



PLEASE NOTE: This meeting will be held at City Hall, 920 SE Cedar Falls Way, North Bend, WA. Members of the public may choose to attend in person or by teleconference. As the in-person/teleconference hybrid meeting option is new technology to City Staff it is strongly encouraged that members of the public that are attending by teleconference provide comments in advance of the meeting. Please email comments on any agenda items prior to the meeting to the City Clerk at soppedal@northbendwa.gov. Please provide comments by 5 p.m., Tuesday, May 16, 2023 so a copy can be provided to the City Council prior to the meeting.

Members of the public that wish to attend by teleconference may do so by using the Zoom Meetings platform. Instructions on how to access the meeting and provide public comment are available at the following link: [May 16, 2023 City Council Meeting Calendar Item](#). You will be required to have a registered Zoom account and display your full name to be admitted to the online meeting.

Zoom Meeting Information:

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CITY COUNCIL MEETING

May 16, 2023 – Agenda

City Hall, 920 SE Cedar Falls Way, North Bend, Washington

7:00 P.M. – CALL TO ORDER, ROLL CALL, FLAG SALUTE

CONSENT AGENDA:

		Pg.#
1) Minutes	City Council Workstudy of April 25, 2023 & City Council Meeting of May 2, 2023	1
2) Payroll	May 5, 2023 – 28638 through 28644, in the amount of \$347,090.57	
3) Checks	May 16, 2023 – 74016 through 74084, in the amount of \$2,394,640.02	
4) AB23-059	Ordinance – Authorizing Franchise Agreement with PSE Ms. Marshall	7
5) AB23-060	Motion – Authorizing Lease with Snoqualmie Valley Historical Society Mr. Miller	25

CITIZEN'S COMMENTS: (Please restrict comments to 3 minutes)

COMMISSION AND COMMITTEE REPORTS:

Planning Commission	Community & Economic Development – Councilmember Miller
Parks Commission	Finance & Administration – Councilmember Gothelf
Economic Development Commission	Public Health & Safety – Councilmember Rosen
Regional Committees	Transportation & Public Works – Councilmember Loudenback
	Mayor Pro Tem – Councilmember Koellen
	Eastside Fire & Rescue Board – Councilmember Gothelf



MAIN AGENDA:

- | | | | | |
|-----|-----------------|---|--------------|------------|
| 6) | AB23-061 | Public Hearing, Resolution – Adopting Six Year TIP 2024-2029 | Mr. Rigos | 37 |
| 7) | AB23-062 | Ordinance – Amending NBMC 9.45 RE Drug & Alcohol Possession | Ms. Marshall | 57 |
| 8) | AB23-063 | Resolution – Accepting FHWA Funds & Authorizing LA Agreement RE Bendigo/4 th Street Roundabout Project | Mr. Rigos | 73 |
| 9) | AB23-064 | Motion – Authorizing Contract with North Bend Downtown Foundation | Mr. Noll | 91 |
| 10) | AB23-065 | Motion – Approving Economic Development Action Plan | Mr. Noll | 111 |

MAYOR, COUNCIL & ADMINISTRATOR CONCERNS AND INITIATIVES: (Business and general information presented that may be deliberated upon by the Council. Formal action may be deferred until a subsequent meeting; immediate action may be taken upon a vote of a majority of all members of the Council.)

ADJOURNMENT:

CITY OF NORTH BEND
CITY COUNCIL WORKSTUDY NOTES

April 25, 2023 – 7:00 p.m.

City Hall, 920 SE Cedar Falls Way, North Bend, WA

Mayor Pro Tem Koellen called the meeting to order at 7:00 p.m.

Councilmembers Brenden Elwood, Alan Gothelf, Heather Koellen, Mary Miller and Jonathan Rosen (remote) were present. Councilmembers Mark Joselyn and Ross Loudanback were excused.

Staff Present: Mayor Rob McFarland, City Administrator David Miller, Deputy City Administrator/Public Works Director Mark Rigos, Community and Economic Development Director Rebecca Deming, Principal Planner Mike McCarty, Communications Manager Bre Keveren and Deputy City Clerk Jennifer Bourlin.

Guests Present: Vinita Sidhu, Clayton Beaudoin, Ryan Storkman, Alison Maitland Scheetz and Sara Canapea (remote) from Site Workshop, Fred Young (remote) from Parametrix.

Riverfront Park and William H. Taylor Park Presentation

Principal Planner Mike McCarty explained that the City Council approved a decision card for the 2021-2022 Biennial Budget to fund the preparation of design and construction plans for William H. Taylor Park (WH Taylor) and Riverfront Park. The City solicited Statements of Qualifications (SOQ) from qualified consulting firms to prepare the park design plans. Council approved a contract with Site Workshop in September 2022. Preparation for the design process included surveying the property and preparing Critical Areas Reports.

Site Workshop along with City of North Bend staff held engagement and stakeholder meetings. During the initial public outreach, important issues were finding site-specific ways to represent the history of the Snoqualmie Tribe, their people, culture, and creation story, study wayfinding and circulation strategies to link the parks to the greater trail networks and parking lots, and improve safety at intersections.

Site Workshop presented different concepts for each park, the train depot and McClellan Street.

Riverfront Park

Consultant Vinita Sidhu of Site Workshop presented different concepts for Riverfront Park. All options included improving pedestrian safety, 12' wide crushed rock surfacing at the levee trail, forest restoration, and interpretive and history signage. She then presented additional options as follows:

- History Focus: entry path with seating, potential property acquisition or land swap with 227 Park LLC (Glazier), viewing deck or pavilion, boardwalk ramp
- Recreation Focus: play/exercise station and loop, viewing deck, tabletop pedestrian crossing/optional signalization, log seating area, river access
- Nature Focus: demolish foundations and court, forest loop trail, riverbank restoration, and widen the Bendigo sidewalk to 8'

WH Taylor Park

Consultant Clayton Beaudoin of Site Workshop discussed the train track realignment at E McClellan Street. He then presented different options for WH Taylor Park.

Options for the park included concepts for Ballarat to have a pedestrian focus, renovation or updating the train depot, multi-use trail, and a raised crossing on Park St for safer crossing at the south end of the park. The options are as follows:

- Railway Interchange: a junction, plaza with long platform seating and stage pavilion, carousel or other building, to preserve existing tree grove, and add a pedestrian rail path
- Alluvial Deposits: deposits related to the region's history, depot outdoor shelter, depot reduced interior, holiday tree, plaza edged with long platform seating, picnic platform/stage with view of Mount Si, splash pad/performance space, deposits of historical artifacts, and meandering pedestrian rails with inlays
- Confluence: a coming or flowing together; gathering at one point, picnic area, open lawn, elements of play, art or historical artifacts, meandering pedestrian path through woodland garden with art, and a wide entry to the park

Council and staff discussed the following: river access, connected trails, forest restoration, interpretive options, play/exercise area, future train track project, a pedestrian crossing on Park Street, history of the sites, parking, property acquisition, depot options, train track realignment, and E McClellan Street.

Community and Economic Development Director Deming and Site Workshop noted they would incorporate the input received from this workstudy and provide it to Council for their review at a future workstudy before introducing it to the public.

The Mayor provided an update to the Council on the Water Service Agreement with Sallal and the Economic Development Action Plan being placed on a future Council agenda.

Adjournment

The workstudy closed at 9:05 p.m.

ATTEST:

Heather Koellen, Councilmember

Jennifer Bourlin, Deputy City Clerk

NORTH BEND CITY COUNCIL MINUTES

May 2, 2023

City Hall, 920 SE Cedar Falls Way, North Bend, Washington

CALL TO ORDER, ROLL CALL:

Mayor McFarland called the regular meeting to order at 7:00 p.m.

Councilmembers Present: Elwood, Gothelf, Koellen, Loudenback and Miller. Councilmembers Joselyn and Rosen were excused.

Councilmember Koellen **MOVED**, seconded by Councilmember Miller to add a proclamation declaring April 30 – May 6, 2023 as Municipal Clerks Week after AB23-057 – Reappointments to Planning Commission. The motion **PASSED** 5-0.

CONSENT AGENDA:

Minutes – City Council Meeting of April 18, 2023

Payroll – April 20, 2023 – 28631 through **28637**, in the amount of **\$342,807.75**

Checks – May 2, 2023 – 73934 through **74015**, in the amount of **\$733,579.77**

AB23-051 – Resolution 2062 Awarding Maloney Grove-Cedar Falls Way Intersection Improvement Project

AB23-052 – Resolution 2063 Awarding PW Covered Equipment Facility Project

AB23-053 – Resolution 2064 Awarding 2023 Annual Sidewalk Repair Project

AB23-054 – Resolution 2065 Accepting FHWA Funds & Authorizing LA Agreement for SR-202 Shared Use Path and Pedestrian Bridge Capital Project

AB23-055 – Resolution 2066 Accepting FHWA Funds & Authorizing LA Agreement for NB Way/Mt Si Road Roundabout Capital Project

AB23-056 – Resolution 2067 Accepting Kanim Grove Infrastructure Improvements

Councilmember Gothelf **MOVED**, seconded by Councilmember Loudenback to approve the consent agenda as presented. The motion **PASSED** 5-0.

ANNOUNCEMENTS, PRESENTATIONS, APPOINTMENTS:

AB23-057 – Reappointments to Planning Commission

Audio: 3:05

Mayor McFarland recommended the reappointment of Juliano Pereira to Planning Commission Position No. 2 and Suzan Torguson to Planning Commission Position No. 3.

Councilmember Koellen **MOVED**, seconded by Councilmember Miller to approve AB23-057, confirming the Planning Commission reappointments of Juliano Pereira to Position No. 2 and Suzan Torguson to Position No. 3, terms expiring May 11, 2024. The motion **PASSED** 5-0.

Proclamation – Municipal Clerks Week

Audio: 9:01

Mayor McFarland read a proclamation declaring April 30 – May 6, 2023 as Municipal Clerks Week in the City of North Bend. The proclamation was accepted by City Clerk Susie Oppedal.

Proclamation – Affordable Housing Week

Audio: 19:05

Mayor McFarland read a proclamation declaring May 7 - 13, 2023 as Affordable Housing Week in the City of North Bend. Jim McEachran of Snoqualmie Valley Housing Task Force was on hand to accept the proclamation.

INTRODUCTIONS:

AB23-058 – Ordinance Authorizing Franchise Agreement with Puget Sound Energy

Audio: 26:35

City Attorney Marshall provided the staff report.

The following individuals commented on the agenda item:

Matt Larson, Government Affairs & Public Policy Manager, Puget Sound Energy

Brandon Leyritz, Municipal Liaison Manager, Puget Sound Energy

Councilmember Loudenback **MOVED**, seconded by Councilmember Gothelf to approve AB23-058, setting for a second reading and consideration by the City Council the ordinance to approve a Franchise Agreement with Puget Sound Energy, Inc. at the regularly scheduled May 16, 2023 City Council meeting. The motion **PASSED** 5-0.

MAYOR, COUNCIL, AND ADMINISTRATOR CONCERNS AND INITIATIVES:

Councilmember Gothelf mentioned attending Eastside Fire & Rescue's (EFR) wildland urban interface meeting last night and noted that EFR's website contains information for homeowners on how to protect their property, including a service that provides reviews of residential property to assist with wildfire preparedness.

Councilmember Miller mentioned how nice it was to see residents out and about enjoying the nice weather.

Councilmember Loudenback thanked volunteers that assisted with the recent Jazz Walk event and noted the Blues Walk would be held this September in Downtown North Bend. Additionally, he wished his daughter Marika a "Happy 31st Birthday".

Councilmember Koellen noted the river was running cold, high, and fast and encouraged all to exercise caution when near waterways.

Mayor McFarland spoke regarding the following items:

- State Legislature Session Wrap-up
- Sip, Suds & Si Event – May 20th 6 – 9 p.m., Downtown North Bend
- Yard Waste Recycling – May 6th 8 a.m. to Noon @ Public Works
- King County Regional Animal Services “License to Love” Pet Licensing Campaign

EXECUTIVE SESSION:

Mayor McFarland recessed the regular meeting for an Executive Session at 7:43 p.m. to discuss potential litigation, pursuant to RCW 42.30.110(1)(i). No action was anticipated as a result of the Executive Session, which was expected to last thirty minutes and videotaping of the meeting ceased.

The regular meeting reconvened at 8:09 p.m.

ADJOURNMENT:

Councilmember Koellen **MOVED** to adjourn, seconded by Councilmember Loudenback. The motion **PASSED** 5-0.

The meeting adjourned at 8:09 p.m.

ATTEST:

Rob McFarland, Mayor

Susie Oppedal, City Clerk



SUBJECT:		Agenda Date: May 16, 2023		AB23-059
Ordinance Authorizing a Franchise Agreement with Puget Sound Energy, Inc.		Department/Committee/Individual		
		Mayor Rob McFarland		
		City Administrator – David Miller		
		City Attorney – Mike Kenyon / Lisa Marshall		X
		City Clerk – Susie Oppedal		
		Administrative Services – Lisa Escobar		
		Comm. & Economic Development – Rebecca Deming		
		Finance – Richard Gould		
Cost Impact: N/A		Public Works – Mark Rigos, P.E.		X
Fund Source: N/A				
Timeline: Immediate				
Attachments: Ordinance, Franchise Agreement				
<p>SUMMARY STATEMENT:</p> <p>The prior Franchise Agreement (FA) for Puget Sound Energy (PSE) to operate in the City of North Bend (City) expired several years before Mayor Rob McFarland took office. For the past several years, PSE has been operating on their infrastructure in the City without a FA. The Mayor has directed City staff to review and update as necessary all City utility franchise agreements. The PSE franchise agreement has been worked on by the City Attorney and PSE’s attorney for the past several years, along with input from the City’s Public Works Department staff. City staff recommend a new FA with PSE be executed. PSE legal staff has reviewed this DRAFT FA and is amenable to it.</p> <p>The first reading of the Puget Sound Energy Franchise Agreement occurred during the May 2, 2023 City Council meeting. A second and final reading was scheduled for May 16, 2023 City Council meeting.</p>				
APPLICABLE BRAND GUIDELINES: Consistent delivery of quality basic services				
COMMITTEE REVIEW AND RECOMMENDATION: This item was reviewed by the Transportation and Public Works Committee during their March 28, 2023 meeting and was recommended for approval and placement on the Main Agenda for discussion.				
RECOMMENDED ACTION: MOTION to approve AB23-059, an ordinance authorizing a Franchise Agreement with Puget Sound Energy, Inc., as a second and final reading.				
RECORD OF COUNCIL ACTION				
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>		
May 2, 2023	AB23-058 – 1 st Reading & Cont. to 5/16/23 CC	5-0		
May 16, 2023				

ORDINANCE

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS, AND THROUGH THE FRANCHISE AREA TO PROVIDE FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF GAS AND ENERGY FOR POWER, HEAT, LIGHT, AND ANY OTHER PURPOSES FOR WHICH GAS AND ENERGY MAY BE USED; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the term of the City of North Bend's previous natural gas and electric power franchises with Puget Sound Energy, Inc., has expired; and

WHEREAS, the City and Puget Sound Energy, Inc. desire to have natural gas and electric power service provided for the current and future citizens and businesses of the City; and

WHEREAS, the City and Puget Sound Energy, Inc. desire to formalize their cooperative and mutually beneficial relationship for the provision of natural gas and electric power service within the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Grant of Franchise: The Mayor is authorized to execute a non-exclusive Franchise Agreement with Puget Sound Energy, Inc. to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use facilities in, upon, over, under, along, across, and through the franchise area to provide for the transmission, distribution, and sale of gas and energy for power, heat, light, and any other purposes for which gas and energy may be used for a period of twenty-five (25) years within the City of North Bend on the terms and conditions set forth in the Franchise Agreement attached hereto as Exhibit A.

Section 2. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date: This ordinance shall be in full force and effect five (5) days after its publication as provided by law. The “Effective Date” of the Franchise Agreement, however, shall be the date on which Puget Sound Energy, Inc. has executed and filed with the City Clerk the Acceptance Form attached at page 14 of the Franchise Agreement. The Franchise Agreement shall be of no force or effect if Puget Sound Energy, Inc. fails to file its written acceptance within 30 days of the date of publication of this ordinance.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 16TH DAY OF MAY, 2023.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Rob McFarland, Mayor

Lisa Marshall, City Attorney

ATTEST/AUTHENTICATED:

Published:
Effective:

Susie Oppedal, City Clerk

FRANCHISE AGREEMENT BETWEEN THE CITY OF NORTH BEND AND PUGET
SOUND ENERGY, INC

Section 1. Definitions.

1.1 Where used in this Franchise Agreement (the “Franchise”), the following terms shall mean:

1.1.1 “City” means the City of North Bend, a code city of the State of Washington, and its successors and assigns.

1.1.2 “Decommissioned Pole” means a PSE owned utility pole located in the Franchise Area which is no longer needed to provide Regulated Service.

1.1.3 “Dispute” means any and all claims, controversies or disputes arising between the Parties relating to or in connection with this Franchise.

1.1.4 “Environmental Laws” means and includes any Law relating to the protection of human health and the environment, including those relating to the generation, use, handling, transportation, storage, release, discharge or disposal of Hazardous Substances, such as the Model Toxics Control Act, Chapter 70.105D RCW.

1.1.5 “Franchise Area” means the surface of, and the space above and below, any public road, street, avenue, boulevard, highway, alley, court, sidewalk, lane, circle, or other public right-of-way of the City, as such public rights-of-way are now laid out, platted, dedicated, acquired, or improved and/or as they may hereafter be laid out, platted, dedicated, acquired, or improved in the future, within the corporate, territorial limits of the City as they now exist or as they may later be extended (by annexation or otherwise).

1.1.6 “Force Majeure” means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen by the Parties) that delays or prevents performance by a Party of any of its obligations under this Franchise, but only to the extent that and for so long as the event or circumstance is beyond the reasonable control of the affected Party; and only to the extent that the affected Party has taken commercially reasonable measures to avoid the effect of the event or circumstance on the affected Party’s ability to perform its obligations hereunder and to mitigate the consequences of the event. Force Majeure shall include the following, to the extent also satisfying the criteria specified above: (a) acts of nature, including storms, epidemics, and pandemics, provided the epidemic or pandemic is declared an emergency by the Governor of the State of Washington pursuant to RCW 43.06.220; (b) acts of public enemies, terrorism, war, rioting, insurrection or sabotage; (c) any form of compulsory government action or change in Law; (d) accidents or other casualties causing damage, loss, or delay; (e) labor disturbances, strikes, lock-outs or other industrial actions affecting the Parties or any of their contractors, subcontractors, agents or employees; and (f) delay in obtaining or denial of any regulatory consents or approvals.

1.1.7 “Hazardous Substance” means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant that is specifically designated as such and regulated by any applicable Environmental Law.

1.1.8 “Law(s)” shall mean all present and future applicable federal, state, or municipal laws, codes, ordinances, rules, tariffs, regulations, resolutions, Environmental Law, orders, and other requirements, provided that the foregoing are accorded the full force and effect of law and are binding upon the Parties to this Franchise. For the avoidance of doubt, Law includes the North Bend Municipal Code. References to Laws shall be interpreted broadly to cover government actions accorded the full force and effect of law, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

1.1.9 “Ordinance” means Ordinance No. ____, which sets forth the terms and conditions of this Franchise.

1.1.10 “Party” means and is a reference to either PSE or the City, and “Parties” means and is a collective reference to PSE and the City.

1.1.11 “PSE” means Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.

1.1.12 “Facilities” means, collectively, any and all (i) natural gas distribution systems, including gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, meters, meter-reading devices, and communication systems; (ii) electric transmission and distribution systems, including poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices, and communication systems; and (iii) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.13 “Public Improvement Project” means any capital improvement project within the Franchise Area that is undertaken by the City (either directly or through its contractors) and is funded by the City (either directly with its own funds or with other funds obtained by the City from any other public or private source).

1.1.14 “Regulated Service” means any utility, telecommunications, or similar service that is subject to the jurisdiction of one or more federal or state agencies that regulate the terms and conditions such service (including the Federal Energy Regulatory Commission, the Federal Communications Commission, and the WUTC).

1.1.15 “Term” means the term of this Franchise, as set forth in Section 17, “Franchise Term.”

1.1.16 “WUTC” means the Washington Utilities and Transportation Commission, and any successor agency with jurisdiction over the terms and conditions of the services provided by PSE to its customers.

Section 2. Grant of Rights.

2.1 The City hereby grants to PSE the right, privilege, authority, and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate, and use Facilities in, upon, over, under, along, across, and through the Franchise Area to provide for the transmission, distribution, and sale of gas and energy for power, heat, light, and such other purposes for which gas and energy may be used.

2.2 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with PSE's rights under this Franchise. This Franchise shall not limit or constrain the exercise of the City's police powers, nor shall this Franchise prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof, if so exercised and used in a manner that is consistent with the terms and conditions of this Franchise.

2.3 PSE shall exercise its rights within the Franchise Area in accordance with Law; provided, however, in the event of any conflict or inconsistency between any municipal law, code, statute, ordinance, rule, regulation, policy, or other requirement of the City and the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control.

2.4 This Franchise shall not convey any right to PSE to install its Facilities on, under, over, or across, or to otherwise use, any City-owned or leased properties of any kind that are located outside the Franchise Area. Further, this Franchise shall not govern or apply to Facilities located on PSE-owned or leased properties or easements (whether inside or outside of the Franchise Area, whether granted by a private or public entity, and whether now existing or hereafter acquired) and such Facilities are not, and will not be deemed to be, located pursuant to rights derived from this Franchise or pursuant to rights otherwise granted by the City.

2.5 Existing Facilities installed or maintained by PSE on public grounds and places within the City in accordance with prior franchises between PSE and the City (but which Facilities are not within the Franchise Area as defined by this Franchise) may be maintained, repaired, and operated by PSE at the location such Facilities exist as of the Effective Date during the Franchise Term; provided, however, that no such Facilities may be enlarged, improved, or expanded without the prior review and approval of the City pursuant to applicable ordinances, codes, resolutions, standards, and procedures.

Section 3. PSE Use and Occupancy of Franchise Area.

3.1 All work performed on PSE's Facilities within the Franchise Area shall be accomplished in a good and workmanlike manner, by means that to the extent practicable minimize interference with the free passage of pedestrian or vehicle traffic, and by methods that allow for reasonable access to adjoining property, whether public or private. PSE shall post and maintain proper barricades, flags, flaggers, lights, flares, safety devices and other measures as required by Law. If work on PSE's Facilities within the Franchise Area shall impair the lateral support of the Franchise Area or adjacent properties, then PSE shall take such action as is reasonably necessary to restore and maintain the lateral support of the Franchise Area or such adjacent properties.

3.2 Whenever PSE desires to engage in any work within the Franchise Area, PSE shall apply for all permits required under the North Bend Municipal Code to do such work, and PSE shall comply with all requirements and conditions of such permits that are not inconsistent or in conflict with the terms and conditions of this Franchise, including but not limited to any such restrictions relating to location, traffic control, restoration, repair, or other work to restore the surface of the Franchise Area pursuant to Subsection 3.4. It is further provided that in the event that PSE has any work in the Franchise Area completed by any of its authorized agents or subcontractors, PSE shall remain fully responsible for the permit, permitted work, and any other permit requirements, notwithstanding any provisions of this Franchise to the contrary.

3.3 In the event of an emergency situation in which PSE's Facilities within the Franchise Area are in such a condition so as to immediately endanger the property, life, health, or safety of any individual, PSE may take immediate action to correct the dangerous condition without first obtaining any required permit, in which case PSE shall notify the City telephonically ((425) 888-0486 during business hours, (425) 736-7697 after hours), electronically at <http://www.northbendwa.gov> or in person within twenty-four (24) hours of the event, and shall apply for any permit(s) required by the City for such work as soon as reasonably practicable thereafter.

3.4 PSE shall, after installation, construction, relocation, maintenance, removal, or repair of any of PSE's Facilities within the Franchise Area, restore the affected Franchise Area and any other City property situated within the Franchise Area that may be disturbed or damaged by such work, to at least the same condition as it was immediately prior to any such work. The City shall not impose any fee, fine, charge, or other cost or expense on PSE for such damage or disturbance, provided that such restoration work is completed to the reasonable satisfaction of the City. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored consistent with Law.

3.5 PSE shall have the right to cut, clear, and remove vegetation overhanging or growing into PSE's Facilities within the Franchise Area so as to prevent such vegetation from coming in contact with such Facilities. The exercise of such right shall be subject to the City's prior approval, which shall not be unreasonably withheld, conditioned, or delayed.

Section 4. Planning and Coordination.

4.1 The Parties shall each exercise commercially reasonable efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. In so doing, the Parties shall undertake cooperative planning so as to promote the coordinated timing, location, and prosecution of such work within the Franchise Area. Upon the request of either Party, but not more often than annually unless otherwise agreed upon by the Parties, the Parties shall meet to discuss and coordinate regarding future construction activities then being planned by either Party within the Franchise Area. Such discussions and coordination shall be for informational purposes only and shall not obligate either Party to undertake any specific improvements within the Franchise Area.

4.2 The City may, from time to time, request:

4.2.1 Copies of any available PSE plan for potential improvements to PSE's Facilities within the Franchise Area if and as such information is needed by the City for its own planning purposes; and

4.2.2 Copies of any available drawings in use by PSE showing the location of its Facilities within the Franchise Area if and as such information is needed by the City for right-of-way management purposes.

Any such request by the City shall be reasonable in scope and at intervals that minimize administrative burdens on both Parties. Any release of such information to the City shall be subject to PSE's prior approval, which shall not be unreasonably withheld, conditioned, or delayed. Any information so provided by PSE shall be for informational purposes only and shall not obligate PSE to undertake any specific improvements within the Franchise Area, nor shall such information be construed as a proposal to undertake any specific improvements within the Franchise Area. As to any such information so provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities is shown, such Facilities are shown in their approximate location.

4.3 In the event either PSE or the City shall cause excavations to be made within the Franchise Area, the Party causing such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation so long as such joint use does not unreasonably delay the work of the Party causing such excavation, and such joint use is arranged and accomplished upon terms and conditions reasonably satisfactory to the Party causing such excavation. With respect to any excavations by PSE or the City within the Franchise Area, nothing in this Franchise is intended (nor shall be construed) to relieve either Party of their respective obligations arising under Law with respect to determining the location of utility facilities.

Section 5. City Use of PSE Poles in Franchise Area.

5.1 During the Term the City may, subject to PSE's prior consent (which shall not be unreasonably withheld, conditioned, or delayed), install and maintain City-owned overhead facilities on PSE-owned poles within the Franchise Area pursuant to mutual agreement entered into between the City and PSE. Such mutual agreement may address commercial and noncommercial uses of PSE's poles by the City. The City shall install, operate, and maintain such facilities at its sole risk and expense and shall conduct all such activities in accordance with Law and consistent with such reasonable terms and conditions as PSE may specify from time to time (including requirements accommodating Facilities or the facilities of other parties having the right to use PSE's poles). PSE shall have no obligation under Section 10 "Indemnification and Insurance" in connection with any City-owned facilities that are installed or maintained on PSE's poles. PSE shall not charge the City for noncommercial use of PSE's poles pursuant to this Section 5, provided however, that nothing herein shall require PSE to bear any cost or expense in connection with any such use by the City.

5.2 Notwithstanding the foregoing, if at any time during the Term the City's use of PSE's poles pursuant to this Section 5 shall be determined to be a Regulated Service, then such use shall be arranged and accomplished in accordance with any Law applicable thereto.

Section 6. Decommissioned Facilities

6.1 As of the Effective Date, PSE and third parties having attachments of wires, devices, and other equipment to PSE-owned poles located in the Franchise Area use the National Joint Utilities Notification System (“NJUNS”) as the means of providing official notice between them of actions required to be taken and reporting of actions taken by such third parties with respect to such attachments. To the extent consistent with Law and at the request of the City, PSE will use commercially reasonable efforts (subject to the functional capabilities and limitations of NJUNS in place from time to time) to include the City as an interested party to any notification tickets submitted by PSE in NJUNS with respect to any PSE-owned poles located in the Franchise Area that are permanently no longer in use by PSE and which contain third party attachments. The City may monitor activity associated with such third-party attachments through NJUNS.

6.2 If PSE shall determine a PSE-owned pole located within the Franchise Area to be a Decommissioned Pole, then PSE shall so notify the City and such notice shall establish the date by which such Decommissioned Pole shall be removed from the Franchise Area. PSE shall use commercially reasonable efforts to remove such Decommissioned Pole from the Franchise Area within one hundred-eighty (180) days of the date of such notice. If, however, upon receipt of any such notice from PSE the City shall reasonably determine that such Decommissioned Pole unreasonably interferes with the free passage of pedestrian or vehicle traffic, then the City shall so notify PSE and PSE shall use commercially reasonable efforts to remove such Decommissioned Pole from the Franchise Area within thirty (30) days of the date of such notice from the City.

6.3 If the City reasonably determines that a PSE-owned pole located within the Franchise Area is no longer in use by PSE or by any authorized third-party, then the City may request that PSE determine if such pole is a Decommissioned Pole. Upon receipt of such request, PSE shall review the status of the pole in question. If PSE shall determine such pole to be a Decommissioned Pole, then PSE shall give the City notice thereof in accordance with Subsection 6.2. If PSE shall determine such pole not to be a Decommissioned Pole, then PSE shall so notify the City and such notice shall explain the basis for making such determination. The Parties agree to cooperate and establish mutually agreeable procedures for the implementation of this Subsection 6.3 that achieve the right-of-way management objectives of the City in a manner that minimizes the administrative burdens on both Parties.

6.4 PSE may, from time to time, elect to discontinue its use of underground natural gas Facilities within the Franchise Area and decommission such Facilities in place (“Decommissioned Gas Facilities”). In such event, PSE shall notify the City of its decision to decommission such Facilities. As requested by the City in accordance with Subsection 4.2 PSE shall provide the City with drawings that show the approximate location of Decommissioned Gas Facilities.

Section 7. Hazardous Substances.

PSE shall only use Hazardous Substances within the Franchise Area incident to PSE’s normal business operations, and in all cases (a) limited to such quantities as may be required in its normal business operations, (b) used, transported, or stored per manufacturer’s instructions, and (c) used, transported, or stored only for their intended uses. In the event PSE or its contractors cause an unlawful release of Hazardous Substances within the Franchise Area, PSE shall notify the City

within twenty-four (24) hours of its discovery. PSE shall act promptly to remediate such release of Hazardous Substances in accordance with Law.

Section 8. Relocation of Facilities.

8.1 Whenever the City causes a Public Improvement Project to be undertaken within the Franchise Area, and such Public Improvement Project requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Subsection 8.2 below), the City shall:

8.1.1 Provide PSE, within a reasonable time prior to the commencement of such Public Improvement Project, written notice requesting such relocation; and

8.1.2 Provide PSE with reasonable plans and specifications sufficient, in PSE's discretion, for such Public Improvement Project and for PSE's initial system design for the required relocation of such Facilities.

After receipt of such notice and such plans and specifications, and within one hundred twenty (120) calendar days (or such shorter or longer period of time as the Parties may mutually agree in writing), PSE shall relocate such Facilities within the Franchise Area at no charge to the City; provided, however, that if PSE determines that it would be impossible or impracticable to perform the relocation within the applicable time frame under this Section 8.1, then PSE shall promptly inform the City and provide a reasonable alternative relocation time frame. In such case, the Parties shall promptly meet and confer in good faith, giving due regard to all relevant facts and circumstances, to determine a mutually agreeable time frame for PSE to perform such relocation. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 8.1, the City shall bear the entire cost of such subsequent relocation.

8.2 Whenever (i) any public or private development within the Franchise Area, other than a Public Improvement Project, requires the relocation of PSE's Facilities within the Franchise Area to accommodate such development; or (ii) the City requires the relocation of PSE's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then in such event, PSE shall have the right as a condition of such relocation, to require such person or entity to make payment to PSE, at a time and upon terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE's Facilities.

8.3 Any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of PSE's Facilities shall be a required relocation for purposes of Subsection 8.2 (including any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction, or development).

8.4 Nothing in this Section 8 "Relocation of Facilities" shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities authorized by easement or other rights not derived from this Franchise, regardless of whether such easement or other rights

are on public or private property and regardless of whether such easement or other rights extend to property lying within the Franchise Area.

8.5 Subject to the exclusions and requirements set forth in this Subsection 8.5, if PSE does not relocate its Facilities within the Franchise Area in accordance with Subsection 8.1 by the applicable relocation date in order to accommodate a Public Improvement Project, and to the extent such failure to relocate causes a delay in the work being undertaken by the City's third-party contractor(s) on the Public Improvement Project that results in a claim by the third-party contractor(s) for direct costs and expenses that are directly caused by the delay in PSE relocating its Facilities in accordance with Subsection 8.1 and such direct costs and expenses are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option:

Tender the Contractor Delay Claim to PSE for defense and indemnification in accordance with Section 10; or

- 8.5.1 Require that PSE reimburse the City for any such direct costs and expenses that are legally required to be paid by the City to its third-party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by PSE under this Subsection 8.5.2, the City shall first give PSE written notice of the Contractor Delay Claim and give PSE the opportunity to work with the third-party contractor(s) to resolve the Contractor Delay Claim for a period of not less than sixty (60) days prior to the City's payment of the Contractor Delay Claim.

Nothing in this Subsection 8.5 or otherwise will require PSE to bear or be responsible for any cost, expense, or damage, or to defend or indemnify the City against any claim, that results from any delay in meeting the applicable relocation date for a Public Improvement Project if and to the extent the delay is caused by the City, any third party that is not an agent or subcontractor of PSE, or any Force Majeure Event.

Section 9. Undergrounding of Electric Facilities.

PSE acknowledges the City desires to encourage the undergrounding of overhead electrical Facilities within the Franchise Area. The City acknowledges that PSE utilizes such overhead Facilities to provide electrical service on a non-preferential basis subject to and in accordance with tariffs on file with the WUTC. Subject to and in accordance with such tariffs, PSE will cooperate with the City in the formulation of policy and regulations concerning the undergrounding of PSE's overhead electrical Facilities within the Franchise Area. If, during the Term, the City directs PSE to underground overhead electrical Facilities within the Franchise Area, such undergrounding shall be arranged and accomplished subject to and in accordance with tariffs on file with the WUTC, including, but not necessarily limited to, Schedule 73 and Schedule 74 of PSE's Electric Tariff G (as amended or replaced from time to time).

Section 10. Indemnification and Insurance.

10.1 PSE shall indemnify and hold the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of PSE, its agents, or employees in exercising the rights granted to PSE by this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the City, the City shall promptly notify PSE thereof, and PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the City based upon any such claim or demand, the City shall likewise promptly notify PSE thereof, and PSE shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

10.2 PSE shall maintain the following liability insurance coverages, insuring PSE and including the City and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to PSE under this Franchise, or the use, construction, installation, removal, or maintenance of any PSE Facilities under this Franchise:

10.2.1 General liability insurance, to include a combination of self-insurance and excess/umbrella liability policies as PSE may elect, with limits not less than \$5 million per occurrence/\$5 million general aggregate;

10.2.2 Automobile liability for owned, non-owned and hired vehicles with a combined single limit of \$5,000,000; and

10.2.3 Worker's compensation with statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000).

10.3 The liability insurance described herein shall be maintained by PSE throughout the Franchise Term, and such other period of time during which PSE is operating its Facilities within the Franchise Area without a franchise or is engaged in the removal of its Facilities from the Franchise Area. Payment of deductibles and self-insured retentions shall be the sole responsibility of PSE. Coverage under applicable policies shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The City shall be included as an insured under PSE's excess/umbrella liability insurance policy to the extent outlined herein and per the policy terms and conditions. PSE shall be the primary insured as respects the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of PSE's insurance and shall not contribute with it.

10.4 The liability insurance described herein, and any subsequent replacement policies, shall provide that insurance shall not be cancelled or materially changed so as to be out of compliance with these requirements without first providing thirty (30) days' written notice to the City. If the insurance is cancelled or materially altered so as to be out of compliance with the requirements of this Subsection within the Term, PSE shall provide a replacement policy. PSE agrees to maintain

continuous uninterrupted insurance coverage, or provide self-insurance, in at least the amounts required for the duration of this Franchise and, in the case of any policy written on a “claims-made” form, for at least three (3) years after expiration of the Term. Any lapse in the required insurance coverage shall be cause for termination of this Franchise.

10.5 In lieu of the insurance requirements set forth in this Section 10, PSE may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the City’s request, PSE shall provide the City with reasonable written evidence that PSE is maintaining such self-insurance.

10.6 Any PSE insurance policies used to meet the insurance obligations set forth in this Section 10 will be placed with insurers authorized to do business in the state of Washington and with a current A.M. Best rating of not less than A-VII, or financial equivalent. PSE shall provide the City with certificates of the required insurance within twenty (20) days of the Effective Date of the Ordinance adopting this Franchise.

Section 11. Recovery of Costs.

11.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon PSE. However, as provided in RCW 35.21.860, the City may recover from PSE actual administrative expenses incurred by the City that are directly related to: (i) receiving and approving a permit, license, or this Franchise, (ii) inspecting plans and construction, or (iii) preparing a detailed statement pursuant to Chapter 43.21C RCW.

11.2 Promptly following adoption of this Franchise, the City shall provide to PSE a detailed statement of actual administrative expenses incurred by the City that are properly reimbursable to the City under Subsection 11.1, and thereafter PSE shall reimburse the City for such expenses within one hundred twenty (120) days after its receipt of the applicable statement.

Section 12. Utility Tax.

Nothing in this Franchise shall exempt PSE from payment of any and all taxes lawfully imposed by the North Bend Municipal Code and due from PSE; provided that nothing in this Section shall be construed as a waiver of PSE’s rights to contest the validity of any such tax or the amount of any tax due.

Section 13. Reservation of Easement in Event of Vacation.

In the event the City vacates any portion of the Franchise Area containing PSE’s Facilities during the Term, the City shall reserve an easement for PSE’s Facilities in the manner provided by the City’s vacation procedures. The City shall give PSE advance notice of its intent to vacate any portion of the Franchise Area and shall consult with PSE regarding the terms and conditions of the easement to be reserved for PSE’s Facilities.

Section 14. Force Majeure.

If performance of this Franchise or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction, or interference. The affected Party shall use commercially reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. Notwithstanding the foregoing, the insufficiency of funds, financial inability to perform, or changes in such Party's cost of performing its obligations hereunder shall not constitute a Force Majeure event.

Section 15 Dispute Resolution.

15.1 A Dispute shall be resolved in accordance with the dispute resolution procedures set forth in this Section 15. A Party shall inform the other Party promptly following the occurrence or discovery of any item or event that would reasonably be expected to result in a Dispute. The initial mechanism to resolve a Dispute shall be by negotiation between the Parties' representatives, so designated by the Parties by notice given in accordance with Subsection 19.1.

15.2 If the Parties cannot resolve a Dispute satisfactorily within fifteen (15) days after receipt of the initial notice required by Subsection 15.1, either Party may thereafter deliver to the other Party notice initiating the dispute resolution procedures set forth in this Subsection 15.2. Such notice shall (i) contain a detailed description of the issues in Dispute, (ii) identify the senior officers or administrators authorized to settle the Dispute, and (iii) propose a date or dates, not less than thirty (30) days from the date such notice, that such officers or administrators are available for a meeting to resolve such Dispute. The recipient Party shall, within three (3) business days following receipt of the Dispute notice, provide to the notifying Party a parallel schedule of availability of the recipient Party's senior officers or administrators duly authorized to settle the Dispute. Following delivery of the respective senior officers' or administrators' schedules of availability, the senior officers or administrators so designated shall meet and confer, as often as they deem reasonably necessary during the remainder of the thirty (30) day period, in good-faith negotiations to resolve the Dispute to the satisfaction of both Parties.

15.3 If at any time after the expiration of such thirty (30) day period the City shall determine that continued negotiations with PSE will not result in a resolution of the issue or issues in Dispute, and if the City reasonably believes that PSE is then in default of its obligations under this Franchise, then the City may serve upon PSE a written order to comply with the provisions of this Franchise pursuant to Section 16 "Default."

15.4 Except as otherwise provided in Subsection 15.3, the Parties intend that the procedures of this Section 15 be exhausted before a Party exercises any other right or remedy available under this Franchise or Law. The Parties hereby reserve any and all such rights and remedies.

Section 16. Default.

If PSE shall fail to comply with the provisions of this Franchise, the City may serve upon PSE a written order to so comply within sixty (60) days from the date such order is received by PSE. If PSE is not in compliance with this Franchise after expiration of said sixty (60) day period, the City

may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by PSE cannot be corrected with due diligence within said sixty (60) day period (PSE's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which PSE may so comply shall be extended for such time as may be reasonably necessary and so long as PSE commences promptly and diligently to effect such compliance.

Section 17. Franchise Term.

This Franchise is and shall remain in full force and effect for a period of twenty-five (25) years from and after the Effective Date.

Section 18. Assignment.

PSE shall not assign this Franchise to any unaffiliated third party without the prior consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, PSE shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits, and privileges in and under this Franchise for the benefit of bondholders.

Section 19. Miscellaneous.

19.1 Unless otherwise specifically provided by this Franchise, all notices, consents, requests, demands, or other communications required or permitted by this Franchise must be in writing and given by personal delivery, email, or certified mail and shall be sent to the respective Parties as follows:

To PSE: Brandon Leyritz
 Municipal Liaison Manager
 East King and Sound Transit
 Puget Sound Energy
 P.O. Box 97034
 Bellevue, WA 98009-9734
 Brandon.Leyritz@pse.com

To City: Mark Rigos, P.E.
 Public Works Director
 920 SE Cedar Falls Way
 North Bend, WA 98045
 Mrigos@northbendwa.gov

Any such communication by a Party shall be deemed to have been received by the other Party (i) upon the delivery date received by the intended recipient if delivered by hand; (ii) five (5) business days after it is sent by certified mail, postage prepaid; or (iii) if sent by email transmission, when dispatched and acknowledged by the recipient as having been received in full and in legible form. A Party may change its address for purposes of this Subsection 19.1 by giving written notice of such change to the other Party in the manner provided in this Subsection 19.1.

19.2 The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs. Terms defined in a given number, tense, or form shall have the corresponding meaning when used in this Franchise with initial capitals in another number, tense, or form. References containing terms such as “hereof,” “herein,” “hereto,” “hereinafter,” and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Franchise taken as a whole. “Includes” or “including” shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation. The term “or” is not exclusive.

19.3 Any provisions of this Franchise prohibited or rendered unenforceable by any Law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Franchise. In such event, the remainder of this Franchise will remain valid and enforceable. Upon such determination that any term or other provision is prohibited or rendered unenforceable, the Parties shall negotiate in good faith to modify this Franchise so as to maintain the original intent of the Parties as closely as possible in an acceptable manner to the end that rights and obligations contemplated under this Franchise are fulfilled to the greatest extent possible.

19.4 This Franchise may be amended only by written instrument, signed by both Parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with Law. This Franchise constitutes the entire agreement between the Parties, and supersedes all other prior agreements and understandings, oral and written, between the Parties, with respect to the subject matter hereof.

19.5 Nothing in this Franchise shall be construed to create any rights or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy upon any person other than the City and PSE. No action may be commenced or prosecuted against either the City or PSE by any third party claiming as a third-party beneficiary of this Franchise.

19.6 The Parties shall act in good faith and use commercially reasonable efforts to carry out their respective obligations under this Franchise. The failure of either Party to insist on or enforce strict performance of any provision of this Franchise or to exercise any right or remedy under this Franchise or Law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provision, right, or remedy in that or any other instance; rather, the same will be and remain in full force and effect.

19.7 This Franchise shall be governed by, subject to, and construed under the laws of the State of Washington. This Franchise is subject to the provisions of any applicable tariff on file with the WUTC or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

19.8 All terms and conditions of this Franchise that must be reasonably construed to survive the expiration or termination of this Franchise in order to give full force and effect to the intent of the Parties as set forth herein shall survive the expiration or termination of this Franchise, regardless of whether such survival is expressly specified herein.

HONORABLE MAYOR AND CITY COUNCIL
CITY OF NORTH BEND, WASHINGTON

In the matter of the application)
of Puget Sound Energy, Inc., a) Franchise Ordinance No. _____
Washington corporation, for a)
franchise to construct, operate)
and maintain facilities in, upon,)
over under, along, across and)
through the franchise area of the) ACCEPTANCE
City of North Bend, Washington)

WHEREAS, the City Council of the City of North Bend, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. _____, bearing the date of _____, 2023; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on _____, 2023, from said City of North Bend, King County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of North Bend, King County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned _____ thereunto duly authorized on this _____ day of _____, 2023.

ATTEST: PUGET SOUND ENERGY, INC.

_____ By: _____

Copy received for City of _____
on _____, 2023

By: _____
City Clerk



SUBJECT:		Agenda Date: May 16, 2023		AB23-060	
Motion Authorizing a Lease Agreement with the Snoqualmie Valley Historical Society		Department/Committee/Individual			
		Mayor Rob McFarland			
		City Administrator – David Miller			X
		City Attorney – Lisa Marshall			
		City Clerk – Susie Oppedal			
		Administrative Services – Lisa Escobar			
		Comm. & Economic Development – Rebecca Deming			
		Finance – Richard Gould			
Cost Impact: N/A		Public Works – Mark Rigos			
Fund Source: N/A					
Timeline: Immediate					
Attachments: Lease Agreement					
SUMMARY STATEMENT:					
<p>The City of North Bend has been leasing the History Museum to the Snoqualmie Valley Historical Society (SVHS), a 501(c)(3) non-profit corporation, since 1976. The original lease was for nineteen (19) years. In 1987 the lease was extended by a lease addendum through the end of 2012; and then extended through December 2019. The lease provided for a five (5) year extension upon notice given by the SVHS to the City prior to December 2019. Unfortunately, the SVHS never sent notice to the City requesting an extension and the City did not track the expiration of the lease in 2019. The SVHS has been occupying the Museum building without a lease for the last 4 years. Recently, the Museum experienced a blockage of the sewer lateral and contacted the City to request reimbursement for this repair. That is when staff discovered that the lease had expired. The City is responsible for all improvements outside of the building enclosure and will be reimbursing SVHS for its cost to restore the sewer lateral.</p> <p>Attached to the Agenda bill is the new lease with the SVHS for a term of three (3) years terminating on December 31, 2026. All provisions of the lease are equal to those of the last lease. The SVHS pays the City \$10/year to lease the site and building. Use is limited to a museum, SVHS maintains the building and grounds and pays for janitorial services. Any structural alterations of the building require City approval and any expense of more than \$50 requires City approval. The City is responsible for any exterior building structural improvements, including utilities to the building. All indemnifications, insurance, assignment prohibition and other typical provisions of a lease are included in the current proposed lease.</p> <p>The Historical Museum is a great asset to the City and an important cultural resource. The City desires to keep the Museum active and successful. Therefore, staff is proposing that this lease be approved by the Finance and Administration Committee and the full Council for another three (3) year term.</p>					
APPLICABLE BRAND GUIDELINES: Commitment to invest in the City and foster community engagement and pride, variety of recreation opportunities.					
COMMITTEE REVIEW AND RECOMMENDATION: On May 9, 2023 the Finance & Administration Committee reviewed the lease and recommended approval of the lease on the Consent Agenda at the May 16, 2023 City Council meeting.					
RECOMMENDED ACTION: MOTION to approve AB23-060, authorizing the Mayor to execute the restated lease with the Snoqualmie Valley Historical Society, in a form and content acceptable to the City Attorney.					

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
May 16, 2023		

**LEASE AGREEMENT
BETWEEN THE CITY OF NORTH BEND
AND SNOQUALMIE VALLEY HISTORICAL SOCIETY**

THIS LEASE AGREEMENT (“Lease”) is made and entered into this ____ day of _____, 2023, by and between the City of North Bend, a municipal corporation of the state of Washington (“City”), and Snoqualmie Valley Historical Society, a 501(c)(3) non-profit corporation (“Lessee”).

WHEREAS, beginning in 1976, the City and Lessee have executed several leases for Lessee’s use of the Premises as a historical museum, and the parties wish to execute a new Lease for a period of three (3) years;

NOW, THEREFORE, in consideration of the mutual promises and conditions set forth herein, the sufficiency of which is hereby acknowledged, the City and Lessee hereby agree as follows:

1. Leased Premises. The City hereby agrees to lease to Lessee certain real property, including a house, shed, and parking lot, located in North Bend, King County, Washington, as described and depicted in the attached **Exhibit A**, which is incorporated herein by this reference (“Premises”).
2. Term of Lease. The term of this Lease shall be for a period of three (3) years, commencing on the date of the last signature hereon and terminating December 31, 2026 (“Term”); provided, that Lessee shall have the option to extend the Term for an additional three (3) years by providing sixty (60) days’ written notice to the City of its intent to extend the Term for this three-year (3-year) period on terms and conditions acceptable to the City; provided further, that the Lease may be terminated by either party for any reason or for no reason by providing advance written notice of one hundred and eighty (180) days to the other party. In the event Lessee chooses to extend the Term, the City shall prepare an amendment to the Lease, which shall be signed by both parties.
3. Rent. The City and Lessee agree that the rent of the Premises shall be ten dollars (\$10.00) per year, plus other valuable consideration. Rent shall be paid in an annual payment at such place or places as the City may designate from time to time in writing.
4. Use of Property. The Premises shall be used and occupied only as a museum and for no other purpose or purposes without the written consent of the City. Lessee is also authorized to place upon the Premises the Museum Farm Shed and such other future display buildings as necessary for housing outdoor equipment; provided, that the City shall not be responsible for any of the maintenance or repairs on such Museum Farm Shed or buildings placed upon the Premises. All said future buildings and the Museum Farm Shed shall remain the property of Lessee.

5. Janitorial Services. Lessee shall provide all janitorial services for the Premises.
6. Maintenance of Property. Lessee shall not perform any acts or carry on any practices which may injure the building or the Premises, or be a nuisance, and shall keep the Premises under its control, and the sidewalks adjacent to the Premises, clean and free from rubbish and dirt at all times, and shall store all trash and garbage within the Premises and arrange for the regular pickup of such trash and garbage. Lessee shall not burn any trash of any kind in or about the Premises without proper permit.

The City shall not be called upon to make any structural improvements and shall be responsible only for exterior structural repairs upon the Premises. The Premises shall, at all times, be kept in good order and condition and repair by Lessee, and shall be kept in a clean and sanitary condition as required by applicable state and local laws, and in accordance with all directions, rules, and regulations of the health officer, fire marshal, building inspector, or other proper officers of the governmental agencies having jurisdiction, at the sole cost and expense of Lessee. Lessee shall comply with all requirements of law, ordinance, and otherwise, in regard to the Premises. Lessee shall permit no waste, damage, or injury to the Premises. Lessee shall, at its own cost and expense, replace any glass windows on the Premises which may become broken. At the expiration of the tenancy created hereunder, Lessee shall surrender the leased premises in good condition, with reasonable wear and tear and loss by fire or other unavoidable casualty excepted. Lessee shall be responsible for all repairs to fixtures. All repairs to interior structures that cost more than \$50.00 (fifty dollars) shall be negotiated between the City and Lessee concerning their respective contributions for the payment of the repairs.

7. Structural Alterations. Lessee shall not make any structural alterations without the City's prior written consent. All alterations, additions, and improvements which may be made or installed by either party upon the Premises shall be the property of the City and shall remain upon, and be surrendered with, the Premises as a part thereof at the expiration of the Term. Respecting any fixtures and/or equipment installed by Lessee during the Term, the City and Lessee shall meet, upon termination of this Lease, to negotiate as to whether the fixture and/or equipment shall be deemed a permanent fixture or permanent equipment installation. Those fixture or equipment installations that are determined by the parties to be permanent shall remain upon, and be surrendered with, the Premises as a part thereof at the expiration of the Term.
8. Plumbing. The plumbing facilities shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Lessee, who shall—or whose employees or agents shall—have caused it. Notwithstanding the above, Lessee shall be responsible for all plumbing up to the point at which the plumbing enters a wall or floor exiting from the Premises, and the City shall be responsible thereafter.

9. Indemnification. Lessee shall defend, indemnify, and hold harmless the City and/or the City's officers, officials, employees, and agents from all damage of every kind or nature whatsoever, and all expenses arising therefrom, that may be claimed to accrue by reason of any accident upon the Premises, and the City shall not be liable to Lessee or any person for claims arising from any defects in the Premises, whether known or unknown, or hereafter occurring in or in front of the Premises, or by reason of any act of negligence occurring in the Premises of any other lessee or invitee of the landlord. All personal property in the Premises shall be at the risk of Lessee only. Lessee shall defend, indemnify, and hold harmless the City and its officers, officials, employees, and agents against and from any and all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of the business conducted in the Premises, or from any work or thing done by Lessee in or about the Premises, and shall further defend, indemnify, and hold harmless the City and its officers, officials, employees, and agents against and from any and all claims arising during the Term for any breach or default on the part of Lessee in the performance of any covenants or agreements on the part of Lessee to be performed hereunder or arising from any act of negligence of the Lessee or any of its agents, contractors, servants, employees, or licensees, in or about the Premises, and from and against all costs, attorneys' fees, expenses, and liabilities incurred in or about any such claim, action, or proceeding brought thereon, and in case any action or proceeding be brought against the City by reason of any such claim, Lessee, upon notice from the City, shall resist or defend any such action or proceeding by attorneys reasonably satisfactory to the City. Lessee shall not suffer or give cause for the filing of any lien against the Premises.
10. Assignment of Lease. This Lease is not assignable by law. Lessee may not assign or sublet or, in any manner, transfer the Lease, or any estate or interest therein, without the prior written consent of the City, and the City shall not be unreasonable in withholding consent, and any such consent for any such transfer, assignment, or subletting shall not be construed as consent for any subsequent transfer, assignment, or subletting. Any such consent shall not be construed as an agreement to release Lessee from its primary responsibility under the terms and conditions of this Lease.
11. Utilities and Taxes. Lessee shall pay all utilities used by Lessee in the operation of the Premises. Lessee shall pay, when due, any increase in personal property taxes, and the City shall pay real estate taxes applicable to the Premises commencing in 1976 and every year thereafter during the Term.
12. Damage by Fire. If the Premises are destroyed or damaged by fire, explosion, or earthquake, or any other casualty, as to become wholly untenable, then the City may, if it so elects, rebuild and put the Premises in good condition and fit for occupancy within a reasonable time after such total or partial destruction, or give notice in writing terminating this Lease. If the City elects to repair or rebuild the Premises, the City shall give Lessee notice thereof within thirty (30) days after such injury and then proceed with reasonable speed to repair or rebuild. Lessee shall not be obligated to pay any rent from the time of such destruction or damage until the Premises are again fit and ready for occupancy.

If the Premises are damaged by fire, explosion, or earthquake, or any other casualty, but are not thereafter rendered wholly untenable, then the City shall repair such damage and put the Premises in tenable condition as rapidly as is reasonably possible, and while such damage is being repaired, Lessee shall not be entitled to any equitable abatement of the rent. The City shall not be liable or responsible for any delays in rebuilding or repairing due to strikes, acts of God, restrictive governmental regulations, or any other causes beyond the City's control. If the City elects to terminate this Lease under the conditions contained in this section, said election to terminate shall not become operative and final until the expiration of thirty (30) days from the date of notification by the City of its election to terminate.

13. Inspection by the City. The City shall have the right to enter upon the Premises at all reasonable hours for the purpose of inspecting the Premises. If the City deems any repairs reasonable and required to be made by Lessee, the City may demand that Lessee make the same forthwith, and if Lessee refuses or neglects to commence such repairs and complete the same with reasonable dispatch, the City may make or cause such repairs to be made and shall not be responsible to Lessee for any loss or damage that may accrue to its stock or business by reason thereof, and if the City makes or causes such repairs to be made, Lessee shall, on demand, pay to the City the costs thereof, with interest at twelve (12) percent per annum, and if Lessee shall default in such payment, the City shall have the remedies provided in section 14 of this Lease.
14. Holding Over. If Lessee remains in possession of the Premises after the termination of this Lease and without execution of a new lease, it shall be deemed to be occupying the Premises as a tenant from month to month, subject to all conditions, provisions, and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.
15. Waiver of Conditions or Covenants. One or more waivers of any covenant or condition by the City, including acceptance of late rent, shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the City's consent to, or approval of, any act by Lessee requiring the City's consent or approval shall not be deemed to waive or render unnecessary the City's consent to, or approval of, any subsequent similar act by Lessee.
16. Notice. Whenever, under this Lease, a provision is made for notice of any kind, it shall be deemed sufficient notice and service thereof if such notice is sent by registered or certified mail with postage prepaid to the last known postal address of the party to be noticed or, in the case of notice made to Lessee, to the postal address of the Premises.
17. Insurance. Lessee shall procure and maintain standard fire and extended coverage insurance on fixtures and equipment in the Premises to the extent of their full insurable value. The City and Lessee shall be named as insureds as the respective interest may appear. Such insurance shall be written with a company satisfactory to the City and shall be in the form approved by the City. Lessee shall provide evidence satisfactory to the City that such insurance is in effect.

Lessee shall, during the entire Term, keep in full force and effect a policy or policies of public liability and property damage insurance with respect to the Premises, and the business operated by Lessee in the Premises, in which the limits of public liability shall not be less than two million dollars (\$2,000,000.00) per person and two million dollars (\$2,000,000.00) per accident, and in which the property damage liabilities shall not be less than one million dollars (\$1,000,000.00). The policies shall name the City as insured and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City ten (10) days' prior written notice. The insurance shall be in an insurance company, or companies, and in a form approved by the City, and a copy of each policy or certificate of insurance shall be delivered to the City.

If possible, fire insurance and personal liability shall be included in the City's fire insurance and personal liability coverages, and Lessee shall pay any increase in the premium charge for such coverage under the City's policies.

18. Applicable Law; Venue; Attorneys' Fees. This Lease shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Lease, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case and such fee, shall be included in the judgment.
19. Signs. All signs used upon any exterior part of the building by Lessee shall be subject to the approval of the City or its agents. Any signs so placed upon the Premises shall be so placed upon understanding and agreement that Lessee will remove the same at the termination of tenancy herein created and repair any damage or injury to the Premises caused thereby and, if not so removed by Lessee, the City may have the same removed at Lessee's expense.
20. Parties Bound. This Lease is binding upon the parties hereto and their heirs, successors, assigns, and personal representatives.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the date first set forth above.

CITY OF NORTH BEND

**SNOQUALMIE VALLEY
HISTORICAL SOCIETY**

By: _____
Rob McFarland, Mayor

By: _____
Kevin Burrows, President

Attest/Authenticated:

Susie Oppedal, City Clerk

Approved As To Form:

Lisa M. Marshall, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2023, did personally appear before me, the undersigned Notary Public in and for the State of Washington, **Rob McFarland**, who is known to me or produced satisfactory evidence that he is the person that executed the foregoing instrument as Mayor on behalf of the City of North Bend, and acknowledged that he signed this instrument as his free and voluntary act for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this this ____ day of _____, 2023.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

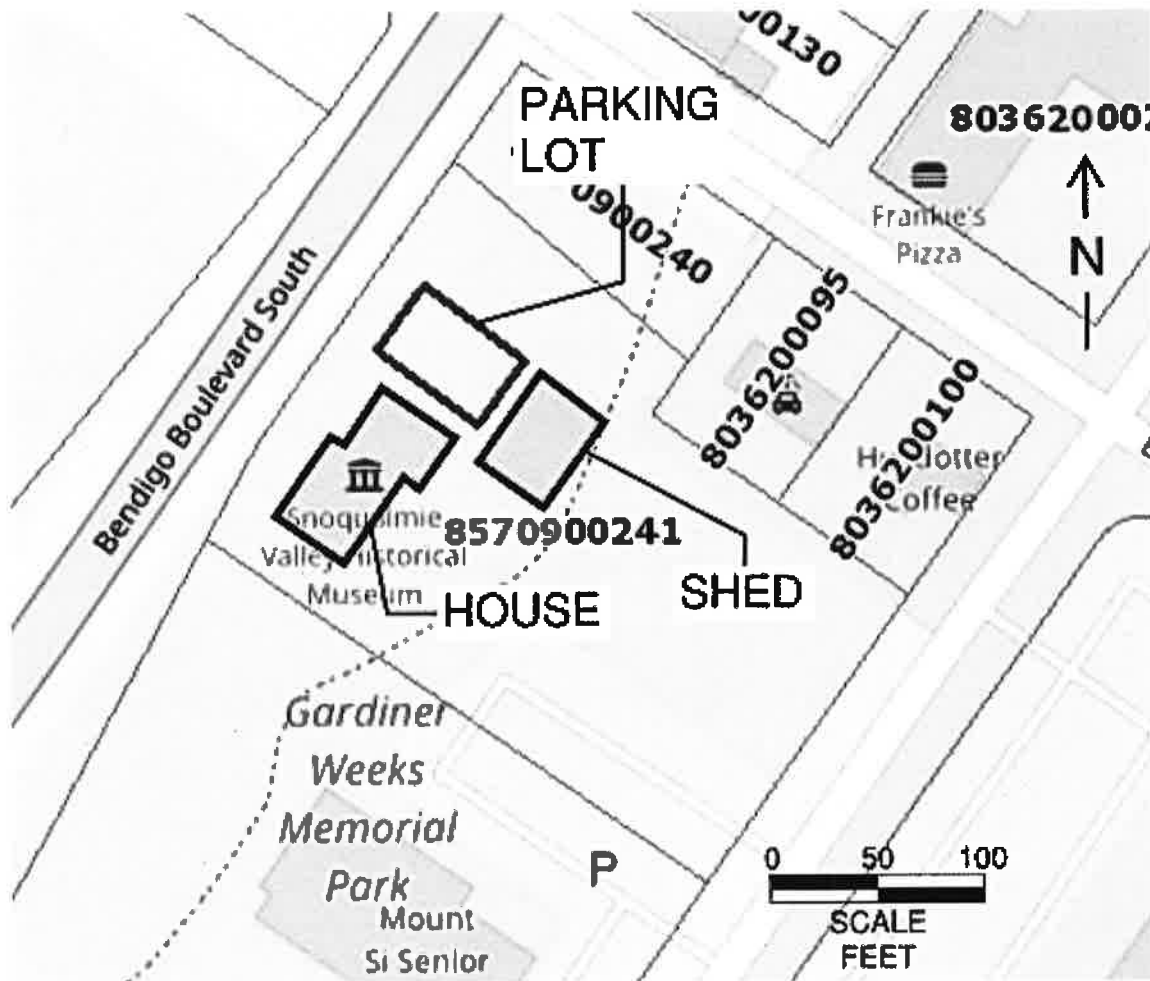
On this ____ day of _____, 2023, did personally appear before me, the undersigned Notary Public in and for the State of Washington, **Kevin Burrows**, who is known to me or produced satisfactory evidence that he is the person that executed the foregoing instrument as President on behalf of Snoqualmie Valley Historical Society, and acknowledged that he signed this instrument as his free and voluntary act for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this this ____ day of _____, 2023.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

EXHIBIT A

The Premises consist of a single-story wood-framed house of approximate dimensions 42 feet by 52 feet, containing approximately 1,674 square feet, one single-story wood-framed shed of approximate dimensions 32 feet by 50 feet, containing approximately 1,568 square feet, and a portion of one gravel parking lot not being used by the City for right of way or other purposes, all located within King County tax parcel number 857090-0241, as depicted below.





SUBJECT:		Agenda Date: May 16, 2023		AB23-061
Public Hearing and Resolution Adopting the 2024-2029 6-Year Transportation Improvement Plan (TIP)		Department/Committee/Individual		
		Mayor Rob McFarland		
		City Administrator – David Miller		
		City Attorney – Lisa Marshall		
		City Clerk – Susie Oppedal		
		Administrative Services – Lisa Escobar		
		Comm. & Economic Development – Rebecca Deming		
		Finance – Richard Gould		
Cost Impact: Approximately \$56 Million		Public Works – Mark Rigos, P.E.		X
Fund Source: TIF, TBD, Storm, Streets, REET, Grants				
Timeline: Immediate				
Attachments: Resolution, TIP Table, TIP Narratives, TIP Map, Public Hearing Notice, Public Comment				
<p>SUMMARY STATEMENT:</p> <p>Every year as required by Washington State law, RCW 35.77.010, each city in Washington must develop and adopt a 6-Year Transportation Improvement Plan (TIP). This program lays out a plan for improving and maintaining each respective city’s transportation system encompassing streets, trails and mass transit. Associated with each project is a financial program to support the proposed improvements. The TIP is a planning tool required by State law to ensure that each city continually has available advanced plans as a guide in carrying out a coordinated transportation plan. The law requires that each city holds an annual public hearing to adopt a 6-year TIP. The adopted TIP is then sent out to adjacent local jurisdictions and utility districts to coordinate projects, as well as to the State for incorporation into the Statewide TIP (STIP).</p> <p>There are several benefits derived from the annual update and adoption of a TIP. These include:</p> <ul style="list-style-type: none"> • The TIP is a management tool for City Council and City staff. • It provides valuable information to the Planning Commission, citizens, developers and businesses interested in the development of the City. • It assists in leveraging available resources through improved timing of projects and improved coordination of City projects with those of private and public entities. • It helps to protect a City’s current infrastructure and to plan for new infrastructure. • Many grant sources require that projects be adopted in the City’s TIP prior to grant application. <p>The City of North Bend’s (“City”) 2024-2029 TIP is part of the framework for the City’s Capital Investment Program (CIP). The TIP is included in the City’s overarching CIP as the CIP includes parks projects, facilities projects, water projects, sanitary sewer/WWTP projects, and surface water / storm drainage projects. Essentially, the TIP is a plan to improve public transportation facilities. North Bend’s TIP is a 6-year plan that identifies capital projects, their costs, and funding sources. Staff prepares the TIP and presents it to City Council each year for review and adoption.</p> <p>Back in 2013, City staff assigned a project number to each transportation capital project. The ‘T-xxx’ numbers shown below are not project priorities, they are tracking numbers. Project priority numbers are different, as they change from year-to-year depending upon what projects were completed, what projects were removed, and changing priorities from City Council and City staff. Priority numbers are shown on the attached TIP Map and TIP Table. Below is list of projects that have been completed in recent years (I), active construction projects (II), and significant changes from last year’s TIP (III).</p>				

I. Substantially Completed Recent Transportation Projects (year completed) are:

- T-019: Roundabout at North Bend Way / 436th Avenue SE Intersection (2022)
- T-048: Mid-Block Crosswalk across NBW for Snoqualmie Valley Trail (2022)
- T-013: 2nd Street Sidewalk and Storm Drainage Improvements (2022)
- T-007: North Bend Way C&G/Landscape South Side (2022)
- T-040: Left Turn Pocket on Park Street to Bendigo Blvd. (2022)
- T-035: Park Street Mid-Block Pedestrian Crossing at Healy Ave (2020)
- T-008: Roundabout at North Bend Way / Park Street / Downing Avenue (2020)
- T-043: Paved Walkway from Cedar Falls Way / Maloney Grove Ave Inter. to City Hall (2019)
- T-002: Re-alignment of Tanner Road Intersection with North Bend Way (2019)
- T-009: NE 12th Street Widening from Ballarat Avenue to Pickett Avenue (2018)
- T-003: Downtown Plaza at NBW and Main Avenue (2017)
- T-006: North Bend Way C&G/Landscape (Ballarat Ave to Downing Ave) North Side (2017)
- T-010: Right Turn Lane, Northbound Bendigo Blvd. at Park Street (2016)
- T-014: NW 14th Street Widening from Bendigo Blvd. to Boalch Avenue (2016)
- T-011: Cedar Falls Way Separated Walkway (2016)

II. Active Transportation Projects (in design or construction) are:

- T-031: Cedar Falls Way / Stilson Avenue Sidewalk and Crosswalks (2023 construction)
- T-050: Cedar Falls Way / Maloney Grove Ave. Crosswalk Improvements (2023 construction)
- T-026: Alm Way Bridge Removal (2023 construction)
- T-033: Mid-Block Crosswalk Across Maloney Grove Avenue Near Cedar Falls Plat Entrance
- T-045: Roundabout at SR-202 and Mount Si Blvd
- T-039: Roundabout at 436th Avenue SE / SE 136th Street intersection
- T-021A: South Fork Ave. Ext. – Bendigo to NW 8th Street Roundabout (Nintendo Bypass)
- T-016: Roundabout at Bendigo Blvd / 4th Street Intersection
- T-030: NW 14th Street Widening and Reconstruction West of Bendigo (with ULID)
- T-017: Roundabout at 468th Avenue SE / Middle Fork Road Intersection
- P-004: Tanner Trail Phases 2 and 3 Construction
- T-021B: South Fork Avenue Levee Setback
- T-020: Roundabout at North Bend Way / Mt Si. Road Intersection
- T-044: SR-202 Shared Use Path with Pedestrian Bridge over SF Snoqualmie River (WWTP Frontage)

III. Significant Changes from 2023-2028 TIP to 2024-2029 TIP are:

- Created Projects T-062 to T-067 for the 6 segments of North Bend Way defined in the Complete Streets Program with a \$2,000,000 placeholder for each.
- Created Project T-068 to underground power and communications lines on the north side of North Bend Way from the Park Street Roundabout to the entrance to Torguson Park.
- Moved many current year construction projects (2023) to the completed section as the TIP is a forward looking document for 2024-2029.
- Combined Project T-058: Pedestrian Bridge Over South Fork Snoqualmie River west of the WWTP with Project T-044: SR-202 Shared Use Trail (WWTP Frontage Improvements) because we received a grant to cover both projects.

Before the new 6-year TIP is adopted by City Council, which is scheduled for June 20, 2023, a public hearing will be held on May 16, 2023 and remain open to solicit public input on this year's TIP.

APPLICABLE BRAND GUIDELINES: Consistent delivery of quality basic services including transportation and traffic management.		
COMMITTEE REVIEW AND RECOMMENDATION: The Transportation and Public Works (TPW) Committee reviewed this item on April 25, 2023 and recommended approval and placement on the Main Agenda for discussion.		
RECOMMENDED ACTION: MOTION to approve AB23-061, a resolution adopting the 6-Year Transportation Improvement Plan 2024 – 2029, as a first reading, and continuing the public hearing until the June 20, 2023 City Council Meeting.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
May 16, 2023		

RESOLUTION

A RESOLUTION OF THE CITY OF NORTH BEND, WASHINGTON, ADOPTING THE 2024-2029 6-YEAR TRANSPORTATION IMPROVEMENT PLAN

WHEREAS, State Law (RCW 35.77.010) requires that the City adopt and annually update a 6-Year Transportation Improvement Plan (TIP); and

WHEREAS, RCW 35.77.010 also requires that a public hearing be held prior to the adoption or update of the TIP, and requires that the adopted TIP be filed with the Washington State Department of Transportation; and

WHEREAS, on May 16, 2023, the City Council held a public hearing on the proposed 2024-2029 TIP,

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND,
WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. The City Council does hereby approve the 2024-2029 6-Year Transportation Improvement Plan, a copy of which is attached hereto and incorporated herein by this reference.

**PASSED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 20TH DAY OF
JUNE, 2023.**

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Rob McFarland, Mayor

Lisa Marshall, City Attorney

ATTEST/AUTHENTICATED:

Effective:
Posted:

Susie Oppedal, City Clerk

Completed Projects thru 2023 or Removed Projects		
T-050	2023	Cedar Falls Way / Maloney Grove Avenue Crosswalks
T-031	2023	Mid-Block Crosswalk across Cedar Falls Way near Stilson Ave. and Stilson Ave Sidewalk to Opstad Elementary School
T-026	2023	Alm Way Bridge Removal
T-039	2023	Roundabout at 436th Avenue SE / SE 136th Street Intersection
T-033	2023	Mid-Block Crosswalk across Maloney Grove Avenue near Cedar Falls Plat entrance
T-048	2022	Mid-Block Crosswalk across North Bend Way for Snoq Valley Trail near Tanner Road
T-019	2022	Roundabout at North Bend Way / 436th Avenue SE Intersection
T-013	2022	2nd St Sidewalk and Storm Drain Improvements (Ballarat Avenue to Bendigo Blvd)
T-007	2022	North Bend Way C&G/landscape (Ballarat to Downing) South Side
T-040	2022	Left Turn Pocket on Park St to Bendigo Blvd. and Traffic Signal Re-calibration
T-035	2020	Park Street Pedestrian Crossing at Healy
T-029	2020	Picket Avenue Extension
T-018	2019	SW Mount St Blvd Reconstruct with concrete
T-035	2018	NBW 4 Travel Lanes & Planter Median between CF RAB and Park St RAB
T-008	2019	Roundabout at North Bend Way / Park Street / Downing Avenue Intersection
T-002	2019	Tanner Road Realignment with North Bend Way (Developer Project)
T-037	2019	Volition Alley Improvements
T-043	2019	Cedar Falls Way Separated Walkway between Maloney Grove Ave and City Hall
T-009	2018	NE 12th Street Widening (Ballarat to Pickett)
T-003	2017	Downtown Plaza (NBW and Main Avenue)
T-006	2017	North Bend Way curb, gutter, sidewalk, landscape (Ballarat Ave to Downing Ave) north side only
T-010	2016	Right Turn Lane from Bendigo Blvd. onto Park Street
T-014	2016	NW 14th Street Widening from Bendigo Blvd. to Boalch Ave NW
T-011	2016	Cedar Falls Way Separated Walkway

City of North Bend 6-Year Transportation Improvement Plan (TIP) for 2024-2029 Project Narratives

**TIP Priority Number is same as Item Number
Capital Project # has a T-#
(Updated 4/20/2023)**

- 1. T-045: Roundabout at SR-202 and Mt Si Blvd** – Replace signalized intersection with roundabout and ADA compliant ramps and walkways; improved crosswalks, installation of landscaped center island and medians and improve the walkability and bicycle access for increased access to local businesses and outlet mall.
- 2. T-044: SR 202 Shared Use Path with Pedestrian Bridge over SF Snoqualmie (WWTP Frontage):**
To provide screening for the WWTP with new curb and gutter, sidewalk, and landscaping from NE 4th Street to SR202 bridge near WWTP. Work shall also include installation of pedestrian bridge over South Fork of Snoqualmie River adjacent to the SR202 bridge near the WWTP. Existing WSDOT bridge is not safe for pedestrians and not ADA compliant. Bridge may also act as the utility carrier.
- 3. T-020: Roundabout at North Bend Way / SE Mount Si Road Intersection** – Design and construct roundabout to serve increasing number of vehicles traveling on North Bend Way and to provide safer vehicular movements off Mt Si Road.
- 4. T-046: McClellan Alley Improvements and Bendigo Sidewalks** – Project is very conceptual at this stage, but the idea is to create a one-way travel direction with angle parking on both sides, shared trash enclosures for businesses and landscaping.
- 5. T-056: North Bend Way/NW 8th St Roundabout** – Installation of new 5 leg roundabout at the intersection of North Bend Way and NW 8th Street. One leg of the roundabout would be the connection to the South Fork Avenue Extension (Nintendo Bypass).
- 6. T-021A: South Fork Avenue Extension - Bendigo to NW 8th Street (Nintendo Bypass)** – Project extends South Fork Avenue SW from current Nintendo east access gate westerly to the intersection of North Bend Way and NW 8th Street.
- 7. T-021B: South Fork Levee Setback** – Project removes existing left bank levee between Bendigo Blvd and North Bend Way and sets the levee back to create more flood storage area. The City currently owns the area necessary to set the levee back. Project has received some grant funding and staff continues applying for Floodplains by Design grant funding and working with KCFCD.
- 8. T-049: NW 8th Street Widening and Sidewalk between North Bend Way and Bendigo Blvd.** - Project provides a more formal and safer connection from Bendigo Blvd to North Bend Way.
- 9. T-038: Downtown Parking Lot/Garage**– Project is conceptual at this time. Create 70-100 new parking stalls at an unidentified location in downtown. Parking could be at grade with land acquisition or could be a parking garage.
- 10. T-032: Orchard Drive Sidewalk between Meadow Drive & Riverside Drive on South Side** – Provide new sidewalk and shoulder parking on opposite side of street from Si View Metro Parks District headquarters.

11. T-034: Park Street Corridor Re-channelization – Park Street between Bendigo Blvd and the Park Street roundabout currently has 2 parking shoulders, 2 travel lanes and 2 sidewalks. Corridor will be widened for additional capacity.

12. T-047: North Bend Way Re-channelization between Snoqualmie Valley Trail & Tanner Road – Project is to shift travel lanes to the south to create a pedestrian walkway on north side of road.

13. P-004: Tanner Trail Phase 2 & 3 Construction – This project consists of continuing the paved Tanner Trail adjacent to North Bend Way from its current location near City Hall east to connection with the Snoqualmie Valley Trail.

14. T-017: Roundabout at 468th Avenue SE / Middle Fork Road Intersection - Design and Construct roundabout as a truck turnaround with provisions for safe pedestrian and bicycle travel. Located at SE 140th Street terminus. Design has been completed.

15. T-053: Cedar Falls Way South Side Sidewalk (Mountain View Blvd SE to Mt Teneriffe Dr. SE) Project would add sidewalk or paved trail to complete the gap between Mt Teneriffe Dr and Mountain View Blvd.

16. T-054: Old Si View to New Si View Pedestrian Connection – Project would add paved trail connection between south end of Meadow Dr SE and SE 10th Street which would formally connect the Old Si View and New Si View neighborhoods.

17. T-057: SE 140th Street Sidewalk on North Side (North Bend Way to Tanner Falls Frontage) – Project would extend approximately 400 feet of sidewalk along the north side of SE 140th Street from North Bend Way to the Tanner Falls Development frontage.

18. T-027: Bendigo Blvd Traffic Reconfiguration – 3rd Street to North Bend Way – Due to traffic congestion at North Bend Way/Bendigo Blvd intersection, better queuing configurations for through and turning movements will be developed. Work will consist of restriping and resigning the corridor and creating time-restricted parking areas related to peak traffic hours.

19. T-030: NW 14th Street Widening and Reconstruction West of Bendigo Blvd (Phase 2) – Reconstruct NW 14th Street including installation of stormwater infrastructure. Could potentially use a cement treated base if existing ground is sufficient.

20. T-055: Cedar Falls Way Pedestrian Improvements (Maloney Grove Ave to 436th Ave SE) – Project would add sidewalk along the south side of Cedar Falls Way from Maloney Grove Avenue to 436th Ave SE.

21. T-015: Ballarat Ave Widening and Sidewalk from NE 6th to NE 12th Streets – Reconstruct Ballarat including replacement of culverts and related stormwater facilities. Add widened shoulder to possibly fit combined bike lane / walking shoulder (no parking). Road may have thickened edge section.

22. T-001: SE 140th Street Sidewalk on North Side (Eagles Nest PL SE to Twin Falls MS) – Installation of sidewalk provides safe pedestrian connectivity to nearby middle school on north side of SE 140th Street from Eagles Nest Pl SE to Twin Falls Middle School SE.

23. T-025: SE 146th Street Reconstruction from 468th Ave SE to east city limits – Reconstruct deteriorated 2-lane roadway with pavement suited to heavy vehicle loads. Thicker pavement section is necessary to handle truck traffic.

24. T-028: North Bend Way/Ballarat Avenue All Way Stop or Traffic Signal – This project is tentative, awaiting the outcome of traffic redistribution as a result of other projects in the downtown area. If implemented, and due to current level of service below city LOS standard “D” on Ballarat Avenue leg of intersection with North Bend Way, a signal could be installed to help with public congestion. Signal would be installed using poles and mast arms at each corner. Signal is to be interconnected and synchronized with the signal at North Bend Way/Bendigo Blvd intersection. All-way stop will be considered instead.

25. T-024: SE 16th Street Extension from Maloney Grove Ave SE to 436th Ave SE –Reserve public right-of-way (ROW) to extend a collector street from Maloney Grove Avenue to Stilson Avenue SE to serve future residential development. This project would connect with SE 16th Street running east to west through Cedar Landing Plat.

26. T-041: Left Turn Pocket on 436th Avenue SE to Cedar Falls Way including Sidewalks – Project was added based on recommendation from 2017 LOS Study by Perteet. Existing pavement channelization leaving roundabout to the north shall be evaluated.

27. T-023: Traffic Signal at SE 146th Street/468th Avenue SE Intersection– Intersection control improvements.

28. T-022: South Fork Avenue Extension – New Bridge across SF Snoqualmie River (Mt Si Blvd to Maloney Grove Avenue SE)- Reserve ROW to extend road as a collector street to serve future residential development from Mount Si Blvd to Maloney Grove Avenue. Project involves a new bridge across South Fork Snoqualmie River.

29. T-042: Roundabout at Cedar Falls Way / Maloney Grove Avenue Intersection – Project was added based on recommendation from 2017 LOS Study by Perteet. ROW is quite wide here. Acute turning angles are present.

30. T-051: NE 8th Street Storm and Reconstruction Project – Installation of new storm drainage infrastructure and roadway reconstruction from Ballarat Avenue to Thrasher Avenue.

31. T-052: Tanner Road Improvements (north of North Bend Way) - Work to provide safer pedestrian connection along Tanner Road between residential area to the north down to the intersection with North Bend Way.

32. T-016: Roundabout at Bendigo Blvd / 4th Street Intersection – Reconfigure intersection to remove diverter and allow full movements with implementation of a roundabout. Alternate configurations will also be considered and will need WSDOT approval. ROW acquisition is necessary. Conceptual design options have been completed.

33. T-062: Compete Streets North Bend Way (Western City Limits to SF Snoqualmie River Bridge): Placeholder for potential future improvements along this stretch of road.

34. T-063: Compete Streets North Bend Way (SF Snoqualmie River Bridge to Park Street Roundabout): Placeholder for potential future improvements along this stretch of road.

35. T-064: Compete Streets North Bend Way (Park Street Roundabout to Cedar Falls Way Roundabout): Placeholder for potential future improvements along this stretch of road.

36. T-065: Compete Streets North Bend Way (Cedar Falls Way Roundabout to 436th Ave SE Roundabout): Placeholder for potential future improvements along this stretch of road.

37. T-066: Compete Streets North Bend Way (436th Ave SE Roundabout to SE 140th Street): Placeholder for potential future improvements along this stretch of road.

38. T-067: Compete Streets North Bend Way (SE 140th Street to 468th Ave SE): Placeholder for potential future improvements along this stretch of road.

39. T-068: OH to UG of Power/Communications from Park Street Roundabout to Entrance to Torguson Park – Undergrounding power and communication lines on north side of North Bend Way from Park Street Roundabout to Entrance to Torguson Park.

Re-Occurring Projects (As funded)

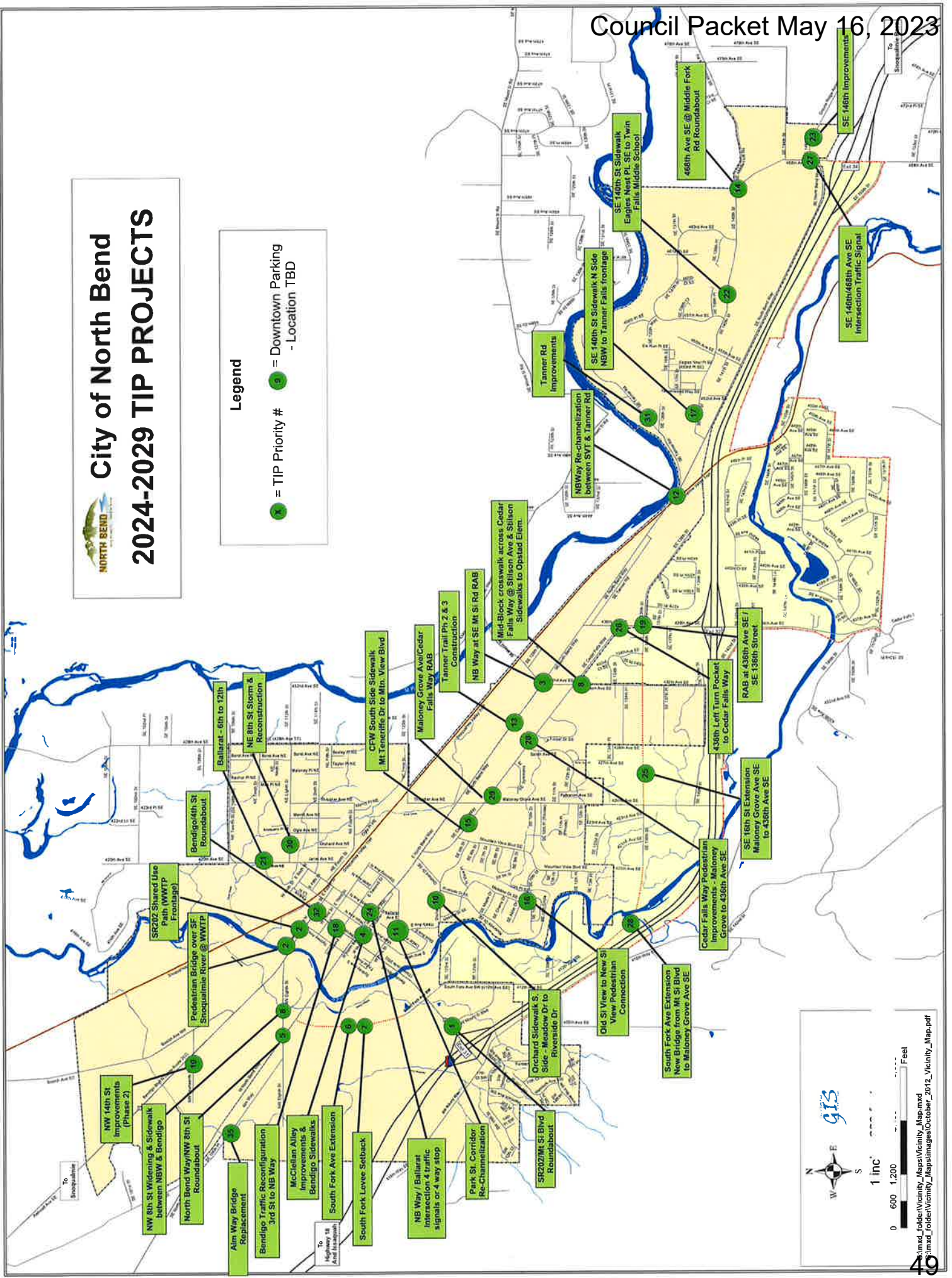
- **Pavement Overlay Program** – To protect the city’s investment in its roadway system, regular maintenance is required. One of the maintenance components includes providing overlays to extend the life of the street surface and protect the roadway base. The ideal program would provide \$540,000 per year of overlay work to maintain our current Pavement Management Index (PMI). The locations are to be determined by the pavement management system update completed in 2019. Currently, the city is budgeting \$475,000 per year and typically receiving grants from the Transportation Improvement Board (TIB) every other year for arterial roadways.
- **Crack Sealing** - Various locations. Develop an annual crack seal program to preserve the City investment in roadways. Staff has done this work internally with Public Works staff and contracted it out in years past.
- **Sidewalk Trip Hazard Elimination** - Trip hazards in the existing sidewalk system will be systematically repaired through either removal of affected sidewalk panels, removing the cause of the problem, and re-pouring the panels, or by grinding the problem areas and resurfacing the affected areas.
- **Inactive: Alley Reconstruction and Overlay** - Various locations. Develop an annual program to reconstruct and overlay alleys to reduce maintenance costs.

City of North Bend 2024-2029 TIP PROJECTS



Legend

● = TIP Priority # ● = Downtown Parking
 - Location TBD



GIS

0 600 1,200 Feet

1 in = 1,200 Feet

W E S N

City of North Bend, Maps/Vicinity_Map.mxd
City of North Bend, Maps/Vicinity_Map.mxd
City of North Bend, Maps/Vicinity_Map.mxd

NOTICE OF PUBLIC HEARING

Six-Year Transportation Improvement Plan (TIP)

NOTICE IS HEREBY GIVEN that the North Bend City Council has scheduled a hearing to solicit public input and comments on the proposed Six-Year Transportation Improvement Plan (TIP). The public hearing will take place during a Regular City Council Meeting on Tuesday, May 16, 2023, at 7:00 p.m. at City Hall, 920 SE Cedar Falls Way, North Bend, WA. For those that don't wish to attend the in-person meeting, a teleconference option will be available using Zoom Meetings, with detailed meeting access information to be provided on May 11, 2023 on the City website calendar item for the May 16, 2023 City Council meeting.

Comments may be presented orally at the public hearing or submitted in writing to the Deputy Public Works Director at 920 SE Cedar Falls Way, North Bend, WA, 98045, or by e-mail to: tmohr@northbendwa.gov prior to 5:00 PM, Monday, May 15, 2023. Questions may be answered by contacting the Deputy Director at tmohr@northbendwa.gov.

A copy of the draft Six-Year (2024 – 2029) Transportation Improvement Plan (TIP) will be available for viewing under Public Notices on the City of North Bend website at www.northbendwa.gov.

North Bend does not discriminate on the basis of disabilities. If you need special accommodation, please contact City Hall within three business days prior to the public hearing at (425) 888-7627.

Posted: May 4, 2023

Published in the Snoqualmie Valley Record: May 5, 2023

Susie Oppedal

From: Tom Mohr
Sent: Wednesday, May 10, 2023 12:02 PM
To: Susie Oppedal
Cc: Jennifer Bourlin; Mark Rigos.
Subject: FW: Transportation improvement plan

Susie and Jennifer,

Below are some comments on the 6 year TIP for council packet.

Thx
Tom

From: Dalton Blackmore <daltonblackmore@gmail.com>
Sent: Tuesday, May 9, 2023 7:56 PM
To: Mark Rigos. <MRIGOS@NORTHBENDWA.GOV>
Cc: Tom Mohr <TMOHR@NORTHBENDWA.GOV>
Subject: Re: Transportation improvement plan

Hey Mark,

Appreciate the quick response despite my delay getting back to you. Not sure how this works but is it possible to get the proposed incoming TIP to review prior to the meeting?

There are many items already on the TIP that we would love to see throughout the city and those are all pedestrian/biking improvements. We would just want to move those up in priority when compared to something like road improvements or a parking garage. The Cedar Falls Way/Maloney Grove crosswalks (believe awarded last meeting to Rainier), North Bend Way Rechannelization between SVT and Tanner Road, CFW South Side Sidewalk (Mountain View Blvd SE to Mt Teneriffe Dr SE), Tanner Trail Phase 2 and 3 Construction, and Cedar Falls Way Pedestrian Improvements (Maloney Grove Ave to 436th Ave SE) are all great projects that would provide safe access for many homes and apartments to downtown without the need for parking. We love the idea of protected walk or bike ways to connect everything in the city including homes, schools, and downtown.

With the Tennant Trailhead park coming together this year, a protected bike lane connecting downtown would be awesome.

What are the driving factors for road extensions like South Fork Ave SE Extension and the Nintendo Bypass? Imagine industry or heavy truck use but I am not exposed to those enough to see the use which certainly doesn't mean it isn't needed I just need help understanding!

North Bend is a great place to live and everything you all do for the city is valued.

Dalton Blackmore

206-303-9346

On Thu, Apr 27, 2023 at 3:06 PM Mark Rigos. <MRIGOS@northbendwa.gov> wrote:

Hi Dalton,

Our 6-year TIP discussion is scheduled to occur during our May 16 (first reading) City Council Meeting with scheduled approval at the June 20 City Council Meeting. There is a State mandated deadline of approval by July 1. Feel free to provide testimony at our May 16 meeting, or give me a call, or email me your questions or input. I'm very familiar with City's transportation system. We update our TIP once per year, so it's practically a living and breathing document. Thanks!

Sincerely,

Mark Rigos, P.E.

Deputy City Administrator / Public Works Director

City of North Bend

920 SE Cedar Falls Way

North Bend, WA 98045

(425) 888-7650

From: Dalton Blackmore <daltonblackmore@gmail.com>

Sent: Thursday, April 27, 2023 2:59 PM

To: Council <COUNCIL@northbendwa.gov>

Subject: Transportation improvement plan

Hi all

Wondering which meeting(s) will be reviewing the next year's TIP. We'd like to be part of the conversation and provide input.

Thank you!

Dalton

--

Dalton Blackmore

206-303-9346



SUBJECT:		Agenda Date: May 16, 2023		AB23-062
Ordinance Repealing NBMC 9.45 Controlled Substances & Adopting NBMC 9.45 Drug and Alcohol Possession		Department/Committee/Individual		
		Mayor Rob McFarland		
		City Administrator – David Miller		
		City Attorney – Lisa Marshall		X
		City Clerk – Susie Oppedal		
		Administrative Services – Lisa Escobar		
		Comm. & Economic Development – Rebecca Deming		
		Finance – Richard Gould		
Cost Impact: N/A		Public Works – Mark Rigos		
Fund Source: N/A				
Timeline: Immediate				
Attachments: Ordinance, Exhibit A				
<p>SUMMARY STATEMENT:</p> <p>During the legislative session for 2023 the Washington State Legislature failed to approve a replacement law dealing with the invalidated RCW 69.50.4013, a statute that made it a felony to unknowingly possess drugs. This previous statute was invalidated by a Washington State Supreme Court decision in <i>State v. Blake</i>. The Supreme Court held that criminalizing for the unknowing possession of drugs is unconstitutional. Later the Legislature imposed a temporary fix by making drug possession a misdemeanor and requiring that the person possessing a controlled substance be aware of the possession. The version of RCW 69.50.4013 sunsets (expires) at midnight on June 30, 2023.</p> <p>In the legislative session that ended on 4/23/23, the Legislature was expected to fix the gap left by the Blake decision. However, the session ended on 4/23/23 without the Legislature agreeing to replacement language for RCW 69.50.4013. Accordingly, unless cities adopt their own drug possession ordinances before July 1, 2023, drug possession in Washington cities will be legal.</p> <p>The City of Kent was one of the first cities to draft a local drug possession ordinance, and the City of North Bend, along with the Cities of Snoqualmie and Issaquah, are recommending adoption of the Kent model so that the cities of North Bend, Snoqualmie, and Issaquah, have identical drug possession laws. The Ordinance proposed for your adoption will repeal and replace North Bend's existing drug possession chapter, NBMC 9.45, and will fill the gap left by the Blake decision. The Ordinance contains the following provisions:</p> <ol style="list-style-type: none"> 1. Makes knowing possession and open-air drug use a gross misdemeanor. The prohibition applies to legend drugs (unprescribed prescription drugs), "street" drugs, and counterfeit controlled substances, and drug paraphernalia. The law also prohibits the unlawful disposing of a controlled substance, counterfeit controlled substance, a legend drug, or drug paraphernalia. Importantly, the ordinance includes treatment as an alternative to jail. 2. The ordinance contains a two-year deferred prosecution program for the offender to enter and complete drug treatment, and the court is given broader discretion to continue the deferred prosecution program if a participant relapses or otherwise violates a program condition. 3. When the offender completes a deferred prosecution program, their criminal charges are dismissed, and no conviction will appear on their criminal history. 4. Once a person successfully completes treatment, the City will not object to the court vacating the individual's conviction. 				

5. If an individual is unable to pay the cost or treatment the City may evaluate what funds it may appropriate for that purpose.

While Governor Inslee has publicly stated his intention to convene a special session to fix the gap in the law left by Blake, Washington cities have no assurances a special session will yield a fix. Adoption of this ordinance will leave the City of North Bend with a legal way to enforce drug laws if the Legislature does not agree to replacement language for Blake before July 1, 2023.

Staff will continue to monitor the current legislative reconvening at the request of the Governor to address the Blake issue. If the legislature enacts legislation to deal with drug possession prior to second reading of this ordinance we will advise the Council and we will respond accordingly to address our pending ordinance.

APPLICABLE BRAND GUIDELINES: Consistent delivery of quality basic services.

COMMITTEE REVIEW AND RECOMMENDATION: The Public Health & Safety Committee reviewed this item at their May 2, 2023 meeting and the Finance & Administration Committee reviewed this item at their May 9, 2023 meeting. Both Committees recommended approval and placement on the Main Agenda for discussion.

RECOMMENDED ACTION: **MOTION to approve AB23-062, an ordinance repealing NBMC 9.45 Controlled Substances & adopting NBMC 9.45 Drug and Alcohol Possession, as a first reading.**

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
May 16, 2023		

ORDINANCE

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, REPEALING AND REPLACING CHAPTER 9.45 OF THE MUNICIPAL CODE TO BE ENTITLED "DRUG AND ALCOHOL POSSESSION", TO: (I) PROHIBIT THE UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCES, LEGEND DRUGS, COUNTERFEIT CONTROLLED SUBSTANCES, AND DRUG PARAPHERNALIA; (II) TO PROHIBIT THE PUBLIC USE OF CONTROLLED SUBSTANCES, LEGEND DRUGS, AND COUNTERFEIT CONTROLLED SUBSTANCES, AND (III) TO CREATE A NEW ALTERNATIVE TWO-YEAR DEFERRED PROSECUTION PROGRAM FOR INDIVIDUALS CHARGED WITH SUCH CRIMES TO CONNECT THEM WITH NECESSARY TREATMENT, WHILE ALLOWING THEM TO HAVE THEIR CRIMINAL CHARGES DISMISSED AND THEIR CONVICTIONS VACATED UPON THEIR SUCCESSFUL COMPLETION OF TREATMENT AND COMPLIANCE WITH THE COURT'S ORDERS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in *State v. Blake*, 197 Wn.2d 170 (2021), the Washington State Supreme Court found former RCW 69.50.4013, which made it a strict liability offense to possess a controlled substance in violation of the Uniform Controlled Substances Act, unconstitutional because the statute did not require proof that the offender knowingly possessed a controlled substance. Without proof of knowledge, the Court held the statute violated constitutional due process. In response, the state legislature adopted RCW 69.50.4013 during its 2021 legislative session, which provided a temporary correction to the law to make it unlawful for an individual to knowingly possess a controlled substance. However, before any arrests could occur, this legislation required officers to inform individuals on their first two violations that they could voluntarily enter treatment. The legislation provided no incentive for offenders to enter treatment, and for a number of other reasons, the legislation proved impractical. This legislation sunsets on July 1, 2023, and the statute will revert to its prior form, which the state Supreme Court has previously held was unconstitutional and void. As a result, starting July 1, 2023, Washington will be left with no enforceable law prohibiting the possession of controlled substances; and

WHEREAS, substance use disorder is ravaging this region, and the number of controlled substance-related deaths continues to rapidly increase. The lack of adequate laws surrounding controlled substances creates an opportunity for those who produce, import, and sell deadly drugs to prey on those suffering from addiction. The illicit drug market drives violent crime throughout the region. Property crimes, which are committed to fund addiction, have impacted our residents and business community. The City is not willing to sit by while the use of deadly drugs is normalized, drug behavior increases, more people become addicted, additional deaths occur, and crime fueled by drugs increases; and

WHEREAS, substance use disorder is a medical issue and treatment services are necessary. However, without proper encouragement, an individual with a substance use disorder cannot be expected to make the decision to stop using on their own. The power of addiction continues to control individuals and there is no incentive to end the cycle of use. While no single response will solve the drug epidemic facing our community, continued inaction will only exacerbate the problem by normalizing drug use, creating a bigger market for the distribution of controlled substances, and increasing the opportunity for people to become addicted. In turn, deaths will increase as will drug-related violence and property crimes; and

WHEREAS, this ordinance will make it a gross misdemeanor crime in North Bend for individuals to knowingly possess a controlled substance, a legend drug, or a counterfeit controlled substance, and a misdemeanor to possess drug paraphernalia or to unlawfully dispose of a controlled substance, counterfeit controlled substance, a legend drug, or drug paraphernalia. It will additionally prohibit the public use of those same substances, which will be punished as a gross misdemeanor. Importantly, the ordinance includes treatment as an alternative to jail; and

WHEREAS, as an alternative to jail, this ordinance includes a new two-year deferred prosecution program, which is more favorable to an individual than the program currently offered at the state level through Chapter 10.05 of the Revised Code of Washington ("RCW"). Under this ordinance, the duration of the program is reduced from five years to two years, and the court is given broader discretion to continue the deferred prosecution program if a participant relapses or otherwise violates a program condition; and

WHEREAS, once an individual successfully completes the alternative deferred prosecution program, their criminal charges are dismissed, and no conviction will appear on their criminal history. Additionally, if an individual violates the deferred prosecution program and they are ultimately convicted of the charge, this ordinance provides that the City will not object to the individual receiving a deferred sentence, which also will allow the individual's charge to be dismissed if they successfully complete treatment; and

WHEREAS, if an individual is not successful in complying with the conditions of a deferred sentence to receive the benefit of a dismissal, they would still be able to have their criminal conviction vacated. Once a person successfully completes treatment, the City will not object to the court vacating the individual's conviction. Once the court vacates a conviction, the individual is released from the burden of that conviction, and for all

purposes, including responding to questions on employment or housing applications, the vacation statute expressly provides that the person may state that they have never been convicted of that crime; and

WHEREAS, this ordinance creates a process that is treatment focused. The purpose statement set forth in NBMC 9.45.010 communicates the City Council's intent that incarceration be requested by prosecutors and imposed by judges only as a sanction when an individual chooses to not engage in treatment or otherwise comply with their recommended treatment program or other court conditions. Otherwise, the provisions are to be interpreted and implemented so as to help individuals find a path to treatment. At each stage of the process, there are avenues for an individual to have their charges dismissed or convictions vacated upon completion of treatment; and

WHEREAS, finally, if an individual is indigent and unable to pay the cost or treatment through the alternative deferred prosecution program, including costs to conduct the required investigation, examination, report, and treatment plan, the City Council is committed to evaluating what funds it may appropriate for that purpose.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. NBMC Chapter 9.45 (Controlled Substances), Repealed and Replaced:

North Bend Municipal Code Chapter 9.45 relating to Controlled Substances is hereby repealed in its entirety and replaced to read as set forth in Exhibit A attached hereto by this reference as if fully set forth herein.

Section 2. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date: This ordinance shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS ____ DAY OF _____, 2023.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Rob McFarland, Mayor

Lisa Marshall, City Attorney

ATTEST/AUTHENTICATED:

Published:
Effective:

Susie Oppedal, City Clerk

DRAFT

CHAPTER 9.45

Sec. 9.45.010. Purpose. Substance abuse is taking an increasing toll on the health and safety of our community. The purpose of this chapter is to help those suffering from addiction find a path to treatment through our municipal court system, and to hold accountable those unwilling to seek treatment for the harm caused to our community. If an individual is charged with a crime under this chapter and they comply with their recommended substance use disorder treatment program, their criminal charge will be dismissed, and no conviction will result. If an individual fails to comply with their treatment program and they are later convicted of the charge after being found noncompliant by the court, they will still have the opportunity to have their conviction vacated if they comply with their recommended treatment program. The North Bend City Council intends that incarceration be utilized as a sanction only when an individual fails to comply with their recommended treatment program or other conditions imposed by the court.

Sec. 9.45.020. Definitions. For purposes of this section, the following terms or words shall be interpreted as follows:

- A. *Controlled substance* means any controlled substance classified in Schedule I, II, III, or IV of Chapter 69.50 RCW, excluding cannabis, as it now exists or shall hereafter be added to, deleted from, modified, or amended.
- B. *Counterfeit controlled substance* means a controlled substance that is falsely labeled so as to appear to have been legitimately manufactured or distributed.
- C. *Drug paraphernalia* has the same meaning as provided for in RCW 69.50.102, which statute is adopted by this reference, as currently enacted and hereafter amended or recodified from time to time.
- D. *Legend drug* means any drug which is required by state law or regulation of the pharmacy quality assurance commission to be dispensed on prescription only or is restricted to use by practitioners only.
- E. *Public place* means an area generally visible to public view and includes without limitation any place where the public has a right of access, which includes without limitation sidewalks,

parking lots and parking garages, streets, alleys, highways, or roads; public buildings and grounds, including schools, parks, playgrounds, and meeting halls; establishments to which the public is invited including restaurants, theaters, stores, gas stations, meeting halls, lobbies, halls and dining rooms of hotels, bars, taverns, pubs, or establishments where beer or soft drinks may be sold, and their associated parking lots, parking structures, walkways, doorways, and entrances; railroad trains, light rail facilities, buses, and other public conveyances of all kinds and character, and their associated stations and platforms used in conjunction therewith which are open to unrestricted use and access by the public; and all other places of like or similar nature.

F. *Use* means actual use, or a substantial step taken that evidences an intent to inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.

Sec. 9.45.030. Controlled substances—Possession or use in public—Penalty.

A. *Possession.* It is unlawful for any person to knowingly possess a controlled substance unless the controlled substance has been lawfully prescribed to the person possessing it.

B. *Public use.* It is unlawful for any person to intentionally use a controlled substance in a public place unless the controlled substance has been lawfully prescribed to the person using it.

C. *Exception.* It shall not be a violation of this section if the person possesses a controlled substance prescribed to another person for whom the person is a legal guardian, and the controlled substance is possessed in the container in which it was originally dispensed.

D. *Penalty.* A violation of this section is punishable as a gross misdemeanor.

Sec. 9.45.040. Legend drugs—Possession or use in public—Penalty.

A. *Possession.* It is unlawful for any person to knowingly possess any legend drug unless the legend drug has been lawfully prescribed to the person possessing it.

B. *Public use.* It is unlawful for any person to intentionally use a legend drug in a public place unless the legend drug has been lawfully prescribed to the person using it.

C. *Exception.* It shall not be a violation of this section if the person possesses a legend drug prescribed to another person for whom the person is a legal guardian, and the legend drug is possessed in the container in which it was originally dispensed.

D. *Penalty.* A violation of this section is punishable as a gross misdemeanor.

Sec. 9.45.050. Counterfeit controlled substances—Possession or use in public—Penalty.

A. *Possession.* It is unlawful for any person to knowingly possess a counterfeit controlled substance.

B. *Public use.* It is unlawful for any person to intentionally use a counterfeit controlled substance in a public place.

C. *Penalty.* A violation of this section is punishable as a gross misdemeanor.

Sec. 9.45.060. Possession of drug paraphernalia. It is unlawful for any person to knowingly possess drug paraphernalia, other than that drug paraphernalia associated with the lawful possession and use of cannabis. A violation of this section is punishable as a misdemeanor.

Sec. 9.45.070. Minor in possession of alcohol. It is unlawful for any person under the age of twenty-one years to knowingly possess, consume, or otherwise acquire any liquor. A violation of this subsection is punishable as a gross misdemeanor.

Sec. 9.45.080. Unlawful deposit of dangerous drugs and drug paraphernalia. It shall be unlawful for any person to knowingly dump, throw, deposit, or discharge onto the ground or into any body of water any controlled substance, counterfeit controlled substance, or legend drug, or any drug paraphernalia. A violation of this section is punishable as a misdemeanor.

Sec. 9.45.090. Alternative deferred prosecution program. In lieu of the process provided for under Ch. 10.05 RCW, an individual charged with a crime under this chapter may petition the court to have that charge considered under the alternative deferred prosecution program provided for by this section.

A. Petition—Eligibility. An individual charged with a crime under this chapter may petition the court to be considered for this alternative deferred prosecution program. The petition may include, upon agreement of the parties, multiple charges that are pending at the time the petition is filed, which may be consolidated into a single program. However, this alternative deferred prosecution program is not available for any offense under Title 46 RCW, any domestic violence offense, or any offense under Chapter 9A.42 RCW, which offenses may only be petitioned for under the deferred prosecution program procedures provided for in Ch. 10.05 RCW. Misdemeanor charges that result from the county declining to file felony charges for the sale, delivery, or possession with an intent to deliver controlled substances, counterfeit controlled substances, or legend drugs, are not eligible for this alternative deferred prosecution program, unless the parties otherwise agree.

The petition shall be filed with the court at least three court days prior to the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

B. Statement of availability. At the time of arraignment an individual charged with an offense under this chapter may be given a statement by the court that explains the availability, operation, and effects of this alternative deferred prosecution program.

C. Requirements of petition—Rights of petitioner—Court findings.

1. In the petition, the petitioner shall allege under oath that the wrongful conduct charged is the result of or was caused by a substance use disorder for which the individual is in need of treatment and unless treated the probability of future recurrence is great, along with a statement that the individual agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems, if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved substance use disorder treatment program as designated in chapter 71.24 RCW.

2. Before entry of an order deferring prosecution, a petitioner shall be advised of their right as an accused and execute, as a condition of receiving treatment, a statement that contains the following:

- a. An acknowledgment of their rights;
- b. An acknowledgment and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in their defense, and the right to a jury trial;
- c. A stipulation to the admissibility and sufficiency of the facts contained in the written police report;
- d. An acknowledgment that the statement will be entered and used to support a finding of guilty, if the court finds cause to revoke the order granting deferred prosecution;
- e. An agreement to sign a release of information allowing the program provider to share information with the court, defense counsel, and the prosecutor, subject to the condition that information learned shall be used only to determine the individual's compliance with treatment approved through this alternative deferred prosecution program and not for prosecution of a criminal offense; and
- f. An acknowledgment that the individual may opt out of this alternative deferred prosecution program at their first review hearing and have their criminal case sent back to pre-trial status. The petitioner shall also be advised that they may, if they proceed to trial and are found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that they seek treatment and, further, that they may seek treatment from public and private agencies at any time without regard to whether or not they are found guilty of the offense charged. They shall also be advised that the court will not accept a petition for deferred prosecution from an individual who: (i) sincerely believes that they are innocent of the charges; or (ii) sincerely believes that they did not, in fact, suffer from a substance use disorder.

3. Before entering an order deferring prosecution, the court shall make specific findings that:

- a. The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report;

b. The petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution;

c. The petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in their defense, and the right to a jury trial; and

d. The petitioner's statements were made knowingly and voluntarily.

Such findings shall be included in the order granting deferred prosecution.

D. Investigation and examination. The program to which such individual is referred shall conduct an investigation and examination to determine:

1. Whether the individual suffers from the problem described;
2. Whether the problem is such that if not treated there is a probability that similar misconduct will occur in the future;
3. Whether extensive and long term treatment is required;
4. Whether effective treatment for the individual's problem is available; and
5. Whether the individual is amenable to treatment.

E. Report to court—Recommended treatment plan—Commitment to provide treatment.

1. The program shall make a written report to the court stating its findings and recommendations after the examination required by NBMC 9.45.090(E). If its findings and recommendations support treatment, it shall also recommend a treatment or service plan setting out:

- a. The type;
- b. Nature;
- c. Length;
- d. A treatment or service time schedule; and
- e. Approximate cost of the treatment.

2. The report with the treatment or service plan shall be filed with the court and a copy given to the petitioner and petitioner's counsel. A copy of the treatment or service plan shall be given to the prosecutor by petitioner's counsel. The evaluation facility making the written report

shall append to the report a commitment by the treatment program that it will provide the treatment in accordance with this section. If the individual is monitored by the court's probation department, the facility or the service provider shall agree to provide the court with a statement every three months for the first year and every six months for the second year regarding (a) the petitioner's cooperation with the treatment proposed, and (b) the petitioner's progress or failure in treatment. If the individual is not monitored by the court's probation department, such statements must be filed with the court, along with a copy sent to the prosecutor and defense attorney, every month or as the court may otherwise order. These statements shall be made as a declaration by the individual who is personally responsible for providing the treatment or services.

F. Procedure upon approval of plan. If the report recommends treatment, the court shall examine the treatment plan. If the court approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the individual's court docket showing that the individual has been accepted for deferred prosecution under this alternative program. A copy of the treatment plan shall be filed with the court.

G. When treatment rejected. When treatment is either not recommended or not approved by the judge, or the petitioner declines to accept the treatment plan, the charge shall proceed through the criminal justice system in regular course.

H. Evidence, uses, and admissibility. If the petition is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petition and/or investigation is inadmissible in any trial on the charges but shall be available for use after a conviction in determining a sentence.

I. Procedure upon breach of treatment plan. If a petitioner, who has been accepted for a deferred prosecution, fails, or neglects to carry out and fulfill any term or condition of the petitioner's treatment plan, the facility, center, institution, or agency administering the treatment shall immediately report such breach to the court, the prosecutor, and the petitioner or petitioner's attorney of record, together with its recommendation. The court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program. At the hearing, evidence shall be taken of the petitioner's alleged failure to comply with

the treatment plan and the petitioner shall have the right to present evidence on their own behalf. The court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the court shall enter judgment pursuant to NBMC 9.45.090(C).

J. Conviction of similar offense. If a petitioner is subsequently convicted of a similar offense that was committed while the petitioner was in a deferred prosecution program, upon notice the court may remove the petitioner's docket from the deferred prosecution file, and if removed, shall enter judgment pursuant to NBMC 9.45.090(C).

K. Trial delay not grounds for dismissal. Delay in bringing a case to trial caused by a petitioner requesting deferred prosecution as provided for in this section shall not be grounds for dismissal.

L. Dismissal of charges. Following proof to the court that the petitioner has complied with the conditions imposed by the court following successful completion of the recommended treatment program, but not before two years following entry of the order of deferred prosecution pursuant to a petition brought under NBMC 9.45.090, or earlier upon agreement of the parties, the court shall dismiss the charges pending against the petitioner.

M. Services provided for indigent defendants. If an individual is indigent and has sufficiently demonstrated to the court that they are unable to pay the cost of any program of treatment, including costs to provide investigation, examination, report and a treatment plan, those costs may be eligible for payment using available funds appropriated by the City or the state for that purpose.

N. Conditions of granting.

1. As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160.

2. To help ensure continued sobriety and reduce the likelihood of re-offense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for substance use disorders, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution program upon violation of any term or condition provided for in the deferred prosecution order.

O. Minimum program requirements. A deferred prosecution program shall be for a two-year period and shall include, but not be limited to, the following requirements:

1. Total abstinence from alcohol and all other nonprescribed mind-altering drugs;
2. Participation in an intensive inpatient or intensive outpatient program in a state-approved substance use disorder treatment program;
3. Participation in a minimum of two meetings per week of a self-help recovery support group, as determined by the assessing agency, for the duration of the treatment program;
4. Participation in a self-help recovery support group, as determined by the assessing agency, from the date of court approval of the plan to entry into intensive treatment;
5. Not less than weekly approved outpatient counseling, group or individual, for a minimum of six months following the intensive phase of treatment;
6. Not less than monthly outpatient contact, group or individual, for the remainder of the two-year deferred prosecution period;
7. The decision to include the use of prescribed drugs to treat a substance use disorder, including but not limited to disulfiram, methadone, buprenorphine, and naltrexone, as a condition of treatment shall be reserved to the treating facility and the petitioner's physician;
8. All treatment within the purview of this section shall occur within or be approved by a state-approved substance use disorder treatment program as described in Chapter 71.24 RCW;
9. Signature of the petitioner agreeing to the terms and conditions of the treatment program.

P. Appeal of deferred prosecution order. The prosecutor may appeal an order granting deferred prosecution if the evaluation facility fails to provide the information required in NBMC 9.45.090(E) and NBMC 9.45.090(F), if the petitioner has been referred to the facility for treatment. If an appeal on such basis is successful, the trial court may consider the use of another treatment program.

Q. Supervision as condition—Levy of assessment. As a condition of granting a deferred prosecution, the court may order supervision of the petitioner by the probation department during the period of deferral and may levy a monthly assessment upon the petitioner as provided in NBMC 9.45.090(M), to the extent the petitioner is able to pay the assessment.

~~**Sec. 9.45.100. No objection to deferred sentence following revoked deferred prosecution.** If an individual declines the alternative deferred prosecution program created through this chapter, a deferred prosecution program as provided for in Chapter 10.05 RCW, or a deferred prosecution program under this chapter or Chapter 10.05 RCW is revoked due to noncompliance, the city will not object to the individual being granted a deferred sentence conditioned on compliance with a state approved substance use disorder treatment program.~~

~~**Sec. 9.45.110. Vacation of conviction.** If a person convicted of an offense under this chapter is ordered by the court to complete a substance use disorder treatment program, the city will not object to the court vacating the individual's conviction(s) if the person successfully completes the court approved treatment program and they file proof of such completion with the court. Vacation shall include all convictions for offenses under this chapter that were entered at the time the individual completed the court approved substance use disorder treatment program.~~



SUBJECT:		Agenda Date: May 16, 2023		AB23-063	
Resolution Accepting Federal Surface Transportation Program (STP) Funds for Preliminary Engineering Design of the Bendigo Blvd and 4th Street Roundabout Capital Project		Department/Committee/Individual			
		Mayor Rob McFarland			
		City Administrator – David Miller			
		City Attorney – Lisa Marshall			
		City Clerk – Susie Oppedal			
		Administrative Services – Lisa Escobar			
		Comm. & Economic Development – Rebecca Deming			
		Finance – Richard Gould			
Cost Impact: \$126,000 (local match)	Public Works – Mark Rigos, P.E.				X
Fund Source: TIF					
Timeline: Immediate					
Attachments: Resolution; Local Agency Agreement, Project Prospectus, Conceptual Site Plan					
SUMMARY STATEMENT:					
<p>In the spring of 2020, the City of North Bend was awarded \$804,000 in grant funds via the Federal Highway Administration (FHWA) Surface Transportation Program (STP) by Puget Sound Regional Council (PSRC) to cover most of the costs associated with preliminary engineering design for the Bendigo Blvd (SR-202) and West 4th Street Roundabout Transportation Capital Project. This roundabout project was eligible for a grant from PSRC, because the site is located on a state highway, the project was listed on the City’s 2021–2026 6-year Transportation Improvement Plan (TIP), and the City had applied (pre-2020) for grant funding for this roundabout.</p>					
<p>For this grant, the City has a match requirement of \$126,000 for a total budget of \$930,000 to cover preliminary engineering. The \$126,000 match would be covered by the City using Transportation Impact Fees (TIF) of which the City has adequate funds to cover.</p>					
<p>This roundabout is listed on the City’s 2023-2028 6-Year TIP which was adopted by North Bend City Council on June 21, 2022. The project’s purpose is to increase traffic mobility, improve public safety, enhance pedestrian connectivity, and decrease wait times (during a.m. and p.m. peak hours) at the nearby Bendigo Blvd. / North Bend Way intersection. This project is part of a larger areawide effort to provide improved traffic circulation through North Bend on SR-202, which is negatively impacted by traffic signals along SR-202 that are causing an increased delay in traffic mobility (another such improvement is the 8th Street / South Fork Avenue Bypass project bordering the Nintendo site).</p>					
<p>Specifically, in addition to the actual roundabout, the project includes new ADA compliant sidewalks at all roundabout approaches and surrounding the roundabout, landscaping with irrigation, replacement of a AC watermain and water services within project limits, stormwater infrastructure improvements, improved roadway luminaries (street lighting), a joint utility trench for the relocation of communication and power facilities underground, pavement markings / signage, right-of-way acquisition of several mobile homes, and relocation of those tenants. Note that the right-of-way (ROW) acquisition and relocation phase would not have to occur for many years into the future.</p>					
<p>A relocation study was completed by consultant Leslie Findlay (ROW Operations Manager) from Tierra Right-of-Way Services, Ltd on October 28, 2021 related to this roundabout. The 4-5 tenants at the adjacent mobile home park having to be relocated in the future would be done at no cost to them and they would receive improved living arrangements. An example of this is replacing an existing older mobile home with a brand-new mobile home at a different location within City Limits. In almost all cases, the relocated tenants land in a better situation. Here are some of the possible positive outcomes of relocation:</p>					
<ul style="list-style-type: none">- Elderly tenants or owners will have the ability to use their acquisition funds and Replacement Housing Payments (RHP) to pay for assisted living or a senior home;					

- A tenant will have the ability to use their rent supplement as a down payment to purchase a home; or
- Individuals currently living in non-decent, un-safe, and un-sanitary situations will be able to get into Federal DSS (Decent, Safe and Sanitary) housing in accordance with the Federal Uniform Act. It will be necessary to advise those displaced of required DSS Standards and to conduct building inspections on selected replacement housing units, in order to guide the displaced in relocating to approved and improved housing.

The City will be responsible for ensuring the above occurs if the project moves forward past the engineering design phase. The ROW acquisition and relocation phase would occur after the engineering design phase is completed. The ROW acquisition and relocation phase can take two plus years, is very detailed, time consuming, and administered by Washington State Department of Transportation (WSDOT) to meet all federal requirements. If relocation is going to occur, it will first need to be reviewed and approved by the City Council.

Another reason to move forward with this project is because the City of North Bend is in “good standing” with PSRC who administers and approves transportation related grants for the City. In recent years, the City has received close to \$10 million in transportation grants. A key reason for North Bend’s success on grants is because North Bend follows through on grant projects. Cities who do not follow through on grants and “give the money back” are less likely to be awarded future grants.

It’s important to note this roundabout project can be designed over the next 3-7 years and after design approval the City has up to 10 years to construct (to be awarded construction grant dollars) if City Council desires to continue with this project. This phase 1 \$804,000 grant does not fund construction of this project. This project can be designed to be “shovel ready”, but it does not have to be constructed and the land does not have to be acquired to build it at this time. This grant is simply allowing the City to design it (Phase 1). Phase 2 would be ROW acquisition and relocation. Phase 3 would be construction.

If City Council chooses to no longer support this project, then the City must return the \$804,000 grant money to the State, which will be used by a different city. This \$804,000 amount cannot be used for other transportation projects in North Bend. If this project does not move forward now, then this project should be removed from the City’s 6-year TIP for 2024-2029 and City staff will halt work on the project.

The attached Resolution accepts the grant and authorizes the Mayor to execute the Local Agency Agreement, Project Prospectus, and all other documents necessary to proceed with grant acceptance for the design of the Bendigo Blvd and 4th Street Roundabout Project. Due to the long duration of this project, the benefits derived from the project, and continuance of future grant approval requests from PSRC, the City administration recommends moving forward with the engineering design phase. The project can continue or stop before ROW acquisition and relocation, if that is what this Council or a future Council decides.

APPLICABLE BRAND GUIDELINES: Consistent delivery of quality basic services including transportation and traffic management.

COMMITTEE REVIEW AND RECOMMENDATION: This item was discussed at the April 25, 2023 Transportation and Public Works Committee meeting and was recommended for approval and placement on the Consent Agenda.

RECOMMENDED ACTION: MOTION to approve AB23-063, a resolution accepting Federal STP Funds for preliminary engineering of the Bendigo Blvd and 4th Street Roundabout Capital Project.

RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
May 16, 2023		

RESOLUTION

A RESOLUTION OF THE CITY OF NORTH BEND, WASHINGTON, ACCEPTING FEDERAL SURFACE TRANSPORTATION PROGRAM (STP) FUNDS FOR PRELIMINARY ENGINEERING OF THE BENDIGO BLVD AND 4TH STREET ROUNDABOUT PROJECT AND AUTHORIZING THE MAYOR TO SIGN LOCAL AGENCY AGREEMENT AND PROJECT PROSPECTUS

WHEREAS, in 2020, the City of North Bend applied for and was awarded \$804,000 in Federal Highway Administration STP (“Program”) funds for preliminary engineering of the Bendigo Blvd and NE 4th Street Roundabout Capital Project (“Project”); and

WHEREAS, the Program requires a match of \$126,000 in local funds, which will be funded with Transportation Impact Fees, for a total preliminary engineering budget of \$930,000; and

WHEREAS, the Project includes construction of a roundabout at the intersection of Bendigo Blvd and NE 4th Street; bike lane transitions; pedestrian crossings; improved illumination for bicyclist and pedestrians; new landscaping; complete Americans with Disability Act compliance; stormwater infrastructure improvements; pavement markings; and other improvements; and

WHEREAS, the Project is listed in the City’s 2023-2028 Six-Year Transportation Improvement Plan which was adopted by City Council on June 21, 2022; and

WHEREAS, the City Council desires to accept the Program grant funds and authorizes the Mayor to execute the Local Agency Agreement, Project Prospectus, and all other documents necessary to proceed with obligation of the grant funds, and further authorizes the Program’s required local match in the amount of \$126,000, to be funded with City transportation impact fees;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council accepts the STP Program grant of \$804,000 and authorizes a local match of \$126,000 to be funded with City Transportation Impact Fees, for preliminary engineering of the Bendigo Blvd and NE 4th Street Roundabout Capital Project.

Section 2. The Mayor is authorized to enter into the Local Agency Agreement and Project Prospectus and any other agreements necessary, in a form and content approved by the City Attorney, to proceed with obligation of the grant funds set forth in Section 1 of this Resolution.

PASSED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 16TH DAY OF MAY 2023.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Rob McFarland, Mayor

Lisa Marshall, City Attorney

ATTEST/AUTHENTICATED:

Effective:

Posted:

Susie Oppedal, City Clerk


**Washington State
Department of Transportation**

Agency

Address

Local Agency Agreement
CFDA No. 20.205

(Catalog or Federal Domestic Assistance)

Project No.**Agreement No.**

For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) 2 CFR Part 200, (4) 2 CFR Part 180 – certifying that the local agency is not excluded from receiving Federal funds by a Federal suspension or debarment, (5) the policies and procedures promulgated by the Washington State Department of Transportation, and (6) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name

Length

Termini

Description of Work

Project Agreement End Date

Proposed Advertisement Date

Claiming Indirect Cost Rate

Yes

No

Type of Work		Estimate of Funding		
		(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE	a. Agency			
%	b. Other			
Federal Aid	c. Other			
Participation	d. State			
Ratio for PE	e. Total PE Cost Estimate (a+b+c+d)			
Right of Way	f. Agency			
%	g. Other			
Federal Aid	h. Other			
Participation	i. State			
Ratio for RW	j. Total R/W Cost Estimate (f+g+h+i)			
Construction	k. Contract			
%	l. Other			
Federal Aid	m. Other			
Participation	n. Other			
Ratio for CN	o. Agency			
	p. State			
	q. Total CN Cost Estimate (k+l+m+n+o+p)			
	r. Total Project Cost Estimate (e+j+q)			

Agency Official

By

Title

Washington State
Department of Transportation

By Director, Local Program

Date Executed

Construction Method of Financing (Check Method Selected)**State Ad and Award**

Method A - Advance Payment - Agency Share of total construction cost (based on contract award)

Method B - Withhold from gas tax the Agency's share of total construction coast (line 5, column 2) in the amount of

\$ _____ at \$ _____ per month for _____ months.

Local Force or Local Ad and Award

Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

_____, Resolution/Ordinance No. _____

Provisions**I. Scope of Work**

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

Once written authorization is given, the Agency agrees to show continuous progress through monthly billings. Failure to show continuous progress may result the Agency's project becoming inactive, as described in 23 CFR 630, and subject to de-obligation of federal aid funds and/or agreement closure.

If right of way acquisition, or actual construction of the road for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which preliminary engineering phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

If actual construction of the road for which right of way has been purchased is not started by the close of the tenth fiscal year following the fiscal year in which the right of way phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

1. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A – The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B – The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C – The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project. The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director, Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 60 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

XII. Nondiscrimination Provision

No liability shall attach to the State or Federal Government except as expressly provided herein.

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

- (1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.
- (2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- (3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.
- (4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

- (1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
- (2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
- (3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
- (4) The Secretary is notified by the Federal Highway Administration that the project is inactive.
- (5) The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

XVII. Assurances

Local agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the Agency Executive and addressed to the State, documenting that all programs, activities, and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

Additional Provisions


**Washington State
Department of Transportation**
**Local Agency Federal Aid
Project Prospectus**

		Prefix		Route		()		Date	
Federal Aid Project Number								DUNS Number	
Local Agency Project Number				(WSDOT Use Only)		Federal Employer Tax ID Number			
Agency			CA Agency Yes No		Federal Program Title 20.205 Other				
Project Title				Start Latitude N			Start Longitude W		
				End Latitude N			End Longitude W		
Project Termini From-To				Nearest City Name				Project Zip Code (+4)	
Begin Mile Post	End Mile Post	Length of Project			Award Type Local Local Forces State Railroad				
Route ID	Begin Mile Point	End Mile Point	City Number	County Number	County Name				
WSDOT Region		Legislative District(s)			Congressional District(s)			Urban Area Number	

Phase	Total Estimated Cost	Local Agency Funding	Federal Funds	Phase Start Date	
	(Nearest Hundred Dollar)	(Nearest Hundred Dollar)	(Nearest Hundred Dollar)	Month	Year
P.E.					
R/W					
Const.					
Total					

Description of Existing Facility (Existing Design and Present Condition)

Roadway Width	Number of Lanes

Description of Proposed Work

Description of Proposed Work (Attach additional sheet(s) if necessary)

Local Agency Contact Person		Title		Phone	
Mailing Address		City		State	Zip Code

Project Prospectus	By _____		Approving Authority	
	Title		Date	

Agency	Project Title	Date
--------	---------------	------

Type of Proposed Work

Project Type (Check all that Apply)			Roadway Width	Number of Lanes
New Construction	Path / Trail	3-R		
Reconstruction	Pedestrian / Facilities	2-R		
Railroad	Parking	Other		
Bridge				

Geometric Design Data

Description	Through Route			Crossroad		
Federal Functional Classification		Principal Arterial			Principal Arterial	
		Minor Arterial			Minor Arterial	
	Urban	Collector		Urban	Collector	
	Rural	Major Collector		Rural	Major Collector	
	NHS	Minor Collector		NHS	Minor Collector	
		Local Access			Local Access	
Terrain	Flat	Roll	Mountain	Flat	Roll	Mountain
Posted Speed						
Design Speed						
Existing ADT						
Design Year ADT						
Design Year						
Design Hourly Volume (DHV)						

Performance of Work

Preliminary Engineering Will Be Performed By	Others %	Agency %
Construction Will Be Performed By	Contract %	Agency %

Environmental Classification

Class I - Environmental Impact Statement (EIS) Project Involves NEPA/SEPA Section 404 Interagency Agreement Class III - Environmental Assessment (EA) Project Involves NEPA/SEPA Section 404 Interagency Agreements	Class II - Categorical Excluded (CE) Projects Requiring Documentation (Documented CE)
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Environmental Considerations

Agency	Project Title	Date
--------	---------------	------

Right of Way

No Right of Way Needed * All construction required by the contract can be accomplished within the existing right of way.	Right of Way Needed	
	No Relocation	Relocation Required

Utilities**Railroad**

No utility work required All utility work will be completed prior to the start of the construction contract All utility work will be completed in coordination with the construction contract	No railroad work required All railroad work will be completed prior to the start of the construction contract All the railroad work will be completed in coordination with the construction contract
---	--

Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project

FAA Involvement

Is any airport located within 3.2 kilometers (2 miles) of the proposed project? Yes No

Remarks

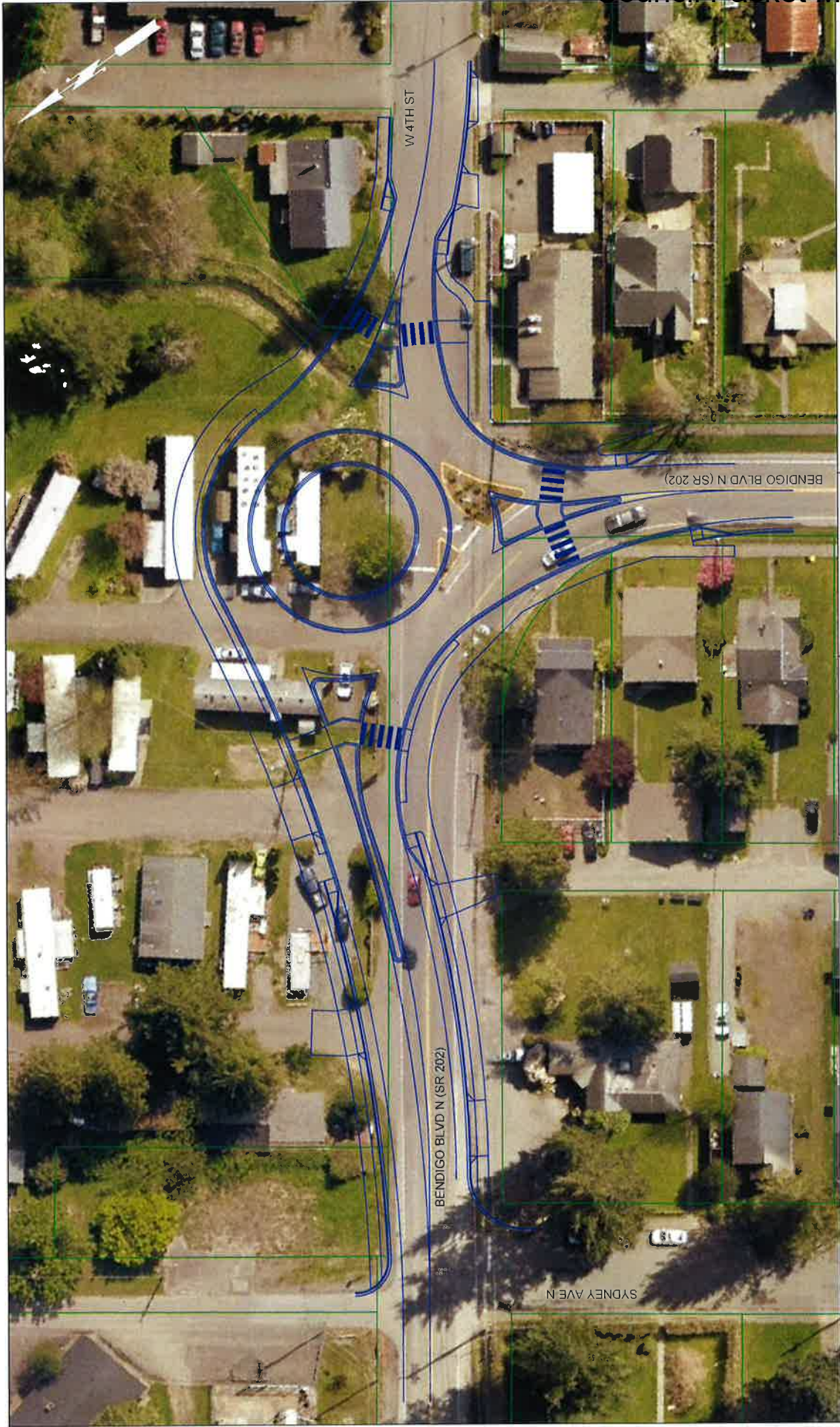
This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.

Agency

Date

By

Mayor/Chairperson



BENDIGO BOULEVARD N / W 4TH STREET
ROUNDABOUT FOOTPRINT
APRIL 2020

PERTEET
2700 COOK AVENUE, SUITE 500
EVANSTON, ILL 60201
414.232.7700 | 800.655.9900





SUBJECT:		Agenda Date: May 16, 2023		AB23-064
Motion Authorizing Contract with North Bend Downtown Foundation		Department/Committee/Individual		
		Mayor Rob McFarland		
		City Administrator – David Miller		
		City Attorney – Lisa Marshall		
		City Clerk – Susie Oppedal		
		Administrative Services – Lisa Escobar		
		Comm. & Economic Development – Rebecca Deming		
		Finance – Richard Gould		
Cost Impact: \$250,000 over three years + Events Budget				
Fund Source: ARPA		Public Works – Mark Rigos		
Timeline: Immediate		Economic Development Manager – Mark Noll		X
Attachments: Contract				
<p>SUMMARY STATEMENT:</p> <p>City Council approved \$250,000 in American Rescue Plan Act (ARPA) funding for the North Bend Downtown Foundation (NBDF) to support and strengthen downtown businesses, manage events, and strengthen downtown’s presence as an attractive place to live, work, shop, and play. The funding will support the hiring of an executive director to achieve these objectives and attain Main Street Community designation, a milestone that will help NBDF sustain its organizational capacity into the future.</p> <p>Staff and NBDF have established the attached contract outlining the terms of the financial agreement, including a scope of work and milestones that must be achieved to allow for payment of funds as outlined in the contract.</p> <p>Following approval, the City and NBDF will sign the final contract allowing NBDF to pursue a hiring process for an Executive Director.</p>				
APPLICABLE BRAND GUIDELINES: Economic Viability / Balanced Budget / Commitment to City Investment and Community Engagement				
COMMITTEE REVIEW AND RECOMMENDATION: The draft contract was introduced to the CED Council Committee on April 18. The CED Council Committee Chair agreed to take this item to the City Council on the Main Agenda for discussion.				
RECOMMENDED ACTION: MOTION to approve AB23-064, authorizing a contract with the North Bend Downtown Foundation, in a form and content acceptable to the City Attorney.				
RECORD OF COUNCIL ACTION				
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>		
May 16, 2023				

AGREEMENT BETWEEN CITY OF NORTH BEND AND NORTH BEND DOWNTOWN FOUNDATION

THIS AGREEMENT, dated for reference purposes only as [date], is by and between the City of North Bend (the “City”), a Washington municipal corporation, and North Bend Downtown Foundation (“Consultant”), a Washington non-profit corporation. The City and the Consultant are referred to collectively in this Agreement as the “Parties.” Once fully executed by the Parties, this Agreement is effective as of the last date signed by both parties.

1. Scope of Work: Consultant agrees to provide the City all services and materials as specified in Exhibit A or B, which is attached and incorporated herein and may hereinafter be referred to as the “Work.”
2. Changes in Scope of Work: The City, without invalidating this Agreement, may order changes to the Work consisting of additions, deletions or modifications. Any such changes to the Work shall be ordered by the City in writing and the Compensation shall be equitably adjusted consistent with the rates set forth in Exhibit A or B or as otherwise mutually agreed by the Parties.
3. Time of Performance and Duration: Consultant shall commence performance of the Agreement pursuant to the schedule(s) set forth in Exhibit A. All Work as outlined in Exhibit A shall be performed until the Consultant achieves Main Street Community Designation, at which point, all Work shall be performed as outlined in Exhibit B. Unless this Agreement earlier terminates in accordance with paragraph 5 herein, the duration of this Agreement shall be for an initial term (Initial Term) of five (5) years beginning on the effective date of this Agreement and ending five years thereafter. After expiration of the Initial Term, the Agreement shall automatically renew for one-year periods (“Renewal Year(s)”) until the fifth Renewal Year following the Initial Term. At the end of the fifth Renewal Year, this Agreement will expire.
4. Compensation:
 - A. Amount. Compensation shall be paid based upon Work actually performed and specified in Exhibit A or B, plus any applicable state and local sales taxes over the term of the Agreement. Except as specifically provided herein, the Consultant shall be solely responsible for payment of any taxes imposed as a result of the performance and payment of this Agreement.
 - B. Method of Payment. In accordance with the schedule set forth in Exhibit A or B incorporated by this reference for each deliverable, the Consultant shall submit a voucher or invoice in a form specified by the City, including a description of what Work has been performed and the City will pay for Work performed within thirty (30) calendar days after receipt and approval by the appropriate City representative of the voucher or invoice.

C. Effect of Payment. Payment for any part of the Work shall not constitute a waiver by the City of any remedies it may have against the Consultant for failure of the Consultant to perform the Work or for any breach of this Agreement by the Consultant.

D. Non-Appropriation of Funds. If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City shall not be obligated to make payments for Work or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Work for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

5. Termination:

A. This Agreement shall automatically terminate in the event that Consultant does not achieve Main Street Community Designation by December 31, 2025. Upon termination pursuant to this subsection, the Consultant shall be entitled to payment pursuant to the terms set forth in Paragraph 5.C.

B. The City reserves the right to terminate this Agreement at any time, with or without cause by giving ten (10) calendar days' notice to the Consultant in writing. In the event of such termination or suspension, all finished or unfinished documents, data, studies, worksheets, models and reports, or other material prepared by the Consultant pursuant to this Agreement shall be submitted to the City, if any are required as part of the Work.

C. In the event this Agreement is terminated by the City, the Consultant shall be entitled to payment for all hours worked to the effective date of termination, less all payments previously made. If the Agreement is terminated by the City after partial performance of Work for which the agreed compensation is a fixed fee, the City shall pay the Consultant an equitable share of the fixed fee. This provision shall not prevent the City from seeking any legal remedies it may have for the violation or nonperformance of any of the provisions of this Agreement and such charges due to the City shall be deducted from the final payment due the Consultant. No payment shall be made by the City for any expenses incurred or work done following the effective date of termination unless authorized in advance in writing by the City.

6. Warranties And Right To Use Work Product: Consultant represents and warrants that Consultant will perform all Work identified in this Agreement in a professional and workmanlike manner and in accordance with all reasonable and professional standards and laws. Compliance with professional standards includes, as applicable, performing the Work in compliance with applicable City standards or guidelines (e.g. design criteria and Standard Plans for Road, Bridge and Municipal Construction). Professional engineers shall certify engineering plans, specifications, plats, and reports, as applicable, pursuant to RCW 18.43.070. Consultant further represents and warrants that all final work product

created for and delivered to the City pursuant to this Agreement shall be the original work of the Consultant and free from any intellectual property encumbrance which would restrict the City from using the work product. Consultant grants to the City a non-exclusive, perpetual right and license to use, reproduce, distribute, adapt, modify, and display all final work product produced pursuant to this Agreement. The City's or other's adaptation, modification or use of the final work products other than for the purposes of this Agreement shall be without liability to the Consultant. The provisions of this section shall survive the expiration or termination of this Agreement.

7. Record Maintenance: The Consultant shall maintain accounts and records, which properly reflect all direct and indirect costs expended and Work provided in the performance of this Agreement and retain such records for as long as may be required by applicable Washington State records retention laws, but in any event no less than six years after the termination of this Agreement. The Consultant agrees to provide access to and copies of any records related to this Agreement as required by the City to audit expenditures and charges and/or to comply with the Washington State Public Records Act (Chapter 42.56 RCW). The provisions of this section shall survive the expiration or termination of this Agreement.
8. Public Records Compliance: To the full extent the City determines necessary to comply with the Washington State Public Records Act, Consultant shall make a due diligent search of all records in its possession or control relating to this Agreement and the Work, including, but not limited to, e-mail, correspondence, notes, saved telephone messages, recordings, photos, or drawings and provide them to the City for production. In the event Consultant believes said records need to be protected from disclosure, it may, at Consultant's own expense, seek judicial protection. Consultant shall indemnify, defend, and hold harmless the City for all costs, including attorneys' fees, attendant to any claim or litigation related to a Public Records Act request for which Consultant has responsive records and for which Consultant has withheld records or information contained therein, or not provided them to the City in a timely manner. Consultant shall produce for distribution any and all records responsive to the Public Records Act request in a timely manner, unless those records are protected by court order. The provisions of this section shall survive the expiration or termination of this Agreement.
9. Independent Contractor Relationship:
 - A. The Consultant is retained by the City only for the purposes and to the extent set forth in this Agreement. The nature of the relationship between the Consultant and the City during the period of the Work shall be that of an independent contractor, not employee. The Consultant, not the City, shall have the power to control and direct the details, manner or means of Work. Specifically, but not by means of limitation, the Consultant shall have no obligation to work any particular hours or particular schedule, unless otherwise indicated in the Scope of Work or where scheduling of attendance or performance is mutually arranged due to the nature of the Work. Consultant shall retain the right to designate the means of performing the Work covered by this agreement, and the Consultant shall be entitled to employ other

workers at such compensation and such other conditions as it may deem proper, provided, however, that any contract so made by the Consultant is to be paid by it alone, and that employing such workers, it is acting individually and not as an agent for the City.

- B. The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Consultant or any employee of the Consultant.
 - C. If the Consultant is a sole proprietorship or if this Agreement is with an individual, the Consultant agrees to notify the City and complete any required form if the Consultant retired under a State of Washington retirement system and agrees to indemnify any losses the City may sustain through the Consultant's failure to do so.
10. Hold Harmless: The Consultant agrees to release, indemnify, defend, and hold harmless the City, elected officials, employees, officers, representatives, and volunteers from any and all claims, demands, actions, suits, causes of action, arbitrations, mediations, proceedings, judgments, awards, injuries, damages, liabilities, taxes, losses, fines, fees, penalties, expenses, attorney's or attorneys' fees, costs, and/or litigation expenses to or by any and all persons or entities, arising from, resulting from, or related to the negligent acts, errors or omissions of the Consultant in its performance of this Agreement or a breach of this Agreement by Consultant, except for that portion of the claims caused by the City's sole negligence.

Should a court of competent jurisdiction determine that this agreement is subject to RCW 4.24.115, (Validity of agreement to indemnify against liability for negligence relative to construction, alteration, improvement, etc., of structure or improvement attached to real estate...) then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees and volunteers, Consultant's liability shall be only to the extent of Consultant's negligence.

It is further specifically and expressly understood that the indemnification provided in this Agreement constitute Consultant's waiver of immunity under the Industrial Insurance Act, RCW Title 51, solely for the purposes of this indemnification. The Parties have mutually negotiated and agreed to this waiver. The provisions of this section shall survive the expiration or termination of this Agreement.

The Consultant shall release, indemnify, and hold harmless the City for the Consultant's use of American Rescue Plan Act ("ARPA") funds in any manner inconsistent with the July 27, 2022 US Treasury's Final Rule regarding authorized use of Coronavirus State and Local Government Fiscal Recovery Funds ("SLGFR"). For purposes of Consultant's release, indemnification and hold harmless set forth herein, "misuse" shall include use of ARPA funds inconsistent with US Treasury requirements including but not limited to reporting requirements, technical compliance, and expenditures of ARPA funds.

Information regarding the US Treasury's expenditure and compliance program can be located at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>.

11. Gifts and Conflicts: The City's Code of Ethics and Washington State law prohibit City employees from soliciting, accepting, or receiving any gift, gratuity or favor from any person, firm or corporation involved in a contract or transaction. To ensure compliance with the City's Code of Ethics and state law, the Consultant shall not give a gift of any kind to City employees or officials. Consultant also confirms that Consultant does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in selecting the Consultant, negotiating or administering this Agreement, or evaluating the Consultant's performance of the Work.
12. City of North Bend Business License: Unless exempted by the North Bend Municipal Code, the Consultant shall obtain a City of North Bend Business License prior to performing any Work and maintain the business license in good standing throughout the term of this agreement with the City.

Information regarding acquiring a city business license can be found at: www.NorthBendwa.gov

Information regarding State business licensing requirements can be found at: <https://dor.wa.gov/doing-business/register-my-business>

13. Insurance: Consultant shall secure and maintain:
 - A. Commercial general liability insurance in the minimum amounts of \$1,000,000 for each occurrence/\$2,000,000 aggregate for the Term of this Agreement.
 - B. In the event that Work delivered pursuant to this Agreement either directly or indirectly involves or require Professional Services, Professional Liability, Errors and Omissions coverage shall be provided with minimum limits of \$1,000,000 per occurrence. "Professional Services", for the purpose of this section, shall mean any Work provided by a licensed professional or Work that requires a professional standard of care.
 - C. Workers' compensation coverage, as required by the Industrial Insurance laws of the State of Washington, shall also be secured.
 - D. Commercial Automobile Liability for owned, leased, hired or non-owned, leased, hired or non-owned, with minimum limits of \$1,000,000 per occurrence combined single limit, if there will be any use of Consultant's vehicles on the City's Premises by or on behalf of the City, beyond normal commutes.
 - E. Consultant shall name the City as an Additional Insured on its commercial general

liability policy on a non-contributory primary basis. The City's insurance policies shall not be a source for payment of any Consultant liability, nor shall the maintenance of any insurance required by this Agreement be construed to limit the liability of the Consultant to the coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or in equity.

F. Subject to the City's review and acceptance, a certificate of insurance showing the proper endorsements, shall be delivered to the City before performing the Work.

G. Consultant shall provide the City with written notice of any policy cancellation, within two (2) business days of their receipt of such notice.

14. Delays: Consultant is not responsible for delays caused by factors beyond the Consultant's reasonable control. When such delays beyond the Consultant's reasonable control occur, the City agrees the Consultant is not responsible for damages, nor shall the Consultant be deemed to be in default of the Agreement.

15. Successors and Assigns: Neither the City nor the Consultant shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

16. Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears below (as modified in writing from time to time by such party), and given personally, by registered or certified mail, return receipt requested, by facsimile or by nationally recognized overnight courier service. Time period for notices shall be deemed to have commenced upon the date of receipt, EXCEPT facsimile delivery will be deemed to have commenced on the first business day following transmission. Email and telephone may be used for purposes of administering the Agreement, but should not be used to give any formal notice required by the Agreement.

CITY OF NORTH BEND
Attn: David Miller, City Administrator
920 SE Cedar Falls Way
North Bend, WA 98045

CONSULTANT

[ADDRESS]

17. Discrimination Prohibited: Except to the extent permitted by a bona fide occupational qualification, the Consultant agrees as follows:

A. Consultant, and Consultant's agents, employees, representatives, and volunteers with regard to the Work performed or to be performed under this Agreement, shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation or preference, age (except minimum age and retirement provisions), honorably discharged veteran or military status, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification in relationship to hiring and employment, in employment or application for employment, the administration of the delivery of Work or any other benefits

under this Agreement, or procurement of materials or supplies.

- B. The Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, national origin, sex, age, sexual orientation, physical, sensory or mental handicaps, or marital status. Such action shall include, but not be limited to the following employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training.
- C. If the Consultant fails to comply with any of this Agreement's non-discrimination provisions, the City shall have the right, at its option, to cancel the Agreement in whole or in part.
- D. The Consultant is responsible to be aware of and in compliance with all federal, state, and local laws and regulations that may affect the satisfactory completion of the Work which includes but is not limited to fair labor laws, worker's compensation, and Title VI of the Federal Civil Rights Act of 1964.

18. Miscellaneous: The parties hereby acknowledge:

- A. The City is not responsible to train or provide training for Consultant.
- B. Consultant will not be reimbursed for job related expenses except to the extent specifically agreed within the attached exhibits.
- C. Consultant shall furnish all tools and/or materials necessary to perform the Work except to the extent specifically agreed within the attached exhibits.
- D. In the event special training, licensing, or certification is required for Consultant to provide Work he/she will acquire or maintain such at his/her own expense and, if Consultant employs, sub-contracts, or otherwise assigns the responsibility to perform the Work, said employee/sub-contractor/assignee will acquire and or maintain such training, licensing, or certification.
- E. This is a non-exclusive agreement and Consultant is free to provide his/her Work to other entities, so long as there is no interruption or interference with the provision of Work called for in this Agreement.
- F. Consultant is responsible for his/her own insurance, including, but not limited to health insurance.
- G. Consultant is responsible for his/her own Worker's Compensation coverage as well as that for any persons employed by the Consultant.

19. Other Provisions:

- A. Approval Authority. Each individual executing this Agreement on behalf of the City and Consultant represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the City or Consultant.
- B. General Administration and Management. The City's project manager is Mark Noll. In providing Work, Consultant shall coordinate with the City's contract manager or his/her designee.
- C. Amendment and Modification. This Agreement may be amended only by an instrument in writing, duly executed by both Parties.
- D. Conflicts. In the event of any inconsistencies between Consultant proposals and this Agreement, the terms of this Agreement shall prevail. Any exhibits/attachments to this Agreement are incorporated by reference only to the extent of the purpose for which they are referenced within this Agreement. To the extent a Consultant prepared exhibit conflicts with the terms in the body of this Agreement or contains terms that are extraneous to the purpose for which it is referenced, the terms in the body of this Agreement shall prevail and the extraneous terms shall not be incorporated herein.
- E. Governing Law. This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington and the City of North Bend. Consultant and all of the Consultant's employees shall perform the Work in accordance with all applicable federal, state, county and city laws, codes and ordinances.
- F. Joint Drafting Effort. This Agreement shall be considered for all purposes as prepared by the joint efforts of the Parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution.
- G. Jurisdiction and Venue. Any lawsuit or legal action brought by any party to enforce or interpret this Agreement or any of its terms or covenants shall be brought in the King County Superior Court for the State of Washington or its replacement or successor. Consultant hereby expressly consents to the personal and exclusive jurisdiction and venue of such court even if Consultant is a foreign corporation not registered with the State of Washington.
- H. Alternative Dispute Resolution. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the Parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the Parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through binding arbitration which shall be conducted

under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the Parties equally. However, each Party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

- I. Severability. A court of competent jurisdiction's determination that any provision or part of this Agreement is illegal or unenforceable shall not cancel or invalidate the remainder of this Agreement, which shall remain in full force and effect.
- J. Sole and Entire Agreement. This Agreement contains the entire agreement of the Parties and any representations or understandings, whether oral or written, not incorporated are excluded.
- K. Time is of the Essence. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Work is essential to the Consultant's performance of this Agreement.
- L. Third-Party Beneficiaries. Nothing in this Agreement is intended to, nor shall be construed to give any rights or benefits in the Agreement to anyone other than the Parties, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Parties and no one else.
- M. Binding Effect. The Parties each bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement, and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of the Agreement.
- N. Waivers. All waivers shall be in writing and signed by the waiving party. Either party's failure to enforce any provision of this Agreement shall not be a waiver and shall not prevent either the City or Consultant from enforcing that provision or any other provision of this Agreement in the future. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach unless it is expressly waived in writing.
- O. Counterparts. The Parties may execute this Agreement in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement.

IN WITNESS WHEREOF, the Parties have voluntarily entered into this Agreement as of the date last signed by the Parties below.

CITY OF NORTH BEND

NORTH BEND DOWNTOWN
FOUNDATION

By: _____
Mayor Rob McFarland

By: _____
Name and Title

Date: _____

Date: _____

ATTEST/AUTHENTICATED:

By: _____
Susie Oppedal, City Clerk

Approved as to form:

Lisa M. Marshall, City Attorney

EXHIBIT A

**NORTH BEND DOWNTOWN FOUNDATION SCOPE OF
WORK**

2023 through Main Street Community Designation

The Contractor agrees to provide the City all services and materials set forth below within the term of the Agreement:

The Contractor agrees to provide the City all services, materials, and deliverables set forth below within the term of the Agreement:

1. Organizational Development and Administration

The following organizational and administrative actions or milestones are required to meet the terms of the Agreement:

- a. Maintain status as a recognized 501 (c)(3) or (c)(6) organization with the mission of improving the downtown commercial district.
- b. Hire Executive Director
NBDF shall be responsible for developing and managing a competitive hiring process to name an Executive Director.
- c. Organizational and programmatic strategic plan
NBDF shall be responsible for developing and maintaining a strategic plan that aligns with the City's comprehensive plan for downtown and incorporates the *Main Street Four-Point ApproachTM*.
- d. Annual workplan and budget
NBDF shall develop and implement an annual workplan that guides the regular activities of the NBDF to fulfill its strategic plan, implement the *Main Street Four-Point Approach*, and attain or maintain designation as a Main Street Community. NBDF shall also develop an annual budget inclusive of anticipated revenues and expenses that aligns with the workplan.
- e. Annual report and Council presentation
NBDF shall submit an annual report to the City, inclusive of the State required annual Washington State Main Street Program report, the annual workplan and budget, outcomes or review of completed initiatives, actual revenues and expenditures of previous year, and the status of ongoing or planned initiatives by end of quarter 1 of each calendar year. NBDF shall schedule with City staff a presentation of the annual report to the City Council by end of quarter 1 of each calendar year.
- f. Coordination meetings
NBDF shall meet with City leadership on a quarterly basis to 1) review Washington State required quarterly reports that track key performance measures and progress toward achieving or maintaining Main Street Community status 2) review upcoming and proposed initiatives, 3) outline issues, challenges, or needs, and 4) ensure coordination and alignment of goals between the City and Downtown Foundation.
- g. Business outreach meetings

NBDF shall co-facilitate (with City staff) regular business outreach meetings with the North Bend business community including developing agenda topics, attendance, and providing updates.

Required Deliverables and Payment Schedule

The following deliverables must be received and accepted by the City prior to release of funding as outlined below.

- **Description of duties for Executive Director and hiring timeline**
 - Anticipated June 2023
 - City provides \$50,000
- **Downtown strategic plan**
 - Anticipated September 2023
 - City provides \$50,000
- **Annual workplan and budget**
 - Anticipated December of each year, 2023 – 2025
 - City provides \$100,000 (quarterly installments in 2024 only)
- **Annual report and Council presentation**
 - Anticipated in Quarter 1, beginning 2024
- **Main Street Community Designation**
 - Must be complete by December 31, 2025
 - City provides \$50,000

Expectation of responsibilities:

- Develop and manage downtown-specific programs with input and support from the NBDF Board and Committees and City of North Bend that shall be outlined in the Annual Workplan
- Serve as the primary point of contact for the organization and form strong working relationships with the City, Sno Valley Chamber of Commerce, community groups, businesses, and property owners
- Serve as primary representative for the organization on committees and working groups for projects that will impact the vibrancy and health of downtown (e.g. William H Taylor Park redesign, North Bend Way corridor improvements, etc.)
- Develop and manage a strategic plan inclusive of mission-centered goals, strategies for attaining goals, a workplan with organizational priorities, and a plan for tracking progress toward goals
- Develop and implement an annual funding plan to sustain the organization
- Implement the *Main Street Four-Point Approach* to work toward attaining and maintaining *Main Street Community* status
- Establish NBDF offices and manage regular operations

- Promote economic vitality of downtown North Bend through effective marketing, events, and programs
- Provide support to new and existing businesses with the goal of business retention and expansion in downtown North Bend
- Be knowledgeable and proactive regarding downtown development needs and trends

2. Event Management

The North Bend Downtown Foundation (NBDF) shall be responsible for planning, coordinating, recruiting, and marketing for large and small-scale events that represent the City of North Bend and the NBDF. These events are expected to enhance the vitality of North Bend, promote downtown and the City as a great place to live, work, and play, and increase economic activity in North Bend.

NBDF shall manage City-NBDF events to ensure successful outcomes, including budgeting, promoting, permitting, day-of work, and evaluation with stakeholders following each event to measure success, growth, and future needs. NBDF shall provide a post-event summary to the City outlining estimated attendance, revenue earned, successes, and any issues.

Required events:

- [Downtown Block Party](#) (City and NBDF's largest annual event, 3rd Saturday in July): NBDF shall host a festival with an estimated attendance of 4,000 that includes a Kid Zone, live music, a vendor fair, beer and wine garden, and additional activities and entertainment. The event duration shall be minimum 9 hours. The City shall have a booth available to them at no cost.

The City will provide a budget of \$25,000 (may increase annually per approved budget).

The City will provide in-kind services including street closures, and garbage monitoring and collection as agreed to during the event permitting process..

- [Trick-Or-Treat Street](#) (Annual event, the Saturday on or before Halloween: NBDF shall organize annual Trick-Or-Treat Street, consisting of trick-or-treating with merchants throughout North Bend and live music in one to two locations throughout the downtown area. Annual attendance is estimated at 2,000, with merchants participating annually. The event duration shall be a minimum of 2-3 hours. The City shall have a booth available to them at no cost.

The City will provide a budget of \$5,500 (may increase annually per approved budget).

The City will provide in-kind services including street closures, and garbage monitoring and collection as agreed to during the event permitting process.

- **Holly Days** (First Saturday following Thanksgiving weekend): NBDF shall organize North Bend's winter outdoor festival, including a Tree Lighting Ceremony, community performances, entertainment for children and families, and coordination with Light Up North Bend as pertaining to businesses. Estimated attendance is 400+. The event duration shall be a minimum of 2-3 hours. The City shall have a booth available to them at no cost.

The City will provide a budget of \$5,900 (may increase annually per approved budget).

The City will provide in-kind services including street closures, and garbage monitoring and collection as agreed to during the event permitting process.

- **Holiday Lighting** (Beginning first week of November through end of January): NBDF shall organize downtown Park, Train Depot, and North Bend Way tree and light-post holiday lighting to minimum 2022 standards, including 36 Christmas Poles with lit garland, 26 winter trees with warm lights, and lighting of the Train Depot building.

The City will provide a budget of \$5,000 (may increase annually per approved budget).

The City will continue to install lighted snowflakes along North Bend Way as soon as possible after Halloween in the first week of November to enable the contractor hired by the NBDF to add lighting to light posts and street trees the first week of November.

- **Other events as approved by the City and NBDF**

EXHIBIT B

**NORTH BEND DOWNTOWN FOUNDATION SCOPE OF
WORK**
After Main Street Community Designation is received to end of
contract

The Contractor agrees to provide the City all services and materials set forth below within the term of the Agreement:

The Contractor agrees to provide the City all services, materials, and deliverables set forth below within the term of the Agreement:

1. Organizational Development and Administration

The following organizational and administrative actions or milestones are required to meet the terms of the Agreement:

- a. Maintain status as a recognized 501 (c)(3) or (c)(6) organization with the mission of improving the downtown commercial district.
- b. Executive Director
NBDF shall employ an Executive Director for the term of the agreement.
- c. Organizational and programmatic strategic plan
NBDF shall be responsible maintaining a strategic plan that aligns with the city's comprehensive plan for downtown and incorporates the *Main Street Four-Point ApproachTM*.
- d. Annual workplan and budget
NBDF shall develop and implement an annual workplan that guides the regular activities of the NBDF to fulfill its strategic plan, implement the *Main Street Four-Point Approach*, and attain or maintain designation as a Main Street Community. NBDF shall also develop an annual budget inclusive of anticipated revenues and expenses that aligns with the workplan.
- e. Annual report and Council presentation
NBDF shall submit an annual report to the City, inclusive of the State required annual Washington State Main Street Program report, the annual workplan and budget, outcomes or review of completed initiatives, actual revenues and expenditures of previous year, and the status of ongoing or planned initiatives by end of quarter 1 of each calendar year. NBDF shall schedule with City staff a presentation of the annual report to the City Council by end of quarter 1 of each calendar year.
- f. Coordination meetings
NBDF shall meet with City leadership on a quarterly basis to 1) review Washington State required quarterly reports that track key performance measures and progress toward achieving or maintaining Main Street Community status 2) review upcoming and proposed initiatives, 3) outline issues, challenges, or needs, and 4) ensure coordination and alignment of goals between the City and Downtown Foundation
- g. Business outreach meetings

NBDF shall co-facilitate every-other-month business outreach meetings with the North Bend business community.

Required Deliverables and Payment Schedule

The following deliverables must be received and accepted by the City prior to release of funding as outlined below.

Following Main Street Community designation, the City will provide funding up to \$168,000 per year and may be adjusted as approved by Council. The payment schedule will be defined after achievement of Main Street Community status in accordance with requirements of the Washington Main Street Tax Credit Incentive Program and will be documented as an Addendum to this Contract.

- **Maintain Downtown strategic plan**
- **Annual workplan and budget**
 - Anticipated December of each year
- **Annual report and Council presentation**
 - Anticipated in Quarter 1

Expectation of responsibilities:

- Develop and manage downtown-specific programs with input and support from the NBDF Board and Committees and City of North Bend that shall be outlined in the Annual Workplan
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- **Other events as approved by the City and NBDF**

3. Funding

The funding shall be provided in Quarterly payments subject to continuous 75% reimbursement the next fiscal year through the Main Street Tax Credit Incentive Program. The 25% amount not reimbursable by the program shall be not more than \$42,000 subject to increases approved by the City Council (cost for events and lighting).



SUBJECT:		Agenda Date: May 16, 2023	AB23-065
Motion Approving Economic Development Action Plan	Department/Committee/Individual		
	Mayor Rob McFarland		
	City Administrator – David Miller		
	City Attorney – Lisa Marshall		
	City Clerk – Susie Oppedal		
	Administrative Services – Lisa Escobar		
	Comm. & Economic Development – Rebecca Deming		
	Finance – Richard Gould		
Cost Impact: \$0	Public Works – Mark Rigos		
Fund Source: N/A	Economic Development Manager – Mark Noll		X
Timeline: Immediate			
Attachments: None			
<p>SUMMARY STATEMENT:</p> <p>In 2020 City Council directed staff and the Economic Development Commission (EDC) to develop a citywide economic development strategy. In response, the EDC developed a vision and high-level goals for economic development consistent with the City’s comprehensive plan and Branding Guidelines. The EDC also completed a SWOT (strengths, weaknesses, opportunities, threats) analysis outlining many of the primary issues and opportunities relevant to economic development in North Bend. These items were presented to Council by the previous chair of the EDC, Coreen Wilson, in April 2022.</p> <p>On June 7, 2022, Council approved a contract with Place + Main Advisors to assist the City in developing an economic development action plan. As a result of extensive stakeholder outreach and data analysis, including updates to demographic and retail leakage data collected in the 2018 Economic Profile, Place + Main identified primary economic development challenges and opportunities in North Bend and developed a list of actionable strategies that 1) align with the Plan’s visions and goals, 2) address challenges identified throughout the planning process, and 3) pursue long-term fiscal strength.</p> <p>On Nov. 29, 2022, Place + Main presented the preliminary data analysis at a joint City Council/EDC Workstudy meeting. The draft plan was presented to City Council at a February 14th Workstudy. Following updates to the plan based on Council feedback, the draft plan was shared with community stakeholders and the public for comment on March 13th. On March 28th the EDC recommended the City Council approve the Plan.</p> <p>UPDATE: Council voted to postpone the Action Plan to the May 16th Council Meeting for further action. Staff recommends postponing further action until the May 23rd Council Workstudy.</p>			
APPLICABLE BRAND GUIDELINES: Economic Viability / Balanced Budget			
COMMITTEE REVIEW AND RECOMMENDATION: The Economic Development Action Plan went to Council Workstudy on Nov. 29, 2022 and Feb. 14, 2023 for review and direction. The CED Council Committee Chair agreed to take this item to the City Council on the Apr. 18 Main Agenda for discussion. Council voted to postpone the Action Plan to the May 16 Council Meeting for further discussion.			
RECOMMENDED ACTION: MOTION to postpone discussion on AB23-065 – approval of Economic Development Action Plan to the May 23, 2023 Council Workstudy.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	
April 18, 2023	AB23-047 Remanded to 05/16/23 Council Meeting	5-1 (Loudenback)	
May 16, 2023			