

**LYNNWOOD
CITY COUNCIL
Work Session**

Date: Tuesday, February 16, 2021

Time: 6:00 PM

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

-
- | | | |
|---------|----------|--|
| 6:00 PM | A | Roll Call |
| 6:05 PM | B | Comments and Questions on Memo Items |
| 6:10 PM | C | Race and Social Justice Coordinator Position |
| 6:55 PM | D | Introduction to the Community Equity Survey |
| 7:15 PM | E | Break |
| 7:25 PM | F | Briefing: Scriber Creek Trail Improvements Project |
| 8:10 PM | G | Mayor Comments and Questions |
| 8:15 PM | H | Council President and Council Comments |
| 8:20 PM | I | Executive Session, If Needed |
| | | Adjourn |

Memorandums for Future Agenda Items:

- | | |
|-----|--|
| M-1 | Contract Supplement: Scriber Creek Trail Improvements |
| M-2 | Construction Agreement: with Wave for 196th St SW Project |
| M-3 | Construction Agreement: with Comcast for 196th St SW Project |
| M-4 | Resolution- Finance Committee Calendar |

Memorandums for Your Information:

- | | |
|-------|--|
| FYI-1 | Annual Report: Planning Commission Annual Report |
| FYI-2 | Annual Report: Hearing Examiner Annual Report |

Contact: Executive Office (425) 670-5001

CITY COUNCIL ITEM A

CITY OF LYNNWOOD Executive

TITLE: Roll Call

DEPARTMENT CONTACT: Leah Jensen

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM B

CITY OF LYNNWOOD Executive

TITLE: Comments and Questions on Memo Items

DEPARTMENT CONTACT: Leah Jensen

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM C

CITY OF LYNNWOOD Executive

TITLE: Race and Social Justice Coordinator Position

DEPARTMENT CONTACT: Mayor Nicola Smith

SUMMARY:

The City of Lynnwood will begin recruitment to hire a Race and Social Justice Coordinator. The position will provide coordination and guidance in the City's social justice initiatives, will amplify the City's outreach efforts and will oversee the review of the City's policies and programs to ensure they are equitable and adequately serve all Lynnwood community members.

ACTION:

Administration is soliciting feedback from Council on the work of the Race and Social Justice position. We ask Council to consider these two questions:

1. What are the outcomes that Council would like to see as a result of the City's race and social justice work?
2. What does success look like for this position?

PREVIOUS COUNCIL ACTIONS:

At Council's Business Meeting on Monday, November 23, 2020, Council approved the 2021-2022 budget and salary schedule, which included funding for the Race and Social Justice position. At that time, a motion was made by Councilmember Altamirano-Crosby and seconded by Councilmember Smith to "delay the hiring of the Race and Social Justice Coordinator until further research is done in 2021." This presentation is a result of the requested research.

FUNDING:

Position is funded in the 2021-2022 budget and salary schedule.

KEY FEATURES AND VISION ALIGNMENT:

The Race and Social Justice Coordinator position is aligned with the City's vision to be a cohesive community that respects all citizens. This position is also aligned with the City's Strategic Priority #4: Be a safe, welcoming, and livable city and Priority #5 Pursue and maintain collaborative relationships and partnerships. Additionally, this position is aligned with Resolution 2017-03 Safe, Welcoming, and Equitable City.

DOCUMENT ATTACHMENTS

Description:	Type:
Presentation RSJ Coordinator Position	Presentation



Race & Social Justice Coordinator

This position will:

- ◆ Perform a variety of outreach, administrative, analytical, and strategic operational duties
- ◆ Lead projects, foster outreach and engagement, facilitate, and teach on a variety of relevant topics across the organization enabling employees to incorporate the principles of racial and social equity into everything they do for the City.

Race & Social Justice Coordinator

This position:

- ◆ Is currently in the adopted 2021-2022 budget and salary schedule
- ◆ It is a new job title/description, but not new money, actually a savings from previous position
- ◆ Does have an outreach function, connecting people to programs/services
- ◆ Amplifies outreach and connecting residents to services by coordinating city equity efforts to increase citywide engagement
- ◆ Making sure policies and programs are inclusive and equitable

Demographic Snapshot

Census Population: **38,511** Represents a **7.4%** Increase from 2010



Gender

■ Female - 50.6%
■ Male - 49.4%



Age

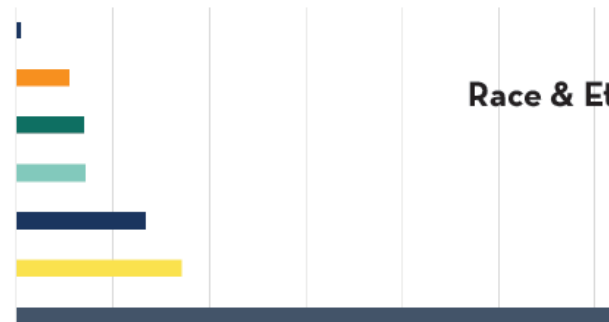
■ Under 5 years - 4.9%
■ 18 years and older - 78.8%
■ 65 years and older - 15%

64.7%
Population 16yrs+
in the civilian
workforce

2,131
Veterans

11.7%
Disabled Population

28.7%
Foreign Born



Race & Ethnicity

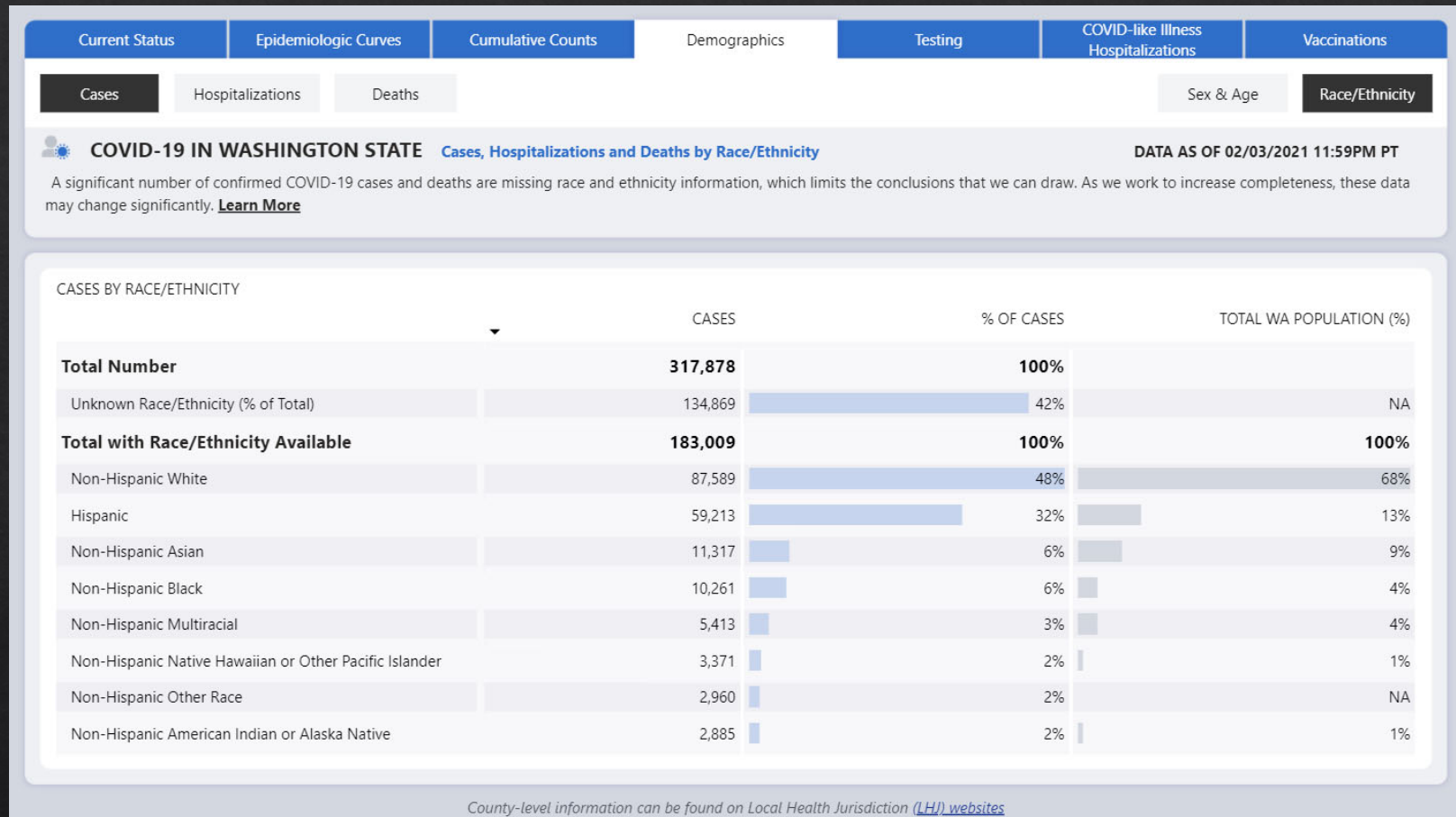
■ White Alone - 62.2%
■ Asian alone - 17.1%
■ Hispanic or Latino - 13.3%
■ Black or African American alone - 7.1%
■ Two or more races - 7.0%
■ Some other race alone - 5.5%
■ American Indian and Alaska Native alone - 0.4%

35.1%
Speak a Language
other than English
at home

Top Languages Spoken by Student Families of Edmonds School District:

English, Spanish, Vietnamese, Arabic,
Amharic, Korean, Russian, Ukrainian

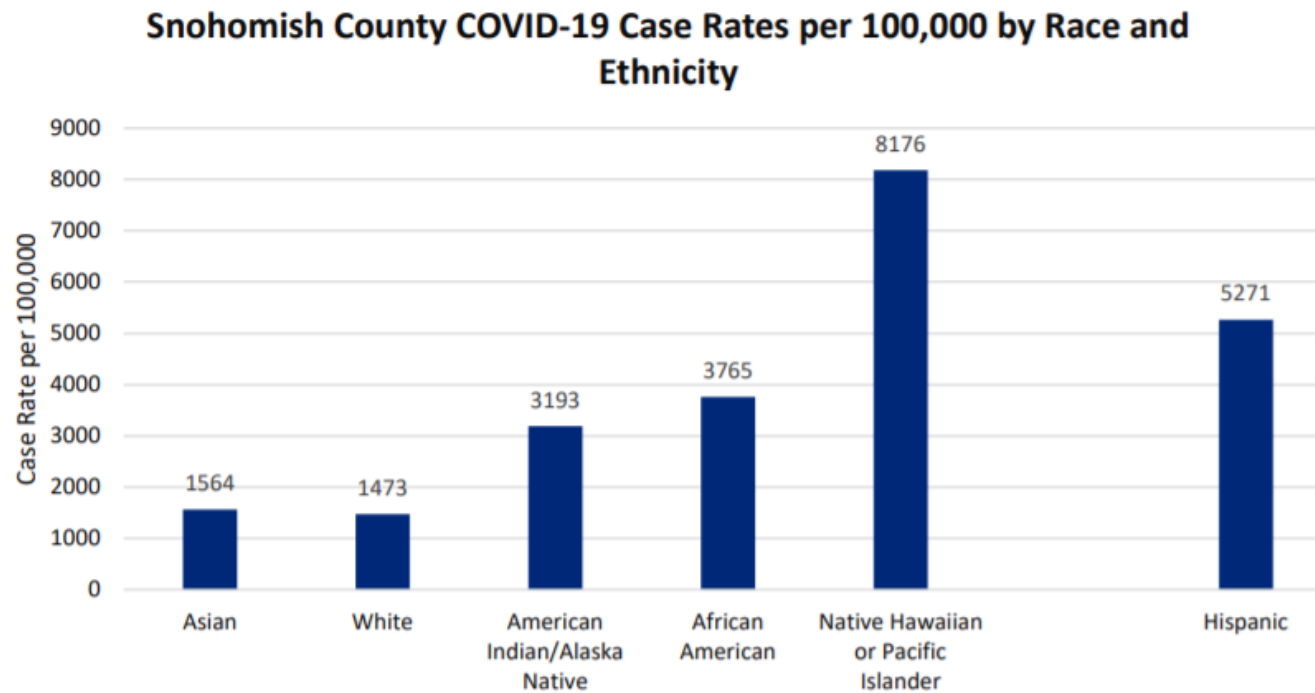
COVID-19 Racial Disparities



WA State COVID-19 Cases by Race/Ethnicity: Data from www.doh.wa.gov

COVID-19 Racial Disparities

Figure 1: COVID-19 case rates per 100,000 by Race and Ethnicity, Snohomish County



Snohomish County COVID-19 Cases by Race/Ethnicity: Data from www.snohd.org

History

- ◆ 2004: Neighborhoods & Demographic Diversity Advisory Commission established
- ◆ 2005: Office of Neighborhoods & Community Affairs established
- ◆ 2009: *Lynnwood Moving Forward: Our Community Vision* adopted



History

- ◆ 1/23/2017: Resolution 2017-03, Safe, Welcoming & Equitable Community
- ◆ 1/23/2017: Ordinance 3247 Establishing Diversity, Equity & Inclusion Commission



Resolution 2017-03

Safe, Welcoming, and Equitable Community For All Adopted January 23, 2017

1. The City Council, Mayor, and Police Chief are committed to making Lynnwood a safe, welcoming, and equitable community for everyone that lives, works, plays, does business, goes to school in, or visits our city.
2. The City Council, Mayor, and Police Chief are committed to standing together with the people of Lynnwood in opposing hate, violence, and acts of intolerance committed against our community members.
3. The City Council, Mayor, and Police Chief are committed to continuing our pro-equity work, reaching out and connecting with our community members to ensure that our programs are accessible and open to all individuals.



Council Presentations



Work of the DEI



July 2020 Community Listening Session

Step Up Conference Workshop

All Are Welcome Initiative

DEI Accomplishments

- ◇ Creation of All Are Welcome Initiative and distribution of decals to local businesses and community members
- ◇ Hosted workshop at Step Up: Moving Racial Equity Forward Conference – 2019
- ◇ Partnered with LPD to translate materials related to immigration
- ◇ Members have participated on numerous hiring panels for COL and LPD
- ◇ Provided feedback and input on various city plans and projects such as Housing Action Plan, Communications Strategy, State of the Arts
- ◇ Participated in multiple Fair on 44th events
- ◇ Hosted Community Listening Session after the death of George Floyd and increased calls for social justice – 2020
- ◇ Collaboration with Arts Commission, Human Services Commission, Planning Commission
- ◇ Attended many City Council Meetings/Presentations, community meetings and events



Team REAL
Racial Equity Advancing Lynnwood

Team REAL Accomplishments

- ◆ Participated in a nine-month learning cohort
- ◆ Created a Racial Equity Action Plan
- ◆ Conducted an employee equity survey
- ◆ Beginning to implement a community equity survey
- ◆ Hosted several “Role of Government in Advancing Racial Equity” trainings for city staff

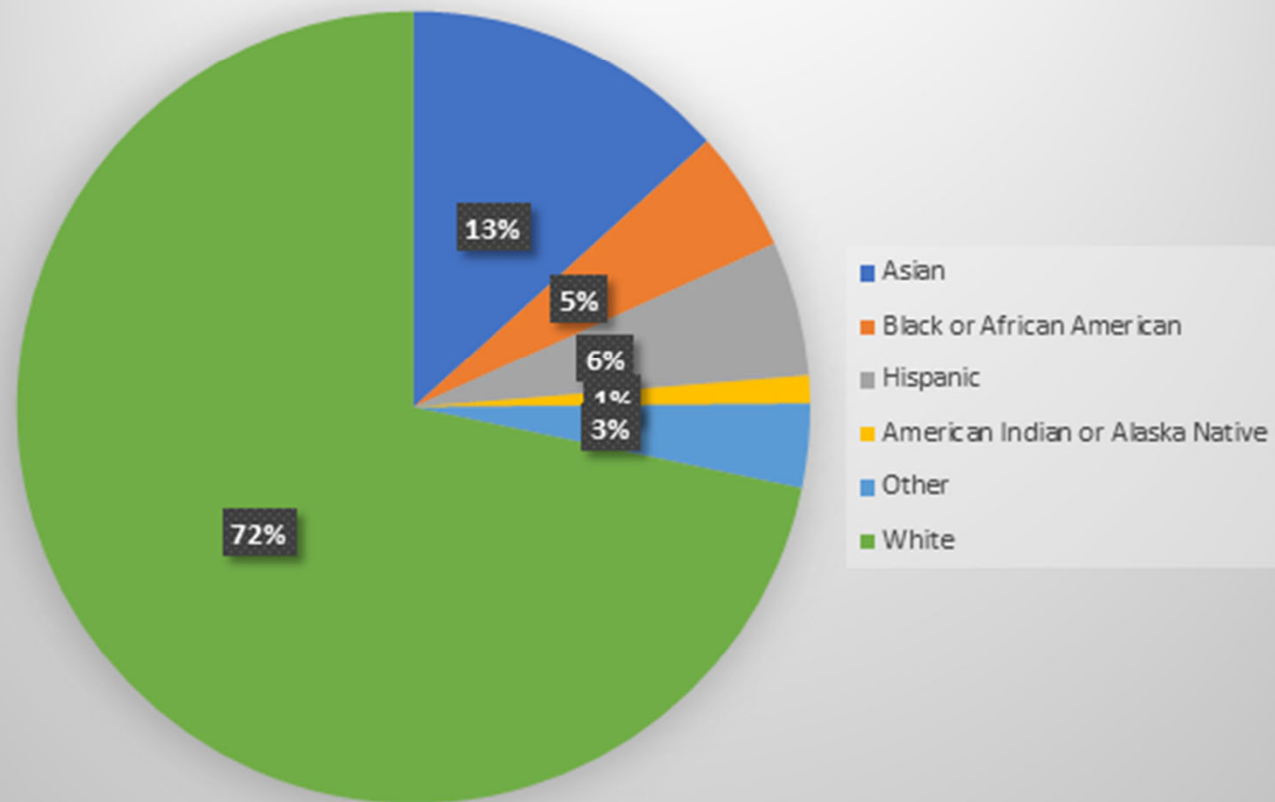
Team REAL Accomplishments Draft

Department	Staff	Accomplishment
Purchasing	Stan Hernandez	Developing purchasing program outreach and standards for <u>Minority and Women-owned businesses</u> .
PRCA PW	Mary-Anne Grafton Cameron Coronado	CARES Grant workgroup selected Communities of Color Coalition to coordinate rental assistance grant program.
IT	Will Cena	Integrated Zoom & Calendar technology to support virtual court proceedings. IT Team created educational videos about how to participate in court and translated captions in Russian, Spanish & Korean.
CD	Ashley Winchell	<u>Provided online Open Houses on the Housing Action Plan in Korean and Spanish</u>
PW	Cameron Coronado	Leading a team of City staff on creating, implementing and administering a community equity survey.
HR	Evan Chinn	<u>Requesting a Diversity, Equity and Inclusion Coordinator position in the 2021-22 budget proposal.</u>
		Held employee listening session with Mayor after the George Floyd killing.
HR	Evan Chinn	Developing training for interview panelists and hiring panel requirements.
		<u>Collecting a list of staff who speak non-English languages who are also willing to be a resource for translation services.</u>
PW PRCA PRCA	Cameron Coronado Mary-Anne Grafton Misty Burke	Delivered online trainings on Government's Role in Advancing Racial Equity to Directors, Supervisors and Managers. More training for general staff to be delivered in October and November.
HR, Purchasing, PW PRCA	Evan Chinn Stan Hernandez Cameron Coronado Misty Burke	Supporting the State of the Arts public meeting on equity in the arts by assisting with the planning and serving as panelists.
HR IT PRCA	Evan Chinn Will Cena Misty Burke	<u>Working with Race Forward/GARE, implemented and administered a Staff Equity survey. Achieved a nearly 70 percent response rate.</u>

Executive PRCA	Leah Jensen Misty Burke	Launched two monthly racial equity discussion group opportunities for staff. A video/article discussion group led by Leah, and a book discussion group led by Misty.
		In partnership with Leadership Snohomish County, planning a series of monthly conversations with community members showcasing race equity in action and supporting the efforts of these groups.
		areas. Tracking areas of repair and demographics.
Clerk	Team	<u>Review new city policies for racial equity impacts.</u>
PRCA PW	Misty Burke Cameron Coronado	Planning committee for annual STEP:Up Moving Racial Equity Forward conference. The conference was designed for participants to gain a deeper understanding and new perspectives about racial equity and social justice.
Police Dept	Connie Avalos- <u>Galer</u>	<ol style="list-style-type: none"> 1. Part of Command Level Oral Boards (interview new Police Officers). 2. We have added a DEI Commissioner to the Command Promotion Assessment Center. 3. Diversity hiring has increase with Pacific Islanders, Women of diverse cultures, etc. 4. Video that hi-lights staff that speak a 2nd or 3rd languages "We Speak your Language" – We are here to serve you (our community).
	Team	Developed COL Racial History statement
	Team	Wrote Racial Equity Mission and Vision for COL
Advisor	Team	Reviewed racial equity components for Departmental BFO budgets 2021 – 2022.
Advisor	Team	Produced COL Racial Equity Action Plan
PW	Adrian Farias	Work with operations management to develop an equitable plan for rolling out a city wide water meter replacement project. (Easily translated literature, intentional installation patterns)
HR	Evan, Misty, Cameron	Added explicit equity considerations into employee competency evaluations



Active COL Employee Ethnicities





Race & Social Justice Coordinator

The Why...

Need an expert, a champion to help move this work forward and make lasting impacts for our community.

CITY COUNCIL ITEM D

CITY OF LYNNWOOD Human Resources

TITLE: Introduction to the Community Equity Survey

DEPARTMENT CONTACT: Human Resources Director Evan Chinn

SUMMARY:

Introduction and overview of a Community Equity Survey that will help the City learn more about the community we serve and will help inform the work of the Race and Social Justice Coordinator position.

DOCUMENT ATTACHMENTS

Description:	Type:
Community Equity Survey Presentation	Backup Material

Lynnwood Community Equity Survey

Lynnwood City Council

February 16, 2021

WHO WE ARE



BRIAN SCOTT

PRINCIPAL,
BDS PLANNING & URBAN DESIGN



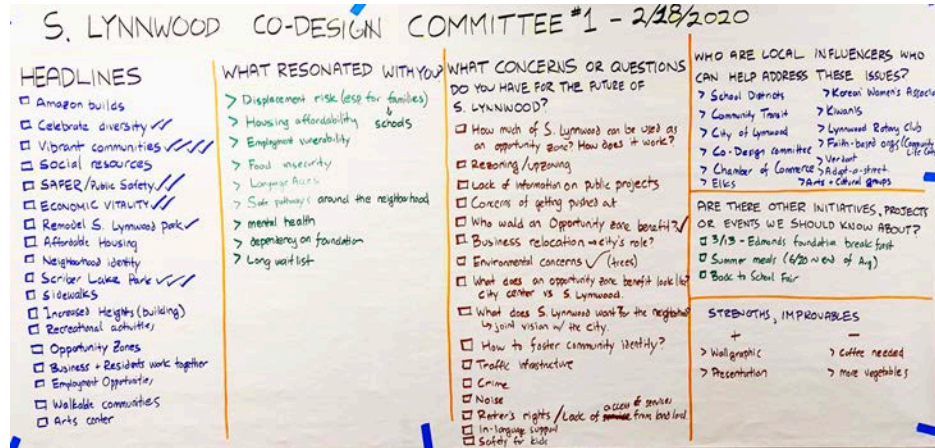
ISHMAEL NUÑEZ

PROJECT MANAGER,
BDS PLANNING & URBAN DESIGN

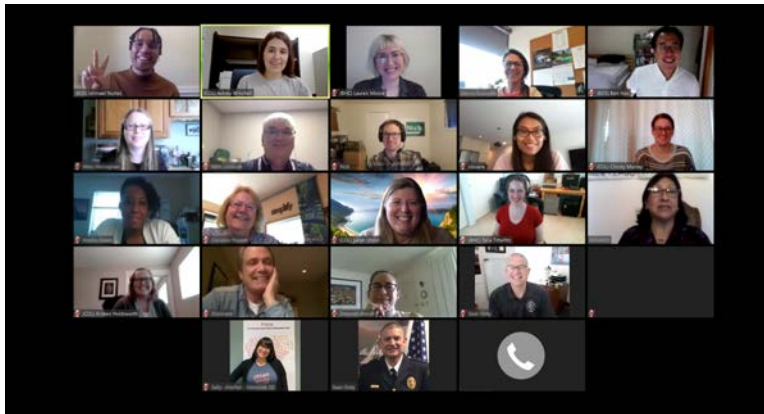


D-3

BDS LYNNWOOD HISTORY



SOUTH LYNNWOOD NEIGHBORHOOD PLAN



D-4

COMMUNITY EQUITY SURVEY

PURPOSE:

- Gather data from Lynnwood's diverse community regarding their experience of the city as "Safe, Welcoming & Livable"
- Understand where gaps and challenges exist for the city's most vulnerable communities
- Understand the City of Lynnwood's role in responding to community needs

COMMUNITY EQUITY SURVEY

INTENDED OUTCOMES

- Establish and build connections with historically “hard to reach” communities
- Leverage information and relationships
- Inform Lynnwood policy and actions centering racial and social equity

COMMUNITY EQUITY SURVEY

PROCESS

1. Survey Development & Distribution Strategy
2. Survey Deployment
3. Data analysis & interim report
4. Focus Groups
5. Final Report & Recommendations

COMMUNITY EQUITY SURVEY

PROCESS

1. Survey Development & Distribution Strategy
2. Survey Deployment
3. Data analysis & interim report
4. Focus Groups
5. Final Report & Recommendations

Questions & Comments

D-9

CITY COUNCIL ITEM E

CITY OF LYNNWOOD City Council

TITLE: Break

DEPARTMENT CONTACT: George Hurst, Council President

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM F

CITY OF LYNNWOOD Public Works

TITLE: Briefing: Scriber Creek Trail Improvements Project

DEPARTMENT CONTACT: Monica Thompson, David Mach, Sarah Olson

SUMMARY:

This is a project briefing for the Scriber Creek Trail Improvement Project to provide a summary of the 60% design changes (which includes illumination), project costs, grant awards, and funding development. This trail project is both a park (recreational trail) and a transportation (multimodal access) project.

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.

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.

ACTION:

Briefing. No action needed.

BACKGROUND:

This project will convert approximately 1-mile of existing trail into a multi-modal/shared use trail. Scriber Creek Trail currently is a 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 at 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.

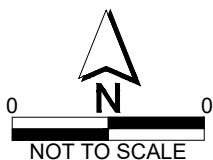
KEY FEATURES AND VISION ALIGNMENT:

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.

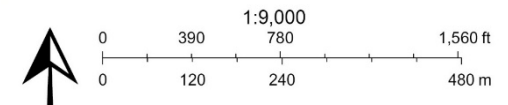
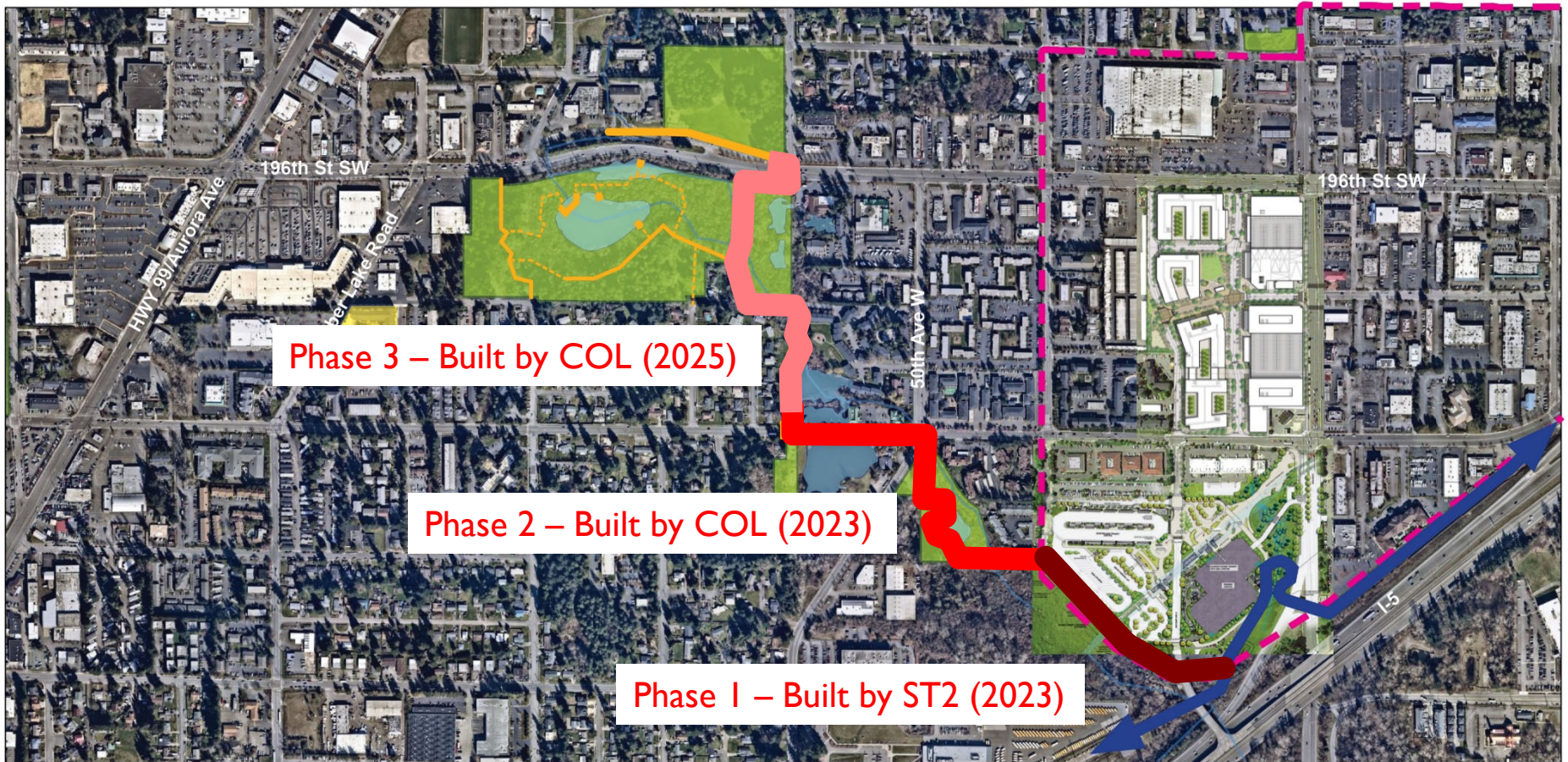
The Scriber Creek Trail Improvements project supports that vision and results in an important improvement to the City's infrastructure that links City of Lynnwood programs, policies, comprehensive plans, mission, and ultimately the Community Vision. The project is a supporting capital project that is 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:
Map	Backup Material
Funding Summary	Backup Material
SCT Council Briefing	Backup Material



Scriber Creek Trail Redevelopment Phases



Scriber Creek Trail Improvement Project Funding Summary
City of Lynnwood

	SCRIBER CREEK TRAIL PHASES 2 & 3	ESTIMATED COST	FUNDING STATUS	FUNDING SOURCE	SCHEDULE	
					START	COMPLETE
1						
2	Pre-Design (Alternative Analysis)	\$130,000	Secured	WA Bike & Ped Grant (\$675,000 WSDOT + \$225,000 COL)	2018	2019
3	30% Design	\$472,139	Secured	WA Bike & Ped Grant (\$675,000 WSDOT + \$225,000 COL)	2019	2020
4	Environmental + Right of Way Services	\$100,000	Secured	WA Bike & Ped Grant (\$675,000 WSDOT + \$225,000 COL)	2020	2021
	SCRIBER CREEK TRAIL PHASE 2	ESTIMATED COST	FUNDING STATUS	FUNDING SOURCE	SCHEDULE	
					START	COMPLETE
5	60% Design	\$196,000	Secured	WA Bike & Ped Grant (\$675,000 WSDOT + \$225,000 COL)	2020	2021
6	100% Design & Bid Advertisement	\$475,000	Secured	ST 2 (portion of \$2.5M)	2021	2022
7	Right of Way Acquisition	\$200,000	Secured	REET 1 (21/22 Capital Budget)	2020	2021
8	Construction + Construction Management	\$5,000,000	Secured	ST 3 (\$2.5M), CMAQ (\$1M), WSDOT (\$1.75M)	2022	2023
	SCRIBER CREEK TRAIL PHASE 3	ESTIMATED COST	FUNDING STATUS	FUNDING SOURCE	SCHEDULE	
					START	COMPLETE
9	100% Design & Bid Advertisement	\$430,000	Unsecured	ST 2 (portion of \$2.5M)	2021	2023
10	Construction	\$5,000,000	Unsecured	Will Seek Funding: RCO Trails, WSDOT, PSRC	2025	2026
11	Total	\$12,003,139				

Updated February 2021

Scriber Creek Trail Improvements

Council Briefing
February 2021

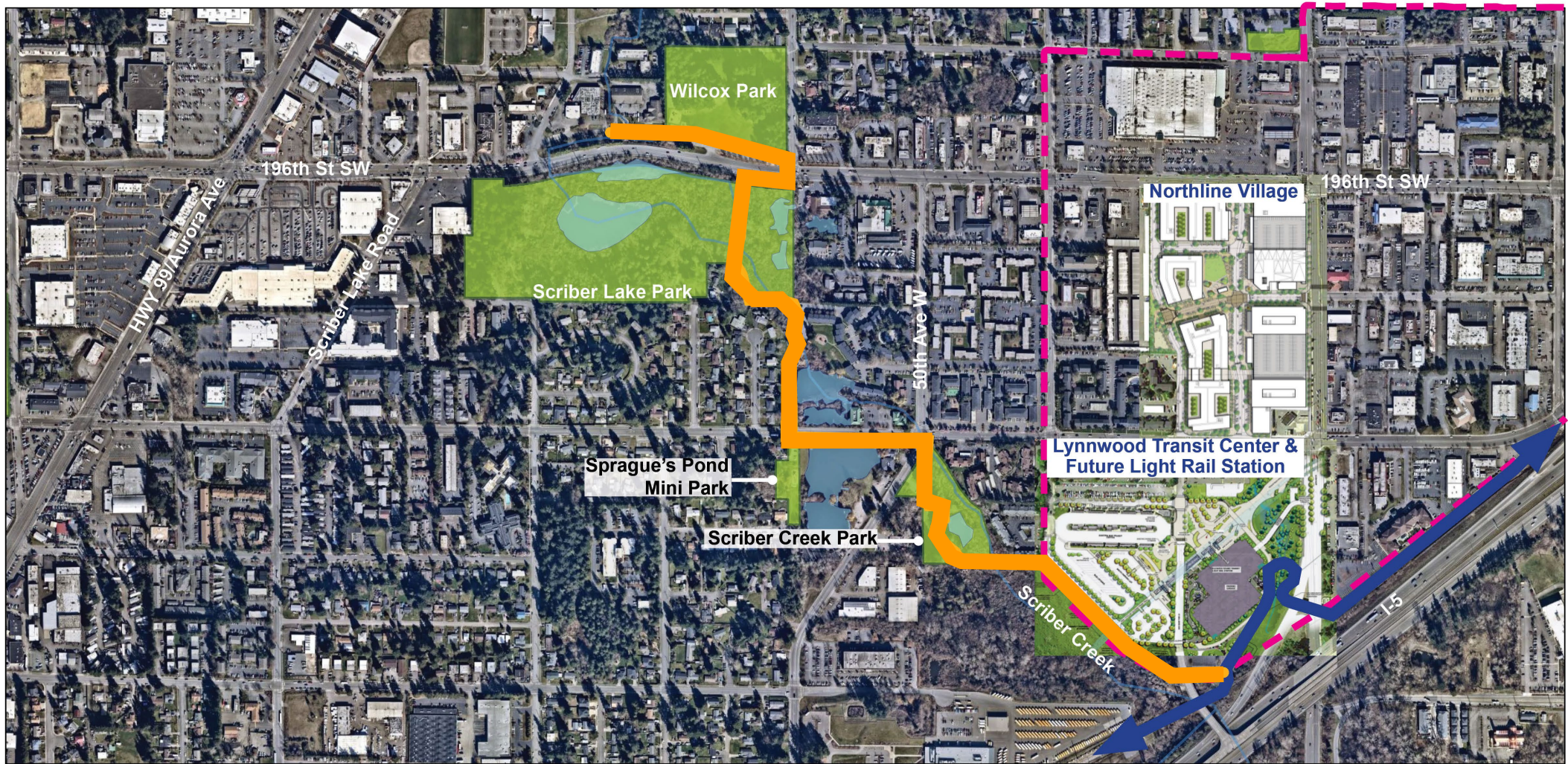
Presented by:

Sarah Olson, Deputy Director - PRCA
Monica Thompson, Senior Park Planner - PRCA
David Mach, City Engineer – Public Works

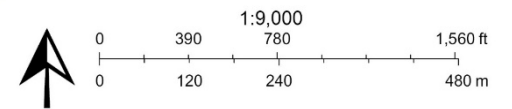


City of Lynnwood | Stephanie Bower, Architectural Illustration

Project Location & Context



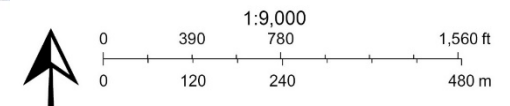
F-7



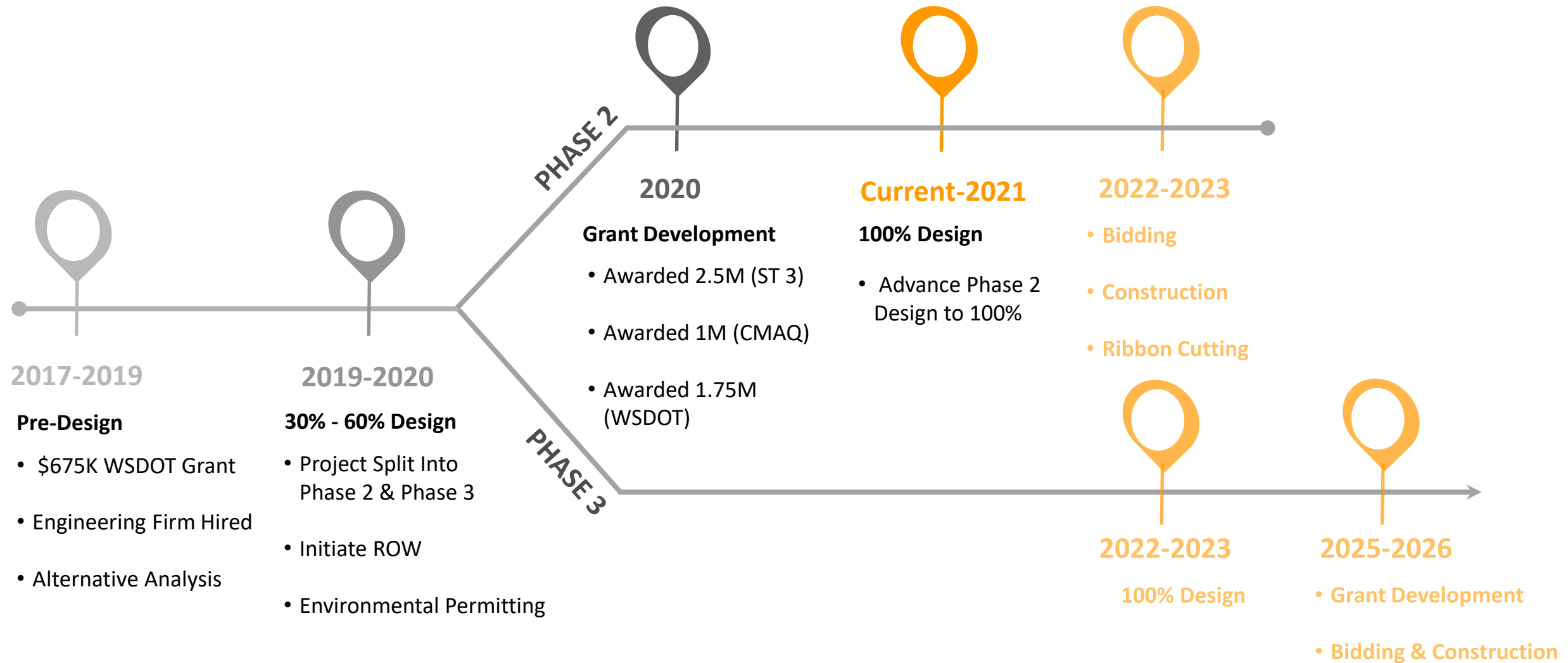
Project Phasing



F-8

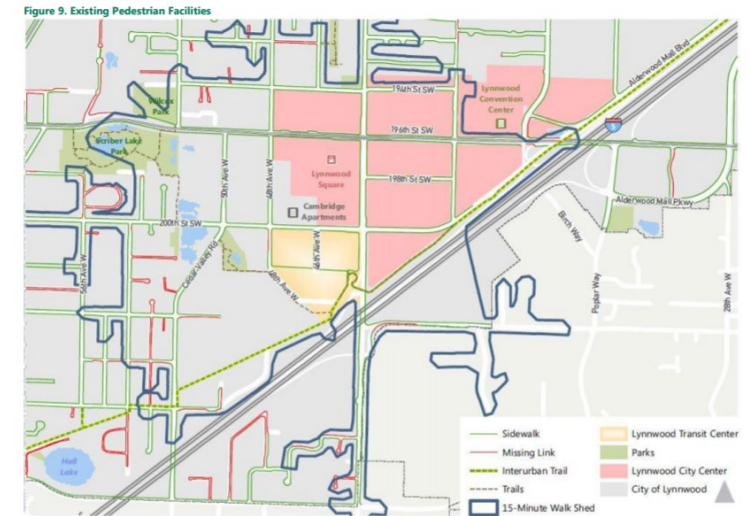


Project Timeline



Previous Council Action

Council Action	Date
Original Contract Authorization	2/2018
Contract Authorization: Supplement #4	8/2018
Council Briefing & Alternative Analysis	1/2019
Council Briefing and Contract Authorization: Supplement #7	5/2019
Council Briefing and Contract Authorization: Supplement #10	9/2020
Council Briefing and Contract Authorization: Supplement #13	2/2021



Chapter 4: Mode Profiles

SCRIBER CREEK TRAIL IMPROVEMENTS - PHASE 1 Comparison of Alternatives																	
Alternative Options		Cost Factors			Trail User Experience							Potential Impacts					
		Planning Level Estimate of Construction & ROW Costs ¹	ROW acquisition (SF)	ROW acquisition (no. of parcels)	Segment Length (LF) / Directness	Nature / Recreation Experience	No. of Road/Driveway Crossings	Traffic Congestion (vehicle delay)	Road Crossing Safety ²	Separation from Traffic	Trail Visibility	Parking Removal	Amount of Vegetation Removal	Visual Impact	Geotechnical Challenge	Scriver Creek Impacts? ³	Spragues Pond Impacts?
2.1 Road	200th to Cedar Valley Rd	\$4.9 to \$6.65 Million	10,000	4	1460	Moderate	2	Most	Good	Not Separated	Best	2 stalls	Most	Moderate	Moderate	Yes	Yes (more bank impacts)
2.2 Park	West of Spragues Pond	\$5.6 to \$7.65 Million	50,000	8	1355	Moderate	1	Moderate	Better	Separated	Least	None	Most	Moderate	Most	None	None
2.3 Pond	Pond Alternative	\$5.0 to \$8.10 Million	25,000	4	1140	Best	1	Moderate	Best	Separated	Moderate	2 stalls	Moderate	Moderate	Moderate	None	Yes (more open water impacts)

¹ Planning level costs are for the trail from Wilcox Park to the Transit Center.

Illustration: Phase 2 Trail Segment



Trail alignment provides more buffer

2 Viewpoints/Lookout Areas identified for birding

Illumination added throughout Scriber Creek Park

Existing Condition: 200th Street SW



F-12

Illustration: 200th Street SW (12' Wide)



Improved street lighting

Realigned crosswalk

5' buffer

12' shared-use path

F-13

S. BOWER 2021

Existing Condition: Boardwalk Through Wetland



Illustration: Boardwalk Through Wetland (16' Wide)

Pedestrian level lighting

Improves wetland function

Pervious fibergrate surfacing
mimics natural conditions

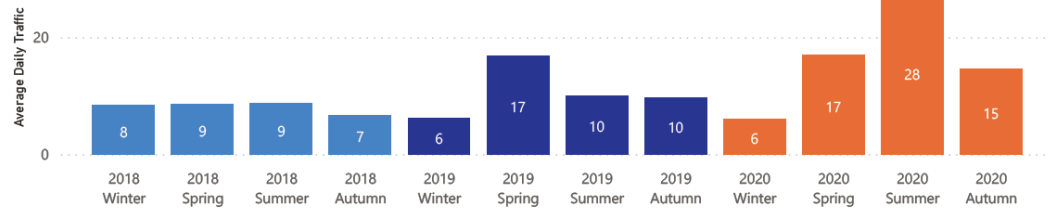
F-15

Scriber Creek Trail Usage

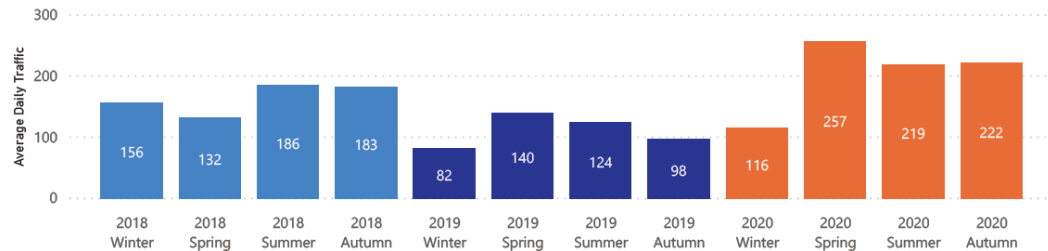
Park & Trail Usage Study (In Progress)

- Mobile device data sourced from StreetLight Data, Inc

Avg Daily Bicycle Traffic by Season



Avg Daily Pedestrian Traffic by Seasons

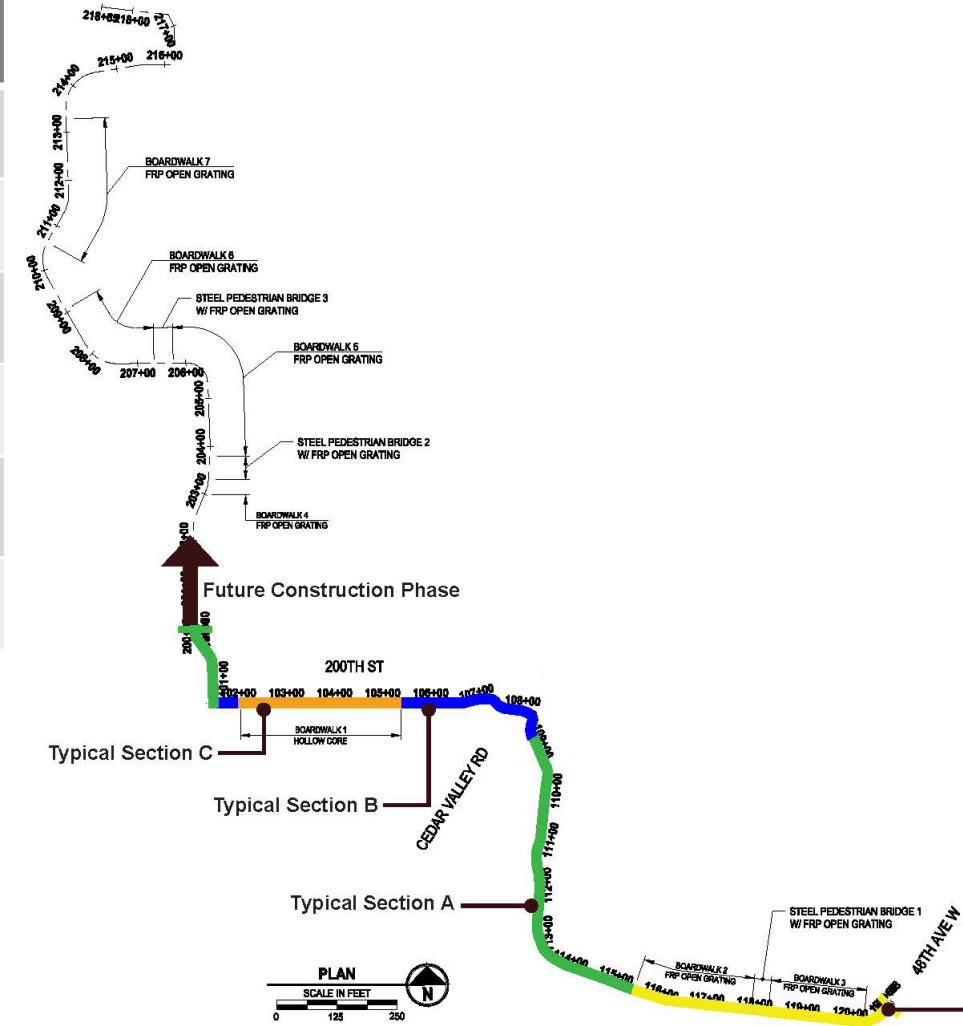


Total Trips (Scriber Creek Trail)

Year	Bicycle	Pedestrian	Total
2018	3,831	179,063	182,894
2019	6,296	107,768	114,064
2020	7,603	186,181	193,784
Total	17,730	473,012	490,742

Grant Awards

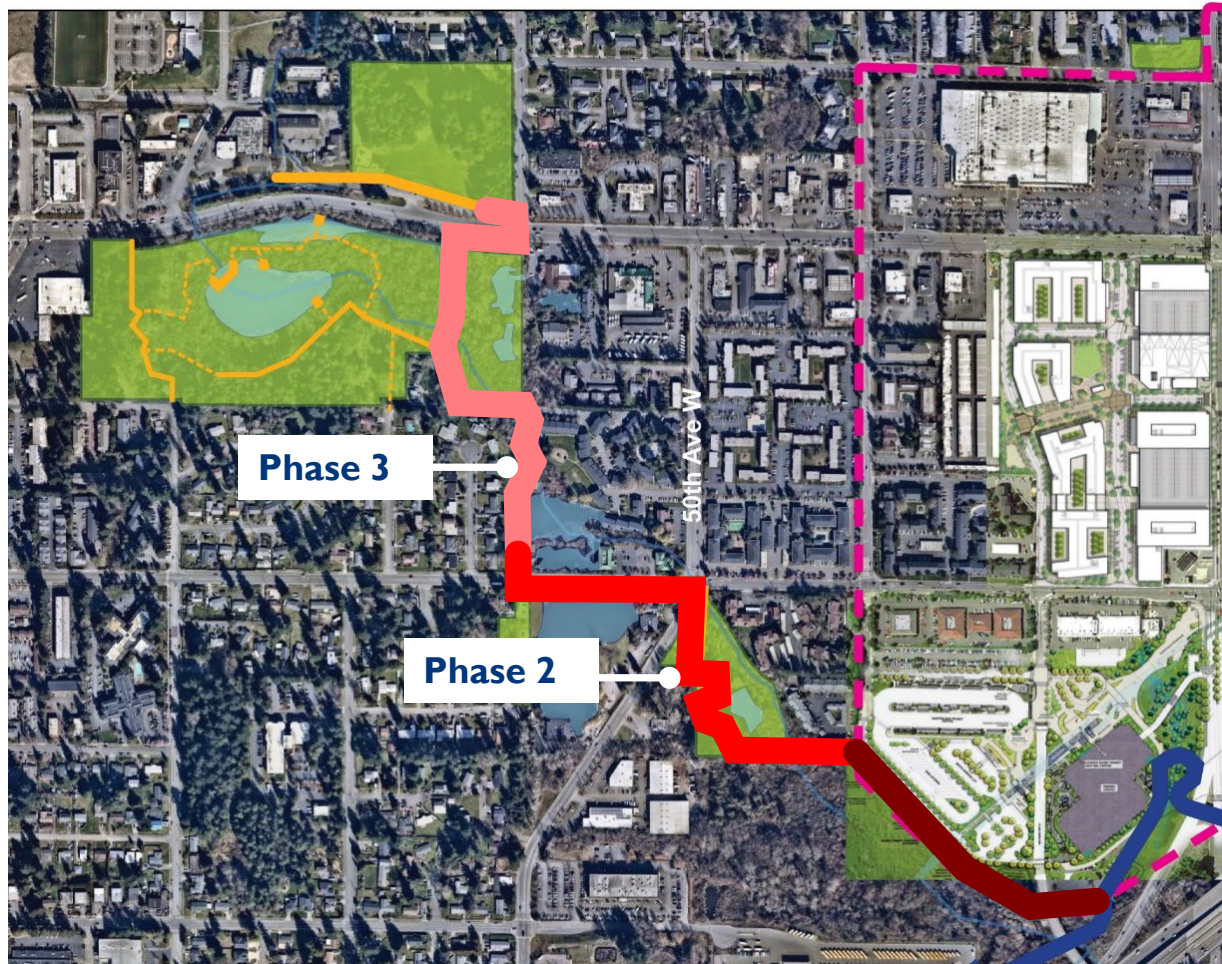
Grant Sources	Grant Amount	Status
2017 WSDOT (secured)	\$675,000	Expended
ST 2 (secured)	\$2,500,000	Available
ST 3 (secured for construction)	\$2,500,000	Awarded
CMAQ (secured for construction)	\$1,000,000	Awarded
2020 WSDOT (secured for construction)	\$1,750,000	Awarded
Total (to date)	\$8,425,000	



Project Costs & Funding

Scriber Creek Trail Improvement Project Funding Summary City of Lynnwood						
1	SCRIBER CREEK TRAIL PHASES 2 & 3	ESTIMATED COST	FUNDING STATUS	FUNDING SOURCE	SCHEDULE	
					START	COMPLETE
2	Pre-Design (Alternative Analysis)	\$130,000	Secured	WA Bike & Ped Grant (\$675,000 WSDOT + \$225,000 COL)	2018	2019
3	30% Design	\$472,139	Secured	WA Bike & Ped Grant (\$675,000 WSDOT + \$225,000 COL)	2019	2020
4	Environmental + Right of Way Services	\$100,000	Secured	WA Bike & Ped Grant (\$675,000 WSDOT + \$225,000 COL)	2020	2021
5	SCRIBER CREEK TRAIL PHASE 2	ESTIMATED COST	FUNDING STATUS	FUNDING SOURCE	SCHEDULE	
					START	COMPLETE
6	60% Design	\$196,000	Secured	WA Bike & Ped Grant (\$675,000 WSDOT + \$225,000 COL)	2020	2021
7	100% Design & Bid Advertisement	\$475,000	Secured	ST 2 (portion of \$2.5M)	2021	2022
8	Right of Way Acquisition	\$200,000	Secured	REET 1 (21/22 Capital Budget)	2020	2021
9	Construction + Construction Management	\$5,000,000	Secured	ST 3 (\$2.5M), CMAQ (\$1M), WSDOT (\$1.75M)	2022	2023
10	SCRIBER CREEK TRAIL PHASE 3	ESTIMATED COST	FUNDING STATUS	FUNDING SOURCE	SCHEDULE	
					START	COMPLETE
11	100% Design & Bid Advertisement	\$430,000	Unsecured	ST 2 (portion of \$2.5M)	2021	2023
12	Construction	\$5,000,000	Unsecured	Will Seek Funding: RCO Trails, WSDOT, PSRC	2025	2026
13	Total	\$12,003,139				
				Grant Sources	Grant Amount	
				WSDOT (secured)	\$675,000	
				ST 2 (available)	\$2,500,000	
				ST 3 (secured for construction)	\$2,500,000	
				CMAQ (secured for construction)	\$1,000,000	
				WSDOT (secured for construction)	\$1,750,000	
				F-18 Total (to date)	\$8,425,000	

Next Steps & Future Planning



2021

- Phase 2: Complete 100% Design
- Phase 2: ROW (complete)

2022-2023

- Phase 2: Construction
- Phases 1 & 2 Open (Fall 2023)
- Phase 3: 100% Design

2024-2026

- Light Rail Station Opens (July 2024)
- Phase 3: Grant Development & Construction

CITY COUNCIL ITEM G

CITY OF LYNNWOOD Executive

TITLE: Mayor Comments and Questions

DEPARTMENT CONTACT: Mayor Smith

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM H

CITY OF LYNNWOOD City Council

TITLE: Council President and Council Comments

DEPARTMENT CONTACT: George Hurst, Council President

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM I

CITY OF LYNNWOOD Executive

TITLE: Executive Session, If Needed

DEPARTMENT CONTACT: Leah Jensen

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM M-1

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 M-2

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 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.

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”. M-2-1

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 moto 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: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
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 M-3

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.

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 Comcast JUT-Agreement 02012021.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 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 M-4

CITY OF LYNNWOOD Administrative Services

TITLE: Resolution- Finance Committee Calendar

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:

On February 22, 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:

Approved Committee meeting schedules during past years.

FUNDING:

NA

KEY FEATURES AND VISION ALIGNMENT:

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

ADMINISTRATION RECOMMENDATION:

On February 22, approve the draft resolution.

DOCUMENT ATTACHMENTS

Description:	Type:
Draft resolution with calendar	Backup Material



RESOLUTION NO. 2021 - __

**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 FYI-1

CITY OF LYNNWOOD Community Development

TITLE: Annual Report: Planning Commission Annual Report

DEPARTMENT CONTACT: Ashley Winchell

SUMMARY:

Each year, the City Council receives a written report from the Planning Commission.

The purpose of this agenda item is to transmit the Planning Commission's annual report for 2020.

The Planning Commission's annual report is a summary of its activities during the previous year. The Planning Commission reviewed this report at its regular meeting of January 14, 2021 and approved it for distribution.

POLICY QUESTION(S) FOR COUNCIL CONSIDERATION:

ACTION:

None.

DOCUMENT ATTACHMENTS

Description:	Type:
Planning Commission Annual Report 2020	Report

2020 Annual Report of the **Lynnwood Planning Commission**

Introduction

This Annual Report provides a summary of the Planning Commission's work during 2020, including significant discussion issues, actions, and recommendations. This is a report to the Mayor and City Council but may also be of interest to others. LMC 2.24.020 provides that each of Lynnwood's boards and commissions prepare an annual report.

The Lynnwood Planning Commission operates under the authority specified by Chapter 35A.63 RCW. Chapter 2.29 LMC outlines the general organization and procedural provisions for the Commission.

The Commission provides a forum (public meetings, work sessions and hearings) for public comment and discussion of growth, development, land use and urban design matters. Its work also supports implementation of the City's Comprehensive Plan. Section 3 of the Planning Commission's Scope & Rules includes the following description of the work of the Commission:

The Planning Commission shall serve as an 'advisory body' to the City of Lynnwood and may act as the research and fact-finding agency for the municipality. To that end it may make such surveys, analyses, research and reports as are generally authorized or requested by its Mayor or City Council, or by the State of Washington with the approval of the City Council.

The Planning Commission shall undertake the following:

- A. Annually review the Comprehensive Plan of the City as specified by the Growth Management Act of the State of Washington and suggest plan amendments, as appropriate.
- B. Annually, review all applications and suggestions for plan amendments to the Comprehensive Plan and Zoning Map.
- C. Annually, review its portion of the City budget and suggest desired amendments, as relates to comprehensive plan, capital facilities plan, and policy matters.
- D. Review and perform extraterritorial planning for Urban Growth Areas as defined by Snohomish County and for annexation areas under consideration by the City.
- E. Conduct neighborhood and community hearings and meetings, both formal and informal in nature, regarding its studies, recommendations, and proposals.
- F. Participate in preparing an annual report showing achievement toward fulfilling goals, policies and objectives of the Planning Commission.
- G. Prepare an annual work plan for the ensuing year.
- H. Present major policy advisories to the Mayor and City Council.

- I. Meet with the Mayor, City Council and the Hearing Examiner, on an annual basis and other advisory boards, as required.
- J. Examine and respond to referrals from the City Council, Mayor or staff, including public meetings or formal hearings.
- K. Perform other advisory duties as may be provided by ordinance or as may be assigned to it by the City Council or Mayor.

The Community Development Department provides administrative and technical support to the Commission. Other City departments provide support to the Commission on an as-needed basis. In most cases, the Commission's work culminates in recommendations for final action by the City Council.

Regular Commission Meetings:

- 2nd and 4th Thursdays of each month

Major Projects of 2020

In 2020, the Planning Commission reviewed a number of topics. Below are the major projects brought to the Planning Commission in 2020.

Name	Summary Description	Outcome
Housing Action Plan	Create a Housing Action Plan (HAP) consistent with RCW 36.70A.600(2): The goal of any such housing plan must be to encourage construction of additional affordable and market rate housing in a greater variety of housing types and at prices that are accessible to a greater variety of incomes, including strategies aimed at the for-profit single-family home market.	In progress
Title 21.29 Development Agreement Code Updates	This Code Amendment expanded flexibility through Development Agreements citywide (except for single-family zones).	Approved by City Council
Covid-19 Land Use Decision Extension Ordinance	This extension permits an additional year extension to land use applications in response to delays created by Covid-19.	In progress
South Lynnwood Neighborhood Plan	This Neighborhood Subarea Planning project aims to engage South Lynnwood's organizations and residents to establish a vision for the community; identify projects and policies to stabilize housing for all families; provide opportunities for various land uses; improve access to busses and non-motorized transportation; and be a model for other neighborhood improvements throughout the city.	In progress

Officers for 2020

The following officers were elected to terms for 2020:

- Chair – Chad Braithwaite
- 1st Vice Chair – Chris Eck
- 2nd Vice Chair – Layla Bush

Membership Changes in 2020

Commissioners Robinson and Bush joined the Planning Commission in early 2020 to fill previously vacated seats.

Commissioner Wojack and Commissioner Braithwaite's appointments ended on December 31, 2020 due to term limits.

Attendance in 2020

Planning Commission was unable to meet from March to early June due to stay-at-home orders related to Covid-19. Starting in June meetings reconvened using Zoom.

	Position 1	Position 2	Position 3	Position 4	Position 5	Position 6	Position 7
Date	Wojack	Eck	Lum	Segalla	Robinson	Bush	Braithwaite
Jan 9							
Jan 23	✓	✓	absent	✓	✓	✓	✓
Feb 12	✓	✓	absent	✓	✓	✓	absent
Feb 27	✓	✓	absent	✓	✓	✓	✓
Mar 12							
Mar 26							
Apr 9	COVID CANCELLATION						
Apr 23							
May 14							
May 28							
Jun 11							
Jun 25	absent	✓	✓	✓	✓	✓	✓
Jul 9	✓	✓	✓	✓	✓	✓	✓
Jul 23							
Aug 13	✓	✓	✓	✓	✓	✓	✓
Aug 27	absent	✓	absent	✓	✓	✓	✓
Sep 10							
Sep 24	✓	✓	✓	✓	✓	✓	✓
Oct 8							
Oct 22	✓	absent	✓	✓	✓	✓	✓
Nov 12	✓	✓	✓	✓	✓	✓	✓
Nov 26							
Dec 10	✓	✓	✓	✓	✓	✓	✓
Dec 24							
Percent	81%	91%	63%	100%	91%	100%	91%

CITY COUNCIL ITEM FYI-2

CITY OF LYNNWOOD Community Development

TITLE: Annual Report: Hearing Examiner Annual Report

DEPARTMENT CONTACT: Ashley Winchell

SUMMARY:

Each year, the City Council receives a written report from the hearing examiner. The purpose of this agenda item is to transmit the Hearing Examiner's annual report for 2020.

BACKGROUND:

The City utilizes a hearing examiner to adjudicate a variety of quasi-judicial matters, including several types of land use permit decisions. The hearing examiner is not a City employee, but instead an independent, third-party. Hearing examiner duties are specified by Chapter 2.22 LMC.

LMC 2.22.170 directs the hearing examiner to submit a written annual report to the Planning Commission and City Council. If desired, the City Council could schedule an in-person meeting with the hearing examiner.

PREVIOUS COUNCIL ACTIONS:

FUNDING:

DOCUMENT ATTACHMENTS


Description:	Type:
Hearing Examiner Annual Report	Report

JOHN E. GALT
Quasi-Judicial Hearing Services
927 Grand Avenue
Everett, Washington 98201
Voice/FAX: (425) 259-3144
e-mail: jegalt755@gmail.com

MEMORANDUM

To: Lynnwood City Council
Lynnwood Planning Commission

CC: Mayor Nicola Smith
David Kleitsch, Interim Community Development Director

From: John E. Galt, Hearing Examiner 

Date: January 11, 2021

Subject: Annual Report for 2020

FYI-2-2

The Lynnwood Municipal Code provides for an annual report from the Hearing Examiner to the City Council and Planning Commission:

The Examiner shall report in writing to and meet with the Planning Commission and City Council at least annually for the purpose of reviewing the administration of the land use policies and regulatory ordinances, and any amendments to City ordinances or other policies or procedures which would improve the performance of the Examiner process. Such report shall include a summary of the Examiner's decisions since the last report.

[LMC 2.22.170] This Report covers the cases which I decided during 2020. The report is divided into two parts: Hearing Activity and Discussion of Issues. I am available to meet at a time of mutual convenience with Council and/or Planning Commission at your request.

Hearing Activity

I decided only two cases during 2020, both heard remotely due to the COVID-19 pandemic: A Conditional Use Permit for a Public Works antenna on a pole at the water tank site; and an appeal of a Zoning Interpretation rendered by the Community Development Department.

2020 Decision Summaries

Applicant:	Department of Public Works
File No(s).:	CUP-009181-2020
Hearing/Decision dates:	August 25, 2020/August 26, 2020

Location:	18425 40 th Avenue W
Request:	Locate AMI receiving antenna on an 85-foot utility pole on the City's water tank site
Issue(s):	None; no substantive public comment
Decision:	GRANT subject to conditions
Reconsideration:	N/A
Regulations, policies, or procedures identified for revision/clarification:	None

FY1-2-3

Appellant:	AutoZone Parts, Inc.
File No(s):	INT-009452-2020
Hearing/Decision dates:	December 3, 2020 (Record closed December 10, 2020)/December 16, 2020
Location:	Not directly related to a specific site
Request:	Appealed Zoning Interpretation holding that an AutoZone "MegaHub" store is not permitted in the HMU (Highway 99 Mixed Use) zone
Issue(s):	Is a "MegaHub" store a distribution center or warehouse?
Decision:	Sustain Zoning Interpretation: An AutoZone Mega Hub store is a distribution center not permitted in the HMU zone
Reconsideration:	Denied, December 28, 2020
Regulations, policies, or procedures identified for revision/clarification:	The reconsideration procedures in LMC 1.35.255 are not ideal. They are discussed further in this Annual Report.

Discussion of Issues

The AutoZone case was the first in the last 13 years where reconsideration was requested. In going through the process this time I encountered two provisions which I believe would benefit from code amendment.

I first note that provisions for reconsideration of the Hearing Examiner's land use decisions occur in two places in Chapter 1.35 LMC, Application Processing and Review: In LMC 1.35.168 for Process I applications; and in LMC 1.35.255 for Process II applications. The two sets of reconsideration provisions are not entirely the same. I cannot think of any logical reason why they should differ.

The AutoZone case was a Process II appeal. Under LMC 1.35.255(B)(1), "Within seven days from the filing of a request for reconsideration, the examiner shall issue a written decision on the request." (Under Process I the Examiner gets only five days to act.) Because the code does not specify "working days," it means calendar days. [See LMC 1.35.090 which provides for exclusion of weekend days and legal holidays only where the time period is less than seven days. Under Process I I would have had an additional day in which

to act.] AutoZone filed its request for reconsideration on December 23rd – two days before Christmas. The seventh day was December 30th. Of the allotted seven days, two were weekend days, one was Christmas, and one was Christmas Eve. Granted, Christmas Eve is not a holiday, but it can hardly be considered a typical work day. In my opinion seven days is not reasonable; most jurisdictions allow me 10 working days to act on a request for reconsideration. I ask you to consider amending the LMC to so provide.

The other problem I encountered was the limitation on possible actions. Under either LMC 1.35.168 or .255 I have only three options: Grant the request and revise the Decision, deny the request, or call for additional hearing. A fourth option would be extremely beneficial: Give the Parties of Record to the hearing the opportunity to submit written comments on the request. (That is an option I would have used in the AutoZone case had it been available.) There are many situations where it would be appropriate to the parties and extremely helpful to me to give the parties a chance to submit comments on the request. I have that ability in most of the jurisdictions for whom I provide hearing services.

In most jurisdictions I have ten working days to decide which course of action to take (Grant/revise decision, Deny, Call for hearing, or Call for written comments). If I call for written comments, parties are typically allowed 10 working days to submit them after which I have 10 working days to take final action on the request.

I respectfully ask that you consider amending Chapter 1.35 LMC to incorporate these concepts into your reconsideration regulations. (I can provide staff with language used in other jurisdictions upon request.)

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 moto 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: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
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 M-3

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.

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 Comcast JUT-Agreement 02012021.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 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 M-4

CITY OF LYNNWOOD Administrative Services

TITLE: Resolution- Finance Committee Calendar

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:

On February 22, 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:

Approved Committee meeting schedules during past years.

FUNDING:

NA

KEY FEATURES AND VISION ALIGNMENT:

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

ADMINISTRATION RECOMMENDATION:

On February 22, approve the draft resolution.

DOCUMENT ATTACHMENTS

Description:	Type:
Draft resolution with calendar	Backup Material



RESOLUTION NO. 2021 - __

**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.

//

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

2
3 **PASSED BY THE CITY COUNCIL, the 22nd day of February 2021.**

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5 APPROVED:

6
7
8 _____
9 Nicola Smith, Mayor

10
11 ATTEST/AUTHENTICATED:

12
13
14 _____
15 Karen Fitzthum, Interim City Clerk

16
17
18
19
20 FILED WITH CITY CLERK: __/__/2021

21 PASSED BY THE CITY COUNCIL: __/__/2021

22 RESOLUTION NUMBER: 2021-__
23

CITY COUNCIL ITEM FYI-1

CITY OF LYNNWOOD Community Development

TITLE: Annual Report: Planning Commission Annual Report

DEPARTMENT CONTACT: Ashley Winchell

SUMMARY:

Each year, the City Council receives a written report from the Planning Commission.

The purpose of this agenda item is to transmit the Planning Commission's annual report for 2020.

The Planning Commission's annual report is a summary of its activities during the previous year. The Planning Commission reviewed this report at its regular meeting of January 14, 2021 and approved it for distribution.

POLICY QUESTION(S) FOR COUNCIL CONSIDERATION:

ACTION:

None.

DOCUMENT ATTACHMENTS

Description:	Type:
Planning Commission Annual Report 2020	Report

2020 Annual Report of the **Lynnwood Planning Commission**

Introduction

This Annual Report provides a summary of the Planning Commission's work during 2020, including significant discussion issues, actions, and recommendations. This is a report to the Mayor and City Council but may also be of interest to others. LMC 2.24.020 provides that each of Lynnwood's boards and commissions prepare an annual report.

The Lynnwood Planning Commission operates under the authority specified by Chapter 35A.63 RCW. Chapter 2.29 LMC outlines the general organization and procedural provisions for the Commission.

The Commission provides a forum (public meetings, work sessions and hearings) for public comment and discussion of growth, development, land use and urban design matters. Its work also supports implementation of the City's Comprehensive Plan. Section 3 of the Planning Commission's Scope & Rules includes the following description of the work of the Commission:

The Planning Commission shall serve as an 'advisory body' to the City of Lynnwood and may act as the research and fact-finding agency for the municipality. To that end it may make such surveys, analyses, research and reports as are generally authorized or requested by its Mayor or City Council, or by the State of Washington with the approval of the City Council.

The Planning Commission shall undertake the following:

- A. Annually review the Comprehensive Plan of the City as specified by the Growth Management Act of the State of Washington and suggest plan amendments, as appropriate.
- B. Annually, review all applications and suggestions for plan amendments to the Comprehensive Plan and Zoning Map.
- C. Annually, review its portion of the City budget and suggest desired amendments, as relates to comprehensive plan, capital facilities plan, and policy matters.
- D. Review and perform extraterritorial planning for Urban Growth Areas as defined by Snohomish County and for annexation areas under consideration by the City.
- E. Conduct neighborhood and community hearings and meetings, both formal and informal in nature, regarding its studies, recommendations, and proposals.
- F. Participate in preparing an annual report showing achievement toward fulfilling goals, policies and objectives of the Planning Commission.
- G. Prepare an annual work plan for the ensuing year.
- H. Present major policy advisories to the Mayor and City Council.

- I. Meet with the Mayor, City Council and the Hearing Examiner, on an annual basis and other advisory boards, as required.
- J. Examine and respond to referrals from the City Council, Mayor or staff, including public meetings or formal hearings.
- K. Perform other advisory duties as may be provided by ordinance or as may be assigned to it by the City Council or Mayor.

The Community Development Department provides administrative and technical support to the Commission. Other City departments provide support to the Commission on an as-needed basis. In most cases, the Commission's work culminates in recommendations for final action by the City Council.

Regular Commission Meetings:

- 2nd and 4th Thursdays of each month

Major Projects of 2020

In 2020, the Planning Commission reviewed a number of topics. Below are the major projects brought to the Planning Commission in 2020.

Name	Summary Description	Outcome
Housing Action Plan	Create a Housing Action Plan (HAP) consistent with RCW 36.70A.600(2): The goal of any such housing plan must be to encourage construction of additional affordable and market rate housing in a greater variety of housing types and at prices that are accessible to a greater variety of incomes, including strategies aimed at the for-profit single-family home market.	In progress
Title 21.29 Development Agreement Code Updates	This Code Amendment expanded flexibility through Development Agreements citywide (except for single-family zones).	Approved by City Council
Covid-19 Land Use Decision Extension Ordinance	This extension permits an additional year extension to land use applications in response to delays created by Covid-19.	In progress
South Lynnwood Neighborhood Plan	This Neighborhood Subarea Planning project aims to engage South Lynnwood's organizations and residents to establish a vision for the community; identify projects and policies to stabilize housing for all families; provide opportunities for various land uses; improve access to busses and non-motorized transportation; and be a model for other neighborhood improvements throughout the city.	In progress

Officers for 2020

The following officers were elected to terms for 2020:

- Chair – Chad Braithwaite
- 1st Vice Chair – Chris Eck
- 2nd Vice Chair – Layla Bush

Membership Changes in 2020

Commissioners Robinson and Bush joined the Planning Commission in early 2020 to fill previously vacated seats.

Commissioner Wojack and Commissioner Braithwaite's appointments ended on December 31, 2020 due to term limits.

Attendance in 2020

Planning Commission was unable to meet from March to early June due to stay-at-home orders related to Covid-19. Starting in June meetings reconvened using Zoom.

	Position 1	Position 2	Position 3	Position 4	Position 5	Position 6	Position 7
Date	Wojack	Eck	Lum	Segalla	Robinson	Bush	Braithwaite
Jan 9							
Jan 23	✓	✓	absent	✓	✓	✓	✓
Feb 12	✓	✓	absent	✓	✓	✓	absent
Feb 27	✓	✓	absent	✓	✓	✓	✓
Mar 12							
Mar 26							
Apr 9	COVID CANCELLATION						
Apr 23							
May 14							
May 28							
Jun 11							
Jun 25	absent	✓	✓	✓	✓	✓	✓
Jul 9	✓	✓	✓	✓	✓	✓	✓
Jul 23							
Aug 13	✓	✓	✓	✓	✓	✓	✓
Aug 27	absent	✓	absent	✓	✓	✓	✓
Sep 10							
Sep 24	✓	✓	✓	✓	✓	✓	✓
Oct 8							
Oct 22	✓	absent	✓	✓	✓	✓	✓
Nov 12	✓	✓	✓	✓	✓	✓	✓
Nov 26							
Dec 10	✓	✓	✓	✓	✓	✓	✓
Dec 24							
Percent	81%	91%	63%	100%	91%	100%	91%

CITY COUNCIL ITEM FYI-2

CITY OF LYNNWOOD Community Development

TITLE: Annual Report: Hearing Examiner Annual Report

DEPARTMENT CONTACT: Ashley Winchell

SUMMARY:

Each year, the City Council receives a written report from the hearing examiner. The purpose of this agenda item is to transmit the Hearing Examiner's annual report for 2020.

BACKGROUND:

The City utilizes a hearing examiner to adjudicate a variety of quasi-judicial matters, including several types of land use permit decisions. The hearing examiner is not a City employee, but instead an independent, third-party. Hearing examiner duties are specified by Chapter 2.22 LMC.

LMC 2.22.170 directs the hearing examiner to submit a written annual report to the Planning Commission and City Council. If desired, the City Council could schedule an in-person meeting with the hearing examiner.

PREVIOUS COUNCIL ACTIONS:

FUNDING:

DOCUMENT ATTACHMENTS


Description:	Type:
Hearing Examiner Annual Report	Report

JOHN E. GALT
Quasi-Judicial Hearing Services
927 Grand Avenue
Everett, Washington 98201
Voice/FAX: (425) 259-3144
e-mail: jegalt755@gmail.com

MEMORANDUM

To: Lynnwood City Council
Lynnwood Planning Commission

CC: Mayor Nicola Smith
David Kleitsch, Interim Community Development Director

From: John E. Galt, Hearing Examiner 

Date: January 11, 2021

Subject: Annual Report for 2020

FYI-2-2

The Lynnwood Municipal Code provides for an annual report from the Hearing Examiner to the City Council and Planning Commission:

The Examiner shall report in writing to and meet with the Planning Commission and City Council at least annually for the purpose of reviewing the administration of the land use policies and regulatory ordinances, and any amendments to City ordinances or other policies or procedures which would improve the performance of the Examiner process. Such report shall include a summary of the Examiner's decisions since the last report.

[LMC 2.22.170] This Report covers the cases which I decided during 2020. The report is divided into two parts: Hearing Activity and Discussion of Issues. I am available to meet at a time of mutual convenience with Council and/or Planning Commission at your request.

Hearing Activity

I decided only two cases during 2020, both heard remotely due to the COVID-19 pandemic: A Conditional Use Permit for a Public Works antenna on a pole at the water tank site; and an appeal of a Zoning Interpretation rendered by the Community Development Department.

2020 Decision Summaries

Applicant:	Department of Public Works
File No(s).:	CUP-009181-2020
Hearing/Decision dates:	August 25, 2020/August 26, 2020

Location:	18425 40 th Avenue W
Request:	Locate AMI receiving antenna on an 85-foot utility pole on the City's water tank site
Issue(s):	None; no substantive public comment
Decision:	GRANT subject to conditions
Reconsideration:	N/A
Regulations, policies, or procedures identified for revision/clarification:	None

FY1-2-3

Appellant:	AutoZone Parts, Inc.
File No(s):	INT-009452-2020
Hearing/Decision dates:	December 3, 2020 (Record closed December 10, 2020)/December 16, 2020
Location:	Not directly related to a specific site
Request:	Appealed Zoning Interpretation holding that an AutoZone "MegaHub" store is not permitted in the HMU (Highway 99 Mixed Use) zone
Issue(s):	Is a "MegaHub" store a distribution center or warehouse?
Decision:	Sustain Zoning Interpretation: An AutoZone Mega Hub store is a distribution center not permitted in the HMU zone
Reconsideration:	Denied, December 28, 2020
Regulations, policies, or procedures identified for revision/clarification:	The reconsideration procedures in LMC 1.35.255 are not ideal. They are discussed further in this Annual Report.

Discussion of Issues

The AutoZone case was the first in the last 13 years where reconsideration was requested. In going through the process this time I encountered two provisions which I believe would benefit from code amendment.

I first note that provisions for reconsideration of the Hearing Examiner's land use decisions occur in two places in Chapter 1.35 LMC, Application Processing and Review: In LMC 1.35.168 for Process I applications; and in LMC 1.35.255 for Process II applications. The two sets of reconsideration provisions are not entirely the same. I cannot think of any logical reason why they should differ.

The AutoZone case was a Process II appeal. Under LMC 1.35.255(B)(1), "Within seven days from the filing of a request for reconsideration, the examiner shall issue a written decision on the request." (Under Process I the Examiner gets only five days to act.) Because the code does not specify "working days," it means calendar days. [See LMC 1.35.090 which provides for exclusion of weekend days and legal holidays only where the time period is less than seven days. Under Process I I would have had an additional day in which

to act.] AutoZone filed its request for reconsideration on December 23rd – two days before Christmas. The seventh day was December 30th. Of the allotted seven days, two were weekend days, one was Christmas, and one was Christmas Eve. Granted, Christmas Eve is not a holiday, but it can hardly be considered a typical work day. In my opinion seven days is not reasonable; most jurisdictions allow me 10 working days to act on a request for reconsideration. I ask you to consider amending the LMC to so provide.

The other problem I encountered was the limitation on possible actions. Under either LMC 1.35.168 or .255 I have only three options: Grant the request and revise the Decision, deny the request, or call for additional hearing. A fourth option would be extremely beneficial: Give the Parties of Record to the hearing the opportunity to submit written comments on the request. (That is an option I would have used in the AutoZone case had it been available.) There are many situations where it would be appropriate to the parties and extremely helpful to me to give the parties a chance to submit comments on the request. I have that ability in most of the jurisdictions for whom I provide hearing services.

In most jurisdictions I have ten working days to decide which course of action to take (Grant/revise decision, Deny, Call for hearing, or Call for written comments). If I call for written comments, parties are typically allowed 10 working days to submit them after which I have 10 working days to take final action on the request.

I respectfully ask that you consider amending Chapter 1.35 LMC to incorporate these concepts into your reconsideration regulations. (I can provide staff with language used in other jurisdictions upon request.)