



**CITY COUNCIL ITEM A**

**CITY OF LYNNWOOD  
City Council**

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**TITLE:** Comments and Questions on Memo Items

**DEPARTMENT CONTACT:** Nicola Smith, Mayor

**DOCUMENT ATTACHMENTS**

**Description:**

**Type:**

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No Attachments Available

**CITY COUNCIL ITEM B**

**CITY OF LYNNWOOD  
City Council**

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**TITLE:** COVID-19 Update

**DEPARTMENT CONTACT:** Christine Frizzell, Council President

**SUMMARY:**

The City continues to monitor and respond to the COVID-19 emergency. The Council will receive an update from City staff.

**DOCUMENT ATTACHMENTS**

**Description:**

**Type:**

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No Attachments Available

**CITY COUNCIL ITEM C**

**CITY OF LYNNWOOD  
Executive**

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**TITLE:** Sound Transit Update

**DEPARTMENT CONTACT:** Leah Jensen

**SUMMARY:**

Presentation by Sound Transit on the Lynnwood Link Light Rail project and the impact of COVID-19 on Sound Transit operations.

**DOCUMENT ATTACHMENTS**

**Description:**

[Sound Transit Presentation](#)

**Type:**

Backup Material



***Lynnwood Link Extension  
Lynnwood City Council Presentation  
July 6, 2020***

# *Introductions*

## Sound Transit Presenters:

- Randy Harlow  
*Lynnwood Link Extension Executive Project Director*
- Erik Ashlie-Vinke  
*North Corridor Government & Community Relations Manager*

## City Staff Contacts:

- David Kleitsch  
*Economic Development Director*
- Karl Almgren  
*City Center Project Manager*

# Presentation Overview

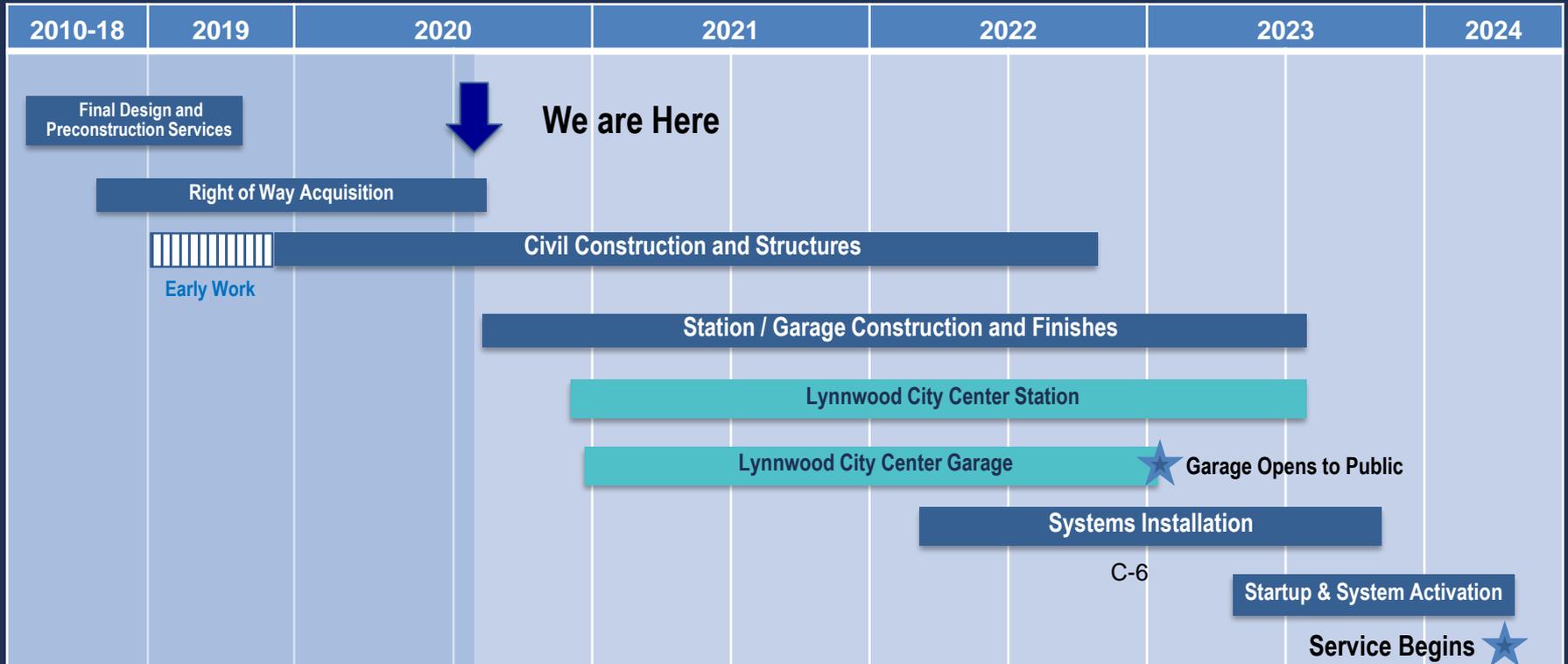
- Project Timeline
- Construction Updates
- Station and Garage
- Community Outreach



# *Before We Begin*

- COVID-19 impacts are still being assessed
  - Effects on construction progress, timeline and schedules
  - Additional safety measures implemented to protect construction workforce
  - Sound Transit revenue projections given economic outlook
  - Sound Transit Board review of the capital program portfolio underway

# Project Timeline



# Construction Updates

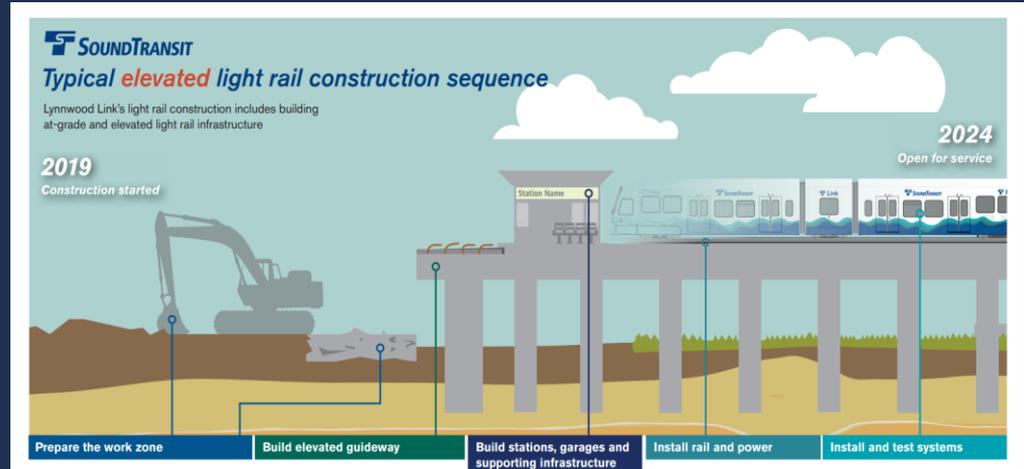
## Early Work 2019

- Clearing and Grubbing
- Access Roads
- Utility Relocations

## Major Construction 2020-2023

- Drilled Shafts
- Columns
- Girders
- Walls
- Trackwork
- Station
- Garage
- Systems Installation
- 200<sup>th</sup> Street SW Widening

Service begins mid-2024



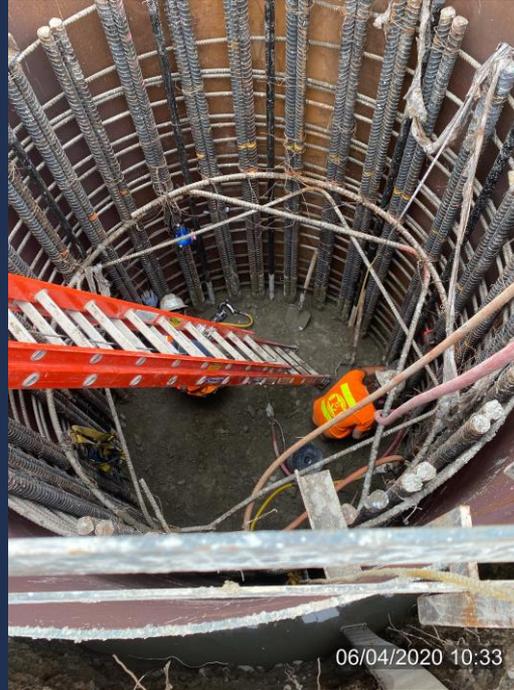
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# Early Work Construction

- Access Road Construction
- Utility Relocations



# Major Construction – Drilled Shafts



# Major Construction - Walls



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# Major Construction - Columns



C-11

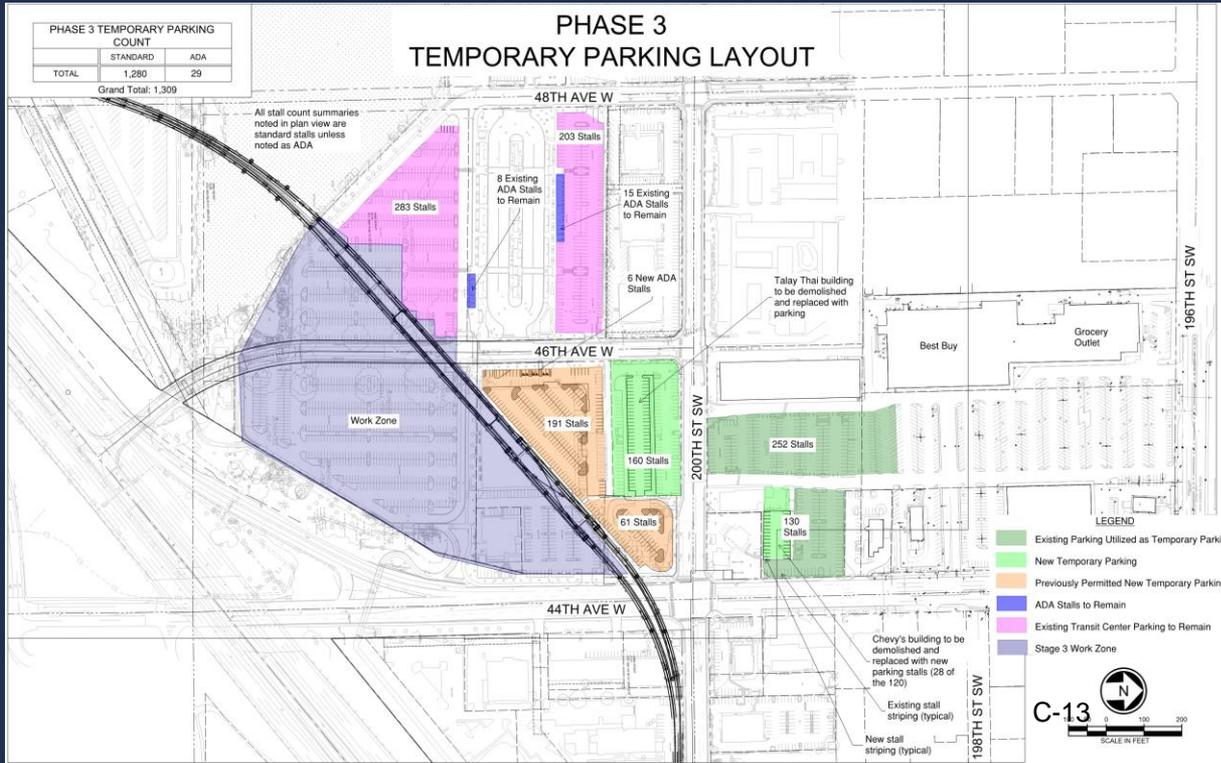
# *Lynnwood City Center Station*



Artist's Rendering

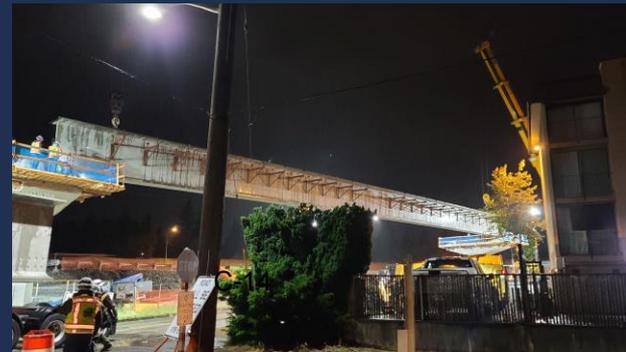


# LTC Parking During Construction



# Upcoming Activities Q2 20 – Q2 21

- Continuing Utility Relocations
- Continuing Drilled Shaft Work
- Continuing Column Placement
- Continuing Wall Work
- Aerial Guideway Girder Placements
- Scriber Creek Temporary Trestle
- Station and Garage Structures
- Property Acquisitions for 200<sup>th</sup> SW



# Future Activities

- Station and Garage Mechanical / Electrical / Plumbing (MEP) Systems
- Station and Garage Finishes
- Trackwork Installation
- Systems Installation
- Paving and Hardscape
- Landscaping and Planting
- Artwork Installations



# *Collaboration and Partnering*

Sound Transit is coordinating with City staff regarding mutually advantageous elements of work:

- Permitting for temporary commuter parking lots
- 200<sup>th</sup> Street SW Widening
- Stormwater System Upgrades
- Scriber Creek Trail Improvements
- STRIDE / BRT project development

# Contacts

## Sound Transit:

- Rhonda Dixon – Rhonda.Dixon@SoundTransit.org  
*Community Outreach Specialist*
- Erik Ashlie-Vinke – Erik.Ashlie-Vinke@SoundTransit.org  
*North Corridor Government & Community Relations Manager*
- Randy Harlow – Randy.Harlow@SoundTransit.org  
*Lynnwood Link Extension Executive Project Director*

**24-hour Construction Hotline – 1-888-298-2395**



**Thanks!**

*[soundtransit.org/LLE](https://soundtransit.org/LLE)*



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 **SOUNDTRANSIT**

**CITY COUNCIL ITEM D**

**CITY OF LYNNWOOD  
City Council**

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**TITLE:** Break

**DEPARTMENT CONTACT:** Christiine Frizzell, Council President

**DOCUMENT ATTACHMENTS**

**Description:**

**Type:**

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No Attachments Available

## **CITY COUNCIL ITEM E**

### **CITY OF LYNNWOOD Economic Development**

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**TITLE: Presentation: Development & Business Services Process Improvements**

**DEPARTMENT CONTACT: David Kleitsch, Economic Development Director / Interim  
Community Development Director**

#### **SUMMARY:**

In August 2019 Lynnwood contracted with Strategica, Inc., to conduct an efficiency study of Development & Business Services (DBS). Council has received periodic updates regarding this effort.

At the Work Session on July 26, 2020, Strategica will present to Council a summary of their report. The following materials are attached to this memo:

- 1) Staff memo providing background information and an update on the efficiency study; titled DBS Process Review and Improvement Project.
- 2) Presentation from Strategica providing an overview of project activities, findings and recommendations.
- 3) Final report from Strategica. (Due to the length of the report two technical exhibits will be provided through on-line distribution.)

#### **ACTION:**

Receive the presentation and the report.

#### **BACKGROUND:**

The City has undertaken efficiency studies of various city departments in support of the Council's direction regarding Budgeting for Outcomes and operational efficiencies.

In February 2019, work began in earnest on various activities to address DBS customer service and process improvements. At that time, a hiring freeze for DBS Departments was put in place. New hiring was deferred until completion of the efficiency study unless it was necessary to fill an essential position.

Strategica was selected in August 2019 to undertake the DBS Process Review and Improvement Project and the project was initiated in September 2019. The project is now complete. With the completion of the efficiency study and the significant increase in planning and development activity, the hiring of essential positions has been initiated.

The next step in this efficiency study will be implementation. Strategica's activities, findings and recommendations will inform the City's course of action. Staff will bring specific actions to Council for consideration as needed.

#### **PREVIOUS COUNCIL ACTIONS:**

## **KEY FEATURES AND VISION ALIGNMENT:**

The Process Review and Improvement Project has several key features:

1. Review of DBS functions, workflows, performance and customer service.
2. Recommendation that DBS functions be organized into a unified structure.
3. Proposed staffing to accomplish performance measures and policy outcomes.
4. Proposed new permit processing system for customer service, efficiency, and project tracking.

These features support the Community Vision to:

\*Be a welcoming city that builds a healthy and sustainable environment.

\*Encourage a broad business base in sector, size and related employment, and promote high quality development.

\*Be a cohesive community that respects all citizens.

\*Invest in efficient, integrated local and regional transportation systems.

\*Be a city that is responsive to the wants and needs of our citizens.

## **ADMINISTRATION RECOMMENDATION:**

Receive the presentation and the report.

## **DOCUMENT ATTACHMENTS**

<b>Description:</b>	<b>Type:</b>
<a href="#">Staff Memorandum</a>	Backup Material
<a href="#">Strategica Presentation</a>	Presentation
<a href="#">Strategica Report</a>	Report

# MEMORANDUM

**DATE:** July 6, 2020

**TO:** Mayor and Council

**FROM:** David Kleitsch      **Economic Development Director /  
Interim Community Development Director**

**SUBJECT:** Update:      **Development & Business Services Process  
Review and Improvement Project**

## **Introduction**

On June 15, 2020, Council received an update on the Development & Business Services Process Review and Improvement Project. On July 6, 2020, Strategica, Inc., will present to Council a summary of their activities, findings, and recommendations. Attached to this document is Strategica's PowerPoint presentation and the report. A complete copy of the report with all appendices (250 pages) will be made available to Council on-line.

## **Background**

The City of Lynnwood has undertaken efficiency studies of various city departments. These efforts have included Administrative Services, Fire, Information Technologies, Municipal Courts, Police, and Public Works. These efforts support Council's directive to advance Budgeting for Outcomes and the goal to provide operational efficiencies.

In November 2017, Mayor Smith convened a team of department directors to address process improvements and customer service within Community Development. This team included the Executive Office, and department directors from Community Development, Economic Development, Public Works, Administrative Services, Information Technologies, Human Resources, and the South Snohomish County Regional Fire Authority.

In 2018, this effort was expanded to include the four functions collocated at Development & Business Services (DBS): Community Development; Economic Development; Public Works Development Engineering; and Fire Prevention. Two independent assessments were completed regarding the quality of customer service and the work culture at DBS. These reports identified the need for improvement. During 2018 DBS also conducted a visioning exercise and developed a mission statement.

In February 2019, work began in earnest on various activities to address DBS customer service and process improvements. At that time, a hiring freeze for DBS Departments

was put in place. New hiring was deferred until completion of the efficiency study unless it was necessary to fill an essential position.

Strategica was selected in August 2019 to undertake the DBS Process Review and Improvement Project and the project was initiated in September 2019. The project is now complete. With the completion of the efficiency study and the significant increase in planning and development activity, the hiring of essential positions has been initiated.

Presentation to Council of Strategica's report was originally anticipated in March 2020. The advent of the COVID-19 emergency postponed the opportunity to present this information to Council. As Lynnwood has moved forward with COVID-19 Phase 2 reopening, a presentation by Strategica to Council may now be scheduled.

### **Policy Considerations**

Should Lynnwood continue on course to address the process improvements and customer service focus for Development & Business Services?

DBS process improvements and a customer service focus are fundamental to the Lynnwood Community Vision and the Lynnwood Strategic Plan 2018-2022. Specifically:

- The goals for DBS process improvements and customer service support the Community Vision for: a sustainable, vibrant community with engaged citizens and an accountable government; a welcoming city that builds a healthy and sustainable environment; and high quality, sustainable development, and design.
- Improving DBS serves to implement the Lynnwood Strategic Plan 2018-2022 by championing Priority 1, City Center and Lynnwood Link Light Rail; Priority 2, Financial Stability and Economic Success; and Priority 3, Operational and Organizational Excellence.

### **Strategica Study: DBS Process Review and Improvements Project**

Strategica, Inc., has been contracted by Lynnwood to conduct an efficiency study on the organizational structure and processes for (DBS). The four City functions that are co-located at include:

- Community Development (Planning, Plan Review and Inspections, and Permitting)
- Economic Development
- Fire Prevention (South Snohomish County Regional Fire Authority)
- Public Works (Development Services for private development)

Strategica has evaluated and provided recommendations regarding DBS. The following components are included in the Process Review and Improvements Report:

- DBS Strategic Plan
- Organizational structure and staffing needs
- Future permitting process system
- Process improvements.

On July 6, 2020, Strategica will present their report and recommendations to the Council.

**Council Briefings:**

Council previously received updates and presentations on DBS process improvements and customer service. Please refer to the Council agenda packets referenced below for background information.

- March 11, 2019: Presentation on Development & Business Services Process Improvements and Customer Service.
- September 3, 2019: Update on Development & Business Services Process Improvements and Customer Service
- February 18, 2020: Status Report on Development & Business Services Process Improvements and Customer Service.
- June 15, 2020. Update o Development & Business Services Process Improvement and Customer Service Project

**Path to Completion**

Briefing to Executive	February 24, 2020
Briefing to DBS Directors	Feb 24 / March 4, 2020
COVID-19 Delay	March 23 / June 8, 2020
Briefing to DBS Management Team	June 4, 2020
Briefing to Executive	June 8, 2020
Briefing to DBS All-Hands Meeting	June 12, 2020
Update to City Council	June 15, 2020
Briefing to Executive Leadership Team	June 23, 2020
Presentation to Council	July 6, 2020

**Next Steps**

The next step in this efficiency study will be implementation. Strategica’s activities, findings and recommendations will inform the course of action. Staff will then bring specific actions to Council for consideration.



## ***Process Review and Improvement Project***

# ***Project Results***

***June 23, 2020***



## Why this project was undertaken

- A desire among City policy makers to improve customer service at DBS
- A desire to improve the business climate in Lynnwood
- Address turnover at DBS and use the opportunity to enhance needed skill sets and managerial capacity at DBS
- Improve the efficiency of permitting processes
- Make decisions on the IT infrastructure at DBS

## What we did

- **Interviewed:**
  - 17 political leaders and managers from the City
  - 10 external stakeholders
  - We also conducted job shadowing or ridealongs with 11 DBS staffpeople
- **Conducted an online survey of DBS staff:**
  - 23 staff responded
- **Conducted a strategic planning workshop with DBS managers**
- **Conducted a workshop to define performance measures**
- **Analyzed historical workloads and performance data**
- **Benchmarked DBS against 5 peer agencies in western WA**
- **Created an empirically-based staffing needs forecasting model**
- **Defined specs, design elements and process requirements for a new permitting system**

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## What we did

- Assisted in developing the permitting system RFP and created demo scripts
- Mapped out and evaluated processes for:
  - Plan review
  - Public Works plan review
  - Inspections
  - Code enforcement
- Evaluated systems and applications for records management, online portals, GIS, electronic plan review
- Evaluated network capacity at DBS
- Evaluated methods and processes for dealing with difficult code enforcement cases
- Designed a new org structure and required positions for DBS
- Developed improved processes for developer agreements and land use planning cases

E-9

## Key Results

- **DBS Strategic Plan**

- **5 Key goals:**

1. Create a positive culture for applicants
2. Build systems, processes and codes to work smarter and more efficiently
3. Develop staff expertise and a culture to address Lynnwood's future growth
4. Enhance quality of life through implementing the Lynnwood Comprehensive Plan
5. Attract businesses and development partners to succeed in Lynnwood

- **One page strategic plan on everyone's wall - uses plain English, active voice so that everyone knows what needs to be done**

- **Plan is reproduced at end of presentation**

E-10

## Key Results

- **DBS Strategic Plan**

- **A roster of performance and outcome measures to track strategic implementation**

- **Measures of efficiency such as turnaround times:**

- » **Response time to customer calls and email inquiries**
- » **Plan review and inspection turnaround times**
- » **Code enforcement case resolution time**
- » **Average calendar days between final inspection and closeout**
- » **Average # of calendar days to issue notice of decision**

- **Outcome measures such as:**

- » **Permit applicant satisfaction index (an existing measure)**
- » **Percent of City area covered by improved design guidelines**
- » **Value of construction and public infrastructure in designated development zones**
- » **Marketing impressions per dollar**
- » **Valuation of construction and public infrastructure in City Center**

E-11

## Key Results

### ▪ DBS Organizational Structure

- The DBS structure (as of Fall 2019) was hindering performance and mission attainment:
  - 28% of the organization had been impacted by turnover
  - Half of the middle management positions were either vacant or in interim status
  - Of 36 DBS budgeted positions, 10 were either vacant, in interim status or on leave
  - The structure was hindered by hard siloes - staff working at DBS but not reporting through the DBS chain of command
  - Very little admin support or management/financial/ technical analytical support
  - Not enough technical expertise to deal with emerging development patterns (i.e., TOD, larger more complex projects)

E-12

# Key Results

## ▪ DBS Organizational Structure

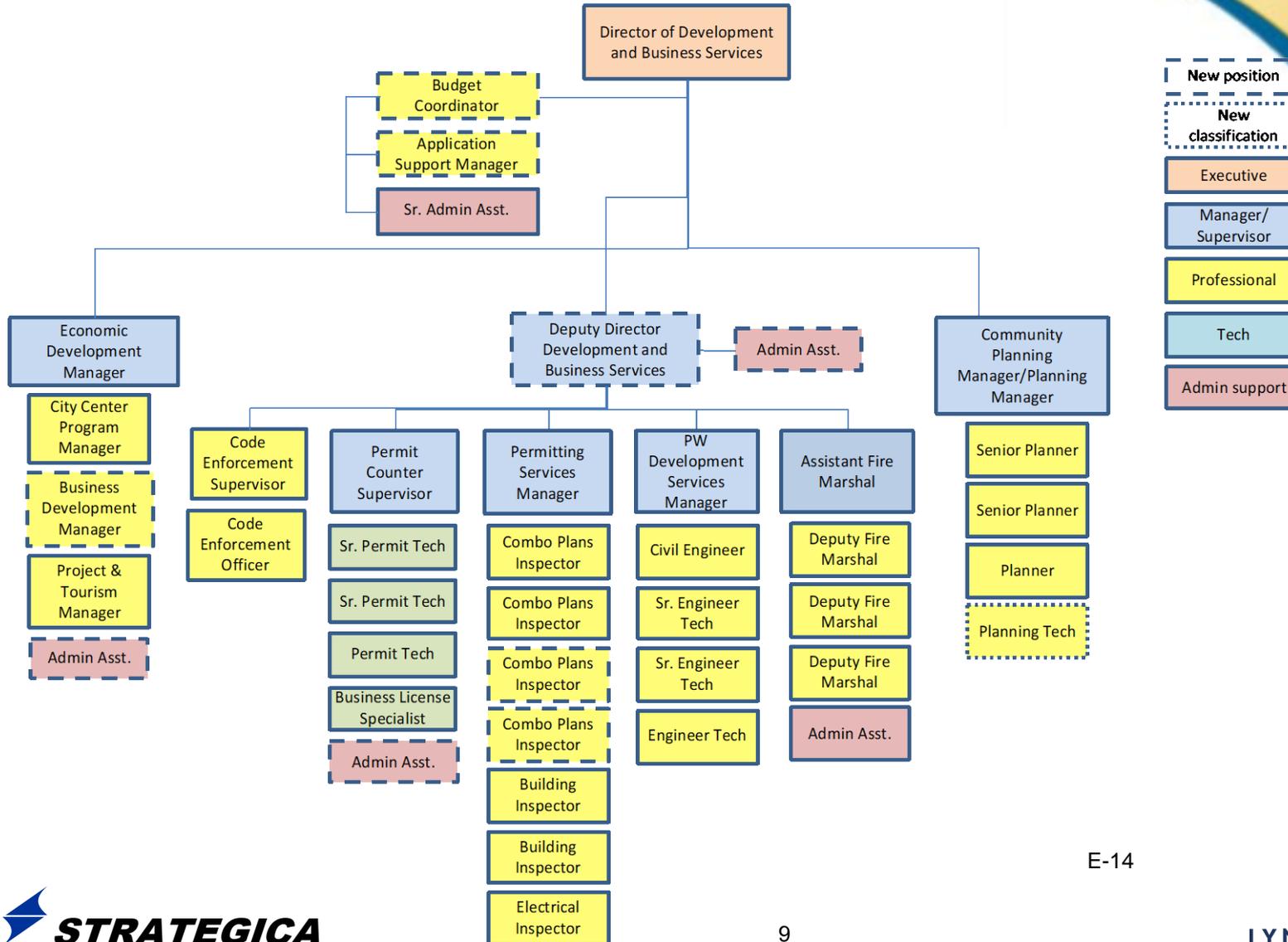
### • The recommended structure includes:

- Unity of command for all DBS functions. Elimination of hard siloes between building, public works and fire
- Public Works (renamed Development Engineering) and FMO staff under direct supervision of Manager of Permitting Services
- Oversight and supervision of all plan review workflow is consolidated under Deputy Director of Permitting Services/Building Official
- Vacant positions either filled or eliminated (with funding used elsewhere)
- New positions in Planning and manager made permanent
- New Management Analyst and Applications Analyst positions.
- Code Enforcement renamed Community Standards and Assistance. Additional position to oversee all cases that are not in litigation or NOV status
- DBS is relocated to City Hall campus to be co-located with other City functions
- Net addition of 7 new positions in DBS

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# Proposed Structure

## Development & Business Services (DBS)



**Legend:**

- New position** (dashed border)
- New classification** (dotted border)
- Executive** (orange box)
- Manager/Supervisor** (blue box)
- Professional** (yellow box)
- Tech** (light blue box)
- Admin support** (pink box)

# Key Results

- **DBS IT infrastructure**

- **The current permitting system:**

- Energov has been in use since 2009
- The extent of the functionality that has been successfully put into production is very limited
- System basically is used as a word processor and card file
- Workflow has never been implemented as intended
- Permit types have not been correctly defined leading to additional work and corrupted transaction history
- Historical data is unusable for management purposes
- Staff training was insufficient (and those staff are mostly gone)
- Support is limited to one person at City IT (not dedicated to DBS)
- DBS staff confidence and trust in Energov is very low

# Key Results

## ▪ DBS IT infrastructure

- We recommend that Lynnwood either reinstall Energov (the latest version) from scratch OR purchase a competing package – either option should be effected through an open procurement
- Experienced change management or configuration experts should be retained to correctly configure the new system and train staff
- The new system should include ancillary applications designed to modernize DBS processes:
  - Electronic plan submittal, routing, review, markup, correcting and finalizing
  - Secure online portal for plan submittal, fee payment, inspection requests
  - Full workflow capabilities that will expedite and allow parallel reviews among reviewing org units
  - Mobile field inspection applications for inspection and code enforcement staff
  - Digital document storage, search and retrieval
  - GIS capabilities that will facilitate the work of Planning staff

E-16

# Key Results

## ▪ Process Improvements

- Developer agreements (DA) should be incorporated as a "application" type in any new system to ensure that they are memorialized securely – and simplify future references to DA terms and conditions for subsequent DA administration
- Long range planning products should also be incorporated into any new system as an "application" type to facilitate future tracking of projects covered by these plans and tracking of outcomes
- Business licensing procedures and system enhancements for ensuring that delinquencies are tracked, late fees are collected and City-specific licenses are administered

E-17

# Key Results

## ▪ Process Improvements – Code Enforcement

- **New procedures and tools for addressing unsafe housing and junk car cases**
  - Pursue unsafe housing cases through Superior Court using outside counsel
  - Recover abatement (demolition) costs through special tax assessments collected through property tax collection and/or tax foreclosure (all permitted by WA State law)
- **Address the preponderance of rental unit housing in Lynnwood (43% of the housing stock) and the desire of policy makers to enforce community standards by implementing a Rental Unit Registry (RUR) and inspection program:**
  - Mandatory registration of most rental housing (some exemptions allowed)
  - Quadrennial (4 year) inspection schedule
  - Advance notice of inspections along with rental housing standards so landlords know what to check and correct
  - Registration requires landlord to agree to expedited authority for City to abate nuisances
  - Fee study to determine appropriate fee amounts (adjusted after first year or two of program history)

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# Key Results – Adopted DBS Strategic Plan

## Goal 1 – Create a positive service culture for applicants

### Tactics

- a. Hire and retain people with a customer service mentality
- b. Simplify (or communicate simply) our processes so applicants can understand them
- c. Provide customer service training for DBS staff
- d. Provide recognition and rewards for good customer service
- e. Shorten turnaround times (while still meeting our regulatory responsibilities)
- f. Define and track customer service metrics

## Goal 2 – Build systems, processes and codes to work smarter and more efficient

### Tactics

- a. Implement a new user-friendly, DBS-wide permitting system that facilitates accurate data, 24/7 access and workflow data sharing
  1. Align work processes with the capabilities and functions of the new system
  2. Streamline permit types and supporting processes
  3. Obtain continuous training in the software functionality for DBS staff
- b. Streamline and untangle our codes and regulations
  1. Eliminate duplicative sections and resolve conflicts
  2. Modernize regulations to address projected development patterns
  3. Make it easy for applicants and businesses to access and understand
  4. Streamline the zoning code

## Goal 3 – Develop staff expertise and a culture to address Lynnwood's future growth

### Tactics

- a. Identify the expertise, qualifications and skills we need
- b. Determine how many staff we need and hire up to that level

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# Key Results – Adopted DBS Strategic Plan

- a. Create an organizational structure that promotes accountability for results and fosters a cohesive, positive culture
- b. Train our people in customer service and technical expertise for their success
- c. Update and/or create new job descriptions that match DBS needs
- d. Provide staff the flexibility to work with applicants to identify solutions and solve problems
- e. Track performance to ensure accountability to our mission and strategy

## Goal 4 – Enhance quality of life through implementing the Lynnwood Comprehensive Plan

### Tactics

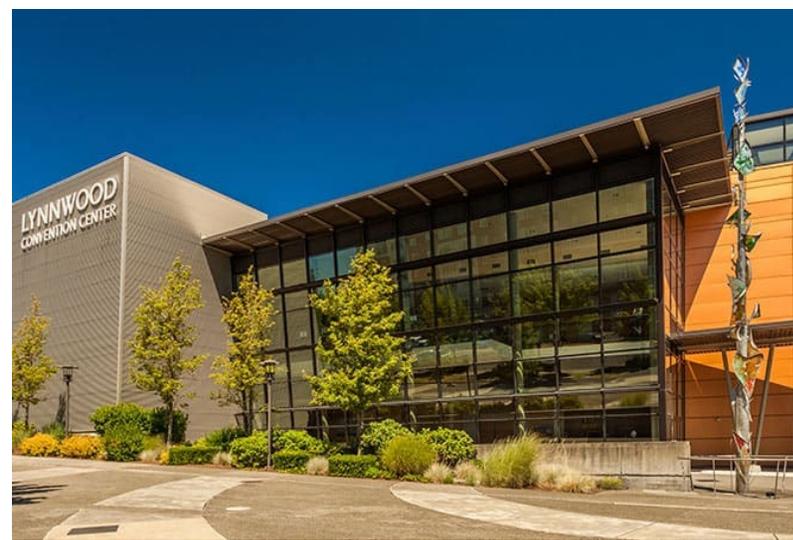
- a. Track implementation of the current Comprehensive Plan
- b. Gear up for the 2023 update of the Comprehensive Plan and make it simpler and more accessible
- c. Develop plans through meaningful public engagement
- d. Implement fair and equitable code enforcement
  - 1. Build a system allowing us to expeditiously process the tougher cases

## Goal 5 – Attract businesses and development partners to succeed in Lynnwood

### Tactics

- a. Explore and adopt programs to promote new business formation and expansion
- b. Partner with the Lynnwood Chamber and other business organizations for economic vitality
- c. Change public perception on how friendly it is to do business in Lynnwood
- d. Promote tourism, visitor spending and hotel stays
- e. Prioritize and facilitate development of projects for community benefit
  - 1. Quantify and communicate the benefit to the community

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***City of Lynnwood  
Development & Business Services***

***Process Review and  
Improvement Project***

***Final Report***

***June 19, 2020***



# Process Review and Improvement Project

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## ***I. Executive Summary***

The City of Lynnwood has undertaken an efficiency study for process and organization improvements at Development & Business Services (DBS). DBS consists of four independent departments:

- Community Development Department (Administration, Planning, Permitting and Inspections)
- Office of Economic Development (Economic Development and Tourism)
- Public Works (Development Engineering), and
- Fire Marshal's Office (South Snohomish County Fire)

This efficiency study has been undertaken in response to negative feedback regarding services provided at DBS.

### **Background**

The City has been reviewing the organizational management structure of DBS, functional processes, and the customer service culture since 2017. This effort is a work in progress. To help expedite the process, the firm of Strategica, Inc. was retained in the summer of 2019 to evaluate the structure of DBS, formulate a new strategic plan, and improve the automated systems and processes of the various functions.

Lynnwood has a Community Vision, adopted by City Council in 2009 and reaffirmed in 2015, to be a regional model for a sustainable, vibrant community with engaged citizens and an accountable government. In 2018, a Strategic Plan covering the period of 2018 to 2022 was prepared to compile priorities, objectives and strategies deemed to be of the highest importance. The top priorities for 2018-2022 are:

## *Process Review and Improvement Project*

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1. Fullfill the community vision for the City Center and Lynnwood Link light rail
2. Ensure financial stabilty and economic success
3. Nurture operational and organizational excellence
4. Be a safe, welcoming and livable city
5. Pursue and maintain collaborative relationships and partnerships

The situation at DBS was seen as an impediment to achieving the Community Visision and implementing the Strategic Plan.

### **DBS Strategic Plan**

While the City has a Community Vision and a Strategic Plan, DBS itself was operating without a strategic plan. Although the management and staff at DBS were operating with apparent strategic goals in mind, they were not articulated or necessarily aligned with the broader City vision. To address this situation, Strategica, Inc. first worked with DBS managers and then sought input from staff on documenting the strategic plan direction for DBS. Five DBS strategic goals evolved from this process:

1. Create a positive culture for applicants
2. Build systems, processes and codes to work smarter and more efficiently
3. Develop staff expertise and a culture to address Lynnwood's future growth
4. Enhance quality of life through implementing the Lynnwood Comprehensive Plan
5. Attract businesses and development partners to succeed in Lynnwood

The entire DBS Strategic Plan was documented on one page so that DBS staff can quickly instill a unified direction and incorporate these goals into their daily activities. These goals will be achieved and supported by specific strategies and tactics. The DBS Strategic Plan can be viewed in **Appendix A** and associated performance measures for tracking progress are found in **Appendix B**.

### **Organizational Structure**

In the summer of 2019, the organizational structure of DBS reflected an organization in transition. Nearly a third of the staff positions were either filled in an interim status, vacant, on leave, or staff were working out of class. This was due to significant turnover during the first half of 2019.

The organizational structure was also characterized by hard siloes, whereby the various functions within DBS involved in the core processes of handling development, building permit applications and business services were placed in separate City departments with no overall management of the processes.

In addition, DBS had not evolved its portfolio of skills and expertise to reflect an increasingly mixed-use urban environment that included more complicated projects. This evolution will become more critical in the future as Lynnwood becomes integrated into the Sound Transit light rail system and transit-oriented development (i.e., more dense, mixed-use development, pedestrian oriented) comes on line. In addition, the structure of DBS lacked sufficient administrative support or management/technical support.

The recommended DBS organizational structure (shown in Appendix C) resolves these problems and achieves unified command over all DBS functions, especially core building permit processing. The new structure reflects the strategic goals of DBS and clearly shows where accountability for these goals is placed within the organization. The new structure strengthens functional areas critical to the future growth of Lynnwood, and addresses the issues of staff vacancies, interim appointments and staff working out-of-class. Finally, the new organization structure adds critically needed managerial and technical support positions. This new structure reflects a net addition of 7 positions to DBS.

### **Permitting Process System**

The existing permitting process system, was originally installed 11 years ago. It has never been fully implemented and has been incorrectly used over the years by staff that was insufficiently trained. The

## ***Process Review and Improvement Project***

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importance of a permit processing system to track the “life-cycle” of a permit is critical to organizational efficiency. The City should either re-install the system from scratch or evaluate and install a different software product through an open procurement process.

The most important feature in any future permitting process system is a workflow function that expedites and tracks planning cases, the processing of permit applications, business licenses and code enforcement cases. In addition, peripheral software applications such as electronic plan review, an online public portal, mobile inspection tools, geographic information system (GIS), and digital document storage should be part of the selected enterprise permitting system.

The most critical process at DBS is the processing of building permits given the volume of permits and fees involved. New processes should be implemented and facilitated by a new permitting system that features parallel reviews, workflow technology, digital plans and drawings, and automated tools for inspections.

### **Code Compliance Activities**

The Community Vision and Strategic Plan speak to the quality and character of Lynnwood. Achieving these priorities can be supported through code enforcement. While DBS does a good job of achieving compliance for most cases, there needs to be new procedural and legal tools for dealing with serious conditions such as derelict houses and junk cars. In addition, with 43% of the City’s housing stock consisting of rental units, Lynnwood needs to design and implement a program for ensuring that these housing units are safe, meet code and do not deviate or detract from community standards.

### **Achieving Planning and Policy Outcomes**

In the effort for efficient processing of building permits, effective planning and economic development functions may be overshadowed. There is a big difference between efficiently processing applications and achieving the goals and policies of the Community Vision and the Strategic Plan. While tracking

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desired outcomes to be achieved through policies and development agreements is essential, specific performance measures and efficiencies are not as easily identified as with permit processing. Achieving the successful implementation of plans, policies, and related projects, however, should be tracked in the permit process system to monitor and evaluate progress.

The following pages present the findings and recommendations for the Development and Business Services efficiency study prepared by Strategica, Inc.

## ***II. What Work Was Done***

This project was begun in August 2019 as the result of changes at Development & Business Services (DBS). DBS had acquired a negative reputation in the business and development community for heavy-handed regulation, slow turnaround times and unhelpful customer service. In February 2019, staff turnover at DBS provided the opportunity to install new management, and mandate process improvements and organizational change. Several new hires were made at DBS in an effort to improve the level of customer service, make Lynnwood a friendlier place to do business while staying faithful to the Lynnwood Municipal Code, and fulfilling regulatory responsibilities. Lynnwood sought the advice of outside experts in organizational development, process improvement and permitting systems to make impactful changes at DBS. This report is the product of that effort. The recommendations contained herein will result in a more efficient, mission-driven organization that helps to fulfill the policy objectives of City leaders.

### III. What should be the DBS Strategy?

A strategic plan is a plan for achieving impactful changes in an organization whether those changes be improved products, services, improved financial performance, policy goals realized, etc. All of these outcomes should result in achieving the mission of an organization. Strategies are different from tactics in that strategies have higher payoffs and bigger benefits that are directed at bigger problems or opportunities. Tactics, in contrast, are designed to achieve specific strategies and are more immediate in time. All organizations have a strategic plan whether it's explicit and written down or is just a general, unspoken understanding of what needs to be done to achieve the mission. It is easier to communicate and track performance of a well thought out and documented strategic plan, which is what Strategica, Inc. was asked to do at DBS.

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*The future strategy of DBS will be driven by attention to building a positive culture for staff and applicants; building new and enhanced permitting systems, processes and codes; build up skills and staffing to respond to address future growth patterns in Lynnwood; and attracting new development and business partners*

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#### What was the existing strategy at DBS?

DBS did not have a documented strategic plan in August 2019 when Strategica, Inc. started this project. In 2018, initial efforts were made by DBS staff to document a strategy. Some goals were documented for each operating unit within DBS but no strategies or tactical-level actions were defined.

A DBS mission statement dating from 2018 was documented by Community Development in the City budget:

*“We strive to ensure our City is the safest, most livable and sustainable community in the region”*

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This mission statement is limited in perspective and does not embrace a future for process improvements and customer service through proactive change.

The City itself does have a strategic plan that has been in place since 2018 which includes several vision statements and strategic priorities that involve DBS. These statements and priorities are incorporated into the DBS strategic plan that was created as part of this project.

Performance measures and targets to achieve the 2018 DBS mission statement are included in the biennial City budget but are not monitored on an ongoing basis. These measures and targets are separated by DBS departments. In addition, very little data is available for effective monitoring and management of DBS processes and outcomes. The current permit processing system is not configured to easily and consistently generate this data and cannot generate reliable management information for monitoring performance and mission achievement. These factors prevent regular assessments of efficiencies and effectiveness.

### **What problems or opportunities were identified for DBS that a strategic plan would address?**

Based on interviews with DBS staff, City officials, and members of the development and business community, Strategica, Inc. identified several key issues that should be addressed by a strategic plan and the other components of this Process Review and Improvement Project. Key issues and opportunities requiring a strategic-level response included:

- An outdated, error-prone, user unfriendly permitting system that had not been properly configured when originally installed in 2012, had never been fully implemented and put into production, and in which the DBS staff had lost confidence.
- A longstanding reputation of DBS for poor customer service, long turnaround times for permits, non-responsiveness and heavy-handed regulation, which had become a hindrance to attracting new investment into the City.

- Although the City had begun a well-received organizational revamp at DBS that included hiring new managers, transitioning from the less helpful managers and staff, and changing attitudes and customer service standards, there remained vacant positions, staff working out of class, and managers in interim appointments that needed to be addressed. In addition, the City has been undergoing significant redevelopment and is poised to be further transformed by the impending arrival of Sound Transit light rail. DBS does not have all the technical or professional expertise to handle this change. Outdated zoning designations, land use codes, development standards, and code enforcement do not match the emerging development that is occurring.

### What is going to be the DBS strategic response to these problems and opportunities?

DBS managers met in December 2019 and developed a strategic plan that incorporated these five strategic goals:

1. Create a positive culture for applicants
2. Build systems, processes and codes to work smarter and more efficiently
3. Develop staff expertise and a culture to address Lynnwood's future growth
4. Enhance quality of life through implementing the Lynnwood Comprehensive Plan
5. Attract businesses and development partners to succeed in Lynnwood

From these goals, specific strategies were defined to drive implementation of the goals. DBS staff were given an opportunity to review the draft plan and suggest enhancements prior to adoption of the DBS strategic plan. The full plan can be viewed in **Appendix A**. It is a focused one-page document identifying the most important DBS goals and strategies.

### How will DBS know if the mission and strategic plan are realized?

DBS managers have adopted a roster of performance measures to monitor strategic implementation and operational efficiency. These measures include:

Measures of efficiency such as turnaround times:

- Response time to customer calls and email inquiries
- Plan review and inspection turnaround times
- Code enforcement case resolution time

Outcome measures such as:

- Permit applicant satisfaction index (an existing measure)
- Percent of City area covered by improved design guidelines
- Value of construction and public infrastructure in designated development zones

The entire roster of performance measures can be viewed in **Appendix B**

**Recommendation III.1** – Continue to implement the new strategic plan (**Appendix A**) by making it part of managerial goal setting and performance review criteria, ongoing DBS managerial meetings, reporting to City Council and the Mayor, and monthly DBS All-Hands meetings.

**Recommendation III.2** – Initiate the daily, monthly, semi-annual and annual monitoring of DBS performance using the measures in **Appendix B**. Ensure that configuration of a new permitting system include reporting tools and queries that generate regular, periodic data to populate the measures. Use the measures as part of managerial goal setting and performance review criteria.

#### ***IV. How should DBS be organized and how many staff will be needed in the future?***

In this section, the structure of DBS is examined, recommendations to streamline and focus the structure are offered and, using data-driven empirical models, we identify how many staff will be needed in the future to accomplish the goals and work of DBS.

The structure of any organization is a key tool to achieving the organization’s mission. In this light, the organizational structure should be thought of in the same way as the permit process systems, policies, work processes, strategies, and the staff; all of these are tools or enablers for mission achievement. A well-designed structure should clearly delineate accountability for the organization’s strategic goals, facilitate easy communication between staff, and facilitate efficient work processes and transfers of information.

In this section, we examine the structure of DBS, offer recommendations to streamline and focus the structure and, using data-drive, empirical models, we identify how many staff will be needed in the future to accomplish the goals and work of DBS.

##### **What is the Current Structure of DBS?**

The current structure of DBS is consistent with an organization that has been undergoing rapid and significant changes and turnover. Several long-term staff transitioned out of DBS in early 2019 leading to several vacancies, unfilled management positions, interim appointments and managers and staff working out of class. In addition, DBS is not a unified City department with unified command over all the staff, processes, and policies. Rather, it is modeled more like an agency with separate departments responsible for various functions. Specifically, as of November 2019:

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*The DBS management structure reflects significant recent turnover, a high percentage of unfilled positions and interim appointments, and a lack of unified command. Although the current management is working hard to rectify these problems, the City should adopt a sweeping reorganization and staff right-sizing.*

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- 28% of the organization had been impacted by turnover.
- Of 6 mid-management positions at DBS; 2 were vacant, 1 was filled on an interim basis and 3 were filled permanently. Management vacancies still exist for the Permit Counter (the main point of contact with the public) and the Planning unit (which is filled on an interim basis).
- Of 36 total positions in DBS, 10 were vacant, serving as interim status, or on leave. There have been some new hires since April 2019.
- The DBS structure is characterized by siloes and the apparent chief executive of DBS, who leads Community Development and Economic Development, does not have direct managerial control over certain parts of the organization. The Public Works staff (that review private infrastructure development permits) and the Fire Prevention staff (that review fire building permit applications) report to outside entities: the Public Works Department, and the South Snohomish County Fire and Rescue Regional Fire Authority, respectively. Thus, there is no unity of command within DBS. Proposals for bringing the private development review function of Public Works under the control of DBS are being discussed. However, the Interlocal Agreement between the City and the Fire Authority memorializes this dis-unity of command for fire prevention services.
- All DBS staff except for 1 are engaged in line activities (i.e., involved directly with core DBS functions). There are only two management or admin support positions and one of those was on leave until recently. The other admin support position reports to the Fire Authority.
- Until recently, technical specialties in the planning unit reflected a suburban built environment rather than an urban built environment (e.g., high densities, multi-modal transportation, more complex design and construction techniques that are typically associated with transit oriented development or TOD).
- Staff resources are primarily focused on plan review and inspection; with limited resources provided to planning, policy, economic development, and business support services.

- The structure features narrow spans of control (ratio of subordinates to manager) throughout DBS except at the Permit Center where it is 1:5; elsewhere it is 1:4 or less.
- There is currently no structure or staffing at DBS that analyzes the financial, budgetary or management operations or permit systems of the agency and assists top management. Consequently, these crucial tasks are done inconsistently.

**What are the Current Staffing Levels at DBS?**

Current staffing levels for all departments that comprise DBS were established in the City’s 2019-2020 Adopted Biennial Budget at 36 funded positions, no change from 2018. No empirically or data-based staffing model was in use for determining optimal staff levels based on workloads, performance or policy goals. The use of overtime is minimal within DBS although, as mentioned before, several funded positions have been vacant for quite some time. As an example of the amount of turnover experienced within DBS, 20 different people (not positions) worked on permit review and inspection functions (including Public Works and Fire Authority) during the 2019 calendar year, however, as of February 2020, only 13 of those remain with DBS.

Strategica developed a workload and staffing forecast model that looked at historical workloads, how staff spend their time, and forecasted population growth to determine optimal staffing levels. In the future, as a new permitting system is configured and put into production, there should be sufficient performance data (specifically permit and inspection turnaround times) to refine this model to accurately forecast staffing needs in DBS in the future.

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*The proposed structure for DBS eliminates siloes, focuses accountability for strategic goals, consolidates managerial control over all DBS functions and critical processes, adds technical and managerial support positions and adds skill sets that will be necessary to address future development trends in Lynnwood.*

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**Recommendation IV.1** – Implement a new organizational structure that will have the following features:

- Unity of command for all DBS functions (including those handled by Public Works and the Fire Authority),

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- Pinpoint accurate accountability for the strategic goals embedded in the recommended strategic plan,
- Reasonable spans of control
- Elimination of the hard siloes that currently exist in DBS,
- Sufficient staffing of the right type and expertise to guide the community planning (i.e., long term) efforts of the City,
- Sufficient admin support for line staff and management,
- Unified, seamless, consolidated and close-up oversight of the key work processes at DBS (e.g., application intake to Certificate of Occupancy and everything that happens in-between),
- Sufficient staffing to address planning, policy, economic development, and business development services.
- Permanent appointments for the current management positions filled on an interim basis,
- A strengthened and expanded code enforcement function, and
- Two positions dedicated to management, financial and budget analysis and permit system applications support for DBS.

This recommended structure is shown in **Appendix C**. Specific implementing actions include:

- 1) Create new positions and hire for:
  - a) Planning Technician (needs new classification as well)
  - b) Management analyst
  - c) Applications Analyst

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- d) Deputy Director, Permitting Services (designate this person as Building Official)
  - e) Two Combo Plans Reviewer/Inspector
  - f) Two admin assistant or Sr. Finance Spec positions
  - g) One Business Development Manager
- 2) Reclassify/Rename positions:
- a) Rename Building Official to Deputy Director, Permitting Services
  - b) Rename Planning Manager to Community Planning Manager
  - c) Rename Economic Development Director to Economic Development Manager
  - d) Reclassify one existing permit tech position as an Administrative Assistant
- 3) Fill currently budgeted positions for:
- a) Permit Counter Supervisor
  - b) Senior Planner (w/ 50% Transportation Focus)
  - c) One code enforcement officer
- 4) Eliminate positions:
- a) Existing vacant Assistant Building Official (funding used for new Deputy Director, Permitting Services)
  - b) Existing contract inspector (use funds for a permanent position)
- 5) Transfer supervisory responsibility to the Deputy Director, Permitting Services:
- a) Private development public works (renamed Development Engineering). This should be facilitated by executing an Inter-Departmental Agreement between Public Works and

DBS. The Public Works Director has prepared a draft agreement that serves as a good model.

- b) Fire Marshall permitting staff. This should be facilitated by amending the existing Interlocal Agreement, Exhibit A, Section I.A so that the Director of DBS as delegated by the City will “Direct the management and supervision of personnel performing the Services” provided by the Fire Authority.
- c) Explore co-locating DBS with other city departments to achieve organizational adjacencies and efficiencies.

**Recommendation IV.2** – Based on the strategic and policy needs of the City and DBS and the results obtained from the Workload and Staffing Forecasting Model, right size the staffing level of DBS by creating and filling a net of 7 new positions within DBS as follows:

- 1) Create positions and hire for:
  - a) Planning Technician (needs new classification as well)
  - b) Management analyst
  - c) Applications Analyst
  - d) Deputy Director, Permitting Services (option to designate this person the Building Official)
  - e) Two Combo Plans Reviewer/Inspector
  - f) Two admin assistant or Senior Finance Spec positions
  - g) Business Development Manager
- 2) Eliminate two existing positions:

- a) Existing vacant Assistant Building Official (funding used for new Deputy Director, Permitting Services)
- b) Existing contract inspector (use funds for a permanent position)

**Recommendation IV.3** – Analyze the staffing needs of DBS in the future using the Workload and Staffing Forecasting tool developed by Strategica. This model (an Excel-based tool) was provided to DBS staff in March 2020. The model should be updated annually with the population growth projections for the City.

The model calculates workloads and staffing requirements for the permit review and inspection and permit counter areas based on those population projections. In future years, time-based performance data from the new permitting system should be analyzed to calculate permitting turnaround times (based on the recommended performance measures from this report). The Workload and Staffing model can be modified so that the difference between current and targeted turnaround times can be programmed into the model and staffing needs can be calculated to close the gap (if any) between those current and targeted performance levels. The City may need to contract with a consultant to re-program the model for those purposes.

Staffing needs for planning, policy, economic development, and business development are not easily measured by a data-driven workload and staffing forecast tool. These functions serve to attain outcomes and benchmarks that achieve the community vision and strategic goals. The regular assessment of outcomes and benchmarks related to the community vision and strategic goals will track progress and serve to determine the resources required.

## V. What should be the future permit software system of DBS?

This chapter covers the permit process systems of DBS. The permit process system is the backbone of the organization that should track all activity and transactions from over-the-counter permits to long range community planning products that are implemented over years. In addition, this chapter discusses key peripheral applications. Topics covered include:

- Status of the current system and what to do about it
- Secure, On-line Public Portal
- Automated Review Routing and Electronic Plan Review
- Mobile Field Inspection Applications
- Digital Document Storage
- Geographic Information Systems (GIS)
- Network Infrastructure

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*The existing enterprise permitting system, the EnerGov system, was originally installed 11 years ago and has never been fully implemented and has been misused over the years by under-trained staff. The City should either re-install EnerGov from scratch or install a different software product through an open procurement process.*

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### What is the Status of the Current Enterprise Permitting System Used at DBS?

The City has been using the EnerGov permit management system from Tyler Technologies for eleven years. EnerGov was originally installed to replace Accela PERMITS Plus, a legacy system that was no longer supported by the vendor. EnerGov is a server-based product hosted at the City Hall data center and managed by the City's Information Technology Department.

The EnerGov installation does not serve the needs of DBS. The following reasons lead to this conclusion:

- Staff who implemented EnerGov are no longer with the City and much of the background rationale and information about configuration decisions and design have been lost through staff changes over the years.

- Some application types were never implemented (such as Development Agreements); and others have not been fully configured. For example, the workflow feature, a crucial element of a functional permitting system, has never been fully configured or put into production mode. For practical purposes, the EnerGov system is mostly functioning as a card file and word processor to generate and archive permits.
- Some design elements retained from PERMITS Plus impose extra work on DBS staff. For example, Building Permits must be entered as an EnerGov “plan” application type, after which separate “permit” cases (e.g., a building permit) are created for issuance and inspection. This situation is complex, confusing, and inefficient.
- Training on EnerGov for DBS staff has been inconsistent and incomplete, especially for new hires.
- City IT provides one staff person to support EnerGov via a system of support tickets submitted to IT to request changes and address issues with the software. DBS staff report that response times from City IT on many issues is slow and the backlog of tickets is approximately 300 items. A ticket list this extensive is more typical of a system in the first year or two of implementation, not a mature installation.
- DBS staff and IT efforts to reconfigure and improve EnerGov were hobbled a year ago, when a key DBS staffer left temporarily on extended leave.
- There is a deep lack of trust of EnerGov among DBS staff, given the lack of training, periodic software crashes, slow performance, gaps in functionality, and backlog of support issues.
- Historical data is severely corrupted due to null records, forced transactions, and general misuse of the system.

**Recommendation V.1** - The City should scrap the existing EnerGov permitting process system configuration and either rebuild the EnerGov system (including permit, license, land use application and code enforcement configuration as a new installation to incorporate more complete and efficient processes needed by DBS in today’s business

environment), **OR** the City should replace the existing EnerGov system with a new permit system that can provide the required functionality. The choice to rebuild or replace should be based on evaluation of proposals and demos from vendors under Request For Proposal (RFP) 3178, currently in procurement. The design of application types, workflow processes, fees, forms, and other system configuration elements should follow the structured requirements outline in **Appendix E**. The City should retain change management or configuration services familiar with the selected software to install and configure the software to match the structured requirements shown in **Appendix E**, and to train DBS staff on proper use of the software. The DBS application support position will assist in this process and the on-going use of the system.

Peripheral applications that should support the permitting process system are discussed below.

### Secure, On-line Public Portal

A permit system that provides a secure, on-line, public portal, available 24/7 will provide customers with access for submitting applications, checking status, paying fees, uploading and downloading documents, printing permit forms, scheduling inspections, and other tasks. An effective, self-service portal also substantially reduces staff time needed to process applications, compared to interacting with customers at the permit counter on many applications.

EnerGov includes a Customer Self-Service (CSS) on-line portal capability and can be configured to accommodate any permit, license or plan application. The City has configured and made available on CSS several simple application types that don't require plan submittal and review. Recently, however, the ability to submit applications via this portal was suspended on CSS because:

- Applicants became confused and chose the wrong application type at the start, requiring DBS staff to manually back out erroneous applications and refund fees.

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- Applicants sometimes created duplicate contact records for contractors, electricians, plumbers, and other licensed trades people who were already in the system, again requiring DBS staff to manually clean up contact records.

CSS continues to allow customers to check application status, pay fees, and schedule inspections.

**Recommendation V.2** - The future enterprise permitting system should include a secure, on-line public portal that allows customers to perform all required tasks associated with the entire lifetime of an application, from beginning of an application through final approval, as described in RFP 3178 and as shown in scripts for vendor demos (see **Appendix D**). Particularly important for achieving the City's goal of going paperless, is the ability to upload/download digital plans and other documents for projects of any size, via the portal, instead of submitting paper plans and documents. Accommodations should also be made for "mom and pop" applicants, who have no ability to create digital plans. This may be achieved by providing a PC kiosk at DBS and scanning small paper plans for a nominal fee.

### Automated Review Routing and Electronic Plan Review

Virtually all applications for permits, business licenses, and land use approvals, plus certain code enforcement cases, require routing plans, drawings or other submitted documents to one or more departments within the city, and occasionally to outside agencies, such as Snohomish PUD, Alderwood Water, and the Snohomish County Health Department. The only exception is certain minor "over-the-counter" permits (e.g., certain plumbing permits) that don't require plan submittal.

EnerGov supports automating the routing of plans and documents to reviewing personnel (a concept known as workflow) but it has been only partially implemented. As a result, most staff continue to use their own tracking spreadsheets, paper logs sheets, and clipboards to track which reviews are required, who has signed off, and when a permit is ready to issue. These paper logs, clipboards and spreadsheets defeat a key purpose of using a permitting process system, which is to expedite the flow of documents, facilitate faster turnaround times, and keeping applications from falling through the cracks.

After tracking reviews with external spreadsheets, Microsoft Word documents, and paper logs, DBS staff update the application status after the fact in EnerGov. These workarounds slow the issuance process, consume large amounts of staff time shuffling paper in a sequential review process, and result in a highly siloed environment separating departments. More efficient parallel (i.e., simultaneous) review of plans by multiple departments is rendered impossible because paper plans are available to only one reviewer at any given time.

DBS recently installed Bluebeam, an electronic plan review application that allows reviewers to examine and mark up plans and drawings without resorting to paper documents. EnerGov supports interaction with Bluebeam electronic plan review software, but only a few reviewers perform reviews in Bluebeam. Such digital plans are received as email attachments and manually loaded as documents into EnerGov. Most plan review is still done on paper plan sets. This process is inefficient and does not take full advantage of electronic permitting capabilities. While a few DBS staff are proficient in using Bluebeam from previous jobs, most staff have received little or no training in Bluebeam.

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*The most important feature in any future enterprise permitting system is a workflow function that expedites and tracks the processing of permit applications, planning cases, business licenses and some code enforcement cases.*

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**Recommendation V.3** – Ensure that the future permitting process system supports automated notification, review routing, and electronic plan review as required in RFP 3178 and demonstrated per the scripts for vendor demos (see **Appendix D**). The system should be configured to include standard automated routings and plan review steps (Workflow) that allow

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multiple departments and reviewers to simultaneously review and mark up plans and other digital documents submitted through the portal. The system should allow:

- adding and deleting routing steps as needed to handle unusual review situations.
- automated consolidation of markups, comments, corrections, and notes into a single correction or comment letter or memo to be sent electronically via the portal to contacts associated with the application.
- each reviewer to apply and “burn in” digital approval stamps and other notations to appropriate pages in the electronic plans and documents.
- applicants to download marked-up and approved versions of digital plans and documents through the portal.
- applicants to upload requested corrected plans and other submittals at the correct stage of the review process.
- insertion and/or replacement of single PDF plan pages into multipage plan sets.

DBS staff need to be thoroughly trained in working with automated review routing and whichever electronic plan review software is selected.

### **Mobile Field Inspection Applications**

Providing connected software for inspectors to do their work in the field is essential to the success of the future permitting process system. The City currently uses EnerGov IG Connect field inspection software on Apple iPads. Inspection requests from applicants and contractors are made on the CSS portal or in the main EnerGov program, after which they are assigned and downloaded each day to each inspector’s iPad. Inspectors can pull up a given inspection request, note corrections, approve or fail an inspection, capture digital signatures of the inspector and recipient of the inspection, and send an automated email with inspection results to the contractor and other contacts in minutes from the field.

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This reduces the amount of office work an inspector must do at the end of the day and customers appreciate getting inspection results quickly.

Some inspectors have had the following issues with IG Connect:

- At locations with poor or no cell service, inspectors cannot complete inspections. When cell service is available, previously unrecorded results may not be updated correctly in the main database.
- Contractors often request additional inspections while meeting with an inspector at the job site, but inspectors cannot add new inspections in the field, on top of those previously scheduled for the day.

**Recommendation V.4** – Ensure that the mobile field inspection component of the future enterprise permitting system replicates capabilities used by DBS inspectors today and include capabilities as required in RFP 3178 and demonstrated per the scripts for vendor demos (see **Appendix D**). In particular, the future system should include two important capabilities to remedy issues with the existing system:

- Ability to work reliably and update accurately in areas with poor or no cell service, by automatically storing results and updating the back-end database when a cell connection is available.
- Ability to add new inspections while out in the field.

### Digital Document Storage

DBS staff create, access, file, and store thousands of pages of plans, specs, reports, memos, and other documents while processing applications and permits. Most large-format plan drawings are still handled in paper form during the review process, with plan storage on shelves and in bins or file cabinets. After finalizing a permit, one set of approved plans is boxed with other plans and sent to

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records management at City Hall for scanning, indexing, and archiving on the Application Xtender document management system. Reports, memos, spreadsheets, and other small-format Microsoft Office documents created during application processing are stored by individuals who have to remember to manually upload files to department network share drives and/or local hard drives.

This fragmented storage of both large- and small-format documents requires additional staff time to handle paper, risks loss of key documents stored in department network share drives, and risks losing track of documents stored on local hard drives.

Archiving only a portion of a file's documents on Application Xtender requires the additional cost and time to scan paper and could make potentially important documents unavailable in the future.

**Recommendation V.5** – The future permitting process should support cloud-based document storage capabilities associated with all permit and application types as required in RFP 3178 and demonstrated per the scripts for vendor demos (see **Appendix D**). The future system should facilitate easy saving of all large- and small-format documents from within an application workflow, instead of saving to a network shared or local hard drives. This will encourage saving critical documents in this centralized location. Records Management may choose to selectively download certain digital documents to Application Xtender for public records requests **OR** members of the public conducting record searches for permit information could access permit information directly from the future enterprise permitting system via the on-line portal or other portal user interface.

### **Geographic Information Systems (GIS)**

Considerable GIS technology and data layers are potentially available to DBS staff, through extensive existing ESRI licenses of both ArcGIS Pro desktop and ArcGIS Online. Details are included in **Appendix E**. Planning staff are the primary users of GIS data and use GIS to review locations associated with Planning

applications, produce vicinity maps, and generate lists for mailing labels for public notices. Despite the wealth of available GIS software and data, DBS staff utilization of GIS is extremely low. It has been hampered for months by periodic crashes loading ArcGIS Pro on HP laptops recently acquired for Planning staff. Recent investigations suggest a time-out problem with a legacy ArcSDE server and not the laptops themselves. GIS is supported by only one individual in IT.

**Recommendation V.6** – The future permitting process system should support GIS capabilities associated with all permit, license, and application types and code enforcement as required in RFP 3178 and demonstrated per the scripts for vendor demos (see **Appendix D**). These capabilities should include:

- generating mailing labels, hearing notice postcards, and lists of properties within a certain radius of a land use application.
- Creating ad hoc polygon boundaries of multiple parcels (and fragments of parcels) associated with complex projects. This would allow identifying permits, land-use applications and their requirements related to complex project boundaries by clicking and drilling down from a map.
- Providing public access to up-to-date GIS data in a “What’s in my Neighborhood?” portal page.

### Network Infrastructure

The City's network infrastructure is vital for any future permitting process system to function in a fast, reliable manner. This network infrastructure currently includes:

- One gigabit/sec (GB) fiber connects all buildings across the city.
- Each workstation is equipped with a 1GB network interface card; each network closet has a new Cisco Meraki GB switch.

- Wave Communications currently provides a 1GB internet connection with a secondary internet connection through Frontier Communications at City Hall. IT is transitioning that Frontier service to a second discreet WAVE internet service, allowing a transition to the backup internet without changing external IP addresses. That project is scheduled to be completed by late spring.
- A single Cisco model 4150 core network switch at City Hall has become a bottleneck for network traffic with the addition of additional security and traffic cameras, VOIP traffic, and other hardware requiring substantial bandwidth. This has resulted in complaints from DBS staff about slow network response using EnerGov and dropped calls on the agency phone system.
- Two new Cisco model 9500 core switches with substantially increased capacity are scheduled for installation when the hardware arrives from the manufacturer (in China).
- The change from the internally-hosted EnerGov system to a potential cloud-based system will increase demands for bandwidth, especially for electronic plan documents retrieved from cloud-based storage.

**Recommendation V.7** – The City’s IT Department should constantly monitor network traffic and bandwidth demand from the new permitting process system, set automatic notifications to IT staff when issues occur, and quickly make repairs and adjustments at the core switches and other hardware to maintain bandwidth for DBS. In the event that a cloud-based permitting system is chosen, network performance recommendations from the software vendor should be provided and maintained for all DBS users

## **VI. How should work processes be improved?**

This chapter discusses the key work processes of DBS and ways to make these processes more efficient, reduce turnaround times, achieve better outcomes and realize the strategic goals of DBS that address work processes. The chapter covers these processes:

- End-to-end permit intake, routing, review, inspection and finalizing
- Paperless Parallel Processing with Electronic Plan Review
- Field Inspection Hardware/Software
- Development Agreements
- Land-Use Application Processing
- Long-Range Planning
- Business Licensing
- Code enforcement for derelict houses
- Code enforcement for junk vehicles
- Rental unit registration and inspection

### **End-to-end Integration of Permit intake, routing, review, inspection and finalizing**

DBS should provide for “life-cycle” review of permit applications from initial intake, through application review, final approvals, and archiving. End-to-end processing integration should encompass everything from customers being able to submit any type of application using a self-service on-line portal, through automated routing to staff who need to review, comment, and approve, to public hearings where required, to issuance of the permit or approval back to the applicant via the portal, to scheduling and managing inspections and final approvals in the field. Integration should also document projects approvals that arise through development agreements and impact fee requirements. Such integration should help to remedy the currently siloed, sequential series of largely manual workflows in DBS, supplemented by manually updated spreadsheets, Word documents, and

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*The most critical process is the processing of building permits given the volume of permits and fees involved. New processes should be implemented, facilitated by a new permitting system that feature parallel reviews, workflow technology, and using digital plans and drawings, and automated tools for inspections.*

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paper log sheets, with the permit system serving as little more than an electronic “card file” system to record a few key dates and actions after the fact.

Partial, incomplete efforts have been made to achieve end-to-end integration in EnerGov, using the EnerGov Customer Self-Service (CSS) public portal for application submittal on the front end and IG Connect field inspections at the end of the process. Application submittal using CSS has been postponed due to applicant confusion in choosing the correct application type and creation of duplicate contact records. IG Connect functions moderately well, except when cell service is poor or non-existent.

**Recommendation VI.1** – In considering an RFP for a future permitting process system, the City should look for the best end-to-end integration suite of tools offered by a vendor. Where a vendor’s solution incorporates some third-party products and services (such as electronic plan review, report writers, GIS, field inspection software, cashiering, etc.) that link with a vendor’s main system, seamless integration is particularly important. One example to consider is how well a third-party electronic plan review application integrates with a) the on-line portal to send and receive digital drawing files, b) automated creation and sending of correction notices, and c) storage of digital documents related to the permit or land-use application.

### **Paperless Parallel Processing with Electronic Plan Review**

In order to speed up reviews, all types of permits, licenses, and applications that require reviews by multiple agencies and staff should be reviewed in parallel, allowing multiple reviewers to perform their review tasks simultaneously. However, the current process features each reviewer looking at paper plans and drawings before handing them on to the next reviewer. Using paper makes it impossible to achieve parallel reviews which are much quicker and efficient. Instead of marking up paper, modern electronic plan review software allows all staff to access the same set of digital plans and other documents to add digital markups, corrections, notes, and stamps. A modern system should also expedite issuance of correction letters and incorporating updated plans and drawings.

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In addition to building permits, all planning and land-use applications should use this technology to review digital plans, consultant reports, staff reports, hearing decisions, and other documents. Furthermore, it is imperative that all DBS staff in Building, Planning, FMO, Public Works, Business Licensing, Economic Development, and Code Enforcement have thorough training to become as proficient in the use of the electronic plan review software as they are with Microsoft Word and email.

**Recommendation VI.2** – Make sure that the following key functionality is integrated with the future permitting process system, to facilitate parallel, paperless processing:

1. Self-service on-line portal to allow applications to be filed along with managing the submittal of digital plans and documents
2. Automated routing for staff review to keep the review process moving
3. Electronic plan review app to allow simultaneous review and mark-up of digital plans
4. Markups and corrections noted on the digital plans should automatically flow into correction letters that are automatically emailed to the applicant
5. The system should send an automated correction letter to the applicant and allow the applicant to retrieve the marked-up plans through the on-line portal. The applicant should resubmit, via the portal, only the pages from the plan set that have been corrected, and the system should facilitate inserting the corrected pages into the full plan set for the next round of plan review. The system should automatically assign a version number to plans used in each round of plan review

### **Field Inspection Hardware/Software**

Virtually all types of permits, licenses, land-use applications, and code enforcement require field inspections to verify compliance with codes and conditions of approval as a project is built out or violations are resolved. Inspections prescribed by approval of a permit or land-use application are

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typically requested by contractors and applicants using the on-line public portal. Ad hoc inspections may be performed at any time by staff to check on-going compliance.

Speedy posting of complete, accurate inspection results immediately from the field benefits contractors by alerting them to required corrections and allowing work to move ahead quickly when each stage of inspection is approved. Inspectors also benefit by completing each inspection at the job site, with little or no follow-up or paperwork to be done at the end of the day.

**Recommendation VI.3** – Acquire, install and implement a field inspection application and associated hardware that is compatible with the future permitting process system. Field inspection hardware should be compatible with the Cisco Meraki Mobile Device Management (MDM) standard adopted by IT. The field inspection software should accommodate a range of inspection tasks across the six main groups of the DBS organization: Building, Fire Marshal, Public Works, Planning applications, Business Licensing, and Code Enforcement. The system should be able to schedule prescribed inspections for Building, Fire, Planning and Public Works, plus ad hoc inspections not requested by the applicant for all groups.

### **Development Agreements**

DBS Economic Development staff pursue policies and projects that address the vision and strategic goals of the community. Development Agreements are negotiated agreements between the City and a developer to clarify both the scope and timing of new development and to provide a consolidated approval framework for large projects. No fees are collected by the City, under the assumption that increased tax revenue from the development will more than offset the lost permit revenue.

Development Agreements (DAs) are currently done manually, on paper and with Microsoft Word and Excel, with no data entered in EnerGov and no system workflow to assist processing. The final negotiated Development Agreement is recorded on the subject property with the Snohomish County

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Auditor's Office. This memorializes the agreed-upon duties and responsibilities of both parties and is intended to transfer the requirements to new owners in the event the property is sold.

DAs may interact with other land-use approvals over wide areas of the project for years or decades to come. It is imperative that they be tracked in the future permitting system so their provisions may be easily accessed during future application review. Staff do not consistently monitor long-term compliance with the provisions of individual Development Agreements but should do so in the future using timed reminders programmed in the permitting system.

Development Agreements often span multiple parcels and encompass multiple street addresses; they should be mapped in GIS so staff can locate and drill down into the provisions from a map, even if addresses and parcel boundaries change in the future.

**Recommendation VI.4** – Tracking Development Agreements would enable identification and tracking of outcomes achieved. The following should be included as an application type in the future permit processing system:

1. Include automated workflow with electronic plan review to speed up review and approval,
2. Include links to GIS (linked to polygonal geographical project extents) to map the potentially complex assemblage of parcels and addresses encompassed by the DA,
3. Incorporate on-line document storage to allow present and future staff full access to all documents (including the final recorded agreement) to track requirements and compliance during the lifetime of the DA, and
4. Include the ability to set alerts for site visits, conditions of approval with specific follow-up dates, and periodic inspections scheduled in the future system.

### Land-Use Application Processing

Requirements for processing land-use applications, holding hearings, and issuing decisions are governed by the Lynnwood Municipal Code (LMC). The LMC sets forth six decision-making processes (note that the LMC no longer defines a “Process V” so that number is skipped in the following text):

- Process I – Public Hearing and decision by Hearing Examiner
- Process II – Administrative decisions appealed to the Hearing Examiner
- Process III – Administrative permits review process
- Process IV – Decision by City Council after Review by Planning Commission
- Process VI – Appeals of administrative decisions to the Hearing Examiner
- Process VII – Appeals of decisions by the Hearing Examiner to City Council

Noticing, hearing, and decision requirements in the LMC are slightly different from one decision-making process to another, complicating staff work in processing applications. For example, the hearing notice for a Process I (Hearing Examiner) application must be sent at least 20 days prior to the hearing, but the Notice of Impending Decision for a Process III (administrative) application must be sent only 14 days before. Process I notices must be mailed to property owners within 300 feet, but Process III notices must be sent to 300-foot radius property owners and to occupants/tenants of multiple-tenant buildings and mobile home parks within the same radius as well.

Planning staff have identified potential changes to the LMC to create more common procedural requirements, while still preserving the existing tiers of review (Administrative, Hearing Examiner, Planning Commission, and City Council).

LMC 1.35.080 provides for process consolidation of two or more applications, where the applications would follow different processes if done separately. For example, a Short Plat is normally a Process III admin decision, but if a Variance is required (Process I – Hearing Examiner), the combined application would be heard by the Hearing Examiner.

Efficiencies should be identified and implemented to improve the process for applicants and the community.

**Recommendation VI.5** - Retain a code consultant to work with Planning staff on potential changes to the LMC. Strategica also recommends that the implementation of the future permitting system not be held up waiting for LMC code changes to be made. In our experience, code changes sometimes take much longer than originally anticipated and most modern permit software systems have configuration tools that allow changing workflow processes that may result from any likely code changes.

**Recommendation VI.6** – Configure the future permitting system so that application combinations are entered as separate applications, grouped as a “project” in the system, with the higher-process application designated as the primary application.

### Long-Range Planning

Planning functions in DBS include both “current planning” (review of land-use applications) and “long-range planning” (preparation and maintenance of area and neighborhood plans, critical areas, transportation planning, and other activities that are not site-specific). While most of the focus of the permit processing system is on applications handled in current planning, DBS should track long-range planning policies and projects in the permitting process system. Like permit applications, long-range planning policies and projects involve multiple reviewers, production of documents, scheduling of meetings and hearings, and occur within project boundaries (such as neighborhoods and critical areas) that can be delineated in GIS. Being able to view and drill down into a long-range planning projects on a map would enrich decision making and help avoid possible conflicts where future land-use applications and permits fall within that planning project boundary.

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*Often overshadowed by the rush to churn out building permits, effective long range planning can be the difference between just another anonymous suburb and a place with unique amenities and character. Long range planning products should be processed and tracked the same as building permits in the new enterprise permitting system.*

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**Recommendation VI.7** – Long-Range Planning should be included as an application type in the new system to provide staff with the same automated tools as they use for processing land-use applications and permits. Automated workflow should be used to track and schedule staff reviews, meetings, preparation of documents and reports for neighborhood, Planning Commission, and City Council hearings. The boundaries of the long-range planning project should be mapped in GIS, and all documents should be stored electronically for present and future staff to access. Because this would be an internal application type, no application would be available to the public on the on-line portal. This process would enable identification and tracking of outcomes achieved by adopted plans and policies.

### Business Licensing

Starting in November 2019, the State Legislature mandated that all Washington municipalities process business license applications, issuances, and renewals on the Business License System (BLS) developed and operated by the State Department of Revenue (DOR). This mandate has provided some efficiencies for the customer and the licensing process. However, there are aspects of the licensing system that should be improved or that resulted in additional work for DBS staff:

- Instead of routing regulatory business license reviews electronically to affected city departments, routing is done manually using a spreadsheet and email.
- DBS must monitor reports from the State BLS system for licensees that are paid late and send a letter or invoice to collect a late fee, as is presently done on 551 accounts as of 2/7/2020. The State does not collect such late fees for the City.
- DBS must manually send out Occupancy Fee letters and invoices to collect alcohol fees from full-service restaurants because they are not included in BLS.
- DBS manually monitors accounts on the State termination report (115 account terminations at present) to see if the businesses are actually terminated or still doing business in Lynnwood.

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- DBS must follow up on 3,726 accounts that the State shows as doing business in Lynnwood that have never filed for a City business license before.
- DBS must follow up on 380 accounts that have not renewed their business license through BLS.
- BLS customer service to businesses at times is not very helpful, referring calls back to the City.

The City has become the de-facto fee collection agency for the DOR because the State does not attempt to collect any overdue business license fees. If a business fails to renew on BLS, the State sends two reminder notices, but if the business fails to respond, the State simply closes the account and refers the account to the City for collection. Also, the City is responsible for collection of all other regulatory non-State-related fees for businesses such as garbage collection, establishments serving alcohol, and body scrub parlors. The City must follow up by verifying if the business is still open and send collection letters for overdue amounts.

After three months on the State program, it is apparent that revenues are down primarily because the State prorates City license renewal due dates to coincide with the business license fee due dates on the State licenses. This process does not coincide with how Lynnwood previously issued business licenses on an annual basis making it more difficult to forecast and budget City fee revenue.

Lynnwood is evaluating other cities to learn from their experience and identify best practices. For example, Kirkland has seen a revenue loss after the first three months due to proration and sending of collection letters. They also have the same equivalent license volume administered. However, Kirkland has 1.5 staff FTEs for business license administration which is 0.5 FTE greater than Lynnwood. Kirkland's collection ordinance also allows them to go back and collect delinquent fees for three prior years plus penalties and one year forward. This process has resulted in over one million dollars of additional collections. Lynnwood could collect close to \$500,000 if similar changes were implemented.

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There is currently no automated way to update Business Licensing records in EnerGov, based on changes in BLS. Without hand-keyed manual updates, data in EnerGov will become increasingly out of date and less reliable.

**Recommendation VI.8** To maintain up-to-date information on licensed businesses in Lynnwood, the City should pursue periodic data updates of license data from BLS and create methods to import BLS data into the future permitting process system.

**Recommendation VI.9** The City should implement changes to the LMC and department procedures to allow back billing for unpaid fees and penalties for up to three years back.

**Recommendation VI.10** Ensure that the future permitting system includes a business license module to register all businesses in the City of Lynnwood, independently of licensing under the State BLS. This would include downloading BLS data to keep the Lynnwood data up to date, automated routing for departments to review new applications, and billing capabilities for following up on unpaid renewals and additional fees for businesses such as garbage collection, establishments serving alcohol, and body scrub parlors.

**Recommendation VI.11** As reliable licensing volume data is available, DBS should budget for sufficient staff to handle manual processing tasks associated with business licensing tasks not handled by the State BLS.

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*The DBS code enforcement does a good job of achieving compliance for most cases but needs new procedural and legal tools for dealing with derelict houses and junk cars.*

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### Code Enforcement

The code enforcement unit within DBS is currently comprised of one staffed Code Enforcement Officer (CEO) position and one additional vacant CEO position. The unit closes approximately 500 cases per year although that number varies from year to year. The majority of cases are investigated, mitigated and closed within 180 days. As of February 2020, 8 cases (comprising 13 separate violations) had been open beyond 180 days. Of these 13 outstanding violations, 6 were for

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houses that were unsafe to occupy or junked vehicles on private property but visible from the street. The oldest case (a derelict house) has been on the books for more than three years. Despite the best efforts of the Code Enforcement unit, these cases linger due to uncooperative property owners or difficulties in finding responsible parties.

In some of the outstanding derelict house cases, the responsible property owners were recently deceased, and the heirs are difficult to track down or are not cooperative or competent. In some junk vehicle cases, it can also be difficult to track down registered vehicle owners to obtain cooperation in removing the vehicles or the property owners may not agree to remove the vehicle. Usually, these junk vehicles have some scrap value and once title is made available, it is relatively easy to have them towed away and sold. But if the vehicle is on private property and title is not available, it requires the cooperation of the property owner in the absence of a warrant.

Legal remedies are available to the City to mitigate these conditions; however, these remedies are difficult to undertake since they often require a warrant from Snohomish County Superior Court. Thus far, the Code Enforcement unit has not been able to obtain adequate legal support from the resources currently available. The current code enforcement process relies on informal persuasion and fines to motivate compliance, which is eventually effective in most cases. However, for the most egregious cases, more intensive methods, including legal discovery tools and litigation, are required.

If the City opts to improve the code enforcement process, further study will be needed to identify specific recommendations, which may include additional staffing to handle the informal persuasion code enforcement tactics while other staff are following up with more egregious violations and litigated cases.

In the same way that “life-cycle” permit processing integration can help expedite permits and land-use applications, Code Enforcement can benefit from such integration. This would involve the public using the on-line portal to enter complaints (anonymously or not); automated workflow among code

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enforcement officers, planners, inspectors, and other staff; creation of routine forms such as the Notice of Violation; tracking inspections and site visits; maintaining lists of property owners, tenants, complainants, property managers, etc.; and keeping an extemporaneous log of everything that's transpired with the violation, in the event that stronger civil and/or criminal actions must be taken.

### **Rental Unit Regulation**

The City should also address the fact that 43% of the housing stock in Lynnwood are rental properties (this includes apartments). Cities with such high proportions of rental units are adopting rental unit registry and inspection programs to maintain their housing stock and property values and ensure that rental units are maintained to code and incorporate life safety measures such as smoke and carbon monoxide detectors. Tenants are often hesitant to report code violations for fear of landlord retribution. A proactive registry and inspection program addresses this problem by making inspection mandatory rather than just based on complaints.

**Recommendation VI.12** – The City should hire and fill the existing vacant Code Enforcement Officer position and assign each officer geographically-based territories (e.g., South Lynnwood, North Lynnwood).

**Recommendation VI.13** The City should choose a software solution that supports Code Enforcement with the ability to receive complaints via the on-line portal, conduct automated workflow and creation of routine notices, enter inspection results and site visits in the field, and track all the parcels, addresses, and people involved with code enforcement cases.

**Recommendation VI.14** – Strengthen the process for mitigating derelict houses to include a stronger litigation component and a new cost recovery procedure under the authority of [RCW 35.80](#). This would include:

1. Retain contract legal services focused on code enforcement to initiate litigation on difficult derelict house cases to obtain abatement warrants through Snohomish County Superior Court to mitigate the blight (i.e., demolition).
2. Recover the abatement cost (typically demolition which can amount to \$50,000 or more) through a Special Assessment on the property to recover the costs through property tax collections, or a tax foreclosure and sale if necessary. [RCW 35.80.030 \(1\)\(h\)](#) provides that:

“...amount of the cost of such repairs, alterations or improvements; or vacating and closing; or removal or demolition by the board or officer, shall be assessed against the real property upon which such cost was incurred...”

And that

“...county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year...”

[RCW 35.80.030](#) also specifies the due process protections that may be afforded the property owner. If adopted into ordinance by the City, these protections will require the City to serve notice to all interested parties ([RCW 35.80.030 \(1\)\(c\)](#)) of the violation and an order to mitigate (up to and including demolition).



This unoccupied house on 200<sup>th</sup> St SW is literally collapsing, constitutes a blight and a safety hazard and needs to be demolished

3. Provide additional due process protection to property owners by utilizing the City’s contracted hearing examiner to hear appeals to abatement orders.

**Recommendation VI.15** – Expedite the process to remove junk vehicles that incorporates issuance of the initial infraction within 30 days of initial contact with the property owner. Second infractions should be issued after 60 days of initial contact if the vehicles have not been removed.

**Recommendation VI.16** – Implement a Rental Unit Registry (RUR) program in the City for purposes of encouraging preventive maintenance of rental units, protecting the interest of vulnerable tenants (e.g., low income, disabled) that may be resistant to lodging complaints with their landlords, and maintaining the housing stock and property values in the City. The RUR should be administered by the Code Enforcement Unit of Development and Business Services and should incorporate the following features:

- 1) **Scope of Program.** The program should apply to any housing unit available for long term rental. Exemptions may include short-term rental (Air BNBs), hotels & motels, government-owned or subsidized rental housing (Section 8), owner-occupied rental housing (e.g. owner lives in one-half of a duplex or the property owner rents out a room), and properties built within the past five years.
- 2) **Rental Unit Registration.** Registration should be renewed annually. A detailed process and fee study is warranted to ensure the fees are accurate and defensible.
- 3) **Registration requirements.** The registration should include contact info to identify the property owner and insurer. For property owners located out-of-state, the registration should require a Snohomish County contact that will accept legal notices and Notices of Violations. Registration should require a property owner to agree to expedited authority of the City to abate nuisances and blight with less due process (e.g., hearing officer appeal is final) and at owner’s expense, and that all outstanding code violations be cured before annual certificate is issued. The registration certificate should include an inspection guide listing

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*With 43% of the City’s housing stock rented out, the City needs to design and implement a program for ensuring that these housing units are safe, meet code and do not deviate or detract from community standards.*

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criteria used in quadrennial inspections. Finally, the Certificate cannot be transferable if the property is sold.

- 4) **Inspections.** Inspections should be required within a specific term, such as every four years, and accelerated to annually for rental units with violation history of 5 or more violations in any one calendar year. Inspections should be noticed beforehand to both the property owner and the tenant so a property owner has a chance to clean up potential problems.
- 5) **Inspections Fees.** The initial inspection should be free to encourage compliance. If violations are found that need to be corrected and re-inspected, fees could be charged.
- 6) **Initial Inspections.** At the RUR program inception, DBS should assign all registered units to four zones. Each zone should be inspected during one of the first four years. DBS could also phase it in by age of building – oldest units first, or properties with a history of code violations. An inspection and new registration should also be triggered by a change in ownership.
- 7) **Mitigation.** A property owner should be given specific timelines to correct both non-life threatening and life-threatening violations. A follow-up inspection should be scheduled based on the highest-scoring (most serious) violation (30 days if no life-threatening violations).
- 8) **Program staffing.** Rough estimates show that the program would require approximately 2,000 inspections per year. Assuming an inspector could handle 4 to 6 inspections per day, this would require 1.5 to 2 inspector FTEs. An additional FTE may be required to handle the administrative tasks of registrations, accounting, processing violations, etc. for a total FTE count of 2.5 to 3. The exact number of positions should be determined once program specifications are finalized.

***Appendix A – Adopted 2020-22 DBS Strategic Plan***

## **Process Review and Improvement Project**

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### **Goal 1 – Create a positive service culture for applicants**

#### **Tactics**

- a. Hire and retain people with a customer service mentality
- b. Simplify (or communicate simply) our processes so applicants can understand them
- c. Provide customer service training for DBS staff
- d. Provide recognition and rewards for good customer service
- e. Shorten turnaround times (while still meeting our regulatory responsibilities)
- f. Define and track customer service metrics

### **Goal 2 – Build systems, processes and codes to work smarter and more efficient**

#### **Tactics**

- a. Implement a new user-friendly, DBS-wide permitting system that facilitates accurate data, 24/7 access and workflow data sharing
  1. Align work processes with the capabilities and functions of the new system
  2. Streamline permit types and supporting processes
  3. Obtain continuous training in the software functionality for DBS staff
- b. Streamline and untangle our codes and regulations
  1. Eliminate duplicative sections and resolve conflicts
  2. Modernize regulations to address projected development patterns
  3. Make it easy for applicants and businesses to access and understand
  4. Streamline the zoning code

### **Goal 3 – Develop staff expertise and a culture to address Lynnwood’s future growth**

#### **Tactics**

- a. Identify the expertise, qualifications and skills we need
- b. Determine how many staff we need and hire up to that level

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- c. Create an organizational structure that promotes accountability for results and fosters a cohesive, positive culture
- d. Train our people in customer service and technical expertise for their success
- e. Update and/or create new job descriptions that match DBS needs
- f. Provide staff the flexibility to work with applicants to identify solutions and solve problems
- g. Track performance to ensure accountability to our mission and strategy

### **Goal 4 – Enhance quality of life through implementing the Lynnwood Comprehensive Plan**

#### **Tactics**

- a. Track implementation of the current Comprehensive Plan
- b. Gear up for the 2023 update of the Comprehensive Plan and make it simpler and more accessible
- c. Develop plans through meaningful public engagement
- d. Implement fair and equitable code enforcement
  - 1. Build a system allowing us to expeditiously process the tougher cases

### **Goal 5 – Attract businesses and development partners to succeed in Lynnwood**

#### **Tactics**

- a. Explore and adopt programs to promote new business formation and expansion
- b. Partner with the Lynnwood Chamber and other business organizations for economic vitality
- c. Change public perception on how friendly it is to do business in Lynnwood
- d. Promote tourism, visitor spending and hotel stays
- e. Prioritize and facilitate development of projects for community benefit
  - 1. Quantify and communicate the benefit to the community

***Appendix B – Recommended Performance Measures***

## Performance Measures

Org Unit/Measure	data source	calculation method	Trigger event	Terminal event	reporting frequency	responsible party	Purpose or strategy link
<b>Permit Counter</b>							
1 Average calendar days between final inspection and closeout	energov or replacement	subtract julian date of final inspection from closeout date for all permits closed out during month. Calc mean of all elapsed times	final inspection logged	permit closed out	monthly	permit counter supervisor	shorten turnaround times
2 Average calendar days between plan submittal and completeness check	energov or replacement	subtract julian date of submittal from completeness check for all plans deemed complete during month. Calc mean of all elapsed times	plans submitted	completeness check	monthly	permit counter supervisor	shorten turnaround times
3 Average call hold time	ACD	Calc mean of all hold times on incoming calls during the day	incoming call	call answered	daily	permit counter supervisor	positive service culture
4 Average time to respond to emails	?	subtract julian date of email received from date of response for all email responses during month. Calc mean of all elapsed times	email received	email answered	daily	permit counter supervisor	positive service culture
<b>Code Enforcement</b>							
5 Average calendar days, complaint to initial inspection	energov or replacement	subtract julian date of complaint received from initial inspection date for all complaints received during month. Calc mean of all elapsed times	complaint logged	initial inspection logged	monthly	Building Official	expeditious processing of code enforce cases
6 Average calendar days, Initial inspection to forced compliance	energov or replacement	subtract julian date of initial inspection from closure date for all forced cases closed during month. Calc mean of all elapsed times	initial inspection logged	forced compliance case closed	monthly	Building Official	expeditious processing of code enforce cases
7 Average calendar days, Initial inspection to voluntary compliance	energov or replacement	subtract julian date of initial inspection from closure date for all voluntarily resolved cases closed during month. Calc mean of all elapsed times	initial inspection logged	voluntary compliance case closed	monthly	Building Official	expeditious processing of code enforce cases
8 Percentage of cases resolved through forced compliance	energov or replacement	# of forced compliance cases closed during month divided by all informal+voluntary+forced cases closed during the month	N/A	forced compliance case closed	monthly	Building Official	fair & equitable code enforcement
9 Percentage of cases resolved through voluntary compliance	energov or replacement	# of voluntary compliance cases closed during month divided by all informal+voluntary+forced cases closed during the month	N/A	voluntary compliance case closed	monthly	Building Official	fair & equitable code enforcement
10 Percentage of cases resolved through informal measures (door hangars, etc.)	energov or replacement	# of informally resolved compliance cases closed during month divided by all informal+voluntary+forced cases closed during the month	N/A	informally resolved case closed	monthly	Building Official	fair & equitable code enforcement
11 # of cases unresolved longer than 365 days	energov or replacement	subtract julian date of initial complaint or observation from current date. Sum # of cases where elapsed time is greater than 365	initial inspection logged	N/A	monthly	Building Official	expeditious processing of code enforce cases

Org Unit/Measure	data source	calculation method	Trigger event	Terminal event	reporting frequency	responsible party	Purpose or strategy link
<b>Plan Review &amp; Inspection (building/public works/fire)</b>							
12 Average # of calendar days from plan submittal to completion of all reviews by Department (building, public works, FMO)	energov or replacement	subtract julian date of plan submittal from date of last finished review for the cycle for all applications where all reviews are complete during month. Calc mean of all elapsed times	plans submitted & logged into system	last review completed per cycle	monthly	Building Official/ PW supervisor/ Fire Marshal	shorten turnaround times (while meeting regulatory reqts)
13 Average # of calendar days per review (review assigned to correction letter/pass) by Department (building, public works, FMO)	energov or replacement	subtract julian date of plan submittal from date of each finished review for all applications where at least one review was completed during month. Calc mean of all elapsed times	review assigned	each review completed	monthly	Building Official/ PW supervisor/ Fire Marshal	shorten turnaround times (while meeting regulatory reqts)
14 Development: Average calendar days from request to inspection: Commercial (by Department (building, public works, FMO))	energov or replacement	subtract julian date of inspection request from date of inspection for all completed commercial inspections during month. Calc mean of all elapsed times	inspection request received	inspection results logged in	monthly	Building Official/ PW supervisor/ Fire Marshal	shorten turnaround times (while meeting regulatory reqts)
15 Development: Average calendar days from request to inspection: Residential (by Department (building, public works, FMO))	energov or replacement	subtract julian date of inspection request from date of inspection for all completed residential inspections during month. Calc mean of all elapsed times	inspection request received	inspection results logged in	monthly	Building Official/ PW supervisor/ Fire Marshal	shorten turnaround times (while meeting regulatory reqts)
16 # of plan review cycles by Department (building, public works, FMO)	energov or replacement	sum the number of review cycles for each application sorted by reviewing department	review assigned	review completed	monthly	Building Official/ PW supervisor/ Fire Marshal	shorten turnaround times (while meeting regulatory reqts)

Org Unit/Measure	data source	calculation method	Trigger event	Terminal event	reporting frequency	responsible party	Purpose or strategy link
<b>Planning</b>							
17 Average # of calendar days to issue notice of complete application or request for additional information	energov or replacement	subtract julian date of application received from date of notice of complete application/request for additional info issued for all applications where a notice was issued during month. Calc mean of all elapsed times	Application received	Notice of complete application request for add'l info issued	quarterly	Planning Manager	RCW 36.70B.070
18 Average # of calendar days to post public notices	energov or replacement	subtract julian date of notice of complete application from date of public notice posting for all applications where a public notice was posted during month. Calc mean of all elapsed times	Notice of Complete Application issued	Public notice posted	quarterly	Planning Manager	shorten turnaround times (while meeting regulatory reqts)
19 Average # of calendar days to send first round of comments to applicant	energov or replacement	subtract julian date of public notice posted from date comment letter was sent to applicant for all applications where comments were received. Calc mean of all elapsed times.	Public notice posted	Comments sent	quarterly	Planning Manager	shorten turnaround times (while meeting regulatory reqts)
20 Average # of calendar days to issue notice of decision	energov or replacement	subtract julian date of conclusion of testimony or notice of impending decision from date of notice of decision issued for all applications where a notice was issued during month. Calc mean of all elapsed times	conclusion of testimony (hearing examiner) or notice of impending decision (admin cases)	Notice issued	quarterly	Planning Manager	RCW 36.70B.080
21 Average # of round of comments sent to applicant	energov or replacement	Divide total number of rounds of comments by the number of applications receiving comments	decision made		quarterly	Planning Manager	statistical

Org Unit/Measure	data source	calculation method	Trigger event	Terminal event	reporting frequency	responsible party	Purpose or strategy link
<b>Business licensing</b>							
22 Average # of calendar days between application and submittal of approval to WA DOR	State system	subtract julian date of license application from date approved application submitted to DOR for all licenses submitted to DOR during month. Calc mean of all elapsed times	Application received	Approved application logged into DOR system	monthly	Building Official	shorten turnaround times (while meeting regulatory reqts)
23 Average # of calendar days between regulatory license application and approval	energov or replacement	subtract julian date of regulatory license application from date approved for all licenses approved during a selected time period. Calc mean of all elapsed times	Application received	Approved license	As needed	Building Official	shorten turnaround times (while meeting regulatory reqts)
<b>Economic Development</b>							
24 applicant satisfaction index	survey monkey tool	% of applicants expressing target level of overall satisfaction	N/A	N/A	semi-annual	Econ Dev Director	positive service culture

### Input/Output Measures

<b>DBS Input/Output Measures - Proposed</b>			
<b>Org Unit/Measure</b>	<b>data source</b>	<b>reporting frequency</b>	<b>responsible party</b>
<b>Permit Counter</b>			
1 # of plan submittals by permit type	energov or replacemnt	monthly	permit counter supervisor
2 # of counter visits	TBD	daily	permit counter supervisor
3 # of phone call	ACD	daily	permit counter supervisor
<b>Code Enforcement</b>			
4 # of complaints	energov or replacemnt	monthly	Building Official
5 # of inspections	energov or replacemnt	monthly	Building Official
6 # of cases closed	energov or replacemnt	monthly	Building Official
<b>Plan Review &amp; Inspection (building/public works/fire)</b>			
7 # of plans reviewed by permit type	energov or replacemnt	monthly	Building Official
8 # of reviews by permit type	energov or replacemnt	monthly	Building Official
9 # of inspections by permit type	energov or replacemnt	monthly	building Official
10 # of permits issued by type	energov or replacemnt	monthly	building Official
11 # of review hours by permit type	energov or replacemnt	monthly	building Official

<b>DBS Input/Output Measures - Proposed</b>			
<b>Org Unit/Measure</b>	<b>data source</b>	<b>reporting frequency</b>	<b>responsible party</b>
<b>Planning</b>			
12 # of projects that use planned action ordinance	TBD	Annual	Planning Manager
13 # of formal partnership contacts (e.g., ST, AHA, HART, Edmonds School District)	TBD	Annual	Planning Manager
14 Amount/types of public outreach for projects	TBD	Annual	Planning Manager
15 # of public notices issued	energov or replacemnt	quarterly	Planning Manager
16 # of notices of decision issued	energov or replacemnt	quarterly	Planning Manager
17 # of complete applications received (RCW 36.70B.080)	energov or replacemnt	quarterly	Planning Manager
18 # of of complete applications received during the year for which a notice of final decision was issued before the deadline established	energov or replacemnt	quarterly	Planning Manager
19 # of applications received during the year for which a notice of final decision was issued after the deadline	energov or replacemnt	quarterly	Planning Manager
20 # of applications received during the year for which an extension of time was mutually agreed upon by the applicant and the city	energov or replacemnt	quarterly	Planning Manager
21 # of notices of decision issued	energov or replacemnt	quarterly	Planning Manager
<b>Business licensing</b>			
22 # of license applications received	State system	monthly	Building Official

### Planning Outcome Measures

Org Unit/Measure	reporting frequency	responsible party	Purpose or strategy link
<b>Planning Outcome Measures</b>			
1 # of subsections of code changes proposed to Council that promote development and allow for greater flexibility	Annual	Planning Manager	remove unnecessary development obstacles and allow greater innovation in design and construction
2 % of City area overlaid by new or improved design guidelines	Annual	Planning Manager	Encourage design for all development within the City that promotes a sense of place
3 # of City road miles overlaid by streetscape standards	Annual	Planning Manager	Encourage design for all development within the City that promotes a sense of place
4 % of City area overlaid by new or improved sub-Area plans	Annual	Planning Manager	Encourage design for all development within the City that promotes a sense of place
5 # of subsidized and # of market-rate units approved	Annual	Planning Manager	Encourage the development of affordable housing for all income levels
6 % of eligible development utilizing MFTE	Annual	Planning Manager	?
7 % of population and employment growth specified by the Countywide Planning Policies occurring within designated Lynnwood Regional Growth Center and Highway 99	Annual	Planning Manager	?

**Economic Development Outcome Measures and Benchmarks**

Org Unit/Measure	reporting frequency	responsible party	Purpose or strategy link
<b>Economic Development/Tourism Outcome Measures</b>			
1 Marketing impressions per dollar	Annual	ED Manager	Promote tourism, visitor spending and hotel stays
2 valuation of construction and public infrastructure in City Center	Annual	City Center Manager	Track City Center development goals
3 Tourism	Annual	ED Manager	Track tourism metrics
4 Development agreements	Annual	ED Manager	Track DA requirements
5 Policy Implementation	Annual	ED Manager	Track policy/plan achievements

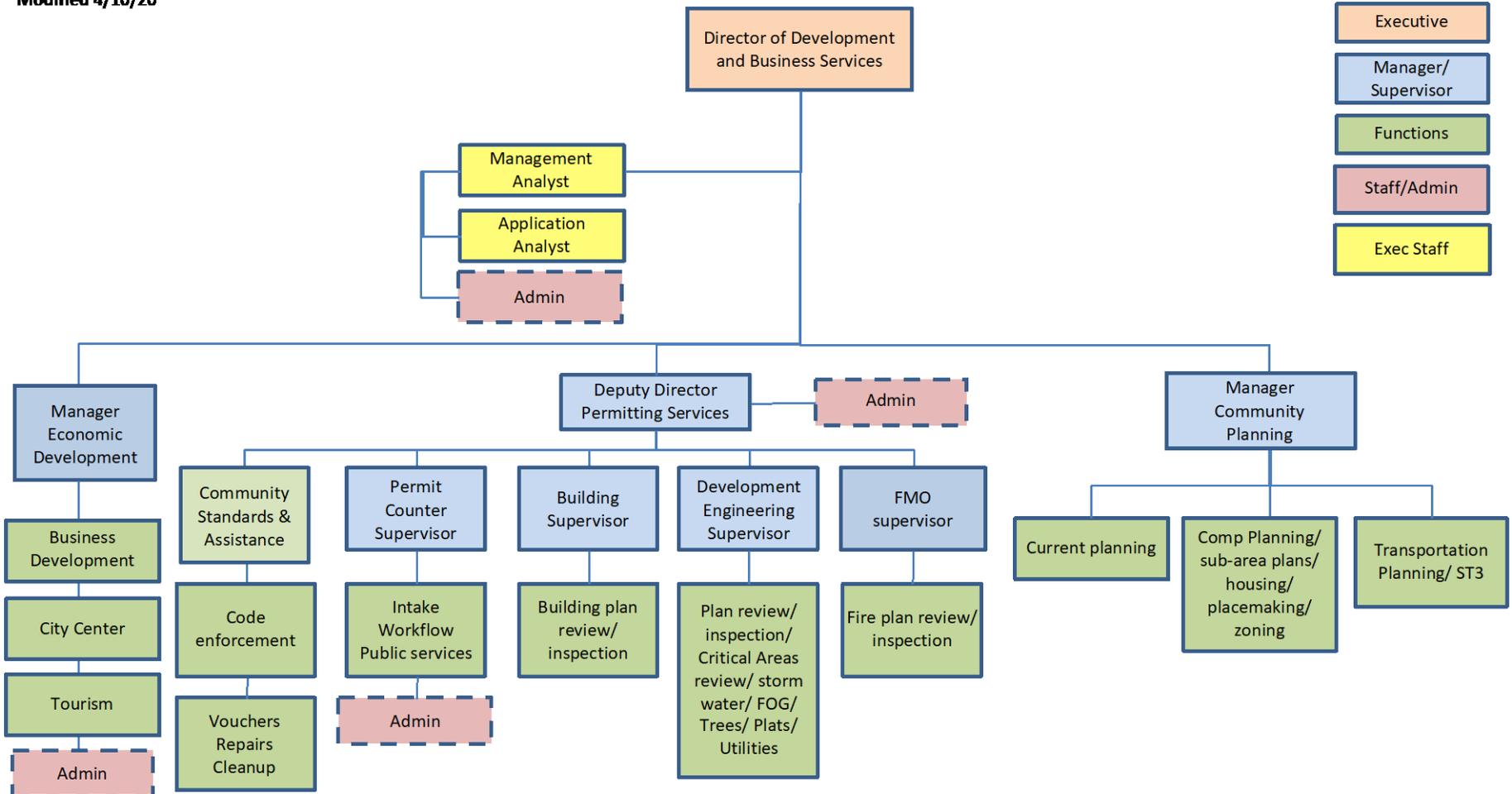
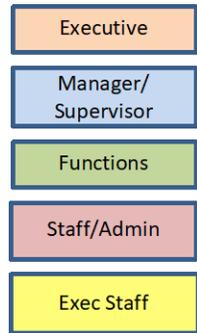
***Appendix C – Recommended DBS Organizational Structure***

## Recommended DBS Organizational Structure – Functional Chart

Lynnwood DBS  
 Proposed functional structure  
 Created 2/3/20  
 Modified 4/10/20

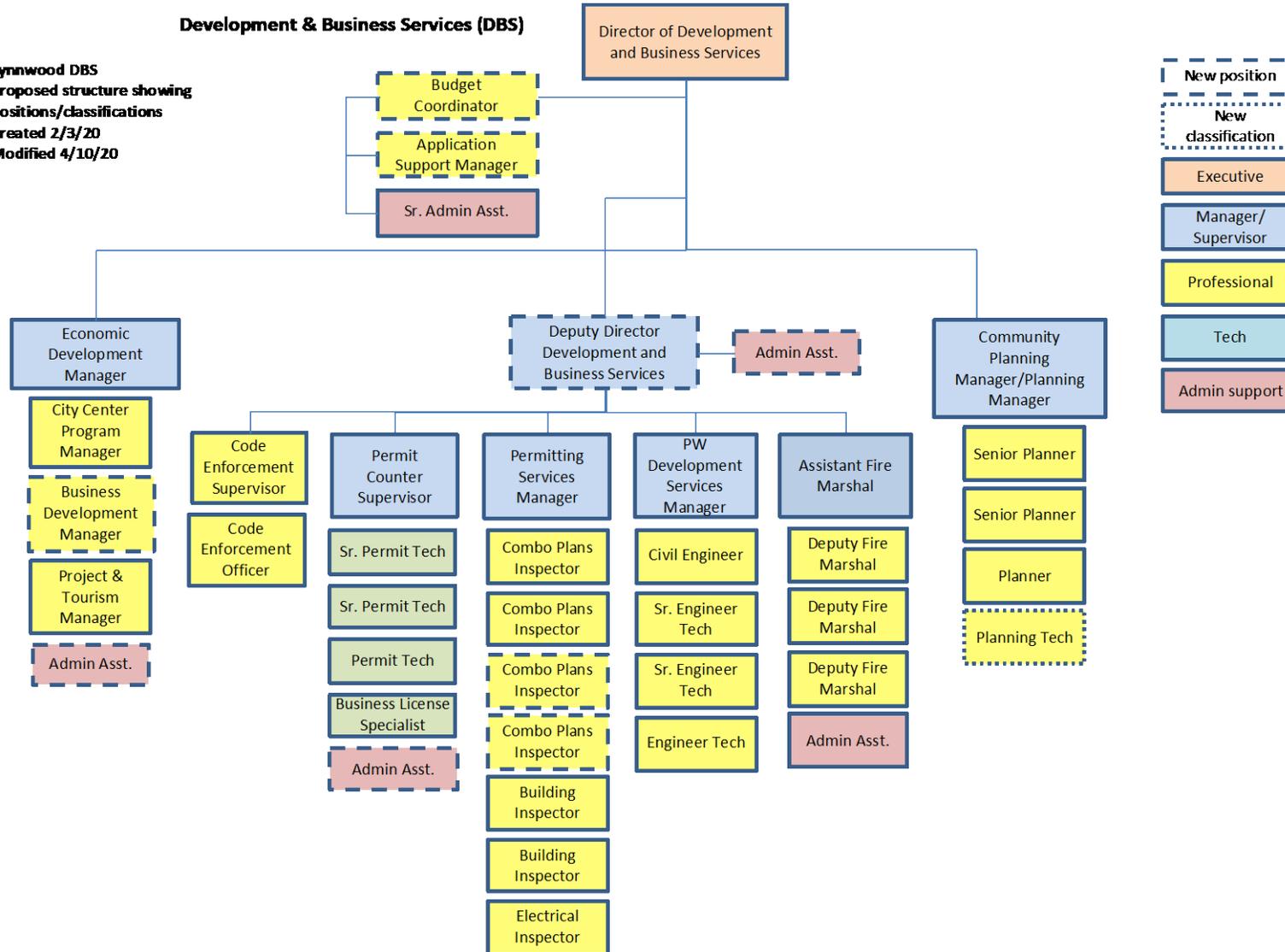
### Development and Business Services

Position boxes are shown as representations only and not as the actual number of positions.



## Recommended DBS Organizational Structure – Position Chart

Lynnwood DBS  
 Proposed structure showing  
 positions/classifications  
 Created 2/3/20  
 Modified 4/10/20



**Legend:**

- New position (dashed border)
- New classification (dotted border)
- Executive (orange)
- Manager/Supervisor (blue)
- Professional (yellow)
- Tech (light blue)
- Admin support (pink)

**CITY COUNCIL ITEM F**

**CITY OF LYNNWOOD  
City Council**

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**TITLE:** Mayor Comments and Questions

**DEPARTMENT CONTACT:** Nicola Smith, Mayor

**DOCUMENT ATTACHMENTS**

**Description:**

**Type:**

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No Attachments Available

**CITY COUNCIL ITEM G**

**CITY OF LYNNWOOD  
City Council**

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**TITLE:** Council President and Council Comments

**DEPARTMENT CONTACT:** Christine Frizzell, Council President

**DOCUMENT ATTACHMENTS**

**Description:**

**Type:**

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No Attachments Available

**CITY COUNCIL ITEM H**

**CITY OF LYNNWOOD  
Executive**

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**TITLE:** Executive Session, If Needed

**DEPARTMENT CONTACT:** Leah Jensen

**DOCUMENT ATTACHMENTS**

**Description:**

**Type:**

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No Attachments Available

## **CITY COUNCIL ITEM M-2**

### **CITY OF LYNNWOOD Public Works**

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**TITLE: Contract: Consultant Engineering Services: Facility Plan for Lynnwood Wastewater Treatment Plant**

**DEPARTMENT CONTACT: Jared Bond, Operations and Maintenance Manager**

#### **SUMMARY:**

The Wastewater Treatment Plant (WWTP) is an aged facility that must continue to operate amidst a rapidly growing city, and an ever-changing regulatory environment. This project will develop a facility plan that will provide the City with a comprehensive approach for the future of the WWTP over the next 20 to 30 years. This plan will begin with significant stakeholder engagement, and will evaluate liquid stream processing, solids handling, nutrient removal, disinfection, as well as physical layout and staffing. One major outcome will be how our facility can accommodate all projected growth including the city center. As such, this is an extensive contract with numerous components involving many disciplines. In addition, work produced in this study will provide the baseline for numerous other studies over the next several years including the next Sewer Comprehensive Plan. This is a significant amount of effort which is reflected in the price of the study.

#### **ACTION:**

Authorize the Mayor to enter into, and execute on behalf of the City an Engineering Services contract with RH2 for preparing the Lynnwood Wastewater Treatment Plant Facility Plan, in an amount not to exceed \$713,100.00 with an additional \$25,000.00 contingency for a total amount of \$738,100.00.

#### **BACKGROUND:**

The City of Lynnwood's (City) Wastewater Treatment Plant (WWTP) is a highly complex facility that performs many functions simultaneously. This study will look across the broad spectrum of those functions and do a deep dive into processes, current state, deficiencies, and proposed solutions. This Facility Plan Study will actually be a synthesis of several separate but related studies that in and of themselves will require significant time and effort to complete.

The City of Lynnwood's (City) wastewater treatment plant (WWTP) provides liquid stream treatment with a conventional activated sludge process and on-site solids handling. The solids handling processes include blending of primary sludge with waste activated sludge, dewatering with a screw press, and burning of the dewatered sludge in an incinerator. In the past few years, issues with the reliability of the incineration process and its ancillary sub processes have resulted in significant downtime and problems for the City. The City also has faced uncertainty with the changing air quality regulations for incinerators. The City has requested an evaluation of available solids handling processes, including both on-site and off-site options, and comparison to the incineration process for selection of a preferred alternative. The City understands the solids handling processes are closely interrelated to the liquid stream treatment process; therefore, the liquid stream treatment also needs to be considered in the evaluation. In addition, the Washington State Department of Ecology (Ecology) has been modeling and studying the impacts of nitrogen in the effluent of treatment plants that discharge into the Puget Sound. With the Salish Sea initial modeling now complete, Ecology is moving forward with a General Permit to regulate the amount of nitrogen species being discharged by the approximately 70 treatment plants that discharge into the Puget Sound, which includes the City's WWTP.

Initiating a planning process to perform a comprehensive evaluation of both liquid stream treatment process and the associated impacts on the solid treatment process is a necessity. This effort will culminate in a thorough understanding of the current system and its ability to perform over the next 20 years.

This facility plan, in order to be successful, has to achieve several criteria:

- Provide reliable performance and reduce downtime and resulting air/water quality violations.
- Accommodate future growth in load to the plant.
- Eliminate waste/recycle streams impact on the liquid stream process.
- Accommodate the site limitations – space available for the process, access difficulties for large vehicles, location in a residential neighborhood and a natural ravine.
- Allow for additional plant modifications on the liquid stream side to incorporate additional nutrient removal

To achieve these goals, an experienced team of consultants need to work together and perform the following tasks:

- Start with an evaluation of the current and proposed 20-year flow and load projections.
- Evaluate the current capacity of the overall solids handling system, incineration system, and its subsystems.
- Evaluate the upgrades that are required to meet the 20-year planning horizon and perform financial analysis.
- Evaluate the air quality treatment systems and anticipated regulatory framework that the incinerator will likely need to meet over the next 20 years.

Among all tasks, the following have the highest impact on the outcome of this effort:

1- Site investigations and evaluation of existing facilities and processes

This task will require significant multi-discipline site investigations to evaluate the performance, processes, equipment and analysis of associated historical data. Tens of hours of data collection and review will be required to identify age deficiencies and assess regulatory criteria capabilities of the WWTP.

2- Liquid stream alternative processes

Perform alternatives analysis for major CIP projects that address the performance, capacity, reliability, redundancy, and regulatory criteria deficiencies of the existing liquid stream processes. The environmental considerations and known impacts to the public, including odor, noise and other parameters will require tens of hours of interlocal stakeholder involvements and efforts. Identifying permitting requirements and analyze effects to the existing WWTP hydraulic profile caused by any of the proposed improvements is another important component of this task.

3- Solids handling alternative processes

Performing a detailed evaluation of the option to keep and upgrade the incineration process and ancillary solids handling processes. Evaluate CIPs required to increase capacity and replace or repair systems for a 20-year operating life cycle for the incineration system. Evaluate standby systems and costs for when the incinerator is down for service or unexpected shutdowns.

The structures for the buildings are exhibiting substantial deterioration, and this document will guide repairs, replacements, or process driven building changes.

The City has decided to move forward with the evaluations as part of a larger effort to prepare a Facility Plan for the WWTP and has selected RH2 to perform the work. Washington Administrative Code (WAC) 173-240-060 establishes the requirements for Engineering Reports for domestic wastewater treatment facilities. These documents further reference the US Environmental Protection Agency’s (EPA) Guidance for Preparing a Facility Plan, EPA-430/9-76-015 and federal rule 40 CFR 35.2030, which identify additional requirements for facility plans. Additionally, the Ecology Criteria for Sewage Works Design (Orange Book) summarizes the requirements for both Engineering Reports and Facility Plans. The additional requirements for a facility plan allow for the projects identified in the plan to be available for federal funding through the EPA.

**FUNDING:**

Utility Fund 412. The funds for this contract were included in the recent Rate Study and Analysis that set our Utility Rates for the 2020-2025 period.

**KEY FEATURES AND VISION ALIGNMENT:**

The Lynnwood Community Vision states that the City is to be a welcoming city that builds a healthy and sustainable environment.

The WWTP Facility Plan project supports that vision and results in an important improvement to the City’s infrastructure that links City of Lynnwood programs, policies, comprehensive plans, mission and ultimately the Community Vision. The project will also result in a group of Capital Improvement Projects (CIPs) that will enhance functionality and efficiency of City’s Wastewater Treatment Plant and prepare the City with the ability to handle population growth for the next 20 to 30 years.

**DOCUMENT ATTACHMENTS**

<b>Description:</b>	<b>Type:</b>
No Attachments Available	

## CITY COUNCIL ITEM M-2

### CITY OF LYNNWOOD Public Works

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**TITLE:** Ordinance: Franchise Agreement with Level 3 for Operations of Communication Facilities

**DEPARTMENT CONTACT:** Les Rubstello

**SUMMARY:**

Level 3 Communications (same parent company as CenturyLink) is seeking a franchise agreement to deploy and operate communication transmission facilities (dark fiber) within the City.

**ACTION:**

Approve the attached Ordinance No. \_\_\_\_\_ granting a non-exclusive Franchise to Level 3 to deploy and operate communications facilities with the City rights of way.

**BACKGROUND:**

Level 3 Communications (owned by the same parent company as CenturyLink) approached the City of Lynnwood to secure a franchise agreement allowing them to deploy and operate facilities to support communication services (dark fiber) in our area.

We started negotiations with the City's standard telecommunications franchise that was written mutually with Public Works, the City Attorney, and the Purchasing Manager. The sections specific to wireless communications were deleted and minor changes were made to Use of Right of Way, Undergrounding, Relocation, Bonding, Permits and Auditing. The section of Termination, Revocation, and Forfeiture was rewritten at the franchisee's request. The main conditions for the City are that the franchisee must maintain their infrastructure in the roadway to not be a hazard, and that they must relocate for a City project at their cost, were maintained.

The franchisee will pay the one-time standard administrative fee of \$2500 for setting up the franchise. They also agree that their service falls under the City's definition of telephone services and agree to pay utility tax upon their operations.

**FUNDING:**

This agreement requires Level 3 to compensate the City \$2,500 for administrative costs of this franchise.

**ADMINISTRATION RECOMMENDATION:**

Approve the Ordinance.

**DOCUMENT ATTACHMENTS**

Description:	Type:
<a href="#">Level 3 Franchise</a>	Backup Material

CITY OF LYNNWOOD

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO LEVEL 3 COMMUNICATIONS, LLC TO INSTALL, OPERATE AND MAINTAIN TELECOMMUNICATIONS FACILITIES WITHIN THE CITY; PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Level 3 Communications, LLC, a Delaware limited liability company with its principal offices at 1028 Eldorado Blvd., Broomfield, CO 80021 ("Franchisee") has requested that the City Council grant it a non-exclusive telecommunications services franchise to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the City, consisting of telecommunication lines, conduit, fiber, cables, manholes, handholes, and all necessary appurtenances ("System");; and

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way; and

WHEREAS, pursuant to RCW 35A.47.040, the City is authorized to grant one or more non-exclusive franchises for use of public streets, roads, bridges, and other public rights-of-way, above and below the surface of the ground, for antennas, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, cut-off switches, electric meters, coaxial cables, fiber optic cables, telecom demarcation boxes and related materials, equipment, poles, conduits, tunnels, towers, structures, pipes, wires, and appurtenances and other facilities for the transmission and distribution of electrical energy, signals and other methods of communication; and

WHEREAS, the City has determined that it is in the best interests of the City and in the best interests of the health, safety, and welfare of the Lynnwood community and the general public to grant this non-exclusive Franchise to Franchisee; now therefore,

THE CITY COUNCIL OF THE CITY OF LYNNWOOD DO ORDAIN AS FOLLOWS:

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following words, terms and phrases shall have the meanings stated in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

1 **1.1** "Affiliate" means any corporate entity that Franchisee owns or controls, is  
2 owned or controlled by, or is under common ownership with Franchisee. Any entity in  
3 which Franchisee has ownership of 5% or more of the equity ownership, (either voting,  
4 control or value), or in which Franchisee has actual working control, in whatever manner  
5 exercised, will also be deemed an Affiliate. Both the entity owned or controlled, and the  
6 entity owning or controlling, shall be considered Affiliates of each other.

7 **1.2** "City" means the City of Lynnwood, Washington, and all the territory within its  
8 present and future boundaries and including any area over which the City exercises  
9 jurisdiction.

10 **1.3** "Communications Service" means any telecommunications services,  
11 telecommunications capacity, wireless telecommunications services, or dark fiber,  
12 provided by the Franchisee using its Facilities, either directly or by its Affiliates,  
13 including, but not limited to, the transmission of voice, data, or other electronic  
14 information, by wire, optical cable, radio frequency spectrum, or other similar means.  
15 For purposes of this subsection, "information" means knowledge or intelligence  
16 represented by writing, signs, signals, pictures, sounds, or any other symbols. For  
17 purposes of this Franchise, Communications Service excludes over-the-air transmission  
18 of broadcast television and broadcast radio signals. Further, Communications Services  
19 shall not include the provision of cable services or open video services as defined in the  
20 Communications Act of 1934, as amended, for which a separate franchise would be  
21 required.

22 **1.4** "Cost" means any actual, reasonable, and documented costs, fees, or expenses,  
23 including but not limited to attorneys' fees.

24 **1.5** "Facilities" means the Franchisee's telecommunications system constructed and  
25 operated within the City's Right-of-Ways, including all antennas, transmitters, receivers,  
26 equipment boxes, backup power supplies, power transfer switches, cut-off switches,  
27 electric meters, telecom demarcation boxes, poles, and related materials, equipment,  
28 coaxial cables, fiber optic cables, amplifiers, conductors, lines, wires, conduits, ducts,  
29 manholes, pedestals, and any associated converters, equipment or other appurtenances  
30 and facilities, for the purpose of providing Communications Services under this  
31 Franchise.

32 **1.6** "FCC" means the Federal Communications Commission, or any successor  
33 governmental agency.

34 **1.7** "Franchise" means the non-exclusive rights, privileges, and authority granted to  
35 Franchisee to use its Facilities in the City's Rights-of-Way pursuant to this Ordinance.

36 **1.8** "Person" means any individual, corporation, partnership, association, joint  
37 venture, or organization of any kind and the lawful trustee, successor, assignee,  
38 transferee, or personal representative thereof.

39 **1.9** "Right-of-Way" means the surface of, and any space above or below, any land  
40 previously or hereafter acquired by or dedicated to the public or the City for purposes in

1 whole or in part of pedestrian or vehicular travel, including but not limited to public  
2 streets, roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements, and  
3 similar public property located within the Service Area.

4 **1.10** "Service Area" means the present municipal boundaries of the City and shall  
5 include any future additions thereto by annexation or other legal means.

6 **SECTION 2. GRANT.**

7 **2.1 Grant of a Non-Exclusive Franchise.**

8 2.1.1 The City hereby grants to Franchisee the non-exclusive right, privilege, and  
9 authority to use and occupy the Rights-of-Way for the purpose of providing  
10 Communications Services, including without limitation the right to lawfully install,  
11 remove, construct, erect, operate, use, maintain, relocate, and repair Facilities in, along,  
12 under, and across the Rights-of-Way subject to the terms and conditions of this  
13 Ordinance. In order to provide any other services over the Facilities, the Franchisee  
14 shall be required to obtain any additional governmental authorizations required by law.

15 2.1.2 In exercising its rights under this Ordinance, Franchisee shall comply with  
16 all lawfully enacted City Codes, ordinances, standards, procedures, and regulations;  
17 provided that, in the event of conflict, the provisions of this Franchise shall control. The  
18 provisions of this Franchise are subject to the lawful exercise of the City's police powers  
19 upon reasonable notice to Franchisee. In accepting this Franchise, the Franchisee  
20 acknowledges that its rights hereunder are subject to the police power of the City to  
21 adopt and enforce, from time to time and in the manner it deems reasonable, general  
22 ordinances necessary for the safety, health, and welfare of the public. This Franchise  
23 shall not be interpreted to prevent the City from imposing additional lawful conditions,  
24 including lawful additional compensation conditions for use of the Rights-of-Way,  
25 should Franchisee provide service other than Communications Service. Franchisee  
26 agrees to comply with all applicable laws that are now or may in the future be enacted  
27 by the City pursuant to such police power.

28 2.1.3 The authority granted herein to Franchisee is a limited authorization to  
29 occupy and use the Rights-of-Way for providing Communications Services, and shall not  
30 include or be a substitute for:

31 a. Any other permit or authorization required for the privilege of  
32 transacting and carrying on a business within the City, including but not limited to a City  
33 business license; or

34 b. Any permit, agreement, authorization, or condition that may be  
35 required by the City for using the Right-of-Way in connection with operations on or in  
36 the Right-of-Way or public property, such as Right-of-Way Use Permits and approved  
37 traffic control plans.

38 2.1.4 This Franchise only conveys limited rights and interests as to those Rights-  
39 of-Way in which the City has an actual interest. It is not a warranty of title or interest,  
40 nor does it provide the Franchisee with any representation as to any location of a City

1 Right-of-Way or the nature of the City's interest in any Right-of-Way. No right to install  
2 any facility, infrastructure, wires, lines, cables, or other equipment, on any City property  
3 other than a Right-of-Way, or upon private property without the owner's consent, or  
4 upon any public or privately owned utility poles or conduits is granted herein.

5 2.1.5 Nothing in this Franchise is a bar to the imposition of any lawful condition  
6 with respect to the Franchisee's delivery of any services other than Communications  
7 Services, nor does this Franchise relieve the Franchisee from obtaining authorization  
8 from the City for providing any other such services.

9 2.1.6 This Franchise shall not be construed as to deprive the City of any rights or  
10 privileges which it now has or may hereafter have to regulate the use and control of the  
11 Rights-of-Way, and public property. Nothing in this Franchise shall limit nor expand  
12 either party's right of eminent domain under State law. If at any time the City exercises  
13 its authority to vacate all or any portion of any Right-of-Way, the City shall not be liable  
14 for any damages or loss to Franchisee by reason of such vacation. The City may, upon  
15 ninety (90) days' written notice to Franchisee, terminate this Franchise with respect to  
16 such vacated area.

17 2.1.7 The City specifically reserves the right to grant, at any time, such additional  
18 franchises for other similar systems to the Franchisee or to other persons or entities, as  
19 the City deems appropriate; provided, however, such additional grants shall not operate  
20 to materially modify, revoke, interfere with, or terminate any rights previously granted  
21 to Franchisee. The grant of any additional franchise shall not of itself be deemed to  
22 constitute a modification, revocation, or termination of rights previously granted to  
23 Franchisee.

24 2.1.8 This Franchise does not establish any priority for the use of the Rights-of-  
25 Way by Franchisee or by any present or future franchisees or other permit holders. In  
26 the event of any dispute as to the priority of use of the Rights-of-Way, the first priority  
27 shall be to the City in the performance of its various functions, the second priority shall  
28 be to the public generally, and thereafter, as between franchisees and other permit  
29 holders, as reasonably determined by the City in the exercise of its powers, including the  
30 police power and other powers reserved to and conferred on it by the State of  
31 Washington. Franchisee shall have priority as to positioning and location of its Facilities  
32 with respect to any of its authorized Facilities installed prior to construction and/or  
33 installation of any third-party facilities.

34 2.1.9 To the extent that any of the Rights-of-Way within the Franchise Area are a  
35 part of the State highway system ("State Highways") and are governed by the provisions  
36 of Chapter 47.24 RCW and applicable Washington State Department of Transportation  
37 regulations, Franchisee shall comply with said requirements in addition to local  
38 ordinances and other applicable regulations. Franchisee shall correct any noncompliant  
39 facilities identified by the City or by any other local, State or federal governmental  
40 entity.

41 **2.2 Term of Franchise.**

1 The term of this Franchise shall be for a period of ten (10) years from the date of  
2 acceptance as set forth in Section 8.6 (Acceptance), unless sooner terminated or  
3 revoked. This Franchise shall not renew unless and until the City and Franchisee reach  
4 agreement on a renewal and said agreement is approved by ordinance of the City  
5 Council. In the event that agreement is not reached, this Franchise shall terminate at  
6 the end of the then current term. Nothing in this Section prevents the parties from  
7 reaching agreement on renewal provisions earlier than the conclusion of any then  
8 current term.

9 **2.3 Non-Exclusive.**

10 This Franchise shall be non-exclusive, and subject to all prior rights, interests,  
11 easements, or licenses granted by the City or its predecessors to any Person to use any  
12 property, Right-of-Way, easement, right interest, or license. The City may at any time  
13 grant authorization to use the Right-of-Way for any purpose not incompatible with the  
14 Franchisee's authority under this Franchise and for such additional franchises as the City  
15 deems appropriate.

16 **2.4 Effect of Acceptance.**

17 By accepting this Franchise, the Franchisee acknowledges and accepts the City's legal  
18 right to issue and enforce the Franchise; accepts and agrees to comply with each and  
19 every provision of this Franchise to the extent it remains lawful; and agrees that the  
20 Franchise was granted pursuant to processes and procedures consistent with applicable  
21 law.

22 **SECTION 3. GENERAL RIGHT OF WAY USE AND CONSTRUCTION.**

23 **3.1 Use of Rights-of-Way.**

24 Franchisee shall not erect, install, construct, repair, replace, or maintain its Facilities in  
25 such a fashion as to inconvenience the public use of the City's Rights-of-Way or to  
26 adversely affect the public health, safety or welfare. If the City in its reasonable  
27 judgment determines that any portion of the Franchisee's Facilities inconveniences the  
28 public use of the Rights-of-Way or adversely affects the public health, safety or welfare,  
29 City shall provide notice to Franchisee. Following reasonable advance written notice of  
30 not less than sixty (60) days, Franchisee at its expense shall modify its Facilities or take  
31 such other actions as the City may determine are in the public interest and reasonably  
32 necessary to remove or alleviate the inconvenience or adverse affect, and Franchisee  
33 shall do so within the time period established by the City. Franchisee may, subject to  
34 the terms of this Franchise, erect, install, construct, repair, replace, reconstruct, and  
35 retain in, on, over, under, upon, across, and along the Rights-of-Way within the City  
36 such poles, antennas, transmitters, receivers, equipment boxes, backup power supplies,  
37 power transfer switches, cut-off switches, electric meters, telecom demarcation boxes  
38 and related materials, equipment, lines, coaxial cables, fiber optic cables, conductors,  
39 ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and  
40 other appurtenances and equipment as are necessary to the provision of its  
41 Communications Services.

1 **3.2 Construction or Alteration.**

2 Franchisee shall in all cases comply with all lawfully-enacted City laws, resolutions and  
3 regulations regarding the acquisition of permits and/or such other items as may be  
4 reasonably required in order to construct, alter, or maintain its Facilities and to provide  
5 Communications Services. All work authorized and required under this Franchise shall  
6 be accomplished in a safe, thorough, and workmanlike manner, or better. All  
7 installations of equipment shall be durable and installed in accordance with current  
8 engineering standards.

9 **3.3 Non-Interference.**

10 Franchisee shall exert commercially reasonable efforts to construct and maintain its  
11 Facilities so as not to interfere with other use of the Rights-of-Way. Franchisee shall,  
12 where possible, in the case of above ground lines or facilities, make use of existing poles  
13 and other facilities available to Franchisee.

14 **3.4 Consistency with Designated Use.**

15 Notwithstanding any other provision of this Franchise, no Right-of-Way shall be used by  
16 the Franchisee if the City determines that such use is inconsistent with the terms,  
17 conditions, or provisions by which such Right-of-Way was created or dedicated, or  
18 presently used under City, County, State or federal laws.

19 **3.5 Undergrounding.**

20 Franchisee shall place underground, at Franchisee's expense unless stated otherwise, all  
21 of its Facilities which are located or are to be located above or within the Rights-of-Way  
22 of the City only in the following cases:

23 (a) All other existing utilities are required to be placed underground pursuant to  
24 a public project; and

25 (b) When required by ordinances, resolutions, regulations, or policy of the City  
26 or applicable State or federal law.

27 Notwithstanding the foregoing, Franchisee shall not be required to place underground  
28 antennas, equipment cabinets, cabling and other equipment that must be above-ground  
29 to operate.

30 3.5.1 Whenever the City may require the undergrounding of aerial utilities as  
31 provided under this section, Franchisee shall underground its aerial Facilities (excluding  
32 antennas, equipment cabinets, cabling and other equipment that must be above-ground  
33 to operate) in the manner specified by the City, concurrently with and in the area of the  
34 other affected utilities. The location of any such relocated and underground Facilities  
35 shall be approved by the City, following consultation with the Franchisee. Where other  
36 utilities are present and involved in the undergrounding project, Franchisee shall only be  
37 required to pay its fair share of the common costs borne by all utilities, in addition to  
38 the costs specifically attributable to the undergrounding of Franchisee's Facilities.  
39 "Common costs" shall include necessary costs not specifically attributable to the

1 undergrounding of any particular facility, such as costs for common trenching and utility  
2 vaults. "Fair share" shall be determined for a project on the basis of the number and  
3 size of all other utility facilities being undergrounded.

4 3.5.2 If an ordinance is passed creating a local improvement district which  
5 involves placing underground utilities including Franchisee's Facilities which are  
6 currently located overhead, Franchisee shall participate in such underground project  
7 and shall remove any Franchisee-owned poles, cables, overhead wires and other  
8 facilities (excluding antennas, equipment cabinets, cabling and other equipment that  
9 must be above-ground to operate) within such district if requested to do so and place  
10 such facilities underground. If such undergrounding of Franchisee's Facilities is part of  
11 such a project, Franchisee shall not be responsible for the costs, and the costs thereof  
12 shall be included in such local improvement district.

13 3.5.3 In those areas and portions of the City where the transmission or  
14 distribution facilities of the utility(ies) providing telephone service and the utility(ies)  
15 providing electric service are underground or hereafter are placed underground, then  
16 the Franchisee shall likewise construct, operate, and maintain all of its transmission and  
17 distribution facilities (excluding antennas, equipment cabinets, cabling and other  
18 equipment that must be above-ground to operate) underground. Amplifiers and  
19 connectors in Franchisee's transmission and distribution lines may be in appropriate  
20 enclosures upon or above the surface of the ground in locations approved by the  
21 City. Upon sufficient notice, work shall be done at the same time as other facilities that  
22 are placed underground and all work shall be done consistent with City regulations and  
23 to minimize impact on streets and neighborhoods.

24 3.5.4 Franchisee shall use conduit or its functional equivalent to the greatest  
25 extent possible for undergrounding. Cable and conduit shall be utilized which meets the  
26 highest industry standards for performance and resistance to interference or damage  
27 from environmental factors. Franchisee shall use and construct, in conjunction and  
28 coordination with other utility companies or providers, common trenches for  
29 underground construction wherever available and possible.

### 30 **3.6 Construction in Right-of-Way.**

31 In cases where the Franchisee's facilities will not be placed underground, the Franchisee  
32 shall utilize existing poles wherever possible. In cases where Franchisee's Facilities will  
33 be placed underground, whenever it is possible and reasonably and financially  
34 practicable to joint trench or share bores and cuts, Franchisee shall work with other  
35 providers (such as telecommunications, cable, gas, electric utilities, or the City),  
36 licensees, permittees, and franchisees to reduce as far as possible the number of Right-  
37 of-Way disturbances.

### 38 **3.7 Maintenance and Restoration.**

39 3.7.1 Restoration. In case of disturbance of any Right-of-Way or public  
40 improvement by Franchisee, Franchisee shall, at its own cost and expense and in  
41 accordance with the requirements of the City, restore such Right-of-Way or public

1 improvement to substantially the same condition as existed before the work involving  
2 such disturbance took place, less ordinary wear and tear, as reasonably determined by  
3 the City and in accordance with any applicable City public works construction standards.  
4 This includes vegetation that is damaged by or removed during the Right-of-Way  
5 disturbance. All requirements of this Section pertaining to public property shall also  
6 apply to the restoration of private easements and other private property, but only to  
7 the extent such restoration is related to work in the Right-of-Way. Franchisee shall  
8 perform all restoration work promptly. If Franchisee fails, neglects, or refuses to make  
9 restorations as required under this Section, then the City may (but is not required to) do  
10 such work or cause it to be done, and Franchisee shall pay the cost thereof to the City  
11 within 60 days of the City providing an itemized list of the costs and expenses incurred  
12 in performing such work. If Franchisee causes any damage to private property in the  
13 process of restoring facilities related to work in the Right-of-Way, Franchisee shall repair  
14 such damage, ordinary wear and tear excepted. Franchisee shall warrant any  
15 restoration work performed under this Franchise, including the maintenance of any  
16 landscaping or vegetation installed as part of the restoration work, for a period of two  
17 years.

18 3.7.2 Maintenance. Franchisee shall maintain all above ground improvements  
19 that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid  
20 interference with the City's ability to maintain the Right-of-Way, Franchisee shall  
21 provide a clear zone of five feet on all sides of such improvements. If Franchisee fails to  
22 comply with this provision, and by its failure, property is damaged, then Franchisee shall  
23 be responsible for all damages to the extent caused thereby, including restoration.

24 3.7.3 Disputes. In any dispute over the adequacy of restoration or maintenance  
25 under this Section, the City's Public Works Department shall have the authority, in the  
26 exercise of its reasonable discretion, to determine the adequacy of the restoration or  
27 maintenance.

### 28 **3.8 Relocation.**

29 3.8.1 City Property. If during the term of the Franchise the City determines  
30 that it is necessary for purposes of public welfare, health, or safety, to alter, repair,  
31 realign, abandon, improve, vacate, reroute, or change the grade of any street, public  
32 way, or other public property; or to construct, maintain, or repair any public  
33 improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire  
34 conduit, pipe, line, pole, wire-holding structure, or other facility, including a facility used  
35 for the provision of utility or other services or transportation of drainage, sewage, or  
36 other liquids, Franchisee shall, upon request and with as much advance notice as is  
37 feasible under the circumstances (but in no event less than ninety (90) days), except as  
38 otherwise hereinafter provided, at its sole expense remove or relocate as necessary its  
39 poles, wires, cables, underground conduits, vaults, pedestals, manholes, and any other  
40 facilities which it has installed. However, pursuant to RCW 35.99.060(4), to the extent  
41 that a project requiring the relocation of Franchisee's Facilities is primarily for private

1 benefit, then the private party or parties shall reimburse the Franchisee for the costs of  
2 relocation in the same proportion to their contribution to the costs of the project.

3 3.8.2 Utilities and Other Franchisees. If during the term of the Franchise  
4 another entity which holds a franchise or any utility requests Franchisee to remove or  
5 relocate such facilities to accommodate the construction, maintenance or repair of the  
6 requesting party's facilities, or their more efficient use, or pursuant to an agreement  
7 between Franchisee and such requesting party to "make ready" the requesting party's  
8 facilities for use by others, or because Franchisee is using a facility which the requesting  
9 party has a right or duty to remove, Franchisee and such requesting party shall mutually  
10 negotiate the actions required in connection with the "make ready" relocation or  
11 removal. The companies involved shall decide among themselves who is to bear the  
12 cost of "make ready" removal or relocation, provided that the City shall not be liable for  
13 such costs.

14 3.8.3 Notice to remove or relocate. Any City request to Franchisee to remove  
15 or relocate its facilities shall give Franchisee reasonable advance written notice of no  
16 less than ninety (90) days to Franchisee advising Franchisee of the date or dates removal  
17 or relocation is to be undertaken; provided that the City may provide whatever notice is  
18 reasonable under the circumstances in emergencies or in cases where public health and  
19 safety or property is immediately endangered.

20 3.8.4 Failure by Franchisee to remove or relocate. If, after receipt of all  
21 required notices, Franchisee fails, neglects or refuses to remove or relocate its facilities  
22 as directed by the City; or in emergencies or where public health and safety or property  
23 is endangered, the City may do such work or cause it to be done, and the cost thereof to  
24 the City shall be paid by Franchisee within sixty (60) days after receipt of an invoice  
25 therefor. If Franchisee fails, neglects, or refuses to remove or relocate its facilities as  
26 directed by another franchisee or utility, that franchisee or utility may do such work or  
27 cause it to be done, and if Franchisee would have been required to pay for the cost of  
28 performing such work under the provisions of this Agreement, the cost thereof to the  
29 party performing the work or having the work performed shall be paid by Franchisee.

30 3.8.5 If in the sole but reasonable opinion of the City Public Works Director,  
31 damage to the public Right-of-Way resulting from damage or disturbance during the  
32 construction, operation, or maintenance of the Franchisee's Facilities requires  
33 immediate repair, the City may, after providing reasonable notice to Franchisee and an  
34 opportunity to cure, perform such repairs, at the cost of the Franchisee. In such event,  
35 the City will endeavor to notify the Franchisee of the immediate repairs needed. The  
36 Franchisee shall pay to the City the City's costs, including administrative costs related to  
37 such repairs within sixty (60) days of the date of written notice of the costs to the  
38 Franchisee.

39 3.8.6 Procedure for removal of Facilities. Franchisee shall not remove any  
40 underground facilities which requires trenching or other opening of the streets along  
41 the facilities to be removed, except as hereinafter provided. Franchisee may remove  
42 any underground facilities from the streets which have been installed in such a manner

1 that it can be removed without trenching or other opening of the streets. Subject to  
2 applicable law, Franchisee shall remove, at its sole cost and expense, any underground  
3 facilities by trenching or opening of the streets along the extension thereof or otherwise  
4 which is ordered to be removed by the City based upon a determination, in the  
5 reasonable discretion of the City, that removal is required in order to eliminate or  
6 prevent a hazardous condition. Usable underground cable and conduit in the streets  
7 that is not removed as required in this subsection shall be deemed abandoned and title  
8 thereto shall vest in the City at no cost to the City.

9 **3.9 Movement of Buildings.**

10 If the Franchisee has installed wires in support of its operations under this franchise, the  
11 Franchisee shall, on the request of any person holding a building moving permit issued  
12 by the City, temporarily raise or lower its wires to permit the moving of such  
13 building. Franchisee shall be entitled to ninety- (90) days' notice to arrange the raising  
14 or lowering of the wires. Franchisee may charge a reasonable fee no greater than its  
15 actual costs, including administrative costs, incurred in raising or lowering its wires, for  
16 this service to the person or entity holding a building permit and may request that the  
17 costs be paid in advance.

18 **3.10 City Right to Inspect and Cost Recovery.**

19 The City shall have the right to inspect all work performed by Franchisee in, on or above  
20 City Rights-of-Way, whether during the performance of such work or after completion  
21 so long as such inspection does not disrupt Franchisee's system operation. To the  
22 extent that the City is required to perform any inspections, maintenance, or repairs to  
23 City streets, Right-of-Way, or other City property due to Franchisee's use thereof, the  
24 City shall be entitled to recover the costs and expenses to the extent incurred therefor  
25 from Franchisee and such costs and expenses shall be payable on demand within thirty  
26 (30) days after Franchisee receives an invoice therefor. In the event that the City incurs  
27 any costs or expenses for designing, installing, repairing, or altering any City facilities  
28 that would not have occurred but for Franchisee's exercise of the rights granted under  
29 this Franchise, the City may bill Franchisee for reimbursement of such costs and  
30 expenses and such shall be immediately due and payable to the City. Any such recovery  
31 of City costs or reimbursements of such costs shall not be an off-set or credit against any  
32 Franchise Fee to be paid to the City by the Franchisee.

33 **3.11 Construction Standards.**

34 3.11.1 All work authorized or required under this Franchise shall be done in a  
35 safe, thorough, and workmanlike manner, or better. All installations of equipment shall  
36 be durable and installed in accordance with current professional engineering  
37 standards. Prior to commencement of construction or any work being performed in any  
38 Right-of-Way, all of such work shall be conducted pursuant to engineering plans  
39 submitted by the Franchisee to the City for review and approval, which may be  
40 conditional approval, by the City Public Works Department. Franchisee shall take  
41 prompt corrective action if, after reasonable notice from the City, it or the City finds that

1 any Facilities are not operating in a manner consistent with approved plans, or if it or  
2 the City finds that facilities and equipment do not comply with the requirements of this  
3 Franchise or applicable law, the Lynnwood Municipal Code or any permit requirements.

4 3.11.2 Franchisee shall comply with all applicable City construction and other  
5 codes, ordinances, and regulations, including without limitation, all building and zoning  
6 codes.

7 3.11.3 Any erection of poles, antennas, wires, cables, and other installations,  
8 upon the poles of the Franchisee located in the Right of Way or upon the poles of others  
9 located in the Right of Way, shall be done only in accordance with a plan or maps first  
10 submitted to and approved by the City or other person designated by the City, which  
11 approval shall not be unreasonably withheld, conditioned, or delayed. Antenna  
12 supporting structures (towers) shall be designed for the proper loading as specified by  
13 the Electronics Industries Association (EIA), as those specifications may be amended  
14 from time to time, and shall meet all requirements and regulations adopted by the  
15 Federal Communications Commission (FCC). Antenna supporting structures (towers)  
16 shall be painted, lighted, erected, and maintained in accordance with all applicable rules  
17 and regulations of the Federal Aviation Administration, the FCC, and all other applicable  
18 federal, State, and local codes or regulations. Any repair work or replacement work  
19 performed in the Right of Way shall be done under the supervision of the City and only  
20 after permission from the City is received.

21 3.11.4 Prior to placing any underground facilities, Franchisee shall, if required by  
22 applicable laws, join and maintain membership in good standing with the Utility  
23 Coordinating Council One Call Center or other similar or successor organization which is  
24 designated to coordinate underground equipment locations and installations.  
25 Franchisee represents that it is familiar with Chapter 19.122 RCW (Washington State's  
26 "Underground Utilities" statute) and understands and will comply with local procedures  
27 and practices relating to the one call locator service program.

28 3.11.5 Franchisee shall comply with any generally applicable ordinances, rules,  
29 regulations, and policies of the City regarding geographic information systems mapping  
30 for users of the Right-of-Way; provided, that all similarly situated users of the Right-of-  
31 Way are also required to comply.

32 **3.12 Notice of Construction.**

33 3.12.1 If at any time the Franchisee intends to perform construction work in any  
34 Right-of-Way, the Franchisee shall obtain a Right-of-Way Permit from the City and shall  
35 provide the City with notice before commencing any such work as required by the Right-  
36 of-Way Permit application process.

37 3.12.2 The City may establish requirements for advance notification to residents  
38 adjacent to the proposed construction areas to be provided by the Franchisee, and  
39 Franchisee shall comply with such advance notification requirements, provided such  
40 requirements are imposed in a non-discriminatory, competitively neutral manner to all  
41 persons or entities using the City's Rights-of-Way.

1 **3.13 Safety Requirements.**

2 3.13.1 The Franchisee shall, at all times, employ industry standards of care and  
3 shall install and maintain and use commonly accepted methods for preventing failures  
4 and accidents which are likely to cause damage, injuries, or nuisances to the public. All  
5 structures and all lines, equipment, and connection in, over, under, and upon the  
6 streets, sidewalks, alleys, and public ways or places of the Service Area, wherever  
7 situated or located, shall at all times be kept and maintained in a safe  
8 condition. Franchisee shall comply with all federal, State, and City safety requirements,  
9 rules, regulations, laws and practices, and employ all necessary devices as required by  
10 applicable law during the construction, operation, maintenance, upgrade, repair, or  
11 removal of its Facilities. By way of illustration and not limitation, Franchisee shall also  
12 comply with the National Electric Code, National Electrical Safety Code, FCC regulations,  
13 and Occupational Safety and Health Administration (OSHA) Standards.

14 3.13.2 If an unsafe condition is found to exist, the City agrees to give Franchisee  
15 notice of such condition and afford Franchisee a reasonable opportunity to repair the  
16 same. If Franchisee fails to start to make the necessary repairs and alterations within  
17 the time frame specified by the City, then after notice to the Franchisee, the City may  
18 make such repairs or contract for them to be made. All costs, including administrative  
19 costs, incurred by the City in repairing any unsafe conditions after such applicable notice  
20 periods, shall be borne by Franchisee. The Franchisee shall pay to the City all of the  
21 City's actual costs, including administrative costs, incurred as a result of circumstances  
22 herein within sixty (60) days of the date of the written notice of the costs that is  
23 delivered to the Franchisee. If the Franchisee fails to comply with the time frames  
24 herein, this Franchise shall terminate without further action required.

25 **3.14 Permits Required for Construction.**

26 3.14.1 Prior to doing any work in the City, Franchisee shall apply for, and obtain,  
27 appropriate permits from the City. As part of the permitting process, the City may  
28 impose such conditions and regulations as are necessary for the purpose of protecting  
29 any Rights-of-Way, the proper restoration of Rights-of-Way and structures, the  
30 protection of the public, and the continuity of pedestrian or vehicular traffic, or as may  
31 be required by law, ordinance, codes, or regulations. Such conditions may also include  
32 requiring the provision of a construction schedule and maps showing the location of the  
33 facilities to be installed in the Right-of-Way. Franchisee shall pay all applicable fees for  
34 the requisite City permits, reviews, and/or approvals required of or received by  
35 Franchisee. In the event that emergency repairs are necessary, Franchisee shall  
36 immediately notify the City of the need for such repairs. Franchisee shall apply for  
37 appropriate permits within five (5) business days after discovery of the  
38 emergency. During emergencies, the City may move Franchisee's Facilities without prior  
39 notice.

40

1           3.14.3 In the event of any emergency in which any of Franchisee’s Facilities  
2 break or are damaged, or if the Franchisee’s construction area is otherwise in such a  
3 condition as to immediately endanger the property, life, health, or safety of any person,  
4 the Franchisee shall immediately take proper emergency measures to repair its  
5 Facilities, to cure or remedy the dangerous condition, without first applying for and  
6 obtaining City permits otherwise required for said work; provided, that the Franchisee  
7 shall immediately notify the City of said condition and of the emergency work, and shall  
8 obtain all necessary permits as promptly as possible after the emergency work is  
9 performed, and in any event no later than the second business day following the  
10 discovery of the condition requiring the emergency work.

11           **3.15 Tree Trimming.**

12 In cases of emergency, the Franchisee shall notify the City of its intent to trim trees or  
13 other natural growth necessary to access and maintain its Facilities immediately upon  
14 determining that such an emergency exists and prior to engaging in such activity. Upon  
15 receipt of such notice, the City may inspect such circumstance prior to the removal of  
16 the emergency condition. In non-emergency conditions, Franchisee may, at its own  
17 expense, trim trees within the Right-of-Way or other natural growth overhanging any of  
18 its installed Facilities to prevent branches from coming in contact with the Franchisee's  
19 wires, cables, or other equipment upon twenty (20) days’ notice of the actual trees and  
20 other natural growth that is intended to be affected in non-emergency situations, and  
21 upon approval of the City Public Works Department, which shall not be unreasonably  
22 withheld, and subject to the requirement to obtain a Right-of-Way Use Permit and  
23 complying with any and all conditions of that Permit. Nothing herein grants the  
24 Franchisee any authority to act on behalf of the City or to enter upon any private  
25 property, or to trim any tree or natural growth not owned by the City. The Franchisee  
26 shall be solely responsible and liable for any damage to any third-parties’ trees or  
27 natural growth, and in addition to the terms and conditions of Section 7, the Franchisee  
28 shall indemnify, defend, and hold harmless the City from claims of any nature to the  
29 extent arising from any act or negligence of the Franchisee with regard to tree and/or  
30 natural growth trimming, damage, and/or removal. Franchisee shall reasonably  
31 compensate the City or the property owner for any damage caused by such trimming,  
32 damage or removal. The Franchisee, may, at their own discretion, but in a manner and  
33 of a style reasonably approved by the City or property owner, provide replacement of  
34 any trees or shrubbery damaged as a result of actions taken by the Franchisee in lieu of  
35 compensation.

36           **3.16 Reservation of Rights.**

37 Nothing in this Franchise shall limit, waive, release, or terminate any rights or interests  
38 of the City in its property and/or Right-of-Way, including but not limited to the City  
39 retaining all right to sewer, plank, pave, grade, alter, repair, vacate, and improve and/or  
40 work upon, under, or above any public Rights-of-Way, and, further the City shall retain  
41 its right to grant Franchise rights or similar rights to others, and the City shall not be  
42 liable for damage resulting to the Franchisee by reason of or as a result of the

1 performance of such work or by the exercise of such rights by the City, unless such  
2 damage is caused by the City’s negligence or willful misconduct.

3 **SECTION 4. PAYMENTS TO CITY.**

4 **4.1 Recovery of Costs.**

5 4.1.1 Franchisee shall pay an administrative fee to the City for the City’s  
6 administrative, legal, and other costs incurred in drafting and processing this Franchise  
7 and all work related thereto, in an amount up to \$2,500. The City shall provide  
8 Franchisee an invoice for the administrative fee in writing, and Franchisee shall pay such  
9 amounts within 45 days after receipt of notice. No construction permits shall be issued  
10 for the installation of Facilities authorized hereby until such time as the City has  
11 received payment of the administrative fee.

12 4.1.2 Franchisee shall be subject to all standard permit fees associated with  
13 activities undertaken by Franchisee through the authority granted in this Franchise or  
14 under the laws of the City. Where the City incurs costs and expenses for review,  
15 inspection, or supervision of activities, including but not limited to reasonable fees  
16 associated with attorneys, consultants, City staff, and City Attorney time, undertaken  
17 through the authority granted in this Franchise or any ordinances relating to the subject  
18 for which a permit fee is not established, Franchisee shall pay such costs and expenses  
19 directly to the City. In addition to the above, Franchisee shall, within thirty days (30)  
20 upon receipt of a request from the City, reimburse the City for any and all costs the City  
21 reasonably incurs in response to any emergency involving Franchisee’s Facilities.  
22 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an  
23 itemized billing for incurred costs, itemized by project, for the Franchisee’s  
24 proportionate share of all actual, identified expenses incurred by the City in planning,  
25 constructing, installing, repairing, altering, or maintaining any City facility as the result of  
26 the presence of Franchisee’s Facilities in the Rights-of-Way. Such costs and expenses  
27 shall include but not be limited to the Franchisee’s proportionate cost of City personnel  
28 assigned to oversee or engage in any work in the Rights-of-Way as the result of the  
29 presence of the Franchisee’s Facilities in the Rights-of-Way. Such costs and expenses  
30 shall also include the Franchisee’s proportionate share of any time spent reviewing  
31 construction plans in order to either accomplish the relocation of the Franchisee’s  
32 Facilities or the routing or rerouting of any utilities so as not to interfere with the  
33 Franchisee’s Facilities.

34 **4.2 City’s Reservation of Rights.**

35 4.2.1 Pursuant to RCW 35.21.860, the City is precluded from imposing a  
36 franchise fee on a “telephone business” as defined in RCW 82.16.010, or a “service  
37 provider” as defined in RCW 35.99.010, for use of the Right-of-Way, excepting actual  
38 administrative expenses directly related to the franchise or any tax authorized by state  
39 law. Franchisee hereby warrants that its operations as authorized under this Franchise  
40 are those of a “telephone business” as defined in RCW 82.16.010 or a “service provider”

1 as defined in RCW 35.99.010. As a result, the City will not impose a franchise fee under  
2 the terms of this Franchise, other than as described herein.

3 4.2.2 Franchisee acknowledges that its operation within the City may constitute  
4 a telephone business subject to the utility tax imposed pursuant to Title 3 of the  
5 Lynnwood Municipal Code. Franchisee shall pay any and all utility tax due to the City in  
6 accordance with the provisions of the City code. Franchisee understands that RCW  
7 35.21.870 currently limits the rate of city tax to six percent (6%) of gross receipts from  
8 telephone business activities, unless a higher rate is otherwise approved. The parties  
9 agree however that nothing in this Franchise shall limit the City's power of taxation as  
10 may now or hereafter exist. Franchisee stipulates and agrees that should its business  
11 activities be subject to taxation that Franchisee shall pay to the City the rate then  
12 applicable to such services under the City's utility tax code, and consistent with state  
13 and federal law. This provision does not limit the City's power to amend the City's utility  
14 tax code as may be permitted by law.

15 4.2.3 The City reserves its right to impose a franchise fee, in accordance with  
16 state or federal law, on Franchisee for purposes other than to recover its administrative  
17 expenses, if Franchisee's operations as authorized by this Franchise change such that  
18 Franchisee's activities are not those of a "telephone business" as defined in RCW  
19 82.16.010, and if there are no statutory prohibitions on the imposition of such fees.

20 **4.3 Acceptance of Payment.**

21 No acceptance of any payment by the City shall be construed as an accord that the  
22 amount paid is, in fact, the correct amount, nor shall such acceptance of payment be  
23 construed as a release of any claim which the City may have for further or additional  
24 sums payable under the provisions of this Franchise. Franchisee's payment to the City  
25 shall not be construed as an acknowledgement by the Franchisee that the amount paid  
26 is the correct amount and Franchisee reserves the right to subsequently seek to recover  
27 any amount of such payments in the event of an erroneous overpayment or for other  
28 lawful reasons. The costs of such verification shall be borne solely by the Franchisee.

29 **4.4 Audits and Examinations.**

30 No more than once per calendar year, the City, upon at least thirty (30) days' advance  
31 written notice to Franchisee, shall have the right to inspect the books and records of  
32 Franchisee for determining the accuracy and completeness of Franchisee's payments  
33 made to the City under this Franchise, such as the utility tax.

34 **4.5 Interest and Penalties on Late Payments.**

35 In the event that any payment due to the City under this Franchise, except for utility  
36 taxes which shall be governed by applicable provisions of the City code, is not received  
37 by the City by the date due, (1) interest shall be charged from such date at the rate of  
38 twelve percent (12%) per annum, and (2) in addition, Franchisee shall pay the City an  
39 additional amount equal to one percent (1%) of the amount not paid by the date due.

40 **4.6 Taxes and Assessments.**

1 The payments required under this Franchise shall be in addition to any and all taxes,  
2 levies, or other assessments which are now or hereafter required to be paid by  
3 businesses or utilities by any law of the City, the State, or the federal government,  
4 including, without limitation, sales, use, utilities, and business and occupation taxes,  
5 business license fees, or other payments. Nothing stated herein shall limit Franchisee's  
6 obligation to pay lawful and applicable local, state, or federal taxes, and payment of fees  
7 under this Franchise shall not exempt Franchisee from payment of any other lawfully  
8 imposed license fee, permit fee, tax, or other charge on the business, occupation,  
9 property, or income of Franchisee.

10 **SECTION 5. FRANCHISE RENEWAL, EXTENSION AND TRANSFER.**

11 **5.1 Transfer of Franchise.**

12 5.1.1 This Franchise may not be assigned or transferred (including by operation  
13 of law) without the written approval of the City, which approval shall not be  
14 unreasonably withheld, conditioned or delayed. Notwithstanding the above, Franchisee  
15 may, upon thirty (30) days' written notice to the City, freely assign this Franchise in  
16 whole or in part to an Affiliate, including without limitation a parent or subsidiary  
17 organization or as part of any corporate financing, reorganization, or refinancing;  
18 provided, that the assignee or transferee must have the legal, technical, financial, and  
19 other requisite qualifications to own, hold, and operate the Franchisee's Facilities for  
20 the purpose of providing Communications Services. The Franchisee shall reimburse the  
21 City for all costs and expenses reasonably incurred by the City in considering a request  
22 to transfer or assign this Franchise. In the case of transfer or assignment as security by  
23 mortgage or other security instrument in whole or in part to secure indebtedness, such  
24 approval shall not be required unless and until the secured party elects to realize upon  
25 the collateral. No assignment or transfer of this Franchise shall be deemed to occur  
26 based on the public trading of the Franchisee's stock.

27 5.1.2 Franchisee may, without the prior written approval of the City: (i) grant  
28 an indefeasible right of user interest in the Facilities, or any portion thereof, to another  
29 entity; or (ii) offer or provide capacity or bandwidth from the Facilities to another  
30 person; provided, that Franchisee at all times retains exclusive control over the Facilities  
31 and remains responsible for locating, servicing, repairing, relocating, or removing its  
32 Facilities pursuant to the terms of this Franchise and remains in compliance with this  
33 Franchise.

34  
35 **5.2 Franchise Renewal.**

36 The City and the Franchisee agree that any proceedings undertaken by the City that  
37 relate to the renewal of the Franchisee's Franchise shall be governed by and comply  
38 with applicable federal, state and local laws, ordinances, and regulations or as otherwise  
39 agreed to by the parties.

40 **SECTION 6. VIOLATIONS; ENFORCEMENT.**

1 **6.1 Enforcement.**

2 6.1.1 Notice of Franchisee Violation. In the event that the City believes that the  
3 Franchisee has not complied with any terms of the Franchise, the City, at its sole  
4 election may informally discuss the matter with Franchisee. If discussions do not lead to  
5 resolution of the problem or if the City elects not to informally discuss the matter with  
6 the Franchisee, the City shall issue a written Notice of Violation to the Franchisee,  
7 stating with particularity the alleged breach, violation or other non-compliance.

8 6.1.2 Franchisee's Right to Cure or Respond. The Franchisee shall have thirty  
9 (30) days from receipt of the Notice of Violation to (i) respond to the City, contesting the  
10 asserted breach, violation or non-compliance and requesting a meeting as provided in  
11 section 6.2.1 (ii) cure such default, or (iii) in the event that, by the nature of default,  
12 such default cannot be cured within the thirty (30) day period, initiate reasonable steps  
13 to remedy such default and notify the City of the steps being taken and the estimated  
14 date that they will be completed.

15  
16 **6.2 Termination, Revocation, and Forfeiture.** 6.2.1 If the Franchise timely notifies  
17 the City that it contests the asserted breach, violation or non-compliance and requests a  
18 meeting with the City, the Mayor shall hold a meeting with the Franchisee within  
19 fourteen (14) days after such notice, provided that said timeframe may be extended at  
20 the sole discretion of the Mayor.

21 6.2.2 If after such meeting, the Mayor determines that the Franchisee is in  
22 breach, violation or non-compliance with the Franchise, then the Mayor shall notify the  
23 Franchisee of his/her decision in writing within seven (7) days, stating the grounds of the  
24 breach, violation, or non-compliance, the required corrective action and time for  
25 completing the corrective action, if any, and the penalty for failure to comply with the  
26 same, including but not limited to revocation of the Franchise.

27 6.2.3 After receiving the Mayor's written notice of decision, the Franchisee may  
28 request a public hearing before the City Council as to whether or not a violation, breach,  
29 or non-compliance with the Franchise has occurred. Said request must be made in  
30 writing, stating with specificity the reasons why the Franchisee believes that the alleged  
31 non-compliance has not occurred, and delivered to the City Clerk within fourteen (14)  
32 days of receipt of the Mayor's decision.

33 6.2.4 If the Franchisee does not request a public hearing before the City Council  
34 under Section 6.2.3 above and the Franchisee fails to complete required corrective  
35 action within the specified time, then at the next available meeting, the City Council  
36 shall pass an ordinance declaring the Franchise revoked and terminated, and any  
37 security or bonds shall be forfeited to the City. If the Franchisee does request a public  
38 hearing before the City Council under Section 6.2.3 above, the City Clerk shall cause the  
39 public hearing to be held at the next available City Council meeting, provided that the  
40 Franchisee shall be provided at least thirty (10) days' notice of such hearing.

1           6.2.5 At the City Council public hearing, the City shall have the burden of proof  
2 that a violation, breach, or non-compliance with the Franchise has occurred, and must  
3 demonstrate that a preponderance of evidence supports the conclusion that there is a  
4 violation or breach of the Franchise and that such violation or breach was not timely  
5 cured as required in this Franchise.

6           6.2.6 If the City Council upholds the Mayor’s decision that the Franchisee is in  
7 breach, violation, or non-compliance, then the City Council shall immediately pass an  
8 ordinance declaring the Franchise revoked and terminated, and any security or bonds  
9 shall be forfeited to the City. Said revocation ordinance shall include findings of fact and  
10 conclusions derived from those facts which support the decision of the City Council;  
11 provided, that the City Council may adopt the findings and conclusions of the Mayor.

12           6.2.7 The Franchisee shall be bound by the decision of the City Council, unless  
13 an appeal is filed to a court of competent jurisdiction within thirty (30) days of the date  
14 of the Council’s decision.

15       **6.3     Failure to Timely Cure.**

16       6.3.1 If the Franchisee has not contested the asserted breach, violation, or non-  
17 compliance and fails to timely cure the breach, violation, or non-compliance under  
18 Section 6.1.2 above, then in addition to any other remedy at law or equity, or provided  
19 for in this Franchise, the City may revoke the Franchise. Said revocation shall be  
20 effective immediately after the delivery of a written notice of revocation executed by  
21 the Mayor stating the grounds of the breach, violation, or non-compliance with the  
22 Franchise. If the Franchisee has contested the asserted breach, violation, or non-  
23 compliance and the City has determined, as provided in Section 6.2, that the Franchisee  
24 is in breach, violation, or non-compliance, Franchisee shall cure the breach, violation, or  
25 non-compliance within thirty (30) days from receipt of the City’s decision, or within  
26 thirty (30) days from the issuance of a final non-appealable order by a court of  
27 competent jurisdiction, or in the event that, by the nature of default, such default  
28 cannot be cured within the thirty- (30) day period, initiate reasonable steps to remedy  
29 such default and notify the City of the steps being taken and the estimated date that  
30 they will be completed. If Franchisee fails to timely cure the breach, violation, or non-  
31 compliance as provided in this Section 6.3 after receiving the City’s decision or following  
32 an appeal, then in addition to any other remedy at law or equity, or provided for in this  
33 Franchise, the City may revoke the Franchise. Said revocation shall be effective  
34 immediately after the delivery of a written notice of revocation executed by the Mayor  
35 stating the grounds of the breach, violation, or non-compliance with the Franchise.

36  
37       **6.4     Removal.**

38       6.4.1 If the Franchise has been terminated, revoked, canceled, or has expired,  
39 and Franchisee has not exercised its rights, if any, to contest the termination,  
40 revocation, cancelation or nonrenewal, the City may give Franchisee written notice to  
41 remove its Facilities from the City’s Rights-of-Way or it may, in the City’s sole discretion

1 allow Franchisee to abandon the system in place if the Franchisee requests in writing to  
2 abandon its Facilities in place. Within ten (10) days of receiving the City's notice, in the  
3 event that the City requires removal of the Facilities, the Franchisee agrees to  
4 commence removal of its system and to proceed diligently with such removal. Work  
5 shall be completely done one hundred-eighty (180) days from notice to complete such  
6 work.

7 6.4.2 If the Franchisee fails to remove any of its property as provided herein,  
8 except to the extent this section provides otherwise, the City may elect to cause such  
9 removal and may recover its reasonable costs and expenses from Franchisee, including  
10 its reasonable attorney's fees and costs incurred in recovering such costs and expenses.

### 11 **6.5 Effective Abandonment.**

12 Any property of the Franchisee remaining in place ninety (90) days after the termination  
13 or expiration of the Franchise may be considered permanently abandoned. Upon  
14 abandonment of the property of the Franchisee in place the property shall become that  
15 of the City, and the Franchisee shall submit to the City Clerk an instrument in writing, to  
16 be approved by the City Attorney, transferring to the City the ownership of such  
17 property.

## 18 **SECTION 7. FINANCIAL AND INSURANCE REQUIREMENTS.**

### 19 **7.1 Indemnity and Hold Harmless.**

20 7.1.1 General Indemnification. The Franchisee shall indemnify, defend, and hold  
21 the City, its officers, officials, employees, agents, and consultants ("City"), harmless from  
22 and against any and all liabilities, claims, fees, costs, and damages, whether to person  
23 or property, or expense of any type or nature which may occur to the City or to any  
24 third party, including without limitation reasonable attorneys' fees, experts' fees, and  
25 other costs, by reason of the construction, operation, maintenance, repair, and  
26 alteration of Franchisee's Facilities by Franchisee or any other act done under this  
27 Franchise by Franchisee, its employees or agents, except to the extent that such  
28 liabilities, claims, fees, costs, and damages are caused by the negligence or willful  
29 misconduct of the City.

30 7.1.2 Relocation Indemnification. To the extent not covered by the indemnity  
31 requirements of Section 7.1.1, Franchisee shall indemnify, defend and hold the City  
32 harmless from and against any and all liabilities, claims, fees, costs, and damages,  
33 whether to person or property, or expense of any type or nature which may occur to the  
34 City or any third party, including without limitation reasonable attorneys' fees, experts'  
35 fees and other costs, to the extent arising out of, or resulting from, directly or indirectly,  
36 Franchisee's failure to remove, adjust, or relocate any of its Facilities in the Right-of-Way  
37 in a timely manner in accordance with any relocation required by the City under this  
38 Franchise, except to the extent that such liabilities, claims, fees, costs, and damages are  
39 caused by the negligence of the City.

1           7.1.3 Procedures and Defense. In any case in which suit or action is instituted  
2 against the City by reason of damages or injury caused in whole or in part by an act or  
3 omission of Franchisee, the City shall cause written notice thereof to be given to the  
4 Franchisee and Franchisee thereupon shall have the duty to appear and defend in any  
5 such suit or action, without cost or expense to the City. The City may participate in the  
6 defense of a claim, at its sole expense, and in any event, Franchisee may not agree to  
7 any settlement of claims financially affecting the City without the City's prior written  
8 consent, which consent shall not be unreasonably withheld. The City shall not agree to  
9 any settlement of claims without the prior written consent of Franchisee.

10           7.1.4 Inspection or acceptance by the City of any work performed by Franchisee  
11 at the time of completion of construction shall not be grounds for avoidance by  
12 Franchisee of any of its obligations under this Franchise. Said indemnification  
13 obligations shall extend to claims which are not reduced to a suit and any claims which  
14 may be compromised, with Franchisee's prior written consent, prior to the culmination  
15 of any litigation or the institution of any litigation.

16 **7.2 Insurance.**

17           7.2.1 General Requirement. During the entire term of this Franchise, the  
18 Franchisee shall have and maintain in full force and effect, at its own cost and expense,  
19 a Commercial General Liability insurance policy, including the City, its officers, elected  
20 officials, boards, commissioners, and employees as an additional insured protecting the  
21 City and all persons against liability for loss or damage or bodily injury, death, and  
22 property damage occasioned by the operations of Franchisee under such Franchise.

23           7.2.2 Insurance Limits. Franchisee shall maintain in full force and effect at its  
24 own cost and expense each of the following policies of insurance:

- 25           A. Commercial General Liability Insurance with limits of Five Million  
26 Dollars (\$5,000,000) per occurrence for bodily injury and property  
27 damage and Five Million Dollars (5,000,000.00) general aggregate  
28 including personal and advertising injury, blanket contractual;  
29 premises-operations; independent contractors; products, and  
30 completed operations; explosion, collapse, and underground  
31 (XCU). Commercial General Liability policy shall contain a Waiver  
32 of Subrogation in favor of City.
- 33           B. Commercial Automobile Liability Insurance with combined single  
34 limits of Three Million Dollars (\$3,000,000) each accident for  
35 bodily injury and property damage covering all owned, hired, and  
36 non-owned vehicles assigned to or used in the operation of the  
37 Facilities in the City.
- 38           C. Professional Liability: One Million Dollars (\$1,000,000) per claim  
39 and covering the negligent acts, errors and/or omissions of  
40 Franchisee in the performance of professional services under this  
41 Franchise

- 1 D. Worker's Compensation coverage as required by the Industrial  
2 Insurance laws of the State of Washington and Employer's  
3 Liability with a limit of \$1,000,000 each accident/disease/policy  
4 limit.
- 5 E. Excess/Umbrella Liability with a limit of Five Million Dollars  
6 (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000)  
7 aggregate providing coverage above the primary commercial  
8 general liability, commercial automobile liability and employer's  
9 liability insurance required above.

10 7.2.3 Franchisee's insurance coverage shall be primary insurance with respect  
11 to the City. Any insurance or self-insurance maintained by the City shall be in excess to  
12 the Franchisee's insurance. A certificate of insurance reasonably acceptable to the City  
13 shall be filed with the City Clerk. The insurance company(ies) shall be approved by the  
14 state insurance Commissioner pursuant to Title 48 RCW or issued as a surplus line by a  
15 Washington Surplus Lines Broker. The insurer must have at least an A-(VII) A.M. Best  
16 Rating.

17 7.2.4 Upon receipt of notice(s) from its insurer Franchisee shall use commercially  
18 reasonable efforts to provide the City thirty (30) days prior written notice of  
19 cancellation. If the insurance is cancelled or materially altered so as to be out of  
20 compliance with the requirements of this section, Franchisee shall provide a  
21 replacement policy. Franchisee shall maintain continuous, uninterrupted insurance  
22 coverage, in the amounts required, for the duration of the Franchise term, and in the  
23 case of Commercial General Liability, for at least one year after expiration of this  
24 Franchise.

25

26 **7.3 Performance Bond.**

27 7.3.1 If requested by the City, no later than the effective date of this Franchise,  
28 Franchisee shall establish and provide to the City, as security for the faithful  
29 performance of all of the requirements of this Franchise, a performance bond, from a  
30 surety or financial institution acceptable to the City, in the amount of Fifty Thousand  
31 Dollars (\$50,000). The performance bond may be drawn upon by the City for purposes,  
32 including but not limited to the following: (1) failure of Franchisee to pay the City sums  
33 due under the terms of this Franchise; (2) reimbursement of costs born by the City to  
34 correct Franchise violations not corrected by Franchisee; and (3) monetary remedies or  
35 damages assessed against Franchisee due to default or breach of Franchise  
36 requirements.

37 7.3.2 The City shall give Franchisee written notice of any withdrawal under this section  
38 upon such withdrawal. Within fifteen (15) days following receipt of such notice,  
39 Franchisee shall restore the performance bond to the amount required under this  
40 Franchise. Franchisee's maintenance of the bond shall not be construed to excuse

1 performance of obligations under the Franchise, or to limit the liability of Franchisee or  
2 otherwise limit the City's recourse to any other remedy available at law or equity.

3 **SECTION 8. MISCELLANEOUS TERMS**

4 **8.1 Confirmation of Consistency with Federal Provisions.**

5 If any portion of this Franchise ordinance is deemed to be inconsistent with the  
6 Telecommunications Act of 1996, as amended, or any federal or state rule or regulation  
7 now existing or hereinafter adopted, then to the extent of the inconsistency, the Act or  
8 rule or regulation shall control for so long, but only for so long, as such rule or regulation  
9 shall remain in effect, and the remaining provisions of this Franchise ordinance shall not  
10 thereby be affected. If that rule or regulation allows existing franchises to not be  
11 affected, then there shall be no effect to this Franchise. If federal or state law changes,  
12 whether through legislative or rule-making action or court or administrative  
13 interpretation during the term of this Franchise, then this Franchise ordinance shall be  
14 considered modified to be consistent with such federal law changes.

15 **8.2 Severability.**

16 Each section, subsection, or other portion of this Ordinance shall be severable and the  
17 invalidity of any section, subsection, or other portion shall not invalidate the remainder.

18 **8.3 Notice.**

19 Any notice or information required or permitted to be given to the parties under this  
20 Franchise may be sent to the following addresses unless otherwise specified:

21  
22 CITY OF LYNNWOOD:                   Level 3 Communiucations, LLC:  
23 City of Lynnwood                    Level 3 Communications, LLC  
24 City Clerk                             Attn: NIS – Contract Management – cma@level3.com  
25 19100 44th Ave W                   1025 Eldorado Blvd.  
26 Lynnwood, WA 98036               Broomfield, CO 80021

27  
28   With a copy to:  
29   Level 3 Communications, LLC  
30   931 14<sup>th</sup> Street  
31   Denver, CO 80301  
32   Attn: Law Department  
33

1 Notice shall be deemed given upon actual receipt or refusal of delivery and shall be sent  
2 by personal delivery, United States Certified Mail, return receipt requested, or by  
3 overnight delivery.

4 **8.4 Entire Franchise.**

5 This Franchise and its acceptance constitutes the entire terms between the parties as to  
6 the subject matter herein and no other agreements or understandings, written or  
7 otherwise, shall be binding upon the parties. Any amendment to this Franchise shall  
8 only occur by mutual written agreement of the parties and amendment of this  
9 Ordinance.

10 **8.5 Reserved Rights.**

11 The City reserves all rights and powers under its police powers and powers conferred by  
12 federal, state or local law. In particular the City reserves the right to alter, amend, or  
13 repeal its municipal code as it determines shall be conducive to the health, safety, and  
14 welfare of the public, or otherwise in the public interest. The City agrees that by  
15 accepting this Franchise, Franchisee has not waived its right to object to the application  
16 to it of actions by the City pursuant to its reserved rights or police powers.

17 Both the City and the Franchisee expressly reserve all rights they may have under law to  
18 the maximum extent possible; neither the City nor the Franchisee shall be deemed to  
19 have waived any federal or state constitutional or statutory rights they may now have or  
20 may acquire in the future by entering into this agreement.

21 **8.6 Franchise Acceptance.**

22 Within sixty (60) days of the effective date of this ordinance, Franchisee shall execute  
23 and return to the City the Franchisee Acceptance form, attached to this Ordinance. The  
24 executed Franchise Acceptance shall be returned to the City accompanied by  
25 performance bonds, security funds, and evidence of insurance, all as provided in this  
26 Ordinance. In the event Franchisee fails to accept this Franchise, or fails to provide the  
27 required documents and/or funds, by said date, this Franchise shall be null and void and  
28 Franchisee shall have no rights or privileges hereunder.

29 **8.7 Effective Date.**

30 This Franchise ordinance or a summary thereof consisting of the title shall be published  
31 in the official newspaper of the City, and shall take effect and be in full force five (5)  
32 days after publication; provided, however, that if Franchisee does not accept this  
33 Franchise and comply with all conditions for such acceptance set forth herein, this  
34 Franchise ordinance shall be null and void.

35 PASSED BY THE CITY COUNCIL this \_\_\_\_ day of \_\_\_\_\_, 2020.

36  
37 APPROVED:

38  
39 \_\_\_\_\_  
40 Nicola Smith, Mayor

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ATTEST/AUTHENTICATED:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Fitzhum, City Clerk

\_\_\_\_\_  
Rosemary Larson, City Attorney

FILED WITH ADMINISTRATIVE SERVICES: \_\_\_\_\_

PASSED BY THE CITY COUNCIL: \_\_\_\_\_

PUBLISHED: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

ORDINANCE NUMBER: \_\_\_\_\_

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**FRANCHISEE ACCEPTANCE**

*Franchisee*, for itself and for its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated by this reference. *Franchisee* expressly acknowledges that in accepting this Franchise it did so relying on its own investigation and understanding of the power and authority to grant this Franchise.

ACCEPTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

*Franchisee*

\_\_\_\_\_  
Name: \_\_\_\_\_, Title

Date: