

LYNNWOOD CITY COUNCIL

Business Meeting

**This meeting will be held
electronically via Zoom. See the City
of Lynnwood website for details.**

Date: Monday, February 22, 2021

Time: 6:00 PM

10 CALL TO ORDER & FLAG SALUTE

20 ROLL CALL

30 APPROVAL OF MINUTES

A January 19, 2021 Work Session Minutes

B January 20, 2021 Work Session Minutes

C January 25, 2021 Business Meeting Minutes

D February 1, 2021 Work Session Minutes

E February 8, 2021 Business Meeting Minutes

40 MESSAGES AND PAPERS FROM THE MAYOR

50 PUBLIC COMMENTS AND COMMUNICATIONS

60 PRESENTATIONS AND PROCLAMATIONS

70 WRITTEN COMMUNICATIONS AND PETITIONS

80 COUNCIL COMMENTS AND ANNOUNCEMENTS

90 BUSINESS ITEMS AND OTHER MATTERS

90 .1 UNANIMOUS CONSENT AGENDA

A Confirm Diversity, Equity and Inclusion Commission Candidate Selam Habte

B Confirm Finance Director Candidate Michelle Meyer

C Contract Supplement: Scriber Creek Trail Improvements

D Construction Agreement: with Wave for 196th St SW Project

E Construction Agreement: with Comcast for 196th St SW Project

F Voucher Approval

90 .2 PUBLIC HEARINGS OR MEETINGS

90 .3 OTHER BUSINESS ITEMS

A Resolution- Finance Committee Calendar 2021

B Discussion: Business Round Table

100 NEW BUSINESS

110 ADJOURNMENT

THE PUBLIC IS INVITED TO ATTEND

Parking and meeting rooms are accessible for persons with disabilities. Individuals requiring reasonable accommodations may request written materials in alternate formats, sign language interpreters, language interpreters, physical accessibility accommodations, or other reasonable accommodations by contacting 425-670-5023 no later than 3pm on Friday before the meeting. Persons who are deaf or hard of hearing may contact the event sponsor through the Washington Relay Service at 7-1-1.

"El estacionamiento y las salas de junta cuentan con acceso para personas con discapacidad. Las personas que requieran de adaptaciones razonables pueden solicitar materiales impresos en formatos alternativos como intérpretes de lenguaje de señas, intérpretes de idiomas, asistencia física para acceso, así como otros ajustes razonables. Pueden comunicarse al numero 425-670-5023 antes de las 3:00 pm del Viernes antes a la reunión. Las personas con discapacidad auditiva o con problemas de audición pueden comunicarse con el patrocinador del evento a través del Washington Relay Service al 7-1-1."

Regular Business Meetings are held on the second and fourth Mondays of the month. They are videotaped for broadcast on Comcast Channel 21 and FIOS - Frontier Channel 38 on Wednesdays at 7:30p.m. and Sundays at 7:00a.m. and 2:00p.m.

CITY COUNCIL ITEM 30-A

CITY OF LYNNWOOD City Clerk

TITLE: January 19, 2021 Work Session Minutes

DEPARTMENT CONTACT: Lisa Harrison, Executive Assistant

DOCUMENT ATTACHMENTS

Description:

[January 19, 2021 Work Session Minutes](#)

Type:

Backup Material

**MINUTES OF THE WORK SESSION OF THE LYNNWOOD CITY COUNCIL
HELD TUESDAY, JANUARY 19, 2021 AT 6:00 p.m. VIA ZOOM**

A. Roll Call:

Mayor & Council:

Mayor Nicola Smith
Council President George Hurst
Council Vice President Jim Smith
Councilmember Ruth Ross
Councilmember Ian Cotton
Councilmember Christine Frizzell
Councilmember Julieta Altamirano-Crosby
Councilmember Shannon Sessions

Others Attending:

Corbitt Loch, Interim Finance Director
David Kleitsch, DBS Director
Kristen Holdsworth, Senior Planner
Ashley Winchell, Planning Manager
Fred Wong, Community Programs Coordinator
Julie Moore, Communications Manager

Asst. City Administrator Art Ceniza
Interim City Clerk Karen Fitzthum
Executive Assistant Lisa Harrison

B. Comments and Questions on Memo Items

None

C. Interview: Planning Commission Candidate Ann Guan (2:00)

Planning Manager Ashley Winchell introduced Ms. Guan, who discussed her background and qualifications for the planning commission. Each council member had a chance to ask her questions and thank her for her interest.

D. Interview: History & Heritage Board Candidate Kevin Brewer (17:00)

Program coordinator Fred Wong introduced Mr. Brewer. Each council member asked him questions and expressed their gratitude for willingness to serve.

E. Interview: Planning Commission Candidate Bob Larsen (35:00)

Planning Manager Ashley Winchell introduced Mr. Larsen, who had previously been with the planning commission and is interested in serving again. Each council member asked questions or made comments regarding his candidacy.

F. Housing Action Plan Update (52:00)

Senior Planner Kristen Holdsworth presented a summary of the Housing Action Plan, including priorities and next steps. Included in the information they gathered were responses from 700 citizens regarding housing needs and opportunities. This will be reviewed with the planning commission and the final review will be presented to the council, shared with the public. In order to be reimbursed for the grant money, action is expected by June. Council members were given a chance for questions and comments.

G. Break (2:22:00)

H. Discussion: Process to Amend the Strategic Plan, 2018-2022 (2:30:00)

Interim Finance Director Corbitt Loch explained that the current strategic plan goes through 2022 and needs to be updated to include recent changes in the city. This will be internally conducted as there is now budget for the project. In addition to administrative staff, 2-3 council members will be included in the work. Discussion was had regarding when would be the best

time to work through this, including the possibility of delaying until the fall. Councilmembers should let President Hurst know if they are interested in being on this committee.

A motion was made by Council President Hurst, seconded by councilmember Cotton, to extend timing until they get to the end of the agenda. Motion passed unanimously.

I. 2021 Legislative Priorities Discussion (2:58:00)

Communications Director Moore shared legislative priorities that the City of Lynnwood plans to share with legislators during the upcoming City Action Days conference held by the Association of Washington Cities on February 10-11, 2021. Councilmembers asked questions, made comments regarding the priorities. Julie will be setting up meetings with legislatures and will send zoom links for each meeting to the council.

J. Mayor Comments and Questions (3:21:00)

Mayor Smith announced that staff's focus will be on communication about the vaccine availability and logistics. The telecommuting from home has been extended to July. She also reminded the council and public that she will be giving the State of the City address on January 27th at 9 a.m.

K. Council President and Council Comments (3:36:00)

- Council President Hurst reminded the council of the need for questions for their interviews the following night.
- Councilmember Sessions asked about what has been done to address the complaint received from residents who live near the intersection at 199th S. SW & 52nd Ave. W. Council President Hurst responded that Council Leadership has met with the traffic department and they are prioritizing this intersection for a new traffic signal which will be much safer by end of March.

Executive Session

- None

The meeting was adjourned at 9:40 pm.

Nicola Smith, Mayor

CITY COUNCIL ITEM 30-B

CITY OF LYNNWOOD City Council

TITLE: January 20, 2021 Work Session Minutes

DEPARTMENT CONTACT: Lisa Harrison, Executive Assistant

DOCUMENT ATTACHMENTS

Description:	Type:
January 20, 2021 Work Session Minutes	Backup Material

**MINUTES OF THE WORK SESSION OF THE LYNNWOOD CITY COUNCIL
HELD WEDNESDAY, January 20, 2021 AT 6:00 p.m. VIA ZOOM**

A. Roll Call:

Mayor & Council:

Mayor Nicola Smith
Council President George Hurst
Council Vice President Jim Smith
Councilmember Ruth Ross
Councilmember Ian Cotton
Councilmember Christine Frizzell
Councilmember Julieta Altamirano-Crosby
Councilmember Shannon Sessions

Others Attending:

Asst. City Administrator Art Ceniza
Interim City Clerk Karen Fitzthum
Executive Assistant Lisa Harrison

After roll call the meeting was adjourned at 6:02 in order for the council to enter an Executive Session regarding personnel. No action was taken.

The meeting was adjourned at 8:45 pm.

Nicola Smith, Mayor

CITY COUNCIL ITEM 30-C

CITY OF LYNNWOOD City Council

TITLE: January 25, 2021 Business Meeting Minutes

DEPARTMENT CONTACT: Lisa Harrison, Executive Assistant

DOCUMENT ATTACHMENTS

Description:	Type:
January 25, 2021 Business Meeting Minutes	Backup Material

CITY OF LYNNWOOD
CITY COUNCIL BUSINESS MEETING MINUTES
January 25, 2021

10. CALL TO ORDER - The January 25, 2021 Business Meeting of the Lynnwood City Council, held via Zoom, was called to order by Mayor Smith at 6:00 p.m. A quorum was present.

20. ROLL CALL

Mayor & Council:

Mayor Nicola Smith
Council President George Hurst
Council Vice President Jim Smith
Councilmember Julieta Altamirano-Crosby
Councilmember Ian Cotton
Councilmember Christine Frizzell
Councilmember Ruth Ross
Councilmember Shannon Sessions

Others Attending:

Acting Finance Director Corbitt Loch

Asst. City Administrator Art Ceniza
Interim City Clerk Karen Fitzthum
City Attorney Rosemary Larson
Executive Assistant Lisa Harrison

30. APPROVAL OF MINUTES (1:00)

Motion made by Councilmember Cotton, to approve the minutes of:

A. Work Session ~ January 4, 2021

B. Business Meeting ~ January 11, 2021

Amendments to the January 11 minutes were requested by councilmembers Frizzell and Smith to identify George Hurst as President, Jim Smith as Vice President and state that they were elected, not selected, in a roll call vote.

The above minutes were approved as amended.

40. MESSAGES AND PAPERS FROM THE MAYOR (3:00)

Mayor Smith stated that the key communications goal for the city is availability and eligibility for vaccines. Supply is scarce and it is challenging to find an appointment. Information is available at www.snohd.org/Covid vaccine (425) 339-5278.

The state of the city will take place virtually on zoom this Wednesday from 9-10 a.m.

50. CITIZENS COMMENTS AND COMMUNICATIONS (8:00)

The following individuals made comments via Zoom:

- Elizabeth Lunsford, Lynnwood
- Ted Hikel, Lynnwood
- Rosa Antoine, Lynnwood

60. PRESENTATIONS AND PROCLAMATIONS

None.

70. WRITTEN COMMUNICATIONS AND PETITIONS

None

80. COUNCIL COMMENTS AND ANNOUNCEMENTS (21:00)

- Councilmembers Ross and Frizzell mentioned that this is an election year for the city and encouraged the public to participate in city boards, commissions and consider running for council.
- Councilmember Altamirano-Crosby announced that more volunteers are needed at the Lynnwood food bank. It is open every Wednesday from 11am to 5pm and Friday between 10am - 1pm. Contact the city council office to get involved.
- Councilmember Sessions encouraged viewers to check out the Lynnwood Restaurant Showcase to support local businesses.

90. BUSINESS ITEMS AND OTHER MATTERS

90.1 UNANIMOUS CONSENT AGENDA (36:00)

Items listed below were distributed to Councilmembers in advance for study and were enacted with one motion.

Councilmember Sessions moved for unanimous consent of the following items:

- *Confirm Ann Guan to Position #1 of the Planning Commission for a term expiring December 31, 2024.*
- *Confirm Bob Larsen to Position #7 of the Planning Commission for a term expiring December 31, 2024.*
- *Appoint Kevin Brewer to Position #3 of the History & Heritage Board for a term expiring December 31, 2024.*
- *Authorize the Mayor to enter into an interlocal agreement with Snohomish County for Jail Services from January 1, 2021 through December 31, 2023 with an annual estimated cost of \$500,000 per year.*
- *Grant final acceptance of the work performed under the contract for the 2020 Pavement Preservation Project, subject to the requirements of appropriate State and Federal agencies and ultimately release of retainage to the contractor, if any.*
- *Voucher Approval:*
 - a. Approve claims in the amount of \$2,883,682.82 for the period 12/31/2020 - 1/15/2021.*
 - b. Approve payroll in the amount of \$1,202,252.05 dated 1/15/2021.*

Motion passed unanimously.

69 90.2 PUBLIC HEARINGS OR MEETINGS

70 None

71 90.3 OTHER BUSINESS ITEMS

72 A. Resolution- Calendar for Mid-Biennial Budget Review

73 *Motion was made by Council President Hurst, seconded by councilmember Cotton, to*
74 *adopt RESOLUTION NO. 21-02, A RESOLUTION OF THE CITY OF LYNNWOOD,*
75 *WASHINGTON, ADOPTING THE 2021 BUDGET PLANNING CALENDAR IN*
76 *ACCORDANCE WITH CHAPTER 2.72 OF THE LYNNWOOD MUNICIPAL*
77 *CODE.*

78 *Motion passed unanimously.*

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80 100. NEW BUSINESS (44:23)

81 A. Councilmember Frizzell proposed that the council hold Business Roundtables with
82 local businesses in order to get direction on how to best be of service to them. She
83 mentioned that this has been successful in the past and suggested this be held in
84 February. Council President Hurst agreed that this was important but suggested that
85 they wait until March, after the summit.

86 B. Executive Session (52:00)

87 The Council closed the business meeting in order to attend an executive session
88 regarding litigation.

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90 110. ADJOURNMENT (1:27:00)

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92 The meeting was adjourned at 7:27 p.m.
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Nicola Smith, Mayor

CITY COUNCIL ITEM 30-D

CITY OF LYNNWOOD City Council

TITLE: February 1, 2021 Work Session Minutes

DOCUMENT ATTACHMENTS

Description:

[February 1, 2021 Work Session Minutes](#)

Type:

Backup Material

**MINUTES OF THE WORK SESSION OF THE LYNNWOOD CITY COUNCIL
HELD MONDAY, FEBRUARY 1, 2021 AT 6:00 p.m. VIA ZOOM**

A. Roll Call:

Mayor & Council:

Mayor Nicola Smith
Council President George Hurst
Council Vice President Jim Smith
Councilmember Ruth Ross
Councilmember Ian Cotton
Councilmember Christine Frizzell
Councilmember Julieta Altamirano-Crosby
Councilmember Shannon Sessions

Others Attending:

David Kleitsch, DBS Director
Evan Chinn, Human Resources Director
Karl Almgren, City Center Program Manager
Julie Moore, Communications Manager

Asst. City Administrator Art Ceniza
Interim City Clerk Karen Fitzthum
Executive Assistant Lisa Harrison

B. Comments and Questions on Memo Items

None

C. Interview: Diversity, Equity and Inclusion Commission Candidate Jennifer McLaughlin (2:00)

Human Resources Director Evan Chinn introduced Ms. McLaughlin who discussed her background and qualifications for the DEI commission. Each council member had a chance to ask her questions and thank her for her interest.

D. Briefing: City Center Update and Development Standards (29:00)

Director Kleitsch and City Center Program Manager Almgren provided an overview of what is happening with the City Center. There have been a lot of developments, driven by the coming of the light rail and the need for affordable housing. Some of the elements taken into consideration include amount of housing, parking needed, retail space needed, mitigation of environmental impact, and traffic flow changes. Each council member was given the opportunity to comment and ask questions. Director Kleitsch will come to council meetings with updates throughout the year.

E. Legislative Priorities- Specific Bills to Review (1:25:00)

Council President Hurst and Communications Manager Moore led a discussion reviewing legislative priorities of Lynnwood and bills being considered related to the priorities. Moore will send council a list of scheduled meetings with legislators during the AWC City Action Days on February 10-11.

F. Council Summit Agenda and Format (2:00:00)

Council Vice President Smith reviewed the proposed schedule for the February 20th Council Summit. He mentioned that all items on the agenda were submitted by council members earlier in the year and that the summit will be for discussion only, no actions will be taken. Each council member had the opportunity to comment and ask questions.

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33 **G. Mayor Comments and Questions (2:11:00)**

34 Mayor Smith announced that the county is working through vaccination availability and supply
35 has been slower than anticipated. Those who are looking for information should go to
36 www.snohd.org/covidvaccine or call 425-339-5278 between 8:30 a.m. and 4:30 p.m. to find out
37 where and when they will qualify to make an appointment for the vaccine.

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39 **H. Council President and Council Comments (2:15:00)**

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- 41 • The council addressed the comment that it might be possible for them to begin holding in-
42 person meetings in the council chambers later in the year. Several council members
43 expressed hesitation towards doing this too soon, as the council needs to set a good
44 example. Right now city employees are expected to work from home if they can through the
end of July.
 - 45 • Councilmember Altamirano-Crosby announced that there continues to be Covid testing at
46 the Lynnwood Food Bank Mondays, Tuesdays and Thursdays as well as Saturdays.
47 Appointments can be made on their website.

48 **Executive Session**

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- None
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51 The meeting was adjourned at 8:23 p.m.

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Nicola Smith, Mayor

CITY COUNCIL ITEM 30-E

CITY OF LYNNWOOD City Council

TITLE: February 8, 2021 Business Meeting Minutes

DEPARTMENT CONTACT: Lisa Harrison, Executive Assistant

DOCUMENT ATTACHMENTS

Description:	Type:
February 8, 2021 Business Meeting Minutes	Backup Material

CITY OF LYNNWOOD
CITY COUNCIL BUSINESS MEETING MINUTES
February 8, 2021

10. CALL TO ORDER - The February 8, 2021 Business Meeting of the Lynnwood City Council, held via Zoom, was called to order by Mayor Smith at 6:00 p.m. A quorum was present.

20. ROLL CALL

Mayor & Council:

Mayor Nicola Smith
Council President George Hurst
Council Vice President Jim Smith
Councilmember Julieta Altamirano-Crosby
Councilmember Ian Cotton
Councilmember Christine Frizzell
Councilmember Ruth Ross
Councilmember Shannon Sessions

Others Attending:

Asst. City Administrator Art Ceniza
Interim City Clerk Karen Fitzthum
City Attorney Rosemary Larson
Executive Assistant Lisa Harrison

30. APPROVAL OF MINUTES (1:00)

Motion made by Council Vice President Smith, seconded by Councilmember Cotton, to approve the minutes of:

A. Finance Committee ~ January 28, 2021

The above minutes were approved as written unanimously.

40. MESSAGES AND PAPERS FROM THE MAYOR (2:00)

Mayor Smith reiterated that the key communications goal for the city is availability and eligibility for vaccines. Supply is scarce and it is challenging to find an appointment. Information is available at www.snohd.org/Covid vaccine (425) 339-5278.

50. CITIZENS COMMENTS AND COMMUNICATIONS (5:00)

The following individuals made comments via Zoom:

- Ted Hikel, Lynnwood 98036
- Elizabeth Lunsford, Lynnwood 98206

60. PRESENTATIONS AND PROCLAMATIONS (13:00)

A. Proclamation: Black History Month

Council President Hurst read the Proclamation recognizing the month of February as Black History Month and calling upon public officials, educators, businesses, volunteers, and all people of Lynnwood to join in celebrating the great contributions of African

Americans to our city, state, and nation. Nazanin Lashgari, Chair of the Diversity, Equity, and Inclusion Commission, accepted the Proclamation and made brief remarks.

70. WRITTEN COMMUNICATIONS AND PETITIONS

None

80. COUNCIL COMMENTS AND ANNOUNCEMENTS (17:00)

- Councilmembers commented on the importance of black history month, encouraging citizens to read and have discussions with their families regarding this subject.

90. BUSINESS ITEMS AND OTHER MATTERS

90.1 UNANIMOUS CONSENT AGENDA (29:00)

Items listed below were distributed to Councilmembers in advance for study and were enacted with one motion.

Council Vice President Smith moved for unanimous consent of the following items:

- *Authorize the Mayor to enter into and execute on behalf of the City, an interlocal agreement with City of Edmonds to construct the 76th Ave Overlay Project.*
- *Authorize the Mayor to enter into an inter-local agreement with Snohomish County for Jail Services from January 1, 2021 through December 31, 2023 with an annual estimated cost of \$500,000 per year.*
- *Authorize the Mayor to approve the Funding Authorization Amendment to the previously approved Interagency Agreement with DES, for an amount of \$292,305.65 including tax, and approve a purchase agreement with Ferguson Waterworks for that additional meters for \$690,721.21 including tax.*

Voucher Approval

- *Approve claims in the amount of 2,649,007.45 for the period 1/16/2021 - 1/29/2021.*
- *Approve payroll in the amount of \$1,122,101.03 dated 1/29/2021.*

Motion passed unanimously.

Motion made by Council President Hurst, seconded by council member Ross, to confirm Jennifer McLaughlin to fill Positions #1 on the Diversity, Equity and Inclusion Commission for a term expiring December 31, 2022. Motion was passed unanimously. McLaughlin was present at the zoom meeting and thanked the council for the appointment.

90.2 PUBLIC HEARINGS OR MEETINGS

None

90.3 OTHER BUSINESS ITEMS (34:00)

A. Discussion- Boards and Commissions Experience

Council President opened up a conversation about their liaison roles and experiences with various boards and commissions. Each council member had an opportunity to share their experience as liaisons and the value of meeting/interviewing each candidate.

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100. NEW BUSINESS

None

110. ADJOURNMENT (1:32:00)

The meeting was adjourned at 7:32 p.m.

Nicola Smith, Mayor

CITY COUNCIL ITEM 90.1-A

CITY OF LYNNWOOD Executive

TITLE: Confirm Diversity, Equity and Inclusion Commission Candidate Selam Habte

DEPARTMENT CONTACT: Evan Chinn, Human Resources Director

SUMMARY:

Position #6 on the Diversity, Equity and Inclusion Commission is vacant. Mayor Smith and staff respectfully nominate Selam Habte to fill Position #6; term ending December 31, 2022.

ACTION:

Confirm Selam Habte to fill Position #6 on the Diversity, Equity and Inclusion Commission.

BACKGROUND:

Ms. Habte submitted an application to serve on the Diversity, Equity and Inclusion Commission in November of 2020. She was interviewed by DEIC staff liaison, Director Chinn in January 2021 and was interviewed by Mayor Smith on February 1, 2021 . Ms. Habte has attended two DEIC meetings. She lives within Lynnwood's city limits.

ADMINISTRATION RECOMMENDATION:

Confirm Selam Habte to fill Position #6 on the Diversity, Equity, and Inclusion Commission.

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM 90.1-B

CITY OF LYNNWOOD Executive

TITLE: Confirm Finance Director Candidate Michelle Meyer

DEPARTMENT CONTACT: Mayor Nicola Smith

SUMMARY:

Recruitment for a Finance Director began in October of 2020. Mayor Smith, the Executive Leadership team and Administrative Services staff interviewed six candidates in December 2020 and January 2021, Mayor Smith selected three finalist to advance to the interview with Council members.

Following the interview with Council, Mayor Smith selected Michelle Meyer to fill the Finance Director position. Ms. Meyer has passed reference and background checks.

BACKGROUND:

Michelle Meyer spent her career in public service with over twenty years of progressively responsible experience in local government agencies including the last ten in municipal Finance Director roles. She has extensive experience in debt management, economic development and operational and capital budgeting for full-service cities. Her strengths include building diverse, adaptable teams and enhancing service delivery despite limited resources. She strives to embody servant leadership in all her actions and values transparency, collaboration and integrity.

Michelle holds a Master of Public Administration and a Graduate Certificate in City/County Management from Wichita State University. Michelle currently resides on Whidbey Island with her three dogs. Before moving to Whidbey Island, she lived in Lynnwood.

PREVIOUS COUNCIL ACTIONS:

Council interviewed 3 candidates for the Finance Director position in an executive session at their January 20, 2021 Work Session.

FUNDING:

The Finance Director position is funded per the 2021-2022 budget and salary schedule.

KEY FEATURES AND VISION ALIGNMENT:

The Finance Director position aligns with Strategic Priorities #2 Ensure financial stability and economic success, and #3 Nurture Operational and Organizational Excellence.

ADMINISTRATION RECOMMENDATION:

Confirm Michelle Meyer as the City's Finance Director.

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM 90.1-C

CITY OF LYNNWOOD Public Works

TITLE: Contract Supplement: Scriber Creek Trail Improvements

DEPARTMENT CONTACT: Monica Thompson, David Mach, Sarah Olson

SUMMARY:

The purpose of this agenda item is to supplement an existing agreement with Parametrix, Inc. for the Scriber Creek Trail project. The contract total currently is \$898,139.06. Public Works and Parks staff are requesting to increase the contract by \$475,000, which will result in a new contract total of \$1,373,139.06.

This request is for authorization of Supplement #13 which will progress the Phase 2 segment to 100-percent design and support through project bidding. Phase 2 extends from north of 200th St SW to the southwest corner of the Lynnwood Transit Center.

ACTION:

Authorize the Mayor to enter into and execute on behalf of the City a supplement to the contract with Parametrix, Inc. not to exceed a total contract value of \$1,373,139.06.

BACKGROUND:

Since the September 2020 Council Briefing, the project has completed the following:

- Incorporated illumination into the design and cost estimate of the Phase 2 trail segment
- Completed 60% design for Phase 2
- Initiated right of way acquisition
- Submitted environmental permits for Phase 2 and Phase 3 which includes the SEPA Checklist.

This trail project is both a park (recreational trail) and a transportation (multimodal access) project. The dual nature and benefit of this project is why PRCA and Public Works are co-managing this project and supports our ability to seek both transportation and recreational grant funds. In addition to the \$2.5M Sound Transit 3 System Access Fund grant, City staff have been successful in being awarded the following grants to support the construction of Phase 2:

- \$1,000,000 from Puget Sound Regional Council Congestion Mitigation and Air Quality Program (Federal Highway Administration Funds)
- \$1,750,000 from 2020 Washington State Department of Transportation Pedestrian and Bicycle Program.

This project will convert approximately 1-mile of existing trail into a multi-modal/shared use trail. Scriber Creek Trail currently is a soft surface pedestrian trail that generally follows the Scriber Creek corridor in Lynnwood. The trail links Scriber Lake Park, Sprague's Pond Mini Park, Scriber Creek Park, the Interurban Trail and The Lynnwood Transit Center on 44th Avenue West.

The trail is being designed to 10-12 feet wide with 2-foot shoulders and to be ADA compliant. In the wetland and stream areas, the trail will be constructed on an elevated bridge or boardwalk with a durable and slip resistant surface. The elevated boardwalks within park property will be 16 feet wide from handrail to handrail.

The City received a design grant from the 2017 Washington State Pedestrian & Bicycle Safety Program. In April 2020 the City's trail segment was split into two design and construction phases renamed Phase 2 and Phase 3; Phase 1 is currently being constructed by Sound Transit as part of the light rail project. See Trail Phase Map.

PREVIOUS COUNCIL ACTIONS:

Supplemental Agreement #10 approved on August 10, 2020.

Supplemental Agreement #7 approved on May 28, 2019.

Original Contract approved on February 26, 2018.

FUNDING:

This project is approved in the City's 2020-2021 Biennial Budget in Fund 380, Parks Capital Fund, with revenue from Sound Transit 2 Station Access Enhancement Fund (Sound Transit Development Agreement).

KEY FEATURES AND VISION ALIGNMENT:

The Lynnwood Community Vision states that the City is to invest in efficient, integrated, local and regional transportation systems, be a welcoming city that builds a healthy and sustainable environment, and be a city that is responsive to the wants and needs of our citizens.

The Scriber Creek Trail Improvements project supports that vision and results in an important improvement to the City's infrastructure that links City of Lynnwood programs, policies, comprehensive plans, mission, and ultimately the Community Vision. The project is a supporting capital project that is listed specifically as project 201500107 in the Capital Facilities Plan and a project in 2018-2013 Transportation Improvement Plan (TIP) as well as one of the three priority projects needed to support future Lynnwood Link light rail.

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM 90.1-D

CITY OF LYNNWOOD Public Works

TITLE: Construction Agreement: with Wave for 196th St SW Project

DEPARTMENT CONTACT: Bill Franz and David Mach

SUMMARY:

The purpose of this agenda item is to enter into an agreement with Wave Broadband (Wave) to outline the roles and responsibilities associated with the construction of a Joint Utility Trench (JUT) for the 196th St SW Improvement Project. Wave provides cable, broadband internet and telephone services to businesses and residential customers. Wave's utility facilities will need to be relocated from overhead to underground into the JUT. The agreement also defines Wave's contribution to the construction costs.

ACTION:

Authorize the Mayor to enter into and execute on behalf of the City a Construction Agreement with Wave to outline the roles and responsibilities associated with the construction of a Joint Utility Trench (JUT) and to share in the JUT construction costs for the 196th St SW Improvement Project.

BACKGROUND:

This project will improve 196th St SW from 37th Ave W to 48th Ave W by providing additional multi-modal capacity, safety and aesthetic boulevard features to support the future growth anticipated for the City Center. Capacity improvements include increasing the roadway section to seven lanes to accommodate installation of Business Access and Transit (BAT) lanes in each direction. The project also includes a planted center median/left turn/U-turn, new curb, gutter, wider sidewalks (including buffer), landscaping, hardscaping, undergrounding of overhead utilities into a Joint Utility Trench (JUT), street lighting, new traffic signals, replacement of much of the city's water, sewer, and stormwater utilities within the roadway, and an overlay of the existing pavement. Construction is anticipated to be begin in February 2021 and completed by mid-2023.

The agreement outlines Wave's contribution associated with the project's JUT costs. As part of the agreement, the City will procure and install vaults, conduits and associated trenching. Wave will install cabling, conduct splicing and terminations. Wave will pay the City an estimated \$179,000. Staff believes that it is in the best interest of the City to partner with Wave to share in the JUT costs.

PREVIOUS COUNCIL ACTIONS:

This Construction agreement was introduced to City Council at the November 16, 2020 Work Session (Briefing: 196th St SW Improvement Project Bid Award).

FUNDING:

The total estimated construction cost (excluding Construction Management and Engineering services during construction) is \$27,910,930. As part of the agreement, Wave has committed to paying the actual cost of their share of the JUT, which is estimated at \$178,551.

At the February 16, 2021 Council Work Session, Councilmember Smith asked how much City funds

are to go towards the 196th Street SW project. The following is a summary breakdown of costs and funding.

\$3,758,307	Design
\$9,111,088	Property Acquisitions
<u>\$37,607,781</u>	Construction
\$50,477,176	Total

\$18,049,540	city funds
\$4,653,504	city utility funds
\$27,234,715	grants
<u>\$539,417</u>	other
\$50,477,176	Total

KEY FEATURES AND VISION ALIGNMENT:

The Lynnwood Community Vision states that the City is to “Invest in efficient, integrated, local and regional transportation systems”, “be a city that is responsive to the wants and needs of our citizens”, “be a welcoming city that builds a healthy and sustainable environment” with a “vibrant city center”.

The 196th St SW Improvement Project supports that vision and results in an important improvement to the City’s infrastructure that links City of Lynnwood programs, policies, comprehensive plans, mission, and ultimately the Community Vision. The project is a supporting capital project that is listed specifically in the City of Lynnwood 6 Year Transportation Improvement Plan (TIP) and Capital Facilities Plan (ST2003068A). Furthermore, this project meets the goal of providing necessary street capacity in support of the City Center expansion and future Lynnwood growth.

DOCUMENT ATTACHMENTS

Description:	Type:
Lynnwood_Astound-WAVE_JUT-Agreement_02032021.docx	Backup Material

JOINT UTILITY TRENCH CONSTRUCTION AGREEMENT

THIS JOINT UTILITY TRENCH CONSTRUCTION AGREEMENT (“Agreement”), effective as of the date last signed below (“Effective Date”), is made by and between the City of Lynnwood, a Washington municipal corporation (“CITY”), and Astound Broadband LLC, a Washington limited liability company (“ASTOUND”).

RECITALS

A. The CITY is making improvements to the roadway in the CITY right-of-way known as 196th St. SW (the “Project”).

B. ASTOUND provides telecommunications services pursuant to a franchise in the CITY through telecommunications utility facilities located in CITY rights-of-way, including the 196th St. SW right-of-way.

C. The Project includes the relocation of utility facilities that are currently located along the 196th St. SW corridor and owned by ASTOUND and other service providers, including the undergrounding of utility facilities that are currently overhead (“Relocation”).

D. The CITY completed the design of the Project, including Plans, Specifications, and Estimates (“PS&E”) for the Project, advertised the Project for bid, and awarded the contract for the Project’s construction to a contractor in November 2020. By this reference, the PS&E (consisting of Conformed Plans dated 11/20/2020, Conformed Manual dated 9/16/2020, and Bid Tabulations dated 10/26/2020) and filed under City project number 2849, are made of part of this Agreement.

E. The Relocation will require the construction of trenching within the 196th St. SW and other City right-of-way for placement of facilities of utilities service providers, including ASTOUND, the CITY and others, into a Joint Utility Trench (“JUT”).

F. ASTOUND desires to secure the services of the CITY to install conduit, utility vaults and other equipment underground (the “ASTOUND Facilities”) which such ASTOUND Facilities are and shall remain the property of ASTOUND, during the course of, and within the location of, the Project (“Work”) and ASTOUND desires to cooperate in the planning, engineering, design and other work associated with completion of the JUT and the Work as part of the Project.

G. The CITY is willing to include the Work in the City’s Project on the condition that ASTOUND pay for and reimburse the CITY for the Work in accordance with the terms, conditions and provisions of this Agreement.

AGREEMENT

In consideration of the mutual covenants, terms, conditions and obligations stated below, the parties agree as follows:

1. Project Description.

The JUT will be placed in the CITY 196th St. SW right-of-way from 100 feet west of 48th Ave. W. to 340 feet west of 36th Ave. W., as set forth in the PS&E. The Relocation is approximately 3,380 feet in length along the Project route and includes facilities extended to those side streets and to properties included and as shown in the PS&E. The JUT will be constructed to accommodate the underground facilities of several utility service providers, including at a minimum, the CITY, ASTOUND, Public Utility District No. 1 of Snohomish County, Ziply Fiber, and Comcast. The CITY has awarded a contract for the design of the Project, and will bid and award a contract that includes construction of the Project, including the JUT and the Work.

2. Performance of Work.

2.1 The CITY, acting through the successful bidder on the Project (“Contractor”), shall perform and complete the Work in accordance with the PS&E and all applicable federal, state, and local laws. As one of the first orders of work to be required, the Contractor shall develop a construction schedule for the Project in sufficient detail to allow the CITY and ASTOUND to understand timeframes for completion of the Project and the Work.

2.2 To the extent that performance of the Relocation Work requires the installation of any materials that would not be needed but for ASTOUND’s participation in the Project, ASTOUND shall arrange for the purchase and delivery of such materials to the Contractor in accordance with Subsection 3.2 below. Specific materials to be purchased and delivered by ASTOUND are defined in the PS&E.

3. Responsibility of Parties to Complete the Work.

3.1 CITY Responsibilities.

3.1.1 *Contractor Duties.* The CITY shall cause the Contractor to excavate the JUT, accommodate and coordinate the installation of underground utilities, install vaults, conduits and other equipment, furnish and install bedding material, backfill and compact the JUT, and perform any restoration required by the CITY within the right-of-way. The CITY shall cause the Contractor to install the ASTOUND Facilities in accordance with written requirements and drawings provided in the PS&E. The CITY shall cause the Contractor to provide traffic control required for the Work.

3.1.2 *Notice of Materials Required.* The CITY shall provide ASTOUND notice via e-mail to ckolling@wavebroadband.com, not less than ten (10) working days prior to the required delivery date, requesting delivery of necessary vaults and all related equipment or materials that the Contractor reasonably requires to install the JUT and the ASTOUND Facilities.

3.1.3 *Other Notices Under Section 3.2.* The CITY shall provide such other notices to ASTOUND as are required under Section 3.2 below.

3.1.4 *Plan Discrepancies.* If there is any discrepancy between the PS&E and the ASTOUND plans, the parties mutually agree to work together to resolve such discrepancy between said plans.

3.2 ASTOUND Responsibilities.

3.2.1 *Provision of Work, Materials, and Equipment.* All work and equipment described in this subsection as ASTOUND responsibilities shall be provided by ASTOUND in the manner and timeframe described herein at ASTOUND's sole cost and expense.

3.2.2 *Coordination.* ASTOUND shall maintain continued coordination with the CITY regarding installation of ASTOUND's facilities. This coordination shall include, but not be limited to the following:

- (i) The Contractor shall develop a schedule that will accurately depict how the Contractor plans to complete the Project, including the Relocation and the Work. ASTOUND shall be responsible for coordinating its work to meet this Project schedule.
- (ii) A weekly meeting shall be held at which the Contractor will provide a schedule and list of materials needed for the following three (3) weeks. A representative from ASTOUND shall attend each meeting and provide weekly progress reports. The ASTOUND representative shall be responsible for coordinating the delivery of materials per the discussion of the schedule at these weekly meetings, in accordance with this Subsection 3.2.2.
- (iii) ASTOUND shall furnish all materials required for the installation of ASTOUND Facilities not less than ten (10) working days prior to the date that the work in each stage is scheduled to begin, as discussed in the weekly meeting; provided, that CITY gives ASTOUND notice in accordance with Subsection 3.1.2. The CITY shall provide a reasonable location to ASTOUND to which the materials will be delivered.
- (iv) ASTOUND and the CITY shall each provide an inspector on-site, on twenty-four (24) hours' notice, to inspect and accept the installation of all vault and conduit installation work. ASTOUND's inspector shall not direct the Contractor in any manner; the ASTOUND inspector shall communicate all requests in writing to the CITY's inspector.
- (v) Once ASTOUND Facilities are installed by the CITY and accepted by ASTOUND, ASTOUND shall complete installation of its own conductors and other equipment and perform cut-over and transfer of existing customers and facilities to the new underground system, and remove all

existing facilities that are no longer in use (the “Conduit Installation Work”). ASTOUND’s responsibilities for the Conduit Installation Work shall include, but not be limited to, furnishing and installing its own cables, conductors, electrical equipment, and temporary utility poles; conversion to underground; and the removal of its overhead facilities no longer needed as a result of the Relocation.

- (a) The CITY or its Contractor shall provide ten days’ written notice to ASTOUND of the date on which the trench, vaults, conduits and related equipment will be ready and available for ASTOUND to perform its Conduit Installation Work for each Stage (the “Installation Work Date”). Following such notice, ASTOUND shall complete the Conduit Installation Work within 60 calendar days after the Installation Work Date for each Stage.
- (b) The Conduit Installation Work shall be performed and completed by ASTOUND in a manner that does not materially delay or otherwise impact progress of construction of the Project, any work by other utilities in connection with the Project, or any of the Contractor’s other work on the Project.

3.2.3 *Traffic Control.* ASTOUND or its contractor shall provide traffic control when ASTOUND or its contractor is installing its new underground cabling and splicing or performing overhead construction and removing its existing overhead facilities. Traffic control plans to be utilized by ASTOUND or its contractor shall be coordinated with traffic control established for the Project. Allowable lane closure hours shall be in accordance with the Project Specifications.

3.2.4 *Installation Not in Right-of-Way.* The installation of any ASTOUND facilities not in CITY right-of-way or Temporary Construction or Utility Easements obtained for the project, including but not limited to cable, conduit, and pedestals, shall be the sole responsibility of ASTOUND. ASTOUND shall be solely responsible for coordinating any such work with private property owners on whose property the facilities will be located. The Project will not provide for any construction beyond the limits shown on the PS&E which may be outside of the CITY’s right-of-way or Temporary Construction or Utility Easements. Coordination of work, and payment for necessary easements or agreements from private property owners, is the responsibility of ASTOUND and shall be done in a manner so as not to delay or otherwise impact the construction of the Project.

4. Compensation.

4.1 ASTOUND agrees to pay the CITY for its portion of the Project costs, reasonably attributed to the ASTOUND Facilities and actually incurred by the CITY in connection with the Relocation Work; including such amounts paid by the CITY to its Contractor for labor, materials

and other costs of the Relocation Work; provided, that for the costs of JUT excavation, backfill, right-of-way restoration, and any jointly used vaults, ASTOUND shall only pay for its share of those costs, as determined on the basis of the number and size of all other utilities being relocated into the JUT; and further provided, that ASTOUND shall pay for its portion of costs associated with lateral trenches occupied by ASTOUND Facilities including the installation of ASTOUND Facilities by the City's Contractor, as set forth in the PS&E. For planning purposes, an estimate of the costs to be reimbursed by ASTOUND to the CITY for the Work is attached as **Exhibit A** to this Agreement, and incorporated herein by this reference. This compensation covers a pro rata share of certain costs and the pro rata share formula is set forth on Attachment A. Preliminary costs shall be agreed upon prior to construction. Costs shall be finalized after completion of construction and will be subject to final review and approval by ASTOUND, which approval shall not be unreasonably withheld. ASTOUND agrees to pay the CITY for its portion of the actual construction costs approved by ASTOUND based on the pro rata share formula set forth on Attachment A.

4.2 *Share of additional expenses.* ASTOUND shall pay its proportionate share of any reasonable, additional expenses incurred by the CITY to complete the Work, including engineering and inspection costs associated with the Work, provided such additional expenses are mutually agreed upon by the parties in writing, prior to such additional expenses being incurred.

4.3 *Invoices.* ASTOUND shall pay all undisputed invoices to the CITY within sixty (60) days of being invoiced by the CITY. ASTOUND's responsibility for payment of disputed amounts shall be resolved under the Dispute Resolution provisions stated in Section 9 below.

4.4 *Defective or Unauthorized Work.* ASTOUND reserves the right to withhold payment from the CITY for any defective or unauthorized work performed by the Contractor until the same is corrected or approved, as determined by ASTOUND in the reasonable exercise of its discretion. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Agreement, and extra work and materials furnished without ASTOUND's approval.

5. Change Orders.

5.1 Any change requested by ASTOUND to be performed by the CITY shall be submitted to the CITY's Inspector, who will submit the request to the Contractor to obtain a reasonable price for the Contractor to perform the work. The CITY will notify ASTOUND of the price. ASTOUND will have five (5) business days after being notified of the price to respond and confirm or revise the requested change, and authorize any confirmed change in work and cost.

5.2 ASTOUND shall reimburse the CITY for its share of negotiated costs associated with any change, including associated engineering and inspection costs. ASTOUND shall not pay for any share of additional expenses incurred to the extent due to approved change requests from other private utilities and/or the CITY.

6. Schedule.

The CITY's Contractor will be responsible for planning and scheduling its work and the CITY will require the Contractor to submit a progress schedule to the CITY and ASTOUND prior to beginning construction activities.

7. Notices.

All notices shall be in writing and delivered in person or by certified mail return receipt requested or any other delivery system which is capable of providing proof of delivery, with copies to email if such information is also provided. Any such notice shall be deemed effective on the date of mailing. All notices shall be addressed to the parties as specified below:

Astound Broadband LLC
3700 Monte Villa Pkwy
Bothell, WA 98021
Attn: Richard Hays
Email: rhays@wavebroadband.com

With a copy to:

Astound Broadband, LLC
650 College Road East, Suite 3100
Princeton, NJ 08540
Attn: Legal Dept.

City of Lynnwood
19100 44th Ave. W
Lynnwood, WA 98046
Attn:

Either party may change the above addresses to which notices are sent by giving notice of such change to the other party in accordance with the provisions of this Section.

8. Governing Law.

This Agreement will be governed by and interpreted in accordance with the laws of the State of Washington.

9. Default.

Neither party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of fifteen (15) calendar days after written notice of default from any other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the fifteen (15) day period, then the defaulting

party shall initiate reasonable actions to cure within the fifteen (15) day period; provided, however, such default shall not be deemed a cure unless and until the defaulting party diligently prosecutes such cure to completion.

10. Dispute Resolution.

It is the parties' intent to work cooperatively and to resolve disputes in an efficient and cost-effective manner. All disputes arising out of or relating to this Agreement shall be resolved as follows:

10.1. Settlement Meeting. If any dispute arises between the parties relating to this Agreement, then the parties shall meet and seek to resolve the dispute, in good faith, within ten (10) days after a party's request for such a meeting. Each party shall send to the meeting at least one representative with factual and technical information or expertise related to the dispute.

10.2. Mediation. If the parties cannot resolve the issue within ten (10) days then they shall mediate the matter using a mediator from Judicial Dispute Resolution, LLC or any other mediation service mutually agreed to by the parties, or as appointed by the court if the parties cannot agree (collectively "JDR"), within seven (7) days of their failure to agree pursuant to Section 10.1. The parties shall evenly split any fees charged by JDR, regardless of the outcome of the mediation. Each party shall bear its own attorneys' fees in connection with the mediation.

10.3 Other Resolution. Except as otherwise specified in this Agreement, in the event the dispute is not resolved by mediation under Subsection 10.2 above, the parties are free to file suit, seek any available legal remedy, or agree to alternative dispute resolution methods such as mediation. At all times prior to resolution of the dispute, the parties shall continue to perform any undisputed obligations and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

11. Force Majeure.

Both parties shall be excused from performance of their respective obligations under this Agreement (and such nonperformance will not constitute a breach of this Agreement) if prevented by acts or events beyond the parties reasonable control including but not limited to extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities of the government of the United States or of any state or political subdivision thereof ("Force Majeure Event(s)"). Each party agrees to promptly notify the other party if and when the nonperforming party's performance is delayed by a Force Majeure Event, and both parties agree to use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event. Performance of any obligation affected by Force Majeure Event shall be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure Event.

12. Indemnification.

The CITY shall, and the CITY shall cause the Contractor to, defend, indemnify and hold harmless ASTOUND, its parents, subsidiaries and affiliates and each of their respective

directors, officers, employees, representatives and agents from and against any and all liabilities, claims, judgments, losses, orders, awards, damages, fines, penalties and costs, including reasonable attorneys' fees and expert witness fees (collectively, "Liabilities"), to the extent they arise from or in connection with: (a) the performance of any Work required under this Agreement by the CITY or Contractor and each of their respective directors, officers, employees, agents, subcontractors and/or representatives (each, a "City Indemnifying Party"), except for injuries and damages solely caused by the negligence or willful misconduct of any ASTOUND Indemnifying Party (as defined below); or (b) failure of any City Indemnifying Party to comply with any term of this Agreement or any applicable local, state, or federal law or regulation.

ASTOUND shall defend, indemnify and hold harmless the CITY, its directors, officials, officers, employees, representatives and agents from and against any and all Liabilities to the extent they arise from or in connection with: (a) the performance of any Work required under this Agreement by ASTOUND, its directors, officers, employees, agents, subcontractors and/or representatives (each, a "ASTOUND Indemnifying Party"), except for injuries and damages to the extent caused by the negligence or willful misconduct of any City Indemnifying Party; or (b) failure of any ASTOUND Indemnifying Party to comply with any term of this Agreement or any applicable local, state, or federal law or regulation, including but not limited to the OSH Act and environmental protection laws.

In the event of Liabilities arising out of injury or damages caused by or resulting from the concurrent negligence of the parties involved in the Project, such party's liability hereunder, including the duty and cost to defend, shall be limited only to the extent of its own negligence.

The indemnification provisions herein constitute each party's waiver of immunity under industrial insurance, Title 51 RCW, solely to carry out the purposes of the indemnification provisions. The parties acknowledge they have mutually negotiated this waiver. The foregoing waiver shall not in any way preclude the indemnifying party from raising such immunity as a defense against any claim brought against the indemnifying party by any of its employees.

EXCEPT TO THE EXTENT OF EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION, NEITHER PARTY IS LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, FRUSTATION OF ECONOMIC OR BUSINESS EXPECTATIONS, COMMERCIAL LOSS AND LOST PROFITS OR DOWN TIME COST, HOWEVER CAUSED AND REGARDLESS OF LEGAL THEORY OR FORESEEABILITY, DIRECTLY OR INDIRECTLY, ARISING UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. Insurance.

13.1 The CITY has included in the PS&E requirements for the Contractor to secure and maintain insurance coverages that are consistent with state law and federal funding requirements. Each party agrees to secure and maintain and the CITY shall cause Contractor to secure and maintain insurance in amounts not less than those specified below:

(1) Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage (including loss of use) occurring or arising out of work performed under this Agreement for which the insured party is responsible hereunder and including coverage for premises-operation product/completed operations and contractual liability coverage. The limits of insurance shall not be less than:

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000

(2) Workers' Compensation insurance with statutory limits as required in the state(s) of operation; and providing coverage for any employee in connection with this Agreement, even if not required by statute. Employer's Liability or "Stop Gap" insurance with limits of not less than \$1,000,000 each accident.

(3) Business Automobile Liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles used in connection with this Agreement with limits of at least \$1,000,000 each accident.

13.2 Each party shall assume all property loss or damage from any cause whatsoever to any of their respective tools, employee owned tools, machinery, equipment, any motor vehicles owned or rented, including any temporary structures, scaffolding and protective fences used in performance of work under this Agreement unless caused by the negligent act, omission or willful misconduct of the other party. The parties shall require their agents and subcontractors to also assume the same property loss or damage as required under this paragraph for their property.

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

13.4 Verification of Coverage. ASTOUND shall furnish the CITY with certificates and a copy of the amendatory endorsements or provisions, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of ASTOUND before commencement of the Work. Upon request, the CITY shall provide evidence of coverage in accordance with this Section 12.

13.5 Contractors. ASTOUND shall furnish separate certificates and endorsements for each of its contractors and subcontractor performing work associated with this Agreement. All coverages for contractors and subcontractors shall be subject to all of same insurance requirements as stated herein for ASTOUND.

14. Safety and Health.

14.1 During the performance of work under this Agreement, the CITY shall be responsible for its safety, the safety of its employees, agents or subcontractors, the public, and the worksite in general and shall comply with all applicable provisions of local, state and federal law, regulations and orders affecting safety and health that apply to the Project, including but not limited to the Occupational Safety and Health Act of 1970 (collectively referred to as "The OSH

Act”). The CITY shall promptly report all accidents and/or fatalities relating to the Work to ASTOUND. The CITY agrees that it and its subcontractors will give access to the authorized representatives of ASTOUND, or any state or local official for the purpose of inspecting, investigating or carrying out any required duties that apply to the Project, under the OSH Act and the CITY shall immediately notify ASTOUND if access is sought. The CITY shall be responsible for coordinating its safety plan with its subcontractors, other contractors and ASTOUND, where appropriate.

14.2 ASTOUND reserves the right to shut down the ASTOUND part of work operation if it reasonably believes the CITY, its employees, or subcontractors are performing work in a manner that imposes imminent danger to the workers, the job site, the public, and/or ASTOUND property.

15. Term and Termination.

15.1 This Agreement shall take effect on the Effective Date, and shall continue in force until the parties have performed all obligations under this Agreement.

15.2 Either party may terminate this Agreement upon thirty (30) days’ written notice to the other party in the event that the other party is in material default and has failed to cure such default under Section 9 above.

15.3 The CITY may terminate this Agreement at any time upon ten (10) days’ written notice to ASTOUND in the event that the City determines not to proceed with the Project for any reason or no reason.

16. Relationship of the Parties.

This Agreement does not create a partnership, joint venture or similar relationship between the parties and neither party will have the power to obligate the other in any manner whatsoever.

Any person who performs services required by this Agreement to be performed by a party will be solely the employee or agent of that party. Each party is solely responsible for (a) the hours of work, methods of performance and compensation of its employees and agents; (b) compliance with all federal, state, and local rules and regulations including those governing Worker’s Compensation, Unemployment, Disability Insurance, and Social Security withholding for its employees and agents; and (c) all federal income taxes for its income derived in connection with this Agreement.

17. Assignment.

Neither party may assign this Agreement without the prior written consent of the other party. Such consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, ASTOUND may assign this Agreement (i) to any affiliate or (ii) in connection

with the sale of any cable system or sale of substantially all of the business or assets of ASTOUND, in each case, to which the Project relates.

18. Entire Agreement/Amendments.

This Agreement, including all Exhibits and all specified references, contains the entire agreement between the parties and supersedes all prior oral and written agreements with respect to the subject matter hereof. This Agreement may not be amended or modified except by a written instrument executed by the parties hereto. No modifications to these terms, including handwritten, are permitted or shall be made without a duly executed written amendment between the parties or, if prior to execution, a revised printed Agreement. In the event any handwritten modification is made to the Agreement terms and conditions, such modifications shall be considered null and void, whether or not acknowledged by the parties, and the Agreement shall continue in full force and effect under its original, unadulterated terms and conditions.

19. Binding.

The terms, covenants and conditions contained in this Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

20. Counterparts.

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic means by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered as if the original had been received.

21. Authority.

Each party represents and warrants that it has the authority to execute, deliver and perform under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

ASTOUND:

CITY:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

EXHIBIT A

ESTIMATE OF ASTOUND/WAVE BROADBAND CONSTRUCTION COSTS TO BE REIMBURSED TO THE CITY

From Bid Tabulations - Joint Utility Trench Schedule D

ITEM NO.	ITEM	UNIT	QUANTITY	ESTIMATED UNIT PRICE	ESTIMATED AMOUNT
29D	Remove Existing Utility Vault	EA.	1	\$2,460	\$2,460
36D	Gravel Borrow Incl. Haul	TON	1035	\$19	\$19,665
55D	Vault Installation - W1 - Type 233-LA HH (Wave Broadband)	EA.	8	\$1,150	\$9,200
56D	Vault Installation - W2 - Type 25-TA HH (Wave Broadband)	EA.	2	\$1,150	\$2,300
58D	PVC Conduit - 4 In. Diam.	L.F.	4,223	\$15	\$63,345
63D	Joint Utility Trench Excavation incl. Haul	C.Y.	845	\$79	\$66,755
64D	Sand Bedding	C.Y.	143	\$45	\$6,435
67D	Crushed Surfacing Base Course	TON	113	\$20	\$2,260
110D	Shoring or Extra Excavation Class B	S.F.	6131	\$1	\$6,131
	Total				\$178,551

Pro-rata share of excavation and backfill quantities is based on trench length. Since majority of Wave trench consists of 1 – 4” conduit, conduit length is approximately equal to trench length.

ITEM NO.	ITEM	UNIT	PRO-RATA QUANTITY (DESIGN QUANTITY/TRENCH LENGTH)
36D	Gravel Borrow Incl. Haul	TON/L.F.	0.245
63D	Joint Utility Trench Excavation incl. Haul	C.Y./L.F.	0.200
64D	Sand Bedding	C.Y./L.F.	0.034
67D	Crushed Surfacing Base Course	TON/L.F.	0.027
110D	Shoring or Extra Excavation Class B	S.F./L.F.	1.45

CITY COUNCIL ITEM 90.1-E

CITY OF LYNNWOOD Public Works

TITLE: Construction Agreement: with Comcast for 196th St SW Project

DEPARTMENT CONTACT: Bill Franz and David Mach

SUMMARY:

The purpose of this agenda item is to enter into an agreement with Comcast to outline the roles and responsibilities associated with the construction of a Joint Utility Trench (JUT) for the 196th St SW Improvement Project. Comcast's utility facilities will need to be relocated from overhead to underground into the JUT. The agreement also defines Comcast's contribution to the construction costs.

ACTION:

Authorize the Mayor to enter into and execute on behalf of the City a Construction Agreement with Comcast to outline the roles and responsibilities associated with the construction of a Joint Utility Trench (JUT) and to share in the JUT construction costs for the 196th St SW Improvement Project.

BACKGROUND:

This project will improve 196th St SW from 37th Ave W to 48th Ave W by providing additional multi-modal capacity, safety and aesthetic boulevard features to support the future growth anticipated for the City Center. Capacity improvements include increasing the roadway section to seven lanes to accommodate installation of Business Access and Transit (BAT) lanes in each direction. The project also includes a planted center median/left turn/U-turn, new curb, gutter, wider sidewalks (including buffer), landscaping, hardscaping, undergrounding of overhead utilities into a Joint Utility Trench (JUT), street lighting, new traffic signals, replacement of much of the city's water, sewer and stormwater utilities within the street, and an overlay of the existing pavement. Construction is anticipated to be begin in February 2021 and completed by mid-2023.

The agreement outlines Comcast's contribution associated with the project's JUT costs. As part of the agreement, the City will procure and install vaults, conduits and associated trenching. Comcast will install cabling, conduct splicing and terminations. Comcast will pay the City an estimated \$176,000. Staff believes that it is in the best interest of the City to partner with Comcast to share in the JUT costs.

PREVIOUS COUNCIL ACTIONS:

This Construction agreement was introduced to City Council at the November 16, 2020 Work Session (Briefing: 196th St SW Improvement Project Bid Award).

FUNDING:

The total estimated construction cost (excluding Construction Management and Engineering services during construction) is \$27,910,930. As part of the agreement, Comcast has committed to paying the actual cost of their share of the JUT, which is estimated at \$176,052.

At the February 16, 2021 Council Work Session, Councilmember Smith asked how much City funds are to go towards the 196th Street SW project. Following is a summary breakdown of costs and funding.

\$3,758,307	Design
\$9,111,088	Property Acquisitions
<u>\$37,607,781</u>	Construction
\$50,477,176	Total

\$18,049,540	city funds
\$4,653,504	city utility funds
\$27,234,715	grants
<u>\$539,417</u>	other
\$50,477,176	Total

KEY FEATURES AND VISION ALIGNMENT:

The Lynnwood Community Vision states that the City is to “Invest in efficient, integrated, local and regional transportation systems”, “be a city that is responsive to the wants and needs of our citizens”, “be a welcoming city that builds a healthy and sustainable environment” with a “vibrant city center”.

The 196th St SW Improvement Project supports that vision and results in an important improvement to the City’s infrastructure that links City of Lynnwood programs, policies, comprehensive plans, mission, and ultimately the Community Vision. The project is a supporting capital project that is listed specifically in the City of Lynnwood 6 Year Transportation Improvement Plan (TIP) and Capital Facilities Plan (ST2003068A). Furthermore, this project meets the goal of providing necessary street capacity in support of the City Center expansion and future Lynnwood growth.

DOCUMENT ATTACHMENTS

Description:

[Lynnwood_Comcast_JUT-Agreement_02012021.docx](#)

Type:

Backup Material

JOINT UTILITY TRENCH CONSTRUCTION AGREEMENT

THIS JOINT UTILITY TRENCH CONSTRUCTION AGREEMENT (“Agreement”), effective as of the date last signed below (“Effective Date”), is made by and between the City of Lynnwood, a Washington municipal corporation (“CITY”), and Comcast Cable Communications, LLC, a Delaware limited liability company (“COMCAST”).

RECITALS

A. The CITY is making improvements to the roadway in the CITY right-of-way known as 196th St. SW (the “Project”).

B. COMCAST provides cable services in the CITY through cable utility facilities located in CITY rights-of-way, including the 196th St. SW right-of-way.

C. The Project includes the relocation of utility facilities that are currently located along the 196th St. SW corridor and owned by COMCAST and other service providers, including the undergrounding of utility facilities that are currently overhead (“Relocation”).

D. The CITY completed the design of the Project, including Plans, Specifications, and Estimates (“PS&E”) for the Project, advertised the Project for bid, and awarded the contract for the Project’s construction to a contractor in November 2020. By this reference, the PS&E (consisting of Conformed Plans dated 11/20/2020, Conformed Manual dated 9/16/2020, and Bid Tabulations dated 10/26/2020) and filed under City project number 2849, are made of part of this Agreement.

E. The Relocation will require the construction of trenching within the 196th St. SW and other City right-of-way for placement of facilities of utilities service providers, including COMCAST, the CITY and others, into a Joint Utility Trench (“JUT”).

F. COMCAST desires to secure the services of the CITY to install conduit, utility vaults and other equipment underground (“Work”) and COMCAST desires to cooperate in the planning, engineering, design and other work associated with completion of the JUT and the Work as part of the Project.

G. The CITY is willing to include the Work in the City’s Project on the condition that COMCAST pay for and reimburse the CITY for the Work in accordance with the terms, conditions and provisions of this Agreement.

AGREEMENT

In consideration of the mutual covenants, terms, conditions and obligations stated below, the parties agree as follows:

1. Project Description.

The JUT will be placed in the CITY 196th St. SW right-of-way from 100 feet west of 48th Ave. W. to 340 feet west of 36th Ave. W. The Relocation is approximately 3,380 feet in length along the Project route and includes facilities extended to those side streets and to properties included and as shown in the PS&E. The JUT will be constructed to accommodate the underground facilities of several utility service providers, including at a minimum, the CITY, COMCAST, Public Utility District No. 1 of Snohomish County, Ziply Fiber (f/k/a Frontier Communications Northwest Inc.), and Astound Broadband. The CITY has awarded a contract for and completed the design of the Project, and has awarded a contract that includes construction of the Project, including the JUT and the Work.

2. Performance of Work.

2.1 The CITY, acting through the successful bidder on the Project (“Contractor”), shall perform and complete the Work in accordance with the PS&E and all applicable federal, state and local laws and the requirements of those that own or have jurisdiction over the rights of way in which the Relocation Work is to be performed. As one of the first orders of work to be required, the Contractor shall develop a construction schedule for the Project in sufficient detail to allow the CITY and COMCAST to understand timeframes for completion of the Project and the Work.

2.2 To the extent that performance of the Relocation Work requires the installation of any materials that would not be needed but for COMCAST’s participation in the Project, COMCAST shall arrange for the purchase and delivery of such materials to the Contractor in accordance with Subsection 3.2 below. Specific materials to be purchased and delivered by COMCAST are defined in the PS&E.

3. Responsibility of Parties to Complete the Work.

3.1 CITY Responsibilities.

3.1.1 *Contractor Duties.* The CITY shall cause the Contractor to excavate the JUT, accommodate and coordinate the installation of underground utilities, install vaults, conduits and other equipment, furnish and install bedding material, backfill and compact the JUT, and perform any restoration required by the CITY within the right-of-way. The CITY shall cause the Contractor to install COMCAST conduit, utility vaults and related equipment in accordance with written requirements and drawings provided in the PS&E. The CITY shall cause the Contractor to provide traffic control required for the Work.

3.1.2 *Notice of Materials Required.* The CITY shall provide COMCAST notice, not less than ten (10) working days prior to the required delivery date, requesting delivery of necessary conduits and vaults and all related equipment or materials that the Contractor reasonably requires to install the JUT and the COMCAST conduits, vaults and related equipment.

3.1.3 *Other Notices Under Section 3.2.* The CITY shall provide such other notices to COMCAST as are required under Section 3.2 below.

3.1.4 *Plan Discrepancies.* If there is any discrepancy between the PS&E and the COMCAST plans, the parties mutually agree to work together to resolve such discrepancy between said plans.

3.2 COMCAST Responsibilities.

3.2.1 *Provision of Work, Materials, and Equipment.* All work and equipment described in this subsection as COMCAST responsibilities shall be provided by COMCAST in the manner and timeframe described herein at COMCAST's sole cost and expense.

3.2.2 *Coordination.* COMCAST shall maintain continued coordination with the CITY regarding installation of COMCAST's facilities. This coordination shall include, but not be limited to the following:

- (i) The Contractor shall develop a schedule that will accurately describe how the Contractor plans to complete the Project, including the Relocation and the Work. COMCAST shall be responsible for coordinating its work to meet this Project schedule.
- (ii) A weekly meeting shall be held at which the Contractor will provide a schedule and list of materials needed for the following three (3) weeks. A representative from COMCAST shall attend each meeting and provide weekly progress reports. The COMCAST representative shall be responsible for coordinating the delivery of materials per the discussion of schedule at these weekly meetings, in accordance with this Subsection 3.2.2.
- (iii) COMCAST shall furnish all materials required for the installation of COMCAST conduit, utility vaults and related equipment, including pull boxes, vaults, conduits and all other materials necessary for installation of the vaults, conduits and related equipment required by the Contractor for the installation of COMCAST facilities that week, not less than ten (10) working days prior to the date that the work in each stage is scheduled to begin, as discussed in the weekly meetings; provided, that CITY gives COMCAST notice in accordance with Subsection 3.1.2. The CITY shall provide a reasonable location to COMCAST to which the materials will be delivered.
- (iv) COMCAST and the CITY shall each provide an inspector on-site, on twenty-four (24) hours' notice, to inspect and accept the installation of all vault and conduit installation Work. COMCAST's inspector shall not direct the Contractor in any manner; the COMCAST inspector shall communicate all requests in writing to the CITY's inspector.

- (v) Once sections of vault, conduit and related equipment are installed by the CITY through its Contractor and accepted by COMCAST, COMCAST shall complete installation of conductors and other equipment and perform cut-over and transfer of existing customers and facilities to the new underground system, and remove all existing facilities that are no longer in use (the “COMCAST Installation Work”). COMCAST’s responsibilities for the COMCAST Installation Work shall include, but not be limited to, furnishing and installing all cables, conductors, electrical equipment, and temporary utility poles; conversion to underground; and the removal of poles, and other equipment no longer needed.
- (a) The City or its Contractor shall provide fourteen calendar days’ written notice to COMCAST of the date on which the trench, vaults, conduits and related equipment will be ready and available for COMCAST to perform the COMCAST Installation Work for each Stage (the “Installation Work Date”). COMCAST shall complete the COMCAST Installation Work within 60 calendar days after the Installation Work Date for each Stage.
- (b) Subject to Force Majeure Events (hereinafter defined), the COMCAST Installation Work shall be performed and completed by COMCAST in a manner that does not delay or otherwise impact progress of construction of the Project, any work by other utilities in connection with the Project, or any of the Contractor’s other work on the Project.

3.2.3 *Traffic Control.* COMCAST or its contractor shall provide traffic control when COMCAST or its contractor is installing its new underground cabling and splicing or performing overhead construction and removing its existing overhead facilities. Traffic control plans to be utilized by COMCAST or its contractor shall be coordinated with traffic control established for the Project. Allowable lane closure hours shall be in accordance with the Project PS&E.

3.2.4 *Installation Not in Right-of-Way or Temporary Construction and Utility Easements.* The installation of any COMCAST facilities not in CITY right-of-way or temporary construction or utility easements obtained by the City for the Project, including but not limited to cable, conduit, and pedestals, shall be the sole responsibility of COMCAST. COMCAST shall be solely responsible for coordinating any such work with private property owners on whose property the facilities will be located. The Project will not provide for any construction beyond the limits shown on the PS&E which may be outside of the CITY’s right-of-way or Temporary Construction or Utility Easements. Coordination of work, and payment for necessary easements or agreements from private property owners, is the responsibility of COMCAST and shall be done in a manner so as not to delay or otherwise impact the construction of the Project.

4. Compensation.

4.1 Subject to the approval process set forth in this section below, COMCAST agrees to pay the CITY for the CITY'S actual costs to install the items listed in Exhibit A; including all related amounts paid by the City to its Contractor for labor, materials and other costs of all such Work, except for the costs of JUT excavation, backfill, and right-of-way restoration; provided, however, that COMCAST shall pay for all costs associated with COMCAST lateral trenches including the installation of COMCAST vaults, conduit and other equipment by the City's Contractor that are documented in a mutually agreed Change Order. For planning purposes, an estimate of the costs to be reimbursed by COMCAST to the CITY for the Work is attached as **Exhibit A** to this Agreement, and incorporated herein by this reference. Preliminary costs shall be agreed upon prior to construction. Costs shall be finalized after completion of construction and will be subject to final review and approval by COMCAST, which approval shall not be unreasonably withheld. COMCAST agrees to pay the CITY for its portion of the actual construction costs approved by COMCAST based on the pay items set forth on Exhibit A.

4.2 *Invoices.* The CITY shall invoice COMCAST for all amounts due to the CITY from COMCAST under this Agreement. COMCAST shall pay all undisputed amounts to the CITY within sixty (60) days of being invoiced by the CITY. COMCAST's responsibility for payment of disputed amounts shall be resolved under the Dispute Resolution provisions stated in Section 10 below. The making of final payment by Comcast shall constitute a waiver of claims by the City, except those previously and properly made and identified as unsettled at the time the City makes written request to Comcast for final payment.

4.3 *Defective or Unauthorized Work.* COMCAST reserves the right to withhold payment from the CITY for any defective or unauthorized Work performed by the Contractor until the same is corrected or approved, as determined by COMCAST in the reasonable exercise of its discretion. Defective or unauthorized Work includes, without limitation: work and materials that do not conform to the requirements of this Agreement, and extra work and materials furnished without COMCAST's approval.

5. Change Orders.

5.1 Any change requested by COMCAST to be performed by the CITY shall be submitted to the CITY's Inspector, who will submit the request to the Contractor to obtain a reasonable price for the Contractor to perform the work. The CITY will notify COMCAST of the price. COMCAST will have five (5) business days after being notified of the price to respond and confirm or revise the requested change, and authorize any confirmed change in work and cost.

5.2 COMCAST shall reimburse the CITY for its share of negotiated costs associated with any change, including associated engineering and inspection costs. COMCAST shall not pay for any share of additional expenses incurred due solely to approved change requests from other private utilities and/or the CITY.

5.3 Any changes must be agreed upon in advance as evidenced by written amendment(s) to this Agreement signed by authorized representatives of both parties (each, a "Change Order").

6. Schedule.

The CITY's Contractor will be responsible for planning and scheduling its work and the CITY will require the Contractor to submit a progress schedule to the CITY and COMCAST prior to beginning construction activities.

7. Notices.

All notices shall be in writing and delivered in person or by certified mail return receipt requested or any other delivery system which is capable of providing proof of delivery. Any such notice shall be deemed effective on the date of mailing. All notices shall be addressed to the parties as specified below:

Comcast Cable Communications, LLC
1525 75th ST SW #200
Everett, WA 98203
Attn: Jill Look, Supervisor, OSP Engineering / Construction

With copies to:

Comcast Cable Communications, LLC
One Comcast Center
1701 JFK Blvd.
Philadelphia, PA 19103
Attn: Cable Law Department-Operations

City of Lynnwood
19100 44th Ave. W
Lynnwood, WA 98036
Attn: David Mach, Public Works Manager / City Engineer

Either party may change the above addresses to which notices are sent by giving notice of such change to the other party in accordance with the provisions of this Section.

8. Governing Law/Venue.

This Agreement will be governed by and interpreted in accordance with the laws of the State of Washington. Venue of any judicial resolution of disputes under this Agreement shall be Snohomish County Superior Court.

9. Default.

Neither party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of fifteen (15) calendar days after written notice of default from the other party. Each notice of default shall specify the nature of the alleged default and the

manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the fifteen (15) day period, then the defaulting party shall initiate reasonable actions to cure within the fifteen (15) day period; provided, however, such default shall not be deemed a cure unless and until the defaulting party diligently prosecutes such cure to completion.

10. Dispute Resolution.

It is the parties' intent to work cooperatively and to resolve disputes in an efficient and cost-effective manner. All disputes arising out of or relating to this Agreement shall be resolved as follows:

10.1. Settlement Meeting. If any dispute arises between the parties relating to this Agreement, then the parties shall meet and seek to resolve the dispute, in good faith, within ten (10) days after a party's request for such a meeting (a "Settlement Meeting"). Each party shall send to the meeting at least one representative with factual and technical information or expertise related to the dispute.

10.2. Other Resolution. Except as otherwise specified in this Agreement, in the event the dispute is not resolved in a Settlement Meeting, the parties are free to file suit, and seek any available equitable or legal remedy. At all times prior to resolution of the dispute, the parties shall continue to perform any undisputed obligations and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

10.3. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Washington without regard to conflict of laws principles.

11. Force Majeure.

Both parties shall be excused from performance of their respective obligations under this Agreement (and such nonperformance will not constitute a breach of this Agreement) if prevented by acts or events beyond the parties reasonable control including but not limited to extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities of the government of the United States or of any state or political subdivision thereof ("Force Majeure Event(s)"). Each party agrees to promptly notify the other party if and when the nonperforming party's performance is delayed by a Force Majeure Event, and both parties agree to use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event. Performance of any obligation affected by Force Majeure Event shall be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure Event.

12. Indemnification.

The CITY shall, and the CITY shall cause the Contractor to, defend, indemnify and hold harmless COMCAST, its parents, subsidiaries and affiliates and each of their respective

directors, officers, employees, and representatives (collectively the “COMCAST Indemnified Parties”) from and against any and all liabilities, claims, judgments, losses, orders, awards, damages, fines, penalties and costs, including reasonable attorneys’ fees and expert witness fees (collectively, “Liabilities”), to the extent they arise from or in connection with: (a) the performance of any Work required under this Agreement by the CITY or Contractor and each of their respective directors, officers, employees, subcontractors and/or representatives, except for injuries and damages solely caused by the negligence or willful misconduct of any COMCAST Indemnified Party; or (b) failure of the CITY, the Contractor or any of their respective officers, employees, subcontractors and/or representatives to comply with any term of this Agreement or any applicable local, state, or federal law or regulation, including but not limited to the OSH Act (hereinafter defined) and environmental protection laws.

COMCAST shall defend, indemnify and hold harmless the CITY, its directors, officials, officers, employees, and representatives (collectively the “CITY Indemnified Parties”) from and against any and all Liabilities to the extent they arise from or in connection with: (a) the performance of any Work required under this Agreement by COMCAST, its directors, officers, employees, subcontractors and/or representatives, except for injuries and damages solely caused by the negligence or willful misconduct of any City Indemnified Party; or (b) failure of COMCAST, its officers, directors, employees, subcontractors and/or representatives to comply with any term of this Agreement or any applicable local, state, or federal law or regulation, including but not limited to the OSH Act (hereinafter defined) and environmental protection laws.

In the event of Liabilities arising out of injury or damages caused by or resulting from the concurrent negligence of the parties involved in the Project, such party’s liability hereunder, including the duty and cost to defend, shall be limited only to the extent of its own negligence.

The indemnification provisions herein constitute each party’s waiver of immunity under industrial insurance, Title 51 RCW, solely to carry out the purposes of the indemnification provisions. The parties acknowledge they have mutually negotiated this waiver. The foregoing waiver shall not in any way preclude the indemnifying party from raising such immunity as a defense against any claim brought against the indemnifying party by any of its employees.

EXCEPT FOR EACH PARTY’S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION, NEITHER PARTY IS LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, FRUSTATION OF ECONOMIC OR BUSINESS EXPECTATIONS, COMMERCIAL LOSS AND LOST PROFITS OR DOWN TIME COST, HOWEVER CAUSED AND REGARDLESS OF LEGAL THEORY OR FORESEEABILITY, DIRECTLY OR INDIRECTLY ARISING UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

The provisions of this Section 12 shall survive the termination or expiration of this Agreement for one (1) year.

13. Insurance.

13.1 The CITY has included in the PS&E requirements for the Contractor to secure and maintain insurance coverages that are consistent with state law and federal funding requirements. Each party agrees to secure and maintain, and the CITY shall cause the Contractor to secure and maintain, insurance in amounts not less than those specified below:

(1) Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage (including loss of use) occurring or arising out of work performed under this Agreement for which the insured party is responsible hereunder and including coverage for premises-operation product/completed operations and contractual liability coverage. The limits of insurance shall not be less than:

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000

(2) Workers' Compensation insurance with statutory limits as required in the state(s) of operation; and providing coverage for any employee in connection with this Agreement, even if not required by statute. Employer's Liability or "Stop Gap" insurance with limits of not less than \$1,000,000 each accident.

(3) Business Automobile Liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles used in connection with this Agreement with limits of at least \$1,000,000 each accident.

13.2 Each party shall assume all property loss or damage from any cause whatsoever to any of their respective tools, employee owned tools, machinery, equipment, any motor vehicles owned or rented, including any temporary structures, scaffolding and protective fences used in performance of work under this Agreement unless caused by the negligent act, omission or willful misconduct of the other party. The parties shall require their agents and subcontractors to also assume the same property loss or damage as required under this paragraph for their property.

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

13.4 Verification of Coverage. COMCAST shall furnish the CITY with certificates and a copy of the amendatory endorsements or provisions, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of COMCAST before commencement of the Work. Upon request, the CITY shall provide evidence of coverage in accordance with this Section 12.

13.5 Contractors. COMCAST shall furnish separate certificates and endorsements for each of its contractors and subcontractor performing work associated with this Agreement. All coverages for contractors and subcontractors shall be subject to all of same insurance requirements as stated herein for COMCAST.

14. Safety and Health.

14.1 During the performance of work under this Agreement, the CITY shall be responsible for its safety, the safety of its employees, agents or subcontractors, the public, and the worksite in general and shall comply with all applicable provisions of local, state and federal law, regulations and orders affecting safety and health that apply to the Project, including but not limited to the Occupational Safety and Health Act of 1970 (the "OSH Act"). The CITY shall promptly report serious accidents and/or fatalities relating to the Work to COMCAST. The CITY agrees that it and its subcontractors will give access to the authorized representatives of COMCAST, or any state or local official for the purpose of inspecting, investigating or carrying out any required duties that apply to the Project, under the OSH Act and the CITY shall immediately notify COMCAST if access is sought. Upon request, the CITY will provide COMCAST with copies of any written safety plan(s) and procedures required under the OSH Act and/or written assurances that the CITY and its subcontractors have a written safety plan in effect and that applicable OSH Act training appropriate for the work has been conducted for the CITY and its subcontractors, including but not limited to the requirements as defined in OSHA Excavation Standard, 29 CFR 1926.650(b) for providing a "Competent Person" at all work sites, who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to personnel, and who has the authorization to take prompt corrective measures to eliminate such hazards. The CITY shall be responsible for coordinating its safety plan with its subcontractors, other contractors and COMCAST, where appropriate.

14.2 COMCAST reserves the right to shut down the COMCAST part of work operations if it reasonably believes the CITY, its employees, or subcontractors are performing work in a manner that imposes imminent danger to the workers, the job site, the public, and/or COMCAST property.

15. Term and Termination.

15.1 This Agreement shall take effect on the Effective Date, and shall continue in force until the parties have performed all obligations under this Agreement.

15.2 Either party may terminate this Agreement upon thirty (30) days' written notice to the other party in the event that the other party is in material default and has failed to cure such default under Section 9 above.

15.3 The CITY may terminate this Agreement at any time upon ten (10) days' written notice to COMCAST in the event that the City determines not to proceed with the Project for any reason or no reason.

16. Relationship of the Parties.

This Agreement does not create a partnership, joint venture or similar relationship between the parties and neither party will have the power to obligate the other in any manner whatsoever.

Any person who performs services required by this Agreement to be performed by a party will be solely the employee or agent of that party. Each party is solely responsible for (a) the hours of work, methods of performance and compensation of its employees and agents; (b) compliance with all federal, state, and local rules and regulations including those governing Worker's Compensation, Unemployment, Disability Insurance, and Social Security withholding for its employees and agents; and (c) all federal income taxes for its income derived in connection with this Agreement.

17. Assignment.

Neither party may assign this Agreement without the prior written consent of the other party. Such consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, COMCAST may assign this Agreement (i) to any affiliate or (ii) in connection with the sale of any cable system or sale of substantially all of the business or assets of COMCAST, in each case, to which the Project relates.

18. Entire Agreement/Amendments.

This Agreement, including all Exhibits and all specified references, contains the entire agreement between the parties and supersedes all prior oral and written agreements with respect to the subject matter hereof. This Agreement may not be amended or modified except by a written instrument executed by the parties hereto. No modifications to these terms, including handwritten, are permitted or shall be made without a duly executed written amendment between the parties or, if prior to execution, a revised printed Agreement. In the event any handwritten modification is made to the Agreement terms and conditions, such modifications shall be considered null and void, whether or not acknowledged by the parties, and the Agreement shall continue in full force and effect under its original, unadulterated terms and conditions.

19. Binding.

The terms, covenants and conditions contained in this Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

20. Counterparts.

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic means by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered as if the original had been received.

21. Authority.

Each party represents and warrants that it has the authority to execute, deliver and perform under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

COMCAST CABLE
COMMUNICATIONS, LLC:

CITY OF LYNNWOOD:

By: _____

Printed Name: _____

Title: _____

Date Signed: _____

By: _____

Printed Name: _____

Title: _____

Date Signed: _____

EXHIBIT A
ESTIMATE OF COMCAST CONSTRUCTION COSTS TO BE REIMBURSED TO THE CITY

From Bid Tabulations - Joint Utility Trench Schedule D

ITEM NO.	ITEM	UNIT	QUANTITY	ESTIMATED UNIT PRICE	ESTIMATED AMOUNT
52D	Vault Installation - C1 - Precast Concrete Type 3642-LA (Comcast)	EA.	23	\$1,150	\$26,450
53D	Vault Installation - C2 - Precast Concrete Type 444-LA (Comcast)	EA.	12	\$1,150	\$13,800
54D	Vault Installation - C3 - Precast Concrete Type 17301366 (Comcast)	EA.	3	\$1,150	\$3,450
61D	Installation Only PVC Conduit - 2 In. Diam.	L.F.	1,040	\$4	\$4,160
62D	Installation Only PVC Conduit - 4 In. Diam.	L.F.	16,024	\$8	\$128,192
	Total				\$176,052

CITY COUNCIL ITEM 90.1-F

CITY OF LYNNWOOD Administrative Services

TITLE: Voucher Approval

DEPARTMENT CONTACT: Corbitt Loch, Acting Director

SUMMARY:

Approve claims in the amount of 1,738,685.24for the period 1/30/2021 - 2/12/2021.
Approve payroll in the amount of \$1,135,569.92 dated 2/12/2021.

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM 90.3-A

CITY OF LYNNWOOD Administrative Services

TITLE: Resolution- Finance Committee Calendar 2021

DEPARTMENT CONTACT: Corbitt Loch

SUMMARY:

The City Council Rules of Procedure call for approval of the meeting calendar for the Finance Committee for the forthcoming year. During the January 28 Finance Committee meeting, the attached resolution and calendar was approved. The 2021 calendar continues the past practice of holding Finance Committee meetings at 3:00 pm on the fourth Thursday of each month (except November, and no meetings during August and December).

POLICY QUESTION(S) FOR COUNCIL CONSIDERATION:

Should the 2021 meeting calendar be approved as written?

ACTION:

Approve the draft resolution.

BACKGROUND:

It is appropriate that the meetings of the Finance Committee be confirmed each year since the meetings are open to the public and the meeting date/time is not specified elsewhere.

PREVIOUS COUNCIL ACTIONS:

This procedural step occurs each year.

FUNDING:

NA

KEY FEATURES AND VISION ALIGNMENT:

Confirming Finance Committee meeting dates promotes transparency, efficiency, and community engagement.

ADMINISTRATION RECOMMENDATION:

Approve the draft resolution.

DOCUMENT ATTACHMENTS

Description:	Type:
Draft Resolution with Calendar	Backup Material



RESOLUTION NO. ____

**A RESOLUTION OF THE CITY OF LYNNWOOD, WASHINGTON,
ADOPTING THE 2021 MEETING SCHEDULE FOR THE CITY COUNCIL
FINANCE COMMITTEE.**

WHEREAS, with the approval of Resolution 2012-01 on January 9, 2012, the City Council established City Council Finance Committee; and

WHEREAS, the City Council Rules of Procedure (Resolution 2015-04) state that the Finance Committee shall present an ordinance or resolution to the City Council that sets their regular meeting dates/times for the year; and

WHEREAS, on January 28, 2021, the Finance Committee approved the calendar provided herein; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF LYNNWOOD DOES RESOLVE AS FOLLOWS:

Section 1. Adoption of regular meeting time, date, and location. The regular meeting schedule for the City Council Finance Committee shall be 3:00 pm on the fourth Thursday of each month, unless otherwise stated below. As indicated on the City of Lynnwood website (www.Lynnwoodwa.gov), meetings will be held electronically until public health regulations allow for in-person meetings at Lynnwood City Hall, 19100 44th Ave W, Lynnwood, WA 98036.

Section 2. Finance Committee meeting calendar for 2021.

January 28, 2021 (fourth Thursday)	July 22, 2021 (fourth Thursday)
February 25, 2021 (fourth Thursday)	August 2021 none - recess
March 25, 2021 (fourth Thursday)	September 23, 2021 (fourth Thursday)
April 22, 2021 (fourth Thursday)	October 28, 2021 (fourth Thursday)
May 27, 2021 (fourth Thursday)	November 18, 2021 (third Thursday)
June 24, 2021 (fourth Thursday)	December 2021 none – recess

Section 3. Changes to meeting schedule authorized. The chair of the Finance Committee may authorize variation(s) to the meeting schedules specified herein, with public notice provided in accordance with applicable law.

//

This Resolution shall be in full force and effect from and after its adoption and approval.

PASSED BY THE CITY COUNCIL, the 22nd day of February 2021.

APPROVED:

Nicola Smith, Mayor

ATTEST/AUTHENTICATED:

Karen Fitzthum, Interim City Clerk

FILED WITH CITY CLERK: __/__/2021

PASSED BY THE CITY COUNCIL: __/__/2021

RESOLUTION NUMBER: 2021-__

CITY COUNCIL ITEM 90.3-B

CITY OF LYNNWOOD City Council

TITLE: Discussion: Business Round Table

DEPARTMENT CONTACT: Lisa Harrison, Executive Assistant

SUMMARY:

Council President Hurst will review the procedures for the March 17th business round table discussion.

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM 90.3-C

CITY OF LYNNWOOD Executive

TITLE: Executive Session, If Needed

DEPARTMENT CONTACT: Leah Jensen

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available