

City of Redmond



Agenda

Wednesday, July 5, 2023

4:30 PM

City Hall: 15670 NE 85th St; Remote: Comcast Ch. 21/321, Ziplly Ch. 34,
Facebook Live, YouTube, Redmond.gov/rctvlive, or 510-335-7371

Committee of the Whole - Planning and Public Works

Committee Members

Melissa Stuart, Presiding Officer

Jeralee Anderson

David Carson

Steve Fields

Jessica Forsythe

Varisha Khan

Vanessa Kritzer

AGENDA

ROLL CALL

1. Updated Lodging Tax Advisory Committee (LTAC) Budget [CM 23-333](#)
Recommendations

[Attachment A: Draft LTAC June 6 Meeting Minutes](#)

[Attachment B: General Tourism and LTAC FAQ Overview](#)

Department: Planning and Community Development, 5 minutes

Requested Action: Consent, July 18th

2. Approval of a Contract with Community Attributes, Inc., in [CM 23-343](#)
the Amount of \$80,850 for an Economic Development
Strategic Plan

[Attachment A: Contract with Exhibits](#)

Department: Planning and Community Development, 5 minutes

Requested Action: Consent, July 18th

3. Approval of the 2023-24 Annual ORCA Contract Renewal [CM 23-346](#)

[Attachment A: ORCA Passport Per Trip Agreement](#)

Department: Planning and Community Development, 5 minutes

Requested Action: Consent, July 18th

4. Approve Final Contract with CDK Construction Services, [CM 23-342](#)
Inc., Accept Construction for the Fire Station 16 &
Maintenance Building Seismic Upgrade Project, and Request
Additional Funding

[Attachment A: Additional Project Information](#)

Department: Public Works, 5 minutes

Requested Action: Consent, July 18th

5. Approve a Contract Amendment to the Comprehensive [CM 23-322](#)
Garbage, Recyclables, and Organics Collection Contract

[Attachment A: First Amendment to Contract](#)

[Attachment B: Contract Attachment A](#)

[Attachment C: Fixed Annual Charge Example Calculation](#)

Department: Public Works, 5 minutes

Requested Action: Consent, July 18th

6. Approve On-Call Cultural Resources and Archaeological [CM 23-344](#)
Management Services Agreements

[Attachment A: ASM Consultant Agreement](#)

[Attachment B: ESA Consultant Agreement](#)

Department: Public Works, 5 minutes

Requested Action: Consent, July 18th

7. Approve the Redmond Technology Station Pedestrian/Bicycle [CM 23-336](#)
Bridge Operation and Maintenance Agreement with Microsoft

[Attachment A: Redmond Technology Station Pedestrian/Bicycle Bridge
Operation and Maintenance Agreement](#)

Department: Public Works, 5 minutes

Requested Action: Consent, July 18th

8. Award Bid to Watson Asphalt Paving Co Inc. of Redmond, [CM 23-335](#)
WA, for the 2023 Pavement Repairs Project in the amount of
\$428,448

[Attachment B Project Information.docx](#)

[Attachment A Vicinity Map.pdf](#)

Department: Public Works, 5 minutes

Requested Action: Consent, July 18th

9. Report out from NACTO [CM 23-359](#)

Councilmembers Fields and Khan, 10 minutes

ADJOURNMENT



Memorandum

Date: 7/5/2023

Meeting of: Committee of the Whole - Planning and Public Works

File No. CM 23-333

Type: Committee Memo

TO: Committee of the Whole - Planning and Public Works

FROM: Mayor Angela Birney

DEPARTMENT DIRECTOR CONTACT(S):

Planning and Community Development	Carol Helland	425-556-2107
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DEPARTMENT STAFF:

Planning and Community Development	Jackie Lalor	Economic Development and Tourism Program Administrator
Planning and Community Development	Philly Marsh	Economic Development Manager
Planning and Community Development	Seraphie Allen	Deputy Director

TITLE:

Updated Lodging Tax Advisory Committee (LTAC) Budget Recommendations

OVERVIEW STATEMENT:

Per Council's feedback at the April 25, 2023, meeting, the LTAC has updated recommendations for Council's consideration. The LTAC unanimously passed two new recommendations related to the end fund reserve for Council's approval.

The LTAC will review the additional recommendations that impact signature events and cultural arts programming designated funding with Parks and Recreations staff at an upcoming LTAC meeting. Those updated recommendations will come to the Council at a later date.

☒ **Additional Background Information/Description of Proposal Attached**

REQUESTED ACTION:

☐ **Receive Information**

☒ **Provide Direction**

☐ **Approve**

REQUEST RATIONALE:

- **Relevant Plans/Policies:**
N/A
- **Required:**
RCW 67.28
- **Council Request:**
April 25, 2023

- **Other Key Facts:**
Original request from Council came October 4, 2022

OUTCOMES:

The LTAC met on June 6, 2023, to review Council's feedback on their original budget process recommendations and to review guidance from the City Finance Department related to an acceptable end fund reserve minimum cash balance. After reviewing all the information, the LTAC passed two recommendations for Council's approval. Those recommendations are as follows:

1. The LTAC unanimously recommends maintaining a target end fund reserve of 60% of projected budget revenues.

The LTAC may recommend to Council at any time, a funding plan above the 60% threshold to adequately invest in identified, large spending opportunities.

(Councilmember Steve Fields moved; unanimously passed)

2. The LTAC unanimously recommends allocating up to \$80,000 to support a tourism strategic plan.

(Councilmember Steve Fields moved; unanimously passed)

COMMUNITY/STAKEHOLDER OUTREACH AND INVOLVEMENT:

- **Timeline (previous or planned):**
N/A
- **Outreach Methods and Results:**
N/A
- **Feedback Summary:**
N/A

BUDGET IMPACT:

Total Cost:

The total cost for the lodging tax fund relates to the 1% tax revenues on hotels and motels. For the 2023/2024 budget, this cost is estimated to be around \$1,048,359. An additional \$136,000 is funded through one-time ARPA funds for staff administration through 2024.

Approved in current biennial budget: ☒ **Yes** ☐ **No** ☐ **N/A**

Budget Offer Number:

000040 Community/Economic Development

Budget Priority:

Vibrant and Connected

Other budget impacts or additional costs: ☒ Yes ☐ No ☐ N/A

If yes, explain:

The request to utilize up to \$80,000 for a Tourism Strategic Plan would draw down the Lodging Tax end fund reserve by up to \$80,000 over the next nine months.

Funding source(s):

Lodging tax reserve fund

Budget/Funding Constraints:

The revenue fund is limited to lodging tax revenues earned by a 1% tax on Redmond hotels/motels. For 2022, the lodging tax fund revenues were approximately \$522,000. The reserve fund fluctuates each year based on the lodging tax revenues and expenses. As of April 30, 2023- there was \$758,000 in the end fund reserve.

☐ **Additional budget details attached**

COUNCIL REVIEW:

Previous Contact(s)

Date	Meeting	Requested Action
10/4/2022	Committee of the Whole - Planning and Public Works	Provide Direction
4/4/2023	Committee of the Whole - Planning and Public Works	Provide Direction
4/25/2023	Study Session	Provide Direction

Proposed Upcoming Contact(s)

Date	Meeting	Requested Action
7/18/2023	Business Meeting	Approve
7/25/2023	Study Session (If necessary)	Provide Direction

Time Constraints:

For Recommendation 1: Need approval or direction from the Council before the 2025/2026 budgeting process starts in early 2024. For Recommendation 2: Need approval as soon as possible in order to complete the 8-10-month process of developing a Tourism Strategic Plan with a consultant in time to help inform the 2025/2026 budget.

ANTICIPATED RESULT IF NOT APPROVED:

Recommendation 1: The end fund reserve will continue to have no minimum cash balance guidance around its use.

Recommendation 2: The City will not have a Tourism Strategic Plan in place to help inform budgeting for the 2025-26 biennium and other important decisions.

ATTACHMENTS:

Attachment A: Draft LTAC June 6 Meeting Minutes

Attachment B: General Tourism and LTAC FAQ Overview



Interested members of the public can listen to this meeting by phone at: 206-800-4590; Phone Conference ID: 102 660 96#. All public comments shall be emailed to Philly Marsh (pmarsh@redmond.gov) at least 24 hours before the meeting time. [To view the meeting presentation, click here.](#)

MEETING AGENDA

Tuesday | June 6, 2023
10 a.m. – Noon

Prepared by Jackie Lalor, Staff Liaison jlalor@redmond.gov

LTAC Members:

- Steve Fields, Council Chair
- Dan Angellar
- Latha Sambamurti
- George Manojlovic
- Melody Lanthorn
- Nancy Heard

City of Redmond Staff:

- Philly Marsh – Economic Development and Tourism
- Seraphie Allen – Planning & Community Development Deputy Director

Agenda:

1. March 6, 2023 meeting minutes approval
 - i. LTAC Action: Approved**
2. 2024 Tourism Grant application window August 1-15
3. Council feedback on LTAC recommendations
 - a. April 25 | [7 p.m. Study Session](#) (Watch on [Facebook](#) or [Legistar](#))
 - b. April 4 | [4:30 p.m. Committee of the Whole](#) (Watch on [Facebook](#))
 - i. *Committee Discussion:*
 - *Signature Events:*
 - *Derby Days: the weekend it takes place is one of the busiest weekends of the summer for hotels due to soccer tournaments*
 - *LTAC has concerns around the tourism draw to hotels and from more than 50 miles away for mostly Derby Days- Redmond Lights and cultural arts have potential if reworked to have a tourism focus*
 - *Can Parks staff provide proposals to the LTAC of how signature events and cultural arts programs will change to target tourists from more than 50 miles away and result in more hotel stays?*

- *Reserve Fund: LTAC members agreed with Finance's assessment and recommendation to keep 60% of projected budget revenues*
- *LTAC discussed tourism spend opportunities such as:*
 - *Tourism strategic plan*
 - *Fully funding current level of administration*
 - *Increasing event grants*
 - *Visitor center/kiosk*
 - *Data collection tools*
 - *Shuttle between Redmond and Woodinville*
 - *Light rail opening - marketing campaign*
- *Tourism Strategic Plan:*
 - *This plan is not currently in existence and is needed*
 - *Help inform the 2025/2026 budget*
 - *Help inform how to coordinate with TPA funding and workplan*
 - *Help inform how to best invest additional surplus funds of the end fund reserve above the 60% threshold*
 - *Work with Parks staff to evaluate opportunities to increase tourism results for signature events and cultural arts programming*

4. Round 2 of Council Recommendations

ACTION: COUNCIL RECOMMENDATIONS FROM THE LTAC:

- Recommendation 1:
The LTAC unanimously recommends maintaining a target end fund reserve of 60% of projected budget revenues.

The LTAC may recommend to Council at any time, a funding plan above the 60% threshold to adequately invest in identified, large spending opportunities.

(Councilmember Steve Fields moved; unanimously passed)

- Recommendation 2:
The LTAC unanimously recommends allocating up to \$80,000 to support a tourism strategic plan.

(Councilmember Steve Fields moved; unanimously passed)

*The above recommendations passed unanimously 6 yes; 0 no votes
(no absent members)*

LTAC and Tourism Overview FAQ's

How did the Lodging Tax Advisory Committee begin?

An advisory committee was assembled in accordance with the State regulations to weigh-in on the creating of a hotel/motel tax.

When was Committee and Tax implemented?

- 1998 LTAC was formed
- 1999 the Lodging tax was implemented
- Funding for this program is made possible through revenues Redmond collects from a one percent (1%) lodging tax on the rental of hotel/lodging rooms in Redmond.

Where does the funding come from?

The Revised Code of Washington (RCW) 67.28.180 provides authority for cities to adopt a lodging tax. A 1% tax is charged on each overnight stay at Redmond hotels and motels.

What are the allowed uses of the lodging tax dollars?

Specific RCW language is as follows:

"(a) Tourism marketing;

(b) The marketing and operations of special events and festivals designed to attract tourists;

(c) Supporting the operations and capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district created under chapters 35.57 and 36.100 RCW; or

(d) Supporting the operations of tourism-related facilities owned or operated by nonprofit organizations described under 26 U.S.C. Sec. 501(c)(3) and 26 U.S.C. Sec. 501(c)(6) of the internal revenue code of 1986, as amended."

What are the goals and limitations of the revenue?

These funds must be used to attract visitors external to the city. Due to the funding being generated by Redmond hotels/motels, grants and uses of the tax revenue often prioritizes efforts that will support hotels night stays, but attraction of external visitors (more than 50 miles away) to Redmond small businesses and enrichment of the community is also heavily weighted.

Specific RCW 67.28.1816 language can be viewed [here](#).

What is LTAC's role per current RMC 4.37 and [RCW 68.28](#)?

- LTAC can advise on the creation of a Lodging Tax;
- The increase or reduction of a Lodging Tax; or
- The Repeal of a lodging tax
- Review fund applicants and make funding recommendations to the legislative body

How are the funds used at the City of Redmond currently?

- At the city, the LTAC and City Council predetermined how the tax dollars are spent via an adopted allocation split in 2005 as follows:
 - 50% to marketing
 - 39% to City signature events & cultural arts programming
 - 9% to tourism grants
 - 2% to administration

What were the past recommended tourism grant funding amounts?

Year	# Of Applicants*	LTAC Recommendation*	Notes
2015	7	\$ 42,500	
2016	10	\$ 70,000	
2017	16	\$ 126,000	
2018	12	\$ 114,500	
2019	17	\$ 146,000	
2020	16	\$ 150,000*	*Only \$48,837 was used due to the pandemic and most events were cancelled. The City reimbursed fees incurred regardless of event status to help the applicants.
2021	5	\$ 45,000	
2022	23	\$ 252,500	2 application rounds held due to covid impacts
2023	18	\$ 154,000	

**These are estimates based on past documents and Council memos staff located*

What were the past recommended City signature events and cultural arts funding amounts?

Year	City Signature Events/Arts Allocations	Notes
2015	\$ 140,000	
2016	\$ 140,000	
2017	\$ 140,000	
2018	\$ 160,000	
2019	\$ 194,000	
2020	\$ 205,000*	*Only \$9,120 was used due to the pandemic.
2021	\$ 75,000	
2022	\$ 150,000	
2023	\$ 146,000	

**These are estimates based on past documents and Council memos staff located*

What is the process or requirements for City signature events and cultural arts programming lodging tax dollars?

They do not have to go through the full grant process. The money was designated outright and is not a part of the annual tourism grant process or 9% allocation.

All dollars allocated to city signature events and cultural arts programming shall follow the same guideline and limitation on how the dollars may be spent. All funds used must align with expenditures requirements in RCW 67.28 and city specific instructions.

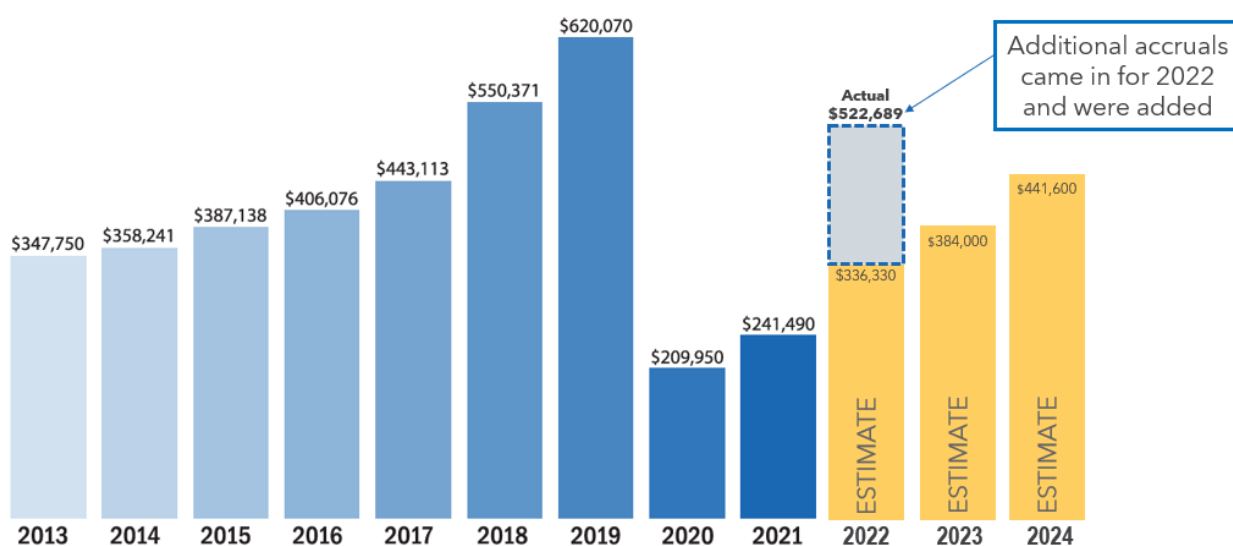
At the end of each calendar year, the city will need to provide an outline to the state of how the dollars were used, and performance summary data like that of the tourism grants. The city is required annually to submit summary outcomes for all uses of tax dollars.

If there are any unused funds at the end of the year those dollars shall be transferred back to the end fund balance. Finance may determine preference on annual transfer of allocated funding upfront and retransfer of an unspent funds or smaller transfers throughout the year.

How is the lodging tax fund performing?

The lodging tax fund currently has approximately 758K in the end fund balance (as of April 30, 2023). The impacts of covid on the hotel industry drastically declined incoming funds over the past few years. City staff and Finance worked together to make some educated estimates on what the fund recovery may look like in July 2022 as a part of the budgeting process for 2023/2024. Below is a snapshot of the fund and future estimates with the actuals from 2022 incorporated. 2022 performed much better than anticipated.

Historical annual revenue amounts from lodging tax is as follows:



How does the City use the “Marketing” portion of the lodging tax fund:

The city has a current contract with Bullseye Creative for \$178,000 a year to manage and staff the Experience Redmond brand needs. The contract is in its last renewal option and will require an RFP to be completed prior to the conclusion of the contract in 2024. Bullseye provides reports throughout the year on the return on investment the city receives in response to their contracted work.

The remainder of the marketing balance not used on the Bullseye contract has traditionally been used to help fund additional community grants above the 9% allocation. However, due to the reduction of revenue as a result of the pandemic, dollars from the end-fund balance were used to help maintain historical tourism granting levels.

How does the LTAC handle conflict of interest when reviewing tourism grant applicants?

Conflicts of interest with applicants are common on this committee due to the requirement that members must either be an entity for which the tax is charged or an entity that might receive grant dollars. Conflicts of interest are noted in the full scoring spreadsheet. Members were not asked to recuse themselves from the tourism grant recommendation vote or discussion per the MRSC guidance. However, staff did request that if a personal financial interest was involved, that a recusal would be requested. No personal financial interests were present or noted for the 2023 applicant recommendations.



Memorandum

Date: 7/5/2023

Meeting of: Committee of the Whole - Planning and Public Works

File No. CM 23-343

Type: Committee Memo

TO: Committee of the Whole - Planning and Public Works

FROM: Mayor Angela Birney

DEPARTMENT DIRECTOR CONTACT(S):

Planning and Community Development	Carol Helland	425-556-2107
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DEPARTMENT STAFF:

Planning and Community Development	Seraphie Allen	Deputy Director
Planning and Community Development	Philly Marsh	Economic Development Manager

TITLE:

Approval of a Contract with Community Attributes, Inc., in the Amount of \$80,850 for an Economic Development Strategic Plan

OVERVIEW STATEMENT:

Staff recommends that the City Council authorize the Mayor to sign a contract with Community Attributes, Inc. to complete an Economic Development Strategic Plan for the City.

☒ **Additional Background Information/Description of Proposal Attached**

REQUESTED ACTION:

☐ **Receive Information**

☒ **Provide Direction**

☐ **Approve**

REQUEST RATIONALE:

- **Relevant Plans/Policies:**
Redmond 2050 Comp Plan Economic Vitality Chapter
- **Required:**
Council approval is required for contracts exceeding \$50,000.
- **Council Request:**
The Council approved funding in the 2023-24 Budget for an Economic Development Strategic Plan
- **Other Key Facts:**
N/A

OUTCOMES:

This process and project will value broad and intentional research and stakeholder engagement to deliver a five-year strategic work plan for Redmond's Economic Development program. The project will include referencing recommendations and work items from the City's various plans and strategies, continued stakeholder engagement, and conducting an evaluation of Redmond's economic development opportunities. The final deliverable will be a chapter-based economic development plan with program strategies approved by the City Council.

The Economic Development plan will:

1. Be in alignment with existing Redmond and regional policies and reflective of the current realities of the market and ecosystem in which the city is operating.
2. Enhance equitable economic development practices.
3. Use a process that draws on both quantitative and qualitative data to inform strategies.
4. Use a process that prioritizes broad stakeholder outreach.
5. Use a process that engages internal City departments and programs that contribute to Redmond's economic environment or business engagement.
6. Set a vision and mission for economic development in Redmond that can be communicated with a variety of audiences.
7. Be structured as a five-year implementation plan that aligns, organizes, prioritizes, and sequences economic development efforts in a series of program chapters with short-term and medium-term strategies. Longer-term strategies beyond the five-year implementation period should be included for future consideration or opportunity.
8. Initial strategic areas should include: Business attraction and competitiveness, business retention and expansion, entrepreneurship and small business support, industry cluster development, enhancing livability, and leveraging partners.
9. Specifically identify what strategies are implemented by Economic Development staff, other City departments, external partners, or additional consultants.
10. Include associated implementation budget range for strategies.
11. Define Key Performance Metrics for Redmond's economic development program.
12. Upon completion and review, be formally adopted by the Redmond City Council.

COMMUNITY/STAKEHOLDER OUTREACH AND INVOLVEMENT:

- **Timeline (previous or planned):**

The project will begin as soon as Council approves the contract and is anticipated to be complete by April 2024.

- **Outreach Methods and Results:**

Broad stakeholder outreach including Council engagement and feedback, business stakeholders, neighborhood and community leaders will be conducted as part of the plan's development. Feedback will be gathered through interviews, focus groups, and questionnaires as well as referencing past community conversations.

- **Feedback Summary:**

TBD

BUDGET IMPACT:

Total Cost:

\$80,850

Approved in current biennial budget:

☒ Yes

☐ No

☐ N/A

Date: 7/5/2023
Meeting of: Committee of the Whole - Planning and Public Works

File No. CM 23-343
Type: Committee Memo

Budget Offer Number:
0000040 Community/Economic Development

Budget Priority:
Vibrant and Connected

Other budget impacts or additional costs: ☐ Yes ☒ No ☐ N/A

If yes, explain:
N/A

Funding source(s):
American Rescue Plan Act (ARPA) (\$60,000) / Economic Development Professional Services General Fund (\$20,850)

Budget/Funding Constraints:
N/A

☐ Additional budget details attached

COUNCIL REVIEW:

Previous Contact(s)

Date	Meeting	Requested Action
5/2/2023	Committee of the Whole - Planning and Public Works	Provide Direction

Proposed Upcoming Contact(s)

Date	Meeting	Requested Action
7/18/2023	Business Meeting	Approve

Time Constraints:

The timeline is aligned with Redmond 2050 Economic Vitality adoption and will be used to inform 2025/2026 budget proposals.

ANTICIPATED RESULT IF NOT APPROVED:

If the consultant contract is delayed, the planning process and adoption of the plan will be delayed and could impact the 2025/2026 budget proposal preparations.

ATTACHMENTS:

Attachment A: Contract with Exhibits

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PROJECT TITLE	EXHIBITS (List all attached exhibits - Scope of Work, Work Schedule, Payment Schedule, Renewal Options, etc.)
CONTRACTOR	CITY OF REDMOND PROJECT ADMINISTRATOR (Name, address, phone #) City of Redmond
CONTRACTOR'S CONTACT INFORMATION (Name, address, phone #)	BUDGET OR FUNDING SOURCE
CONTRACT COMPLETION DATE	MAXIMUM AMOUNT PAYABLE

THIS AGREEMENT is entered into on _____, 20__ between the City of Redmond, Washington, hereinafter called "the CITY", and the above person, firm or organization, hereinafter called "the CONSULTANT".

WHEREAS, the CITY desires to accomplish the above-referenced project; and

WHEREAS, the CITY does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the project; and

WHEREAS, the CONSULTANT has represented to the CITY that the CONSULTANT is in compliance with the professional registration statutes of the State of Washington, if applicable, and has signified a willingness to furnish consulting services to the CITY, now, therefore,

IN CONSIDERATION OF the terms and conditions set forth below, or attached and incorporated and made a part hereof, the parties agree as follows:

1. **Retention of Consultant - Scope of Work.** The CITY hereby retains the CONSULTANT to provide professional services as defined in this agreement and as necessary to accomplish the scope of work attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this agreement.

2. **Completion of Work.** The CONSULTANT shall not begin any work under the terms of this agreement until authorized in writing by the CITY. The CONSULTANT shall complete all work required by this agreement according to the schedule attached as Exhibit B and incorporated herein by this reference as if set forth in full. A failure to complete the work according to the attached schedule, except where such failure is due to circumstances beyond the control of the CONSULTANT, shall be deemed a breach of this agreement. The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the CITY, in the event of a delay attributable to the CITY, or because of unavoidable delays caused by circumstances beyond the control of the CONSULTANT. All such extensions shall be in writing and shall be executed by both parties.

3. **Payment.** The CONSULTANT shall be paid by the CITY for satisfactorily completed work and services satisfactorily rendered under this agreement as provided in Exhibit C, attached hereto and incorporated herein by this reference as if set forth in full. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Work attached. The CONSULTANT shall be entitled to invoice

the CITY no more frequently than once per month during the course of the completion of work and services by the CONSULTANT. Invoices shall detail the work performed or services rendered, the time involved (if compensation is based on an hourly rate) and the amount to be paid. The CITY shall pay all such invoices within 30 days of submittal, unless the CITY gives notice that the invoice is in dispute. In no event shall the total of all invoices paid exceed the maximum amount payable set forth above, if any, and the CONSULTANT agrees to perform all services contemplated by this agreement for no more than said maximum amount.

4. **Changes in Work.** The CONSULTANT shall make such changes and revisions in the complete work provided by this agreement as may be necessary to correct errors made by the CONSULTANT and appearing therein when required to do so by the CITY. The CONSULTANT shall make such corrective changes and revisions without additional compensation from the CITY. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as provided in Section 5.

5. **Extra Work.**

A. The CITY may, at any time, by written order, make changes within the general scope of the agreement in the services to be performed. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work or services under this agreement, whether or not changed by the order, or otherwise affects any other terms or conditions of the agreement, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule or both; and (3) other affected terms, and shall modify the agreement accordingly.

B. The CONSULTANT must submit any "proposal for adjustment" under this clause within 30 days from the date of receipt of the written order to make changes. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a proposal submitted before final payment of the agreement.

C. Failure to agree to any adjustment shall be a dispute under the Disputes clause of this agreement, as provided in Section 13. Notwithstanding any such dispute, the CONSULTANT shall proceed with the agreement as changed.

D. Notwithstanding any other provision in this section, the maximum amount payable for this agreement shall not be increased or considered to be increased except by specific written amendment of this agreement.

6. **Ownership of Work Product.** Any and all documents, drawings, reports, and other work product produced by the CONSULTANT under this agreement shall become the property of the CITY upon payment of the CONSULTANT'S fees and charges therefore. The CITY shall have the complete right to use and re-use such work product in any manner deemed appropriate by the CITY, provided, that use on any project other than that for which the work product is prepared shall be at the CITY'S risk unless such use is agreed to by the CONSULTANT.

7. **Independent Contractor.** The CONSULTANT is an independent contractor for the performance of services under this agreement. The CITY shall not be liable for, nor obligated to pay to the CONSULTANT, or any employee of the CONSULTANT, sick leave, vacation pay, overtime or any other benefit applicable to employees of the CITY, nor to pay or deduct any social security, income tax, or other tax from the payments made to the CONSULTANT which may arise as an incident of the CONSULTANT performing services for the CITY. The CITY shall not be obligated to pay industrial insurance for the services rendered by the CONSULTANT.

8. **Indemnity.** The CONSULTANT agrees to hold harmless, indemnify and defend the CITY, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the CONSULTANT, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the CONSULTANT, its officers, agents, subconsultants or employees, in connection with the services required by this agreement, provided, however, that:

A. The CONSULTANT's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the CITY, its officers, agents or employees; and

B. The CONSULTANT's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the CONSULTANT and the CITY, or of the CONSULTANT and a third party other than an officer, agent, subconsultant or employee of the CONSULTANT, shall apply only to the extent of the negligence or willful misconduct of the CONSULTANT.

9. **Insurance.** The CONSULTANT shall provide the following minimum insurance coverages:

A. Worker's compensation and employer's liability insurance as required by the State of Washington;

B. General public liability and property damage insurance in an amount not less than a combined single limit of two million dollars (\$2,000,000) for bodily injury, including death, and property damage per occurrence.

C. Professional liability insurance, if commercially available in CONSULTANT's field of expertise, in the amount of two million dollars (\$2,000,000) or more against claims arising out of work provided for in this agreement.

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 CONSULTANT as to the insurance necessary to protect the CONSULTANT'S interests and any decision by the CONSULTANT to carry or not carry insurance amounts in excess of the above is solely that of the CONSULTANT.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. Excepting the professional liability insurance, the CITY will be named on all insurance as an additional insured. The CONSULTANT shall submit a certificate of insurance to the CITY evidencing the coverages specified above, together with an additional insured endorsement naming the CITY, within fifteen (15) days of the execution of this agreement. The additional insured endorsement shall provide that to the extent of the CONSULTANT's negligence, the CONSULTANT's insurance shall be primary and non-contributing as to the City, and any other insurance maintained by the CITY shall be excess and not contributing insurance with respect to the CONSULTANT's insurance. The certificates of insurance shall cover the work specified in or performed under this agreement. No cancellation, reduction or modification of the foregoing policies shall be effective without thirty (30) days prior written notice to the CITY.

10. Records. The CONSULTANT shall keep all records related to this agreement for a period of three years following completion of the work for which the CONSULTANT is retained. The CONSULTANT shall permit any authorized representative of the CITY, and any person authorized by the CITY for audit purposes, to inspect such records at all reasonable times during regular business hours of the CONSULTANT. Upon request, the CONSULTANT will provide the CITY with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the CONSULTANT, but the CONSULTANT may charge the CITY for copies requested for any other purpose.

11. Notices. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth in the box for the same appearing at the outset of this Agreement. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

12. **Project Administrator.** The Project Administrator shall be responsible for coordinating the work of the CONSULTANT, for providing any necessary information for and direction of the CONSULTANT's work in order to ensure that it meets the requirements of this Agreement, and for reviewing, monitoring and approving the quality and quantity of such work. The CONSULTANT shall report to and take any necessary direction from the Project Administrator.

13. **Disputes.** Any dispute concerning questions of fact in connection with the work not disposed of by agreement between the CONSULTANT and the CITY shall be referred for resolution to a mutually acceptable mediator. The parties shall each be responsible for one-half of the mediator's fees and costs.

14. **Termination.** The CITY reserves the right to terminate this agreement at any time upon ten (10) days written notice to the CONSULTANT. Any such notice shall be given to the address specified above. In the event that this agreement is terminated by the City other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. In the event that services of the CONSULTANT are terminated by the CITY for fault on part of the CONSULTANT, the amount to be paid shall be determined by the CITY with consideration given to the actual cost incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the CITY at the time of termination, the cost of the CITY of employing another firm to complete the work required, and the time which may be required to do so.

15. **Non-Discrimination.** The CONSULTANT agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, creed, color, national origin, sex, religion, honorable discharged veteran or military status, familial status, sexual orientation, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog or service animal by a person with a disability, except for a bona fide occupational qualification. The CONSULTANT understands that if it violates this provision, this Agreement may be terminated by the CITY and that the CONSULTANT may be barred from performing any services for the CITY now or in the future.

16. **Compliance and Governing Law.** The CONSULTANT shall at all times comply with all applicable federal, state, and local laws, rules, ordinances, and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

17. **Subcontracting or Assignment.** The CONSULTANT may not assign or subcontract any portion of the services to be provided under this agreement without the express written consent of the CITY. Any sub-consultants approved by the CITY at the outset of this agreement are named on separate Exhibit attached hereto and incorporated herein by this reference as if set forth in full.

18. **Non-Waiver.** Payment for any part of the work or services by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of the agreement by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it under the agreement by the CITY. Waiver of any right or entitlement under this agreement by the CITY shall not constitute waiver of any other right or entitlement.

19. **Litigation.** In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this agreement, the parties agree that such actions shall be initiated in the Superior Court of the State of Washington, in and for King County. The parties agree that all questions shall be resolved by application of Washington law and that parties to such actions shall have the right of appeal from such decisions of the Superior Court in accordance with the law of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, in and for King County. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

20. **Taxes.** The CONSULTANT will be solely responsible for the payment of any and all applicable taxes related to the services provided under this agreement and if such taxes are required to be passed through to the CITY by law, the same shall be duly itemized on any billings submitted to the CITY by the CONSULTANT.

21. **City Business License.** The CONSULTANT has obtained, or agrees to obtain, a business license from the CITY prior to commencing to perform any services under this agreement. The CONSULTANT will maintain the business license in good standing throughout the term of this Agreement.

22. **Entire Agreement.** This agreement represents the entire integrated agreement between the CITY and the CONSULTANT, superseding all prior negotiations, representations or agreements, written or oral. This agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto. These standard terms and conditions set forth above supersede any conflicting terms and conditions on any attached and incorporate exhibit. Where conflicting language exists, the CITY'S terms and conditions shall govern.

**page 8 – Consulting Services Agreement, Non-Public Work
City of Redmond, standard form**

**IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the
day and year first above written.**

CONSULTANT:

CITY OF REDMOND:

By: _____
Title: _____

Angela Birney, Mayor
DATED: _____

ATTEST/AUTHENTICATED:

City Clerk, City of Redmond

APPROVED AS TO FORM:

Office of the City Attorney

City of Redmond Economic Development Strategic Plan

Exhibit A - SCOPE OF WORK

June 26, 2023

TASK 1. PROJECT START-UP AND MANAGEMENT

CAI will work with City leadership and project staff to initiate project work and meet throughout the project to review progress and develop a draft strategy. We will provide monthly progress reports and coordinate with City staff from week to week via email and phone calls, as necessary.

CAI will facilitate a **kickoff meeting** with City staff to discuss, at a minimum, the following: project objectives, scope and schedule review, project management expectations, stakeholder engagement strategies and schedule. CAI will also work with City staff to determine the **governance structure for the plan development process**, including staff engagement and decision-making internal to the City, and working groups to advise as project work progresses. CAI's project manager will facilitate **bi-weekly check-in calls** with the City staff to ensure progress toward milestones and address any challenges as they occur. CAI will also prepare and submit **monthly invoices with a monthly progress report** to document the project team's work and ensure consistent progress toward project completion.

Deliverables: Kick-off meeting materials; Monthly progress reports.

TASK 2. DATA ANALYSIS

This task will provide a background summary of the local economic situation in Redmond, supported by current, relevant data, and presented clearly and concisely so it can be easily understood by the general public. Relevant data and information will be gathered for a holistic, external perspective on different factors identified as most important to Redmond's economic development opportunities. This may include:

- **Demographic and economic data**, including the human capital assets of the area, labor force characteristics such as educational attainment, labor force participation, and employment by occupation and industry. Where possible, the data will be disaggregated by race and ethnicity, gender, and geography to show how populations have grown in the city and the region, how affordability and income differs across race and geography, and how the structure of the economy may contribute to economic disparities and income inequality.
- **Emerging or declining clusters or industry sectors** and their past, present, and projected impacts on the region's competitive advantages and ability to build capacity for economic development.
- Other factors that relate to economic performance in an area such as **commercial real estate performance, economic and occupational diversity, and small business and entrepreneurship**.
- **Relationship of Redmond's economy to that of the region and peer cities**, with particular regard to local advantages or disadvantages. Geography affects economic opportunities, and a peer cities analysis will offer a broad comparison to contextualize conditions in Redmond.

CAI will also work with Redmond staff and partners to **inventory and review existing studies, plans, policies, and programs relevant to economic development** in Redmond and the region and will document and assess the City's role in economic development partnerships.

A key sub-task for this work will be to synthesize all we have learned thus far from the data profile, stakeholder engagement, and project partners into an assessment of Redmond's internal strengths and weaknesses, and external opportunities and threats. This **SWOT assessment** will suggest strategic themes

and begin to transition the work toward strategy and action development. We will summarize the findings and deliver a draft and final landscape assessment.

Deliverables: Draft and final landscape assessment with illustrations and narrative.

TASK 3. COMMUNITY AND STAKEHOLDER ENGAGEMENT

Stakeholder engagement provides the consultant team with the opportunity to work directly with residents, stakeholders, and partners in economic development to facilitate a sophisticated understanding of the regional economy and local conditions and to curate a durable coalition to guide the plan and recommendations into action. As an early deliverable in the process, we will work with the client to develop and deliver a **stakeholder engagement plan**, outlining all virtual and in-person engagement activities and meetings, as well as facilitation responsibilities, materials requirements, and timeline. As a starting point, we have identified some methods of outreach and engagement outlined below that we feel would benefit the project. However, we are eager to further discuss Redmond's understanding of the engagement needs for this project and design this further.

- **Orientation interviews** conducted early in the project to understand the lay of the land from key partners, identify vision and priorities for the plan, and to jump-start the process of issue identification.
- **Business and resident surveys** to assess challenges and opportunities for firms across the various sectors present in Redmond and the residents' vision for the local economy.
- **Focus groups** that can be organized thematically to bring together stakeholders where cross-sector challenges exist (for example, in workforce development or infrastructure availability, or resiliency).
- **Redmond staff and working group meetings** to review draft project deliverables and seek input as we progress toward a full plan. The best format for how to engage working group members will be determined in collaboration with city staff.

The number of orientation interviews, focus groups, and working group meetings will be determined in collaboration with the client and will be scaled within the budget available for this task.

Deliverables: Engagement plan summarizing the approach, timing, and participants of all outreach activities; Business and resident surveys; Focus groups materials; Synthesis of findings from interviews, surveys, and focus groups; Raw surveys data and spreadsheet with surveys analysis.

TASK 4. ECONOMIC DEVELOPMENT STRATEGY ANALYSIS

A clear, aspirational **vision statement** and concrete, measurable **goals, strategies, and actions** will form the bedrock of this Economic Development Strategic Plan. With the insights and ideas gained through previous analysis and engagement, and in close collaboration with City staff, CAI will draft and refine a vision and high-level goals to ground and guide the development of strategies and actions for Redmond. Specifically, this task will include:

- Drafting and refining a vision statement for the future of Redmond's economy.
- Developing a suite of specific, measurable, actionable, realistic, timely (SMART) strategies and actions for the next five (5) years, formatted as a 5-Year Action Plan.
- Evaluate and rank strategies against a set of criteria defined in collaboration with the city, including but not limited to equitable economic development, environmentally sustainable economy, impact on livability, and leveraging partners.
- Develop an implementation matrix, including lead and supporting roles, timelines, relative cost, associated risks, expected outcomes, levels of effort, and barriers to implementation.
- Reconcile and align with the Redmond 2050 Economic Vitality Chapter Comprehensive Plan.

Deliverables: Up to three (3) interim working drafts of the strategies and actions; Draft and final implementation matrix.

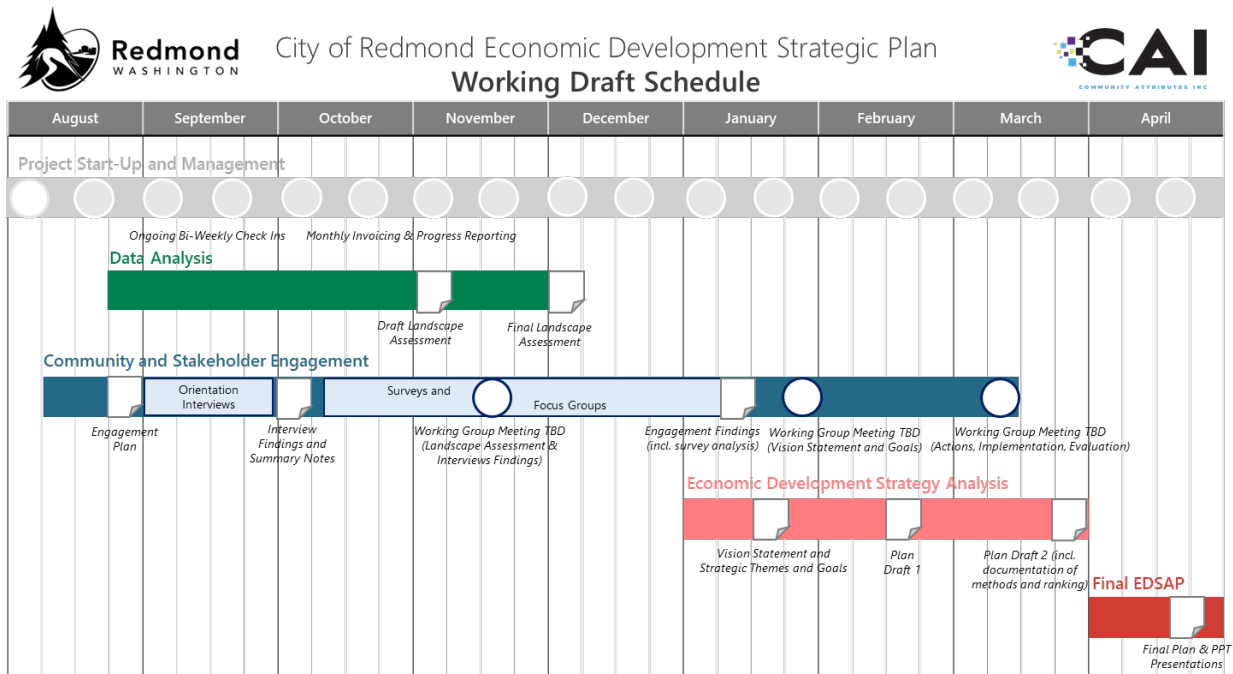
TASK 5. FINAL ECONOMIC DEVELOPMENT STRATEGIC ACTION PLAN (EDSAP)

In this final phase of the work, CAI will bring together all the pieces from the previous tasks conducted to date, telling the story of Redmond's economic development vision and strategic priorities artfully and graphically, supported by focused data and infographics. CAI will work through multiple drafts of the plan, producing an internal working draft early in the project, for review and improvement at all team meetings. CAI will deliver the final product in Microsoft Word, in addition to PDF. CAI will present the Plan to City staff, Council, and/or partners (to be decided upon with the City) in a final presentation.

Deliverables: Draft and final plan and appendices; Up to two (2) presentations of the final plan to Planning Commission and City Council.

PROJECT SCHEDULE

CAI can complete this scope of work within nine months of a notice to proceed, depending on the City's schedule needs. This graphic shows a draft schedule for project completion by April 2024, assuming an early August kick-off.



COST

The exhibit below presents the project cost that aligns with the scope of work and is inclusive of all costs. CAI can complete the above work plan for a total budget of \$80,850. CAI reserves the right to adjust budget allocation amongst tasks, provided all scope tasks and subtasks are met, or in close coordination with the client, and documented in monthly progress reports.

Task	Total Hours	Total Budget
Task 1. Project Start-up and Management	46	\$8,050
Task 2. Data Analysis	142	\$21,200
Task 3. Community and Stakeholder Engagemen	156	\$23,700
Task 4. Economic Development Strategy Analys	102	\$18,000
Task 5. Final EDSAP	56	\$9,900
Total - All Tasks	502	\$80,850



Memorandum

Date: 7/5/2023

Meeting of: Committee of the Whole - Planning and Public Works

File No. CM 23-346

Type: Committee Memo

TO: Committee of the Whole - Planning and Public Works

FROM: Mayor Angela Birney

DEPARTMENT DIRECTOR CONTACT(S):

Planning and Community Development	Carol Helland	425-556-2107
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DEPARTMENT STAFF:

Planning and Community Development	Seraphie Allen	Deputy Director
Planning and Community Development	Vangie Garcia	Manager
Planning and Community Development	LaNaya Taylor	Program Administrator

TITLE:

Approval of the 2023-24 Annual ORCA Contract Renewal

OVERVIEW STATEMENT:

Execute a renewal agreement with King County for ORCA Business Passport transit services (ORCA cards) and vanpool services for distribution to City of Redmond employees as an element of the City Employee Commute Trip Reduction Program.

☐ **Additional Background Information/Description of Proposal Attached**

REQUESTED ACTION:

☐ **Receive Information**

☒ **Provide Direction**

☐ **Approve**

REQUEST RATIONALE:

- **Relevant Plans/Policies:**
City Employee Commute Trip Reduction Program, Washington Clean Air Act, City Comprehensive Plan, Community Strategic Plan, Transportation Master Plan
- **Required:**
N/A
- **Council Request:**
N/A
- **Other Key Facts:**
 - King County Metro launched the pay-as-you-go payment structure in the summer of 2020.
 - We have paid a total of \$8418.19 in monthly invoices under the current contract.
 - The City started its first vanpool in October 2022.

- The current contract expires on 7/31/23.

OUTCOMES:

This agreement allows the City of Redmond to continue to purchase and distribute ORCA cards to City employees for transit and vanpool services provided by the participating transit agencies, thereby helping to reduce traffic congestion, energy consumption, air pollution and vehicle miles traveled.

Some benefits of renewing this contract include:

- Unlimited trips on all services other than Washington State Ferries. Includes: transit, rail, and streetcar.
- Guaranteed ride home.
- Continued "Pay as we go" model.
- Compliance with both State Community Trip Reduction (CTR) laws and the city's Transit Management Plan (TMP) goals.
- Vanpool fares for employees are fully covered.

This renewal would ensure a transportation benefit for employees commuting to work and other staff members as they continue to return to riding transit.

COMMUNITY/STAKEHOLDER OUTREACH AND INVOLVEMENT:

- **Timeline (previous or planned):**
N/A
- **Outreach Methods and Results:**
N/A
- **Feedback Summary:**
N/A

BUDGET IMPACT:

Total Cost:

The total cost of the services is forecasted not to exceed a maximum of \$20,000. The ORCA contract renewal was included within the adopted budget for the Commuter Assistance Office.

Approved in current biennial budget: ☒ **Yes** ☐ **No** ☐ **N/A**

Budget Offer Number:

0000034 - Mobility of People and Goods

Budget Priority:

Vibrant and Connected

Other budget impacts or additional costs: ☐ **Yes** ☒ **No** ☐ **N/A**

If yes, explain:

N/A

Funding source(s):

100 General Fund

Budget/Funding Constraints:

N/A

☐ Additional budget details attached

COUNCIL REVIEW:

Previous Contact(s)

Date	Meeting	Requested Action
	Item has not been presented to Council	N/A

Proposed Upcoming Contact(s)

Date	Meeting	Requested Action
7/18/2023	Business Meeting	Approve

Time Constraints:

Our current contract expires on July 31, 2023.

ANTICIPATED RESULT IF NOT APPROVED:

If this agreement is not approved, we would need to seek alternatives to comply with the approved City Commute Trip Reduction Plan and the Transportation Management Plan commitments. With the continued pay-as-you-go model, the City would meet CTR compliance while only paying for the transit and vanpool rides taken by staff.

ATTACHMENTS:

Attachment A-ORCA Business Passport Agreement



AGREEMENT FOR PURCHASE OF ORCA BUSINESS CARDS AND ORCA BUSINESS PASSPORT PRODUCTS

THIS AGREEMENT (hereinafter, "Agreement") is made and entered into by and among **City of Redmond** ("Business Account") and **King County Metro** ("Lead Agency") on behalf of the following agencies, individually referred to as the "Agency" and collectively as the "Agencies" in this Agreement.

The Snohomish County Public Transportation Benefit Area ("Community Transit")
The City of Everett ("Everett Transit")
The King County Metro Transit Department ("King County Metro")
The Kitsap County Public Transportation Benefit Area ("Kitsap Transit")
Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit")
The Central Puget Sound Regional Transit Authority ("Sound Transit")
The Washington State Department of Transportation, Ferries Division ("Washington State Ferries")

IN CONSIDERATION of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 PURPOSE

- 1.1 This Agreement establishes the terms under which certain fare payment-related services, referred to herein as "ORCA Services," will be provided to the Business Account, including but not limited to the prices and terms under which the Business Account may purchase and distribute ORCA Business Cards loaded with a Business Passport Product to its Eligible Business Cardholders. Such ORCA Business Cards may be used to access certain Transportation Services of the Agencies. The specific ridership privileges applicable to the Business Passport Product provided under this Agreement are specified in *Attachment 1, Products, Pricing and Terms*, which is incorporated in this Agreement by this reference, and are subject to Sections 6 and 18 below. Businesses must at a minimum cover all benefits-eligible employees except those who work 100% remote. Additional participants can be included. Eligibility is defined in *Attachment 3 Eligible Participants*.
- 1.2 Attachment 1 also establishes the terms under which specific optional products and services (e.g. use of an ORCA Business Card on vanpool; a guaranteed ride home program per *Attachment 6 Guaranteed Ride Home*, attached hereto), if any, shall be provided by one or more individual Agencies.
- 1.3 This Agreement also enables the Business Account to purchase Business Choice Products from the Agencies, via the myORCA.com website, at the prices and terms in effect at the time of purchase.
- 1.4 The Business Account understands and agrees that this Agreement applies to its use of ORCA Services including, but not limited to, its purchase of ORCA Business Cards and ORCA Products. This Agreement does not constitute a contract for transportation services. The Agencies have no obligation to the Business Account or any other entity or person to provide any particular level, frequency or routing of transportation service.

2.0 TERM OF AGREEMENT AND CONTACT PERSONS

- 2.1 This Agreement shall take effect upon the effective date specified in Attachment 1. Unless terminated in accordance with Section 14, this Agreement shall expire on the last day of the Program Term specified in Attachment 1, or an Amended Attachment 1 that has been signed by a person authorized to bind the Business Account.
- 2.2 The Business Account shall designate a Primary Contact Person in *Attachment 2 Designated Representatives*, which is incorporated in this Agreement by this reference. This Primary Contact Person shall be responsible for managing the Business Account's roles and responsibilities under this Agreement. A Secondary Contact Person shall also be designated in Attachment 2. The Lead Agency may communicate with and rely upon either the Primary or Secondary Contact Person on matters relating to this Agreement.

3.0 DEFINITIONS

- 3.1 *Business Account.* The organization, educational or human services institution, government agency or other entity that has entered into this Agreement enabling it to purchase ORCA Business Cards and ORCA Products for distribution to their employees, students, clients or other constituency.
- 3.2 *Business Choice Products.* The ORCA Products that may be purchased at retail prices to supplement the ORCA Business Passport Product for one or more Business Cardholders (e.g. a WSF monthly pass).
- 3.3 *Business Cardholder(s) or Cardholder(s).* The individual(s) whose ORCA cards are loaded by and/or may be provided by the Business Account.
- 3.4 *Business Passport Product.* The ORCA Product loaded on the Business Account's ORCA Business Cards under this Agreement that provides the Business Cardholders an unlimited right-to-ride the regularly scheduled Transportation Services of, or operated by, certain Agencies to the extent specified in Attachment 1.
- 3.5 *Card Close.* An ORCA system action that permanently invalidates an ORCA Card. The Business Account, Lead Agency or Cardholder with access may close cards.
- 3.6 *Card Lock.* An ORCA system process action that prevents an ORCA Business Card from being used until the action is reversed. The Business Account, Lead Agency or Cardholder with access can lock and unlock cards.
- 3.7 *Lead Agency.* The Agency that entered into this Agreement on behalf of itself and the other Agencies and, except as otherwise provided in this Agreement, is responsible for administration of this Agreement on behalf of the Agencies, including contract modifications and renewals, and ORCA system support.
- 3.8 *ORCA Website.* The myORCA.com website used by the Business Account to manage its account.
- 3.9 *ORCA.* The trademarked name of the system that enables use of a common fare card on the public transportation services provided by any of the Agencies.

- 3.10 *ORCA Business Card (or “Business Card”)*. An ORCA fare card managed by a Business Account to enable the loading of ORCA Products for use by a Cardholder to whom it was distributed by the Business Account to access Transportation Services as specified in Attachment 1. These cards must be purchased with the business card profile of full access or the account must be set to have the global ownership flag. The fare card may be a physical card or if approved by the Lead Agency, a virtual fare card application.
- 3.11 *Load-Only ORCA Card*. An ORCA fare card managed by an individual which can be linked to a Business Account with load-only privileges. Load-only privileges allow the Business Account to load products and/or E-purse value. The Business Account does not have the ability to close the card, transfer card balances or check card balance
- 3.12 *ORCA Products*. Any transit fare payment mechanism offered for sale within the ORCA system by any of the Agencies. Examples include, but are not limited to, monthly or period pass, and E-purse.
- 3.13 *ORCA Services*. The materials and services that may be provided, from time to time, under the ORCA program, including but not limited to the ORCA Business Cards, ORCA Products, ORCA Websites, data, information, and any equipment, systems and services related to the ORCA program.
- 3.14 *Parties*. The Business Account and the Agencies (which include the Lead Agency) referred to herein collectively as the "Parties" and individually as a "Party."
- 3.15 *Transportation Services*. Those public transportation services provided by the Agencies that are specified in Attachment 1.

4.0 PRICES AND PAYMENT TERMS

The prices and payment terms applicable to this Agreement are specified in Attachment 1. Such terms shall include: (a) the amounts due for the Business Cards, Business Passport Product, and any other products, services and fees and (b) the timing of payments. Each order submitted by the Business Account for ORCA Business Cards and/or any ORCA Products will be subject to the provisions of this Agreement.

- 4.1 The Business Account's purchase of any Business Choice Products via the myORCA.com website will be at the prices and terms in effect at the time of order. The Business Account is responsible for reviewing the prices in effect before submitting each order and shall be deemed to have agreed to the then-applicable prices by submitting the order.
- 4.2 Payment in full is due as specified in Attachment 1.
- 4.3 If for any reason payment in full is not received by the date due, if a payment is not honored due to non-sufficient funds (NSF), or if for any reason a payment is negated or reversed, Sound Transit, on behalf of the Lead Agency, will notify the Business Account of the payment problem and if full and clear payment is not received within ten (10) days of such notification, the Lead Agency may;
- 4.3.1. Refuse to process new orders for ORCA Business Cards and lock the loading of new ORCA Products by or for the Business Account;
- 4.3.2 Assess any late payment, NSF and collection fees to the maximum amount permitted by law;

- 4.3.3 Initiate a Card Lock on the Business Cards issued to the Business Account, rendering them ineffective for use by the Cardholders, until such time as the Business Account pays the full amount due, including any late payment, NSF and fees, in a manner acceptable to the Lead Agency; and
- 4.3.4 Suspend or terminate access rights to the Business Account's secured area of the website.
- 4.4 In addition to any other obligations it may have under this Agreement and at law, the Business Account agrees to pay to the Lead Agency any reasonable court costs, attorney fees and collection fees incurred in collecting amounts due from the Business Account.
- 4.5 Sound Transit, on behalf of the Lead Agencies, will be responsible for invoicing and receiving amounts due per this Agreement, unless otherwise described in this Agreement.

Payments will be remitted to:

Central Puget Sound Regional Transit
LB 1194
PO BOX 35146
Seattle, WA 98124-5146

Wire /ACH instructions will also be available.

5.0 PURCHASE, OWNERSHIP, DISTRIBUTION AND REPLACEMENT OF ORCA BUSINESS CARDS

- 5.1 *Ordering ORCA Business Cards.* The Business Account shall order ORCA Business Cards via the ORCA Business Accounts Website, in accordance with the directions provided on that website, and shall make payment as provided in Attachment 1. If additional cards are required, the Business Account may be required to pay the standard card fee and other applicable fees as specified in Attachment 1.
- 5.2 *Receipt and Ownership of ORCA Business Cards.* Upon actual or constructive receipt of the ORCA Business Cards it has ordered, the Business Account shall be responsible for the management of the ORCA Business Cards. The Business Account shall be deemed to have constructively received all ordered ORCA Business Cards unless it notifies the Lead Agency of any non-delivery or incorrect delivery within thirty (30) days after the order was placed. If the Business Account notifies the Lead Agency that it has not received the ordered cards, the Lead Agency will ship a replacement order. If the Business Account subsequently receives the cards reported as missing, the Business Account is responsible for returning them to the Lead Agency.
- 5.3 *Storage and Risk of Loss.* The Business Account is responsible for the storage, distribution and use of the ORCA Business Cards issued to it. The Business Account bears the sole risk of any loss, damage, theft or unauthorized use of one of its cards, whether such card is held in its inventory or has been distributed for use. The Business Account is responsible for the cost of any use of its Business Cards until the effective date of a Card Close or Card Lock that may be initiated as provided below.
- 5.4 *Distance Based Transit Fare.* The Business Account is responsible for communicating to Cardholders that "distance based fares" are charged on some systems such as: Link light

rail, and Sounder commuter rail systems. On distance based fare modes, when the Cardholder “taps on,” the ORCA system will record the trip to the last stop on the line. When the Cardholder “taps off” at the end of the ride, ORCA will record the actual ride. The Business Account then will be charged the correct fare for the actual ride taken. If the Cardholder fails to “tap off”, then ORCA will record a ride to the end of the line. The result of not “tapping off” is that the Business Account will be charged the largest fare for the ride even if a shorter ride was taken.

- 5.5 *Distribution of ORCA Business Cards.* The Business Account is responsible for distributing its Business Cards for use by its Eligible Business Cardholders. The Business Account manages all Business Cards it distributes but a cardholder may also purchase and load individual ORCA products on a Business Card. The Business Account understands that a Business Card it distributes to a Cardholder may be linked by the Cardholder to his/her/their personal account on myorca.com as provided in Section 6. The Business Account may not register the Business Cards that are issued under this Agreement to a personal account.

The Business Account shall require that the Cardholder, as a condition of receiving a Business Card, be informed of the Cardholder Rules of Use, incorporated in this Agreement as *Attachment 4 ORCA Business Cardholder Rules of Use*, through the Business Account’s standard means of communicating policies.

The Business Account understands and agrees that it is solely responsible for implementation and enforcement of the Cardholder Rules of Use.

- 5.6 *Proof of payment.* The Business Account is responsible for notifying Cardholders that proof of payment must be made by tapping the ORCA Card on the card reader in the manner required by each Agency; otherwise, the Cardholder may be subject to a fine if the ORCA Card is not tapped, and the Cardholder will be personally responsible for any fines that may be imposed.
- 5.7 *Business Account Access to Personally Identifying Information.* If an individual Cardholder opts to register one of the Business Cards issued to the Business Account, any personally identifying information provided to the ORCA System (e.g. name, address, telephone number, and credit card number) will not be accessible by the Business Account. If the Business Account collects any personally identifying information about individuals to whom it has distributed Business Cards, the Business Account is solely responsible for its collection, use, storage and disclosure of such information.
- 5.8 *Card Locks and Card Close.* In the event a Business Card is determined to be lost or stolen or if a Cardholder is determined by the Business Account to be no longer eligible to use the card, the Business Account may initiate a Card Lock, which is reversible action, or a Card Close, which is a permanent action, via the myORCA.com website to invalidate the subject Business Card. The Lead Agency may also initiate a Card Lock or Card Close to any of the Business Account’s Business Cards at the request of the Business Account, or at the sole discretion of the Lead Agency in accordance with Section 4.3, or if it is suspected that a card has been altered, duplicated, counterfeited, stolen or used by an ineligible Cardholder.
- 5.9 *Restoration of Value After Card is Locked or Closed.* Following a Card Lock, a Business Account can transfer remaining funds and products onto a replacement card. Business Account will be responsible for card replacement fee.

- 5.10 *Card Replacement.* The Business Account is responsible for ordering and paying for any new cards needed to replace Business Cards that for any reason cease to be available or suitable for use by the Cardholders under the program of the Business Account, including but not limited to, if the unavailability or unsuitability is caused by damage, abuse, loss, theft, Card Close, and end of useful life. Provided, however, and notwithstanding the exclusion of warranties in Section 15, if a Business Card malfunctions within twelve (12) months after it was delivered to the Business Account, it shall be replaced by the Lead Agency without additional charge to the Business Account if the malfunction was caused by a defect in design, material or workmanship and was not caused by misuse, an intentional act, negligence or damage, reasonable wear and tear excepted. The Business Account understands and agrees that to avoid the disruption and inconvenience caused by sporadic failures as its cards are used, it must plan for replacement of its Business Cards on a regular basis. As a condition of continuing under the Business Passport program, the Business Account agrees that it will purchase replacement Business Cards at the then-applicable rate.

6.0 CARDHOLDER USE OF ORCA BUSINESS CARDS

Cardholder Privileges. The Business Account understands and agrees that the Cardholder has the following privileges in connection with the use of an ORCA Business Card.

- 6.1 The Cardholder may present an ORCA Business Card, loaded with a valid, applicable Business Passport or Business Choice Product, to an ORCA fare transaction processor as proof of payment of all or a portion of a required fare on a regular transportation service operated by one or more of the Agencies. (Provided, however, an ORCA Product that is not sufficient to fully pay a fare will not be accepted as partial payment by the Washington State Ferries.) In all cases, a Cardholder will be required to make other payment to the extent a fare is not covered by an ORCA Product.
- 6.2 The Cardholder may individually purchase ORCA Products and load them on the Business Card in addition to any ORCA Product loaded by the Business Account. Individual ORCA Products may be used to pay all or a portion of a required fare on a transportation service not covered by a Business Passport Product or Business Choice Product. (Provided, however, an ORCA Product that is not sufficient to fully pay a fare will not be accepted as partial payment by the Washington State Ferries.) In all cases, a Cardholder will be required to make other payment to the extent a fare is not covered by an ORCA Product.
- 6.3 The Cardholder may link his/her/their name and other contact information with the ORCA system and link such personal information to the serial number of the Business Card provided to him/her. Such registration does not give the Cardholder full access to the card but may give the Cardholder the right to access the myORCA.com website to view the card's transaction history and current stored value, and to add retail products.
- 6.4 The Cardholder's personally identifying information is generally exempt from disclosure under the Washington Public Records Act (Chapter 42.56 RCW) as more specifically outlined in RCW 42.56.330(5).

7.0 BUSINESS RESPONSIBILITIES AND PRIVILEGES RELATING TO LOAD-ONLY CARDS

- 7.1 The Business Account understands that if it links an individual's ORCA card to their Business Account with load-only privileges the Business Account will have limited access. The Business Account will be able to load products and/or E-purse on the account and

unlink the card from its account. The Business Account will not be able to close the card, transfer products and/or E-purse value, or view card balance.

- 7.2 When the load-only card holder is no longer eligible for a transit benefit, the Business Account is responsible for unlinking the card from their account.

8.0 NO RETURNS OR REFUNDS

Except as otherwise provided herein or in Section 14.2, the Business Account understands and agrees that its purchases of Business Cards, and Business Passport or Business Choice products purchased for such cards, are final and it is not entitled to any refunds. However, the Business Account may request a refund of the E-purse value remaining on a Business Card if the card is closed. The Lead Agency shall initiate a Card Close and the refund will be processed approximately ten (10) days after the Card Close was initiated. A processing fee of ten dollars (\$10) may be payable by the Business Account to the Lead Agency for each refund that is processed, regardless of number of cards refunded. The Business Account, not the Lead Agency, is responsible for the refunding of such E-purse value, if any, to the individual Cardholder to whom the Business Card had been distributed.

9.0 BUSINESS ACCOUNT WEBSITE

- 9.1. The myORCA.com website is the primary means by which the Business Account shall purchase ORCA Business Cards, Business Passport and Business Choice Products, manage its Business Cards and obtain information about the use of said cards. As a condition of participation in the Business Passport program, the Business Account agrees that it will use the myORCA.com website when it is available and that each access and use of said website shall be subject to the ORCA Terms of Use and ORCA Privacy Statement that are in effect and posted on the myORCA.com website at the time of such access and use.
- 9.2. The Business Account understands and agrees that uninterrupted access to and use of the myORCA.com website is not guaranteed and agrees that it will contact its representative at the Lead Agency by email or telephone if the website is not available.
- 9.3. At the time the Business Account enters into the ORCA program, the Business Account's Primary Contact (Super Admin) will be provided a password to access myorca.com. The Super Admin will be responsible for adding additional admins to the Business Account. The Business Account is solely responsible for managing their account's users. The Business Account is also solely responsible for complying with the security standards specified in *Attachment 5 ORCA Business Account Security Standards*, which is incorporated in this Agreement by this reference.

10.0 INFORMATION PROVIDED BY THE AGENCIES AND THE ORCA SYSTEM

- 10.1 The Business Account understands and agrees that the data, reports or any information provided to it via the myORCA.com website or otherwise, is and remains the sole property of the Agencies and nothing shall be construed as a transfer or grant of any copyright or other property interest in such data, reports or information. The Agencies hereby grant to the Business Account a non-exclusive license to use any data, reports or information provided by the Agencies, via the myORCA.com website or otherwise, for any lawful purpose related to the administration of the transportation benefits program of the Business Account.

10.2 The ORCA System will record data each time an ORCA Business Card is presented to an ORCA device for fare payment and to load a product. Such transaction data includes, but is not limited to, the date, time, and location (or route) of the transaction. The Business Account may routinely access such transaction data related to its Business Cards to the extent provided via the myORCA.com website. Said website and its reports do not provide the Business Account Business Card transaction data linked to card serial numbers for the purpose of preventing fraud, the Primary Contact Person of the Business Account may submit a written request to the Lead Agency for transaction data related to a specific card number or for a card number linked to a specific transaction. Fraud is defined as intentional deception or misrepresentation by a person with knowledge that it will result in an unauthorized benefit to him, her, or some other person. The submittal is not intended to be used to request data for multiple cards or all cards managed by the Business Account. The written request shall include the following:

10.2.1 Card number or the date, time and other known details about the specific transaction for which a card serial number is being requested;

10.2.2 Detailed statement as to why the information is germane to the prevention of fraud; and

10.2.3 The signature of the Primary Contact Person.

If the Lead Agency determines that the subject transaction(s) is linked to a Business Card issued to the Business Account, the Lead Agency will provide the Business Account with the card serial number linked to the requested transaction(s). The Business Account agrees that it will use such card serial number information only for purposes of enforcing the Rules of Use, as provided to the Cardholder. The Business Account must maintain its own records if it wishes to identify the card serial number issued to an individual.

11.0 PUBLIC RECORDS

The Business Account understands and agrees that all records related to its participation in the ORCA System are public records under the Washington Public Records Act (Chapter 42.56 RCW) ("Act"), including but not limited to: (a) this Agreement and the sales activity hereunder; (b) the orders, communications, and any other information provided by the Business Account to the Lead Agency, the other Agencies or the ORCA System, whether provided via this website or otherwise and whether provided in hard copy or electronic form; (c) any communications, responses, requests, reports or information of any kind provided to the Business Account from the Lead Agency, the other Agencies or the ORCA System; and (d) all data, reports and information of any kind related to the loading of products on, and the use of, the Business Cards issued to the Business Account. As public records, these records will be made available for public inspection and copying upon request, unless the Lead Agency determines they are exempt from disclosure.

12.0 INDIVIDUAL USE OF BUSINESS CARD AFTER LEAVING A BUSINESS ACCOUNT

The Business Account is encouraged to collect Business Cards from Cardholders who are no longer eligible for the Business Account's transportation benefits program. In any case, the Business Account is solely responsible for initiating a Card Lock or Closing a Card in accordance with this Agreement to prevent any continued use of, and financial liability for, a card that had been distributed to a person who is no longer eligible.

13.0 ORCA SERVICES SUBJECT TO CHANGE

The Agencies seek to continually improve and enhance the ORCA Services. With thousands of organizations, schools, and other entities entering into business account agreements at varying dates in the year, the Agencies are unable to guarantee to each business account that the ORCA Services will not change during the term of its agreement. The Business Account understands and agrees that one or more ORCA Services may be changed, suspended or terminated from time to time without prior notice to, or agreement by, the Business Account, including but not limited to changes in the look, feel, content and functions of the myORCA.com website. If the Business Account is dissatisfied with a change in the ORCA Services, however, it may terminate this Agreement for its convenience in accordance with the provisions of Section 14.2.

14.0 TERMINATION

- 14.1 The Lead Agency may at any time terminate this Agreement if the Business Account fails to make timely and effective payment of all amounts due, or otherwise materially breaches the Agreement, or acts in manner indicating that it intends to not comply, or is unable to comply, with the Agreement. To effect such a termination for cause, the Lead Agency shall send email notice to the last known email address for the last known Primary Contact Person of the Business Account describing the manner in which the Business Account is in default and the effective date of termination. If the basis for termination is a failure to perform that can be cured, the termination shall not take effect so long as the Business Account cures the default within ten (10) days of the sending of the email notice. Upon the effective date of such termination, the Lead Agency may immediately terminate the website access privileges of the Business Account, lock the Business Cards issued to the Business Account and decline to accept and fulfill any pending or new orders from the Business Account. In the event of such a termination for cause, the Business Account shall not be entitled to any refund of any amounts paid.
- 14.2 Either the Business Account or the Lead Agency may terminate the Agreement without cause and for its own convenience by sending the other Party written or email notice at least thirty (30) days in advance of the effective date of the termination. Upon receipt of a notice of termination for convenience from the Business Account, the Lead Agency may, in its sole discretion, waive the advance notice period and immediately terminate the website access privileges of the Business Account, initiate a Card Lock on the Business Cards issued to the Business Account, and decline to accept and fulfill any pending or new orders from the Business Account. In the event of such a termination for convenience and not cause, the amounts due under this Agreement shall be calculated by the Lead Agency. (The amounts due for the ORCA Passport Product and any optional products listed in Attachment 1 shall be the annual amounts due prorated for the number of months during which the Passport Product and optional products were valid for at least one day.) If the Business Account has not paid in full all of the amounts due under this Agreement as of the termination date, the Business Account shall immediately pay the remaining amount due. If the Business Account has paid more than all of the amounts due under this Agreement as of the termination date, the Business Account shall be entitled to a refund of the excess it has paid.
- 14.3 Notwithstanding any termination of the Agreement, the Business Account shall remain liable to satisfy and comply with all of its obligations under this Agreement and at law with regard to, or arising out of, any orders submitted or any of its acts or omissions occurring prior to the effective date of the termination, including but not limited to paying all amounts due or incurred prior to the effective date of the termination and any fees, charges, collection costs or other costs arising from a failure to make timely and effective payment.

15.0 EXCLUSION OF WARRANTIES

- 15.1 ALL ORCA SERVICES PROVIDED ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ANY USE OF THE ORCA SERVICES IS AT THE BUSINESS ACCOUNT'S SOLE DISCRETION AND RISK.
- 15.2 BY WAY OF EXAMPLE, AND NOT LIMITATION, THE LEAD AGENCY AND EACH OF THE OTHER AGENCIES SPECIFICALLY DO NOT REPRESENT AND WARRANT THAT:
- A. THE BUSINESS ACCOUNT'S USE OF THE ORCA SERVICES WILL BE UNINTERRUPTED, TIMELY, FREE FROM ERROR AND OTHERWISE MEETING ITS REQUIREMENTS;
 - B. ANY INFORMATION OBTAINED BY THE BUSINESS ACCOUNT AS A RESULT OF USING THE ORCA SERVICES WILL BE ACCURATE AND RELIABLE; AND
 - C. ANY USE OF THE ORCA WEBSITE, INCLUDING BUT NOT LIMITED TO THE CONTENT OR MATERIAL DOWNLOADED FROM SAID WEBSITE, WILL BE FREE OF DEFECTS, VIRUSES, MALWARE, HACKS OR POTENTIALLY HARMFUL INTRUSIONS.
- 15.3 TO THE EXTENT PERMITTED BY LAW, THE LEAD AGENCY AND EACH OF THE OTHER AGENCIES DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO: ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; ANY WARRANTIES OF QUIET ENJOYMENT OR NON-INFRINGEMENT; AND ANY WARRANTIES CREATED BY TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE.
- 15.4 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM THE AGENCIES OR THE ORCA SYSTEM SHALL REVISE OR CREATE ANY WARRANTY.

16.0 NOTICES

- 16.1 Any notice required to be given under the terms of this Agreement shall be directed either by email or regular mail to the Parties' Designated Representatives, as specified in Attachment 2, or to the last person and address provided by a Party in accordance with Section 16.2.
- 16.2 Each Party shall immediately notify the other Parties of any changes to its Designated Representatives' contact information. The Business Account shall also immediately notify the Lead Agency of any changes in any other information provided in its application.

17.0 FORCE MAJEURE

The Agencies and each of them shall be relieved of any obligations under this Agreement to the extent they are rendered unable to perform, or comply with such obligations as a direct or indirect result of a force majeure event, or any other circumstance not within such party's control, including, but not limited to, acts of nature, pandemics, acts of civil or military authorities, terrorism, fire or water damage, accidents, labor disputes or actions, shutdowns for purpose of emergency repairs, or industrial, civil or public disturbances.

18.0 APPLICATION OF AGENCY FARES AND OTHER POLICIES

The purchase, distribution and use of Business Cards and ORCA Products by the Business Account and its Cardholders, and access to and use of the ORCA website, shall be subject to all applicable federal, state and local law, regulations, ordinances, codes and policies, including but not limited to the ORCA Cardholder Terms of Use and ORCA Privacy Statement (posted on the ORCA website and available in printed form upon request to the Lead Agency), and the Agencies' respective fares, transfer rules, codes of conduct and other operating policies and procedures.

19.0 PROHIBITED DISCRIMINATION

The Business Account shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, or physical handicap in the administration of its transportation benefits program, the provision of ORCA Business Cards and ORCA Products, or the performance of any acts under this Agreement. The Business Account shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations which prohibit such discrimination.

20.0 COMPLIANCE WITH APPLICABLE LAW

The Business Account shall be solely responsible for compliance with all applicable federal, state and local laws, regulations, resolutions and ordinances, including, but not limited to, any provisions relating to the Business Account's provision of compensation, benefits or services to employees or others (e.g. including, but not limited to, transportation fringe benefits) and any reporting, tax withholding, or other obligations related thereto. The Business Account expressly acknowledges and agrees that it has not relied on any representations or statements by the Agencies and will not rely on them to provide any legal, accounting, tax or other advice with regard to the Business Account's provision of compensation, benefits or services to employees or others (e.g. including, but not limited to, transportation fringe benefits) and any reporting, withholding or other obligations related thereto.

21.0 LEGAL RELATIONS

21.1 *No Partnership, Agency or Employment Relationship Formed.* The Business Account and the Agencies are independent parties and nothing in this Agreement shall be construed as creating any joint venture, partnership, agency or employment relationship between and among them or their respective employees. Without limiting the foregoing, the Business Account understands and agrees that none of its employees or agents shall be deemed employees or agent, for any purpose, of any of the Agencies and the Business Account is solely responsible for the acts of its agents and employees and their compensation, wages, withholdings and benefits.

21.2 LIMITATION ON LIABILITY

- A. THE LEAD AGENCY AND EACH OF THE OTHER AGENCIES SHALL NOT BE LIABLE FOR, AND THE BUSINESS ACCOUNT HOLDS EACH AGENCY HARMLESS FROM, ANY LOSS OR DAMAGE ARISING OUT OF OR RELATED TO:
 - 1. ANY RELIANCE PLACED BY THE BUSINESS ACCOUNT ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY

INFORMATION PROVIDED TO THE BUSINESS ACCOUNT BY OR THROUGH THE ORCA SERVICES;

2. ANY CHANGES TO THE ORCA SERVICES OR THE TEMPORARY OR PERMANENT CESSATION OF ANY SUCH SERVICES (OR FEATURES WITHIN A SERVICE);
 3. THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY INFORMATION MADE AVAILABLE TO THE BUSINESS ACCOUNT, OR GENERATED BY THE USE OF THE ORCA SERVICES UNDER THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, THE USE OF THE ORCA BUSINESS CARDS ISSUED UNDER THIS AGREEMENT;
 4. THE BUSINESS ACCOUNT'S FAILURE TO PROVIDE THE LEAD AGENCY WITH ACCURATE ACCOUNT INFORMATION; AND
 5. THE BUSINESS ACCOUNT'S FAILURE TO KEEP INFORMATION SECURE AND CONFIDENTIAL.
- B. THE LEAD AGENCY AND EACH OF THE OTHER AGENCIES SHALL NOT BE LIABLE FOR, AND THE BUSINESS ACCOUNT HOLDS EACH AGENCY HARMLESS FROM, ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES INCURRED BY THE BUSINESS ACCOUNT UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, LOSS OF PRIVACY, LOSS OF DATA, LOSS OF GOODWILL OR BUSINESS REPUTATION, WHEN SUCH DAMAGES ARISE OUT OF, OR ARE RELATED TO, THIS AGREEMENT OR THE ORCA SERVICES, WHETHER OR NOT ONE OR MORE AGENCIES HAS BEEN ADVISED OF, OR SHOULD HAVE BEEN AWARE OF, THE POSSIBILITY OF ANY SUCH DAMAGES ARISING.
- C. TO THE EXTENT ONE OR MORE OF THE AGENCIES INCURS ANY LIABILITY FOR A BREACH OF THIS AGREEMENT, OR ANY DUTY RELATED TO THE ORCA SERVICES, AND SUCH LIABILITY THAT IS NOT EXCLUDED UNDER THE TERMS OF THIS AGREEMENT, THE EXCLUSIVE, AGGREGATE REMEDY AGAINST THE LEAD AGENCY AND EACH OTHER AGENCY WILL BE, AT THE OPTION OF THE APPLICABLE AGENCIES: (A) THE CORRECTION, SUBSTITUTION OR REPLACEMENT OF ALL OR PART OF THE ORCA SERVICES GIVING RISE TO THE BREACH, OR (B) A REFUND OF THE AMOUNT PAID BY THE BUSINESS ACCOUNT FOR THE ORCA SERVICE CAUSING THE DAMAGE, THE AMOUNT OF WHICH WILL NOT EXCEED THE DAMAGES (OTHER THAN THOSE EXCLUDED ABOVE) ACTUALLY INCURRED BY THE BUSINESS ACCOUNT IN REASONABLE RELIANCE.

THE DAMAGE EXCLUSIONS AND LIMITATIONS ON LIABILITY IN THE AGREEMENT SHALL APPLY EVEN IF ANY REMEDY FAILS FOR ITS ESSENTIAL PURPOSE.

- 21.3 No Waiver. The Business Account agrees that if the Lead Agency does not exercise or enforce any legal right or remedy which is contained in the Agreement or under applicable law, this will not be taken to be deemed to be a waiver or modification of the Lead Agency's

rights and remedies, and that those rights or remedies will still be available to the Lead Agency.

- 21.4 **Governing Law and Forum.** This Agreement and all provisions hereof shall be interpreted and enforced in accordance with, and governed by, the applicable law of the State of Washington and of the United States of America without regard to its conflict of laws provisions. The exclusive jurisdiction and venue for conducting any legal actions arising under this Agreement shall reside in either the Federal District Court or the State of Washington Superior Court, as applicable, that is located in the county in which the Lead Agency's primary administrative office is located. The Business Account hereby consents to personal jurisdiction and venue in said courts and waives any right which it might have to conduct legal actions involving the Agencies in other forums.
- 21.5 **Attorneys' Fees and Costs.** In the event of litigation between the parties related to this Agreement, the Court is authorized to award the substantially prevailing party its costs, fees and expenses including reasonable attorney fees to the extent authorized by the Court and permitted by applicable law.
- 21.6 **Survival.** Sections 4, 5, 10, 15 and 21 shall survive and remain effective notwithstanding any termination of this Agreement.
- 21.7 **Use of ORCA name and logos.** The Business Account understands and agrees that the "ORCA" name and logos are trademarked and that it will not copy or use them and any other trade names, trademarks, service marks, logos, domain names, and other distinctive features or intellectual property of the Agencies without written permission. The Agencies understand and agree the Business Account name and logo may be trademarked and that it will not copy or use them and any other trade names, trademarks, service marks, logos, domain names, and other distinctive features or intellectual property of the Business Account without written permission.

22.0 SUCCESSORS AND ASSIGNS

This Agreement and all terms, provisions, conditions and covenants hereof shall be binding upon the parties hereto, and their respective successors and assigns; provided, however, no Party may assign or delegate the duties performed under this Agreement without the written agreement by the Lead Agency, the Business Account and the assignee.

23.0 ENTIRE AGREEMENT AND WRITTEN AMENDMENTS

This Agreement constitutes the entire agreement between the Business Account and the Lead Agency, on behalf of all Agencies, related to the Business Account's use of and access to ORCA Services (but excluding any services which Lead Agency may provide under a separate written agreement), and completely replaces and supersedes any prior oral or written representations or agreements in relation to fare media consignment and sales or to ORCA Services. No oral agreements or modifications will be binding on the parties and any changes shall be effective only upon a written amendment being signed by the parties.

24.0 SEVERABILITY

In the event any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable or invalid, then the meaning of that provision shall be construed, to the extent feasible, to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of the Agreement which shall remain in full force

and effect unless the provisions that are invalid and unenforceable substantially impair the value of the entire Agreement to any party.

25.0 AUTHORITY TO EXECUTE

Each party to this Agreement represents and warrants that: (i) it has the legal power and authority to execute and perform this Agreement and to grant the rights and assume its obligations herein; and (ii) the person(s) executing this Agreement below on the party's behalf is/are duly authorized to do so, and that the signatures of such person(s) is/are legally sufficient to bind the party hereunder.

26.0 COUNTERPARTS

This Agreement may be executed in two (2) counterparts, each one of which shall be regarded for all purposes as one original.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the Effective Date.

BUSINESS ACCOUNT	LEAD TRANSPORTATION AGENCY
CITY OF REDMOND	King County Metro
BY: _____	BY: _____
Name: Angela Birney	Name: Carol Cooper
Title: Mayor, City of Redmond	Title: Managing Director, Market Innovation
Date:	Date:

ATTACHMENT 1

ORCA BUSINESS PASSPORT - PRODUCTS, PRICING AND TERMS

Business Account: City of Redmond
ORCA Business ID#: 1282
Federal Tax ID #: 91-6001492
Agreement Type: Business Passport
Program Term: August 1, 2023 – July 31, 2024

Business Passport Products

- Valid for full fare and unlimited rides on
 - **Bus:** Community Transit, Everett Transit, King County Metro, Kitsap Transit, Pierce Transit, and Sound Transit.
 - **Ferry:** King County Water Taxi and Kitsap Local Ferries and Fast Ferries
 - **Monorail**
 - **Rail:** Sound Transit Link light rail and Sound Transit Sounder (including Rail Plus partnership with Amtrak Cascades).
 - **Streetcar:** Seattle Streetcar
 - **Paratransit Transportation:** King County Metro Access, Kitsap Transit Access, and Pierce Transit SHUTTLE.
- **Vanpool:** 100% fare subsidy on Community Transit, King County Metro, Kitsap Transit, and Pierce Transit vanpool vans.
- **Vanshare:** 100% fare subsidy on Community Transit, King County Metro, Kitsap Transit, and Pierce Transit vanshare vans.

Business Passport Pricing

Product	Cost
Transit	E-purse per trip rate
Cards	\$3.00 each
Service Charge	\$2,820.00
Vanpool/Vanshare—King County Metro	\$18,000.00
Vanpool/Vanshare—Community Transit	\$0.00
Vanpool/Vanshare—Kitsap Transit	\$0.00
Vanpool/Vanshare—Pierce Transit	\$0.00

Transit Per Trip Rate

The Transit Per Trip Rate uses ridership data from the ORCA System to calculate costs. The ORCA System calculates the apportioned value for each boarding based on the E-purse equivalent value. The E-purse equivalent value accounts for transfers as shown below:

- Single leg trips are apportioned to the transit agency where the boarding took place at CEFFV (Cash Equivalent Full Fare Value).
- Multi-leg trips are apportioned as follows:
 - $\text{Apportioned Value} = \text{Highest CEFFV among the linked boardings} \times \text{Weight of Linked Trip}$
 - $\text{Weight of Linked Trip} = \text{Agency Trip Rate} / \text{Sum of Trip Rates}$
- The values are then summed up by Participating Agency and invoiced to the customer.

Card Costs

Card orders can be placed by the customer on the Business Account website.
Cards cost three dollars (\$3) each and will be invoiced per payment terms.

Card Logo Permission

ORCA Business Passport Agreement
City of Redmond
August 1, 2023 – July 31, 2024

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The Business Account hereby grants permission for the Agencies to print the Business Account's name and logo on the Business Account's ORCA Business Cards and no further permission is required.

Vanpool and Vanshare Service

The vanpool/vanshare subsidy dollar amounts specified above are based on the estimated usage by Eligible Employees of each included Agency's vanpool/vanshare services.

- If the vanpool/vanshare dollar amount specified above is less than the amount due for actual usage by Eligible Employees for any of the included Agency's vanpool/vanshare services under this Agreement, the provider Agency may invoice the Business Account for the additional use.
- If the Business Account enters into a successor agreement to this Agreement, the difference between the specified amount above and the actual amount due to each included Agency under this Agreement will be calculated. An overpayment under this Agreement will be subtracted from the amount specified in the successor agreement. A deficit under this Agreement will be added to the amount specified in the successor agreement, if the provider Agency did not submit a supplemental invoice.
- If this Agreement is terminated or expires without the Business Account entering into a successor agreement, the difference between the specified amount above and the actual amount due each included Agency under this Agreement will be calculated. An overpayment under this Agreement will be credited against any amount still due from the Business Account, or reimbursed by the provider Agency if none is still due. A deficit under this Agreement shall become immediately due and payable by the Business Account to the provider Agency.

Employee Contributions: Employees may contribute up to 50% of the price per eligible employees.

Business Passport Payment Terms

- | |
|---|
| <ul style="list-style-type: none">• Transit usage (trips taken on Bus, Ferry, Monorail, Rail, Seattle Streetcar), card orders and card logo fees will be invoiced monthly, due net 30 days from receipt of invoice.• Service Charge, and Vanpool/Vanshare costs will be invoiced in full at the start of the Program Term, due net 30 from receipt of invoice. |
|---|

ATTACHMENT 2

DESIGNATED REPRESENTATIVES

	BUSINESS ACCOUNT - Primary	LEAD AGENCY – Primary
Name	LaNaya Taylor	Rocco DeVito
Title	Employee Transportation Coordinator	Customer Relationship Manager
Address	City of Redmond 15670 NE 85 th St PO Box 97010 Redmond, WA 98073-9710	King County Metro Transit 201 South Jackson Street MS: KSC-TR-0326
Telephone	(425) 556-2482	206-263-3391
E-Mail	ltaylor@redmond.gov	rdevito@kingcounty.gov
	BUSINESS ACCOUNT - Secondary	LEAD AGENCY – Secondary
Name	Vangie Garcia	Stacie Khalsa
Title	Transportation, Planning and Engineering Manager	Business Programs Lead
Address	City of Redmond 15670 NE 85 th St PO Box 97010 Redmond, WA 98073-9710	King County Metro Transit 201 South Jackson Street MS: KSC-TR-0326
Telephone	(425) 556-2446	206-263-8952
E-Mail	vgarcia@redmond.gov	Stacie.khalsa@kingcounty.gov
	BUSINESS ACCOUNT - Billing	
Name	Jodi Daub	
Title	Department Administrative Coordinator	
Address	City of Redmond 15670 NE 85 th St PO Box 97010 Redmond, WA 98073-9710	
Telephone	(425) 556-2482	
E-Mail	jdaub@redmond.gov	

ATTACHMENT 3
ELIGIBLE BUSINESS CARDHOLDERS

Definition and Number of Eligible Participants

Definition of Eligible Participants	All employees who work at the City of Redmond
Number of Eligible Participants	500

ATTACHMENT 4

SAMPLE - ORCA BUSINESS CARDHOLDER RULES OF USE

(Business account can customize content for means of communicating with employees.)

As a Business Account Cardholder, I agree to the following:

1. I understand that the ORCA Business Card is owned by the employer that provided it to me and it has been provided to me for my personal use only. I agree that I will not sell or transfer my assigned ORCA Card to another person. If I violate these terms of use, my ORCA Card may be blocked from further use.
2. I will keep my assigned ORCA Business Card secure and in good condition, and I will immediately report a lost, stolen, or damaged ORCA Business Card to my company's Transportation Coordinator. I understand an ORCA Business Card will be replaced at the fee charged by my company.
3. I will return my assigned ORCA Business Card upon request or when I leave my employment or otherwise do not meet the eligibility requirements of my company. If I do not return my ORCA Business Card, I understand that it may be blocked for further use.
4. I understand that my ORCA Business Card is valid for the following provided by the listed transportation Agencies.
 - a. 100% of fares on regularly scheduled transportation service on Community Transit, Everett Transit, King County Metro, King County Water Taxi, Kitsap Transit and Kitsap Ferries, Monorail, Pierce Transit, Sound Transit, and Seattle Streetcar.
 - b. 100% of vanpool and vanshare fares on vanpool services provided by Community Transit, King County Metro, Kitsap Transit, and Pierce Transit.
5. I understand and will comply with policies of my employer or other institution that provided my ORCA Business Card.
6. I understand that the ORCA Business Card is not valid for fare payment on transportation services not specified in Section 4 and I am responsible for paying any additional fares required for services not covered, or not fully covered, by my assigned ORCA Business Card.
7. I understand that any additional ORCA Products I load onto my assigned ORCA Card will become the property of the company that owns my ORCA Business Card and the refund, if any, of such products will be made by the company according to its refund policy.
8. I understand in the event any ORCA Products I load onto my assigned ORCA Card must be replaced, I am responsible for any fares required during the replacement period.
9. I understand the ORCA system will record data each time I use my assigned ORCA Business Card. Data will include the date, time and location of the card when it is presented. I understand this data is owned by the transit Agencies and is accessible to the company that owns my ORCA Business Card.
10. I understand that the ORCA Card must be "tapped" on a card reader to show proof of fare

payment or issuance of a valid fare. Merely showing the ORCA Card on a bus, train, ferry or light rail vehicle does not constitute proof of fare payment or issuance of a valid fare. I will be subject to a fine if the ORCA Card is not "tapped," and I understand I will be personally responsible for any fines that may be imposed.

11. I understand that for the correct fare to be recorded, I must "tap" off on a card reader when exiting some transit systems. For example, I must "tap" off when exiting from a Sounder train or Link light rail.

ATTACHMENT 5

ORCA BUSINESS ACCOUNT SECURITY STANDARDS

1.0 Application Security

- 1.1 At the time the Business Account enters into the ORCA program, a unique password will be used by each Business Account authorized to enable access to myORCA.com.
- 1.2 The Business Account shall use a strong password that meets the following criteria:
 - a. Length - At least eight (8) characters in length or the maximum length permitted by the ORCA system, whichever is shorter.
 - b. Elements - Contains one each of at least one character from each of the following four (4) groups.
 - 1. English upper case letters (A, B, C...)
 - 2. English lower case letters (a, b, c...)
 - 3. Westernized Arabic numbers: 0, 1, 2...9
 - 4. Special characters: #%&\$*!@^()[]{}<>\"/?/'\"+=.,
- 1.3 The Business Account shall restrict access to the myORCA.com website by providing its user id and password to only the employee(s) who have a business "need to know" and who are authorized by the Business Account as "system user(s)". If the password is updated for reasons listed in (a) or (b), then the security questions for that same account shall be updated as well.
- 1.4 Access to the ORCA myORCA.com website is restricted to the purpose of authorized administrative support for the ORCA Business Account program
- 1.5 The Business Account's password shall be changed at least quarterly but also immediately upon (a) a system user leaving the Business Account's employment or otherwise losing his/her status as an authorized user; and (b) the Business Account learning that the password has been obtained by unauthorized persons or entities.
- 1.6 The Business Account's Primary Contact will review security policies and guidelines with system users at least quarterly.

2.0 Physical Security

- 2.1 The Business Account shall require system users, when not at their workstations, to log off the myORCA.com website, or lock their screen using a password protected screen-saver in order to prevent unauthorized access.
- 2.2 ORCA card stock shall be kept in a secure/locked location with access limited to those administering the program.
- 2.3 The Business Account shall require its employees to keep printed reports containing account information in a secure location.

3.0 Incident Management

- 3.1 The Business Account shall report any security incident or suspected incident immediately to the Lead Agency. Examples of possible security incidents would be: introduction of computer viruses, unauthorized transactions or blocked cards, or lost or stolen card stock.



Memorandum

Date: 7/5/2023

Meeting of: Committee of the Whole - Planning and Public Works

File No. CM 23-342

Type: Committee Memo

TO: Committee of the Whole - Planning and Public Works

FROM: Mayor Angela Birney

DEPARTMENT DIRECTOR CONTACT(S):

Public Works	Aaron Bert	425-556-2786
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DEPARTMENT STAFF:

Public Works	Joseph O'Leary	Senior Project Manager
Public Works	Jon Spangler	City Engineer

TITLE:

Approve Final Contract with CDK Construction Services, Inc., Accept Construction for the Fire Station 16 & Maintenance Building Seismic Upgrade Project, and Request Additional Funding

OVERVIEW STATEMENT:

Staff is requesting Council to approve the final contract and accept construction for the Fire Station 16 & Maintenance Building Seismic Upgrade Project (No. 60021819). This contract with CDK Construction Services, Inc. had a base bid amount \$1,944,729, plus, or minus change orders and bid items increases and decreases resulting a in a final contract in the amount is \$1,980,038. Staff is also requesting an additional \$100,484 to cover additional project costs associated with added construction work and construction and grant administration costs.

See Attachment A for final project costs that include FEMA Grant funds.

☒ **Additional Background Information/Description of Proposal Attached**

REQUESTED ACTION:

☐ **Receive Information**

☒ **Provide Direction**

☐ **Approve**

REQUEST RATIONALE:

- **Relevant Plans/Policies:**
N/A
- **Required:**
Council approval is required to accept a Public Works contract that exceeds \$300,000 (2018 City Resolution 1503)
- **Council Request:**
N/A

- **Other Key Facts:**

N/A

OUTCOMES:

As a result of the seismic upgrades, Fire Station 16 will be able to remain operational and crews will be able to respond to emergencies and lifesaving events after an earthquake.

Council initially approved funding for design only and the project was initiated in late 2018. The Fire Department discovered a FEMA grant funding opportunity and the City applied. The grant was awarded in November 2021, which allowed the project to move forward to construction. The project was advertised in February 2022. Work began in June and the project was substantially complete at the end of November 2022, with physical completion occurring in February 2023.

Seismic upgrades included adding anchors to strengthen the connection between the structure and the foundation and seismic bracing in the ceiling for both the station and the maintenance facility, high-speed roll-up doors for the station apparatus bay, upgraded HVAC in the dorms, reinforced the hose tower, and finish work included new insulation, fresh paint, and flooring.

COMMUNITY/STAKEHOLDER OUTREACH AND INVOLVEMENT:

- **Timeline (previous or planned):**

N/A

- **Outreach Methods and Results:**

N/A

- **Feedback Summary:**

N/A

BUDGET IMPACT:

Total Cost:

\$1,980,038

Approved in current biennial budget:

☒ **Yes**

☐ **No**

☐ **N/A**

Budget Offer Number:

CIP

Budget Priority:

Vibrant and Connected

Other budget impacts or additional costs:

☒ **Yes**

☐ **No**

☐ **N/A**

If yes, explain:

The requested additional funds of \$100,484 includes an increase of \$35,309 in the construction contract and \$65,175

due to underestimated staff costs associated with FEMA Grant management and staff labor overhead charges which are ineligible for grant reimbursement.

Funding source(s):
General CIP and FEMA Grant

Budget/Funding Constraints:
N/A

☒ **Additional budget details attached**

COUNCIL REVIEW:

Previous Contact(s)

Date	Meeting	Requested Action
N/A	Item has not been presented to Council	N/A

Proposed Upcoming Contact(s)

Date	Meeting	Requested Action
7/18/2023	Business Meeting	Approve

Time Constraints:

Following project acceptance, in accordance with RCW 60.28, the contract retainage will be released upon receipt of clearances from the Washington State Departments of Revenue and Labor and Industries, and a mandatory 45-day waiting period for filing claims and liens.

ANTICIPATED RESULT IF NOT APPROVED:

The warranty period begins upon Council acceptance. Not accepting construction will result in delay of warranty start, increasing the project close-out cost.

ATTACHMENTS:

Attachment A: Additional Project Information

Attachment A – Additional Project Information

Fire Station 16 and Maintenance Facility Seismic Upgrades

Fiscal Information

Current Project Budget

General CIP	\$1,300,000
FEMA Grant*	\$1,769,624
Total Funding	\$3,069,624

Project Estimated Costs

Design Phase	\$700,802
Construction Phase	\$2,472,960
Estimated Project Cost	\$3,173,762

Budget Difference **\$104,138**

Total Cost to City **\$1,404,138**

*Total FEMA grant funds available: **\$2,442,862**. Grant allowed billing of 75% of total eligible construction costs up to that amount. Eligible construction cost amount was **\$2,359,499**. Total FEMA grant funds requested is noted above.

Project Photos



New high-speed roll up doors

Attachment A – Additional Project Information



Example of seismic bracing in ceiling



Example of seismic anchor bolts at foundation



Memorandum

Date: 7/5/2023

Meeting of: Committee of the Whole - Planning and Public Works

File No. CM 23-322

Type: Committee Memo

TO: Committee of the Whole - Planning and Public Works

FROM: Mayor Angela Birney

DEPARTMENT DIRECTOR CONTACT(S):

Public Works	Aaron Bert	425-556-2786
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DEPARTMENT STAFF:

Public Works	Micah Bonkowski	Program Administrator
Public Works	Aaron Moldver	Manager

TITLE:

Approve a Contract Amendment to the Comprehensive Garbage, Recyclables, and Organics Collection Contract

OVERVIEW STATEMENT:

King County Solid Waste Division (KCSWD) is changing the rate structure for the disposal of municipal solid waste at the county landfill. Currently, most of KCSWD revenue is derived from its per-ton fee for waste disposed of at county facilities. As the County implements its aggressive waste reduction programs (RE+), revenues will be reduced significantly. As a result, the County has restructured the rate to include a Fixed Annual Charge for each City based on their share of system tonnage, and a reduced basic per ton fee. This restructure is intended to collect the same revenue as the status quo, but in a more stable way without shifting costs between cities. However, this will require cities and waste haulers to update the disposal component terms in their collection contracts. This amendment to the Comprehensive Garbage, Recyclables, and Organics Collection Contract allows the contractor to collect the Fixed Annual Charge for payment to King County Solid Waste.

☒ **Additional Background Information/Description of Proposal Attached**

REQUESTED ACTION:

☐ **Receive Information**

☒ **Provide Direction**

☐ **Approve**

REQUEST RATIONALE:

- **Relevant Plans/Policies:**
King County Comprehensive Solid Waste Management Plan, King County Solid Waste Interlocal Agreement, Environmental Sustainability Action Plan
- **Required:**
N/A
- **Council Request:**
N/A

- **Other Key Facts:**

In 2022, King County Council approved the new King County Solid Waste Rate structure that includes the Fixed Annual Charge. The King County Council delayed implementation until Jan 1, 2024, to give cities time to amend their hauler contracts to accommodate this new rate structure. This amendment has been agreed to by our contracted City hauler, WM.

OUTCOMES:

This contract amendment will allow the contractor to bill residents for their share of the City's Fixed Annual Charge over the course of each year. The Fixed Annual Charge amount will be paid to King County Solid Waste by the contractor. This rate restructure does not increase resident or business rates as it is accompanied by a reduction in the per ton fee, or tip fee charged by King County.

COMMUNITY/STAKEHOLDER OUTREACH AND INVOLVEMENT:

- **Timeline (previous or planned):**

N/A

- **Outreach Methods and Results:**

N/A

- **Feedback Summary:**

N/A

BUDGET IMPACT:

Total Cost:

N/A

Approved in current biennial budget:

☐ Yes

☒ No

☒ N/A

Budget Offer Number:

N/A

Budget Priority:

N/A

Other budget impacts or additional costs:

☐ Yes

☒ No

☒ N/A

If yes, explain:

N/A

Funding source(s):

N/A

Budget/Funding Constraints:

N/A

☐ **Additional budget details attached**

COUNCIL REVIEW:

Previous Contact(s)

Date	Meeting	Requested Action
N/A	Item has not been presented to Council	N/A

Proposed Upcoming Contact(s)

Date	Meeting	Requested Action
7/18/2023	Business Meeting	Approve

Time Constraints:

Amendments to City Solid Waste contracts are required to be completed by September 1st in order to accommodate the King County rate restructure. Beginning January 1, 2024, King County will implement the new Fixed Annual Charge, and cities will be required to pay the FAC.

ANTICIPATED RESULT IF NOT APPROVED:

If not approved, our current contracted rates do not allow for the collection of the Fixed Annual Charge. If not approved, the City could again petition the King County Council to delay implementation of the Fixed Annual Charge.

ATTACHMENTS:

Attachment A: Contract Amendment

Attachment B: Contract Attachment A

Attachment C: Fixed Annual Charge example calculation

FIRST AMENDMENT TO COMPREHENSIVE GARBAGE, RECYCLABLES AND ORGANICS COLLECTION CONTRACT

This FIRST AMENDMENT TO THE COMPREHENSIVE GARBAGE, RECYCLABLES AND ORGANICS COLLECTION CONTRACT is entered into as of July __, 2023, by and between the City of Redmond, a municipal corporation of the State of Washington ("City") and Waste Management of Washington, Inc. ("Contractor"). City and Contractor shall each be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, the Parties entered into that certain Comprehensive Garbage, Recyclables and Organics Collection Contract as of October 7, 2015 ("Contract");

WHEREAS, Section 3.3.2 of the Contract provides for periodic Customer rate adjustments to reflect increases or decreases in King County disposal fees for solid waste;

WHEREAS, as of January 1, 2024, King County ("County") will be restructuring its disposal rates to determine a fixed annual charge ("FAC") for commercial hauler disposal of all Garbage at the King County disposal facilities, which will be allocated on a proportionate basis to each jurisdiction within the King County Disposal System based on the total aggregate tons of Garbage sent by the respective jurisdictions;

WHEREAS, Garbage from the City is sent to the King County Disposal System and will therefore receive an allocation of the FAC annually;

WHEREAS, the Contractor shall be responsible for billing the FAC as a disposal charge to Customers and remitting the FAC to the County;

WHEREAS, the Parties desire to amend the Contract to describe the Composite Commercial Rate ("CCR") methodology the Contractor will use to annually allocate and invoice the FAC and the County commercial hauler tipping fee ("County Tipping Fee") to Customers;

NOW, THEREFORE, in consideration of the mutual covenants, agreements and promises contained herein, the Parties hereby agree as follows:

AGREEMENT

1. Capitalized Terms. Capitalized terms used herein but not defined shall have the meanings set forth in the Contract.
2. Section 3.1.3, Drop-Box Containers. Section 3.1.3 of the Collection Contract shall be deleted and replaced in its entirety with the following:

"3.1.3 Drop-Box Disposal Surcharge

The Contractor shall invoice Drop-Box Garbage Customers the Annual CCR (as described in Section 3.3.2) based on the applicable Drop-Box Container weight increased by twelve percent (12.0%)."

3. Section 3.3.1, Rate Adjustment Statement. The last paragraph of Section 3.3.1 shall be deleted and replaced in its entirety with the following:

"On or before October 1st of each year, the Contractor shall submit to the City for review and approval a Rate Adjustment Statement, calculating the new rates and the Annual

CCR for the next year. Notwithstanding the foregoing, in the event that the County notifies the City and the Contractor of the County Tipping Fee, FAC, and estimated commercial Garbage tonnage for the next calendar year pursuant to Section 3.3.2(a) after September 1st, the Contractor shall submit to the City for review and approval a Rate Adjustment Statement no later than thirty (30) days after receipt of such notice from the County. The City shall have thirty (30) days to approve or disapprove the calculations. If the City disapproves the Contractor's calculations, the Parties shall meet immediately thereafter to resolve any disagreement as to the correct calculation of the rate adjustment under subsection (b) above or the Annual CCR. Upon approval of the calculations, the Contractor shall provide 45 days notice of the new rates to its Customers, and the new rates shall be effective (i) on January 1st, or (ii) on the first day of the calendar month following the end of the 45-day notice period, whichever is later. Any delays in City approval or disapproval shall not be cause for a delay in implementation of the new rates and the Annual CCR."

4. Section 3.3.2, Periodic Adjustments. Section 3.3.2 shall be deleted and replaced in its entirety with the following:

"3.3.2 Periodic Adjustments

As of January 1, 2024, the Contractor shall annually adjust the disposal fee component of rates to reflect increases or decreases in the County Tipping Fee and King County Fixed Annual Charge ("FAC"). The Contractor shall utilize the Annual Composite Commercial Rate ("Annual CCR") methodology to annually adjust the disposal fee component of Customer rates to incorporate the FAC as follows:

- a. On or before September 1st of each year, the County shall notify the City and Contractor of the County Tipping Fee, FAC, and estimated commercial Garbage tonnage for the next calendar year. The FAC shall be divided by the County's estimated commercial Garbage tonnage which shall be expressed as a per-ton charge (the "Per-Ton FAC").
- b. The Per-Ton FAC shall be added to the County Tipping Fee that will be applicable during the next year, the sum of which shall be the Annual CCR for each ton of City Garbage during the next year.
- c. Adjustments to the disposal fee component of rates charged to Customers shall be based on percentage increase or decrease in the Annual CCR from the previous year, and further adjusted by the excise tax on the change in the disposal fee component.

Specific examples of rate modifications due to Consumer Price Index and Annual CCR are provided in Attachment C.

Adjustments to the disposal fee component shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments."

5. Attachment B: Contractor Rates. The column of the rate tables titled "2016 Disposal Per Month" shall be deleted in its entirety. Disposal rates shall be calculated as Annual CCR pursuant to Section 2 hereof.

6. Attachment C: Rate Modification Examples. Attachment C to the Contract is hereby deleted and replaced in its entirety with Exhibit A hereto.
7. Full Force and Effect. Except as otherwise provided herein, all other terms and provision of the Contract shall remain in full force and effect.

DRAFT

WITNESS THE EXECUTION HEREOF on the day and year first herein above written.

**WASTE MANAGEMENT OF
WASHINGTON, INC.**

CITY OF REDMOND

By: _____
Name: Jason S. Rose
Its: President

By: _____
Name: _____
Its: _____

Attested By: _____
Name: _____
Its: _____

Approved as to Form
By: _____
Name: _____
Its: _____

DRAFT

EXHIBIT A
ATTACHMENT C: RATE MODIFICATION EXAMPLES

DRAFT

Exhibit A: Rate Modification Examples

Collection Component Adjustment

The collection component listed in Attachment B will be increased or decreased by the amount of the CPI change: $NCC = PCC \times [1 + (nCPI - oCPI) / oCPI]$

Where

NCC	=	The new collection charge component of the Customer rate for a particular service level
PCC	=	The previous collection charge component of the Customer rate for a particular service level
nCPI	=	The most recent CPI value
oCPI	=	The previous period's CPI value

If the previous CPI is 143.2, the new CPI is 149.3 the new collection component of the rate will increase from \$13.20 to \$13.76 on January 1, 2024.

$$\text{New Collection Component} = \$13.20 \times [1 + (149.3 - 143.2) / 143.2] = \mathbf{\$13.76}$$

Annual CCR Component Adjustment

The Annual CCR component of the Customer charges listed in Attachment B reflects the combination of the Per-Ton FAC and the County Tipping Fee. Any increase or decrease in the Annual CCR will not become effective until the new Annual CCR charges become effective and are actually charged to the Contractor. The Annual CCR component of each service level will be adjusted as follows:

Step 1: $nFAC = FAC / TONS$

Step 2: $nCCR = nFAC + NTF$

Step 3: $A = ODC \times (nCCR / oCCR)$

Step 4: $NDC = A + [(A - ODC) \times CETR]$

nFAC	=	The new Per-Ton FAC
FAC	=	The new overall King County FAC
TONS	=	The King County estimated commercial garbage tonnage for the upcoming year
nCCR	=	The new Annual CCR for the upcoming year, dollars per ton
NTF	=	The new County Tipping Fee, dollars per ton

Where

A	=	The new pre-excise tax adjusted Annual CCR component
ODC	=	The old Annual CCR component of the Customer rate for a particular service level;
oCCR	=	The old Annual CCR, dollars per ton
NDC	=	The new Annual CCR component of the Customer rate for a particular service level
CETR	=	Current excise tax rate (the current State excise tax rate; 0.0175 used for this example).

For example, using an initial one 35-gallon cart rate of \$20.20 per month:

If the 2024 King County FAC is \$22,614,181 and the estimated 2024 tonnage is 656,580, then the new Per-Ton FAC would be \$34.44. If the new County Tipping Fee is \$150.83 per ton, then the new Annual CCR would be \$185.27 per ton starting January 1, 2024.

If the old disposal component is \$4.73, the old Annual CCR is \$168.68 per ton, and the State Excise Tax rate is 1.75%, the new Annual CCR component of the Customer rate will be \$7.70.

$$\text{New Per-Ton FAC} = \$22,614,181 / 656,580 = \$34.44 \text{ per ton}$$

$$\text{New Annual CCR} = \$34.44 + \$150.83 = \$185.27 \text{ per ton}$$

$$\text{New Pre-Excise Tax Adjusted Annual CCR Component} = \$7.00 \times (\$185.27 / \$168.68) = \$7.69$$

$$\text{New Annual CCR Component} = \$7.69 + [(\$7.69 - \$7.00) \times 1.75\%] = \mathbf{\$7.70}$$

Thus, the new Customer charge for one 35-gallon cart per week Residential Curbside as of January 1, 2024 will be \$13.76 plus \$7.70, equaling \$21.46 per month.

*Data provided by King County, subject to change.

FAC Allocation Table*

2024 Fixed Annual Charge \$22,614,181 Estimated Commercial
2024 Per Ton FAC: \$34.44

Commercial Hauler	2020 - Tons	2021 - Tons	2022 - Tons
Republic	212,141	219,274	220,303
WM	252,874	259,892	268,126
Recology	121,628	128,549	136,624
Republic - Renton*	42,383	43,937	45,804
City of Enumclaw*	5,371	5,810	5,845
Town of Skykomish*	116	103	86
Waste Connections*	2,808	2,842	2,820
Total	637,323	660,407	679,608

*These hauler accounts serve only a single jurisdiction and do not need further allocation.

Allocations by Jurisdiction for Aggregated Haulers

Republic \$7,330,641 Allocated FAC

Jurisdiction	2020 - Tons	2021 - Tons	2022 - Tons
Auburn	5,396	4,261	71
Beaux Arts	95	76	76
Bellevue	58,788	61,875	64,855
Black Diamond	1,620	1,982	2,059
Clyde Hill	966	952	911
Covington	8,315	8,698	8,945
Hunts Point	156	146	147
Issaquah	18	151	41
Kenmore	6,585	6,640	6,733
Kent	78,888	82,290	82,920
Lake Forest Park	3,304	3,320	3,403
Medina	950	960	976
Mercer Island	10	38	29
North Bend	4,149	4,444	4,363
Out of area	18	16	7
Out-of-Area	-	56	74
Sammamish	12,856	12,840	12,071
Sammamish Klahanie	2,819	2,761	2,713
Unincorporated - North	4,400	3,808	3,290
Unincorporated - South	27,176	28,086	29,020
Yarrow Point	290	283	250
Total	216,802	223,683	222,954

Waste Management

\$8,921,983 Allocated FAC

Jursidiction	2020 - Tons	2021 - Tons	2022 - Tons
Algona	1,656	2,174	2,246
Auburn	41,759	46,424	49,524
Bothell	2,481	904	616
Duvall	2,221	2,156	2,152
Federal Way	45,859	47,153	45,286
Kirkland	35,769	35,886	35,363
Newcastle	3,711	3,957	3,920
Normandy Park	2,166	2,240	2,109
Pacific	3,812	3,977	3,960
Redmond	31,588	31,771	31,099
Sammamish	126	80	19
Snoqualmie	4,966	4,820	4,662
Tukwila	27,399	28,334	28,194
Unincorporated - North	17,421	17,320	17,972
Unincorporated - South	25,321	25,883	23,507
Woodinville	12,826	11,520	10,051
Total	259,080	264,598	260,680

Recology

\$4,546,206 Allocated FAC

Jursidiction	2020 - Tons	2021 - Tons	2022 - Tons
Bothell	14,669	16,270	16,698
Burien	20,643	20,672	20,164
Carnation	899	806	844
Des Moines	12,648	12,684	12,921
Issaquah	17,713	17,899	18,382
Maple Valley	8,841	8,906	9,147
Mercer Island	6,693	6,730	6,565
SeaTac	21,201	24,428	29,917
Shoreline	18,225	18,124	18,948
Total	121,531	126,518	133,585

ial Tonnage - 2024

656,580

2020 - %	2021 - %	2022 - %
33.29%	33.20%	32.42%
39.68%	39.35%	39.45%
19.08%	19.47%	20.10%
6.65%	6.65%	6.74%
0.84%	0.88%	0.86%
0.02%	0.02%	0.01%
0.44%	0.43%	0.41%
100.00%	100.00%	100.00%

FAC Allocation	2024 Annual FAC
32.42%	\$7,330,641
39.45%	\$8,921,983
20.10%	\$4,546,206
6.74%	\$1,524,133
0.86%	\$194,500
0.01%	\$2,871
0.41%	\$93,847
100.00%	\$22,614,181

2020 - %	2021 - %	2022 - %
2.49%	1.91%	0.03%
0.04%	0.03%	0.03%
27.12%	27.66%	29.09%
0.75%	0.89%	0.92%
0.45%	0.43%	0.41%
3.84%	3.89%	4.01%
0.07%	0.07%	0.07%
0.01%	0.07%	0.02%
3.04%	2.97%	3.02%
36.39%	36.79%	37.19%
1.52%	1.48%	1.53%
0.44%	0.43%	0.44%
0.00%	0.02%	0.01%
1.91%	1.99%	1.96%
0.01%	0.01%	0.00%
0.00%	0.02%	0.03%
5.93%	5.74%	5.41%
1.30%	1.23%	1.22%
2.03%	1.70%	1.48%
12.54%	12.56%	13.02%
0.13%	0.13%	0.11%
100.00%	100.00%	100.00%

FAC Allocation	2024 Annual FAC
0.03%	\$2,325
0.03%	\$2,499
29.09%	\$2,132,409
0.92%	\$67,707
0.41%	\$29,941
4.01%	\$294,113
0.07%	\$4,844
0.02%	\$1,359
3.02%	\$221,370
37.19%	\$2,726,370
1.53%	\$111,891
0.44%	\$32,106
0.01%	\$946
1.96%	\$143,457
0.00%	\$225
0.03%	\$2,420
5.41%	\$396,903
1.22%	\$89,194
1.48%	\$108,184
13.02%	\$954,160
0.11%	\$8,217
100.00%	7,330,641

2020 - %	2021 - %	2022 - %
0.64%	0.82%	0.86%
16.12%	17.54%	19.00%
0.96%	0.34%	0.24%
0.86%	0.81%	0.83%
17.70%	17.82%	17.37%
13.81%	13.56%	13.57%
1.43%	1.50%	1.50%
0.84%	0.85%	0.81%
1.47%	1.50%	1.52%
12.19%	12.01%	11.93%
0.05%	0.03%	0.01%
1.92%	1.82%	1.79%
10.58%	10.71%	10.82%
6.72%	6.55%	6.89%
9.77%	9.78%	9.02%
4.95%	4.35%	3.86%
100%	100%	100%

FAC Allocation	2024 Annual FAC
0.86%	\$76,887
19.00%	\$1,694,985
0.24%	\$21,074
0.83%	\$73,642
17.37%	\$1,549,950
13.57%	\$1,210,325
1.50%	\$134,173
0.81%	\$72,197
1.52%	\$135,540
11.93%	\$1,064,378
0.01%	\$652
1.79%	\$159,552
10.82%	\$964,950
6.89%	\$615,120
9.02%	\$804,547
3.86%	\$344,011
100.00%	\$8,921,983

2020 - %	2021 - %	2022 - %
12.07%	12.86%	12.50%
16.99%	16.34%	15.09%
0.74%	0.64%	0.63%
10.41%	10.03%	9.67%
14.57%	14.15%	13.76%
7.27%	7.04%	6.85%
5.51%	5.32%	4.91%
17.44%	19.31%	22.40%
15.00%	14.33%	14.18%
100.00%	100.00%	100.00%

FAC Allocation	2024 Annual FAC
12.50%	\$568,268
15.09%	\$686,218
0.63%	\$28,734
9.67%	\$439,727
13.76%	\$625,584
6.85%	\$311,299
4.91%	\$223,408
22.40%	\$1,018,141
14.18%	\$644,827
100.00%	\$4,546,206

2024 Monthly Charge	2024 Est Tons	2024 FAC
\$610,886.8	212,838	7,330,641.50
\$743,498.6	259,041	8,921,982.92
\$378,850.5	131,995	4,546,205.87
\$127,011.1	44,252	1,524,133.29
\$16,208.3	5,647	194,499.51
\$239.3	83	2,871.23
\$7,820.6	2,725	93,846.69
	656,580	22,614,181.00

2024 Monthly Charge
\$193.79
\$208.27
\$177,700.76
\$5,642.27
\$2,495.11
\$24,509.39
\$403.65
\$113.27
\$18,447.50
\$227,197.49
\$9,324.28
\$2,675.50
\$78.86
\$11,954.75
\$18.71
\$201.63
\$33,075.25
\$7,432.87
\$9,015.37
\$79,513.31
\$684.76

2024 Est Tons	2024 FAC
259,041	8,921,983

2024 Monthly Charge
\$6,407.26
\$141,248.72
\$1,756.13
\$6,136.81
\$129,162.51
\$100,860.42
\$11,181.11
\$6,016.43
\$11,295.04
\$88,698.17
\$54.34
\$13,295.99
\$80,412.46
\$51,260.00
\$67,045.57
\$28,667.61

2024 Est Tons	2024 FAC
2,232	\$76,887.10
49,212	\$1,694,984.59
612	\$21,073.61
2,138	\$73,641.78
45,001	\$1,549,950.07
35,141	\$1,210,325.05
3,896	\$134,173.32
2,096	\$72,197.18
3,935	\$135,540.48
30,903	\$1,064,378.09
19	\$652.05
4,632	\$159,551.93
28,016	\$964,949.57
17,859	\$615,120.00
23,359	\$804,546.79
9,988	\$344,011.30

2024 Monthly Charge
\$47,355.69
\$57,184.86
\$2,394.48
\$36,643.89
\$52,131.96
\$25,941.61
\$18,617.37
\$84,845.05
\$53,735.58

Overall FAC %
6.74%
0.86%
0.01%
0.41%

Overall FAC %
0.01%
0.01%
9.43%
0.30%
0.13%
1.30%
0.02%
0.01%
0.98%
12.06%
0.49%
0.14%
0.00%
0.63%
0.00%
0.01%
1.76%
0.39%
0.48%
4.22%
0.04%

Overall FAC %
0.34%
7.50%
0.09%
0.33%
6.85%
5.35%
0.59%
0.32%
0.60%
4.71%
0.00%
0.71%
4.27%
2.72%
3.56%
1.52%

Estimated

Overall FAC %
2.51%
3.03%
0.13%
1.94%
2.77%
1.38%
0.99%
4.50%
2.85%

Current King County Solid Waste Division Proposal for 2024 Disposal Fees

Redmond

Estimated per Ton Tip Fee:	\$150.83
2024 Allocated FAC for WM:	\$8,921,983
2024 Estimated Commercial Tonnage for WM:	259,041
City of Redmond Estimated Commercial Tonnage:	30,903
Percentage Share of Estimated Commercial Tonnage:	11.93%
City Share of Fixed Charge for 2024:	\$1,064,378
2024 Fixed Annual Charge per ton equivalent:	\$34.44
Composite Per Ton MSW Disposal Fee in 2024:	\$185.27
2023 Tip Fee	\$168.68
% Increase in the Composite Tip Fee	<u>9.8%</u>

City of Redmond

[illegible]

Univariate and Multivariate Coefficients	SERVICE LEVEL	DESPITAL PER PATIENT	SERVICE PER PATIENT	CONVERT PER PATIENT	DESPITAL PER PATIENT	SERVICE PER PATIENT	CONVERT PER PATIENT
C. 1.0. Univariate	1.0.1. P.1. Univariate	217.3	12.67	144.0	34.0	117.0	22.38
	1.0.2. P.2. Univariate	67.48	20.25	26.84	43.0	213.0	28.43
	1.0.3. P.3. Univariate	186.22	21.0	186.22	21.0	186.22	21.0
	1.0.4. P.4. Univariate	15.01	38.11	15.01	38.11	30.24	28.43
	1.0.5. P.5. Univariate	15.01	38.11	15.01	38.11	30.24	28.43
C. 1.0. Multivariate	1.0.1. P.1. Multivariate	90.25	90.05	71.02	20.0	58.73	16.81
	1.0.2. P.2. Multivariate	47.08	20.25	26.84	42.0	144.0	16.81
	1.0.3. P.3. Multivariate	190.25	20.25	160.0	30.0	302.73	40.48
	1.0.4. P.4. Multivariate	15.01	44.0	15.01	44.0	30.24	28.43
	1.0.5. P.5. Multivariate	15.01	50.0	15.01	50.0	30.24	28.43
C. 2.0. Univariate	2.0.1. P.1. Univariate	205.10	50.0	142.0	20.0	57.16	10.72
	2.0.2. P.2. Univariate	186.12	21.0	186.12	21.0	186.12	21.0
	2.0.3. P.3. Univariate	205.10	81.00	120.0	31.0	84.0	1.094
	2.0.4. P.4. Univariate	65.4	10.0	20.0	4.0	10.0	20.0
	2.0.5. P.5. Univariate	65.4	10.0	20.0	4.0	10.0	20.0
C. 2.0. Multivariate	2.0.1. P.1. Multivariate	205.10	50.0	142.0	20.0	57.16	10.72
	2.0.2. P.2. Multivariate	186.12	21.0	186.12	21.0	186.12	21.0
	2.0.3. P.3. Multivariate	205.10	81.00	120.0	31.0	84.0	1.094
	2.0.4. P.4. Multivariate	65.4	10.0	20.0	4.0	10.0	20.0
	2.0.5. P.5. Multivariate	65.4	10.0	20.0	4.0	10.0	20.0
C. 3.0. Univariate	3.0.1. P.1. Univariate	361.00	97.33	120.0	4.0	10.0	1.028
	3.0.2. P.2. Univariate	361.00	97.33	120.0	4.0	10.0	1.028
	3.0.3. P.3. Univariate	361.00	20.0	20.0	20.0	20.0	20.0
	3.0.4. P.4. Univariate	361.00	40.0	40.0	40.0	40.0	40.0
	3.0.5. P.5. Univariate	361.00	70.0	70.0	70.0	70.0	70.0
C. 3.0. Multivariate	3.0.1. P.1. Multivariate	361.00	97.33	120.0	4.0	10.0	1.028
	3.0.2. P.2. Multivariate	361.00	97.33	120.0	4.0	10.0	1.028
	3.0.3. P.3. Multivariate	361.00	20.0	20.0	20.0	20.0	20.0
	3.0.4. P.4. Multivariate	361.00	40.0	40.0	40.0	40.0	40.0
	3.0.5. P.5. Multivariate	361.00	70.0	70.0	70.0	70.0	70.0



Memorandum

Date: 7/5/2023

Meeting of: Committee of the Whole - Planning and Public Works

File No. CM 23-344

Type: Committee Memo

TO: Committee of the Whole - Planning and Public Works

FROM: Mayor Angela Birney

DEPARTMENT DIRECTOR CONTACT(S):

Public Works	Aaron Bert	425-556-2786
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DEPARTMENT STAFF:

Public Works	Anne-marie Marshall-Dody	Deputy Director
Public Works	Steve Hitch	Engineering Manager
Public Works	Tom Hardy	Stream and Habitat Planner
Planning and Community Development	Kim Dietz	Principal Planner

TITLE:

Approve On-Call Cultural Resources and Archaeological Management Services Agreements

OVERVIEW STATEMENT:

Through a standard Request for Qualifications (RFQ) process, City staff reviewed and scored proposals for on-call cultural resources and archaeological management services. Two firms, Environmental Science Associates (ESA) and ASM affiliates (ASM), scored highest in the review criteria and were selected to provide on-call services to the city. The on-call agreements will each be for \$150,000. As the need for these services are required, the associated project charges against the total contract amount up to the contract cost ceiling.

☐ **Additional Background Information/Description of Proposal Attached**

REQUESTED ACTION:

☐ **Receive Information**

☒ **Provide Direction**

☐ **Approve**

REQUEST RATIONALE:

- **Relevant Plans/Policies:**
Cultural Resources Management Plan
- **Required:**
Contracts over \$50,000
- **Council Request:**
N/A
- **Other Key Facts:**
There are no funds encumbered by the on-call agreements because projects will charge as-needed from

approved budgets. Administration support will be provided by the stormwater budget.

OUTCOMES:

Having on-call archaeological firms available will provide efficient contracting through task order-based agreements. Both firms are highly capable in historic and pre-historic assessments and can scale-up depending on the project needs. ESA has more capacity to take on larger projects, and ASM is better set-up for small scale projects. We anticipate using both firms for various types of services, including pre-project surveying, construction monitoring, public outreach, and employee training.

COMMUNITY/STAKEHOLDER OUTREACH AND INVOLVEMENT:

- **Timeline (previous or planned):**
N/A
- **Outreach Methods and Results:**
N/A
- **Feedback Summary:**
N/A

BUDGET IMPACT:

Total Cost:
\$300,000

Approved in current biennial budget: ☒ Yes ☐ No ☐ N/A

Budget Offer Number:
0000002 Ground & Surface Water Management

Budget Priority:
Healthy and Sustainable

Other budget impacts or additional costs: ☐ Yes ☒ No ☐ N/A

If yes, explain:
N/A

Funding source(s):
405.21108.00410.53150

Budget/Funding Constraints:
N/A

☐ **Additional budget details attached**

COUNCIL REVIEW:

Previous Contact(s)

Date	Meeting	Requested Action
N/A	Item has not been presented to Council	N/A

Proposed Upcoming Contact(s)

Date	Meeting	Requested Action
7/18/2023	Business Meeting	Approve

Time Constraints:

N/A

ANTICIPATED RESULT IF NOT APPROVED:

The City will still need to contract with cultural resources and archaeological firms, but it will be less efficient and likely more expensive.

ATTACHMENTS:

Attachment A: ASM Consultant Agreement

Attachment B: ESA Consultant Agreement

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PROJECT TITLE 	EXHIBITS <i>(List all attached exhibits - Scope of Work, Work Schedule, Payment Schedule, Renewal Options, etc.)</i>
CONTRACTOR 	CITY OF REDMOND PROJECT ADMINISTRATOR <i>(Name, address, phone #)</i> City of Redmond
CONTRACTOR'S CONTACT INFORMATION <i>(Name, address, phone #)</i> 	BUDGET OR FUNDING SOURCE
CONTRACT COMPLETION DATE 	MAXIMUM AMOUNT PAYABLE

THIS AGREEMENT is entered into on _____, 20__ between the City of Redmond, Washington, hereinafter called "the CITY", and the above person, firm or organization, hereinafter called "the CONSULTANT".

WHEREAS, the CITY desires to accomplish the above-referenced project; and

WHEREAS, the CITY does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the project; and

WHEREAS, the CONSULTANT has represented to the CITY that the CONSULTANT is in compliance with the professional registration statutes of the State of Washington, if applicable, and has signified a willingness to furnish consulting services to the CITY, now, therefore,

IN CONSIDERATION OF the terms and conditions set forth below, or attached and incorporated and made a part hereof, the parties agree as follows:

1. **Retention of Consultant - Scope of Work.** The CITY hereby retains the CONSULTANT to provide professional services as defined in this agreement and as necessary to accomplish the scope of work attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this agreement.

2. **Completion of Work.** The CONSULTANT shall not begin any work under the terms of this agreement until authorized in writing by the CITY. The CONSULTANT shall complete all work required by this agreement according to the schedule attached as Exhibit B and incorporated herein by this reference as if set forth in full. A failure to complete the work according to the attached schedule, except where such failure is due to circumstances beyond the control of the CONSULTANT, shall be deemed a breach of this agreement. The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the CITY, in the event of a delay attributable to the CITY, or because of unavoidable delays caused by circumstances beyond the control of the CONSULTANT. All such extensions shall be in writing and shall be executed by both parties.

3. **Payment.** The CONSULTANT shall be paid by the CITY for satisfactorily completed work and services satisfactorily rendered under this agreement as provided in Exhibit C, attached hereto and incorporated herein by this reference as if set forth in full. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Work attached. The CONSULTANT shall be entitled to invoice

the CITY no more frequently than once per month during the course of the completion of work and services by the CONSULTANT. Invoices shall detail the work performed or services rendered, the time involved (if compensation is based on an hourly rate) and the amount to be paid. The CITY shall pay all such invoices within 30 days of submittal, unless the CITY gives notice that the invoice is in dispute. In no event shall the total of all invoices paid exceed the maximum amount payable set forth above, if any, and the CONSULTANT agrees to perform all services contemplated by this agreement for no more than said maximum amount.

4. Changes in Work. The CONSULTANT shall make such changes and revisions in the complete work provided by this agreement as may be necessary to correct errors made by the CONSULTANT and appearing therein when required to do so by the CITY. The CONSULTANT shall make such corrective changes and revisions without additional compensation from the CITY. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as provided in Section 5.

5. Extra Work.

A. The CITY may, at any time, by written order, make changes within the general scope of the agreement in the services to be performed. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work or services under this agreement, whether or not changed by the order, or otherwise affects any other terms or conditions of the agreement, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule or both; and (3) other affected terms, and shall modify the agreement accordingly.

B. The CONSULTANT must submit any "proposal for adjustment" under this clause within 30 days from the date of receipt of the written order to make changes. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a proposal submitted before final payment of the agreement.

C. Failure to agree to any adjustment shall be a dispute under the Disputes clause of this agreement, as provided in Section 13. Notwithstanding any such dispute, the CONSULTANT shall proceed with the agreement as changed.

D. Notwithstanding any other provision in this section, the maximum amount payable for this agreement shall not be increased or considered to be increased except by specific written amendment of this agreement.

6. **Ownership of Work Product.** Any and all documents, drawings, reports, and other work product produced by the CONSULTANT under this agreement shall become the property of the CITY upon payment of the CONSULTANT'S fees and charges therefore. The CITY shall have the complete right to use and re-use such work product in any manner deemed appropriate by the CITY, provided, that use on any project other than that for which the work product is prepared shall be at the CITY'S risk unless such use is agreed to by the CONSULTANT.

7. **Independent Contractor.** The CONSULTANT is an independent contractor for the performance of services under this agreement. The CITY shall not be liable for, nor obligated to pay to the CONSULTANT, or any employee of the CONSULTANT, sick leave, vacation pay, overtime or any other benefit applicable to employees of the CITY, nor to pay or deduct any social security, income tax, or other tax from the payments made to the CONSULTANT which may arise as an incident of the CONSULTANT performing services for the CITY. The CITY shall not be obligated to pay industrial insurance for the services rendered by the CONSULTANT.

8. **Indemnity.** The CONSULTANT agrees to hold harmless, indemnify and defend the CITY, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the CONSULTANT, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the CONSULTANT, its officers, agents, subconsultants or employees, in connection with the services required by this agreement, provided, however, that:

A. The CONSULTANT's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the CITY, its officers, agents or employees; and

B. The CONSULTANT's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the CONSULTANT and the CITY, or of the CONSULTANT and a third party other than an officer, agent, subconsultant or employee of the CONSULTANT, shall apply only to the extent of the negligence or willful misconduct of the CONSULTANT.

9. **Insurance.** The CONSULTANT shall provide the following minimum insurance coverages:

A. Worker's compensation and employer's liability insurance as required by the State of Washington;

B. General public liability and property damage insurance in an amount not less than a combined single limit of two million dollars (\$2,000,000) for bodily injury, including death, and property damage per occurrence.

C. Professional liability insurance, if commercially available in CONSULTANT's field of expertise, in the amount of two million dollars (\$2,000,000) or more against claims arising out of work provided for in this agreement.

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 CONSULTANT as to the insurance necessary to protect the CONSULTANT'S interests and any decision by the CONSULTANT to carry or not carry insurance amounts in excess of the above is solely that of the CONSULTANT.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. Excepting the professional liability insurance, the CITY will be named on all insurance as an additional insured. The CONSULTANT shall submit a certificate of insurance to the CITY evidencing the coverages specified above, together with an additional insured endorsement naming the CITY, within fifteen (15) days of the execution of this agreement. The additional insured endorsement shall provide that to the extent of the CONSULTANT's negligence, the CONSULTANT's insurance shall be primary and non-contributing as to the City, and any other insurance maintained by the CITY shall be excess and not contributing insurance with respect to the CONSULTANT's insurance. The certificates of insurance shall cover the work specified in or performed under this agreement. No cancellation, reduction or modification of the foregoing policies shall be effective without thirty (30) days prior written notice to the CITY.

10. Records. The CONSULTANT shall keep all records related to this agreement for a period of three years following completion of the work for which the CONSULTANT is retained. The CONSULTANT shall permit any authorized representative of the CITY, and any person authorized by the CITY for audit purposes, to inspect such records at all reasonable times during regular business hours of the CONSULTANT. Upon request, the CONSULTANT will provide the CITY with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the CONSULTANT, but the CONSULTANT may charge the CITY for copies requested for any other purpose.

11. Notices. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth in the box for the same appearing at the outset of this Agreement. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

12. **Project Administrator.** The Project Administrator shall be responsible for coordinating the work of the CONSULTANT, for providing any necessary information for and direction of the CONSULTANT's work in order to ensure that it meets the requirements of this Agreement, and for reviewing, monitoring and approving the quality and quantity of such work. The CONSULTANT shall report to and take any necessary direction from the Project Administrator.

13. **Disputes.** Any dispute concerning questions of fact in connection with the work not disposed of by agreement between the CONSULTANT and the CITY shall be referred for resolution to a mutually acceptable mediator. The parties shall each be responsible for one-half of the mediator's fees and costs.

14. **Termination.** The CITY reserves the right to terminate this agreement at any time upon ten (10) days written notice to the CONSULTANT. Any such notice shall be given to the address specified above. In the event that this agreement is terminated by the City other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. In the event that services of the CONSULTANT are terminated by the CITY for fault on part of the CONSULTANT, the amount to be paid shall be determined by the CITY with consideration given to the actual cost incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the CITY at the time of termination, the cost of the CITY of employing another firm to complete the work required, and the time which may be required to do so.

15. **Non-Discrimination.** The CONSULTANT agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, creed, color, national origin, sex, religion, honorable discharged veteran or military status, familial status, sexual orientation, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog or service animal by a person with a disability, except for a bona fide occupational qualification. The CONSULTANT understands that if it violates this provision, this Agreement may be terminated by the CITY and that the CONSULTANT may be barred from performing any services for the CITY now or in the future.

16. **Compliance and Governing Law.** The CONSULTANT shall at all times comply with all applicable federal, state, and local laws, rules, ordinances, and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

17. **Subcontracting or Assignment.** The CONSULTANT may not assign or subcontract any portion of the services to be provided under this agreement without the express written consent of the CITY. Any sub-consultants approved by the CITY at the outset of this agreement are named on separate Exhibit attached hereto and incorporated herein by this reference as if set forth in full.

18. **Non-Waiver.** Payment for any part of the work or services by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of the agreement by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it under the agreement by the CITY. Waiver of any right or entitlement under this agreement by the CITY shall not constitute waiver of any other right or entitlement.

19. **Litigation.** In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this agreement, the parties agree that such actions shall be initiated in the Superior Court of the State of Washington, in and for King County. The parties agree that all questions shall be resolved by application of Washington law and that parties to such actions shall have the right of appeal from such decisions of the Superior Court in accordance with the law of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, in and for King County. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

20. **Taxes.** The CONSULTANT will be solely responsible for the payment of any and all applicable taxes related to the services provided under this agreement and if such taxes are required to be passed through to the CITY by law, the same shall be duly itemized on any billings submitted to the CITY by the CONSULTANT.

21. **City Business License.** The CONSULTANT has obtained, or agrees to obtain, a business license from the CITY prior to commencing to perform any services under this agreement. The CONSULTANT will maintain the business license in good standing throughout the term of this Agreement.

22. **Entire Agreement.** This agreement represents the entire integrated agreement between the CITY and the CONSULTANT, superseding all prior negotiations, representations or agreements, written or oral. This agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto. These standard terms and conditions set forth above supersede any conflicting terms and conditions on any attached and incorporate exhibit. Where conflicting language exists, the CITY'S terms and conditions shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the
day and year first above written.

CONSULTANT:

CITY OF REDMOND:

By: _____
Title: _____

Angela Birney, Mayor
DATED: _____

ATTEST/AUTHENTICATED:

City Clerk, City of Redmond

APPROVED AS TO FORM:

Office of the City Attorney

On-Call Cultural Resources – Archaeological Management Services

Exhibit A – Scope of Work

The scope of services being sought is a Task Order based cultural resources management services that would support the City of Redmond's (City) Departments of Parks, Planning, and Public Works.

Project Description:

This project will be a non-exclusive continuing services contract to assist the City in protecting cultural resources during the planning and construction of capital projects. The consultant will serve as a partner to the City to expand the capability of Redmond staff to provide cultural resources management services.

Typical projects may include but not be limited to the following areas: archaeological desktop, pedestrian, and in-field surveying; monitoring of geotechnical exploration; monitoring of ground disturbing construction activities; and response to inadvertent discoveries. The consultant may also be requested to partner with staff during Section 106 and Executive Order 21-02 project management; provide staff and contractor training; provide presentations on cultural resources; and advise the City's Cultural Resources Management Plan implementation and maintenance.

Some recent examples of cultural resources services include monitoring of Downtown Park development and Cleveland Streetscape Improvements, surveying and monitoring of Pond C Building Demolition and Site Cleanup, and surveying of Evans Creek Relocation.

I. Task Order Administration

There will be no specific limitation on the quantity, minimum and/or maximum value of individual task orders. Tom Hardy, Stream and Habitat Planner or a designated representative will administer each task order from the Public Works Department of the City. Redmond Historic Preservation Officer (RHPO) Kimberly Dietz will provide technical support on task orders, as needed.

A. Period of Performance and Contract Value

The contract will be for a period of performance for three (3) years with one (1) optional year. The schedule and period of each task order agreement will be separately negotiated and defined.

The maximum value of this contract will not exceed one hundred and fifty thousand (\$150,000) during the contract period; however, there is no guarantee that the City will expend the entire value of this contract. Specifically, the City does not guarantee that the consultant will receive a specified volume of work, a specific total contract amount, or a specific task order value. The value of the contract could potentially be increased through supplemental agreements. The work will be conducted through task orders for specific pieces of work.

B. Consultant Resources and Time

Specific work under this contract will be performed on a Task Order basis consisting of individually negotiated task orders. Each task order will provide a specific scope, budget, and schedule of the services



required. The exact disciplines required and the amount of work for each discipline, have not been determined. The consultant should be capable of adding, deleting, or substituting disciplines/expertise as necessary to meet the needs of specific task orders. There is no guarantee that all disciplines or services will be utilized.

The consultant may be expected to respond to short notice requests for technical services to resolve urgent task orders such as regarding inadvertent discovery of cultural resources. The consultant should be capable of performing urgent task order assignments while working on several other task orders simultaneously. Consultant task orders will be coordinated with on-going work being performed by the City. Typically, each effort should be complete with final reports submitted to the City as defined by individual contract or by the end of the year.

C. Task Order Process

1. For each individual task order, the project manager will issue a written "Task Order Request" to the consultant. The task request will describe the nature and extent of the project, its scope and preliminary schedule.
2. Within five (5) calendar days of the time frame specified in the "task order request", the consultant will prepare a proposal that includes an applicable scope of work, schedule, and detailed fee proposal as well as identify key staff assignments and potential sub consultants.
3. The consultant and project manager will determine the detailed scope of work, project schedule, consultant fee, and other project management details.
4. The project manager will provide a final approval of the task order with a signed task order sheet.
5. The consultant will be paid on the basis of approved monthly invoices. Task orders will be invoiced in a manner to allow costs to be identified by work performed under separate task orders.
6. The Project Manager will issue a written task release when work on a specific task order is complete and final payment for that task is authorized.

II. Scope of Services

The consultant will provide all labor, materials, equipment and supplies to perform professional monitoring services on a task order basis for various task assignment projects. These tasks may include, but are not limited to the following:

- Literature review;
- Desktop surveying;
- Archaeological and historical monitoring;
- In-field surveying;
- Report authoring;
- Report submittal to Washington Department of Archaeology and Historic Preservation (DAHP) through WISAARD tool;
- Response to inadvertent discoveries and archaeological permit coordination with the DAHP;
- Providing cultural resources management awareness briefings including during pre-construction phases of capital projects;
- In-field, project-specific staff and contractor training;
- Advisement to staff for implementation and maintenance of adopted Cultural Resources Management Plan;
- Development and maintenance of cultural resources management operational guidelines;
- Staff training in accordance with adopted cultural resources management standards, protocols, and procedures;
- Partnership with staff during planning and implementation of the Section 106 review process; and



- Advisement to staff during annual and periodic maintenance of the City's adopted Cultural Resources Management Plan.
- Cultural Resources and Archaeological Presentations to Redmond staff or the public

Expertise required shall be in accordance with the Secretary of Interior's Standards for Qualification and as defined by RCW 27.53.030(11) Professional Archaeologist and the Washington State Standards for Cultural Resources Reporting.

End Scope of Work



Exhibit D

Consultant Fee Determination

Project Name: On-call Cultural Resources and Archaeological Ser
Project Number:
Consultant: ASM Affiliates

NEGOTIATED HOURLY RATES

Classification	Hours	DSC	Overhead 196%	Fee (Profit) 26%	Total Hourly Rate	Total
Project Manager II		\$ 40.87	\$80.01	\$10.50	\$131	
Principal Investigator		\$ 50.48	\$98.82	\$12.97	\$162	
Project Manager I		\$ 33.00	\$64.60	\$8.48	\$106	
Field Director		\$ 30.00	\$58.73	\$7.71	\$96	
Total Hours					Subtotal:	
REIMBURSABLES						
Mileage						
Reproduction (copies, plots, etc.)						
Miscellaneous						
					Subtotal:	
SUBCONSULTANT COSTS (See Exhibit E)						
					Subtotal:	

Total:

Contingency:

GRAND TOTAL:

--

PROJECT TITLE	EXHIBITS (List all attached exhibits - Scope of Work, Work Schedule, Payment Schedule, Renewal Options, etc.)
CONTRACTOR	CITY OF REDMOND PROJECT ADMINISTRATOR (Name, address, phone #) City of Redmond
CONTRACTOR'S CONTACT INFORMATION (Name, address, phone #)	BUDGET OR FUNDING SOURCE
CONTRACT COMPLETION DATE	MAXIMUM AMOUNT PAYABLE

THIS AGREEMENT is entered into on _____, 20__ between the City of Redmond, Washington, hereinafter called "the CITY", and the above person, firm or organization, hereinafter called "the CONSULTANT".

WHEREAS, the CITY desires to accomplish the above-referenced project; and

WHEREAS, the CITY does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the project; and

WHEREAS, the CONSULTANT has represented to the CITY that the CONSULTANT is in compliance with the professional registration statutes of the State of Washington, if applicable, and has signified a willingness to furnish consulting services to the CITY, now, therefore,

IN CONSIDERATION OF the terms and conditions set forth below, or attached and incorporated and made a part hereof, the parties agree as follows:

1. **Retention of Consultant - Scope of Work.** The CITY hereby retains the CONSULTANT to provide professional services as defined in this agreement and as necessary to accomplish the scope of work attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this agreement.

2. **Completion of Work.** The CONSULTANT shall not begin any work under the terms of this agreement until authorized in writing by the CITY. The CONSULTANT shall complete all work required by this agreement according to the schedule attached as Exhibit B and incorporated herein by this reference as if set forth in full. A failure to complete the work according to the attached schedule, except where such failure is due to circumstances beyond the control of the CONSULTANT, shall be deemed a breach of this agreement. The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the CITY, in the event of a delay attributable to the CITY, or because of unavoidable delays caused by circumstances beyond the control of the CONSULTANT. All such extensions shall be in writing and shall be executed by both parties.

3. **Payment.** The CONSULTANT shall be paid by the CITY for satisfactorily completed work and services satisfactorily rendered under this agreement as provided in Exhibit C, attached hereto and incorporated herein by this reference as if set forth in full. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Work attached. The CONSULTANT shall be entitled to invoice

the CITY no more frequently than once per month during the course of the completion of work and services by the CONSULTANT. Invoices shall detail the work performed or services rendered, the time involved (if compensation is based on an hourly rate) and the amount to be paid. The CITY shall pay all such invoices within 30 days of submittal, unless the CITY gives notice that the invoice is in dispute. In no event shall the total of all invoices paid exceed the maximum amount payable set forth above, if any, and the CONSULTANT agrees to perform all services contemplated by this agreement for no more than said maximum amount.

4. Changes in Work. The CONSULTANT shall make such changes and revisions in the complete work provided by this agreement as may be necessary to correct errors made by the CONSULTANT and appearing therein when required to do so by the CITY. The CONSULTANT shall make such corrective changes and revisions without additional compensation from the CITY. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as provided in Section 5.

5. Extra Work.

A. The CITY may, at any time, by written order, make changes within the general scope of the agreement in the services to be performed. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work or services under this agreement, whether or not changed by the order, or otherwise affects any other terms or conditions of the agreement, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule or both; and (3) other affected terms, and shall modify the agreement accordingly.

B. The CONSULTANT must submit any "proposal for adjustment" under this clause within 30 days from the date of receipt of the written order to make changes. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a proposal submitted before final payment of the agreement.

C. Failure to agree to any adjustment shall be a dispute under the Disputes clause of this agreement, as provided in Section 13. Notwithstanding any such dispute, the CONSULTANT shall proceed with the agreement as changed.

D. Notwithstanding any other provision in this section, the maximum amount payable for this agreement shall not be increased or considered to be increased except by specific written amendment of this agreement.

6. **Ownership of Work Product.** Any and all documents, drawings, reports, and other work product produced by the CONSULTANT under this agreement shall become the property of the CITY upon payment of the CONSULTANT'S fees and charges therefore. The CITY shall have the complete right to use and re-use such work product in any manner deemed appropriate by the CITY, provided, that use on any project other than that for which the work product is prepared shall be at the CITY'S risk unless such use is agreed to by the CONSULTANT.

7. **Independent Contractor.** The CONSULTANT is an independent contractor for the performance of services under this agreement. The CITY shall not be liable for, nor obligated to pay to the CONSULTANT, or any employee of the CONSULTANT, sick leave, vacation pay, overtime or any other benefit applicable to employees of the CITY, nor to pay or deduct any social security, income tax, or other tax from the payments made to the CONSULTANT which may arise as an incident of the CONSULTANT performing services for the CITY. The CITY shall not be obligated to pay industrial insurance for the services rendered by the CONSULTANT.

8. **Indemnity.** The CONSULTANT agrees to hold harmless, indemnify and defend the CITY, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the CONSULTANT, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the CONSULTANT, its officers, agents, subconsultants or employees, in connection with the services required by this agreement, provided, however, that:

A. The CONSULTANT's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the CITY, its officers, agents or employees; and

B. The CONSULTANT's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the CONSULTANT and the CITY, or of the CONSULTANT and a third party other than an officer, agent, subconsultant or employee of the CONSULTANT, shall apply only to the extent of the negligence or willful misconduct of the CONSULTANT.

9. **Insurance.** The CONSULTANT shall provide the following minimum insurance coverages:

A. Worker's compensation and employer's liability insurance as required by the State of Washington;

B. General public liability and property damage insurance in an amount not less than a combined single limit of two million dollars (\$2,000,000) for bodily injury, including death, and property damage per occurrence.

C. Professional liability insurance, if commercially available in CONSULTANT's field of expertise, in the amount of two million dollars (\$2,000,000) or more against claims arising out of work provided for in this agreement.

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 CONSULTANT as to the insurance necessary to protect the CONSULTANT'S interests and any decision by the CONSULTANT to carry or not carry insurance amounts in excess of the above is solely that of the CONSULTANT.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. Excepting the professional liability insurance, the CITY will be named on all insurance as an additional insured. The CONSULTANT shall submit a certificate of insurance to the CITY evidencing the coverages specified above, together with an additional insured endorsement naming the CITY, within fifteen (15) days of the execution of this agreement. The additional insured endorsement shall provide that to the extent of the CONSULTANT's negligence, the CONSULTANT's insurance shall be primary and non-contributing as to the City, and any other insurance maintained by the CITY shall be excess and not contributing insurance with respect to the CONSULTANT's insurance. The certificates of insurance shall cover the work specified in or performed under this agreement. No cancellation, reduction or modification of the foregoing policies shall be effective without thirty (30) days prior written notice to the CITY.

10. Records. The CONSULTANT shall keep all records related to this agreement for a period of three years following completion of the work for which the CONSULTANT is retained. The CONSULTANT shall permit any authorized representative of the CITY, and any person authorized by the CITY for audit purposes, to inspect such records at all reasonable times during regular business hours of the CONSULTANT. Upon request, the CONSULTANT will provide the CITY with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the CONSULTANT, but the CONSULTANT may charge the CITY for copies requested for any other purpose.

11. Notices. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth in the box for the same appearing at the outset of this Agreement. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

12. **Project Administrator.** The Project Administrator shall be responsible for coordinating the work of the CONSULTANT, for providing any necessary information for and direction of the CONSULTANT's work in order to ensure that it meets the requirements of this Agreement, and for reviewing, monitoring and approving the quality and quantity of such work. The CONSULTANT shall report to and take any necessary direction from the Project Administrator.

13. **Disputes.** Any dispute concerning questions of fact in connection with the work not disposed of by agreement between the CONSULTANT and the CITY shall be referred for resolution to a mutually acceptable mediator. The parties shall each be responsible for one-half of the mediator's fees and costs.

14. **Termination.** The CITY reserves the right to terminate this agreement at any time upon ten (10) days written notice to the CONSULTANT. Any such notice shall be given to the address specified above. In the event that this agreement is terminated by the City other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. In the event that services of the CONSULTANT are terminated by the CITY for fault on part of the CONSULTANT, the amount to be paid shall be determined by the CITY with consideration given to the actual cost incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the CITY at the time of termination, the cost of the CITY of employing another firm to complete the work required, and the time which may be required to do so.

15. **Non-Discrimination.** The CONSULTANT agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, creed, color, national origin, sex, religion, honorable discharged veteran or military status, familial status, sexual orientation, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog or service animal by a person with a disability, except for a bona fide occupational qualification. The CONSULTANT understands that if it violates this provision, this Agreement may be terminated by the CITY and that the CONSULTANT may be barred from performing any services for the CITY now or in the future.

16. **Compliance and Governing Law.** The CONSULTANT shall at all times comply with all applicable federal, state, and local laws, rules, ordinances, and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

17. **Subcontracting or Assignment.** The CONSULTANT may not assign or subcontract any portion of the services to be provided under this agreement without the express written consent of the CITY. Any sub-consultants approved by the CITY at the outset of this agreement are named on separate Exhibit attached hereto and incorporated herein by this reference as if set forth in full.

18. **Non-Waiver.** Payment for any part of the work or services by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of the agreement by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it under the agreement by the CITY. Waiver of any right or entitlement under this agreement by the CITY shall not constitute waiver of any other right or entitlement.

19. **Litigation.** In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this agreement, the parties agree that such actions shall be initiated in the Superior Court of the State of Washington, in and for King County. The parties agree that all questions shall be resolved by application of Washington law and that parties to such actions shall have the right of appeal from such decisions of the Superior Court in accordance with the law of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, in and for King County. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

20. **Taxes.** The CONSULTANT will be solely responsible for the payment of any and all applicable taxes related to the services provided under this agreement and if such taxes are required to be passed through to the CITY by law, the same shall be duly itemized on any billings submitted to the CITY by the CONSULTANT.

21. **City Business License.** The CONSULTANT has obtained, or agrees to obtain, a business license from the CITY prior to commencing to perform any services under this agreement. The CONSULTANT will maintain the business license in good standing throughout the term of this Agreement.

22. **Entire Agreement.** This agreement represents the entire integrated agreement between the CITY and the CONSULTANT, superseding all prior negotiations, representations or agreements, written or oral. This agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto. These standard terms and conditions set forth above supersede any conflicting terms and conditions on any attached and incorporate exhibit. Where conflicting language exists, the CITY'S terms and conditions shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the
day and year first above written.

CONSULTANT:

CITY OF REDMOND:

By: _____
Title: _____

Angela Birney, Mayor
DATED: _____

ATTEST/AUTHENTICATED:

City Clerk, City of Redmond

APPROVED AS TO FORM:

Office of the City Attorney

On-Call Cultural Resources – Archaeological Management Services

Exhibit A – Scope of Work

The scope of services being sought is a Task Order based cultural resources management services that would support the City of Redmond's (City) Departments of Parks, Planning, and Public Works.

Project Description:

This project will be a non-exclusive continuing services contract to assist the City in protecting cultural resources during the planning and construction of capital projects. The consultant will serve as a partner to the City to expand the capability of Redmond staff to provide cultural resources management services.

Typical projects may include but not be limited to the following areas: archaeological desktop, pedestrian, and in-field surveying; monitoring of geotechnical exploration; monitoring of ground disturbing construction activities; and response to inadvertent discoveries. The consultant may also be requested to partner with staff during Section 106 and Executive Order 21-02 project management; provide staff and contractor training; provide presentations on cultural resources; and advise the City's Cultural Resources Management Plan implementation and maintenance.

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required. The exact disciplines required and the amount of work for each discipline, have not been determined. The consultant should be capable of adding, deleting, or substituting disciplines/expertise as necessary to meet the needs of specific task orders. There is no guarantee that all disciplines or services will be utilized.

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- Desktop surveying;
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- Report submittal to Washington Department of Archaeology and Historic Preservation (DAHP) through WISAARD tool;
- Response to inadvertent discoveries and archaeological permit coordination with the DAHP;
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- Advisement to staff for implementation and maintenance of adopted Cultural Resources Management Plan;
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- Staff training in accordance with adopted cultural resources management standards, protocols, and procedures;
- Partnership with staff during planning and implementation of the Section 106 review process; and



- Advisement to staff during annual and periodic maintenance of the City's adopted Cultural Resources Management Plan.
- Cultural Resources and Archaeological Presentations to Redmond staff or the public

Expertise required shall be in accordance with the Secretary of Interior's Standards for Qualification and as defined by RCW 27.53.030(11) Professional Archaeologist and the Washington State Standards for Cultural Resources Reporting.

End Scope of Work



Exhibit D

Consultant Fee Determination

Project Name: On-Call Cultural Resources - Archaeological Mana
Project Number: REQ 10779-23
Consultant: Environmental Science Associates

NEGOTIATED HOURLY RATES

Classification	Hours	DSC	Overhead 196%	Fee (Profit) 26%	Total Hourly Rate	Total
Project Technician 2		\$ 32.69	\$64.08	\$8.40	\$105	
Project Technician 3		\$ 39.66	\$77.75	\$10.19	\$128	
Project Technician 4		\$ 45.29	\$88.78	\$11.64	\$146	
Project Technician 5		\$ 53.31	\$104.50	\$13.70	\$172	
Project Technician 6		\$ 63.29	\$124.07	\$16.27	\$204	
Consultant 1		\$ 34.50	\$67.63	\$8.87	\$111	
Consultant 2		\$ 30.95	\$60.67	\$7.95	\$100	
Consultant 3		\$ 34.99	\$68.59	\$8.99	\$113	
Consultant 4		\$ 41.61	\$81.57	\$10.69	\$134	
Consultant 5		\$ 38.74	\$75.94	\$9.96	\$125	
Consultant 6		\$ 41.09	\$80.55	\$10.56	\$132	
Associate Consultant 1		\$ 38.46	\$75.39	\$9.88	\$124	
Associate Consultant 2		\$ 45.00	\$88.21	\$11.57	\$145	
Associate Consultant 3		\$ 50.48	\$98.96	\$12.97	\$162	
Associate Consultant 4		\$ 49.49	\$97.02	\$12.72	\$159	
Associate Consultant 5		\$ 49.85	\$97.72	\$12.81	\$160	
Associate Consultant 6		\$ 53.61	\$105.09	\$13.78	\$172	
Senior Consultant 1		\$ 45.05	\$88.31	\$11.58	\$145	
Senior Consultant 2		\$ 51.04	\$100.05	\$13.12	\$164	
Senior Consultant 3		\$ 59.75	\$117.13	\$15.36	\$192	
Senior Consultant 4		\$ 59.50	\$116.64	\$15.29	\$191	
Senior Consultant 5		\$ 65.50	\$128.40	\$16.83	\$211	
Senior Consultant 6		\$ 66.80	\$130.95	\$17.17	\$215	
Managing Consultant 1		\$ 64.92	\$127.26	\$16.68	\$209	
Managing Consultant 2		\$ 60.80	\$119.19	\$15.63	\$196	
Managing Consultant 3		\$ 67.83	\$132.97	\$17.43	\$218	
Managing Consultant 4		\$ 77.33	\$151.59	\$19.87	\$249	
Principal Consultant 1		\$ 67.75	\$132.81	\$17.41	\$218	
Principal Consultant 2		\$ 73.75	\$144.57	\$18.95	\$237	
Principal Consultant 3		\$ 84.00	\$164.67	\$21.59	\$270	
Principal Consultant 4		\$ 90.25	\$176.92	\$23.19	\$290	
Total Hours					Subtotal:	
REIMBURSABLES						
Mileage (IRS)					0.66	
Copies - Black & White - 8.5 x 11					0.18	
Copies - Black & White - 11 x 17					0.35	
Copies - Color - 8.5 x 11					0.56	
Copies - Color - 11 x 17					0.90	
All other reimbursable expenses at cost						
Equipment (no markup)						
Data Tablet + GPS (daily use)					75.00	
Company Vehicle - Standard/Light Truck (day)					125.00	
Company Vehicle - Heavy-duty Truck (day)					150.00	
					Subtotal:	
SUBCONSULTANT COSTS (See Exhibit E)						
						Subtotal:

Total:

Contingency:

GRAND TOTAL:



Memorandum

Date: 7/5/2023

Meeting of: Committee of the Whole - Planning and Public Works

File No. CM 23-336

Type: Committee Memo

TO: Committee of the Whole - Planning and Public Works

FROM: Mayor Angela Birney

DEPARTMENT DIRECTOR CONTACT(S):

Public Works	Aaron Bert	425-556-2786
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DEPARTMENT STAFF:

Public Works	Mike Paul	Senior Engineer (Consultant)
Public Works	Steve Gibbs	Construction Supervisor
Public Works	Jon Spangler	Engineering Manager

TITLE:

Approve the Redmond Technology Station Pedestrian/Bicycle Bridge Operation and Maintenance Agreement with Microsoft

OVERVIEW STATEMENT:

This agreement between the City of Redmond and Microsoft outlines responsibilities for ownership, maintenance, and funding for the Redmond Technology Station (RTS) Pedestrian Bridge. Under this agreement Microsoft will reimburse the City of Redmond for operation/maintenance/repair/replacement costs related to certain enhanced features of the bridge including the canopy fabric, landscaping, irrigation, planters, a portion of the drainage system, and other elements. The agreement takes effect when Microsoft conveys the bridge to the City of Redmond, which is expected in early 2024.

☐ **Additional Background Information/Description of Proposal Attached**

REQUESTED ACTION:

☐ **Receive Information**

☒ **Provide Direction**

☐ **Approve**

REQUEST RATIONALE:

- **Relevant Plans/Policies:**
N/A
- **Required:**
Revised Code of Washington 39.80 and City Purchasing Policies and Procedures requires Council authorization for the Mayor to sign the contract.
- **Council Request:**
N/A

- **Other Key Facts:**
The maintenance costs????

OUTCOMES:

This pedestrian/bicycle bridge will improve mobility, safety, and accessibility in the Overlake neighborhood by providing a new east-west trail connection across SR 520 for pedestrians and bicyclists to access the light rail stations, SR520 bike trail, and other destinations. The Operations and Maintenance Agreement provides for Microsoft to reimburse the City for expenses incurred for the operation, maintenance, repair, and replacement costs of certain elements of the bridge.

COMMUNITY/STAKEHOLDER OUTREACH AND INVOLVEMENT:

- **Timeline (previous or planned):**
N/A
- **Outreach Methods and Results:**
N/A
- **Feedback Summary:**
N/A

BUDGET IMPACT:

Total Cost:
N/A

Approved in current biennial budget: ☒ Yes ☐ No ☐ N/A

Budget Offer Number:
CIP
Other - Microsoft /City of Redmond Construction Agreement

Budget Priority:
CIP

Other budget impacts or additional costs: ☐ Yes ☐ No ☒ N/A
If yes, explain:
N/A

Funding source(s):
N/A

Budget/Funding Constraints:
N/A

☐ **Additional budget details attached**

COUNCIL REVIEW:

Previous Contact(s)

Date	Meeting	Requested Action
N/A	Item has not been presented to Council	N/A

Proposed Upcoming Contact(s)

Date	Meeting	Requested Action
7/18/2023	Business Meeting	Approve

Time Constraints:

This agreement needs to be in place before the completed bridge is conveyed from Microsoft to the City of Redmond.

ANTICIPATED RESULT IF NOT APPROVED:

The City of Redmond will not be reimbursed for Microsoft's share of the operation, maintenance, repair, and replacement costs for the bridge.

ATTACHMENTS:

Attachment A: Redmond Technology Station Pedestrian/Bicycle Bridge Operation and Maintenance Agreement

REDMOND TECHNOLOGY STATION PEDESTRIAN/BICYCLE BRIDGE
OPERATION AND MAINTENANCE AGREEMENT

THIS OPERATION AND MAINTENANCE AGREEMENT (this “Agreement”) is entered into as of _____, 20__ (the “Effective Date”) by and between the CITY OF REDMOND, a Washington municipal corporation (the “City”), and MICROSOFT CORPORATION, a Washington corporation (“Microsoft”), collectively “Parties” and individually “Party.”

RECITALS

- A. Sound Transit is constructing the East Link light rail project to extend light rail service between downtown Seattle and the Overlake area of Redmond. The East Link project includes a light rail station at Redmond Technology Station (“RTS”), a public transit facility owned by Sound Transit;
- B. The Parties have entered into the Agreement for Construction of Redmond Technology Station Pedestrian/Bicycle Bridge dated as of June 3, 2019 (the “Bridge Agreement”) which provides for the design and construction of a pedestrian/bicycle bridge (the “Bridge”) as shown on Exhibit A attached hereto and incorporated herein by this reference;
- C. The Bridge will be connected to the RTS by a direct access ramp that allows pedestrians and bicyclists to access public transit from the Bridge;
- D. The Bridge transitions at the east end of the Bridge to a route across Microsoft real property to NE 36th Street and 156th Avenue NE (the “East Campus Route”) and at the west end of the bridge to a route across Microsoft real property to the SR 520 Bike Trail (the “West Campus Route”). Each of these routes are shown on Exhibit A;
- E. The Bridge Agreement provides for the Parties to enter into a separate agreement to establish ownership and responsibilities for operating and maintaining the Bridge and approaches;
- F. As described in the Bridge Agreement, the Parties believe that the Bridge serves an important function to provide pedestrians and bicyclists safe, convenient access to public transit, the SR 520 bike trail, surrounding businesses and neighborhoods, and desire to enter into this Agreement to establish clear roles and responsibilities for each Party for the ongoing maintenance, operations and repair of the Bridge; and
- G. The Bridge Agreement provides that, subject to the City’s final written acceptance of the completed Bridge, the City shall own and have primary responsibility for the operation and maintenance of the Bridge. Microsoft shall provide certain assistance in such operation and maintenance, as further described in this Agreement.

THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties therefore agree as follows:

AGREEMENT

1.0 OWNERSHIP

The Bridge spans real property owned by four separate entities: Microsoft, the City, Sound Transit, and the Washington State Department of Transportation (“WSDOT”). Exhibit A shows the location of City right-of-way, easements, and leases that support the ownership, operation, and maintenance of the Bridge and provide for public access.

1.1 City Ownership

The City owns 156th Ave NE and NE 36th Street and the air rights above those streets. By separate instrument, and upon final written acceptance by the City, Microsoft will transfer and convey to the City the completed Bridge along with any easements necessary for the City to perform its obligations under this Agreement, Microsoft will retain ownership of specific facilities located on the Bridge as shown in Exhibit B and described in Section 1.2 of this Agreement.

By separate instrument, the City will obtain a permanent easement from Sound Transit for the construction, reconstruction, operation, and maintenance of those portions of the Bridge located on Sound Transit’s RTS property. Microsoft will provide easement exhibits and legal descriptions and pay for any and all costs associated with easement acquisition.

The City has entered into a trail lease with WSDOT for construction, reconstruction, operation, and maintenance of those portions of the Bridge located in the WSDOT right-of-way.

1.2 Microsoft Ownership

Microsoft owns the real property on which the east and west termini of the Bridge landings and approaches are located. By separate instrument, Microsoft will convey permanent easements to the City for the following purposes:

- A. Construction, reconstruction, operation, and maintenance of those portions of the Bridge and appurtenances located on or over Microsoft’s real property.
- B. Public, emergency vehicle, and maintenance vehicle access from the bridge terminus on Microsoft’s West Campus to the SR 520 Bike Trail.
- C. Public, emergency vehicle, and maintenance vehicle access from the bridge terminus on Microsoft’s East Campus to the NE 36th St public right of way.
- D. The right to connect the drainage system for the Bridge to the drainage system on the Microsoft Campus and to discharge drainage from the Bridge into the Microsoft drainage system. The City will not be obligated to pay Microsoft for discharge of the drainage from the Bridge or to share in any maintenance or other costs related to Microsoft’s drainage

system; provided, however, the City is obligated to repair any damage to Microsoft's drainage system caused by Bridge drainage.

E. Microsoft will own certain facilities located on the Bridge as described below and shown in Exhibit B, subject to the requirements of this Agreement and the latest version of the Telecommunications Right of Way Use Agreement or Telecommunications Master Permit Agreement between the City and Microsoft.

- A. Six Microsoft communications conduits, hanger systems, and appurtenances located under the bridge deck.
- B. The right to use vacant conduit pathways (4 blockouts) unused by PSE to install conduits at a future date and secure them as necessary.
- C. Microsoft wayfinding signage (see Section 2.6) placed on the Bridge.

2.0 RESPONSIBILITIES

The Parties have agreed to allocate responsibilities for the operation and maintenance of the Bridge in accordance with the O&M Matrix attached as Exhibit B and the following provisions:

2.1 City Responsibilities

The City shall maintain, repair, and replace those elements of the Bridge designated as being the City's maintenance responsibility in the "maintenance responsibility" column on Exhibit B attached hereto and incorporated herein by this reference. Such maintenance, repair, and replacement shall be at the City's sole expense except for those elements and locations designated as Microsoft's funding responsibility in the "funding responsibility" column on Exhibit B. The City shall maintain those elements of the Bridge in good condition and repair in accordance with generally accepted public infrastructure management. The City shall also maintain and repair the structure and foundation of the Bridge and conduct periodic physical inspections of the Bridge structure. City responsibilities may be conducted by City staff, another delegated public agency, or a hired third-party contractor at the City's discretion

For those elements designated on Exhibit B as the City's maintenance responsibility and Microsoft's funding responsibility, Microsoft shall reimburse the City for the City's actual cost of maintenance, repair, and replacement. For periodic routine maintenance, the City may invoice Microsoft no more frequently than once per month and Microsoft shall make payment in full within 30 days of the date of the invoice and supporting paid invoices. For repair and replacement, the City shall invoice Microsoft upon completion of the repair or replacement and Microsoft shall make payment within 30 days of the date of the invoice.

When hiring third-party contractors to perform annual maintenance, repair, replacement, or operation of the Bridge, whether for City responsibilities or for Microsoft responsibilities, the City shall afford Microsoft the opportunity to propose certain bidder qualifications prior to issuing a

request for proposals or other call for bids to perform the work. Prior to finalizing any contract with such a third-party contractor, the City shall provide the contract to Microsoft for its review. Microsoft shall review the contract(s) and scope of work and provide comments within ten (10) business days after delivery of the contract to Microsoft. The City shall consider in good faith Microsoft's requested bidder qualifications and contract comments to the extent reasonable and practical, but the final decision as to bidder qualifications and the terms of the contract shall be within the City's sole discretion. The City will notify Microsoft of the City's decision to modify or not modify the contract documents based on Microsoft's comments and provide Microsoft with the City's reasoning. If the proposed scope of work changes the design of the Bridge in such a way as to significantly increase any costs that are Microsoft's responsibility, the City will consult with Microsoft prior to making such change. If the design change would increase Microsoft's costs and Microsoft does not agree with the change, the City retains the authority to approve the change but shall be responsible for any increased cost.

When entering into a contract with third-party contractors to provide non-routine repairs of the Bridge, the City is not required to seek Microsoft input, but the City shall provide notice of such repair work in accordance with Section 2.5 below.

2.2 Microsoft Responsibilities

Microsoft shall inspect, maintain, repair, and replace those elements of the Bridge designated as being Microsoft's responsibility in the "maintenance responsibility" column on Exhibit B. Such maintenance, repair, and replacement shall be at Microsoft's sole expense. Microsoft may perform its maintenance, repair and replacement responsibilities by using its own personnel or by contracting with a third-party contractor approved by the City. Microsoft shall be required to maintain the elements designated as Microsoft's maintenance responsibility on Exhibit B in a reasonably safe ADA-compliant condition, including making repairs as hazardous conditions are reported either to the City or to Microsoft directly by the traveling public. Microsoft shall also be required to perform an inspection of the elements designated as Microsoft's maintenance responsibility on Exhibit B at least annually. Any hazardous conditions discovered during the inspection shall also be repaired at the cost of and by Microsoft and contractors hired by Microsoft. Should the City receive any reports from the public regarding hazardous conditions related to the elements designated as Microsoft's maintenance responsibility on Exhibit B, the City will notify Microsoft of such report.

Microsoft shall provide "as built" drawings, permanent easements, construction records, and other project closeout documents to the City prior to the City's acceptance of the Bridge.

Microsoft may perform snow and ice removal on the City-owned portion of the Bridge when conditions warrant. All such snow and ice removal shall be at Microsoft's sole cost and expense. Microsoft shall notify the City when such snow and ice removal will be performed by Microsoft.

2.3 Cooperation, Good Faith Efforts and Responsibility for Quality of Work

The Parties understand and agree that the successful execution of this Agreement depends upon timely and open communication and cooperation between the Parties. Each Party shall be

responsible for the quality, technical accuracy, timelines, and coordination of all services performed by such Party, its employees and contractors pursuant to this Agreement. The Bridge shall be maintained and operated to the level of service (LOS) specified in Exhibit C or to a standard as good or better than comparable public facilities of the City if no standard is specified. If Microsoft believes the City is not maintaining the Bridge in accordance with the terms of this Agreement, Microsoft may notify the City of Microsoft's concerns. If the City disagrees with Microsoft, either party may invoke the dispute resolution process set forth in Section 6.0. If the City agrees with Microsoft, the City will notify Microsoft of the City's intention to bring performance of its maintenance activities into compliance and shall do so within such period as the City deems reasonable and practical; provided, however, if Microsoft deems it imperative to immediately provide maintenance or repairs it deems necessary, it may do so at Microsoft's expense. In such situations Microsoft shall notify the City when such maintenance or repairs will be performed by Microsoft.

If Microsoft desires to enhance the LOS provided for in Exhibit C, Microsoft shall notify the City and the Parties shall meet within thirty (30) days after delivery of the notice, The City and Microsoft will discuss and determine what needs to be done to elevate the standard of maintenance and operation and how any additional costs for enhanced LOS will be allocated. The parties shall attempt in good faith to resolve disagreements between Microsoft and the City over whether to provide an enhanced level of service or regarding the allocation of costs for such an enhanced level of service by following the dispute escalation process in Section 6.4. The final decision regarding whether an enhanced level of service will be provided or whether the City will pay any of the costs for such an enhanced level of service shall, however, be within the City's sole discretion and the City's decision shall not be subject to suit or other remedy by Microsoft under Section 6.5.

The LOS provided for in Exhibit C may be modified by mutual agreement of the parties. Modification shall not require approval by the Redmond City Council as long as the cost of the modified LOS is within approved budget limitations.

2.4 Bridge Hours of Operation

The Bridge will be open to the public seven (7) days per week, twenty-four (24) hours per day per the requirement in the WSDOT trail lease except for periods when maintenance or repair of the Bridge or a police or emergency medical response requires its closure.

2.5 Access and Notification of Work

Each Party shall allow reasonable access by the other Party to those portions of its property necessary to maintain and operate facilities and systems and to carry out the terms of this Agreement.

The City shall prepare in December of each year an annual schedule of routine maintenance. The City shall provide the schedule to Microsoft for review and comment, but the final decision on the routine maintenance schedule shall be within the City's sole discretion. No notice of routine maintenance other than the annual schedule is required.

The Parties agree that routine maintenance typically will not result in closure of the Bridge. Routine maintenance, such as sweeping, cleaning, graffiti removal, and normal trash collection, may require cordoning off portions of the Bridge in the immediate area of the work, but should allow for passage of pedestrians and bicyclists across the length of the Bridge. The Parties agree to notify each other by phone or email as soon as is reasonably possible for emergency maintenance and operations activities that require immediate action. The Parties shall conduct or direct their work so as not to unreasonably interfere with, obstruct, or endanger the operations of each Party's properties.

Major maintenance or repair work is any work that requires closure of the Bridge. If either Party intends to perform major maintenance or repair work requiring closure of the Bridge, whether the work is on the Bridge itself or on other facilities of the Parties located in the vicinity of the Bridge, such Party shall provide at least forty-five (45) days prior written or electronic notice of such major maintenance or repair work to the other Party. A shorter notification period may be provided in the event of emergency repair, with the Party doing the work providing notice to the other Party as soon as is reasonably practicable under the circumstances.

The City shall prepare plans and a construction schedule for any major maintenance or repair of the Bridge, and Microsoft shall be provided an opportunity to review the documents and provide comments prior to the work being performed. Microsoft shall provide comments within fifteen (15) business days of receiving the documents. The City shall consider Microsoft's comments in good faith to the extent reasonable and practical, but the final decision on the plans and construction schedule shall be within the sole discretion of the City. To the extent reasonably practical, the City will perform its operations in a manner that minimizes disruption to transit operations at RTS.

The City will coordinate any scheduled closures of the Bridge with Microsoft to avoid closures during planned major events on Microsoft's campus.

2.6 Signage

The City shall be responsible at its sole expense for installing, cleaning, maintaining, repairing, and replacing, in whole or in part, all regulatory signage and other City signage on the Bridge. Microsoft shall have the right to place any wayfinding signage on the Bridge consistent with the style and content on the Microsoft Campus provided that the same meets any requirements of the City's sign regulations. Microsoft shall be responsible at its sole expense for installing, cleaning, maintaining, repairing, and replacing, in whole or in part, wayfinding signage on the Bridge for Microsoft and its facilities. Advertising signage shall not be installed on the Bridge, by Microsoft or others.

2.7 Security

The City shall be responsible for providing police services related to a 911 emergency response due to an incident on the Bridge, provided that nothing in this subsection is intended to create any duty on the part of the City to any individual or class of individuals or to create any special relationship between the City and Microsoft, or any other person or entity regarding such police

services. The City makes no representations or warranties as to the safety or security of any person by entering into this Agreement and the parties agree that the City has no greater or lesser duty to provide police services to persons on the Bridge than it does with regard to the general public in providing police services throughout the City. Microsoft may, periodically and at its discretion, deploy security patrols of the Bridge by its private security personnel. Such personnel shall at all times be considered the sole agents of Microsoft and not the City, and the City shall have no responsibility for the actions of such personnel.

2.8 Reimbursement by Microsoft

The City shall initially pay for any work that is to be performed by the City but paid for by Microsoft. Microsoft shall reimburse the City for such payment within thirty (30) days after receipt of evidence from the City that the work has been paid for.

2.9 Reimbursement by the City

If Microsoft undertakes any work on the Bridge at the City's request, the City shall reimburse Microsoft for the cost of such work within thirty (30) days after receipt of evidence from Microsoft that the work has been paid for.

3.0 INSURANCE

The Parties acknowledge that the City insures its operations under its General Liability program. Liability associated with the operation and maintenance of the Bridge pursuant to this Agreement will also be covered by that program. The City shall also purchase or maintain property insurance insuring the full replacement value of the Bridge for fire and extended perils including earthquake coverage. The City shall cause its insurer to name or list Microsoft as an additional insured under the City's General Liability program for claims related to the City's operation and maintenance of the Bridge. The City shall deliver to Microsoft a certificate of insurance confirming that the City has the insurance required by this Section 3.0. Any notice of cancellation of such insurance received by the City shall be delivered promptly to Microsoft. Microsoft shall be solely responsible for obtaining any insurance deemed necessary by Microsoft for claims related to the maintenance and operations responsibilities of Microsoft under this Agreement.

Microsoft shall purchase and maintain general commercial liability insurance covering those elements of the Bridge or its approaches that are owned or maintained by Microsoft. Such general liability insurance shall have coverage limits of no less than \$5,000,000 per occurrence/aggregate. In addition, Microsoft shall purchase and maintain property insurance insuring the full replacement value of those elements of the Bridge or its approaches that are owned or maintained by Microsoft. Microsoft shall cause its insurer to name or list the City as an additional insured on Microsoft's general commercial liability insurance for claims related to Microsoft's operation and maintenance of those elements of the Bridge or its approaches owned or maintained by Microsoft. Microsoft shall deliver to the City a certificate of insurance confirming that Microsoft has the insurance required by this Section 3.0. Any notice of cancellation of such insurance received by Microsoft shall be delivered promptly to the City. The City shall be solely responsible for obtaining any insurance deemed necessary by City for claims related to the maintenance and operations responsibilities of the City under this Agreement.

Microsoft may, at its option, meet the above insurance requirements via commercial insurance, self-insurance, alternative risk financing solutions, or a combination of these options.

4.0 REPAIR, REPLACEMENT, OR TRANSFER OF BRIDGE

If the City should determine at some future time that it no longer wishes to own the Bridge and desires to transfer ownership of the Bridge, the City shall provide written notice of such facts to Microsoft. Microsoft shall have one hundred eighty (180) days to determine whether it desires to assume ownership of the Bridge. If Microsoft elects to assume ownership of the Bridge, the City shall transfer ownership of the Bridge, without cost or any warranty except for unencumbered title, along with all maintenance and operational records, equipment, and supplies, to Microsoft. The City shall also assign to Microsoft the trail lease and air rights with the Washington State Department of Transportation (“WSDOT”) if the same is assignable by its terms and shall grant to Microsoft the right to occupy the air space above NE 156th Street. If the WSDOT trail lease is not assignable, then Microsoft shall be solely responsible for obtaining such rights from WSDOT as are necessary for the Bridge to occupy air space above SR 520. If the City is unable to assign the trail lease and Microsoft is unable to obtain a lease from WSDOT, the Bridge shall not be transferred to Microsoft. If the Bridge is transferred to Microsoft, then Upon completion of the transfer, Microsoft shall assume the City’s obligations under this Agreement and the City will have no further obligations or responsibilities thereafter with respect to the Bridge. This assignment shall not relieve the City of obligations or liabilities incurred prior to the transfer of ownership.

If Microsoft does not elect to assume ownership of the Bridge or if the rights cannot be obtained from WSDOT for Microsoft, the City may approach other public agencies on assuming ownership of the Bridge provided that: the City, WSDOT, and Microsoft consent to the transfer. If the above conditions are met, the Parties shall follow the procedures in this Section 4.1 to transfer the City’s interest to said public agency.

If neither Microsoft nor a public agency desire or is able to assume ownership of the Bridge, the Parties shall endeavor to find a third party to assume ownership of the Bridge. If a third party cannot be located within one (1) year after Microsoft has determined that neither it nor any other public agency wishes to assume ownership of the Bridge, the City shall have the right to have the Bridge dismantled at the City’s expense. If this option is exercised, the City shall complete at its expense all work necessary to leave the RTS property in a safe and operational condition.

Notwithstanding the foregoing, the City shall not transfer ownership of the Bridge during the initial term of the WSDOT trail lease.

5.0 LIABILITY, INDEMNIFICATION

5.1 To the extent permitted by law, each of the Parties to this Agreement shall protect, defend, indemnify, and hold harmless the other Parties, and their officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgment, damages or liability of any kind including injuries to persons or damages to property, if and to the extent they arise out of, or in any way result from, or are connected to, or are due to any negligent acts or omissions or intentional misconduct of the indemnifying Party. No Party will be

required to indemnify, defend, or hold harmless another Party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence or intentional misconduct of the Party seeking indemnification. Where such claims, suits, or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of any Party's own negligence.

Each of the Parties agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties hereby waives with respect to the other Parties only, any immunity that would otherwise be available under the industrial insurance provisions of Title 51 RCW against the claims to which the indemnity extends. **The Parties agree that this section has been specifically and mutually negotiated by each of the Parties.**

In the event of any claims, demands, actions and lawsuits, the indemnifying Party upon prompt notice from the other Party, shall assume all costs of defense thereof, including legal fees incurred by the other Party, and of all resulting judgments that may be obtained against the other Party. In the event that any Party incurs attorneys' fees, costs or other legal expenses to enforce the provisions of this section, all such reasonable fees, costs and expenses shall be recoverable by the prevailing Party.

5.2 Each Party shall bear full responsibility for any and all tax liabilities owed by that Party that may arise in relation to this Agreement, and each Party shall fully indemnify and hold the other Party, its officers, agents and employees harmless from any tax liability owed by other Parties arising from or related to the transactions set forth herein, including, but not limited to, any taxes, penalties, fines, and/or interest that are assessed by any tax authority against the indemnifying Party and further including all attorneys' fees and costs incurred in response to any claims or assessments by any tax authority against the indemnifying Party, its officers, agents and employees.

5.3 Consistent with the Parties' indemnification obligations herein, the Parties shall give each other, as applicable, prompt notice of any claims directly affecting any Party about which the other Parties have received formal notification. The Parties, as applicable, shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the other Parties. The Parties shall cooperate fully with any Party, as applicable, in the defense of any claim associated with this Agreement. The Parties shall not settle any claim associated with this agreement directly affecting any other Party, as applicable, without the prior written consent of such party, which consent shall not be unreasonably withheld.

5.4 Third Party Contract Clauses. All consultant and construction contracts entered into by a Party for work related to the Bridge shall include both Parties as third-party beneficiaries indemnified by the contractor or consultant to the same extent as the Party to the third-party contract is indemnified and named as additional insureds on any policies required under the third party contract.

5.5 The indemnification obligations provided in this Section shall survive termination of this Agreement for any claim or liability arising out of an event or occurrence that took place prior to such termination.

6.0 DISPUTE RESOLUTION

6.1 The Parties agree that no Party shall take or join any action in any judicial or administrative forum to challenge actions of another Party associated with this Agreement or the Project, except as set forth herein.

6.2 Any disputes or questions of interpretation of this Agreement that may arise between the Parties shall be governed under the dispute resolution provisions in this Section. The Parties agree that cooperation and communication are essential to resolving issues efficiently. The Parties agree to exercise their best efforts to resolve any disputes that may arise through this dispute resolution process.

6.3 The Parties agree to use their best efforts to prevent and resolve potential sources of conflict at the lowest level.

6.4 The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

A. Level One - The City's Designated Representative, and Microsoft's Designated Representative shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level One, any Party may refer the dispute to Level Two.

B. Level Two - The City's Public Works Director, and Microsoft's Senior Director for Puget Sound Real Estate and Facilities shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot resolve the dispute within fourteen (14) days after referral of that dispute to Level Two, any Party may refer the dispute to Level Three.

C. Level Three - The City Mayor or Designee, and Microsoft's General Manager for Real Estate and Facilities shall meet to discuss and attempt to resolve the dispute in a timely manner.

6.5 Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within twenty-one (21) days after referral of that dispute to Level Three, the Parties are free to file suit, seek any available legal remedy, or agree to alternative dispute resolution methods such as mediation or arbitration. At all times prior to resolution of the dispute, the Parties shall continue to perform any undisputed obligations in the same manner and under the same terms as existed prior to the dispute. Notwithstanding anything in this Agreement to the contrary, no Party has an obligation to agree to refer the dispute to mediation, arbitration, or other form of dispute resolution following completion of Level Three of the process described herein. Such agreement may be withheld for any reason or no reason.

7.0 DEFAULT

No Party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) days after written notice of default from the other Party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure; provided that in no event shall a cure take longer than ninety (90) days to complete without mutual written consent. Any dispute regarding the existence of a default or appropriate cure shall be handled through the dispute resolution process described in Section 6.

8.0 REMEDIES; ENFORCEMENT

8.1 The Parties reserve the right to exercise any and all remedies available at law or in equity, singly or in combination, and subject to and consistent with the dispute resolution and default Sections of this Agreement, in the event of a breach of this Agreement, including, but not limited to:

- A. Commencing an action at law for monetary damages;
- B. Commencing an action for equitable or other relief; and
- C. Seeking specific performance of any provision that reasonably lends itself to such remedy.

8.2 Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

8.3 No Party shall be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure by another Party to enforce prompt compliance, and such failure to enforce shall not constitute a waiver of rights or acquiescence in another Party's conduct.

9.0 DESIGNATED REPRESENTATIVES.

9.1 Each Party shall designate a representative who shall be responsible for coordination of communications between the parties regarding the matters set forth in this Agreement and who shall act as the primary point of contact for each Party. The Designated Representatives shall communicate as necessary to discuss the status of the tasks to be performed, identify upcoming decisions and provide any information or input necessary to inform those decisions, and to identify and resolve disputes related to the operation and maintenance of the Bridge in a timely manner.

The Designated Representatives are as follows:

Microsoft:

Mohan Reddy
Director, Puget Sound Facilities - GWS
(425)-706-3721
mohand.redd@microsoft.com

City of Redmond:

Chris Stenger
Deputy Director of Public Works
City of Redmond
15670 NE 85th Street
P.O. Box 97010
Mail Stop MOC PW
Redmond, WA 98073-9710
(425) 556-2870
cstenger@redmond.gov

9.2 Communication of issues, changes, or problems that may arise with any aspect of the operation or maintenance of the Bridge should occur as early as possible. The Designated Representatives shall use reasonable efforts to provide up-to-date and best available information to the other party promptly after such information is obtained or developed.

9.3 Each Designated Representative is also responsible for coordinating the input and work of its agency, consultants, and staff as it relates to the objectives of this Agreement. The Parties reserve the right to change Designated Representatives by written notice to the other Parties during the term of this Agreement.

10.0 NOTICES

10.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representatives.

10.2 Unless otherwise provided herein, all notices shall be either: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other Designated Representatives as listed herein, followed by delivery by methods (i) – (iii) above unless the recipient acknowledges receipt of the electronic communication.

11.0 ANNUAL REVIEW

An oversight committee that shall consist of the City's Public Works Director and Fire Marshal and Microsoft's Director of Real Estate and Facilities, or their designees (the "Oversight Committee"), shall meet on the third Tuesday in January during the term of this Agreement to report on the status of the implementation of this Agreement and make any operational adjustments deemed necessary. Additional meetings shall occur as necessary.

12.0 GENERAL PROVISIONS

12.1 The Parties shall not unreasonably withhold requests for information, approvals or consents provided for in this Agreement; provided, however, that approvals or consents required to be given by vote of the Redmond City Council are recognized to be legislative actions. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement provided, however, that where such actions or documents required must be first approved by vote of the Redmond City Council, such actions are recognized to be legislative actions.

12.2 This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.

12.3 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Microsoft and the City.

12.4 Time is of the essence in every provision of this Agreement. Unless otherwise set forth in this Agreement, the reference to “days” shall mean calendar days. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.

12.5 This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

12.6 No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party.

12.7 This Agreement has been reviewed and revised by legal counsel for all Parties and no presumption or rule that ambiguity shall be construed against the Party drafting the document shall apply to the interpretation or enforcement of this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by applicable law.

12.8 Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed in writing by the Parties.

12.9 The Parties shall not be deemed in default with provisions of this Agreement where performance was rendered impossible or impracticable by war or riots, civil disturbances, floods or other natural catastrophes beyond its control; the unforeseeable unavailability of labor or materials; or labor stoppages or slowdowns, or power outages exceeding available back-up power supplies; government mandated shut downs due to pandemics or other causes, or other events beyond the control of the Parties. This Agreement shall not be revoked or a party penalized for such noncompliance, provided that such party takes immediate and diligent steps to bring itself

back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of all parties' employees or property, or the health, safety, and integrity of the public, public right-of-way, or public or private property.

12.10 This Agreement may be amended only by a written instrument executed by each of the Parties hereto.

12.11 This Agreement constitutes the entire agreement of the Parties with respect to the subject matters of this Agreement, and supersedes any and all prior negotiations (oral and written), understandings and agreements with respect hereto.

12.12 Section headings are intended as information only, and shall not be construed with the substance of the section they caption.

12.13 In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.

12.14 All exhibits attached to this Agreement are hereby incorporated into this Agreement.

12.15 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

12.16 This Agreement may not be assigned by any of the Parties nor the obligations transferred without the consent of the other Parties in their sole discretion.

12.17 To the extent the plans for the Bridge change subsequent to the Effective Date, Exhibit A shall be updated to reflect the as-built condition of the Bridge when construction of the Bridge is complete.

12. TERM

This Agreement shall take effect as of the date Microsoft transfers the Bridge to the City by bill of sale or other instrument and remain in effect until such date as the Bridge may be permanently decommissioned or removed from service, or by mutual agreement of the Parties.

[Signatures on following page.]

THE CITY OF REDMOND

By: _____
Angela Birney, Mayor

Date: _____

Authorized by Ordinance _____

Approved as to form:

By: _____
James Haney, City Attorney

MICROSOFT CORPORATION

By: _____
Michael Ford, VP, Global Workplace Services

Date: _____

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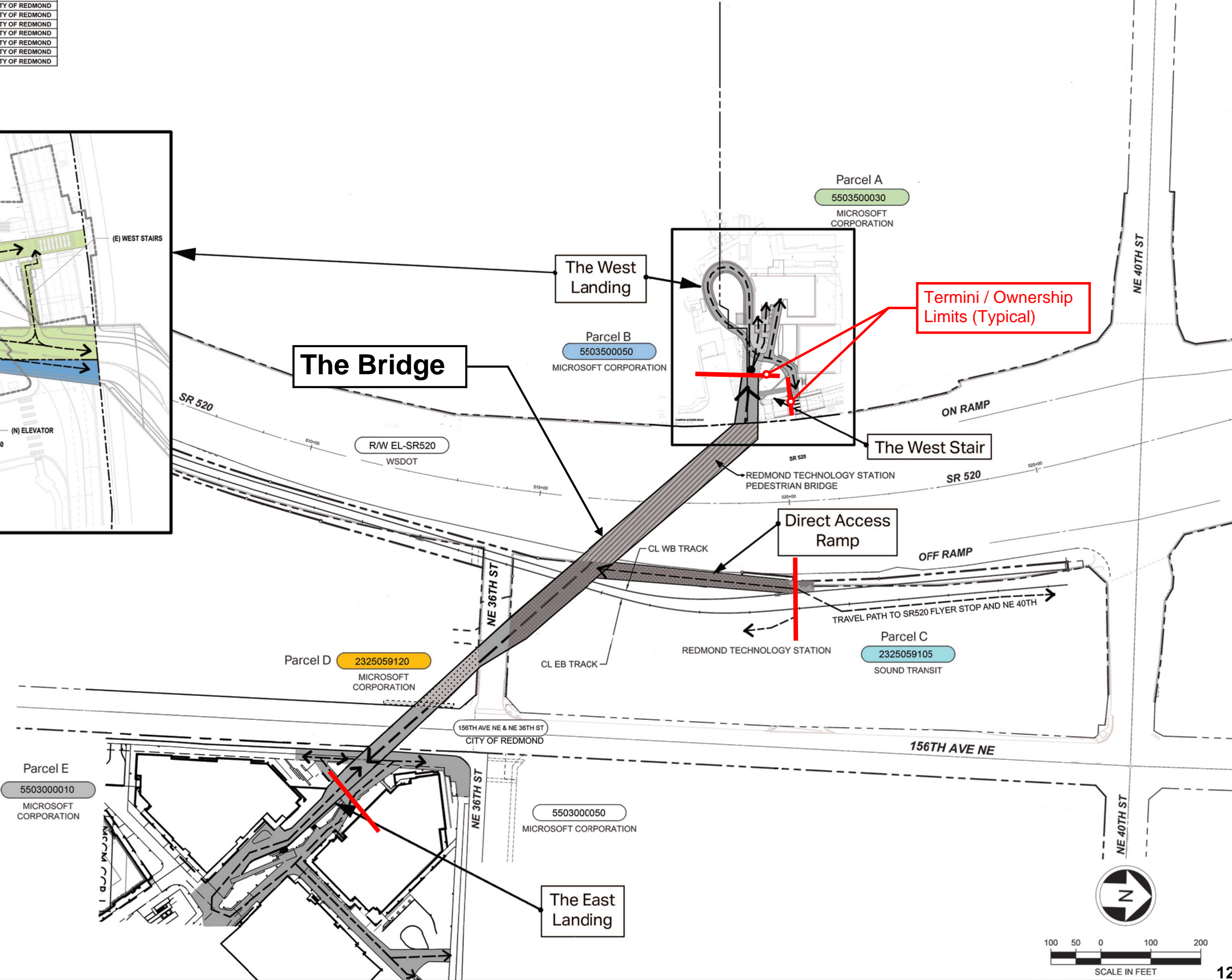
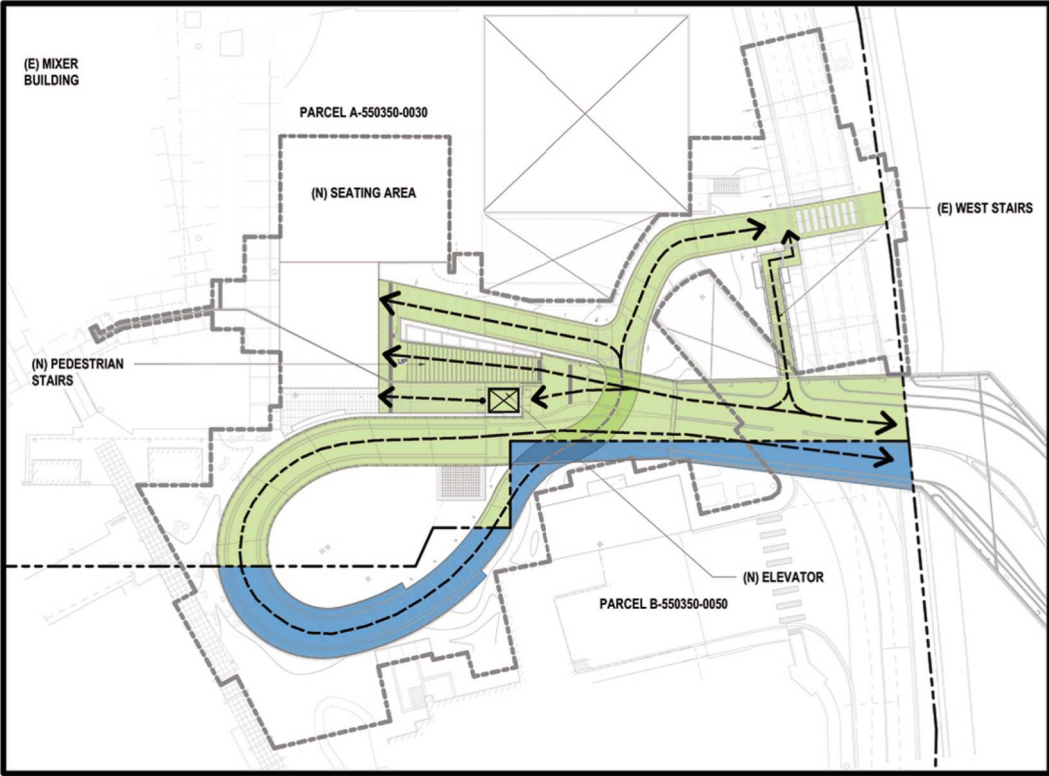
EXHIBIT A

BRIDGE OWNERSHIP, LIMITS, AND EASEMENT MAP

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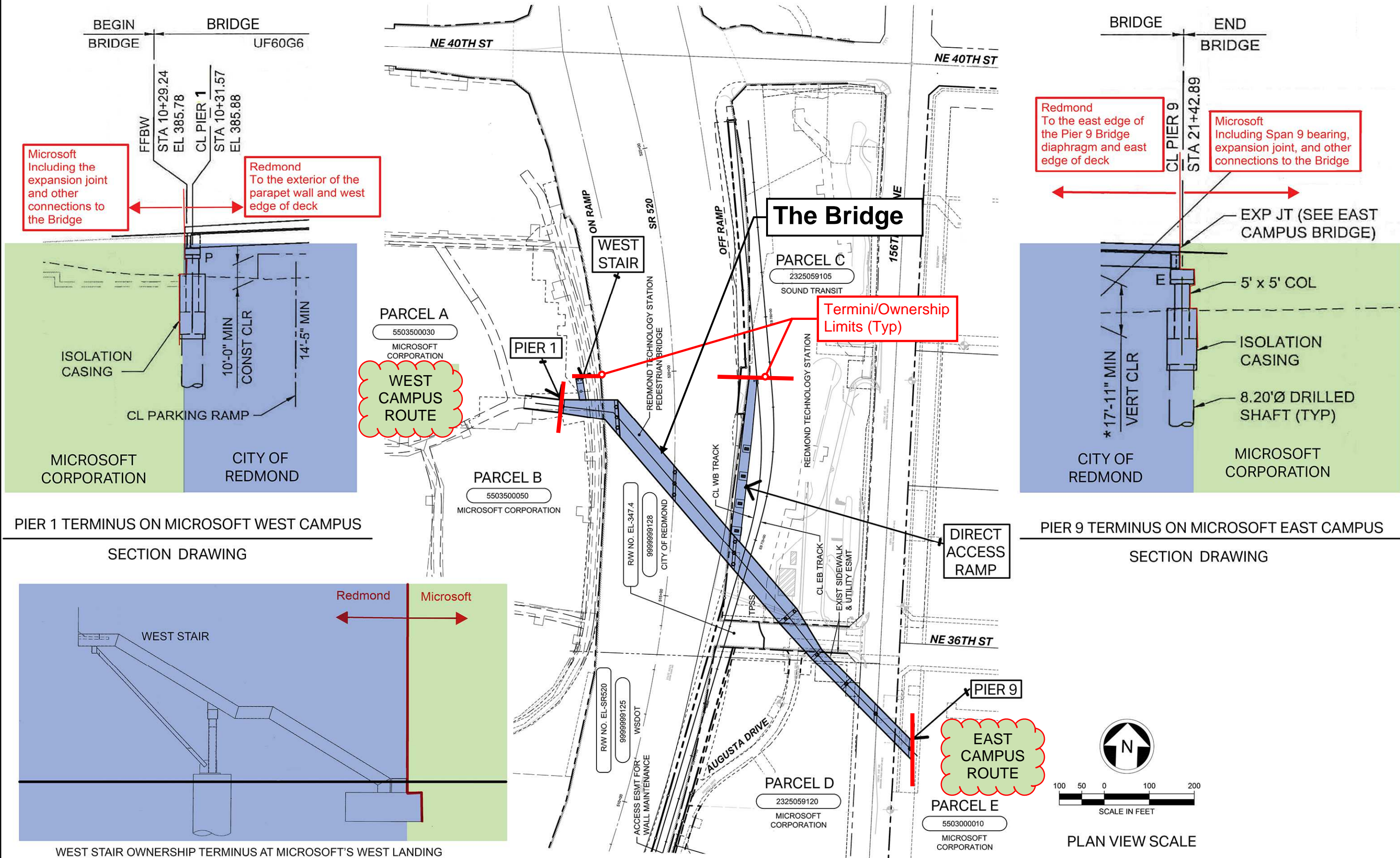
KEY	PARCEL	PARCEL NO. (King Co. Assessor ID)	KEY	PROPERTY RIGHTS	GRANTOR	GRANTEE
A	5503500030			EASEMENT (ACCESS)	MICROSOFT CORP	CITY OF REDMOND
A	5503500030			EASEMENT (RIGHT OF WAY)	MICROSOFT CORP	CITY OF REDMOND
B	5503500050			EASEMENT (ACCESS)	MICROSOFT CORP	CITY OF REDMOND
B	5503500050			EASEMENT (RIGHT OF WAY)	MICROSOFT CORP	CITY OF REDMOND
C	2325059105			EASEMENT (ACCESS/UTILITIES)	SOUND TRANSIT	CITY OF REDMOND
C	2325059105			EASEMENT (DRAINAGE)	SOUND TRANSIT	CITY OF REDMOND
D	2325059120			EASEMENT (RIGHT OF WAY)	MICROSOFT CORP	CITY OF REDMOND
D	2325059120			EASEMENT (SIDEWALK/STREETLIGHT)	MICROSOFT CORP	CITY OF REDMOND
E	5503000010			EASEMENT (ACCESS)	MICROSOFT CORP	CITY OF REDMOND
E	5503000010			EASEMENT (RIGHT OF WAY)	MICROSOFT CORP	CITY OF REDMOND
	N/A (R/W EL-SR520)			TRAIL LEASE #TR-1-13382	WSDOT	CITY OF REDMOND

EXTEND OF BRIDGE LIMITS
PATH OF PUBLIC ACCESS ON BRIDGE AND DIRECT ACCESS RAMP



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EXHIBIT A-2: BRIDGE OWNERSHIP AT TERMINI



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EXHIBIT B

OWNERSHIP, MAINTENANCE, AND FUNDING RESPONSIBILITIES

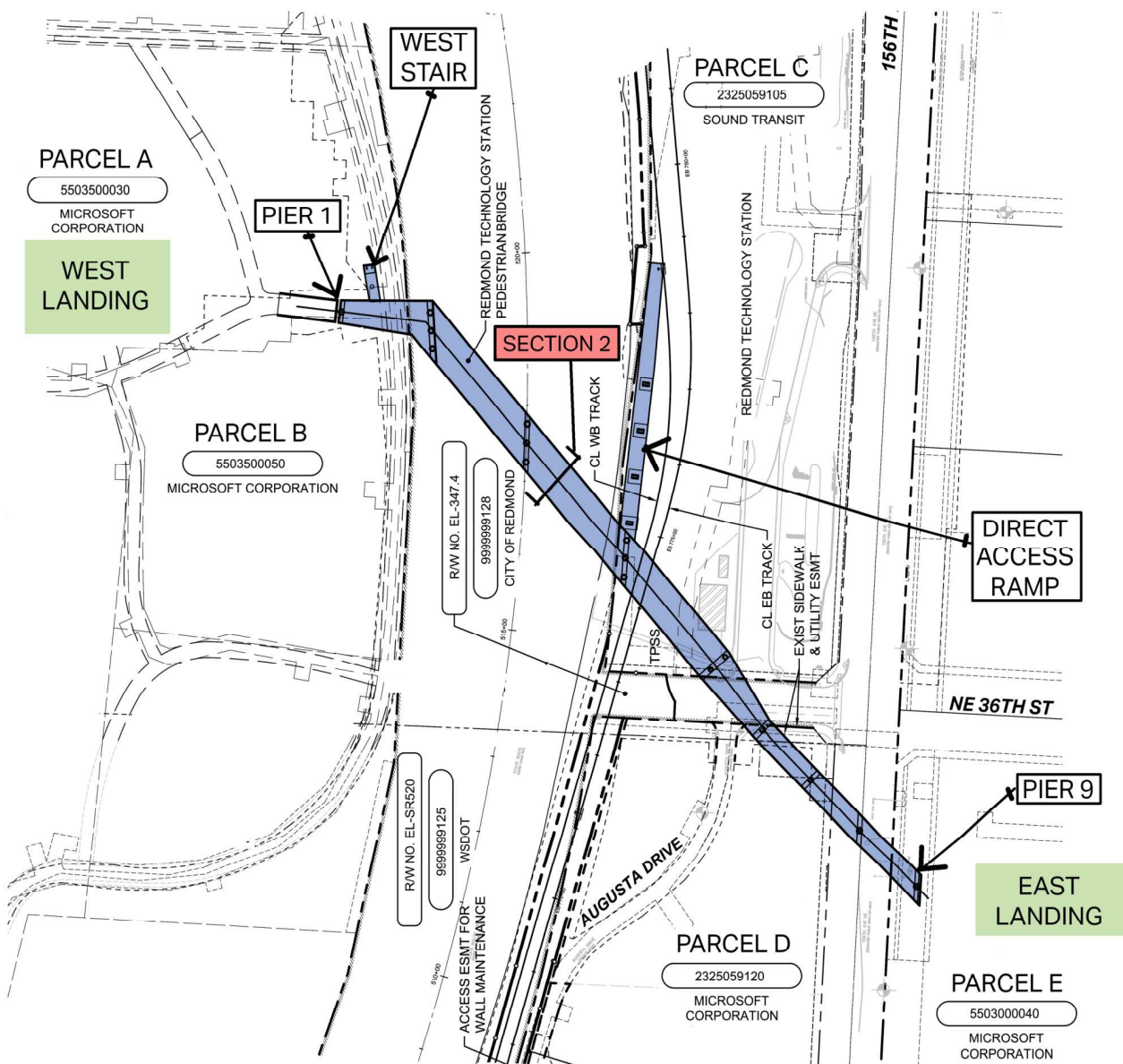
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EXHIBIT B-1

RTS Pedestrian Bridge and Direct Access Ramp Ownership, Maintenance and Funding Responsibilities	Ownership		Maintenance Responsibility		Funding Responsibility		Notes
	City	Microsoft	City	MS	City	Microsoft	
Description of Elements	City	Microsoft	City	MS	City	Microsoft	
Foundations	X		X		X		
Columns, Caps, and Bearings	X		X		X		
I-Girders and Box Girders	X		X		X		
Deck Surface	X		X		X	X	City funds basic LOS, Msft funds enhanced LOS
Structural Deck, Barriers, Median Walls, and Curbs	X		X		X		Integral with the structural deck
Expansion Joints	X		X		X		
Landscaping Planters - All Components	X		X			X	Includes precast concrete planter walls, waterproofing systems, soil, mulch, rain gardens, and other components not integral with the structural deck
Landscaping Plantings	X		X			X	
Storm Drainage System - Drains and Pipes	X		X		X	X	All components EXCEPT canopy downspouts, gutters, and helical downspout assemblies. Funding responsibility split 50/50 between the City and Microsoft
Canopy - Structural Support Elements	X		X		X		Concrete pedestals, painted steel frames and masts
Canopy - Painting of Structural Support Elements	N/A		X		X		
Canopy - Tensile Fabric, Fastening Systems, and Other Components	X		X			X	Work performed by Fabritech
Canopy - Downspouts, Gutters, and Helical Downspout Assemblies	X		X			X	
Canopy - Cleaning and Bird Control	N/A	N/A	X			X	
West Stairs	X		X		X		
Railings	X		X		X		Steel and aluminum railing on the DAR, West Stairs, and top of concrete barrier
East Campus Approach - Pier 9 to City ROW		X		X		X	Outside limits of City ownership and maintenance contract
West Campus Approach - Pier 1 to SR520 bike trail		X		X		X	Outside limits of City ownership and maintenance contract
Fiber Optic Conduits - Microsoft		X		X		X	Outside scope of City manitenance contract
Conduits - City	X		X		X		
Illumination System	X		X		X		City pays for power
Irrigation and Domestic Water Supply Systems	X		X			X	All components behind the meter. Microsoft pays for water
Security - Cameras, conduits, junction boxes	X		X		X		Conduits and junction boxes installed during construction for possible future camera installation.
Snow and Ice Removal	N/A	N/A	X		X	X	City funds basic LOS within limits of City ownership, Msft funds enhanced LOS and areas outside City ownership
Grafitti and Vandalism - On maintenance items funded by Microsoft	N/A	N/A	X			X	
Grafitti and Vandalism - On maintenance items funded by City	N/A	N/A	X		X		
Garbage Pick-Up	N/A			X		X	Garbage receptacles at east and west Bridge ends; no receptacles on Bridge nor Direct Access Ramp. Microsoft maintains as part of Microsoft Campus maintenance.
Signage - Wayfinding Signage		X		X		X	Microsoft maintains as part of Microsoft Campus maintenance.
Signage - Regulatory Signage	X		X		X		City signage maintained by City Sign Shop
Precast concrete planters and benches	X		X			X	Precast concrete planters including concrete units and fasteners, waterproofing system, irrigation, soil, plants, etc.
Precast concrete planters and benches	X		X		X		Wood bench components (including wood seat, backrest, arms, metal framing, fasteners, etc.), electrical, and lighting
Direct Access Ramp	X		X		X		

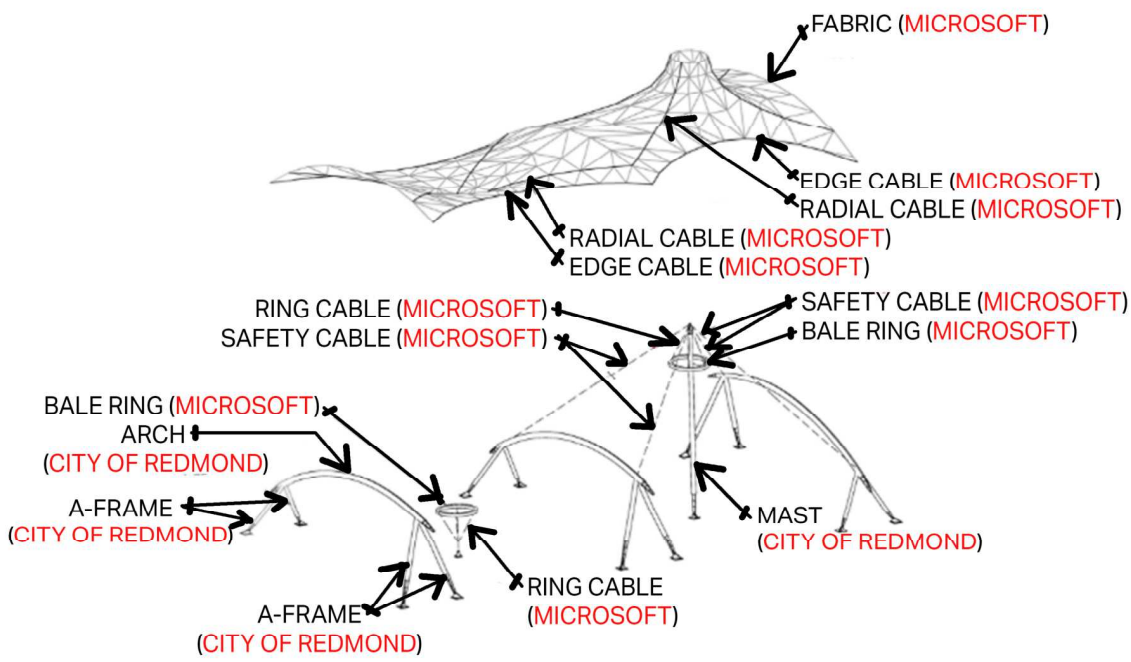
= Enhanced LOS funded by Microsoft
= Microsoft funded, owned, or maintained

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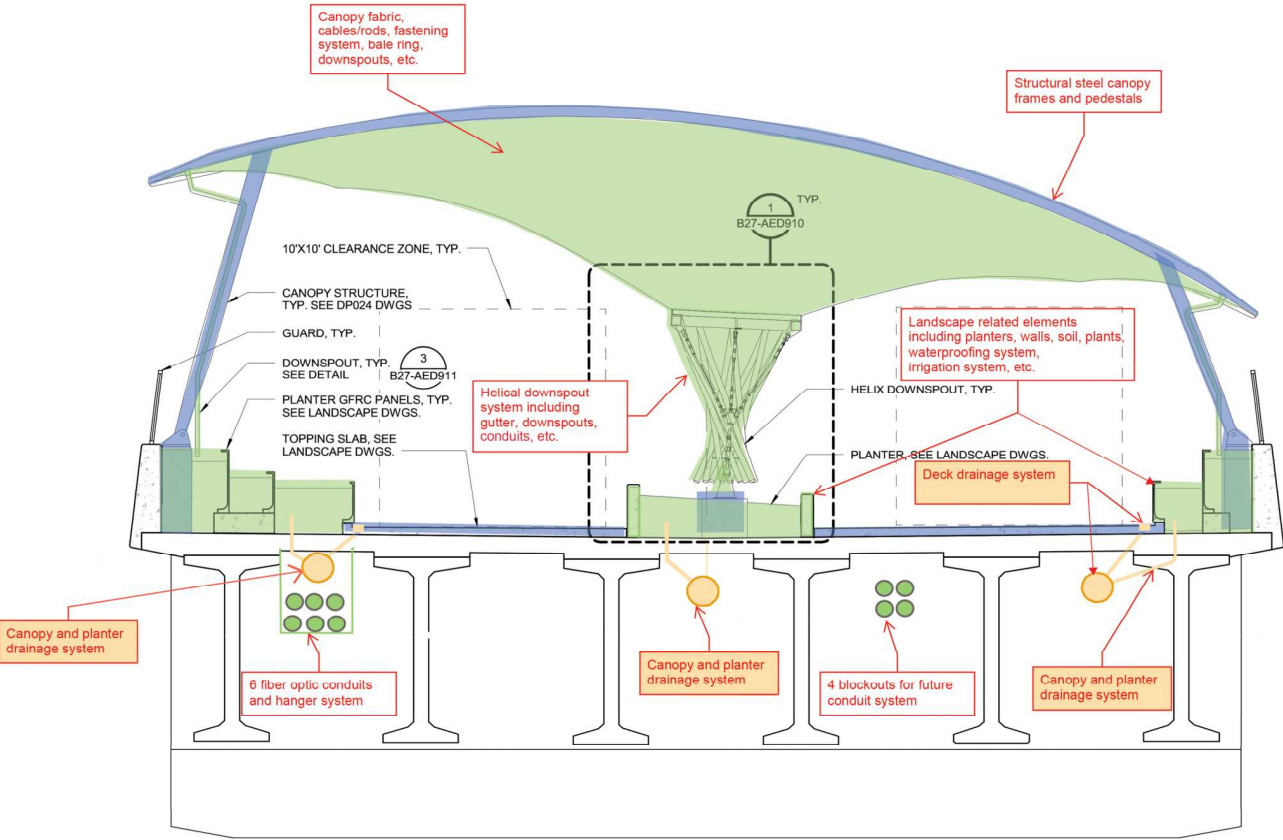
PLAN VIEW OF RTS BRIDGE

EXHIBIT B-2: OWNERSHIP & MAINTENANCE FUNDING RESPONSIBILITY



SECTION 1

CANOPY ISOMETRIC



Microsoft City Shared

SECTION 2

O & M FUNDING RESPONSIBILITIES RTS BRIDGE AND CANOPY

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EXHIBIT C

O&M Level of Service

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RTS Pedestrian Bridge Level of Service

Scheduled Tasks

Task	System	Frequency/interval
Steel - touch up paint	Canopy	1 year*
Inspect/clean gutters and downspout connections	Canopy	1 year
Downspouts - touch up paint	Canopy	1 year
Fabric - inspect	Canopy	1 years*
Fabric - inspect/re-tension cables/hardware	Canopy	1 years*
Structural bridge inspection	Concrete Structure	2 years
Inspect underdeck utilities, DAR, West Stairs	Concrete Structure	2 years
Inspect/clean drains	Drainage	1 year
Sweeping/Blowing	Hardscape	<i>[See Landscape Maintenance Table]</i>
Inspect	Illumination	6 months
Spring Activation	Irrigation	<i>[See Landscape Maintenance Table]</i>
Winterization	Irrigation	<i>[See Landscape Maintenance Table]</i>
Maintain plants and planter beds	Landscaping	<i>[See Landscape Maintenance Table]</i>
Replace dead plants	Landscaping	1 year

*Warranty work

Landscape Maintenance Table													
Frequency by Month													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total Times
Weeding		1	2	2	2	2	2	2	2	1	1	1	18
Pruning/Trimming			1	1		1		1	1	1			6
Mulch application		1											1
Sweep/blow hardscape	1	1	2	2	2	2	2	2	2	1	1	1	19
Irrigation – Spring Activation				1									1
Winterize Irrigation										1			1

Reactive Maintenance Tasks

Note: Response times for reactive tasks will vary based on severity of issue and availability of resources such as replacement parts. Situations that present unsafe circumstances to bridge users will be addressed immediately.

Task	System	Typical Response Time
Response to Customer Requests	ALL	Customer requests responded to within 2 business days (resolution to reported issue make take longer)
Repairs	Bridge guardrail	Area secured with temporary barricades within 2 hours of notification; repairs within 4 months.
Fabric - repair	Canopy	Small temporary repairs made within 14 days, permanent repairs within 2 months
Fabric - clean	Canopy	1 year
Fabric - Replace edge diverters	Canopy	1 year
Clear clogged drains	Drainage	7 working days; less if surface flooding is occurring
Pressure wash (response to spills)	Hardscape	7 working days; less if slipping hazard or pollutant is present
Replace bulbs	Illumination	1 month
Repair/replace fixtures	Illumination	1 month
Repairs	Irrigation	7 working days
Graffiti removal	Other	7 working days; less if graffiti is offensive/obscene
Snow and Ice	Other	24 hours – may vary depending on severity of event
Repair	Waterproofing	1-6 months, depending on severity and location.

Expected Service Intervals

Based on manufacturer recommendations and expected service life of components.

Task	System	Planning level frequency/interval
Steel - clean frames/supports	Canopy	10 years
Downspouts – clean helical assembly	Canopy	10 years
Steel - recoat	Canopy	25 years
Fabric - replace	Canopy	25 years
Fabric - Replace edge diverters	Canopy	25 years
Clean pier caps and bearings	Concrete Structure	15 years
Clean expansion joints	Concrete Structure	1 year
Seal deck cracks	Hardscape	5 years
Seal deck surface	Hardscape	25 years
Steel - touch up paint	West Stairs	5 years
Steel - recoat	West Stairs	25 years
Steel - clean	West Stairs	10 years

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Memorandum

Date: 7/5/2023

Meeting of: Committee of the Whole - Planning and Public Works

File No. CM 23-335

Type: Committee Memo

TO: Committee of the Whole - Planning and Public Works

FROM: Mayor Angela Birney

DEPARTMENT DIRECTOR CONTACT(S):

Public Works	Aaron Bert	425-553-5814
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DEPARTMENT STAFF:

Public Works	Adnan Shabir	Senior Engineer
Public Works	Paul Cho	Engineering Manager
Public Works	Patty Criddle	Engineering Supervisor

TITLE:

Award Bid to Watson Asphalt Paving Co Inc. of Redmond, WA, for the 2023 Pavement Repairs Project in the amount of \$428,448

OVERVIEW STATEMENT:

This contract in the amount of \$428,448 is for construction of an asphalt overlay on NE 76th Street and 185th Ave NE, with a total paving length of 3140 feet. This project has a current pavement condition index (PCI) score of 42.

- PCI 85-100: Good
- PCI 70-85: Satisfactory
- PCI 55-70: Fair
- PCI 40-55: Poor
- PCI 25-40: Very Poor
- PCI 10-25: Serious
- PCI 0-10 : Failed

This project is part of the City's Pavement Preservation Program and is the first of three projects to be completed in the 2023-2024 biennium. After completion, the PCI will move to the 'Good' class and will be functional for another 15-20 years.

☒ **Additional Background Information/Description of Proposal Attached**

REQUESTED ACTION:

☐ **Receive Information**

☒ **Provide Direction**

☐ **Approve**

REQUEST RATIONALE:

- **Relevant Plans/Policies:**
Transportation Master Plan
- **Required:**
Council approval is required to award a Public Works contract that exceeds \$300,000 (2018 City Resolution 1503)
- **Council Request:**
N/A
- **Other Key Facts:**
N/A

OUTCOMES:

As part of the City's Pavement Preservation/Repair Program, the City will repave the asphalt surface on 185th Ave NE and NE 76th Street. This project will include a grind and overlay to preserve the street long-term, in addition to replacing select utility lids, updating the roadway markings, and replacing the existing signal loop detectors.

COMMUNITY/STAKEHOLDER OUTREACH AND INVOLVEMENT:

- **Timeline (previous or planned):**
Notifications will be sent to residents adjacent to the work activity in advance of construction.
- **Outreach Methods and Results:**
Staff has created a website for the project and will send out letters and postcards to residents adjacent to the work activity. City will also post construction notifications on the roadway and post traffic alerts.
- **Feedback Summary:**
N/A

BUDGET IMPACT:

Total Cost:

\$428,448- Construction Contract

Approved in current biennial budget: ☒ Yes ☐ No ☐ N/A

Budget Offer Number:

CIP- Pavement Repair Program

Budget Priority:

Vibrant and Connected

Other budget impacts or additional costs: ☐ Yes ☒ No ☐ N/A

If yes, explain:

N/A

Funding source(s):
Real Estate Excise Tax

Budget/Funding Constraints:
N/A

☐ **Additional budget details attached**

COUNCIL REVIEW:

Previous Contact(s)

Date	Meeting	Requested Action
N/A	Item has not been presented to Council	N/A

Proposed Upcoming Contact(s)

Date	Meeting	Requested Action
7/18/2023	Business Meeting	Approve

Time Constraints:

Award of bid must occur within forty-five (45) days of the bid opening (which occurred on June 7th, 2023) or the contractor may withdraw their bid.

ANTICIPATED RESULT IF NOT APPROVED:

Not approving contract will result in delaying construction, increasing the cost to complete the project.

ATTACHMENTS:

Attachment A: Vicinity Map
Attachment B: Additional Project Information

Attachment B – Additional Project Information

2023 Pavement Repairs

Bid Results

The project was advertised in the *Daily Journal of Commerce* on May 24, 2023 and May 31, 2023. Bids were received and opened on June 7, 2023. The City received two bids which are summarized below.

Bidder	Bidder Location	Bid Amount
Watson Asphalt Paving Co. Inc.	Redmond, WA	\$428,448.00
Lakeside Industries	Issaquah, WA	\$514,920.00
Engineer's Estimate		\$472,959.00

All bidders' prices, extension and additions have been checked for accuracy and unbalanced bid items. The contractor's references were checked and found to be acceptable. Staff recommends awarding contract to Watson Asphalt Paving Co. Inc.

Fiscal Information

Current Budget

2023-2024 Pavement Repair	\$935,000
Program beginning fund balance	

Estimated Project Costs

Design	\$25,000
Construction	\$441,000
Contingency	\$44,100
Total Estimated Project Cost	\$535,100

Budget Difference	+\$424,900
--------------------------	-------------------

Remaining program budget will be spent through 2024 on other pavement repair projects such as additional asphalt overlays, and preventative maintenance projects such as slurry seals.



Memorandum

Date: 7/5/2023

Meeting of: Committee of the Whole - Planning and Public Works

File No. CM 23-359

Type: Committee Memo

Report out from NACTO