



CITY OF MERCER ISLAND

CITY COUNCIL REGULAR VIDEO MEETING

Tuesday, August 4, 2020 at 5:00 PM

COUNCIL MEMBERS:

Mayor Benson Wong, Deputy Mayor Wendy Weiker,
Councilmembers: Lisa Anderl, Jake Jacobson,
Salim Nice, Craig Reynolds, David Rosenbaum

LOCATION & CONTACT:

Mercer Island City Hall - Council Chambers
9611 SE 36th Street | Mercer Island, WA 98040
Phone: 206.275.7793 | www.mercerisland.gov

In compliance with the Americans with Disabilities Act, those requiring accommodation for Council meetings should notify the City Clerk's Office at least 24 hours prior to the meeting at 206.275.7793.

VIRTUAL MEETING NOTICE

The virtual meeting will be broadcast live on MITV Channel 21 and live streamed on the City's YouTube Channel at <https://www.youtube.com/c/mercerislandcouncil>

A Note About Registering to Speak: Individuals wishing to speak live during Appearances will need to register their request with the City Clerk at 206.275.7793 or email deb.estrada@mercergov.org and leave a message before 4 PM on the day of the Council meeting. Please reference "Appearances for August 4 Council Meeting" on your correspondence. The City Clerk will call on you by name or telephone number when it is your turn to speak.

Join by Telephone at 5:00PM: To listen to the meeting or speak live under Appearances via telephone, please call **253.215.8782** and enter Webinar ID **895 3830 2579** when prompted. The City Clerk will call on you by name or by your telephone number when it is your turn to speak. Please unmute your phone.

Join by Internet at 5:00PM: To watch the meeting over the internet or speak live under Appearances, via your computer microphone, follow these steps:

- 1) Click [this link](#)
- 2) If the Zoom app is not installed on your computer, you will be prompted to download it.
- 3) If prompted for Webinar ID, enter **895 3830 2579**
- 4) Enter Password **851646**
- 5) The City Clerk will call on you by name or refer to your email address when it is your turn to speak. Please confirm that your audio works prior to participating.

Submitting Written Comments: Written comments may be submitted at the Mercer Island [Lets Talk Council Connects](#) page. Written comments received by 4 PM on August 4, 2020 will be forwarded to all Councilmembers and a brief summary of the comments will be included in the minutes of the meeting.

For the safety and wellbeing of the public and staff, the City strongly recommends that people attend the meeting by viewing the live feed of the video conference on the City's [YouTube Channel](#), or on [MI-TV Channel 21](#).

CALL TO ORDER & ROLL CALL

PLEDGE OF ALLEGIANCE

AGENDA APPROVAL

CITY MANAGER REPORT

APPEARANCES

CONSENT CALENDAR

1. Approve **Accounts Payable Reports** for the periods ending:
 - A) July 17, 2020 in the amount of \$111,588.35
 - B) July 24, 2020 in the amount of \$430,305.07
2. Approve **Minutes** for the July 14, 2020 Special Video Meeting
3. Certification of **Payroll** dated July 31, 2020 in the amount ending \$681,410.57
4. AB 5733: Building Access Control System Bid Award
Recommended Action: Award the Building Access Control System project to Security Solutions NW in the amount of \$150,206.00. Set the total project budget to \$199,827.00 and direct the City Manager to execute the contract.
5. AB 5734: Appropriation of Synthetic Turf Sinking Fund for South Mercer Turf Replacement
Recommended Action: Appropriate an amount not to exceed \$729,406 from the Synthetic Turf Sinking Fund to the Mercer Island School District for replacement of the synthetic turf at the South Mercer Playfield.

REGULAR BUSINESS

6. AB 5720: Zayo Franchise (1st Reading)
Recommended Action: Set Ordinance No. 20-16 for second reading and adoption on September 1, 2020.
7. AB 5737: Emergency Ordinance (20C-17) to Temporarily Allow Private Parking and Right-of-Way Use by Businesses to Meet Safe Start Plan Guidelines.
Recommended Action:
 - A) Waive second reading of Ordinance No. 20C-17 pursuant to Council Rules 6.3 and 10.1.
 - B) Adopt Ordinance No. 20C-17 providing temporary measures to allow more outdoor seating for eating and drinking establishments on City rights-of-way and on “off-street” private commercial parking areas.
 - C) Authorize staff to waive the permit fee and utilize King County CARES Act funding to cover the cost.
8. AB 5736: Town Center Moratorium Update and Findings of Fact
Recommended Action:
 - A) Suspend Council Rules of Procedure 6.3 and 10.1 requiring second reading of an ordinance.
 - B) Adopt Ordinance No. 20-18 amending the scope of the Town Center moratorium and adopting additional findings of fact.
9. AB 5735: Thrift Store & Recycling Center Remodel Project Update
Recommended Action: Discussion only.
10. AB 5738: Anti-Racism and Cultural Awareness Training and Listening Sessions Update
Recommended Action: Provide feedback on listening sessions goal statement.

OTHER BUSINESS

11. [Planning](#) Schedule

12. Councilmember Absences & Reports


EXECUTIVE SESSION

To discuss with legal counsel pending or potential litigation pursuant to RCW 42.30.110(1)(i) for approximately 60 minutes. No action will be taken.

ADJOURNMENT

CERTIFICATION OF CLAIMS

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described herein, that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the City of Mercer Island, and that I am authorized to authenticate and certify to said claim.



Finance Director

I, the undersigned, do hereby certify that the City Council has reviewed the documentation supporting claims paid and approved all checks or warrants issued in payment of claims.

Mayor

Date

<u>Report</u>	<u>Warrants</u>	<u>Date</u>	<u>Amount</u>
Check Register	204105-204160	7/17/2020	\$ 111,588.35 \$ 111,588.35

Accounts Payable Report by GL Key

PO #	Check #	Vendor:	Transaction Description	Check Amount
<i>Org Key: 402000 - Water Fund-Admin Key</i>				
P0108119	00204125	H D FOWLER	INVENTORY PURCHASES	5,609.69
P0108125	00204148	SUPPLY SOURCE INC,THE	INVENTORY PURCHASES	738.46
	00204124	Glasser, Marc	refund sold home 4/7 pulled	223.50
P0108117	00204111	CESSCO INC	INVENTORY PURCHASES	138.27
<i>Org Key: 814074 - Garnishments</i>				
	00204112	CHAPTER 13 TRUSTEE	PAYROLL EARLY WARRANTS	1,298.78
	00204112	CHAPTER 13 TRUSTEE	PAYROLL EARLY WARRANTS	1,298.78
	00204154	UNITED STATES TREASURY	PAYROLL EARLY WARRANTS	826.84
<i>Org Key: 814075 - Mercer Island Emp Association</i>				
	00204135	MI EMPLOYEES ASSOC	payroll early warrants	247.50
<i>Org Key: 814076 - City & Counties Local 21M</i>				
	00204158	WSCCCE AFSCME AFL-CIO	PAYROLL EARLY WARRANTS	2,532.20
	00204158	WSCCCE AFSCME AFL-CIO	PAYROLL EARLY WARRANTS	0.00
<i>Org Key: 814077 - Police Association</i>				
	00204140	POLICE ASSOCIATION	PAYROLL EARLY WARRANTS	2,432.16
<i>Org Key: CA1100 - Administration (CA)</i>				
P0108121	00204127	K&L GATES LLP	Professional Services - Invoice	3,702.16
P0108061	00204147	SUMMIT LAW GROUP	Professional Services INV 1140	1,207.00
<i>Org Key: CA1200 - Prosecution & Criminal Mngmnt</i>				
P0108126	00204136	MOBERLY AND ROBERTS	Professional Services - Prosec	6,800.00
<i>Org Key: CM1200 - City Clerk</i>				
P0108137	00204114	CODE PUBLISHING CO	Web Update Ord. 20-08 - 20C-12	286.60
<i>Org Key: CR1100 - Human Resources</i>				
P0108132	00204141	PUBLIC SAFETY TESTING INC	Fire Quarterly Subscription Fe	300.00
<i>Org Key: CT1100 - Municipal Court</i>				
	00204116	COMPLETE OFFICE	OFFICE SUPPLIES JUNE.JULY 2020	137.85
<i>Org Key: DS1100 - Administration (DS)</i>				
	00204116	COMPLETE OFFICE	OFFICE SUPPLIES JUNE.JULY 2020	185.68
<i>Org Key: DS1200 - Bldg Plan Review & Inspection</i>				
P0108092	00204119	DEPT OF ENTERPRISE SERVICES	BUSINESS CARDS	145.20
<i>Org Key: FN2100 - Data Processing</i>				
P0108141	00204143	QUADRANT SYSTEMS INC	QUADRANT ANNUAL SOFTWARE	1,680.00
<i>Org Key: FR1100 - Administration (FR)</i>				
	00204110	CENTURYLINK	CENTURY LINK JUNE 2020	1,045.51
	00204110	CENTURYLINK	Century Link June 2020	176.58
	00204116	COMPLETE OFFICE	OFFICE SUPPLIES JUNE.JULY 2020	96.79
P0108134	00204115	COMCAST	Internet Charges/Fire	62.39
<i>Org Key: FR2100 - Fire Operations</i>				
P0106709	00204122	EPSCA	MONTHLY RADIO ACCESS FEES 49 R	1,111.00
P0108131	00204118	DAY MANAGEMENT CORP	Radio Repair	753.65

Accounts Payable Report by GL Key

PO #	Check #	Vendor:	Transaction Description	Check Amount
P0106709	00204122	EPSCA	QTLY ACCESS FEE REBATE FIRE	-194.04
<i>Org Key: FR2500 - Fire Emergency Medical Svcs</i>				
P0108130	00204133	LIFE ASSIST INC	FR3 System Case (BLS Core	135.30
P0108133	00204146	STERICYCLE INC	On-Call Charges/Fire	19.95
<i>Org Key: GGM001 - General Government-Misc</i>				
P0108138	00204108	BRINKS INC	MAY 2020 ARMoured TRUCK SERVIC	182.55
<i>Org Key: GGM004 - Gen Govt-Office Support</i>				
	00204116	COMPLETE OFFICE	OFFICE SUPPLIES JUNE.JULY 2020	421.40
<i>Org Key: GGM005 - Genera Govt-LI Retiree Costs</i>				
P0108140	00204120	DEVENY, JAN P	LEOFF1 Retiree Medical Expense	344.18
<i>Org Key: IGVO11 - Chamber of Commerce</i>				
P0106841	00204134	MI CHAMBER OF COMMERCE	MONTHLY CHAMBER OF COMMERCE	600.00
<i>Org Key: IS2100 - IGS Network Administration</i>				
	00204110	CENTURYLINK	CENTURY LINK JUNE 2020	2,116.42
	00204110	CENTURYLINK	Century Link June 2020	677.75
<i>Org Key: MT2100 - Roadway Maintenance</i>				
P0108123	00204129	KC FINANCE	SIGNAL MAINTENANCE	1,550.88
P0098051	00204156	WEST COAST SIGNAL INC	RETAINAGE	1,079.10
<i>Org Key: MT2500 - ROW Administration</i>				
	00204116	COMPLETE OFFICE	OFFICE SUPPLIES JUNE.JULY 2020	1,939.40
	00204130	KELLEY, CHRIS M	emergency call out	37.82
<i>Org Key: MT3100 - Water Distribution</i>				
	00204126	HUNTER, ALLEN	main repar wo 17486	33.64
<i>Org Key: MT3150 - Water Quality Event</i>				
P0107245	00204151	LINKO TECHNOLOGY INC	2020 CROSS CONNECTION WEB TEST	1,136.00
<i>Org Key: MT3200 - Water Pumps</i>				
	00204110	CENTURYLINK	Century Link June 2020	298.45
P0108109	00204144	S&B INC	Field Services for Southend	272.25
P0108118	00204144	S&B INC	Main reservoir & Inlet #2	267.30
<i>Org Key: MT3300 - Water Associated Costs</i>				
	00204106	AUCKLAND, JOSH	main break wo 3816	43.70
	00204132	LEYDE, CASEY	main break wo 17486	41.98
	00204139	PAPADEM, KATHERINE	main break 17486	14.79
	00204130	KELLEY, CHRIS M	emergency call out	0.00
<i>Org Key: MT3500 - Sewer Pumps</i>				
	00204110	CENTURYLINK	CENTURY LINK JUNE 2020	7,858.55
<i>Org Key: MT4150 - Support Services - Clearing</i>				
P0106363	00204159	XEROX CORPORATION	2020 COPIER CHARGES	396.76
P0106709	00204122	EPSCA	MONTHLY RADIO ACCESS FEES 1 RA	25.25
P0106709	00204122	EPSCA	QTLY ACCESS FEE REBATE PUBLIC	-4.41
<i>Org Key: MT4200 - Building Services</i>				

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PO #	Check #	Vendor:	Transaction Description	Check Amount
P0108102	00204123	FERGUSON ENTERPRISES LLC	HYDRANT GUARD POST	2,615.25
P0108127	00204152	Tulsa Chain	3/8" GRADE 30 POWDERCOATED CHA	2,577.14
<i>Org Key: MT4300 - Fleet Services</i>				
P0108120	00204107	AUTONATION INC	FLEET PARTS	544.32
P0105794	00204131	KIA MOTORS FINANCE	PW 2019 KIA NIRO PHEV LEASE	405.80
P0108124	00204138	OVERLAKE OIL	DIESEL EXHAUST FLUID & PUMP	229.10
P0106771	00204109	CARQUEST AUTO PARTS STORES	2020 MONTHLY FLEET PARTS	153.65
P0108110	00204157	WESTERN EQUIPMENT	ELECTRICAL SWITCHES FOR FL0515	166.17
P0106771	00204109	CARQUEST AUTO PARTS STORES	2020 MONTHLY FLEET PARTS	117.97
<i>Org Key: MT4403 - Customer Response - Water</i>				
	00204130	KELLEY, CHRIS M	emergency call out	37.81
<i>Org Key: MT4501 - Water Administration</i>				
	00204110	CENTURYLINK	CENTURY LINK JUNE 2020	58.05
<i>Org Key: PO1100 - Administration (PO)</i>				
	00204116	COMPLETE OFFICE	OFFICE SUPPLIES JUNE,JULY 2020	318.93
<i>Org Key: PO1350 - Police Emergency Management</i>				
P0106709	00204122	EPSCA	MONTHLY RADIO ACCESS FEES 13 R	328.25
P0106709	00204122	EPSCA	QTLY ACCESS FEE REBATE EMAC	-57.33
<i>Org Key: PO1650 - Regional Radio Operations</i>				
P0106709	00204122	EPSCA	MONTHLY RADIO ACCESS FEES 59 R	1,515.00
P0106709	00204122	EPSCA	QTLY ACCESS FEE REFUND POLICE	-264.60
<i>Org Key: PR1100 - Administration (PR)</i>				
P0107596	00204160	XEROX CORPORATION	Monthly lease charges for colo	146.18
<i>Org Key: PR4100 - Community Center</i>				
	00204142	PUGET SOUND ENERGY	PSE JUNE 2020	2,554.41
P0106545	00204115	COMCAST	MICEC High Speed Connection	556.44
P0107588	00204159	XEROX CORPORATION	Monthly lease charges for colo	300.85
	00204110	CENTURYLINK	CENTURY LINK JUNE 2020	55.63
<i>Org Key: PR6200 - Athletic Field Maintenance</i>				
	00204110	CENTURYLINK	CENTURY LINK JUNE 2020	90.13
	00204110	CENTURYLINK	Century Link June 2020	84.35
<i>Org Key: PR6500 - Luther Burbank Park Maint.</i>				
	00204110	CENTURYLINK	CENTURY LINK JUNE 2020	175.44
<i>Org Key: PR6900 - Aubrey Davis Park Maintenance</i>				
P0106552	00204153	UNITED SITE SERVICES	Aubrey Davis & Lid Parking Are	645.07
P0106552	00204153	UNITED SITE SERVICES	Lid Parking Boat Launch - 2020	151.66
P0108136	00204150	T2 SYSTEMS CANADA INC	Boat launch ticket machine mon	77.00
P0108135	00204149	T-MOBILE	Monthly service for boat launc	20.00
<i>Org Key: WP122P - Open Space - Pioneer/Engstrom</i>				
P0106552	00204153	UNITED SITE SERVICES	Pioneer Park - 2020 Portable T	151.66
<i>Org Key: WS713T - SCADA System Upgrade</i>				
P0104206	00204128	KBA INC	SCADA SYSTEM CONSTRUCTION	0.00

Accounts Payable Report by GL Key

PO #	Check #	Vendor:	Transaction Description	Check Amount
<i>Org Key: WS901F - PS Generator and Pump Repl</i>				
P0104590	00204137	MOUNTAIN PACIFIC BANK	RETAINAGE FOR P0104588	1,708.38
<i>Org Key: WS901G - Sewer System Generator Repl</i>				
P0102393	00204113	CHS ENGINEERS LLC	GENERATOR 13/17/24 AND PS 18	326.24
P0104206	00204128	KBA INC	UTILTIY CONSTRUCTION	0.00
<i>Org Key: WW117R - Street Related Water Impvts</i>				
P0103618	00204121	EARTHWORK ENTERPRISES INC	RETAINAGE	12,581.11
<i>Org Key: WW120S - Meter Replacement Residential</i>				
P0104206	00204128	KBA INC	METER REPLACEMENT	4,051.04
<i>Org Key: WW535D- Booster Chlorination Station</i>				
P0104206	00204128	KBA INC	BOOSTER CL2 STATION CONSRUCTIO	4,124.41
<i>Org Key: XP710R - Luther BB Minor Capital LEVY</i>				
P0106467	00204105	ANCHOR QEA LLC	South Shoreline Trail Plan Set	15,293.50
<i>Org Key: YF1100 - YFS General Services</i>				
P0107596	00204160	XEROX CORPORATION	Monthly lease charges for colo	146.18
P0108129	00204155	VERIZON WIRELESS	Cell Charges/YFS	87.37
<i>Org Key: YF1200 - Thrift Shop</i>				
	00204110	CENTURYLINK	Century Link June 2020	184.23
<i>Org Key: YF2600 - Family Assistance</i>				
	00204117	CORK, TAMBI A	grocery gift cards - food pant	6,000.00
P0106396	00204145	SHOREWOOD #14885	Rental assistance for Emergenc	1,000.00
Total				111,588.35

Accounts Payable Report by Check Number

Check No	Check Date	Vendor Name/Description	PO #	Invoice #	Invoice Date	Check Amount
00204105	07/17/2020	ANCHOR QEA LLC South Shoreline Trail Plan Set	P0106467	67605	04/16/2020	15,293.50
00204106	07/17/2020	AUCKLAND, JOSH main break wo 3816		OH013621	07/06/2020	43.70
00204107	07/17/2020	AUTONATION INC FLEET PARTS	P0108120	151765	07/07/2020	544.32
00204108	07/17/2020	BRINKS INC MAY 2020 ARMoured TRUCK SERVIC	P0108138	3345659	05/31/2020	182.55
00204109	07/17/2020	CARQUEST AUTO PARTS STORES 2020 MONTHLY FLEET PARTS	P0106771	OH013605	07/03/2020	271.62
00204110	07/17/2020	CENTURYLINK Century Link June 2020		OH013601	06/20/2020	12,821.09
00204111	07/17/2020	CESSCO INC INVENTORY PURCHASES	P0108117	13212	06/19/2020	138.27
00204112	07/17/2020	CHAPTER 13 TRUSTEE PAYROLL EARLY WARRANTS		OH013613	07/17/2020	2,597.56
00204113	07/17/2020	CHS ENGINEERS LLC GENERATOR 13/17/24 AND PS 18	P0102393	801703-2006	06/28/2020	326.24
00204114	07/17/2020	CODE PUBLISHING CO Web Update Ord. 20-08 - 20C-12	P0108137	67169	07/14/2020	286.60
00204115	07/17/2020	COMCAST Internet Charges/Fire	P0106545	0057728-06-0720	07/17/2020	618.83
00204116	07/17/2020	COMPLETE OFFICE OFFICE SUPPLIES JUNE.JULY 2020		OH013602	07/01/2020	3,100.05
00204117	07/17/2020	CORK, TAMBIA grocery gift cards - food pant		OH013625	07/13/2020	6,000.00
00204118	07/17/2020	DAY MANAGEMENT CORP Radio Repair	P0108131	INV638136	07/07/2020	753.65
00204119	07/17/2020	DEPT OF ENTERPRISE SERVICES BUSINESS CARDS	P0108092	73196234	02/05/2020	145.20
00204120	07/17/2020	DEVENY, JAN P LEOFF1 Retiree Medical Expense	P0108140	OH013616	07/15/2020	344.18
00204121	07/17/2020	EARTHWORK ENTERPRISES INC RETAINAGE	P0103618	2019RETAINAGE	07/13/2020	12,581.11
00204122	07/17/2020	EPSCA MONTHLY RADIO ACCESS FEES 49 R	P0106709	10077	06/02/2020	2,459.12
00204123	07/17/2020	FERGUSON ENTERPRISES LLC HYDRANT GUARD POST	P0108102	0891094	06/24/2020	2,615.25
00204124	07/17/2020	Glasser, Marc refund sold home 4/7 pulled		OH013618	07/15/2020	223.50
00204125	07/17/2020	H D FOWLER INVENTORY PURCHASES	P0108119	I5497428/I551120	07/02/2020	5,609.69
00204126	07/17/2020	HUNTER, ALLEN main repar wo 17486		OH013620	07/06/2020	33.64
00204127	07/17/2020	K&L GATES LLP Professional Services - Invoic	P0108121	3798017	06/22/2020	3,702.16
00204128	07/17/2020	KBA INC SCADA SYSTEM CONSTRUCTION	P0104206	3005087	06/20/2020	8,175.45
00204129	07/17/2020	KC FINANCE SIGNAL MAINTENANCE	P0108123	106360-106362	06/30/2020	1,550.88
00204130	07/17/2020	KELLEY, CHRIS M emergency call out		OH013622	07/13/2020	75.63

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Check No	Check Date	Vendor Name/Description	PO #	Invoice #	Invoice Date	Check Amount
00204131	07/17/2020	KIA MOTORS FINANCE PW 2019 KIA NIRO PHEV LEASE	P0105794	OH013607	07/21/2020	405.80
00204132	07/17/2020	LEYDE, CASEY main break wo 17486		OH013619	07/05/2020	41.98
00204133	07/17/2020	LIFE ASSIST INC FR3 System Case (BLS Core	P0108130	1016289	07/07/2020	135.30
00204134	07/17/2020	MI CHAMBER OF COMMERCE MONTHLY CHAMBER OF COMMERCE	P0106841	OH013606	07/01/2020	600.00
00204135	07/17/2020	MI EMPLOYEES ASSOC payroll early warrants		OH013626	07/17/2020	247.50
00204136	07/17/2020	MOBERLY AND ROBERTS Professional Services - Prosec	P0108126	902	07/01/2020	6,800.00
00204137	07/17/2020	MOUNTAIN PACIFIC BANK RETAINAGE FOR P0104588	P0104590	RETAINAGEPP#5	07/15/2020	1,708.38
00204138	07/17/2020	OVERLAKE OIL DIESEL EXHAUST FLUID & PUMP	P0108124	0198407-IN	07/10/2020	229.10
00204139	07/17/2020	PAPADEM, KATHERINE main break 17486		OH013623	07/05/2020	14.79
00204140	07/17/2020	POLICE ASSOCIATION PAYROLL EARLY WARRANTS		OH013612	07/17/2020	2,432.16
00204141	07/17/2020	PUBLIC SAFETY TESTING INC Fire Quarterly Subscription Fe	P0108132	2020-0443	07/10/2020	300.00
00204142	07/17/2020	PUGET SOUND ENERGY PSE JUNE 2020		OH013608	07/17/2020	2,554.41
00204143	07/17/2020	QUADRANT SYSTEMS INC QUADRANT ANNUAL SOFTWARE SUPPO	P0108141	200524	06/01/2020	1,680.00
00204144	07/17/2020	S&B INC Main reservoir & Inlet #2	P0108109	25529A	05/20/2020	539.55
00204145	07/17/2020	SHOREWOOD #14885 Rental assistance for Emergenc	P0106396	OH013615	07/15/2020	1,000.00
00204146	07/17/2020	STERICYCLE INC On-Call Charges/Fire	P0108133	3005162855	06/30/2020	19.95
00204147	07/17/2020	SUMMIT LAW GROUP Professional Services INV 1140	P0108061	114035	06/22/2020	1,207.00
00204148	07/17/2020	SUPPLY SOURCE INC,THE INVENTORY PURCHASES	P0108125	2002520	07/09/2020	738.46
00204149	07/17/2020	T-MOBILE Monthly service for boat launc	P0108135	519850018-0720	07/01/2020	20.00
00204150	07/17/2020	T2 SYSTEMS CANADA INC Boat launch ticket machine mon	P0108136	IRIS0000072553	06/28/2020	77.00
00204151	07/17/2020	LINKO TECHNOLOGY INC 2020 CROSS CONNECTION WEB TEST	P0107245	7280	06/30/2020	1,136.00
00204152	07/17/2020	Tulsa Chain 3/8" GRADE 30 POWDERCOATED CHA	P0108127	256222	07/08/2020	2,577.14
00204153	07/17/2020	UNITED SITE SERVICES Lid Parking Boat Launch - 2020	P0106552	114-10549804	06/25/2020	948.39
00204154	07/17/2020	UNITED STATES TREASURY PAYROLL EARLY WARRANTS		OH013614	07/17/2020	826.84
00204155	07/17/2020	VERIZON WIRELESS Cell Charges/YFS	P0108129	9857253465	06/23/2020	87.37
00204156	07/17/2020	WEST COAST SIGNAL INC RETAINAGE	P0098051	2974	03/03/2020	1,079.10

Accounts Payable Report by Check Number

Check No	Check Date	Vendor Name/Description	PO #	Invoice #	Invoice Date	Check Amount
00204157	07/17/2020	WESTERN EQUIPMENT ELECTRICAL SWITCHES FOR FL0515	P0108110	7121695-00	06/08/2020	166.17
00204158	07/17/2020	WSCCCE AFSCME AFL-CIO PAYROLL EARLY WARRANTS		OH013611	07/17/2020	2,532.20
00204159	07/17/2020	XEROX CORPORATION 2020 COPIER CHARGES	P0107588	010735643	07/01/2020	697.61
00204160	07/17/2020	XEROX CORPORATION Monthly lease charges for colo	P0107596	010735642	07/01/2020	292.36
					Total	111,588.35

CERTIFICATION OF CLAIMS

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described herein, that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the City of Mercer Island, and that I am authorized to authenticate and certify to said claim.



Finance Director

I, the undersigned, do hereby certify that the City Council has reviewed the documentation supporting claims paid and approved all checks or warrants issued in payment of claims.

Mayor

Date

Report	Warrants	Date	Amount
Check Register	204161-204227	7/24/2020	\$ 430,305.07
			\$ 430,305.07

Accounts Payable Report by GL Key

PO #	Check #	Vendor:	Transaction Description	Check Amount
Org Key: 402000 - Water Fund-Admin Key				
	00204217	Su, Dennis	OVERCHARGED WATER CONNECTION	6,240.00
P0108152	00204225	WALTER E NELSON CO	INVENTORY PURCHASES	1,802.82
P0108144	00204175	CERTIFIED LABORATORIES	INVENTORY PURCHASES	291.25
P0108157	00204187	GRAINGER	INVENTORY PURCHASES	175.83
Org Key: CA1100 - Administration (CA)				
P0108168	00204201	LIGHTHOUSE LAW GROUP PLLC	Professional Services - Invoic	6,960.00
P0108170	00204208	OGDEN MURPHY WALLACE PLLC	Professional Services - Invoic	1,622.01
P0108169	00204194	K&L GATES LLP	Professional Services - Invoic	1,467.40
Org Key: CM1100 - Administration (CM)				
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless Phone	52.37
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless phone	50.09
Org Key: CM1200 - City Clerk				
P0108175	00204176	CODE PUBLISHING CO	Website Update: Ord. 19C-06, 2	1,399.35
P0108175	00204176	CODE PUBLISHING CO	Website Update: Ord. 20-08 - 2	286.60
P0108177	00204216	SOUND PUBLISHING INC	Ntc. 2507499 6/17 Notice of Pu	93.59
P0108177	00204216	SOUND PUBLISHING INC	Ntc. 2507150 6/3 Notice of Cou	70.26
P0108177	00204216	SOUND PUBLISHING INC	Ntc. 2507285 6/10 Ord. 20C-10	62.48
P0108177	00204216	SOUND PUBLISHING INC	Ntc. 2507286 6/10 Ord. 20-12	62.48
P0108177	00204216	SOUND PUBLISHING INC	Ntc. 2507287 6/10 Ord. 20-09	57.30
P0108177	00204216	SOUND PUBLISHING INC	Ntc. 2507289 6/10 Ord. 20-08	57.30
P0108177	00204216	SOUND PUBLISHING INC	Ntc. 2507644 6/24 Ord. 20-11	57.30
P0108177	00204216	SOUND PUBLISHING INC	Ntc. 2507645 6/24 Ord. 20C-13	57.30
Org Key: CR1100 - Human Resources				
P0108162	00204211	PUBLIC SAFETY TESTING INC	Police Q2 Fees	449.00
Org Key: DS0000 - Development Services-Revenue				
	00204220	TUGHAN ELECTRIC	DUPLICATE PERMIT #2005-114	108.83
Org Key: GGM001 - General Government-Misc				
P0108176	00204210	PROJECT A INC	Intranet Support Fee	1,250.00
Org Key: GGM005 - Genera Govt-L1 Retiree Costs				
	00204200	LEOFF HEALTH & WELFARE TRUST	LEOFF HEALTH - RETIREES	6,289.00
	00204199	LEOFF HEALTH & WELFARE TRUST	LEOFF HEALTH - FIRE RETIREES	3,144.50
	00204191	HILTNER, PETER	LEOFF1 Medicare Reimb	556.00
	00204215	SMITH, RICHARD	LEOFF1 Medicare Reimb	231.70
	00204167	BARNES, WILLIAM	LEOFF1 Medicare Reimb	222.40
	00204179	DEEDS, EDWARD G	LEOFF1 Medicare Reimb	222.40
	00204214	SCHOENTRUP, WILLIAM	LEOFF1 Medicare Reimb	222.40
	00204186	GOODMAN, J C	LEOFF1 Medicare Reimb	211.90
	00204203	LYONS, STEVEN	LEOFF1 Medicare Reimb	199.90
	00204218	THOMPSON, JAMES	LEOFF1 Medicare Reimb	196.40
	00204227	WHEELER, DENNIS	LEOFF1 Medicare Reimb	181.70
	00204181	DEVENY, JAN P	LEOFF1 Medicare Reimb	177.20
	00204198	KUHN, DAVID	LEOFF1 Medicare Reimb	177.20
	00204171	BOOTH, GLENDON D	LEOFF1 Medicare Reimb	177.10
	00204183	ELSOE, RONALD	LEOFF1 Medicare Reimb	176.70

Accounts Payable Report by GL Key

PO #	Check #	Vendor:	Transaction Description	Check Amount
	00204166	AUGUSTSON, THOR	LEOFF1 Medicare Reimb	175.90
	00204173	CALLAGHAN, MICHAEL	LEOFF1 Medicare Reimb	175.90
	00204206	MYERS, JAMES S	LEOFF1 Medicare Reimb	175.90
	00204163	ADAMS, RONALD E	LEOFF1 Medicare Reimb	175.60
	00204182	DOWD, PAUL	LEOFF1 Medicare Reimb	173.10
	00204224	WALLACE, THOMAS	LEOFF1 Medicare Reimb	170.10
	00204162	ABBOTT, RICHARD	LEOFF1 Medicare Reimb	165.50
	00204193	JOHNSON, CURTIS	LEOFF1 Medicare Reimb	163.70
	00204213	RUCKER, MANORD J	LEOFF1 Medicare Reimb	162.90
	00204189	HAGSTROM, JAMES	LEOFF1 Medicare Reimb	158.80
	00204202	LOISEAU, LERI M	LEOFF1 Medicare Reimb	157.80
P0108163	00204163	ADAMS, RONALD E	LEOFF1 Retiree Medical Expense	146.29
	00204184	FORSMAN, LOWELL	LEOFF1 Medicare Reimb	144.60
	00204226	WEGNER, KEN	LEOFF1 Medicare Reimb	144.60
	00204212	RAMSAY, JON	LEOFF1 Medicare Reimb	136.20
P0108165	00204183	ELSOE, RONALD	LEOFF1 Retiree Medical Expense	123.72
P0108160	00204184	FORSMAN, LOWELL	LEOFF1 Retiree Medical Expense	108.63
P0108164	00204171	BOOTH, GLENDON D	LEOFF1 Retiree Medical Expense	88.79
P0108166	00204189	HAGSTROM, JAMES	FRLEOFF1 Retiree Medical Exp	45.00
P0108161	00204183	ELSOE, RONALD	LEOFF1 Retiree Medical Expense	22.50
P0108167	00204193	JOHNSON, CURTIS	FRLEOFF1 Retiree Medical Exp	20.70
Org Key: GGM606 - Excess Retirement-Fire				
	00204167	BARNES, WILLIAM	LEOFF1 Excess Benefit	1,932.13
	00204177	COOPER, ROBERT	LEOFF1 Excess Benefit	1,890.52
	00204193	JOHNSON, CURTIS	LEOFF1 Excess Benefit	1,065.12
	00204214	SCHOENTRUP, WILLIAM	LEOFF1 Excess Benefit	988.66
	00204212	RAMSAY, JON	LEOFF1 Excess Benefit	574.01
Org Key: GX9996 - Employee Benefits-Police				
	00204200	LEOFF HEALTH & WELFARE TRUST	LEOFF HEALTH & WELFARE - POLIC	54,888.67
Org Key: GX9997 - Employee Benefits-Fire				
	00204199	LEOFF HEALTH & WELFARE TRUST	LEOFF HEALTH - FIRE	50,563.68
	00204200	LEOFF HEALTH & WELFARE TRUST	LEOFF HEALTH & WELFARE - POLIC	3,247.05
	00204199	LEOFF HEALTH & WELFARE TRUST	LEOFF HEALTH - FIRE	-0.02
Org Key: IGMA02 - Alcoholism Program				
P0108158	00204196	KC FINANCE	Remit Liquor Profits	1,736.92
Org Key: IS2100 - IGS Network Administration				
P0107116	00204197	KING COUNTY FINANCE	I-NET MONTLY SERVICES FROM	1,122.00
Org Key: MT2100 - Roadway Maintenance				
P0108182	00204180	DEPT OF TRANSPORTATION	PROJECT COSTS FOR MAR 2020	71.33
P0108183	00204180	DEPT OF TRANSPORTATION	PROJECT COSTS FOR APRIL 2020	41.67
Org Key: MT2150 - Pavement Marking				
P0108151	00204192	HOME DEPOT CREDIT SERVICE	PAINT FOR PARKING LOT	65.96
Org Key: MT3100 - Water Distribution				
P0106533	00204170	BOLLES CONSTRUCTION INC	EXCAVATION ON CALL	5,021.63
P0106556	00204221	US Bank Redmond	RETAINAGE FOR P0106533	1,172.29

Accounts Payable Report by GL Key

PO #	Check #	Vendor:	Transaction Description	Check Amount
P0108150	00204165	AMERICAN LEAK DETECTION	4" AND 6" CI LEAK INSPECTION	675.00
P0106556	00204221	US Bank Redmond	RETAINAGE FOR P0106533	524.91
P0108153	00204188	H D FOWLER	HYDRANT NOZZLE & CAP	285.10
<i>Org Key: MT3150 - Water Quality Event</i>				
P0107500	00204164	AM TEST INC	2020 WATER QUALITY SAMPLES	300.00
P0107500	00204164	AM TEST INC	2020 WATER QUALITY SAMPLES	40.00
P0107245	00204219	LINKO TECHNOLOGY INC	2020 CROSS CONNECTION WEB TEST	6.00
<i>Org Key: MT3800 - Storm Drainage</i>				
P0108178	00204164	AM TEST INC	OIL AND GREASE ANALYSIS	95.00
<i>Org Key: MT4200 - Building Services</i>				
P0108155	00204209	PACIFIC AIR CONTROL INC	CITY HALL HVAC POLICE AREA HVA	1,411.58
P0108154	00204209	PACIFIC AIR CONTROL INC	FS#91 HVAC REPAIR	810.15
P0108156	00204209	PACIFIC AIR CONTROL INC	CITY HALL HEAT PUMP REPAIR	733.70
P0108173	00204223	WA ST DEPT OF LABOR & INDUST	ELEVATOR OPERATING PERMIT	200.50
<i>Org Key: MT4501 - Water Administration</i>				
P0108177	00204216	SOUND PUBLISHING INC	Ntc. 2507646 6/24 Water Consum	57.30
<i>Org Key: PR1100 - Administration (PR)</i>				
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless Phone	166.10
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless phone	87.37
<i>Org Key: PR1500 - Urban Forest Management</i>				
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless Phone	47.37
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless phone	45.75
<i>Org Key: PR4100 - Community Center</i>				
P0108174	00204223	WA ST DEPT OF LABOR & INDUST	ELEVATOR OPERATING PERMIT	134.10
<i>Org Key: PR6100 - Park Maintenance</i>				
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless Phone	611.58
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless phone	599.53
<i>Org Key: PR6200 - Athletic Field Maintenance</i>				
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless Phone	102.69
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless phone	101.08
<i>Org Key: PR6500 - Luther Burbank Park Maint.</i>				
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless phone	70.64
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless Phone	70.64
<i>Org Key: PR6600 - Park Maint-School Related</i>				
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless phone	15.32
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless Phone	15.32
<i>Org Key: PR6800 - Trails Maintenance</i>				
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless Phone	47.34
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless phone	45.74
<i>Org Key: PR6900 - Aubrey Davis Park Maintenance</i>				
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless Phone	118.00
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless phone	116.39

Accounts Payable Report by GL Key

PO #	Check #	Vendor:	Transaction Description	Check Amount
<i>Org Key: PY4620 - Flex Spending Admin 2020</i>				
	00204169	BLUVAS, SARAH	FLEXIBLE SPENDING REIMBURS.	40.00
<i>Org Key: ST0025 - ST Environmental</i>				
	00204204	Mr. Kelly Price, President	MS INV 2019-12, THARSIS MI-ENV	19,386.30
<i>Org Key: WD104D - Watercourse Condition Assess</i>				
P0107111	00204174	CARDNO INC	2019-2020 WATER COURSE CONDITI	779.25
<i>Org Key: WD140R - Drainage System Pipe Replacem</i>				
P0107632	00204168	BLUELINE GROUP	2020 WATER SYSTEM IMPROVMENTS	230.80
<i>Org Key: WG102R - Maintenance Building Repairs</i>				
P0108180	00204185	GARY HARPER CONSTRUCTION INC	CITY SHOP WA/DRYER INSTALL	46,862.00
<i>Org Key: WPI22R - Vegetation Management</i>				
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless Phone	47.37
P0108142	00204161	VERIZON WIRELESS	Monthly Verizon Wireless phone	45.75
<i>Org Key: WS713T - SCADA System Upgrade</i>				
P0103284	00204172	BROWN AND CALDWELL CONSULTANTS	PH1 SCADA EQUIPMENT REPLACEMEN	52,907.85
P0103284	00204172	BROWN AND CALDWELL CONSULTANTS	PH1 SCADA EQUIPMENT REPLACEMEN	41,273.66
P0104206	00204195	KBA INC	SCADA SYSTEM CONSTRUCTION	7,428.48
<i>Org Key: WS901E - Sewer Sys Emergency Repairs</i>				
P0107506	00204195	KBA INC	2020 CONSTRUCTION MANAGEMENT	9,147.38
P0108181	00204222	UTILITIES SERVICE CO INC	REPAIR ON PUMP STATION 11	4,496.80
P0108122	00204178	CUMMINS SALES & SERVICE	REPAIR ON GENERATOR #19	533.56
<i>Org Key: WS901F - PS Generator and Pump Repl</i>				
P0104588	00204185	GARY HARPER CONSTRUCTION INC	PUMP STATION 18 REPLACEMENT	21,630.23
<i>Org Key: WS901G - Sewer System Generator Repl</i>				
P0104206	00204195	KBA INC	UTILTIY CONSTRUCTION	18,630.52
<i>Org Key: WW102P - Water Model and Fire Flow Anal</i>				
P0107834	00204190	HDR ENGINEERING INC	2020 WATER MODELING	2,890.24
<i>Org Key: WW120S - Meter Replacement Residential</i>				
P0104206	00204195	KBA INC	METER REPLACEMENT	1,000.00
P0102980	00204190	HDR ENGINEERING INC	WATER METER REPLACEMENT	885.40
<i>Org Key: WW521C - Water Components Replacement</i>				
P0107630	00204205	MURRAYSMITH INC	DOH SANITARY SURVEY RESERVOIR	8,714.50
<i>Org Key: WW522R - Reservoir Generator</i>				
P0105058	00204205	MURRAYSMITH INC	RESERVOIR STANDBY DIESEL GENER	470.00
<i>Org Key: WW718R - Main 87th and 88th Ave SE</i>				
P0107632	00204168	BLUELINE GROUP	2020 WATER SYSTEM IMPROVEMENT	1,344.00
<i>Org Key: WW914R - 96th 97th Ave and SE 34th Main</i>				
P0107631	00204207	OCEANSIDE CONSTRUCTION INC	2020 WATER SYSTEM IMPROVEMENTS	21,235.87
P0107632	00204168	BLUELINE GROUP	2020 WATER SYSTEM IMPROVMENTS	345.70
<i>Org Key: YF1200 - Thrift Shop</i>				

Accounts Payable Report by GL Key

PO #	Check #	Vendor:	Transaction Description	Check Amount
P0108173	00204223	WA ST DEPT OF LABOR & INDUST	ELEVATOR OPERATING PERMIT	167.30
			Total	430,305.07

Accounts Payable Report by Check Number

Check No	Check Date	Vendor Name/Description	PO #	Invoice #	Invoice Date	Check Amount
00204161	07/22/2020	VERIZON WIRELESS Monthly Verizon Wireless phone	P0108142	9857253458	06/23/2020	2,456.44
00204162	07/24/2020	ABBOTT, RICHARD LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	165.50
00204163	07/24/2020	ADAMS, RONALD E LEOFF1 Retiree Medical Expense		AUG2020B	08/01/2020	321.89
00204164	07/24/2020	AM TEST INC 2020 WATER QUALITY SAMPLES	P0108178	116589	07/15/2020	435.00
00204165	07/24/2020	AMERICAN LEAK DETECTION 4" AND 6" CI LEAK INSPECTION	P0108150	52641	07/16/2020	675.00
00204166	07/24/2020	AUGUSTSON, THOR LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	175.90
00204167	07/24/2020	BARNES, WILLIAM LEOFF1 Medicare Reimb		AUG2020A	08/01/2020	2,154.53
00204168	07/24/2020	BLUELINE GROUP 2020 WATER SYSTEM IMPROVMENTS	P0107632	19171	07/01/2020	1,920.50
00204169	07/24/2020	BLUVAS, SARAH FLEXIBLE SPENDING REIMBURS.		OH013636	07/23/2020	40.00
00204170	07/24/2020	BOLLES CONSTRUCTION INC EXCAVATION ON CALL	P0106533	3064	07/13/2020	5,021.63
00204171	07/24/2020	BOOTH, GLENDON D LEOFF1 Retiree Medical Expense		AUG2020B	08/01/2020	265.89
00204172	07/24/2020	BROWN AND CALDWELL CONSULTANTS PH1 SCADA EQUIPMENT REPLACEMENT	SP0103284	14376591	07/07/2020	94,181.51
00204173	07/24/2020	CALLAGHAN, MICHAEL LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	175.90
00204174	07/24/2020	CARDNO INC 2019-2020 WATER COURSE CONDITI	P0107111	291922	05/06/2020	779.25
00204175	07/24/2020	CERTIFIED LABORATORIES INVENTORY PURCHASES	P0108144	7023597	07/10/2020	291.25
00204176	07/24/2020	CODE PUBLISHING CO Website Update: Ord. 20-08 - 2	P0108175	67210	07/20/2020	1,685.95
00204177	07/24/2020	COOPER, ROBERT LEOFF1 Excess Benefit		AUG2020A	08/01/2020	1,890.52
00204178	07/24/2020	CUMMINS SALES & SERVICE REPAIR ON GENERATOR #19	P0108122	01-79287	06/26/2020	533.56
00204179	07/24/2020	DEEDS, EDWARD G LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	222.40
00204180	07/24/2020	DEPT OF TRANSPORTATION PROJECT COSTS FOR MAR 2020	P0108183	RE41-GMB1110R005	05/18/2020	113.00
00204181	07/24/2020	DEVENY, JAN P LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	177.20
00204182	07/24/2020	DOWD, PAUL LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	173.10
00204183	07/24/2020	ELSOE, RONALD LEOFF1 Retiree Medical Expense		AUG2020B	08/01/2020	322.92
00204184	07/24/2020	FORSMAN, LOWELL LEOFF1 Retiree Medical Expense		AUG2020B	08/01/2020	253.23
00204185	07/24/2020	GARY HARPER CONSTRUCTION INC CITY SHOP WA/DRYER INSTALL	P0104588	PAYREQ#6	05/22/2020	68,492.23
00204186	07/24/2020	GOODMAN, J C LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	211.90

Accounts Payable Report by Check Number

Check No	Check Date	Vendor Name/Description	PO #	Invoice #	Invoice Date	Check Amount
00204187	07/24/2020	GRAINGER INVENTORY PURCHASES	P0108157	9592602172	07/16/2020	175.83
00204188	07/24/2020	H D FOWLER HYDRANT NOZZLE & CAP	P0108153	I5518414	07/10/2020	285.10
00204189	07/24/2020	HAGSTROM, JAMES FRLEOFF1 Retiree Medical Expen		AUG2020B	08/01/2020	203.80
00204190	07/24/2020	HDR ENGINEERING INC 2020 WATER MODELING	P0102980	1200280283	07/10/2020	3,775.64
00204191	07/24/2020	HILTNER, PETER LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	556.00
00204192	07/24/2020	HOME DEPOT CREDIT SERVICE PAINT FOR PARKING LOT	P0108151	0102445	07/16/2020	65.96
00204193	07/24/2020	JOHNSON, CURTIS FRLEOFF1 Retiree Medical Expen		AUG2020A	08/01/2020	1,249.52
00204194	07/24/2020	K&L GATES LLP Professional Services - Invoic	P0108169	3803915	07/08/2020	1,467.40
00204195	07/24/2020	KBA INC SCADA SYSTEM CONSTRUCTION	P0104206	3005343	06/12/2020	36,206.38
00204196	07/24/2020	KC FINANCE Remit Liquor Profits	P0108158	2124775	05/28/2020	1,736.92
00204197	07/24/2020	KING COUNTY FINANCE I-NET MONTHLY SERVICES FROM	P0107116	11009267	06/30/2020	1,122.00
00204198	07/24/2020	KUHN, DAVID LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	177.20
00204199	07/24/2020	LEOFF HEALTH & WELFARE TRUST LEOFF HEALTH - FIRE RETIREES		OH013635	08/01/2020	53,708.16
00204200	07/24/2020	LEOFF HEALTH & WELFARE TRUST LEOFF HEALTH - RETIREES		OH013634	08/01/2020	64,424.72
00204201	07/24/2020	LIGHTHOUSE LAW GROUP PLLC Professional Services - Invoic	P0108168	20465	06/30/2020	6,960.00
00204202	07/24/2020	LOISEAU, LERI M LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	157.80
00204203	07/24/2020	LYONS, STEVEN LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	199.90
00204204	07/24/2020	Mr. Kelly Price, President MS INV 2019-12, THARSIS MI-ENV		OH013637	07/23/2020	19,386.30
00204205	07/24/2020	MURRAYSMITH INC DOH SANITARY SURVEY RESERVOIR	P0105058	19-2659.00-7	07/13/2020	9,184.50
00204206	07/24/2020	MYERS, JAMES S LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	175.90
00204207	07/24/2020	OCEANSIDE CONSTRUCTION INC 2020 WATER SYSTEM IMPROVEMENTS	P0107631	PPNO.1	06/30/2020	21,235.87
00204208	07/24/2020	OGDEN MURPHY WALLACE PLLC Professional Services - Invoic	P0108170	840296	06/25/2020	1,622.01
00204209	07/24/2020	PACIFIC AIR CONTROL INC FS#91 HVAC REPAIR	P0108156	31437	07/03/2020	2,955.43
00204210	07/24/2020	PROJECT A INC Intranet Support Fee	P0108176	20-1530	04/01/2020	1,250.00
00204211	07/24/2020	PUBLIC SAFETY TESTING INC Police Q2 Fees	P0108162	2020-0407	07/10/2020	449.00
00204212	07/24/2020	RAMSAY, JON LEOFF1 Medicare Reimb		AUG2020A	08/01/2020	710.21

Accounts Payable Report by Check Number

Check No	Check Date	Vendor Name/Description	PO #	Invoice #	Invoice Date	Check Amount
00204213	07/24/2020	RUCKER, MANORD J LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	162.90
00204214	07/24/2020	SCHOENTRUP, WILLIAM LEOFF1 Medicare Reimb		AUG2020A	08/01/2020	1,211.06
00204215	07/24/2020	SMITH, RICHARD LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	231.70
00204216	07/24/2020	SOUND PUBLISHING INC Ntc. 2507150 6/3 Notice of Cou	P0108177	7988857	06/30/2020	575.31
00204217	07/24/2020	Su, Dennis OVERCHARGED WATER CONNECTION F		OH013639	07/22/2020	6,240.00
00204218	07/24/2020	THOMPSON, JAMES LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	196.40
00204219	07/24/2020	LINKO TECHNOLOGY INC 2020 CROSS CONNECTION WEB TEST	P0107245	6709	01/31/2020	6.00
00204220	07/24/2020	TUGHAN ELECTRIC DUPLICATE PERMIT #2005-114		OH013638	07/22/2020	108.83
00204221	07/24/2020	US Bank Redmond RETAINAGE FOR P0106533	P0106556	RET-3058	06/15/2020	1,697.20
00204222	07/24/2020	UTILITIES SERVICE CO INC REPAIR ON PUMP STATION 11	P0108181	2427	07/14/2020	4,496.80
00204223	07/24/2020	WA ST DEPT OF LABOR & INDUST ELEVATOR OPERATING PERMIT	P0108173	264169	07/17/2020	501.90
00204224	07/24/2020	WALLACE, THOMAS LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	170.10
00204225	07/24/2020	WALTER E NELSON CO INVENTORY PURCHASES	P0108152	767582/766731	07/10/2020	1,802.82
00204226	07/24/2020	WEGNER, KEN LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	144.60
00204227	07/24/2020	WHEELER, DENNIS LEOFF1 Medicare Reimb		AUG2020B	08/01/2020	181.70
					Total	<u>430,305.07</u>



CITY COUNCIL MINUTES SPECIAL VIDEO MEETING JULY 14, 2020

EXECUTIVE SESSION

At 5:00 pm, Mayor Wong convened an Executive Session:

- 1) To discuss with legal counsel pending or potential litigation pursuant to RCW 42.30.110(1)(i) for approximately 15 minutes.
- 2) To discuss planning or adopting the strategy or position to be taken by the City Council during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress pursuant to RCW 42.30.140(4)(b) for approximately 30 minutes. No action will be taken.

At 5:44 pm, Mayor Wong adjourned the Executive Session.

CALL TO ORDER & ROLL CALL

Mayor Benson Wong called the meeting to order at 6:00 pm from a remote location.

Mayor Benson Wong, Deputy Mayor Wendy Weiker and Councilmembers Lisa Anderl, Jake Jacobson, Salim Nice, Craig Reynolds, and David Rosenbaum participated remotely using a video teleconferencing platform by Zoom.

City Attorney Bio Park and several additional staff members participated from remote locations.

City Manager Jessi Bon and City Clerk Deborah Estrada participated remotely from separate rooms at City Hall, 9611 SE 36th Street, Mercer Island, Washington.

AGENDA APPROVAL

It was moved by Rosenbaum; seconded by Reynolds to:

Approve the agenda as presented.

A roll call vote was conducted, and the results were as follows:

Passed 7-0

FOR: 7 (Anderl, Jacobson, Nice, Reynolds, Rosenbaum, Weiker and Wong)

APPEARANCES

Mayor Wong opened public appearances and noted that Ms. Meg Lippert would be given two three-minute opportunities to speak as she was unable to deliver her statement during the July 7 meeting, having previously registered with the City Clerk.

Meg Lippert, Mercer Island – Lippert expressed concern about the protection and preservation of public parkland, specifically Mercerdale Park, in light of the Council's discussion regarding the Thrift Shop expansion. She further noted that the community needs assurance that current public street parking on the south side of 32nd Street would not be coopted by the Thrift Shop.

Meg Lippert, Mercer Island – Lippert outlined the technical difficulties she experienced when she attempted to speak during the July 7 public appearances and encouraged the City to clarify its language and procedures on the City webpage and calendar. She also requested that if a citizen is unable to present due to technical

difficulties that they be permitted to present two appearances at the following meeting.

Bharat Shyam, Mercer Island – Shyam spoke in support of the Mercer Island Police Department and recommended that their budget be increased to increase bias training opportunities. Shyam thanked Police Chief Holmes and his officers.

Addie Smith, Mercer Island – Smith reported that she is a hate crime survivor and believes that the Police Department's funding should be decreased. She also addressed affordable housing, explaining that new housing will not be more affordable than old housing.

Ira Appleman, Mercer Island – Appleman objected to the building project in Mercerdale Park without public input or public participation, noting that it was a violation of the OPMA by excluding the public in making the decision. Appleman outlined his objectives and encouraged the Council to suspend all expenditures and put the project on hold until public input and involvement has occurred, and the Council has identified protections for the park.

STUDY SESSION

AB 5724: Police Operations Report

Chief Ed Holmes and Sargent Mike Seifert outlined the Police Department's ongoing efforts to build and maintain trust within the community by explaining the following department practices:

- Hiring Process – testing, oral boards, background investigation, Chief's Interview, and conditional job offer
- Initial Training – Pre-Academy, Basic Law Enforcement Academy, Post-Academy Training, Field Training, and 18-month probationary period
- Clear Policies – Lexipol/Daily training bulletins, Use of Force policy, Biased-Based Policing
- Ongoing Training:
 - State law requires officers attend a minimum of 24 hours training annually; however, MIPD officers typically receive more than the minimum
 - Coalition of Small Police Agencies sponsors anti-biased police training
 - Crisis Intervention Training
 - Use of Force and De-escalation Training
- Accountability:
 - Few complaints are received, and all complaints are taken seriously and investigated.
 - If gaps are identified, additional training is completed to prevent future issues.
 - Citizens are given the outcome of their complaint
 - Use of force is rarely used and hands-on force is applied on average once every other year.
 - All applications of force require a separate Use of Force report and are reviewed by supervisors
 - Corrective actions are taken when necessary
 - Criminal and/or administrative investigations are initiated when appropriate

Council asked several questions to which Police Chief Holmes explained that the department recognizes Public Trust is earned and must be maintained, noting that the department continually looks for ways to improve the services provided to the community.

Mayor Wong reported that he had received several requests to sign the Mayors Commit to Action Pledge, to which Chief Holmes explained is aimed at addressing use of force policies in police departments across the country. Chief Holmes further explained that MIPD's Use of Force Policy already includes best practices and comports with current law, noting that the Pledge's fourth action point "to reform policies" assumes that the current Use of Force policy is inadequate or misguided. It was also noted that if the Mayor were to sign the Pledge, there would be an expectation that the community would be actively involved in reforming the Use of Force policy.

Council expressed strong support for the Police Department's ongoing efforts to meet the community's needs and requested that staff bring the Mayors Commit to Action Pledge back to Council at its July 21 Regular meeting for consideration.

AB 5726: MIFD Fire Services Study

Chief Steve Heitman explained that in October 2019, a Request for Proposals was issued to perform a Fire Services Study for the Mercer Island Fire Department. Six proposals were received, and MATRIX Consulting Group was selected. The purpose of the Study Session was to review the Fire Services Study completed by MATRIX, noting that the intent of the analysis was to evaluate existing conditions and determine if the City could realize greater efficiencies in the delivery of fire protection services.

Chief Heitman introduced Robert Finn, of MATRIX, who explained that the City commissioned a staffing study to conduct an organizational and operational assessment of the Fire Department, including:

- Gathering Input from internal and external stakeholders
- Reviewing existing conditions of the Mercer Island Fire Department
- Development of analysis of future service demand
- Development of future service delivery models
- Presentation of the findings to the City Council

Mr. Finn reviewed the Department's strengths and response time performance in detail. Finn also outlined the following improvement opportunities and a list of study recommendations:

- Improvement Opportunities:
 - Improve Training through the use of an online program and video conferencing.
 - Additional personnel is needed in areas with high-rise and mid-rise developments.
 - Reduce OT by moving the D-Shift firefighter to a 24-hour shift and hiring two additional firefighters
 - Replace one engine with a quint will improve response times and availability of an aerial apparatus and further improve the City's WSRB rating.
- Study Recommendations:
 - Continue monitoring response time metrics against established community standards.
 - Continue the use of shift personnel to manage and deliver training programs.
 - Invest in an online training program for the delivery of training programs.
 - Utilize video conferencing between the stations to allow units to remain in their district during meetings and training sessions.
 - Replace an existing engine with a quint style apparatus during the normal apparatus replacement schedule.
 - Assign the D-shift firefighter and hire two additional firefighters to staff 24-hour shifts saving approximately \$162,000 in OT.
 - Continue to maintain the 7-person minimum daily shift staffing and scheduling one firefighter for a Kelly Day and one firefighter for vacation leave each shift.
 - If the option of contracting for services is desired, negotiate a contract with the City of Bellevue due to potential cost savings and improved regional approaches to providing services.

Council asked several questions. City Manager Bon explained that the report would be added to the Work Plan and follow-up discussion with the Council would be scheduled as part of the 2021-2022 biennial budget process to determine next steps.

REGULAR BUSINESS

Communication on Commuter Parking & Mixed-Use Development Project

City Manager Bon shared a draft message to the Community from the City Council, outlining the Council's relationship with the MainStreet Property Group and the City's decision to part ways with MainStreet over differences in the project vision. The letter further explained that the large-scale project was not a viable investment for the City given the current fiscal realities of an unpredictable post COVID-19 landscape and significant reductions in City staff.

It was moved by Jacobson; seconded by Rosenbaum to:

Authorize the publication of the City Council's letter to the community on the subject of ending the City's Commuter Parking & Mixed-Use Development Project substantially in the form presented.

A roll call vote was conducted, and the results were as follows:

Passed 7-0

FOR: 7 (Anderl, Jacobson, Nice, Reynolds, Rosenbaum, Weiker and Wong)

OTHER BUSINESS

There were no other items brought before Council for discussion.

EXECUTIVE SESSION

At 9:08 pm, Mayor Wong convened an Executive Session for approximately 60 minutes to discuss planning or adopting the strategy or position to be taken by the City Council during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress pursuant to RCW 42.30.140(4)(b)

No action will be taken.

At 10:05 pm, Mayor Wong adjourned the Executive Session.

ADJOURNMENT

There being no additional business to come before City Council, the Special Video Meeting adjourned at 10:06 PM

Attest:

Benson Wong, Mayor

Deborah A. Estrada, City Clerk



CITY OF MERCER ISLAND CERTIFICATION OF PAYROLL

PAYROLL PERIOD ENDING **7.24.2020**
PAYROLL DATED **7.31.2020**

Net Cash	\$ 454,328.26
Net Voids/Manuals	\$ -
Net Total	\$ 454,328.26
Federal Tax Deposit - Key Bank	\$ 73,101.20
Social Security and Medicare Taxes	\$ 39,166.37
Medicare Taxes Only (Fire Fighter Employees)	\$ 2,368.63
State Tax (Massachusetts)	\$ -
Public Employees Retirement System 2 (PERS 2)	\$ 23,476.93
Public Employees Retirement System 3 (PERS 3)	\$ 4,549.36
Public Employees Retirement System (PERSJM)	\$ 870.75
Public Safety Employees Retirement System (PSERS)	\$ 214.08
Law Enforc. & Fire fighters System 2 (LEOFF 2)	\$ 26,414.23
Regence & LEOFF Trust - Medical Insurance	\$ -
Domestic Partner/Overage Dependant - Insurance	\$ -
Group Health Medical Insurance	\$ -
Health Care - Flexible Spending Accounts	\$ 1,636.60
Dependent Care - Flexible Spending Accounts	\$ 767.31
ICMA Deferred Compensation	\$ 30,345.84
Fire 457 Nationwide	\$ 12,789.89
Roth - ICMA	\$ 475.00
Roth - Nationwide	\$ 990.00
Garnishments (Chapter 13)	\$ -
Tax Levy	\$ 826.84
Child Support	\$ 599.99
Mercer Island Employee Association	\$ 242.50
Cities & Towns/AFSCME Union Dues	\$ -
Police Union Dues	\$ -
Fire Union Dues	\$ 2,153.38
Fire Union - Supplemental Dues	\$ 160.00
Standard - Supplemental Life Insurance	\$ -
Unum - Long Term Care Insurance	\$ -
AFLAC - Supplemental Insurance Plans	\$ -
Coffee Fund	\$ -
Transportation	\$ -
HRA - VEBA	\$ 5,933.41
Tax & Benefit Obligations Total	\$ 227,082.31

TOTAL GROSS PAYROLL	\$ 681,410.57
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I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein, that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the City of Mercer Island, and that I am authorized to authenticate and certify to said claim.

Finance Director

I, the undersigned, do hereby certify that the City Council has reviewed the documentation supporting claims paid and approved all checks or warrants issued in payment of claims.

Mayor

Date



BUSINESS OF THE CITY COUNCIL CITY OF MERCER ISLAND

AB 5733
August 4, 2020
Consent Calendar

AGENDA BILL INFORMATION

TITLE:	AB 5733: Building Access Control System Bid Award	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Award the contract to Security Solutions NW and direct the City Manager to execute the Small Public Works contract.	<input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	City Manager
STAFF:	Zach Houvener, Logistics Section Chief
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Scope of Work 2. Premier Cabling, LLC Quote
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ 199,827.00
AMOUNT BUDGETED	\$ 0
APPROPRIATION REQUIRED	\$ 199,827.00

SUMMARY

This agenda bill addresses the Building Access Control System project, which will enhance security and provide keyless access to City Hall, the Public Works/Maintenance building, and the Mercer Island Community & Event Center.

BACKGROUND

In 2016, staff issued a Request for Proposal (RFP) for a building access control system to improve employee and visitor security for City Hall. The RFP would have allowed staff to administer keyless access to the areas needed at the right times with minimal barriers, while preventing unauthorized access to restricted areas. A building access control system would replace traditional lock and key security protocols for six (6) exterior doors, and twenty-two (22) interior doors. Staff determined that the bids were not financially viable in 2016 and the project was put on hold.

Currently, authorized staff/visitors are given a generic passcode (not associated with individual employees) that allows either: (1) keyless electronic access through cylindrical pin locks, or (2) a traditional keyset for authorized people entering City Hall. This system does not allow for proper internal controls or audit trails of who entered a building and at what time. Passcodes are changed on a rotating basis, but must be changed via a local, wired connection to each keyless lock.

Sensitive areas (i.e. Server Room) are programmed with a different code to restrict unauthorized access, however other interior doors do not have a keyless entry lock installed and rely on traditional sets of cores to distinguish who is allowed entry into doors. Of note, the Mercer Island Police Department has a separate keyless access system and set of access protocols required for enhanced security and accreditation purposes.

During the COVID-19 Pandemic and related workforce reductions, building access control has been challenging for staff/vendors/visitors as traditional keysets were given out without logging who possessed keys for certain City facilities. Passcodes have been changed at City Hall to restrict unauthorized access via keyless entry.

Building access control protocols are similar at the Public Works/Maintenance building(s) utilizing a mix of keyless electronic access via cylindrical pin locks, and/or a traditional key and core for entering exterior doors. Currently, there are no interior doors at the Public Works/Maintenance building that require passcodes to enter.

At the Mercer Island Community & Event Center (MICEC), a tiered key/core schedule was installed that restricts access to only authorized individuals who are given traditional keys for access. There is currently no keyless entry hardware installed at the MICEC.

PROJECT DESCRIPTION

The Building Access Control project will retrofit 42 doors across three City facilities with contactless “smart” card technology solutions to permit access into secured areas as follows:

Phase 1: City Hall (28 doors)

Phase 2: Public Works/Maintenance Building (6 doors)

Phase 3: Mercer Island Community & Event Center (8 doors)

This system replaces the traditional brass keys and generic keyless passcodes currently used. The project scope of work (see Exhibit 1) requires solutions that seamlessly integrate with existing video surveillance systems and requires Power over Ethernet (PoE) capable locking hardware, enhancing building and staff security.

The system will provide pre-defined reporting as well as the ability to design custom reports, such as contact tracing requirements related to the COVID-19 Pandemic.

Access cards/fobs will be given to authorized employees and can be programmed remotely for pre-defined groups of doors where access can either be granted or restricted. Access permissions can be altered (either upgraded, downgraded, or voided) for set periods of time from a remote administrator account. In the event of emergency, the system allows specific security personnel free access throughout physical locations.

The proposed system as previously mentioned integrates with existing video security equipment and allows enterprise level security and surveillance for the City. Roles and identities can be connected with the City’s surveillance system and allows administrators the ability to create rules or control access events to instantly detect someone at a specified access control point.

PROJECT CABLING AND WIRING

This project requires cabling and wiring. Those costs were not included in the scope of work as the City has an on-call cabling vendor, Premier Cabling, LLC, that has worked with the City for over 10 years on various projects. Their knowledge of City buildings will help limit the number of surprises and cost overruns during construction.

A formal quote from Premier Cabling, LLC is attached as Exhibit 2, and the cost for this work is included in the appropriation required to complete this project. Premier Cabling, LLC will be responsible for installing category 5e network cables to doors listed within the scope of work for each phase. Premier Cabling, LCC will also provide and install all necessary surface-mounted raceways, termination hardware, and 24 and/or 48-port category 5e patch panels in the server room for each proposed phase. The cost for the access control cabling component is \$31,455, not including WA State Sales Tax (WSST).

BID RESULTS AND AWARD RECOMMENDATION

Although eight bids were received, only two bids came back responsive, meeting criteria outlined in the scope of work and addenda. The non-responsive bids were excluded for either not specifying hardware that would seamlessly integrate with the City’s video surveillance system or proposed solutions that did not meet specifications requiring PoE capable locking hardware. This condition was specified from the City’s IT staff due to potential IT and network security liabilities. The projected installation timeline is to have the system installed and operational by the end of 2020.

The lowest responsive bid was from Security Solutions NW, broken out in phases:

- Phase 1 bid amount: \$99,165
- Phase 2 bid amount: \$21,954
- Phase 3 bid amount: \$29,087

The total bid amount for Phases 1-3 is \$150,206 which does not include WSST.

Security Solutions NW has completed numerous building access system control projects for several organizations within Washington State in recent years, including projects for the City of Bellingham, Port of Anacortes, and the Edmonds School District.

Staff’s review of the Labor and Industries (L&I) website confirms Security Solutions NW is a contractor in good standing, with no current violations and meets current requirements. Staff recommends awarding the Building Access Control System project to Security Solutions NW. The responsive bid results for the project are shown in the table below.

Building Access Control System BID RESULTS	
Contractor	Total Bid Amount
Security Solutions NW	\$150,206.00
Absco Solutions	\$150,423.00

The following table summarizes the overall project costs and budget amounts:

Building Access Control System PROJECT BUDGET	
Description	Total
Small Public Works Contract (Security Solutions NW)	\$ 150,206.00
Premier Cabling, LLC	\$ 31,455.00
Sub-Total Cost	\$ 181,661.00
WSST @ 10%	\$ 18,166.00
Total Project Cost	\$ 199,827.00

FINANCIAL IMPACTS

Although this project was not specifically identified in the 2019-2020 Capital Improvement Program (CIP) staff recommend utilizing unspent money (currently more than \$300,000) from the South Mercer Playfield Backstop project to fund the Building Access Control System project.

Building Access Control System AVAILABLE FUNDING	
Description	Total
South Mercer Playfield Backstop Project (XP901C)	\$ 302,781.00
Building Access Control Project	\$ 199,827.00
Funds Leftover	\$ 102,954.00

The South Mercer Playfield Project is currently suspended and will be revisited during the CIP discussions planned as part of the 2021-2022 budget discussion this fall. Building security and improved control is a higher priority, therefore staff recommend reallocating the CIP funds to complete the Building Access Control System project in 2020.

RECOMMENDATION

Award the Building Access Control System project to Security Solutions NW in the amount of \$150,206.00. Set the total project budget to \$199,827.00 and direct the City Manager to execute the contract.

City of Mercer Island Building Access Control System “Exhibit 1”

Scope of Work

1. INTENT:

The City of Mercer Island is seeking a qualified Contractor to enter a Small Public Works Contract to provide the City with a solution to implement a door access system at three (3) City-owned facilities. Building access solutions shall only include Power over Ethernet (PoE) capable locking hardware.

2. CONTRACTOR RESPONSIBILITIES:

- A. Provide the City with the materials, labor, support, hardware, and software necessary to install a building access system that would control a total of 42 of doors located in three (3) buildings. Wiring standard ethernet cables will be completed in-house and will not be the responsibility of the contractor. This project should be bid separately, by the three phases listed below:

Phase 1: City Hall (9611 SE 36th St, Mercer Island WA 98040)

- Total Number of Doors: 28
 - Door 1: Entrance by Lunchroom (exterior)
 - Door 2: IT/IGS Office A
 - Door 3: IT/IGS Office B
 - Door 4: Server Room
 - Door 5: City HR Door
 - Door 6: Giant Hallway Door
 - Door 7: City Manager Door
 - Door 8: Hallway down to Exercise Room
 - Door 9: Double Door to Courtroom
 - Door 10: Courtroom Double Door
 - Door 11: Court Clerk Room
 - Door 12: Court Clerk to Courtroom
 - Door 13: Jury Room to Courtroom
 - Door 14: Door from Courtyard to Courtroom (exterior)
 - Door 15: City Hall Main Entrance
 - Door 16: Council Chambers
 - Door 17: Cambers lobby to Police Lobby
 - Door 18: Police Storage
 - Door 19: Caucus Room
 - Door 20: Boiler Room
 - Door 21: City Storage
 - Door 22: Fire Control Room
 - Door 23: CCTV Room
 - Door 24: Workout Room to EOC

- Door 25: Workout Room to Stairwell
- Door 26: Stairwell
- Door 27: Double door to EOC (exterior)
- Door 28: EOC

Phase 2: Public Works/Maintenance Building (9601 SE 36th St, Mercer Island WA 98040)

- Total Number of Doors: 6
 - Door 1: Admin Office (East side of building and upstairs)
 - Door 2: Admin Office North (glass door near restrooms)
 - Door 3: Mud Room Door (East side of building)
 - Door 4: Parks Shop Door (South side of building)
 - Door 5: Warehouse Entrance
 - Door 6: Lower Level Entrance (ROW/Utility Entry)

Phase 3: Mercer Island Community & Event Center (8236 SE 24th St, Mercer Island WA 98040)

- Total Number of Doors: 8
 - Door 1: Admin Office East
 - Door 2: Admin Office North
 - Door 3: Slater Room (next to Admin Office North)
 - Door 4: Room 101 Exterior Door
 - Door 5: Lower Level Entrance
 - Door 6: Custodial Hallway
 - Door 7: Terrace to Landing Room
 - Door 8: Trash Room

- B. Provide contactless smart card or other door access technology solutions that allows the city to have no more than ten (10) people (at any one time) who can administer the system with varied levels of security.
- C. The City will entertain both on-premise and cloud-based access control solutions with the caveat that all proposals *must* have an on-premise solution as the primary solution, with an optional, alternative cloud based solution. Proposals that are cloud-based only will not be accepted.
- D. Proposals that include a cloud-based option require an accessible API and related documentation, detailed database structure and City's access to said database, and annual third-party vulnerability assessments.
- E. The City requires that all proposals integrate or expand on either one of the following existing systems:
 - Expand/upgrade CardAccess 3000 system currently used by a single department.
 - Integrate with the City's camera system, Avigilon.
- F. The system should provide for pre-defined reporting as well as the ability to design custom reports as needed, such as contact tracing requirements related to the COVID-19 Pandemic per Washington State Department of Health, King County Public Health and the Centers for Disease Control and Prevention recommendations.

- G. The software should allow for the opening of individual doors or pre-defined groups of doors from any of the 10-administrator account(s).
- H. The proposed system should allow for viewing events in real-time as well as reviewing historical events.
- I. The proposed solution should allow defining time-periods (days/hours) where access can either be granted or restricted.
- J. Access permissions should be able to be altered (either upgraded or downgraded) for set periods of time.
- K. The system should allow for multiple doors that could be grouped into single access-controlled areas.
- L. The system should allow for the definition of “normal” hours whereby specific doors would automatically be open for predefined times for predefined days.
- M. In the event of an emergency, the system should allow specific security personnel free access throughout the physical locations.
- N. Contractor will be required to pull any permits necessary for installation and will also be required to obtain a Mercer Island Business License prior to performing any work.
- O. Work scheduling must be as agreed upon with the Project Manager.
- P. The job site and surrounding areas must be properly protected from damage. Worksite must be left clean at the end of each workday.
- Q. The working hours will be flexible and final job scheduling will be agreed upon with the Project Manager, once the bid is awarded.
- R. In the unforeseen need of a Change Order (CO), it shall be noted in writing by the Contractor and approved in writing by the City before any CO occurs.
- S. The Contractor shall supply everything necessary for the execution and completion of the work. Site preparation and installation performance shall be in accordance with local building codes, standards, and manufacturer warranty and specifications for installation of proposed system.
- T. Damage to facilities during installation shall be the responsibility of the contractor to repair damaged area to the previous condition prior to damage by contractor.
- U. Successful bidder shall obtain and provide the City with a Certificate of Liability Insurance form as well as an Endorsement Form naming the City as Additionally Insured.

3. CITY POINT OF CONTACT INFORMATION:

All questions regarding this project must be sent via email to the Project Manager:

Zach Houvener, Logistics Section Chief
Zach.Houvener@mercergov.org

4. GENERAL REQUIREMENTS:

Contractor will be required to enter into a Small Public Works Contract with the City of Mercer Island with standard terms addressing Prevailing Wage Requirements, Insurance Requirements, and compliance with applicable laws, and other standard terms.

The City reserves the right to reject any (in part or in full) and all bids, and to terminate the selection process at any time if, in its sole discretion, the City determines that such action would be in the best interests of the City.

The City believes that effective project management is essential for the successful implementation of the building access system and Contractors will be evaluated against the following criteria (listed in no specific order).

- Ability to meet the functional and technical requirements
- Ability to ensure completion of project no later than September 30, 2020
- Ability to provide deliverables and documentation on all equipment/software
- History, experience and qualifications of the company and product
- Cost
- Ability to provide 3 professional references of past projects

5. SCHEDULE/TIMELINE OF WORK:

June 16, 2020	Call for Bids released
June 23, 2020	Site visit(s) at 11:00 am
June 26, 2020	Contractor questions due by 9pm
July 8, 2020	Bids due by 5:00 pm PST
July 13-14, 2020	Review bids
July 17, 2020	Award bid
End of July – August	Installation
September 30, 2020	Contract completed

6. BID SUBMITTAL & TIMELINE:

Bids will be accepted up until July 8, 2020 at 5:00 pm PST. Companies desiring consideration must provide the following information:

- A. Letter of introduction from Contractor describing company history, experience, and qualifications
- B. List of at least (3) past references of previous installations/solutions, complete with names, addresses, and telephone numbers of representatives to contact.
- C. Summary of each Phase shall be completed on Bid Form.
- D. Manufacturer warranty information must be included in the bid.
- E. Bidder acknowledges the general requirements, insurance documents, and scope of work for this project.

Due to the closure of City facilities, bids must be emailed to:

Email: Zach.Houvener@mercergov.org
Subject: Mercer Island Building Access System Bid

When a bid has been received, a response email will be sent to confirm receipt.

7. SITE VISITS AND PROJECT REVIEW:

The City strongly recommends all contractors wishing to bid, attend the site visit scheduled for June 23, 2020 at 11:00 am. Please meet in front of the main entrance to City Hall at 9611 SE 36th Street, Mercer Island, WA 98040. Please have all personnel wear a face covering during the site visits. The site visit will cover City Hall, Public Works Building (within walking distance of City Hall), and then drive to the Mercer Island Community & Event Center located at 8236 SE 24th St Mercer Island, WA 98040.



To arrange a site visit at a separate time, please contact the Project Manager.

City of Mercer Island

Attn: Alfredo Moreno

O: 206-275-7775

E: alfredo.moreno@mercergov.org

Project: Access Control Cabling

Statement of Work:

City Hall:

- Provide and install total of (28) category 5e network cables to specified doors thru-out City Hall. Network jack will be located within 5-feet of door frame, final connection to access control panel to be provided by others.
- Provide and install all necessary surface-mounted raceway.
- Provide and install all necessary termination hardware at each location.
- Provide and install (1) new 48-port category 5e patch panel in main server room.

Public Works/Maintenance:

- Provide and install total of (6) category 5e network cables to specified doors thru-out Public Works building. Network jack will be located within 5-feet of door frame, final connection to access control panel to be provided by others.
- Provide and install all necessary surface-mounted raceway.
- Provide and install all necessary termination hardware at each location.
- Provide and install (1) new 24-port category 5e patch panel in main server room.

Community and Event Center:

- Provide and install total of (8) category 5e network cables to specified doors thru-out the community Center. Network jack will be located within 5-feet of door frame, final connection to access control panel to be provided by others.
- Provide and install all necessary surface-mounted raceway.
- Provide and install all necessary termination hardware at each location.
- Provide and install (1) new 24-port category 5e patch panel in main server room.

All new cabling will be terminated, tested, and labeled upon project completion.

Project Total: \$ 31,455.00

Price does not include Washington State sales tax



BUSINESS OF THE CITY COUNCIL CITY OF MERCER ISLAND

AB 5734
August 4, 2020
Consent Calendar

AGENDA BILL INFORMATION

TITLE:	AB 5734: Appropriation of Synthetic Turf Sinking Fund for South Mercer Turf Replacement	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Appropriate an amount not to exceed \$729,406 from the Synthetic Turf Sinking Fund to the Mercer Island School District for the South Mercer Playfield synthetic turf replacement project.	<input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	Public Works
STAFF:	Jason Kintner, Public Works Director
COUNCIL LIAISON:	n/a
EXHIBITS:	1. MISD Sports Field Maintenance Interlocal Agreement
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ 729,406

SUMMARY

The purpose of this agenda bill is to authorize the appropriation of an amount not to exceed \$729,406 from the Synthetic Turf Sinking Fund and remit payment to the Mercer Island School District for the replacement of the synthetic turf at the South Mercer Playfield (“SMP.”)

BACKGROUND

In 2007, the City replaced the dirt soccer field at the SMP with synthetic turf. At the time, the dirt soccer field had poor drainage and an irregular playing surface. Lined for soccer, lacrosse, and football practice, the new All-Weather Field opened for play in 2008. This was the first synthetic turf project completed by the City.

The synthetic turf carried an eight-year warranty, which expired in 2016. Over the past 12 years, nearly 19,000 recreation hours have been played on this field, supporting a variety of youth and adult recreation programs in the Mercer Island community. The field has survived beyond its expected useful life and the turf needs to be replaced.

Per City Council direction, a portion of the revenue generated from paid rental reservations at the SMP All-Weather Field was set aside for future turf replacement. In total, \$729,406 has been reserved in the Synthetic Turf Sinking Fund for replacement of the synthetic turf at this facility.

A portion of the revenue from two other facilities (the South Mercer Softball fields and the Island Crest Park Baseball field) also funds the Synthetic Turf Sinking Fund. The remaining fund balance of \$429,140 and additional revenues generated from synthetic turf rental reservations will support future turf replacement at these facilities.

In 2017, the City and the Mercer Island School District (“the District”) entered into a new Interlocal Agreement (see Exhibit 1). Per the agreement, the District will contract for and oversee the replacement of the SMP turf, while the City will provide funding for replacement from the established Synthetic Turf Sinking Fund.

The District has entered into a contract, utilizing the King County Directors’ Association (“KCDA”) purchasing co-op to replace the SMP All-Weather Field. This purchasing co-op meets Washington State law for purchasing large capital commodities and was used by the City to procure the synthetic turf and lights at Island Crest Park. The District has also utilized this co-op to replace the turf at the high school stadium. The construction contract with KCDA is \$552,163, which does not include project management and contingency costs.

Construction is expected to begin the week of July 27, 2020. Replacement of the turf is like-for-like, in accordance with the Interlocal Agreement. The District anticipates construction will continue through August and that the field will be ready for community use in September. The District will also complete repairs and resurfacing of the Islander Middle School track, which will be funded by the District.

NEXT STEPS

Staff will return with a formal budget amending ordinance, which will reflect all construction project costs, not to exceed \$729,406, with the next quarterly financial status report.

RECOMMENDATION

Appropriate an amount not to exceed \$729,406 from the Synthetic Turf Sinking Fund to the Mercer Island School District for replacement of the synthetic turf at the South Mercer Playfield.

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF MERCER ISLAND AND
THE MERCER ISLAND SCHOOL DISTRICT
FOR THE USE, MAINTENANCE AND IMPROVEMENT OF
CERTAIN SCHOOL DISTRICT SPORTS FIELDS**

THIS INTERLOCAL AGREEMENT (“Agreement”) is made and entered into between the City of Mercer Island (“City”), a Washington municipal corporation, and the Mercer Island School District (“District”), a Washington municipal corporation (together, the “Parties”).

- A. The Parties enter into this Agreement pursuant to and as authorized by the Washington State Interlocal Cooperation Act (Chapter 39.34 RCW).
- B. The Parties desire to improve the maintenance and operations of sports fields at 1) Island Park Elementary, 2) Lakeridge Elementary, and 3) West Mercer Elementary School (together, the “Elementary School Sports Fields”), and 4) South Mercer Playfields (the “SMP”, together with the Elementary School Sports Fields, herein referred to collectively as the “Subject Fields”).
- C. The Parties intend this Agreement to reinstate the partnership documented in the following two expired Interlocal Agreements (together, the “Past Agreements”): 1) the January 8, 2010 Interlocal Agreement for the Improvement, Scheduling, Use and Operations of the Mercer Island High School Stadium and Other Facilities, and 2) the November 13, 2009 Interlocal Agreement for the Maintenance and Improvement of Certain School District Sports Fields as revised August 24, 2013.
- D. The Parties entered into the Past Agreements in the interest of improving the quality and use of the Subject Fields in a manner that was cost effective for both Parties as well as for the greater Mercer Island community.
- E. The following three matters are the subjects of this Agreement:
 - 1. SMP Turf Replacement– See Sections 4 & 5;
 - 2. Subject Fields Maintenance – See Attachment A;
 - 3. Subject Fields Scheduling – See Section 5 & the City of Mercer Island Parks & Recreation Athletic Field Use and Reservation Policy.
- F. Except for field maintenance as detailed in Attachment A, this Agreement does not extend to the District’s natural and synthetic fields associated with Northwood Elementary School and the Mercer Island High School (the “North Mercer Complex”). Scheduling of the North Mercer Complex shall be done by the District, for such times that the fields are available. The North Mercer Complex is reserved for the District sports programs in an effort to allow enhanced capacity for City and Mercer Island community use of the Subject Fields after 4:30 pm on days when school is in session.
- G. The Parties will act in good faith to implement the terms of this Agreement.

**Interlocal Agreement Between The City of Mercer Island and the Mercer Island School District
for the Use, Maintenance and Improvement of Certain School District Sports Fields**

- H. This Agreement is intended to enhance and not interfere with the primary mission of City or District governance.
- I. All programming and activities scheduled under this Agreement will comply with the Parties' policies prohibiting discrimination.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises and covenants contained herein, and for other good and valuable consideration, the Parties agree as follows:

1. DEFINITIONS

- a. "The Fields Maintenance Enhancement" element of the Agreement will provide turf rehabilitation and maintenance to ensure "game quality" sports fields.
- b. "Game Quality" means the level of sports field condition that would allow competitive games to be scheduled on a regular basis.
- c. "Premium Field" means a sports field which has a significantly enhanced quality and appearance. Elements that raise a field to a "Premium Field" include but are not limited to outfield "home run" fences, lighting, pitcher bullpen areas, synthetic turf on infield and outfield, and enhanced electronic scoreboard.
- d. "Turf Premium" means a surcharge added to regular fees for the use of a sports field comprised of synthetic turf. This surcharge will be collected over time, held in a separate, designated account, and exclusively utilized for the replacement of the synthetic turf.
- e. "School Use" means District-sanctioned school activities.

2. TERM

This Agreement shall be effective when fully executed by all the Parties and shall last for a term of one year. This Agreement shall automatically renew annually unless one of the parties gives written notice of termination consistent with Section 9 herein. The Parties acknowledge that the City's requirement to maintain the improvements is not intended to permit the perpetual existence of this Agreement. Either Party may request a review of the Agreement for amendment at any time.

3. GENERAL AGREEMENTS

The Parties agree as follows:

- a. The subject of this Agreement is maintenance services contributed by the City towards the Subject Fields and the collection of field use fees as described herein along with the District's commitment to provide access to the Subject Fields to

**Interlocal Agreement Between The City of Mercer Island and the Mercer Island School District
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the Mercer Island community through the agreed scheduling procedures set forth in Section 5.

- b. The City will collect and transfer fees from user groups as described in Section 5.

4. SMP TURF REPLACEMENT & FIELD MAINTENANCE

a. SCOPE OF WORK

The Parties agree that the Subject Fields element of this Agreement is intended to ensure that such fields are Game Quality. To this end, in addition to any maintenance it is currently performing on the Subject Fields, the City will provide enhanced maintenance rehabilitation activities as described in Attachment A to this Agreement. The District will provide the level of maintenance it is currently providing these fields.

b. IMPROVEMENT ELEMENT: SMP

The District will contract for and oversee replacement of the SMP synthetic turf. Such replacement turf must meet the specifications of the Mercer Island Parks & Recreation Department. The City will provide funding for that replacement from a designated City account wherein Turf Premiums collected from renters of Subject Fields have been deposited consistent with Section 5.D of this Agreement. The City will provide a designated park professional to assist the District in the SMP field replacement process.

5. SCHEDULING & FEE COLLECTION

a. PRIORITIZATION – SCHEDULING

- i. Use of the Subject Fields authorized by this Agreement must have both an educational and municipal purpose with the District being given priority to schedule educational programs on the Subject Fields as described below.
- ii. With respect to using the Subject Fields, subject to Sections 5.a.iv, v, and vi below: (i) the District shall be entitled to exclusive use for any School Use from 7:00 a.m. to 4:30 p.m. on days when school is in session; and (ii) at all other times, usage shall be determined consistent with the policies and procedures established in the City of Mercer Island Parks & Recreation Athletic Field Use and Reservation Policy (“Park and Rec Reservation Policy”), most current edition.
- iii. With respect to scheduling use of the Subject Fields: (1) the District shall schedule School Uses from 7:00 a.m. to 4:30 p.m. during days when school is in session; (2) at all other times, scheduling shall be done by the City consistent with the policies and procedures established in the Park and Rec Reservation Policy; (3) The District is responsible for scheduling the fields on the North

**Interlocal Agreement Between The City of Mercer Island and the Mercer Island School District
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Mercer Complex at all times. For the purposes of scheduling the Subject Fields, the Parties shall use the current scheduling software system being utilized by the City.

- iv. Notwithstanding the provisions of the Park and Rec Reservation Policy, the City shall give the District's Girls Softball program first priority with respect to the use and scheduling of the SMP at all times, and the City shall give the District's High School Boys Baseball program first priority with respect to use and scheduling of Island Crest Park ball fields at all times.
- v. If there are times during regular school hours, currently 7:00 a.m. to 4:30 p.m., during days when school is in session that the District does not require use of one or more of the Subject Fields for School Use, the City may request the use of such fields during that period in accordance with the Park and Rec Reservation Policy, which request shall not be unreasonably denied by the District.
- vi. For purposes of this Section, any activity that is funded in whole or in part by the District or the City shall have priority under the Park and Rec Reservation Policy.

b. ANNUAL SCHEDULING CONFIRMATION PROCESS

During each year of this Agreement, the Parties agree to conduct joint scheduling conferences with other field users as needed in:

1. January (for the period April to June);
2. April (for the period July to September);
3. July (for the period October to December); and
4. October (for the period January to March).

Additional meetings will occur as needed to coordinate time requirements of the various user groups. Blocks of time will be allocated throughout the day, week and year for use by the District, City and other field user groups, in accordance with the priorities established and consistent with this Section 5.

c. SCHEDULING/AVAILABILITY CONFLICTS

The Parties agree to the following principles and procedures for resolving field space availability conflicts:

- i. It is the Parties' mutual goal to maintain program continuity, give adequate notification of scheduling changes, and to relocate programming when necessary. When reasonably possible, each Party will assist the other in locating alternative field space.

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- ii. In the event of scheduling conflicts, facility-based representatives will first attempt to reach resolution of field space availability issues. When the conflict involves more than one City and District program, both Parties will be informed and involved in resolving the conflict. The central scheduling offices of both Parties will, whenever possible, identify options or ways to accommodate the interests of the Parties consistent with this Agreement. If a resolution cannot be reached on a scheduling request, the issue will be referred to the Director of Maintenance and Operations or the Mercer Island High School Athletic Director or designee for the District and the Parks and Recreation Director or designee for the City. If the conflict remains unresolved after such referral, the District's Superintendent or designee shall resolve the matter with the City Manager or designee.

d. FEES AND CHARGES

- i. Consistent with the terms of this Agreement, including Section 5.d.iii, the City will use best efforts to collect fees (rental and administrative) from field user groups and such fees will be deposited in a separately-designated account with the City of Mercer Island Parks & Recreation Department. Except as provided in 5.d.iii below, neither Party shall be charged a rental or administrative fee for the use of Subject Fields without mutual agreement.
- ii. The City may charge users for extra material, labor and appropriate overhead costs that either Party may incur because of their use of the Subject Fields, including but not limited to property damage, unsecured gates and locks, security response, removal of leftover trash and garbage, etc.
- iii. The City and third party renters of the Subject Fields will be charged a Turf Premium to use the improved synthetic turf fields. The District will also be charged the turf premium for any School Use which takes place outside of regular school hours (currently 7:00 a.m. to 4:30 p.m.).
- iv. The City will be responsible for collecting the Turf Premium from field renters. The Turf Premium will be based on engineer's estimates to be used for synthetic turf replacements. Revenues generated from the Turf Premium fees will be accumulated by the City in a specially-designated fund for the purpose of the eventual replacement of the synthetic turf at the end of its useful life, at which time the City will transfer funds to the District to cover the cost of turf replacement. If either Party requests enhanced features to be included in the turf replacement, the requesting Party shall fully fund the cost of the enhancement unless the other Party accepts the enhanced features and agrees to equally share the associated costs. If the designated funds accumulated by the City are not sufficient to pay the base level field replacement costs, the Parties will equally share the costs in excess of the available funds.
- v. The Parties agree to meet at least annually to review/approve fees and charges for the use of the Subject Fields to ensure equity, fairness, parity with the

**Interlocal Agreement Between The City of Mercer Island and the Mercer Island School District
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regional market and to account for funds collected relative to future field replacement costs to determine whether field rental fees/charges should be adjusted.

6. LIABILITY AND INSURANCE

- a. The Parties agree to provide each other with evidence of insurance coverage, in the form of a certificate of insurance from a solvent insurance provider and/or a letter confirming coverage from a solvent insurance pool, which is sufficient to address the insurance and indemnification obligations set forth in this Agreement.
- b. The Parties shall obtain and maintain throughout the term of this Agreement coverage in minimum liability limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for its liability exposures, including comprehensive general liability, errors and omissions, auto liability and police professional liability. The insurance policy shall provide coverage on an occurrence basis.

7. HOLD HARMLESS/INDEMNIFICATION

- a. The District shall indemnify and hold harmless the City and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent act or omission of the District, its officers, agents, and employees, or any of them, in the performance of this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the City, the District shall defend the same at its sole cost and expense; provided that the City retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or jointly against the City and the District and their respective officers, agents, and employees, or any of them, the District shall satisfy the same to the extent judgment is apportioned to such negligent act or omission by the District.
- b. The City shall indemnify and hold harmless the District and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent act or omission of the City, its officers, agents, and employees, or any of them in the performance of this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the District, the City shall defend the same at its sole cost and expense; provided that the District retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the District, and its officers, agents, and employees, or any of them, or jointly against the District and the City and their respective officers, agents, and employees, or any of them, the City shall satisfy the same to the extent judgment is apportioned to such negligent act or omission by the City.

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- c. The Parties hereby waive, as to each other only, their immunity from suit under industrial insurance, Title 51 RCW. This waiver of immunity was mutually negotiated by the Parties.
- d. The provisions of Section 7 shall survive any termination or expiration of this Agreement.

8. GENERAL PROVISIONS

- a. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties.
- b. Any provision that is declared invalid or illegal shall in no way affect or invalidate any other provision.
- c. In the event any Party defaults on the performance of any term of this Agreement or any Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, the prevailing Party shall be entitled to an award of all its reasonable attorney fees, costs, and expenses.
- d. Failure of either Party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not constitute a waiver of such breach or default.
- e. Any action, suit, or judicial proceeding for the enforcement of this Agreement shall be brought and tried in the Superior Court of the State of Washington in King County.
- f. The laws of the State of Washington shall govern this Agreement.
- g. The Parties agree that this Agreement is consistent with RCW 43.09.210, the "Accountancy Act." The City is receiving adequate consideration from the District in exchange for its payment. The District consideration consists of its transfer of control of the scheduling of the Subject Fields to the City and allowing additional public use of the Subject Fields.
- h. This Agreement shall be filed/posted in accordance with RCW 39.34.040.

9. TERMINATION

- a. Each Party shall have the right to terminate this Agreement in the event the other Party is in default of any material term or condition of this Agreement, including without limitation the failure to strictly comply with the obligations set forth in Attachment A hereto, by providing thirty (30) days' advance written notice specifying the basis for such determination. If the other Party thereafter fails to commence reasonable steps within the thirty-day period to correct fully and to remedy the default

**Interlocal Agreement Between The City of Mercer Island and the Mercer Island School District
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within ninety (90) days from the date of the notice, then the Agreement shall be deemed terminated; provided that, if the nature of the default is such that it cannot be remedied within ninety (90) days, then the Agreement shall not terminate so long as the Party in default is proceeding promptly to remedy the default and does so within such additional period as may be agreed by the Parties.

- b. This Agreement may be terminated in whole or in part at any time by either Party prior to its expiration for good cause upon ninety (90) days written notice. Good cause shall include the following items: (1) financial hardship as demonstrated by a resolution of the City Council or District Board of Directors; and (2) the District's need to recapture school grounds as demonstrated by a resolution of the District Board of Directors. In the event such termination affects only part of the Agreement (e.g., applicability to the SMP only or the Elementary Schools Sports Fields only), then such termination will not impact the requirements of this Agreement for the remaining, non-affected fields.
- c. This Agreement may be terminated in whole or in part by either Party for any reason with ninety (90) days prior written notice.

This Agreement has been executed in duplicate by the parties hereto and made effective when all parties have fully executed this Agreement.

CITY OF MERCER ISLAND


MERCER ISLAND SCHOOL DISTRICT

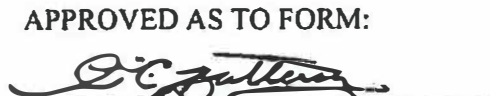

Julie Underwood
City Manager


Gary Plano
Superintendent

Dated: 5/16/17

Dated: 5/17/17

APPROVED AS TO FORM:

Kari Sand
City Attorney

APPROVED AS TO FORM:

Erin Battersby
Senior Director, Compliance & Legal Affairs

ATTACHMENT A

BETWEEN THE CITY OF MERCER ISLAND AND THE MERCER ISLAND SCHOOL DISTRICT CONCERNING MAINTENANCE, OPERATION AND REPAIR OF FIELDS AT ISLAND PARK, LAKERIDGE, NORTHWOOD AND WEST MERCER ELEMENTARY SCHOOLS, SOUTH MERCER PLAYFIELDS, AND THE MERCER ISLAND HIGH SCHOOL

This attachment defines the division of labors between City of Mercer Island Parks Maintenance staff and Mercer Island School District Grounds Maintenance staff at the District's four elementary schools, the South Mercer Playfields, and the Mercer Island High School athletic fields.

1. The City shall undertake and continually employ scheduled turf rehabilitation that will provide the community with improved athletic fields at four (4) public elementary schools and one (1) public high school on Mercer Island. Turf rehab will be executed by City Park Maintenance staff using City equipment. The annual cycle of rehabilitation:
 - a) Fertilize three (3) times a year with a seasonally-adjusted fertilizer blend
 - b) Aerification two (2) times a year, core extraction or deep tine as needed
 - c) Top Dress two (2) times a year
 - d) Re-seed two (2) times a year

The City shall undertake annual spring seasonal preparation of skinned infields at Lakeridge and Island Park and inspect and repair damaged turf at all fields each year prior to, and in preparation for, scheduled March field use. The City will drag skinned infields regularly (at least once weekly) March through August.

2. The City shall incorporate District Integrated Pest Management policy (Board Policy 1415) in any and all fertilizer and/or pesticide applications on all District-owned properties.
3. The District shall continue to provide mowing, irrigation services, and leaf and debris removal, as follows:
 - a) Weekly mowing mid-February to mid-November and more frequently as needed; the District shall provide a mowing schedule annually, including frequencies and scheduled times for mowing each field, to the City's Parks Operations Superintendent.
 - b) Irrigation seasonal startup and shutdown, and repairs as needed
 - c) Leaf and debris removal as warranted seasonally and as storm response
4. The City, acknowledging that increased fertilization rates and turf rehabilitation work consistent with Paragraph 1 above, will likely increase the frequency and importance of some regular maintenance tasks undertaken by the District consistent with Paragraph 3 above, agrees to cooperate and assist the District with these tasks on an "as needed" basis subject to staff and equipment availability.
5. The City reserves the right to limit the use of the fields for purposes of maintenance and for safety of the playing surfaces. The City will obtain District approval prior to limiting the use of the facilities during the school day, except in emergency situations. District approval will not be unreasonably withheld. Turf rehabilitation closure dates for each field will be scheduled during school closures and summer break as much as possible. Dates will be set annually at a January meeting involving the Parks Operations Superintendent for the City and the Director of Maintenance and Operations for the District, or their respective designees. The approved schedule shall be distributed annually to all relevant parties in each agency and to the field renters of record by February 15.
6. Communication between City and District field staff shall be open, cooperative and frequent. Contact lists will be exchanged and updated as needed, and 'after hours' contact protocols will be exchanged.

Attachment A

7. District and City maintenance staff will work together to immediately address any safety issues brought to their attention by City or District personnel or facility users. District staff will refer all maintenance inquiries, including scheduling requests, citizen concerns and any other items that are affected by or affect the maintenance of elementary fields, to the City's Parks Operations Superintendent in a timely manner, in writing. The City's Parks Operations Superintendent will respond, in writing, within three business days.
8. A "Fields Working Group", consisting of the Parks Operations Superintendent and the Facility Scheduler for the City and the Director of Maintenance and Operations for the District, will meet not less than once annually, and as needed, to address issues and exchange information.
9. The City will schedule activities on all school district sports fields (excluding those fields on the North Mercer Complex) during non-school hours, defined as between 4:30 p.m. and 10:00 p.m. weekdays, weekends, and all days during school breaks. District activities occurring during these times shall be booked through the City. MISD booking requests for these non-school hours shall receive priority per the City of Mercer Island Parks and Recreation Athletic Field Use and Reservation Policy, most current edition.

Attachment A



**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 5720
August 4, 2020
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 5720: Zayo Franchise (1 st Reading)	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Set Ordinance No. 20-16 for second reading and adoption on September 1, 2020.	<input checked="" type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	Community Planning and Development
STAFF:	Patrick Yamashita, City Engineer/Interim Director
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Draft Ordinance No. 20-16 – Franchise Agreement with Zayo
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

SUMMARY

BACKGROUND

The City of Mercer Island was approached by Zayo, a fiber optic company, approximately one year ago about obtaining a franchise agreement that would generally allow Zayo the right to access the City’s rights-of-way for the purpose of installing new wireline facilities (fiber optic). There were discussions for a period of time, but the City did not receive an application until January 2020. Following some revisions to the application, the City deemed the application complete in early February 2020 and began working on the draft franchise agreement.

Staff worked with Daniel Kenny (Ogden Murphy Wallace, PLLC) to negotiate this agreement with Zayo on behalf of the City. The draft agreement was prepared by Mr. Kenny, vetted by staff (Community Planning and Development, Public Works, and City Attorney), and approved by Zayo. The draft franchise agreement is provided for City Council consideration as Exhibit 1.

THE FRANCHISE

This franchise agreement is a general contractual agreement with Zayo which allows entrance and use of the right-of-way for wireline deployments as allowed by [RCW 35A.47.040](#). Zayo will still need to apply for and receive all necessary permits for any and all installations; the franchise is only the first step. Generally

speaking, all similarly situated entities should be treated with equity. Because the City has other wireline franchisees (Comcast and CenturyLink), the City should grant Zayo a franchise on an equal basis. This wireline franchise with Zayo is consistent with past City practice.

ZAYO

Zayo is a fiber optic company which proposes to initially connect several cell sites in the City with fiber lines (high speed data). Each of the cell sites are existing locations with existing wired connections. This franchise is limited to wireline deployments and does not allow any installation of small wireless facilities (5G) or other cellular antennas or installations. Zayo plans to replace the existing data lines connected to these sites with fiber lines which will increase capacity and speed for those locations. The proposed initial deployment is outlined in the exhibit attached to the franchise agreement. All work associated with the initial deployment, or any subsequent deployment, must be completed with approved permits. The franchise is only the initial, general step, and all permit applications and approvals will follow.

While this franchise does include a described initial deployment, this franchise covers all City rights-of-way and would allow additional wireline deployments during the ten-year term of the franchise with appropriate approved permits.

RECOMMENDATION

Set Ordinance No. 20-16 for second reading and adoption on September 1, 2020.

CITY OF MERCER ISLAND 20-16
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, GRANTING TO ZAYO GROUP, LLC, AND ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN (10) YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF MERCER ISLAND, WASHINGTON.

RECITALS

1. Zayo Group, LLC (“Franchisee”) has requested that the city council grant it a nonexclusive franchise, and
2. The city council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

Section 1. Franchise Granted.

1.1 Pursuant to RCW 35A.47.040, the city of Mercer Island, a Washington municipal corporation (the “City”), grants to Franchisee, its successors, legal representatives and assigns, subject to the terms and conditions set forth below, a Franchise for a period of ten (10) years, beginning on the effective date of this ordinance, set forth in Section 40.

1.2 This Franchise grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, acquire, sell, lease, and use all necessary Facilities for a telecommunications network in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City, including such additional areas as may be subsequently

{DPK2091338.DOCX;13/13045.000007/ }

included in the corporate limits of the City during the term of this Franchise (the “Franchise Area”), as approved pursuant to City permits issued pursuant to Section 8.2. The phrase “Rights-of-Way” (singular “Right-of-Way”) as used in this Franchise, means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, public way, drive, circle, pathways, spaces, or other public right of way which, under City ordinances or applicable laws, the City has authority to grant franchises, licenses, or leases for use thereof, or has regulatory authority thereover and only to the extent such Rights-of-Way are opened. Rights-of-Way for the purpose of this Franchise do not include buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City not reserved for transportation purposes, or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the Rights-of-Way such as utility poles, light poles and bridges. “Facilities” as used in this Franchise means one or more elements of Franchisee’s telecommunications network, with all necessary cables, wires, conduits, ducts, pedestals, electronics, and other necessary appurtenances; provided that new utility poles for overhead wires or cabling are specifically excluded. Equipment enclosures with air conditioning or other noise generating equipment are also excluded from “Facilities,” to the extent such equipment is located in zoned residential areas of the City. For the purposes of this franchise the term Facilities excludes “microcell” facilities, “minor facilities,” “small cell facilities,” all as defined by RCW 80.36.375, and “macrocell” facilities, including towers and new base stations and other similar facilities used for the provision of “personal wireless services” as defined by RCW 80.36.375. Collectively, all such facilities may be referred to herein as “Personal Wireless Facilities.”

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

2.1 The authority granted by this Franchise is a limited, non-exclusive authorization to occupy and use the City’s Rights-of-Way. Franchisee represents that it expects to provide the following services within the City: fiber optic cable network (the “Services”). No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner’s consent,

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or upon any City, public or privately owned utility poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, nor to subordinate the primary use of the Right-of-Way as a public thoroughfare. A more detailed description of Franchisee's initial telecommunications system and Services is described in Exhibit A. If Franchisee desires to expand the Services provided within the City, it shall provide written notification of the addition of such services prior to the addition of the service and may only expand services after applying for and receiving all permits required by the City Code; provided, however, that Franchisee may not offer Cable Services as defined in 47 U.S.C. § 522(6) or deploy Personal Wireless Facilities, without obtaining a new franchise or an amendment to this Franchise.

2.2 As described in Section 8, construction is not authorized without the appropriate permits, leases, easements, or approvals. This Franchise does not and shall not convey any right to Franchisee to install its Facilities on, under, over, across, or to otherwise use City owned or leased properties of any kind outside of the incorporated area of the City or to install Facilities on, under, over, across, or otherwise use any City owned or leased property other than the City's Rights-of-Way. This Franchise does not convey any right to Franchisee to install its Facilities on, under, over, or across any facility or structure owned by a third-party without such written approval of the third-party. Further this Franchise does not convey any right to continue in any streets, avenues, alleys, roads or public places which are eliminated from the City limits by reason of subsequent disincorporation or reduction of City limits or which are vacated consistent with Section 31. No substantive expansions, additions to, or modifications or relocation of any of the Facilities shall be permitted without first having received appropriate permits from the City pursuant to Section 8.2. As of the effective date of this Franchise, Franchisee has no owned Facilities located in the City's Rights-of-Way.

2.3 Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers and/or lessees consistent with this Franchise provided:

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(a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by the City.

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

Section 4. Location of Telecommunications Facilities.

4.1 Franchisee is maintaining a telecommunications network consisting of Facilities within the City. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's code and adopted standards for design or construction and subject to the City's applicable permit requirements. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities approved in this Franchise within the Franchise Area.

4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways") and are governed by the provisions of Chapter

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47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

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

(b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 5. Relocation of Facilities.

5.1 Franchisee agrees and covenants to protect, support, temporarily disconnect, relocate, or remove from any Rights-of-Way any of its Facilities when reasonably required by the City by reason of:

- (a) Traffic conditions or public safety,
- (b) Dedications of new Rights-of-Way and the establishment and improvement thereof,
- (c) Widening and improvement of existing Rights-of-Way,
- (d) Street vacations,
- (e) Freeway construction,
- (f) Change or establishment of street grade, or
- (g) Construction of any public improvement or structure, including municipal utilities, by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity.

5.2 Provided that Franchisee shall in all such cases identified in Section 5.1 have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any

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Facilities required to be temporarily disconnected or removed. If such bypass is approved by the City, it must be completed pursuant to any and all necessary permits.

5.3 Except as otherwise provided by law, the costs and expenses associated with relocations and other such actions ordered pursuant to Section 5.1 shall be borne by Franchisee. Nothing contained within this Franchise shall limit Franchisee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

5.4 Upon request of the City and in order to facilitate the design of any of the project categories identified in Section 5.1(a) through (g), Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the City's improvements shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

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

(a) At least ninety (90) days prior to the date on which the City needs the relocation to be complete, provide Franchisee with written notice requiring such relocation; provided, however, that in the event of an emergency situation, defined for purposes of this Franchise as a condition posing an imminent threat to property, life, health, or safety of any person or entity, the City shall give Franchisee written notice as soon as practicable; and

(b) At least ninety (90) days prior to the date on which the City needs the relocation to be complete, provide Franchisee with copies of pertinent portions of the plans for the improvement project so that Franchisee may relocate its Facilities in other City Rights-of-Way in order to accommodate such improvement project; and

(c) After receipt of such notice and such plans, Franchisee shall complete relocation of its Facilities at least ten (10) days prior to commencement of the City's project

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construction at no charge or expense to the City, except as otherwise provided by law. Relocation shall be accomplished in such a manner as to accommodate the City's project.

5.6 Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. Such alternatives must be submitted to the City at least thirty (30) days prior to commencement of project construction. The City may evaluate the alternatives and advise Franchisee in writing if one or more of the alternatives are suitable to accommodate the work that would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit at its sole cost and expense additional information to assist the City in making such evaluation. The City is under no obligation to accept any proposed alternative. In the event the City ultimately determines that the proposed alternative is not desirable, Franchisee shall relocate its Facilities as required by this Section 5.

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

5.8 If Franchisee breaches its obligations under Section 5.1 with respect to relocating its Facilities within the Franchise Area, and to the extent such breach causes a delay in the work being undertaken by the City's third party contractor(s) that results in a claim by the third party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option:

(a) tender the Contractor Delay Claim to Franchisee for defense and indemnification in accordance with Section 5.9 and Section 17; or

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(b) require that Franchisee reimburse the City for actual costs, expenses, and/or damages that are legally required to be paid by the City to its third party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by Franchisee under this Section 5.8(b), the City shall first give Franchisee written notice of the Contractor Delay Claim and give Franchisee the opportunity to work with the third party contractor(s) to resolve the Contractor Delay Claim for a period of not less than sixty (60) days prior to the City's payment of the Contractor Delay Claim.

5.9 Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 17, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities in a timely manner; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

5.10 Whenever any person shall have obtained permission from the City to use any Right-of-Way for the purpose of moving any building, Franchisee, upon thirty (30) days' written notice from the City, shall raise, remove, or relocate to another part of the Right-of-Way, at the expense of the person desiring to move the building, any of Franchisee's Facilities that may obstruct the removal of such building.

5.11 If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.6 and Section 5.9 the City may perform such work or cause it to be done, and the City's costs shall be paid by Franchisee pursuant to Section 15.3 and Section 15.4.

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

Section 6. Undergrounding of Facilities.

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

6.2 Whenever the City may require the undergrounding of the aerial utilities in any area of the City, Franchisee shall underground its aerial facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall work with the other utilities to determine a fair share cost allocation for each individual utilities' facilities as well as common costs in a manner that is agreeable to all involved utilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of conduits of Franchisee's Facilities being undergrounded in comparison to the total number of conduits of all other utility facilities being undergrounded. Such fair share cost allocation is the sole responsibility of the involved utilities and does not involve the City. This Section 6.2 shall only apply to the extent Franchisee has existing aerial utilities in the City or is specifically authorized to build aerial utilities by the City.

6.3 To the extent Franchisee is providing Services to Personal Wireless Facilities, Franchisee shall adhere to the design standards for such Personal Wireless Facilities, and shall underground its Facilities and/or place its Facilities within the pole as may be required

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by such design standards. For the purposes of clarity, this Section 6.3 does not require undergrounding or interior placement of Facilities within the pole to the extent that the Personal Wireless Facilities are located on utility poles that have pre-existing aerial telecommunications facilities and provided such construction of Franchisee's Facilities continue to comply with Sections 6.1 or 6.2.

6.4 Within forty-eight (48) hours (excluding weekends and City-recognized holidays) following a request from the City, Franchisee shall locate underground Facilities by marking the location on the ground. The location of the underground Facilities shall be identified using orange spray paint, unless otherwise specified by the City, and within two (2) feet of the actual location.

6.5 Franchisee shall be entitled to reasonable access to open utility trenches, provided that such access does not interfere with the City's placement of utilities or increase the City's costs. Franchisee shall pay to the City the actual cost to the City resulting from providing Franchisee access to an open trench, including without limitation the pro rata share of the costs of access to an open trench and any costs associated with the delay of the completion of a public works project.

6.6 Franchisee shall not remove any underground cable or conduit that is part of its Facilities and requires trenching or other opening of the Rights-of-Way along the extension of cable to be removed, except as provided in this Section 6.6. Franchisee may remove any underground cable and other related facilities from the Right-of-Way that has been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way along the extension of cable to be removed, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5. When the City determines, in the City's sole discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a potentially hazardous condition, Franchisee shall remove the cable or conduit at Franchisee's sole cost and expense. Franchisee must apply for and receive a permit, pursuant to Section 8.2, prior to any such removal of underground cable,

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conduit and other related facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

6.7 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

Section 7. Maps and Records.

7.1 After aerial or underground construction is complete, whether new construction, relocation required by Section 5 or required undergrounding consistent with Section 6, Franchisee shall provide the City with accurate digital as-built plans and maps stamped and signed by a professional land surveyor in a form and content acceptable to the City Manager or his/her designee. These plans and maps shall be provided at no cost to the City. Franchisee shall provide such maps within ten (10) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps and as-builts provided to the City.

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

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

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from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit, in the event the City is permitted to charge fees as further described in Section 16.1, or as otherwise required in this Franchise. Franchisee shall be responsible for clearly and conspicuously identifying any records disclosed pursuant to Section 7.3 as confidential or proprietary (if they are), and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Nothing in this Section 7.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

7.5 On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Franchisee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit

shows that fee payments or taxes have been underpaid by three percent (3%) or more, Grantee shall pay the total cost of the audit.

Section 8. Work in the Rights-of-Way.

8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so as to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares, and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair, and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or any interference with City services. The provisions of this Section 8 shall survive the expiration of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

8.2 Whenever Franchisee shall commence work in any public Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its cable or facilities, it shall apply to the City for a permit to do so and shall comply with the requirements of the Mercer Island City Code 19.09.060 as now enacted or hereafter amended. In addition, the Franchisee shall give the City at least ten (10) working days (except in the case of an emergency) prior notice of its intent to commence work in the Rights-of-Way. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

8.3 Whenever Franchisee installs underground cables, conduits, and other linear facilities, trenchless construction methods shall be utilized as much as possible to

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minimize impacts to surface improvements (roadways, sidewalks, curbs), underground utilities, and tree roots. The use of open-cut construction methods shall be minimized.

8.4 If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section 8.4, the Franchisee shall afford the other franchisees and the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

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

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

(c) Franchisee may deny such request for safety reasons.

8.5 Except for emergency situations, Franchisee shall give at least seven (7) days' prior notice of intended construction to residents in the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. At least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property, Franchisee shall physically post a notice on the property indicating the nature and location of the work to be performed. Door hangers are permissible methods of notifications to residents. These timeframes may be modified in the permit approved for the work. Franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Following performance of the work, Franchisee shall restore the private property as nearly as possible to its condition prior to construction, except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to

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enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

8.6 Franchisee shall at all times comply with the safety requirements contained in Section 10 and all applicable federal, State and local safety requirements.

8.7 Tree Trimming.

(a) Trees on Public Property.

(i) Franchisee, its contractors, and agents shall apply for a tree permit to prune or cut any tree in a right-of-way in accordance with chapter 19.10.100 of the Mercer Island City Code as now enacted or hereafter amended. No such pruning or cutting may occur before the permit is properly issued. Tree pruning or cutting shall only be allowed to the extent necessary to resolve a possible hazard or health or safety concern.

(ii) Franchisee shall provide 7 days' advance notice to the adjacent property owners before pruning or cutting a tree on public property.

(iii) Any pruning shall be completed consistent with the approved permit. All pruning or cutting shall at all times minimize damage to the tree and ensure best practices.

(iv) All tree pruning operations shall comply with the Manual on Uniform Traffic Control Devices (MUTCD) on temporary traffic control standards or other standards as may be required by the tree pruning/cutting permit.

(b) Trees on Private Property.

(i) Franchisee shall not prune or cut any trees on private property, unless Franchisee has the express, written permission of the property owner and a tree permit in accordance with chapter 19.10 of the Mercer Island City Code as now enacted or hereafter amended is obtained, if applicable.

(ii) The City shall not be liable for any damages, injuries, or claims arising from Franchisee's actions under this Section 8.7.

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

8.9 Franchisee acknowledges that it, and not the City, shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the Federal Communications Commission ("FCC") with respect to Franchisee's Facilities, if applicable. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may, upon at least forty-eight (48) hours' prior written notice to Franchisee, either terminate this Franchise immediately if the equipment is not brought into compliance by the expiration of such notice period or may proceed to cure the conditions of noncompliance at Franchisee's expense, and collect all reasonable costs from Franchisee in accordance with the provisions of Section 15.3 and Section 15.4.

8.10 The granting of this Franchise shall not preclude the City, its accredited agents or its contractors, from demolition, grading or doing other necessary road work contiguous to the Franchisee's improvements.

8.11 The provisions of this Section 8 shall survive the expiration, revocation, or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

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Section 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Chapter 19.122 RCW. Further, upon request from a third party or the City, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 10. Safety Requirements.

10.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All facilities in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

10.2 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe

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conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 15.3 and Section 15.4.

10.3 Additional safety standards include:

(a) Franchisee shall endeavor to maintain all facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities.

(b) All installations of facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

10.4 Stop Work Order

On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall conform to the requirements of Mercer Island City Code 6.10. Nothing in this Franchise Agreement shall be construed to limit the City's authority to enforce applicable permit conditions, laws, regulations, ordinances, or standards as set forth in Section 24.

10.5 The provisions of this Section 10 shall survive the expiration, revocation, or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 11. Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, {DPK2091338.DOCX;13/13045.000007/ }

regulations, and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise, any applicable permits, and applicable law. The provisions of this Section 11 shall survive the expiration, revocation, or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 12. City Conduit. Except in emergency situations, Franchisee shall inform the City Engineer with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit, and related structures necessary to access the conduit pursuant to and subject to RCW 35.99.070. Such notification shall be in addition to the requirement to apply for and obtain permits pursuant to Section 8.2.

Section 13. Restoration after Construction.

13.1 Franchisee shall, after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 19, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee. The City Manager or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (Chapter 332-120 WAC), and local standards and specifications.

13.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in

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accordance with applicable City standards and warranted for a period of two (2) years following closeout of the permit, or other time period as may be required by a permit of the City Code, and for undiscovered defects as is standard and customary for this type of work.

13.3 If conditions (e.g. weather) make the complete restoration required under Section 13 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

13.4 In the event Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way within the time agreed to by the City Manager, or his/her designee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an itemized invoice to Franchisee in accordance with the provisions of Section 15.3 and Section 15.4. In addition, and pursuant to Section 15.3 and Section 15.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with Section 21.2.

13.5 The provisions of this Section 13 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 14. Emergencies.

14.1 In the event of any emergency in which any of Franchisee's Facilities located in or under any street endangers the property, life, health, or safety of any person, entity or the City, or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities and to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of

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any person, entity or the City, without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which the Mercer Island City Hall is open for business. The City retains the right and privilege to cut or move any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. The City shall notify Franchisee by telephone promptly upon learning of the emergency and shall exercise reasonable efforts to avoid an interruption of Franchisee's operations.

14.2 Whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, an adjoining public place, street utilities, City property, Rights-of-Way, or private property (collectively "Endangered Property") or endangers the public, the City Manager or his/her designee, may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the Endangered Property or the public, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if an emergency situation exists that requires immediate action before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the Endangered Property and take such reasonable actions as are necessary to protect the Endangered Property or the public. Franchisee shall be liable to the City for the costs of any such repairs in accordance with the provisions of Sections 15.3 and 15.4.

14.3 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the gross negligence or willful acts of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person

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or entity of any type as a direct or indirect result of the City's actions under this Section 14 except to the extent caused by the gross negligence or willful acts of the City, its employees, contractors, or agents.

14.4 The provisions of this Section 14 shall survive the expiration, revocation, or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 15. Recovery of Costs.

15.1 Upon receipt of an itemized billing from the City, Franchisee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving of this Franchise pursuant to RCW 35.21.860, including the costs associated with City's legal costs incurred in drafting and processing this Franchise and all work related thereto. No construction permits shall be issued for the installation of Facilities authorized until such time as the City has received payment of the fee; further, this Franchise will not be deemed accepted without the payment of this fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 15.3.

15.2 In addition to Section 15.1, Franchisee shall promptly reimburse the City in accordance with the provisions of Section 15.3 and Section 15.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

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15.3 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

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

Section 16. City's Reservation of Rights.

16.1 Franchisee represents that its Services, as authorized under this Franchise, are a telephone business as defined in RCW 82.16.010, or that it is a service provider as used in RCW 35.21.860 and defined in RCW 35.99.010. As a result, the City will not impose franchise fees under the terms of this Franchise. The City reserves its right to impose a franchise fee on Franchisee if Franchisee's Services as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are otherwise removed. The City also reserves its right to require that Franchisee obtain a separate franchise for a change in use, which franchise may include

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provisions intended to regulate Franchisee's operations as allowed under applicable law. Nothing contained within this Franchise shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

16.2 Franchisee acknowledges that its operation with the City constitutes a telecommunication business subject to the utility tax imposed pursuant to the Mercer Island City Code Chapter 4.12. Franchisee stipulates and agrees that certain of its business activities are subject to taxation as a telecommunication business and that Franchisee shall pay to the City the rate applicable to such taxable services under Mercer Island City Code Chapter 4.12, and consistent with state and federal law. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Mercer Island City Code Chapter 4.12 as may be permitted by law.

Section 17. Indemnification.

17.1 Franchisee shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Franchisee's acts, errors or omissions, or from the conduct of Franchisee's business, or from any activity, work or thing done, permitted, or suffered by Franchisee arising from or in connection with this Franchise Agreement, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

17.2 However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Franchisee and the City, its officers, officials, employees, and volunteers, the Franchisee's liability hereunder shall be only to the extent of the Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Franchisee's waiver of immunity under Industrial Insurance, Title 51 RCW,

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solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Section 17 shall survive the expiration or termination of this Agreement.

17.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 16.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit.

17.4 If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

17.5 In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action,

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including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision.

17.6 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 17. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

17.7 Notwithstanding any other provisions of this Section 17, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any grossly negligent, willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. In no event shall either party be liable to the other for any indirect, incidental, special, consequential, exemplary, or punitive damages, including, by way of example and not limitation, lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with such party's performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the gross negligence or any willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

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17.8 The provisions of this Section 17 shall survive the expiration, revocation, or termination of this Franchise.

Section 18. Insurance.

18.1 Franchisee shall procure and maintain for the duration of this Franchise Agreement and so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to Franchisee, its agents representatives or employees. Franchisee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Franchisee-provided insurance as set forth herein, except the Franchisee shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Franchisee shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 2026.

18.2 No Limitation. Franchisee's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

18.3 Minimum Scope of Insurance. Franchisee shall obtain insurance of the types and coverage described below:

(a) Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as additional an insured on Franchisee's Commercial General Liability insurance policy with respect this Franchise Agreement using ISO Additional Insured-Managers or

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Lessors of Premises Form CG 20 26 07 04 or a substitute endorsement providing at least as broad coverage.

- (b) Property insurance shall be written on an all risk basis.

18.4 Minimum Amounts of Insurance. Franchisee shall maintain the following insurance limits:

(a) Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate;

(b) Property insurance shall be written covering the full value of Franchisee's property and improvements with no coinsurance provisions;

(c) Franchisee's Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

(d) Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased, or hired vehicles, as applicable, with a minimum limit of \$5,000,000 each accident for bodily injury and property damage; and

(e) Workers' Compensation insurance for Washington State as required by Title 51 RCW Industrial Insurance.

(f) Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

(g) The City may reasonably increase the minimum policy limits and coverage from time to time as the City deems appropriate to adequately protect the City and the public.

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18.5 Additional Insured. The Commercial General Liability insurance policy and Excess of Umbrella liability insurance, if any, shall name the City, its elected officials, officers, and employees as additional insureds as respects any covered liability arising out of Franchisee's performance of this Franchise. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. Franchisee shall be responsible for notifying the City of such change or cancellation.

18.6 Franchisee's Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, Contractors Pollution Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect to the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

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

18.8 Verification of Coverage. Franchisee shall furnish the City with certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Franchisee. Upon request by the City, the Franchisee shall furnish and evidence of all subcontractors' coverage.

18.9 Notice of Cancellation. Franchisee shall provide the City with written notice of any policy cancellation within seven (7) business days of their receipt of such notice.

18.10 Failure to Maintain Insurance. Failure on the part of Franchisee to maintain the insurance as required shall constitute a material breach of the Franchise, upon which the City may, after giving 5 business days' notice to Franchisee to correct the breach, terminate the Lease or, at its discretion, procure or renew such insurance and pay any and all

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premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

18.11 As of the effective date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee must provide the City with thirty (30) days advanced written notice of its intent to self-insure. In order to self-insure, Franchisee shall comply with the following: (i) provide the City, upon request, a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Franchisee or its parent company is responsible for all payments within the self-insured retention; (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Agreement. (iv) provide a written attestation that Franchisee possesses the necessary amount of unencumbered financial assets to support the financial exposure of self-insurance, as evidenced by an outside auditor's review of Franchisee's financial statements; and (v) the City, upon request, may review Franchisee's financial statements.

Section 19. Abandonment of Franchisee's Telecommunications Network.

19.1 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within sixty (60) days of receiving written notice from the City Manager or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the City Manager or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

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19.2 Notwithstanding Section 19.1 above, the City may permit Franchisee's improvements to be abandoned and placed in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

19.3 Any Facilities which are not removed within one hundred (120) days of either the date of termination or revocation or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 19 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place. The provisions of this Section 19 shall survive the expiration, revocation, or termination of this Franchise.

19.4 If Franchisee leases a structure in the Right-of-Way from a landlord and such landlord later replaces, removes or relocates the structure, for example by building a replacement structure, Franchisee shall remove or relocate its Facilities within the rights-of-way within ninety (90) days of such notification from the landlord at no cost to the City.

19.5 The provisions of this Section 19 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 20. Security.

20.1 Within 30 days of the execution of this Franchise, Franchisee shall maintain and furnish to the City a Security in favor of the City. "Security" means either an executed performance bond, letter of credit, or a bank or cashier's check made payable to the City, or other form of security acceptable to the City for the purpose of protecting the City from the costs and expenses associated with Franchisee's failure to comply with its material obligations under and throughout the life of this Franchise, including but not limited to, (a) the City's restoration of its Right-of-Way; (b) the City's removal of any of Franchisee's Facilities

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that are abandoned without approval or not properly maintained or that need to be removed to protect public health, safety, welfare, or City property; or (c) the City's remediation of environmental and hazardous waste issues caused by Franchisee after Franchisee receives reasonable notice from the City of any of the non-compliance listed above and opportunity to cure.

20.2 The amount of the Security shall be determined by mutual agreement by Franchisee and the City Attorney/City Manager in writing.

20.3 The Bond, if any, must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Washington state. The surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability up to \$100,000.00, by a reinsurer listed on the U.S. Treasury list.

20.4 In the event the surety or party issuing the Security cancels or decides not to renew or extend the Security, Franchisee shall obtain, and provide to the City Attorney for approval, a replacement Security with another surety, authorized to do business in Washington, within 30 days of the date the Security has been cancelled or non-renewed. If Franchisee fails to provide the replacement Security within the 30-day period, the City Manager, after consulting with the City Attorney, may immediately suspend Franchisee from any further performance under this Franchise and begin procedures to terminate for default.

20.5 In the event that the City draws upon the Security, Franchisee must replenish the amount of the Security within 30 days. Notwithstanding any provisions of this Franchise to the contrary, the City Manager shall be required to notify Franchisee in writing as a precondition to drawing on, seeking payment under, or executing against the Security.

20.6 In the event that Franchisee shall fully and faithfully comply with all of the terms of this Franchise, the City shall return the Security to Franchisee within 60 days of the Franchise's expiration or termination, to the extent such Security is not otherwise applied consistent with this Franchise.

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Section 21. Remedies to Enforce Compliance.

21.1 In addition to any other remedy provided in this Franchise, the City reserves the right to pursue any remedy available at law or in equity to compel or require Franchisee and/or its successors and assigns to comply with the terms of this Franchise and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation for breach of the conditions. In addition to any other remedy provided in this Franchise, Franchisee reserves the right to pursue any remedy available at law or in equity to compel or require the City, its officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms of this Franchise. Further, all rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to either the City or Franchisee. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as provided by law, equity or otherwise, and nothing contained in this Franchise shall be deemed or construed to affect any such waiver. The parties reserve the right to seek and obtain injunctive relief with respect to this Franchise to the extent authorized by applicable law and that the execution of this Franchise shall not constitute a waiver or relinquishment of such right. The parties agree that in the event a party obtains injunctive relief, neither party shall be required to post a bond or other security and the parties agree not to seek the imposition of such a requirement.

21.2 If either party violates or fails to comply with any of the provisions of this Franchise, or a permit issued as required by Section 8.2, or should it fail to heed or comply with any notice given to such party under the provisions of this Franchise (the “Defaulting Party”), the other Party (the “Non-defaulting Party”) shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of any such breach and the Defaulting Party shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the Non-defaulting Party reasonably determines the breach cannot be cured within thirty (30) days, the Non-defaulting Party may specify a

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longer cure period, and condition the extension of time on the Defaulting Party's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Defaulting Party does not comply with the specified conditions, the Non-defaulting Party may pursue any available remedy at law or in equity as provided in Section 21.1 above, or in the event Franchisee has failed to timely cure the breach, the City, at its sole discretion, may elect to (1) revoke this Franchise pursuant to Section 22, (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against Franchisee (and collect from the Franchise Bond if necessary), or (3) extend the time to cure the breach if under the circumstances additional time is reasonably required. Liquidated damages described in this Section 21.2 shall not be offset against any sums due to the City as a tax or reimbursement pursuant to Section 15.

Section 22. Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this Franchise, then at the election of the Mercer Island City Council after at least sixty (60) days prior written notice to Franchisee specifying the alleged violation or failure, the City may revoke all rights conferred and this Franchise may be revoked by the Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Mercer Island City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Mercer Island City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Mercer Island City Council does not grant any additional period, the Mercer Island City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

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Section 23. Non-Waiver. The failure of either party to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such covenants, agreements, or option or any other covenants, agreements or option.

Section 24. Police Powers and City Regulations. Nothing within this Franchise shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise and the franchises of similarly-situated entities, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations, consistent with 47 U.S.C. § 253, the location, elevation, manner of construction, and maintenance of any Facilities by Franchisee and other similarly-situated franchisees, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. The City reserves the right to promulgate any additional regulations of general applicability as it may find necessary in the exercise of its lawful police powers consistent with 47 U.S.C. § 253. In the event of a conflict between the provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over this Franchise.

Section 25. Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Section 26. Acceptance. Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as Exhibit B. The administrative fee pursuant to Section 15.1 is due within thirty days of receipt of the invoice from the City. In addition, Franchisee shall file the certificate of insurance and the additional insured endorsements obtained pursuant to Section 18, and the Franchise Bond required pursuant to Section 20.

Section 27. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 10, Section 11, Section 13, Section 14, Section 15, Section 17, Section 18, Section 19, Section 20, and Section 28 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract,

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

Section 28. Changes of Ownership or Control.

28.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The above notwithstanding, Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 28.2 below, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 28, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

28.2 Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the: ultimate ownership or working control of Franchisee, ownership or working control of the Facilities, ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee's Facilities, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval if there is a change in control as described in the preceding sentence. Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party

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of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. The City shall approve or deny such request for an assignment or transfer requiring City's consent within one-hundred twenty (120) days of a completed application from Franchisee, unless a longer period of time is mutually agreed to by the parties or when a delay in the action taken by the City is due to the schedule of the City Council and action cannot reasonably be obtained within the one hundred twenty (120) day period. In the event that the City adopts a resolution denying its consent and such change, transfer, or acquisition of control has been affected, the City may revoke this Franchise, following the revocation procedure described in Section 22 above. The assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate Franchisee's Services. Franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Franchise, in accordance with the provisions of Section 15.3 and Section 15.4, and shall pay the applicable application fee.

28.3 Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 28.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

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Section 29. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter within this Franchise and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 30. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of Franchisee’s Facilities for the fair market value. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 31. Vacation. If at any time the City, by ordinance and in accordance with applicable laws, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall use reasonable efforts to reserve an appurtenant easement for public utilities within the vacated portion of the Rights-of-Way within which Franchisee may continue to operate existing Facilities under the terms of this Franchise for the remaining period of the term set forth in Section 1.1. Notwithstanding the preceding sentence, the City shall incur no liability for failing to reserve such easement. The City shall notify Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City may, after sixty (60) days’ written notice to Franchisee, terminate this Franchise with respect to such vacated area.

Section 32. Notice. Any notice or information required or permitted to be given to the parties under this Franchise shall be sent to the following addresses unless otherwise specified by personal delivery, overnight mail by a nationally recognized courier, or by U.S. certified mail, return receipt requested and shall be effective upon receipt or refusal of delivery:

CITY OF MERCER ISLAND
Attn: City Clerk
9611 SE 36th Street
Mercer Island, WA 98040
Telephone: (206) 275-7600

Zayo Group, LLC
Attn: General Counsel
1805 29th Street
Suite 2050
Boulder, CO 80301

With a copy to:
Zayo Group, LLC

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Attn: Underlying Rights Dept.
 1805 29th Street
 Suite 2050
 Boulder, CO 80301

Emergencies:

Network Operations Center & Repair
 Phone: (888) 404 9296
 E-mail: zayoncc@zayo.com

Section 33. Severability. If any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

Section 34. Compliance with all Applicable Laws. Each party agrees to comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. The City reserves the right at any time to amend this Franchise to conform to any enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation, when such statute, regulation, or ordinance necessitates this Franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days' written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations regarding the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, either party may pursue any available remedies at law or in equity.

Section 35. Attorney Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, each party shall pay all its legal costs and attorney fees
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incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this section shall be construed to limit the City's right to indemnification under Section 17 of this Franchise.

Section 36. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors, or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify, and hold the City, its officers, officials, employees, agents, and volunteers harmless from and against any and all claims, costs, and liabilities including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property to the extent caused by Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage, or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional.

Section 37. Licenses, Fees and Taxes. Prior to constructing any Facilities or providing Services within the City, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay all applicable taxes on personal property and Facilities owned or placed by Franchisee in the Rights-of-Way and shall pay all applicable license fees, permit fees, and any applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees properly imposed by the City under this Franchise.

Section 38. Miscellaneous.

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

38.2 Any litigation between the City and Franchisee arising under or regarding this Franchise shall occur if in the state courts, in the King County Superior Court, and if in the federal courts, in the United States District Court for the Western District of Washington.

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38.3 If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with all terms contained in this Franchise; or

(b) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 19.

38.4 Section captions and headings are intended solely to facilitate the reading of this Franchise. Such captions and headings shall not affect the meaning or interpretation of the text within this Franchise.

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

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

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

38.8 There are no third-party beneficiaries to this Franchise.

38.9 This Franchise may be enforced at both law and in equity.

Section 39. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance,

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including the correction of clerical errors; ordinance, section or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

Section 40. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND THIS ____ DAY OF _____, 2020; AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS ____ DAY OF _____, 2020.

Mayor

Attest: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

PUBLISHED:

EFFECTIVE:

{DPK2091338.DOCX;13/13045.000007/ }

EXHIBIT A

Providing fiber optic cable to existing wireless communication antenna sites, which may be a rooftop location, cell tower or utility pole. Such operations are commercial only. The initial buildout locations are described below and depicted in the attached maps:

<u>ID</u>	<u>NAME</u>	<u>ADDRESS</u>
10092732	W MERCER TUNNEL	2250 60TH AVE SE
10092302	W MERCER	2748 61ST AVE SE
10092489	MERCER ISLAND	7900 SE 28TH ST
10098217	CLISE PARK	SE 39TH ST & 84TH AVE SE
10092497	EAST CHANNEL	9655 SE 36TH ST
10097866	MID-MERCER PSE	4621 ISLAND CREST WAY
10992517	MERCER CREST	5017 90TH AVE SE
10092519	SOUTH MERCER	8476 SE 68TH ST

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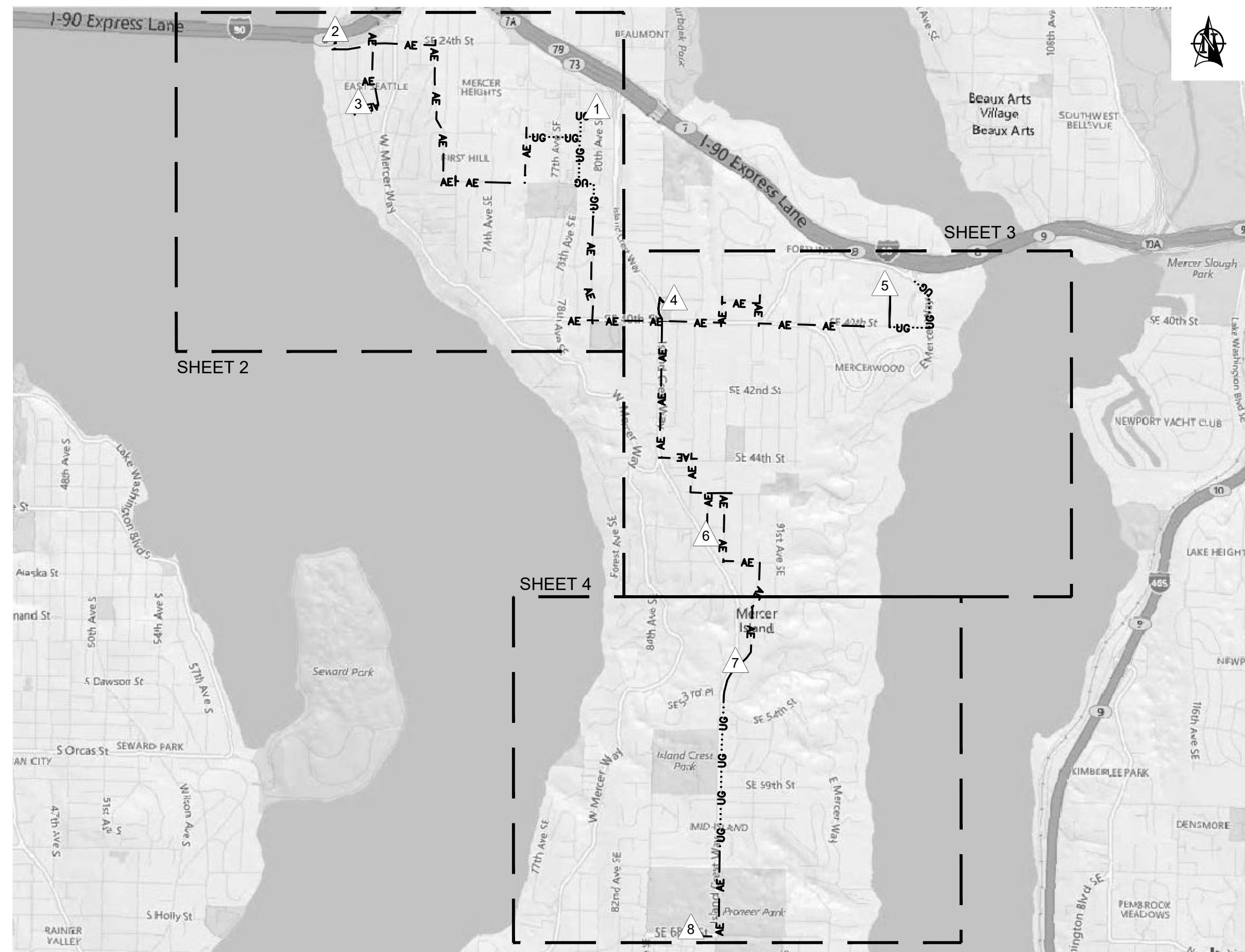


EXHIBIT A

PROVIDING FIBER OPTIC CABLE TO THE SUPPORTING EQUIPMENT OF EXISTING WIRELESS COMMUNICATION ANTENNA SITES, WHICH MAY BE A ROOFTOP LOCATION, CELL TOWER, UG FACILITY OR UTILITY POLE. SUCH OPERATIONS ARE COMMERCIAL ONLY. THE INITIAL BUILDOUT LOCATIONS ARE DESCRIBED BELOW AND DEPICTED IN THE ATTACHED MAP.

EXISTING FACILITY LOCATIONS

- 1 10092489 - MERCER ISLAND
LAT: 47.585896, LONG: -122.232033
- 2 10092732 - WEST MERCER TUNNEL
LAT: 47.589198, LONG: -122.252898
- 3 10092302 - WEST MERCER
LAT: 47.585816, LONG: -122.250993
- 4 10098217 - CLISE PARK-PSE
LAT: 47.575726, LONG: -122.226827
- 5 10092497 - EAST CHANNEL
LAT: 47.576696, LONG: -122.209406
- 6 10097866 - MIDMERCER-PSE
LAT: 47.563180, LONG: -122.223074
- 7 10092517 - MERCER CREST
LAT: 47.556491, LONG: -122.220587
- 8 10092519 - SOUTH MERCER
LAT: 47.541620, LONG: -122.223899

LINETYPE LEGEND

- AERIAL ON EXISTING PSE POLE
(TOTAL FOOTAGE ~ 33,096 FT)
- AE — AE — AE — AE — AE —
- DIRECTIONALLY DRILL IN (3) 1.25"
(TOTAL FOOTAGE ~ 3,298 FT)
- UG···UG···UG···UG···UG···UG···

3				AS-BUILT
2				REVISION # 1
1	7/2/20	MF	KMB	ORIGINAL
NO.	DATE	ENGINEER	DRAFTER	COMMENT



ZAYO ENGINEER: MICHAEL ADAMS
ENGINEERING FIRM: MGC TECHNICAL CONSULTING INC.
PROJECT NAME: MERCER ISLAND OVERVIEW
LOCATION: MERCER ISLAND OVERVIEW
PERMIT NUMBER: ZAYO MERCER ISLAND EXHIBIT
DRAWING NAME: ZAYO - MERCER ISLAND - EXHIBIT.dwg
CONFIDENTIAL/PROPRIETARY

EXHIBIT A

PROVIDING FIBER OPTIC CABLE TO THE SUPPORTING EQUIPMENT OF EXISTING WIRELESS COMMUNICATION ANTENNA SITES, WHICH MAY BE A ROOFTOP LOCATION, CELL TOWER, UG FACILITY OR UTILITY POLE. SUCH OPERATIONS ARE COMMERCIAL ONLY. THE INITIAL BUILDOUT LOCATIONS ARE DESCRIBED BELOW AND DEPICTED IN THE ATTACHED MAP.

EXISTING FACILITY LOCATIONS

- 1 10092489 - MERCER ISLAND
LAT: 47.585896, LONG: -122.232033
- 2 10092732 - WEST MERCER TUNNEL
LAT: 47.589198, LONG: -122.252898
- 3 10092302 - WEST MERCER
LAT: 47.585816, LONG: -122.250993

LINETYPE LEGEND

AERIAL ON EXISTING PSE POLE
(TOTAL FOOTAGE ~ 33,096 FT)
 — AE — AE — AE — AE — AE —
 DIRECTIONALLY DRILL IN (3) 1.25"
(TOTAL FOOTAGE ~ 3,298 FT)
 ...UG...UG...UG...UG...UG...UG...UG...



MATCH TO SHEET 3

3				AS-BUILT
2				REVISION # 1
1	7/2/20	MF	KMB	ORIGINAL
NO.	DATE	ENGINEER	DRAFTER	COMMENT
zayo		MGC		
ZAYO ENGINEER: MICHAEL ADAMS		ENGINEERING FIRM: MGC TECHNICAL CONSULTING INC.		
PROJECT NAME: MERCER ISLAND OVERVIEW		LOCATION: NORTH MERCER ISLAND		
PERMIT NUMBER: ZAYO MERCER ISLAND EXHIBIT		DRAWING NAME: ZAYO - MERCER ISLAND - EXHIBIT.dwg		
CONFIDENTIAL/PROPRIETARY		SHEET: 2 OF 4		

MATCH TO SHEET 2



EXHIBIT A
 PROVIDING FIBER OPTIC CABLE TO THE SUPPORTING EQUIPMENT OF EXISTING WIRELESS COMMUNICATION ANTENNA SITES, WHICH MAY BE A ROOFTOP LOCATION, CELL TOWER, UG FACILITY OR UTILITY POLE. SUCH OPERATIONS ARE COMMERCIAL ONLY. THE INITIAL BUILDOUT LOCATIONS ARE DESCRIBED BELOW AND DEPICTED IN THE ATTACHED MAP.

- EXISTING FACILITY LOCATIONS**
- △ 4 10098217 - CLISE PARK-PSE
 LAT: 47.575726, LONG: -122.226827
 - △ 5 10092497 - EAST CHANNEL
 LAT: 47.576696, LONG: -122.209406
 - △ 6 10097866 - MIDMERCER-PSE
 LAT: 47.563180, LONG: -122.223074

LINETYPE LEGEND



AERIAL ON EXISTING PSE POLE
 (TOTAL FOOTAGE ~ 33,096 FT)

— AE — AE — AE — AE — AE —

DIRECTIONALLY DRILL IN (3) 1.25"
 (TOTAL FOOTAGE ~ 3,298 FT)

··UG····UG····UG····UG····UG····UG····

3				AS-BUILT
2				REVISION # 1
1	7/2/20	MF	KMB	ORIGINAL
NO.	DATE	ENGINEER	DRAFTER	COMMENT

ZAYO ENGINEER: MICHAEL ADAMS
 ENGINEERING FIRM: MGC TECHNICAL CONSULTING INC.
 PROJECT NAME: MERCER ISLAND OVERVIEW
 LOCATION: EAST MERCER ISLAND

PERMIT NUMBER: ZAYO MERCER ISLAND EXHIBIT
 DRAWING NAME: ZAYO - MERCER ISLAND - EXHIBIT.dwg
 CONFIDENTIAL/PROPRIETARY

MATCH TO SHEET 4

L a k e
 W a s h i n g t o n

MATCH TO SHEET 3

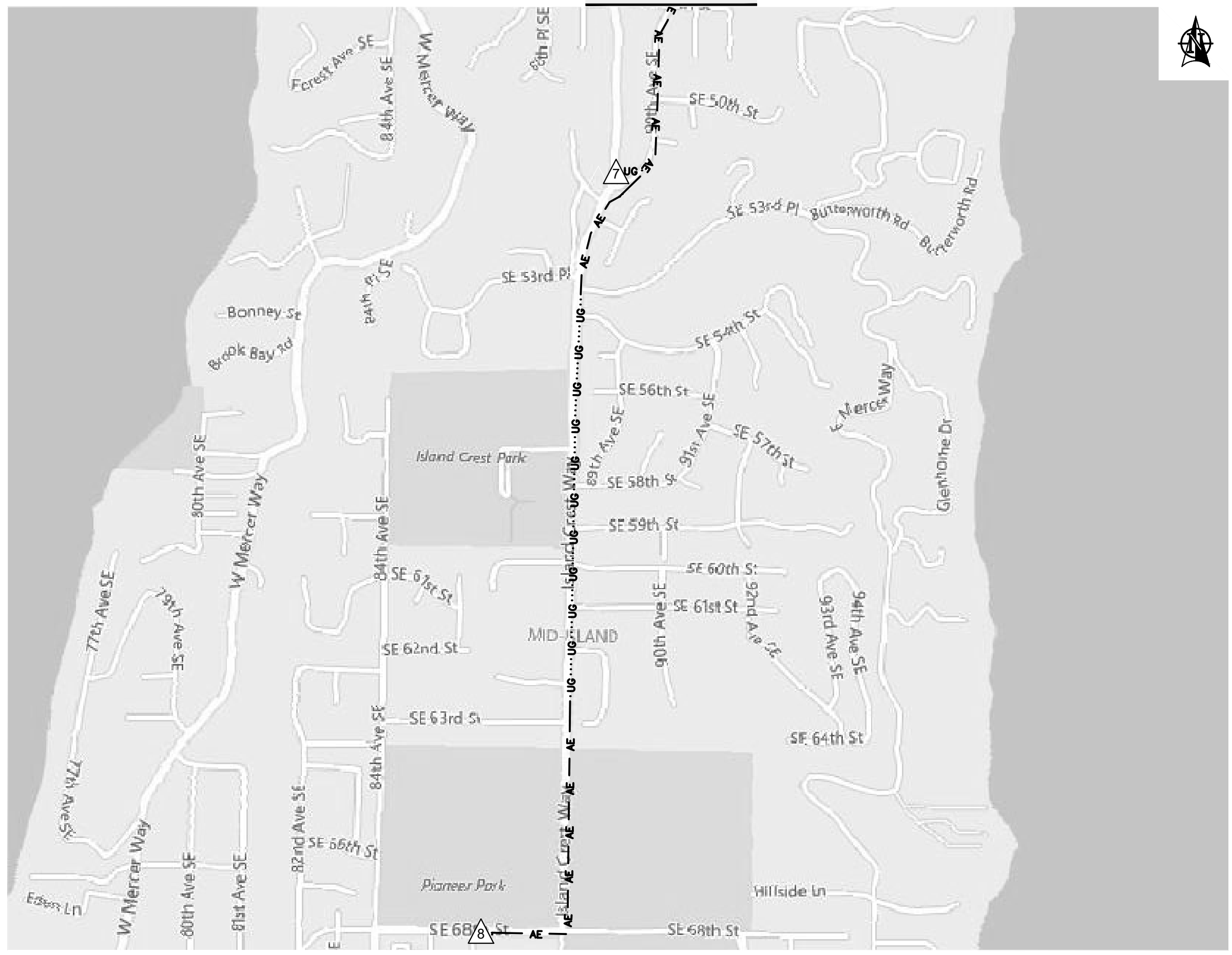


EXHIBIT A
 PROVIDING FIBER OPTIC CABLE TO THE SUPPORTING EQUIPMENT OF EXISTING WIRELESS COMMUNICATION ANTENNA SITES, WHICH MAY BE A ROOFTOP LOCATION, CELL TOWER, UG FACILITY OR UTILITY POLE. SUCH OPERATIONS ARE COMMERCIAL ONLY. THE INITIAL BUILDOUT LOCATIONS ARE DESCRIBED BELOW AND DEPICTED IN THE ATTACHED MAP.

- EXISTING FACILITY LOCATIONS**
- △ 7 10092517 - MERCER CREST
 LAT: 47.556491, LONG: -122.220587
 - △ 8 10092519 - SOUTH MERCER
 LAT: 47.541620, LONG: -122.223899

LINETYPE LEGEND

AERIAL ON EXISTING PSE POLE
 (TOTAL FOOTAGE ~ 33,096 FT)

— AE — AE — AE — AE — AE —

DIRECTIONALLY DRILL IN (3) 1.25"
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···UG···UG···UG···UG···UG···UG···

3				AS-BUILT
2				REVISION # 1
1	7/2/20	MF	KMB	ORIGINAL
NO.	DATE	ENGINEER	DRAFTER	COMMENT

zayo GROUP **MGC** TECHNICAL CONSULTING INC.

ZAYO ENGINEER: MICHAEL ADAMS
 ENGINEERING FIRM: MGC TECHNICAL CONSULTING INC.
 PROJECT NAME: MERCER ISLAND OVERVIEW
 LOCATION: SOUTH MERCER ISLAND

PERMIT NUMBER: ZAYO MERCER ISLAND EXHIBIT
 DRAWING NAME: ZAYO - MERCER ISLAND - EXHIBIT.dwg
 CONFIDENTIAL/PROPRIETARY SHEET: 4 OF 4

EXHIBIT B

STATEMENT OF ACCEPTANCE

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

Zayo Group, LLC

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

ACKNOWLEDGEMENT

STATE OF _____ Δ)
)SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

Notary Seal

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of
Washington
My appointment expires: _____

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Zayo Franchise Ordinance 20-16 First reading

August 4, 2020

Background

- Zayo approached the City approximately one year ago requesting a franchise agreement.
- Zayo desires to install new wireline facilities (fiberoptic) which will initially serve existing facilities which currently have dated/slow connections. This agreement would not allow small wireless facilities – just wireline.
- The application was received in January 2020 and, following some revisions, was deemed complete early February 2020.
- The City and Zayo negotiated the franchise agreement before you tonight.



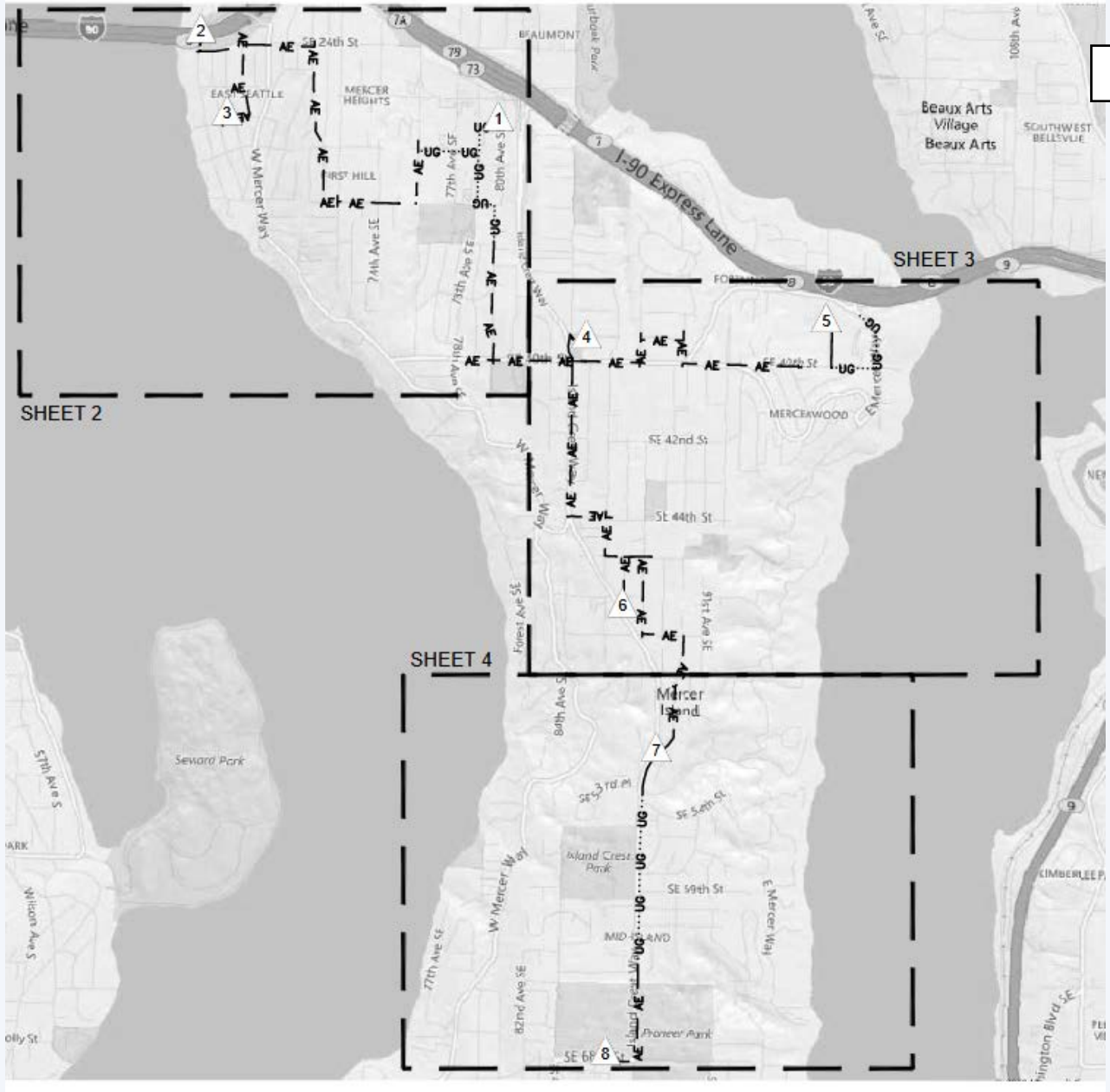
Additional Information

- Pursuant to RCW 35A.47.040, the City has the authority to issue franchise agreements that allow the franchisee general access to the City's rights-of-way.
- Zayo will still need to apply for and receive all necessary permits for any and all installations; the franchise is only the first step.
- The City has a number of franchises with a range of companies and utilities.
 - Comcast - Cable
 - Centurylink – Broadband
 - Crown Castle – Small Wireless Facilities
 - Power, gas, garbage collection, etc.



Proposed Initial Deployment

- Connects 8 existing locations with high speed fiber data connections.
- Additional deployments would be covered by this Franchise Agreement.



Common Questions

1. Is this Franchise consistent with the treatment of other franchisees? Yes. This franchise was drafted with the existing Crown Castle franchise (most recently approved similar franchise) in mind and seeks to treat these similarly situated entities the same.



Common Questions

2. Can the City charge an ongoing fee for the franchise? No. RCW 35.21.860 prohibits the imposition of a franchise fee on businesses like Zayo.
3. Will Zayo be responsible for the City's costs in reviewing and approving this Franchise? Yes. Zayo is responsible for actual administrative expenses incurred by city that are directly related to receiving and approving the franchise. RCW 35.21.860. Zayo provided a \$7,500 fee deposit check at the outset of this process. Actual administrative costs will be deducted from this fee deposit. If money is left over, it is returned to Zayo. If the actual administrative costs exceed this amount, Zayo will be billed by the City.



Common Questions

4. Can the City deny the request for Franchise? Yes, but it would be challenging and is strongly discouraged. First, if it were denied it would need to be supported by substantial evidence contained in a written record. RCW 35.99.030. The impacted entity – Zayo here – can challenge in court and get injunctive relief. There is competitive equity between telecom entities. So, because there are existing franchises, the City should not deny another entrant – that makes the playing field unequal and would cause a legal challenge.



Common Questions

5. What discretion does the City have to modify the draft franchise? The draft franchise before Council was prepared by the City and negotiated with Zayo. If Council wanted to further modify the agreement it could direct staff to engage in further negotiations with Zayo. However, due to competitive equity, prior franchise agreements have “set the table” for some provisions and others may be controlled by state and federal law restrictions.



Next Steps

Set ordinance 20-16 for second reading and adoption on September 1.





BUSINESS OF THE CITY COUNCIL CITY OF MERCER ISLAND

AB 5737
August 4, 2020
Regular Business

AGENDA BILL INFORMATION

TITLE:	AB 5737: Emergency Ordinance to Temporarily Allow Private Parking and Right-of-Way Use by Businesses to Meet Safe Start Plan Guidelines	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Waive second reading, and adopt Ordinance No. 20C-17	<input checked="" type="checkbox"/> Action Needed:
		<input type="checkbox"/> Motion
		<input checked="" type="checkbox"/> Ordinance
		<input type="checkbox"/> Resolution

DEPARTMENT:	City Manager	
STAFF:	Bio Park, City Attorney; Patrick Yamashita, Interim Community Planning & Development Director; Sarah Bluvas, EOC Small Business Liaison	
COUNCIL LIAISON:	Jake Jacobson	Craig Reynolds
EXHIBITS:	1. Ordinance No. 20C-17	
CITY COUNCIL PRIORITY:	3. Implement an economic development program.	

AMOUNT OF EXPENDITURE	\$ N/A
AMOUNT BUDGETED	\$ N/A
APPROPRIATION REQUIRED	\$ N/A

SUMMARY

This agenda bill addresses the need to allow additional outdoor seating spaces to assist Mercer Island eating and drinking establishments impacted by the COVID-19 emergency.

BACKGROUND

On May 31, 2020, Governor Jay Inslee’s “Stay Home, Stay Healthy” order ended, and the state moved into Safe Start – Washington’s Phased Reopening plan. This phased approach allows for businesses to reopen with modified operations, including physical distancing measures to minimize the spread of the coronavirus. King County entered Phase 2 of the Safe Start plan on June 19, 2020, which allowed reopening of restaurants, taverns, and other eating and drinking establishments with limited indoor capacity.

Some Mercer Island businesses have partially reopened by significantly modifying their operations to meet the Phase 2 guidelines. However, two recent announcements from the governor’s office further restrict their ability to continue operating:

1. On July 23, 2020, Governor Inslee and Secretary of Health John Wiesman issued additional restrictions to the Phase 2 guidelines, targeting activities that data have shown create a higher risk of COVID-19 exposure. The additional restrictions that impact Mercer Island eating and drinking establishments currently open during Phase 2 include:

- Limiting indoor dining at restaurants to members of the same household (until Phase 4)
 - Prohibiting bar-area seating (all phases)
 - Prohibiting indoor service at taverns, breweries, wineries, and distilleries (until Phase 4)
2. On July 28, 2020, Governor Inslee announced an indefinite pause to the Safe Start plan, which prevents King County from advancing beyond Phase 2 until further notice.

EMERGENCY ORDINANCE TO FACILITATE OUTDOOR SEATING

Through ongoing discussions with the Mercer Island Chamber of Commerce and local business owners/advocates, staff have identified additional outdoor space as a primary need for local eating and drinking establishments to reopen and operate under the Safe Start guidelines. With the additional restrictions leveled on businesses in Phase 2 as well as the paused timeline for advancing phases, there is growing concern in the local business community that delays in making outdoor space available will create an unnecessary barrier to safely reopening.

To accommodate the need for outdoor space, staff recommend temporarily allowing eating and drinking establishments the use of public Right-of-Way and private parking space to expand their outdoor footprint during the Safe Start plan. Facilitating this temporary use requires adoption of Ordinance No. 20C-17 (Exhibit 1), which enables the following:

1. Temporarily allows existing eating and drinking establishments to obtain a permit to operate on public property with the approval of the code official (interim amendment to 19.06.050 Commerce on public property)
2. Temporarily adjusts parking requirements in commercial areas on the Island, enabling existing eating and drinking establishments to work with landlords/property owners to repurpose private, off-street parking for temporary outdoor seating

The estimated cost for review of the commerce on public property permit is \$347.63. This one-time permit fee is based on a standard hourly rate for Right-of-Way permit review. The fee amount also aligns with fees identified by other neighboring communities (e.g. Bothell, Redmond, Renton, and Tukwila) offering similar solutions to assist small businesses. If the City Council would like to waive the fee for this permit, they may direct staff to utilize funds from the King County Coronavirus Relief Fund Economic Development for Cities grant (i.e. King County CARES Act funding) to cover the cost of the permit.¹

The ordinance will remain in effect for six months following adoption or until King County is authorized to move into Safe Start Phase 4 (whichever deadline is met first). The City may extend the ordinance pending continued need in the business community. The associated commerce on public property permit will also remain valid for the duration of the ordinance.

NEXT STEPS

Upon adoption of this ordinance, staff will alert the business community that the temporary permit is available through a variety of channels, including the City's business outreach list (800+ e-mail contacts) and the Chamber of Commerce channels (400+ e-mail contacts). Community Planning and Development staff are prepared to expedite review of these permit applications to enable businesses to begin offering outdoor seating as quickly as possible. In addition to the commerce on public property permit, businesses will also be required to provide a certificate of insurance and indemnification (hold harmless).

¹ Staff will present a full recommendation for expending the City's King County CARES Act funding on September 1.

RECOMMENDATION

Waive second reading of Ordinance No. 20C-17 pursuant to Council Rules 6.3 and 10.1.

Adopt Ordinance No. 20C-17 providing temporary measures to allow more outdoor seating for eating and drinking establishments on City rights-of-way and on “off-street” private commercial parking areas.

Authorize staff to waive the permit fee and utilize King County CARES Act funding to cover the cost.

**CITY OF MERCER ISLAND
ORDINANCE NO. 20C-17**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
PROVIDING TEMPORARY MEASURES TO ALLOW MORE OUTDOOR
SEATING FOR EATING AND DRINKING ESTABLISHMENTS; CALLING A
PUBLIC HEARING; DECLARING AN EMERGENCY; AND ESTABLISHING AN
IMMEDIATE EFFECTIVE DATE.**

WHEREAS, a state of emergency has been declared by the federal, state, county, and municipal governments, including the City of Mercer Island, in response to the COVID-19 pandemic; and

WHEREAS, since February 29, 2020, Governor Jay Inslee has issued several proclamations, including Emergency Proclamation 20-25 (“Stay Home, Stay Healthy order”), placing numerous restrictions on individuals and businesses in response to the state-wide threat of the spread of the COVID-19 virus; and

WHEREAS, Governor Inslee has developed a phased reopening approach, known as the “Safe Start Washington” phased reopening plan, for resuming recreational, social, and business activities; and

WHEREAS, outdoor restaurant seating has been determined to be safer and less likely to lead to the spread of COVID-19 than indoor restaurant seating, which has been significantly restricted; and

WHEREAS, the City Council wishes to promote local economic recovery by encouraging business activity in Mercer Island consistent with the Safe Start requirements and to make eating and drinking establishments safer to operate by leveraging available private and public space to be used as additional outdoor areas for eating and drinking while maintaining social distancing requirements; and

WHEREAS, it is necessary and appropriate during the state of local emergency to utilize an interim ordinance, which is intended to be only temporary until public health and economic conditions improve, to facilitate and encourage outdoor seating areas to make eating and drinking establishments safer to operate and to promote needed economic and business recovery in the City; and

WHEREAS, the City Council finds that significant restrictions on indoor seating on eating and drinking establishments may cause said establishments in Mercer Island to close and to go out-of-business; and

WHEREAS, the lack of local eating and drinking establishments would result in harm to public health, safety, property, and welfare in Mercer Island during the current state of emergency; and

WHEREAS, to prevent the potential harm to public health, safety, property, and welfare, the City Council concludes that the City immediately needs interim regulations to ease impacts on local eating and drinking establishments resulting from restrictions on indoor seating; and

WHEREAS, the City is authorized under RCW 35A.63.220, 36.70A.390 to pass an interim zoning and official control ordinance for up to six months, provided it holds a public hearing on the same within sixty days after passage; and

WHEREAS, consistent with the provisions of RCW 35A.63.220 and RCW 36.70A.390, it is appropriate for the City Council to hold a public hearing and adopt additional findings of fact, if necessary, supporting and justifying the interim zoning and official control ordinance within at least sixty days of its passage; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Whereas Clauses Adopted. The “Whereas Clauses” set forth in the recital of this Ordinance are hereby adopted as the preliminary findings and conclusions of the City Council for passing this Ordinance.

Section 2. Declaration of Emergency. As set forth in the “Whereas Clauses” adopted in Section 1 of this Ordinance, the City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority plus one of the whole membership of the City Council, and that under the law the same is not subject to a referendum and is exempt from SEPA review.

Section 3. Code Amended. Subsections (D)(4) and (E) of MICC 19.06.050 are amended as follows for the duration of this Ordinance:

D. 4. The design for any non-temporary improvements is consistent with the design requirements for the Town Center plan.

E. A permit to operate a private business on public property shall be reviewed and approved by the design commission; provided, that occasional, temporary business operations involving temporary structures and/or temporary right-of-way obstructions may be approved by the code official ~~or referred to the design commission at the code official’s discretion.~~ Permit applications from existing eating and drinking establishments at Mercer Island to temporarily operate a private business on public property during a phase of what is known as the Governor’s “Safe Start Washington” plan that allows “sit-down” services but limits capacity to less than 75% shall be considered to be temporary, and they may be approved by the code official without review or approval by the design commission.

Section 4. Authorization to Use Private Parking Areas for Outdoor Dining. Subject to the provisions of this Ordinance, the City grants temporary permission for existing eating and drinking establishments at Mercer Island to temporarily utilize private parking areas for outdoor dining use, provided the private parking area is immediately adjacent to the eating and drinking establishment, and the following conditions are met:

A. Such outdoor dining use shall be permitted only if it is authorized to operate under the Governor’s “Safe Start Washington” phased reopening plan and only during a phase that limits “sit-down” services to less than 75% capacity.

B. An eating and drinking establishment may only operate in a private parking area only while this Ordinance remains in effect.

C. Use of any portion or percentage of private off-street parking areas for outdoor dining use shall require the landlord’s / property owner’s approval. Nothing in this Ordinance compels a landlord / property owner to permit a tenant to expand its business to the exterior.

D. This Ordinance authorizes only temporary use of private areas otherwise restricted for parking purposes. Nothing in this Ordinance authorizes permanent improvements or interior expansions.

Section 5. Minimum Parking Regulations Waived. In order to effectuate the purpose of Section 4 above, but only to the extent necessary to so effectuate and under the terms and conditions set forth in this Ordinance, minimum parking regulations normally applicable to eating and drinking establishments are waived to enable such uses to serve patrons in adjoining parking spaces for the duration of this Ordinance.

Section 6 Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a public hearing shall be scheduled within 60 days of this Ordinance passage, in order to hear and consider the comments and testimony of those wishing to speak at such public hearing regarding the interim zoning and official controls approved by this Ordinance, and to consider adopting further findings of fact, if necessary.

Section 7. Duration of Interim Zoning and Official Controls. The interim zoning and official controls approved by this Ordinance shall become effective immediately, on the date hereof, and shall continue in effect for an initial period of six months, unless repealed, extended or modified by the City Council after subsequent public hearing(s), entry of appropriate findings of fact, and or development of a work plan for related studies pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 8. Severability. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property, or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this Ordinance or its application to any other person, property or circumstance.

Section 9. Effective Date. This Ordinance, as a public emergency ordinance necessary for the protection of the public health, safety, property, and welfare, shall take effect and be in full force and effect immediately upon passage by a majority plus one of the whole membership of the City Council.

Passed at least by a majority plus one of the City Council of the City of Mercer Island, Washington, at its regular meeting on the 4th day of August 2020 and signed in authentication of its passage.

CITY OF MERCER ISLAND

Benson Wong, Mayor

Approved as to Form:

ATTEST:

Bio Park, City Attorney

Deborah A. Estrada, City Clerk

Date of Publication: _____

Emergency Ordinance to Temporarily Allow Private Parking & ROW Use by Businesses

AB 5737 | August 4, 2020



New Phase 2 Restrictions Impacting Food & Drinking Establishments

- July 23: Additional Phase 2 restrictions issued
 - Limits indoor dining to restaurants and members of the same household (until Phase 4)
 - Prohibits bar-area seating (all phases)
 - Prohibits indoor service at taverns, breweries, wineries, and distilleries (until Phase 4)
- July 28: Safe Start plan paused indefinitely; King County remains in Phase 2



Requests for Additional Outdoor Seating for Mercer Island Businesses

- Two types of requests
 - ROW sidewalk or parking use
 - Private sidewalk or parking use
- Primarily from Town Center businesses
- Many other communities have already or are in the process of implementing this solution



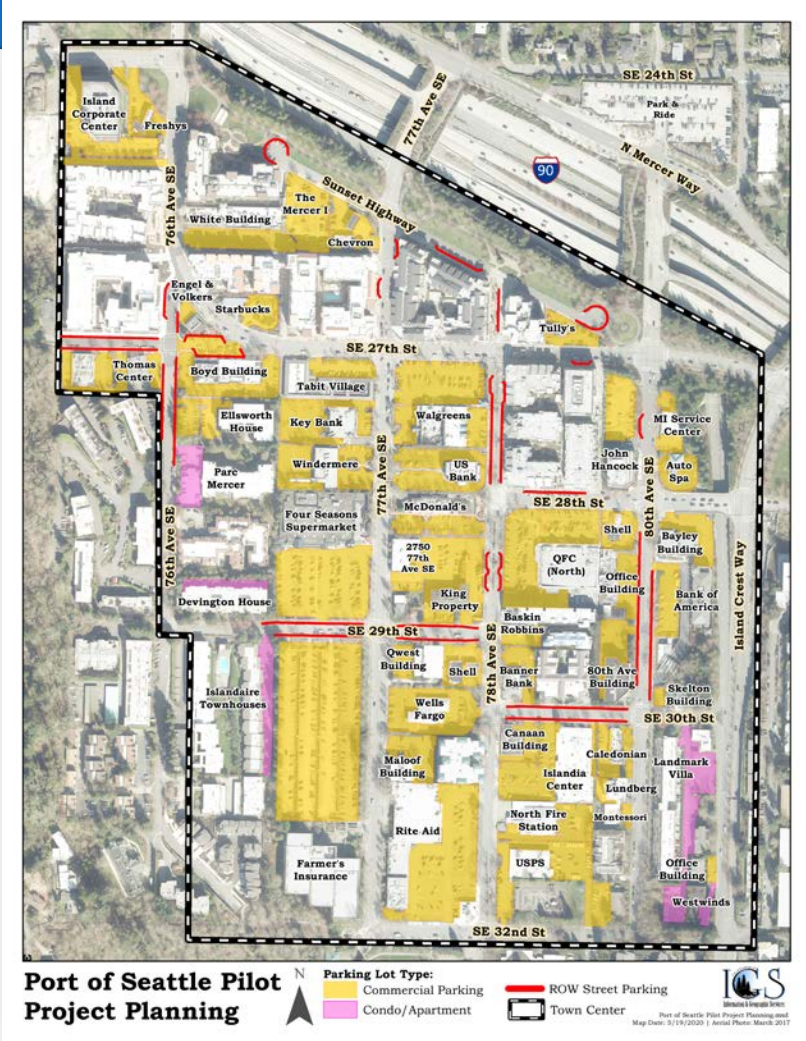
Ordinance No. 20C-17

- Amends MICC 19.06.050 (Commerce on public property)
- Authorizes use of private parking areas for outdoor dining
- Waives minimum parking regulations for duration of the ordinance



Who will benefit?

- 85%+ existing eating/drinking establishments adjacent to ROW or private parking in Town Center and South End shopping center
- Adds more ways for Islanders to spend local while still adhering to Safe Start guidelines



Ordinance Duration

- Once adopted, remains in effect for six months following the adoption **OR** until King County moves into Safe Start Phase 4
 - Option to extend the ordinance if needed
 - Associated commerce on public property permit will remain valid for duration of ordinance
- Permit for ROW access available August 5
 - CPD staff prepared to review/expedite permits



Additional Permit Information

Costs

- Est. review costs for commerce on public property permit: **\$347.63**
(Based on standard hourly rate for ROW permit review)
- **Staff recommend covering the permit fee** with King County CARES Act funding

Other Requirements

- Mercer Island Business License
- Site Plan
- Certificate of Insurance



Recommended Actions

1. Waive second reading of Ordinance No. 20C-17 pursuant to Council Rules 6.3 and 10.1.
2. Adopt Ordinance No. 20C-17 providing temporary measures to allow more outdoor seating for eating and drinking establishments on City rights-of-way and on "off-street" private commercial parking areas.
3. Authorize staff to waive the permit fee and utilize King County CARES Act funding to cover the cost.





**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 5736
August 4, 2020
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 5736: Town Center Moratorium Update and Findings of Fact	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Adopt Ordinance No. 20-18 Amending the Scope of the Town Center Moratorium and Adopting Additional Findings of Fact.	<input checked="" type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	Community Planning and Development
STAFF:	Alison Van Gorp, Community Planning & Development Deputy Director & Bio Park, City Attorney
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Adopted Ordinance No. 20-12 2. Proposed Ordinance No. 20-18
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

SUMMARY

On June 2, 2020, the City Council adopted Ordinance No. 20-12 (see Exhibit 1), which established a 6-month moratorium on major new construction south of SE 29th Street in the Town Center (TC) zoning designation. On July 21, 2020, the City Council held a public hearing on the Town Center Moratorium and directed staff to prepare an amended ordinance reducing the size of the area subject to the moratorium and including additional findings of fact.

BACKGROUND

The current Town Center development regulations were established in June 2016 (see [Ordinance No. 16C-06](#)) and require that:

- Major new development located north of SE 29th Street in the Town Center, must provide ground floor street frontage commercial space for use by retail, restaurant, or personal service (e.g. barber shop, nail salon, fitness center, etc.);
- Between 40 and 60 percent of the ground floor street frontage north of SE 29th Street must be designated for retail, restaurant, or personal services; 40 percent is required for those major new developments that provide public parking, while 60 percent is required for those developments that do not provide public parking; and

- Commercial retail space is allowed, but not required, south of SE 29th Street in the Town Center zoning designation.

Based on City Council direction on July 21, 2020, staff have prepared Ordinance No. 20-18 decreasing the geographical area affected by the moratorium for Council adoption (see Exhibit 2). The new area is within the Town Center (TC zone) south of SE 29th St, east of 77th Ave SE and west of 80th Ave SE. Additional findings of fact have been prepared based on the public hearing and subsequent City Council discussions.

NEXT STEPS

Development Regulation Amendment: Scope of Work and Funding

Staff anticipates that additional staff resources and consultant support will be required to provide an economic analysis of the viability of requiring more commercial space. Staff will prepare a scope of work for the consultant and an appropriation request for City Council review and approval in the fall of 2020. The scope of work will be informed by the discussion of the moratorium scope at the July 21, 2020 Council Meeting and the adoption of the findings of fact for the moratorium on August 4, 2020.

Review Process

Any proposed amendments to the Town Center regulations will require review by the Planning Commission, a public hearing, and final adoption by the City Council. Certain Town Center code amendments may also require an amendment to the Comprehensive Plan.

RECOMMENDATION

1. Suspend Council Rules of Procedure 6.3 and 10.1 requiring second reading of an ordinance.
2. Adopt Ordinance No. 20-18 amending the scope of the Town Center moratorium and adopting additional findings of fact.

**CITY OF MERCER ISLAND
ORDINANCE NO. 20-12**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON;
ADOPTING A MORATORIUM ON THE ACCEPTANCE OF CERTAIN
BUILDING PERMIT APPLICATIONS IN THE MERCER ISLAND TOWN
CENTER ZONE; SCHEDULING A PUBLIC HEARING; DECLARING AN
EMERGENCY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING
AN IMMEDIATE EFFECTIVE DATE.**

WHEREAS, in compliance with the Washington State Growth Management Act, Chapter 36.70A RCW, the City of Mercer Island (City) adopted a Comprehensive Plan in 1994 and has amended the plan on several occasions since that time; and

WHEREAS, in compliance with the Washington State Growth Management Act, Chapter 36.70A RCW, the City has adopted a zoning code and map (Mercer Island City Code, Title 19, Unified Land Development Code); and

WHEREAS, as part of its Growth Management Act obligations, the City desires to significantly update and amend development regulations applicable to certain parts of the Mercer Island Town Center, including requirements for various types of commercial retail space; and

WHEREAS, during its annual Planning Session, the City Council established a work plan for 2020 and 2021 that prioritized the included updates to the Town Center development regulations; and

WHEREAS, the City Council may adopt an immediate moratorium for a period of up to six months on the acceptance of building and development permit applications for major new construction as long as the City Council holds a public hearing on the proposed moratorium within sixty days after adoption, pursuant to RCW 35A.63.220 and RCW 36.70A.390; and

WHEREAS, consistent with the provisions of RCW 35A.63.220 and RCW 36.70A.390, it is appropriate for the City Council to hold a public hearing and to adopt findings of fact supporting and justifying the moratorium, and to implement a work plan to prepare and adopt changes to the Town Center development regulations; and

WHEREAS, allowing building and other new development to continue in certain parts of the Town Center zone before the City Council can fully consider new Town Center development regulations will substantially impact orderly growth in the Town Center zone; and

WHEREAS, building permit applications and other development proposals submitted under existing regulations may be inconsistent with the updated Town Center regulations; and

WHEREAS, the City Council finds that if new developments vest under the current Town Center regulations, it may result in a poorly designed Town Center, visual blight, economic hardship, and poor infrastructure design that pose harm to public health, safety, property, and welfare; and

WHEREAS, to prevent the potential harm to public health, safety, property, and welfare, the City Council concludes that the City Council needs to take immediate action; and

WHEREAS, the moratorium does not apply to any complete application for a development proposal that has vested pursuant to MICC 19.15.170 to the regulations in effect prior to the effective date of this ordinance; and

WHEREAS, the City shall schedule a public hearing before August 01, 2020, consistent with the requirements set forth in RCW 35A.63.220 and RCW 36.70A.390.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON DO ORDAIN AS FOLLOWS:

- Section 1. Moratorium Established.** The Mercer Island City Council hereby imposes a six month moratorium on the submission or acceptance of applications for any building permits or any other land use approvals for Major New Construction as defined in MICC 19.16.010 for properties located south of SE 29th Street within the Town Center (TC) zone at Mercer Island. All applications subject to this moratorium received by the City shall be rejected and returned to the applicant.
- Section 2. Whereas Clauses Adopted.** The “Whereas Clauses” set forth in the recital section above are hereby adopted as the preliminary findings of the City Council for passing this ordinance.
- Section 3. Public Hearing.** A public hearing shall be scheduled and noticed to be held before August 01, 2020 pursuant to RCW 35A.63.220 and RCW 36.70A.390 to hear and consider the comments and testimony of those wishing to speak regarding the moratorium enacted by this ordinance. After the public hearing, the City Council will either adopt findings of fact justifying the continuation of the moratorium, or adopt an ordinance lifting it.
- Section 4. Duration of Moratorium.** The moratorium established by this ordinance shall continue in effect for an initial period of six months, unless repealed, extended or modified by the City Council after subsequent public hearing(s), entry of appropriate findings of fact, and or development of a work plan for related studies pursuant to RCW 35A.63.220 and RCW 36.70A.390.
- Section 5. Declaration of Emergency.** As set forth in the “Whereas Clauses” adopted in Section 2 of this ordinance, the City Council hereby declares that an emergency exists necessitating that this ordinance take effect immediately

upon proper passage by the whole membership of the City Council, and that the same is exempt from SEPA review under WAC 197-11-880.

Section 6. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or its application to any other person, property or circumstance.

Section 7. Effective Date. This ordinance, as a public emergency ordinance necessary for the protection of the public health, safety, property, and welfare, shall take effect and be in full force and effect immediately upon its proper passage by the City Council as provided under RCW 35A.13.190.

Passed unanimously by the City Council of the City of Mercer Island, Washington, at its regular meeting on June 2, 2020, and signed in authentication of its passage.

CITY OF MERCER ISLAND



Benson Wong, Mayor

ATTEST:



Deborah A. Estrada, City Clerk

Approved as to Form:

/s/

Bio Park, City Attorney

Date of Publication: June 10, 2020

**CITY OF MERCER ISLAND
ORDINANCE NO. 20-18**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON;
AMENDING THE SCOPE OF MORATORIUM ADOPTED BY ORDINANCE 20-12;
ADOPTING ADDITIONAL FINDINGS OF FACT; PROVIDING FOR SEVERABILITY;
AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the City adopted Ordinance No. 20-12 on June 2, 2020, implementing a six-month moratorium pursuant to RCW 35A.63.220 and RCW 36.70A.390 on the submission or acceptance of applications for any building permits or any other land use approvals for Major New Construction as defined in MICC 19.16.010 for properties located south of SE 29th Street within the Town Center (TC) zone at Mercer Island; and

WHEREAS, Ordinance No. 20-12 also called for a public hearing to be scheduled before August 01, 2020 to receive public comments related to the adoption of the moratorium; and

WHEREAS, the City Council held the public hearing on July 21, 2020 and received public comments on the moratorium, consistent with the requirements set forth in RCW 35A.63.220 and RCW 36.70A.390; and

WHEREAS, protecting and expanding Mercer Island's retail sector is of utmost importance to maintaining and improving the quality of life and emergency preparedness by providing local access to goods and services that are necessary to meet the daily needs of residents; and

WHEREAS, the City Council has determined the bounds of the moratorium should be limited to the area within the Town Center (TC) zone south of SE 29th Street, east of 77th Avenue SE, and west of 80th Avenue SE; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Moratorium Amended. The scope of the moratorium adopted in Section 1 of Ordinance 20-12 is amended as follows:

Mercer Island City Council hereby imposes a six month moratorium on the submission or acceptance of applications for any building permits or any other land use approvals for Major New Construction as defined in MICC 19.16.010 for properties located ~~south of SE 29th Street~~ within the Town Center (TC) zone at Mercer Island south of SE 29th Street, east of 77th Avenue SE, and west of 80th Avenue SE. All applications subject to this moratorium received by the City shall be rejected and returned to the applicant.

Section 2. Map of Moratorium. A map depicting generally the area covered by the moratorium adopted by Ordinance 20-12 as amended and narrowed by Section 1 of this ordinance is attached as Exhibit One.

Section 3. Whereas Clauses Adopted. The "Whereas Clauses" set forth in the recital section above are hereby adopted as additional findings of the City Council for adopting the moratorium in Ordinance 20-12, as amended by this ordinance.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or its application to any other person, property or circumstance.

Section 5. Effective Date. This ordinance shall take effect and be in force 5 days after its passage and publication.

Passed by the City Council of the City of Mercer Island, Washington, at its regular meeting on August 4, 2020, and signed in authentication of its passage.

CITY OF MERCER ISLAND

Benson Wong, Mayor

Approved as to Form:

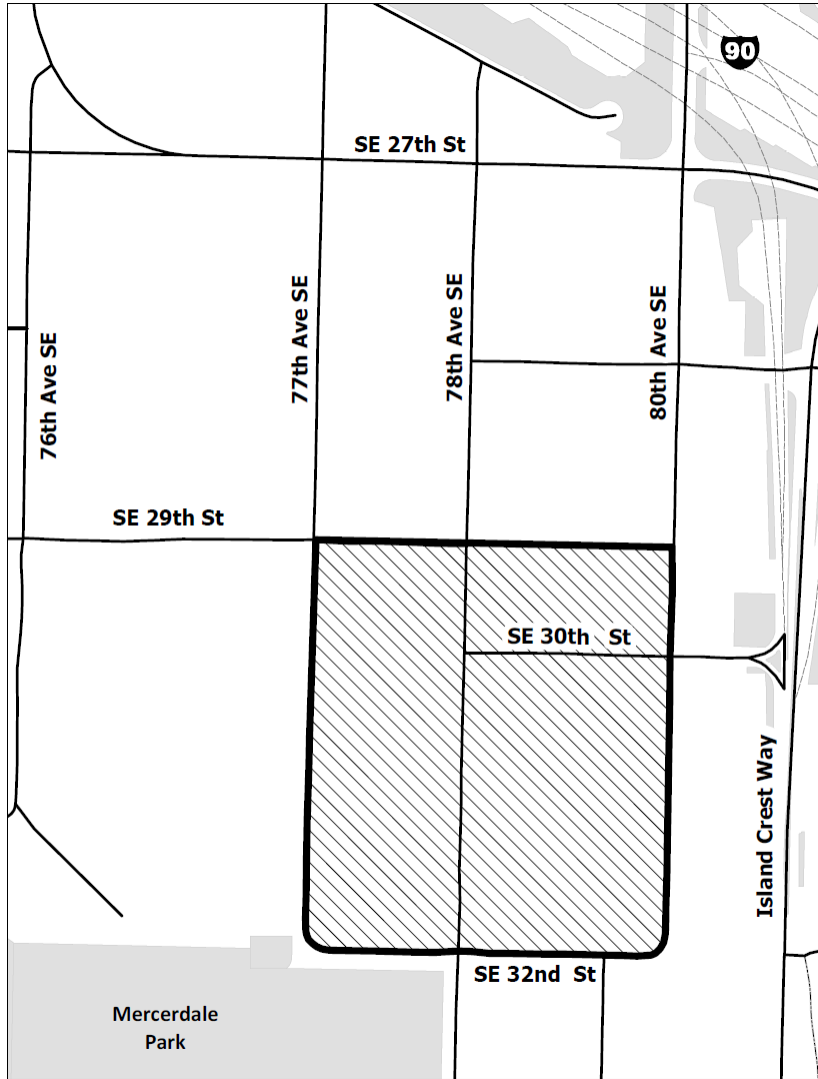
ATTEST:

Bio Park, City Attorney

Deborah A. Estrada, City Clerk

Date of Publication: _____

Exhibit One



TOWN CENTER MORATORIUM UPDATE AND FINDINGS OF FACT

AB 5736 | August 4, 2020



Town Center Moratorium

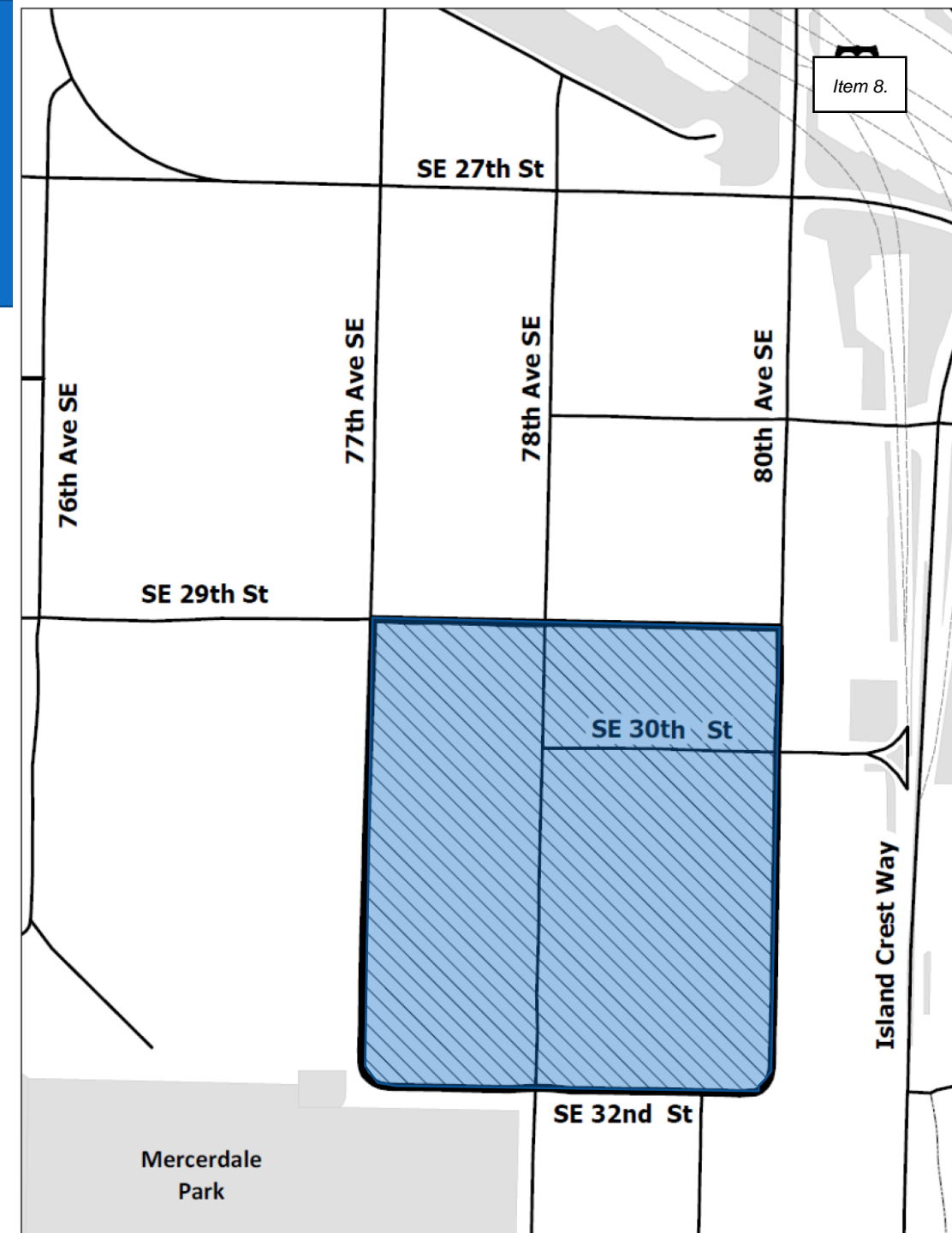
- On June 2, City Council adopted Ordinance No. 2012, placing a moratorium on major new construction in the Town Center
- On July 21, City Council held public hearing and directed staff to draft an ordinance amending the geographic extent of the moratorium
- Today, the Council can adopt Ordinance No. 20-18 to amend the moratorium and also adopt additional findings of fact



Amend Moratorium

Ordinance No. 20-18 would amend the scope of the Town Center moratorium to include the geographic area shown:

- South of SE 29th St
- East of 77th Ave SE
- West of 80th Ave SE
- North of SE 32nd St



Findings of Fact

WHEREAS, the City adopted Ordinance No. 20-12 on June 2, 2020, implementing a six-month moratorium pursuant to RCW 35A.63.220 and RCW 36.70A.390 on the submission or acceptance of applications for any building permits or any other land use approvals for Major New Construction as defined in MICC 19.16.010 for properties located south of SE 29th Street within the Town Center (TC) zone at Mercer Island; and

WHEREAS, Ordinance No. 20-12 also called for a public hearing to be scheduled before August 01, 2020 to receive public comments related to the adoption of the moratorium; and

WHEREAS, the City Council held the public hearing on July 21, 2020 and received public comments on the moratorium, consistent with the requirements set forth in RCW 35A.63.220 and RCW 36.70A.390; and

WHEREAS, protecting and expanding Mercer Island’s retail sector is of utmost importance to maintaining and improving the quality of life and emergency preparedness by providing local access to goods and services that are necessary to meet the daily needs of residents; and

WHEREAS, the City Council has determined the bounds of the moratorium should be limited to the area within the Town Center (TC) zone south of SE 29th Street, east of 77th Avenue SE, and west of 80th Avenue SE; and



Next Steps

1. Consultant RFP currently in development for retail analysis
2. Staff will bring scope of work, schedule and appropriation request to Council this fall
3. Any amendments proposed to the Town Center regulations or the Comprehensive Plan will require Planning Commission review, a public hearing, and adoption by the City Council



Recommended Actions

1. Suspend Council Rules of Procedure 6.3 and 10.1 requiring second reading of an ordinance
2. Adopt Ordinance No. 20-18 amending the scope of the Town Center moratorium and adopting additional findings of fact





**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 5735
August 4, 2020
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 5735: Thrift Store & Recycling Center Remodel Project Update	<input checked="" type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Receive report and provide feedback.	<input type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	Public Works
STAFF:	Jason Kintner, Public Works Director
COUNCIL LIAISON:	
EXHIBITS:	n/a
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ 17,416
AMOUNT BUDGETED	\$ 50,000
APPROPRIATION REQUIRED	\$ n/a

SUMMARY

The purpose of this agenda bill is to provide the City Council with an update on the Thrift Shop and former Recycling Center Remodel Project.

At the June 16, 2020 City Council meeting (see [AB 5711](#)), the City Council authorized staff to retain architectural services and begin the preliminary design assessment for these two facilities. The assessment is underway to enhance and expand retail floor space at the Thrift Shop and to complete a design for the former Recycling Center to support donation processing.

On June 17, 2020, the City issued a Request for Qualifications for Architectural Design for the Thrift Shop and Recycling Center Remodel Project. The City received eight (8) Statements of Qualifications and three (3) firms were selected for interviews. Osborn Architects Inc. ("OAI") was identified as the preferred consultant and began work on the project in mid-July.

At the August 4, 2020 City Council meeting, OAI will provide an update regarding the preliminary design assessment and progress to date. Given the limited time that OAI has had on this project, staff will facilitate a discussion with the City Council and return to City Council in September with an updated design recommendation and cost estimate. Please also note, given the short turn time from the OAI contract being

executed to the City Council packet deadline, the supporting materials for this item are not yet available. The City Council packet will be amended to include these materials as soon as possible.

RECOMMENDATION

Discussion only.



Thrift Shop & Recycling Center Remodel Update

AB5735

August 4, 2020

Presentation Overview

- Review the Project Scope
- Introduction to Design Team
- Existing Conditions & Opportunities
- Next Steps



Project Scope



- June 16 Council meeting direction to retain A/E Services and begin preliminary assessment
- Goal is to maximize retail floor space at Thrift Shop:
 - Decommission existing production spaces (donation processing areas) in the Thrift Shop
 - Relocate production spaces and facilitate wholesale processing and sales
 - Create new office Area & ADA restrooms
- Request for Qualification Process
 - 8 Statements Received from firms
 - 3 Firms selected for interviews



Introduction to Project Team



Anais Adamska,
OAI Project
Architect



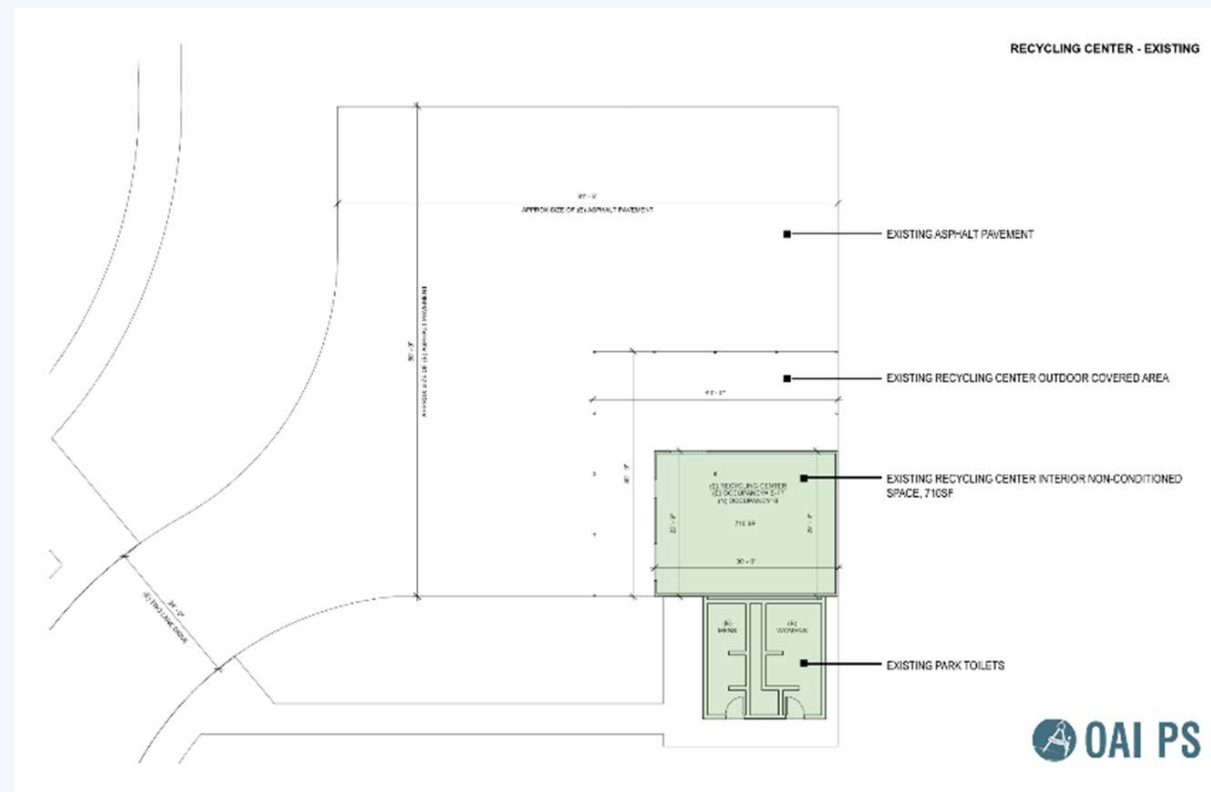
Jerry Osborn,
OAI Pricipal

- Osborn Architects, Inc. (OAI) was selected as the preferred firm for the project
- Preliminary work began on the project (July 22nd)
- OAI has completed 3 site visits and began review of existing conditions



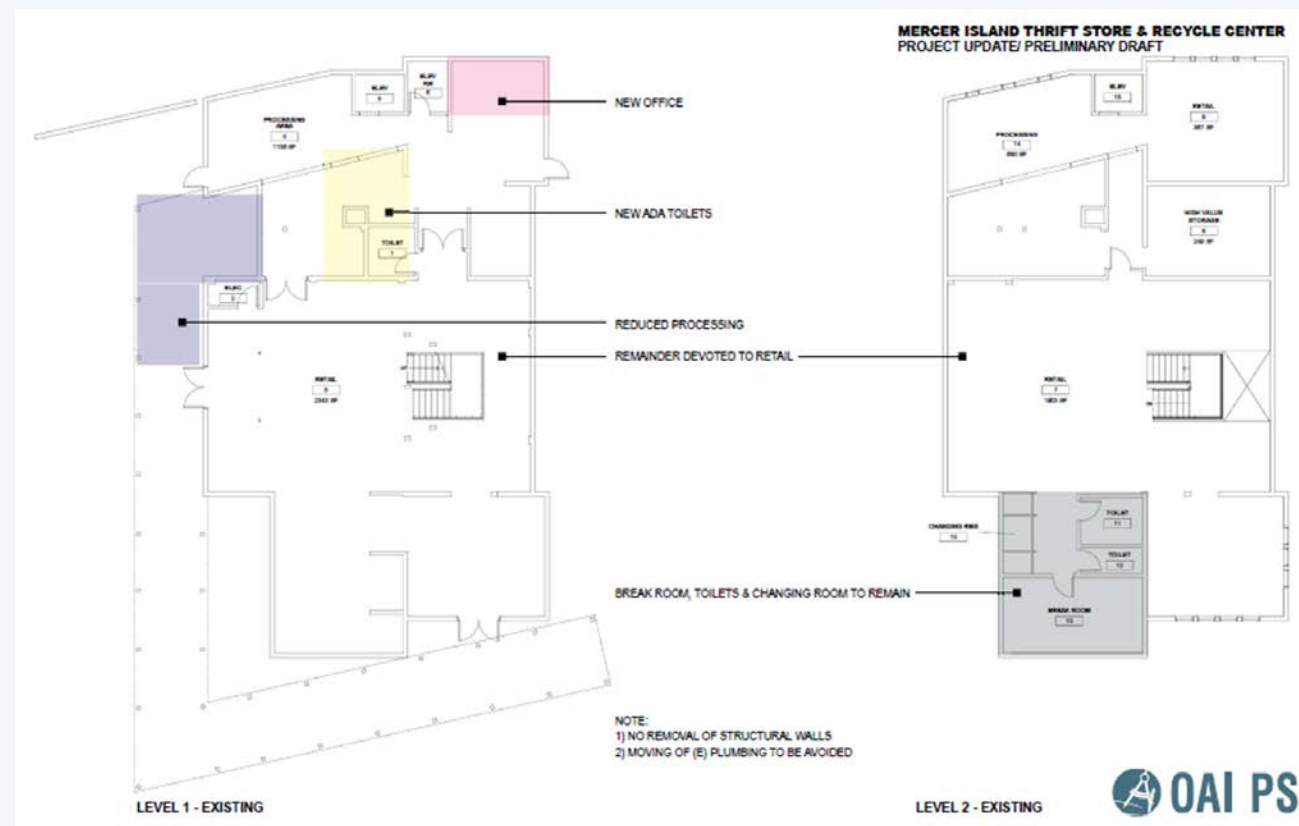
Existing Conditions Recycling Center

- City didn't possess complete "As-Built" plans (thank you Meg Lippert, Ira Appelman & Robin Russell who helped the City acquire these drawings)
- Approximately 1,600 square feet ("SF") in space (total inside/covered spaces)
 - Existing interior non-conditioned space is approximately 710 SF
- Design goal to remain within existing footprint of facility
 - Options include limiting impact to footprint of existing structure or footprint of existing paving
- Building was constructed using pre-fabricated concrete tilt-up panels
 - Due to construction methodology, removing/modifying walls of existing facilities to increase interior space may not be more cost effective than replacing the structure



Thrift Shop

- Thrift Shop has been operating since 1975
- After evaluation, it appears the building was expanded/modified at least 3 times
- Structural Engineer evaluated structure and interior walls
- Preliminary design:
 - Focusing efforts on minimizing impacts to structural walls
 - Minimizing plumbing configurations to reduce costs
 - Create ADA restrooms
 - New office and improved retail floor layout



Next Steps

- Due to the limited timeframe for design work, Staff will return to Council in September with:
 - More information on facilities
 - Analysis of options and costs for facilities
 - Updated Engineer Estimate(s)





**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 5738
August 4, 2020
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 5738: Anti-Racism and Cultural Awareness Training and Listening Sessions Update	<input checked="" type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Provide feedback on listening sessions goal statement.	<input type="checkbox"/> Action Needed:
		<input type="checkbox"/> Motion
		<input type="checkbox"/> Ordinance
		<input type="checkbox"/> Resolution

DEPARTMENT:	City Council
STAFF:	Ali Spietz, Chief of Administration
COUNCIL LIAISON:	n/a
EXHIBITS:	n/a
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

SUMMARY

At the June 16, 2020 Council Meeting, the City Council directed the City Manager to return to the City Council to:

1. "Mandate and appropriate funds for annual training in diversity, implicit bias, cultural awareness or related topics for the city council and all members of city Boards and Commissions; and
2. Authorize and appropriate funds for engaging a consultant or contractor to conduct a series of listening sessions for the community so that we can hear first-hand the stories of minority experiences on the Island, and gather ideas for what we can do to make the island a safe and welcoming place for people of all races and ethnicities."

This agenda bill is to provide a progress update and present scenarios for the trainings and listening sessions.

TRAINING

Staff has reached out to several trainers to schedule anti-racism/implicit bias trainings for City Councilmember and members of the City's boards and commissions. Most were fully booked for June and July. Staff will continue to contact trainers with the goal of scheduling sessions in the fall.

Staff recommends that these trainings have a mix of Councilmembers and board and commission members in each one and due to the COVID-19 Pandemic, these trainings will need to be held virtually via the Zoom platform. With the intention of creating a space where people feel comfortable sharing, the capacity for each Zoom training will be limited to allow for more participation and candor. With over 55 people to train, staff suggests scheduling 3-4 trainings with 15-20 people (including 2-3 Councilmembers in each one).

LISTENING SESSIONS

Over the past two months, many government entities have held listening sessions with their constituents regarding racial justice, systemic racism, police use of force polices, equity, diversion, and inclusion. With the City Council's direction in June, staff will be contracting with a consultant to moderate listening sessions with the public and the City Council.

Again, because of the COVID-19 pandemic, these listening sessions will need to be held virtually. If the session is to be an opportunity for African American and Black, Indigenous, and People of Color (BIPOC) to share their first-hand accounts of their experiences on Mercer Island, requiring pre-registration and setting a speaking time limit is suggested. Staff recommends scheduling 2-3 listening sessions with the option for more if needed or desired. If more speakers register than can be heard within the allotted time set for the listening session, the registered speaker list would be carried over to the next session.

If the City Council desires to expand the listening sessions to all residents, requiring pre-registration, setting a speaking time limit, allowing an opportunity to submit statements in advance by email and grouping speakers by topics to share could be helpful. Topics could include:

- Use of force policies/policing
- Systemic racism beyond policing/racial justice
- Mental health services/community services in lieu of policing
- Other topics related to policing, racial justice, and equity

The grouping of topics will enable City Councilmembers to respond to comments at the conclusion of each topic but would not be intended to limit or restrict speakers who wish to speak holistically or about the relationships among these inherently related issues. And speakers who wish to address multiple topics related to policing, racial justice, and equity would be asked to sign up for "other topics."

GOAL STATEMENT

Staff recommends developing a goal statement for the listening sessions. A suggested starting place is as follows:

As we determine the most effective ways to identify and address racial discrimination within our community, we have to fully comprehend the extent of its impact. A first step is to hear directly from those who have experienced it through listening sessions.

The intent of the listening sessions is to allow the Mercer Island City Council to hear first-hand accounts of the magnitude and intensity of racism in our community from residents who are African American and Black, Indigenous, and People of Color (BIPOC).

These sessions are an opportunity to gather information to guide future community actions around race, racism, diversity, and inclusion.

NEXT STEPS

Staff will secure consultants for the trainings and listening sessions moderator. Dates for the trainings will be scheduled with the City Councilmembers and boards and commissions members. The listening sessions will be scheduled in the fall to ensure the greater participation by the community. They will be publicized through all normal communication channels, in addition to reaching out to community groups (i.e. PTA Organizations, One MI – Equity for MI, Mercer Island High School Clubs for Students, etc.) to notify a broader base of residents.

RECOMMENDATION

Provide feedback on listening sessions goal statement.

Anti-Racism and Cultural Awareness Training and Listening Sessions Update

AB 5738 | August 4, 2020



City Council Direction

1. “Mandate and appropriate funds for annual training in diversity, implicit bias, cultural awareness or related topics for the city council and all members of city Boards and Commissions; and
2. Authorize and appropriate funds for engaging a consultant or contractor to conduct a series of listening sessions for the community so that we can hear first-hand the stories of minority experiences on the Island, and gather ideas for what we can do to make the island a safe and welcoming place for people of all races and ethnicities.”



Training Update

- Staff reached out to several trainers to schedule anti-racism and implicit bias trainings
- Most were fully booked for June and July
- Staff continue to contact trainers to schedule trainings in the fall



Trainings Recommendations

- Hold trainings virtually via the Zoom platform, due to COVID-19
- Limit the capacity for each training to create a space where people feel comfortable sharing
- Schedule 3-4 trainings with 15-20 people each, including a mix of Councilmembers and board and commission members in each training



Listening Sessions

- Staff will be contracting with a consultant to moderate listening sessions with the public and the City Council
- Per Council's direction: African American and Black, Indigenous, and People of Color (BIPOC) will be invited to share their first-hand accounts of their experiences on Mercer Island
- Sessions could be expanded (or additional sessions could be scheduled) to allow all residents to speak



Listening Sessions Recommendations

- Schedule for 2-3 listening sessions or more if needed or desired
- Hold sessions virtually via the Zoom platform, due to COVID-19
- Require pre-registration to speak
- Set a speaking time limit
- Accept statements in advance by email



Listening Sessions Recommendations

- Determine and group speakers by topic:
 - Use of force policies/policing
 - Systemic racism beyond policing/racial justice
 - Mental health services/community services in lieu of policing
 - Other topics related to policing, racial justice, and equity



Goal Statement (draft)

As we determine the most effective ways to identify and address racial discrimination within our community, we must fully comprehend the extent of its impact. A first step is to hear directly from those who have experienced it through listening sessions.

The intent of the listening sessions is to allow the Mercer Island City Council to hear first-hand accounts of the magnitude and intensity of racism in our community from residents who are African American and Black, Indigenous, and People of Color (BIPOC).

These sessions are an opportunity to gather information to guide future community actions around race, racism, diversity, and inclusion.



Goal Statement (draft - revised)

As we determine the most effective ways to identify and address racial and other discrimination within our community, we must fully comprehend the extent of its impact. A first step is to hear directly from those who have experienced it in our community through listening sessions.

Accordingly, a primary goal of the listening sessions is to allow the Mercer Island City Council and the community to hear first-hand accounts of racism and other discrimination in our community. Another goal of the listening sessions will be to learn from members of our community on how to make Mercer Island a more welcoming and inclusive community for all people.

These sessions are an opportunity to gather information to guide City Council actions and policies around race, racism, diversity, and inclusion.



Next Steps

1. Secure consultants for the trainings and listening sessions moderator
2. Schedule trainings with City Councilmembers and members of the City's Boards & Commissions
3. Schedule and widely publicize listening sessions





2020 PLANNING SCHEDULE

Please email the City Manager & City Clerk when an agenda item is added, moved, or removed.

NOTE - Regular Meetings begin at 5:00 pm from June 16, 2020 through December 31, 2020. Items are not listed in any particular order. Agenda items & meeting dates are subject to change.

AUGUST 4		DD	FN	CA	Clerk 7/27	CM 7/27
ABSENCES:						
ITEM TYPE TIME TOPIC				STAFF		
CONSENT CALENDAR						
--	AB 5734: Islander Middle School Turf Interlocal Agreement			Jason Kintner		
--	AB 5733: Building Access Control System Bid Award			Zach Houvener		
REGULAR BUSINESS						
30	AB 5720: Zayo Franchise (Ord. No. 20-16, 1 st Reading)			Patrick Yamashita/Bio Park		
30	AB 5737: adopting an interim emergency ordinance (20C-17) to temporarily allow food and beverage service on public property			Bio Park, Patrick Yamashita		
30	AB 5736: Town Center Moratorium Update and Findings of Fact (Ord. No. 20-18)			Alison Van Gorp Bio Park		
30	AB 5735: Thrift Store & Recycling Center 30% Project Update			Jason Kintner/Jessi Bon		
60	AB 5738: Discussion on Anti-Racism and Cultural Awareness Training			Ali Spietz/Jessi Bon		
EXECUTIVE SESSION						
60	Potential Litigation					

AUGUST 18 (CANCELLED)						
Notice published MI Reporter: July 22, 2020						

SEPTEMBER 1		DD	FN	CA	Clerk 8/24	CM 8/24
ABSENCES:						
ITEM TYPE TIME TOPIC				STAFF		
STUDY SESSION (5:00 PM)						
60	AB xxxx: Business Needs Assessment Survey Results			Sarah Bluvas		
CONSENT CALENDAR						
	AB xxxx: Interlocal Agreement with the Mercer Island School District for Counseling Services			Ed Holmes/Derek Franklin		
	AB xxxx: Interlocal Agreement with the Mercer Island School District for Field Maintenance			Jason Kintner		
REGULAR BUSINESS						
30	AB 5721: Board & Commission Vacancy Appointments (tentative)			Deb Estrada		
60	AB xxxx: Q2 2020 Financial Status Report and Revenue Forecast Budget Adjustments (Ord. No. 20-xx)			Matt Mornick/LaJuan Tuttle		
15	AB xxxx: Zayo Franchise (Second Reading)			Patrick Yamashita/Bio Park		
15	AB xxxx: Subrecipient Grant Agreement for King County Coronavirus Relief Fund (Support for Small Businesses)			Sarah Bluvas		
EXECUTIVE SESSION						

Potential Litigation

SEPTEMBER 15		DD	FN	CA	Clerk 9/7	CM 9/7
ABSENCES:						
ITEM TYPE TIME TOPIC				STAFF		
STUDY SESSION (5:00 PM)						
SPECIAL BUSINESS						
CONSENT CALENDAR						
REGULAR BUSINESS						
30	AB 5730: Donations Code Amendment (Ord. 20C-15 First Reading)			Alison Van Gorp		
15	AB xxxx: Permit Expiration Extension			Alison Van Gorp		
30	AB 5719: PSERN Operator Interlocal Agreement			Dave Jokinen		
30	AB xxxx: G. Richard Hill Code Amendment			Bio Park		
90	AB xxxx: 2021-2022 Biennial Budget: Overview of Organizational Changes			Jessi Bon		
EXECUTIVE SESSION						

OCTOBER 6		DD	FN	CA	Clerk 9/28	CM 9/28
ABSENCES:						
ITEM TYPE TIME TOPIC				STAFF		
STUDY SESSION (5:00PM)						
30	AB xxxx: ARCH 2021 Budget (Tentative)			Alison VanGorp		
SPECIAL BUSINESS						
CONSENT CALENDAR						
REGULAR BUSINESS						
60	AB xxxx: Sustainability Update (Tentative)			Ross Freeman		
60	AB xxxx: Town Center Scoping/Next Steps			Alison Van Gorp		
EXECUTIVE SESSION						

OCTOBER 13 – SPECIAL MEETING (BUDGET)		DD	FN	CA	Clerk 9/28	CM 9/28
ABSENCES:						
Public Hearing Notice:						
ITEM TYPE TIME TOPIC				STAFF		
STUDY SESSION						

120	AB xxxx: 2021-2022 Biennial Budget Presentation (Part 1 of 2)	Jessi Bon/Matt Mornick
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OCTOBER 20 (BUDGET)		DD	FN	CA	Clerk 10/12	CM 10/12
Legal Notice for Public Hearing: ABSENCES:						
ITEM TYPE TIME TOPIC				STAFF		
STUDY SESSION						
SPECIAL BUSINESS						
CONSENT CALENDAR						
REGULAR BUSINESS						
120	AB xxxx: Public Hearing: 2021-2022 Biennial Budget (Part 2 of 2)				Matt Mornick/LaJuan Tuttle	
60	AB xxxx: 2021 Comprehensive Plan / Code Amendment Preliminary Docket (tentative)				CPD Staff – TBD	
EXECUTIVE SESSION						

NOVEMBER 3 (ELECTION NIGHT)		DD	FN	CA	Clerk 10/26	CM 10/26
ABSENCES:						
ITEM TYPE TIME TOPIC				STAFF		
STUDY SESSION						
60	2021-2022 Biennial Budget Workshop (If Needed)					
SPECIAL BUSINESS						
CONSENT CALENDAR						
REGULAR BUSINESS						
30	AB xxxx: Q3 2020 Financial Status Report and Budget Adjustments (Ord. No. 20-XX)				Matt Mornick/LaJuan Tuttle	
30	AB xxxx: Construction Permit Fee Resolution				Alison Van Gorp	
30	AB xxxx: Town Center Moratorium Extension (tentative)				Alison Van Gorp	
EXECUTIVE SESSION						

NOVEMBER 17		DD	FN	CA	Clerk 11/9	CM 11/9
Legal Notice for Public Hearing: ABSENCES:						
ITEM TYPE TIME TOPIC				STAFF		
STUDY SESSION						

SPECIAL BUSINESS		
CONSENT CALENDAR		
REGULAR BUSINESS		
60	AB xxxx: Public Hearing: Adopt 2021 Property Tax Ordinances; NORCOM and Utility Rate Resolutions	Matt Mornick/LaJuan Tuttle
EXECUTIVE SESSION		

DECEMBER 1		DD	FN	CA	Clerk 11/23	CM 11/23
ABSENCES:						
Public Hearing Notice:						
ITEM TYPE TIME TOPIC					STAFF	
STUDY SESSION						
SPECIAL BUSINESS						
CONSENT CALENDAR						
REGULAR BUSINESS						
30	AB xxxx: Public Hearing: Adoption of 2021-2022 Biennial Budget					Matt Mornick/LaJuan Tuttle
15	AB xxxx: Interlocal Agreement with the Mercer Island School District for School Resource Officer Services					Ed Holmes
EXECUTIVE SESSION						

DECEMBER 15		DD	FN	CA	Clerk	CM
ABSENCES:						
POTENTIALLY CANCELED						

OTHER ITEMS TO BE SCHEDULED:

- Open Space Vegetation Management Report
- Comprehensive Mobility Plan (ST Settlement)
- Stormwater Dissolved Metals Testing Report (Q3)
- Mobile Integrated Health (MIH) Overview (Q3)
- PROS Plan Kick-Off
- Public Hearing to amend ORD No. 96-002, Article III (OSCT)
- Mobile Integrated Health (MIH) Overview
- FS 91 Site Characterization Appropriation
- Local Business Eviction Protection and Rent Relief
- Open Space Conservancy Trust Board Annual Report
- Transportation Impact Fee Update
- Sign Regulations – Confirm Scope of Work
- Sustainability Committee Discussion
- International Building & Fire Code update
- Pavement 101 Discussion
- Residential Dev Standards 3-Yr Review – Scope of Work