

Agenda

City Council

Regular Session

MONDAY
July 6, 2004

8:00 – 10:00 p.m.
Council Chambers

- | | <u>Page</u> |
|--|---|
| 1. Call to Order | |
| 2. Roll Call, Flag Salute | |
| (a) Harborview Medical Center (HMC) presentation on voter-approved bond issue/upcoming construction | Executive Director
David Jaffe & Johnese Spizzo, CCO
<u>2-1</u> |
| (b) Presentation of 2004 Diversity Champion Award from the Association of Washington Cities | PARK Patrick Foran/
Kevin Henry
<u>2-2</u> |
| 3. Communications: Written and Oral | |
| <i>Note: Three-minute limit per person, or five minutes if representing the official position of a recognized organization. A maximum of three persons is permitted to speak to each side of any one topic. Additional presentations may be heard at Agenda Item 13, including three additional persons speaking to topics heard at Agenda Item 3.</i> | |
| 4. Reports of Community Council, Boards and Commissions | |

City Council meetings are wheelchair accessible. American Sign language (ASL) interpretation is available upon request. Please phone 452-6805 at least 48 hours in advance.



City of Bellevue

	<u>Page</u>
5. Report of the City Manager	
6. Council Business	
7. Approval of the Agenda	
8. Consent Calendar	
(a) Minutes of June 17, 2004 Study Session Minutes of June 14, 2004 Extended Study Session	
(b) Resolution No. 7033 authorizing a revision to the Interlocal Agreement relating to the Hazardous Materials Response Unit and Teams to add the City of Snoqualmie and King County Fire District #27	FIRE <u>8-1</u>
(c) Motion to reject all bids for Bid No. 0423 for the construction of the Restroom Building at the Bellevue Downtown Park, modify the project scope and re-bid the project at a later date	PARK <u>8-4</u>
(d) Settlement agreement with Entranco, Inc.	TRAN <u>8-6</u>
(1) Resolution No. 7034 authorizing execution of a settlement agreement with Entranco, Inc., to provide construction inspection services at no cost to the City and close out existing service contracts without additional compensation for the Factoria Boulevard Improvement Project (CIP Plan No. PW-R-116)	
(2) Resolution No. 7035 authorizing execution of a consultant agreement with Entranco, Inc., to provide construction inspection services at no cost to the City for the construction of roadway improvements for the NE 29th Place Connection (CIP Plan No. PW-R-60)	
(e) Resolution No. 7036 authorizing execution of an amendment to the professional services agreement for engineering services with W&H Pacific for the design of the 2005 Street Overlay Program.	TRAN <u>8-12</u>

- (f) Resolution No. 7037 authorizing execution of an agreement with King County Department of Transportation for Commute Trip Reduction (CTR) implementation services

TRAN 8-22

(This action is fully supported with State grant funds secured through Ordinance No. 5468)

- (g) Resolution No. 7038 authorizing execution of an agreement with the Washington State Department of Transportation (WSDOT) for the Downtown Bellevue I-405 Alternatives Analysis

TRAN 8-25

(Action is requested this evening. Council adopted Ordinance No. 5520 on May 3, 2004 which authorized acceptance of \$500,000 in Federal Surface Transportation Program (STP) grant funding. This project is independent of the NE 10th Street extension/Overlake Hospital Medical Center expansion but will determine access points and ROW impacts in vicinity of Hospital campus.)

- (h) Resolution No. 7039 authorizing execution of an amendment to the professional services agreement for the Meydenbauer Reservoir Replacement project with MWH America's Inc., for additional engineering services in the amount of \$63,000 (CIP Plan No. W-85)

UTIL 8-29

9. Public Hearings

- (a) Second public hearing on the 2005 – 2006 Budget / 2005 – 2011 Capital Investment Program Plan

FIN 9-1

- (1) Staff Report
- (2) Motion to open public hearing
- (3) Public testimony

Note: Three-minute limit per person, or five minutes if representing the official position of a recognized organization.

(4) Motion to close the public hearing

(This is the second of three public hearings on the 2005-2006 Operating Budget and the 2005 – 2011 Capital Investment Program (CIP) Plan. The final public hearing is scheduled for November 15, 2004.)

10. Land Use

- (a) * Application of Franklin West LLC for a rezone amending the existing Concomitant Agreement for Kelsey Creek Center to allow health club uses of less than 5,000 square feet, (file No. 03-131400-LQ) HE 10-1

Ordinance No. 5534 approving the rezone application of Franklin West, LLC (Kelsey Creek Center) by amendment of the 1987 Concomitant Agreement No. 12967 adopted by Ordinance No. 3835 to allow Health Club uses of less than 5,000 square feet.

(This item was discussed at the June 21, 2004 Study Session)

- (b) * Application of Overlake Hospital Medical Center for the rezone of five parcels from Office Limited Business (OLB) to Institutional District (I), File No. 04-104728-LQ HE 10-8

Ordinance No. 5535 approving the rezone applications of Overlake Hospital Medical Center and the City of Bellevue to rezone property located at 1041, 1031, 1011, 849, and 825 – 116th Ave NE from Office Limited Business (OLB) to Institutional District (I)

(This item was discussed at the June 21, 2004 Study Session)

11. Other Ordinances, Resolutions and Motions

- | | | |
|--|---------------------|--------------|
| (a) Resolution No. 7040 granting a non-exclusive cable television franchise to Comcast of Bellevue, Inc. to construct, operate, and maintain a cable communications system in the City of Bellevue, and setting forth conditions accompanying the grant of franchise | TRAN
David Kerr | <u>11-1</u> |
| (b) Ordinance No. 5524 regarding the Transportation Improvement Program; adopting the 2004-2015 Transportation Facilities Plan; and amending the Impact Fee Project List and Impact Fee Areas Map | TRAN
Eric Miller | <u>11-58</u> |

(Following adoption of the TFP project list, Staff will develop an updated Impact Fee Schedule for consideration by Council before year-end)

- 12. Unfinished Business
- 13. Continued Oral Communications
- 14. New Business
- 15. Executive Session
- 16. Adjournment

* Quasi-judicial matters are those in which the Councilmembers sit as “judges” to decide issues involving specifically-identified property or other rights between individuals or parties. This is as opposed to the Council’s usual role of acting in a legislative or policy-making capacity.

WELCOME TO YOUR BELLEVUE CITY COUNCIL MEETING

Most City Council business is conducted in public, and citizens are most welcome to watch and listen.

In order to hold a meeting, a *quorum* of at least four Councilmembers must be present. The Council operates under its own Rules and Procedures, and conducts its meetings according to Robert's Rules of Order.

Councilmembers may add items to the meeting's *agenda* for discussion or action, with a majority vote of those present, at the time when the agenda is approved. Before any agenda item can be acted upon, the Mayor will call for a *motion* to take action on that item. After the motion is *seconded*, the Council discusses the arguments for and against the motion.

Sometimes a Councilmember will propose a different course of action on a subject on the agenda. This is called a *substitute motion* and also requires a second. After discussion, the substitute motion is voted upon first. If a majority of the Councilmembers vote for the substitute motion, it passes and the matter is completed. If the substitute motion fails to obtain a majority, the Council returns to the original motion and continues to discuss and vote on it.

Other times, a Councilmember may wish to change a pending motion in some way. This is called an *amendment*. It also requires a second and is voted upon before a vote is taken on the main motion. If the amendment passes, the main motion is then voted upon "as amended". If the amendment does not receive a second or a majority vote, the main motion, as originally proposed, is voted upon.

The *Consent Calendar* portion of the agenda allows the Council to act on several items of business with one motion and vote. Items on the Consent Calendar are usually recurring "housekeeping" matters, legislation that follows-up decisions from previous meetings, and other issues for which no debate or dissenting votes are expected.

When necessary, the Council may recess to an *executive session*. During these closed sessions, the Councilmembers are limited, by law, to discussing only such items as personnel issues, property acquisition and disposition, and quasi-judicial matters*; or to receiving advice from legal counsel on pending or potential litigation. The Mayor or Deputy Mayor will announce both the reason for any executive session and the anticipated time when the Council will return.

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Harborview Medical Center

Memo

To: Bellevue City Council
From: Kristin Foley, Community Relations, Harborview Medical Center
Date: July 6, 2004
Re: Harborview Medical Center presentation

For the past year, representatives from Harborview Medical Center have been attending city council meetings throughout King County. Harborview is owned by King County and managed by the University of Washington. It has a mission to serve the communities throughout the county and provides a key component of the regional safety net for priority populations. These include persons incarcerated in the King County Jail; mentally ill patients, particularly those treated involuntarily; persons with sexually transmitted diseases; substance abusers; indigents without third-party coverage; non-English speaking poor; trauma; burn treatment; specialized emergency care; victims of domestic violence; and victims of sexual assault. Harborview's intensive care units, currently operating 65 beds, are some of the most high tech in the country. Despite its mission to serve all people, regardless of their ability to pay, the hospital maintains a positive operating margin of 1 percent, or approximately \$4 million.

In 2000, voters of King County passed a bond issue of \$193 million for seismic upgrades to the hospital and to add 50 critically needed beds. The presentation tonight provides an overview of Harborview's services and an update on the construction program. It will be presented by Executive Director David Jaffe and Johnese Spisso, chief operating officer.

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City of Bellevue
Parks & Community
Services Department



MEMORANDUM

Phone: 452-5377
Date: July 6, 2004
To: Mayor Marshall and City Councilmembers
From: Patrick Foran, Director 
Subject: 2004 Diversity Champion Award

The Association of Washington Cities Diversity Champion Awards applaud Washington cities that exemplify what is best about America. The awards recognize cities' efforts in celebrating diversity; their leadership and empowerment in meeting the challenges of potential conflict; demonstrating collaboration with all aspects of society to develop maximum impact in improving the living, working, educational, social, and economic environment for their communities.

On June 17th the City of Bellevue was presented the 2004 Diversity Champion Award at the AWC Annual Conference specifically recognizing the Latino Hispanic Celebration that took place in September 2003. The celebration highlighted the heritage and the contributions of Latino and Hispanics to our society as part of Latino Hispanic History Month. The three day event included featured art exhibits, music, performances, historical displays, guest speakers and great food and was distributed over three locations: Crossroads Shopping Center, Bellevue City Hall and Bellevue Arts Museum.

The event was co-sponsored by the Eastside Latino Leadership Forum, Crossroads Shopping Center, Bellevue Art Museum, Bellevue Chamber of Commerce, and the City of Bellevue Parks & Community Services Cultural Diversity Program.

Bellevue received the Diversity Champion Award in 2003 as well. Since the completion of the Cultural Diversity plan in 1996, the City's diversity program has implemented a wide variety of programs and events that foster diversity in our community and meet the specific needs of our residents.

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

June 7, 2004
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Marshall, Deputy Mayor Noble, and Councilmembers Balducci, Chelminiak, Davidson, Degginger, and Lee

ABSENT: None

1. Executive Session

Mayor Marshall called the meeting to order at 6:04 p.m. and announced the following changes to the agenda: 1) the order of the first two items will be switched, and 2) agenda item (d) has been postponed. There was no Executive Session.

2. Study Session

(b) Budget – Strategic Policy Discussions – Fire and Police Presentations

Deputy City Manager Ed Oberg opened discussion of the Fire and Police Department budget presentations.

Fire Chief Peter Lucarelli reviewed the primary services provided by the Fire Department:

- Fire suppression and rescue,
- Emergency Medical Services,
- Fire Prevention, and
- Emergency Preparedness Program.

In the City's 2004 budget survey, citizens ranked fire suppression and EMS as the two most important services provided by the City. Bellevue continues to be a national leader in cardiac survival rate and confining fires to the room of origin. Chief Lucarelli noted that cardiac survival rate is an internationally recognized measure of an EMS system's effectiveness.

Turning to the operating budget, Chief Lucarelli said 82 percent of the department's revenue is spent on personnel. The remainder of the budget is divided into Interfunds (e.g., Information Technology services, fleet maintenance), supplies, and professional services (e.g., utilities, maintenance of 800mhz radio system). The Fire Department's revenues represent approximately 35 percent of its operating budget, compared to five percent for most fire departments. The revenue is generated primarily through fire contracts with neighboring jurisdictions. Chief Lucarelli reviewed the following 2002-2004 expenditure controls: 1) prioritized and delayed equipment and supply purchases, 2) changed hiring practices to reduce overtime expenditures due to vacancies, and 3) delayed facility maintenance projects.

Chief Lucarelli said the department conducts annual inspections of schools, public assemblies, commercial property, and multifamily occupancies. The goal of the inspection services function is to minimize fire losses, provide life safety for occupants and firefighters, and to comply with requirements of the Washington State Insurance Rating Bureau and the Fire Department's accreditation status. More than 20 million square feet of space has been added to the department's inspection responsibility since 1994. However, no resources have been added to respond to the increased demand for inspection services. Due to limited resources, approximately 1,000 inspections were not completed in 2003. Chief Lucarelli said staff has discussed the possibility of establishing a fee for annual fire and life safety inspections. Another alternative is to allocate a portion of the revenue generated by development to fire inspection services.

Chief Lucarelli explained that one firefighter per platoon was reassigned from Light Force 3 to Battalion 1 effective April 1, 2004, to address the overall emergency and non-emergency needs of the department. He feels this enhances the overall safety of the department. However, this reassignment reduces staffing and the operational capability of the Light Force. Chief Lucarelli asked Council to consider the option of increasing staffing by one constant fixed position, which would require four firefighters at an estimated annual cost of \$312,000.

Moving to facility needs, Chief Lucarelli said a recent study of fire system needs produced the recommendation for an additional fire station in the downtown area. Staff is interested in exploring the feasibility of identifying a site for a future downtown station.

Responding to Dr. Davidson, Chief Lucarelli said a permit is required for public assemblages but an inspection fee is not charged.

Responding to Ms. Balducci, Chief Lucarelli recommended two additional FTEs at an estimated cost of \$175,000 per year to complete all inspections in the city.

Responding to Mr. Chelminiak, Chief Lucarelli said some properties are inspected four times a year or as frequently as monthly, depending on the activities and materials on site.

Responding to Mr. Degginger, Chief Lucarelli said approximately 800 businesses conduct a self-inspection annually. These are small occupancies in which the incidence or likelihood of fire is extremely low. In response to Dr. Davidson, Fire Marshall Steve Nuttall said the current return rate on self-inspection forms is about 75 percent and a third notice will be sent soon.

Mr. Lee commented on the importance of inspections in overall fire prevention efforts.

Mayor Marshall noted Council consensus to direct staff to develop inspection fee alternatives, research approaches used by other jurisdictions, and to prepare optional fee structures (ranging from partial to full cost recovery) for Council consideration.

Dr. Davidson clarified his earlier suggestion that perhaps a portion of B&O tax collections could be reallocated to fund inspections.

Responding to Councilmember Lee, Chief Lucarelli recommended restoring Light Force staffing levels.

Mayor Marshall requested further analysis of appropriate staffing levels before making a decision. Following additional questions, Mrs. Marshall noted Council consensus to direct staff to provide more information on the Light Force including the tactics and activities of the firefighters. Ms. Balducci requested information regarding Light Force staffing in other jurisdictions. Mr. Degginger requested a job description for the staff assistant and the Light Force.

Regarding a downtown fire station, Mayor Marshall suggested exploring the feasibility of locating a downtown station in the first floor of a high-rise building. Mr. Degginger is in favor of directing staff to study options for locating a downtown station. Chief Lucarelli suggested a multifunction facility in which perhaps a community center and fire station could be co-located. Mayor Marshall noted Council support to direct staff to begin identifying possible locations and facilities for a downtown fire station.

Police Chief Jim Montgomery highlighted three departmental achievements in 2003: 1) creation of Special Enforcement Team, 2) creation of Crowd Control Unit, and 3) reorganization of Community Services and Investigations. Reviewing crime statistics, Chief Montgomery said there are fewer reported crimes today than 20 years ago, no criminal homicides have occurred in the past five years, Part I index crimes are down from 2002, and police response times continue to improve. A survey indicates that residents feel safe in their neighborhoods and downtown, and 80 percent of those who have had contact with the police say the handling was good or excellent.

Major new directions for the Police Department in 2004 are the New City Building, CALEA accreditation, and continued implementation of the wireless mobile data communications system. The 911 Communications Center will undergo an accreditation visit in August. Chief Montgomery reviewed the primary policy issues for the 2005-2006 budget including communications center staffing, Opticom intersection control devices, and wireless solutions for motorcycle and bicycle officers as well as investigators. Overtime expenditures in the communications center are increasing and the average full-time employee works 32 hours in overtime per month. As a result, employee turnover is higher than desired and morale is suffering, while the crowded physical working conditions are stressful.

Chief Montgomery explained that the new technology in which broadband providers can provide telephone service presents a challenge for 911 operators. When used for 911 calls, such phone systems do not provide number identification or location information to assist emergency personnel. Therefore, 911 operators will have to spend more time interviewing callers using these phone systems in order to respond properly. Chief Montgomery feels it is important for citizens to understand that broadband phone service does not provide 911 operators with location information.

Mayor Marshall asked staff to include a notification requirement for Comcast regarding its phone service and to add this issue to the federal legislative agenda.

Moving on, Chief Montgomery noted that Opticom light-preemption technology reduces the chance of an accident involving an emergency vehicle and enables a quicker response. The Police Department is exploring wireless solutions for motorcycle and bicycle officers and investigators.

Councilmember Lee expressed support for the wireless communication systems, which helps with enforcement as well as officer safety.

Responding to Ms. Balducci, Chief Montgomery said 911 dispatcher turnover is higher than desired. Dispatcher training is lengthy (7 to 9 months) and complex, particularly since Bellevue's communications center dispatches both police and fire/medical calls.

Mayor Marshall would like staff to analyze the feasibility of having dispatchers designated as either police or fire/medical operators to reduce the required training period and decrease stress levels for dispatch personnel.

(a) Neighborhood Traffic Calming Program – Project Ballot Process

Laurie Gromala, Transportation Assistant Director, recalled a recent neighborhood traffic calming project in which the ballot process was questioned by some residents. Concerns were raised regarding the manner in which ballots were collected and how information was shared. Council directed staff at that time to review the process and to come back with findings and recommendations.

Karen Gonzalez, Neighborhood Services Manager, said the Neighborhood Traffic Calming Program began in 1985 and typically focused on only the adjacent property owners of a street experiencing a traffic problem. In 1998, Council directed staff to expand the public involvement process to the entire neighborhood surrounding a proposed project. Under the current process, a traffic committee of local residents is organized to work with staff in developing a plan and initiating neighborhood involvement. Residents are provided with voters pamphlets describing the project and alternatives. The City allows one ballot to be submitted for each household, and ballots are accepted by mail or in person. A minimum of 65 percent support by residents is needed to proceed with a project.

Ms. Gonzalez noted criticisms of the ballot process during consideration of the 168th Avenue/14th Street traffic calming plan. Approximately 14 projects have been planned over the past 4 to 5 years using the current process, and this is the first location in which issues were raised regarding the ballot process. At Council's direction, staff reviewed the process and recommends the following modifications:

1. Maps showing which households have returned their ballots and how they voted will not be prepared prior to completion of the balloting process.
2. City staff will provide postage-paid envelopes for returning ballots.
3. Copies of a ballot will be allowed if provided by City staff and reflect an original signature.
4. Traffic Committee volunteers will not be allowed to collect and return ballots.

Ms. Gonzalez said another option is to allow Traffic Committee members to collect ballots as long as the ballots have been sealed in an envelope by the voting resident.

Mayor Marshall noted two recent projects have not raised any issues in terms of the balloting process.

Mr. Chelminiak spoke in favor of allowing Traffic Committee members to collect ballots in sealed envelopes and forward them to the City. On the issue of requiring signatures, he questioned how a controversy over a signature would be addressed.

Deputy Mayor Noble sees no problem with accepting mailed and hand-delivered ballots and feels that neighbors for and against a project should be able to collect and return ballots to the City. Ms. Balducci concurred and opined that the important goal is to encourage as much participation by residents as possible. Mr. Lee expressed support for Mr. Noble's suggestion.

- Deputy Mayor Noble moved to approve balloting process Option A, amended as follows to: 1) allow any resident to collect and return ballots, 2) allow copies of ballots, 3) require signatures on ballots, and 4) provide an advisory on the ballot suggesting that residents return their own ballots to the City. Ms. Balducci seconded the motion.
- Dr. Davidson moved to amend the main motion to require ballots to be returned by mail only and to require residents to request additional ballots from the City if needed. Mr. Lee seconded the motion.
- The proposed amendment to the main motion failed by a vote of 2-5, with Dr. Davidson and Mr. Lee in favor.
- The motion to approve balloting process Option A, amended as follows to: 1) allow any resident to collect and return ballots, 2) allow copies of ballots, 3) require signatures on ballots, and 4) provide an advisory on the ballot suggesting that residents return their own ballots, carried by a vote of 6-1, with Dr. Davidson dissenting.

- (c) Neighborhood Investment Strategy – West Lake Hills Update

[This Agenda Item was addressed in the Regular Session under City Manager's Report, Agenda Item 5.]

- (d) Contractor Advisory Group – [Postponed]

At 8:02 p.m., Mayor Marshall declared recess to the Regular Session.

Myrna L. Basich
City Clerk

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CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Extended Study Session

June 14, 2004
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Deputy Mayor Noble and Councilmembers Balducci, Chelminiak¹, Davidson, Degginger², and Lee³

ABSENT: Mayor Marshall

1. Executive Session

Deputy Mayor Noble opened the meeting at 6:02 p.m. and announced recess to Executive Session for approximately 45 minutes to discuss two items of potential litigation and one item of property acquisition.

The meeting resumed at 6:47 p.m. with Deputy Mayor Noble presiding. He announced that Mayor Marshall is attending her son's high school graduation. Deputy Mayor Noble congratulated all graduating seniors.

2. Oral Communications

- (a) Arlene Darby expressed concern that the NE 10th Street extension project will result in the demolition of the Ramada Hotel at 112th Avenue and NE 8th Street.
- (b) Tim Attebery, Master Builders Association of King and Snohomish Counties, spoke against a proposal to change the 10,000-square-foot sprinkler mandate to a 5,000-square-foot requirement. He thanked Bellevue Chamber of Commerce and the realtors association for supporting this position as well. He questioned the reason for the proposed change. Mr. Attebery noted that smoke detectors are more critical in fire prevention efforts than sprinklers, which are expensive. He said only two percent of the Fire Department's calls are related to residential fires. Mr. Attebery said most cities are not adopting a 5,000-square-foot sprinkler requirement.

¹ Mr. Chelminiak arrived at 7:13 p.m. at the beginning of Agenda Item 3(b).

² Mr. Degginger left the meeting at 10:05 p.m. at the conclusion of Agenda Item 3(g).

³ Mr. Lee arrived at 6:31 p.m.

- (c) Roger Anderson encouraged Council to direct staff to pursue a sign code amendment that will allow signs on the tops of high-rise buildings. He asked Council to consider allowing internal illumination for signs, which in some cases can be more compatible with the architecture than a non-illuminated sign.
- (d) Betty Nokes, Bellevue Chamber of Commerce, spoke in favor of allowing signage on high-rise buildings.
- (e) Leslie Lloyd, President of Bellevue Downtown Association, spoke in favor of allowing signage on high-rise buildings. She asked Council to not reduce existing signage rights to accommodate signs on the tops of buildings.
- (f) Randy Banneker, Seattle-King County Association of Realtors, spoke against the proposed amendment to require sprinklers in occupancies of 5,000 square feet or larger. He noted that sprinklers can add \$10,000-15,000 to the price of a home.
- (g) Kathy Putt, Comcast, noted her letter in Council's desk packet regarding unresolved issues related to Comcast's franchise renewal. She explained that Comcast does not provide automatic credits for service outages for any of its customers. However, credits are given when a customer calls to report an outage. She noted Comcast is often unaware of an outage until a customer calls them.
- (h) Mike O'Herron, speaking on behalf of Millennium Digital Media, spoke against the proposed requirement for cable TV companies to provide automatic credits for service outages. He explained the company is often unaware of outages and questioned whether the problem is extensive enough to require a solution.
- (i) Kevin Austin expressed concern that the potential future implementation of international fire codes would prohibit the use of standard propane barbeque grills in condos and apartments. He noted the state legislature adopted the international fire codes by reference without a public comment process and without legislators having a thorough understanding of the code. Mr. Austin asked Council to suspend adoption of this particular code provision. Although fire marshals have indicated they will not issue citations for violations, insurance companies will not honor claims made if they are in violation of the local building code.

3. Study Session

- (a) Council New Initiatives

No new initiatives were introduced.

- (b) High-Capacity Transit (HCT) Presentation by Puget Sound Regional Council

Transportation Director Goran Sparrman introduced Eli Cooper, Puget Sound Regional Council, and Paul Matsuoka, Sound Transit, to provide an overview regarding a high-capacity transit corridor assessment.

Mr. Cooper explained for the public that the Puget Sound Regional Council is a four-county association of government responsible for maintaining the region's long-range vision and transportation plan. The high-capacity transit assessment was prepared to: 1) evaluate corridors identified in the 1996 Sound Transit Vision and PSRC's Destination 2030 Plan, 2) affirm that the corridor extensions are capable of supporting HCT within the planning horizon, and 3) evaluate the ability of a range of technologies to serve corridor and system needs.

Regional corridors under consideration for HCT are a cross-lake route (Seattle to Bellevue with spurs to Issaquah and Redmond), north corridor (Northgate to Everett), south corridor (SeaTac to Tacoma and Dupont), and Eastside corridor (Lynnwood to SeaTac, roughly parallel to I-405). The assessment reviewed land use and demographic characteristics of each corridor, analyzed travel patterns, and assessed a range of HCT technologies for potential application in each corridor. Mr. Cooper explained the identification of activity centers to potentially be served by high-capacity transit. Statistical information indicates that the cross-lake corridor is ready for consideration and investment in HCT now.

Mr. Cooper said the following HCT technologies were evaluated for each corridor:

- Enhanced bus,
- Bus Rapid Transit,
- Light rail,
- Monorail, and
- Sky Train.

Diesel multiple unit and commuter rail technologies were evaluated for selected corridors. The following technologies were reviewed but not fully evaluated for any corridor due to the operational characteristics of the systems and travel demands within this region: heavy rail, magnetic-levitation, people movers, and personal rapid transit. The HCT technologies were evaluated based on the following characteristics:

- Vehicle/line capacity,
- Operating speeds,
- Station spacing,
- Headways,
- System Integration,
- Land use impacts,
- Implementation risk,
- Reliability,
- Right-of-way needs, and
- Profile flexibility.

Mr. Cooper said the study found that the north and cross-lake corridors appear to have the highest potential for near-term development. Given the projected levels of growth for Bellevue and Seattle, it is important to look beyond the capacities of bus rapid transit for the cross-lake corridor. Next steps for PSRC are to finalize the HCT Workbook and, with Sound Transit, study the economic and community influences of high-capacity transit.

Mr. Matsuoka explained that Sound Transit is currently updating its long-range plan and will then select projects for Phase II to be presented for voter approval. He noted an additional document distributed to Council, *Technical Report on Future High-Capacity Transit Development along the Seattle CBD to East King via I-90/Bellevue Corridor*, which summarizes approximately a dozen cross-lake HCT studies conducted since 1976.

Responding to Dr. Davidson, Mr. Cooper said bus rapid transit is defined by seven parameters and can operate within HOV lanes or a dedicated right-of-way.

Councilmember Lee is uncomfortable that some of the newer technologies are not under consideration for this region's HCT.

Mr. Cooper explained that the study focused on HCT systems in revenue service today or those anticipated to be available for revenue service in the future. Because this is a public system, the intent is to minimize the potential risks associated with newer technologies. Mr. Cooper noted that different HCT technologies could be chosen for the different corridors over time.

Councilmember Balducci expressed strong support for HCT.

Responding to Mr. Chelminiak, Mr. Matsuoka said the first HCT implementation could be constructed in eight to 10 years.

Mr. Sparrman noted that HCT implementation could be quicker on the I-90 corridor because the center lanes are already available for transit use.

Deputy Mayor Noble thanked staff for the presentation.

(c) Cable TV and Franchise Code Changes

Mr. Noble recalled previous discussion during the June 1 Special Meeting regarding cable television and franchise code changes, at which time Council directed staff to revise the proposed codes.

David Kerr, Franchise Manager, noted Council's interest that the proposed code changes should not increase cable TV customer rates. Staff has worked with Comcast and Millennium Digital Media to modify their reporting requirements and to refine additional sections of the code. Both Comcast and Millennium are opposed to automatic credits for service outages, as heard during Oral Communications this evening.

Regarding automatic credits for service outages, Councilmember Balducci said she is not typically in favor of regulations that cannot be enforced. Mr. Kerr feels the provision will become easier to enforce as business practices change and technology advances.

Deputy Mayor Noble is concerned about the proposed regulation and wondered whether it would be cost effective to implement.

Dr. Davidson said he generally does not like to tell businesses how to interact with their customers. However, perhaps the automatic credits would provide a good incentive for minimizing and resolving service outages.

Ms. Balducci noted that several new customer service standards are proposed and suggested deferring adoption of the requirement for automatic credits to a future franchise renewal. Mr. Noble concurred.

Mr. Chelminiak understands that cable companies are not always aware of a service outage. However, he feels automatic credits should be issued in the event of an areawide outage.

Mr. Kerr said he will modify the language on the automatic credits issue and bring it back for further Council consideration.

Moving to the application fee issue, Mr. Kerr noted the proposal in Council's packet for a minimum application fee of \$5,000 plus actual additional costs over that amount for franchise applications. He feels this is consistent with the suggestion offered by Millennium Digital Media to assess application fees based on the size of a company's customer base. Comcast continues to assert that these fees are subject to the five percent cap on franchise fees. The City Attorney's Office has prepared a legal opinion on the issue for Council consideration. Mr. Kerr said it is common for application fees to be set to recover a jurisdiction's costs.

Following brief comments by Councilmembers, Deputy Mayor Noble noted support for staff's proposed approach.

Mr. Kerr noted the proposal to set franchise performance bond costs according to the number of households/customers served. Mr. Noble indicated Council support for this provision.

Mr. Kerr recalled previous Council direction to revise and clarify franchise revocation and termination criteria and procedures. Comcast is concerned that subsection 7 of Bellevue City Code section 5.30.340 is too broad in terms of criteria that could justify franchise termination. Mr. Kerr explained that non-cable services, such as modems and voice-over IP services, are not addressed in the franchise agreement. However, if a franchisee failed to comply with laws or regulations for these services, the City might want to consider such violations in reviewing potential revocation of the cable TV franchise.

Mr. Degginger made suggestions regarding some of the proposed contract language, including the use of the phrases "grossly inadequate" service and "gross negligence." There was consensus to delete the words "grossly" and "gross" due to the difficulty in defining the terms.

Mr. Kerr noted the references in sections 5.30 and 14.20 to safety as a criteria in considering both revocation and franchise renewal. Council agreed with the proposed language. Mr. Kerr highlighted additional proposed code changes, which are outlined on page 3-8 of the Council packet.

Deputy Mayor Noble thanked staff for their work and cable providers for participating in the code revision process with City staff. Council action on the code amendments is scheduled for June 21.

(d) Rotary-Funded Play Area – Crossroads Community Park

Mr. Noble opened discussion of a proposed partnership with Bellevue Breakfast Rotary Club (BBRC) to build a water play area at Crossroads Community Park. Parks and Community Services Director Patrick Foran introduced Norm Johnson, BBRC project manager for the proposed partnership.

Pam Fehrman, Project Manager, explained that the Crossroads Community Park master plan includes an accessible water play area. Mr. Johnson said Rotary International will celebrate its 100th anniversary in February 2005, and member clubs have been challenged to undertake a centennial project in their hometowns. BBRC was attracted to the international theme of Crossroads Park and felt this would be a good project fit. The water play area is designed to be accessible to developmentally disabled and elderly citizens.

Mr. Johnson reviewed the responsibilities under the proposed partnership. BBRC will initiate a capital campaign to raise \$1 million for construction of the water play area. The Rotary club has already designated \$50,000 to kick off the project. The City is providing the site; soft costs for design, permitting, construction, and project management; and ongoing operations and maintenance costs.

Ms. Fehrman said the project will cover approximately 5,500 square feet and contain zero-depth water play areas including an acoustical garden, water columns, and features such as water drums and water play pipes. The Parks and Community Services Board enthusiastically supports the project.

Mr. Foran said the current Capital Investment Program (CIP) Plan includes funds for soft costs as well as ongoing operations and maintenance costs. The project will be constructed in phases as funding permits.

Dr. Davidson expressed support and appreciation for this partnership proposal.

Mr. Lee requested additional information on the Crossroads Park master plan and the compatibility of this project.

Deputy Mayor Noble said the City looks forward to working with Rotary members.

(e) Pacific Science Center/Mercer Slough Environmental Education Center

Mr. Foran described a proposed partnership with Pacific Science Center to develop the Mercer Slough Environmental Education Center. Council will be asked to take action on the proposed Memorandum of Understanding between the City and Pacific Science Center on June 21. The project is a village of educational and interpretive facilities, some to be operated by the City and some to be operated by Pacific Science Center. Plans for permanent exhibits at the site have been eliminated from the project scope, and the MOU has been revised accordingly. The City will function as project manager for construction of the facilities and will continue to own the site and all facilities. Upon approval of the MOU, a joint use agreement (JUA) will be prepared to outline each agency's responsibilities. Initial Community Development Block Grant/HUD funding of \$2 million must be used by July 2007 and remaining grant funds of \$1 million must be expended by September 2007.

Deputy Mayor Noble thanked staff for the presentation.

At 9:15 p.m., Mr. Noble declared a break. The meeting resumed at 9:25 p.m.

(f) Model Building, Fire, and Electrical Codes and Proposed Local Amendments

Mike Brennan, Deputy Director of Development Services, reported that the state legislature recently revised the State Building Code Act (RCW 19.27) and requires local jurisdictions to begin administering the new codes on July 1, 2004. Three model building code organizations in the United States have been working together to merge their codes and establish the International Code Council. In the process of merging the codes, the less restrictive provisions prevailed unless there was a compelling argument that a more restrictive standard was appropriate nationwide.

The international code focuses on performance and desired outcomes, which provides some flexibility in design, and reflects a heavy reliance on sprinkler systems. New Washington laws adopted in 2003 direct the State Building Code Council to implement the international building codes. Local jurisdictions cannot adopt less restrictive codes than those prescribed by the State Building Code Council.

Mr. Brennan said City staff have been preparing for the transition to the international codes for approximately one year. Training has been provided to the development community through partnerships with design and building professionals and organizations. Developers are in favor of greater consistency between local jurisdictions.

Steve Nuttall, Fire Marshall, is a member of the State Building Code Council. Requirements regarding barbecues and natural-cut Christmas trees have been deleted from the state code pending a more formal public hearing and review process this fall. Mr. Brennan explained that a construction administrative code was developed to govern the administration of all construction codes in a single document. Technical amendments are primarily related to fire protection in large buildings or provide additional building design alternatives.

Mr. Nuttall described statewide discussions about where to set the sprinkler threshold for buildings. Bellevue's current threshold for requiring sprinklers is 10,000 square feet for commercial and multifamily occupancies. Possible alternatives for consideration include: 1) reduce the threshold to 5,000 square feet for all buildings, 2) introduce public education about sprinklers for homeowners, and 3) maintain existing 10,000 square foot threshold. Policy questions to consider include: What is the current level of fire protection within the community? What are the costs of additional built-in protection for consumers and what are the anticipated effects? Over the past three years in Bellevue, 78 homes greater than 5,000 square feet were constructed and 63 percent of these were sprinklered. During the same period, 14 commercial buildings between 5,000 and 10,000 square feet were constructed and 72 percent were sprinklered. Mr. Nuttall said Issaquah, Mercer Island, Shoreline, and Woodinville have passed a 5,000-square-foot ordinance. Bothell, Kirkland, and Redmond continue to study the issue.

Staff responded to questions of clarification from Councilmembers Davidson and Degginger. Mr. Lee is in favor of promoting public education regarding sprinklers rather than changing the current threshold.

Mr. Chelminiak requested a clarification from the City Attorney's Office regarding right of entry for firefighters. Mr. Nuttall said Bellevue Fire Department personnel do not enter homes without permission of homeowners.

Responding to Mr. Chelminiak, Mr. Nuttall described the national debate regarding smoke control systems in high-rise buildings with one side in favor of evacuation and the other in favor of a "defend in place" approach. Most high-rise buildings in Bellevue have smoke control systems.

Deputy Mayor Noble opined that the 10,000-square-foot sprinkler threshold has served the community well. He sees no compelling reason to change to a 5,000-square-foot threshold and expressed concern about the cost for consumers associated with requiring sprinklers in residences.

Dr. Davidson feels a 5,000-square-foot sprinkler threshold is inconsistent with encouraging affordable housing. He is in favor of a public education approach.

Ms. Balducci would like staff to prepare responses to issues raised during Oral Communications before making a decision. She requested the specific rationale for the proposed 5,000-square-foot threshold.

Mr. Brennan reiterated that the new state codes go into effect on July 1. He suggested Council could adopt the proposed package and retain the current sprinkler threshold, and then later revisit the 5,000-square-foot threshold alternative.

- At 9:59 p.m., Mr. Degginger moved to extend the meeting to 11:00 p.m., and Mr. Noble seconded the motion.
- The motion to extend the meeting carried by a vote of 6-0.

(g) Signage – Downtown High-Rise Buildings

Planning and Community Development Director Matt Terry explained that Puget Sound Energy and a new division of Safeco would like to display their corporate names at the top of their high-rise buildings. The current policy discourages such signage.

Kate Berens, Legal Planner, displayed photos of the downtown skyline and enhanced images showing how high-rise signage might look. A related issue is whether to allow illuminated signs. Signs are currently allowed on the tops of hotels. If Council wants staff to pursue amendment of the sign code, next steps would be for staff to prepare a draft ordinance, a SEPA (State Environmental Policy Act) review, and Council action.

Dr. Davidson is interested in studying the proposal. However, he suggested that high-rise signage be limited to just one company name and perhaps just to buildings facing east toward I-405. Mr. Degginger concurred.

Deputy Mayor Noble noted Council consensus to further explore sign code amendments with staff.

(h) 2005-2006 Operating Budget and 2005-2011 Capital Investment Program (CIP)
Plan – Department Presentations

(1) Parks and Community Services

Mr. Foran provided the budget presentation for the Parks and Community Services Department. The department's primary functional areas are resource management, recreation, human services, enterprise, CIP planning, and probation. Major budget and policy issues are:

1. Maintenance and operation of new park additions (South Bellevue Community Center and Lewis Creek Park).
2. Continued acquisition of critical parks and open spaces by leveraging City funds.
3. Investment in master plans for Boeing/Lakewood property site and Meydenbauer Bay waterfront park.
4. Creative partnerships (e.g., water play area at Crossroads Park).
5. Evolving regional issues and trends.
6. Future voter initiative.
7. Council memory bank items.

South Bellevue Community Center will be completed within the next two years and four full-time equivalent (FTE) positions are needed to operate the center in conjunction with Bellevue Boys and Girls Club. Property acquisition funds in the CIP Plan are fully committed through 2009, with an emphasis on waterfront property, Richards Valley, and neighborhood character projects. Mr. Foran described a proposal for a City-private partnership to resurface the Robinswood Park lighted soccer fields with a synthetic surface, which would greatly expand the opportunity for year-round use.

Mr. Foran said evolving regional issues and trends include: 1) fiscal challenges for regional Eastside parks (e.g., Marymoor Park, Bridle Trails State Park) managed by other agencies/jurisdictions, 2) a changing consumer market for park services and coordination in planning between neighboring jurisdictions, and 3) maximizing investment in "wraparound" services (e.g., health, human services, and recreation programs with schools, nonprofit organizations, and others).

Mr. Foran noted the potential for a future voter initiative during the upcoming biennium budget. Three Council memory bank items are the King County Human Services Task Force; investment in neighborhood functions, community events, and cultural festivals; and the completion of Downtown Park.

Mr. Lee would like more discussion regarding wraparound services and identifying reliable funding sources.

Responding to Ms. Balducci, Mr. Foran described staff's interest in a pilot project to initiate partnerships for wraparound services. He commented on the importance of partnering with school recreation facilities, for example, as an overall quality of life and economic development objective.

Responding to Mr. Noble, Mr. Foran said a current position vacancy could be reassigned to coordinate partnerships. Mr. Noble indicated Council will discuss this issue further at its upcoming retreat.

(2) Enterprise Technology [Postponed]

At 10:36 p.m., Deputy Mayor Noble declared the meeting adjourned.

Myrna L. Basich
City Clerk

kaw

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

Resolution No. 7033, authorizing the City Manager to enter into a revised Interlocal Agreement, Hazardous Materials Response Unit and Teams – adding City of Snoqualmie and King County Fire District #27.

FISCAL IMPACT

Approving this agreement adds the City of Snoqualmie and King County Fire District #27 as members of the Hazardous Materials Response Unit and Teams. The inclusion of these additional members will reduce Bellevue's share of the program cost from \$21,244 to \$20,851 due to spreading the costs over a wider pool of jurisdictions. No additional appropriation authority is needed, all costs are covered within the current budget.

STAFF CONTACT

Ronald A. Pedee, Deputy Chief

452-2016

POLICY CONSIDERATION

This agreement provides the basis for improving the quality of emergency services through the continued operation of the regional cooperative hazardous materials response unit as a normal function of fire protection services. The revision to the agreement approves the addition of the City of Snoqualmie and King County Fire District #27 as new members to the regional group.

BACKGROUND

In 1983 the City Council adopted Ordinance 3256 designating the Fire Department as the Hazardous Materials Incident Command Agency for the City of Bellevue. The containment of any hazardous materials incident requires specialized equipment and training. These concerns were shared by other cities and fire districts, with which we have mutual fire/aid agreements. In 1984 the Fire Department proposed to the City Council creation of an Interlocal Agreement with these agencies. The City Council adopted Resolution No. 4296 authorizing execution of this interlocal agreement on January 9, 1984.

The City Council adopted Resolution No. 5455 on December 11, 1991, which designated the City of Bellevue as "Lead Agency". The duties and responsibilities of the Lead Agency are to provide administrative support to the joint board and bill each member for their annual charge for maintenance and operation of the Hazardous Materials Response Unit.

The City Council adopted Resolution No. 6095 on May 5, 1997, which added an additional agency to the regional group – King County Fire District #10, currently known as Eastside Fire & Rescue.

Over the past year, Board members (Fire Chiefs) have met to review this agreement and to incorporate any amendments that were mutually identified as pertinent or necessary. This agreement has been modified to include the City of Snoqualmie and King County Fire District #27 as a signatory to this agreement and to change the month for annually billing members from January 1st to on or about March 1st. This agreement, if adopted by Council, will become inclusive of the cities of Bellevue, Redmond, Kirkland, Bothell, Woodinville Fire & Life Safety, Eastside Fire & Rescue (providing services to the City of Issaquah and King County Fire District No.10), King County Fire District No. 45, City of Snoqualmie, and King County Fire District No. 27. This is a true reciprocal mutual aid agreement with agencies and jurisdictions with written agreements for Hazardous Materials Response. The financial impact of the agreement would be further distributed and reduced, as each member agency pays a fee determined by a formula.

EFFECTIVE DATE

If approved, this Resolution will become effective immediately.

OPTIONS

1. Adopt Resolution No. 7033 authorizing the City Manager to sign the revised Interlocal Agreement for Hazardous Materials Response Unit and Teams agreement to add the City of Snoqualmie and King County Fire District No. 27 as members.
2. Do not adopt Resolution No. 7033 authorizing the City Manager to sign the revised agreement, which would cause the Fire Department an inability to efficiently and cost effectively provide a specialized service.

RECOMMENDATION

Adopt Resolution No. 7033 authorizing the City Manager to sign the revised Interlocal Agreement for Hazardous Materials Response Unit and Teams agreement to add the City of Snoqualmie and King County Fire District No. 27 as members.

MOTION

Move to adopt Resolution No. 7033 authorizing the City Manager to sign the revised Interlocal Agreement for Hazardous Materials Response Unit and Teams agreement to add the City of Snoqualmie and King County Fire District No. 27 as members.

ATTACHMENT

Proposed Resolution No. 7033

AVAILABLE IN COUNCIL OFFICE

Revised Interlocal Agreement

Version 3 (June 29, 3:52 pm)

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7033

A RESOLUTION authorizing execution of a revised Joint Hazardous Materials Response Unit and Teams Agreement, adding the City of Snoqualmie and King County Fire District No. 27.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute a revised Joint Hazardous Material Response Unit and Teams Agreement, adding the City of Snoqualmie and King County Fire District No. 27 a copy of which Agreement has been given Clerk's Receiving No. _____.

Passed by the City Council this _____ day of _____, 2004, and signed in authentication of its passage this _____ day of _____, 2004.

(SEAL)

Connie B. Marshall, Mayor

Attest:

Myrna L. Basich, City Clerk

CITY COUNCIL AGENDA MEMORANDUM

- SUBJECT:** Motion to reject all bids for **Bid No. 0423** for the construction of the restroom building at the **Bellevue Downtown Park**, and modify the project scope and re-bid the project at a later date.
- FISCAL IMPACT:** Minimal costs will be incurred if this project is re-advertised at a later date. There is sufficient funding in the Renovation and Refurbishment of Park Facilities (P-R-11) CIP budget to complete this project. The estimated total construction cost is **\$170,000**. Staff will re-scope the restroom building construction design downward to meet the current budget and engineer's estimate.
- STAFF CONTACT:** Randy Ransom, 452-2036
Patrick Foran, 452-5377

POLICY CONSIDERATION

Bellevue City Code 4.28 provides for the fair and equitable treatment of persons in the purchasing process. Because of the amount of the purchase, City Council approval is required.

BACKGROUND

This restroom facility construction project is part of the Parks Renovation and Refurbishment Plan within the CIP. The goal of the Parks Renovation Plan is to systematically refurbish and renovate the Parks system's operating facilities by maintaining safety, integrity, and functionality. Construction of this restroom was identified as a desired customer service improvement for park users at the Downtown Park. The proposed restroom facility is to be constructed near the adjacent existing playground located in the southwest corner of the Downtown Park. When completed, the project will provide direct customer service to users of the playground, and other park visitors during special events held at the Downtown Park such as 4th of July, 24-Hour Relay, and Magic Season.

SCOPE OF WORK

The project includes the following elements:

The construction of the restroom facility calls for a 500 square foot public restroom with Men's and Women's accessible stalls and one stall designed for toddler use. The design of the restroom facility is consistent with the current Downtown Park Master Plan. The proposed restroom site is adjacent to the existing playground in the southwest corner at the Downtown Park.

BID INFORMATION

The engineer's estimate is \$170,000, which includes Washington State Sales Tax. The bids received are as follows:

Bidder	Base Bid Amount (incl. WSST)	% over Engineer's Estimate
1. Biwell Construction	\$217,894.31	28%
2. Roy E. Dunham Co	\$223,568.00	32%
3. Tek Construction, Inc	\$273,910.00	61%
4. Ellis Construction, Inc	\$305,020.00	79%

After extensive review, staff recommends the rejection of all bids because they are significantly higher than the engineer's estimate of \$170,000 and the total available project budget. Staff will revise the project scope by redesigning the construction of the restroom building, and will work with the engineer(s) to reduce the higher-than-anticipated infrastructure costs.

EFFECTIVE DATE

If adopted by Council, this motion will become effective immediately.

OPTIONS

1. Reject all bids, modify the project scope by redesigning the restroom building, and re-bid the project at a later date.
2. Award Bid No.0423 to the lowest bidder, Bi-well Construction, in the amount of \$217,894.31.
3. Reject all bids and provide alternative direction to staff.

RECOMMENDATION

Reject all bids, modify the project scope, and re-bid the project at a later date.

MOTION

Move to reject all bids, modify the project scope, and re-bid the project at a later date.

ATTACHMENT

N/A

CITY COUNCIL AGENDA MEMORANDUM**SUBJECT:**

Resolution No. 7034 authorizing the City Manager or his designee to execute a settlement agreement with Entranco, Inc., to provide construction inspection services at no cost to the City and close out existing service contracts without additional compensation for the Factoria Boulevard Improvement Project, CIP Plan No. PW-R-116; and

Resolution No. 7035 authorizing the City Manager to execute a consultant agreement with Entranco, Inc., to provide construction inspection services at no cost to the City for the construction of roadway improvements for the NE 29th Place Connection, CIP Plan No. PW-R-60.

FISCAL IMPACT:

Adopting these resolutions will allow the City to settle a design engineering dispute between the City of Bellevue and Entranco, Inc. The settlement includes Entranco's offer to provide five months of construction inspection services valued at \$75,000 at no cost to the City. Entranco will also waive outstanding invoices in the amount of \$58,115 for previous services provided to the City for design of the Factoria Boulevard project. The total settlement with Entranco, Inc. is valued at \$133,115.

STAFF CONTACT:

Goran Sparrman, 452-4338/David Berg, 452-6468/Paul Krawczyk, 452-7905

POLICY CONSIDERATION:

Acceptance of these services will settle the City's dispute with Entranco, Inc., regarding the design of the Factoria Boulevard project.

BACKGROUND:

The Factoria Boulevard project design plans called for a wall to be built in the vicinity of the new signal at SE 40th Lane between the city right-of-way and the Factoria Mall property. After awarding the contract and just prior to the contractor starting construction, it was discovered that the wall as designed in the plans could not be built. Since that time, the City has been negotiating with Entranco, Inc., over reimbursement for the increase in costs due to the wall design error.

The City Council is now being asked to approve the settlement agreement with Entranco, Inc.

EFFECTIVE DATE:

If adopted, these resolutions will be effective immediately upon adoption.

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OPTIONS:

1. Adopt Resolution No. 7034 authorizing the City Manager or his designee to execute a settlement agreement with Entranco, Inc., to provide construction inspection services at no cost to the City and close out existing service contracts without additional compensation for the Factoria Boulevard Improvement Project, CIP Plan No. PW-R-116; and

Adopt Resolution No. 7035 authorizing the City Manager to execute a consultant agreement with Entranco, Inc., to provide construction inspection at no cost to the City for the construction of roadway improvements for NE 29th Place Connection, CIP Plan No. PW-R-60.

2. Do not adopt Resolution No. 7034 or Resolution No. 7035 and provide alternative direction to staff.

RECOMMENDATION:

Resolution No. 7034 authorizing the City Manager or his designee to execute a settlement agreement with Entranco, Inc., to provide construction inspection services at no cost to the City and close out existing service contracts without additional compensation for the Factoria Boulevard Improvement Project, CIP Plan No. PW-R-116; and

Resolution No. 7035 authorizing the City Manager to execute a consultant agreement with Entranco, Inc., to provide construction inspection services at no cost to the City for the construction of roadway improvements for the NE 29th Place Connection, CIP Plan No. PW-R-60.

MOTION:

Move to adopt Resolution No. 7034 authorizing the City Manager or his designee to execute a settlement agreement with Entranco, Inc., to provide construction inspection services at no cost to the City and close out existing service contracts without additional compensation for the Factoria Boulevard Improvement Project, CIP Plan No. PW-R-116; and

Resolution No. 7035 authorizing the City Manager to execute a consultant agreement with Entranco, Inc., to provide construction inspection services at no cost to the City for the construction of roadway improvements for the NE 29th Place Connection, CIP Plan No. PW-R-60.

ATTACHMENTS:

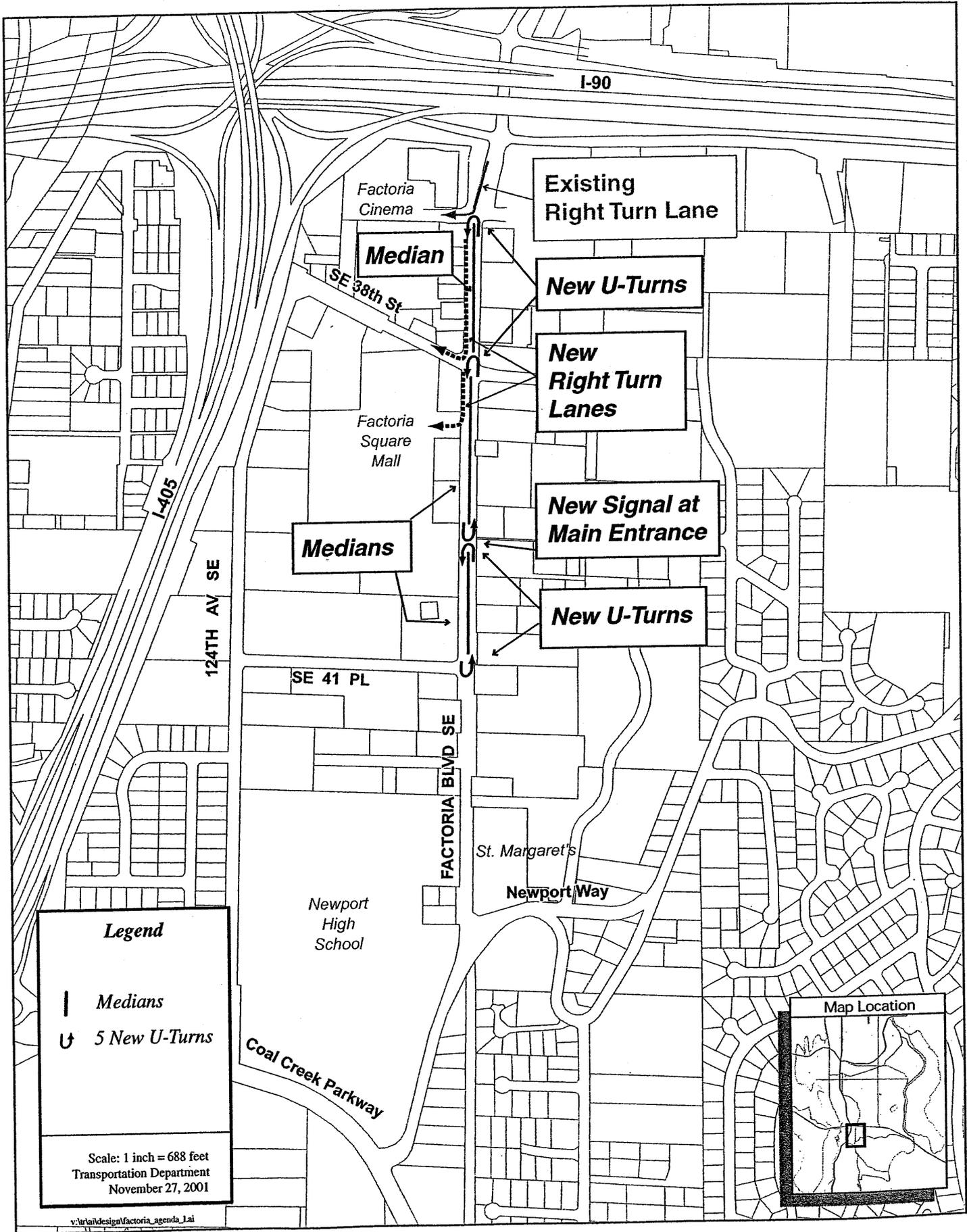
Proposed Resolution Nos. 7034 and 7035
CIP Project Description
Project Vicinity Map

AVAILABLE IN COUNCIL OFFICE:

Draft Settlement Agreement
Consultant Contract

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Vicinity Map:
Factoria Blvd. Project
PW-R-116



2001-2007 Adopted CIP: Transportation-Roadways

CIP PLAN NUMBER: PW-R-116

CIP FUND/PROJECT NUMBER: 3680—096

PROJECT NAME: Factoria Boulevard Improvements

PROJECT LOCATION: Factoria Boulevard – SE 3600 Block to SE 41st Place

DEPT/PROGRAM: Transportation/Transportation Improvements

STATUS: Approved and Begun

ACTUAL/ESTIMATED START DATE: 2000

ESTIMATED COMPLETION DATE: 2003

PROJECT DESCRIPTION/SCOPE: This project will fund design and right-of-way acquisition and create a construction funding placeholder to implement the Factoria Area Transportation Study's proposed improvements on Factoria Boulevard from the 3600 Block to SE 41st Place. Included will be: the extension of a southbound lane between 3600 Block and the first mall entrance; relocation of the sidewalk between SE 38th Street and the first mall entrance adjacent to the right-turn lane; intersection improvements at SE 38th Street; a new traffic signal at SE 40th Lane; intersection reconfiguration at SE 41st Place; and access management treatments, including center median, turn restrictions and driveway consolidation between 3600 Block and SE 41st Place. Construction funding needs will be refined during the design process.

PROJECT JUSTIFICATION/BENEFITS: This project is identified in the Factoria Area Transportation Study (1996) and will contribute to capacity improvements in the Factoria Mobility Management Area necessary to maintain adopted level-of-service standards. Key benefits of this project include additional capacity through the heavily traveled Factoria Boulevard corridor, increased pedestrian safety and reduced accidents from left-turn movements. In addition, the extension of the right-turn lane through the SE 38th Street intersection will likely reduce traffic volumes on 124th Avenue SE.

ENVIRONMENTAL IMPACTS: An environmental determination will be made in conjunction with preliminary design of this project.

CHANGES TO PREVIOUSLY APPROVED CIP PROJECT DESCRIPTION:

Project Description/Scope: The scope has been changed to include design, right-of-way acquisition, and construction of a southbound right-turn lane on Factoria Boulevard between SE 38th Street and the first mall entrance.

Capital Cost/Revenue: Capital costs reflect an increase of \$811,000 for the design and construction of the right-turn lane noted, and \$356,000 for inflation.

PROJECT BUDGET:

\$000

	Through 2000	2001	2002	2003	2004	2005	2006	2007	2001-2007 Total	Project Total
TOTAL CAPITAL COST:	306	690	3,007	3,328					7,025	7,331
REVENUE:										1
Restrict MVFT	1								6,104	6,268
Gen CIP Revenue	164	630	3,007	3,278					110	161
Transp Impact Fees	51	60		50						90
Transp Funding	90								7,025	7,331
TOTAL REVENUE	306	690	3,007	3,328						
M&O COSTS:										

Capital Costs Beyond 2007: NA

ESA Cost Impacts: This project may incur costs related to Endangered Species Act (ESA) requirements, but these costs cannot be determined at this time. Accordingly, the budget identified above does not include an ESA cost component.

8-9

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7034

A RESOLUTION authorizing execution of a settlement agreement with Entranco, Inc. to provide construction inspection services at no cost to the City and to close out existing service contracts for the Factoria Boulevard Improvement Project, CIP Plan No. PW-R-116.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute on behalf of the City, a Settlement Agreement with Entranco, Inc. to provide construction inspection services at no cost to the City and to close out existing service contracts for the Factoria Boulevard Improvement Project, CIP Plan No. PW-R-116, in substantially the same form as that Settlement Agreement given Clerk's Receiving No. _____.

Passed by the City Council this _____ day of _____, 2004, and signed in authentication of its passage this _____ day of _____, 2004.

(SEAL)

Connie B. Marshall, Mayor

Attest:

Myrna L. Basich, City Clerk

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7035

A RESOLUTION authorizing execution of a consultant agreement with Entranco, Inc., to provide at no cost to the City, construction inspection services for the NE 29th Place Connection roadway improvement project, CIP Plan No. PW-R-60.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute a consultant agreement with Entranco, Inc., to provide at no cost to the City, construction inspection services for the NE 29th Place Connection roadway improvement project, CIP Plan No. PW-R-60, a copy of which Agreement has been given Clerk's Receiving No. _____.

Passed by the City Council this _____ day of _____, 2004, and signed in authentication of its passage this _____ day of _____, 2004.

(SEAL)

Connie B. Marshall, Mayor

Attest:

Myrna L. Basich, City Clerk

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT:

Resolution No. 7036 authorizing the City Manager to execute an amendment to consultant agreement No. 33819 for engineering services with W&H Pacific for the 2005 Street Overlay Program.

FISCAL IMPACT:

This action obligates the City to an increase of \$255,217 for professional engineering services with W&H Pacific to conduct comprehensive roadway testing and roadway design for the 2005 Street Overlay Program.

Original Contract	\$348,427.39
Supplement #1	<u>255,217.42</u>
New Contract Total Amount	\$603,644.81

Sufficient funding exists within the Street Overlay program budget (CIP Plan No. PW-M-1) to fully fund this contract.

STAFF CONTACTS:

Goran Sparrman, 452-4338 / David Berg, 452-6468 / Tony Cezar, 452-7835 / Bob Goenen, 452-4239

POLICY CONSIDERATION:

The policies that guide the 2005 Street Overlay Program are consistent with the Transportation element of the City of Bellevue Comprehensive Plan, which guides the maintenance of our existing street system.

BACKGROUND:

On April 8, 2003, the City contracted with W&H Pacific to provide professional services (agreement No. 33819) for the design of the 2004 overlay program. While we normally contract for design services on the overlay program to span two seasons of overlay contracts, in this case we only contracted for the design of one season, the 2004 overlay contract, with the plan being to design the 2005 contract with in-house staff. Due to a recent staff resignation, we no longer have the resources to perform this design work in-house.

On March 23, 2004, the completion date of the professional services agreement No. 33819 with W&H Pacific was extended to March 1, 2005, to begin design of the 2005 overlay program. This amendment will allow W&H Pacific to complete the design phase of additional streets selected for the 2005 program to allow for a February 2005 bid advertisement. If we wait on the design of the 2005 program, then too much time is lost in the design phase to complete the asphalt paving by November 2005. W&H Pacific was selected for design of the 2004 overlay contract after a review of the consultant's proposal for engineering services in pavement and roadway design. W&H Pacific is 1 of 16 firms listed on a consultant roster, selected through a competitive RFQ

process, submitted to Transportation/Capital Projects Division in 2002. Rating criteria consisted of relevant experience of the proposed staff, understanding of the project and objectives, consultant resources, and the firm's management organization. W&H Pacific is being contracted with to perform design services for the 2005 overlay program due to their staff's ability to deliver the 2004 overlay program on schedule and under budget.

Through the use of the City's Pavement Management System, City staff has identified 152 street segments needing to be resurfaced in 2005. The Pavement Management System selects streets that will receive the most benefit from an asphalt overlay and before they require an extensive pavement rehabilitation. The street repairs and resurfacing will extend the life of the pavement 10 to 12 years for arterial streets and 15 to 20 years for residential streets.

The City's consultant will provide the following engineering services:

Continuous Project Management
Utility Coordination
Non-Destructive Deflection Testing
Plans, Specifications, and Estimates.

While developing a set of plans, specifications and an estimate for the 152 street segments is a major part of this contract, of equal importance is the engineering of the rehabilitation strategy for each street segment. Non-destructive deflection testing is used to simulate heavy truck and bus traffic loads to the pavement surface. This information is then used by the engineer to determine the rehabilitation strategy, i.e. amount of pavement repair, overlay thickness, type of asphalt, etc., for the street segments.

Coordination with franchise utilities, other City departments, and CIP programs will occur as part of the 2005 Street Overlay Program. This coordination ensures that newly overlaid asphalt pavement is not cut and patched due to another project immediately following the overlay. Typically, joint funding of these coordinated improvements in the pavement overlay contract comes from the following programs:

- PW-M-2 Minor Capital - Traffic Operations
- PW-M-3 Curb, Gutter, and Sidewalk Rehabilitation
- PW-M-7 Neighborhood Traffic Calming Program
- PW-M-8 Minor Capital Programs - Streets
- NEP Neighborhood Enhancement Program
- W/B-56 Pedestrian Access Improvements

EFFECTIVE DATE:

If adopted, this Resolution becomes effective immediately upon adoption.

OPTIONS:

1. Adopt Resolution No. 17036 authorizing the City Manager to execute an amendment to consultant agreement No. 33819 for engineering services with W&H Pacific for the 2005 Street Overlay Program.

2. Do not adopt the resolution and provide alternate direction to staff. This option would delay the design and construction of the 2005 Street Overlay Program.

RECOMMENDATION:

Adopt Resolution No. 7036 authorizing the City Manager to execute an amendment to consultant agreement No. 33819 for engineering services with W&H Pacific for the 2005 Street Overlay Program.

MOTION:

Move to adopt Resolution No. 7036 authorizing the City Manager to execute an amendment to consultant agreement No. 33819 for engineering services with W&H Pacific for the 2005 Street Overlay Program.

ATTACHMENTS:

2005 Overlay Street Roster

Vicinity Map

CIP Project Description

Proposed Resolution No 7036

AVAILABLE IN COUNCIL OFFICE:

Amendment to Consultant Agreement No. 33819

ATTACHMENT "A"

City of Bellevue

2005 OVERLAY STREETS

1/22/2004

Street	From	To	Length	Width	Lane Miles
* SE 27TH ST	EOR W	123RD AVE SE	304	20	0.10
* SE 42ND PL	SE 42ND ST	SE 42ND ST	944	26	0.42
* SE 42ND ST	SOMERSET BLVD SE	SE 42ND PL	1250	26	0.56
* SE 43RD PL	EOR N	158TH PL SE	458	26	0.21
* SE 49TH PL	140TH PL SE	141ST AVE SE	207	26	0.09
* SE 49TH PL	141ST AVE SE	HIGHLAND DR	782	26	0.35
* SE 50TH PL	134TH PL SE	SE 51ST PL	812	25	0.35
* SE 50TH ST	EOR W	141ST AVE SE	202	30	0.10
* SE 51ST PL	SE 50TH PL	136TH PL SE	482	26	0.22
* SE 51ST PL	136TH PL SE	139TH AVE SE	319	26	0.14
* SE 51ST ST	SOMERSET DR SE	134TH PL SE	277	26	0.12
* SE 51ST ST	141ST AVE SE	142ND PL SE	122	26	0.05
* SE 51ST ST	142ND PL SE	HIGHLAND DR	234	26	0.10
* SE 56TH ST	142ND AVE SE	145TH AVE SE	376	26	0.17
* SE 56TH ST	145TH AVE SE	SE 56TH ST	1075	26	0.48
* SE 61ST ST	144TH PL SE	145TH AVE SE	360	25	0.15
* 134TH PL SE	EOR N	SE 50TH PL	569	20	0.20
* 134TH PL SE	SE 50TH PL	SE 51ST ST	332	26	0.15
* 139TH AVE SE	SE 51ST PL	HIGHLAND DR	337	26	0.15
* 139TH PL SE	EOR N	SE 51ST PL	672	26	0.30
* 140TH PL SE	EOR N	SE 49TH PL	271	30	0.14
* 141ST AVE SE	SE 49TH PL	SE 50TH ST	235	26	0.11
* 141ST AVE SE	SE 50TH ST	SE 51ST ST	398	26	0.18
* 142ND AVE SE	143RD AVE SE	SE 56TH ST	996	26	0.45
* 143RD AVE SE	142ND AVE SE	143RD AVE SE	250	26	0.11
* 143RD AVE SE	143RD AVE SE	SE 56TH ST	791	26	0.35
* 145TH AVE SE	SE 56TH ST	ROAD D	543	25	0.23
* 145TH AVE SE	ROAD D	ROAD E	353	25	0.15
* 145TH AVE SE	ROAD E	145TH PL SE	151	25	0.06
* 145TH AVE SE	145TH PL SE	SE 60TH ST	136	25	0.06
* 145TH AVE SE	SE 60TH ST	SE 60TH ST	151	25	0.06
* 173RD AVE SE	SE 45TH ST	EOR S	324	26	0.15
* 173RD AVE SE	EOR N	SE 47TH ST	221	24	0.09
* 173RD AVE SE	SE 47TH ST	SE 47TH PL	202	26	0.09
* 173RD PL SE	SE 47TH PL	SE 48TH CT	230	26	0.10
* 174TH AVE SE	EOR N	SE 47TH ST	408	24	0.17
* 174TH CT SE	EOR N	SE 47TH ST	207	24	0.09
* COAL CREEK PKWY SE	SE NEWPORT WAY	FOREST DR	3242	52	2.90
* COAL CREEK PKWY SE	FOREST DR	SE 60TH ST	3477	52	3.11
* COAL CREEK PKWY SE	SE 60TH ST	SE 66TH ST	1644	52	1.47
* COAL CREEK PKWY SE	SE 66TH ST	END CITY LIMIT	1477	52	1.32
* LAKEMONT BLVD SE	171ST AVE SE	VILLAGE DR SE	769	44	0.58
* LAKEMONT BLVD SE	VILLAGE PK DR SE	164TH WAY SE	1571	44	1.19
* SOMERSET BLVD SE	SOMERSET AVE SE	SOMERSET LN SE	407	40	0.28
* SOMERSET BLVD SE	SOMERSET LN SE	139TH AVE SE	236	40	0.16
* SOMERSET BLVD SE	139TH AVE SE	143RD AVE SE	981	40	0.68
					18.73

SE 2ND ST	110TH AVE SE	110TH PL SE	254	27	0.12
SE 2ND ST	110TH PL SE	111TH AVE SE	256	27	0.12
NE 4TH ST	100TH AVE NE	104TH AVE NE	1316	52	1.18

* Denotes streets moved from the 2004 overlay program.

Streets to be added as Optional Services.

Shaded sections denotes streets for deflection testing.

8-15

ATTACHMENT "A"

City of Bellevue

2005 OVERLAY STREETS

1/22/2004

Street	From	To	Length	Width	Lane Miles
NE 4TH ST	104TH AVE NE	105TH AVE NE	334	54	0.31
NE 4TH ST	105TH AVE NE	NO NAME	166	54	0.15
NE 4TH ST	NO NAME	106TH AVE NE	169	63	0.18
NE 4TH ST	106TH AVE NE	108TH AVE NE	654	54	0.61
NE 4TH ST	108TH AVE NE	109TH AVE NE	312	64	0.34
NE 4TH ST	109TH AVE NE	110TH AVE NE	340	64	0.37
NE 4TH ST	110TH AVE NE	111TH AVE NE	314	64	0.35
NE 4TH ST	111TH AVE NE	112TH AVE NE	341	64	0.38
NE 8TH ST	98TH AVE NE	99TH AVE NE	332	44	0.25
NE 8TH ST	99TH AVE NE	100TH AVE NE	328	44	0.25
NE 8TH ST	100TH AVE NE	101ST AVE NE	190	63	0.21
NE 8TH ST	101ST AVE NE	102ND AVE NE	476	63	0.52
NE 8TH ST	102ND AVE NE	104TH AVE NE	663	63	0.72
NE 8TH ST	104TH AVE NE	106TH AVE NE	665	63	0.72
NE 8TH ST	106TH AVE NE	108TH AVE NE	656	63	0.71
NE 8TH ST	108TH AVE NE	110TH AVE NE	655	63	0.71
NE 8TH ST	110TH AVE NE	112TH AVE NE	666	63	0.72
SE 10TH ST	104TH AVE SE	BELLEVUE WAY SE	225	34	0.13
98TH AVE NE	NE 24TH ST	NE 23RD ST	330	28	0.16
98TH AVE NE	NE 23RD ST	NE 22ND ST	334	28	0.16
98TH AVE NE	NE 22ND ST	NE 21ST ST	334	28	0.16
98TH AVE NE	NE 21ST ST	NE 20TH ST	327	28	0.16
98TH AVE NE	N3 20TH ST	NE 19TH ST	334	28	0.16
98TH AVE NE	NE 19TH ST	NE 18TH ST	326	28	0.16
98TH AVE NE	NE 18TH ST	NE 16TH ST	660	23	0.26
98TH AVE NE	NE 16TH ST	NE 15TH ST	320	23	0.13
100TH AVE NE	NE 10TH ST	NE 8TH ST	661	46	0.52
104TH AVE SE	MAIN ST	SE 1ST ST	182	57	0.18
104TH AVE SE	SE 1ST ST	SE 3RD ST	607	57	0.60
104TH AVE SE	SE 3RD ST	SE KILMARNOCK ST	147	52	0.13
104TH AVE SE	SE KILMARNOCK ST	SE 6TH ST	1199	52	1.07
104TH AVE SE	SE 6TH ST	NO NAME	219	52	0.20
104TH AVE SE	NO NAME	SE 8TH ST	321	52	0.29
104TH AVE SE	SE 16TH ST	SE 19TH ST	1012	24	0.42
104TH AVE SE	SE 19TH ST	SE 20TH ST	557	24	0.23
104TH AVE SE	SE 20TH ST	SE 22ND ST	484	24	0.20
104TH AVE SE	SE 22ND ST	SE 23RD ST	248	24	0.10
104TH AVE SE	SE 23RD ST	SE 23RD ST	271	24	0.11
104TH AVE SE	SE 24TH PL	SE 25TH ST	324	24	0.13
104TH AVE SE	SE 25TH ST	C/L S / SE 27TH ST	608	24	0.25
110TH PL SE	SE 2ND ST	SE 4TH ST	865	26	0.39
111TH AVE NE	NE 4TH ST	NE 3RD PL	252	22	0.10
111TH AVE NE	NE 3RD PL	NE 3RD ST	42	22	0.02
111TH AVE NE	NE 3RD ST	NE 2ND PL	185	22	0.07
111TH AVE NE	NE 2ND PL	NE 2ND ST	145	22	0.05
MAIN ST	100TH AVE NE	101ST AVE SE	430	42	0.31
MAIN ST	101ST AVE SE	102ND AVE NE	225	24	0.09
MAIN ST	102ND AVE NE	103RD AVE NE	328	24	0.14
MAIN ST	103RD AVE NE	104TH AVE NE	326	24	0.13
MAIN ST	112TH AVE NE	I-405	623	53	0.57
MAIN ST	I-405	116TH AVE NE	667	53	0.61

17.31

* Denotes streets moved from the 2004 overlay program.

Streets to be added as Optional Services.

Shaded sections denotes streets for deflection testing.

8-16

ATTACHMENT "A"

City of Bellevue

2005 OVERLAY STREETS

1/22/2004

	Street	From	To	Length	Width	Lane Miles
#	NE 1ST ST	EOR N	98TH AVE NE	176	24	0.07
#	NE 1ST ST	98TH AVE NE	99TH AVE NE	440	30	0.23
#	NE 1ST ST	99TH AVE NE	100TH AVE NE	408	20	0.14
#	NE 1ST ST	103RD AVE NE	104TH AVE NE	330	24	0.14
#	NE 2ND PL	108TH AVE NE	111TH AVE NE	950	24	0.39
#	NE 2ND ST	160TH AVE NE	164TH AVE NE	1619	32	0.89
#	NE 3RD PL	EOR W	111TH AVE NE	379	22	0.14
#	SE 3RD ST	101ST AVE SE	102ND AVE SE	313	24	0.13
#	NE 5TH ST	94TH AVE NE	95TH AVE NE	487	22	0.18
#	NE 5TH ST	95TH AVE NE	96TH AVE NE	486	22	0.18
#	SE 8TH ST	166TH AVE SE	168TH AVE SE	718	32	0.40
#	NE 9TH ST	91ST AVE NE	92ND AVE NE	264	16	0.07
#	SE 10TH PL	EOR W	110TH AVE SE	124	34	0.07
#	NE 10TH ST	100TH AVE NE	NO NAME	190	44	0.14
#	NE 10TH ST	NO NAME	101ST AVE NE	160	44	0.12
#	NE 10TH ST	101ST AVE NE	102ND AVE NE	311	44	0.24
#	NE 11TH ST	110TH AVE NE	110TH PL NE	140	20	0.05
#	NE 11TH ST	110TH PL NE	111TH AVE NE	254	20	0.09
#	NE 11TH ST	111TH AVE NE	112TH AVE NE	260	20	0.09
#	SE 11TH ST	107TH AVE SE	108TH AVE SE	259	20	0.09
#	NE 12TH ST	EOR W	102ND AVE NE	385	20	0.13
#	NE 12TH ST	102ND AVE NE	104TH AVE NE	621	54	0.58
#	SE 12TH ST	108TH AVE SE	EOR S	343	9	0.05
#	SE 14TH ST	164TH AVE SE	165TH AVE SE	257	20	0.09
#	SE 14TH ST	165TH AVE SE	166TH AVE SE	261	20	0.09
#	SE 14TH ST	166TH AVE SE	167TH AVE SE	641	20	0.22
#	SE 14TH ST	167TH AVE SE	168TH AVE SE	269	20	0.09
#	SE 15TH ST	EOR W	96TH AVE SE	461	18	0.14
#	SE 15TH ST	96TH AVE SE	100TH AVE SE	330	18	0.10
#	SE 16TH ST	156TH AVE SE	159TH AVE SE	1140	22	0.43
#	SE 16TH ST	159TH AVE SE	160TH AVE SE	179	22	0.07
#	SE 16TH ST	160TH AVE SE	PHANTOM WAY	138	20	0.05
#	SE 20TH ST	104TH AVE SE	107TH AVE SE	1132	20	0.39
#	NE 26TH ST	98TH AVE NE	100TH AVE NE	659	22	0.25
#	NE 27TH ST	98TH AVE NE	100TH AVE NE	654	24	0.27
#	88TH AVE NE	NE 11TH ST	LK WA BLVD NE	326	20	0.11
#	91ST AVE NE	NE 9TH ST	EOR S	147	15	0.04
#	95TH AVE NE	NE 8TH ST	NE 5TH ST	585	19	0.19
#	97TH AVE NE	NO NAME	NE 5TH ST	481	20	0.17
#	97TH PL SE	SE 11TH ST	100TH AVE SE	1084	20	0.37
#	98TH AVE NE	NE 34TH ST	NE 33RD ST	341	19	0.11
#	98TH AVE NE	NE 33RD ST	NE 32ND ST	444	19	0.15
#	98TH AVE NE	NE 32ND ST	NE 31ST ST	339	19	0.11
#	98TH AVE NE	NE 31ST ST	NE 30TH ST	323	40	0.22
#	98TH AVE NE	NE 5TH ST	98TH PL NE	212	25	0.09
#	98TH AVE NE	98TH PL NE	NE 4TH ST	225	25	0.10
#	99TH AVE NE	NE 1ST ST	NE LK WA BLVD	377	22	0.14
#	100TH AVE NE	NE 25TH ST	NE 24TH ST	328	16	0.09
#	100TH AVE SE	MAIN ST	SE BELLEVUE PL	181	20	0.06
#	100TH AVE SE	SE 5TH ST	SE 5TH PL	478	24	0.20

* Denotes streets moved from the 2004 overlay program.

Streets to be added as Optional Services.

Shaded sections denotes streets for deflection testing.

ATTACHMENT "A"

City of Bellevue

2005 OVERLAY STREETS

1/22/2004

	Street	From	To	Length	Width	Lane Miles
#	100TH AVE SE	SE 5TH PL	SE 6TH ST	109	24	0.05
#	100TH AVE SE	SE 6TH ST	SE 7TH ST	430	24	0.18
#	100TH AVE SE	SE 7TH ST	SE 8TH ST	103	18	0.03
#	100TH AVE SE	SE 15H PL	SE 16TH ST	304	20	0.10
#	102ND AVE NE	NE 26TH ST	NE 24TH ST	641	30	0.33
#	102ND AVE SE	MAIN ST	SE 3RD ST	805	22	0.30
#	102ND AVE SE	SE 3RD ST	NO NAME	1104	22	0.42
#	102ND AVE SE	NO NAME	SE 6TH ST	237	22	0.09
#	106TH AVE NE	NE 10TH ST	NE 8TH ST	683	43	0.51
#	107TH AVE SE	EOR N	SE 10TH ST	411	20	0.14
#	107TH AVE SE	SE 19TH ST	SE 20TH ST	376	22	0.14
#	107TH AVE SE	SE 20TH ST	108TH AVE SE	102	22	0.04
#	108TH AVE NE	EOR N	NE 26TH ST	717	21	0.26
#	108TH AVE NE	NE 24TH ST	NE 20TH ST	1054	24	0.44
#	108TH AVE NE	NE 20TH ST	NE 20TH ST	187	24	0.08
#	108TH AVE NE	NE 20TH ST	NE 19TH PL	421	24	0.17
#	108TH AVE NE	NE 19TH PL	NE 19TH PL	70	24	0.03
#	108TH AVE NE	NE 19TH PL	NE 18TH ST	277	24	0.11
#	108TH AVE NE	NE 18TH ST	NE 18TH ST	38	24	0.02
#	108TH AVE NE	NE 18TH ST	NE 17TH ST	324	24	0.13
#	108TH AVE NE	NE 17TH ST	NE 16TH ST	325	24	0.13
#	108TH AVE NE	NE 9TH ST	NE 8TH ST	436	45	0.34
#	108TH AVE NE	NE 4TH ST	NE 2ND PL	499	44	0.38
#	108TH AVE NE	NE 2ND PL	NE 2ND ST	160	44	0.12
#	108TH AVE NE	NE 2ND ST	MAIN ST	684	44	0.52
#	108TH AVE SE	107TH AVE SE	SE 21ST ST	57	22	0.02
#	108TH AVE SE	SE 21ST ST	SE 22ND ST	319	22	0.12
#	108TH AVE SE	SE 22ND ST	SE 23RD ST	465	22	0.18
#	108TH AVE SE	SE 28TH ST	SE 29TH ST	494	22	0.19
#	108TH AVE SE	SE 29TH ST	SE 30TH ST	178	22	0.07
#	108TH AVE SE	SE 30TH ST	SE 31ST ST	274	22	0.10
#	110TH AVE NE	NE 8TH ST	NE 6TH ST	671	42	0.49
#	111TH AVE NE	NE 11TH ST	NE 10TH ST	264	24	0.11
#	158TH PL SE	MAIN ST	SE 3RD ST	1018	32	0.56
#	168TH AVE SE	SE 14TH ST	SE 16TH ST	267	20	0.09
#	168TH AVE SE	SE 16TH ST	SE 17TH ST	319	20	0.11
#	168TH AVE SE	SE 17TH ST	SE 17TH PL	356	20	0.12
#	168TH AVE SE	SE 17TH PL	SE 18TH ST	170	20	0.06
#	168TH AVE SE	SE 18TH ST	SE 19TH ST	295	20	0.10
#	168TH AVE SE	SE 19TH ST	SE 21ST PL	533	20	0.18
#	SE BELLEVUE PL	MEYDENBAUER WAY S	100TH AVE SE	279	21	0.10
#	LK HILLS BLVD	156TH AVE SE	155TH AVE SE	714	24	0.30
#	LK HILLS BLVD	155TH AVE SE	154TH AVE SE	456	24	0.19
#	LK HILLS BLVD	154TH AVE SE	151ST AVE SE	971	24	0.40
#	LK HILLS BLVD	151ST AVE SE	150TH AVE SE	644	24	0.27
#	LK HILLS BLVD	150TH AVE SE	148TH AVE SE	800	24	0.33
#	PHANTOM WAY	163RD AVE SE	164TH AVE SE	342	20	0.12
#	PHANTOM WAY	SE 16TH ST	163RD AVE SE	1086	20	0.37

18.60

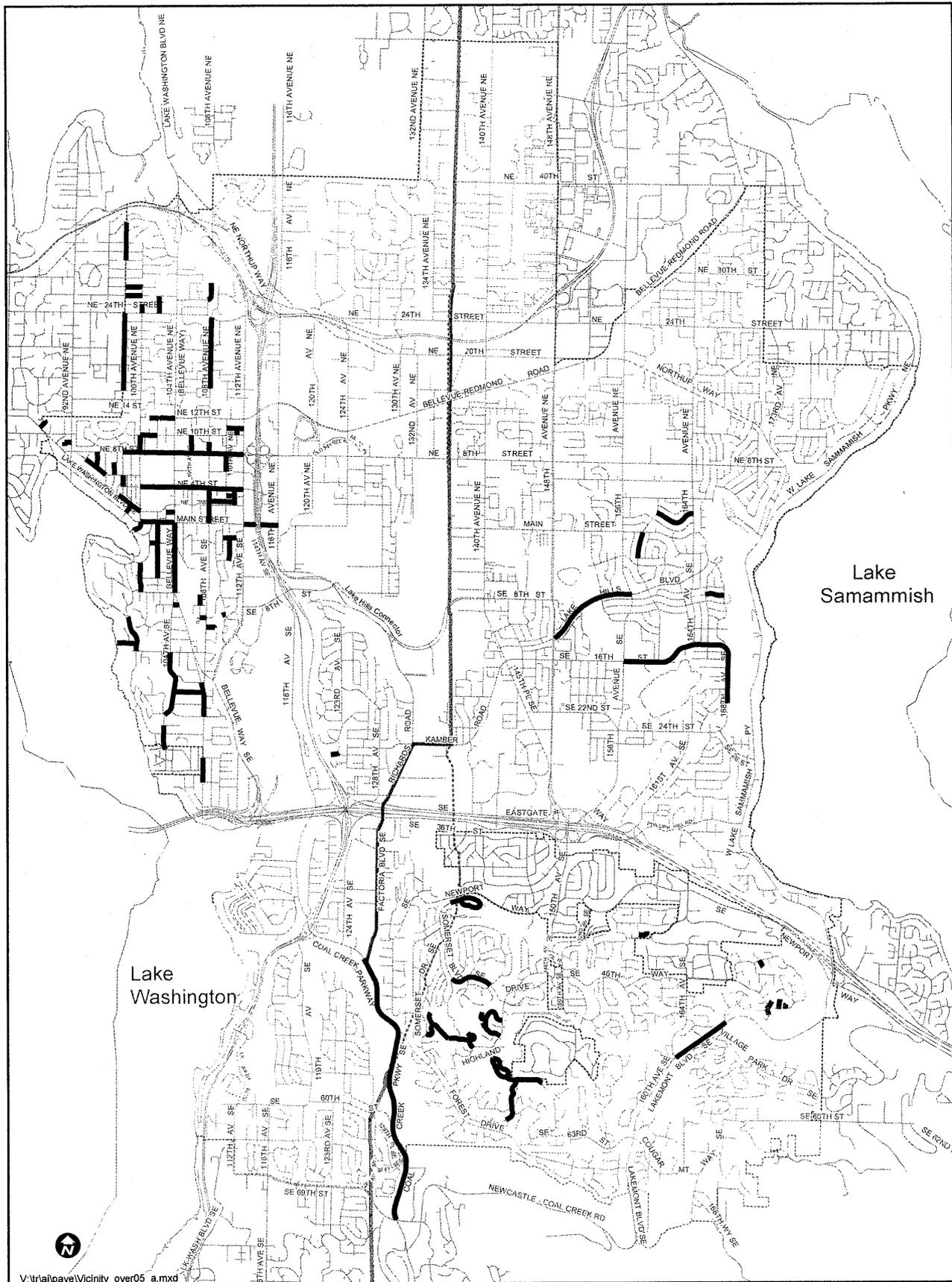
* Denotes streets moved from the 2004 overlay program.

Streets to be added as Optional Services.

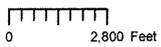
Shaded sections denotes streets for deflection testing.

8-18

Vicinity Map - City of Bellevue Pavement Management 2005 Overlay Candidates



V:\trialpave\vicinity_over05_a.mxd



City of Bellevue
IT Department
GIS Group
Plot Date: 1/8/2004

- Streets Held Over from 2004 Overlay Program
- 2005 Overlay Streets
- Olympic Pipeline
- 16 INCH
- 20 INCH

8-19

This map is a graphic representation derived from the City of Bellevue Geographic Information System. It was designed and intended for City of Bellevue staff use only; it is not guaranteed to survey accuracy. This map is based on the best information available on the date shown on this map. Any reproduction or sale of this map, or portions thereof, is prohibited without express written authorization by the City of Bellevue.

NOTE: If you have specific questions concerning information contained on this map, please contact the sponsoring department as shown on this map.

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2003-2009 Adopted CIP: Transportation – Maintenance/Minor Capital

CIP PLAN NUMBER: PW-M-1

CIP FUND/PROJECT NUMBER: 3680-661

PROJECT NAME: Street Overlays

PROJECT LOCATION: Various locations throughout the City

DEPT/PROGRAM: Transportation/Transportation Improvements

STATUS: Ongoing

ACTUAL/ESTIMATED START DATE: Ongoing

ESTIMATED COMPLETION DATE: Ongoing

PROJECT DESCRIPTION/SCOPE: This project provides major street maintenance, street overlays, and bridge inventory and maintenance.

PROJECT JUSTIFICATION/BENEFITS: With this project, the City can maintain its Pavement Management System and address street overlays as needed within the funding appropriation limit approved. Investment in road maintenance contributes to smooth traffic circulation and reduces the long-term cost of major reconstruction, by extending the life of Bellevue's roadways. Also, the City conducts Federal Highway Administration mandated bridge inspection (\$20,000 annually) and inventory and minor maintenance (\$50,000 annually).

ENVIRONMENTAL IMPACTS: Environmental issues are minimal and are addressed as appropriate on a location-by-location basis.

CHANGES TO PREVIOUSLY APPROVED CIP PROJECT DESCRIPTION:

Capital Cost/Revenue: Capital costs have increased by \$7,523,000 to reflect continued funding in 2008 and 2009, less a \$1,726,000 reduction in previously applied inflation.

PROJECT BUDGET:

\$000

	Through 2002	2003	2004	2005	2006	2007	2008	2009	2003-2009 Total	Project Total
TOTAL CAPITAL COST:	38,916	3,994	4,101	4,212	2,531	4,443	5,663	5,381	30,325	69,241
REVENUE:										
Real Estate Excise Tax	29,704	2,000	2,000	2,000	2,201	3,412	2,752	4,095	18,460	48,164
Gen CIP Revenue	5,480	1,994	1,814	2,212	330				6,350	11,830
LID	102									102
Restricted MVFT							772		772	772
Transp Funding	1,817					1,031	2,139	1,286	4,456	6,273
Developer Contrib	668									668
Miscellaneous	3									3
ISTEA Grants	1,138									1,138
Redmond Contrib	4									4
TEA-21 Grant			287						287	287
TOTAL REVENUE	38,916	3,994	4,101	4,212	2,531	4,443	5,663	5,381	30,325	69,241
M&O COSTS:										

Capital Costs Beyond 2009: Ongoing project

8-20

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7036

A RESOLUTION authorizing the City Manager or his designee to execute a second amendment to that professional services agreement with W & H Pacific for additional engineering services for the City's 2005 Street Overlay Program (CIP PW-M-1) for a total contact amount not to exceed \$603,644.81.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute a second amendment to that professional services agreement with W & H Pacific (Clerk's Receiving Nos. 33819 and 35512) to provide additional engineering services for the City's 2005 Street Overlay Program; a copy of which amendment has been given Clerk's Receiving No. _____.

Passed by the City Council this _____ day of _____, 2004, and signed in authentication of its passage this _____ day of _____, 2004.

(SEAL)

Connie B. Marshall, Mayor

Attest:

Myrna L. Basich, City Clerk

CITY COUNCIL AGENDA MEMORANDUM**SUBJECT:**

Resolution No. 7037 authorizing the City Manager to enter into an agreement with King County Department of Transportation for Commute Trip Reduction (CTR) implementation services.

FISCAL IMPACT:

This agreement obligates the City to pay the King County Department of Transportation up to \$104,002 for CTR implementation services for the period of July 1, 2004 through June 30, 2005. The proposed agreement includes a fixed fee for labor and office expenses, reimbursable workshop costs for training Employee Transportation Coordinators at affected work sites, incentives for employer programs, and staff assistance with special projects relating to CTR implementation as mutually agreed by the City and the County.

The City's portion of this proposed agreement is fully funded through State grant funds secured by the City (Ordinance 5468, September 15, 2003).

This proposed agreement will be effective from July 1, 2004 through June 30, 2005.

STAFF CONTACTS:

Goran Sparrman, 452-4338; Kris Liljeblad, 452-2866; Maria McGarry, 452-4345

POLICY CONSIDERATION

Bellevue City Code section 14.40 specifies the City's Commute Trip Reduction regulations. These were adopted by Ordinance No. 5157 (July 1999), which amended the City's CTR regulations as required by the State CTR Act of 1991, as amended, and by the State CTR Task Force Guidelines.

The Washington State Growth Management Act (RCW 36.70A.070) requires that Transportation Demand Management (TDM) strategies be included as part of the Transportation Element of Comprehensive Plans. The goal of the Transportation Demand Management section in the Transportation Element of the Bellevue Comprehensive Plan supports the reduction of single-occupant vehicles and vehicle miles traveled through regulations, marketing, provision of alternative travel options and through regional coordination with other agencies and jurisdictions. Specifically, Policies TR-8 and TR-9 in this section support CTR program implementation.

BACKGROUND:

The State CTR Act of 1991 requires local governments in counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement plans to help employers reduce single-occupant vehicle commute trips. Employers with over 100 employees that commute to work between the hours of 6:00 a.m. and 9:00 a.m. are required to develop trip reduction plans to achieve specific trip reduction goals by certain years as specified by the law. The 1997 amendment to the law extends the horizon time for trip reduction goals from 1999 to 2005 and includes other trip measurement options and administrative changes. The revised City ordinance, adopting the revised state requirements, was approved by the City Council on July 26, 1999.

The City contracts with King County Department of Transportation to work directly with employers to help them plan and implement the most effective trip reduction strategies for each work site. The City has contracted with King County Metro to provide CTR implementation services since 1994. The most recent contract was adopted by Council on October 6, 2003 (Resolution 6907).

EFFECTIVE DATE:

If approved, this resolution becomes effective immediately upon Council adoption.

OPTIONS:

1. Adopt Resolution No. 7037 authorizing the City Manager to enter into an agreement with King County Department of Transportation for Commute Trip Reduction (CTR) implementation services.
2. Provide direction to staff to renegotiate the agreement.
3. Do not adopt Resolution No. 7037 and provide alternate direction to staff.

RECOMMENDATION:

Adopt Resolution No. 7037 authorizing the City Manager to enter into an agreement with King County Department of Transportation for Commute Trip Reduction (CTR) implementation services.

MOTION:

Move to adopt Resolution No. 7037 authorizing the City Manager to enter into an agreement with King County Department of Transportation for Commute Trip Reduction (CTR) implementation services.

ATTACHMENTS:

Proposed Resolution No. 7037

AVAILABLE IN COUNCIL OFFICE:

Proposed Commute Trip Reduction Act Implementation Agreement with King County Department of Transportation

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7037

A RESOLUTION authorizing the City Manager or his designee to execute, on behalf of the City, an Agreement with King County Department of Transportation for Commute Trip Reduction (CTR) implementation services.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute, on behalf of the City, that certain Agreement with King County Department of Transportation for Commute Trip Reduction (CTR) implementation services; a copy of which agreement has been given Clerk's Receiving No. _____.

Passed by the City Council this _____ day of _____, 2004, and signed in authentication of its passage this _____ day of _____, 2004.

(SEAL)

Connie B. Marshall, Mayor

Attest:

Myrna L. Basich, City Clerk

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT:

Resolution No. 2038 authorizing the City Manager or his designee to execute an agreement (and supplements if necessary) with the Washington State Department of Transportation (WSDOT) I-405 Congestion Relief and Bus Rapid Transit Projects Team for conducting the Downtown Bellevue I-405 Alternatives Analysis.

FISCAL IMPACT:

This action obligates the City of Bellevue to up to \$500,000 with the WSDOT I-405 Congestion Relief and Bus Rapid Transit Projects Team for professional services to conduct the Downtown Bellevue I-405 Alternatives Analysis. This contract is fully funded by the I-405 Access Design Options project (CIP Plan No. PW-R-148).

Project Summary

Project Category: Roadways
 CIP Plan No: PW-R-148
 Project Name: I-405 Access Design Options

	(\$ 000)				Projected/Actual
	Current	Actual/ Projected	<i>This</i>	Projected	Completion
	Budget	Expenditures	<i>Action</i>	Balance	Date
Phase I (Planning)	\$580	\$80	\$500	\$0	Q2-2005
Phase II (Design, Engineering)	0	0	0	0	N/A
Phase III (Property Acquisition)	0	0	0	0	N/A
Phase IV (Construction)	0	0	0	0	N/A
Total	\$580	\$80	\$500	\$0	

The total projected cost of \$580,000 (including this action) reflects planning consulting services and internal project related costs. Sufficient funding exists to complete this study. This project is funded, in part, by a Surface Transportation Program (STP) federal grant.

STAFF CONTACT:

Goran Sparrman 452-4338; Kris Liljeblad 452-2866; Bernard Van de Kamp 452-6459; Rick Logwood 452-6858

POLICY CONSIDERATION:

This project is supported by policies of the City's Comprehensive Plan and would implement recommendations of the Downtown Implementation Plan Update (2003) and WSDOT's I-405 Corridor Program (2002). Comprehensive Plan Policies TR-68a and TR-68c (from the State highways/Corridors Section) directly support the project. The project also fulfills many of the policy directives in the Transportation and Land Use section of the Transportation Element, namely working cooperatively with other agencies to ensure transportation systems that support the land use vision of Bellevue as an urban center. Both the Downtown Implementation Plan and

the I-405 Corridor Program recommended added freeway access to serve Downtown Bellevue at NE 2nd and NE 10th Streets.

BACKGROUND:

On May 3, 2004, Council adopted Ordinance No. 5520 amending the 2003-09 CIP Plan to create the new CIP project (No. PW-R-148) named I-405 Access Design Options, and authorizing the City Manager to execute a grant agreement with WSDOT Local Programs to accept \$500,000 in federal Surface Transportation Program (STP) funds.

This study is urgently needed to support planning and design efforts for the NE 10th Street extension which was recommended by the Downtown Implementation Plan Update. The purpose of the study is to develop a conceptual design for I-405 through downtown Bellevue, roughly from Main Street to SR 520. New interchange connections at NE 10th Street and/or NE 12th Street will be evaluated for geometric feasibility and operational effectiveness. This work will build upon prior work including the Downtown Implementation Plan Update, the I-405 Corridor Program, and the NE 10th Street Extension Pre-Design Study.

This alternatives analysis will be conducted independently of the Overlake Hospital Master Plan / NE 10th Street Extension SEPA EIS. However, the analysis is critical in determining potential access points and likely right of way impacts in the vicinity of the hospital campus. It is therefore important to the decision making for the hospital campus expansion, implementation of the Downtown Plan, and implementation of the I-405 Corridor Program.

EFFECTIVE DATE:

If approved, this resolution becomes effective immediately upon Council adoption.

OPTIONS:

1. Adopt Resolution No. 7038 authorizing the City Manager or his designee to execute an agreement with WSDOT for the Downtown Bellevue I-405 Alternatives Analysis;
2. Do not adopt Resolution No. 7038. By not proceeding with the study, design information will not be produced to support decision-making according to the schedule necessary for the Overlake Hospital Medical Center/Group Health Cooperative expansion.

RECOMMENDATION:

1. Adopt Resolution No. 7038 authorizing the City Manager to execute an agreement with WSDOT for the Downtown Bellevue I-405 Alternatives Analysis

MOTION:

Move to adopt Resolution No. 7038 authorizing the City Manager to execute an agreement with WSDOT for the Downtown Bellevue I-405 Alternatives Analysis.

ATTACHMENTS:

- CIP Project Description
- Resolution No. 7038 authorizing the City Manager to execute an agreement with WSDOT for the Downtown Bellevue I-405 Alternatives Analysis.

AVAILABLE IN COUNCIL OFFICE:

Downtown Bellevue I-405 Alternatives Analysis, Scope of Work

2003-2009 Adopted CIP: Transportation-Roadways

REVISED PROJECT DESCRIPTION EFFECTIVE 5/04

CIP PLAN NUMBER: PW-R-148

PROJECT NUMBER: 680255

PROJECT NAME: I-405 Access Design Options

PROJECT LOCATION: NE 8th Street to SR 520

DEPT/PROGRAM: Transportation/Transportation Improvements

STATUS: New

ACTUAL/ESTIMATED START DATE: 2004

ESTIMATED COMPLETION DATE: 2005

PROJECT DESCRIPTION/SCOPE: Develop a conceptual design for the NE 10th Street Extension (and associated collector-distributor roadway and ramps) that supports the overall transportation and land use needs in Bellevue along the I-405 corridor from Downtown to SR 520. The design will accommodate the City's planned freeway system connection(s) at NE 10th Street as part of the Downtown Implementation Plan, Overlake Hospital Medical Center's expansion plans, and the long-term vision for I-405 as identified in WSDOT's I-405 Corridor Plan. The study includes pre-design of ultimate horizontal and vertical alignments for: NE 10th Street and NE 12th Street Undercrossing Bridges; the northbound and southbound collector-distributor roadways; mainline I-405 and contemplated ramps to and from I-405 and SR 520 in this segment. In addition, the project will evaluate emergency access to the hospital, interim build alternatives, and conduct traffic analyses of the I-405 mainline and proposed ramps to support the preferred interim build alternative.

PROJECT JUSTIFICATION/BENEFITS: Overlake Hospital Medical Center, Group Health Cooperative, Washington State Department of Transportation, Sound Transit and the City of Bellevue (both through the Downtown Implementation Plan and the Wilburton Area Study) all have plans relating to the project area. This project will produce a conceptual design to support the decision-making needs of the City and its valued partners, while upholding the Transportation and Land Use policies in the Comprehensive Plan. Key benefits of the project will be a conceptual design for the extension of NE 10th Street, a transportation system improvement needed to enhance access to downtown Bellevue, ensure critical access for the hospital's emergency vehicles, visitors, and freight; and improve vehicular capacity and non-motorized circulation in the project area.

ENVIRONMENTAL IMPACTS: An environmental determination will be made in conjunction with the preliminary design of this project.

PROJECT BUDGET:

\$000

	Through							2003-2009 Total	Project Total	
	2002	2003	2004	2005	2006	2005	2006			2007
TOTAL CAPITAL COST:			465	115					580	580
REVENUE:										
TEA-21 Grant			400	100					500	500
General CIP Revenue			65	15					80	80
TOTAL REVENUE			465	115					580	580
M&O COSTS:										

Capital Costs Beyond 2009: N/A

8-27

1174-RES
6/16/2004

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7038

A RESOLUTION authorizing the City Manager or his designee to execute an Agreement with the Washington State Department of Transportation for the Downtown Bellevue I-405 Alternatives Analysis.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute an Agreement with the Washington State Department of Transportation for the Downtown Bellevue I-405 Alternatives Analysis, a copy of which Agreement has been given Clerk's Receiving No. _____.

Passed by the City Council this _____ day of _____, 2004, and signed in authentication of its passage this _____ day of _____, 2004.

(SEAL)

Connie B. Marshall, Mayor

Attest:

Myrna L. Basich, City Clerk

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

Resolution No. 7039 authorizing the City Manager to execute an amendment to the professional services agreement for the Meydenbauer Reservoir Replacement project, CIP Plan No. W-85, Utility Capital Investment Program fund 4690, with MWH America's, Inc., for additional engineering services, in the amount of \$63,000.00.

FISCAL IMPACT

Awarding this contract amendment commits the City to an additional contract of \$63,000.00. This revises the original contract amount from \$307,500 to \$370,500. This contract amendment will be funded from the Utilities CIP Plan No. W-85, Meydenbauer Reservoir Replacement Project. There is adequate budget remaining to fund this contract.

STAFF CONTACT

Brad Miyake, 4895/Wes Jorgenson, 4887

POLICY CONSIDERATION

One of the policies identified in the City's Water Comprehensive Plan is the need to provide adequate service reliability. The policy goal is to provide a water distribution system that has one-hundred percent operational reliability. In order to meet this goal, the Utility needs to invest resources as necessary to construct, maintain and renew the water system and to ensure that the water system infrastructure is designed and constructed to remain in operation following events such as earthquakes.

CIP Plan No W-85 has been designated to do this.

BACKGROUND

The construction of the New Meydenbauer Reservoir has been underway since mid August 2003 and completion was estimated to be around July 2004. Due to adverse weather conditions, from an unusually wet winter, the Contractor's progress has been hampered. This has extended the construction completion to around September 2004 and consequently the need for additional construction services. Challenging site conditions also necessitated a higher than expected level of inspection services.

MWH America's, Inc. is providing construction services and inspections for the reservoir replacement project because construction of water reservoirs and pump stations require specialized engineering knowledge in structural, electrical and mechanical systems besides general civil engineering. Utility staff does not have these specialized skills therefore we rely on consultants to provide support for these types of projects.

EFFECTIVE DATE

If adopted, this Resolution will become effective immediately upon adoption.

OPTIONS

1. Adopt Resolution No. _____ authorizing the City Manager to execute an amendment to the professional services agreement for the Meydenbauer Reservoir Replacement project, CIP Plan No. W-85, Utility Capital Investment Program fund 4690, with MWH America's, Inc., for additional engineering services, in the amount of \$63,000.00.
2. Reject Resolution No. 7039 and provide alternate direction to staff.

RECOMMENDATION

Adopt Resolution No. 7039 authorizing the City Manager to execute an amendment to the professional services agreement for the Meydenbauer Reservoir Replacement project, CIP Plan No. W-85, Utility Capital Investment Program fund 4690, with MWH America's, Inc., for additional engineering services, in the amount of \$63,000.00.

MOTION

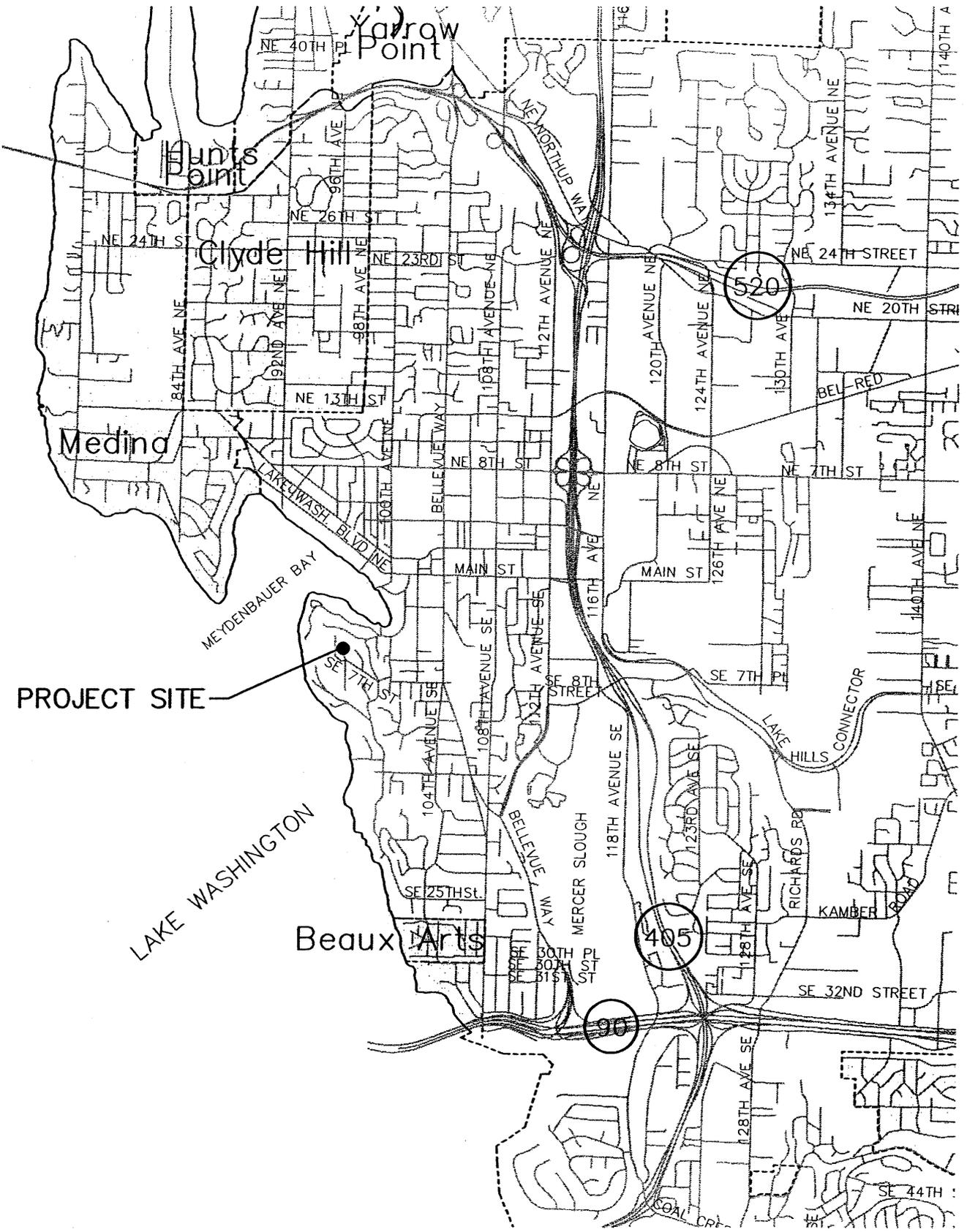
Move to adopt Resolution No. 7039, authorizing the City Manager to execute an amendment to the professional services agreement for the Meydenbauer Reservoir Replacement project, CIP Plan No. W-85, Utility Capital Investment Program fund 4690, with MWH America's, Inc., for additional engineering services, in the amount of \$63,000.00.

ATTACHMENTS

- Vicinity Map
- CIP Project Description
- Proposed Resolution

AVAILABLE IN COUNCIL OFFICE

- Consultant Contract



PROJECT SITE

LAKE WASHINGTON

Beaux Arts



NTS.

— CITY OF BELLEVUE CITY LIMITS

VICINITY MAP

MEYDENBAUER RESERVOIR REPLACEMENT PROJECT

C.I.P. W-85

8-31

2003-2009 Adopted CIP: Water

CIP PLAN NUMBER: W-85

CIP FUND/PROJECT NUMBER: 4690-462

PROJECT NAME: Structural/Seismic Reservoir Rehabilitation

PROJECT LOCATION: Reservoir locations throughout Water Utility's service area

DEPT/PROGRAM: Utilities/Utility Improvements

STATUS: Ongoing

ACTUAL/ESTIMATED START DATE: 1993

ESTIMATED COMPLETION DATE: Ongoing

PROJECT DESCRIPTION/SCOPE: This program will modify or replace existing reservoirs to mitigate water system earthquake damage and maintain their function during seismic events. Pre-design studies will be conducted prior to design and construction of projects to address structural/seismic issues at individual sites.

Demolition of the old Water District 68 water treatment plant will be included in this project and will be done in conjunction with the demolition and reconstruction of the adjacent Meydenbauer Reservoir. This work will take place in 2003 and 2004. To date, improvements have been completed at six of the seventeen reservoirs requiring rehabilitation or replacement under this project.

PROJECT JUSTIFICATION/BENEFITS: An assessment of seismic vulnerability identified reservoirs at risk for failure in a seismic event. This project will modify existing reservoirs as necessary to mitigate earthquake damage and maintain system function after a major seismic event.

The improvements will reduce life safety risks and optimize reduction of economic risk during seismic events. Failure consequences that will be reduced include loss of tank system operation, loss of use of communications systems, and resultant property damage. The maintenance and operational costs of the reservoirs will remain about the same.

The water treatment plant is an old unsightly structure that is unneeded and incompatible with the neighborhood. Demolition of the treatment plant, in conjunction with the reservoir work, will reduce costs and disruption to the neighborhood.

ENVIRONMENTAL IMPACTS: The environmental impacts will be determined during the design of each specific project.

CHANGES TO PREVIOUSLY APPROVED CIP PROJECT DESCRIPTION:

Project Scope: The project scope has been expanded to include demolition of an old drinking water treatment plant in conjunction with demolition and reconstruction of the adjacent Meydenbauer Reservoir.

Capital Cost/Revenue: Capital cost and revenue has been increased by \$1,956,000 for increased project scope, and the addition of CIP program years 2008 and 2009. Project costs have also been adjusted for inflation. If Council so chooses, future sale of the property currently occupied by the treatment plant can be used to offset costs associated with the treatment plant demolition.

PROJECT BUDGET:

\$000

	Through									2003-2009 Total	Project Total
	2002	2003	2004	2005	2006	2007	2008	2009			
TOTAL CAPITAL COST:	3,650	2,982	1,055	70	167	162	381	569	5,386	9,036	
REVENUE:											
Water Utility Revenue	3,650	2,982	1,055	70	167	162	381	569	5,386	9,036	
TOTAL REVENUE	3,650	2,982	1,055	70	167	162	381	569	5,386	9,036	
M&O COSTS:											

Capital Costs Beyond 2009: This program will continue through 2012.

8.32

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7039

A RESOLUTION authorizing execution of an amendment to the professional services agreement with MWH America's, Inc. bearing Clerk's Receiving No. 34334 in an amount not to exceed \$63,000 for a total amended contract amount of \$370,500.00 for engineering services related to the Meydenbauer Reservoir Replacement Project, CIP Plan No. W-85.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is authorized to execute an amendment to the professional services agreement with MWH America's, Inc. bearing Clerk's Receiving No. 34334 in an amount not to exceed \$63,000 for a total amended contract amount of \$370,00.00 for engineering services related to the Meydenbauer Reservoir Replacement Project, CIP Plan No. W-85, a copy of which amendment has been given Clerk's Receiving No. _____.

Passed by the City Council this _____ day of _____, 2004, and signed in authentication of its passage this _____ day of _____, 2004.

(SEAL)

Connie B. Marshall, Mayor

Attest:

Myrna L. Basich, City Clerk

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT:

Second Public Hearing on the 2005-2006 Budget/2005-2011 Capital Investment Program Plan

FISCAL IMPACT:

There is no fiscal impact associated with the public hearing.

STAFF CONTACT:

Jan Hawn, Finance Director, 452-6846

Rich Siegel, Performance and Outreach Coordinator, 452-7114

POLICY CONSIDERATION:

Should the City Council hold a second public hearing to obtain public comment prior to the development of the City's 2005-2006 Budget/2005-2011 Preliminary Capital Investment Program (CIP) Plan? This public hearing would be in addition to the legally required public hearing.

State law (RCW 35A.34.110) requires that the City Council hold at least one public hearing for the purpose of fixing the Operating Budget of the City. This legally-required public hearing is held one or two weeks prior to the Council adopting the budget.

BACKGROUND:

The public hearing scheduled for July 6 is the second of three public hearings planned for the City's 2005-2006 Budget/2005-2011 Capital Investment Program Plan. The purpose of this public hearing is to enable the City Council and City administration to hear public comment prior to the development of the City's 2005-2006 Budget/2005-2011 CIP Plan. Holding three public hearings is in keeping with Bellevue's long history of overall stakeholder involvement with the budget process.

The third and last public hearing is scheduled for November 15, prior to adoption of the combined operating and capital budgets on December 6, 2004.

This second public hearing notice was advertised in the King County Journal on June 21 and June 28, and the City Clerk has posted a notice of this evening's hearing in the required places.

OPTIONS:

1. Hold the second public hearing on the 2005-2006 Budget/2005-2011 Capital Investment Program Plan.
2. Provide alternative direction to staff regarding the public hearing(s).

RECOMMENDATION:

Option 1.

MOTION:

Move to open the second public hearing on the 2005-2006 Budget/2005-2011 Capital Investment Program Plan.

ATTACHMENTS:

Public Hearing Notice

J:\ADMIN\BUD\ag-PH2.doc

PLEASE PUBLISH ON JUNE 21 AND JUNE 28, 2004

**BUDGET/CIP HEARING
NOTICE OF PUBLIC HEARING
CITY OF BELLEVUE**

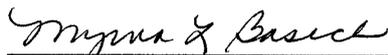
NOTICE IS HEREBY GIVEN of the public hearing on the City of Bellevue's 2005-2006 Budget/2005-2011 Capital Investment Program (CIP) Plan that will be held before the Bellevue City Council in the Bellevue City Council Chambers, 11511 Main Street, at 8:00 p.m. on Tuesday, July 6, 2004.

The public hearing is an opportunity for residents and other stakeholders to provide input on the budget to aid the City Council and City Administration in developing the City's 2005-2006 Budget/2005-2011 Capital Investment Program (CIP) Plan. Please check our website under "What's New" at www.cityofbellevue.org for more information on this update. Interested persons are encouraged to attend the public hearing and to provide written and/or oral testimony.

Any questions about the public hearing should be addressed to Rich Siegel, Performance & Outreach Coordinator, at (425) 452-7114 or e-mail rcsiegel@ci.bellevue.wa.us.

Affidavit of posting has been filed with the City Clerk for the Bellevue City Council.

Dated this 10th day of June 2004.



Myrna Basich
City Clerk

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

The Application of **FRANKLIN WEST LLC** for a rezone amending the existing Concomitant Agreement for Kelsey Creek Center to allow Health Club uses of less than 5,000 square feet. File No. 03-131400 – LQ.

FISCAL IMPACT

None of Record.

STAFF CONTACT

Wick Dufford, Hearing Examiner – 452-6935

POLICY CONSIDERATION

Whether the application complies with the Bellevue City Code and applicable decision criteria.

BACKGROUND

For background information, please review the attached Hearing Examiner's Summary.

EFFECTIVE DATE

If adopted, the Ordinance concerning this application would become effective July 15, 2004.

OPTIONS

1. Approve the application as recommended by the Examiner.
2. Approve the application with additions or modifications.
3. Deny the application.
4. Remand the matter.

HEARING EXAMINER'S RECOMMENDATION

Move to adopt the Hearing Examiner's Findings and Recommendation, and approve the Ordinance. 5534

ATTACHMENTS

Ordinance 5534
Site Maps

AVAILABLE IN COUNCIL OFFICE

The Department (PCD) supporting file is available for review in the City Council Office.

SUMMARY

The City Council is considering the Hearing Examiner's Recommendation concerning the application of **FRANKLIN WEST LLC** for a rezone amending the existing Concomitant Agreement for Kelsey Creek Center to allow Health Club uses of less than 5,000 square feet.

The Kelsey Creek Center is located at 15015 Main Street. The property is zoned Community Business (CB). Health club uses are permitted outright in CB zones. However, health clubs are not among the recreational uses allowed in this shopping center under the CZA as currently written.

The rezone would legitimize "Curves" a weight loss and fitness enterprise that has become a tenant of space within the Center. The activities at "Curves" meet the definition of a health club. The rezone will resolve an enforcement action.

1. BACKGROUND

The application and an environmental checklist were submitted on November 21, 2003. The application was deemed complete on January 29, 2004. A public meeting was held on April 6, 2004, at the East Bellevue Community Council's regularly scheduled meeting. Public comment was provided by only one person who expressed concerns related to parking and traffic associated with including health clubs at this location. These issues were addressed by Staff during the application review process.

No other public comment (written correspondence, phone calls, or emails) was received. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued by the City on April 29, 2004. The DNS was not appealed. The hearing was noticed by the PCD to be held on May 13, 2004.

2. APPLICATION BEFORE EXAMINER

The public hearing before the Examiner was held, as noticed, on May 13, 2004 at 7:00 p.m. The applicant was represented by Nat Franklin, owner of Kelsey Creek Center and Anne Rennick, Planner represented the City. There was no public testimony.

On May 28, 2004, the Hearing Examiner issued Findings of Fact, Conclusions of Law and a Recommendation that the application be **APPROVED** subject to a condition. The deadline for filing an appeal of the Examiner's Recommendation was June 11, 2004. No appeals were filed.

3. SITE CHARACTERISTICS

The Kelsey Creek Center is located just north of the Larson Lake portion of the Lake Hills Greenbelt, east of 148th Avenue SE and south of Main Street. The existing 16 acre site referred to as the Kelsey Creek Center is addressed with a single address, 15015

Main Street. However, the shopping center consists of three separate parcels created by a three lot short plat in 1998 (KC Recording No. 199803099020). There is also a separate parcel to the south of the three lot short plat, which is entirely classified as a Native Growth Protection Easement (NGPE), this NGPE extends approximately 18feet onto Lots 2 & 3 of the short plat (KC Recording No. 198809129014).

Prior to 1965 the site was occupied by residential structures and farmland. Commercial use of the property began occurring in the late 1960's with the Kelsey Creek Center developed by 1968, including the Kmart, a music store, a pharmacy, and other retail uses. The subject property was purchased by the current owner in 1988.

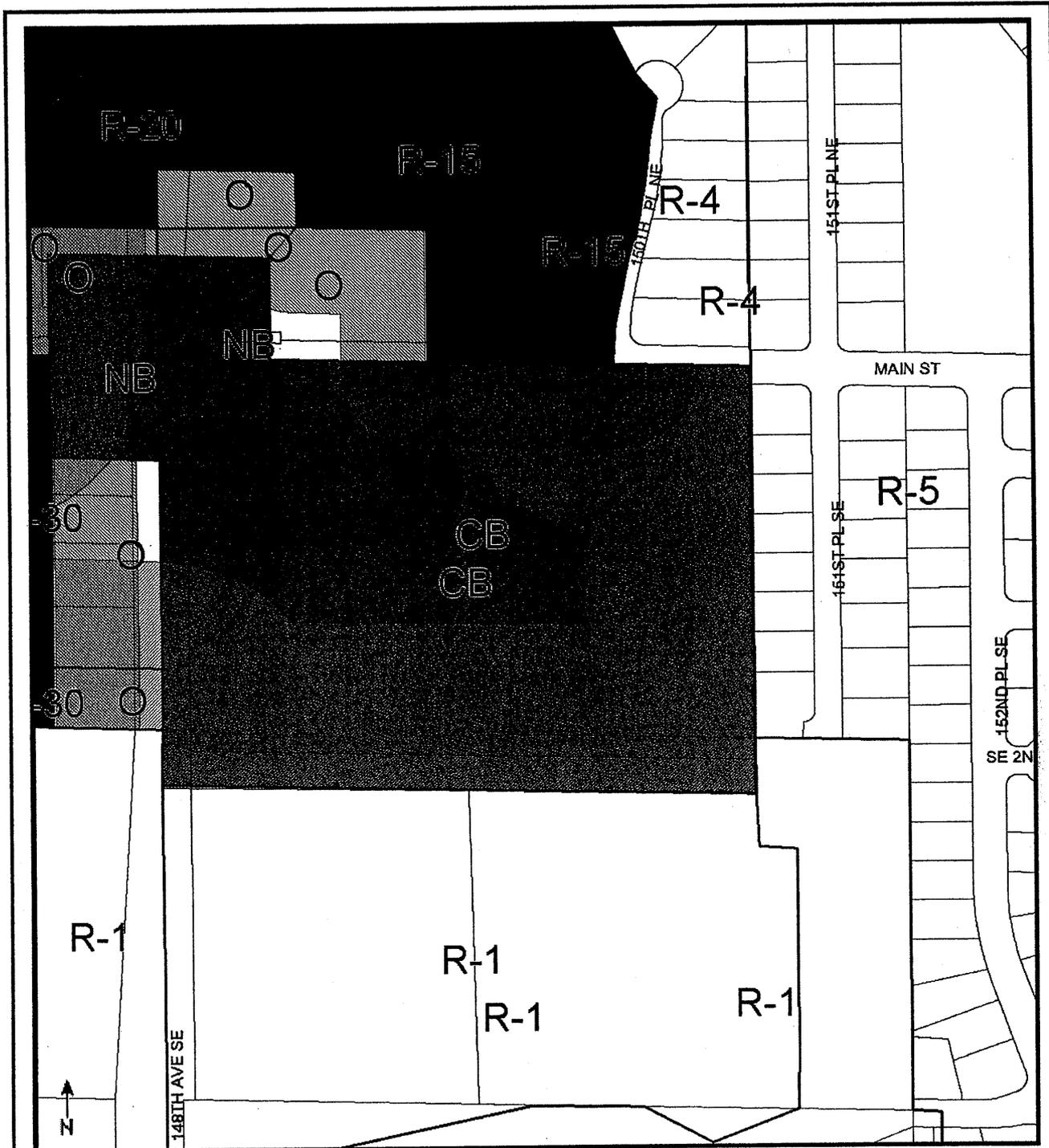
4. COMMENTS

As referenced in Section 2 above, there was no public testimony.

5. HEARING EXAMINER'S RECOMMENDATION

The Hearing Examiner recommends that the City Council **APPROVE** the application with one condition, which concurs with the Recommendation of the DPCD. The condition is:

This rezone applies only to the inclusion of "Health Club" as a permitted use; Health Club use may not exceed a total area of 5,000 net square feet in the Kelsey Creek Center.



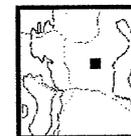
City of Bellevue
 Information Technology
 Geographic Information Services
 April 20, 2004

Zoning
LQ 03-131400

- | | | | |
|--|---------------------|--|-------------------------------|
| | Single Family | | Subdistrict A |
| | Multi Family | | Subdistrict B |
| | Office | | Subdistrict C |
| | Commercial | | Downtown Core |
| | Light Industrial | | Single Family Transition Zone |
| | Evergreen Highlands | | Multi Family Transition Zone |
| | Institutional | | |

This map is derived from the Bellevue Geographic Information System and designed for City staff use. It is not guaranteed accurate.

If you have specific questions concerning information contained on this map please contact the department shown.



VICINITY MAP

10-5

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5534

AN ORDINANCE approving the rezone application of Franklin West, LLC (Kelsey Creek Center) by amendment of the 1987 Concomitant Agreement No. 12967 adopted by Ordinance No. 3835 to allow Health Club uses of less than 5,000 square feet.

WHEREAS, on November 21, 2003, an application was filed seeking a change to the Concomitant Agreement to allow Health Club uses of less than 5,000 square feet; and

WHEREAS, the request was considered at a public meeting of the East Bellevue Community Council on April 6, 2004; and

WHEREAS, a public hearing was held before the Hearing Examiner for the City of Bellevue on May 13, 2004 pursuant to notice required by law; and

WHEREAS, on May 28, 2004, the Hearing Examiner recommended approval of the rezone application with a condition, and made and entered findings of fact and conclusions thereon in support of that recommendation; and

WHEREAS, the City Council concurs in the findings of fact and conclusions of the Hearing Examiner and has determined that the public use and interest will be served by approving the rezone application to allow Health Club uses of less than 5,000 square feet; and

WHEREAS, the City has complied with the requirements of the State Environmental Policy Act and the City Environmental Procedures Code now therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The City Council adopts the findings of fact and conclusions based thereon, made and entered by the Hearing Examiner in support of his recommendation to the City Council to approve the rezone application to allow Health Club uses of less than 5,000 square feet to the 1987 Concomitant Zoning Agreement No. 12967 adopted by Ordinance No. 3835.

Section 2. This rezone shall be subject to the following condition:

This rezone applies only to the inclusion of "Health Club" as a permitted use; Health Club use may not exceed a total area of 5,000 net square feet in the Kelsey Creek Center.

Section 3. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

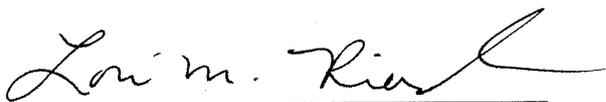
Passed by the City Council this _____ day of _____, 2004, and signed in authentication of its passage this _____ day of _____, 2004.

(SEAL)

Connie B. Marshall, Mayor

Approved as to form:

Richard L. Andrews, City Attorney



Lori M. Riordan, Deputy City Attorney

Attest:

Myrna L. Basich, City Clerk

Published _____

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

The Application of **OVERLAKE HOSPITAL MEDICAL CENTER and THE CITY OF BELLEVUE** for the rezone of five parcels from Office Limited Business (OLB) to Institutional District (I). The File No. is 04-104728-LQ/

FISCAL IMPACT

None of Record.

STAFF CONTACT

Gordon F. Crandall, Hearing Examiner – 452-6935

POLICY CONSIDERATION

Whether the application complies with the Bellevue City Code and applicable decision criteria.

BACKGROUND

For background information, please review the attached Hearing Examiner's Summary.

EFFECTIVE DATE

If adopted, the Ordinance concerning this application would become effective July 14, 2004.

OPTIONS

1. Approve the application as recommended by the Examiner.
2. Approve the application with additions or modifications.
3. Deny the application.
4. Remand the matter.

HEARING EXAMINER'S RECOMMENDATION

Move to adopt the Hearing Examiner's Findings and Recommendation, and approve the Ordinance. 5535

ATTACHMENTS

Ordinance 5535
Site Maps

AVAILABLE IN COUNCIL OFFICE

The Department (PCD) supporting file is available for review in the City Council Office.

SUMMARY

The City Council is considering the Hearing Examiner's Recommendation concerning the application of **OVERLAKE HOSPITAL MEDICAL CENTER** and the **CITY OF BELLEVUE** for the rezone of five parcels from Office Limited Business (OLB) to Institutional District (I). The application file number is 04-104728-LQ

Two applications to rezone five parcels of land for the Overlake Hospital Medical Center were filed. One application was submitted by Overlake Hospital Medical Center for four sites. The other application was submitted by Goran Sparmann, Director of the City of Bellevue's Transportation Department.

The parcels are described in the City's Staff Report at page 2. They are:

1041 – 116th Avenue NE
1031 – 116th Avenue NE
1011 – 116th Avenue NE
849 – 116th Avenue NE
825 – 116th Avenue NE

The effect of rezoning the five parcels from OLB to I will be to allow institutional use of the property, increase the height limit from 45 feet (75 feet if within 475 feet of I-405) to 60 feet (75 – 120 feet if within 175 feet of I-405 with provision of public amenities), and allow lot coverage by structure to increase from 35% to 50%.

1. BACKGROUND

In 1999, the City Council approved a Rezone and Master Development Plan for the Overlake Hospital campus. Property owned by the hospital within the Master Planning area was rezoned from OLB to I. Five parcels within the planning area were owned by others and were not rezoned at that time.

The hospital has since acquired three of the five remaining parcels. The fourth, 1041 – 116th Avenue NE is leased to Overlake Hospital until 2014, with an option to purchase. The applicant represented the property owner of this parcel at the hearing. The fifth parcel is owned by the City of Bellevue and assigned to the Transportation Department. This parcel, site of the ^{Taste of} Tokyo Restaurant, was acquired for the NE 10th Street right-of-way, but is to be exchanged for another location on the hospital site for that purpose. All of the aforementioned properties front on 116th Avenue NE.

Draft and Final EISs were prepared in connection with the 1999 Rezone Ordinance and Master Development Plan. The Final EIS provided programmatic-level environmental impact analysis for future development of the site over the next 30 years. A Determination of Non-Significance (DNS) was issued for this rezone proposal and was not appealed.

A public meeting was held and the public hearing was noticed. No members of the public attended the informational public meeting.

2. APPLICATION BEFORE EXAMINER

The public hearing before the Examiner was held, as noticed, on May 6, 2004 at 7:00 p.m. The applicant, Overlake Hospital, was represented by John C. McCullough, Attorney-at-Law (firm of McCullough Hill Fikso Kretschmer Smith). Carol Saari, Planner, represented the City. As with the informational meeting, no one from the public appeared or testified at the public hearing. There were no letters or telephone calls from the public concerning the applications. At the hearing four exhibits were entered. (See exhibit section of report.)

On May 21, 2004, the Hearing Examiner issued Findings of Fact, Conclusions of Law and a Recommendation that the application be **APPROVED subject to Conditions**. The deadline for filing an appeal of the Examiner's Recommendation was June 4, 2004. No appeals were filed.

3. SITE CHARACTERISTICS

The five parcels in question have a total area of 2.1 acres and are located on the west side of 116th Avenue NE in the Wilburton/NE 8th Street Subarea.

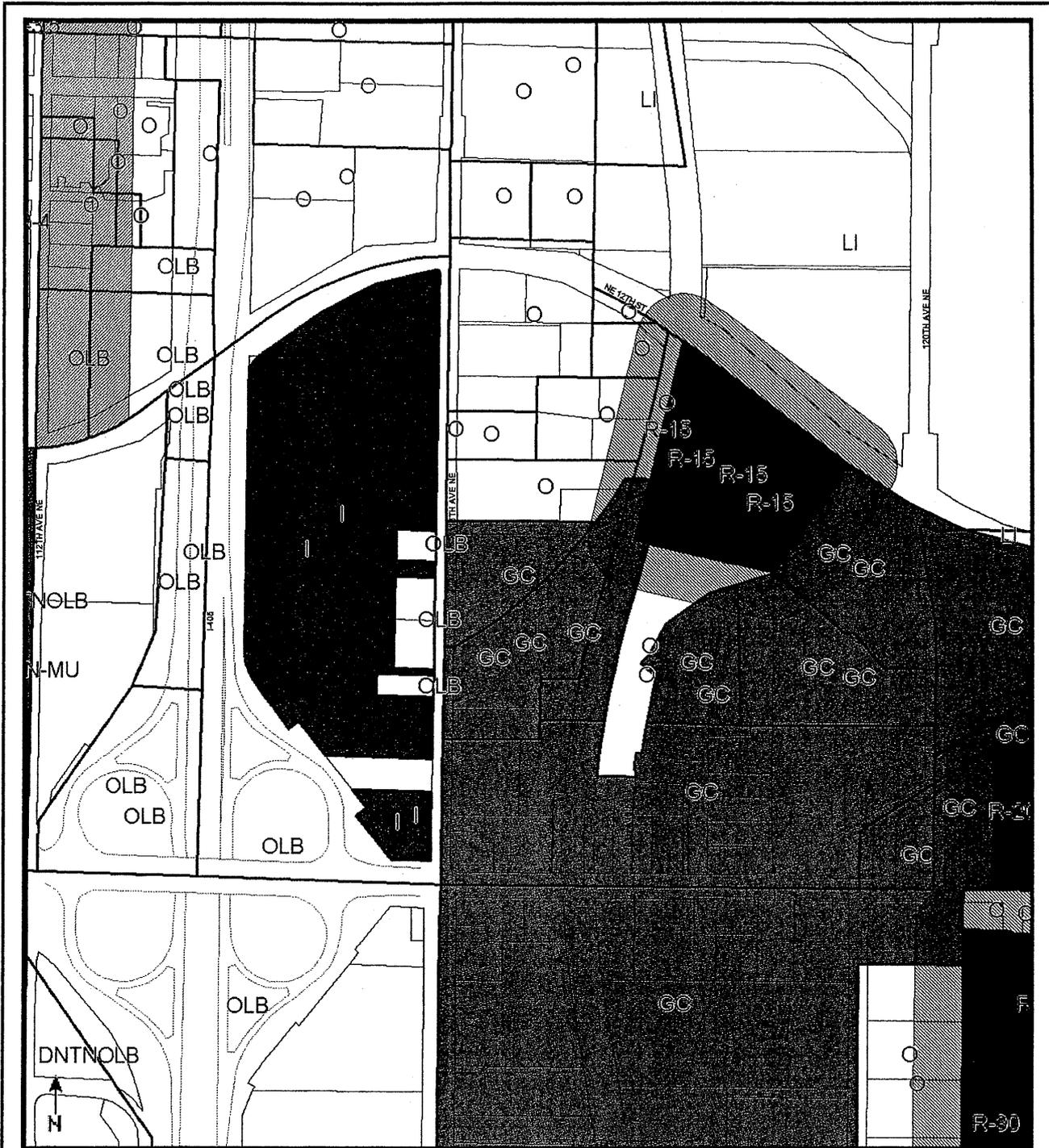
These parcels abut 116th Avenue NE along their eastern property line and except where they abut each other are surrounded on their north, west and southern sides by Overlake Medical Center property currently designated in the Institutional District.

4. COMMENTS

As referenced in Section 2 above, there was no public testimony at the examiner hearing, and no letters or telephone calls were received regarding the application.

5. HEARING EXAMINER'S RECOMMENDATION

The Hearing Examiner recommends that the City Council **APPROVE** the application with the conditions recommended by the DPCD.



City of Bellevue
 Information Technology
 Geographic Information Services
 April 12, 2004

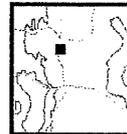
Zoning

LQ 04-104728 Rezone Request OLB to I

- | | | | |
|--|-----------------------------------|--|-------------------------------|
| | Single Family | | Subdistrict A |
| | Multi Family | | Subdistrict B |
| | Office | | Subdistrict E |
| | Commercial | | Downtown Core |
| | Light Industrial | | Single Family Transition Zone |
| | Evergreen Highlands Institutional | | Multi Family Transition Zone |

This map is derived from the Bellevue Geographic Information System and designed for City staff use. It is not guaranteed accurate.

If you have specific questions concerning information contained on this map please contact the department shown.



VICINITY MAP

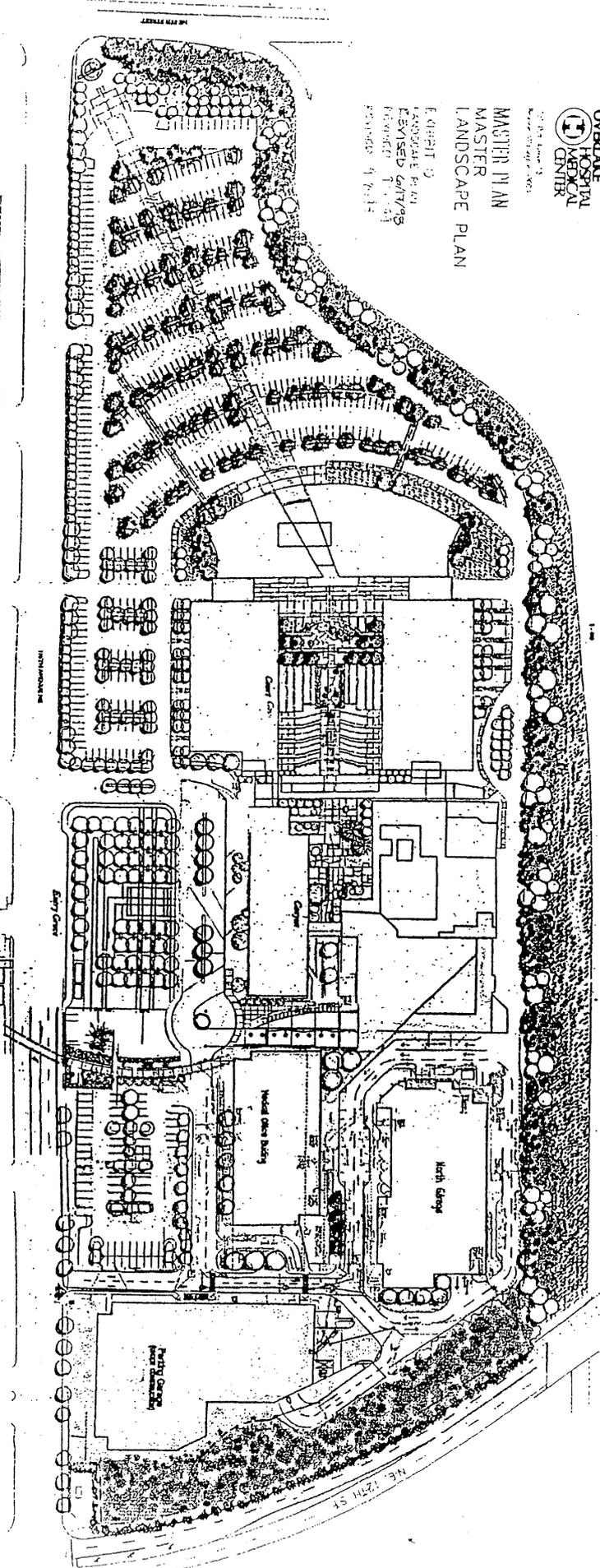
10-12



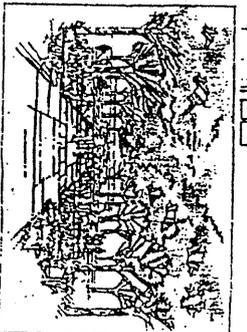
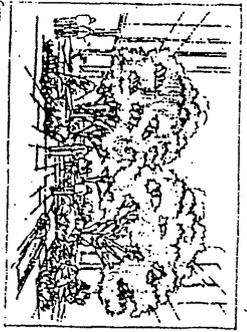
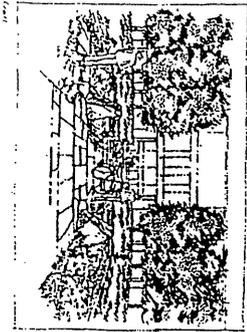
Overlake Hospital Medical Center
12000 NE 127th St
Bellevue, WA 98005

MASTER PLAN LANDSCAPE PLAN

DESIGNED BY
LANDSCAPE ARCHITECTS
REVISED 1/1/81
PROJECT NO. 10-13



OVERLAKE HOSPITAL
Central Landscaping, S.A.



10-13

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5535

AN ORDINANCE approving the rezone applications Overlake Hospital Medical Center and the City of Bellevue to rezone property located at 1041, 1031, 1011, 849 and 825 – 116th Ave NE from Office Limited Business (OLB) to Institutional District (I).

WHEREAS, Overlake Hospital Medical Center and the City of Bellevue filed applications to rezone property located at 1041, 1031, 1011, 849 and 825 – 116th Ave NE from Office Limited Business (OLB) to Institutional District (I); and

WHEREAS, on May 6, 2004, a public hearing was held on the rezone application before the Hearing Examiner for the City of Bellevue pursuant to notice as required by law; and

WHEREAS, on May 21, 2004, the Hearing Examiner recommended approval of the rezone application and made and entered findings of fact and conclusions based thereon in support of that recommendation, and no timely appeal thereof has been filed; and

WHEREAS, the City Council concurs in the findings of fact and conclusions of the Hearing Examiner and has determined that the public use and interest will be served by approving the rezone of said property from Office Limited Business (OLB) to Institutional District (I); and

WHEREAS, the City has complied with the requirements of the State Environmental Policy Act and the City Environmental Procedures Code; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The City Council adopts the findings of fact and conclusions based thereon, made and entered by the Hearing Examiner in support of the recommendation to the City Council with regard to the hereinafter described property located at 1041, 1031, 1011, 849 and 825 – 116th Ave NE, as set forth in "Findings, Conclusions and Recommendations of the Hearing Examiner for the City of Bellevue in the Matter of the Applications of Overlake Hospital Medical Center and the City of Bellevue to Rezone Five Parcels from Office Limited Business (OLB) to Institutional District (I), File No. 04-104728-LQ."

Section 2. The zoning on the below described real property is hereby amended to Institutional District (I):

That portion of records of King County, Washington, described as follows:

1041 – 116th Avenue NE:

The South 99.00 feet of the North 303.50 feet of the West 125.00 feet of the East 155 feet of the Southeast quarter of the Southeast quarter of Section 29, Township 25 North, Range 5 East, W.M. in King County, Washington.

1031 – 116th Avenue NE:

Lot 1, City of Bellevue Short Plat No. 78-41, as filed under Recording No. 7806190928, in King County, Washington.

1011 – 116th Avenue NE:

Lot 2, City of Bellevue Short Plat No. 78-41, as filed under Recording No. 7806190928, in King County, Washington.

849 – 116th Avenue NE:

Lot 1, City of Bellevue Short Plat No. 77-64, as filed under Recording No. 7709260748, in King County, Washington.

825 – 116th Avenue NE:

That portion of the North 105 feet of the South 400.00 feet of the Southeast quarter of the Southeast quarter of Section 29, Township 25 North, Range 5 East, W.M. in King County, Washington, lying Northeasterly of the Easterly margin of SR 405, as shown on Primary State Highway No. 1(SR 405) Right of Way Plans, sheet 15 of 27, dated July 1, 1952;

Except the East 30.00 feet thereof.

Section 3. This rezone shall be subject to the following conditions:

A. **Conditions of Ordinance No. 5174:** All conditions of Ordinance No. 5174 shall remain in effect and apply to these five parcels.

1. **Design Review Required:** Prior to issuance of a construction permit, Design Review is required for each phase of development of the Master Development Plan (LUC 20.25J.010).

2. **Revisions to Master Development Plan:** If revisions to the Master Development Plan are proposed in the future, the revisions will be reviewed through the appropriate process provided in LUC 20.25J.050E or as required by the provisions of the Land Use Code in effect at that time.

3. **Building Height:** If building height above 75 feet is proposed in future phases, the review of the specific design details for each element of the amenity plan shall be reviewed and approved as part of the required Design Review application for each phase, and the required amenities shall be constructed prior to occupancy of the first building utilizing the height allowance above 75 feet. (LUC 20.25J.050E)

4. **Transportation Management Plan:** Prior to issuance of a Certificate of Occupancy of future phases of development, the Applicant shall be required to submit a detailed Transportation Management Plan to increase employee use of transit and car/vanpools.

a. The TMP Shall include the following mandatory strategies as required by BCC 14.60.070:

1. Posting of rideshare and transit information;
2. Distribution of rideshare and transit information;
3. Provision of a Transportation Coordinator;
4. Provision of preferential parking;
5. Subsidized transit passes and carpool subsidies;
6. Provision for a guaranteed ride home program.

b. The TMP shall also include the following strategies to maximize the probability of success of its TMP program:

1. In cooperation with Metro, conduct an analysis of the feasibility of implementing a transit shuttle between the Bellevue Transit Center and the Medical Center. The analysis, including findings and conclusions, shall be submitted to the City for its use in determining whether a transit shuttle should be included in the Medical Center's TMP at the time of future phases.

2. The applicant shall be required to include in its TMP a specific plan for implementation, monitoring, evaluation and reporting, as well as periodic review of the TMP with Metro and the City.

3. The goal of the TMP shall be to reduce the hospital's single occupancy vehicle rate for the target employee population to 75% and to increase the mode split to 25%. (BCC 14.60.070)

5. **Transportation Management Plan:** Based upon factors which are unique to the Medical Center (including, but not limited to existing employee shifts and shift changes, employee residence patterns, labor agreement constraints, and changes in the labor force), Overlake Hospital shall be required to undertake, at

its own expense, a study including a survey of its current full-time and part-time employees to determine whether and under what circumstances it may be feasible to incorporate the following TMP program elements. The study shall be completed prior to issuance of a Certificate of Occupancy for the first phase of development.

a. Coordinate its TMP with the TMPs of other nearby public and private sector employees in Bellevue.

b. Implement other potential TMP strategies on its own or in cooperation with other Bellevue employers, including, but not limited to customized bus routes, on-site day care, and other HOV utilization incentives and disincentives (parking charges).

c. Implement policies which encourage "flex-time" schedules for appropriate full-time and part-time employees who may be able to participate in TMPs of other Bellevue employers or in programs that may be feasibly implemented in cooperation with other Bellevue employers.
(BCC 14.60.070)

6. **Phasing Plan:** Overlake Hospital shall complete frontage and site improvements consisting with the Master Plan Development Plan and according to the following schedule. (See attached Phasing Plan [B-5, B-6 and Master Development Plan, B-7)

Phase II Improvements 2002-2005

Demolish 1199 Building (Medicenter South) and construct surface parking and landscaping.

Phase III Improvements: 2006-2009

Demolish 1051 Building and install landscaping and surface parking.

Phase IV Improvements 2010-2015

Demolish 1031 Building (OIMA North) and construct surface parking, south half of new main entrance improvements and landscaping. This is conditioned upon future Acquisition of the property. Applicant has agreed that upon acquisition of the property earlier than Phase IV, the demolition and improvements would occur not later than five years following such acquisition.

Demolish 1041 Building (Griffith) and complete main entrance improvements with parking and landscaping. This is conditioned upon future acquisition of the property. Applicant has agreed that upon an acquisition of the property earlier than Phase IV, the demolition and improvements would occur not later than seven years following such acquisition.

Demolish 1231 Building, install landscaping and complete north driveway entrance improvements. (LUC 20.25J.030)

7. **Accelerated Construction of Improvements:** If the hospital acquires properties fronting on 116th Avenue NE and existing leases expire or are terminated prior to the timeframes indicated in the Phasing Plan, the applicant shall install the required Master Development Plan improvements on the applicable properties within seven years of the date that the hospital has control of the property. (LUC 20.20.30A, LUC 20.30A, Rezone Ordinance No. 5174)

B. **Amending Ord. 5174 Phasing Plan:** The applicant shall submit an amendment to the Phasing Plan schedule originally approved with Ordinance 5174 (Condition #6) proposing a new timing schedule for when Phase II-IV improvements will be completed. These amendments to the Phasing Plan shall be submitted in conjunction with or prior to any future development proposal and/or design review application associated with Overlake Hospital Medical Center campus expansion. (LUC 20.30A; Rezone Ordinance No. 5174)

Section 4. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

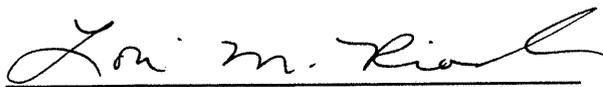
Passed by the City Council this _____ day of _____, 2004, and signed in authentication of its passage this _____ day of _____, 2004.

(SEAL)

Connie B. Marshall, Mayor

Approved as to form:

Richard L. Andrews, City Attorney



Lori M. Riordan, Deputy City Attorney

Attest:

Myrna L. Basich, City Clerk

Published _____

CITY COUNCIL AGENDA MEMORANDUM**SUBJECT**

Resolution No. 7040 granting a non-exclusive cable television franchise to Comcast of Bellevue, Inc.

FISCAL IMPACT:

Under the current franchise agreement and City Code, cable television providers are required to pay a 5.0% gross revenue cable franchise fee on services provided in the City. These fees generate approximately \$1.0 million annually that is currently used to support Bellevue Television (BTV), franchise management, and General Fund operations. Under the proposed franchise agreement, the cable operator will continue to pay a franchise fee of 5.0%.

Under the terms and conditions of the franchise (Sections 9.5 and 9.6) the City will receive a \$450,000 upfront capital contribution to meet necessary equipment replacement capital support for Bellevue Television (BTV). Over the proposed five year term of the franchise this \$450,000 upfront capital contribution would be recovered as a line item on subscriber monthly bills at the rate of \$0.25 per subscriber per month.

STAFF CONTACT:

Goran Sparrman, 452-4338; Nora Johnson, 452-4167; David Kerr, 452-6139

POLICY CONSIDERATIONS:

The policy of the City of Bellevue is to conduct the cable franchise renewal process as provided by federal law in Section 626 of the Cable Communications Policy Act, [47 U.S.C. § 546] and in Bellevue City Code Chapter 5.30, Cable Communications.

BACKGROUND:

The current cable television franchise with Comcast expires July 29, 2004. The 1992 Cable Act establishes a 36-month window for the cable renewal process. A formal request to initiate the franchise renewal process was received by the City of Bellevue in September 2001 and the City began the franchise renewal process.

In October 2001, the City sent out letters to various community stakeholders asking them to identify specific cable related needs and began an extensive community needs ascertainment process that included 7,000 detailed surveys mailed to random households in the city. Approximately 1,500 of these were returned, a 21% response rate. The survey was also posted on the City of Bellevue web site, and visitors to the web site completed and returned an additional 284 surveys. Results of this process were presented to Council on February 3, 2003.

Staff returned to Council on September 15, 2003 with an update on the Comcast cable franchise renewal.

In December, 2003 the City conducted a statistically valid telephone survey of Comcast cable subscribers as part of the ongoing community needs ascertainment process.

Staff successfully completed negotiation of the proposed Comcast cable TV franchise and presented the proposed franchise to Council on June 28, 2004. Council provided direction that the \$450,000 upfront capital contribution and the proposed \$0.25 PEG Fee (per subscriber per month) was acceptable to a majority of the Council and should be included in the franchise. Council also provided direction that the proposed Conduit Indefeasible Right of Use and the proposed Utility Tax Memorandum of Understanding were acceptable and should be included with the franchise.

Council directed that staff bring the proposed franchise, with exhibits, back to Council for final action.

Following the June 28 Council Study Session, Comcast requested two changes to the proposed franchise agreement.

- 1) Comcast has requested that Section 1.19, "Gross Revenues", be modified to conform to the language used in the 1984 Cable Policy Act, §622(b) that provides that, "For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services. To conform these definitions Comcast has requested that the word "used" be deleted as indicated below:

Section 1.19 "Gross Revenues" means all revenues derived directly or indirectly by the Franchisee or an Affiliated Entity from the operation of the Cable Communications System ~~used~~ to provide Cable Services within the Franchise Area. Gross Revenues shall not include (i) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Franchisee which are imposed directly on any Subscriber by the State, City or other governmental unit and which are collected by the Franchisee on behalf of said governmental unit; or (iii) any Access Capital Contributions as defined by this Franchise.

- 2) Comcast has requested that Section 15.3 (Revocation Procedures and Process) be modified to explicitly state that the final decision of the City Council revoking the franchise may be appealed to a court of competent jurisdiction.

Staff has accommodated this requested change by inserting the new provision 15.3.E that reads as follows:

Section 15.3. E. Grantee shall be bound by the City Council's decision to revoke the franchise unless an appeal to a court of competent jurisdiction, as specified in Section 19.5, is filed within thirty (30) days of the date of the Council's decision.

EFFECTIVE DATE:

If adopted by Council, Resolution No. 7040 will be effective immediately. The effective date of this franchise agreement is July 29, 2004.

OPTIONS:

- 1) Adopt Resolution No. 7040 granting a non-exclusive cable television franchise to Comcast of Bellevue, Inc. and direct the City Manager or his designee to request the \$450,000 upfront capital contribution pursuant to section 9.5 of the proposed franchise.
- 2) Reject Resolution No. 7040 and provide alternative direction for staff.

RECOMMENDATION:

Staff recommends Option 1. Adopt Resolution No. 7040 and direct the City Manager or his designee to request the \$450,000 upfront capital contribution pursuant to section 9.5 of the proposed franchise.

MOTION:

Move to adopt Resolution No. 7040 granting a non-exclusive cable television franchise to Comcast of Bellevue, Inc. and hereby direct the City Manager, or his designee, to request the \$450,000 upfront capital contribution pursuant to section 9.5.

ATTACHMENTS:

Summary of Key Franchise Provisions (Attachment A)
Proposed Resolution No. 7040 with exhibits (Attachment B)

AVAILABLE IN COUNCIL OFFICE:

N/A

Proposed Comcast Franchise Summary of Key Provisions

Attachment A

SECTION 1. DEFINITIONS

- 1.19 Gross Revenues Conforms definition to language used in the 1984 Cable Policy Act §622(b)
- 1.28 Right-of-Way Includes easements and similar public property as in the PSE franchises.
- 1.29 School Means any State accredited K-12 public or private educational institution in the City of Bellevue.

SECTION 2. GRANT OF FRANCHISE

- 2.1 Grant The franchise is an express authorization to provide cable services but it does not bar the imposition of any lawful conditions on the delivery of non-cable services, telecommunications services or information services.
- 2.2 Duration Five (5) years from the effective date of this Franchise.

SECTION 4. ADMINISTRATION AND REGULATION

- 4.2(G) No Rate Discrimination Rates and charges shall not disadvantage a cable-only subscriber in favor of subscribers who take cable and one or more other types of service(s) the company might offer.
- The company agrees, as a voluntary initiative throughout the term of the Franchise, to offer a discount of 30% for residents over 65 or who are disabled, for Basic Cable Services.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

- 5.1 Indemnification The company shall indemnify the City for any damages, claims, additional costs or expenses related to the failure to remove, adjust or relocate any of its facilities in a timely manner in accordance with any relocation required by the City for a city project.
- 5.3 Security Requires a franchise performance bond in the amount of \$500,000 and additional construction and/or Right-of-Way bonds as required.

SECTION 6. CUSTOMER SERVICE

- 6.1 Customer Service Must comply with the newly enacted Customer Service Standards and future changes or amendments to those standards.

SECTION 8. PROGRAMMING AND CHANNEL CAPACITY

- 8.3 Complementary Will provide a standard installation and one cable outlet of Basic Service to each fire station, police station, school, public library, and other municipal buildings without charge.

SECTION 9. GOVERNMENTAL AND EDUCATIONAL ACCESS AND I-NET

- 9.1 Access Channels Two (2) Access Channels for Government and Educational Access
- Two (2) additional Access Channels if there is a demonstrated community need and Subscriber demand
- 9.4 Institutional Network The City may require I-Net connections between the existing I-Net locations and/or additional I-Net connections to other City buildings or public schools at time and materials cost.
- The City may use its own conduit/fiber or conduit/fiber provided by a third party for the purpose of expanding the I-Net to achieve the most economical coverage.
- 9.5 Support for Capital Costs During the term of the franchise the City may request a one time Access Capital Contribution in an amount not to exceed \$450,000 to be used by the City to purchase, replace and maintain the Access programming and production equipment and facilities.
- The company may recover this amount as a "PEG Fee" in an amount, as set periodically throughout the term of the Franchise by the City Council, not to exceed \$0.25 per subscriber per month.
- 9.6 Return Lines Upon the anticipated relocation of Bellevue City Hall from its current location to the new City Hall location, the company shall construct and maintain a fiber-optic return line from that location to the City/BCC headend at Bellevue Community College and to the cable system headend from the City/BCC headend.

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

- 10.6 Relocation of Facilities (A) The company shall assume the costs (in accordance with applicable law) associated with any requirement of the City relocate its cable system facilities located in the Right-of-Way.

(B) At the request of any person/entity holding a valid City permit the company must relocate its facilities but the third party is not responsible for the cost if the project is identified by the City as a part of a City capital improvement project.

10.10 Undergrounding of Cable Requires undergrounding when there is a change or intensification of use or when all aerial facilities go underground and the utility poles are removed.

SECTION 11. SYSTEM DESIGN AND CAPABILITY

11(B) Upgrade Throughout the term of the franchise, the company shall provide additional facilities and equipment, expand cable system channel capacity, and otherwise upgrade or re-build its cable system as required to incorporate improvements in technology as necessary to reasonably meet the needs and interests of the community, in light of the costs thereof.

SECTION 15. DISPUTE RESOLUTION AND REVOCATION

15.1 Disputes Provides process for dispute resolution for non material obligations under the franchise.

15.2 Revocation
15.3 Procedure Incorporates the revocation and termination process and procedures from in the Cable Communication Ordinance Chapter 5.30 and includes stated right to appeal the final decision of Council.

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7040

A RESOLUTION Granting a Non-Exclusive Cable Television Franchise to Comcast of Bellevue, Inc. to Construct, Operate and Maintain a Cable Communications System in the City of Bellevue, Washington, and Setting Forth Conditions Accompanying the Grant of Franchise.

WHEREAS, Comcast of Bellevue, Inc. (hereinafter the "Franchisee") has requested renewal of its cable television franchise; and

WHEREAS, the City of Bellevue (hereinafter the "City") has analyzed and considered the technical ability, financial condition, legal qualification, and general character of the Franchisee, and has determined that it is in the best interest of the City and its residents to grant a cable communications franchise to the Franchisee; and

WHEREAS, the Franchisee and the City have agreed to be bound by the conditions set forth herein; and

WHEREAS, the City determines to exercise its authority, consistent with state and federal law, to grant a non-exclusive franchise renewal to the Franchisee in accordance with the provisions of this Franchise;

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

THIS FRANCHISE is made and entered into this _____ day of _____ 2004, by and between Comcast of Bellevue, Inc. (hereinafter referred to, together with any lawful successor, transferee, or assignee, as the "Franchisee") and the City of Bellevue, Washington (the "City").

SECTION 1. DEFINITIONS

For the purposes of this Franchise and all Exhibits attached hereto the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Access" includes Educational Access, Governmental Access and Public Access, collectively, and means the availability for noncommercial use by various governmental and educational agencies, institutions, organizations, groups and

individuals in the community, including the City and its designees, of particular channels on the Cable Communications System to receive and distribute video programming to Subscribers, as permitted under applicable law, including, but not limited to:

(A) "Educational Access" means Access where Schools are the primary users having editorial control over programming and services.

(B) "Governmental Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services; and

(C) "Public Access" means Access where the public is the primary user.

1.2 "Access Channel" means any Channel or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming.

1.3 "Access Capital Contribution" means the capital contribution paid to the City by the Franchisee in accordance with Section 9.

1.4 "Affiliated Entity" or "Affiliate" when used in connection with the Franchisee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with the Franchisee.

1.5 "Bad Debt" means amounts lawfully owed by a Subscriber and accrued as revenues on the books of the Franchisee but not collected after reasonable efforts by the Franchisee.

1.6 "Basic Cable Service" means the lowest service Tier that includes the retransmission of local television broadcast signals and Access Channels, or as such service Tier may be further defined by federal law.

1.7 "Cable Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and any amendments thereto.

1.8 "Cable Communications System" or "System" means the Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term shall not include:

(A) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(B) A facility that serves subscribers without using any public right-of-way;

(C) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934 (47 U.S.C., 201 et seq.), except that such facility shall be considered a Cable Communication System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(D) An open video system that complies with Section 653 of the Cable Act;
or

(E) Any facilities of any electric utility used solely for operating its electric utility systems.

1.9 "Cable Company" means any Person or group of Persons, including the Franchisee, who provides Cable Service over the Cable Communications System and directly or through one or more Affiliates owns a significant interest in such System or who otherwise controls or is responsible for, through any arrangement, any of the management and/or operation of the System.

1.10 "Cable Service" means the one-way transmission of video programming, or other programming service, to Subscribers and the Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.11 "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, as television channel is defined by FCC regulations.

1.12 "City" means the City of Bellevue, Washington, a municipal corporation, of the State of Washington.

1.13 "Designated Access Provider" means the entity or entities designated by the City to manage or co-manage Educational or Governmental Access Channels and facilities. The City may be a Designated Access Provider.

1.14 "Dwelling Unit" means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy.

1.15 "Franchise" means the non-exclusive right and authority to construct, maintain, and operate a Cable Communications System through use of the public streets, dedications, public utility easements, or other public ways in the Franchise Area pursuant to a contractual agreement executed by the City and the Franchisee.

1.16 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.17 "Franchise Fee" means consideration paid by the Franchisee for the privilege granted under this Franchise for the use of Streets and Public Ways and the privilege to construct and/or operate a Cable Communication System in the Franchise Area. The term Franchise Fee does not include:

- (A) Any tax, fee or assessment of general applicability;
- (B) Capital costs which are required by the Franchise to be incurred by the Franchisee for Public, Educational or Governmental Access facilities, including the support required in Section 9;
- (C) Requirements or charges incidental to the awarding or enforcing of the Franchise, including but not limited to, payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
- (D) Any fee imposed under Title 17, United States Code.

1.18 "Fully Allocated Costs" means the City's proportionate share of all direct and actual material and labor costs (excluding profit) of constructing, relocating or placing additional ducts, conduit or related structures by the Franchisee for the City alongside or together with ducts, conduit or structures by and for the Franchisee.

1.19 "Gross Revenues" means all revenues derived directly or indirectly by the Franchisee or an Affiliated Entity from the operation of the Cable Communications System to provide Cable Services within the Franchise Area. Gross Revenues shall not include (i) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Franchisee which are imposed directly on any Subscriber by the State, City or other governmental unit and which are collected by the Franchisee on behalf of said governmental unit; or (iii) any Access Capital Contributions as defined by this Franchise.

1.20 "Headend" means any facility used for signal reception and dissemination on the Cable Communications System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, and all other related equipment and facilities.

1.21 "Incremental Costs" means the direct and actual material and labor cost (excluding profit) of constructing, relocating or placing additional ducts, conduit or related structures by the Franchisee for the City excluding the costs of design, trenching, boring, pipe bedding, backfilling, compacting, restoring the surface, installation and other charges, costs or expenses that the Franchisee would otherwise incur to construct, relocate or place ducts, conduit or related structures for the Franchisee.

1.22 "Institutional Network" or "I-Net" means the dedicated network and equipment designed for private non-commercial voice, video and data communications to, from and among City departments, schools and libraries within the Franchise Area.

1.23 "Interconnect" or "Interconnection" means the actual physical linking of the Cable System's Access Channels with the Access Channels of another geographically contiguous cable system, including technical, engineering, physical, financial and other necessary components to accomplish, complete and adequately maintain such linking, in a manner that permits the transmission and receiving of Access programming between the Cable Communications System and other cable systems.

1.24 "Leased Access Channel" means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.

1.25 "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some hours on Saturday.

1.26 "PEG Fee" means the amount, as set periodically throughout the term of the Franchise by the City, to be collected from the subscriber each month.

1.27 "Person" means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.

1.28 "Right-of-Way" means land previously acquired or dedicated to the public, or hereafter acquired or dedicated to the public, and maintained under public authority or by others, including but not limited to public streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property located within the Franchise Area.

1.29 "School" means any State accredited K-12 public or private educational institution in the City of Bellevue.

1.30 "Subscriber" or "Customer" means any Person(s) who lawfully elects to receive Cable Services provided by the Franchisee by means of the Cable Communications System.

1.31 "Tier" means a category of Cable Services provided by the Franchisee for which a separate rate is charged.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to the Franchisee a nonexclusive authorization to make reasonable and lawful use of the Right-of-Way within the Franchise Area to construct, operate, maintain, reconstruct, repair and upgrade a Cable Communications System for the purpose of providing Cable Services. Such grant is subject to the terms and conditions set forth in this Franchise, and applicable law. This Franchise shall constitute both a right and an obligation to provide Cable Services and to fulfill the obligations set forth in the provisions of this Franchise.

(B) The Franchisee is granted the right to operate its Cable Communications System using the City's Right-of-Way in compliance with all lawfully enacted applicable City codes, ordinances, standards, procedures and regulations, provided that in the event of a conflict between the provisions of the City codes, ordinances, standards, procedures and regulations and this Franchise, the express provisions of this Franchise shall govern. The express provisions of this Franchise constitute a valid and enforceable contract between the parties. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to any ordinance, rule, regulation, resolution, or other enactment of the City, except in the lawful exercise of the City's police power. The Franchisee reserves the right to challenge provisions of any ordinance, rule, regulation, resolution or other enactment of the City that conflicts with the rights granted by this Franchise, either now or in the future.

(C) This Franchise shall not be interpreted to prevent the City from imposing other conditions, to the extent permitted by law, including additional compensation for use of the Right-of-Way, should the Franchisee provide service(s) other than Cable Service.

(D) No rights shall pass to the Franchisee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement or authorization required by the City for Right-of-Way users in connection with operations on or in the Right-of-Way or other public property, including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise, including, without limitation, permits and agreements for placing devices

on poles, in conduits or in or on other structures.

(E) This Franchise is intended to convey limited rights and interests only as to those Right-of-Ways in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Franchisee with any interest in any particular location within the Right-of-Way. This Franchise shall not be deemed to authorize the Franchisee to provide service, or install cables, wires, lines, or any other equipment or facilities upon City property other than the Right-of-Way, or upon private property without the owner's consent, or to utilize publicly or privately owned utility poles or conduits without a separate agreement with the owners thereof.

(F) No grant of use by this Franchise shall extend to the Franchisee any permission or use outside the purpose, dedication, or reservation granted to or held by the City. Nothing herein shall prohibit the City or the Franchisee from exercising its rights under Section 621 of the Communications Act of 1934, as amended, 47 U.S.C. 541.

(G) This Franchise is an express authorization to provide Cable Services. This Franchise is not a bar to the imposition of any lawful conditions on the Franchisee with respect to Franchisee's delivery of non-cable services, telecommunications services or information services, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve the Franchisee of any obligation it may have to obtain from the City an authorization to provide non-cable services, telecommunications services or information services or relieve the Franchisee of its obligation to comply with any such authorization(s) that may be lawfully required. However, this Franchise shall not be read as a concession by the Franchisee that it needs authorization to provide non-cable services, telecommunications services or information services.

2.2 Duration

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be five (5) years from the effective date of this Franchise.

2.3 Effective Date

(A) This Franchise and the rights, privileges and authority granted hereunder shall take effect and be in force from and after the effective date of this Franchise. The effective date of this Franchise shall be July 29, 2004.

(B) Within forty-five (45) days after the effective date of the Resolution granting this Franchise, the Franchisee shall signify its acceptance of this Franchise by executing a written acceptance of this Franchise. This Franchise is voidable unless accepted in writing by the Franchisee within this timeframe.

(C) The grant of this Franchise shall have no effect on the Franchisee's duty under the prior franchise, in effect prior to the effective date of this Franchise, to indemnify or insure the City against acts and omissions occurring during the period that the prior franchise was in effect, nor shall it have any affect upon liability to pay all Franchise Fees which were due and owed under a prior franchise.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City or its predecessors to any Person to use any property, Right-of-Way, easement, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar uses allowed the Franchisee hereunder. The City may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with the Franchisee's authority under this Franchise and for such additional franchises for other cable communication systems as the City deems appropriate.

2.5 Grant of Other Franchises

In the event the City enters into a cable franchise with any other Person or entity other than the Franchisee to use the City's streets or Right-of-Way for the purpose of constructing or operating a cable system to provide Cable Service to all or any part of the Franchise Area in which the Franchisee is providing Cable Service under the terms and conditions of this Franchise then the parties agree that the terms and conditions of the cable franchise, taken as a whole, should be substantially similar in order that one Cable Company not be granted an unfair competitive advantage over another. However, nothing in this provision shall be constructed in such a way as to limit the City's authority to enter into other cable franchises that the City, in its sole discretion, determines meet the cable related needs and interests of the community, considering both the added risk of entry into the market and the benefits of incumbency. The parties recognize and acknowledge that other cable franchises granted by the City might contain terms and conditions that are different than the terms and conditions the Franchisee has negotiated and accepted in this Franchise. Nothing in this provision shall be construed so as to require certain terms and conditions in other cable franchises granted by the City and/or require that the City modify or change the terms and conditions of this Franchise.

2.6 Familiarity with Franchise

The Franchisee acknowledges and warrants by acceptance of the rights and privileges granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions, terms and conditions herein. The Franchisee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are

commercially practicable at this time and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.7 Effect of Acceptance

By accepting the Franchise, the Franchisee: acknowledges and accepts the City's legal right to issue and enforce the Franchise; agrees that it will not oppose the City's intervening, to the extent it is legally entitled to do so, in any legal or regulatory proceeding affecting the Cable Communications System; accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the use of the City's Right-of-Way, the Franchisee shall pay as a Franchise Fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Franchisee's Gross Revenues. Accrual of such Franchise Fee shall commence as of the effective date of this Franchise.

3.2 Maximum Franchise Fee

The parties acknowledge that, at present, applicable federal law limits the City to collection of a Franchise Fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that at any time during the term of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues in any twelve (12) month period, it may do so with sixty (60) days written notice to the Franchisee, provided that all other franchised Cable Companies in the Franchise Area over which the City has jurisdiction are treated in an equivalent manner.

3.3 Payments

The Franchisee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates. Late payments shall be subject to applicable interest and penalties.

3.4 Acceptance of Payment

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

Franchisee. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by the Franchisee was due.

3.5 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the City on a form approved by the City, verified by an officer of the Franchisee, containing an accurate statement in summarized form, as well as in detail, of the Franchisee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable Communications System.

3.6 Audits

On an annual basis, upon thirty (30) days' prior written notice, the City shall have the right to conduct an independent audit of the Franchisee's records necessary to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. Provided the Franchisee cooperates in making all relevant records available upon request, the City will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous six (6) years. Any additional amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to the Franchisee by the City, which notice shall include a copy of the audit findings, and the Franchisee's agreement that the audit findings are correct. If the audit shows that there has been a material underpayment of Franchise Fees by three percent (3%) or more in a calendar year, then the Franchisee shall pay the cost of the audit, such cost not to exceed five thousand dollars (\$5,000) for each year of the audit period.

3.7 Financial Records

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

3.8 Interest and Penalties on Late Payments

In the event that any Franchise Fee payment is not received by the City by the date due, interest shall be charged from such date at the rate of twelve percent (12%) per annum, or the statutory rate for judgments, whichever is less, in addition to any applicable penalties.

3.9 Additional Commitments Not Franchise Fees

No term or condition in this Franchise shall in any way modify or affect the

Franchisee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of the Franchisee's Gross Revenues in any twelve (12) month period, the Franchisee agrees that the additional commitments including Access Capital Contribution, Access Channels and the I-Net are excluded from the definition of Franchise Fees herein and are not Franchise Fees. Such additional commitments will not be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees to be passed through to Subscribers pursuant to any federal law.

3.10 Payment on Termination

If this Franchise terminates for any reason, the Franchisee shall file with the City within one hundred twenty (120) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Franchisee since the end of the previous fiscal year. Within forty-five (45) days of the filing of the certified statement with the City, the Franchisee shall pay any unpaid amounts as indicated. If the Franchisee fails to satisfy its remaining financial obligations as required in this Franchise, the City may do so by utilizing the funds available in any security provided by the Franchisee.

SECTION 4. ADMINISTRATION AND REGULATION

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

4.1 Rates and Charges

The Franchisee shall comply with applicable laws regarding the setting of all rates and charges for Cable Services and cross subsidization. All Franchisee rates and charges for Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

4.2 No Rate Discrimination

Franchisee's rates and charges shall be non-discriminatory so as to not disadvantage any Subscriber or class of Subscribers, including those who only subscribe to Cable Services offered by the Franchisee in favor of Subscribers who subscribe to Cable Services and one or more other types of service(s) the Franchisee might offer.

Nothing herein shall be construed to prohibit:

- (A) The temporary reduction or waiving of rates or charges in conjunction

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with limited promotional campaigns;

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;

(C) The offering of bulk discounts for Multiple Dwelling Units.

The Franchisee shall as a voluntary initiative throughout the term of the Franchise, offer a discount of thirty percent (30%) from its published rate card to Subscribers for Basic Cable Services (provided they are not already receiving a package discount) who are aged 65 years or older or disabled, provided that such individual(s) are the legal owner or lessee/tenant of their Dwelling Unit and that their combined disposable income from all sources does not exceed the Housing and Urban Development Standards for the Seattle/Everett Area for the current and preceding calendar year.

The Franchisee shall permit Subscribers to make any in-residence connections the Subscriber chooses without additional charge and without penalizing the Subscriber therefore. If any in-home connection requires service from the Franchisee due to signal quality, signal leakage or other factors caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged appropriate service charges by the Franchisee.

4.3 Filing of Rates and Charges

(A) Throughout the term of this Franchise, the Franchisee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require the Franchisee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this subsection, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than twelve (12) consecutive months (or such other period as may be approved by the City) to purchase Cable Services at such rate or charge.

(B) On an annual basis, the Franchisee shall, upon request, provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by the Franchisee. The schedule shall include a description of the price, terms and conditions established by the Franchisee for Leased Access Channels.

4.4 Late Fees

If the Franchisee assesses any kind of fee for late payment, such fee shall comply with applicable law.

4.5 Performance Evaluation

(A) Special evaluation sessions may be held at any time upon request by the City during the term of this Franchise.

(B) All evaluation sessions shall be open to the public and announced at least one (1) week in advance in a newspaper of general circulation in the Franchise Area.

(C) Topics which may be discussed at any evaluation session may include, but are not limited to Cable Service rates, Franchise Fees, free or discounted Cable Services, application of new technologies, System performance, Cable Services provided, customer complaints, privacy, amendments to this Franchise, judicial and FCC rulings, line extension policies, and the City's or the Franchisee's rules, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision therein.

(D) During evaluations under this Section, the Franchisee shall fully cooperate with the City and shall provide such information and documents as the City may require under Section 7 of the Franchise to perform the evaluation.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. The Franchisee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, authorized agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for the Franchisee, its authorized agents, or its employees, or by reason of any neglect or omission of the Franchisee, its authorized agents or its employees. The Franchisee shall consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. Subject to applicable law, the Franchisee shall indemnify the City for any damages, claims, additional costs or expenses assessed against, or payable by, the City related to, arising solely out of, or resulting solely from the Franchisee's failure to remove, adjust or relocate any of its facilities in the Streets in a timely manner in accordance with any relocation required by the City for a City project.

(C) Additional Circumstances. The Franchisee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses in

any way arising out of any failure by the Franchisee to secure consents from owners or authorized distributors or licensees/licensors of programs to be delivered by the System, provided however, the City shall indemnify, defend and hold the Franchisee harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses arising out of the use of the Government Access Channel programmed and controlled by the City and/or its Designated Access Provider(s) or use by the City of the Emergency Alert System.

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

(E) Duty of Defense. The fact that the Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to the Franchisee's duty of defense and indemnification under this Section.

(F) Duty to Give Notice. The City shall give the Franchisee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by this Section. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to the Franchisee and the Franchisee shall have the obligation and duty to defend any claims arising there under, and the City shall cooperate fully therein.

(G) Separate Representation. 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 the Franchisee to represent the City, the Franchisee shall pay attorneys' fees and expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by the Franchisee. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by the Franchisee.

5.2 Insurance Requirements

(A) General Requirement. The Franchisee must have adequate insurance during the entire term of this Franchise to protect the City against claims for injuries to Persons or damages to property which in any way relate to, arise from or are connected with this Franchise, or involve the Franchisee, its agents, representatives, contractors, subcontractors and their employees.

(B) Initial Insurance Limits. The Franchisee must maintain during the

Franchise term and for a period of twelve (12) months after expiration, termination or non-renewal thereof, insurance in effect in accordance with the minimum insurance limits herein set forth by the City from time to time. The Franchisee shall obtain policies or provide evidence of self insurance for the following initial minimum insurance limits:

- (1) Commercial General Liability: Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury or death of a person and/or property damage;
- (2) Automobile Liability: Two million dollars (\$2,000,000) per person property damage; and
- (3) Employer's Liability: Two million dollars (\$2,000,000).
- (4) Workers Compensation Insurance in accordance with state law requirements.

(5) The amounts listed above are the minimum deemed necessary by the City to protect the City's interests in this matter. The City has made no recommendation to the Franchisee as to the insurance necessary to protect the Franchisee's interests and any decision by the Franchisee to carry or not carry insurance amounts in excess of the above is solely that of the Franchisee. The Franchisee shall be responsible for judgments, settlements, damages, costs, attorneys' fees and expenses that exceed the limits of the Franchisee's insurance coverage.

(C) Endorsements.

- (1) All policies shall contain, or shall be endorsed so that:
 - (a) The City shall be designated as an additional insured.
 - (b) The Franchisee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and duly authorized agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Franchisee's insurance and shall not contribute to it, provided the occurrence arises out of the Franchisee's acts or negligence; and
 - (c) The Franchisee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(2) The policy shall not be cancelled or materially altered so as to be out of compliance with the requirements of this Section without thirty (30) days written notice first being given to the City. If the insurance is cancelled or materially

altered so as to be out of compliance with the requirements of this Section within the term of this Franchise, the Franchisee shall provide a replacement policy. The Franchisee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.

(D) Acceptability of Insurers. The insurance obtained by the Franchisee shall be placed with insurers with a Best's rating of no less than "A".

(E) Verification of Coverage. The Franchisee shall furnish the City with certificates of insurance and an endorsement reflecting additional insured status. The certificates for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the City at the time of acceptance of this Franchise by the Franchisee with existing insurance coverage to be maintained by the Franchisee until that date. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

5.3 Security

(A) The Franchisee shall provide a single Franchise performance bond to ensure Franchisee's faithful performance of any and all of the terms and conditions of this Franchise. The Franchise performance bond shall be in the amount of five hundred thousand dollars (\$500,000).

(B) The City reserves the right, consistent with Bellevue City Code, Chapter 14.30, as from time to time amended, to require, and the Franchisee shall provide, additional construction and/or Right-of-Way bonds.

(C) The bond(s) shall be in a form reasonably acceptable to the City. The Franchisee shall pay all premiums or costs associated with maintaining the bond(s), and shall keep the same in full force and effect at all times during the term of this Franchise.

(D) The parties agree that the Franchisee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by the Franchisee or limit the liability of the Franchisee to the amount of the bond(s) or otherwise limit the City's recourse to any other remedy available at law or equity.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

The Franchisee shall comply with Customer Service Standards as provided in the City Code as it exists on the date of adoption of this Franchise, and as may be lawfully amended from time to time by the City thereafter. It is acknowledged and agreed that the City may, from time to time, modify or add to the Customer Service

Standards as permitted by applicable law. The Franchisee reserves the right to challenge any Customer Service Standards that it believes are inconsistent with federal law or the contractual rights granted in this Franchise.

6.2 Subscriber Privacy

The Franchisee shall comply with privacy rights of Subscribers in accordance with applicable federal, State and local laws.

6.3 Customer Service Location(s)

Upon adoption of this Franchise, the Franchisee shall have in place a full service customer service center located at 14870 N.E. 95th St. in Redmond, WA. Throughout the Franchise term, the Franchisee must maintain this customer service location or another full-service customer service location conveniently located on the Eastside, or alternatively, two (2) co-location customer service locations conveniently located on the Eastside (with one (1) located within the City limits of Bellevue) that will be open during Normal Business Hours to provide Subscribers the opportunity to return Subscriber equipment and to make bill payments. If however, a customer service location is required to relocate, the Franchisee shall be allowed a reasonable period of time to establish a new location.

6.4 Customer Service Agreement and Manual

(A) The Franchisee shall provide to Subscribers an accurate, comprehensive service agreement and customer installation packet for use in establishing Subscriber service. This material shall, at a minimum, contain the following:

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

Franchisee. This information shall be prominently displayed in the installation packet.

(9) Upon request by the City, the Franchisee shall use its best efforts to include information about Access channel programming in the installation packet provided to Subscribers. The City shall supply such materials, for insertion in the packet, in a format consistent with the Franchisee's requirements.

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

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

The City shall have access to, and the right to inspect, any books and records of the Franchisee and/or its Affiliates, if necessary, for the enforcement of the terms of this Franchise. The Franchisee shall not deny the City access to any of the Franchisee's records on the basis that the Franchisee's records are under the control of any parent corporation, Affiliated Entity or a third party. The City may, in writing, request copies of any such records or books, and the Franchisee shall provide such copies within thirty (30) days of the receipt of such request. One copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Franchisee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Franchisee may request, in writing within ten (10) days of receipt of such request, that the City inspect them at the Franchisee's local offices. If any books or records of the Franchisee are not kept in a local office and are not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Franchisee.

7.2 Confidentiality

The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. The Franchisee shall be responsible for clearly and conspicuously identifying the work confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under state or federal law. If the City receives a demand from any Person(s) for disclosure of any information designated by the Franchisee as confidential, the City shall, so far as consistent with applicable law, advise the Franchisee and provide the Franchisee with a copy of any written request by the

party demanding access to such information within a reasonable time.

7.3 Copies of Federal and State Reports

Upon written request, the Franchisee shall submit to the City copies of any pleadings, applications, notifications, communications and documents of any kind, submitted by the Franchisee or its Affiliates to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of the Franchisee's Cable Communications System within the Franchise Area. The Franchisee shall submit such documents to the City no later than thirty (30) days after receipt of the City's request. The Franchisee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all other reports, documents and notifications provided to any federal, State or local regulatory agency as a routine matter in the due course of operating the Franchisee's Cable Communications System within the Franchise Area, the Franchisee shall make such documents available to the City upon the City's written request.

7.4 Complaint File and Reports

The Franchisee shall keep an accurate and comprehensive compilation of any and all customer complaints received and the Franchisee's actions in response to those complaints, in a manner consistent with the privacy rights of Subscribers. The Franchisee shall provide an executive summary report to the City on an annual basis (unless requested semi-annually by the City) within one-hundred twenty (120) days of the end of each year (or six month period as the case may be) which shall include the following information:

- (A) Nature and type of customer complaints;
- (B) A summary of unplanned service interruptions, including the frequency, location and customer impact information if such information is available;
- (C) Any significant construction activities which affected the quality or otherwise enhanced the service of the Cable Communications System;
- (D) Average response time for service calls;
- (E) Phone activity report;
- (F) New areas constructed and available for Cable Service, including Multiple Dwelling Units;
- (G) Video programming changes (additions/deletions); and

(H) Such other information as reasonably requested by the City.

7.5 False Statements

Any intentional false or misleading statement or representation in any report required by this Franchise shall be a material breach of this Franchise and may subject the Franchisee to all remedies, legal or equitable, which are available to the City under this Franchise or otherwise.

SECTION 8. PROGRAMMING AND CHANNEL CAPACITY

8.1 Obscenity

The Franchisee shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any programming which is obscene under applicable federal, State or local law.

8.2 Parental Control Device

Upon request by any Subscriber, the Franchisee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. The Franchisee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

8.3 Complementary Cable Service

Upon request of the City, the Franchisee shall provide without charge, a standard installation and one outlet of Basic Service to each fire station, police station, School, public library, and other municipal buildings (excluding those buildings or portions thereof that house or occupy prison/jail populations) provided that the buildings are either owned and occupied or leased and occupied by the City, and provided further that the buildings are either already served or are within 125 aerial feet (a Standard Installation) of its Cable Communications System. The Franchisee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the City or building owner/occupant agrees to pay the Incremental Cost (time and materials) of any necessary Cable Communications System extension and/or non-Standard Installation. If additional outlets of Cable Service are provided to such buildings beyond those required herein, the building owner/occupant shall pay the usual installation and service fees associated therewith. The Franchisee shall be permitted to recover the Franchisee's actual cost for any additional converters required.

During renovation of the new City Hall, Franchisee agrees to install one cable drop into the telecommunications room of the new City Hall, at its sole cost and expense. The cable will be terminated at a designated internal location within City Hall, at a standard termination panel provided by Franchisee. The City will provide

wall mount backboard for the termination panel. The termination panel will be the point of demarcation. Franchisee will cooperate and consult with the City or its contractor on the design and installation of any internal cable wiring to ensure that the internal cable wiring is adequate and acceptable for distributing Franchisee's cable signal throughout the building and will not interfere with the Franchisee's System. The City shall be responsible for maintenance of all internal cable wiring from the City side of demarcation point.

The Cable Service described herein is a voluntary initiative of Franchisee that shall be provided throughout the term of the Franchise.

The Cable Service provided in accordance with this subsection shall not be distributed beyond the originally installed outlet without authorization from the Franchisee.

The Cable Service provided shall not be used for commercial purposes and the City shall take reasonable steps to limit display in public areas to the City Access Channels. The City shall take reasonable precautions to prevent any use of the Franchisee's Cable Communication System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable Communication System. To the extent not inconsistent with other provisions in this Franchise, the City shall hold the Franchisee harmless from any and all liability or claims arising out of the use of Cable Service at the City facilities, educational facilities and other public buildings required by this Section.

8.4 Ascertainment of Programming and Customer Satisfaction

In lieu of any other customer survey requirements in the Bellevue City Code, the Franchisee shall, upon request of the City, conduct a statistically valid telephone survey of Subscribers. The survey shall not be requested more frequently than once every three (3) years and shall be at the sole expense of the Franchisee. The survey may include such items as programming, response to community needs, satisfaction and dissatisfaction with the Cable Service offered by the Franchisee and customer service. The Franchisee shall consult and cooperate with the City in developing survey questions. The Franchisee shall provide the results of such survey to the City within one (1) month after the survey results become available. Nothing herein shall be construed to limit the right of the City to conduct its own surveys at its own expense.

SECTION 9. GOVERNMENTAL AND EDUCATIONAL ACCESS AND I-NET

9.1 Access Channels

In order to meet the demonstrated community need for Access Channels and programming, the Franchisee shall make available the following Access Channels throughout the Franchise Area:

(A) Two (2) Access Channels, each of which shall be made available as part of the Basic Cable Service Tier, as follows:

(1) One Government Access Channel, as currently provided and programmed as BTV, for use by the City for Government Access programming, as the City sees fit; and

(2) One Educational Access Channel, as currently provided and programmed by Bellevue Community College, as part of the community college programming consortium, except that the City reserves the right to designate another Educational Access programmer, as the City may see fit.

(B) Franchisee agrees, as a voluntary initiative, to continue to make available to Subscribers in the City a Public Access channel so long as it is carried on a regional basis, recognizing however, that neither the Franchisee nor the City programs or exercises editorial control over any Public Access Channel(s) carried by the Franchisee.

(C) If there is a demonstrated community need and Subscriber demand for additional Access Channel programming as reasonably determined by the City, then two (2) additional Access Channels shall be made available to the City within one-hundred eighty (180) days of receipt by the Franchisee of a written request from the City.

(D) In the event the Franchisee makes any change in the System and related equipment and facilities or in signal delivery technology, which change directly or indirectly affects the signal quality or transmission of any Access Channel programming or services, the Franchisee shall, at its own expense, take necessary technical steps, provide necessary technical assistance, acquire new equipment, provide training, and in addition, provide the necessary assistance and foregoing equipment so that the Access facilities and equipment may be used as intended to ensure that delivery of Access signals is not diminished or adversely affected, including, among other things, so that live and taped programming can be cablecast with as good or better signal quality than existed prior to such change. For example, these provisions shall apply if Basic Service on the Cable Communication System is converted from an analog to a digital format, such that the Access Channels must also be converted to digital in order to be received by Subscribers.

9.2 Access Channel Identification/Location/Relocation/Bill Insertions

The Franchisee will use reasonable efforts to minimize the movement of Access Channel assignments. The Franchisee shall provide to the City a minimum of sixty (60) days notice prior to any relocation of any Access Channels, unless the change is required by federal law, in which case the Franchisee shall give the City the maximum notice possible.

The Franchisee, upon request, shall provide the City the opportunity to

include one (1) Access Channel bill insertion and one (1) Access Channel bill message per year. The City shall be responsible for the costs of printing its bill insertion, the cost of inserting the information into the Franchisee's bills and for any incremental postage costs. Bill insertions must conform to the Franchisee's reasonable mailing requirements. The Franchisee shall be provided an opportunity to review and approve all Access bill insertions.

9.3 Access Interconnections

(A) The Access Channels required by this Franchise shall be interconnected with the Access Channels of geographically adjacent cable communication systems that are owned and operated by the Franchisee or an Affiliate of the Franchisee so long as the City has authorization for use of Access programming originated in geographically adjacent communities. The Franchisee shall take all necessary technical steps to ensure that downstream transmissions provide an adequate signal quality in accordance with FCC regulations.

(B) At such time as the City has authorization for use of Access programming originated in geographically adjacent communities, the Franchisee shall, in accordance with this Franchise, Interconnect the Access Channels required by Section 9 herein with any other geographically adjacent cable communication systems not owned or operated by the Franchisee or an Affiliate of the Franchisee upon request of the City. Interconnections shall be located either at the jurisdictional boundaries or at another mutually agreed upon location. The City shall not request interconnection in this case except under circumstances where it can be accomplished without undue burden or excessive cost to the Subscribers. The Franchisee shall not be required to interconnect with the other cable communication system unless the cable operator of that system is willing to do so and pay for its own costs of constructing and maintaining the interconnect up to the demarcation point.

9.4 Government and Educational Institutional Network.

(A) Prior to the effective date of this Franchise, the Franchisee constructed Institutional Network (I-Net) connections to designated public buildings pursuant to an Institutional Network Agreement (City Clerk Filed No. 28346, May 24, 2000) and the Franchisee's obligations to provide those I-Net connections will continue, as per the Institutional Network Agreement, throughout the term of this Franchise, and subject to the indefeasible right of use agreement (attached as Exhibit A and hereby incorporated by reference as if fully set forth) setting forth the terms and conditions for Franchisee's relocation of the I-Net fiber(s) from the current City Hall to the new City Hall location, at Franchisee's cost and expense, using conduit and pathway owned and provided by the City.

(B) The Franchisee recognizes that during the term of this Franchise, the City may require redundant I-Net connections between the existing I-Net locations and/or additional I-Net connections to other City buildings and/or additional I-Net

connections to public schools located within the Franchise Area. The Franchisee therefore agrees that, within 120 days of the City's written request, the Franchisee will prepare and submit to the City its reasonable time and materials estimate of the cost for the Franchisee to design and construct the redundant and/or additional I-Net connections and/or incorporate those redundant or additional I-Net connections into the existing I-Net and a reasonable timeline for completion of the I-Net construction.

(C) If the City rejects Franchisee's estimate of costs, then the City shall only be responsible for reimbursing the Franchisee of the actual and reasonable cost incurred by the Franchisee to prepare the City's I-Net cost estimate.

(D) If the City accepts Franchisee's estimate of costs, including reasonable design costs and the cost of construction, and directs the Franchisee in writing to proceed with I-Net infrastructure construction, the I-Net infrastructure will be constructed, acceptance tested, terminated and maintained by the Franchisee in accordance with terms and conditions of a new Institutional Network Agreement or an amendment to the existing Institutional Network Agreement for the new I-Net connection(s) as negotiated by the parties.

(E) So long as it is technically feasible and does not interfere with normal operations of the Cable System, the City may use existing City conduit and/or fiber, or fiber and/or conduit provided by a third party, for the purpose of expanding the I-Net to achieve the most economical coverage. Upon the request of the City, the Franchisee shall interconnect the existing I-Net infrastructure with the City's conduit and/or fiber, or any fiber and/or conduit provided by a third party. The point of demarcation for maintenance will be specified at the time of interconnection.

9.5 Support for Access / I-Net Capital Costs

In order to help the City meet the demonstrated need for Access programming, production equipment, facilities and the Institutional Network, the Franchisee shall pay to the City an Access Capital Contribution as follows:

(A) During the term of this Franchise, the Franchisee shall provide, upon the written request of the City, a one time Access Capital Contribution in an amount not to exceed Four Hundred Fifty Thousand Dollars (\$450,000) to be used by the City to purchase, replace and maintain the Access programming and production equipment and facilities. The City shall have discretion to allocate the Access Capital Contribution in accordance with applicable law. Franchisee may recover this amount as an "external cost" as such term is used in 47 C.F.R. Section 76.922(f) on the date of this Franchise over the remainder of the five (5) year term of the Franchise and/or any extension of the term of this Franchise necessary to allow recovery through a PEG Fee set by the City per Section 9.5 (B) below.

(B) An amount, as set periodically throughout the term of the Franchise by the City, not to exceed twenty-five cents (\$0.25) per subscriber per month when combined with and including the recovery of the one time Access Capital

Contribution as above. The Franchisee may recover this amount to the extent and in a manner provided for in federal regulations. Such payments are to be made quarterly on the same schedule as Franchise Fees. With each quarterly payment, Franchisee will prepare and submit a report, in a form acceptable to the City, that shows how such payments were calculated. The Franchisee shall not be responsible for paying capital contributions on gratis or Bad Debt accounts.

The City and the Franchisee agree that the recovery of any Access Capital Contribution shall be referred to on Subscribers' bills as a "PEG Fee", or language substantially similar thereto.

9.6 Return Lines

(A) The Franchisee shall continue to provide and maintain a fiber-optic return line from the current City Hall to the System Headend for so long as such return line is necessary. It is the Franchisee's responsibility to ensure that the signal carried on the existing return line from the existing point of demarcation back to the system headend meets FCC technical standards. Similarly, it is the City's responsibility to ensure the technical quality of the signal from the BTV origination equipment to the designated demarcation point.

(B) Upon the anticipated relocation of Bellevue City Hall from its current location to the new City Hall location, the Franchisee shall construct and maintain a fiber-optic return line from that location to the City/BCC headend at Bellevue Community College (or to such other City headend as the City and the Franchisee may agree) and to the System Headend from the City/BCC headend.

(C) The fiber-optic return line from the new City Hall to the City/BCC Headend and then to the System Headend will be terminated at a designated internal location within City Hall at a standard termination panel provided by Franchisee. The City will provide wall mount backboard and a power source for the termination panel.

(D) The termination panel will be the fiber demarcation point. The Franchisee shall own and maintain the fiber optic return line from the termination panel at City Hall to BCC and from there to the System Headend.

(E) The City and/or BCC shall provide the necessary optronic transmitter(s) and receiver(s) and shall be responsible for the signal quality on the return line from the new City Hall to the City/BCC Headend.

(F) The Franchisee shall provide the necessary optronic transmitter(s) and receiver(s), capable of accepting, transmitting and receiving the video/audio signal(s) from the City/BCC Headend equipment without degradation, limitation or loss of signal. For purposes of signal quality, the identified point of demarcation will be the input connector on the optronic transmitter(s) provided by the Franchisee at the City/BCC Headend. Once the optronic transmitter(s) provided by the Franchisee

receives the signal(s) from the City/BCC Headend, it shall be transmitted to the System Headend. The Franchisee shall be responsible for the signal quality of the return line from the City/BCC Headend to the System Headend.

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

10.1 Construction

(A) Subject to applicable laws, regulations and ordinances of the City and the provisions of this Franchise, the Franchisee may perform all maintenance, construction, repair, upgrade and reconstruction necessary for the operation of its System. All construction and maintenance of any and all of the Franchisee's facilities within the Right-of-Way shall, regardless of who performs the construction, be and remain the Franchisee's responsibility. The Franchisee shall apply for, and obtain, all permits necessary for construction of any facilities and for excavating and laying any facilities underground within the Right-of-Way. The Franchisee shall pay all applicable fees upon issuance of the requisite construction permits by the City to the Franchisee.

(B) The Franchisee may make excavations in Right-of-Way for any facility needed for the maintenance or extension of the Franchisee's System. Prior to doing such work, the Franchisee shall apply for, and obtain, appropriate permits from the City, and give appropriate notices to the City. As a condition of any permits so issued, City officials may impose such conditions and regulations as are lawful and necessary for the purpose of protecting any structures in such Right-of-Way, proper restoration of such Right-of-Way and structures, protection of the public and the continuity of pedestrian or vehicular traffic.

(C) In the event that emergency repairs are necessary, the Franchisee shall immediately notify the City of the need for such repairs. The Franchisee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.2 Location of Facilities

(A) Upon the City's reasonable request, in connection with the design of any City project, the Franchisee will verify the location of its underground System within the Franchise Area by marking on the surface the location of its underground facilities as required by law. However, when necessary for the actual design of any City project, the City may reasonably request that the Franchisee identify the exact location of its underground System by excavating (e.g., pot holing) at no expense to the City.

(B) Upon the City's reasonable request, the Franchisee will provide, at no expense to the City, copies of available drawings, maps or plans showing the location of Franchisee's System within the Franchise Area.

10.3 Restoration of Right-of-Way and Other Public Property

If the Franchisee excavates, disturbs or damages any Right-of-Way or other public property, then the Franchisee shall be responsible for restoration in accordance with applicable regulations. The City may, after providing notice to the Franchisee and an opportunity to cure a failure in restoration, or without notice where the excavation, disturbance or damage may create a risk to public health, safety or welfare, or cause delay or added expense to a public project or activity, repair, refill or repave any excavation, disturbance or damage. The cost thereof, including the costs of inspection and supervision, shall be paid by the Franchisee. All excavations made by the Franchisee in Right-of-Way shall be properly safeguarded for the prevention of accidents.

10.4 Maintenance and Workmanship

(A) The Franchisee's Cable Communications System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the Right-of-Way by, or under, the City's authority.

(B) The Franchisee shall provide and use any equipment and appliances necessary to control and carry the Franchisee's signals so as to prevent injury to the City's property or property belonging to any Person. The Franchisee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair and safe and presentable condition.

(C) The Franchisee will maintain membership in good standing with the Utility Coordinating Council One Call Center or other similar or successor organization designated to coordinate underground equipment locations and installations. The Franchisee shall abide by RCW Chapter 19.122 (Washington State's "Underground Utilities" statutes) and will further comply with and adhere to local procedures, customs and practices relating to the one call locator service program.

(D) The Franchisee shall give reasonable notice to private property owners of construction work in adjacent Right-of-Way.

10.5 Acquisition of Facilities

Upon the Franchisee's acquisition of facilities in any Right-of-Way, or upon the addition or annexation to the City of any area in which the Franchisee owns or operates any facility, the Franchisee shall, at the City's request, submit to the City a statement describing all facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent the Franchisee has possession of such information. Such facilities shall immediately be subject to the terms of this Franchise.

10.6 Relocation of Facilities

(A) Movement of the System For and By the City. Nothing in this Franchise shall prevent the City or public utilities from constructing any public work or capital improvement. The Franchisee shall assume the costs (in accordance with applicable law) associated with any requirement of the City to relocate its Cable Communications System facilities located in the Right-of-Way. Following sixty (60) days written notice by the City, the Franchisee shall remove, replace, relocate, modify or disconnect any of its Facilities within any Right-of-Way, or on any other property of the City, except that the City shall provide at least ninety (90) days written notice of any major City capital improvement project which would require the removal, relocation, replacement, modification or disconnection of the Franchisee's facilities or equipment from the Right-of-Way. If the Franchisee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Franchisee. The Franchisee shall remit payment to the City within forty-five (45) days of receipt of an itemized list of those costs.

In the case of fire, disaster or other emergency, the City may remove or disconnect the Franchisee's facilities and equipment located in the Right-of-Way or on any other property of the City. The City shall provide reasonable notice to the Franchisee prior to taking such action and shall provide the Franchisee with the opportunity to perform such action unless, in the City's sole judgment, the eminent threat to public health safety or welfare make such notice impractical.

(B) Movement for Other Permittees. At the request of any Person holding a valid City permit and upon reasonable advance notice, the Franchisee shall remove, replace, relocate, modify or disconnect any of its Facilities or temporarily raise, lower or remove its Facilities as necessary to accommodate the work under the permit. Unless the project is identified by the City as a part of a City capital improvement project, the cost must be paid by the permit holder, and the Franchisee may require the estimated payment in advance.

(C) If the City requires the subsequent relocation of any Cable Communications System equipment or facilities within five (5) years from the date of relocation of such facilities pursuant to this Section, the City shall bear the entire cost of such subsequent relocation.

(D) The City shall not be required to obtain easements for the Franchisee.

10.7 Right-of-Way Vacation

If any Right-of-Way or portion thereof used by the Franchisee is vacated by the City during the term of this Franchise, unless the City specifically reserves to the Franchisee the right to continue the use of vacated Right-of-Way, the Franchisee shall, without delay or expense to the City, remove its facilities from such Right-of-

Way, and restore, repair or reconstruct the Right-of-Way where such removal has occurred. In the event of failure, neglect or refusal of the Franchisee, after thirty (30) days' notice by the City, to restore, repair or reconstruct such Right-of-Way, the City may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the City, shall be paid by the Franchisee within forty-five (45) days of receipt of an invoice and documentation.

10.8 Removal of Discontinued Facilities

Whenever the Franchisee intends to discontinue using any Cable Communications System facilities within the Right-of-Way, the Franchisee shall submit a complete description of the facilities and the date on which the Franchisee intends to discontinue using the facilities to the City. The Franchisee may remove the facilities or request that the City allow them to remain in place. Notwithstanding the Franchisee's request that any such facilities remain in place, the City may require the Franchisee to remove the facilities from the Rights of Way or modify the facilities to protect the public health, welfare, safety and convenience, or otherwise serve the public interest. The City may require the Franchisee to perform a combination of modification and removal of the facilities. The Franchisee shall complete such removal or modification in accordance with a reasonable schedule set by the City. Until such time as the Franchisee removes or modifies the facilities, or until the rights to and responsibility for the facilities are accepted by another Person having authority to construct and maintain such facilities, the Franchisee shall be responsible for all necessary repairs and relocations of the facilities, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facilities were in active use, and the Franchisee shall retain all liability for such facilities.

10.9 Hazardous Substances

(A) The Franchisee shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances within the Right-of-Way.

(B) The Franchisee shall maintain and inspect its Cable Communications System located in Right-of-Way. Upon reasonable notice to the Franchisee, the City may inspect the Franchisee's facilities in Right-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to the Franchisee's System. In removing or modifying the Franchisee's facilities as provided in this Franchise, the Franchisee shall also remove all residue of hazardous substances related thereto.

10.10 Undergrounding of Cable

(A) The following terms and conditions shall control the aerial and underground construction, installation, operation and maintenance of Franchisee's Cable Communication System during the term of this Franchise.

(1) In areas of the Franchise Area where electrical or telephone utility wiring is aerial and Franchisee's existing Cable Communications System facilities are aerial, the Franchisee may continue to operate and maintain the existing Cable Communications System aerially.

(2) Where construction or installation of any Cable Communications System coaxial wire or fiber sheaths results in a change in use or an intensification of an existing use, then the Cable Communications System coaxial wire or fiber sheaths shall be placed underground, unless the requirement to underground is delayed as part of a specific program to coordinate undergrounding of several utilities or in conjunction with an undergrounding program for several sites or when related to future street improvements. For the purpose of this section the terms "change in use" or "intensification of an existing use" shall mean adding new coaxial wire(s) or fiber sheaths where none previously existed; increasing the number of coaxial wires or fiber sheaths, or; increasing the size or dimension of the existing coaxial wires or fiber sheaths by one half inch ($\frac{1}{2}$ ") or more in diameter when doing a one for one change out.

(3) In those areas of the Franchise Area where electrical or telephone utility wiring is aerial and the Franchisee's construction or installation of any Cable Communications System coaxial wires or fiber sheaths results in a change in use or an intensification of an existing use, the Franchisee may request consent from the City for aerial construction. Consent by the City will be granted on a case by case basis and will not be unreasonably withheld.

(4) When electric and telephone utility wiring and the aerial lines of telecommunications providers in an area of the Franchise Area are subsequently relocated to underground the Franchisee shall relocate its aerial Cable Communications System facilities to underground, at no cost or expense to the City, at the same time.

(5) The Franchisee shall utilize existing poles wherever possible. This Franchise does not grant, give or convey to the Franchisee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person.

(B) Related Cable Communications System facilities (such as pedestals, equipment cabinets, etc.) must be placed in accordance with applicable City code requirements and underground utility policies, as interpreted by the City.

(C) The City shall provide reasonable advanced notice of available opportunities for access to open trenches. To the extent technically and economically feasible, the Franchisee shall participate with other providers in joint trench projects to relocate its overhead facilities underground provided that Franchisee's share of the cost of participation in a joint trench project does not exceed Franchisee's cost of relocation to a single occupancy trench.

10.11 Avoid Interference

The Franchisee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference, the City may require the removal or relocation of the Franchisee's lines, cables and other appurtenances from the property in question.

10.12 Tree Trimming

Upon obtaining a permit from the City, the Franchisee may trim or prune trees in the Right-of-Way that interfere with the System. Any such trimming or pruning will be performed using standard practices accepted by the International Society of Arboriculture (ISA) addressing vegetation health and aesthetics.

10.13 Standards

(A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Franchisee must comply with all federal, State and local safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable Communications System. By way of illustration and not limitation, the Franchisee must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

(B) The Franchisee shall ensure that all cable drops are properly bonded and grounded at the home, consistent with applicable code requirements. All non-conforming or non-performing cable drops shall be replaced by the Franchisee as necessary.

(C) All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices and of sufficient height to comply with all federal, State and local regulations, ordinances and laws so as not to interfere in any manner with the right of the public or individual property owner, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic.

(D) In the maintenance and operation of its System in the Right-of-Way and other public places, and in the course of any new construction or addition to its facilities, the Franchisee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the Right-of-Way or other public places made by the Franchisee in the course of its operations shall be guarded and protected 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.

10.14 Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions

Whenever the City determines that the Franchisee has taken any action or caused any condition within the Franchise Area in violation of the Bellevue City Code or other applicable City ordinances, standards, procedures and/or regulations that results in or produces any unsafe, nonconforming, or unauthorized condition the City may order the correction or discontinuance of such condition or any activity causing such condition, or take any other remedial action, pursuant to applicable provisions of the Bellevue City Code or other applicable City ordinances, standards, procedures and/or regulations, as from time to time amended.

10.15 Work of Contractors and Subcontractors

The Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with local ordinances, regulations and requirements. Work by contractors and subcontractors shall be subject to the same restrictions, limitations and conditions as if the work were performed by the Franchisee. The Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law.

10.16 Additional Ducts and Conduit

If the City is interested in contracting with the Franchisee to place additional duct or conduit in a specific area within the Franchise Area, it shall notify the Franchisee of its interest and the Franchisee shall determine whether the request could be incorporated into any future construction, relocation or maintenance projects. If a project is scheduled by the Franchisee wherein additional duct or conduit will be placed on behalf of the City, the following conditions shall apply:

(A) The City shall enter into a contract with the Franchisee consistent with RCW 80.36.150. The contract rates to be charged should recover the Incremental Costs of the Franchisee. If the City makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing Cable Service or telecommunications service for hire, sale or resale to the general public, the rates to be charged, as set forth in the contract with the Franchisee shall recover at least the Fully Allocated Costs of the Franchisee. The Franchisee shall state both contract rates in the contract. The City shall inform the Franchisee of the use, and any change in use, of the requested duct or conduit and related access structures to determine the applicable rate to be paid by the City.

(B) The City shall not require that the additional duct or conduit space to be connected to the access structures and vaults of the Franchisee.

(C) The value of the additional duct or conduit requested by the City shall not be considered a public works construction contract.

(D) This section shall not affect the possible provision of an I-Net by the Franchisee as provided elsewhere in this Franchise or under federal law.

(E) At the City's sole option, the City may require Franchisee to furnish such additional duct or conduit and the related structures necessary to access the conduit or duct for the Incremental Costs (if such Incremental Costs have been mutually agreed to by the parties) by so notifying Franchisee no later than sixty (60) days after the information is provided by the Franchisee. Notwithstanding the foregoing, Franchisee's construction, relocation or maintenance projects shall not be unreasonably delayed as a result of the requirements contained within this section.

(F) If the City requires Franchisee to furnish additional duct, conduit or related structures pursuant to this section, the Franchisee shall construct these facilities to the same standards as Franchisee's own new facilities, and shall turn such additional duct, conduit or related structures over to the City upon completion of same and satisfactory inspection thereof by the City. The Franchisee shall be responsible for any required filings with State agencies or commissions.

SECTION 11. SYSTEM DESIGN AND CAPABILITY

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

(B) Throughout the term of this Franchise, the Franchisee shall provide additional Cable Communication System facilities and equipment, expand Cable Communication System channel capacity and otherwise upgrade or re-build its Cable Communications System as required to incorporate improvements in technology as necessary to reasonably meet the needs and interests of the community, in light of the costs thereof.

SECTION 12. TECHNICAL STANDARDS

12.1 Technical Performance

The technical performance of the Cable Communication System shall meet or exceed all applicable technical standards authorized or required by law, including, without limitation, FCC technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

12.2 Inspection of Construction

The City shall have the right to inspect any construction or installation work performed under this Franchise and to charge generally applicable inspection fees therefore. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order the Franchisee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition within the time specified by the City. The City has the right to correct, inspect, administer and repair the unsafe condition if the Franchisee fails to do so within the time specified, and to charge the Franchisee therefore.

12.3 Cable Communication System Performance Testing

(A) The Franchisee shall, at its expense, perform all tests on its Cable Communication System required by the FCC (including at least one (1) test point located within the City) and shall maintain written records of its test results. Copies of such test results will be provided to the City upon request.

(B) All required technical performance or other System tests shall be at the expense of the Franchisee and may be witnessed by representatives of the City. Upon request, the Franchisee will notify the City before any required technical proof-of-performance or other testing occurs.

(C) The Franchisee shall promptly take such measures as are necessary and diligently continue the same until completion in order to correct any performance deficiencies fully and to prevent their recurrence. The Franchisee's failure to correct deficiencies identified through this testing process shall be a violation of this Franchise. Sites shall be re-tested within five (5) days following correction until correction has been confirmed and satisfactory results are obtained.

12.4 Additional Tests

(A) Upon thirty (30) days prior written notice, the City may require the Franchisee to conduct proof of performance tests on up to seven (7) test points located within the City. This testing requirement may only be triggered by the City once during the thirty-six (36) month franchise renewal window.

(B) Notwithstanding Subsection (A) above, where there exists a pattern of poor technical performance or quality on the Cable Communication System, the City may upon thirty (30) days prior written notice, require the Franchisee to conduct an additional performance test within the City. The Franchisee shall fully cooperate with the City in performing such testing and shall prepare the results and a report if requested, within thirty (30) days after testing. Such report shall include the following information:

(1) The nature of the complaint or problem which precipitated the special tests;

- (2) The Cable Communication System component tested;
- (3) The equipment used and procedures employed in testing;
- (4) The method, if any, in which such complaint or problem was resolved; and
- (5) Any other information pertinent to said tests and analysis which may be required.

SECTION 13. SERVICE EXTENSION

13.1 Service Availability

(A) In general, except as otherwise provided herein, the Franchisee shall provide a standard installation of Cable Service within seven (7) days of a request by any Person within its Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Franchisee, receipt of a written request by the Franchisee or receipt by the Franchisee of a verified verbal request. The Franchisee shall provide such service:

- (1) With no line extension charge except as specifically authorized elsewhere in this Franchise.
- (2) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot aerial drop connecting to the exterior demarcation point for Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by the Franchisee and provided in writing to the City.

(B) No customer shall be refused service arbitrarily. However, for unusual circumstances, such as the existence of more than one hundred twenty-five (125) feet of aerial distance from distribution cable to connection of service to Customers, or a density of less than twenty-five (25) residences per 5280 cable-bearing strand feet of trunk or distribution cable, service may be made available on a pro rata cost basis of construction including cost of material, labor and easements. For the purpose of determining the amount of cost of construction to be borne by the Franchisee and Customers in the area in which service may be expanded, the Franchisee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals twenty-five (25). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Franchisee may require that the payment of the pro rata cost of construction borne by such potential customers be paid in advance.

SECTION 14. STANDBY POWER AND EMERGENCY ALERT SYSTEM

14.1 Standby Power

The Franchisee shall provide standby power generating capacity at the System Headend capable of providing at least twelve (12) hours of emergency operation.

14.2 Emergency Alert Capability

(A) In accordance with, and at the time required by, the provisions of FCC Regulations, as such provisions may from time to time be amended, Emergency Alert System ("EAS") activation will be accomplished in compliance with the EAS Plans that apply to the City.

(B) The City shall only permit its appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Franchisee's Cable Communication System that in any manner results in an inappropriate use thereof. To the extent allowed by law, the City shall hold the Franchisee, its employees and officers harmless from any claims arising out of the emergency use of the EAS facilities by the City, including, but not limited to, reasonable attorneys' fees and costs.

(C) The Franchisee shall ensure that the EAS system is functioning properly at all times. It will test the EAS system periodically, in accordance with FCC regulations.

SECTION 15. FRANCHISE VIOLATIONS

15.1 Procedure for Remedying Non-Material Franchise Violations

(A) If the City believes that the Franchisee has failed to perform any non-material obligation under this Franchise or has failed to perform in a timely manner, the City shall notify the Franchisee in writing, stating with reasonable specificity the nature of the alleged default. The Franchisee shall have thirty (30) days from the receipt of such notice to:

(1) Respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below; or

(2) Cure the default; or

(3) Notify the City that the Franchisee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, the Franchisee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine

whether additional time beyond the thirty (30) days specified above is indeed needed, and whether the Franchisee's proposed completion schedule and steps are reasonable.

(B) If the Franchisee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A) (3), or denies the default and requests a meeting in accordance with subsection (A) (1), or the City orders a meeting in accordance with subsection (A) (3), then the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify the Franchisee of the meeting in writing and such meeting shall take place no less than thirty (30) days after the Franchisee's receipt of notice of the meeting. At the meeting, the Franchisee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists; the Franchisee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order the Franchisee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable timeframe as the City shall determine. In the event the Franchisee does not cure within such time, to the City's reasonable satisfaction, the City may:

(1) Pursue the revocation of this Franchise pursuant to Sections 15.2, Revocation and 15. 3, Revocation Procedures and Process below; or

(2) Pursue any other legal or equitable remedy available under this Franchise or any applicable law;

(D) The determination as to whether a non-material violation of this Franchise has occurred shall be within the discretion of the City, provided that any such determination may be subject to appeal to the City Council or review by a court of competent jurisdiction under applicable law.

15.2 Revocation

(A) In addition to all other rights and powers retained by the City, the City reserves the right to revoke and terminate this Franchise and all rights and privileges of the Franchisee in the event of a substantial violation or breach of its terms and conditions. A substantial violation or breach by the Franchisee shall include, but shall not be limited to, any of the following acts or omissions:

(1) An uncured substantial violation of any material provision of this Franchise, or any material rule, order or regulation of the City made pursuant to its power to protect the public health, safety and welfare;

(2) Any default in the performance of any of the Franchisee's material obligations under any other documents, agreements and other terms and provisions entered into by and between the City and the Franchisee;

(3) An intentional evasion or knowing attempt to evade any material provision of this Franchise or the practice of any fraud or deceit upon the Cable Communications System Subscribers or upon the City;

(4) Failure to begin or substantially complete any System construction or System extension as required;

(5) Failure to provide the services as specified in this Franchise, or a reasonable substitute therefor;

(6) Any use or occupation of the Right of Way that presents a risk to public health or safety or the construction, installation, operation or maintenance of the Cable Communications System in an unsafe or dangerous manner;

(7) The willful violation of any orders or rulings of any regulatory body having jurisdiction over the Franchisee relative to this Franchise;

(8) Misrepresentation of material fact in the application for, or during negotiations relating to, this Franchise;

(9) A continuous and willful pattern of inadequate service or failure to respond to legitimate subscriber complaints;

(10) Failure to provide insurance, bonds, letter of credit, or indemnity as required by this Franchise;

(11) An uncured failure to pay Franchise Fees as required by this Franchise agreement.

(B) None of the foregoing shall constitute a substantial violation or breach if the Franchisee is without fault or if the violation or breach occurs as a result of circumstances beyond the Franchisee's reasonable control. The Franchisee shall bear the burden of proof in establishing the existence of such circumstances. However, the Franchisee's substantial violation or breach shall not be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, employees, agents or, contractors.

15.3 Revocation Procedures and Process

(A) This Franchise may be terminated in accordance with the following procedures:

(1) The City Manager, or other person designated by the City Manager, shall notify the Franchisee in writing of the exact nature of the alleged substantial violation or breach constituting a ground for termination. Said notice shall provide that the Franchisee shall have sixty (60) days from the date of receipt of the notice to correct and cure such alleged substantial violation or breach or to present

facts and argument in refutation of the alleged substantial violation or breach. A copy of said notice of substantial violation or breach shall be mailed to the surety on any performance bond.

(2) If the Franchisee corrects any alleged substantial violation or breach within the sixty (60) day cure period, then in no event shall the violation be weighed against such Franchisee in any subsequent review of Franchise performance.

(3) If the Franchisee does not correct and cure the alleged substantial violation or breach within the sixty (60) day cure period then the City Council shall, within forty-five (45) days of the last day of the sixty (60) cure period designate the Hearing Examiner as the hearing officer to conduct a public hearing to determine if the revocation and termination of the Franchise is warranted and to make a recommendation to the City Council. That recommendation shall be transmitted to the City Council for final action on a closed record. The City Council shall act as the final decisionmaker.

(4) At least twenty (20) days prior to the public hearing, the City Clerk, shall issue a public hearing notice and order that shall: establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the City shall hear any persons interested therein; and provide that the Franchisee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

(5) The Hearing Examiner shall hear testimony, take evidence, hear oral argument and receive written briefs. The Hearing Examiner shall create for the City Council a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording.

(6) The Franchisee carries the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that there is not an uncured substantial violation or breach or that the substantial violation or breach is a result of circumstances beyond the Franchisee's reasonable control.

(7) Within ten (10) working days after the close of the record the Hearing Examiner shall issue a written decision that shall include the recommendation of the Hearing Examiner on the revocation and termination of the Franchise; a findings of facts upon which the recommendation is based; and the conclusions derived from those facts.

(B) The City Council shall, at a public meeting, consider and take final action on the recommendation of the Hearing Examiner. The City Council shall not accept new information, written or oral, but shall consider the complete record

developed before the Hearing Examiner and the recommendation of the Hearing Examiner.

- (C) At the public meeting the City Council shall either:
- (1) Accept the recommendation of the Hearing Examiner; or
 - (2) Reject the recommendation of the Hearing Examiner; or;
 - (3) Remand the decision to the Hearing Examiner for an additional hearing limited to specific issues identified by the City Council.

(D) The City Council shall adopt an ordinance which accepts or rejects the recommendation of the Hearing Examiner by a majority vote of the membership of the Council. If the action by the City Council will result in the revocation and termination of the Franchise then the ordinance shall declare that the Franchise shall be revoked and terminated; any security fund or bonds are forfeited; and shall include findings of fact and conclusions derived from those facts which support the decision of the Council. The City Council may by reference adopt some or all of the findings and conclusions of the Hearing Examiner.

(E) Grantee shall be bound by the City Council's decision to revoke the franchise unless an appeal to a court of competent jurisdiction, as specified in Section 19.5, is filed within thirty (30) days of the date of the Council's decision.

15.4 Removal

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

(B) If the Franchisee fails to complete any required removal to the satisfaction of the City, the City may cause the work to be done, and the Franchisee shall reimburse the City for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the City's expenses and costs, or the City may recover its expenses and costs from the security, or pursue any other judicial remedies for the collection thereof. Any expenses incurred in the collection by the City of such obligation shall be included in the monies due the City from the Franchisee, including reasonable attorneys' fees, court expenses and expenses for work conducted by the City's staff or agents.

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that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise. Further, Franchisee may pledge the assets of the Cable Communications System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Franchisee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 18. NOTICES

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

The Franchisee's address shall be:

Comcast of Bellevue, Inc.
P.O. Box 97007
Redmond, WA 98073-97007
Attention: Area Vice President

With a copy to:

Comcast of Bellevue, Inc.
P.O. Box 3042
Bothell, WA 98041-3042
Attention: Franchise Department

The City's address shall be:

City of Bellevue
P.O. Box 90012
Bellevue, WA 98009-9012
Attention: Cable Franchise Manager

With a copy to:

City of Bellevue
P.O. Box 90012
Bellevue, WA 98009-9012
Attention: City Clerk

SECTION 19. MISCELLANEOUS PROVISIONS

19.1 Cumulative Rights

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

19.2 Costs to be Borne by the Franchisee

The Franchisee shall pay for all costs of publication of this Franchise, and any and all notices prior to any public meeting or hearing provided for pursuant to this Franchise.

19.3 Binding Effect

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

19.4 Authority to Amend

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

19.5 Venue

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

19.6 Governing Law

This Franchise shall be governed in all respects by federal law, the laws of the State of Washington and local laws.

19.7 Captions

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

19.8 No Joint Venture

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

19.9 Waiver

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

19.10 Severability

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

19.11 Compliance with Federal, State, and Local Laws

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

19.12 Force Majeure

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

19.13 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by the Franchisee, such time shall be deemed to be of the essence, and any failure of the Franchisee to perform within the allotted time may be considered a breach of this Franchise. However, in the event that the Franchisee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the

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reasonable control of the Franchisee, the Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation that is satisfactory to the City.

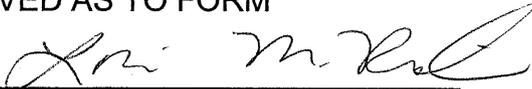
PASSED by the City Council this _____ day of _____, 2004,
and signed in authentication of its passage this _____ day of _____,
2004.

By _____
Connie B. Marshall, Mayor

ATTEST:

Myrna L. Basich, City Clerk
Bellevue, Washington

APPROVED AS TO FORM



Lori M. Riordan,
Deputy City Attorney

Exhibit A

Conduit Capacity and Pathway Indefeasible Right of Use

(A) **Indefeasible Right to Use (IRU).** The City hereby grants to Comcast an IRU in the Conduit, Capacity and Pathway, contingent upon timely receipt of payment as specified in Section 3 of this Conduit Capacity and Pathway agreement (the "Agreement").

(B) **Term.** This Agreement shall be made part of and run concurrent with the cable TV Franchise agreement (Resolution No. _____) between Comcast and the City of Bellevue and any extension or renewal thereof. Comcast is authorized to make use of a portion of the Conduit, as described below, for so long as Comcast continues to provide I-Net connection(s) to City Hall pursuant to the cable TV Franchise and the Institutional Network Agreement.

(C) **Payment.** In consideration for the IRU granted pursuant to this Agreement, Comcast shall pay an IRU fee to the City in the amount of forty-three thousand dollars (\$43,000). Such fee shall constitute full payment for Comcast's use of the City's conduit and shall be paid within sixty (60) days of Comcast's acceptance of the cable TV Franchise agreement (Resolution No. _____) between Comcast and the City of Bellevue.

(D) **Conduit Capacity and Pathway.** The IRU granted in this Agreement is for the following identified Conduit Capacity and Pathway (See Attachments 1 & 2):

- (1) Segmented portion of 2-inch conduit from NW corner of 116th Ave NE and Main St. crossing I-405 over pass to NE corner of 112th Ave NE and Main Street; from SE corner of 112th Ave NE and NE 4th crossing 112th NE to NW corner of 112th Ave NE and NE 4th to the City's common vault at NW corner of 112th and NE 4th
- (2) Accessory handholes and junction boxes
- (3) Dedicated 4-inch conduit from the City's common vault at NW Corner of 112th and NE 4th into the new City Hall SPOP

(E) **Testing and Proofing.** Prior to making the Conduit Capacity and Pathway available, the City shall test and proof the Conduit to ensure that the Conduit Capacity and Pathway is in good and useable condition and, if necessary, the City shall promptly repair and correct any nonconformity or damage. Prior to making the Conduit Capacity and Pathway available the City will install inner duct to

segment the conduit for use and occupation by the various users including the City and Comcast.

(F) Ownership and Maintenance. The City shall at all times own and maintain (at its cost and expense) the conduit and common accessory structures, including the handholes, junction boxes and vaults. Comcast shall at all times own and maintain (at its cost and expense) its identified fiber optic cable in the conduit and common accessory structures and any Comcast installed handholds, junction boxes or vaults. All users of the conduit and common accessory structures shall install ownership identification tags on all cables at all appearances in common accessory structures, including the handholes, junction boxes and vaults. All users shall take all necessary and prudent steps protect all cables in the shared conduits in the event of conduit damage.

(G) Relocation. Unless the circumstances make such notice impracticable, the City shall give Comcast at least ninety (90) days prior written notice of any scheduled relocation of any portion of the Conduit Capacity and Pathway and as much advance notice as possible of any unscheduled relocation. The City shall be responsible for the relocation costs for the conduit and common accessory structures including the handholds, junction boxes and vaults. Comcast shall be responsible for the relocation costs of its identified fiber optic cable in the conduit and common accessory structures and any Comcast installed handholds, junction boxes or vaults.

(H) Restriction on the Use of the Conduit, Capacity and Pathway. The City shall make available and Comcast may use the Conduit, Capacity and Pathway for the purpose of providing I-Net connection(s) to City Hall pursuant to the cable TV Franchise and the Institutional Network Agreement between the parties, and for providing fiber optic return lines for the City Government Access Channel (BTV) and for providing cable TV and other services to the new City Hall. Comcast may not sell, trade, exchange or otherwise make the Conduit Capacity and Pathway available for any other service provider's use without the City's consent, such consent not to be unreasonably withheld. Upon notification to the City, Comcast itself may use any excess capacity available within its identified portion of the inner duct and pathway for business purposes at no additional cost for the life of this Agreement, or any extension thereof. Comcast's use of its identified portion of the Conduit inner duct and Pathway may not interfere with or prohibit the use of the conduit and pathway by the City.

(I) Incorporation of Terms by Reference. The cable TV Franchise agreement (Resolution No. _____) and the Institutional Network Agreement (City Clerk Filed No. 28346, May 24, 2000) are hereby incorporated by reference and made part of this Agreement as if fully set forth.

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Attachment 1 to Exhibit A

Drawing - Comcast IRU Conduit Identification – to be attached

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Attachment 2 to Exhibit A

Drawing - Main St. 2-inch Conduit Fill – to be attached

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Exhibit B

**Memorandum of Understanding
Pertaining to the Application of
Cable Franchise Fees to Certain Tax Obligations**

This Memorandum of Understanding (the "MOU") is made and is effective as of _____ day of _____, 2004 (the Effective Date) between the City of Bellevue (the "City") and Comcast of Bellevue, Inc ("Comcast").

WHEREAS, the 1994 cable TV franchise (Resolution No. 5084) between the City and Comcast (formerly Viacom Cable) expires on July 29, 2004; and

WHEREAS, the aforementioned cable TV franchise contains provisions (Section 6.03) that address the application of cable franchise fees to certain tax obligations; and

WHEREAS, both the City and Comcast desire to move forward with the approval and acceptance of a renewed Franchise agreement while the City, through its biennial budget process, considers the application of cable Franchise Fees to certain tax obligations;

NOW, THEREFORE, IT IS AGREED as follows:

(A) Section 6.03 of the cable TV franchise (Resolution No. 5084) reads:

6.03 APPLICATION OF FRANCHISE FEE TO CERTAIN TAX OBLIGATIONS.

This Franchise is not intended to diminish or limit the City's power to tax Grantee or any other entity, provided, however, that the City and Grantee do not intend to make Grantee subject to duplicate payment obligations resulting from the imposition of both a tax on gross income and a franchise fee or Capital Contribution. Accordingly, the franchise fee payment and Capital Contribution for any given year shall apply to the Grantee's tax obligation amount for that year under the City's utility occupation tax (or similar tax on gross income) to the extent that said franchise fee payments and Capital Contributions derive from activities that would otherwise be subject to said tax in that year.

(B) The City and Comcast mutually agree that Section 6.03 of the cable TV franchise (Resolution No. 5084), as presented above, shall remain in force and be in effect until the termination of this MOU on December 31, 2004 and that both parties shall abide by and comply with the terms and conditions of Section 6.03 as they have in the past.

(C) Upon the termination of this MOU, Comcast agrees to abide by and comply with the requirements of the City tax code with respect to the application of cable franchise fees to certain tax obligations and any and all tax obligations that Comcast might have under the City tax code.

(D) Nothing in this MOU is intended to nor shall it be interpreted so as to limit or to restrict the City's ability to impose and collect any lawful tax or franchise fee or to in any way impair, reduce or circumscribe the City's general taxing or franchise authority in any way, except as expressly provided in this MOU with respect to the application of cable franchise fees to certain tax obligations under Section 6.03, as presented above, for the limited term of this agreement.

(E) This MOU contains the entire agreement between the parties with respect to the application of cable Franchise Fees to certain tax obligations. This Agreement may not be enlarged, modified or altered except in writing signed by the parties. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the City of Bellevue and Comcast have caused this Memorandum of Understanding to be duly executed and effective as of the date first set forth above.

City of Bellevue

Comcast of Bellevue, Inc

By: _____

By: _____

Its: _____

Its: _____

APPROVED AS TO FORM

Lori M. Riordan,
Deputy City Attorney

CITY COUNCIL AGENDA MEMORANDUM**SUBJECT:**

Ordinance No. 5524 adopting the 2004-2015 Transportation Facilities Plan and amending the Impact Fee Project List (Clerk's Receiving No. 30708 of Ordinance No. 5311) and Impact Fee Areas Map (part of Clerk's Receiving No. 31185 of Ordinance No. 5332).

FISCAL IMPACT:

There is no immediate fiscal impact associated with this item. The 2004-2015 Transportation Facilities Plan (TFP) includes transportation facility improvement projects that can be funded within the City's projected financial constraints. It is not the purpose of the TFP to commit revenue for the individual projects within the document beyond those already funded in the current 2003-2009 Capital Investment Program (CIP) Plan; rather it is to provide a list of priorities which may inform the CIP update process.

The Impact Fee Project List, the subset of roadway and intersection capacity projects within the overall TFP project list supplemented by Redmond BROTS projects (per the BROTS Interlocal Agreement), will form the basis for updating the transportation Impact Fee Schedule later this year. Amending the impact fee calculation methodology by modifying the impact fee areas to match the mobility management areas will result in a minimal fiscal impact to the city. Efficiency will be gained by reducing the number of transportation demand modeling platforms maintained by staff.

STAFF CONTACTS:

Goran Sparrman, 452-4338 / Kris Liljeblad, 452-2866 / Eric Miller, 452-6146

POLICY CONSIDERATION:

Policy CF-1 of the Capital Facilities Element and Policies TR-25, TR-35, TR-55, TR-79 and TR-82 of the Transportation Element of the Comprehensive Plan provide a framework for compliance with the requirements of the Growth Management Act. Adoption of the Transportation Facilities Plan (TFP) and the revised Impact Fee Project List and Fee Schedule will satisfy Comprehensive Plan objectives and mobility targets by prioritizing transportation capital improvements for funding.

The Bellevue City Code (Section 22.16.050, Ordinance No. 4824) requires that the TFP and Impact Fee Project List (and Fee Schedule) be updated and adopted every two years. The Impact Fee Project List consists of the transportation improvements in the TFP needed to provide capacity on City of Bellevue roadways, where capacity needs are created in whole or in part by new development.

BACKGROUND:

On March 8, 2004, staff provided the Council with a detailed Study Session briefing on two related items:

1. The 2004-2015 Transportation Facilities Plan (TFP) Update (March 8, 2004 Extended Study Session Agenda Item 3e).

2. A review and recommendation regarding the simplification of the City's adopted impact fee calculation methodology (3/8/04, Item 3f). At the March 8th, 2004 Study Session, Council passed a motion to direct staff to align impact fee areas with Mobility Management Areas (MMAs) as part of the 2004 update of the TFP. This action was consistent with recommendations of the Bellevue Transportation Commission, Transportation Department staff and the Joint Transportation Committee of the Bellevue Chamber of Commerce and Bellevue Downtown Association.

The boundaries of the impact fee areas on the proposed Impact Fee Areas Map (attached) do match the current boundaries of the City's 14 MMAs. Per the BROTS Interlocal Agreement, impact fees within both Redmond and Bellevue may be calculated using all BROTS projects subject to the agreement, regardless of location. This does not mean that Bellevue can charge impact fees to developers outside its municipal limits, but Bellevue's share of the cost of Redmond BROTS projects may be used in the determination of Bellevue impact fees. For purposes of listing these Redmond BROTS projects on the Impact Fee Project List, all non-completed Redmond BROTS projects are listed under Impact Fee Area No. 12 (Overlake) which, like MMA No. 12, includes a significant portion of area within Redmond's city limits.

A TFP Draft Environmental Impact Statement (DEIS) was published on March 4, 2004, and made available to the Council at the time of the March 8th Study Session. Two written comments were received during the DEIS public comment period. A Final Environmental Impact Statement (FEIS), responding to the comments, was published on June 10, 2004. Consistent with the DEIS, the FEIS does not identify any significant environmental impacts due to implementation of the proposed TFP. Most notably, there are no projected violations of Comprehensive Plan Level of Service standards. The TFP EIS does make it clear that project specific environmental impacts of private development proposals and/or transportation facility improvements will be evaluated for compliance with applicable local, state (SEPA) and federal (NEPA) guidelines at the time of development application or project design. A copy of the FEIS is now available in the Council Office.

In accordance with Bellevue City Code, the Bellevue Transportation Commission has been closely involved throughout the 2004-2015 TFP development process. On May 13th, 2004, the Commission passed a motion to recommend adoption of the 2004-2015 TFP and Impact Fee Project List. A copy of the Commission's written recommendation is attached to this memorandum.

Next Steps in the Process

Following Council adoption of the 2004-2015 TFP, Impact Fee Project List and Impact Fee Areas Map, staff will develop an updated Impact Fee Schedule. Per Bellevue City Code (BCC 22.16.080), within six months following the adoption of an updated TFP and impact fee project list, the Transportation Commission shall develop and present to the Council for consideration and adoption a new transportation impact fee schedule. Staff will coordinate with the Transportation Commission on this task and return to Council before the end of the year.

EFFECTIVE DATE:

If approved, this ordinance becomes effective on July 14, 2004.

OPTIONS:

1. Adopt the 2004-2015 Transportation Facilities Plan, the revised Impact Fee Project List and the revised Impact Fee Areas Map.
2. Adopt the 2004-2015 Transportation Facilities Plan, the revised Impact Fee Project List and the revised Impact Fee Areas Map with modifications.
3. Do not adopt the 2004-2015 Transportation Facilities Plan, the revised Impact Fee Project List and/or the revised Impact Fee Areas Map and provide alternate direction to staff.

RECOMMENDATION:

Staff recommends that Council adopt the 2004-2015 Transportation Facilities Plan, the revised Impact Fee Project List and the revised Impact Fee Areas Map with the understanding that staff will bring the revised Impact Fee Schedule back to Council for separate review and approval before the end of the year.

MOTION:

Move to adopt Ordinance No. 5524 adopting the 2004-2015 Transportation Facilities Plan and amending the Impact Fee Project List and Impact Fee Areas Map.

ATTACHMENTS:

Proposed 2004-2015 Transportation Facilities Plan (Under Separate Cover)
Proposed Impact Fee Project List
Proposed Impact Fee Areas Map
Summary Minutes of March 8, 2004, Extended Study Session
Transportation Commission Recommendation Memorandum
Proposed Ordinance No. 5524

AVAILABLE IN COUNCIL OFFICE:

2004-2015 TFP Final Environmental Impact Statement



MEMORANDUM

D. Elliott

Date: May 13, 2004

To: Mayor Marshall and Councilmembers

From: David Elliott, Chair, Bellevue Transportation Commission

Subject: Recommendation to adopt the 2004-2015 Transportation Facilities Plan Update

Pursuant to Bellevue City Code Chapter 22.16, the Bellevue Transportation Commission is pleased to present to the City Council the 2004-2015 Transportation Facilities Plan (TFP) and Impact Fee Project List for your consideration. The TFP document lists the transportation improvements planned for the City of Bellevue over the next twelve years. The Impact Fee Project List is a subset of roadway and intersection capacity projects included in the proposed TFP update.

The Transportation Commission has worked closely with Transportation Department staff and the public over the past fifteen months to develop the proposed 2004-2015 TFP. The TFP provides the first level of citywide prioritization of transportation improvement projects recommended by long-range transportation studies conducted for various subareas of the City. The 73 projects included in this recommended plan were selected from the hundreds of projects recommended by long-range plans such as the Downtown Implementation Plan Update (2003), BROTS (1999), the 148th Avenue Mobility Improvement Package (2003), the Eastgate/I-90 Corridor Study (2002), and the Pedestrian and Bicycle Transportation Plan Update (1999). The update also modifies the preceding 2001-2012 TFP project list based upon previous actions of the City Council including the adoption of the 2003-2009 Capital Investment Program (CIP) Plan.

This update process of the financially constrained TFP has been especially challenging due to the significantly lowered 12-year revenue projections associated with the depressed economy, new legislation (i.e. impacting local B & O Tax collection), voter approved initiatives (i.e. I-776) and competing local initiatives. One of the ways in which this TFP update responds to recent fiscal conditions is the inclusion of only early phases of many projects. More than 80% of new non-capacity projects are listed only with the cost of a pre-design phase – often about 10% of the total cost of a project. This strategy allows the design study and associated community involvement procedures to determine the highest priority components or phases of projects to be implemented with the increasingly scarce financial resources available.

A different approach was utilized for capacity projects. Because the cost of capacity projects in the TFP forms the basis for the City's Impact Fee program, we included full implementation costs to help ensure developers pay a fair share of the cost of facilities needed to serve their developments. Chapter 22.16 of the Bellevue City Code specifies that the Impact Fee Schedule must be updated within six months of updating the TFP. The Transportation Commission will present the Council with an updated Impact Fee Schedule for consideration within that timeframe.

Finally, the Commission encourages the Council to take the time to review the project list in the recommended 2004-2015 TFP. We believe the recommended projects enhance the development of a safe and balanced multimodal transportation system for the City of Bellevue. The Commission would be happy to discuss their findings and the proposed TFP update in more detail at a future City Council study session.

PROPOSED IMPACT FEE PROJECT LIST

June 21, 2004

TFP #	CIP #	Project Location	Project Description	Project Costs (\$000)	COB Costs (\$000)
Impact Fee Area #1 - North Bellevue					
		None		0	0
Impact Fee Area #2 - Bridle Trails					
		None		0	0
Impact Fee Area #3 - Downtown					
TFP-016	PW-I-46	I-405/Bellevue Downtown Access	Construct HOV interchange at NE 6th St; add eastbound lanes on NE 8th St and NE 4th St crossing I-405; extend NE 2nd St from 112th Ave NE to 114th Ave NE; widen NE 8th SW/112th Avenue NE Intersection.	20,929	9,391
TFP-110	PW-R-139	110th Avenue NE - NE 4th Street to NE 8th Street	Widen 110th Ave NE to five lanes from NE 4th St. to NE 6th St. and design 110th from 6th to 8th Streets NE.	2,766	2,766
TFP-172		106th and 108th Avenues/Main Street to NE 12th Street	Convert roadways to function as a one-way couplet. 106th Avenue will function as a northbound one-way street and 108th Avenue will function as a southbound one-way street. 108th will include a single northbound contraflow lane between NE 4th and NE 8th Streets for transit buses only. Sidewalks along 106th Avenue will be widened.	5,630	5,630
TFP-182		NE 2nd Street at Bellevue Way	Convert southbound thru lane to left/thru shared lane; modify signal.	200	200
TFP-183		NE 4th Street at Bellevue Way	Convert eastbound thru-right to right only.	200	200
TFP-184		NE 8th Street/106th Avenue NE to 108th Avenue NE	Add westbound lane on NE 8th Street becoming right turn lane at 106th Avenue NE; no widening west of 106 Avenue NE.	3,203	3,203
Impact Fee Area #4 - Bel-Red/Northup					
TFP-016	PW-I-46	I-405/Bellevue Downtown Access	Widen NE 8th Street/116th Avenue NE Intersection; construct off ramp from northbound I-405 at SE 8th Street to 116th Avenue NE.	2,616	1,174
TFP-039	PW-R-122	130th Ave NE - Bel-Red Rd to NE 20th St	Add two-way left turn lane on 130th Ave NE between Bel-Red Rd and NE 20th St; sidewalks.	3,190	2,893
TFP-089	PW-I-91	124th Avenue NE/Bel-Red Road	Widen intersection for 2nd left turn lane westbound, 2nd southbound lane and a right-turn lane southbound; curb/gutter/sidewalks on east side of intersection.	3,000	2,907
TFP-090		116th Avenue NE/NE 12th Street	Add northbound right turn lane.	893	810
TFP-091	PW-R-133	124th Avenue NE/Northup Way	Add northbound right turn lane and widen to provide 2nd eastbound left-turn lane; complete portions of curb/gutter/sidewalk where missing, illumination and traffic signal modifications.	2,277	1,797
TFP-106	PW-R-133	Northup Way - 120th Ave NE to 124th Ave NE	Add 2nd eastbound lane on Northup Way between 120th Ave NE and 124th Ave NE; complete portions of curb/gutter/sidewalk where missing, illumination and traffic signal modifications.	2,825	2,229
Impact Fee Area #5 - Crossroads					
TFP-092		156th Avenue NE/Northup Way	Add 2nd northbound left turn lane and add an eastbound through lane to the Unigard access.	5,347	3,928
TFP-167		Northup Way - 156th Ave NE to 164th Ave NE	Prepare a design report for the construction of a two-way left turn lane and bicycle lanes.	250	250
Impact Fee Area #6 - Northeast Bellevue					
		None		0	0
Impact Fee Area #7 - South Bellevue					
TFP-016	PW-I-46	I-405/Bellevue Downtown Access	Improve access to I-405 southbound at SE 8th St.	238	107
TFP-117		112th Avenue SE/SE 8th Street	Add northbound right turn lane.	382	382

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PROPOSED IMPACT FEE PROJECT LIST

June 21, 2004

Impact Fee Area #8 - Richards Valley			
TFP-009	PW-R-102	Kamber Rd - Richards Rd to 145th Pl. SE	Add left turn lanes on Kamber Rd. at SE 20th St and SE 24th St and complete sidewalks on north and west sides of Kamber Rd.
			3,759
Impact Fee Area #9 - East Bellevue			
TFP-168		NE 8th Street at 148th Avenue SE	Add 2nd eastbound and westbound left turn lanes on NE 8th Street. All widening would be done to the north side of the roadway.
			2,389
TFP-188	PW-I-90	148th Avenue SE at Lake Hills Boulevard	Lengthen the westbound left turn lane from Lake Hills Blvd to 148th Avenue SE from 75 feet to approximately 250 feet and/or convert the existing thru/right turn lane to a left/thru/right turn lane. Construct new sidewalks where missing on the north side and reconstruct sidewalks on the south side of Lake Hills Blvd to the east of 148th Avenue SE, and implement pedestrian crossing and signal improvements.
			540
Impact Fee Area #10 - Eastgate			
TFP-011	PW-R-105	150th Ave SE - SE 36th St to Newport Wy	Widen 150th Ave SE to seven lanes from SE 36th to SE 38th Sts, add a sidewalk on the west side from SE 36th St to Newport Way, add turn lanes at the intersection of 150th and Newport Way; add U-turn pocket on SE 36th St west of Allen Rd.
			5,659
TFP-038	PW-R-117	148th Ave SE - SE 24th to SE 28th Sts.	Construct additional lane on southbound 148th Ave SE from SE 24th to I-90 on ramp
			5,483
TFP-154		148th/150th Avenue SE/I-90 westbound on-ramp to I-90 westbound off-ramp	Widen by extending the third southbound lane (currently funded as part of PW-R-117) from the ramp to westbound I-90 to south of Eastgate Way at the I-90 westbound off ramp.
			1,600
TFP-162		156th Avenue SE at SE Eastgate Way (I-90 westbound off-ramp)	Widen the I-90 westbound off-ramp to provide two dedicated left turn lanes and a shared through/right lane with a channelized right turn.
			410
Impact Fee Area #11 - Newcastle			
TFP-002	PW-R-57	Lakemont Blvd - 171st Ave SE to Newport Way	Construction of new three-lane arterial from 171st Ave SE to Newport Way and associated wetland mitigation and reforestation.
			21,094
Impact Fee Area #12 - Overlake (Including Redmond BROTS Projects)			
TFP-003	PW-R-60	NE 29th Pl - 148th Ave NE to NE 24th St	Extend NE 29th Pl. between 148th Ave NE and NE 24th St
			9,283
TFP-094	PW-I-76	148th Ave NE/Bel-Red Rd	Add eastbound right turn lane and a 2nd westbound left turn lane
			6,254
TFP-095		156th Ave NE/Bel-Red Rd	Add southbound right turn lane
			549
TFP-096	PW-R-60	140th Ave NE/NE 24th St	Add 2nd westbound left turn lane
			1,647
TFP-097	PW-R-60	148th Ave NE/NE 29th Place	Add southbound right turn lane; second westbound left turn lane; and convert eastbound right turn lane to shared left and right turn lane
			2,440
TFP-098	PW-R-60	NE 24th St - NE 29th Pl to 140th Ave NE	Widen NE 24th St to four lanes from 140th Ave NE to the proposed NE 29th Pl extension
			2,471
TFP-101	PW-I-78	148th Ave NE/NE 20th St	Add 2nd eastbound and westbound left turn lanes
			3,048
TFP-102		Bel-Red Rd/NE 24th St	Add southbound right turn and northbound left turn lanes
			2,060
TFP-128		148th Avenue NE/NE 36th Street	Add 2nd southbound left turn lane and 2nd westbound left turn lane
			1,246
TFP-157		NE 24th Street at 148th Avenue NE	Lengthen the westbound right turn lane on NE 24th Street and provide a second westbound left turn lane; widen NE 24th Street to allow wide curb lanes for cyclists.
			4,000
TFP-176		148th Avenue NE at SR 520	Streamline/Rechannelize the southbound lanes on 148th Avenue to reduce friction and improve southbound flow.
			325
Redmond BROTS	PW-I-83	148th Ave NE/NE 40th St	Redmond BROTS Project; Add 2nd southbound left turn lane and a northbound right turn lane.
			980
Redmond BROTS	PW-I-83	148th Ave NE/NE 40th St	Redmond BROTS Project; Add 2nd westbound right turn lane.
			426
Redmond BROTS	PW-I-83	148th Ave NE/NE 51st St	Add second southbound left turn lane; convert westbound lanes to provide shared left turn/through and two right turn lanes
			760
Redmond BROTS	PW-I-83	152nd Ave NE/NE 24th Street	Add northbound and southbound approach lanes; make northbound lanes: left/through/through-right and make southbound lanes left/through/right
			1,994
Redmond BROTS	PW-I-83	148th Ave NE/Old Redmond Rd.	Extend the eastbound right turn lane by increasing length and channelization
			385

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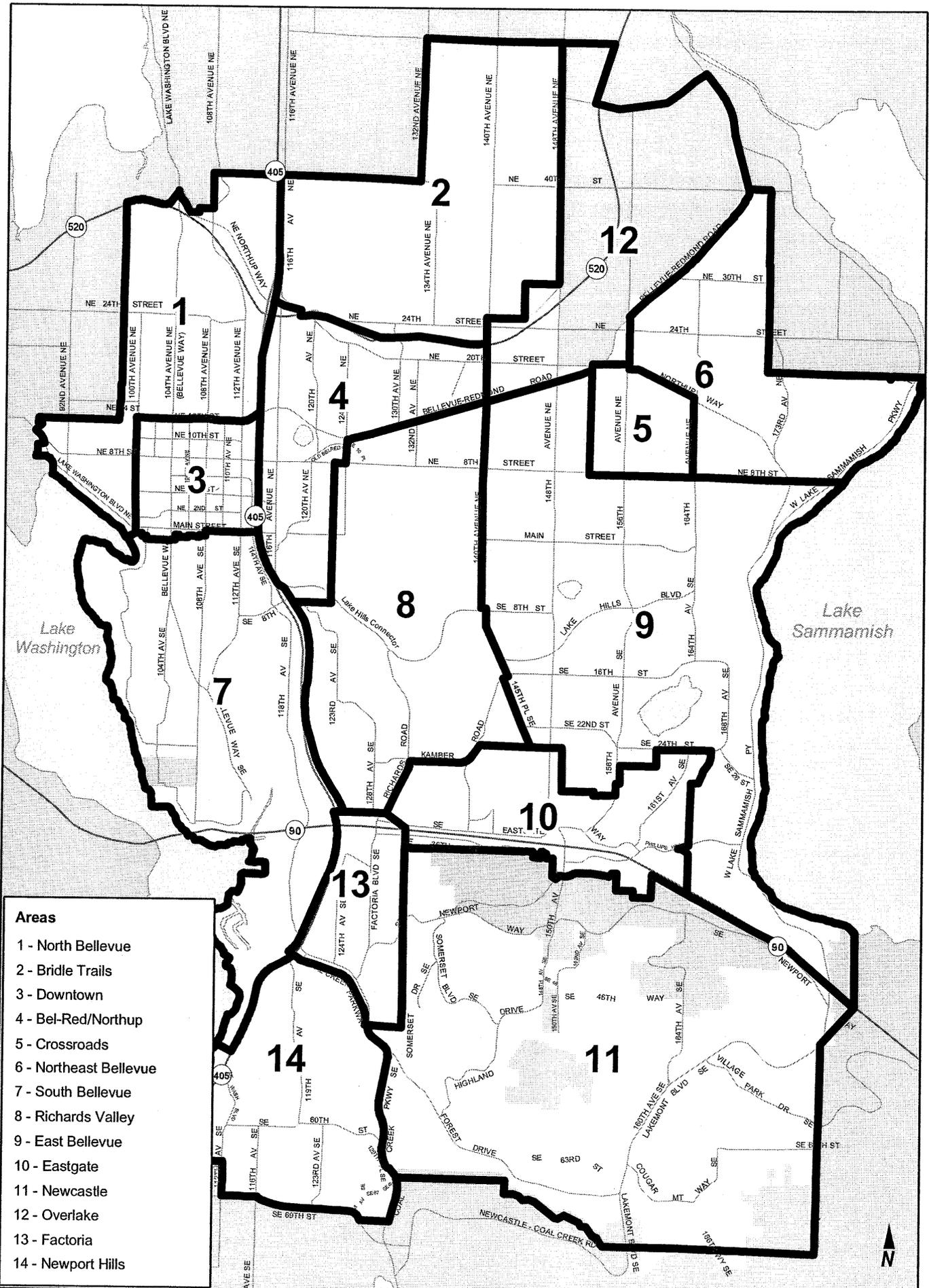
PROPOSED IMPACT FEE PROJECT LIST

June 21, 2004

Redmond BROS	PW-I-83	140th Ave NE/Redmond Way	Add eastbound right turn lane from Redmond Way to 140th Ave NE and second northbound left turn lane from 140th Ave NE to Redmond Way	1,032	80
Redmond BROS	PW-I-83	Willows Road/Redmond Way	Convert southbound lanes to provide left and left/through/right turn lanes; add westbound right turn lane	885	69
Redmond BROS	PW-I-83	W. Lake Sammamish Pkwy/SR520 EB Ramps	Add second eastbound left turn lane	317	61
Redmond BROS	PW-I-83	W. Lake Sammamish Pkwy/Rel-Red Rd.	Add second eastbound left turn lane	757	146
Redmond BROS	PW-I-83	W. Lake Sammamish Pkwy/Town Center	Construct new four lane connector with signal at W. Lake Sammamish Pkwy NE	8,000	1,544
Redmond BROS	PW-I-83	150th Ave NE/NE 40th Street	Add northbound right turn lane	693	160
Redmond BROS	PW-I-83	150th Ave NE/NE 51st St	Add north leg to intersection; provide two southbound left turn lanes	540	125
Redmond BROS	PW-I-83	159th Ave NE/NE 40th St	Revise lanes to provide northbound left turn and shared left turn/right turn lanes	47	7
Redmond BROS	PW-I-83	156th Ave NE/NE 36th St	Add eastbound right turn and second westbound right turn lanes	633	91
Redmond BROS	PW-I-83	W. Lake Sammamish Pkwy/NE 51st St	Convert eastbound lanes to provide left turn and shared left turn/right turn lanes; convert southbound lanes to provide through and through/right turn lanes; and add northbound through lane	876	169
Redmond BROS	PW-I-83	148th Avenue NE - SR 520 Eastbound off ramp to SR 520 westbound on ramp	Redmond BROTS Project; Add northbound through lane; modify channelization and signals.	2,017	555
Impact Fee Area #13 - Factoria					
TFP-103	PW-R-138	129th Place SE - SE 38th Street to Newport Way	Design study to evaluate the feasibility and cost of completing the missing segment of roadway on 129th Place SE between SE 38th Street and Newport Way and adding a new signal at 129th Place SE and Newport Way.	281	281
Impact Fee Area #14 - Newport Hills					
			None	0	0
Total Cost of Impact Fee Projects in the 2004-2015 TFP				148,826	93,736

11-604

Impact Fee Areas



- Areas**
- 1 - North Bellevue
 - 2 - Bridle Trails
 - 3 - Downtown
 - 4 - Bel-Red/Northup
 - 5 - Crossroads
 - 6 - Northeast Bellevue
 - 7 - South Bellevue
 - 8 - Richards Valley
 - 9 - East Bellevue
 - 10 - Eastgate
 - 11 - Newcastle
 - 12 - Overlake
 - 13 - Factoria
 - 14 - Newport Hills

Mr. Blake expressed Kirkland's interest in entering into an interlocal agreement for participation in the Public Safety Wireless Project.

Responding to Mr. Chelminiak, Fire Chief Peter Lucarelli said all Eastside Communications Center customers would like to participate in the project but some cannot due to lack of funding. Staff is researching opportunities for grants to help these jurisdictions.

Responding to Dr. Davidson, Chief Montgomery said Bellevue is actively working with the cities of Kirkland and Mercer Island to reconfigure the Eastside Communications Center to accommodate their and others Police dispatch services.

Mayor Marshall noted Council consensus to proceed with the interlocal agreements.

(e) Update on 2004-2015 Transportation Facilities Plan (TFP)

Kris Liljeblad, Transportation Assistant Director, explained that City Code requires that the Transportation Facilities Plan is updated every two years. Eric Miller, Transportation Capital Programming Manager, described the programmatic environmental review conducted to prepare the Draft Environmental Impact Statement (DEIS) on the proposed 2004-2015 Transportation Facilities Plan. The DEIS was issued on March 4 and the comment period on the document extends through April 5. No significant impacts were identified in the report, and all mobility management areas (MMAs) are projected to meet LOS (level of service) standards through 2015.

The TFP is a financially constrained plan funded through the general Capital Investment Program (CIP), impact fees and developer contributions, transportation-dedicated revenues, and grants and other agencies. Mr. Miller discussed the availability of \$58.8 million in unconstrained revenue through 2015 for new projects, which represents a decrease of approximately \$22 million from 2001 projections. He reviewed maps depicting planned capacity and non-capacity projects as well as new projects.

Mr. Miller noted the next agenda item regarding TFP impact fees. Following the DEIS comment period, a final EIS will be prepared and published by May. Council will be asked to take action on the TFP and impact fee project list in May. If approved, Council will be asked to adopt the updated Impact Fee Schedule within six months as dictated by City Code.

Responding to Deputy Mayor Noble, Mr. Miller said the Transportation Commission supports the TFP and will prepare a formal recommendation for Council following the DEIS comment period.

(f) Impact Fee Calculation Methodology

Laurie Gromala, Transportation Assistant Director, recalled previous Council direction to staff to review the impact fee calculation methodology. Staff recommends maintaining the methodology but aligning the impact fee areas with the City's mobility management areas (MMAs).

Chris Dreaney, Development Review Manager, said the impact fee program was implemented in 1990 with the 1991-2002 Transportation Facilities Plan. Fees are collected from new development to help pay for needed capacity projects, and fees are updated with each revised TFP. The current impact fee schedule was adopted in November 2001, at which time Council directed staff to review the impact fee program and develop options for a simplified structure. Staff developed methodology alternatives and met with the Transportation Commission. In July 2003, staff recommended to Council a reduction in the number of impact fee areas from 13 to one. At that time, the Transportation Commission prepared a recommendation that impact fees be modified only by matching the impact fee area boundaries to MMA boundaries. The Commission's recommendation is provided on page 3-47 of the Council packet.

As further directed by Council, staff presented the options in focus group meetings with local businesses and at a joint transportation committee meeting of the Bellevue Downtown Association and Chamber of Commerce. The Chamber and the BDA support the Commission's recommendation to match impact fee area boundaries with MMA boundaries.

Ms. Dreaney explained that aligning impact fee areas with MMAs will cause an impact fee decrease of 8 percent for MMA 5, an increase of 16 percent for MMA 9 (\$168 for single family home), and an increase of 6 percent for MMA 6 (\$65 for single family home). There is little opportunity for single family development in MMAs 6 and 9. Staff recommends modifying impact fee areas to match MMA boundaries.

Responding to Mr. Chelminiak, Ms. Dreaney said staff has not calculated the revenue impact of decreasing impact fees for MMA 5. However, impact fees represent a very small portion (approximately 1 percent) of overall transportation funding.

- Deputy Mayor Noble moved to direct staff to align impact fee areas with mobility management areas as part of the 2004 update of the Transportation Facilities Plan, and Mr. Degginger seconded the motion.
- The motion to direct staff to align impact fee areas with mobility management areas as part of the 2004 update of the Transportation Facilities Plan carried by a vote of 5-1, with Dr. Davidson dissenting.

(g) Extension of Olympic Pipe Line Company Franchise Agreement

David Kerr, Franchise Manager, explained that the current franchise agreement with Olympic Pipe Line Company expires soon. Olympic has been reluctant to engage in franchise negotiations due to pending litigation with the City of Seattle. However, Olympic has agreed to extend the current franchise agreement for one year upon Council approval.

Responding to Mr. Degginger, Mr. Kerr said Olympic paid most of its franchise fee during the bankruptcy period except for \$6,000. The City has submitted a claim to recover the full amount due.

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5524

AN ORDINANCE regarding the Transportation Improvement Program; adopting the 2004-2015 Transportation Facilities Plan and amending the Impact Fee Project List and the Impact Fee Areas Map.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Pursuant to BCC 22.16.050 and Section 4 of Ordinance No. 4824, the City Council hereby approves the 2004-2015 Transportation Facilities Plan given Clerk's Receiving No. _____.

Section 2. Pursuant to BCC 22.16.050 and Section 4 of Ordinance No. 4824, the City Council hereby approves that Impact Fee Project List given Clerk's Receiving No. _____.

Section 3. Pursuant to BCC Section 22.16.080 and Section 6 of Ordinance No. 4824 the City Council approves and adopts that certain Transportation Impact Fee Areas Map given Clerk's Receiving No. _____.

Section 4. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

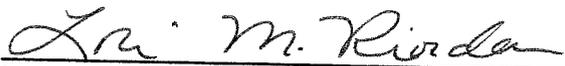
Passed by the City Council this _____ day of _____, 2004, and signed in authentication of its passage this _____ day of _____, 2004.

(SEAL)

Connie B. Marshall, Mayor

Approved as to form:

Richard L. Andrews, City Attorney



Lori M. Riordan, Deputy City Attorney

Attest:

Myrna L. Basich, City Clerk

Published _____

11-68