/2021	518203	Federal Tax	2	941 Taxes Medicare Pay Period:	001-2200000	324.05-
05/31/2021	CDPT	05/19/2021	518203	Federal Tax	2	941 Taxes Medicare Pay Period:	001-2200000	324.05-
05/31/2021	CDPT	05/19/2021	518203	Federal Tax	2	941 Taxes Federal Withholding T	001-2200000	3,366.68-
05/31/2021	PC	05/30/2021	531201	Lovas, Istvan	9002		999-1010110	1,284.06-
05/31/2021	PC	05/30/2021	531202	Wilcox, Austen	9037		999-1010110	3,470.76-
05/31/2021	PC	05/30/2021	531203	Ritter, Bonnie	9041		999-1010110	5,565.77-
Grand Totals:			20					29,548.02-

STAFF REPORTS

1. Police Report
2. Fire-EMS Reports for May
3. Engineer Report
 - A. NE 2019 NE 42nd Street/ 91st Ave NE Stormwater Upsizing & UGC Project
 - B. 2021 NE 37th Paving Project
4. Commission Minutes
 - May 17, 2021 Planning Commission Minutes
 - May 25, 2021 Park Board Minutes



MEMO

To: Yarrow Point Town Council
From: Chief Kyle Kolling
Date: June 8, 2021
Re: May 2021 Summary

Greetings,

Significant progress was made towards WASPC accreditation. The assigned mentor started the first level review and approval of our portfolio utilizing an online file share. The second level review and approval was tentatively scheduled for mid-June. The goal is to be State Accredited by the fall of 2021.

May was a busier month for training:

- Regular monthly training through PoliceOne Academy continued with 1 hour of instruction on dealing with suspects in medical distress as well as 2 hours of instruction on defensive tactics.
- Chief Kolling and Lt. Hanson attended the semi-annual WASPC conference.
- Ofc. Lyon completed an 8-hour critical incident training.
- Ofc. Swai attended body language/facial expression training for analyzing non-verbal behavior.
- Ofc. Fernandez and Cpl. Cobrea completed mandatory 24-hour CJTC in-service patrol tactics training.
- Records Manager Jones attended training on firearms processing and public records.

11 Facebook posts were created in May. There are currently 111 people following our page, a 23% increase from last month! Our page garnered over 60 engagements this month by the public (reactions, comments, and shares). In addition, the Sentinel e-newsletter continued with three editions published to almost 800 recipients. Followers on our Instagram account increased 80% to 36!



Town of Yarrow Point

ACTIVITY REPORT

	2021 May	2021 April	2021 YTD	2020 YTD
CRIMES AGAINST PERSONS				
Assault	0	0	0	0
Domestic Violence/Disturbance	3	0	5	2
Harassment	0	0	1	3
Order violation	0	0	0	0
Rape/sex offenses	0	0	0	0
Robbery	0	0	0	0
Other (<i>Abuse, APS, civil, CPS, custodial interference, extortion</i>)	0	0	1	0
PROPERTY CRIMES				
Burglary	1	0	2	3
Fraud	2	0	3	7
MV Prowl	1	0	3	4
MV Theft	0	0	0	0
Theft	1	0	3	5
Other (<i>Arson, illegal dumping, malicious mischief, prowler, trespass</i>)	1	0	3	2
ARRESTS				
Drug/alcohol	0	0	0	1
Warrants	0	0	0	1
Other	0	1	1	4
TRAFFIC ACTIVITY				
Citations	0	0	0	5
Infractions	3	6	11	14
Warnings	4	13	42	35
Traffic accidents	0	0	0	2
Traffic stops	6	14	49	40
OTHER				
Alarms	0	6	12	13
Complaints				
~Animal	1	0	2	0
~Fireworks	0	0	0	0
~Noise	1	0	2	0
~Parking	12	9	31	20
~Soliciting	0	0	0	1
Deaths	0	0	0	1
QA	3	2	7	11
Drug/alcohol	0	0	0	0
PUBLIC SERVICES				
Other Public Services (<i>area check, assist, community policing, contacts, direct enforcement/patrol, 911 hang-ups, fire assist, follow up, on-view, order service, walk through, welfare check</i>)	19	23	118	98



Town of Yarrow Point
May 2021

2021-1080	05-05-21	9200 BLK NE 37 th PI	Fraud	Cobrea
Officer was dispatched to a report of international bank fraud. The RP noticed a fraudulent charge on her account from another country and needed a police report to resolve the issue with the bank. No suspects or evidence at this time. Report for information/documentation purposes only.				
2021-1102	05-07-21	4600 BLK 92 nd Ave NE	Mal Misch	Lyon
Officer dispatcher to a report of mal mish overnight for a damaged construction trailer. Trailer door was damaged in an attempt to gain access to the trailer. Estimated damage is \$1,000. No suspects or evidence at this time. Report for information/documentation purposes only.				
2021-1271	05-23-21	3600 BLK 91 st Ave NE	MV Prowl	Lyon
Officer was dispatched to a report of a motor vehicle prowling from an unlocked vehicle. No suspects or evidence at this time. Report pending list of items from RP that were taken from the vehicle. Report for information/documentation purposes only.				
2021-1272	05-23-21	8900 BLK NE 33 rd St	Burglary	Lyon
During an investigation of another incident, \$600 worth of items from victim's vehicle were found. When officers checked the victim's address, the vehicle had been prowled and the garage rummaged through. Fingerprinting technician called to scene. Case pending report from RP of any items taken from the garage as well results from evidence submitted for analysis.				
2021-1291	05-25-21	4000 BLK 94 th Ave NE	Fraud	Cobrea
Officer dispatched to a report of unemployment fraud. RP was mailed paperwork saying they owed WA state for a false unemployment claim but had never made a claim. Paperwork appeared to be fake with many inconsistencies. RP advised to file a fraud claim with ESD and FTC. Victim provided with identity theft resource book. Report for information/documentation purposes only.				
2021-1307	05-26-21	94 th Ave NE/NE 37 th PI	Assist	Lyon
Officer dispatched to a report of a disabled vehicle. A semi-truck had gotten stuck due to a tight turning radius. Officer assisted driver with safely turning around. Stop sign at the intersection was hanging down and secured by YP public works. Report for information/documentation purposes only.				



Issued Ticket Report Summary
Yarrow Point
5/1/2021 through 5/31/2021

Citations - Non-Traffic	0	Location
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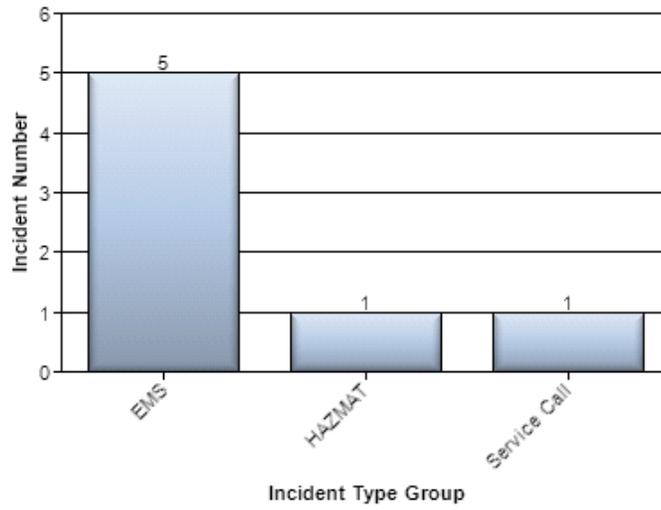
Citations - Traffic	0	Location
----------------------------	----------	-----------------

Infractions - Traffic	3	Location
SPEED 11-15 MPH OVER LIMIT (40 OR UNDER)	2	8900 BLK POINTS DR
SPEED 16-20 MPH OVER LIMIT (40 OR UNDER)	1	8900 BLK POINTS DR

Infractions - Parking	3	Location
PARKED BLOCKING LANE OF TRAVEL	3	4200 BLK 94TH AVE NE
		9200 BLK NE 40TH ST

Incident Date between 2021-05-01 and 2021-06-01
City equal to Yarrow Point

Incident Type Group	Incident Count
EMS	5
HAZMAT	1
Service Call	1





PROJECT STATUS REPORT

REPORT DATE	PROJECT NAME	PREPARED BY
5/05/21	2019 NE 42 nd Street/ 91 st Ave NE Stormwater Upsizing & UGC Project	Stacia Schroeder

STATUS SUMMARY

PGH Excavation has used over 70% of their available contract days so far and through May 31st, 2021, we have paid them 52% of the original contract amount. We continue to have great weather and are expecting a very busy next few months to see this project through to closeout.

The four individual property owners on NE 42nd St (4205, 9035, 9030, and 9004) have conduit in place for new underground utilities. Likewise, on 91st Ave NE 4228 has conduit installed while 4427/4429 and 4419 are still working to meet the PSE timeline of 6/7 and the Lumen schedule of 6/21, respectively.

PGH's primary focus for the month of June is completing the NE 42nd Street stormwater mainline and various stormwater elements of the project (ie. catch basin installs on both NE 42nd and 91st Ave NE).

The following activities are scheduled over the next month:

- PGH will focus on completing the stormwater mainline on NE 42nd Street;
- PSE will install underground mainline on 91st Ave NE starting the week of 6/7;
- Comcast will install underground mainline on 91st Ave NE beginning the week of 6/14;
- Lumen (CenturyLink) will install underground mainline on 91st Ave beginning the week of 6/21;

Town staff will assist the various purveyors with resident notifications regarding power/ phone/ cable outages.

The project management team is now turning their focus to site restoration. For instance, we continue to work with PGH on securing the required compaction testing reports and with the various utility companies on adding vault risers where necessary. Additionally, the King County Roads low bidder (Lakeside Industries) was identified the third week in May and Town staff received an updated estimate on May 25th, 2021, ~\$176,000. As we wrap up the NE 42nd Street project, we will work with both King County Roads and PGH to align the pavement restoration efforts.

PROJECT OVERVIEW

TASK	% DONE	TARGET DUE DATE	LEAD	NOTES
Bidding	100	October 2020	Gray & Osborne Town Engineer	Ad date 9/16 and 9/23 Bids Due 9/30
Award	100	October 2020	Town Engineer	October 2020
Construction	50	July 2021	Gray & Osborne Town Engineer	Delay start until January 11, 2021; G&O – survey staking & inspection
Project Close Out	0	July 2021	Town Engineer	
Grind & Overlay – KC Roads	0	August 2021	Town Engineer	Under Contract w/ KC Roads;

BUDGET OVERVIEW

CATEGORY	BUDGETED	EXPENDED	ON TRACK?	NOTES
Stormwater Design (2019)	\$30,000			CIP S-1: Design
UGC Design (2019)	\$40,000			CIP U-1: Design
Jan 2019 – Oct. 2020 Town Engineer Project Management		\$19,718.75		Task Completed: 10/13/20; Change to Construction Management
Jan 2019 – Oct. 2020 Civil Engineering Consultant Gray & Osborne, Inc.		\$52,300.00		
Evergreen Concrete Cutting:		\$2,043.00		Coring Pavement to determine depth
Total:	\$70,000	\$74,061.75		
Jan. 2021 - May 2021 – PGH Excavating, Inc. (Stormwater & UGC)	\$854,655.50	\$446,491.30*	Yes	CIP S-1: \$475,000 Budget; CIP U-1: \$475,000 Budget *Does not include 5% retainage held to-date: \$20,851.31
Oct. 2020 – May 2020 Town Engineer Project Management	\$40,000	\$16,531.25	Yes	
Oct. 2020 – Apr. 2020 Civil Engineering Consultant Gray & Osborne, Inc.	\$87,500 \$46,000	\$78,864.88	No	!!! Budget Remaining: \$8,520.32 will be billed out by next invoice. Gray & Osborne has submitted an addendum for add'l construction support service hours to complete project.
Total:	\$1,028,155.50	\$541,887.43		
Summer 2021 – King County Roads (2-inch grind and overlay)	\$220,000	\$461.97		CIP T-1: \$220,000 Budget; KC Roads Final Estimate ~\$176,159; KC Rec'd Bid Results on 5/18/21 and identified Lakeside Industries as low bidder
Total:	\$220,000.00	\$461.97		

RISK AND ISSUE HISTORY

ISSUE	STATUS	DATE

CONCLUSIONS/NEXT STEPS



PROJECT STATUS REPORT

REPORT DATE	PROJECT NAME	PREPARED BY
6/8/21	2021 NE 37 th Paving Project	Stacia Schroeder

STATUS SUMMARY

Fury Site Works, under contract with the City of Bellevue, completed the additional paving on NE 37th Street on May 5th, 2021, as requested by the Town of Yarrow Point.

On May 11th, 2021, I inspected the work on behalf of the Town and sent a small list of outstanding items to Robert Rudd – City of Bellevue Inspector. The most notable item was to ensure the stormwater runoff along the north side of NE 37th Street western culdesac did not drain down the private lane of 9012.

The final cost including all applicable taxes was \$61,788.12, this is roughly one-half the cost estimate by King County Roads at the end of January.

PROJECT OVERVIEW

TASK	% DONE	TARGET DUE DATE	LEAD	NOTES
Survey	100	January 2021	PACE/ Town Engineer	
Design/Bid	N/A	N/A	N/A	
Construction	100	Summer 2021	City of Bellevue/ Town Engineer	

BUDGET OVERVIEW

CATEGORY	BUDGETED	EXPENDED	ON TRACK?	NOTES
Dec. 2020 – Mar. 2021 Town Engineer Design	\$17,500	\$1,093.75	YES	CIP T-2: Design \$25,000
Jan. 2021 – Feb. 2021 PACE Surveying Consultant Task Order No. 1	\$7,500	\$7,500.00	YES	Completed cost
Total:	\$25,000	\$8,593.75		
Mar. 2021 – Town Engineer Project Management	\$10,000	\$93.75		CIP T-2: Construction \$135,000
Summer 2021 – City of Bellevue	\$49,103.59	\$61,788.12		

Consultant/ Contractor				
Total:	\$59,103.59	\$61,881.87		

RISK AND ISSUE HISTORY

ISSUE	STATUS	DATE

CONCLUSIONS/NEXT STEPS

**TOWN OF YARROW POINT
PLANNING COMMISSION (TELECONFERENCE) MEETING MINUTES
May 17, 2021**

The following is a condensation of the proceedings and is not a verbatim transcript.

CALL TO ORDER:

Carl Hellings Planning Commission Chairman called the meeting to order at 7:02pm

PRESENT:

Chairman:	Carl Hellings
Commissioners:	Trevor Dash Chuck Hirsch Jennifer Whittier David Feller
Staff:	Austen Wilcox – Town Deputy Clerk Mona Green – Town Planner Scott Missall – Town Attorney
Guests:	Debbie Prudden – Resident

APPEARANCES:

None.

MINUTES:

March 15, 2021 Regular Meeting.

MOTION: Commissioner Hirsch moved to approve the minutes of the March 15, 2021 regular meeting as presented. Commissioner Feller seconded the motion.

VOTE: 5 For, 0 Against. Motion carried.

STAFF REPORTS:

Town Planner Mona Green and Deputy Clerk Austen Wilcox provided a report on the May Council meeting:

- The Park Board voted to reclassify Sally's Alley from a road into a park. The Town's Attorney and Town staff are gathering more information to formulate a plan to move forward. There was a petition presented to Council in support of preserving Sally's Alley. The Planning Commission will likely review the request at an upcoming meeting and need to provide a recommendation to Council.
- Council passed Ordinance No. 711 covering zoning and subdivision codes describing driveway widths and correcting discrepancies.

- Updates on NE 42nd St UGC project. There was a large transformer placed in the ROW at the bottom of NE 42nd St that was supposed to be underground. There are plans to camouflage it with a fence and landscaping. City of Bellevue plans to underground the transformer in the future.
- Review of the 2022-2027 CIP/TIP. A public hearing will be held at the regular June 8 Council meeting.

REGULAR BUSINESS:

PCAB 21-04 Continued tree code discussion/ Review draft tree code

Town Planner Mona Green reviewed a draft tree code that has incorporated the agreements the Planning Commission has made to date on private property tree regulations. She covered the following chapters:

- Purpose.
- Definitions.
- Tree removal & minimum significant tree density.
- Exemptions.
- Tree Removal permit – Application process.
- Tree Removal permit – Expiration.
- Mitigation.
- Construction Site Tree Protection.
- Appeals.
- Enforcement and Penalties.

The Commission discussed need for a good notification process to adjacent neighbors who could be affected by tree removal. The Commission would like the Town to be responsible for providing the notification.

The following additional topics were discussed:

- Tree canopy.
- Significant trees.
- Penalties- cost needs to be significant.
- Credits for trees bordering private property and Town ROW.
- Credits for trees bordering two private properties. In this scenario, the Commission discussed allowing each adjoining property owner the right to .5 credits.
- Spacing of trees.
- Location of areas for mitigation trees.

Debbie Prudden resident at 3805 94th Ave NE discussed tree ratio replacement based on square footage of her lot. The cost to remove a tree should be burdened towards those who own the tree causing issues.

Town Planner Green responded stating that best management practices should be followed.

Town Planner Mona Green will consult with the Town Arborist on the following questions the Planning Commission created:

1. If the Town would like to cite a document that describes Best Management Practices for tree protection during construction, what should the citation be, and what are those practices?
2. What is the current definition of a hazardous tree, and what is the source of this definition?
3. A regulation was suggested that would restrict mitigation trees (defined as trees that have the potential to grow to a DBH of 18" at some future time) from being planted closer than 20 - 30 feet apart. It was also suggested that there be property line setback requirements to prevent trees from interfering with neighboring properties. Are there any such regulations being in place in other jurisdictions?
4. What is the suggested penalty for the removal of a significant tree (over 18" DBH) without a permit?
5. What species should be avoided as mitigation trees?

The Town Arborist and Town Attorney will need to review the draft code to provide further input.

MOTION: Commissioner Hirsch moved to forward the draft code with the edits as outlined in tonight's meeting to the Town's Arborist and Attorney to provide further input and guidance. Commissioner Feller seconded the motion.

VOTE: 4 For, 1 Against, 0 Abstain. Motion carried.

PCAB 21-05 Adopt Roberts Rules of Order & review current YPMC Planning Commission Code

1.) The Town does not have a historic record of the adoption of Roberts Rules of Order for the conduct of its meetings. The Planning Commission must adopt its own Procedural Rules per RCW 35.63.040 Commissions—Organization—Meeting—Rules;

MOTION: Chairman Hellings moved that the Planning Commission adopt Roberts Rules of Order, in their current version and as may be revised from time to time, for the conduct of the Commission's meetings and actions. Commissioner Hirsch seconded the motion.

VOTE: 5 For, 0 Against, 0 Abstain. Motion carried.

2.) Town Attorney Scott Missall explained that the current Planning Commission chapter (YPMC 2.28) is inadequate and should be expanded. He referenced City of Mill Creek's Planning Commission chapter to use as an example.

The Planning Commission requested to have Attorney Missall and Planner Green provide an updated draft Planning Commission code chapter for them to review at an upcoming meeting.

ADJOURNMENT:

MOTION: Chairman Hellings moved to adjourn the meeting at 9:02pm. Commissioner Feller seconded the motion.

VOTE: 5 For, 0 Against, 0 Abstain. Motion carried.

APPROVED:

ATTEST:

Carl Hellings, Chairman

Austen Wilcox, Deputy Clerk

DRAFT

**TOWN OF YARROW POINT
PARK BOARD (TELECONFERENCE) MEETING MINUTES
May 25, 2021
7:06pm**

The following is a condensation of the proceedings and is not a verbatim transcript.

CALL TO ORDER:

Park Board Chairman John McGlenn called the meeting to order at 7:02pm

IN ATTENDANCE:

Chairperson: John McGlenn

Members: Kathy Smith
Doug Waddell
Carolyn Whittlesey
Trevor Dash – Excused absence
Krista Fleming

Staff: Austen Wilcox - Deputy Clerk

Guests: Andy Valaas - Town Councilmember
Steve Fleming – Resident

APPEARENCES

None.

REGULAR BUSINESS:

PB AB 21-10 Utility box wraps

The wrap is currently in production with Traffic Wrapz. Deputy Clerk Wilcox will contact Traffic Wrapz to get a status update and timeline for installation and report back to the Park Board.

PB AB 21-11 Status/actions needed on playground

The Park Board discussed a missing fossil piece on the playground climber that appears to have been removed intentionally. Park Board member Smith stated that her husband has offered to carve a new fossil and install it in the climber. Any associated costs should be minimal. The Park Board was appreciative of her husband's offer and accepted it.

Park Board member Smith stated that the water pump on the playground has loose bolts. Deputy Clerk Wilcox will inform Public Works.

Additional play chips for the playground are planned to be placed to fill in low areas.

Park Board member Whittlesey requested additional mulch and Kinnikinic ground cover to be placed at the entry of the town.

PB AB 21-12 Clean up work needed on beach

The Park Board requested staff to setup a meeting with Public Works Coordinator Istvan Lovas to discuss the placement of new mulch at the beach. The rock walls need to be backfilled. Deputy Clerk Wilcox will send out a poll to the Park Board members to find a good time for everyone to meet.

Park Board member Whittlesey will research the particular type of mulch that should be purchased and inform Deputy Clerk Wilcox.

PB AB 21-13 Invasive blackberry control

Park Board Chairman John McGlenn will make a request to Mayor Cahill to have the summer interns assist with blackberry and ivy removal at Morningside park.

PB AB 21-14 Status of Sally's Alley activities

The Town Attorney is currently researching legalities on the process to reclassify Sally's Alley from a street into a park.

The following items need to be addressed:

- Obtain title report.
- Locate boundaries. A survey engineer needs to identify them.
- Attorney and staff need to formulate a plan.

Town staff and legal counsel will provide an update to Council and the Park Board when a plan is formulated. The process will likely include review by the Planning Commission and recommendation by them to the Council.

Park Board Chairman John McGlenn recommends retaining JGM Architects to assist the Town with a future landscaping master plan for Sally's Alley.

Councilmember Valaas stated that a plan and survey needs to be done prior to any decisions being made. The Town Attorney should address the Park Board to discuss the options on what can be done with the street. Councilmember Valaas will brief the Council on the Park Board's meeting discussion on this topic.

Steve Fleming resident at 3798 94th Ave NE discussed boundary markers placed by the Town Engineer for a road extension/driveway turnaround for the vacant lot at the east end of Sally's Alley. He also recommends to have the Town Attorney review RCW 36.87.090 Vacation of road unopened for five years—Exceptions.

OTHER REPORTS:

None.

ADJOURNMENT:

Park Board Chairman John McGlenn adjourned the meeting at 8:03pm.

APPROVED:

ATTEST:

John McGlenn, Park Board Chairman

Austen Wilcox, Deputy Clerk

**Business of The Town Council
Town of Yarrow Point, WA**

Agenda Bill 21-27
June 8, 2021

Gray & Osborne, Inc. NE 42nd 91st Storm and UGC Project change order & project summary	Proposed Council Action: For Approval
-------------------------------------------------------------------------------------------------------	-------------------------------------------------

Presented by:	Town Engineer Stacia Schroeder & Gray Osborne representatives
Exhibits:	<ul style="list-style-type: none">• Amendment No. 3 to Contract for Professional Engineering Service G&O Job No. 19456/ dated June 2, 2021• Email discussion from Gray & Osborne• Construction work schedule

Summary:

An amendment for additional CM/inspection on the 42nd/91st Storm and UGC project. Some of the hours in the amendment are for time already expended on extra coordination and site visits to get to this point. Representatives from Gray & Osborne will be on the call to provide a project summary and answer any questions from Council.

Recommended Action:

Approve Gray & Osborne Amendment No. 3 to Contract for Professional Engineering Service modify the contract for engineering services dated June 2, 2021, for additional services related to the NE 42nd Street/91st Avenue NE Stormwater Upsizing and UGC project.

RECEIVED

By Town of Yarrow Point at 11:06 am, Jun 02, 2021

**AMENDMENT NO. 3
TO
CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES
G&O JOB NO. 19456**

THIS AMENDMENT, by and between the Town of Yarrow Point, Washington, hereinafter referred to as the Agency, and Gray & Osborne, Inc., hereinafter referred to as the Engineer, hereby modifies the contract for engineering services dated (by Agency) March 11, 2019, for additional services related to the NE 42nd Street/91st Avenue NE Stormwater Upsizing and UGC.

For additional construction inspection and management services, see attached Exhibits A and B.

IN WITNESS WHEREOF, the parties hereto have executed, or cause to be executed by their duly authorized officials, this AMENDMENT to the Contract for Engineering Services in duplicate on the respective dates indicated below.

GRAY & OSBORNE, INC.

TOWN OF YARROW POINT

By: _____
(Signature)

By: _____
(Signature)

Name: Michael B. Johnson, P.E., President
GRAY & OSBORNE, INC.

Name: _____
(Print)

Date: _____

Date: _____

"Equal Opportunity/Affirmative Action Employer"

EXHIBIT A

SCOPE OF WORK

TOWN OF YARROW POINT NE 42ND STREET/91ST AVENUE NE STORMWATER AND UGC PROJECT AMENDMENT 3

Construction for the NE 42nd Street/91st Avenue NE Stormwater and UGC project began on January 25, 2021, and was originally scheduled to be completed by August 18, including several weeks to allow the utilities to make their conversions to underground. Our original scope for construction management (CM) and inspection included full-time inspection during the storm system and joint utility trench (JUT) installation, with part-time (1 day per week) inspection during utility conversion and project closeout, with the assumption that utility conversion would not start until all other work had been completed. Due to utility conflicts, changes requested by the individual utilities, contractor delays, and additional coordination, analysis, and inspection to accommodate these items, the project has been delayed approximately at least 25 days. In addition, utility conversion has begun; however, the JUT on 91st Avenue is being completed concurrent with the conversions, and the storm system is only 50 percent complete on NE 42nd Street, so additional CM and inspection are required. The contractor's original schedule was to complete the project by July 22, but that has now slipped to August 25.

The Town has now requested that Gray & Osborne provide a scope amendment to complete CM and inspection on the project. The following ADDITIONAL tasks are added with this amendment.

SCOPE OF WORK

1. **Additional Project Management** – Provide additional overall project management services including:
 - a. Dedicate sufficient staff resources to the project.
 - b. Monitoring of contractor's compliance with schedule.
 - c. Monitoring of project budget.
 - d. Provide monthly progress reports and invoices.
2. **Additional Construction Management** – Provide office services to support contractor inquiries and field activities, to include correspondence and:
 - a. Attend up to 16 additional weekly construction meetings with the Town, contractor, utility companies, and other stakeholders deemed necessary to facilitate construction and construction coordination.

- b. The inspector will coordinate quantities for payment with the contractor in the field. The Town will prepare monthly pay estimates. The Engineer will submit quantities to the Town for processing.
 - c. Answer contractor requests for information (RFIs), provide contractor timely interpretation of contract documents, and review contractor testing laboratory reports, as may be requested.
3. **Additional Construction Inspection** – Provide on-site full-time inspection services to observe the progress of the remaining work and determine, in general, the work is proceeding in accordance with the Contract Documents.

ASSUMPTIONS

- 1. This scope of work assumes the project will be completed by August 25, 2021.

EXHIBIT B

ENGINEERING SERVICES SCOPE AND ESTIMATED COST

*Town of Yarrpw Point - NE 42nd Street/91st Avenue NE Stormwater and UGC Project
Construction Management Amendment 3*

Tasks	Principal/ Project Manager Hours	Project Engineer Hours	Field Inspector Hours
1 Additional Project Management	12		
2 Additional Construction Management	12	32	
3 Additional Construction Inspection			288
Hour Estimate:	24	32	288
Fully Burdened Billing Rate Range:*	\$112 to \$177	\$99 to \$177	\$81 to \$145
Estimated Fully Burdened Billing Rate:*	\$160	\$155	\$125
Fully Burdened Labor Cost:	\$3,840	\$4,960	\$36,000

Total Fully Burdened Labor Cost:	\$ 44,800
Direct Non-Salary Cost:	
Mileage & Expenses (mileage @ current IRS rate)	\$ 1,200
TOTAL ESTIMATED COST:	\$ 46,000

* Actual labor cost will be based on each employee's actual rate. Estimated rates are for determining total estimated cost only. Fully burdened billing rates include direct salary cost, overhead, and profit.

Yarrow Point Deputy Clerk

From: Kevin Brown <kbrown@g-o.com>
Sent: Thursday, June 3, 2021 8:48 AM
To: Stacia Schroeder; 'Roger Kuykendall'
Cc: Yarrow Point Mayor; Yarrow Point Clerk Treasurer; Yarrow Point Deputy Clerk
Subject: RE: Scope Amendment for 42nd 91st Storm and UGC Project

Stacia,

In looking at construction costs through Progress Estimate #4, the Town has paid out \$446,491.30 which represents approximately 52% of the original contract amount to date. Considering that the contractor has used over 70% of the available contract days is another indication that the contractor's schedule has been impacted, due to field changes, their operations and decisions.

With a majority of the underground work now completed, the overall risk of an unforeseen utility conflict will be reduced.

As for outstanding costs that have not been fully agreed to date. These include:

- Change order for storm water pipe bend: \$3,233.74
- Force account for work associated with the large PSE vault at the end of 42nd Street: \$28,190. It should be noted that we agree that PGH completed additional work associated with the large PSE vault, however, we do not agree with the costs provided. We are currently reviewing the information and will provide a recommendation to the Town on how to proceed.

As for construction cost savings, the decision to not install temporary HMA is saving approximately \$23,000.

Moving forward, we do anticipate a quantity overrun for the small retaining walls behind the vaults. Field changes has dictated that additional retaining walls be installed beyond the original contract amount. All other bid quantities appear to be coming in close per the original plan.

Please let me know if you have any additional questions for me regarding the construction costs.

Thanks,
Kevin

Kevin Brown, P.E. | 360.454.5490
Gray & Osborne, Inc | 3710 168th Street NE, Suite B-210, Arlington, WA 98223

Please consider the environment before printing this email.

Electronic File Transfer- Note that these electronic files are provided as a courtesy only. Gray & Osborne, Inc. in no way guarantees the accuracy or completeness of the digital data contained within these files. Furthermore, Gray & Osborne, Inc. assumes no liability for any errors or omissions in the digital data herein. Anyone using the information contained herein should consult the approved or certified hard copy drawings or reports for the most current information available.

From: Stacia Schroeder [mailto:sschroeder@yarrowpointwa.gov]
Sent: Wednesday, June 2, 2021 10:40 AM
To: Roger Kuykendall <rkuykendall@g-o.com>
Cc: kbrown@g-o.com; Yarrow Point Mayor <mayor@yarrowpointwa.gov>; Yarrow Point Clerk Treasurer <clerk-

treasurer@yarrowpointwa.gov>; Yarrow Point Deputy Clerk <depclerk@yarrowpointwa.gov>

Subject: RE: Scope Amendment for 42nd 91st Storm and UGC Project

Roger/ Kevin

Holy cow! You should've slipped in to the intro somehow that the change order was going to be twice as much as I expected (\$46,000)!

It is vital however, that we maintain our project management efforts to the end of the project to make sure things go smoothly to closeout.

To that end, I have alerted Mayor Cahill and staff that a separate agenda item is required for this approval. Please plan to have yourself and/or Kevin on the call for our next council meeting June 8, 2021, to answer council questions. Also, just a heads up that I asked Kevin to prepare a brief summary of where we stand with the overall project budget as of Pay Estimate #4 (due today). He agreed to send this to me by 9am tomorrow so it can be apart of the council agenda materials.

Thank you!

Stacia Schroeder, PE

Town Engineer – Yarrow Point

(206) 276-8922

Sent from [Mail](#) for Windows 10

From: [Roger Kuykendall](#)

Sent: Wednesday, June 2, 2021 7:47 AM

To: [Stacia Schroeder](#)

Cc: kbrown@g-o.com

Subject: Scope Amendment for 42nd 91st Storm and UGC Project

Stacia, please find attached, our amendment for additional CM/inspection on the 42nd/91st Storm and UGC project. Some of the hours in the amendment are for time already expended on extra coordination and site visits to get to this point. If it meets your approval, I will have the amendment signed. If you want changes, please let me know. Thanks,

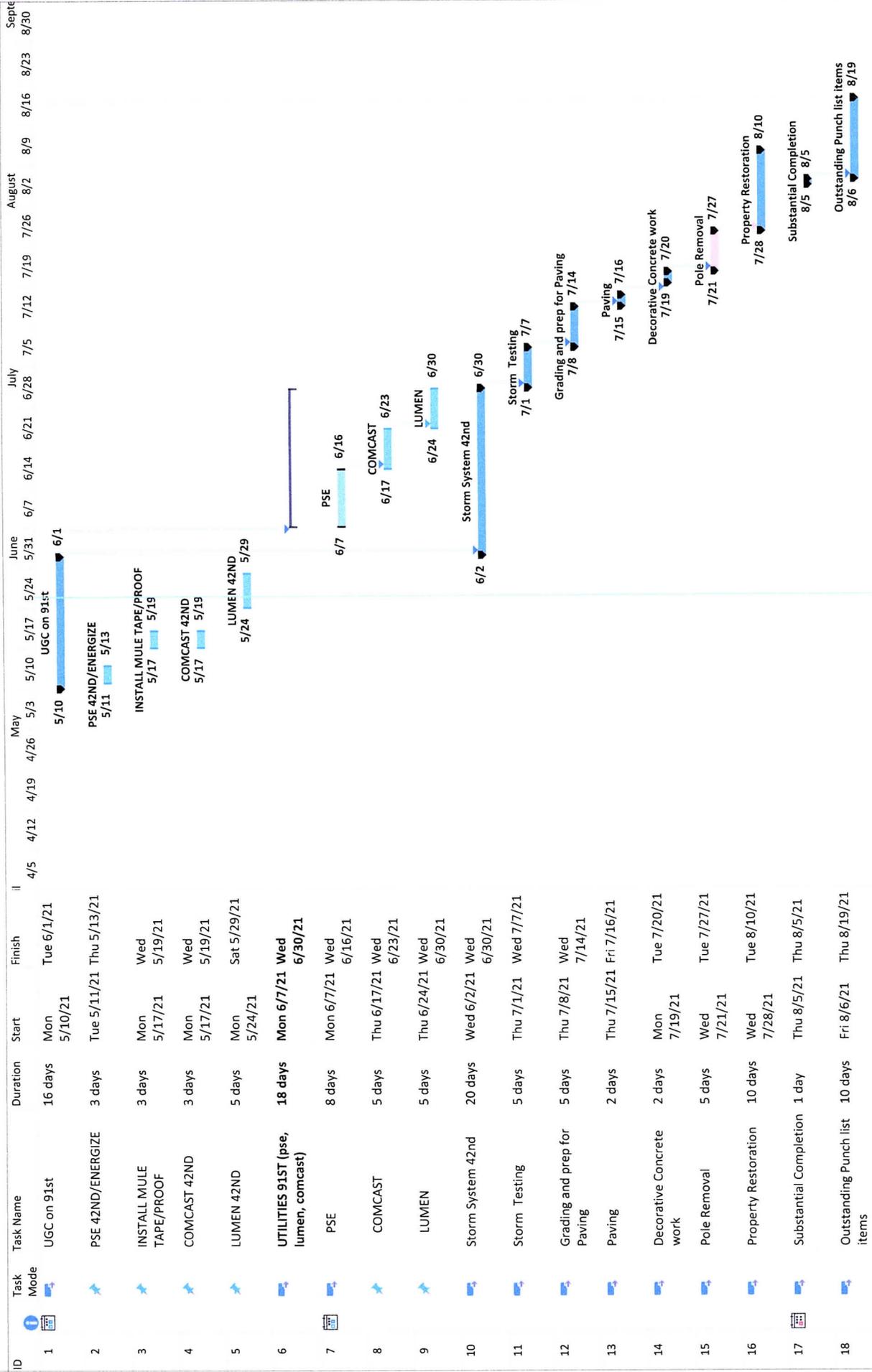
Roger Kuykendall, PE | 360.454.5490 p | 360.454.5491 f

Gray & Osborne, Inc. | 3710 168th Street NE, Bldg. B, Suite 210, Arlington, WA 98223



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NE 42ND STREET - STORM AND UGC



Project: Schedule 5-18
Date: Wed 5/26/21

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

Business of The Town Council

Town of Yarrow Point, WA

Agenda Bill 21-28
June 8, 2021

Comcast Franchise Agreement	Proposed Council Action: For Approval
------------------------------------	-------------------------------------------------

Presented by:	Deputy Town Attorney Emily Miner
Exhibits:	<ul style="list-style-type: none">• Memo from Deputy Town Attorney Emily Miner• Comcast Franchise Agreement/ Ordinance No. 710 (clean version)• Letter from Comcast• Redline pages

Summary:

Comcast is requesting a new franchise agreement. At the April 13, 2021 regular Council meeting, Town Deputy Attorney Emily Miner shared that Comcast and the Town are operating under an expired AT&T franchise that Comcast took over. The purpose of the new franchise is to set new terms and regulations. The Town is authorized, through state and federal statutes to grant and renew cable franchises for the installation, operation, and maintenance of cable systems. The authority to grant franchises for the use of its streets and other public properties is contained in RCW 35A.47.040.

June 8 update:

During the May 11th meeting, Council requested revisions to the franchise to clarify provisions regarding when undergrounding to residents' homes would occur. The Town Engineer also suggested a few minor revisions for clarity. The franchise has been updated in accordance with those directions. For ease of Council packet reading, a clean version of the franchise is included, along with the 7 individual pages that reflect the redlines of the specific sections that have been updated.

Recommended Action:

APPROVE ORDINANCE NO. 710, AN ORDINANCE OF THE TOWN OF YARROW POINT, WASHINGTON, GRANTING COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, RECONSTRUCT, REPAIR AND UPGRADE THE CABLE SYSTEM UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA FOR THE PURPOSE OF PROVIDING CABLE SERVICES, SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS ORDINANCE AND APPLICABLE LAW; AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE

MEMORANDUM

DATE: June 8, 2021
TO: Yarrow Point Town Council
FROM: Emily Miner, Deputy Town Attorney
RE: Comcast Franchise

Background

The Town is authorized, through state and federal statutes to grant and renew cable franchises for the installation, operation, and maintenance of cable systems. The authority to grant franchises for the use of its streets and other public properties is contained in RCW 35A.47.040.

A franchise is essentially a contract between the Town and a service provider who needs to use the public rights-of-way to deliver its services. These franchises allow the Town to regulate services within the Town boundaries through its authority over its public rights-of-way and by other Town powers and authority.

Franchises cover a wide range of topics, such as permitting procedures, notice requirements before digging in the ROWs, insurance and indemnification, length of the franchise, and any applicable costs, fees, or tax arrangements.

The parties are currently operating under the terms of an expired franchise. Comcast has requested that the Town grant it a new 10-year nonexclusive franchise to continue providing services within the Town. On behalf of the Town, Elana Zana and Emily Miner, attorneys at Ogden Murphy Wallace, have been assisting the Town with negotiations for a new cable franchise with Comcast. Initial negotiations were conducted as part of a consortium with several other jurisdictions which allowed for more efficient and effective negotiating of the general pieces of the franchise. Once the agreement framework was established, each jurisdiction finalized the agreement to address their particular needs.

Per state law, franchises require two “readings” before the Council. RCW 35A.47.040. The initial reading was conducted on April 13th and provided an opportunity for the Council to review the franchise and ask questions. The franchise was brought back for a second reading at the May 11th Council meeting.

June 8th Update

During the May 11th meeting, Council requested revisions to the franchise to clarify provisions regarding when undergrounding to residents’ homes would occur. The Town Engineer also suggested a few minor revisions for clarity. The franchise has been updated in accordance with those directions. For ease of

Council packet reading, a clean version of the franchise is included, along with the 7 individual pages that reflect the redlines of the specific sections that have been updated.

Analysis

While the Town has latitude over some aspects of the franchise agreements, other aspects such as franchise fees are regulated by State and Federal regulations. The Town has worked to ensure that provisions of the agreement provide adequate protection of the public rights-of-way and the Town's ability to require movement of utilities consistent with Town needs.

Specifically, the new agreement with Comcast includes:

1. Requirement that Comcast continue to pay 5% of their gross revenues from cable services to the Town as a franchise fee.
2. Continued complimentary cable service to Town Hall, subject to an election by Comcast to discontinue upon 120 days' notice.
3. Terms requiring compliance with general use of the ROW requirements and permitting.
4. Indemnification and Insurance provisions to protect the Town.
5. Design standards and requirements for strand-mounted Wi-Fi devices on Comcast's own cables.

Fiscal Considerations

The Town receives approximately \$23,500.00 annually in franchise fees.

Next Steps and Recommendation

The Town Attorney Office's recommendation is that the franchise is consistent with Town codes and state and federal law and should be adopted.

Attachments

1. Draft Franchise Agreement
2. Redline pages
3. Letter Clarifying Working Rules for Comcast's Existing Aerial Cable Facilities

EFM:efm

**TOWN OF YARROW POINT
ORDINANCE NO. 710**

AN ORDINANCE OF THE TOWN OF YARROW POINT, WASHINGTON, GRANTING COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, RECONSTRUCT, REPAIR AND UPGRADE THE CABLE SYSTEM UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA FOR THE PURPOSE OF PROVIDING CABLE SERVICES, SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS ORDINANCE AND APPLICABLE LAW; AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Town of Yarrow Point (Town) has a legitimate and necessary regulatory role in ensuring the availability of cable communications service, and reliability of cable systems in its jurisdiction, the availability of local programming (including public, educational and Governmental Access programming) and quality Customer service; and

WHEREAS, diversity in Cable Service programming is an important policy goal and Grantee's Cable System offers a wide range of programming services; and

WHEREAS, the Town is authorized by applicable law to grant one or more nonexclusive Franchises to construct, operate and maintain cable systems within the boundaries of the Town; and

WHEREAS, in consideration of the mutual promises made herein, and other good and valuable consideration as provided herein, the receipt and adequacy of which are hereby acknowledged, the Town and Grantee do hereby agree as follows;

NOW THEREFORE THE TOWN COUNCIL OF THE TOWN OF YARROW POINT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

CABLE FRANCHISE

Between

TOWN OF YARROW POINT, WASHINGTON

And

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC

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INTRODUCTORY STATEMENT

CABLE TELEVISION FRANCHISE. This Cable Television Franchise is entered into in Yarrow Point, Washington, this _____ day of _____, 2021, by and between the Town of Yarrow Point, Washington a municipal corporation, hereinafter (the “the Town”) and Comcast Cable Communications Management, LLC who is hereinafter known as (“Grantee”). The Town and Grantee are sometimes referred to hereinafter collectively as the “parties.”

SECTION 1. - DEFINITIONS

For the purposes of this Franchise and the Exhibits attached hereto the following terms, phrases, words and their derivations shall have the meanings given herein when indicated with the text of the Franchise by being capitalized. 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, or those defined, but not capitalized within the text shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory.

- 1.1 “Access” or “Access Programming”
includes Governmental or educational Access, collectively, and means the availability for Noncommercial use by various governmental and educational agencies, institutions and organizations, in the community, including the Town and its designees, of particular channels on the Cable System to receive and distribute Video Programming to Subscribers, as permitted under applicable law. “Governmental Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.
- 1.2 “Access Channel”
means any Channel or portion thereof, designated for Noncommercial Access purposes or otherwise made available to facilitate Access programming.
- 1.3 “Activation” or “Activated”
means the status of any capacity on or part of the Cable System wherein the use of that capacity or part thereof may be made available without further installation of Cable System equipment other than Subscriber premise equipment, whether hardware or software.
- 1.4 “Affiliated Entity” or “Affiliate”
when used in connection with Grantee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control of Grantee.
- 1.5 “Bad Debt”
means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Grantee, but not collected after reasonable efforts by Grantee.
- 1.6 “Basic Service”
means any Cable Service Tier that includes, at a minimum, the retransmission of local television Broadcast Signals.
- 1.7 “Broadcast Signal”
means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System off-the-air by antenna, microwave, satellite dishes or any other means.

- 1.8 “Cable Act”
means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and as amended by the Telecommunications Act of 1996, and any amendments thereto.
- 1.9 “Cable Operator”
means any Person or group of Persons, including Grantee, who provides Cable Service over the Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of the Cable System.
- 1.10 “Cable Service”
means the one-way transmission to Subscribers of Video Programming, or other programming service and Subscriber interaction, if any, that is required for the selection or use of such Video Programming or other programming service.
- 1.11 “Cable System”
means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within a community, but such term does not include:
- (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
 - (2) a facility that serves Subscribers without using any public right-of-way;
 - (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. Section 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of Section 621(c) (47 U.S.C. Section 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
 - (4) an open video system that complies with Section 653 of the Cable Act; or
 - (5) any facilities of any electric utility used solely for operating its electric utility systems. When used herein, the term “Cable System” shall mean Grantee’s Cable System in the Franchise Area unless the context indicates otherwise.
- 1.12 “Capital Contribution”
means a fee required by this franchise for Access facilities pursuant to 47 U.S.C 542(g)(2)(C).”

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- 1.13 “Channel”
means a portion of the frequency band capable of carrying a Video Programming Service or combination of Video Programming Services, whether by analog or digital signal, on a twenty-four (24) hour per day basis or a portion thereof.
- 1.14 “Customer Service Representative” or “CSR”
shall mean any person employed by Grantee to assist, or provide service to, Customers, whether by answering public telephone lines, writing service or installation orders, answering Customers’ questions, receiving and processing payments, or performing other Customer service-related tasks.
- 1.15 “Designated Access Provider”
means the entity or entities designated by the Town to manage or co-manage Access Channels and facilities. The Town may be a Designated Access Provider.
- 1.16 “Downstream Channel”
means a Channel capable of carrying a transmission from the Headend to remote points on the Cable System.
- 1.17 “Dwelling Unit”
means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy.
- 1.18 “FCC”
means the Federal Communications Commission or its lawful successor.
- 1.19 “Fiber Optic”
means a transmission medium of optical fiber cable, along with all associated electronics and equipment capable of carrying electric lightwave pulses.
- 1.20 “Franchise”
means the document, in which this definition appears, that is executed between the Town and Grantee, containing the specific provisions of the authorization granted and the contractual and regulatory agreement created hereby.
- 1.21 “Franchise Area”
means the area within the jurisdictional boundaries of the Town, including any areas annexed by the Town during the term of this Franchise.
- 1.22 “Franchise Fee”
includes any tax, fee or assessment of any kind imposed by the Town on Grantee or Subscribers, or both solely because of their status as such. The term Franchise Fee does not include:
- (1) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment on both utilities and Cable Operators

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or their services, but not including a tax, fee, or assessment that is unduly discriminatory against Cable Operators or cable Subscribers);

- (2) Capital costs that are required by the Franchise to be incurred by Grantee for Educational or Governmental Access facilities, including the support required in Section 9.6;
- (3) Requirements or charges incidental to the awarding or enforcing of the Franchise, including but not limited to, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
- (4) Any fee imposed under Title 17, United States Code.

1.23 “Grantee”

means Comcast Cable Communications Management, LLC or its lawful successor, transferee or assignee.

1.24 “Gross Revenues”

1.24.1 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the Town. Gross Revenues include, by way of illustration and not limitation:

- (1) monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);
- (2) installation, reconnection, downgrade, upgrade, or similar charges associated with changes in subscriber Cable Service levels;
- (3) fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Town;
- (4) converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- (5) Advertising Revenues as defined herein;
- (6) late fees, convenience fees, and administrative fees, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;
- (7) revenues from program guides;

- (8) Franchise Fees;
- (9) FCC Regulatory Fees;
- (10) commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the Town; and
- (11) any Cable Service revenues that may develop in the future, whether or not anticipated, and consistent with GAAP.

1.24.2 “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System Subscribers within the Town and shall be allocated on a pro rata basis using Grantee’s Cable System Subscribers within the Franchise Area in relation to the total number of Grantee’s Cable Service subscribers covered under the advertising arrangement. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and Comcast Effectv (“Effectv”) or their successors associated with sales of advertising on the Cable System within the Town allocated according to this paragraph using total Cable Service Subscribers reached by the advertising.

1.24.3 “Gross Revenues” shall not include:

- (1) actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;
- (2) any taxes and/or fees on services furnished by Grantee imposed by an municipality, state, or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- (3) fees imposed by any municipality, state, or other governmental unit on Grantee, including but not limited to Public, Educational and Governmental (PEG) Fees;
- (4) launch fees and marketing co-op fees; and
- (5) unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

1.24.4 To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro*

rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state, or local law. It is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Town. To the extent discounts reduce revenues includable for purposes of calculating Franchise Fees, Grantee may not unfairly or unlawfully allocate discounts for bundled services for the purpose of evading payment of Franchise Fees to the Town. The Town reserves its right to review and to challenge Grantee's calculations.

- 1.24.5 Grantee reserves the right to change the allocation methodologies set forth in this definition of Gross Revenues in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the Town within sixty (60) days of making such changes, and as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to 1.24.6 below.
- 1.24.6 Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the FASB, EITF and/or the SEC. Notwithstanding the forgoing, the Town reserves its right to challenge Grantee's calculation of Gross Revenues, including the application of GAAP to Franchise Fees and the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.
- 1.24.7 For the purposes of determining Gross Revenue Grantee shall use the same method of determining revenues under GAAP as that which Grantee uses in determining revenues for the purpose of reporting to national and state regulatory agencies.
- 1.25 "Headend" or "Hub"
means any Facility for signal reception and dissemination on a Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, and all other related equipment and Facilities.
- 1.26 "Leased Access Channel"
means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.

- 1.27 "Locally Scheduled Original Programming"
means Government Access or educational Access programming that is created by the Town or their designated access provider(s) including edited coverage of live programming. Such Locally Scheduled Original Programming shall not be considered as qualifying as such after three (3) cablecasts (initial, first repeat, second repeat and third repeat). Automated Video Programming filler, such as cablecasts of highways and roads, or video bulletin boards does not constitute Locally Scheduled Original Programming that qualifies herein.
- 1.28 "Pay Service" or "Premium Service"
means Video Programming or other programming service choices (such as movie Channels or pay-per-view programs) offered to Subscribers on a package tier, per-Channel, per-program or per-event basis.
- 1.29 "Person"
means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.
- 1.30 "Rights-of-Way"
means land acquired or dedicated for public roads and streets including easements dedicated for compatible use and consistent with Section 621 of the Cable Act, but does not include:
- (1) State highways;
 - (2) Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public, unless specifically used as a utility corridor;
 - (3) Structures, including poles and conduits, located within the right-of-way;
 - (4) Federally granted trust lands or forest board trust lands;
 - (5) Lands owned or managed by the state parks and recreation commission; or
 - (6) 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.
- 1.31 "Service Interruption"
means the loss of picture or sound on one or more cable Channels.
- 1.32 "State"
means the State of Washington.

- 1.33 “Subscriber” or “Customer”
means any Person who lawfully receives Cable Services provided by Grantee by means of the Cable System with Grantee’s express permission.
- 1.34 “Town”
means the Town of Yarrow Point, Washington, a municipal corporation, of the State of Washington.
- 1.35 “Tier”
means a category of Cable Services provided by Grantee for which a separate rate is charged.
- 1.36 “Video Programming”
means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, or cable programming provider.

SECTION 2. - GRANT OF FRANCHISE

2.1 Grant

- 2.1.1 The Town hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct, operate, maintain, reconstruct, repair and upgrade the Cable System for the purpose of providing Cable Services, subject to the terms and conditions set forth in this Franchise and applicable law. This Franchise shall constitute both a right and an obligation to fulfill the obligations set forth in the provisions of this Franchise.
- 2.1.2 Grantee, through this Franchise, is granted the right to operate its Cable System using the public Rights-of-Way within the Franchise Area in compliance with all lawfully enacted applicable construction codes and regulations. This Franchise is intended to convey limited rights and interests only as to those streets in which the Town has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide Grantee any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof. This Franchise does not deprive the Town of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the Town’s streets covered by this Franchise, including without limitation the right to perform work on its roadways, Right-of-Way or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

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- 2.1.3 This Franchise is subject to and shall be governed by all applicable provisions now existing or hereafter amended of federal, State and local laws and regulations, including but not limited to the Yarrow Point Municipal Code and general engineering design and development standards. This Franchise is subject to the general lawful police power of the Town affecting matters of municipal concern. Nothing in this Franchise shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by the Town. Grantee agrees to comply with the provisions of the Town ordinances provided that in the event of a conflict between the provisions of ordinances and the Franchise, the express provisions of the Franchise shall govern.
- 2.1.4 Grantee agrees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of Grantee that is a Cable Operator of the Cable System in the Franchise Area, as defined herein, or directly involved in the management or operation of the Cable System in the Franchise Area, will comply with the terms and conditions of this Franchise.
- 2.1.5 No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:
- (1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Town that may be required by the ordinances and laws of the Town.
 - (2) Any permit, agreement or authorization required by the Town for Rights-of-Way users in connection with operations on or in Rights-of-Way or public property; or
 - (3) Any permits or agreements for occupying any other property of the Town or private entities to which access is not specifically granted by this Franchise.
- 2.1.6 This Franchise authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6), as amended. Neither the Town nor the Grantee waive any rights they may have under applicable law as to the lawful use of the Cable System for other services and the regulatory obligations related to such services.

2.2 Use of Rights-of-Way

- 2.2.1 Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, through, below and along the Rights-of-Way within the Franchise Area, such wires, cables (both coaxial and Fiber Optic), conductors, ducts, conduit, vaults, manholes,

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amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures regarding placement and installation of Cable System facilities in the Rights-of Way.

- 2.2.2 Grantee must follow the Town-established requirements, as well as all the Town codes, ordinances and other regulations regarding placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way. Grantee must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. To protect public health, safety and welfare, the Town may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Rights-of-Way; may deny access if Grantee is not willing to comply with the Town's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the Town, or that is installed without prior Town approval of the time, place or manner of installation (including charging Grantee for all the costs associated with removal); and the Town may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. Grantee shall assume its costs (in accordance with applicable law) associated with any requirement of the Town in the exercise of its police powers, to relocate its Cable System facilities located in the Rights-of-Way.

2.3 Term

- 2.3.1 This Franchise and the rights, privileges, and authority granted hereunder and the contractual relationship established hereby shall remain in full force and effect for a period of ten (10) years from and after the effective date of this Ordinance, as specified in SECTION 19. - Effective Date, subject to acceptance of this Franchise by Grantee pursuant to Section 18.16.
- 2.3.2 The grant of this Franchise shall have no effect on any ordinance in effect prior to the effective date of this Franchise to indemnify or insure the Town against acts and omissions occurring during the period that the prior franchise was in effect, nor shall it have any effect upon liability to pay all Franchise Fees (for any prior years) that were due and owed under a prior franchise and the franchise ordinance.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests,

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easements, or franchises granted by the Town or its predecessors to any Person to use any property, Right-of-Way, easement, including the right of the Town to use same for any purpose it lawfully deems fit, including the same or similar purposes allowed Grantee hereunder. The Town may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems, as the Town deems appropriate.

2.5 Grant of Other Franchises

- 2.5.1 Grantee acknowledges and agrees that the Town reserves the right to grant one or more additional franchises subsequent to this Franchise to provide Cable Service or wireline video programming service within the Franchise Area; provided, the Town agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of Grantee's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include but are not limited to: Franchise Fees; insurance; system build-out requirements; security instruments; Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word-for-word identical franchise or authorization so long as the regulatory and financial burdens on each entity are materially equivalent. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section so long as the Town does not have lawful authority to regulate such wireless broadband networks within the Franchise Area.
- 2.5.2 The modification process of this Franchise as provided in the preceding paragraph shall only be initiated by written notice by Grantee to the Town regarding specified franchise obligations. Grantee's notice shall address the following:
- (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise;
 - (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments;
 - (3) providing text for any proposed Franchise amendments to the Town, and
 - (4) a written explanation of why the proposed amendments are necessary.

- 2.5.3 Upon receipt of Grantee's written notice as provided in Section 2.5.2, the Town and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Town and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the parties shall amend this Franchise to include the modifications. Notwithstanding any modification of this Franchise pursuant to the provisions of this Section 2.5, should any entity, whose authorization to provide Cable Services or similar wireline video programming service resulted in a triggering of the amendments under this Section, fail or cease to provide such services within the Town, the Town may provide ninety (90) days' written notice to Grantee of such fact, and the Town and Grantee shall enter into good faith negotiations to determine the original terms, conditions and obligations of this Franchise shall be reinstated and fully effective.
- 2.5.4 In the event an application for a new cable television franchise is filed with the Town proposing to serve the Franchise Area, in whole or in part, the Town shall provide notice of such application to the Grantee.
- 2.5.5 In the event that a wireline multichannel video programming distributor, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or wireline video services within the Town without a Cable Service franchise or other similar lawful authorization granted by the Town, then Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to Grantee. In requesting amendments, Grantee shall file a petition seeking to amend this Franchise. Such petition shall:
- (1) indicate the presence of such wireline competitor;
 - (2) identify the Franchise terms and conditions for which Grantee is seeking amendments;
 - (3) provide the text of all proposed Franchise amendments to the Town,
 - (4) identify all material terms or conditions in the applicable state or federal authorization which are substantially more favorable or less burdensome to the competitive entity.
 - (5) The Town shall not unreasonably withhold consent to Grantee's petition.

2.6 Familiarity with Franchise

Grantee acknowledges and warrants by acceptance of the rights, privileges and

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agreement granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions, terms and conditions herein. Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.7 Effect of Acceptance

By accepting the Franchise, Grantee:

- (1) acknowledges and accepts the Town's legal right to issue and enforce the Franchise;
- (2) agrees that it will not oppose the Town's intervening to the extent it is legally entitled to do so in any legal or regulatory proceeding affecting the Cable System;
- (3) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and
- (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.8 Police Powers

Grantee's rights hereunder are subject to the police powers of the Town to adopt and enforce ordinances necessary to protect the safety, health and welfare of the public, and Grantee agrees to comply with all applicable laws, ordinances and regulations lawfully enacted pursuant to the police powers of the Town, or hereafter enacted in accordance therewith, by the Town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary.

2.9 Franchise Area

Grantee shall provide Cable Services, as authorized under this Franchise, within the Franchise Area in accordance with line extension and density provisions as provided herein.

2.10 Reservation of Rights

Nothing in this Franchise shall

- (1) abrogate the right of the Town to perform any public works or public improvements of any description,
- (2) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Town, or

- (3) be construed as a waiver or release of the rights of the Town in and to the Rights-of-Way.

SECTION 3. - FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the use of the Town's Rights-of-Way, Grantee shall pay as a Franchise Fee to the Town, throughout the duration of this Franchise, an amount equal to five percent (5.0%) of Grantee's Gross Revenues or such greater or lesser percentage subject to subsection 3.7 below. Accrual of such Franchise Fee shall commence as of the effective date of this Franchise.

3.2 Payments

Grantee's Franchise Fee payments to the Town shall be computed quarterly for the preceding quarter. Each quarterly payment shall be due and payable no later than forty-five (45) days after the end of the preceding quarter. The quarters shall end respectively on the last day of March, June, September and December.

3.3 Acceptance of Payment

No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Audits

No more than on an annual basis, upon thirty (30) days' prior written notice, the Town shall have the right to conduct an independent audit of Grantee's financial records necessary to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. Provided Grantee cooperates in making all relevant records available upon request, the Town will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous six (6) years. Any additional amounts due to the Town as a result of the audit shall be paid within sixty (60) days following written notice to Grantee, and Grantee's agreement that the audit findings are correct, which notice shall include a copy of the audit findings. If a Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law calculated from the date the underpayment was originally due until the date the Town receives the payment. If the audit shows that Franchise Fees have been underpaid, by five percent (5%) or more in a calendar year, Grantee shall pay the cost of the audit in an amount up to \$12,500 for the first year of the audit and \$5,000 for the next two years of the audit period.

3.5 Financial Records

Grantee agrees to meet with a representative of the Town upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the Town deems necessary for reviewing reports and records that are relevant to the enforcement of this Franchise.

3.6 Underpayments

In the event any payment is not received within forty-five (45) days from the end of the scheduled payment period, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law calculated from the date the underpayment was originally due until the date the Town receives the payment. The period of limitation for recovery of franchise fees payable hereunder shall be six (6) years from the date on which payment by the Grantee was due.

3.7 Maximum Franchise Fee

The parties acknowledge that, at present, applicable federal law limits the Town to collection of a Franchise Fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that at any time throughout the term of this Franchise, the Town is authorized to collect an amount in excess of five percent (5%) of Gross Revenues in any twelve (12) month period, the parties hereby agree to amend the Franchise after written notice to Grantee, and a public meeting to discuss same, provided that all wireline cable systems in the Franchise Area over which the Town has jurisdiction are treated in an equivalent manner. In the event that at any time throughout the term of this Franchise, the Town is limited by federal law to collecting an amount which is less than five percent (5%) of Gross Revenues in any twelve (12) month period, Grantee may request reduction of the Franchise Fee payments to the Town in accordance with federal law and the parties hereby agree to amend the Franchise unless the Town would be covered under grandfathered provisions under federal law to keep the Franchise Fee at five percent (5%) of Gross Revenues.

3.8 Payment on Termination

If this Franchise terminates for any reason, Grantee shall file with the Town within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by Grantee since the end of the previous fiscal year. Within forty five (45) days of the filing of the certified statement with the Town, Grantee shall pay any unpaid amounts as indicated. If Grantee fails to satisfy its remaining financial obligations as required in this Franchise, the Town may do so by utilizing the funds available in a letter of credit or other security provided by Grantee pursuant to Section 5.3 or may exercise any other remedies provided to the Town in law or equity to collect on such financial obligations.

3.9 Service Packages

In addition to the requirements elsewhere in this Franchise, Town acknowledges

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that, during the term of this Franchise, Grantee may offer to its Subscribers, at a discounted rate, a bundled or combined package of services consisting of Cable Services, which are subject to the Franchise Fee referenced above, and other services that are not subject to that Franchise Fee. To the extent discounts reduce revenues includable for purposes of calculating Franchise Fees, Grantee may not unfairly or unlawfully allocate discounts for bundled services for the purpose of evading payment of Franchise Fees to the Town. As between Cable Services and non-Cable Services, revenues shall be allocated on a pro rata basis. If a dispute arises between the parties regarding this matter, Town and Grantee will meet within twenty (20) days' notice and discuss such matters in good faith in an attempt to reach a reasonable compromise thereof.

3.10 Alternative Compensation

In the event that Franchise Fees are prohibited by any law or regulation, Grantee shall pay to the Town that amount, if any, which is determined by applicable law.

3.11 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses by any law of the Town, the State or the United States including, without limitation, sales, use, utility, property, permits and other taxes, or business license fees.

SECTION 4. - ADMINISTRATION AND REGULATION

The Town shall be vested with the power and right to administer and enforce this Franchise and the regulations and requirements of applicable law, including the Cable Act, or to delegate that power and right of administration, or any part thereof, to the extent permitted under federal, State and local law, to any agent in the sole discretion of the Town.

4.1 Rates and Charges

Grantee rates and charges related to or regarding Cable Services shall be subject to regulation by the Town to the full extent authorized by applicable federal, State and local laws. Customer billing shall be itemized by service(s) per FCC Regulation 76.309(B)(ii)(A) and 76.1619 or as amended. Grantee shall comply with all applicable laws regarding rates for Cable Services and all applicable laws covering issues of cross subsidization.

4.2 No Rate Discrimination

All Grantee rates and charges shall be published (in the form of a publicly-available rate card), made available to the public, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances and conditions. Grantee shall not deny cable service or otherwise discriminate against customers or others. Grantee shall apply its rates in accordance with governing law. Nothing herein shall be construed to prohibit:

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- (1) The temporary reduction or waiving of rates or charges in conjunction with promotional campaigns;
- (2) The offering of reasonable discounts to similarly situated Persons;
- (3) The offering of rate discounts for either Cable Service generally;
or
- (4) The offering of bulk discounts for Multiple Dwelling Units.

4.3 Filing of Rates and Charges

Throughout the term of this Franchise, Grantee shall maintain on file with the Town a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

4.4 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise.

4.5 Performance Evaluation

4.5.1 Performance evaluation sessions may be held at any time upon request by the Town during the term of this Franchise following Grantee's repeated failure to comply with the terms of this Franchise or no more than once in any annual period.

4.5.2 All evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.

4.5.3 Topics that may be discussed at any evaluation session may include those issues surrounding Grantee's failure to comply with the terms of the Franchise, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision therein and further provided that this subsection need not be followed before other legal or equitable remedies within this Franchise.

4.5.4 During evaluations under this subsection, Grantee agrees to participate in such evaluation sessions described in this Section 4.5 and to provide such information or documents as the Town may request to perform the evaluation.

4.6 Leased Access Channel Rates

Upon request, Grantee shall provide a complete schedule of current rates and

charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee.

4.7 Late Fees

4.7.1 For purposes of this subsection, any assessment, charge, cost, fee or sum, however, characterized, that Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with applicable local, State and federal laws.

4.7.2 Grantee's late fee and disconnection policies and practices shall be nondiscriminatory, and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the Town without regard to the neighborhood or income level of the subscribers.

SECTION 5. - FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

5.1.1 General Indemnification

Grantee, at its sole cost and expense, shall indemnify, defend and hold the Town, its officers, officials, boards, commissions, authorized agents, representatives, and employees, harmless from any action or claim for injury, damage, loss, liability, settlement, proceeding, judgment, or cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any acts, errors, or omissions, or from the conduct of Grantee's business, including all damages in any way arising out of, or by reason of, any construction, excavation, erection, operation, maintenance, repair or reconstruction, or any other act done under this Franchise, by or for Grantee, its authorized agents, or by reason of any neglect or omission of Grantee its authorized agents or its employees, except only such injury or damage as shall have been occasioned by the sole negligence or intentional misconduct of the Town. Grantee shall consult and cooperate with the Town while conducting its defense of the Town. Said indemnification obligations shall extend to any settlement made by Grantee.

5.1.2 Concurrent Negligence

However, 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 Grantee and the Town, its officers, officials, employees, and volunteers, the

Grantee's liability hereunder shall be only to the extent of the Grantee's negligence.

5.1.3 Indemnification for Relocation

Grantee shall indemnify, defend and hold the Town, its elected officials, officers, authorized agents, boards, and employees, harmless for any damages, claims, additional costs, or expenses payable by the Town related to, arising out of, or resulting from Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any lawful relocation required by the Town. Pursuant to Section 5.1.1, the provisions of this Section 5.1.3 shall specifically include, but are not limited to, claims for delay, damages, costs, and/or time asserted by any contractor performing public work for or on behalf of the Town.

5.1.4 Additional Circumstances

Grantee shall also indemnify, defend and hold the Town harmless for any claim for injury, damage, loss, liability, cost and expense, including court and appeal costs and attorneys' fees and expenses in any way arising out of any failure by Grantee to secure consents from the owners, authorized distributors or Grantees/licensors of programs to be delivered by the Cable System, provided however, that Grantee will not be required to indemnify the Town for any claims arising out of the use of Access Channels by the Town and/or its Designated Access Providers or use by the Town of the Emergency Alert Cable System.

5.1.5 Procedures and Defense

If a claim or action arises, the Town or any other indemnified party shall tender the defense of the claim or action to Grantee, which defense shall be at Grantee's expense. The Town may participate in the defense of a claim and, in any event, Grantee may not agree to any settlement of claims financially affecting the Town without the Town's written approval that shall not be unreasonably withheld.

5.1.6 Duty of Defense

The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this Section 5.1.

5.1.7 Duty to Give Notice

The Town shall give Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. The Town's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event any such claim arises,

the Town or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the obligation and duty to defend any claims arising thereunder, and the Town shall cooperate fully therein.

5.1.8 Separate Representation

If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the Town and the counsel selected by Grantee to represent the Town, Grantee shall select other counsel without conflict of interest with the Town.

5.1.9 Prior Franchises

The grant of this Franchise shall have no effect on Grantee's duty under the prior franchises to indemnify or insure the Town against acts and omissions occurring during the period that the prior franchises were in effect, nor shall it have any effect upon Grantee's liability to pay all Franchise Fees which were due and owed under prior franchises.

5.1.10 Waiver of Title 51 RCW Immunity

Grantee's indemnification obligations shall include indemnifying the Town for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this indemnification for actions brought by the aforementioned employees is limited solely to claims against the Town arising by virtue of Grantee's exercise of the rights set forth in this Franchise. To the extent required to provide this indemnification and this indemnification only, Grantee waives its immunity under Title 51 RCW as provided in RCW 4.24.115; provided however, the forgoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees or other third party. The obligations of Grantee under this Section 5.1.10 have been mutually negotiated by the parties hereto.

5.1.11 Inspection

Inspection or acceptance by the Town of any work performed by Grantee at the time of completion of construction or maintenance projects shall not be grounds for avoidance of any of these covenants of indemnification.

5.1.12 Damage to Grantee Facilities

Notwithstanding any other provisions of this Section 5.1, Grantee assumes the risk of damage to its Cable System facilities located in or upon the Rights-of-Way from activities conducted by the Town, and agrees to release and waive any and all such claims against the Town

except to the extent any such damage or destruction is caused by or arises from the gross negligence, intentional misconduct or criminal actions of the Town. In no event shall the Town 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 the Town's acts or omissions.

5.1.13 Environmental Liability

Grantee shall at its own cost, expense, and liability, comply with all applicable laws, statutes, rules, and regulations concerning Hazardous Substances that relate to Grantee's Cable System. "Hazardous Substances" shall mean any material or substance which does cause or may cause environmental pollution or contamination (and associated liability and clean-up costs related thereto) as defined under applicable state and federal laws, rules, and regulations. Grantee shall be solely and separately liable and responsible for the containment, remediation and/or clean-up of any release of Hazardous Substances directly arising from or relating to Grantee's Cable System. Grantee shall indemnify, defend and hold the Town harmless from any fines, suits, procedures, claims, costs, damages, expenses, and actions of any kind arising out of or in any way connected with any release(s) of Hazardous Substances directly arising from or related to Grantee's Cable System. This indemnity includes, but is not limited to:

- (1) liability for a governmental agency's costs of removal or remedial action for Hazardous Substances;
- (2) damages to natural resources caused by Hazardous Substances, including the reasonable costs of assessing such damages;
- (3) liability for the Town's costs of responding to Hazardous Substances; and
- (4) liability for any costs of investigation, abatement, mitigation, correction, remediation, cleanup, fines, penalties, or other damages arising under any environmental laws.

5.2 Insurance Requirements

5.2.1 General Requirement

Grantee shall procure and maintain for the duration of the Franchise and as long as Grantee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Agreement and use of the rights-of-way in the coverage amounts described below:

- (1) Commercial General Liability coverage for bodily injury, personal injury, and property damage with limits of no less than five million

dollars (\$5,000,000) per occurrence. The general aggregate limit shall be no less than five million dollars (\$5,000,000). Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Town shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect this Franchise using ISO endorsement CG 20 12 05 09 or CG 20 26 07 04, or substitute endorsement providing at least as broad coverage.

- (2) Commercial Automobile Liability Insurance with minimum combined single limits of at least two million dollars (\$2,000,000) each occurrence and five million dollars (\$5,000,000) aggregate with respect to each of Grantee's owned, hired and non-owned, or any other vehicles assigned to or used in any activities authorized under or used in conjunction with this Franchise. Automobile Liability insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
- (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (4) Umbrella or excess liability insurance in the amount of five million dollars (\$5,000,000). Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Grantee's Commercial General Liability and Automobile Liability insurance. The Town shall be named as an additional insured on the Grantee's Excess or Umbrella Liability insurance policy. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

5.2.2 Primary Insurance

Grantee's Commercial General Liability, Automobile Liability, and Excess or Umbrella Liability, insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the Town. Any insurance, self-insurance, or self-insured pool coverage maintained by the Town shall be excess of the Grantee's insurance and shall not contribute with it. The Town, and the Town's officers, officials, boards, commissions, agents, representatives, and employees are to be covered as, and have the rights of, additional insured's with respect to liability arising out of activities performed by, or

on behalf of, Grantee under this Franchise or applicable law, or in the construction, operation, upgrade, maintenance, repair, replacement or ownership of the Cable System;

5.2.3 Acceptability of Insurers

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

5.2.4 Verification of Coverage

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

5.2.5 Subcontractors

Grantee shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of the Grantee provided insurance as set forth herein, except the Grantee shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Grantee shall require that the Town is an additional insured on the Subcontractor's Commercial General liability insurance policy.

5.2.6 Notice of Cancellation

Grantee shall provide the Town with written notice of any policy cancellation within two business days of their receipt of such notice.

5.2.7 Failure to Maintain Insurance

Failure on the part of Grantee to maintain the insurance as required shall constitute a material breach of Franchise, upon which the Town may, after giving five business days' notice to Grantee to correct the breach, terminate the Franchise or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Town on demand.

5.2.8 Grantee – Self-Insurance

If the Grantee is self-insured or becomes self-insured during the term of the Franchise, Grantee or its affiliated parent entity shall comply with the following:

- (1) provide the Town, upon request, a copy of Grantee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available;

- (2) Grantee or its parent company is responsible for all payments within the self-insured retention; and
- (3) Grantee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

5.2.9 No Limitation of Liability

Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the Town's recourse to any remedy available at law or in equity.

5.3 Security

5.3.1 Grantee shall provide a performance bond ("Performance Bond") in the amount of twenty-five thousand dollars (\$25,000) to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its facilities and to restore the Town Rights-of-Way and other property. The Performance Bond shall be in a standard industry form. Grantee shall pay all premiums or costs associated with maintaining the Performance Bond and shall keep the same in full force and effect at all times. Except as expressly provided in Section 5.4, Grantee shall not be required to obtain or maintain other bonds as a condition of being awarded the Franchise or continuing its existence.

5.3.2 If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then the Town may request and Grantee shall establish and provide within thirty (30) days from receiving notice from the Town, to the Town, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the Town in the amount of twenty-five thousand dollars (\$25,000).

5.3.3 If a letter of credit is furnished pursuant to subsection 5.3.2, the letter of credit shall then be maintained at that same amount until the uncured breach is resolved.

5.3.4 After the giving of notice by the Town to Grantee and expiration of any applicable cure period, the letter of credit or Performance Bond may be drawn upon by the Town for purposes including, but not limited to, the following:

- (1) Failure of Grantee to pay the Town sums due under the terms of this Franchise;

- (2) Reimbursement of costs borne by the Town to correct Franchise violations not corrected by Grantee;
- (3) Liquidated damages assessed against Grantee as provided in this Franchise.

5.3.5 The Town shall give Grantee written notice of any withdrawal from the Performance Bond or letter of credit. Within ten (10) days following notice that a withdrawal has occurred from the Performance Bond or letter of credit, Grantee shall restore the Performance Bond or letter of credit to the full amount required under this Franchise. Grantee's maintenance of the letter of credit shall not be construed to excuse unfaithful performance by Grantee or limit the liability of Grantee to the amount of the letter of credit or otherwise limit the Town's recourse to any other remedy available at law or in equity.

5.3.6 Grantee shall have the right to appeal to the hearing examiner for reimbursement in the event Grantee believes that the Performance Bond or letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the Town erroneously or wrongfully withdraws from the Performance Bond or letter of credit, as determined by either the hearing examiner or judicial appeal, shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in The Wall Street Journal as of the date of such decision.

5.3.7 If any Performance Bond or letter of credit delivered pursuant thereto expires prior to twelve (12) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than twelve (12) months after the expiration of this Franchise. The renewed or replaced Performance Bond or letter of credit shall be of the same form and with a bank authorized herein and for the full amount stated in this Section.

5.4 Bonds

Grantee, at its expense, shall comply with all of the applicable construction or maintenance bonding requirements provided for in the Town Code, permit requirements, or development standards officially adopted by the Town for work in the Rights-of-Way.

SECTION 6. - CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards as provided in FCC Standards 47 C.F.R. Sections 76.309, 76.1602, 76.1603 and 76.1619.

6.2 Subscriber Privacy

Grantee shall comply with privacy rights of Subscribers in accordance with applicable law.

6.3 Customer Service Agreement and Manual

6.3.1 Grantee shall provide to Subscribers an accurate, comprehensive service agreement (currently called the work order) and Customer installation packet (currently called the Install Package) for use in establishing Subscriber service. This material shall, at a minimum, contain the following:

- (1) Grantee's procedure for investigation and resolution of Subscriber service complaints.
- (2) Services to be provided and rates for such services.
- (3) Billing procedures.
- (4) Service termination procedure.
- (5) A description of the manner that will be used to provide notice of changes in rates, service or service terms and conditions.
- (6) A complete statement of the Subscriber's right to privacy.
- (7) Equipment policy.
- (8) The name, address and phone number of the Customer care department that is responsible for handling cable questions and complaints for Grantee.

6.3.2 A copy of the installation packet shall be available to each Subscriber at the time of initial installation and any reconnection or Cable Service upgrade requiring a home visit by Grantee (excluding reconnections to the same Subscriber within twelve (12) months), and at any time the packet is requested by the Subscriber. Within thirty (30) days following material policy changes, information regarding the changes will be provided to Subscribers.

SECTION 7. - REPORTS AND RECORDS

7.1 Open Records

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7.1.1 Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Town. In addition to any other records that may be provided for under any other section of this Franchise, the Town, including the Town's Finance Director and Public Works Director or their designees, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliates, which are reasonably related to the administration or enforcement of the terms of this Franchise, or Grantee's use and location within the Town's Rights-of-Way. Records subject to this Section 7.1 include, without limitation, FCC filings on behalf of Grantee, its parent corporations, or Affiliates which directly relate to the operation of the Cable System in the Town; SEC filings; listing of Cable Services, rates, and Channel line-ups; Cable Services added or dropped; Channel changes; the net number of Subscribers and the number of Subscribers added and terminated; all planned construction activity; Right-of-Way route maps (including overhead and underground trunk and distribution facilities in a GIS format); beginning and ending plant miles; total homes passed for the previous twelve (12) months; and any significant technological changes occurring in the Cable System; federal and State reports; reports of Subscriber complaints in the Town and how such complaints are resolved.

7.1.2 Grantee shall not deny the Town access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate, or a third party. The Town may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the Town, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may require that the Town or its designee inspect them at Grantee's local offices. For purposes of clarity, any requirements to provide as-built maps shall not be considered too voluminous or unable to be copied for security purposes with respect to the provisions of this subsection 7.1.2. If any books or records of Grantee are not kept in a local office and are not made available in copies to the Town or its designee upon written request as set forth above, and if the Town determines that an examination of such records is necessary or appropriate for the performance of any of the Town's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

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- 7.2.1 Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. That said, Grantee does agree to provide all information reasonably required to verify compliance with the material terms of the Franchise. If Grantee believes that any documents are confidential or proprietary, Grantee 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.
- 7.2.2 As a public agency, records and information provided to or otherwise used by the Town may be subject to a request submitted under the state Public Records Act. In such an event, Grantee agrees to cooperate fully with the Town in satisfying the Town's duties and obligations under the Public Records Act, subject to Grantee's rights under this Franchise and RCW 42.56.540. If a request is received for records Grantee has submitted to the Town and has identified as confidential, proprietary or protected trade secret material, the Town will use its best efforts to provide Grantee with notice of the request in accordance with RCW 42.56.540 and a reasonable time (of no less than 10 days) within which Grantee may seek an injunction to prohibit the Town's disclosure of the requested record. The Town shall comply with any injunction or court order requested by Grantee which prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order, Grantee shall reimburse the Town for any fines or penalties imposed for failure to disclose such records. Nothing in this Section 7.2 prohibits the Town from complying with RCW 42.56, or any other applicable law or court order requiring the release of public records, and the Town shall not be liable to Grantee for compliance with any law or court order requiring the release of public records. The Town is not required to assert on Grantee's behalf any exemption based on trade secret, proprietary or confidential information, provided, however, the Town may assert such exemption if the Town itself believes in good faith that an exemption applies to the requested records. Grantee agrees to defend, indemnify and hold the Town, its officers, officials, employees, agents, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the assertion of an exemption to disclosure under the Public Records Act based upon records claimed or identified by Grantee as confidential, proprietary or protected trade secret material. The provisions of this section shall survive the expiration or termination of this Franchise.

7.3 Annual Reports

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- 7.4 Upon request, and no more than ninety (90) days after the end of the first quarter, Grantee shall submit to the Town a written report, which shall include the following information:
- 7.4.1 A Gross Revenue statement for the preceding calendar year and all deductions and computations for the period, and such statement shall be reviewed by a certified public accountant.
 - 7.4.2 A summary of the previous year's activities regarding the development of the Cable System, including, but not limited to, homes passed, beginning and ending plant miles and the total number of Subscribers.

SECTION 8. - PROGRAMMING

- 8.1 Broad Programming Categories
Grantee shall provide at least the following broad categories of programming to the extent such categories are reasonably available.
- (1) Educational programming;
 - (2) News, government, weather and information;
 - (3) Sports;
 - (4) General entertainment including movies;
 - (5) Foreign language programming; and
 - (6) Children's programming.
- 8.2 Deletion of Broad Programming Categories
- 8.2.1 Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without prior written notice to the Town.
 - 8.2.2 In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee shall follow the guidelines of federal law.
- 8.3 Obscenity
Grantee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any programming which is obscene under applicable federal, State or local laws.
- 8.4 Services for the Disabled
Grantee shall comply with the Americans With Disabilities Act and any amendments or successor legislation thereto.

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- 8.5 Parental Control Device
Upon request by any Subscriber, Grantee shall make available at no charge a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.
- 8.6 Complimentary Cable Service
The Town acknowledges that Grantee currently provides certain complimentary video services to Town Hall, without charge. Grantee agrees to voluntarily continue, until it elects to discontinue, the provision of complimentary services. At such time as Grantee elects to discontinue the provision of complimentary services, Grantee agrees that it will do so only after providing Town with at least one hundred twenty (120) days' prior written notice. Such notice shall document the proposed offset or service charges so that the Town can make an informed decision as to whether to keep the services. Upon written notice from Grantee, the Town shall be given the full one hundred twenty (120) days to review the list of outlets receiving complimentary service and shall have the right to discontinue receipt of all or a portion of the outlets receiving complimentary service provided by Grantee in the event Grantee elects to discontinue the provision of complimentary service as set forth herein. In the event applicable law is overturned in whole or in part by action of the FCC or through judicial review, the Town and Grantee will meet promptly to discuss what impact such action has on the provision of the in-kind cable-related contributions to which this section applies.
- 8.7 New Technology
- 8.7.1 If there is a new technology, Cable Service program offering, programming delivery method or other such new development that Grantee in its sole discretion decides to beta test or trial on a limited basis in the marketplace, and such a test or trial is suited to the size and demographics of the Town, Grantee shall be allowed by the Town to conduct the trial or beta test in the Town so long as such a test is technically feasible.
- 8.7.2 If there is a new technology that in the Town's opinion would enhance substantially the quality or quantity of programming available to Subscribers on the Cable System, Grantee shall, at the request of the Town, investigate the feasibility of implementing said technology and report to the Town the results of such investigation within ninety (90) days from the date of such request.

SECTION 9. - PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

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9.1 Access Channels

- 9.1.1 Upon one hundred twenty (120) days written notice, the Grantee shall make available one (1) Standard Digital (SD) Government Access Channel throughout the term of this Franchise. Upon receipt of the written notice, the Town and the Grantee shall meet to discuss and mutually agree upon an implementation plan to activate said Channel controlled and operated by the Town.
- 9.1.2 The Town acknowledges that the Grantee's Cable System provides additional benefits to Access programming needs beyond the requirements listed in subsection 9.1.1 above. This is accomplished through the inclusion of other regional access programming within the regional channel line-up that services the Franchise Area. The Grantee will endeavor to provide the Subscribers in the Franchise Area with the other regional access channels so long as the programmers offer them for use on the Cable System.
- 9.1.3 In the event Grantee makes any change in the Cable System and related equipment and facilities or in signal delivery technology, which change directly or indirectly affects the signal quality or transmission of any Access Channel programming or services, Grantee shall, at its own expense, take necessary technical steps, acquire new equipment so that the Access facilities and equipment may be used as intended to ensure that delivery of Access Video Programming signals is not diminished or adversely affected, including, among other things, so that live and taped programming can be cablecast with as good or better signal quality than existed prior to such change.

9.2 Simulcast High Definition (HD) Access Channel

- 9.2.1 The Grantee agrees to simulcast the one (1) SD Government Access Channel in HD (HD PEG Channel) format after the Town's maintains an average of five (5) hours per-day, five days per-week of Locally Scheduled Original Programming. For the purposes of this subsection, character-generated programming (i.e., community bulletin Town Councils) shall not satisfy, in whole or in part, this programming requirement. Once the Town meets or exceeds this programming requirement, the Grantee shall provide the HD PEG Channel under the following conditions:
- (1) Upon the Town's request, the Grantee shall have one-hundred and twenty (120) days to activate the simulcast HD PEG Channel.
 - (2) The Grantee shall be responsible for all capital engineering costs associated with fulfilling the request to activate the simulcast HD PEG Channels.

- (3) The Town or any Designated Access Provider shall be responsible for acquiring all equipment necessary to produce programming in HD.
- (4) Upon activation of the simulcast HD PEG Channel, Comcast shall own and maintain the encoder equipment used to transmit the HD signal from Town Hall (the demarcation point).
- (5) The Town shall provide the HD PEG Channel signal as specified by the Grantee's engineering standards, as amended by the Grantee from time to time because of changes in technology.

9.2.2 The Town acknowledges that the simulcast HD PEG Channel will be available only to those Subscribers who elect to subscribe to Grantee's high-definition Cable Service, receive a HD set-top converter, and pay all fees associated therewith.

9.2.3 Grantee shall have sole discretion to determine the Channel placement of the simulcast HD PEG Access Channel within its HD channel line-up.

9.3 Management and Control of Access Channels

9.3.1 The Town may authorize Designated Access Providers to control, operate, and manage the use of any and all Access facilities provided by Grantee under this Franchise, including, without limitation, the operation of Access Channels. The Town or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise, the FCC, federal and State law. Nothing herein shall prohibit the Town from authorizing itself to be a Designated Access Provider.

9.3.2 Grantee shall cooperate with the Town and Designated Access Providers in the use of the Cable System and Access facilities for the provision of Access Channels.

9.4 Location and Quality of Access Channels

9.4.1 The Standard Definition Access Channel provided to Subscribers under this Franchise shall be included by Grantee as a part of the lowest Tier of service provided to all Subscribers in the Franchise. Grantee agrees to use reasonable efforts to place the Access Channel in the same vicinity as other local government access channels. Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments.

9.4.2 In addition, Grantee will make reasonable efforts to locate the HD Access Channel provided pursuant to Section 9.2 in a location on its HD Channel lineup that is easily accessible to Subscribers.

- 9.4.3 The parties agree that it is the responsibility of the Designated Access Provider(s) to provide a quality Access signal, to the Grantee at the point of demarcation, which meets or exceeds the FCC technical standards. Notwithstanding the forgoing, the Grantee agrees that it will deliver to subscribers an Access signal of the same quality it receives from the Designated Access Provider(s) without degradation and in accordance with the FCC technical standards. There shall be no restriction on Grantee's technology used to deploy and deliver Standard Definition or High Definition signals so long as the requirements of the Franchise are otherwise met. FCC technical standards shall be used for all testing and assessment of quality under this section.
- 9.4.4 Grantee shall provide Headend and hub equipment and routine maintenance and repair and replace, if necessary, any of Grantee's equipment required to carry the Access signal to and from the Town's and any other Access origination point and the Grantee's Headend and hubs for the Access Channels.
- 9.4.5 If Grantee makes a change in its Cable System and related equipment and facilities, or in its signal delivery technology, which directly or indirectly affects the signal quality or method or type of transmission of Access programming or services, Grantee shall take necessary technical steps and provide necessary technical assistance, including the acquisition of all necessary equipment and full training of access personnel, to ensure that the capabilities of Access Channels and delivery of Access programming are not diminished or adversely affected by such change. For example, live and taped programming must be cablecast with as good or better signal quality than existed prior to such change.

9.5 Access Channel Identification/Location/Relocation/Bill Insertions

- 9.5.1 Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. Grantee shall provide to the Town a minimum of sixty (60) days notice, and use its best efforts to provide ninety (90) days notice, prior to any relocation of its Access Channels, unless the change is required by federal law, in which case Grantee shall give the Town the maximum notice possible.
- 9.5.2 Grantee, upon request, and when space is available, shall provide the Town the opportunity to include two bill insertions per year. The Town or Designated Access Providers shall be responsible for the costs of printing its bill insertions, the cost of inserting the information into Grantee's bills and for any incremental postage costs. Bill insertions must conform to Grantee's reasonable mailing requirements. Grantee shall be provided an opportunity to review and approve all Access bill insertions.

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9.6 Support for Access Capital Costs

- 9.6.1 Upon one hundred twenty (120) days notice from the Town, Grantee shall collect and remit to the Town, as support for any lawful capital PEG use, twenty-five cents (\$.25) per Subscriber per month, payable quarterly with Franchise Fees as a “PEG Contribution.” The PEG Contribution shall not be treated as franchise fees for purposes of 47 U.S.C. § 542 or any other purpose, and shall at no time be offset or deducted from franchise fee payments made to the Town under this Franchise or applicable law. Upon sixty (60) days written notice to Grantee, the Town Council may direct Grantee to no longer collect such PEG Fee from Subscribers.
- 9.6.2 If during the Term of this Franchise, the Town Council determines that there is a need for additional capital equipment to support the Access Channels, then based upon that demonstrated need, both parties shall meet to determine how to adjust the PEG Contribution and if the remaining term of this franchise does not accommodate the full capital needs of the Town, both parties may review the possibilities of extending the term of the franchise. Such amount shall be the same amount required of all other Cable Operators in the Franchise Area. The Town agrees that 47 C.F.R. §76.922 permits Grantee to add the cost of the PEG Contribution to the price of Cable Services and to collect the PEG Contribution from Subscribers. In addition, as permitted in 47 C.F.R. §76.985, all amounts paid as the PEG Contribution may be separately stated on Subscriber’s bills as a government access capital equipment fee.
- 9.6.3 The Town shall have discretion to allocate the PEG Contribution in accordance with applicable law. To the extent the Town makes access capital investments using Town funds prior to receiving the monthly PEG Contribution funds, the Town is entitled to apply the subsequent monthly PEG Contribution payments from Grantee toward such Town capital investments. The Town agrees that the PEG Contribution may be treated as a separate line item on Subscriber bills in accordance with applicable federal law.
- 9.6.4 Upon the Grantee’s written request, the Town shall submit a report no more frequently than annually on the use of the Town specific Access Channels and capital PEG Fee. The Town shall submit a report to the Grantee within one hundred twenty (120) days of a written request. The Grantee may review the records of the Town regarding the use of the PEG Contribution.
- 9.6.5 Unless the Town determines to no longer use the Access Channels, the Town shall dedicate the time, personnel and other resources needed to operate the Access Channels designated herein.

9.7 Technical Quality

Grantee shall maintain all Access channels as required by FCC standards. Grantee shall ensure that any Access Channels carried in High Definition format can also be viewed in Standard Definition format by Subscribers who do not receive High Definition service or do not have High Definition equipment, with the same quality and functionality as commercial channels of the same format, whether through simulcasting the programming in Standard and High Definition, or by means of another technical solution used by Grantee for other commercial programmers carried on the channel lineup.

9.8 Return Connectivity

9.8.1 When the Town provides notice to the Grantee concerning its election to control and operate the SD Access Channel, the Town shall designate its proposed Access facility location. Within sixty (60) days of receiving notice, the Grantee shall review its facilities and records and provide an estimate of costs associated with the construction and activation of a fiber optic return line capable of transmitting Video Programming to enable the distribution of the Town's Access programming to Subscribers on the provided SD Access Channel. The return line shall run from a location to be determined by the Town to the Grantee's facilities. Within a reasonable time-period of receiving the Town's directive, the Grantee shall construct and activate a return line in accordance with the cost estimate previously provided. The Town agrees to pay the actual costs of the return line within ninety (90) days of construction / activation and receipt of an invoice from the Grantee. The parties agree that the Town may use the PEG Contribution to pay for the construction of this return line.

9.8.2 Once activated and throughout the remaining term of this Franchise, Grantee shall continue to provide and maintain such return line, as per federal law.

9.9 Guide Selection

Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the Access Channels shall be treated in a non-discriminatory fashion consistent with applicable laws so that Subscribers will have ready access to Access Channels. To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital channel guide, Grantee will make available to Town the ability to place Access Channel programming information on the interactive Channel guide via the electronic programming guide ("EPG") vendor ("EPG provider") that Grantee utilizes to provide the guide service. Grantee will be responsible for providing the designations and instructions necessary for the Access Channels to appear on the EPG and the Town will be responsible for providing Access content in a format that is compatible with the EPG. All costs and operational requirements for the EPG provider shall be the responsibility of the Town. Grantee is not

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responsible for operations of the EPG provider. Grantee shall, to the maximum extent possible, make available to the Town any price discounts Grantee may have in place with third party vendors that offer such programming guide services. The cost of this guide service may be funded in any manner consistent with applicable law.

SECTION 10. - GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Construction

- 10.1.1 Grantee hereby acknowledges that the Town Code contains construction requirements for the usage of the Rights-of-Way and agrees to abide by such construction requirements, including but not limited to those contained in Yarrow Point Municipal Code Title 12 – Streets, Sidewalks, and Public Places.
- 10.1.2 Grantee shall perform all maintenance, construction, repair, upgrade and reconstruction necessary for the operation of its Cable System in accordance with applicable laws, regulations, ordinances, Town standards, (Town’s engineering design and development standards) and provisions of this Franchise. Prior to doing such work Grantee shall apply for, and obtain, appropriate permits from the Town, and give appropriate notices to the Town, and Grantee shall pay all applicable fees upon issuance of the requisite permits by the Town to Grantee. As a condition of any permits so issued, the Town officials may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, protection of the public and the continuity of pedestrian or vehicular traffic. All facilities constructed or operated under this Franchise shall be installed and maintained at such places in or upon such rights-of-way as shall not interfere with the free passage of traffic and the free use of adjoining property, and shall conform to federal standards, state requirements, and Town regulations. To the extent practicable and economically feasible, Grantee’s construction and location of its facilities shall be of minimal impact to the Town streets and sidewalks located within the Rights-of-Way. All construction and maintenance of any and all of Grantee’s facilities within the Rights-of-Way shall, regardless of who performs the construction, be and remain Grantee’s responsibility.
- 10.1.3 Prior to beginning any construction, excavations, or significant repair, Grantee shall provide the Town with a construction schedule for work in the Rights-of-Ways as required by the Town’s permitting regulations. Further, Grantee shall meet with the Town and other franchise and master permit holders and users of the Rights-of-Way upon written

notice as determined by the Town, to discuss options regarding scheduling and coordinating construction in the Rights-of-Way.

- 10.1.4 Grantee may make excavations in Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, permittees and franchisees so as to reduce so far as possible the number of Rights-of-Way cuts within the Franchise Area.
- 10.1.5 In the event that emergency repairs are necessary, Grantee will make best efforts to contact the Town's Public Works Department (425-454-6994) or the Town's Mayor (mayor@yarrowpointwa.gov) prior to the repair, however Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.
- 10.1.6 Grantee shall be subject to any and all requirements established by the Town with regard to the placement and screening of Grantee's property. Such requirements may include, but are not limited to, the use of landscaping to screen pedestals and cabinets and a requirement that construction be flush with the natural grade of the surrounding area.

10.2 Location of Facilities

- 10.2.1 Prior to doing any digging or excavation in the Rights-of-Way, Grantee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to RCW 19.122.
- 10.2.2 Further, upon request from the Town in conjunction with the design of any Town project, and no more than thirty (30) days following such request, Grantee shall, at Grantee's expense, mark on the surface all of its located underground facilities within the area of the proposed excavation, including horizontal and vertical location.

10.3 Restoration of Rights-of-Way

- 10.3.1 When any opening is made by Grantee in a hard surface pavement in any Rights-of-Way, Grantee shall promptly refill the opening and restore the surface as required by its permit. Grantee shall guarantee the durability and structural integrity of any street cut or repair made by it or its agents or subcontractors which is necessary for the construction, installation, operation, repair or maintenance of Grantee's Facilities for the life of the street; provided, that no action by an unrelated third party materially affects the integrity of the Grantee's

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street cut or repair. Grantee shall repair or replace, at no expense to the Town, any failed street cut or repair which was completed by the Grantee or its agents or subcontractors.

10.3.2 If Grantee excavates the surface of any Rights-of-Way, Grantee shall be responsible for restoration in accordance with applicable regulations regarding the Rights-of-Way and its surface within the area affected by the excavation. The Town may, after providing notice to Grantee, and Grantee's failure to respond within the agreed upon time, refill or repave any opening made by Grantee in the Rights-of-Way, and the expense thereof shall be paid by Grantee. In the event Grantee does not repair a Right-of-Way or an improvement in or to a Right-of-Way in a prompt timeframe or as agreed to with the Town Engineer or any other department director as the Town may designate, the Town may repair the damage and shall be reimbursed its actual cost within thirty (30) days of submitting an invoice to Grantee. The cost of all repairs and restoration, including the costs of inspection and supervision shall be paid by Grantee. All of Grantee's work under this Franchise, and this Section in particular, shall be done in compliance with all laws, regulations and ordinances of the Town and State. All work by Grantee pursuant to this Section shall be performed in accordance with applicable Town standards.

10.3.3 The Public Works Director or any other department director as the Town may designate shall have final approval of the condition of such streets and public places after restoration.

10.4 Maintenance and Workmanship

10.4.1 Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, stormwater, water pipes or any other property of the Town, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in Rights-of-Way by, or under, the Town's authority.

10.4.2 Grantee shall provide and use any equipment and appliances necessary to control and carry Grantee's signals so as to prevent injury to the Town's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in safe condition.

10.4.3 Grantee's transmission and distribution Cable System, wires and appurtenances shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to unnecessarily hinder or obstruct the free use of Rights-of-Way, or other public property.

10.5 Acquisition of Facilities

Upon Grantee's acquisition of facilities in any Rights-of-Way, or upon the addition or annexation to the Town of any area in which Grantee owns or operates any facility, such facilities shall immediately be subject to the terms of this Franchise.

10.6 Relocation of Facilities

10.6.1 Nothing in this Franchise shall prevent the Town from constructing any public work or improvement. The Town may require Grantee to relocate the Cable System within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of public welfare, health, or safety. For example, without limitation, the movement of or the request to locate Grantee's facilities may be needed by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by for public purposes. 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 entities. Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections requested pursuant to this Section 10.6 shall be borne by Grantee. Such work shall be performed at Grantee's expense. Nothing contained within this Franchise shall limit Grantee's ability to seek reimbursement for relocation costs when permitted pursuant to RCW 35.99.060. In the case of a joint relocation project, Grantee shall be responsible for the cost of relocating its facilities.

10.6.2 If the Town determines that the project necessitates the relocation of Grantee's existing facilities, the Town shall provide Grantee 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 Town shall consult with Grantee and consider the extent of facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the Town's overall project construction sequence and constraints, to safely complete the relocation, and the Town shall endeavor to provide Grantee at least sixty (60) days' notice prior to the Relocation Date. Grantee shall complete the relocation by the Relocation Date, unless the Town 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 Town will make reasonable efforts to involve Grantee in the predesign and design phases of any Public Project. After receipt of the written

notice containing the Relocation Date, Grantee shall relocate such facilities to accommodate the Public Project consistent with the timeline provided by the Town and at no charge or expense to the Town. Such timeline may be extended by a mutual agreement.

- 10.6.3 If Grantee fails to complete this work within the time prescribed above and to the Town's satisfaction, the Town may cause such work to be done and bill the cost of the work to Grantee, including all costs and expenses incurred by the Town due to Grantee's delay. In such event, the Town shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, Grantee shall pay the Town. In any event, if Grantee fails to timely relocate, remove, replace, modify or disconnect Grantee's facilities and equipment, and that delay results in any delay damage accrued by or against the Town, Grantee will be liable for all documented costs of construction delays attributable to Grantee's failure to timely act. Grantee reserves the right to challenge any determination by the Town of costs for construction delays related to an alleged failure to act in accordance with this subsection 10.6.

10.7 Movement of Cable System Facilities for Other Entities

- 10.7.1 If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another entity with the rights to use the Rights-of-Way, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party.
- 10.7.2 At the request of any Person holding a valid permit (a "Permittee") and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. Grantee may require a reasonable deposit of the estimated payment in advance and may require that the cost be paid by the Permittee. Such payment is an exchange between the Grantee and the Permittee, and the Town will not be the administrator of these transactions.
- 10.7.3 Reimbursement of Grantee Costs
Grantee specifically reserves any rights it may have under applicable law for reimbursement of costs related to undergrounding or relocation of the Cable System as described in this Section 10.7, and nothing herein shall be construed as a waiver of such rights.

10.8 Reservation of Town Use of Right-of-Way

Nothing in this Franchise shall prevent the Town or public utilities owned, maintained or operated by public entities other than the Town from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System but insofar as the Cable System, or any portion thereof, is required to be relocated to accommodate the construction of the Town or public utility, Grantee shall be solely responsible for the costs associated with relocation.

10.9 Rights-of-Way Vacation

If any Rights-of-Way or portion thereof used by Grantee is vacated by the Town during the term of this Franchise, unless the Town specifically reserves to Grantee the right to continue the use of vacated Rights-of-Way, Grantee shall, without delay or expense to the Town, remove its facilities from such Rights-of-Way, and restore, repair or reconstruct the Rights-of-Way where such removal has occurred. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by the Town, to restore, repair or reconstruct such Rights-of-Way, the Town may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the Town, shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation.

10.10 Removal of Discontinued Facilities

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit to the Town a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the Town allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the Town may require Grantee to remove the facility from the Rights-of-Way or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest. The Town may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the Town. Until such time as Grantee removes or modifies the facility as directed by the Town, or until the Town accepts abandonment or the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for the facility, as well as maintenance of the Rights-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the Town may choose to use such facilities for any purpose whatsoever including, but not limited to, Access Channel purposes.

10.11 Hazardous Substances

- 10.11.1 Grantee shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances within the Rights-of-Way.
- 10.11.2 Upon reasonable notice to Grantee, the Town may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

10.12 Undergrounding of Cable

10.12.1 Wiring

- (1) Unless otherwise permitted by the Town, all new Cable System construction shall be installed underground.
- (2) Where distribution-level electric and telephone utility wiring is installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines, wiring and equipment shall also be placed underground with other wireline service at no expense to the Town. Related Cable System equipment, such as pedestals, must be placed in accordance with applicable Town Code requirements and rules. Except as otherwise stated in Section 10.12.1(3) below, in areas where distribution-level electric or telephone utility wiring are aerial, Grantee may install aerial distribution-level cable.
- (3) Unless otherwise permitted by the Town, Grantee shall underground its wireline Facilities in all new developments and subdivisions, and any development, redevelopment or subdivision where utilities, other than electrical utilities, are currently underground.
- (4) Where the service-level electrical utility wiring is installed underground to an end-user property, any new Cable System service-level cable to that property shall be installed underground.
- (5) Where the service-level electrical utility wiring is aerial to an end-user property, Grantee may install new aerial Cable System service-level cable to that property, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.
- (6) Grantee shall only utilize existing poles and conduit.

- (7) This Franchise does not grant, give or convey to Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Town or any other Person.
- (8) Grantee and the Town recognize that situations may occur in the future where the Town may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by Grantee. Therefore, if Grantee constructs, relocates or places ducts or conduits in the Rights-of-Way it shall submit these plans to the Town in accordance with the Town's permitting process so as to provide the Town with an opportunity to request that Grantee place additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070. Other than submission of plans in accordance with the Town's permitting requirements, nothing set forth herein shall obligate Grantee to slow the progress of any future construction of the Cable System to accommodate the Town. In addition, Grantee agrees to cooperate with the Town in any other construction by Grantee that involves trenching or boring. The Town shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in Grantee's trenches and bores under this paragraph.
- (9) The Town shall not be required to obtain easements for Grantee.
- (10) Grantee may participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where all utilities are being converted to underground facilities. If funds from a Utility Local Improvement District are provided to aerial providers to offset the cost of undergrounding, excluding any entity operating under a tariff, Grantee's costs shall be proportionality paid for out of such funds.

10.12.2 Repair and Restoration of Property

If public property is disturbed or damaged by Grantee arising out of or in connection with the provision of Cable Service, Grantee shall restore the property to its former condition. Rights-of-Way or other Town property shall be restored in a manner and within a timeframe approved by the Town's Public Works Director, or his/her designee. If restoration of Rights-of-Way or other property of the Town is not satisfactorily performed within a reasonable time, the Public Works Director, or his/her designee, may, after prior notice to Grantee, or without notice where the disturbance or damage may create a risk to public health, safety or welfare, or cause delay or added expense to a public project or activity, cause the repairs to be made at Grantee's expense and recover the cost of those repairs from Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, Grantee shall issue payment to the Town.

10.13 Codes

Grantee shall strictly adhere to Town codes that do not directly conflict with the specific provisions of this Franchise. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference or if such construction does not comply with Town codes or the permit, the Town may require the removal or relocation of Grantee's lines, cables and other appurtenances from the property in question.

10.14 Tree Trimming

Upon obtaining a written permit from the Town pursuant to YPMC Chapter 12.26, Grantee may prune or cause to be pruned, using proper pruning practices in accordance with such permit, any tree in the Rights-of-Way that interferes with the Cable System. Grantee shall be responsible for any damage caused by such trimming and shall make every attempt to trim such trees and shrubbery in a fashion that maintains their aesthetic appeal and the health of the tree. Grantee may not remove any trees without the express consent from the Town.

10.15 Standards

10.15.1 Grantee shall, at all times, install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries to the public. In furtherance thereof, Grantee must comply with the Town's traffic control requirements, including, for example, but without limitation, the use of signal devices, warning signs and flaggers when appropriate. All of Grantee's structures, cables, lines, equipment and connections in, over, under and upon the rights-of-way and public ways or other places in the Franchise Area, wherever situated or located, shall at all times be kept and maintained in a safe condition.

10.15.2 Grantee must comply with all federal, State and local safety requirements, rules, regulations, standards, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

10.15.3 All installations of equipment shall be permanent in nature, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. All structures and all lines, equipment and connections in, over, under, and upon the public Rights-of-Way or places of a Franchise Area, wherever situated or located, shall at all

times be kept and maintained in a safe, suitable condition, and in good order and repair.

10.15.4 Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of bundles of unused cables.

10.16 Stop Work

On notice from the Town that any work is being conducted contrary to the provisions of this Franchise, or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by the Town. The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by mail at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition;
and
- (5) Establish conditions under which work may be resumed.

Grantee shall comply immediately with any stop work order issued by the Town.

10.17 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be bonded in accordance with local ordinances, regulations and requirements. Work by contractors and subcontractors shall be subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them. When pulling permits, a subcontractor must clearly state their connection to Grantee.

10.18 Pole Transfers

If Grantee leases or otherwise utilizes a pole within the Rights-of-Way owned by a third party for attachment of Grantee's facilities, and such third party subsequently abandons the pole, for example by building a replacement pole, Grantee shall remove or relocate its facilities from such pole within sixty (60) days of notification from either the third party pole owner or the Town, provided that such other structure or place has been made available to the Grantee with sufficient time to allow for the relocation. If Grantee requires additional time to

accomplish the removal and/or relocation, Grantee shall notify the Town in writing of the reasons for the additional time and its anticipated schedule.

10.19 Strand Mounted WiFi Facilities

10.19.1 Subject to the provisions of this Franchise and applicable safety and electrical codes, Grantee is allowed to place strand mounted cable service wireless facilities on its own cables strung between existing utility poles.

10.19.2 Grantee shall comply with the following requirements:

- (1) each strand mounted WiFi facility must be less than two and half (2.5) cubic feet in volume;
- (2) only one strand mounted WiFi facility is permitted per cable strung between two poles;
- (3) the WiFi strand mounted facilities shall be placed as close to the pole as technically feasible and may not be placed more than six (6) feet from the pole or in that portion of the Right-of-Way used for vehicular travel;
- (4) Grantee may not place an ancillary pole or ground mounted equipment to accommodate such strand mounted WiFi facilities, unless in the case of ground mounted equipment placed in pre-existing equipment cabinets;
- (5) the strand mounted WiFi facilities must comply with any applicable FCC requirements related to RF emissions and interference. Upon request, Grantee shall validate that such device meets FCC standards by producing documentation certified by an RF engineer; and
- (6) such strand mounted WiFi facilities must be removed if they cause a threat to public health or safety.

10.19.3 The deployment of these strand mounted WiFi facilities shall not be considered small cell facilities. To the extent Grantee performs work in the Rights-of-Way associated with the installation, maintenance, construction, repair or upgrade of these strand mounted WiFi facilities, Grantee is required to obtain the appropriate permits consistent with SECTION 10. - General Right-of-Way Use and Construction. Further, such strand mounted facilities must be operated as part of the Cable System

SECTION 11. - CABLE SYSTEM DESIGN

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11.1 Cable System Specifications

Prior to the Effective Date of this Franchise, the parties acknowledge that Grantee undertook a voluntary upgrade of its Cable System to a hybrid fiber coaxial (HFC) fiber-to-the node system architecture, with Fiber Optic cable deployed from its Headend to nodes and tying into a coaxial system serving Subscribers. The Cable System is capable of delivering high quality signals that meet or exceed FCC technical quality standards regardless of any particular manner in which the signal is transmitted. Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of the Franchise.

11.2 Closed Captioning

Equipment must be installed so that all closed captioned programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards.

11.3 No Income Discrimination

Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

11.4 Enforceability of Design and Performance Requirements

Grantee acknowledges that the minimum Cable System design and performance requirements set forth in this Franchise are enforceable, to the extent allowed by law.

11.5 System Review

The Town may hold a hearing to review whether or not the Cable System and the Cable Services offered by Grantee are meeting demonstrated community needs and interests, taking into account the cost of meeting those needs and interests. The parties recognize that, as of the Effective Date, the Town is not permitted to require the provision of specific Video Programming pursuant to this subsection.

SECTION 12. - TECHNICAL STANDARDS

12.1 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable technical standards authorized or required by law, including, FCC technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

12.2 Cable System Performance Testing

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- 12.2.1 Grantee shall, at its expense, perform all tests on its Cable System required by the FCC (including FCC required test points located within the Town) and shall maintain written records of its test results. Upon request, all FCC required technical performance tests may be witnessed by representatives of the Town. Copies of such test results will be provided to the Town upon request.
- 12.2.2 All required technical performance or other Cable System tests shall be at the expense of Grantee and may be witnessed by representatives of the Town. Upon request, Grantee will notify the Town before any required technical proof-of-performance or other testing occurs.
- 12.2.3 Grantee shall promptly take such measures as are necessary and diligently continue the same until completion in order to correct any performance deficiencies fully and to prevent their recurrence. Grantee's failure to correct deficiencies identified through this testing process shall be a violation of this Franchise. Sites shall be re-tested within five (5) days following correction until correction has been confirmed and satisfactory results are obtained.

SECTION 13. - SERVICE EXTENSION

13.1 Service Availability

- 13.1.1 In general, except as otherwise provided herein, Grantee shall provide a standard aerial installation of Cable Service within seven (7) days of a request by any Person within the Franchise Area. For standard underground installations scheduling shall be done within seven (7) days of a request for service. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such service:
 - (1) With no line extension charge except as specifically authorized elsewhere in this Franchise.
 - (2) At a non-discriminatory installation charge for a Standard Installation, consisting of a one hundred twenty-five (125) foot aerial drop or sixty (60) foot underground drop connecting to the exterior demarcation point for Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations.

(3) At non-discriminatory monthly rates for all Subscribers, excepting commercial Subscribers, MDU Bulk Subscribers and other lawful exceptions to uniform pricing.

13.1.2 No Customer shall be refused service arbitrarily. However, for non-Standard Installations of service to Subscribers, or a density of less than twenty-five (25) residences per 5280 aerial cable-bearing strand feet of trunk or distribution cable, or sixty (60) residences per 5280 underground trench feet of trunk or distribution cable, Cable Service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. Grantee may require that the payment of the capital contribution in aid of construction be borne by such potential Subscribers be paid in advance. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Customers in the area in which service shall be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per cable-bearing mile of its trunk or distribution cable and whose denominator equals twenty-five (25) for an aerial extension or sixty (60) for an underground extension. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance.

13.1.3 Grantee shall provide Cable Service to Multiple Dwelling Units in accordance with an agreement with the property owner or owners, this Franchise and all applicable laws.

SECTION 14. - STANDBY POWER AND EAS

14.1 Standby Power

Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twenty-four (24) hours of emergency operation. Grantee shall maintain standby power supplies that will supply back-up power of at least four (4) hours duration throughout the distribution networks, and four (4) hours duration at all nodes and hubs. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the Town no later than thirty (30) days following receipt of a request therefore.

14.2 Emergency Alert Capability

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- 14.2.1 In accordance with, and at the time required by, the provisions of FCC Regulations or other federal or state requirements, as such provisions may from time to time be amended, Emergency Alert System (“EAS”) implementation will be accomplished in compliance with the Washington State EAS Plan and to be in compliance with or further Homeland Security requirements or applications.
- 14.2.2 Grantee shall ensure that the EAS is functioning properly at all times in accordance with FCC regulations.

SECTION 15. - FRANCHISE BREACHES; TERMINATION OF FRANCHISE

15.1 Procedure for Remediating Franchise Violations

- 15.1.1 If the Town believes that Grantee has failed to perform any material obligation under this Franchise or has failed to perform in a timely manner, the Town shall notify Grantee in writing, stating with documented specificity, the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:
- (1) Respond to the Town in writing, contesting the Town’s assertion that a default has occurred, and requesting a hearing in accordance with subsection 15.1.2, below;
 - (2) Cure the default; or
 - (3) Notify the Town in writing that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date. Upon five (5) business days’ prior written notice, either the Town or Grantee may call an informal meeting to discuss the alleged default. In such case, if matters are not resolved at such meeting, the Town may set a hearing, in front of the hearing examiner, in accordance with subsection 15.1.2 below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee’s proposed completion schedule and steps are reasonable.
- 15.1.2 If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection 15.1.1(3), or denies the default and requests a hearing in accordance with subsection 15.1.1(1), or the Town orders a hearing in accordance with subsection 15.1.1(3), the Town shall set a public hearing, in front

of the hearing examiner, to investigate said issues or the existence of the alleged default. The Town shall notify Grantee of the hearing in writing and such hearing shall take place no less than fifteen (15) days after Grantee's receipt of notice of the hearing. At the hearing, Grantee shall be provided an opportunity to be heard, to present and question witnesses, and to present evidence in its defense. At any such hearing, the Town or the hearing examiner shall not unreasonably limit Grantee's opportunity to make a record that may be reviewed should any final decision of the Town be appealed to a court of competent jurisdiction. The determination as to whether a default or a material breach of this Franchise has occurred shall be within the Town's sole discretion, but any such determination shall be subject to appeal to a court of competent jurisdiction.

15.1.3 If, after the public hearing in front of the hearing examiner, the hearing examiner determines that a default still exists, the hearing examiner shall order Grantee to correct or remedy the default or breach within fourteen (14) days of the hearing examiner's notification or within such other reasonable timeframe as the hearing examiner shall determine. In the event Grantee does not cure within such time as per the direction of the hearing examiner, the hearing examiner may:

- (1) Assess and collect monetary damages in accordance with this Franchise; and
- (2) Recommend to the Town Council termination of this Franchise; or
- (3) Recommend to the Town Council to pursue any other legal or equitable remedy available under this Franchise or applicable law.

15.1.4 The determination as to whether a violation of this Franchise has occurred pursuant to this Section herein shall be within the sole discretion of the hearing examiner. Any such determination by the hearing examiner shall be accompanied by a record, to which Grantee's contribution shall not be limited by the Town or the hearing examiner (i.e., the hearing examiner shall hear any interested Persons and shall allow Grantee an opportunity to be heard, to cross examine witnesses, to present evidence and to make additions to the hearing record). Any such final determination made by either the hearing examiner pursuant to 15.1.3(1) or the Town Council pursuant to 15.1.3(2) or 15.1.3(3) shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be taken within thirty (30) days of the issuance of the final determination. The Town shall receive notice from Grantee of any appeal concurrent with any filing to a court of competent jurisdiction.

15.2 Alternative Remedies

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- 15.2.1 No provision of this Franchise shall be deemed to bar the right of either party to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement of obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.
- 15.2.2 The Town specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the Town, its officers, officials, Boards, commissions, agents, or employees under federal, State, or local law including by example Section 635A of the Cable Act. Grantee shall not have any monetary recourse against the Town, or its officers, officials, Board, commissions, authorized agents or employees for any loss, costs, expenses or damages arising out of any provision, requirement of this Franchise or the enforcement thereof, subject to applicable law.

15.3 Assessment of Liquidated Damages and Letter of Credit

- 15.3.1 Because it may be difficult to calculate the harm to the Town in the event of a breach of this Franchise by Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages to the Town. To the extent that the Town elects to assess liquidated damages as provided in this Franchise, such damages shall be the Town's sole and exclusive remedy for such breach or violation and shall not exceed a time period of one hundred eighty (180) days. Nothing in this subsection is intended to preclude the Town from exercising any other right or remedy with respect to a breach that continues past the time the Town stops assessing liquidated damages for such breach.
- 15.3.2 Prior to assessing any liquidated damages, the Town shall follow the procedure provided in Section 5.3. The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day of the violation.
- 15.3.3 Pursuant to the requirements outlined herein, liquidated damages shall not exceed the following amounts: two hundred dollars (\$200.00) per day for material departure from the FCC technical performance standards; one hundred dollars (\$100.00) per day for failure to provide the Access Channel or any equipment related thereto or funding which is required; one hundred dollars (\$100.00) per day for each material violation of the Customer Service Standards; fifty dollars (\$50.00) per

day for failure to provide reports or notices as required by this Franchise.

15.3.4 No cost to Grantee arising from a breach or violation of the Franchise shall be offset against any sums due the Town as a tax or franchise fee regardless of whether the combination of franchise fees, taxes and said costs exceeds five percent (5%) of Grantee's Gross Revenues in any 12-month period unless otherwise permitted by law.

15.3.5 Collection of Liquidated Damages

- (1) The Performance Bond and letter of credit referred to in Section 5.3 may be drawn upon by the Town for breach of a material provision after notice and opportunity to cure.
- (2) The Town shall give Grantee written notice of any intent to withdraw under this subsection. Within seven (7) days following receipt of such notice, Grantee shall restore the Performance Bond and letter of credit to the amount required under this Franchise. Grantee's maintenance of the Performance Bond or letter of credit shall not be construed to excuse unfaithful performance by Grantee or to limit the liability of Grantee to the amount of the Performance Bond or letter of credit or otherwise to limit the Town's recourse to any other remedy available at law or in equity.
- (3) The assessment of liquidated damages does not constitute a waiver by the Town of any other right or remedy it may have under the Franchise or applicable law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by the Town by reason of the breach of this Franchise or to seek specific performance.
- (4) Grantee's maintenance of the security required herein or by applicable code shall not be construed to excuse unfaithful performance by Grantee of this Franchise; to limit liability of Grantee to the amount of the security; or to otherwise limit the Town's recourse to any other remedy available at law or equity.

15.4 Revocation

15.4.1 This Franchise may be revoked and all rights and privileges rescinded if a material breach of the Franchise is not cured pursuant to Section 15.1, or in the event that:

- (1) Grantee attempts to evade or fails to perform any material provision of this Franchise or to practice any fraud or deceit upon the Town or Subscribers;

- (2) Grantee makes a material misrepresentation of fact in the negotiation of this Franchise;
- (3) Grantee abandons the Cable System, or terminates the Cable System's operations;
- (4) Grantee fails to restore service to the Cable System after three (3) consecutive days of an outage or interruption in service; except in the case of an emergency or during a force majeure occurrence, or when approval of such outage or interruption is obtained from the Town, it being the intent that there shall be continuous operation of the Cable System; or
- (5) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, there is an assignment for the benefit of Grantee's creditors, or all or part of Grantee's Cable System is sold under an instrument to secure a debt and is not redeemed by Grantee within thirty (30) days from said sale.

15.4.2 Additionally, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee (at the option of the Town and subject to applicable law) whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless directed otherwise by a court of competent jurisdiction.

15.4.3 If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the Town may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

- (1) The Town has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and
- (2) The purchaser has covenanted and agreed with the Town to assume and be bound by all of the terms and provisions of this Franchise.

15.5 Abandonment; Purchase of the Cable System

15.5.1 Effect of Abandonment

If the Grantee abandons its System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Town, at its option, may:

- (1) operate the Cable System;

- (2) designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Town or until the Franchise is revoked and a new Grantee is selected by the Town; or
- (3) obtain an injunction requiring the Grantee to continue operations. If the Town is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Town or its designee for all reasonable costs, expenses and damages incurred, including reasonable attorney's fees and costs.

15.5.2 What Constitutes Abandonment

The Town shall be entitled to exercise its options and obtain any required injunctive relief if:

- (1) the Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for seven (7) consecutive days, unless the Town authorizes a longer interruption of service; or
- (2) the Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

15.6 Removal

15.6.1 In the event of termination, expiration, revocation or nonrenewal of this Franchise, and after all appeals from any judicial determination are exhausted and final, Town may order the removal of the System facilities from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Town. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.

15.6.2 However, Grantee shall have no obligation to remove the Cable System where it utilizes the system to provide other, permitted and lawful, non-cable services and has obtained or is in the process of obtaining a franchise or other local authority to maintain facilitates in the public rights-of-way, or where Grantee is able to find a purchaser of the Cable System who holds such authorization.

15.6.3 If Grantee fails to complete any required removal to the satisfaction of Town, Town may cause the work to be done, and Grantee shall reimburse Town for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of Town's expenses and costs, or Town may recover its expenses and costs from the security, or pursue any other judicial remedies for the collection thereof. Any expenses incurred

in the collection by Town of such obligation shall be included in the monies due Town from Grantee, including reasonable attorneys' fees, court expenses and expenses for work conducted by Town's staff or agents.

SECTION 16. - FRANCHISE TRANSFER

16.1 Transfer of Ownership or Control

- 16.1.1 The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation or change of control; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the Town, which consent shall be by the Town Council, acting by ordinance or resolution.
- 16.1.2 Grantee shall promptly notify the Town of any actual or proposed change in, or transfer of, or acquisition by any other party of control of Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of Grantee shall make this Franchise subject to cancellation unless and until the Town shall have consented in writing thereto.
- 16.1.3 The parties to the sale, change in control or transfer shall make a written request to the Town for its approval of a sale or transfer or change in control and shall furnish all information required by law.
- 16.1.4 In seeking the Town's consent to any change in ownership or control, the proposed transferee or controlling entity shall indicate whether it:
- (1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;
 - (2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;
 - (3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system;
 - (4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee or

controlling entity, along with any other data that is lawfully required; and

- (5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

16.1.5 The Town shall act by ordinance or resolution on the request within one hundred twenty (120) days of receipt of the FCC Form 394 application, provided it has received a complete application. Subject to the foregoing, if the Town fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Town agree to an extension of time.

16.1.6 Within thirty (30) days of any transfer or sale or change in control, if approved or deemed granted by the Town, Grantee shall file with the Town a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee or controlling entity, and the transferee or controlling entity shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which Grantee is not replaced by another entity, Grantee will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and will not be required to file an additional written acceptance. The approval of any change in control shall not be deemed to waive any rights of the Town to subsequently enforce noncompliance issues relating to this Franchise. For purposes herein to the extent that a change of control involves an entity that was not an Affiliate prior to the contemplated transaction, the Town's consent shall be required for such change in control.

16.1.7 In reviewing a request for sale or transfer or change in control, the Town may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Town in so inquiring. The Town may condition said sale or transfer or change in control upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee. Upon any such request under this SECTION 16. - , the Town may condition such approval upon reimbursement of the Town's reasonable processing and review expense in connection with such request for sale or transfer or change in control.

- 16.1.8 Notwithstanding anything to the contrary in this subsection, the prior approval of the Town shall not be required for any sale, assignment, change in control or transfer of the Franchise or Cable System to an Affiliate of Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Town and must agree in writing to comply with all of the provisions of the Franchise including resolution of any non-compliance issues. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the Town; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 17. - PROHIBITED PRACTICES, LOCAL EMPLOYMENT EFFORTS AND NOTICES

- 17.1 Preferential or Discriminatory Practices Prohibited
Grantee shall not discriminate in its hiring, employment or promotion decisions. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment and non-discrimination provisions and requirements of federal, State and local laws, and rules and regulations relating thereto.

- 17.2 Notices
Throughout the term of this Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:

Grantee's address shall be:

Government Affairs
Comcast Cable Communications Management, LLC
900 132nd ST SW
Everett, WA 98204

the Town's address shall be:

Town Clerk
Town of Yarrow Point, Washington
4030 95th Ave NE
Yarrow Point, Washington 98004

SECTION 18. - MISCELLANEOUS PROVISIONS

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18.1 Cumulative Rights

Subject to applicable law, all rights and remedies given to the Town by this Franchise or retained by the Town herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the Town, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the Town and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

18.2 Costs to be Borne by Grantee

Grantee shall pay for all costs of publication of this Franchise, and any and all notices prior to any public meeting or hearing provided for pursuant to this Franchise. Such costs are incidental to the award of the Franchise and may not be offset against Franchise Fees.

18.3 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

18.4 Authority to Amend

This Franchise may be amended at any time by written agreement between the parties.

18.5 Venue

The venue for any dispute related to this Franchise shall be United States District Court for the Western District of Washington or in King County Superior Court.

18.6 Governing Laws

This Franchise shall be governed, construed and enforced in accordance with the laws of the State of Washington (as amended), the Cable Act as amended, any applicable rules, regulations and orders of the FCC, as amended, and any other applicable local, State and federal laws, rules, and regulations, as amended.

18.7 Captions

The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

18.8 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

18.9 Waiver

The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

18.10 Severability

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

18.11 Compliance with Federal, State and Local Laws

Grantee shall comply with applicable federal, state and local laws, rules and regulations, now existing or hereafter adopted.

18.12 Force Majeure

Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or imposition of damages relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of Grantee to anticipate and control, including war or riots, civil disturbances, pandemics, floods or other natural catastrophes, labor stoppages, slow downs, availability of materials, labor or equipment, power outages exceeding back-up power supplies or work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached.

18.13 Entire Agreement

This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties.

18.14 Attorneys' Fees

If any action or suit arises in connection with this Franchise, attorneys' fees, costs and expenses in connection therewith shall be paid in accordance with the determination by the court.

18.15 Action of the Town or Grantee

In any action by the Town or Grantee mandated or permitted under the terms hereof, it shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

18.16 Acceptance

Within forty-five (45) days of receipt of an executed Franchise from the Town, this Franchise shall be accepted by Grantee by filing with the Town Clerk an unconditional, written acceptance of all of the terms, provisions and conditions of this Franchise, in a form substantially similar to Exhibit A attached hereto. In addition to the written acceptance, Grantee shall furnish the additional insured endorsements and certificates of insurance required pursuant to Section 5.2 and the Performance Bond pursuant to Section 5.3. The failure of Grantee to file such an acceptance shall be deemed a rejection by Grantee and this Franchise shall then be voidable at the discretion of the Town.

18.17 No Third-Party Beneficiaries

There are no third party beneficiaries to this Franchise.

18.18 Termination of Prior Franchise

Grantee and the Town agree that this Franchise replaces and supersedes Ordinance 506 (the "Prior Franchise") with respect to Grantee; provided, however, that the grant of this Franchise shall have no effect on Grantee's obligations to indemnify or insure the Town against acts and omissions occurring during the period(s) that the Prior Franchise was in effect, nor shall it have any effect upon liability to pay all Franchise Fees consistent with Washington State statute of limitations that were due and owed under a Prior Franchise.

SECTION 19. - EFFECTIVE DATE

This Franchise, being an exercise of a power specifically delegated to the Town legislative body, is not subject to referendum, and shall take effect five (5) days after the passage and publication of an approved summary thereof consisting of the title.

APPROVED by the Town Council this ____ day of _____, 2021.

THE TOWN OF YARROW POINT

DICKER CAHILL, MAYOR

ATTEST/AUTHENTICATED:

BONNIE RITTER, TOWN CLERK

APPROVED AS TO FORM:
OFFICE OF THE TOWN ATTORNEY

SCOTT MISSAL, TOWN ATTORNEY

PASSED BY THE TOWN COUNCIL:

PUBLISHED:

EFFECTIVE DATE:

ORDINANCE NO. 710

EXHIBIT A

THE TOWN COUNCIL
THE TOWN OF YARROW POINT, WASHINGTON

In the matter of the application of Comcast :
Cable Communications Management, LLC :
for a franchise to construct operate and : Franchise Ordinance No.: 710
maintain facilities in, upon, over, under, :
along, across and through the franchise : ACCEPTANCE
area of the Town of Yarrow Point, Washington :

WHEREAS, the Town Council of the Town of Yarrow Point, Washington, has granted a franchise to Comcast Cable Communications Management, LLC, its successors and assigns, by enacting Ordinance No. 710, bearing the date of _____, 2021; and

WHEREAS, a copy of said Ordinance granting said franchise was received by Comcast Cable Communications, LLC on _____, 2021, from said Town of Yarrow Point, King County, Washington.

NOW, THEREFORE, Comcast Cable Communications Management, LLC for itself, its successors and assigns, hereby accepts said Ordinance and the franchise contained therein and all the terms and conditions thereof, and files this, it's written acceptance, with the Town of Yarrow Point, King County, Washington.

IN TESTIMONY WHEREOF said Comcast Cable Communications Management, LLC has caused this written Acceptance to be executed in its name by its undersigned _____ thereunto duly authorized on this _____ day of _____, 2021.

ATTEST: COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC

By: _____

Its: _____

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900 132nd ST SW
Everett, WA 98204

The purpose of this letter agreement is to set forth a commitment between Comcast Cable Communications Management, LLC (“Comcast”) and the Town of Yarrow Point, Washington (the “Town”) that is in addition to the renewal franchise agreement to be adopted by ordinance (hereinafter, “the Franchise”). This item has been negotiated in good faith and agreed to as part of the informal franchise renewal process pursuant to 47 U.S.C. § 546(h), and specifically relate to the unique community needs that exist in the Town.

Clarifying Working Rules for Comcast’s Existing Aerial Cable Facilities:

Over the term of the Franchise, both parties agree to the following application of treatment when it comes to Comcast’s existing aerial cable facilities:

- A) Maintenance of Aerial Cable Facilities – The Town agrees that Comcast will maintain and repair the existing aerial facilities in a like manner, until all aerial distribution power and communication lines are placed underground via a Town driven improvement project.
 - i. Like manner means that Comcast can replace damaged cables and equipment within the existing aerial facilities in a one for one manner, when necessary, and shall remove all unused aerial cables and equipment at the time of repair.
 - ii. If opportunities arise to allow Comcast to reduce and/or remove aerial cables and/or equipment, prior to total undergrounding of all aerial facilities under a Town driven improvement project, both parties agree to allow such opportunity to occur.
- B) Undergrounding Improvement Projects – Comcast agrees to participate and underground all existing aerial cable facilities, when directed by the Town, at the same time as the other power and communication providers that are on the utility poles in the right-of-way.
- C) Vaults and Pedestals – Comcast agrees to utilize flush mounted vaults throughout the Town for all its non-electrified cable equipment; and use above ground pedestals for necessary electrified cable equipment like power supplies, nodes, amplifiers, and outdoor WiFi receives.
- D) New Service Requests – If no existing aerial service line exists to accommodate new requests for services, Comcast agrees to underground service line(s) for new service requests from the existing aerial cable facilities to connect residents and others users within the Town, in accordance with Section 10.12.1(2) of the Franchise.

The terms and conditions of this letter agreement are binding upon the Town and Comcast and their successors and assigns. It is understood that fulfillment of these obligations is also necessary and part of the consideration to secure the renewed Franchise.

Comcast Cable Communications Management, LLC

By: _____

Its: _____

Date: ___ day of _____, 2021

Town of Yarrow Point, Washington

Acknowledged and agreed to this ___ day of _____, 2021.

By: _____

Its: _____

- 2.2.1 Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, through, below and along the Rights-of-Way within the Franchise Area, such wires, cables (both coaxial and Fiber Optic), conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures regarding placement and installation of Cable System facilities in the Rights-of Way.
- 2.2.2 Grantee must follow the Town-established requirements, as well as all the Town codes, ordinances and other regulations regarding placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way. Grantee must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. To protect public health, safety and welfare, the Town may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Rights-of-Way; may deny access if Grantee is not willing to comply with the Town's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the Town, or that is installed without prior Town approval of the time, place or manner of installation (including charging Grantee for all the costs associated with removal); and the Town may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. Grantee shall assume its costs (in accordance with applicable law) associated with any requirement of the Town in the exercise of its police powers, to relocate its Cable System facilities located in the Rights-of-Way.

2.3 Term

- 2.3.1 This Franchise and the rights, privileges, and authority granted hereunder and the contractual relationship established hereby shall remain in full force and effect for a period of ten (10) years from and after the effective date of this Ordinance, as specified in SECTION 19. - [Effective Date](#), subject to acceptance of this Franchise by Grantee pursuant to Section 18.16.
- 2.3.2 The grant of this Franchise shall have no effect on any ordinance in effect prior to the effective date of this Franchise to indemnify or insure the Town against acts and omissions occurring during the period that the prior franchise was in effect, nor shall it have any effect upon

5.2.1 General Requirement

Grantee shall procure and maintain for the duration of the Franchise and as long as Grantee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Agreement and use of the rights-of-way in the coverage amounts described below:

- (1) Commercial General Liability coverage for bodily injury, personal injury, and property damage with limits of no less than ~~two~~five million dollars (\$5,000,000) per occurrence. The general aggregate limit shall be no less than five million dollars (\$5,000,000). Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Town shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect this Franchise using ISO endorsement CG 20 12 05 09 or CG 20 26 07 04, or substitute endorsement providing at least as broad coverage.
- (2) Commercial Automobile Liability Insurance with minimum combined single limits of at least two million dollars (\$2,000,000) each occurrence and five million dollars (\$5,000,000) aggregate with respect to each of Grantee's owned, hired and non-owned, or any other vehicles assigned to or used in any activities authorized under or used in conjunction with this Franchise. Automobile Liability insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
- (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (4) Umbrella or excess liability insurance in the amount of five million dollars (\$5,000,000). Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Grantee's Commercial General Liability and Automobile Liability insurance. The Town shall be named as an additional insured on the Grantee's Excess or Umbrella Liability insurance policy. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

5.2.8 Grantee – Self-Insurance

If the Grantee is self-insured or becomes self-insured during the term of the Franchise, Grantee or its affiliated parent entity shall comply with the following:

- (1) provide the Town, upon request, a copy of Grantee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available;
- (2) Grantee or its parent company is responsible for all payments within the self-insured retention; and
- (3) Grantee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

5.2.9 No Limitation of Liability

Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the Town's recourse to any remedy available at law or in equity.

5.3 Security

5.3.1 Grantee shall provide a performance bond ("Performance Bond") in the amount of twenty-five thousand dollars (\$25,000) to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its facilities and to restore the Town Rights-of-Way and other property. The Performance Bond shall be in a standard industry form. Grantee shall pay all premiums or costs associated with maintaining the Performance Bond and shall keep the same in full force and effect at all times. Except as expressly provided in Section 5.4, Grantee shall not be required to obtain or maintain other bonds as a condition of being awarded the Franchise or continuing its existence.

5.3.2 If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then the Town may request and Grantee shall establish and provide within thirty (30) days from receiving notice from the Town, to the Town, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the Town in the amount of twenty-five thousand dollars (\$25,000).

5.3.3 If a letter of credit is furnished pursuant to subsection [5.3.2\(B\)](#), the letter of credit shall then be maintained at that same amount until the uncured breach is resolved.

notice as determined by the Town, to discuss options regarding scheduling and coordinating construction in the Rights-of-Way.

- 10.1.4 Grantee may make excavations in Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, permittees and franchisees so as to reduce so far as possible the number of Rights-of-Way cuts within the Franchise Area.
- 10.1.5 In the event that emergency repairs are necessary, Grantee will make best efforts to contact the Town's Public Works Department ([425-454-6994](tel:425-454-6994) [206-276-8922](tel:206-276-8922)) or the Town's Mayor (mayor@yarrowpointwa.gov) prior to the repair, however Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.
- 10.1.6 Grantee shall be subject to any and all requirements established by the Town with regard to the placement and screening of Grantee's property. Such requirements may include, but are not limited to, the use of landscaping to screen pedestals and cabinets and a requirement that construction be flush with the natural grade of the surrounding area.

10.2 Location of Facilities

- 10.2.1 Prior to doing any digging or excavation in the Rights-of-Way, Grantee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to RCW 19.122.
- 10.2.2 Further, upon request from the Town in conjunction with the design of any Town project, and no more than thirty (30) days following such request, Grantee shall, at Grantee's expense, mark on the surface all of its located underground facilities within the area of the proposed excavation, including horizontal and vertical location.

10.3 Restoration of Rights-of-Way

- 10.3.1 When any opening is made by Grantee in a hard surface pavement in any Rights-of-Way, Grantee shall promptly refill the opening and restore the surface as required by its permit. Grantee shall guarantee the durability and structural integrity of any street cut or repair made by it or its agents or subcontractors which is necessary for the construction, installation, operation, repair or maintenance of Grantee's Facilities for the life of the street; provided, that no action by an unrelated third party materially affects the integrity of the Grantee's

10.5 Acquisition of Facilities

Upon Grantee's acquisition of facilities in any Rights-of-Way, or upon the addition or annexation to the Town of any area in which Grantee owns or operates any facility, such facilities shall immediately be subject to the terms of this Franchise.

10.6 Relocation of Facilities

10.6.1 Nothing in this Franchise shall prevent the Town from constructing any public work or improvement. The Town may require [Franchisee Grantee](#) to relocate the Cable System within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of public welfare, health, or safety. For example, without limitation, the movement of or the request to locate Grantee's facilities may be needed by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by for public purposes. 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 entities. Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections requested pursuant to this Section 10.6 shall be borne by Grantee. Such work shall be performed at Grantee's expense. Nothing contained within this Franchise shall limit Grantee's ability to seek reimbursement for relocation costs when permitted pursuant to RCW 35.99.060. In the case of a joint relocation project, Grantee shall be responsible for the cost of relocating its facilities.

10.6.2 If the Town determines that the project necessitates the relocation of Grantee's existing facilities, the Town shall provide Grantee 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 Town shall consult with Grantee and consider the extent of facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the Town's overall project construction sequence and constraints, to safely complete the relocation, and the Town shall endeavor to provide Grantee at least sixty (60) days' notice prior to the Relocation Date. Grantee shall complete the relocation by the Relocation Date, unless the Town 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 Town will make reasonable efforts to involve Grantee in the predesign and design phases of any Public Project. After receipt of the written

- 10.11.1 Grantee shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances within the Rights-of-Way.
- 10.11.2 Upon reasonable notice to Grantee, the Town may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

10.12 Undergrounding of Cable

10.12.1 Wiring

- (1) Unless otherwise permitted by the Town, all new Cable System construction shall be installed underground.
- (2) Where distribution-level electric and telephone utility wiring is installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines, wiring and equipment shall also be placed underground with other wireline service at no expense to the Town. Related Cable System equipment, such as pedestals, must be placed in accordance with applicable Town Code requirements and rules. Except as otherwise stated in Section 10.12.1(3) below, in areas where distribution-level electric or telephone utility wiring are aerial, Grantee may install aerial distribution-level cable, ~~except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.~~
- (3) Unless otherwise permitted by the Town, ~~Franchisee~~ Grantee shall underground its wireline Facilities in all new developments and subdivisions, and any development, ~~redevelopment~~ or subdivision where utilities, other than electrical utilities, are currently underground.
- (4) Where the service-level electrical utility wiring is installed underground to an end-user property, any new Cable System service-level cable to that property shall be installed underground.
- (5) Where the service-level electrical utility wiring is aerial to an end-user property, Grantee may install new aerial Cable System service-level cable to that property, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.
- ~~(4)(6)~~ Grantee shall only utilize existing poles and conduit.

~~(5)~~(7) This Franchise does not grant, give or convey to Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the Town or any other Person.

~~(6)~~(8) Grantee and the Town recognize that situations may occur in the future where the Town may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by Grantee. Therefore, if Grantee constructs, relocates or places ducts or conduits in the Rights-of-Way it shall submit these plans to the Town in accordance with the Town's permitting process so as to provide the Town with an opportunity to request that Grantee place additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070. Other than submission of plans in accordance with the Town's permitting requirements, nothing set forth herein shall obligate Grantee to slow the progress of any future construction of the Cable System to accommodate the Town. In addition, Grantee agrees to cooperate with the Town in any other construction by Grantee that involves trenching or boring. The Town shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in Grantee's trenches and bores under this paragraph.

~~(7)~~(9) The Town shall not be required to obtain easements for Grantee.

~~(8)~~(10) Grantee may participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where all utilities are being converted to underground facilities. If funds from a Utility Local Improvement District are provided to aerial providers to offset the cost of undergrounding, excluding any entity operating under a tariff, Grantee's costs shall be proportionality paid for out of such funds.

10.12.2 Repair and Restoration of Property

If public property is disturbed or damaged by Grantee arising out of or in connection with the provision of Cable Service, Grantee shall restore the property to its former condition. Rights-of-Way or other Town property shall be restored in a manner and within a timeframe approved by the Town's Public Works Director, or his/her designee. If restoration of Rights-of-Way or other property of the Town is not satisfactorily performed within a reasonable time, the Public Works Director, or his/her designee, may, after prior notice to Grantee, or without notice where the disturbance or damage may create a risk to public health, safety or welfare, or cause delay or added expense to a public project or activity, cause the repairs to be made at Grantee's expense and recover the cost of those repairs from Grantee. Within thirty (30) days

**Business of The Town Council
Town of Yarrow Point, WA**

Agenda Bill 21-29
June 8, 2021

Capital Improvement Plan/Transportation Improvement Plan 2022-2027	Proposed Council Action: For Approval
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Presented by:	Town Engineer Stacia Schroeder
Exhibits:	<ul style="list-style-type: none">• Capital Improvement Plan - Transportation Plan (2022-2027)• Capital Improvement Plan Funds Exhibit 2020 SWMP CIP Recommendations 2020 SWMP CIP Map• Ordinance No. 712

Summary:

The Town Engineer prepared an annual Capital Improvement Plan (CIP) for public comment and Council consideration which includes projected transportation, stormwater, and underground conversion projects. This year's CIP covers the period 2022-2027.

State law requires municipalities to annually prepare and adopt a six-year Transportation Improvement Program (TIP). The adopted program is to be submitted to the State Department of Transportation and the Puget Sound Regional Council. The Town Council must hold a public hearing on the matter and ultimately adopt a plan documented through an ordinance. The transportation section of the Capital Improvement Plan serves to meet this requirement.

Recommended Action:

1. Hold Public Hearing.
2. Adopt Ordinance No. 712, AN ORDINANCE OF THE TOWN OF YARROW POINT, WASHINGTON ADOPTING A CAPITAL IMPROVEMENT PLAN AND TRANSPORTATION IMPROVEMENT PLAN FOR 2022-2027, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

I. TRANSPORTATION IMPROVEMENT PROJECTS

T - 1	2022	NE 36th Street	91st Ave NE	92nd Ave NE	0.05	2" Grind and Overlay (To be completed after Stormwater project S - 1)	3.5	\$160,000.00	REET Heavy Truck Fee
T - 2	2023	NE 34th Street	92nd Ave NE	West to Lake	0.16	2" Grind and Overlay - Design/ Bid/ Construct/ Close Out (Misc repairs to broken pipes)	3.5	\$225,000.00	REET Heavy Truck Fee
T - 3	2024	94th Ave NE	92nd Ave NE	NE 40th Street	0.30	So. 1/2: 2" Grind and Overlay; No. 1/2: Full Depth Reconstruction (To be completed after Stormwater (S-2 & 3) and UGC project (U-1 & 2))	3.5	\$260,000.00	REET Heavy Truck Fee

II. CAPITAL IMPROVEMENT PROJECTS - STORMWATER

S - 1	2022	NE 36th Street	91st Ave NE	92nd Ave NE	0.05	Stormwater Construction - Incl. Bid/ Manage/ Construct/ Close Out (CIP #1: Install ~250LF 12" NE 36th St; Repair broken pipes)		\$280,000.00	REET SW Utility
S - 2	2023	94th Ave NE (CIP #2)	92nd Ave NE	NE 40th St	0.32	Final Engineering Design/ Final Landscape Design (1,690LF)		\$50,000.00	REET SW Utility
S - 3	2024	94th Ave NE (CIP #2)	92nd Ave NE	NE 40th St	0.16	Stormwater Construction - Incl. Bid/ Manage/ Construct/ Close Out (CIP #2: Upsize 690LF of 8" diam. pipe to 15" diam.; replace 8" perf concrete crossing pipes with PVC)		\$350,000.00	REET SW Utility
S - 4	2025	4441 91st Ave NE CIP #H-1	91st R/W	Lake Washington	0.1	Final Engineering Design (525LF)		\$25,000.00	REET SW Utility
S - 5	2026	4441 91st Ave NE CIP #H-1	91st R/W	Lake Washington	0.1	(CIP #4: Replace 525LF of 12" diameter pipe and associated structures)		\$150,000.00	REET SW Utility
S - 6	2027	92nd Ave NE	NE 38th Street	NE 42nd Street	0.2	Final Engineering Design (CIP #5: 1,050 LF new storm system)		\$35,000.00	REET Heavy Truck Fee

III. CAPITAL IMPROVEMENT PROJECTS - UNDERGROUND CONVERSION

U - 1	2023	94th Ave NE	92nd Ave NE	NE 40th Street	0.32	Final Design		\$35,000.00	REET
U - 2	2024	94th Ave NE	92nd Ave NE	NE 40th Street	0.32	Construction: 1,670LF single-phase w/ no street lights Bid/ Manage/ Construct/ Close Out		\$250,000.00	REET

IV. CAPITAL IMPROVEMENT PROJECTS - OTHER

O - 1									
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1) = excellent (new/recent overlay within past 5-10 yr. ++)
2 = good (older overlay, no obvious damage)
3 = fair (some cracks)
4 = fair-poor (several cracks, some alligators/settlement)
5 = poor (several cracks, alligators, settlement/potholes)

1) The above budget figures shown are in 2021 dollars and are to be considered preliminary probable project costs only.
More precise budget figures will need to be determined once the final scope of each project is defined,
which will require more extensive research, survey, and scope definition prior to the particular year's budgeting.
2) The projects identified above are preliminary in scope. Projects may be added to or deleted from this list.

**YARROW POINT
CAPITAL IMPROVEMENT PLAN (2022 - 2027)
TRANSPORTATION IMPROVEMENT PLAN (2022 - 2027)**

DATE SUBMITTED: 07/xx/2021 Approved by: Yarrow Point Town Council
Date: May 5, 2021
Ordinance Number: -

NO.	YEAR	STREET / LOCATION	FROM	TO	(mi)	PROJECT SCOPE	CONDITION	BUDGET	SOURCE
I. TRANSPORTATION IMPROVEMENT PROJECTS									
T - 1	2021	91st Ave NE NE 42nd Street	NE 42nd St 92nd Ave NE	92nd Ave NE Road End Beach	0.15 0.15	2" Grind and Overlay in conjunction with stormwater project (To be completed after Stormwater (S-1) and UGC project (U-1))	3.5	\$220,000.00	REET Heavy Truck Fee
T - 2	2021	NE 37th Street	92nd Ave NE	West to Lake	0.14	2" Grind and Overlay - Design/ Bid/ Construct/ Close Out	3.5	\$160,000.00	REET Heavy Truck Fee
T - 3	2022	NE 36th Street	91st Ave NE	92nd Ave NE	0.05	2" Grind and Overlay (To be completed after Stormwater (S-2 & 3) project)	3.5	\$85,000.00	REET Heavy Truck Fee
T - 4	2023	NE 34th Street	92nd Ave NE	West to Lake	0.16	2" Grind and Overlay - Design/ Bid/ Construct/ Close Out	3.5	\$160,000.00	REET Heavy Truck Fee
T - 5	2024	94th Ave NE	92nd Ave NE	NE 40th Street	0.30	So. 1/2: 2" Grind and Overlay; No. 1/2: Full Depth Reconstruction (To be completed after Stormwater (S-4 & 5) and UGC project (U-2 & 3))	3.5	\$260,000.00	REET Heavy Truck Fee
T - 6	2026	92nd Ave NE	NE 38th Street	NE 42nd Street	0.2	2" Grind and Overlay (To be completed after Stormwater (S-6 & 7) project)	3.5	\$150,000.00	REET Heavy Truck Fee

II. STORM WATER PROJECTS									
S - 1	2021	NE 42nd Street	92nd Ave NE	Road End Beach	0.15	Stormwater Construction - Incl. Bid/ Manage/ Construct/ Close Out (Upsize 850LF of 12" diam. pipe to 24" diam.)		\$475,000.00	REET SW Utility
S - 2	2021	NE 36th Street	91st Ave NE	92nd Ave NE	0.05	Final Engineering Design (Upsize 250LF NE 36th St CIP #1)		\$25,000.00	REET SW Utility
S - 3	2022	NE 36th Street	91st Ave NE	92nd Ave NE	0.05	Stormwater Construction - Incl. Bid/ Manage/ Construct/ Close Out (Install 250LF 12" NE 36th St CIP #1)		\$184,000.00	REET SW Utility
S - 4	2023	94th Ave NE (CIP #2)	92nd Ave NE	NE 40th St	0.16	Final Engineering Design (815LF)		\$30,000.00	REET SW Utility
S - 5	2024	94th Ave NE (CIP #2)	92nd Ave NE	NE 40th St	0.16	Stormwater Construction - Incl. Bid/ Manage/ Construct/ Close Out (Upsize 690LF of 8" diam. pipe to 15" diam.)		\$300,000.00	REET SW Utility
S - 6	2025	92nd Ave NE	NE 38th Street	NE 42nd Street	0.2	Final Engineering Design (1,050 LF new storm system)		\$35,000.00	REET Heavy Truck Fee
S - 7	2026	92nd Ave NE	NE 38th Street	NE 42nd Street	0.09	Stormwater Construction - Incl. Bid/ Manage/ Construct/ Close Out (1,050 LF new storm system)		\$468,000.00	REET Heavy Truck Fee

III. UNDERGROUND CONVERSION PROJECTS									
U - 1	2021	91st Ave NE NE 42nd Street	NE 42nd St 92nd Ave NE	92nd Ave NE Road End Beach	0.15 0.15	Construction: 800LF single-phase/705LF three-phase w/ no street lights Bid/ Manage/ Construct/ Close Out		\$475,000.00	REET
U - 2	2023	94th Ave NE	92nd Ave NE	NE 40th Street	0.30	Final Design		\$35,000.00	REET
U - 3	2024	94th Ave NE	92nd Ave NE	NE 40th Street	0.30	Construction: 690LF single-phase w/ no street lights Bid/ Manage/ Construct/ Close Out		\$250,000.00	REET

IV. OTHER PROJECTS									
O - 1									

1) The above budget figures shown are in 2020 dollars and are to be considered preliminary probable project costs only. More precise budget figures will need to be determined once the final scope of each project is defined, which will require more extensive research, survey, and scope definition prior to the particular year's budgeting.

2) The projects identified above are preliminary in scope. Projects may be added to or deleted from this list.

1 = excellent (new/recent overlay within past 5-10 yr. +-)
 2 = good (older overlay, no obvious damage)
 3 = fair (some cracks)
 4 = fair-poor (several cracks, some alligators/settlement)
 5 = poor (several cracks, alligators, settlement/potholes)

**YARROW POINT
CAPITAL IMPROVEMENT PLAN (2021 - 2026)
TRANSPORTATION IMPROVEMENT PLAN (2021 - 2026)**

Approved by: Yarrow Point Town Council
Date: July x, 2020
Ordinance Number: xxx

DATE SUBMITTED: 07/xx/20

NO.	YEAR	STREET / LOCATION	FROM	TO	(mi)	PROJECT SCOPE	CONDITION	BUDGET	SOURCE
I. TRANSPORTATION IMPROVEMENT PROJECTS									
T - 1	2021	91st Ave NE NE 42nd Street	NE 42nd St 92nd Ave NE	92nd Ave NE Road End Beach	0.15	2" Grind and Overlay in conjunction with stormwater project (To be completed after Stormwater (S-1) and UGC project (U-1))	3.5	\$220,000.00	REET Heavy Truck Fee
T - 2	2021	NE 37th Street	92nd Ave NE	West to Lake	0.14	2" Grind and Overlay - Design/ Bid/ Construct/ Close Out	3.5	\$160,000.00	REET Heavy Truck Fee
T - 3	2022	NE 40th Street	92nd Ave NE	95th Ave NE	0.23	2" Grind and Overlay (To be completed after Stormwater (S-2 & 3) and UGC project (U-2 & 3))	3.5	\$260,000.00	REET Heavy Truck Fee
T - 4	2023	NE 34th Street	92nd Ave NE	West to Lake	0.16	2" Grind and Overlay - Design/ Bid/ Construct/ Close Out	3.5	\$160,000.00	REET Heavy Truck Fee
T - 5	2024	94th Ave NE	92nd Ave NE	NE 40th Street	0.30	So. 1/2: 2" Grind and Overlay; No. 1/2: Full Depth Reconstruction (To be completed after Stormwater (S-4 & 5) and UGC project (U-4 & 5))	3.5	\$260,000.00	REET Heavy Truck Fee
T - 6	2026	NE 38th Street 94th Ave NE	92nd Ave NE Ne 38th St	94th Ave NE NE 40th Street	0.09 0.09	2" Grind and Overlay (To be completed after Stormwater (S-6 & 7) and UGC project (U-6 & 7))	3.5	\$150,000.00	REET Heavy Truck Fee

II. STORM WATER PROJECTS

S - 1	2021	NE 42nd Street	92nd Ave NE	Road End Beach	0.15	Stormwater Construction - Incl. Bid/ Manage/ Construct/ Close Out (Upsize 850LF of 12" diam. pipe to 24" diam.)		\$475,000.00	REET SW Utility
S - 2	2021	NE 40th Street	92nd Ave NE	94th Ave NE	0.12	Final Engineering Design (Upsize 450LF NE 40th St CIP #1)		\$25,000.00	REET SW Utility
S - 3	2022	NE 40th Street	92nd Ave NE	94th Ave NE	0.12	Stormwater Construction - Incl. Bid/ Manage/ Construct/ Close Out (Upsize 450LF 8" to 12" & 18" NE 40th St CIP #1)		\$150,000.00	REET SW Utility
S - 4	2023	94th Ave NE (CIP #2)	92nd Ave NE	NE 40th St	0.16	Final Engineering Design (815LF)		\$300,000.00	REET SW Utility
S - 5	2024	94th Ave NE (CIP #2)	92nd Ave NE	NE 40th St	0.16	Stormwater Construction - Incl. Bid/ Manage/ Construct/ Close Out (Upsize 815LF of 8" diam. pipe to 12" diam.)		\$300,000.00	REET SW Utility
S - 6	2025	NE 38th Street	92nd Ave NE	94th Ave NE	0.09	Final Engineering Design (300 LF new storm system)		\$25,000.00	REET Heavy Truck Fee
S - 7	2026	NE 38th Street	92nd Ave NE	94th Ave NE	0.09	Stormwater Construction - Incl. Bid/ Manage/ Construct/ Close Out (300 LF new storm system)		\$125,000.00	REET Heavy Truck Fee

III. UNDERGROUND CONVERSION PROJECTS

U - 1	2021	91st Ave NE NE 42nd Street	NE 42nd St 92nd Ave NE	92nd Ave NE Road End Beach	0.15	Construction: 800LF single-phase/ 705LF three-phase w/ no street lights Bid/ Manage/ Construct/ Close Out		\$475,000.00	REET
U - 2	2021	NE 40th Street	92nd Ave NE	95th Ave NE	0.23	Final Design		\$40,000.00	REET
U - 3	2022	NE 40th Street	92nd Ave NE	95th Ave NE	0.23	Construction: 900LF three-phase and 300LF single-phase w/ 1 street light Bid/ Manage/ Construct/ Close Out		\$360,000.00	REET
U - 4	2023	94th Ave NE	92nd Ave NE	NE 40th Street	0.30	Final Design		\$35,000.00	REET
U - 5	2024	94th Ave NE	92nd Ave NE	NE 40th Street	0.30	Construction: 815LF single-phase w/ no street lights Bid/ Manage/ Construct/ Close Out		\$250,000.00	REET
U - 6	2025	NE 38th Street 94th Ave NE	92nd Ave NE NE 38th Street	94th Ave NE NE 40th Street	0.09 0.09	Final Design		\$35,000.00	REET
U - 7	2026	NE 38th Street 94th Ave NE	92nd Ave NE NE 38th Street	94th Ave NE NE 40th Street	0.09 0.09	Construction: 1,000LF single-phase w/ one street lights Bid/ Manage/ Construct/ Close Out		\$370,000.00	REET

IV. OTHER PROJECTS

O - 1									
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- 1 = excellent (new/recent overlay within past 5-10 yr. +)
- 2 = good (older overlay, no obvious damage)
- 3 = fair (some cracks)
- 4 = fair-poor (several cracks, some alligators/settlement)
- 5 = poor (several cracks, alligators, settlement/potholes)

- 1) The above budget figures shown are in 2019 dollars and are to be considered preliminary probable project costs only. More precise budget figures will need to be determined once the final scope of each project is defined, which will require more extensive research, survey, and scope definition prior to the particular year's budgeting.
- 2) The projects identified above are preliminary in scope. Projects may be added to or deleted from this list.

Capital Improvement Plan Funds

PRIMARY FUNDING: REET

0.5% of Property Tax
(~\$220,000/ YR)

TIP – STREET PROJECTS

FUNDING:

- 1.) HEAVY TRUCK FEE ~\$100,000/ YR
- 2.) Motor Vehicle Fuel Tax ~\$20,000/YR

- 40% Maintenance (~\$40,000 min)
 - Istvan Salary
 - Pagodas
 - Street Repairs
 - Restriping
- 60% Improvement Projects (~\$60,000 min)
 - Overlays and Striping

STORMWATER PROJECTS

FUNDING: STORMWATER UTILITY FEE

FIXED 419 LOTS * \$153.60/YR ~\$64,000/ YR

- 40% Maintenance (~\$25,600 min)
 - Video Existing Lines
 - Cleaning sediment and debris in CB's
 - Repairs
- 60% Improvement Projects (~\$38,400 min)
 - Stormwater CIPs outlined in Comp Plan

UNDERGROUND CONVERSION PROJECTS

- 100% Design and Construction
 - 94th Ave NE

FUNDING: KC Flood Control District

Fixed: \$13,000/ YR

CHAPTER 5 CAPITAL IMPROVEMENT PLAN

5.1 METHODOLOGY

The 2019 Town of Yarrow Point Capital Improvement Plan (CIP) is an essential tool used to organize and prioritize vital storm drainage system improvements. Each basin recommendation made in Chapter 3 was included in the CIP. Each project was then prioritized into categories based on the following criteria: potential flooding, construction impacts, and the effect that completion of the project would have on the rest of the system. All project costs are in 2020 dollars and the unit prices attempt to take into account sales tax on materials. Table 5-1 shows the prioritization of all projects.

5.2 PROJECT RECOMMENDATIONS

The recommended capital improvements for the 2019 Plan are limited to correcting existing conveyance problems and future conveyance problems based on developed conditions, as well as replacing substandard drainage structures. The recommended capital improvements are listed and prioritized in Table 5-1. All projects that are required to convey existing and proposed flows have been sized to convey the 25-year flow (industry standard) unless noted.

Figure 5-1 Capital Improvement Projects is an insert which shows the locations of the projects. Detailed cost estimates are located in Appendix B.

Table 5-1: Recommended Capital Improvement Projects

CONSTRUCTION PROJECTS				
Project ID	CIP #	General Description	Estimated Cost¹	Priority Level
G-1 D-1	1 ²	This project consists of approximately 250 LF of new 12" Pipe between G-12 and D-2 that will divert flows to Basin D. Also includes outfall upgrades at the discharge point of Basin D, as well as replacing or repairing 6 damaged catch basins in Basin D.	\$184,000	High
J-2	2	Replaces approximately 690 linear feet of existing 8" pipe with larger 15" diameter pipe between structures J-37 and J-46 plus pipe downstream of J-46 to the tee connection to fully contain flows from developed conditions.	\$290,000	Medium-High

CONSTRUCTION PROJECTS				
Project ID	CIP #	General Description	Estimated Cost¹	Priority Level
H-2	3	Install approximately 400 feet of thickened edge while abandoning 400 linear feet of existing perforated pipe between structures H-3 and H-10 and routing water to the existing 12" line on the east side of 91 st Ave. NE	\$121,000	Medium-High
H-1	4	Replaces approximately 525 linear feet of existing pipe damaged by major root intrusion between structures H-17 and H-22.	\$224,000	Medium-High
G-2	5	Upsize between G-32 and G-60 fully contain flows from existing and developed conditions. 1,050 linear feet of new 18" pipe.	\$468,000	Medium High
J-1	6	Replaces approximately 550 linear feet of existing pipe with larger 15" diameter pipe between structures J-21 and J-57 to fully contain flows from developed conditions.	\$185,000	Medium
G-3	7	Replaces approximately 420 linear feet of existing pipe with 12" diameter pipe between structures G-53 and G-56 to fully contain flows from existing and developed conditions.	\$167,000	Medium
G-4	8	Replaces approximately 50 linear feet of existing pipe with 12" diameter pipe between structures G-29 and Tee-5 in NE 37 th St. and the pipe downstream of G-30 to fully contain flows from existing and developed conditions.	\$35,000	Low
G-6	9	Replace 420 linear feet of pipe between G-6 and G-11 with 12" pipe to fully contain flows from existing and developed conditions.	\$160,000	Low
G-5	10	Replace broken 180 linear feet of 8" pipe between G-33 and G-36 in NE 38 th St. with 8"-12" PVC pipe and reinstall catch basin over 92 nd trunk line to reduce clogging potential	\$80,000	Low
G-7	11	Replace CMP pipe between G-48 and G-49 in 94 th Ave. NE	\$13,000	Low
Construction Projects Total			\$1,924,000	
¹ All costs are in 2020 dollars				
² Required to contain the 100-year storm event in NE 42 nd St.				

PROGRAMMATIC PROJECTS				
Project ID	CIP#	General Description	Estimated Cost¹	Priority Level
PP-1	12	Adopt current Department of Ecology Stormwater Management Manual for Western Washington. Includes review of Municipal Code for conflicts and includes production of a stormwater addendum of the manual specific to the Town. Develop a map for the Town to identify parcels which meet direct discharge requirements.	\$30,000	High
PP-2	13	Inventory all existing private flow control facilities and create a database using GIS to ensure regular maintenance is performed.	\$30,000	Medium
PP-3	14	Update Town of Yarrow Point 2010 Standard Plans and Notes	\$25,000	Medium
PP-4	15	Create Policies and Procedures for the Stormwater Operations and Maintenance Program. See Section 6.2	\$25,000	Medium
PP-5	16	Annual Cleaning and Video Inspection Program (6-Year Cycle)	\$30,000	Medium
Programmatic Projects Total			\$140,000	
¹ All costs are in 2020 dollars				

5.3 OTHER RECOMMENDATIONS

The following additional recommendations are suggested to the Town of Yarrow Point:

- The Town should verify that easements exist for outfalls to Lake Washington located on private property (Basins A, B, C, D, E, F, and H). If traditional easements do not exist, it is that possible prescriptive easements may. If easements were not previously granted, the Town should attempt to obtain them from the property owners. Additionally, the town should determine if all outfalls to Lake Washington extend to the ordinary high-water line as this is a requirement for the Ecology direct discharge exemption (see Section 2.3.3).
- Results of the field survey and evaluation (see Appendix C, separately bound as Volume 2 – System Inventory) indicate multiple drainage structures in the inventory have large amounts of debris buildup in their sumps and other drainage structures have other identified problems (some structures have significant cracking and are deficient), the majority of these being inoperable lids. The majority of structures located on private property are not included in the inventory. The Town of Yarrow Point Public Works Department should investigate these problem structures and, at the very least, remove sediment buildup in sumps and pipes.

- Volume 2 of this document should be periodically updated as capital improvement projects and other development projects involving the public storm drainage system are completed.
- A centrally managed drainage complaint database should be created and maintained by the Town to aid in developing future projects and correctly prioritizing Town needs.
- The Town should consider implementing a public education program to make residents aware of the negative effects of stormwater pollution. As stated in the Ecology Phase II Permit coverage exemption letter, implementation of stormwater Best Management Practices and public education will maximize the likelihood that Ecology will not bring the Town back under Phase II coverage in the future.
- The Town should consider adopting the current Department of Ecology's Stormwater Management Manual for Western Washington. While the is not an Ecology Phase II Permit Municipality, we feel that by adopting the most current standards will maximize the likelihood that Ecology will not bring the Town back under Phase II coverage in the future. In addition, we believe the Town, its receiving waters, and its residents benefit from using the best and most recent practices and technologies.
- The Town should consider updating the standard plans and notes. This will ensure that construction projects within the Town, both public and private, are using construction methods and practices that are currently the industry standard.

TOWN OF YARROW POINT

2022-2027 CAPITAL IMPROVEMENT PLAN



Legend

- 12" Thickened Edge
- Existing Structures
 - IN/OUTLET
 - SDCB
 - SDMH
- Proposed Structures
 - Type 1 CB
 - Type 2 CB
- Proposed Pipes
 - 12"
 - 15"
 - 18"
 - 24"
- Existing SD Pipes
- Drainage Basins
- City Limits
- Parcels

**TOWN OF YARROW POINT
ORDINANCE NO. 712**

**AN ORDINANCE OF THE TOWN OF YARROW POINT,
WASHINGTON ADOPTING A CAPITAL IMPROVEMENT
PLAN AND TRANSPORTATION IMPROVEMENT PLAN
FOR 2022-2027, AND FIXING A TIME WHEN THE SAME
SHALL BECOME EFFECTIVE.**

WHEREAS, the six-year capital improvement plan (CIP) and transportation improvement plan (TIP) are elements of the comprehensive plan; and

WHEREAS, pursuant to RCW 35A.63.073, amendments to the comprehensive plan require the Town Council to notice and hold a public hearing to solicit and receive public comment regarding the proposed CIP and TIP; and

WHEREAS, the Town Council duly noted and held a public hearing on June 8, 2021 to solicit and receive public comment; and

WHEREAS, upon hearing public testimony and recommendations of the Town Engineer, the Town Council finds it to be in the public's interest to adopt the CIP and TIP as presented.

NOW, THEREFORE THE TOWN COUNCIL OF THE TOWN OF YARROW POINT, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1: The Capital Improvement Plan (CIP) and Transportation Improvement Plan (TIP) is hereby adopted in the form set forth in Attachment A, incorporated by this reference as fully as if herein set forth.

Section 2: This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Passed by the Town Council this 8th day of June, 2021.

APPROVED:

Dicker Cahill, Mayor

ATTEST: Bonnie Ritter, Clerk-Treasurer

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
Scott Missall

SUMMARY OF ORDINANCE NO. 712

of the Town of Yarrow Point, Washington

On the 8th day of June, 2021, the Town Council of the Town of Yarrow Point, passed Ordinance No. 712. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE TOWN OF YARROW POINT, WASHINGTON ADOPTING A CAPITAL IMPROVEMENT PLAN AND TRANSPORTATION IMPORVEMENT PLAN FOR 2022-2027, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.

DATED this ___ day of June, 2021.

BONNIE RITTER, CLERK-TREASURER

**Business of The Town Council
Town of Yarrow Point, WA**

Agenda Bill 21-30
June 8, 2021

Update on process to reclassify Sally's Alley from a road into a park	Proposed Council Action: For Discussion
Presented by:	Town Attorney Scott Missall
Exhibits:	<ul style="list-style-type: none">Email from Town Attorney Scott Missall dated May 21, 2021

Summary:

An update from the Town Attorney on the process to reclassify Sally's Alley from a road into a Park.

Recommended Action:

For discussion.

Yarrow Point Deputy Clerk

From: Scott M. Missall <smissall@omwlaw.com>
Sent: Friday, May 21, 2021 11:32 AM
To: Yarrow Point Mayor
Cc: Stacia Schroeder; Yarrow Point Deputy Clerk
Subject: RE: Survey of Sally's Alley

Good morning, Dicker. Your email is timely.

Coincidentally I just got off the phone with Laura Lau at First American. She will be reviewing what we asked for with her staff and get back to me next week with a timeline for completing the review and its cost. (The cost will likely be under your authority, but we should know in time to add it to the CC agenda for next month if necessary.) I sent Laura the documents and plats we have assembled (with Andy's help), and gave her this description of what we need:

- * Legal boundaries of the Alley (the Town will have the Alley surveyed to discern encroachments)
- * Metes and bounds legal description if available
- * If bounded by identified tax parcels, the tax parcel #s thereof and the most recent deed for each parcel reflecting the parcel boundaries)
- * If the Alley was created/compiled over time by different plats or dedications, the dates and pertinent documents affecting each such step
- * All covenants, conditions, restrictions, agreements, licenses, easements, etc affecting the Alley
- * A map/diagram showing the Alley and the immediately surrounding parcels
- * An insurance amount for the Town to rely on, perhaps \$25k or \$50k.

This information will tie down what/where the Alley is and whether it is subject to any use or other limitations, and should save a good deal of the survey preparation work you mention below. It seems to me the survey should follow after the guarantee is received so we are confident in the actual boundaries of the Alley and aren't guessing about what to survey. Decisions related to the Park use will also be tied to those boundaries, as will future setbacks from the new park, so they should be well established. It may be that only the 95th boundary needs a survey, which should significantly reduce its cost anyway. Let's find out what that cost is and then we can coordinate with the guarantee and its cost.

I would like to talk, but am tied up this afternoon in calls and meetings starting at 11:45. If it is urgent I'm happy to make some time today. If it's not so urgent, I can make time on Sat/Sun, and of course am in the office all next (and have few appointments or meetings).

Let me know and we'll make it happen. Scott

Scott M. Missall | Member

Ogden Murphy Wallace P.L.L.C.

901 Fifth Avenue, Suite 3500 Seattle, WA 98164

DD: 206.515.2241 | M: 206.200.7710

smissall@omwlaw.com | www.omwlaw.com

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From: Yarrow Point Mayor <mayor@yarrowpointwa.gov>

Sent: Friday, May 21, 2021 11:00 AM

To: Scott M. Missall <smisall@omwlaw.com>

Cc: Stacia Schroeder <sshroeder@yarrowpointwa.gov>; Yarrow Point Deputy Clerk <depclerk@yarrowpointwa.gov>

Subject: Survey of Sally's Alley

Hi Scott,

We received the estimate for a formal survey of Sally's Alley.

The quote came in at \$10,500, which is above my authority and will require council approval at the next meeting.

I believe we have a strong handle on the rough property lines with exception on the intersection point on 95th.

Can you please call me to discuss. I have Stacia requesting a bid for the 95th side only.

Thanks,

Dicker

Dicker Cahill

Mayor

Town of Yarrow Point

4030 95th Ave. NE

Yarrow Point, WA 98004

P: 425.786.6099

F: 425.454.7899

<http://www.yarrowpointwa.gov>



Office Hours:

M-Th: 8:30-4:30

F: 8:30-Noon

Closed Noon-1PM for lunch

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**Business of The Town Council
Town of Yarrow Point, WA**

Agenda Bill 21-31
June 8, 2021

Appointment of Mayor Pro Tem	Proposed Council Action: Appoint Mayor Pro Tem.
Presented by:	Mayor Cahill
Exhibits:	None.

Summary:

According to RCW 35.27.160, the Mayor shall preside over all meetings of the Council at which he or she is present. A Mayor Pro Tem may be chosen by the Council for a specified period of time, not to exceed six months, to act as the Mayor in the absence of the Mayor.

Recommended Action:

Move that a member of the Council be appointed to serve as the Mayor Pro Tem for the next six months – July 1, 2021 through December 31, 2021.

Vehicles distribution amonga velocity ranngae

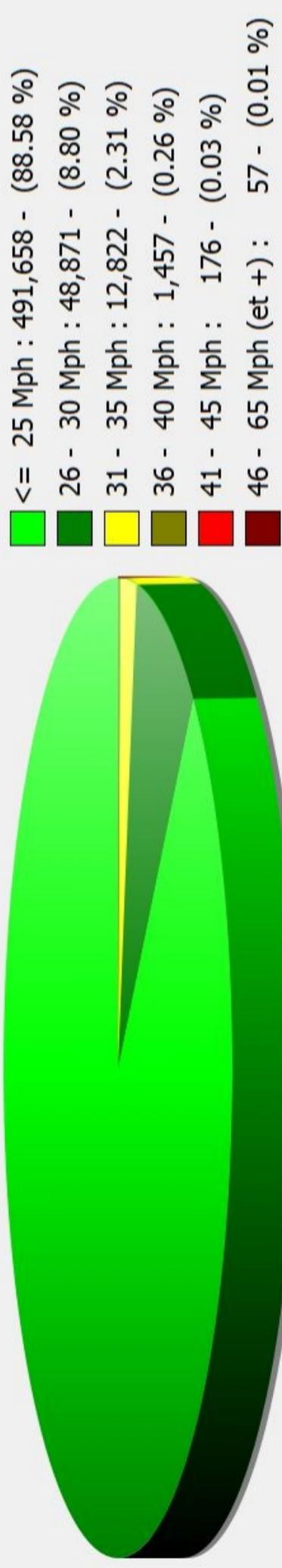
Incoming vehicles



Northbound facing radar sign

Vehicles distribution among velocity ranges

Incoming vehicles



Southbound facing radar sign

Town Council Project Tracking Sheet



Project Description	Status	Priority	Lead person	Date/year started	Updated	Date/year Complete	Comments
ROW Construction Parking Enforcement	Started	High	Mayor	21-Mar			The town is enforcing all ROW construction parking. There is no more construction parking allowed above of Town Hall and Morningside Park.
Utility Tax Revenue Discussion	Started		Clerk-Treasurer	21-May			The Town is currently auditing utility tax intake revenue from its providers. Councilmember Valaas shared that Town code requires 6% on water and sewer utility tax however, City of Bellevue is paying 5%. Mayor Cahill responded that Town staff are researching it.
Hot List configuration for Flock license plate reader cameras	Started	High	Mayor/Deputy Clerk	21-Mar	21-May		Flock is working with CHPD to configure the Hot List. According to Flock, it can take 1-2 months to configure. <i>On May 17, staff received an update from Flock stating that CHPD has access to the portal and is waiting on their acceptance to the Hot List.</i>
Mutt Mitt dog bag purchases	Started		Mayor	21-Feb			Council requested Mayor to look into the large expenditure item of Mutt Mitt bags purchased by the town frequently. They would like him to ask Hunts Point about the frequency of their Mutt Mitt bag purchases.
Adding additional Flock license plate reader cameras	Started		Mayor/Staff	21-Mar			Council discussed the possibility of adding additional cameras in town. One potential location would be facing NE PTS Dr. To install, <i>Mayor Cahill would sign another PO at \$2500/camera/year + \$250 installation.</i>
Roundabout safety	Started	High	Mayor/Staff/Council	21-Feb	21-May		Councilmember Lagerholm requested that a discussion item for roundabout safety be put on the March agenda. There have been some cases of car accidents in the roundabout and we may need to contact the State to further discuss safety measures. <i>At the May Council meeting, Council discussed adding additional signage to existing poles and reviewing current data from speed limit radar signs.</i>
Light pole spacing	Started		Mayor/Staff/Council	Dec-20			Councilmember Bush suggested to reconsider the policy for light pole spacing, more people are walking at night. It is dark specifically on the Yarrow Point side of Points Drive and the connection between Kirkland through NE Points Drive to the roundabout. Mayor and staff will look into additional lighting in these areas. The spacing of light poles along 92nd is 110ft to 140ft, with 125ft being the standard. The poles are also staggered on each side of the roadway.
Back up & retention system research	Started		Councilmember Bush	Feb-20	Mar-21		Councilmember Bush visited Town Hall on 3/3 and presented the town with a proposal to change how we do backups by adding a local Network Attached Storage device.
Emergency preparedness	Ongoing	High	Mayor & staff				Increasing involvement.
Ongoing maintenance to Town Hall	Ongoing		Mayor & staff		Dec-20		Town Hall will be restained in Spring of 2021.

Last update: 6/1/2021