

**JOINT UTILITY TRENCH AGREEMENT  
(CITY OF BOTHELL/THE CITY OF SEATTLE)  
SR 522 STAGE 3 IMPROVEMENTS PROJECT**

**1. Parties**

This agreement (“Agreement”) is entered into as of the Effective Date specified below between the CITY OF BOTHELL, a Washington municipal corporation having its principal place of business at 18415 101<sup>st</sup> Ave NE, Bothell, WA 98011-3403 (“Bothell”), and THE CITY OF SEATTLE, by and through its City Light Department, a Washington corporation (“Seattle”). This Agreement may refer to Seattle or to Bothell, individually, as a party (“Party”) or, jointly, as parties (“Parties”) to this Agreement.

**2. Recitals**

- 2.1 Bothell is making improvements to State Route 522 between west of intersection of SR 522 and 83<sup>rd</sup> Place NE and west of 96<sup>th</sup> Ave NE (the “SR 522 Stage 3”); and
- 2.2 These right-of-way improvements for the SR 522 Stage 3 Improvements Project require Seattle to relocate portions of its electric utility system; and
- 2.3 Relocation requires trenching within the right-of-way, and the Parties recognize the efficiencies of entering into an agreement whereby one trench will be dug for all of the Parties to relocate their facilities into (the “Joint Trench”).

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made part hereof, it is mutually agreed by and between the Parties as follows:

**3. Description of Joint Trench**

Bothell will send out for bid and, provided Bothell receives acceptable responsive and responsible bids, in Bothell’s sole discretion, enter into a contract with a contractor (“Bothell’s Contractor”) for the construction of a joint utility trench (“Joint Trench”), as part of the SR 522 Stage 3 Project, to include Comcast, Frontier, MCIMETRO, Zayo, PSE, Seattle, and University facilities. The Joint Trench Work (as defined in Section 5 below) will follow the SR 522 alignment. The Joint Trench will connect to the joint utility trench segment separately installed under the SR 522 Stage 3 Improvements project.

Work described within this agreement relates to the relocation of Utility’s facilities which are currently aerial and consist of Seattle’s fiber optic cable. All of the Utility’s facilities within the project limit will be relocated to underground as shown on Joint Utility Trench drawings titled “SR 522 Stage 3 Improvements”.

#### **4. Term**

This Agreement shall commence on the last date entered by the Parties below (“Effective Date”) and shall continue for a period of thirty (30) months, unless earlier terminated pursuant to the terms of this Agreement.

#### **5. Responsibilities of the Parties to construct the Joint Trench**

##### 5.1 Seattle’s Responsibilities (“Seattle’s Work”)

- 5.1.1 Seattle shall provide to Bothell engineering drawings, specifications, construction standards, quantities, and cost estimates for relocating its facilities. The drawings shall show in detail the quantity, and size of the conduits and vaults to be used by Seattle for its facilities.
- 5.1.2 Once vault and conduit installation by Bothell is completed, Seattle will provide and install all wires, conductors and any other equipment needed to complete the Seattle portion of the system. Seattle will, in coordination with Bothell and Bothell’s Contractor, schedule, complete and activate its relocated system within thirty (30) working days of notice to proceed from Bothell. Notwithstanding the foregoing, Seattle shall not be responsible for delays in performing Seattle Work to provide such delay is solely caused by other contractors not under the direction or control of Seattle. Seattle shall provide Bothell with five (5) working days’ notice, in writing, of any anticipated delay to its construction schedule. This shall in no way alter any delay claims due per Section 6.5.
- 5.1.3 Seattle shall remove all existing cable, wiring, and vaults upon completion of the new system. The abandonment of utilities in place shall not be allowed.
- 5.1.4 Seattle will be responsible for providing all traffic control associated with the pulling of cables and associated equipment, and the removal of Seattle’s existing lines. Traffic control permits needed for installation and removal of Seattle owned equipment will be obtained by Seattle.
- 5.1.5 Seattle will notify Bothell in writing when Seattle’s installation of its portion of the system is complete and the system has been activated.

- 5.1.6 Seattle will perform cut-over and transfer of existing Seattle customers.
- 5.1.7 Seattle shall maintain continued coordination with Bothell regarding the installation of Seattle’s facilities during the term of this Agreement. This coordination shall include but not be limited to the following:
  - 5.1.7.1 Seattle and/or its contractor will attend the pre-construction meeting.
  - 5.1.7.2 Seattle and/or its contractor will attend weekly construction meetings.
  - 5.1.7.3 Seattle will be given ten (10) days’ notice that Bothell’s Contractor has been given the notice to proceed.
  - 5.1.7.4 Seattle will be responsible for coordination with other utility companies included in the joint trench for the placement of its conduit and vaults.
  - 5.1.7.5 Seattle shall adhere to Bothell’s Contractor’s Schedule (as defined below in Section 5.2.6).
- 5.1.8 Seattle expressly agrees that the scope of work included in Seattle Work is for Seattle’s benefit and all electric utility infrastructure is Seattle’s property and not the property of Bothell.

## 5.2 Bothell’s Responsibilities (“Bothell’s Work”)

- 5.2.1. Bothell will prepare drawings and specifications for excavation of the Joint Trench and placement of conduits. Bothell will advertise for bids, evaluate bids, award contract and monitor Bothell’s Contractor’s activities.
- 5.2.2 Bothell will provide all necessary excavation, bedding, backfill, off-site disposal, and site restoration for the Joint Trench Project, along with the coordination of other utilities participating in the Joint Trench Project.
- 5.2.3 Bothell will provide Seattle with ten (10) working days’ notice that Bothell’s Contractor plans to begin the Joint Trench.
- 5.2.4 Bothell will provide all flagging and traffic control, as required for the trench excavation and backfilling activity.
- 5.2.5 Bothell will attend weekly construction meetings with Bothell’s Contractor, Seattle, and other franchise utilities involved in the Joint Trench Project.
- 5.2.6 Bothell will provide Seattle a copy of Bothell’s Contractor’s proposed work schedule (“Contractor’s Schedule”) showing date, location and extent of work to be performed. The Contractor’s Schedule will be subject to change at any time.
- 5.2.7 Bothell will document quantities as Bothell’s Contractor proceeds with excavation, materials supply, installation and backfill and provide invoices, not more frequently than once per month, to Seattle for work undertaken in connection with this Agreement.
- 5.2.8 Bothell, or Bothell’s Contractor, will install the conduit and vaults per Seattle’s design.

## 6. Cost Allocation

- 6.1 Estimate of Seattle's Costs. **Exhibit A**, attached to this Agreement, is an estimate of Seattle's proportionate share of the Joint Trench costs. The costs shown on **Exhibit A**, attached and incorporated by this reference, are an estimate only. The final breakdown of costs will be based on the actual quantities of work performed by Bothell's Contractor multiplied by the contract unit bid costs for each work item.
- 6.2 Trench Costs. Seattle shall pay to Bothell one hundred percent (100%) of its pro rata share of the Joint Trench Project costs, which are shown by estimate in **Exhibit A**. Joint Trench Project costs will be finalized after completion of construction of the Joint Trench to account for actual construction costs. Seattle will have thirty (30) days to pay Bothell after receiving the final billing.
- 6.3 Installation Costs. Seattle will be solely responsible for its own costs to provide and install all wires, conductors and any other equipment needed to complete Seattle Work for the Joint Trench Project. Seattle will be solely responsible for its own costs to remove and dispose properly of all wires, conductors, and vaults from decommissioned systems. These costs include, but are not limited to, completing and activating its relocated system.
- 6.4 Additional Expenses. Seattle agrees to pay its share of any additional expenses incurred in providing the Joint Trench due to any over-excavation required or any other unforeseen conditions, including any additional Joint Trench width or depth attributable solely to errors in Seattle's design. Any changes to Seattle's Work perceived as necessary by Bothell's Contractor must be approved in writing by Seattle in advance.
- 6.5 Claims by Contractor. Seattle agrees to pay the proportionate share of cost of any claims made by Bothell's Contractor that are caused by Seattle's action or omission. These claims may include delays caused by Seattle installing their facilities, delays caused by Seattle receiving their materials, or any other conflicts between Bothell's Contractor and Seattle. These claims must be verifiable or substantiated claims and be subject to binding arbitration.
- 6.6 Invoices. Seattle agrees to pay Bothell, within thirty (30) calendar days of receiving an invoice from Bothell, for Seattle's proportionate share of the amounts that Bothell has been invoiced by Bothell's Contractor for Joint Trench work that has been completed by Bothell's Contractor.
- 6.7 Withdrawal from Agreement. Should Seattle elect not to participate in the Joint Trench Project, Seattle shall notify Bothell in writing as soon as practicable after such decision is made. In the event Seattle does withdraw from this Agreement, Seattle shall relocate its facilities for the Joint Trench within fifteen (15) business days of Bothell's Contractor's completion of the Joint Trench Project. Seattle shall coordinate Seattle's Work with other utility companies. This coordination may include the stacking

of conduits with another utility, locating conduits below or around other vaults, and placement of vaults around other conduits. Seattle’s new facilities must be located in the public right of way and construction of these facilities shall planned in a manner that does not cause any unreasonable delay to Bothell’s Contractor work. Seattle shall be held liable for any and all actual damages and delays to Bothell’s Joint Trench Project and/or the SR 522 Stage 3 Improvements Project directly attributable to Seattle’s withdrawal from this Joint Trench Agreement or as a result of Seattle’s withdrawal or Seattle’s utility work.

## **7. Changes**

After Bothell executes a contract with Bothell’s Contractor, Seattle shall submit any changes requested to be performed by Bothell’s Contractor to Bothell. Bothell shall submit these change requests (“Seattle Change Orders”) to Bothell’s Contractor and Bothell shall obtain a price from Bothell’s Contractor to perform Seattle Change Orders, and notify Seattle of the price for Seattle Change Orders. Prices supplied by Bothell’s Contractor for Seattle Change Orders shall be in conformance with the 25 percent limit in subsection 1-04.6 of the WSDOT Standard Specifications. Seattle shall have twenty-four (24) hours from receiving the price from Bothell (as provided by Bothell’s Contractor) within which to respond. If Seattle chooses not to accept Bothell’s Contractor’s quoted price, Seattle and Bothell’s Contractor shall use commercially reasonable efforts to negotiate and agree on the price for Seattle Change Order. The work in the Seattle Change Orders shall only be performed by Bothell’s Contractor and no other contractor, unless such other contractor is hired by or approved by Bothell, and performance of Seattle Change Order shall be according to a mutually agreed upon schedule with Bothell, Bothell’s Contractor and Seattle so as not to cause undue delay to Bothell’s Contractor, the Joint Trench Project or the SR 522 Stage 3 Improvements Project.

## **8. Default**

### **8.1 Default by Seattle**

- 8.1.1 If Seattle is: (1) adjudged bankrupt; (2) makes a general assignment for the benefit of its creditors because of its insolvency; (3) operating under a receiver appointed because of its insolvency; or (4) insolvent as evidenced by its inability generally to pay its creditors as and when accounts are due, Bothell, without prejudice to any other right or remedy it may have, may terminate the Agreement by giving Seattle or the receiver or trustee in bankruptcy written notice.
- 8.1.2 If Seattle fails to materially comply with its obligations under this Agreement, Bothell shall give Seattle written notice that Seattle is in default of its contractual obligations and instruct Seattle to correct the default within thirty (30) working days after Seattle receives the notice.

8.1.3 If the default cannot be corrected within thirty (30) working days after delivery of notice under Section 8.1.2, Seattle shall be in compliance with Bothell’s instructions if Seattle:

8.1.3.1 Begins correction of the default before expiration of the thirty (30) working day period;

8.1.3.2 Gives Bothell a correction schedule before expiration of the thirty (30) working day period establishing a time period acceptable to Bothell within which the correction of the default will be completed together with evidence reasonably satisfactory to Bothell that Seattle has the capability and all necessary labor, supervision, equipment and materials to complete the correction as scheduled; and

8.1.3.3 Completes the correction as scheduled.

## 8.2 Default by Bothell.

8.2.1 If Bothell is: (1) adjudged bankrupt; (2) makes a general assignment for the benefit of its creditors because of its insolvency; (3) operating under a receiver appointed because of its insolvency; or (4) insolvent as evidenced by its inability generally to pay its creditors as and when accounts are due, Seattle, without prejudice to any other right or remedy it may have, may terminate the Agreement by giving Bothell or the receiver or trustee in bankruptcy written notice.

8.2.2 Seattle may notify Bothell in writing that Bothell is in default of its obligations under this Agreement if Bothell fails to materially comply with its obligations under this Agreement.

8.2.3 If Bothell fails to materially comply with its obligations under this Agreement, Seattle shall give Bothell written notice that Bothell is in default of its contractual obligations and instruct Bothell to correct or commence to correct the default within thirty (30) days after Bothell receives the notice.

## 9. Termination

9.1 Bothell may terminate this Agreement for its convenience upon ten (10) days written notice to Seattle. This provision shall not preclude Seattle from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments, including damages for delay of Seattle’s Work.

9.2 If Seattle terminates all or part of this Agreement, Bothell shall determine the amount of Joint Trench Work satisfactorily performed to the date of termination and the amount owing to Bothell. In determining the amount to be paid to Bothell for partial performance of the Joint Trench work, Seattle shall consider the actual costs incurred by Bothell in performing the Joint Trench work to the date of termination, the amount of Joint Trench work originally required that was satisfactorily

completed to the date of termination, and other relevant factors. This provision shall not preclude Bothell from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments, including damages for delay of the Joint Trench project and the SR 522 Stage 3 Improvements Project.

9.3 If Bothell terminates all or part of this Agreement for Seattle’s default, Bothell may complete Seattle’s Work, or any portion thereof, at Bothell’s sole discretion, by contract or otherwise, and Seattle shall be liable to Bothell for any additional costs incurred by Bothell. “Additional Costs” shall mean all reasonable costs, including legal costs and attorney fees, incurred by Bothell in connection with Seattle’s Work, the termination of Seattle and delay on the Joint Trench Project or SR 522 Stage 3 Improvements Project as a result of Seattle’s default.

9.4 If Seattle terminates all or part of this Agreement for Bothell’s default, Seattle may complete Bothell’s Work, or any portion thereof, at Seattle’s sole discretion, by contract or otherwise, and Bothell shall be liable to Seattle for any additional costs incurred by Seattle. “Additional Costs” shall mean all reasonable costs, including legal costs and attorney fees, incurred by Seattle in connection with Bothell’s Work, the termination of Bothell and delay on Seattle’s Work as a result of Bothell’s default.

## **10. Indemnification**

10.1 The indemnification and defense obligations specified in this Section 10 (“Indemnity Obligations”) have been mutually negotiated and shall survive the expiration, abandonment, or termination of this Agreement. The Indemnity Obligations shall extend to claims that are not reduced to a suit and to any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation. Inspection, acceptance or payment by Bothell of or for any Seattle Work shall not be grounds for avoidance of any Indemnity Obligations.

10.2 To the maximum extent permitted by law, including R.C.W. 35.32A.090, each Party, for itself and its employees , agrees to defend, indemnify and hold harmless the other Party and its elected and appointed officers, and employees from and against any and all suits, claims, actions, losses, costs, attorney fees and expenses, liabilities, penalties, judgments, settlements, and damages of whatsoever kind or nature (collectively “Claims”) arising out of, in connection with, or incident to the indemnifying Party’s negligence or intentional misconduct occurring in the performance of obligations under this Agreement, except and to the extent judicially determined to have been caused by the negligence of the other Party.

- 10.3 Each Party further agrees to waive, and agrees that this indemnification constitutes that Party's waiver of, immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification, and that this waiver has been mutually negotiated.
- 10.4 Each Party shall comply, and shall ensure its subcontractors comply, with the terms of this Agreement and with all applicable local, state or federal laws, rules or regulations.

## **11. Franchise Agreement**

Bothell and Seattle agree that as to future projects, by entering into this Agreement, neither Party has waived any rights it may have under any existing agreement between Bothell and Seattle and expressly herein reserve such rights.

## **12. Hazardous Materials**

- 12.1 "Hazardous Materials" means any hazardous, radioactive, or toxic substance, material, or waste defined or regulated as such in or under any environmental, health or safety law including without limitation asbestos, and those hazardous materials, substances, and wastes defined by the United States Department of Transportation ("DOT"), Occupational Safety and Health Administration ("OSHA"), Environmental Protection Agency ("EPA"), or the Nuclear Regulatory Commission ("NRC").
- 12.2 In connection with each Party's respective Joint Trench Work obligations under this Agreement, Bothell and Seattle shall comply with all applicable provisions of The Hazardous Materials Transportation Act (49, U.S.C §1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601, et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), the OSH Act, and any other applicable federal, state, and local laws and regulations governing Hazardous Materials or safety.
- 12.3 Wherever applicable, Bothell and Seattle shall utilize reasonable efforts to provide products and services that eliminate or reduce the generation of hazardous waste/materials.
- 12.4 Each Party will promptly notify the other Party of the discovery of any Hazardous Material previously undisclosed affecting the Joint Trench Project hereunder. To the extent applicable and required, the Parties shall furnish each other with Material Safety Data Sheets that comply with the requirements of the OSHA Hazard Communication Standard (29 CFR 1910.1200), as amended, for any materials furnished under this Agreement.

12.5 Each Party shall defend, indemnify and hold harmless the other Party for any loss, damage, liability, claim, demand or any penalty, including costs, expenses and reasonable attorney’s fees, assessed against the non-indemnifying Party that may be sustained by reason of other indemnifying Party’s failure to comply with any rules, regulations, or laws governing hazardous materials and/or substances, including, but not limited to, those enumerated herein. Each Party shall own and properly dispose of any Hazardous Materials that it introduces to the work contemplated by this Agreement. Under no circumstances shall any Hazardous Materials be disposed of by either Party on Bothell premises or property, including but not limited to Bothell dumpsters.

### **13. Insurance**

13.1 Seattle shall procure and maintain the following insurance for the duration of this Agreement or for three (3) years from the date of this Agreement for any claims made coverage. For purposes of this Section 13, “Bothell” means Bothell, its officers, officials, employees, agents, representatives and volunteers. Bothell shall be covered as an additional insured as respects the Seattle Work and as respects liability arising under the following coverages. The cost of the following insurance coverage shall be borne by Seattle. The coverages shall contain no special limitations on the scope of protection afforded to Bothell. Insurance shall be placed with insurers with a current A.M. Best rating of not less than A: VII.

13.2 Commercial General Liability Insurance against which any claims may arise from or in connection with the performance of the Seattle Work by Seattle, its employees, agents or subcontractors. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. Seattle shall maintain limits on such insurance in the amount of \$2,000,000.00 per occurrence/accident with an aggregate of \$3,000,000.00.

13.3 Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Service Office (ISO) occurrence form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. Automobile liability insurance with a minimum combined single limit for bodily injury and property damage of \$2,000,000.

13.4 Workers’ Compensation Insurance coverage as required by the Industrial Insurance laws of the State of Washington.

13.5 Any deductibles or self-insured retentions shall be declared to and approved by Bothell if they exceed ten percent (10%) of the underlying coverage amount. At the option of Bothell, the insurer shall reduce or eliminate such deductibles, and/or the self-insured retention shall not apply to Seattle’s liability to Bothell and shall be the sole responsibility of Seattle. Seattle’s insurance coverage shall be primary as respects Bothell. Any insurance maintained by Bothell shall be in excess of Seattle’s insurance and shall not contribute with it.

- 13.6 Seattle and Seattle’s contractor shall provide Bothell with certificates of insurance and a copy of the additional insured endorsement evidencing the required coverage before execution of this Agreement or, at Bothell’s sole option, commencement of the Seattle Work. Said certificates/endorsements shall be attached to this Agreement as **Exhibit B**. Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Bothell. Bothell reserves the right to require complete, certified copies of all required insurance policies at any time.
- 13.7 Seattle’s maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Seattle to the coverage provided by such insurance, or otherwise limit Bothell’s recourse to any remedy available at law or in equity.
- 13.8 Seattle shall insure that its contractors comply with all provisions of this Agreement, including this Section 13.
- 13.9 For purposes of this Agreement, Bothell acknowledges that Seattle is a self-insured municipal corporation and that Seattle’s self-insurance program satisfies the above insurance requirements without additional obligation.

#### **14. Miscellaneous**

- 14.1 Discrimination. When hiring employees to perform Work, and in any subcontract arising hereunder, Seattle, its subcontractor, or any person acting on behalf of Seattle or subcontractor shall not, by reason of race, religion, color, age, sex, national origin or the presence of any sensory, mental or physical handicap, veteran status, or sexual orientation, discriminate against any person who is qualified and available to perform the Joint Trench Work to which the employment relates.
- 14.2 Nonwaiver of Breach. The failure of a Party to insist upon strict performance of any of the terms and rights contained herein, or to exercise any option herein conferred in one or more instances, shall not be constructed to be a waiver or relinquishment of those terms and rights and they shall remain in full force and effect.
- 14.3 Governing Law/Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
- 14.4 Dispute Resolution. All claims, counterclaims, disputes, and other matters in question between Bothell and Seattle arising out of or relating to this Agreement shall be referred to Bothell City Manager or a designee for determination, together with all pertinent facts, data, contentions, and so forth. Bothell City Manager shall consult with Seattle’s representative and make a determination within thirty (30) calendar days of such referral. Should the claims, counterclaims, or disputes not be resolved

by Bothell City Manager’s decision, the Parties shall refer the matter to professional mediation in Seattle, Washington, which shall be conducted within thirty (30) calendar days of Bothell City Manager’s decision. The cost of mediation shall be shared equally. No civil action on any claim, counterclaim, or dispute may be commenced until 30 days following such mediation. In the event of litigation between Seattle and Bothell to enforce the rights under this Agreement, reasonable attorney fees and expenses shall be allowed to the prevailing party.

- 14.5 Remedies. Bothell’s rights and remedies in this Agreement are in addition to all other rights and remedies provided by law. Bothell may exercise such rights and remedies in any order and at any time as it determines necessary or appropriate.

14.6 **Notice.** All communications regarding this Agreement shall be sent to the Parties at the addresses listed below, or at such other address as given pursuant to this Section 14.6, and shall be effective on the next business day if sent by registered or certified mail or deposited with an overnight delivery service.

**Notices to be sent to:**

**THE CITY OF SEATTLE**

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (facsimile)

**Notices to be sent to:**

**CITY OF BOTHELL**

Attn: Rita Hu  
Public Works Department  
18415 101<sup>st</sup> Ave NE  
Bothell, WA 98011

With a copy to:

Seattle  
Attn: Legal Department

14.7 **Modification.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each of affected Party.

14.8 **Severability.** If any one or more sections, sub-sections, or sentences of this Agreement are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this Agreement and the remainder shall remain in full force and effect.

14.9 **Relationship.** Seattle is an independent contractor under this Agreement, and the parties intend that an independent contractor-client relationship is the only relationship created by this Agreement. No employee, agent, representative or subcontractor of Seattle shall be or shall be deemed to be the employee, agent representative or subcontractor of Bothell. Seattle has no authority, and will not represent itself to have authority, to legally bind Bothell or otherwise act for, or on Bothell’s behalf. None of the compensation or other benefits provided by Bothell to its employees shall be available to Seattle’s employees, agents, representatives or subcontractors. Seattle shall be solely responsible for all compensation, taxes, withholding, and other benefits due to its employees, agents, representatives and subcontractors. Seattle shall be solely responsible for its acts and omissions and for the acts and omissions of Seattle’s agents, employees, representatives and subcontractors during performance of this

Agreement. On or before the Effective Date, Seattle shall file, maintain and/or open all necessary records with the Internal Revenue Service and the State of Washington, and as may be required by RCW 51.08.195, to establish Seattle status as an independent contractor.

- 14.10 Force Majeure. Parties shall not be deemed to be in breach of this Agreement if unable to perform their respective obligations hereunder as a result of the occurrence of an event of “force majeure,” which shall include, but not be limited to, acts of God, acts of the government of the United States or of any state or political subdivision thereof, strikes, civil riots or disturbances, fire, floods, explosions, earthquakes, wind, storms, hurricanes, lightning or other similar catastrophes or other causes beyond the Parties’ reasonable control. The scope of events of force majeure shall not extend to payment of money owed hereunder.
- 14.11 Disclosure. Both parties agree that, to the extent allowable under RCW Chapter 42.56, all information with respect to this Agreement will be kept confidential and will be used for internal company purposes only. Neither party shall, without the prior written consent of the other party: (a) issue any press release or make any other public announcement regarding this Agreement or any relation between Bothell and Seattle; or (b) use the name, trademarks, or other proprietary identifying symbol of the other party or its affiliates.
- 14.12 Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 14.13 Assignment. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may assign all or part of this Agreement immediately, without the prior written consent of the other Party (a) to any entity that controls, is controlled by, or is in common control with a Party or (b) to any successor in interest to a Party or (c) if necessary to satisfy the rules, regulations and/or orders of any federal, state or local governmental agency or body.
- 14.14 Entire Agreement. The written provisions and terms of this Agreement, together with any attached Exhibits, supersede all prior verbal statements by any representative of Bothell, and those statements shall not be construed as forming a part of or altering in any manner this Agreement. This Agreement and any attached Exhibits contain the entire Agreement between the Parties. Should any language in any Exhibit to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.
- 14.15 Authorized Signatures. By their signatures below each Party represents that they have taken all necessary steps and that the signatories are fully authorized to sign for and on behalf of the named principal above.

SIGNATURE PAGE FOLLOWS IMMEDIATELY

**IN WITNESS WHEREOF**, the Parties below have executed this Agreement.

**CITY OF SEATTLE**

\_\_\_\_\_  
**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**CITY OF BOTHELL**

\_\_\_\_\_  
**Print Name:** **Jennifer Phillips**

**Title:** **Bothell City Manager**

**DATE:** \_\_\_\_\_

**ATTEST/AUTHENTICATED:**

\_\_\_\_\_  
**Laura Hathaway**  
**Bothell City Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Paul Byrne**  
**Bothell City Attorney**

**EXHIBIT B**  
**SEATTLE’S INSURANCE CERTIFICATE(S)**  
**(Attached)**