



City of Bothell™

Bothell Municipal Court, 10116 NE 183rd Street, Bothell, WA

City Council
Study Session Agenda
Tuesday, April 8 2014
6:00 PM

Members of the City Council: Mayor Joshua Freed, Deputy Mayor Del Spivey, Council Members Tom Agnew, Bill Evans, Mark Lamb, Andy Rheume and Tris Samberg

Members of the Staff: City Manager Bob Stowe, City Attorney Joe Beck, Assistant City Manager Peter Troedsson, Police Chief Carol Cummings, Fire Chief Bob Van Horne, Public Works Director Erin Leonhart, Human Resources Director Jamie Marsden, Finance Director Tami Schackman, Community Development Director Bill Wiselogle and City Clerk Laura Hathaway

Call to Order/Pledge of Allegiance

* = Estimated Time

6:00 PM

1. Roll Call

6:00 PM

2. Meeting Agenda Approval

6:05 PM - (5 minutes) *

3. Council Committee Reports

6:10 PM – (15 minutes if needed)*

4. Study Session

6:25 PM – (2 hours/25 minutes)*

a. AB #14-55 Study Session regarding Advisory Board and Commission Interviews
(1 hour 45 minutes)*

RECOMMENDED ACTION: No action is requested this evening. Appointments are scheduled for April 22, 2014.

- Pgs. 23-32 b. **AB # 14-56 – State of the Court Presentation (10 minutes)***
RECOMMENDED ACTION: No action is required by the Council related to this matter.
- Pgs. 33-70 c. **AB #14-57 – Study Session regarding Utility Franchise Agreement with Time Warner Telecom (15 minutes)***
RECOMMENDED ACTION: No action is requested this evening; however, this item is currently scheduled for Council action on May 6, 2014.
- Pgs. 71-102 d. **AB #-14-58 Study Session regarding Utility Franchise Agreement with Level 3 Communications (15 minutes)***
RECOMMENDED ACTION: No action is requested this evening; however, this item is currently scheduled for Council action on May 6, 2014.

8:00 PM (approximately) - Consideration of Agenda Schedule, Topics Remaining, and Time of Adjournment (This is an opportunity for the Council to assess its progress on the agenda and to consider whether to re-order or continue remaining agenda items)

BREAK (No later than 8:00 PM) - (15 minutes) *

5. **Executive Session – Property Acquisition/Personnel Matters/Potential/Pending Litigation/ Labor Relations - Possible Action**
(15 minutes, if needed)
6. **Adjournment** (May be extended past 10:00 PM by majority vote of Council)

SPECIAL ACCOMODATIONS: The City of Bothell strives to provide accessible meetings for people with disabilities. If special accommodations are required, please contact the ADA Coordinator at (425) 486-3256 at least three days prior to the meeting.

Copies of the agenda bills and attachments listed in this agenda may be obtained from the City Clerk's Office the Friday before the meeting. Proposed ordinances may be obtained earlier.

PRELIMINARY AGENDA: The preceding is a preliminary agenda; other items may be added and action taken on matters which do not appear above.

Bothell City Council meetings are aired live on Bothell Community Television (BCTV) Channel 21/26 (Comcast/Verizon) (available to Comcast and Verizon Cable customers within Bothell City limits). Meetings are generally replayed according to the following schedule (subject to change): Wednesday following the meeting at 10 a.m.; Friday, Saturday and Sunday following the meeting at 10 a.m. and 7 p.m. City Council and Planning Commission meetings and the BCTV schedule are viewable online at www.ci.bothell.wa.us

Bothell City Council
AGENDA BILL SUMMARY

Meeting Date: April 8, 2014

AB #14-55

Action Item: Study Session Item: X Special Presentation:

Subject: **Study Session to Conduct Board & Commission Applicant Interviews**

Budget Impact and Source of Funds: n/a

Contact Person/Department: Laura Hathaway, City Clerk

EXECUTIVE SUMMARY:

This year, 21 applicants applied for 13 vacancies on City Council appointed Boards and Commissions. All but one of the applicants met eligibility requirements for the board/commission for which they applied. 17 applicants have indicated they wish to only serve on the board/commission for which they applied; 3 applicants have expressed primary interest in one board or commission and alternate interest in serving on other boards or commissions if the first choice is not available; and 7 incumbents have applied for reappointment to the advisory body on which they currently serve.

The interview schedule is noted with both incumbent and alternate-interest information, as appropriate, and each applicant will be scheduled to interview under the board or commission of his or her primary choice.

All of the interviews have been scheduled for April 8. In order to meet with all applicants within the time allotted, staff has scheduled interviews at five-minute intervals. Applicants will be given three minutes to offer comments on why they wish to serve or continue to serve on the board/commission and what they see as the priorities for the coming year.

As in previous years, staff recommends the interviews be audio recorded only, and video recording be suspended.

Section 2.08 of the Bothell City Council Protocol Manual sets forth the Council's current policy and procedure relating to appointments and reappointments to advisory boards and commissions, and is provided as Attachment 1.

Subsection 2.08(B) reviews criteria on which each applicant is to be objectively evaluated. This subsection also addresses residency requirements, which are contained within the Bothell Municipal Code and summarized in Attachment 2, the Advisory Board & Commission Matrix of Qualifications and 2014 Vacancies.

The following attachments are also provided for Council review: Attachment 3, Interview Schedule; Attachment 4, Summary of Vacancies; Attachment 5, Applications and

Supplemental Questionnaires (Council distribution only); Attachment 6, Residency Maps (Council distribution only).

COUNCIL PROCESS: Study Session

- Staff Presentation by Laura Hathaway City Clerk
- Council Conduct Interview
- Item to Return to Council on April 22, 2014 to Consider Appointments to Advisory Boards & Commissions

HISTORY:

- Applications and supplemental questionnaires were received from January 2 through February 14, 2014. Due to lack of applications, staff extended the deadline for both the Landmark Preservation Board and the Lodging Tax Advisory Committee to March 31, 2014.

RECOMMENDED ACTION:

No action is requested this evening. Appointments are scheduled for April 22, 2014.

ATTACHMENTS:

1. Excerpt from Bothell City Council Protocol Manual, Section 2.08, Advisory Bodies
 2. Advisory Board & Commission Matrix of Qualifications and 2014 Vacancies
 3. Interview Schedule
 4. Summary of Vacancies
 5. Applications & Supplemental Questionnaires (Council distribution only)
 6. Residency Maps (Council distribution only)
-

City Manager Approval:



Date: 4/1/14

Excerpt of Section 2.08 from the Bothell City Council Protocol Manual

2.08 Advisory Bodies

A. Appointments Made by the Council

Boards, commissions and citizen committees provide a great deal of assistance to the Bothell City Council when formulating public policy and transforming policy decisions into action. The City has several standing boards and commissions. In addition, special purpose committees and task forces are often appointed by the City Council to address issues of interest or to conduct background work on technical or politically sensitive issues. Special or ad hoc committees will be dissolved upon completion of the intended task.

The procedures established in this manual reflect the policy of the City Council regarding the appointment of volunteer citizens to the various advisory bodies of the City. The establishment of these procedures ensures that well-qualified, responsible, and willing citizens are given the opportunity to serve the City and participate in the governing of their community.

The City Council is specifically empowered to create all advisory boards and commissions pursuant to the provisions of Chapter 35A (Optional Municipal Code), or such advisory boards or commissions not specifically enumerated, as the Council deems necessary or advisable. In the exercise of this power, it is the desire of the City Council to establish a consistent policy in its decision-making role to fairly and equitably evaluate those citizens of the community who demonstrate desire to serve on such boards or commissions.

1. For full-term vacancies, the following filing period is established: first Wednesday of January through second full week of February. The City Clerk will:
 - a. Publicly announce the position vacancy and filing period by publication of it in the official newspaper of the City of Bothell.
 - b. Post notices of the position vacancy and filing period in the three public places established in Section 8.02(B) of this manual.
 - c. Notify by mail all residents of the community not currently a member of an advisory board or commission who have indicated interest in serving on a City board or commission.
 - d. Notify by mail the Chairpersons of advisory boards and commissions of the vacancy.
 - e. Notify by mail the incumbents of advisory boards and commissions whose terms are expiring of such term expiration and inviting incumbent to consider reapplying.

2. For partial-term vacancies, a minimum 30-day filing period applies, with dates to be determined by the City Clerk. Partial-term vacancies will be filled as outlined in Section 2.08(A)(1a-d), above.

B. Qualifications, Terms of Service, Forms

Persons wishing to be considered for appointment or reappointment will submit to the City Clerk's Office an application on a form provided by that office. The Council will review applications and make appointments.

Inasmuch as the qualifications and terms of service for each advisory body set forth in the Bothell Municipal Code may differ from each other, a membership and qualification matrix is appended to this document for Council reference. It is the policy of the City Council to evaluate each applicant on an objective basis, utilizing the following criteria:

1. Residency - Residency requirements for advisory boards and commissions are noted in applicable sections of the Bothell Municipal Code, and summarized on the Membership and Qualification Matrix appended hereto.
2. Sectional Composition - Normally, consideration should be given toward maintaining an equitable balance of community representation on all boards and commissions.

The City Council will not appoint multiple members from the same family or household to a single board or commission, in order to avoid the reality or appearance of improper influence or favor.

The City Council will not appoint members of Council Members' families or households to boards or commissions to avoid the appearance of favor and to increase community representation.

3. Occupation - The Council will attempt to maintain a broad mix of occupational backgrounds on all boards and commissions.
4. Knowledge of Municipal and Planning Process - When ranking equally qualified applicants, the Council will consider background experience and knowledge of the municipal process as appropriate to the position, in reaching its decisions.
5. Contributive Potential - The Council will evaluate the potential contribution that each applicant may make if appointed to a board or commission. Criteria to guide the Council in its evaluation may include:

- a. Ability to communicate
 - b. Desire to perform public service
 - c. Ability to express ideas, concepts, or philosophies
 - d. Desire to participate in decision-making process
6. Leadership Potential - Since each appointee may be called upon to serve as a Chair, the Council will evaluate leadership abilities, such as:
 - a. Past or present leadership experience (current employment, special interests, etc.)
 - b. Past or present participation in community services
 - c. Expressed interest in a leadership role
7. The City Council will not appoint persons to serve as members of more than one board or commission at the same time; however, persons serving on a board or commission who have requested appointment to another board or commission position may be appointed to such position if they, concurrent with the appointment, resign from the board or commission position they are holding at the time of the new appointment.

C. Reappointment Criteria

At such time as reappointment is considered, the Council will be guided by the following performance criteria:

1. Regularity of Attendance
2. Understanding of board or commission function
3. Demonstrated leadership
4. Effectiveness
5. Demonstrated contribution during past term of office on issues, programs, policies, etc., of the advisory board or commission
6. Objectivity

D. Council Action

1. Council Interview Period - It shall be the privilege of the Council to personally interview each applicant individually, at a time and place to be designated by the Council.

However, the Council reserves the right to make appointments after reviewing applications and without conducting interviews. Prior to making selections pursuant to subsection 2 below, the Council further reserves the right to reduce the number of applicants by using a procedure chosen by a majority of Council without conducting interviews.

2. Council Evaluation & Selection - After each applicant or member is evaluated, the Council will deliberate and reach a decision at its earliest convenience, using the following procedure.

Council Members will cast their votes using a written ballot to be provided by the City Clerk's Office. Each ballot will contain an alphabetical-by-last-name list of all applicants (primary and alternate interest) for that particular advisory body, and Council Members will cast the same number of votes as there are vacancies.

For example, a ballot for the Parks & Recreation Board contains the names of all nine of the applicants who expressed either primary or alternate interest in serving on the Parks & Recreation Board. If there are only four vacancies on the Parks & Recreation Board, each Council Member would cast four votes on the Parks & Recreation Board ballot.

After all votes are cast, staff will collect the ballots, tally the votes, and assign position numbers to the applicants who receive a majority of votes of Council Members voting. Following this tallying, the results of the voting and position numbers will be announced to the Council for subsequent action to ratify the results of the voting.

All written ballots used to select board and commission members will be retained with the agenda packet for that Council meeting.

3. Decision & Announcement - Each applicant will be notified by mail of the decision of the Council. The City Clerk will also notify the Chair of the affected board or commission of its decision.

E. Resignations

In the interest of timely noticing of vacancies, and to minimize the impact of such vacancies on boards and commissions, the City Council delegates to the Mayor the authority to accept resignations. Following the Mayor's acceptance of the resignation, the City Clerk is authorized to advertise such vacancies according to the process set forth in Section 2.08(A).

F. Representation by Council Members

The City Council is often requested to appoint Council Members to serve on outside boards, councils, commissions, or committees. This type of representation serves to facilitate communication and provide interaction with other governmental bodies. The City Council appoints members to some of these groups on an as-needed or as-requested basis.

Membership appointment to these groups shall be made by consensus of the Council. If more than one Council Member desires to serve as a member of a

particular outside group, the member for that group will be appointed by a majority vote of the Council.

Where applicable, Council will appoint an alternate to attend outside boards, councils, commissions, or committees, if the main delegate to such group is unable to attend a meeting of the group. If after hours, the main delegate will notify the alternate as soon as possible after the main delegate realizes they will be unable to attend an upcoming meeting of the outside group. If during regular business hours, the main delegate will notify the City Clerk. The City Clerk will immediately attempt to notify the alternate of the need for their attendance at the outside group meeting.

Council Members participating in policy discussions at regional meetings will represent the consensus of the Council, except where regional appointment requires regional opinion. Personal positions, when given, will be identified and not represented as the position of the City. Assignment and direction of staff in relation to regional meetings are at the discretion of the City Manager.

G. Rules of Conduct

By accepting appointment to any City board or commission, members thereby agree to conduct themselves in accordance with the following rules of conduct.

1. All members of City boards and commissions will abide by all applicable state laws, City ordinances, and other doctrines relating to the conduct of board or commission members, including, but not limited to, the Appearance of Fairness Doctrine, conflict of interest statutes, and the State Open Public Meetings Act.
2. Members of City boards and commissions will not testify in their capacity as a board or commission member, before any other board, commission, administrative officer or agency of the federal government, the State of Washington, or of any county or other municipal corporation, including cities and towns, except as hereinafter provided. Exceptions to the policy set forth above shall be as follows:
 - a. If the member is testifying in such a capacity pursuant to a lawfully issued subpoena; or
 - b. In the event the board or commission has designated the member or members to act as a spokesperson for the board or commission to explain the majority vote and recommendation of that board or commission; or

- c. In the event the City Council appoints the member or members to represent the City before another tribunal.
- 3. Notwithstanding the foregoing, nothing contained herein is intended to preclude a board or commission member from speaking as an individual citizen, so long as the following conditions are met:
 - a. The individual clearly identifies that he/she is speaking only as an individual citizen and is not in any manner representing or speaking on behalf of the board or commission of which he/she is a member; and
 - b. No board or commission member testifies orally or in writing as to any quasi-judicial matter being heard, or having the possibility of being heard, by the board or commission of which the person is a member.

H. Council Members' Role and Relationship with City Advisory Bodies

- 1. In accordance with the provisions of state law, Council Members shall not be appointed to City advisory bodies concurrent with their term of office as Council Member.
- 2. Unless specifically authorized by majority vote of a quorum of the Council, no Council Member shall be authorized to state or testify to the policy or position of the Council before any advisory board or commission of the City.
- 3. Limitations on the conduct of Council Members before the City's advisory boards and commissions should be voluntarily undertaken in order to assure public confidence in the decision-making process and avoid the appearance of bias, prejudice, or improper influence. Toward this purpose, the following protocol should be observed:
 - a. Council Members shall not testify in quasi-judicial matters pending before any advisory board or commission that will receive, or could potentially receive, future appeal or review before the City Council. Violation of this protocol may require the Council Member to disqualify him- or herself from participating in any appeal or review proceedings before the City Council.
 - b. Council Members, in their capacity as private citizens, should refrain from providing testimony in legislative or administrative matters pending before any advisory board that will receive, or could potentially receive, future review or other action before the Council. Where a Council Member elects to provide such testimony, the following rules shall apply:

- (i) The Council Member shall declare at the outset and upon the record that the Council Member is present in his or her private capacity as an interested citizen, and not on behalf or at the request of the City Council.
- (ii) The Council Member shall refrain from stating or implying that the Council Member's position or opinion is that of the City Council.
- (iii) The Council Member shall refrain from directing City staff or the advisory body to take any action on behalf of the Council Member.
- (iv) The Council Member shall observe any rules of procedure or protocol that apply to any other private citizen testifying before the advisory board.

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City of Bothell - Advisory Boards & Commissions

Matrix of Year 2014 Vacancies

	Vacancies	Residency Requirements	Special Requirements
Planning Commission (BMC 2.52) 7 members / 4-year terms Meets first 3 Wednesdays of the month, 7:00 p.m., Bothell Municipal Courtroom <i>Appointing Authority: City Council</i>	Two full 4-year terms Pos. Nos. 1, 2 (4/1/14 – 3/31/18)	Reside within City limits	None
Landmark Preservation Board (BMC 22.12) 7 members / 5-year terms Meets 4 th Tuesday of each month, 7:30 p.m., Dawson Building Conference Room <i>Appointing Authority: City Council</i>	Two full 5-year terms Pos. Nos. 6 & 7 (4/1/14 – 3/31/19)	A majority of the board members shall be residents of the city. Members shall be residents of the city's urban growth area; provided, however, the required professional members of said board may reside outside the city or the urban growth area or city planning area.	At least two of the members must be professionals selected from among the disciplines of engineering, history, architecture, architectural history, historic preservation, planning, cultural anthropology, archaeology, cultural geography or American studies; there are no residency requirements for the members with professional qualifications.

City of Bothell - Advisory Boards & Commissions

Matrix of Year 2014 Vacancies

	Vacancies	Residency Requirements	Special Requirements
Library Board (BMC 2.36) 7 members / 5-year terms Meets 2nd Thursday of every other month, beginning January 10, 2013, 7:15 p.m., Bothell Library Meeting Room <i>Appointing Authority: City Council</i>	Two full 5-year terms Pos. Nos. 6 & 7 (4/1/14 – 3/31/19)	Members of the board need not be city residents. Members appointed or reappointed after August 12, 1991, shall be residents of the city's urban growth area, when adopted, and as thereafter amended or of the city's planning area until that time.	None
Lodging Tax Advisory Committee (BMC 2.34) 7 members / 2-year terms Meets at least one time a year to review and make recommendations on the city spending plan. <i>Appointing Authority: City Council</i>	Three full 2-year terms (4/1/14-3/31/16) Pos. No. 3 (revenue) Pos. No. 5 (business) Pos. No. 7 (business) One partial term Pos. No. 6 (upon appt - 3/31/15)	No residency requirements, except for the City Council representative, who must be a resident of the City	(a) 3 members must be persons involved in activities for the enhancement of tourism in the Bothell community which are funded by lodging tax revenues received under Chapter 67.28 RCW (b) 3 members must be representatives of businesses authorized to collect lodging tax under Chapter 67.28 RCW (hotel, rooming house, tourist court, motel, or trailer camp)
Parks & Recreation Board (BMC 2.44) 7 members / 3-year terms Meets 2nd Thursday of the month, 7:00 p.m., Bothell Municipal Courtroom <i>Appointing Authority: City Council</i>	Three full 3-year terms Pos. Nos. 5, 6, 7 (4/1/14 – 3/31/17)	A majority of the members shall be residents of the city. All members shall be residents of the city's urban growth area.	None

2014 Board Commission Interviews April 8, 2014

TIME	FIRST	LAST	BOARD(S) OF INTEREST
6:05 - 6:10	Victoria	Somppi	Landmark (incumbent) Unable to Attend 4/8
6:10 - 6:15	David	Vliet	Planning Commission
6:15 - 6:20	Nicholas	Carlson	Planning Commission
6:20 - 6:25	Eric	Clarke	Planning Commission
6:25 - 6:30	Scott	Comey	Planning Commission
6:30 - 6:35	Walker	Dodson	(1) Planning Comm; (2) Parks Board; (3) Library Board
6:35 - 6:40	Sam	Ezeonwu	Planning Commission (incumbent)
6:40 - 6:45	Apollo (Richard)	Fuhriman	Planning Commission
6:45 - 6:50	Nadia	Mustafa	(1) Planning Comm; (2) Parks Board

7:00 - 7:05	Aaron	Zehm	Planning Commission
7:05 - 7:10	Roger	Corbin	Parks and Rec Board
7:10 - 7:15	June	Kloubec	(1) Parks & Rec Board; (2) Library Board
7:15 - 7:20	Rhonda	Seiber-Doane	Parks and Rec Board (incumbent)
7:20 - 7:25	Shawna	Pitts	LTAC (incumbent)
7:25 - 7:30	Carl (Chip)	Peterson	LTAC (incumbent)
7:30 - 7:35	Sara	Glerum	Library Board
7:35 - 7:40	Roger	Cecil	Parks and Rec Board (incumbent)
7:40 - 7:45	Karlie	Hamilton	LTAC
7:45 - 7:50	Mike	Stall	Planning Commission (incumbent)
7:50 - 7:55	Katie	Sherrow	LTAC

yellow=confirmed
green=unable to attend

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Att-4
CITY OF BOTHELL
BOARD & COMMISSION SUMMARY OF QUALIFIED APPLICANTS
2014

Landmark Preservation Board

Appointing Authority: City Council

- (1) A majority of the board members shall be residents of the city. Members shall be residents of the city's urban growth area; provided, however, the required professional members of said board may reside outside the city or the urban growth area or city planning area *
BMC 22.12
- (2) The board shall always include at least two professionals selected from among the disciplines of history, architecture, architectural history, historic preservation, planning, cultural anthropology, archaeology, cultural geography, or American studies *

Two vacancies

Position Nos. 6 & 7 – Five year term ((4/22/14 – 3/31/19))

Candidate	CITY or Planning Area (PA)	Residency Requirement Met?	Current Status of Board / Commission Membership Requirements (if applicable)
1. Victoria Somppli (Incumbent – Pos. 7) <i>(qualifies for appointment as a professional member)</i>	CITY	Yes	LPB currently has one "Professional Qualifications" requirement met, with one current member identified as "Professional". One applicant has met the "professional qualifications requirement." A majority of the current members resides within the City limits.

Att-4
CITY OF BOTHELL
BOARD & COMMISSION SUMMARY OF QUALIFIED APPLICANTS
2014

Lodging Tax/Tourism Advisory Committee

Appointing Authority: City Council

- (1) No residency requirements, except for the City Council representative, who must be a resident of the City
- (2) 3 members must be persons involved in activities for the enhancement of tourism in the Bothell community which are funded by lodging tax revenues received under Chapter 67.28 RCW
- (3) 3 members must be representatives of businesses authorized to collect lodging tax under Chapter 67.28 RCW (hotel, rooming house, tourist court, motel, or trailer camp)
- (4) BMC requires that the number of business and revenue representatives are equal (BMC requires a minimum of 5 members, which includes the City Council representative)

Four vacancies

- Position No. 3, Revenue Position, two-year term (4/22/14-3/31/16)
- Position No. 5, Business Position, two-year term ((4/22/14-3/31/16)
- Position No. 6, Business Position, partial term ((4/22/14-3/31/15)
- Position No. 7, Business Position, two-year term ((4/22/14-3/31/16)

Candidate	CITY or Planning Area (PA)	Residency Requirement Met?	Current Status of Board / Commission Membership Requirements (if applicable)
1. Chip Peterson (business) (Incumbent – Pos. 5)	n/a	n/a	LTAC currently has 1 appointed Council Member, 2 members who serve as Revenue representatives; and 2 members who serve as Business representatives
2. Shawna Pitts (business) (Incumbent – Pos. 7)	n/a	n/a	
3. Karlie Hamilton (business)	n/a	n/a	
4. Katie Sharrow (revenue)	n/a	n/a	

Att-4
CITY OF BOTHELL
BOARD & COMMISSION SUMMARY OF QUALIFIED APPLICANTS
2014

Planning Commission

Appointing Authority: City Council

(1) Members must reside within City limits

Two vacancies
Position Nos. 1 & 2 – full term, (4/22/14-3/31/18)

Candidate	CITY or Planning Area (PA)	Residency Requirement Met?	Special Requirement(s) Met?
1. Nadia Mustafa (1 st choice)	CITY	Yes	N/A
2. Sam Ezeonwu (Incumbent – Pos. 2)	CITY	Yes	
3. Mike Stall (Incumbent – Pos. 1)	CITY	Yes	
4. Aaron Zehm	CITY	Yes	
5. Apollo Fuhrman	CITY	Yes	
6. Walker Dodson (1 st choice)	CITY	Yes	
7. Nicholas Carlson	CITY	Yes	
8. Eric Clarke	CITY	Yes	
9. Scott Comey	CITY	Yes	
10. David Vilet	CITY	Yes	

Att-4
CITY OF BOTHELL
BOARD & COMMISSION SUMMARY OF QUALIFIED APPLICANTS
2014

Parks & Recreation Board

Appointing Authority: City Council

- (1) A majority of the members shall be residents of the city. All members shall be residents of the city's urban growth area.
*BMC 2.44

Three vacancies
Position Nos. 5, 6, 7, three-year terms ((4/22/14-3/31/17)

Candidate	CITY or Planning Area (PA)	Residency Requirement Met?	Current Status of Board / Commission Membership Requirements (if applicable)
1. June Kloubec (1 st choice)	CITY	Yes	All of the current members of the P&R Board reside within the City limits
2. Nadia Mustafa (2 nd choice)	CITY	Yes	
3. Roger Corbin	CITY	Yes	
4. Rhonda Doane Seiber (Incumbent - Pos. 6)	CITY	Yes	
5. Walker Dodson (2 nd choice)	CITY	Yes	
6. Roger Cecil (Incumbent - Pos. 5)	CITY	Yes	

Att-4
CITY OF BOTHELL
BOARD & COMMISSION SUMMARY OF QUALIFIED APPLICANTS
2014

Library Board

Appointing Authority: City Council

(1) Members of the board need not be city residents. Members appointed or reappointed after August 12, 1991, shall be residents of the city's urban growth area, when adopted, and as thereafter amended or of the city's planning area until that time. * **BMC 2.36**

Two vacancies

Position Nos. 6 & 7, five-year terms ((4/22/14-3/31/19))

Candidate	CITY or Planning Area (PA)	Residency Requirement Met?	Current Status of Board / Commission Membership Requirements (if applicable)
1. Sara Glerum	CITY	Yes	N/A
2. June Kloubec (2 nd choice)	CITY	Yes	
3. Walker Dodson (3 rd choice)	CITY	Yes	

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Bothell City Council
AGENDA BILL SUMMARY

Meeting Date: April 8, 2014

AB # 14- 56

Action Item: Study Session Item: Special Presentation: X

Subject: Report from Municipal Court Judge Regarding State of the Court

Budget Impact and Source of Funds: N/A

Contact Person/Department: Michelle Gehlsen, Presiding Judge

EXECUTIVE SUMMARY:

Judge Gehlsen will provide Council with her annual report of Bothell Municipal Court for the year 2013.

A summary of 2013 activities is included for review as Attachment No. 1. This summary contains a year in review, a list of accomplishments, an introduction to special court projects, and a list of goals for the 2014 year.

COUNCIL PROCESS: Special Presentation

Presentation to Council by Michelle Gehlsen, Presiding Judge.

HISTORY:

N/A

RECOMMENDED ACTION:

No action is required by Council related to this matter.

ATTACHMENTS:

1. 2013 State of the Court Report.

City Manager Approval:



Date: 3/25/14

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City of Bothell | Municipal Court

Judge	Michelle Gehlsen
Administrator	TJ Keogh
10116 NE 183 rd Street Bothell, WA 98011	
Telephone	425-487-5587
Fax	425-488-3052
Email: municourt@ci.bothell.wa.us www.ci.bothell.wa.us	

2013

Filings By The Numbers

1951	Traffic Infractions
183	Parking Infractions
108	Driving Under the Influence (DUI)
358	Criminal Traffic (<i>Includes Driving While License Suspended</i>)
405	Criminal Non-Traffic (<i>Includes Domestic Violence</i>)
3005	TOTAL FILINGS
3528	Total Court Proceedings
11	Jury Trials
3	Bench Trials
8	Appeals Pending
2068	Passports processed

Executive Summary

Bothell Municipal Court is organized under RCW 3.50 as a limited jurisdiction court to hear misdemeanor crimes and civil infractions committed within its geographic boundaries. The Court is open from 8 a.m. to 5 p.m., Monday through Friday, and hears cases every day from the bench. The court is closed from 12:30 p.m. to 1:30 p.m. for lunch. Jury trials are held the first three weeks of the month on Wednesdays. The Court consists of the following positions:

- Judge (3/4 time) – The judge is appointed by the City Manager and confirmed by the City Council for a four-year term. Judge Michelle Gehlsen was appointed in January of 2010 and re-appointed in January 2014
- Court Administrator (Full Time) – Reports directly to the Judge. Oversees daily court operations and implementation of policy and procedures. Handles all Probation matters.
- Lead Clerk (Full Time) – Responsible for criminal case management, which involves processing cases from arraignment to disposition. The Lead Clerk is the Criminal Trial Clerk for Judge Gehlsen and acts as liaison between court participants and the Judge. Other duties include assisting the Court Administrator, Front Desk Clerk and Passports as needed.
- Court Clerk (Full Time) – The Court Clerk's duties include traffic infraction case management, jail calendars, front desk customer contact and passport processing, as needed.
- Office Specialist /Passport Agent (Full Time)– Passport Facility Manager for the City and Jury Coordinator for the Court. Other duties include back up for telephones and clerical support for court staff, and preparation of in-custody calendars.

2013: YEAR IN REVIEW

2013 was another eventful year for the Bothell Municipal Court. It saw the completion of several long-term projects, as well as the introduction of new team members.

In January, Bothell Youth Traffic Court held its launch ceremony on the University of Washington Bothell campus. This event was well attended and helped to raise awareness of the program in the community. Judge Gehlsen gave the introductory speech, which focused on the devastating impact that traffic accidents among young drivers can have on society. It was in response to this crisis that youth courts around the country were created.

In March, the court welcomed Lead Clerk Mia Harper as the newest member of the team. Mia brings ten years of experience at the district court level. She is fluent in Russian and Ukrainian, and is a DSHS certified Russian interpreter.

In May, Court Administrator TJ Keogh attended the annual District and Municipal Court Managers Association (DMCMA) conference held in Chelan. This event was filled with workshops and activities all centering on the theme of technology in the court. Many courts demonstrated innovative programs which seek to improve efficiency, conserve resources, and provide greater public access to justice. During this conference, Judge Gehlsen presented a workshop outlining the establishment of Youth Courts such as Bothell's.

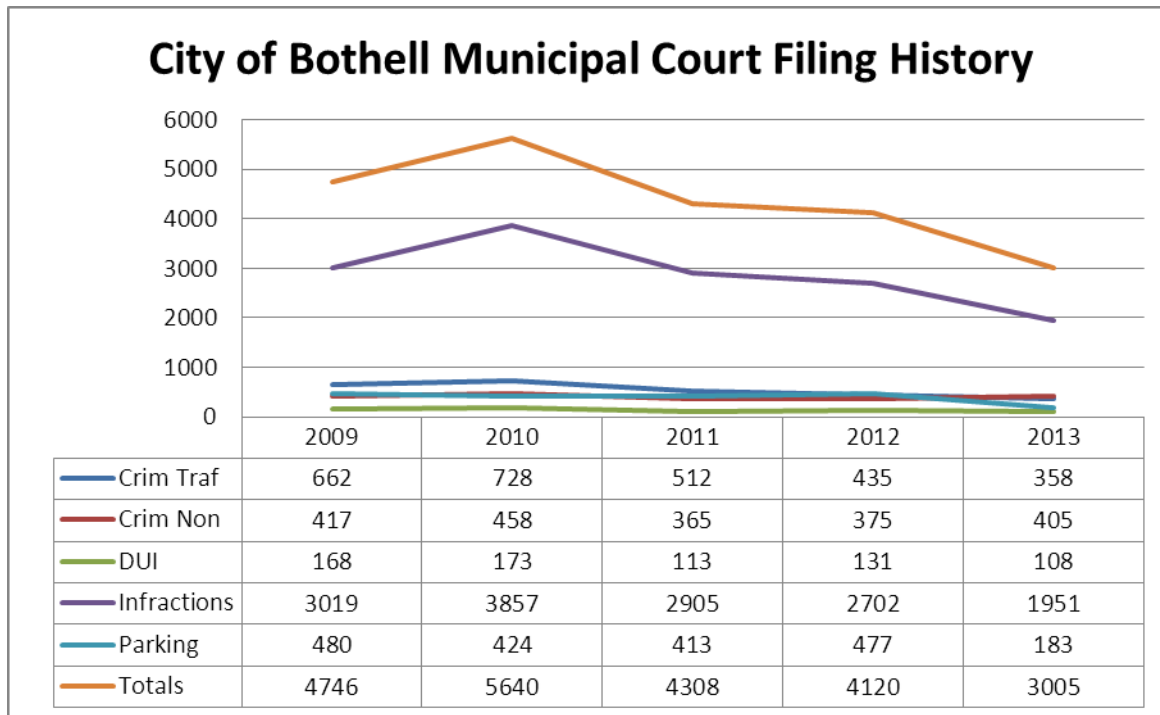
Later in the spring Municipal Court staff attended an engaging and interactive seminar regarding situational awareness and safety. The instructor was Jim Sawyer from Children's Hospital in Seattle. This class focused on how to recognize potential dangers in everyday situations, as well as workplace scenarios. This information was extremely valuable and Mr. Sawyer's approach was both refreshing and highly effective.

In June, the law firm of Stewart MacNichols and Harmell was contracted to provide indigent defense for the court. Their firm brings over seventy-five years of experience in all facets of criminal defense and trial litigation, which will continue to benefit all parties connected with the court system.

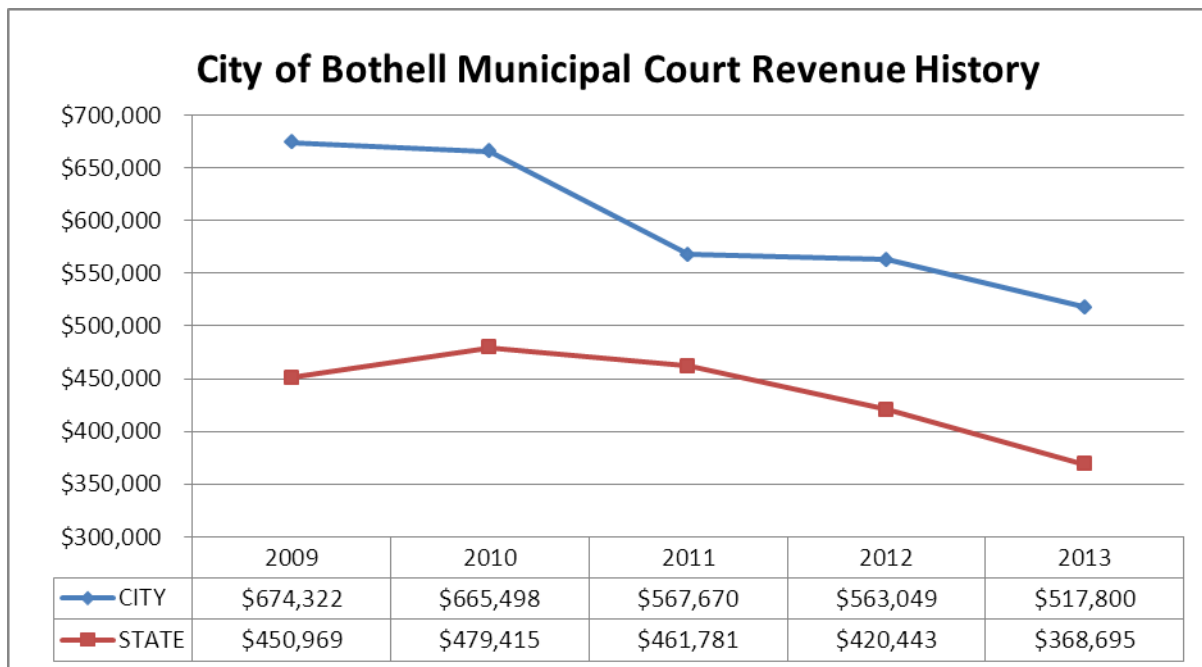
Also in June, Judge Gehlsen attended the annual District and Municipal Court Judge's Association (DMCJA) conference, where topics included Creating a Unified Image of the Courts, Pretrial Issues, and Decision Fatigue.

Summer saw the establishment of a contract between the City and the State of Washington Administrative Office of the Courts, which will allow for the full reimbursement of costs associated with computer and printer replacement. This program is of great benefit to smaller courts like Bothell, who generally do not have the resources of larger courts. The ability to obtain new equipment for all court personnel with no ultimate cost to the City is a win-win scenario.

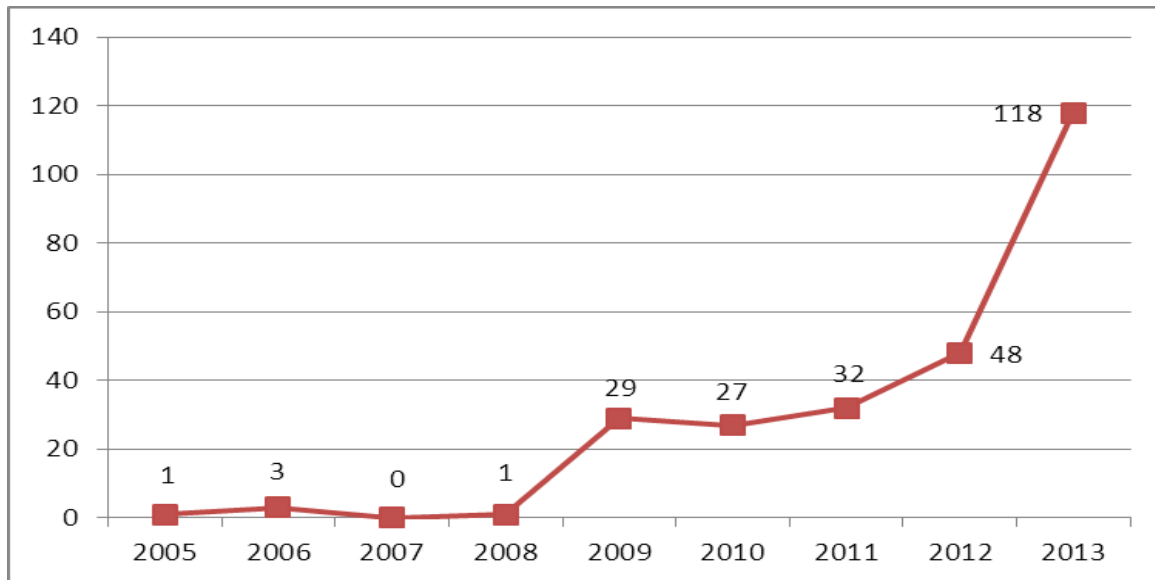
In October, court staff attended a court retreat held at the Seattle Times building in Bothell. Activities focused on team building, employee recognition, and efficiency of court processes. After the retreat, court volunteers were recognized for their service to the City. The court currently has two volunteers who work a total of five hours per week, and we are indebted to them for their hard work.

FILINGS

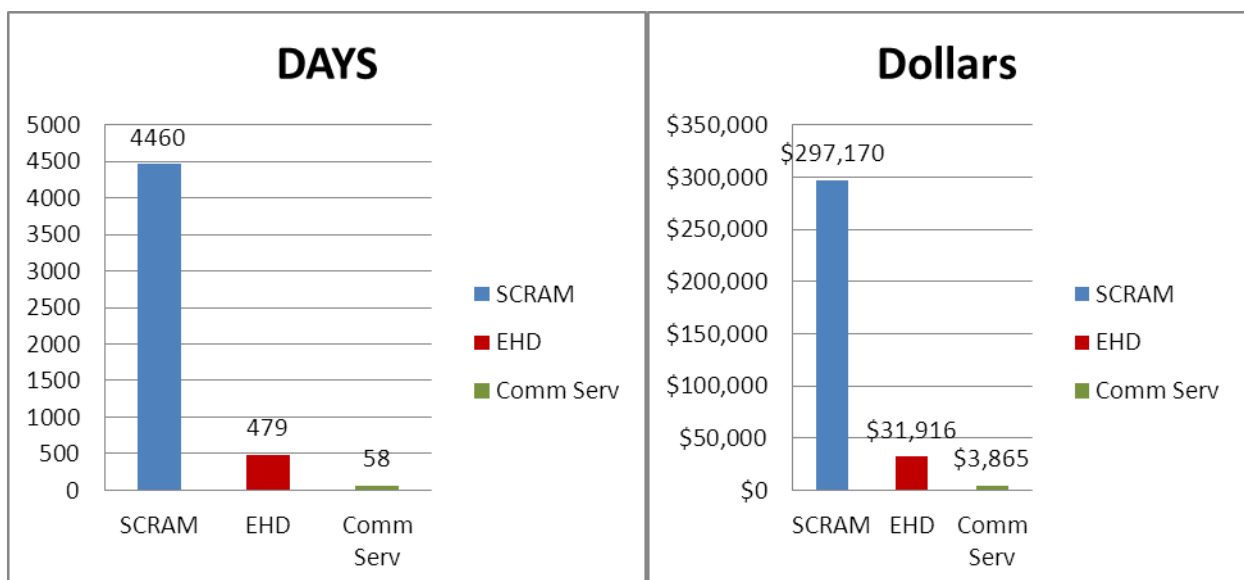
Filings have continued to steadily decrease since their peak in 2010 when the Police Department was fully staffed.

REVENUES

In 2013, total revenue was \$886,495 with the City's share \$517,800. Both the City and State portions continue to decline.

ATTEMPTED FELONY CHARGE FILINGS

Since 2008, the number of attempted felony charges being filed as gross misdemeanors in Bothell Municipal Court has increased dramatically with the most noticeable jump from 2012-2013. These numbers show the seriousness of some of the cases the court is being tasked with handling which often require more in-court time, greater allocation of prosecution and defense resources, as well as more intensive monitoring after adjudication. This trend is expected to continue into 2014.

JAIL ALTERNATIVES

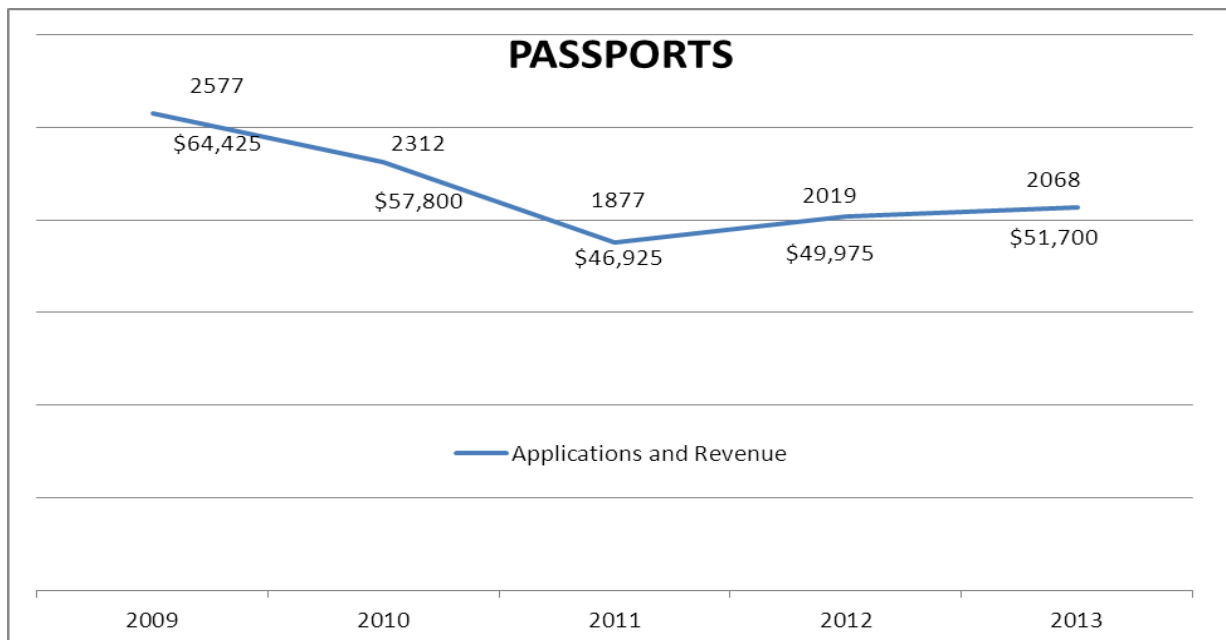
The Court continues to use SCRAM bracelets to monitor alcohol consumption as an alternative to incarceration. This program, administered by MOON Security, is fully paid for by the clients themselves, which results in a significant savings in jail costs to the City while still providing a steady and accurate source of monitoring. The utilization of this program has increased significantly since 2011 and the cost savings are proportional. During 2013, 55 people were monitored by the SCRAM device with a compliance rate of 93.5%. This means almost 94% of those who began the program successfully completed it without a violation. The average time a client spent on the program was 98 days.

SECURITY

The Court continues to utilize Puget Sound Executive Services (PSES) to provide security for court sessions. From January to December, PSES officers worked 1144 hours for the City of Bothell providing screening and court security services. PSES utilizes a combination of off duty local police officers, Washington State Patrol, and retired officers from various agencies to fill the shifts. This has been both an efficient and cost effective method of providing court security.

PASSPORTS

In 2013, the agents processed 2,068 applications with revenue to the city of nearly \$52,000, a 3.5% increase from the previous year. This continues the upward trend in passport applications which began in 2011. During the year, two more members of the Municipal Court staff completed their passport agency certification, and are now certified passport acceptance agents. In June, Passport Facility Manager, Chris Hanna, attended the annual passport acceptance training at the Federal Building in Seattle, where new information and procedural updates were presented.



YOUTH COURT



2013 was a busy year for the new Bothell Youth Traffic Court. During the course of the year 20 youth drivers participated in the program, with 11 already having completed the program successfully. The eligible participants in Youth Court participate in restorative justice by having their infraction adjudicated by their peers and contribute to the process by acting as judge, juror or attorney in cases their peers are involved in. This allows these young drivers to give back to their community while also learning how the court system works. To be eligible for Bothell Youth Court, a driver:

- Must not have been involved in an accident in the instant case
- Must have received a traffic citation in Bothell
- Must not have a current traffic citation pending in any court
- Must not have participated in a youth traffic court previously
- Must be between the ages of 16-17
- Must pay a \$30 transfer fee and admit to the traffic violation

After court, they may be ordered to perform such sanctions as:

- Community service
- Writing essays or letters of apology
- Participating in a police ride-along
- Serving on the Youth Court itself, as a juror, prosecutor, judge, or clerk

During the summer, a Bothell Youth Traffic Court webpage was created and added to the Bothell Municipal Court main page containing all of the forms and information necessary to opt into the program. In 2013 a combination of local outreach and word of mouth was used to recruit new participants into the program. Initially only Bothell High School was participating, but now the program has expanded to include Inglesmoor and Woodinville High Schools. The future of Bothell Youth Traffic Court is bright.

2013 GOALS MET

- ✓ A study was conducted to explore the feasibility of creating a probation position in Bothell
- ✓ A concept paper was written and brought to committee for the Video Arraignment Project
- ✓ Several refinements were made to the jury process to increase efficiency and lower costs

GOALS for 2014

- Continue to investigate feasibility of hiring a probation officer
- Implement Video Arraignments
- Move forward with establishment of second collections to increase collection rate of delinquent costs

THE MUNICIPAL COURT TEAM



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Bothell City Council
AGENDA BILL SUMMARY

Meeting Date: April 8, 2014

AB #14-57

Action Item: Study Session Item: X Special Presentation:

Subject: Study Session Regarding a Utility Franchise Agreement with Time Warner Telecom of Washington LLC

Budget Impact and Source of Funds: None

Contact Person/Department: Joseph Beck, Legal Department
Dave Phelps, P.E., Senior Civil Engineer

EXECUTIVE SUMMARY:

In Washington, a utility that wishes to locate its facilities within city right-of-way generally obtains a franchise (similar to a master permit) from that city, which sets forth the terms under which those facilities are constructed, operated, relocated, and eventually removed. Both state and federal law contain restrictions on a city's franchise authority, but these restrictions vary significantly, depending on the nature of the utility being regulated. The power to grant franchises is a sovereign power, resting in the state. It may be delegated by the state, but it is not within the powers of cities unless expressly delegated to them by the state. RCW 35A.47.040 contains the delegation of franchising authority from the State to the city relevant to this type of franchise.

Currently, the City of Bothell has franchises with various utility providers. In 2001, TW Telecom Washington LLC, had a franchise agreement approved under Ordinance No. 1851 (2001). TW Telecom currently serves businesses in the Monte Villa, North Creek, and Quadrant Business parks. TW Telecom will continue to maintain its existing telecommunications system, and at this time the City is not aware of any expansion plans. If there were any expansions proposed, the City's standard permitting process would be followed. Companies like TW Telecom which use the City's rights-of-way for operation of fiber optic cable network business, are allowed to have a franchise with the City. On November 8, 2011, the City received a formal request for a franchise from TW Telecom.

The purpose of this study session is to provide Council with information in order to consider an ordinance providing for regulation of the use of public rights-of-way. This ordinance would be consistent with state and federal law, and will protect public rights-of-way, provide for control over placement of facilities in the right-of-ways, provide for just compensation for the use of public property, provide for costs incurred by the City, and ensure that similarly situated operators and users of public rights-of-way will be comparably treated.

COUNCIL PROCESS: Study Session

- Staff Presentation by Joseph Beck, City Attorney
- Council Discussion
- Council Direction to Staff
- Item to Return to Council for Consideration of Approval on May 6, 2014

HISTORY:

- August 2011, a representative from Time Warner Telecom contacted the City to inquire about the procedures required to apply for a franchise
- November 8, 2011, the City's franchise application was emailed to the designated representative of Time Warner Telecom
- Summer and Fall 2013, the City Attorney worked with Public Works staff to draft a franchise agreement acceptable to both parties

RECOMMENDED ACTION:

No action is requested this evening; however, this item is currently scheduled for Council action on May 6, 2014.

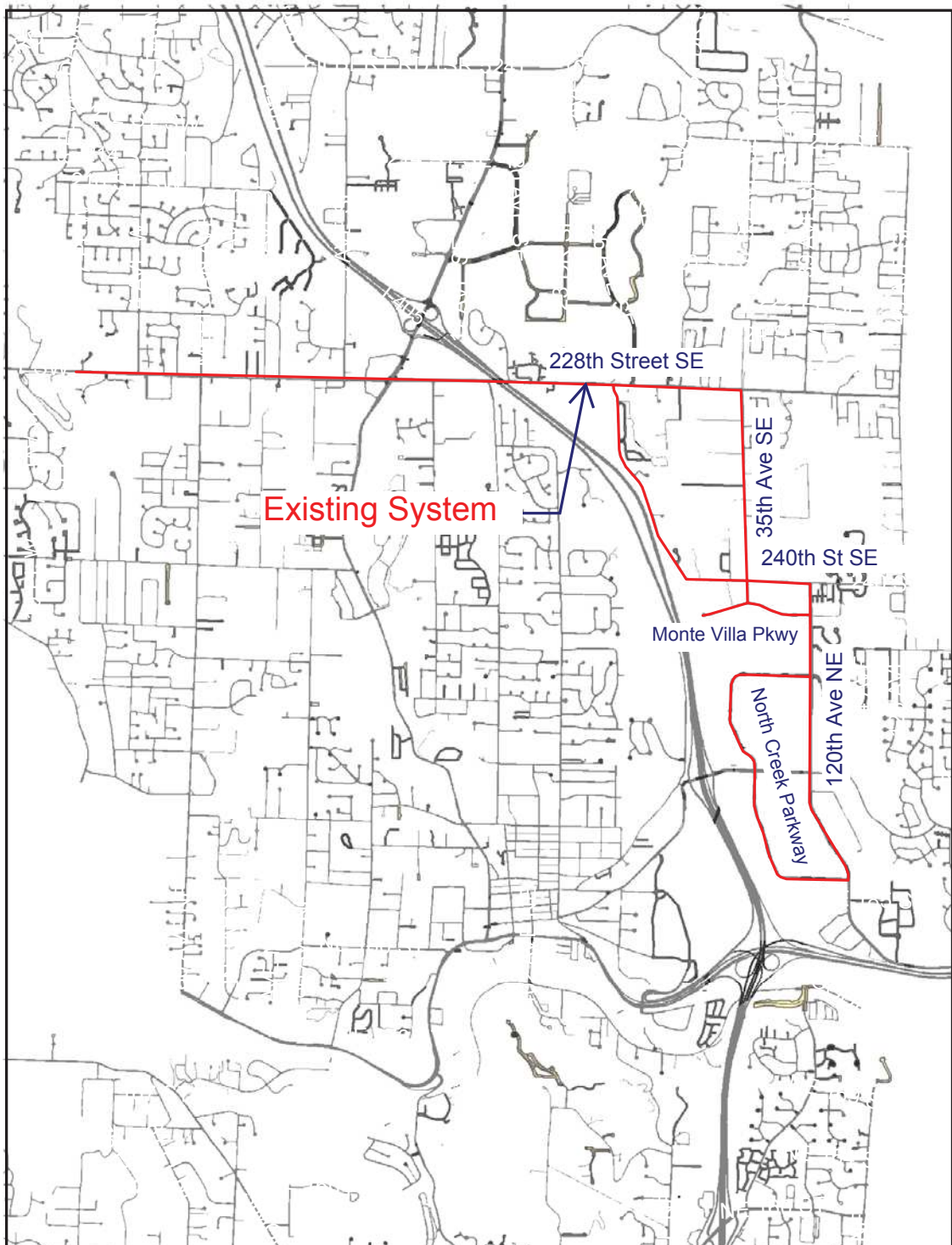
ATTACHMENTS:

1. Vicinity Map
2. Proposed Ordinance Granting a Fiber Optic Cable Franchise to Time Warner Telecom

City Manager Approval:



Date: 3/25/14



VICINITY-SYSTEM MAP

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ORDINANCE NO. _____(2014)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO TW TELECOM OF WASHINGTON LLC AND ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A TELECOMMUNICATIONS NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

WHEREAS, TW Telecom of Washington LLC (“Franchisee”) has requested that the City Council grant it a nonexclusive franchise, and

WHEREAS, Franchisee previously held a franchise, pursuant to Ordinance 1851, which expired on 7/1/2011 and the parties have been operating under such franchise on a holdover basis until a new franchise is in place, during which time, to the best of the parties’ knowledge, Franchisee has acted in compliance with that franchise and applicable permits; and

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

THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1 Franchise Granted.

Section 1.1 Pursuant to RCW 35A.47.040, the City of Bothell, a Washington municipal corporation (hereinafter the “City”), hereby grants to Franchisee, its successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period of ten (10) years, beginning on the effective date of this ordinance, set forth in Section 38 herein. Ordinance No. 1851 is hereby repealed and in its place, the following provisions are enacted.

Section 1.2 This franchise grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, acquire, sell, lease and use all necessary Facilities for a telecommunications network, in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City of Bothell, as approved pursuant to City permits issued pursuant to this franchise. Public “Rights-of-Way” as used herein means the land owned,

dedicated or conveyed to the City, including but not limited to any public alley, boulevard, lane, way, place, drive, easement, Right-of-Way or sidewalk, or any portion thereof, under the jurisdiction of the City. "Facilities" as used herein means a telecommunications network, with all necessary cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary appurtenances; provided that new utility poles for overhead wires or cabling are specifically excluded. Equipment enclosures with air conditioning or other noise generating equipment are also excluded from "Facilities", to the extent such equipment is located in zoned residential areas of the City.

Section 2 Authority Limited to Occupation of Public Rights-of-Way

Section 2.1 The authority granted herein is a limited authorization to occupy and use the City's Rights-of-Way. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing telecommunications services. Franchisee hereby represents that it currently provides or expects to provide the following services within the City: Franchisee provides data, dedicated internet access, and local and long distance voice services, including IP voice services (the "Services"). If Franchisee elects to expand the Services provided within the City it shall provide written notification of the addition of such services at least thirty (30) days in advance of the date such provision of services are offered for sale or otherwise provided.

Section 2.2 As described in Section 8 construction is not authorized without the appropriate permits, leases, easements or approvals. This franchise does not and shall not convey any right to Franchisee to install its Facilities on, under, over, across or to otherwise use City owned or leased properties of any kind outside of the incorporated area of the City and such additional areas as may be included in the corporate limit of the City during the term of this franchise (the "Franchise Area") or to install Facilities on, under, over, across or otherwise use any City owned or leased property other than public roads, streets, avenues, alleys and highways. This franchise does not convey any right to Franchisee to install its Facilities on, under, over or across any facility or structure owned by a third-party without such written approval of the third-party. No substantive expansions, additions to or modifications or relocation of any of the Facilities shall be permitted without first having received appropriate permits from the City

pursuant to Section 8.2. As of the effective date of this franchise, the Facilities are located in the area described in Exhibit A.

Section 2.3 Under this franchise, the Facilities shall not be used for Cable Services as that term is defined in 47 U.S.C § 522(6).

Section 3 Non-Exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. Such franchise shall in no way prevent or prohibit the City from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4 Location of Telecommunications Facilities. Franchisee is maintaining a telecommunications network, consisting of Facilities within the City. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Design and Construction Standards and subject to the City's applicable permit requirements. Franchisee shall not be required to amend this franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 2.

Section 5 Relocation of Telecommunications Facilities.

Section 5.1 Franchisee agrees and covenants to protect, support, temporarily disconnect, relocate or remove from any Rights-of-Way any of its Facilities when reasonably required by the City by reason of traffic conditions or public safety, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other

governmental entity, provided that Franchisee shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same Rights-of-Way upon approval by the City, any section of cable required to be temporarily disconnected or removed. Except as otherwise provided by law, the costs and expenses associated with relocations ordered pursuant to this Section 5.1 shall be borne by Franchisee. Nothing contained herein shall limit Franchisee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

Section 5.2 Upon request of the City and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the location of the same may be taken into account in the improvement design. The decision as to whether said Facilities need to be relocated in order to accommodate the City's improvements shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide the Grantee at least fourteen (14) days written notice prior to any excavation or exposure of Facilities.

Section 5.3 If the City determines that the project necessitates the relocation of Franchisee's then existing Facilities, the City shall:

- (a) At least ninety (90) days prior to the issuance of the Notice to Proceed by the City to the City's contractor, provide Franchisee with written notice requiring such relocation; provided, however, that in the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City, the City shall give Franchisee written notice as soon as practicable; and
- (b) Provide Franchisee with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for Franchisee's Facilities so that Franchisee may relocate its Facilities in other City Rights-of-Way in order to accommodate such improvement project.
- (c) After receipt of such notice and such plans and specifications, Franchisee shall complete relocation of its Facilities at least ten (10) days prior to commencement

of the City's project at no charge or expense to the City. Relocation shall be accomplished in such a manner as to accommodate the City's project. In the event of an emergency, Franchisee shall relocate its Facilities within the time period specified by the City, recognizing that certain emergencies may require a short timeframe.

Section 5.4 Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. Such alternatives must be submitted at least thirty (30) days prior to the issuance of the Notice to Proceed by the City to the City's contractor. The City shall evaluate such alternatives and advise Franchisee in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit at its sole cost and expense additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Franchisee full and fair consideration. In the event the City ultimately determines that there is no other reasonable or feasible alternative, Franchisee shall relocate its Facilities as otherwise provided in this Section.

Section 5.5 The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 5.6 Franchisee will indemnify, hold harmless, and pay the costs of defending the City against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities in a timely manner; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the negligence, willful misconduct, or unreasonable delay of the City.

Section 5.7 Whenever any person shall have obtained permission from the City to use any street or public way for the purpose of moving any building, Franchisee, upon seven (7)

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

Section 5.8 The provisions of this Section 5 shall survive the expiration or termination of this franchise during such time as Franchisee continues to utilize Facilities in the Rights-of-Way. Additionally, these provisions of this Section 5 are applicable only so long as the Right-of-Way is owned and/or controlled by the City.

Section 6 Undergrounding of Facilities.

Section 6.1 Except as specifically authorized by permit of the City, Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its Facilities at the time of a permit application, the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to underground installation at Franchisee's expense. Unless otherwise permitted by the City, Franchisee shall underground its Facilities in all new developments and subdivisions, and any development or subdivision where utilities are currently underground.

Section 6.2 Whenever the City may require the undergrounding of the aerial utilities in any area of the City, Franchisee shall underground its aerial facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of Franchisee's Facilities being undergrounded in comparison to the total number and size of all other utility facilities being undergrounded. The provisions of this Section 6 shall survive the expiration, revocation, or termination of this franchise during such

time as Franchisee continues to utilize Facilities in the Rights-of-Way. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of Franchisee's Facilities.

Section 6.3 Within forty-eight (48) hours (excluding weekends and City-recognized holidays) following a request from the City, Franchisee shall locate underground Facilities by marking the location on the ground. The location of the underground Facilities shall be identified using orange spray paint, unless otherwise specified by the City, and within two feet of the actual location.

Section 7 Maps and Records.

Section 7.1 After construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps in a form and content reasonably prescribed by the Public Works Director or his/her designee. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in Autocad or other industry standard readable format, or other industry standard readable formats which are acceptable to the City and delivered electronically. Thereafter, Franchisee shall provide such maps within 10 days following a request from the City.

Section 7.2 Within thirty (30) days of a written request from the City, Franchisee shall furnish the City with information sufficient to demonstrate: 1) that Franchisee has complied with all applicable requirements of this franchise; and 2) that all taxes, including but not limited to sales, utility and/or telecommunications taxes, due the City in connection with Franchisee's services and Facilities provided by the Franchisee have been properly collected and paid by Franchisee.

Section 7.3 All books, records, maps and other documents, maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

Unless otherwise prohibited by State or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City which the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements, Franchisee has with third parties.

Section 7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Franchisee shall be responsible for clearly and conspicuously indentifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret or proprietary, the City shall promptly provide notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 7.4 prohibits the City from complying with chapter 42.56 RCW, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee which prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records in accordance with the provisions of Section 13.3 and Section 13.4.

Section 8 Work in the Rights-of-Way.

Section 8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper

barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. The provisions of this Section 8 shall survive the expiration of this franchise during such time as Franchisee continues to utilize Facilities in the Rights-of-Way.

Section 8.2 Whenever Franchisee shall commence work in any public Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its cable or equipment, it shall apply to the City for a permit to do so and, in addition, shall give the City at least ten (10) working days prior notice of its intent to commence work in the Rights-of-Way. During the progress of the work, Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this franchise.

Section 8.3 If either the City or Franchisee shall at any time plan to make excavations in any area covered by this franchise and as described in this Section 8.3, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

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

Section 8.4 Except for emergency situations, Franchisee shall give at least (7) days prior notice of intended construction to residents in the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed; a door hanger is permissible. At least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property, Franchisee shall physically post a notice on the property indicating the nature and location of the work to be performed; a door hanger is permissible. Franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Following performance of the work, Franchisee shall restore the private property as nearly as possible to its condition prior to construction, except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident.

Section 8.5 Franchisee, in accordance with applicable federal, State and local safety requirements, shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public. All structures and all lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of a permit area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair. The City reserves the general right to see that the Facilities are constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with Franchisee, establish a reasonable time for Franchisee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from a Franchisee in accordance with the provisions of Sections 13.3 and 13.4.

Section 8.6 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees

from coming in contact with the Franchisee's wires and cables. This Section 8.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. Franchisee shall prepare and maintain a tree trimming schedule to ensure compliance with this Section 8.6 and to avoid exigent circumstances where tree cutting, trimming or removal is necessary to protect the public safety or continuity of service without the regard for the appearance, integrity or health of the trees that planned maintenance would otherwise allow. Franchisee shall submit the schedule to the Public Works Director or his/her designee. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City approval prior to commencing such trimming. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Public Works Director or his/her designee.

Section 8.7 Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon written notice as determined by the City, to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 8.8 Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this franchise immediately on notice to Franchisee or proceed to cure the conditions of noncompliance at Franchisee's expense.

Section 9 One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to chapter 19.122 RCW.

Section 10 RCW 35.99.070. Franchisee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to and subject to RCW 35.99.070.

Section 11 Restoration after Construction. Franchisee shall, after abandonment approved under Section 17 herein, or installation, construction, relocation, maintenance or repair of its Facilities within the Franchise Area, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee's work. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to federal, state and local standards and specifications. Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Franchise Area or other affected area at its sole costs and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Section 11 shall be performed in accordance with applicable City standards and warranted for a period of two (2) years. In the event Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way within the time agreed to with the Public Works Director, or his/her designee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee in accordance with the provisions of Sections 13.3 and 13.4. The provisions of this Section 11 shall survive the expiration of this franchise to the extent Franchisee has failed to comply with the repair, removal, restoral or reimbursement requirements that arose prior to the termination, expiration or revocation of this franchise.

Section 12 Emergencies.

Section 12.1 In the event of any emergency in which any of Franchisee's Facilities located in or under any street endangers the property, life, health or safety of any individual, or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which the Bothell City Hall is open for business. The City retains the right and privilege to cut or move any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall notify Franchisee by telephone promptly upon learning of the emergency and shall exercise reasonable efforts to avoid an interruption of Franchisee's operations.

Section 12.2 Whenever the construction, installation or excavation of Facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director or his/her designee, may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the property and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof in accordance with the provisions of Sections 13.3 and 13.4. The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any

public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, unless directly and proximately caused by the gross negligence, or willful, intentional, or malicious acts of the City, its employees, contractors or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 12 unless caused by the gross negligence, or willful, intentional, or malicious acts of the City, its employees, contractors or agents.

Section 13 Recovery of Costs.

Section 13.1 Franchisee shall pay a grant fee in the maximum amount of Two Thousand Five Hundred Dollars (\$2,500) for the City's administrative, legal, and other costs incurred in drafting and processing this franchise and all work related thereto. No construction permits shall be issued for the installation of Facilities authorized hereby until such time as the City has received payment of the grant fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 13.3.

Section 13.2 In addition to the above, Franchisee shall promptly reimburse the City in accordance with the provisions of Sections 13.3 and 13.4, for any and all costs the City reasonably incurs in response to any emergency involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to first seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency.

Section 13.3 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the

presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

Section 13.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The billing may be on an annual basis, but the City shall provide the Grantee with the City's itemization of costs at the conclusion of each project for information purposes.

Section 14 City's Reservation of Rights.

Section 14.1 To the best of the City's knowledge and belief, there are no existing facts or circumstances that with or without the giving of notice or the passage of time, or both, would constitute a default by Franchisee under the original franchise, Ordinance 1851. Notwithstanding the previous sentence, the granting of this franchise and the passage of this Ordinance _____ does not release Franchisee of any obligations under the original franchise, nor does the City waive or release any claim or issue of non-compliance it may have, known or unknown, now or in the future related to the original franchise, Ordinance 1851.

Section 14.2 Franchisee hereby represents that its operations as authorized under this franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or, if statutory

prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate franchise for its change in use, which franchise may include provisions intended to regulate Franchisee's operations, as allowed under applicable law. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

Section 14.3 Franchise acknowledges that its operation with the City constitutes a telephone business subject to the utility tax imposed pursuant to the Bothell Municipal Code Chapter 5.08. Franchisee understands that RCW 35.21.870 currently limits the rate of city tax upon telephone business activities to six percent (6%) of gross income (as that term is defined in Bothell Municipal Code Chapter 5.08), unless a higher rate is otherwise approved. Franchisee stipulates and agrees that certain of its business activities are subject to taxation and that Franchisee shall pay to the City the rate applicable to such taxable services under Bothell Municipal Code Chapter 5.08, the City's utility tax code, and consistent with state and federal law. The parties agree however that nothing in this franchise shall limit the City's power of taxation as may now or hereafter exist. This provision does not limit the City's power to amend Bothell Municipal Code Chapter 5.08 as may be permitted by law.

Section 15 Indemnification.

Section 15.1 Franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, for injury or death of any person or damage to property caused by or arising out of the tortious, willful, malicious, criminal or negligent acts or omissions of Franchisee, its agents, servants, officers or employees in the performance of this franchise, and any rights granted hereunder.

Section 15.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 15. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

Section 15.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel for the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

Section 15.4 The parties acknowledge that this Agreement is subject to RCW 4.24.115. Accordingly, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Franchisee and the City, its officers, officials, employees, and volunteers, the Franchisee's liability hereunder shall be only to the extent of Franchisee's negligence or wrong doing. It is further specifically and expressly understood that the indemnification provided herein constitutes Franchisee's waiver of

immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 15.5 Notwithstanding any other provisions of this Section 15, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any willful, malicious, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful, malicious, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

Section 15.6 The provisions of this Section 15 shall survive the expiration, revocation, or termination of this franchise.

Section 16 Insurance.

Section 16.1 Franchisee shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted hereunder to Franchisee, its agents representatives or employees. Franchisee shall require that every subcontractor maintain insurance coverage and policy limits that are reasonable and customary to their operations. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a Certificate of Insurance and

endorsement to the City for its inspection at the time of or prior to acceptance of this franchise, and such insurance certificate shall evidence a policy of insurance that includes:

- (a) Automobile Liability insurance with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage. Franchisee currently maintains a \$100,000 per occurrence deductible;
- (b) Commercial General Liability insurance, written on an occurrence basis with limits no less than \$3,000,000 combined single limit per occurrence and \$5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability. Franchisee currently maintains a \$25,000 per occurrence deductible; and
- (c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. No deductible is presently required for this insurance.
- (d) Umbrella liability policy with limits not less than \$10,000,000 per occurrence and in the aggregate. Franchisee currently maintains a \$10,000 per occurrence deductible.

Section 16.2 Any deductibles or self-insured retentions must be declared to and approved by the City. Such approval shall not be unreasonably withheld or delayed. The City acknowledges that Franchisee's current deductibles are subject to change based on business needs and the commercial insurance market. Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Additionally, Franchisee shall pay all premiums for the insurance on a timely basis. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this section. Franchisee's umbrella liability insurance policy provides "follow form" coverage over its primary liability insurance policies.

Section 16.3 The insurance policies obtained by Franchisee shall name the City, its officers, officials, employees, agents, and volunteers (“Additional Insureds”), as an additional insured with regard to activities performed by or on behalf of Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability. Franchisee shall provide to the City prior to or upon acceptance either (1) a true copy of the additional insured endorsement for each insurance policy required in this Section 16 and providing that such insurance shall apply as primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee’s obligations to fulfill the requirements. Franchisee’s insurance shall be primary insurance as respects the Additional Insureds, and the endorsement should specifically state that the insurance is the primary insurance. Any insurance maintained by the Additional Insureds shall be excess of Franchisee’s insurance and shall not contribute with it.

Section 16.4 Franchisee is hereby obligated to notify the City of any cancellation or intent not to renew any insurance policy ninety (90) days prior to any such cancellation. Within thirty (30) days prior to said cancellation or intent not to renew, the Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section 16. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 16 shall be considered a material breach of the Franchise and subject to the City’s election of remedies described in Section 20 below. Notwithstanding the cure period described in Section 20.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 16.5 Franchisee’s maintenance of insurance as required by this Section 16 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City’s recourse to any remedy available at law or equity.

Section 17 Abandonment of Franchisee’s Telecommunications Network. Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall

remove all of its Facilities from the Rights-of-Way within thirty (30) days of receiving notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Provided, however, that the City may permit Franchisee's improvements to be abandoned and placed in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place and which are not removed within thirty (30) days of receipt of said notice shall automatically become the property of the City. Provided, however, that nothing contained within this Section 17 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted the Franchisee to abandon said Facilities in place. The provisions of this Section 17 shall survive the expiration, revocation or termination of this franchise.

Section 18 Construction and Maintenance Bonds

Section 18.1 Construction Performance Bond. Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee's Facilities within the Rights-of-Way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in Section 18.2. Compliance with

the Performance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 18.1.

Section 18.2 Maintenance Bond. Franchisee shall furnish a two-year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of the construction work. The Maintenance Bond in this section Section 18.2 must be in place prior to City's release of the bond required by Section 18.1. Compliance with the Maintenance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 18.2.

Section 19 Franchise Bond. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars (\$50,000.00) running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 19 shall constitute a material breach of this franchise. The amount of the bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 20 Remedies to Enforce Compliance.

Section 20.1 In addition to any other remedy provided herein, the City reserves the right to pursue any remedy available at law or in equity to compel or require Franchisee and/or its successors and assigns to comply with the terms hereof and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture revocation for breach of the conditions herein. In addition to any other remedy provided herein, Franchisee reserves the right to pursue any remedy available at law or in equity to compel or require the City, its

officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms hereof. Provided, further, that by entering into this franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to effect any such waiver. The parties acknowledge that, in the event of a violation of this franchise, the other party shall be entitled to preliminary and permanent injunctive relief without having to prove actual damages or immediate or irreparable harm or to post a bond.

Section 20.2 If either party violates, or fail to comply with any of the provisions of this franchise, or should it fail to heed or comply with any notice given to such party under the provisions of this franchise (the “Defaulting Party”), the other Party (the “Non-defaulting Party”) shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of any such breach and the Defaulting Party shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the Non-defaulting Party reasonably determines the breach cannot be cured within (30) thirty days, the Non-defaulting Party may specify a longer cure period, and condition the extension of time on the Defaulting Party’s submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Defaulting Party does not comply with the specified conditions, the Non-defaulting Party may pursue any available remedy at law or in equity as provided in Section 20.1 above, or in the event the Franchisee has failed to timely cure the breach, the City, at its discretion, may elect to (1) revoke this Franchise pursuant to Section 21, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against Franchisee (and collect from the performance bond if necessary).

Section 21 Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this franchise, then at the election of the Bothell City Council after at least thirty (30) days notice to the Franchisee specifying the alleged violation or failure, the City may revoke all rights conferred hereunder and this franchise may be revoked by the Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within 30 days after the hearing, the Bothell City

Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Bothell City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Bothell City Council does not grant any additional period, the Bothell City Council may by resolution declare the franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the franchise.

Section 22 Non-Waiver. The failure of either party to insist upon strict performance of any of the covenants and agreements of this franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.

Section 23 Police Powers and City Regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations, consistent with 47 U.S.C. § 253, the location, elevation, manner of construction and maintenance of any telecommunications Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. The City hereby reserves the right to promulgate any such additional regulations of general applicability as it may find necessary in the exercise of its lawful police powers consistent with 47 U.S.C. § 253. In the event of a conflict between the provisions of this franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 24 Cost of Publication. The cost of publication of this franchise shall be borne by Franchisee.

Section 25 Acceptance. This franchise may be accepted by Franchisee by its filing with the City Clerk an unconditional written acceptance, within sixty (60) days from the City's execution of this franchise, in the form attached hereto as Exhibit B. Failure of Franchisee to so accept this franchise shall be deemed a rejection thereof by Franchisee and the rights and privileges herein granted shall absolutely cease and determine. In addition, Franchisee shall file the certificate of insurance and the additional insured endorsements obtained pursuant to Section 16, a Performance Bond, if applicable, pursuant to Section 18.1 and the bond required pursuant to Section 19.

Section 26 Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 11, Section 15, Section 17, and Section 27, of this franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive this franchise, and any renewals or extensions thereof, to the extent provided by in those sections. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the successors, executors, administrators, legal representatives and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its successors and assigns equally as if they were specifically mentioned where Franchisee is named herein.

Section 27 Changes of Ownership or Control.

Section 27.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The above notwithstanding, Franchisee may freely assign this franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 27.2 below. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 28, no assignment or transfer of this franchise shall be deemed to occur based on the public trading of Franchisee's stock, provided however any tender offer, merger or similar transaction resulting in a change of control shall be subject the provisions of this franchise.

Section 27.2 Any transactions which singularly or collectively result in a change of more than fifty percent (50%) of the ultimate ownership or working control of Franchisee, of the ownership or working control of the Facilities, of the ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee's Facilities or substantial parts thereof, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval if there is a change in control as described in the preceding sentence. Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. The City shall approve or deny such request for an assignment requiring City's consent within sixty (60) days of such notice from Franchisee, unless a longer period of time is mutually agreed to by the parties. In the event that the City adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the City may revoke this franchise, following the revocation procedure described in Section 21 above. The assignee or transferee must have the legal, technical, financial and other requisite qualifications to own, hold and operate Franchisee's telecommunications system. Franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this permit, in accordance with the provisions of Section 13.3 and Section 13.4, and shall pay the applicable application fee.

Section 27.3 Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion thereof, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion thereof, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms hereof, and Franchisee shall furnish, upon request from the City, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this franchise and applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms hereof under

this Section 27.3 shall survive the expiration of this franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Section 28 Entire Agreement. This franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this franchise.

Section 29 Eminent Domain. The existence of this franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this franchise.

Section 30 Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City may, after sixty (60) days written notice to Franchisee, terminate this franchise with respect to such vacated area.

Section 31 Notice. Any Notice or information required or permitted to be given to the parties under this franchise agreement shall be sent to the following addresses unless otherwise specified by personal delivery, overnight mail by a nationally recognized courier, or by U.S. certified mail, return receipt requested and shall be effective upon receipt or refusal of delivery:

CITY OF BOTHELL
Public Works Director
18305 101st Ave N.E.
Bothell, WA 98011
Telephone:

tw telecom of washington llc
Attn: Vice President of Regulatory
10475 Park Meadows Drive
Littleton, CO 80124
Telephone: 206-676-8052

with a copy to:

SVP and General Counsel
Legal Dept. 10475 Park Meadows Drive
Littleton, CO 80124
Telephone: 303-566-1279

Section 32 Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this franchise materially affected by such court's ruling.

Section 33 Compliance with all Applicable Laws. Each party agrees to comply with all present and future federal, state and local laws, ordinances, rules and regulations. This franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. The City reserves the right at any time to amend this franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation, when such statute, regulation or ordinance necessitates this franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, either party may pursue any available remedies at law or in equity.

Section 34 Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses, and reasonable attorneys' fees upon appeal of any judgment or ruling.

Section 35 Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify and hold the City, its

officers, officials, employees, agents and volunteers harmless from and against any and all claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property to the extent caused by Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage or disposal of such substances by Franchisee's agents, contractors or other persons acting under Franchisee's control, whether or not intentional.

Section 36 Licenses, Fees and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City, if so required. Franchisee shall pay all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all applicable permits, licenses and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees properly imposed by the City, as applicable.

Section 37 Miscellaneous.

Section 37.1 The City and Franchisee respectively represent that their respective signatories are duly authorized and has full right, power and authority to execute this franchise on such party's behalf.

Section 37.2 This franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this franchise shall be the United States District Court for the Western District of Washington, or King County Superior Court.

Section 37.3 Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 37.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 37.5 Franchisee shall be responsible for obtaining all other required approvals, authorizations and agreements from any party or entity and it is acknowledged and agreed that

the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or have been obtained by Franchisee by any person or entity.

Section 37.6 This ordinance is subject to all applicable federal, state and local laws, regulations and orders of governmental agencies as amended, including but not limited to the Communications Act of 1934, as amended, the Telecommunications Act of 1996 as amended and the Rules and Regulations of the FCC. Neither the City nor Franchisee waive any rights they may have under any such laws, rules or regulations.

Section 37.7 This franchise may be enforced at both law and in equity.

Section 38 Ordinance Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

JOSHUA FREED
MAYOR

ATTEST/AUTHENTICATED:

LAURA K. HATHAWAY
CITY CLERK

APPROVED AS TO FORM:

JOSEPH N. BECK
CITY ATTORNEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.:

SUMMARY OF ORDINANCE NO. _____ (2014)

City of Bothell, Washington

On the ____ day of _____, 2014, the City Council of the City of Bothell passed Ordinance No. _____ (2014). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO TW TELECOM OF WASHINGTON LLC AND ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A TELECOMMUNICATIONS NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

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

LAURA K. HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____, 2014
PASSED BY THE CITY COUNCIL: _____, 2014
PUBLISHED: _____, 2014
EFFECTIVE DATE: _____, 2014
ORDINANCE NO.: _____ (2014)

EXHIBIT A

EXHIBIT B

STATEMENT OF ACCEPTANCE

TW Telecom of Washington LLC (“TWTC”) for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the franchise attached hereto and incorporated herein by this reference. TWTC hereby declares that it has carefully read the terms and conditions of this franchise and unconditionally accepts all of the terms and conditions of the franchise and hereby agrees to abide by such terms and conditions. TWTC has relied upon its own investigation of all relevant facts and it has not been induced to accept this franchise and it accepts all reasonable risks related to the interpretation of this franchise.

tw telecom of washington llc
by: tw telecom holdings inc.,
its sole member

By: _____ Date: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

I, _____, a Notary Public in and for the State of Colorado, do hereby certify that _____ of TW Telecom Holdings Inc., sole member of TW Telecom of Washington LLC, did personally appear before me affixing his/her signature on the attached document.

Sworn and Subscribed this day of _____, 2014.

Notary Public

My commission expires _____.

[SEAL]

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Bothell City Council
AGENDA BILL SUMMARY

Meeting Date: April 8, 2014

AB #14-58

Action Item: Study Session Item: X Special Presentation:

Subject: Study Session Regarding a Utility Franchise Agreement with Level 3 Communications

Budget Impact and Source of Funds: None

Contact Person/Department: Joseph Beck, Legal Department
Dave Phelps, P.E., Senior Civil Engineer

EXECUTIVE SUMMARY:

In Washington, a utility that wishes to locate its facilities within city right-of-way generally obtains a franchise (similar to a master permit) from that city, which sets forth the terms under which those facilities are constructed, operated, relocated, and eventually removed. Both state and federal law contain restrictions on a city's franchise authority, but these restrictions vary significantly, depending on the nature of the utility being regulated. The power to grant franchises is a sovereign power, resting in the state. It may be delegated by the state, but it is not within the powers of cities unless expressly delegated to them by the state. RCW 35A.47.040 contains the delegation of franchising authority from the State to the city relevant to this type of franchise.

Currently, the City of Bothell has franchises with various utility providers. In 2000, Level 3 had a franchise agreement approved under Ordinance No. 1803 (2000). Level 3 currently serves businesses in the Canyon Park Business Park and the North Creek Business Park. Level 3 will continue to maintain its existing telecommunications system, and at this time the City is not aware of any expansion plans. If there were any expansions proposed, the City's standard permitting process would be followed. Companies like Level 3 which use the City's rights-of-way for operation of fiber optic cable network business, are allowed to have a franchise with the City. On February 1, 2012, the City received a formal request for a franchise from Level 3.

The purpose of this study session is to provide Council with information in order to consider an ordinance providing for regulation of the use of public rights of-way. This ordinance would be consistent with state and federal law, and will protect public right-of-ways, provide for control over placement of facilities in the right-of-ways, provide for just compensation for the use of public property, provide for costs incurred by the City, and ensure that similarly situated operators and users of public rights-of-way will be comparably treated.

COUNCIL PROCESS: Study Session

- Staff Presentation by Joseph Beck, City Attorney
- Council Discussion
- Council Direction to Staff
- Item to Return to Council for Consideration of Approval on May 6, 2014

HISTORY:

- November 2011, a representative from Level 3 contacted the City to inquire about the procedures required to apply for a franchise
- February 1, 2012, the City's franchise application was emailed to the designated representative of Level 3
- Summer and Fall 2013, the City Attorney worked with Public Works staff to draft a franchise agreement acceptable to both parties.

RECOMMENDED ACTION:

No action is requested this evening; however, this item is currently scheduled for Council action on May 6, 2014

ATTACHMENTS:

1. Vicinity Map
2. Proposed Ordinance Granting a Fiber Optic Cable Franchise to Level 3 Communications

City Manager Approval:



Date: 3/25/14

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO LEVEL 3 COMMUNICATIONS, LLC AND ITS AFFILIATES, SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A FIBER OPTIC CABLE NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

WHEREAS, Level 3 Communications, LLC (the “Franchisee”) has requested that the City Council grant a renewal of its nonexclusive franchise, and

WHEREAS, the City Council previously granted Franchisee a ten year franchise on May 22, 2000, and

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

THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1 Franchise Granted.

Section 1.1 Pursuant to RCW 35A.47.040, the City of Bothell, a Washington municipal corporation (hereinafter the “City”), hereby grants to Level 3 Communications, LLC (the “Franchisee”), its affiliates, heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period of ten (10) years, beginning on the effective date of this ordinance, set forth in Section 37 herein. The term “affiliate” for the purpose of this Franchise shall mean any entity which controls, which is controlled by, or which is under common control with Franchisee; “control” shall mean ownership of greater than fifty percent (50%) of the equity ownership and management control of the entity. Ordinance No. 1803 is hereby repealed and in its place, the following provisions are enacted.

Section 1.2 This franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, acquire, sell, lease and use all necessary Facilities for a fiber optic cable network, in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City of Bothell, as approved pursuant to City permits issued pursuant to this franchise. Public “Rights-of-Way” as used herein means all public streets, roads, alleys, and

highways of the City as now or hereafter laid out, platted, dedicated or improved. "Facilities" as used herein means a fiber optic cable system, with all necessary cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary appurtenances; provided that new utility poles for overhead wires or cabling are specifically excluded. Equipment enclosures with air conditioning or other noise generating equipment are also excluded from permitted "Facilities."

Section 2 Authority Limited to Occupation of Public Rights-of-Way The authority granted herein is a limited authorization to occupy and use specific Rights-of-Way of the City. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services. Franchisee hereby warrants that it currently provides or expects to provide the following services within the City: telecommunications services, including data and internet access, within the City (the "Services"). If Franchisee elects to expand the Services provided within the City it shall provide written notification of the addition of such services at least thirty (30) days in advance of the date such provision of services are offered for sale or otherwise provided, such notice may trigger the need for an amendment to this Franchise as may be required by the City. As described in Section 8 construction is not authorized without the appropriate permits. This franchise does not and shall not convey any right to Franchisee to install its Facilities on, under, over, across or to otherwise use City owned or leased properties of any kind outside of the incorporated area of the City and such additional areas as may be included in the corporate limit of the City during the term of this franchise (the "Franchise Area") or to install Facilities on, under, over, across or otherwise use any City owned or leased property other than public roads, streets, avenues, alleys and highways. This franchise does not convey any right to Franchisee to install its Facilities on, under, over or across any facility or structure owned by a third-party without such written approval of the third-party. No substantive expansions, additions to or modifications or relocation of any of the Facilities shall be permitted without first having received prior authorization from the City. As of the effective date of this franchise, the Facilities are located in the area described in Exhibit A. Under this Franchise, the Facilities shall not be used for Cable Services as that term is defined in 47 U.S.C § 522(6).

Section 3 Non-exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. Such franchise shall in no way prevent or prohibit the City from using any of said roads, streets, or other public properties

or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4 Location of Fiber Optics Network Facilities. Franchisee is maintaining a fiber optic cable network, consisting of Facilities within the City. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Design and Construction Standards and subject to the City's applicable permit requirements. Franchisee shall not be required to amend this franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 2.

Section 5 Relocation of Fiber Optic Cable Network Facilities.

Section 5.1 Franchisee agrees and covenants to protect, support, temporarily disconnect, relocate or remove from any Rights-of-Way any of its Facilities when reasonably required by the City by reason of traffic conditions or public safety, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Franchisee shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same Rights-of-Way upon approval by the City, any section of cable required to be temporarily disconnected or removed. Except as otherwise provided by law, the costs and expenses associated with relocations ordered pursuant to this Section 5.1 shall be borne by Franchisee (in a pro-rata amount relative to other utilities in such Right-of-Way).

Section 5.2 Upon request of the City and in order to facilitate the design of City street and Right-of-Way improvements, the Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the location of the same may be taken into account in the improvement design. The decision as to whether said Facilities need to be relocated in order to accommodate the

City's improvements shall be made by the City upon review of the location and construction of the Franchisee's Facilities.

Section 5.3 If the City determines that the project necessitates the relocation of Franchisee's then existing Facilities, the City shall:

- (a) At least sixty (60) days prior to the issuance of the Notice to Proceed by the City to the City's contractor, provide Franchisee with written notice requiring such relocation; provided, however, that in the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City, the City shall give the Franchisee written notice as soon as practicable; and
- (b) Provide Franchisee with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for Franchisee's Facilities so that Franchisee may relocate its Facilities in other City Rights-of-Way in order to accommodate such improvement project.
- (c) After receipt of such notice and such plans and specifications, Franchisee shall use reasonable efforts to complete relocation of its Facilities at least ten (10) days prior to commencement of the City's project at no charge or expense to the City. Relocation shall be accomplished in such a manner as to accommodate the City's project. In the event of an emergency, the Franchisee shall relocate its Facilities within the time period specified by the City.

Section 5.4 Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. Such alternatives must be submitted at least thirty (30) days prior to the issuance of the Notice to Proceed by the City to the City's contractor. The City shall evaluate such alternatives and advise Franchisee in writing if one or more of the alternatives is suitable to accommodate the work which would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit at its sole cost and expense additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Franchisee full and fair consideration. In the event the City ultimately determines that there is no other reasonable or feasible alternative, Franchisee shall relocate its Facilities as otherwise provided in this Section.

Section 5.5 The provisions of this Section 5.5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 5.6 The Franchisee will indemnify, hold harmless, and pay the costs of defending the City against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Franchisee to remove or relocate its Facilities in a timely manner; provided, that the Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of the Franchisee or the negligence, willful misconduct, or unreasonable delay of the City.

Section 5.7 Whenever any person shall have obtained permission from the City to use any street or public way for the purpose of moving any building, the Franchisee, upon thirty (30) days' written notice from the City, shall raise or remove, at the expense of the person desiring to move the building, any of the Franchisee's Facilities which may obstruct the removal of such building.

Section 5.8 The provisions of this Section 5 shall survive the expiration or termination of this franchise.

Section 6 Undergrounding of Facilities. Except as specifically authorized by permit of the City, Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its Facilities at the time of permit application, the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to underground installation at Franchisee's expense. Unless otherwise permitted by the City, Franchisee shall underground its Facilities in all new developments and subdivisions, and any development or subdivision where utilities are currently underground.

Whenever the City may require the undergrounding of the aerial utilities in any area of the City, Franchisee shall underground its aerial facilities in the manner specified by the City,

concurrently with and in the area of the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of Franchisee's Facilities being undergrounded in comparison to the total number and size of all other utility facilities being undergrounded. The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

Section 7 Maps and Records. After construction is complete, the Franchisee shall provide the City with accurate copies of as-built plans and maps in a form and content reasonably prescribed by the Public Works Director. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in Autocad, ArcGIS.MDB or other readable formats approved by the City and delivered electronically.

Section 7.1 Within thirty (30) days of a written request from the Public Works Director, the Franchisee shall furnish the City with information sufficient to demonstrate: 1) that the Franchisee has complied with all applicable requirements of this Franchise; and 2) that all taxes, including but not limited to sales, utility and/or telecommunications taxes, due the City in connection with the Franchisee's services and Facilities provided by the Franchisee have been properly collected and paid by the Franchisee.

Section 7.2 All books, records, maps and other documents, maintained by the Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.2 shall be construed to require the Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.2 be construed to require the Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

Section 7.3 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to keep confidential any

proprietary or confidential books or records to the extent permitted by law. Franchisee shall be responsible for clearly and conspicuously indentifying 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 and federal law. In the event that the City receives a public records request under RCW 42.56 or similar law for the disclosure of information Franchisee has designated as confidential, trade secret or proprietary, the City shall promptly provide notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 7.3 prohibits the City from complying with RCW 42.56, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee which prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records.

Section 8 Work in the Rights-of-Way. During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 8 shall survive the expiration or termination of this franchise ordinance.

Section 8.1 Whenever Franchisee shall commence work in any public Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its cable or equipment, it shall apply to the City for a permit to do so and, in addition, shall give the City at least ten (10) working days prior notice (except in the case of an emergency) of its intent to commence work in the Rights-of-Way. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence

within any Rights-of-Way without a permit, except as otherwise provided in this franchise ordinance.

Section 8.2 If either the City or Franchisee shall at any time plan to make excavations in any area covered by this franchise and as described in this Section 8.2, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

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

Section 8.3 Franchisee shall provide a notice indicating the nature and location of the work to be performed at least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property. Such notice shall be physically posted upon the affected property by the Franchisee; a door hanger is permissible. The Franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices.

Section 8.4 The Franchisee, in accordance with applicable federal, State and local safety requirements, shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public. All structures and all lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of a permit area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair. The City reserves the general right to see that the Facilities are constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with Franchisee, establish a reasonable time for Franchisee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from a Franchisee.

Section 8.5 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with the Franchisee's wires and cables. This Section 8.5 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity and health of the trees to the extent reasonably possible. Franchisee shall prepare and maintain a tree trimming schedule to ensure compliance with this Section 8.5 and to avoid exigent circumstances where tree cutting, trimming or removal is necessary to protect the public safety or continuity of service without the regard for the appearance, integrity or health of the trees that planned maintenance would otherwise allow. Franchisee shall submit the schedule to the Public Works Director. All trimming is to be done after the explicit prior written notification and approval of the City and at the expense of the Franchisee. Franchisee may contract for such services, however, any firm or individual so retained shall receive City approval prior to commencing such trimming.

Section 9 One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to RCW 19.122.

Section 10 RCW 35.99. Franchisee shall inform the City with at least thirty (30) days' advance written notice (where available, and if less than thirty (30) days' notice is available, as soon as commercially reasonable) that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

Section 11 Restoration after Construction. Franchisee shall, after abandonment approved under Section 16 herein, or installation, construction, relocation, maintenance or repair of its Facilities within the Franchise Area, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to at least the same condition the property was in immediately prior to any such installation, construction, relocation, maintenance or repair. The Public Works Director shall have final approval of the condition of such streets and public places after restoration. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. Franchisee agrees to promptly complete all restoration work and to promptly repair any damage

caused by such work to the Franchise Area or other affected area at its sole costs and expense and according to the time and terms specified in the construction permit issued by the City. All work by the Franchisee pursuant to this Section 11 shall be performed in accordance with applicable City standards and warranted for a period of two (2) years. In the event the Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way in a prompt fashion or as agreed to with the Public Works Director, the City may repair the damage and shall be reimbursed its actual cost within thirty (30) days of submitting an invoice to Franchisee. The provisions of this Section 11 shall survive the expiration, revocation or termination of this franchise.

Section 11.1 Emergency Work – Permit Waived. In the event of any emergency in which any of Franchisee's Facilities located in or under any street breaks, becomes damaged, or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which the Bothell City Hall is open for business. The City retains the right and privilege to cut or move any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall notify Franchisee by telephone promptly upon learning of the emergency and shall exercise reasonable efforts to avoid an interruption of Franchisee's service. The City shall not be liable to the Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

Section 11.2 Dangerous Conditions, Authority for City to Abate. Whenever the construction, installation or excavation of Facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. In the event that Franchisee

fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the property and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Section 12 Recovery of Costs. Franchisee shall pay a grant fee for the City's documented administrative, legal, and other costs incurred in drafting and processing this franchise ordinance and all work related thereto. No construction permits shall be issued for the installation of Facilities authorized hereby until such time as the City has received payment of the grant fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this franchise ordinance or under the laws of the City. Where the City incurs costs and expenses for review, inspection or supervision of activities, including but not limited to fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City. In addition to the above, Franchisee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving Franchisee's Facilities. Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for incurred costs, itemized by project, for the Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to the Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of the Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include the Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of the Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with the Franchisee's Facilities.

Section 13 City's Reservation of Rights.

Section 13.1 Franchisee hereby warrants that its operations as authorized under this franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or, if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate franchise for its change in use, which franchise may include provisions intended to regulate Franchisee's operations, as allowed under applicable law. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

Section 13.2 Franchisee acknowledges that its operation within the City constitutes a telephone business subject to the utility tax imposed pursuant to the Bothell Municipal Code Chapter 5.08. Franchisee understands that RCW 35.21.870 currently limits the rate of city tax upon telephone business activities to six percent (6%) of gross income (as that term is defined in Bothell Municipal Code Chapter 5.08), unless a higher rate is otherwise approved. Franchisee stipulates and agrees that its business activities are subject to taxation and that Franchisee shall pay to the City the rate applicable to such services under Bothell Municipal Code Chapter 5.08, the City's utility tax code, and consistent with state and federal law. The parties agree however that nothing in this franchise shall limit the City's power of taxation as may now or hereafter exist. This provision does not limit the City's power to amend Bothell Municipal Code Chapter 5.08 as may be permitted by law.

Section 14 Indemnification. Franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by Franchisee's own employees for which Franchisee might otherwise be immune under Title 51 RCW, for injury or death of any person or damage to property caused by or arising out of the negligent acts or omissions of Franchisee, its agents, servants, officers or employees in the performance of this franchise, and any rights granted hereunder.

Section 14.1 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 14.1. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised, with Franchisee's consent, prior to the culmination of any litigation or the institution of any litigation.

Section 14.2 In the event that Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification provision contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, the Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision.

Section 14.3 In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Franchisee and the City, its officers, employees and agents, Franchisee's liability hereunder shall be only to the extent of Franchisee's negligence. It is further specifically and expressly understood that the indemnification provision provided herein constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 14.4 The obligations of Franchisee under the indemnification provisions of this Section 14 shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, agents, employees or contractors. The provisions of this Section 14, however, are not to be construed to require the Franchisee to hold harmless, defend or indemnify the City as to any claim, demand, suit or action which arises out of the negligence, willful misconduct, or criminal acts of the City. In the event that a court of competent jurisdiction determines that this Franchise is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

Section 14.5 Notwithstanding any other provisions of this Section 14, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned

property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any willful, malicious, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the negligence or any willful, malicious, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

Section 14.6 The provisions of this Section 14 shall survive the expiration, revocation, or termination of this franchise.

Section 15 Insurance.

Section 15.1 Franchisee shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted hereunder to Franchisee, its agents representatives or employees. Franchisee shall provide a copy of a Certificate of Insurance to the City for its inspection at the time of or prior to acceptance of this franchise ordinance, and such insurance certificate shall evidence a policy of insurance that includes:

- (a) Automobile Liability insurance with limits no less than \$3,000,000 Combined Single Limit per occurrence for bodily injury and property damage; and
- (b) Commercial General Liability insurance, written on an occurrence basis with limits no less than \$5,000,000 combined single limit per occurrence and \$5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products

and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

- (c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (d) To the extent Franchisee does not have the coverage amounts meeting these limits, Franchisee agrees to make the City an additional insured with regard to the umbrella coverage necessary to meet the above coverage limits.

Section 15.2 Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee.

Section 15.3 The insurance policies obtained by Franchisee shall name the City, its officers, officials, employees, agents, and volunteers ("Additional Insureds"), as an additional insured with regard to activities performed by or on behalf of Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City prior to or upon acceptance either (1) a true copy of the additional insured endorsement for each insurance policy required in this Section 15 and providing that such insurance shall apply as primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's insurance shall be primary insurance as respects the Additional Insureds, and the endorsement should specifically state that the insurance is the primary insurance. Any insurance maintained by the Additional Insureds shall be excess of Franchisee's insurance and shall not contribute with it.

Section 15.4 Franchisee's insurance policies shall allow for thirty (30) days notice of cancellation. Upon renewal, the Franchisee shall obtain and furnish to the City certificates of insurance evidencing the requirements of this Section 15, including the applicable additional insured endorsements. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 15 shall be considered a material breach of the Franchise and subject to the City's election of remedies

described in Section 20 below. Notwithstanding the cure period described in Section 20.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 15.5 Franchisee's maintenance of insurance as required by this Section 15 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity.

Section 16 Abandonment of Franchisee's Fiber Optic Cable Network. Upon the expiration, termination, or revocation of the rights granted under this Franchise, the Franchisee shall remove all of its Facilities from the Rights-of-Way within thirty (30) days of receiving notice from the Public Works Director. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. Provided, however, that the City may permit the Franchisee's improvements to be abandoned and placed in such a manner as the City may prescribe. Upon permanent abandonment, and the Franchisee's agreement to transfer ownership of the Facilities to the City, the Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place and which are not removed within thirty (30) days of receipt of said notice shall automatically become the property of the City. Provided, however, that nothing contained within this Section 16 shall prevent the City from compelling the Franchisee to remove any such Facilities through judicial action when the City has not permitted the Franchisee to abandon said Facilities in place. The provisions of this Section 16 shall survive the expiration, revocation or termination of this franchise ordinance.

Section 17 Bonds.

Section 17.1 Construction Performance Bond. Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee's Facilities within the Rights-of-Way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by

the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in Section 17.2. Compliance with the Performance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 17.1.

Section 17.2 Maintenance Bond. Franchisee shall furnish a two (2) year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of the construction work. The Maintenance Bond in this Section 17.2 must be in place prior to City's release of the bond required by Section 17.1. Compliance with the Maintenance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 17.2.

Section 17.3 Franchise Bond. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars (\$50,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 19 shall constitute a material breach of this franchise. The amount of the bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 18 Modification. The City and Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 19 Forfeiture and Revocation. If Franchisee willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given Franchisee by the City under the provisions of this franchise, then Franchisee shall, at the election of the Bothell City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon notice to Franchisee.

Section 20 Remedies to Enforce Compliance.

Section 20.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to effect any such waiver.

Section 20.2 If Franchisee shall violate, or fail to comply with any of the provisions of this franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, City may, at its discretion, (1) revoke this Franchise with no further notification, or (2) claim damages of Two Hundred Dollars (\$200.00) per day against the

Franchise Bond set forth in Section 17.3, or (3) pursue other remedies as described in Section 20.1 above.

Section 21 Non-Waiver. The failure of the City to insist upon strict performance of any of the covenants and agreements of this franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.

Section 22 City Ordinances and Regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of any fiber optic cable or cable facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this franchise ordinance and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.

Section 23 Cost of Publication. The cost of publication of this franchise ordinance shall be borne by Franchisee.

Section 24 Acceptance. This franchise may be accepted by Franchisee by its filing with the City Clerk an unconditional written acceptance, within sixty (60) days from the City's execution of this franchise, in the form attached hereto as Exhibit B. Failure of Franchisee to so accept this franchise shall be deemed a rejection thereof by Franchisee and the rights and privileges herein granted shall absolutely cease and determine. In addition, Franchisee shall file proof of insurance obtained and additional insured endorsement pursuant to Section 15, any construction Performance Bond pursuant to Section 17.1 and the Franchise Bond required pursuant to Section 17.3.

Section 25 Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 11, Section 14, Section 16, Section 17, Section 26, and Section 36.7 of this franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to

Franchisee for the use of the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this franchise ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned where Franchisee is named herein.

Section 26 Assignment.

Section 26.1 This franchise may be assigned or transferred without the prior written approval of the City, provided that:

- (a) Franchisee provides prompt, written notice to the City of any such assignment or transfer;
- (b) The assignee or transferee executes a counterpart to this franchise agreeing to the terms and conditions contained herein, in the form and format as mutually agreed between the parties; and
- (c) The assignee or transferee is able to demonstrate the legal, technical, financial and other requisite qualifications to own, hold and operate Franchisee's telecommunications system.

No such assignment or transfer is effective until Franchisee and transferee or assignee has fulfilled the requirements of (a)-(c) above to the reasonable satisfaction of the City and the City has co-signed the counterpart (which execution shall not be unreasonably withheld or delayed). Franchisee shall reimburse the City for all direct costs and expenses reasonably incurred by the City in reviewing such transfer or assignment of this franchise and shall pay the applicable application fee. Failure of Franchisee to comply with the terms of this Section 26.1 shall be deemed a violation of this franchise and shall subject Franchisee to the remedies described in Section 20.2.

Section 26.2 Franchisee may, without the prior written consent of the City: (i) lease the Facilities, or any portion thereof, to another entity; (ii) grant an indefeasible right of user interest in the Facilities, or any portion thereof, to another entity; or (iii) offer or provide capacity or bandwidth from the Facilities to another person, PROVIDED THAT: Franchisee at all times retains exclusive control over the Facilities and remains responsible for locating, servicing,

repairing, relocating, or removing its Facilities pursuant to the terms and conditions of this Franchise and remains in compliance with this franchise.

Section 27 Entire Agreement. This franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this franchise.

Section 28 Eminent Domain. The existence of this franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this franchise.

Section 29 Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City may, after sixty (60) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 30 Notice. Any Notice or information required or permitted to be given to the parties under this franchise agreement may be sent to the following addresses unless otherwise specified:

CITY OF BOTHELL
Public Works Director
18305 101st Ave. N.E.
Bothell, WA 98011

LEVEL 3, COMMUNICATIONS, LLC
1025 Eldorado Blvd
Broomfield, CO, 80021
ATTN: Senior Manager, Network Infrastructure Services

Section 31 Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this franchise materially affected by such court's ruling.

Section 32 Compliance with All Applicable Laws. Franchisee agrees to comply with all present and future federal, state and local laws, ordinances, rules and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers.

Franchisee further agrees to save and hold the City harmless from damage, loss or expense, arising out of the said use or work, unless caused by the City's sole negligence and to remove all liens and encumbrances arising as a result of said use or work. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. City reserves the right at any time to amend this franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation upon providing Franchisee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, City may enact the proposed amendment, by incorporating Franchisee's concerns to the maximum extent City deems possible.

Section 33 Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

Section 34 Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage or disposal of such substances by Franchisee's agents, contractors or other persons acting under Franchisee's control, whether or not intentional.

Section 35 Licenses, Fees and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.

Section 36 Miscellaneous.

Section 36.1 City and Franchisee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this franchise.

Section 36.2 This franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this franchise shall be the United States District Court for the Western District of Washington, or King County Superior Court.

Section 36.3 Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 36.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 36.5 Franchisee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or have been obtained by Franchisee by any person or entity.

Section 36.6 This franchise may be enforced at both law and equity.

Section 36.7 Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's

equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Section 37 Ordinance Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

JOSHUA FREED
MAYOR

ATTEST/AUTHENTICATED:

LAURA K. HATHAWAY
CITY CLERK

APPROVED AS TO FORM:

JOSEPH N. BECK
CITY ATTORNEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.:

SUMMARY OF ORDINANCE NO. ____ (2014)

City of Bothell, Washington

On the ____ day of _____, 2014, the City Council of the City of Bothell passed Ordinance No. ____ (2014). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING TO LEVEL 3 COMMUNICATIONS, LLC AND ITS AFFILIATES, SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A FIBER OPTIC CABLE NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

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

LAURA K. HATHAWAY
CITY CLERK

FILED WITH THE CITY CLERK: _____, 2014
PASSED BY THE CITY COUNCIL: _____, 2014
PUBLISHED: _____, 2014
EFFECTIVE DATE: _____, 2014
ORDINANCE NO.: ____ (2014)

EXHIBIT A

EXHIBIT B

STATEMENT OF ACCEPTANCE

Level 3 Communications, LLC, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the franchise attached hereto and incorporated herein by this reference.

LEVEL 3 COMMUNICATIONS, LLC

By: _____ Date: _____
Name: _____
Title: _____

STATE OF COLORADO)
)ss.
COUNTY OF BROOMFIELD)

On this ____ day of _____, 2014, before me the undersigned, a Notary Public in and for the State of Colorado, duly commissioned and sworn, personally appeared, _____ of Level 3 Communications, LLC, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

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

Signature

NOTARY PUBLIC in and for the State of Colorado, residing at _____

MY COMMISSION EXPIRES: _____

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