

Anne McEnery-Ogle, Mayor

Bart Hansen • Ty Stober • Erik Paulsen • Sarah J. Fox • Diana H. Perez • Kim D. Harless

January 3, 2022

NO WORKSHOPS

REGULAR COUNCIL MEETING

This meeting was conducted remotely over video conference utilizing a GoToMeeting platform. Members of the public were invited to view the meeting via the live broadcast on www.cvtv.org and CVTV cable channels 23 or HD 323, or on the City's Facebook page, www.facebook.com/VancouverUS. Public access and testimony were also facilitated via the GoToMeeting conference call.

View the CVTV video recording, including presentations and discussion, for this meeting at:

https://www.cvtv.org/vid_link/34181?startStreamAt=0&stopStreamAt=4584

Mayor and Council Oaths of Office

City Attorney Jonathan Young administered the oaths of office to Mayor Anne McEnery-Ogle and Councilmember Erik Paulsen for their new terms of office.

Clark County Superior Court Judge Camara L.J. Banfield administered the oaths of office to Councilmembers Diana Perez and Kim Harless for their new terms of office.

Call to Order and Roll Call

The regular meeting of the Vancouver City Council was called to order at 6:30 p.m. by Mayor McEnery-Ogle. This meeting was conducted remotely over video conference.

Present: Councilmembers Harless, Perez, Fox, Paulsen, Stober, Hansen, Mayor McEnerny-Ogle

Absent: None

Approval of Minutes

Minutes - December 6, 2021

Motion by Councilmember Fox, seconded by Councilmember Stober, and carried unanimously to approve the meeting minutes of December 6, 2021.

Minutes - December 13, 2021

Motion by Councilmember Hansen, seconded by Councilmember Fox, and carried unanimously to approve the meeting minutes of December 13, 2021.

Minutes - December 20, 2021

Motion by Councilmember Stober, seconded by Councilmember Fox, and carried unanimously to approve the meeting minutes of December 20, 2021.

Community Communication (Item 1)

Mayor McEnerny-Ogle opened Community Communication and received the following testimony:

- Kimberlee Elbon, La Center, Washington, stated she questions all items considered by the Council if the City is a member of the ICLEI.

There being no further testimony, Mayor McEnerny-Ogle closed Community Communication.

Consent Agenda (Item 1)

Motion by Councilmember Stober, seconded by Councilmember Fox, and carried unanimously to approve the Consent Agenda.

1. Approval of Claim Vouchers

Request: Approve claim vouchers for January 3, 2022.

Motion approved claim vouchers for January 3, 2022, in the amount of \$13,814,863.40.

Public Hearings (Item 2)

2. Amendments to VMC 2.40.020 City Holidays

Staff Report 204-21

AN ORDINANCE of the City of Vancouver relating to legal holidays; requiring observance of certain holidays and closure of city offices for the same; amending Section 2.40.020 of the Vancouver Municipal Code; providing for severability; and setting an immediate effective date.

First-class cities, such as Vancouver, have the power to establish the days and hours when they will be open for business. This power includes the ability to establish legal holidays if passed by ordinance.

The holidays recognized by the City of Vancouver are set forth in Section 2.40.020 of the Vancouver Municipal Code. VMC 2.40.020 was enacted by Ordinance M-2851 on December 5, 1989. Since its passage, the Washington Legislature has recognized additional legal holidays. Most recently, the State Legislature amended the status of Juneteenth from a non-legal holiday to a fully observed legal holiday.

In researching possible amendments to the Vancouver Municipal Code, City staff observed that two other holidays designated for observance of Martin Luther King, Jr. and Native American Heritage, have been observed, but not formally codified in City code.

Adoption of the proposed ordinance would formally codify three holidays: Martin Luther King, Jr. Day; Juneteenth; and Native American Heritage Day. If adopted, the legal observance of Juneteenth would fall on Monday, June 20, 2022 (because June 19th is a Sunday). As a result, an amended City Council calendar would be published following formal passage of the ordinance.

Request: On Monday, January 3, 2022, subject to second reading and public hearing, approve ordinance.

*Lisa Takach, Human Resources Director, 360-487-8611;
Alicia Sojourner, Director of Diversity, Equity & Inclusion,
360-487-8618*

Mayor McEnerny-Ogle read the title of the ordinance into the record.

Lisa Takach, Human Resources Director, provided an overview of the proposed code amendments.

Mayor McEnerny-Ogle opened the public hearing and received the following testimony:

- Kimberlee Elbon, La Center, Washington, spoke in opposition to the addition of Juneteenth as a holiday.
- Jasmine Tolbert, President of the NAACP Vancouver Chapter, spoke in support of the proposed amendments.
- Diane Manden, Vancouver, spoke in support of the proposed amendments.
- Donna Martinez, Vancouver, spoke in support of the proposed amendments.
- Glen Yung, Vancouver, spoke in support of the proposed amendments.
- Sam Robinson, Vice Chair of the Chinook Indian Nation, spoke in support of the proposed amendments.
- Anna Schmasow, Vancouver, spoke in support of the proposed amendments.

There being no further testimony, Mayor McEnerny-Ogle closed the public hearing.

Councilmember Stober thanked the community members for their comments. He stated he recognizes the call that just declaring a day a holiday is not sufficient, and the City needs to take part in educating and providing programming around that recognition of Juneteenth and why the City is recognizing it. He urged the City and fellow Councilmembers to also consider formally recognizing Indigenous Peoples' Day and implementing a land acknowledgment.

Motion by Councilmember Fox, seconded by Councilmember Perez, and carried unanimously to approve Ordinance M-4361.

Communications

A. From the Council

B. From the Mayor

a. Election of Mayor Pro Tem

Mayor McEnerny-Ogle asked the City Attorney to walk through the ground rules of the nomination and voting process for selecting the Mayor Pro Tem.

City Attorney Jonathan Young explained the selection of Mayor Pro Tem is governed by the City Charter, which requires the Council to select a Mayor Pro Tem from among its members at the first meeting of the year after an election cycle, and Council Policy 100-32 that provides for the process to follow Robert's Rules of Order. He stated nominees for the position do not need to abstain from voting. Mr. Young explained one nominee must receive a majority of the votes cast in total to be successful. If a Councilmember desires to abstain from a vote, they must specify one of three reasons - absence from the previous Council meeting, a conflict of interest, or an appearance of fairness issue. If none of these reasons applies, an abstention counts toward the majority vote.

Mr. Young recommended voting be conducted by roll call, and stated he has a recommendation for electronic voting if the Council is interested in such a process should there not be a decisive result.

Motion by Councilmember Stober to switch to email voting if a majority candidate is not determined after the first round of voting. Motion failed for lack of a second.

Mayor McEnerny-Ogle opened up nominations for Mayor Pro Tem.

Councilmember Hansen nominated Councilmember Fox.

Councilmember Perez nominated Councilmember Paulsen.

Councilmember Harless nominated Councilmember Stober.

Mayor McEnerny-Ogle closed the nominations.

Each nominee then provided a brief statement.

Mayor McEnerny-Ogle then called for a roll call vote on the nominations.

Roll call vote on nominations of Councilmember Fox, Paulsen and Stober resulted as follows, with no majority reached:

- Councilmember Harless - Stober
- Councilmember Perez - Paulsen
- Councilmember Fox - Fox
- Councilmember Paulsen - Paulsen
- Councilmember Stober - Stober
- Councilmember Hansen - Fox
- Mayor McEnerny-Ogle - Paulsen

Councilmember Perez stated she would like to reconsider the electronic voting method. Mr. Young explained the Council could provide their votes over email. A call for the vote would be sent from the Council Assistant, with all of Council blind copied. Each member of the Council would then reply to the Council Assistant with the name of the nominee they are voting for in the body of the email. The votes would then be tabulated and read out.

Motion by Councilmember Perez, seconded by Councilmember Stober, and carried 6-1 to proceed with the electronic voting method as outlined. Councilmember Fox voted no.

A call for the vote was sent out via email to the full Council. Responses to the call are attached to these minutes.

Upon conclusion of voting, Council Assistant Amanda Delapena read the votes as follows:

- **Councilmember Fox - zero votes**
- **Councilmember Stober - four votes**
- **Councilmember Paulsen - three votes**

Councilmember Stober was elected as Mayor Pro Tem for 2022 and 2023.

b. 2022-2023 Council Board and Committee Assignments

Mayor McEnerny-Ogle stated she would postpone Council committee assignments to January 10, as some changes would be necessary following the election of Mayor Pro Tem.

c. Future Meetings Format

Mayor McEnerny-Ogle suggested the Council invite Clark County Public Health Director Dr. Alan Melnick to provide Council with an update on the pandemic and the local situation as the Council considers how it wishes to conduct future Council meetings.

Councilmember Fox recommended the Council put forward a goal or a metric that would provide clarity to the community as to when Council meetings could transition back to being held in-person.

Mayor McEnerny-Ogle stated the Council would reach out to Dr. Melnick, and she requested staff also research and collect information regarding how other jurisdictions are currently conducting business.

C. From the City Manager

Adjournment

7:45 p.m.

Anne McEnerny-Ogle, Mayor

Attest:

Natasha Ramras, City Clerk

Meetings of the Vancouver City Council are electronically recorded on audio and video. The audio recordings are kept on file in the office of the City Clerk for a period of six years.

From: [Delapena, Amanda](#)
To: [Delapena, Amanda](#)
Subject: Call for vote on election of Mayor Pro Tem
Date: Monday, January 3, 2022 7:35:56 PM
Attachments: [image001.png](#)

Amanda Delapena | Assistant to the Mayor and City Manager
Pronouns: She/Her/Hers



CITY OF VANCOUVER, WASHINGTON

Mayor/City Manager's Office

P: (360) 487-8605 | Relay: 711

www.cityofvancouver.us | www.cityofvancouver.us/socialmedia



From: [Stober, Ty](#)
To: [Delapena, Amanda](#)
Subject: Re: Call for vote on election of Mayor Pro Tem
Date: Monday, January 3, 2022 7:36:11 PM
Attachments: [image001.png](#)

Stober

From: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>
Date: Monday, January 3, 2022 at 7:35 PM
To: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>
Subject: Call for vote on election of Mayor Pro Tem

Amanda Delapena | Assistant to the Mayor and City Manager
Pronouns: She/Her/Hers



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From: [Perez, Diana](#)
To: [Delapena, Amanda](#)
Subject: Re: Call for vote on election of Mayor Pro Tem
Date: Monday, January 3, 2022 7:36:26 PM
Attachments: [image001.png](#)

Erik Paulson

From: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>
Sent: Monday, January 3, 2022 7:35 PM
To: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>
Subject: Call for vote on election of Mayor Pro Tem

Amanda Delapena | Assistant to the Mayor and City Manager
Pronouns: She/Her/Hers



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From: [Harless, Kim](#)
To: [Delapena, Amanda](#)
Subject: Re: Call for vote on election of Mayor Pro Tem
Date: Monday, January 3, 2022 7:36:42 PM
Attachments: [image001.png](#)

Stober

From: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>
Sent: Monday, January 3, 2022 7:35 PM
To: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>
Subject: Call for vote on election of Mayor Pro Tem

Amanda Delapena | Assistant to the Mayor and City Manager
Pronouns: She/Her/Hers



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From: [Fox, Sarah](#)
To: [Delapena, Amanda](#)
Subject: Re: Call for vote on election of Mayor Pro Tem
Date: Monday, January 3, 2022 7:36:42 PM
Attachments: [image001.png](#)

Councilmember Stober

From: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>
Sent: Monday, January 3, 2022 7:35:54 PM
To: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>
Subject: Call for vote on election of Mayor Pro Tem

Amanda Delapena | Assistant to the Mayor and City Manager
Pronouns: She/Her/Hers



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From: [Paulsen, Erik](#)
To: [Delapena, Amanda](#)
Subject: Re: Call for vote on election of Mayor Pro Tem
Date: Monday, January 3, 2022 7:36:43 PM
Attachments: [image001.png](#)

Paulsen

From: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>
Sent: Monday, January 3, 2022 7:35:54 PM
To: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>
Subject: Call for vote on election of Mayor Pro Tem

Amanda Delapena | Assistant to the Mayor and City Manager
Pronouns: She/Her/Hers



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From: [McEnerny-Ogle, Anne](#)
To: [Delapena, Amanda](#)
Subject: RE: Call for vote on election of Mayor Pro Tem
Date: Monday, January 3, 2022 7:36:44 PM
Attachments: [image003.png](#)
[image001.png](#)

Erik Paulsen

Anne McEnerny-Ogle | Mayor



CITY OF VANCOUVER, WASHINGTON

P.O. Box 1995 • Vancouver, WA 98668-1995

P: 360.487.8629 | F: 360.487.8625

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This message, in whole or in part, may be subject to public disclosure, including routine disclosure to the media.

From: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>

Sent: Monday, January 3, 2022 7:36 PM

To: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>

Subject: Call for vote on election of Mayor Pro Tem

Amanda Delapena | Assistant to the Mayor and City Manager

Pronouns: She/Her/Hers



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Mayor/City Manager's Office

P: (360) 487-8605 | Relay: 711

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From: [Hansen, Bart](#)
To: [Delapena, Amanda](#)
Subject: RE: Call for vote on election of Mayor Pro Tem
Date: Monday, January 3, 2022 7:37:04 PM
Attachments: [image003.png](#)

Ty Stober

From: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>
Sent: Monday, January 3, 2022 7:36 PM
To: Delapena, Amanda <Amanda.Delapena@cityofvancouver.us>
Subject: Call for vote on election of Mayor Pro Tem

Amanda Delapena | Assistant to the Mayor and City Manager
Pronouns: She/Her/Hers



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Mayor/City Manager's Office

P: (360) 487-8605 | **Relay:** 711

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January 10, 2022

WORKSHOPS

To be conducted remotely.

Workshops were conducted remotely over video conference utilizing a GoToMeeting platform. Members of the public were invited to view the meeting via the live broadcast on www.cvtv.org and CVTV cable channels 23 or HD 323, or on the City's Facebook page, www.facebook.com/VancouverUS, or listen via the GoToMeeting conference call.

View the CVTV video recording, including presentations and discussion, for workshops at: https://www.cvtv.org/vid_link/34197?startStreamAt=0&stopStreamAt=7357.

Councilmember Hansen absent from workshops.

4:00-6:00 p.m. Diversity, Equity and Inclusion Update

Alicia Sojourner, Director of Diversity, Equity and Inclusion, 360-487-8618

Summary

Staff led Council through a discussion to gain shared understanding regarding diversity, equity, and inclusion, and introduced concepts and a timeline for moving forward with a City Diversity, Equity and Inclusion Plan.

COUNCIL CONSENT AGENDA MEETING

This meeting was conducted remotely over video conference utilizing a GoToMeeting platform. Members of the public were invited to view the meeting via the live broadcast on www.cvtv.org and CVTV cable channels 23 or HD 323, or on the City's Facebook page, www.facebook.com/VancouverUS. Public access and testimony on Consent Agenda items and under the Community Forum were also facilitated via the GoToMeeting conference call.

View the CVTV video recording, including presentations and discussion, for this meeting at:

https://www.cvtv.org/vid_link/34199?startStreamAt=0&stopStreamAt=5004

Call to Order and Roll Call

The consent agenda meeting of the Vancouver City Council was called to order at 6:30 p.m. by Mayor McEnerny-Ogle. This meeting was conducted remotely over video conference.

Present: Councilmembers Harless, Perez, Fox, Paulsen, Stober,
Mayor McEnerny-Ogle

Absent: Councilmember Hansen

Motion by Councilmember Fox, seconded by Councilmember Stober, and carried unanimously to excuse Councilmember Hansen.

Special Recognition: Cpl Neil Martin and Paramedic Nathan Cook

Mayor McEnerny-Ogle recognized Cpl Neil Martin and Paramedic Nathan Cook for their recent actions on an emergency call to rescue a 13-month-old child who was reportedly drowning.

Community Communication (Items 1-4)

Mayor McEnerny-Ogle opened Community Communication and received the following testimony:

- Peter Fels, Vancouver, thanked City staff for adding language to the tree pruning contract (Item 1) encouraging contractors to use electronic equipment to reduce carbon emissions, and urged the City to include similar provisions in other procurement items.
- Glen Yung, Vancouver, spoke in support of Item 3.

- Kimberlee Elbon, La Center, Washington, stated she questions all items considered by the Council if the City is a member of the ICLEI.

There being no further testimony, Mayor McEnerny-Ogle closed Community Communication.

Consent Agenda (Item 1-4)

Council requested Item 3 be pulled for discussion.

Councilmember Stober asked whether this purchase would include the purchase of shower or bathroom units. Aaron Lande, Program and Policy Manager, stated staff continues to investigate the best way to provide shower and bathroom access at the Safe Stay Community and Safe Park sites, as it is expensive to plumb at those locations and doing so would be a permanent option. Staff is investigating best options for potential mobile units, so this current purchase does not include shower and bathroom facilities.

Motion by Councilmember Stober, seconded by Councilmember Harless, and carried unanimously to approve the Consent Agenda.

1. Request to award new bid for On-Call Tree Pruning and Removal, ITB 21-33

Staff Report 001-22

Summary

The City of Vancouver considers trees community assets that provide multiple benefits including clean air and water. The City does not have sufficient staff or equipment dedicated for professional tree pruning and removal; therefore, the City has contracted with the private sector for much of our tree pruning and removal needs of our public trees. This contract provides for one professional tree care company to perform proper pruning and/or removal of trees on an as needed basis.

The contract is a one-year contract with an option for three (3) one-year extensions. Extension(s) are at the option of the City.

A call for bids was issued, and the City received three (3) responsive and responsible bids:

SUMMARY OF BIDS	
BIDDER	AMOUNT
General Tree Service, Beaverton, OR (withdrew bid 12-8-21)	\$607,606.51
	\$673,144.85

<i>Arborscape LTD Inc., Vancouver, WA</i>	
<i>TreeWise LLC, Vancouver, WA</i>	<i>\$936,245.96</i>
<i>Engineers' Estimate</i>	<i>\$500,000 per year</i>

Request: On January 10, 2022, award a contract for the On-Call Tree Pruning and Removal Contract to the second, lowest responsive and responsible bidder, Arborscape LTD Inc, Vancouver WA, in the amount not to exceed \$2,400,000 over four (4) years, which includes Washington State sales tax; and authorize the City Manager or designee to execute a contract with Arborscape LTD Inc, for the same.

Charles Ray, Urban Forester, 360-487-8328

Motion approved the request.

2. Ergonomic Assessment & Early Intervention Services Contract C-100265, Contract Increase

Staff Report 002-22

Summary

The City of Vancouver, through it's Public Works Department, currently contracts with Action Onsite for ergonomic assessment and early intervention services and has been very successful in reducing work-related injuries. The Risk and Safety Department requested and was awarded ongoing budget to add VPD to these services.

Request: Approve an increase of \$306,000 to the authorized amount of the Contract with Action Onsite, Inc. and authorize the City Manager, or his designee, to execute an amendment increasing the contract to \$606,000.

Brent Waddle, Interim Risk Manager, 360-487-8436

Motion approved the request.

3. Approval of purchase authority for modular shelters for two Safe Stay Community sites from Pallet

Staff Report 003-22

Summary

A part of the Vancouver Homelessness Plan calls for the establishment of Safe Stay Community sites where residents are provided shelter and personal hygiene facilities and are given access to social service providers to allow them to transition to permanent housing.

The first Safe Stay Community, located at 11400 NE 51st Circle, opened on December 23rd, 2021. City staff are working on establishing additional Safe Stay Community sites within the City of Vancouver and need to purchase the shelter units and office units from the manufacturer, Pallet. City staff were informed by Pallet that prices will be increasing in 2022 but that we can secure the 2021 prices if we place our order now.

Each site features 20 shelter units, with two bunks and mattresses per unit and one electric heater, an office, and personal hygiene facilities. The quote from Pallet includes all assembly costs.

Request: Authorize the City Manager or their designee to approve purchases not to exceed \$402,105.98 from Pallet on the City of Salem Contract to purchase additional modular units for use in two Safe Stay Community sites.

Aaron Lande, Policy and Program Manager, 360-487-8612

Motion approved the request.

4. Approval of Claim Vouchers

Request: Approve claim vouchers for January 10, 2021.

Motion approved claim vouchers in the amount of \$3,553,516.75.

Unfinished Business

2022-2023 Council Board and Committee Assignments

Mayor McEnery-Ogle presented a proposed slate of Council board and committee assignments for 2022 and 2023 (attached).

Councilmember Stober stated he would volunteer to serve as the alternate representative for the SW Regional Transportation Council and the Joint Policy Advisory Committee on Transportation.

Councilmember Fox asked for clarification on the Council subcommittee assignments. She noted the previous Council Subcommittee 1, which included herself and Councilmembers Bart Hansen and Linda Glover, had been remanded a Planning Commission appointment at the last meeting in December and the remaining members of that committee have had discussions about how to move forward with that vacancy since that Council meeting. She recommended the Council hold off on making new subcommittee assignments until that business could be completed, or convene a different ad hoc committee to review that Planning Commission vacancy.

Councilmember Stober noted there was some ambiguity in the language of the motion that remanded that appointment back to the subcommittee for further review.

Councilmember Paulsen recommended the Council assign the legacy members of the previous Subcommittee 1, Councilmembers Hansen and Fox, and add Councilmember Perez to that committee to address the Planning Commission vacancy.

Council spoke at length regarding the options for moving forward with this process.

Motion by Councilmember Stober, seconded by Councilmember Stober, seconded by Councilmember Paulsen, and carried unanimously to appoint Councilmembers Hansen, Fox and Perez to the subcommittee to review the remanded Planning Commission appointment.

Motion by Councilmember Fox, seconded by Councilmember Stober, and carried unanimously to approve the 2022-2023 Council Board and Committee assignments as presented.

Community Forum

Mayor McEnerny-Ogle opened the Community Forum and received the following testimony:

- Peter Bracchi, Vancouver, expressed concerns about pollution into Burnt Bridge Creek from camps of people experiencing homelessness along the trail.
- Yuriy Velikokhatko, Vancouver, expressed concerns regarding the findings of a formal complaint he had submitted in regards to the conduct of police officers.
- Ariel Young, Vancouver, spoke regarding Stalking Awareness Month and

reported on statistics related to stalking. She urged the Vancouver Police Department to document all incidents of stalking to better track the activity that can lead to serious harm.

- Phillip Englund, Vancouver, urged the City to more urgently address climate change.
- Teresa Hardy, Vancouver, expressed concerns about the Planning Commission appointment that was remanded by the Council, and spoke in support of Glen Yung being appointed to that vacancy.
- Kimberlee Elbon, La Center, Washington, spoke in opposition to any diversity, equity and inclusion initiatives.
- Justin Forsman, Vancouver, expressed concerns about any government mandates related to the COVID-19 pandemic and played audio from Robert F. Kennedy Jr.
- Wynn Grcich, Vancouver, expressed concerns about the COVID-19 vaccines.
- Monica Zazueta, Vancouver, spoke in support of appointment of Glen Yung to the Planning Commission vacancy.
- Audra Houston, Vancouver, expressed concerns about the Planning Commission appointment that was remanded by the Council, and spoke in support of Glen Yung being appointed to that vacancy.
- Laurel Pascual, Vancouver, expressed concerns about government mandates related to the COVID-19 pandemic .
- Cathryn Chudy, Vancouver, expressed concerns about the Planning Commission appointment that was remanded by the Council, and spoke in support of Glen Yung being appointed to that vacancy.

There being no further testimony, Mayor McEnerny-Ogle closed the Community Forum.

Adjournment

7:52 p.m.

Anne McEnerny-Ogle, Mayor

Attest:

Natasha Ramras, City Clerk

Meetings of the Vancouver City Council are electronically recorded on audio and video. The audio recordings are kept on file in the office of the City Clerk for a period of six years.

			McEnery-Ogle Hansen Stober Paulsen Fox Perez Harless							
Board/Committee Info		Meeting details								Notes
county	Children's Justice Center Executive Board (1+ALT) <i>Staff: Amy Russell, Amy.Russell@clark.wa.gov</i>	4th Thurs., every other month 9:00-10:30am		ALT			X			
county	Clark County Elder Justice Center Board (1+ALT) <i>Staff: Kasey Vu, kasey.vu@clark.wa.gov</i>	3rd Thurs., every other month 3:00-3:30 pm		ALT				X		
county	Clark County Community Action Advisory Board (1) <i>Staff: Rebecca Royce, rebecca.royce@clark.wa.gov</i>	1st Tues., odd months 8:00am						ALT	X	CAAB: Community Action Advisory Board Clark County (wa.gov)
county	Clark County Law & Justice Council* <i>Staff: Tina Redline, tina.redline@clark.wa.gov</i>	2nd Thurs, every other month 8:00-9:00am	X							*Position elected by County Mayors, not open to Councilmembers
county	Solid Waste Advisory Commission (1) <i>Staff: Travis Dutton, travis.dutton@clark.wa.gov</i>	1st Thurs. of Feb., May, Aug., Nov. at 6:00pm							X	Meets at Center for Community Health, Room 210AB
county/ city	Ending Community Homelessness Organization (ECHO)* (2) <i>Staff: Aaron Lande, aaron.lande@cityofvancouver.us</i>	<i>Tentatively - 2nd Tuesday, 9:30-11</i>						X	X	joint city/county group; meetings TBD * Formerly the Joint Executive Group on Homelessness
env	SW Clean Air Agency (1+ALT) <i>Staff: Uri Papish, Uri@swcleanair.org</i>	1st Thurs., 3:00 pm						ALT	X	https://www.swcleanair.gov/index.asp
env	Clark Regional Wastewater District Oversight Committee (1) <i>Staff: Kim Thur, kthur@crwwd.com</i>	Meets periodically as needed	X						ALT	
land use	Metro Policy Advisory Committee (*1+ALT) <i>Staff: Jaye Cromwell, jaye.cromwell@oregonmetro.org</i>	2nd & 4th Wednesday, 5:00-7:00pm (Portland)			ALT			X		*City has non-voting seat; CDD Director will represent Council
transp.	Joint Policy Advisory Committee on Transportation (1+ALT) <i>Staff: Jaye Cromwell, jaye.cromwell@oregonmetro.org</i>	3rd Thurs., 7:30-9:00am (Portland)	X		ALT					
eco dev	Columbia River Economic Development Council (1+ALT) <i>Staff: Jennifer Baker, jbaker@credc.org</i>	*4th Thurs., 7-8:30 am	ALT				X			*Board meetings every other month; board workshops held on alternative months (attendance not required but
eco dev	<i>CREDC Executive Committee</i>	<i>3rd Thurs., 7-8:30 am</i>	ALT			X				
eco dev	<i>CREDC Finance Committee</i>	<i>2nd Mon., 8:00-9:00am</i>	ALT				X			
transp.	Bi-State Coordination Committee (1)	currently inactive								Representative not required to also sit on RTC
transp.	Interstate Bridge Replacement Project - Executive Steering Group Staff (COV): Aaron Lande, aaron.lande@cityofvancouver.us; Rebecca Kennedy, rebecca.kennedy@cityofvancouver.us; Katherine Kelly, katherine.kelly@cityofvancouver.us	*3rd Thurs., 10:00-12:00pm	x							*potentially expanding to 3 hours in 2022
transp.	Southwest Regional Transportation Council (2) <i>Staff: Matt Ransom, matt.ransom@rtc.wa.gov / Shann Westrand, shann.westrand@rtc.gov</i>	1st Tues., 4:00-6:00pm	X		ALT	x				

		McEnergy-Ogle Hansen Stober Paulsen Fox Perez Harless									
Board/Committee Info		Meeting details							Notes		
transp.	C-TRAN Board of Directors (3+ALT) <i>Staff: Debbie Jermann, debbieJ@c-tran.org</i>	2nd Tues., 5:30 pm		X	X	X			ALT		
emerg.	Regional Disaster Preparedness Organization Policy Committee (1) <i>Staff: Beth Crane (interim), elizabeth.crane@portlandoregon.gov</i>	Quarterly, 9:00-11:00 am (Portland)		X				ALT			
emerg.	Emergency Operations Center (EOC) - City Council delegate	<i>as needed when under emergency orders</i>						X		Assigned to EOC in the event of a large-scale emergency or disaster to report back and act on behalf of Council	
city	City Audit Committee (*2) <i>Staff: Jordan Sherman, jordan.sherman@cityofvancouver.us</i>	Meets twice per year for entrance and exit confrences with State Auditor		X		X				*Requires Mayor and Mayor Pro Tem	
city	Lodging Tax Advisory Committee (*1+ALT) <i>Staff: Teresa Brum, teresa.brum@cityofvancouver.us</i>	Meets 3-4 times per year, as needed						ALT		X *Councilmember serves as LTAC chair	
city	Fire Pension Board (*1 + ALT) <i>Staff: Emily Kemper, emily.kemper@cityofvancouver.us</i>	Meets 3rd Thurs., 2 p.m.		ALT		X				*Requires Mayor or Council designees (Pro Tem not required) - Councilmember serves as Chair	
city	Police Pension Board (*2) <i>Staff: Emily Kemper, emily.kemper@cityofvancouver.us</i>	Meets 3rd Thurs., 2 p.m.		X		X				*Requires Mayor Pro Tem serve as Chair	
city	Strategic Planning Executive Steering Group (*1) <i>Staff: Aaron Lande, aaron.lande@cityofvancouver.us</i>	2022 meeting schedule TBD				X				*Mayor Pro Tem to represent Council	
Council	Mayor Pro Tempore					X					
Council	Council Committee 1	Meets as needed to review Board/Commission candidates			X		X		X		
Council	Council Committee 2	Meets as needed to review Board/Commission candidates				X		X		X	
AWC	Large City Advisory Committee							X			
AWC	Legislative Priorities Committee					X					

NLC

Board/Committee Info		Meeting details								Notes
NLC Board of Directors				X						

To: Vancouver City Council and Staff
Public Comment/January 10, 2022/Cathryn Chudy

I was not able to attend the December 20 City Council meeting but I listened via CCTV to the public comments speaking in support of Glen Yung for the Planning Commission appointment, and the deliberations that followed, when Item 11 was pulled and the decision was made to return Mr. Yung's name back to the appointment subcommittee.

I appreciate Council Member Paulsen's articulation of the conversation about Board and Commission representation, being a blend of both qualifications and of unique voices that truly represent all of our community. The limitations of the applicant pool seeking to fill three vacancies speaks to the need for the city to explore and establish active and effective ways to ensure that applicant pools for city commission appointments, moving forward, do in fact draw broad, diverse community representation (qualifications and unique voices) in the application process itself. The reality that the applicant pool for the currently vacant position on a key city Commission did not have all elements of the broad community representation being sought is worth taking note of with a commitment to pursue corrective measures ensuring this dilemma is not repeated in the future.

I found the comments offered by Council members Fox and Hansen, added to the community voices that spoke in favor of Mr. Yung's appointment, to be most compelling. A reset of the planning Commission's composition is necessary and clearly underway already, and I would like to suggest that this would be much better undertaken as a work in progress rather than something determined in a one time decision that abruptly leaves the current Planning Commission one key member short, and with a majority vote that included two outgoing Council members, when a more diverse Council has in fact now been seated to move forward in 2022.

The meaningful intent reflected in the Council members comments about diversity of representation and a need for unique voices should not in itself result in Mr. Yung as a well qualified and community supported applicant being refused.

Our Planning Commission now moves forward to undertake significant work for our community, with a vacant position that could in fact be filled by someone well qualified and with many strengths. As Council Member Paulsen observed, the presence of community members speaking for Mr. Yung's appointment is significant in itself and a good sign that the community is feeling encouraged that their voices have meaning in Council decision making. Their advocacy for Mr. Yung's voice to be added to the Planning Commission is relevant and compelling.

Mr. Yung's history of extensive community engagement on issues deeply significant for all of our community, those currently represented as well as those underrepresented, presents an opportunity to add to the Commission's composition in present time. This could be done along with a commitment to ensure the application process for future vacancies does in fact draw a sufficiently broad and diverse pool from which to consider and select applicants for filling vacancies to come.

Burnt Bridge Creek Partnership being Censored by City Leaders.

Environmental Terrorism caused by illegal Homesteads along BBC is NOT Included in study
as a Source of Pollution, and Environmental Damage and Damage by Fires under BPA Power Lines.



Clark County to pay \$3.6 million for violating Clean Water Act

By Stephanie Rice
Published: December 17, 2013, 4:00pm

Share: [f](#) [t](#) [in](#) [p](#) [e](#)



Clark County Environmental Services Director Don Benton announces terms of settlement over federal litigation related to violations of the Clean Water Act on Wednesday at the Clark County Public Service Center. At right is Clark County Commissioner David Madore.

https://www.ezview.wa.gov/site/alias_1962/37697/burnt_bridge_creek_partnership.aspx



Burnt Bridge Creek Watershed Fecal Coliform Bacteria, Temperature, Dissolved Oxygen, and pH

Source Assessment Report



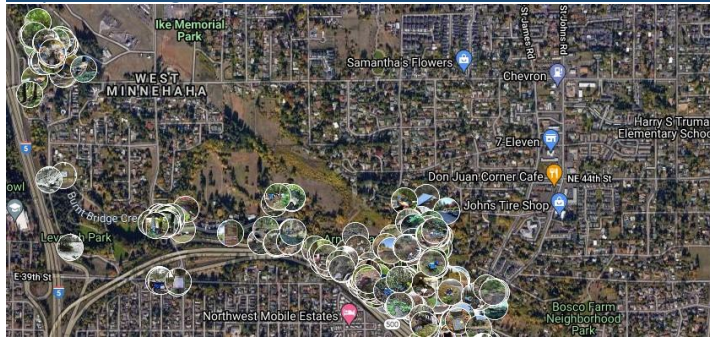
What is the Burnt Bridge Creek Partnership?

The Burnt Bridge Creek watershed located in Vancouver, Washington, is on Washington State's polluted waters list (303d list) for warm water temperatures, bacteria, dissolved oxygen, and pH pollution problems, which drives the need to develop a Water Cleanup Plan. In October 2020, the [Burnt Bridge Creek Source Assessment Report](#) was published to identify critical areas for water quality improvement. This Source Assessment identifies portions of Burnt Bridge Creek that are not meeting water quality standards. The report also identifies the largest shade deficits in the watershed to focus tree planting efforts, and determines the bacteria reductions needed to meet water quality standards.

To implement recommendations from the Source Assessment, the [Burnt Bridge Creek Partnership](#) was formed in February 2021 to develop and implement the Water Cleanup Plan. This Water Cleanup Plan will focus on best management practices and implementation actions to improve water quality. The Partnership will meet regularly through 2022.

5 Years of Environmental Terrorism by the Homeless has been Omitted

https://www.google.com/maps/d/edit?mid=1wFAFTSSrKYbr5uvH-MMr_g2Bd_pQ9Eg2&usp=sharing



5 years of Photo Collection <https://photos.app.goo.gl/kE66S1DnUUUWir6MA>



Who IS being Censored by the City Leaders?

Urban
Forestry &
Greenways

Discussion Topics

- Urban Forestry – street and yard tree planting
- Greenways and Sensitive Lands
- Land Acquisition
- Instream restoration
- Challenges
- Education and Outreach

Workgroup Members: Charles Ray, Rich McConaghy, Brian Potter, Tim Esary, & Annette Griffy

July 2021 Burnt Bridge Creek Partnership - 14

How do we achieve EPA's 8 Elements for TMDL Alternative Restoration Plans?

1. **Identify** impaired waters
2. **Analyze** pollution reductions needed
3. **Implementation plan** explaining how to address pollution sources
 - Timeline and schedule
 - Milestones and target dates
4. **Funding strategy and cost estimates**
5. **Stakeholders and partners**
6. **Estimation** of when water quality standards will be achieved
7. **Monitoring plan** to evaluate effectiveness
 - Adaptive management process
8. **Commitment to periodic evaluation**

Timeline for Burnt Bridge Creek Water Cleanup Plan

COMPLETE	
•	October 2020: <i>Burnt Bridge Creek Source Assessment</i> published.
•	February 2021: Burnt Bridge Creek Partnership kicked off.
•	March 2021: Implementation workgroups assigned • Stormwater and capital improvements • Operations and maintenance • Urban forestry and greenways • Sewer connection and septic systems • Public education and outreach • Other TBD: SEH America, local water use, and monitoring
•	April-May 2021: Implementation workgroups.
•	June 2021: Submit completed worksheets to Ecology.
•	July 2021: Full Burnt Bridge Creek Partnership meeting.
NEXT STEPS	
•	Fall 2021: External partnership meeting – Lower Columbia Estuary Partnership, Watershed Alliance of Southwest Washington, Washington Department of Transportation, DOT, Clark County Clean Water Division, Clark County Public Health, Clark Conservation District, Lower Columbia Fish Recovery Board, Clark Regional Wastewater District, Washington Department of Fish and Wildlife, Environmental Protection Agency.
•	Winter 2021: Public Webinar.
•	January 2022: Internal Draft (City of Vancouver, Ecology, and Environmental Protection Agency).
•	Spring 2022: External Draft <i>Burnt Bridge Creek Water Cleanup Plan</i> .
•	Summer 2022: Publish <i>Burnt Bridge Creek Water Cleanup Plan</i> .

Please add the Environmental Damage Done by the Homeless in the Study as a Source of Pollution and Environmental Destruction.

Admit the Damage Done is MORE than a Litter Pickup and we need to Document Lands for Reclamation along BBC in the Critical Care Area.

From: [City of Vancouver - Office of the City Manager](#)
To: [Delapena, Amanda](#)
Subject: FW: my public comments for 1-10-22 City Council Meeting
Date: Monday, January 10, 2022 11:13:50 AM

For city council tonight

Kerry Peck | Administrative Assistant

CITY OF VANCOUVER, WASHINGTON
City Manager's Office/Administrative Assistant
P: (360) 487-8616
www.cityofvancouver.us | www.cityofvancouver.us/socialmedia

LEARN ABOUT VANCOUVER'S COVID-19 RESPONSE HERE

-----Original Message-----

From: Wendy Withrow <writingwendy@gmail.com>
Sent: Monday, January 10, 2022 10:21 AM
To: City of Vancouver - Office of the City Manager <CMO@cityofvancouver.us>
Subject: my public comments for 1-10-22 City Council Meeting

CAUTION: This email originated from outside of the City of Vancouver. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Council members,

Although I do not see an item on tonight's agenda which covers my concern, I still wish to speak out in a timely manner about (re)appointing Glen Yung to the Planning Commission.

Mr. Yung's professional experience and volunteer efforts make him an excellent choice for a position with power to steer Vancouver's future. Mr. Yung's concern for housing and home-ownership for middle- and lower-income households, as well as for preserving and increasing green spaces, are crucial. I am for improving the quality of life in our communities, for residents of all ethnicities and at all income levels. I am concerned by the the continual loss of open space and mature trees, due to development. Mr. Young, as a Vancouver Planning Commissioner, would certainly speak for me.

Thank you for your consideration of this matter.

Wendy Withrow
East Fisher's Landing

From: [City of Vancouver - Office of the City Manager](#)
To: [Delapena, Amanda](#)
Subject: FW: To City of Vancouver : Mayor and Council : Planning Commission Appointments
Date: Monday, January 3, 2022 4:22:37 PM
Attachments: [image003.png](#)

Please send to council.

Kerry Peck | Administrative Assistant



CITY OF VANCOUVER, WASHINGTON

City Manager's Office/Administrative Assistant

P: (360) 487-8616

www.cityofvancouver.us | www.cityofvancouver.us/socialmedia



[LEARN ABOUT VANCOUVER'S COVID-19 RESPONSE HERE](#)

From: Meridian Green <meridian@mcn.org>
Sent: Monday, January 3, 2022 2:14 PM
To: City of Vancouver - Office of the City Manager <CMO@cityofvancouver.us>
Subject: To City of Vancouver : Mayor and Council : Planning Commission Appointments

CAUTION: This email originated from outside of the City of Vancouver. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To: City of Vancouver Mayor and City Council
January 3, 2022

Dear Mayor and Councilmembers,

I understand that concerns were raised at your last meeting about the gender and race of a potential appointee to the Planning Commission. I appreciate that you have identified the need to consider appointments through a diversity lens. Vancouver voters made their support for having more diverse representation apparent by electing Diana Perez and Kim Harless to the council.

Under these circumstances, in which the Mayor and several council members have themselves raised these concerns about gender and race, and with two new council members who are well qualified to consider whether new planning commission appointees represent our diverse community, I strongly urge that the matter of planning commission appointments be tabled until the new council members are seated.

Thank you for your consideration.

Meridian Green

From: [City of Vancouver - Office of the City Manager](#)
To: [Delapena, Amanda](#)
Subject: FW: Written Comment to Submit for City Council mtg Jan 10
Date: Monday, January 10, 2022 12:11:49 PM
Attachments: [image003.png](#)

For council tonight

Kerry Peck | Administrative Assistant



CITY OF VANCOUVER, WASHINGTON

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[LEARN ABOUT VANCOUVER'S COVID-19 RESPONSE HERE](#)

From: Audra Houston <maxcandy123@gmail.com>
Sent: Monday, January 10, 2022 11:44 AM
To: City of Vancouver - Office of the City Manager <CMO@cityofvancouver.us>
Subject: Written Comment to Submit for City Council mtg Jan 10

CAUTION: This email originated from outside of the City of Vancouver. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To the Mayor, City Council, and City Manager,

I am writing regarding the process to approve an individual for a seat on the Planning Commission.

I am concerned about the way the open seat selection process has gone for filling positions on the Planning Commission. The process has been handled in an arbitrary, non-transparent, and even discriminatory manner.

Specifically, the process has "remanded" Glen Yung despite lack of criteria to move the process forward, nor a timeline given. Even more troubling is that the rationale to do so was outright prejudiced, making the claim to refuse the candidate based on his being a "white male". The tacit approval of the Mayor and council to credit this discriminatory rationale is simply unacceptable.

Although I don't see this process on tonight's agenda, I urge the city to take this matter up tonight to address and put right these concerns.

Several members of the public have expressed their support for Glen Yung as do I, making this

arbitrary process even more unacceptable in the responsibility city council and mayor have to serve and uphold the will of the people.

Please address this concern tonight.

Thank you,
Audra

From: [City of Vancouver - Office of the City Manager](#)
To: [Delapena, Amanda](#)
Subject: FW: Written comments for City Council meeting
Date: Monday, January 10, 2022 10:18:07 AM

For council meeting tonight

Kerry Peck | Administrative Assistant

CITY OF VANCOUVER, WASHINGTON
City Manager's Office/Administrative Assistant
P: (360) 487-8616
www.cityofvancouver.us | www.cityofvancouver.us/socialmedia

LEARN ABOUT VANCOUVER'S COVID-19 RESPONSE HERE

-----Original Message-----

From: Energetic Nova <joey.wheeler.kaiba@gmail.com>
Sent: Monday, January 10, 2022 9:56 AM
To: City of Vancouver - Office of the City Manager <CMO@cityofvancouver.us>
Subject: Written comments for City Council meeting

CAUTION: This email originated from outside of the City of Vancouver. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I suppose this is for next meeting since it is "off topic".

Hello, I am disabled and autistic w/conversation disorder and at least 4 other comorbidities. I have been living in isolation longer than the pandemic itself. Most out of fear. As for since the pandemic; The lack of in person therapy has been making me deteriorate.

I call the crisis line often...

However, I support all efforts to control the virus. Can we get more N95/K94s available?

I have lived in fear even before the virus. The demoralizing effect of Patriot Prayer should not be ignored by my home. They are very scary. They embarrass me too. Vancouver itself, not Portland, should tackle this problem if it cares for diversity and inclusion at all. I don't feel safe in my home.

I have seen their actions on social media... Patriot Prayer is the shame of Vancouver Washington. The police do nothing. The police intimidated my partner who is trans when simply reporting a crime by the hi-school pharmacy by 52nd street. I think this was last year?

My partner... she has not medically transitioned but she does look like a feminine gay man. Over the years she has gotten lots of homophobia that turned into transphobia. And she gets every slur in the book. My city has changed so little and has done so little to ease my fears and pain for her. And she so cheerfully cares for me despite being disabled herself. I still remember 10 years ago her getting a 3/4 can of soda chucked at her from a car. And I know some of you were serving back then... even as a cis woman, I have been called f*ggot more than a few times just being with her... people whisper under their breath in line at the store "tr*nny" "queer" "fairy" and at the dmV and at the place I get therapy...

The next thing I must bring up is the effect of seclusion and restraint of disabled. You see how I am scared to go to

authority? How I am reluctant to come here even for help? It started in the schools. They locked me in the closet room if I so much as broke a pencil at Jason Lee Middle School and Lincoln Elementary. I was fortunate enough to have Mr. Alcantar while at Hudson's Bay. If not for him, I would not have graduated. But the effects are long lasting. My trust in authority is so low. I have nightmares to this day. I was also hurt by Kaiser... for years after school. Clark College failed to protect me as well...

The issues are everywhere and apparent... I heard Joey Gibson was arrested in Portland but he out and about causing trouble again... and coming here for bbqs... we make these terrorists comfortable. Remember when they attacked our schools last year?

Next subject... so many homeless died. I am pleased to see the pallets.

Can we change how we address disabled here in Washington? Jay Inslee talked of "mentally ill" and "special needs" but we are a protected class. Disabled. That is the word that needs to be said. And just in case; it is not "people with autism" it is "autistic people" like blind people.

Anti vaxxers are also very terrifying for me. Did you know anti-vaxxer rhetoric is anti autistic? It is hate. They hate us and make stuff up about vaccines causing autism. Sometimes they advocate for poisoning autistic kids with MMS. Miracle Mineral Solution (bleach) . They also advocate for ABA which is abusive. I have dealt with that on Facebook and even in face to face...

But they are really out causing trouble... I worry such open anti vax sentiment here and around the country will lead to more violence against autistics. Many have paid the price already... what are we doing to protect autistics here in Vancouver? What are we doing for adults? Are we doing anything for the immune compromised or people who are high risk? Are we helping them do errands or shop so they do not go out? Are we fetching them even their controlled medications so they don't have to risk it? Can our postal service help?

Autistics are on the CDC list for comorbidities... and I still feel hurt by many triage protocols which say my life is less valuable than able bodied people here and anywhere else.

If there is positive messaging... or change or I have the wrong idea; I have not gotten any different messages. I have no idea what is being done about anything. I feel so lost since Biden has no National plan.

My dad is in the hospital after a heart attack. My mother in law has sleep apnea and had heart surgery last year... my support system might crumble beneath me with no where to go... and no trust.... And SSI does not give enough to support myself anywhere in Vancouver Washington and certainly not Portland... or anywhere in the whole country... and the waitlists are decades long for help... i do not want to be on the streets again... especially not with my partner... affordable housing for people on SSI is needed. Not "affordable" like I mostly see over the years... a single person on SSI only gets \$740, Know a raise was given but the food stamps went down with it... The max for two married disabled on SSI is \$1,100. And we are still punished from "in-kind charity"... meaning my family helps and we start sinking like quicksand on our own. If someone offered so much as a couch we would get punished. Please make housing for people on SSI. Not just lottery for \$800 studios downtown which I cannot afford... Needing a roommate is not good for me and my partner. When they leave there are gaps in being able to pay waiting for approval in the next. It was so stressful... stressful for family... stressful for everyone.

Covid is a top priority...

I want to believe things will be different for Vancouver for the 20's... I want to feel safe and wanted and seen as a valued member of the city.

Sincerely,
Brittany Pridemore

From: [KARYN Kameroff](#)
To: [City of Vancouver - Office of the City Manager](#)
Subject: Testimony on D/E/I for 1-10-22 city council mtg.
Date: Monday, January 10, 2022 11:55:04 AM

CAUTION: This email originated from outside of the City of Vancouver. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon!

I am providing a statement of support for the ongoing D/E/I work with the City of Vancouver. As a member of the local Indigenous community and a resident of Southwest Washington, I have first hand knowledge of the importance of recognition and work of diversity, equity and inclusion. I have lived in SW Washington for most of my life. I raised three young men in SW Washington who all identify and both Black and Indigenous. My husband is also Indigenous. Because of this, I see and know the importance of everyone and especially those in leadership positions to not just have knowledge of how day to day living here impacts us, but there needs to be a deep understanding of why it is important to be inclusive of not just systems created by and for predominately white community members, but systems that work for all of us. Equity is of the utmost importance to not only level a playing field, but recognize how systems have created unjust outcomes and the need to deconstruct those systems and restructure the field altogether.

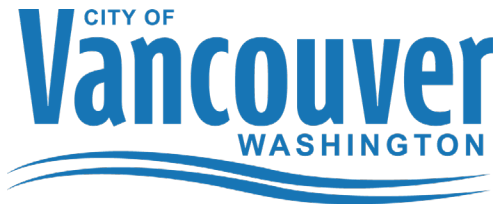
As someone who has engaged in enormous amounts of volunteer work in the community and who has professionally worked in systems here, I see how they have created inequities in our community, in our neighborhoods and our families.

My hope is to build stronger and healthier communities that benefit all of us. I believe that the City of Vancouver needs to take a lead in dismantling white supremacy and focus on equity, empowerment, and help develop healthier communities. This can only be done through an equity framework that is diverse and inclusive. It needs to educate those that do not see the importance of this work and recognize if those not supportive of D/E/I do not belong in leadership positions. It needs to look at every board, committee, department or project and see who is and who isn't at the table. The city would not have to look far to see that there is a need for more diversity at every one of those tables. It also does not have to look far to see that there are plenty of community members who do not support D/E/I that are in leadership positions. In essence, the longer the city allows that to continue, it will also continue to see inequity in every system that causes long-term damage to the community as a whole, but impacts our BIPOC communities and all those that intersect including LGBTQ+, those with disabilities, low income and the elderly in such a harmful way.

One of my personal hopes is to see the City of Vancouver recognize the stolen land upon which the city resides and consider every effort to return those lands to the Indigenous people. I would also like to see the city engage in developing a multi-cultural center that it invests in that would include a community space, access to health, behavioral and mental health, dental and childcare for and by us. I would also encourage the city to develop more art and cultural spaces recognizing the incredible work of the diverse community members in the past as well as the present.

Thank you for taking the time to consider my thoughts. Yakoke (Thank you).

Karyn Kameroff, MA, MSW, SWAICL
Enrolled Citizen; Choctaw Nation of Oklahoma



MEMORANDUM

DATE: January 11, 2021

TO: Mayor and City Council

FROM: Bryan Snodgrass, Principal Planner, Community Development Department

RE: January 24, 2022 City Council workshop review of the pending Clark County Buildable Lands Report, including Vancouver long term growth capacity estimates

CC: Eric Holmes, City Manager

Clark County is in the final stages of updating the regional Vacant and Buildable Lands Model (VBLM) used to formally estimate long-term population and employment growth capacity in Vancouver and other local urban areas. This issue was discussed previously at City Council [communication](#) on June 7, 2021, and originally in an April 2020 memorandum. The January 24 workshop is intended to confirm the overall direction of City staff advocacy in advance of an upcoming Clark County Council public hearing anticipated on February 15, 2022 to adopt and submit to the state a proposed [Buildable Lands Report](#) (BLR) as required by law, which includes initial results from the updated model.

The VBLM model is mainly used to determine the appropriate sizes of urban growth areas (UGAs) countywide needed to accommodate the new 20-year population and employment growth forecasts when they are selected by Clark County with City consultation as part of next full County Comprehensive Plan update, which must be completed by June 2025. The model is also used to inform long-term capital facilities plans, and efforts to improve the regional and local balance of jobs to housing. The model has separate population and employment portions, each consisting of a set of many assumptions about which land will develop and how intensely over time. The pending County Buildable Lands report is required by to be adopted by June 2022, three years before adoption of Comprehensive Plans, and the report's modelling methodology is envisioned to be used to size UGAs and inform capital facilities plans in 2025.

The model has significant policy implications and potential spillover impacts for cities as well the County. If the amount of land needed to accommodate a given amount of growth is significantly overestimated, there are negative effects for sprawl and the efficient use of land, and actual growth may outstrip capital facilities plans. If the amount of land needed is underestimated, growth may be hindered and there may be upward pressure on housing prices, although this may be offset by the legal requirement to restock 20-year UGAs and land supplies every 8 years, well before they run out. An imbalance between the residential and employment halves of the model, if one is reasonably accurate and the other not, may skew the long-term balance of jobs to housing.

To update the local VBLM model, which had been unchanged since 2007, Clark County convened a 14-person advisory committee in late 2019 consisting of representatives from cities including Vancouver, building and environmental interests, and others. In spring 2021 the County Council adopted by resolution some of the advisory committee recommendations, but substituted in building industry recommendations in several other cases.

As noted in prior City Council communication, City staff have had longstanding concerns that the previous County VBLM model significantly underestimated actual population growth capacity. County staff have calculated that the newly updated model recognizes 32% less population capacity countywide than the prior version, significantly worsening the population undercount problem. The resulting estimates of Vancouver's long-term growth capacity indicated in the draft County report recently posted appear to underestimate City growth capacity suggested by local development data by several orders of magnitude:

- The draft County report estimates that as of 2020 the City of Vancouver had capacity for only approximately 3,200 additional housing units over the next 15 years, through 2035. Last year alone the City added 2,059 units according to OFM. There are pending development applications under review encompassing over 12,000 housing units citywide right now, to say nothing of future applications to be submitted over the next 15 years.
- The report estimates the City of Vancouver had capacity in 2020 to add approximately 8,600 additional persons through 2035, or an average of about 570 additional persons per year. Last year with no major annexations the City added 3,500 persons according to OFM. The year before, also with no major annexations, the City added 5,600 persons.

No models are perfect, but discrepancies of this scale in a long-term regional planning document that is submitted to the state Department of Commerce and is intended to serve as the basis for local long term Comprehensive Plans may have significant negative impacts. The recent model update is the first in 15 years, and future updates may not occur for many years into the future. Significant inaccuracies adopted into the model now will likely worsen over time as Vancouver, and some extent other local jurisdictions, continue to densify and redevelop.

As part of normal interjurisdictional staff coordination following initial circulation of the draft County report, Vancouver staff submitted technical [comments](#) to County staff. In upcoming hearings before the County Council, City staff anticipates highlighting these concerns and offering procedural suggestions to address the model's undercount. City staff will report back to the City Council in the event the report is adopted with Vancouver capacity estimates that are not at least reasonably accurate and consistent with State laws and guidance documents.

Staff Contact: Bryan Snodgrass, Principal Planner, Bryan.Snodgrass@cityofvancouver.us

Reference Documents:

- A. [Clark County Buildable Lands Program Update Webpage](#)
- B. [Clark County 2021 Buildable Lands Report \(September 30, 2021\)](#)

Clark County Buildable Lands Model

VANCOUVER
CITY HALL

CITY OF
Vancouver
WASHINGTON

January 24, 2022 City Council Workshop

Bryan Snodgrass, Principal Planner,
bryan.snodgrass@cityofvancouver.us, 360-487-7946

Presentation Overview

- Clark County Vacant and Buildable Land Model (VBLM)
- VBLM Model results in proposed County Buildable Lands Report (BLR) and implications for Vancouver
- Next Steps



County VBLM Model

- Primarily used by County to determine amount of land needed to accommodate long term population and employment growth targets. Impacts size of VUGA. Also used to inform capital facilities plans, and efforts to improve the ratio of jobs to housing.
- Works by inventorying properties in Geographic Information Systems (GIS) and applying a sequence of assumptions about what land will develop, and how intensely, over the long-term.
- Last updated in 2007. Includes population and employment halves. Long standing City concern that the model significantly underestimates actual residential growth capacity.

Recent VBLM Update

- Washington statutes and grant programs for County buildable lands monitoring updated 2017, new state guidance issued 2018.
- In late 2019 Clark County convened 14-member advisory committee including development, environmental and cities representatives to update model.
- Committee met eight times through January 2021, but did not vote on all individual model assumptions, and did not examine validity of model results. Committee recommendations improved model but not close to reaching reasonable accuracy.

Recent VBLM Model Update (cont.)

- County Council accepted some committee recommendations, substituted in development community recommendations in other cases in spring 2021 resolution.
- County staff calculated that updated model recognizes 32% less population growth capacity countywide, 23% in Vancouver, then previous model version.



Proposed County Buildable Lands Report (BLR)

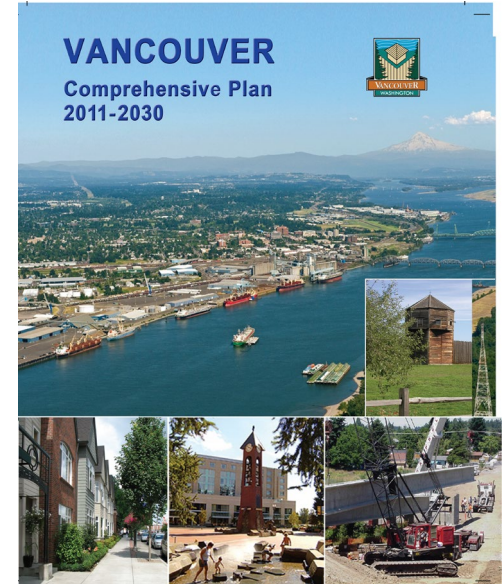
- Required by GMA to be adopted by County and submitted to state by June 2022, three years before 2025 adoption of updated Comprehensive Plans and UGAs. Includes estimate of growth capacity of existing land supplies, using updated model.
- Report estimates appear to drastically underestimate existing residential capacity based on comparison with local and state growth metrics:
 - BLR report estimates Vancouver has capacity for only approximately 3,200 more housing units over 15 years. The City finalized over 2,000 housing units last year per state OFM, and internal permit records show there are currently pending development applications encompassing over 12,000 units. This does not include any future applications the City may receive between now and 2035.

Proposed County BLR Report (cont.)

- BLR Report estimates Vancouver has capacity for population growth of approximately 8,600 people over the next 15 years, or about 570 persons per year on average. OFM census reports that in last two years, with no major residential annexations, the City added 5,600 and 3,500 persons.
- Methodology used in BLR report to estimate capacity anticipated as starting point for methodology used in 2025 County Comprehensive Plan.

Implications if updated model used in 2025

- Although GMA requires interjurisdictional consistency, City is not required to follow County lead on growth assumptions for internal planning within City limits.
- Potential spillover impacts from Vancouver UGA:
 - VUGA could be significantly oversized, with implications for sprawl, efficient land use, climate, and future annexation.
 - Residential portion of VUGA could be significantly oversized, with implications for regional efforts to improve balance of jobs to housing.



Implications (cont.)

- Potential spillover impacts from Vancouver UGA :
 - Capital facilities plans would be required to serve larger residential areas and assume less population than will likely occur.
 - Unclear longer-term implications as BLR report is required to be filed with the state. Report appendixes will highlight City objections, but many document users and decision makers going forward will accept 2020 Vancouver capacity estimates as reasonable.
 - Model can be updated anytime but may not be for another 8 years or longer.

Next Steps

- City staff to testify at anticipated February 15 County Council hearing
- County has until June 30, 2022 to adopt Buildable Lands Report

Questions and Discussion

Bryan Snodgrass, Principal Planner, bryan.snodgrass@cityofvancouver.us, 360-487-7946

Clark County Buildable Lands Program :

<https://clark.wa.gov/community-planning/buildable-lands-program>

Clark County Buildable Lands Report:

<https://clark.wa.gov/sites/default/files/media/document/2021-10/DRAFT%202021%20Buildable%20Lands%20Report.pdf>

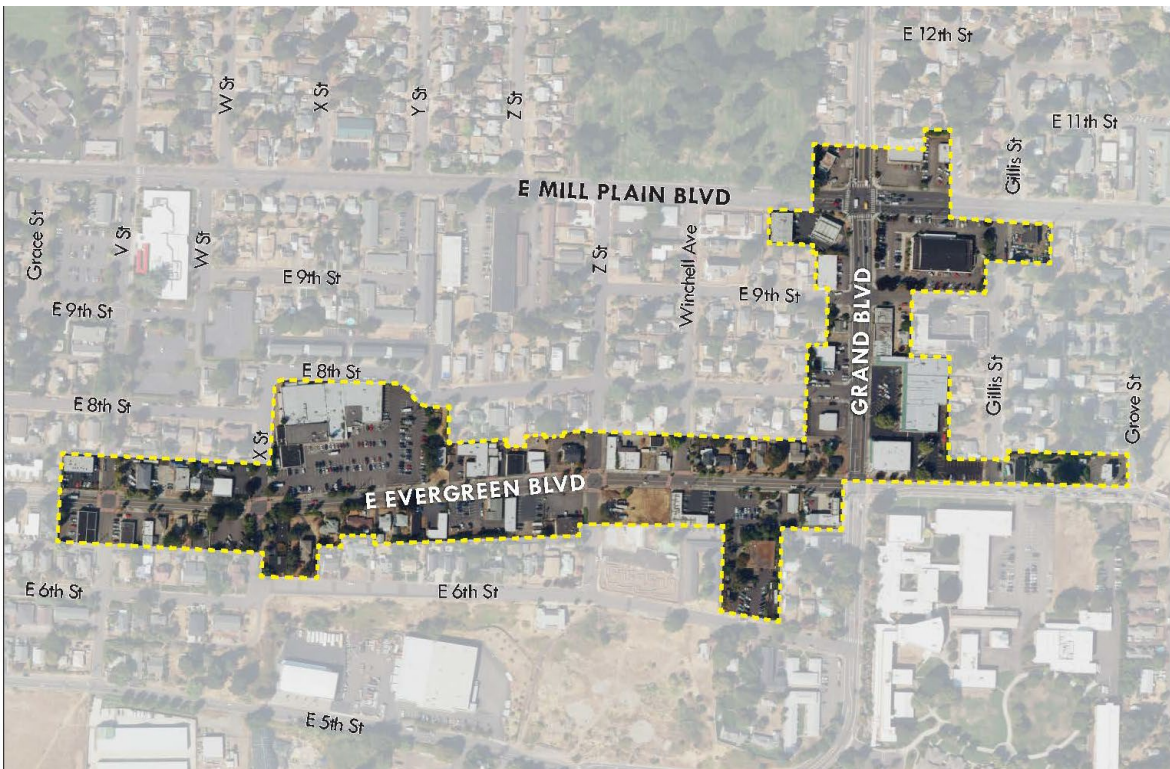


DATE: January 11, 2022

TO: Mayor and City Council

FROM: Bryan Snodgrass, Principal Planner, and Becky Coutinho, Associate Planner,
Community Development Department

RE: January 24 workshop review of the Evergreen and Grand Commercial Corridors Strategy



Background

The January 24 workshop is intended to provide a final City Council workshop review of the proposed [Evergreen and Grand Commercial Corridors Strategy](#) prior to a Council first reading on February 14 and public hearing on February 28. The Strategy document is largely unchanged from

the past Council workshop review on [September 20](#), and was unanimously recommended for approval by the Planning Commission at a December 14 public hearing that drew very limited public testimony. The Strategy document provides guidance, with detail in some cases, to be implemented through zoning code text changes and other implementation measures, most of which are anticipated to be brought forward later in 2022.

Components of proposed Evergreen and Grand Commercial Corridors Strategy

To recap, key policies of the Strategy document are:

- Identification of three subregions with the project area: A Bus Rapid Transit (BRT) hub at the intersection Grand and Mill Plain Boulevards at the north end of the project area; predominantly commercial and mixed-use activity on the remainder of Grand Boulevard to the south, and predominantly residential mixed-use corridor on Evergreen Boulevard.
- Existing mixed-use code requirements allowing first floor non-residential uses in commercial zones such as this are proposed to be relaxed but not eliminated on Evergreen Boulevard, but maintained on Grand.
- Maximum building heights are proposed to be adjusted from the current maximum of 50 feet, with slight height reductions in some areas and increases in others. A limit of five stories/65 ft. is recommended on portions of the Mill Plain and Grand intersection, four stories/50 ft. on most of Grand and parts of Evergreen, and three stories/40 ft. on other parts of Evergreen.
- Adjusted parking standards are recommended to facilitate viable commercial and residential developments. A standard of one off-street parking space per residential unit is proposed for both single and multi-family housing along the corridors. One space per 1,000 square feet is proposed for commercial uses. Ground floor retail parking requirements are proposed to be eliminated, with these uses relying on the on-street network for parking needs.

Other regulatory recommendations are:

- Prohibit *new* uses potentially inconsistent with corridor visions, such as big-box retail; motor vehicle repair, sales and rental; gas stations; self-storage; and drive-thru establishments. Existing uses can be maintained.
- Adopt standards that support activating vacant and underutilized spaces.
- Develop regulations that provide additional access enhancements in the BRT Hub corridor area that take into consideration first/last mile solutions and universal design best practices.
- Allow for non-mixed-use housing types on smaller parcels, where appropriate.
- Explore providing flexibility for nonconforming uses, such as existing small businesses, adaptively reused single-family homes fronting the corridors, etc.
- Consider disincentivizing chains and capping commercial business sizes to accommodate small-scale retail and maintain the fine-grained development pattern of the corridors
- Explore allowances for interim/temporary uses such as food cart pods.

- Create standards for ground floor residential uses to ensure street front activation and interest.
- Develop design guidelines bolstering local identity and street activation that considers development affordability.
- Encourage streetscape improvements in all redevelopment projects.

Non regulatory implementation recommendations are:

- Create a business district to support art, events, and other placemaking activities.
- Extend the Multi-Family Tax Exemption (MFTE) program to the project area, calibrated to implement the vision and goals for the corridors and add workforce housing.
- Attract and retain neighborhood-serving businesses.
- Establish a storefront improvement program to support existing businesses.
- Establish a signage and placemaking program along Grand Boulevard and in the BRT Hub.
- Identify opportunities to support houseless communities and promote community safety.
- Explore strategies to maintain economic diversity and housing affordability, especially for low- and moderate-income households.
- Consider height bonuses in exchange for attainably priced workforce housing units.
- Improve connectivity to nearby destinations such as downtown Vancouver, the Fort Vancouver National Historic Site, and the Pearson Field Airport as an economic development strategy.
- Leverage environmental remediation funding opportunities as an incentive to develop eligible sites.

The Draft Strategy also contains various transportation recommendations to be implemented in the Transportation System Plan (TSP) update:

- Overall: Create a cohesive, safe, walkable, and multimodal environment. Increase signage and consider integrating stormwater and other sustainability best practices. Explore Demand Management strategies. Determine appropriate access management.
- Grand Boulevard: Retrofit street to function as a mobility corridor. Reduce speed limits and implement traffic calming. Add on-street parking. Allow parking space alternatives such as outdoor seating, or bike parking and other placemaking, temporarily or permanently.
- Evergreen Boulevard: Update street standards through TSP implementation; Widen sidewalks, increase street trees and other landscaping, add street furniture, lighting, and other features. Considering enhanced pedestrian crossing at V Street intersection.
- Mill Plain/Grand Intersection BRT Hub: Retrofit street to function as a mobility corridor. Design transportation infrastructure and streetscape improvements to facilitate multi-modal access to transit for people of all abilities around the future BRT station platforms.

Outreach

Community engagement through the approximately two-year planning process has occurred through one in-person and three virtual community meetings, direct communications with individual stakeholders, the project website, and surveys and communication through the City of Vancouver Be Heard page. Appendix A of the Strategy Document draft summarizes outreach, community input, and associated changes made in response.

A final virtual community workshop was held on October 21, 2022, at which participants expressed a desire for small scale commercial, retail, service- oriented neighborhood development, and traffic calming measures on Grand Boulevard. One person suggested creating a Grand-Gillis road couplet of two one-way streets. Concerns were also voiced about parking spillover into surrounding neighborhoods, and that mixed use requirements along Evergreen should not be eliminated as proposed to no longer require first floor commercial uses.

In response to the last concern about Evergreen Boulevard mixed-use development, staff subsequently adjusted the proposed Strategy to indicate that mixed use requirements on Evergreen should be relaxed rather than eliminated, with details to be determined when implementing standards are developed in spring or summer 2022. No change to existing mixed-use requirements is recommended along the commercial core of the project area on Grand Boulevard.

Planning Commission Hearing

The Commission conducted workshops in June 2020, February 2021, August 2021 and October 12, 2021, before holding a public hearing on December 14, 2021. Only two persons testified at the hearing, both representatives of a potential buyer of the Crossley Lanes bowling alley site on Evergreen Boulevard, requesting that policy guidance that maximum height limits for the site remain at 50 feet be changed to raise it to 55 feet or higher. The Commission voted unanimously to recommend approval of the Strategy as proposed without this change but did suggest that an allowance for slightly increased heights in the interior of the bowling alley site should be considered when implementing standards are being drafted. The Commission discussed the importance of clarifying that Strategy is a guiding document similar to other area plans, and would not directly create regulations.

Next Steps

Pending discussion and Council direction at the January 24 workshop, the draft Strategy is scheduled for first reading on February 14, and public hearing on February 28. If the Strategy is adopted, staff will begin drafting implementing standards in spring 2022 for community, Planning Commission and Council consideration, targeting adoption by the end of 2022.

Attachments:

- A. [Evergreen and Grand Commercial Corridors Strategy Document](#)
- B. [Evergreen and Grand Commercial Corridors Strategy Appendices](#)
- C. [Evergreen and Grand Commercial Corridors Strategy Project Website](#)
- D. [December 14 2021 Planning Commission minutes and materials, including those related to Evergreen and Grand Commercial Corridors Strategy](#)

Commercial Corridors Strategy – Evergreen and Grand Boulevards



January 24, 2022
City Council Workshop

Bryan Snodgrass, Principal Planner
Becky Coutinho, Associate Planner
Community Development Department

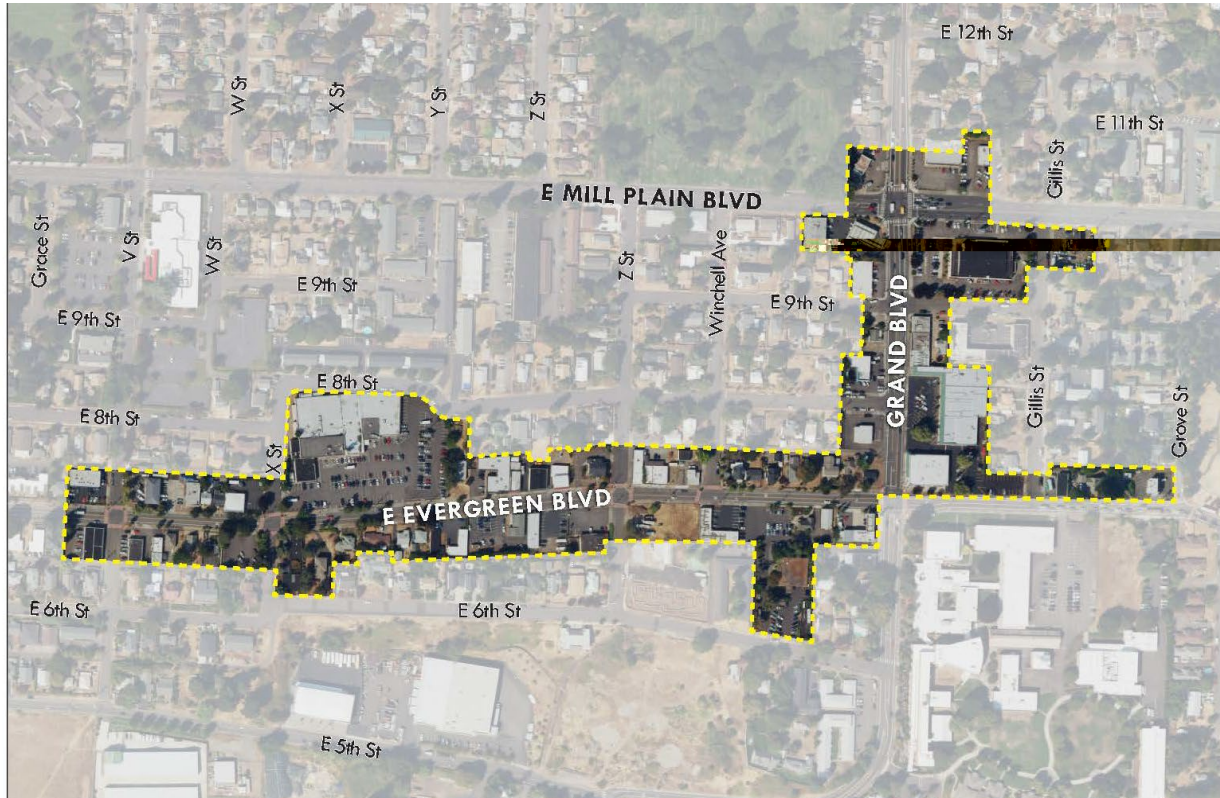
Presentation Overview and Purpose

- Review proposed Evergreen and Grand Commercial Corridors Strategy document and process
- Identify any final considerations prior to scheduled February 14 first reading and February 28 public hearing

Process to date

- Council workshops December 2019, May and September 2020, March and September 2021
- Planning Commission memorandum April 2020, workshops June 2020, February and September 2021 and public hearing December 14, 2021
- Community in-person open house February 2020. Virtual open houses August 2020 and February and October 2021
- Ongoing digital outreach and individual coordination with key stakeholders and agency partners

Evergreen and Grand Study Area



- Fine-grained development pattern
- Smaller-scale buildings oriented to the street, particularly on Evergreen Blvd.
- Older commercial buildings and streetfront single-family homes

Community Input

February 13, 2020 in-person open house and online survey:

- Concerns about out-of-character development, poor appearance/disrepair of the public realm and existing buildings.
- Desire for more local eating/drinking establishments, small-scale retail, and neighborhood-serving amenities and services.



Community Input

August 26 and 27, 2020 virtual open houses:

- General agreement on vision/goals
- Specific concerns about existing buildings condition, traffic speeds on Grand, and general public safety.
- Desires for multi-modal upgrades on Evergreen, traffic calming on Grand, and community gathering spaces including local grocery and/or farmers market.
- Expressed need for adequate parking for retail and residential development, and desire to continue existing character, and provide connections and wayfinding to other areas.

Community Input

February 4, 2021 virtual meeting:

- Support for improved streetscape with wider sidewalks, greenery, and trees, and more public amenities and gathering spaces.
- Support for local businesses rather than chains through funding assistance and incentives. Concerns about maintaining affordability and avoiding displacement.
- Support of economic diversity and range of housing types.
- Concerns about higher density development being out of scale and character. Support for adequate parking to avoid neighborhood spillover.
- At BRT hub, support for local grocer. On Evergreen Blvd, support for ground floor commercial, and concerns about building heights beyond 3-4 stories.

Community Input

October 21, 2021 virtual meeting:

- Desire for small scale commercial, retail, service- oriented neighborhood development, and traffic calming measures on Grand.
- A suggestion to create Grand-Gillis road couplet of two one-way streets .
- Concerns about parking spillover into surrounding neighborhoods
- Concerns that the bowling alley property should be redeveloped and not sit empty, and that mixed use requirements along Evergreen should not be relaxed to no longer require first floor commercial uses.
- Procedural concern that zoning standards should be adopted alongside Strategy.

Vision, Goals, & Objectives

VISION

Promote equitable and diverse corridor development that is vibrant, sustainable, and mixed-use.

Foster development that recognizes and builds upon the neighborhood's unique setting, history, culture, and character.



GOALS

LAND USE. Strengthen current businesses while providing an appropriate mix of commercial and residential uses.

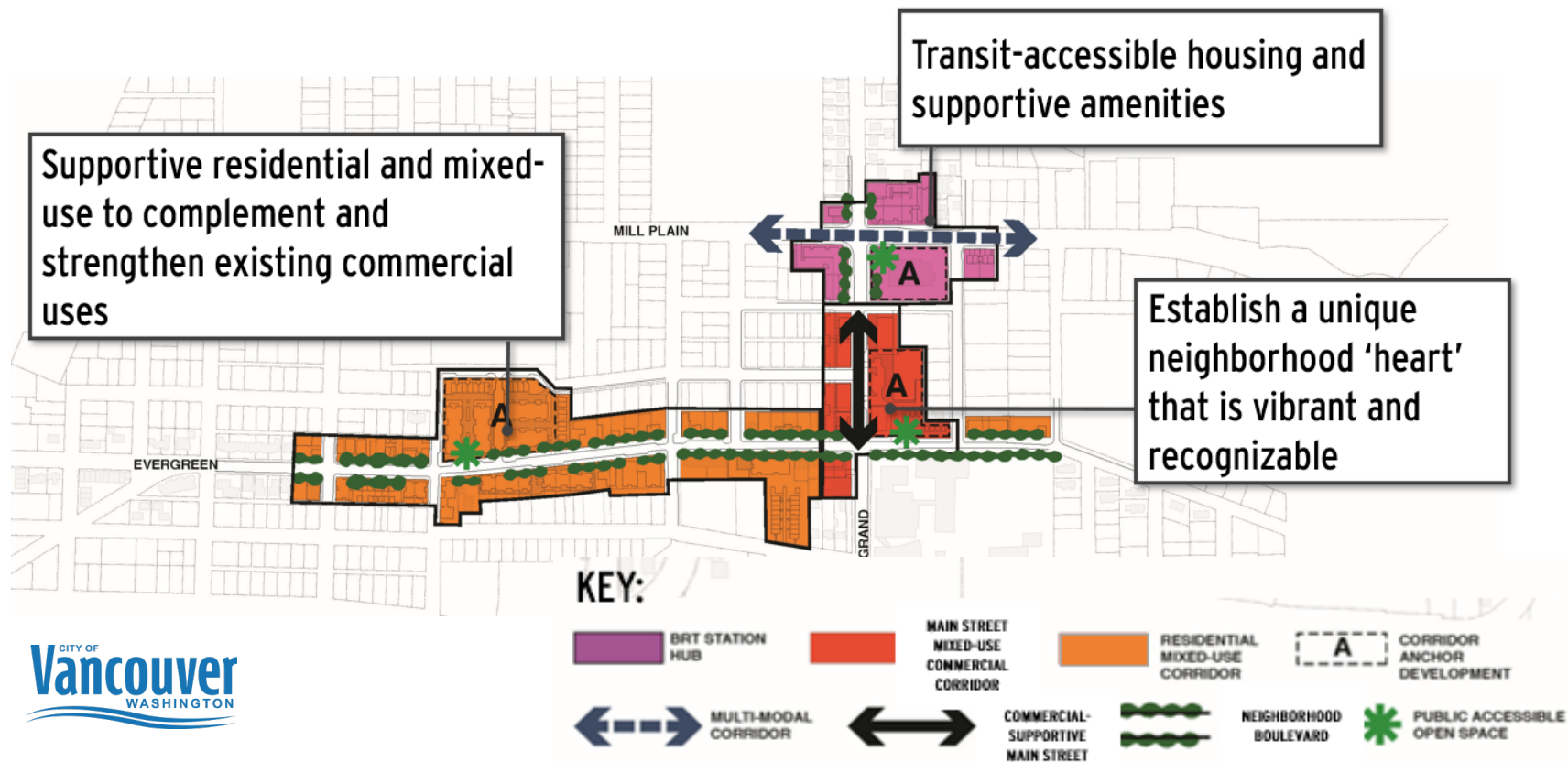
MOBILITY. Establish a balanced multi-modal network of motor vehicle, transit, walking, and biking routes through the corridors.

PARKING. Provide adequate parking to serve existing uses and future development.

URBAN DESIGN. Create public and private spaces that are inclusive, integrated, and contribute positively to the livability of the corridor.

ECONOMIC DEVELOPMENT. Provide ample opportunities for small-scale, locally-owned business to thrive.

Corridor Vision Concepts – Three Subdistricts



Recommendation – Ground Floor Commercial

Continue to require ground floor commercial in the Grand Boulevard Commercial Mixed-Use Corridor, and provide flexibility to allow some ground floor residential outside the commercial 'heart' of the study area.

FIG. 31: GROUND FLOOR COMMERCIAL USE OVERLAY MAP



COMMERCIAL

 Required per Current Standards

 More Limited Requirement

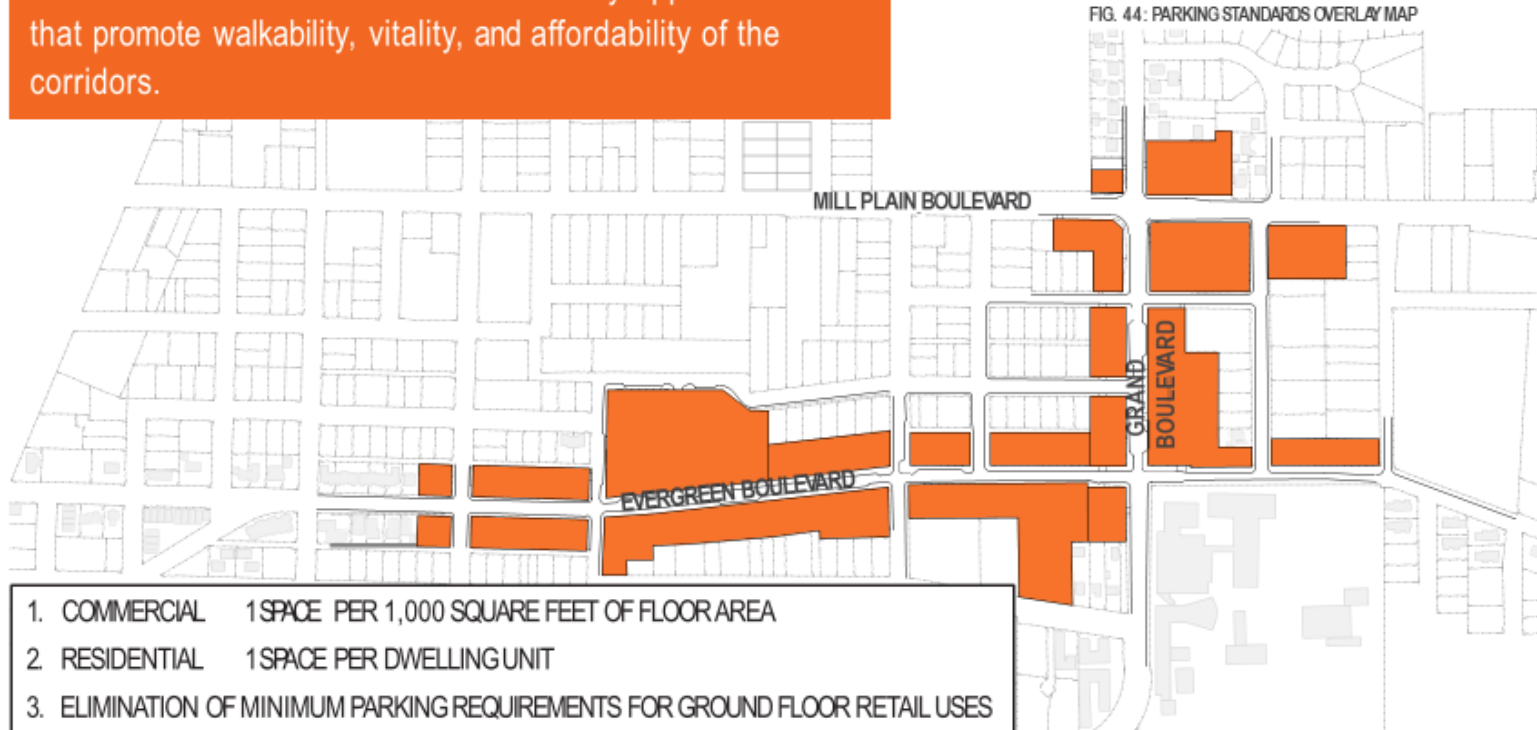
Recommendation – Building Heights

Tailor maximum building heights to align with the corridor vision concepts for the study area.



Recommendation – Parking

Adapt minimum off-street parking requirements that support commercial and residential uses and identify opportunities that promote walkability, vitality, and affordability of the corridors.



Recommendation – Active Edge

Require a maximum front setback of 0-5 feet at the ground floor only regardless of building height.

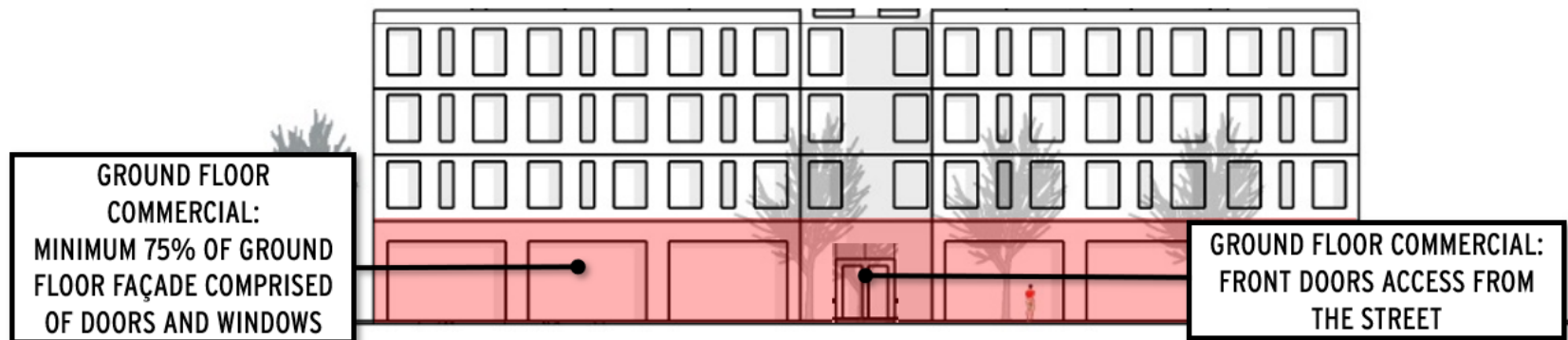
Establish front door access and minimum ground floor transparency requirements for both commercial and residential uses.

FIG. 45: 'ACTIVE EDGE' DEVELOPMENT STANDARDS OVERLAY MAP



Active Edge Development Standards

COMMERCIAL ACTIVE EDGE



Active Edge Development Standards

RESIDENTIAL ACTIVE EDGE



Other Regulatory Recommendations

- Prohibit *new* uses potentially inconsistent with corridor visions, such as big-box retail; motor vehicle repair, sales and rental; gas stations; self-storage; and drive-thru establishments. Existing uses can be maintained.
- Adopt standards that support activating vacant and underutilized spaces.
- Develop regulations that provide additional access enhancements in the BRT Hub corridor area that take into consideration first/last mile solutions and universal design best practices.
- Allow for non-mixed-use housing types on smaller parcels, where appropriate.
- Explore providing flexibility for nonconforming uses, such as existing small businesses, adaptively reused single-family homes fronting the corridors, etc.

Other Regulatory Recommendations (cont.)

- Consider disincentivizing chains and capping commercial business sizes to accommodate small-scale retail and maintain the fine-grained development pattern of the corridors
- Explore allowances for interim/temporary uses such as food cart pods.
- Create standards for ground floor residential to ensure streetfront activation and interest.
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- Encourage streetscape improvements in all redevelopment projects.

Other Implementation Recommendations

- Create a business district to support art, events, and other placemaking
- Extend the Multi-Family Tax Exemption (MFTE) program calibrated to implement the vision and goals for the corridors and add workforce housing
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Other Implementation Recommendations (cont.)

- Explore strategies to maintain economic diversity and housing affordability, especially for low- and moderate-income households
- Consider height bonuses in exchange for attainably priced workforce housing units
- Improve connectivity to nearby destinations such as downtown Vancouver, the Fort Vancouver National Historic Site, and the Pearson Field Airport as an economic development strategy.
- Leverage environmental remediation funding opportunities as an incentive to develop eligible sites

Transportation Recommendations

Through the Vancouver Moves project, inform the upcoming citywide Transportation System Plan (TSP) update as follows:

- **Overall:** Create a cohesive, safe, walkable, and multimodal environment. Increase signage, consider integrating stormwater and other sustainability best practices. Explore Demand Management strategies. Determine appropriate access management.
- **Grand Boulevard:** Retrofit street to function as a mobility corridor. Reduce speed limits and implement traffic calming. Add on-street parking. Allow parking space alternatives such as outdoor seating, or bike parking and other placemaking, temporarily or permanently.

Transportation Recommendations (cont.)

- **Evergreen Boulevard:** Update street standards through TSP implementation; Widen sidewalks, increase street trees and other landscaping, add street furniture, lighting, and other features. Considering enhanced pedestrian crossing at V Street intersection.
- **Mill Plain/Grand Intersection BRT Hub:** Design transportation infrastructure and streetscape improvements to facilitate multi-modal access to transit for people of all abilities around the future BRT station platforms.

Next Steps

- February 14 first reading, February 28 public hearing
- Spring and summer 2022. Draft implementing standards for community, Planning Commission and City Council consideration. Adopt zoning text changes summer or fall 2022.

Questions and Discussion

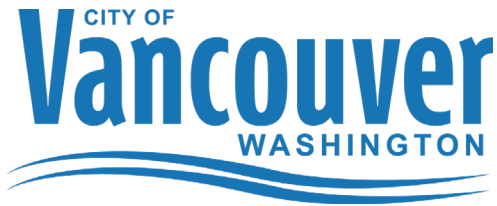
VANCOUVER
CITY HALL

Bryan Snodgrass, Principal Planner,
Bryan.Snodgrass@cityofvancouver.us

Becky Coutinho, Associate Planner,
Becky.Coutinho@cityofvancouver.us



www.cityofvancouver.us/ced/page/commercial-corridors-strategy



MEMORANDUM

DATE: January 24, 2022

TO: Mayor and City Council

FROM: Katherine Kelly, Senior Policy Advisor
Rebecca Kennedy, Deputy Director, Community Development

RE: Interstate Bridge Replacement (IBR) Program Update

CC: Eric Holmes, City Manager

Staff will present an update to Council on the status of the Interstate Bridge Replacement (IBR) Program at their January 24, 2022 workshop. This is the first of a series of workshops with Council through June, 2022, at which time it is anticipated that a Modified Locally Preferred Alternative (LPA) for the IBR Program will be selected. Prior to June, staff anticipates returning to Council to share additional technical details and for further discussion and direction on a Modified LPA. Components of the Modified LPA are yet to be formally defined but it is anticipated that they will include:

- 1) the type of bridge replacement over the Columbia River;
- 2) the general alignment of a dedicated guideway, mode, and terminus for high capacity transit;
- 3) conceptual designs of enhancements for interchanges in the Program area;
- 4) the general location and type of active transportation enhancements;
- 5) determination of whether to replace the North Portland Harbor Bridge; and
- 6) agreement on a process to define a tolling program to fund construction of the IBR Program components.

Background

The most recent workshop discussions with Council on the IBR Program were in June and July 2021. Those discussions focused on the status of the Program at that time and development of Resolution M-4140 (Attachment A) which defines the City's Desired Outcomes from the Program. In addition to workshop discussions in the summer of 2021, brief updates on preparing for and outcomes of the Program's Executive Steering Group meetings have been presented to Council monthly via Mayor's Communications. There have also been numerous technical staff meetings as well as community engagement events and forums to define potential community benefits and desired outcomes in development of design options for the LPA components.

In December, 2021, the IBR Program posted initial design options for consideration on their website with a survey seeking community feedback on those options. Attachment B summarizes the design options included on that survey.

Next Steps

Feedback from the December, 2021 survey along with additional feedback from partner agency Councils, Board, and Commissions along with the Program's advisory groups through Spring 2022 will inform drafting of the Modified LPA. Subsequent to approval of the Modified LPA anticipated in June, 2022, the Program will begin the Design Phase on a Modified LPA through 2024 with Construction slated to begin in 2025.

For additional IBR Program information see: www.interstatebridge.org. Program history and timelines, information on advisory groups, and information about the purpose and need for the Program are included.

Attachments:

- A. Resolution M-4140: Vancouver Interstate Bridge Replacement Program Desired Outcomes
- B. Summary of design options for consideration included in a December 2021 community survey.

July 26, 2021

RESOLUTION NO. M-4140

A RESOLUTION supporting the replacement of the Interstate Bridge between the State of Washington and State of Oregon, guided by the principles herein.

WHEREAS, Interstate 5 is a corridor of national significance that serves the entire west coast of the United States, as well as international commerce with Canada, Mexico, and all of the countries of the Pacific Rim that access US west coast seaports; and

WHEREAS, the Interstate Bridge is a key economic connector to two major ports and much of the industrial land in the Vancouver-Portland Metropolitan Region; and

WHEREAS, Interstate 5 between Vancouver, Washington and Portland, Oregon experiences some of the most severe congestion along the entire length of the Interstate 5 corridor, especially during the daily commuting periods, affecting travel time reliability and hindering the efficient movement of people, freight, goods, and services; and

WHEREAS, the existing Interstate Bridge spans are functionally obsolete and do not meet current seismic standards, and in their current condition will hinder regional emergency response and recovery from a major seismic event; and

WHEREAS, frequent crashes on the corridor and on the Bridge affect public safety; and

WHEREAS, bicycle and pedestrian facilities on the Bridge are unsafe and do not meet Americans with Disabilities Act standards; and

WHEREAS, existing bi-state public transit service is inadequate to meet demand, and existing service operates in mixed-traffic, which has significant negative impacts on performance and operational outcomes; and

WHEREAS, high capacity transit in a dedicated guideway does not currently connect Vancouver and Portland, and high capacity transit with a dedicated guideway would provide greatly improved transit service with much better schedule reliability and service than mixed-traffic operation and support existing and planned land uses; and

WHEREAS, replacement of the Interstate Bridge is needed to support critical trade routes, address congestion, improve safety, and provide transportation choices; and

WHEREAS, the City of Vancouver adopted Resolution M-3975 on August 6, 2018, in support of planning, design, and construction of an Interstate replacement bridge, high capacity transit with a dedicated guideway, and a multimodal approach to enhance regional travel needs;

WHEREAS, a Memorandum of Intent was signed by Oregon and Washington Governors Brown and Inslee on November 18, 2018 to formally kick off joint efforts between the two states to replace the Interstate Bridge;

WHEREAS, a program called the Interstate Bridge Replacements Program (IBRP) to plan, design, and construct the replacement Interstate Bridge across the Columbia River including associated multimodal and urban design enhancements was begun in 2018 by an Oregon-Washington Bi-State Legislative Committee; and

WHEREAS, the IBRP is now in the planning and environmental phase with development of a Locally Preferred Alternative anticipated for consideration in Spring of 2022; and

WHEREAS, the City of Vancouver has identified livability, equity and inclusion, safety, innovation, sustainability and resiliency, connectivity, aesthetics, and community trust and relationships as guiding principles for the IBRP program; and

WHEREAS, the City of Vancouver, as an IBRP partner agency, shall guide and influence development of design options in a timely manner and within the framework of identified principle values;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF VANCOUVER:

The City of Vancouver City Council supports IBRP design options with outcomes that:

- a. Meet or exceed climate and equity goals as defined by the city, region, and IBRP advisory groups during all phases of the program; and

Section 1 - The Built Environment.

- b. Construct the bridge and all related structures to be resilient in the event of a Cascadia Seismic event
- c. Support efforts to make current and future Downtown Vancouver a thriving and attractive place to live, work, and visit within the greater Portland-Vancouver region
- d. Improve connectivity for all users among key downtown and Historic Reserve destinations to support economic vitality and placemaking opportunities
- e. Extend Main Street to the Vancouver waterfront and identify additional opportunities to reconnect other local roadways within the bridge influence area
- f. Improve access to transit for all users
- g. Improve access and connectivity throughout local bikeway, roadway, and sidewalk systems

- h. Improve multimodal access and connectivity to, from, and across the Interstate 5 regional highway system to Downtown Vancouver and the Historic Reserve area
- i. Include a dedicated guideway for transit that accommodates multiple high capacity transit modes and is designed to serve both current and future transit needs as the region grows
- j. Replace and/or upgrade subsurface City assets where appropriate to support new infrastructure, and

Section 2 - Urban Design.

- k. Prioritize the movement of people, freight, and goods
- l. Emphasize and center human and natural systems
- m. Integrate and recognize the IBRP area's history, especially that of Indigenous Peoples
- n. Better connect the west side of Interstate 5, the City's core downtown area, with the east side of Interstate 5, the City's Historic Reserve area, via a lid or some other public open space over Interstate 5 south of Evergreen Street connecting Library Square to the Historic Reserve
- o. Create new public open spaces under the bridge that serve the region's diverse and growing community, connect Vancouver's waterfront, and integrate with existing and forthcoming open space investments
- p. Establish continuity and integration of design associated with transit improvements that complement existing and future downtown transit investments
- q. Integrate new aesthetic features to amplify Vancouver and associated bridge improvement elements as landmark destinations, and

Section 3 - Mobility.

- r. Focus on efficient, connected, and safe movement of people, freight, and goods
- s. Provide more reliable travel for all modes and all users
- t. Reduce overall Interstate Bridge congestion and length of peak congestion periods including no lift span on the bridge
- u. Reduce peak period impacts on the local road system
- v. Reduce collisions on local roads leading to and within downtown
- w. Incorporate tolling to fund construction of the Bridge and associated elements
- x. Retain three through travel lanes on Interstate 5 in the Bridge Influence Area and, based on updated analyses, accompanying auxiliary lanes to support the Program's Purpose and Need; and

Section 4 - Construction and Ongoing Operations and Maintenance.

- y. Meet or exceed requirements to employ Minority, Women, and Disadvantaged Business Enterprise (WMDBE) firms
- z. Create opportunities for inter-generational wealth through workforce investment programs during planning, design, and construction phases of the program
- aa. Implement tolling in an equitable manner that includes mitigation programs
- bb. Proactively mitigate construction impacts to Downtown Vancouver businesses, residents, and visitors
- cc. Efficiently manage post-construction operating and maintenance costs, and
- dd. Use climate smart construction materials built for existing and future types of transportation.

ADOPTED at a Regular Meeting of the Vancouver City Council this 26th day of July,
2021.

Attest:

DocuSigned by:

BCF6734E40E94AE...
Natasha Ramras, City Clerk

DocuSigned by:

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Anne McEnery-Ogle, Mayor

Approved as to form:

DocuSigned by:

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Jonathan Young, City Attorney

October 2021

IBR Preliminary List of Design Options

In 2011, a Final EIS and Record of Decision for the prior work on the program was published. In the years subsequent to that decision, the baseline conditions, regulatory and policy context, and community priorities have changed, including:

- Regional, state, and local equity policies and priorities
- Regional, state, and local climate goals and priorities
- Oregon tolling/congestion pricing programs being studied
- Demographics along the I-5 corridor and nearby neighborhoods
- COVID-19 impacts on transportation
- Environmental regulations
- Expanded transit service in the corridor (i.e., VINE BRT and bus-on-shoulder on I-5 in Vancouver)
- Current Regional Transportation Plans and City Comprehensive Plans
- Updates to USACE, USCG and FAA requirements
- Land use policies, planned development, and zoning changes
- Federal transit funding requirements
- Freight/industrial activity

To address these changes, the IBR program collaborated with lead Federal agencies (FHWA and FTA) and partner agencies to identify how these changes affected prior assumptions, data analysis, designs, anticipated impacts and benefits, as well as mitigation for adverse impacts. Building on past work, the program in collaboration with agency partners developed high-level design options to respond to changes while incorporating current regional values and priorities into the IBR Solution. Input on these design options will be gathered through a variety of community engagement strategies. The design options pertain to the following program areas:

- Hayden Island and Marine Drive interchanges including the North Portland Harbor bridge
- Bridge Crossing over the Columbia and Alignment
- Downtown Vancouver
- Vancouver Interchanges
- Transit
- Active transportation improvements

The design options will continue to be developed during the fall of 2021 to show more detail including local street connections and access to multi-use paths, ramps, and transit options. This fall, the program is sharing the design options with the community and is gathering feedback to inform the decision-making process. Following engagement with advisory groups, steering groups and the community, additional refinements, details, or options may be developed as needed to address feedback. Screening criteria are being developed

and aligned with the IBR Desired Outcomes. The criteria will help narrow the design options, which are being informed by multiple sources including:

- Original Purpose & Need and Vision & Values
- Feedback from the community and agencies around transportation problems and values
- Program climate framework
- Program equity framework developed by the Equity Advisory Group
- Community Values and Priorities informed by the Community Advisory Group
- Partner agency engagement and input
- Technical expertise
- Broad community engagement efforts

During November and December 2021, the design options will be evaluated using the screening criteria. Recommendations and decisions will be made through discussions with the program, partner agencies, lead Federal agencies, and the Bi-State Legislative Committee. Ultimately, these options will be woven together into the multimodal draft IBR Solution. Once the draft IBR solution is identified, the program will advance that solution into the detailed environmental review process in spring 2022.

NORTH PORTLAND HARBOR BRIDGE

Since previous studies, the North Portland Harbor bridge has aged another 10 years and it is no longer cost-effective to rehabilitate it. Replacing it will improve seismic resiliency throughout the entire program area and on I-5. Additional work will be done to identify impacts and considerations of replacing this bridge.

Equity considerations: Unclear at this stage.

Climate considerations: Replacement bridge will be designed with current and future river conditions in mind, and it will integrate as appropriate with the overall plan for transit and active transportation.

BRIDGE CROSSING OVER THE COLUMBIA RIVER AND ALIGNMENT OPTIONS

Summary: Initial options for the river crossing will look at the horizontal alignment and configuration of the bridge. The program will work through additional considerations like bridge height and bridge type in the future. Combinations of options being considered include configurations with two separate bridges, a single stacked bridge and alignments that include a curved alignment and a straight alignment. These configurations separate vehicles, high-capacity transit, and the multi-use path in various ways. Some of these options are easier to construct than others, and some result in a smaller footprint over the river. The modeling and screening process will help identify additional tradeoffs to consider when analyzing the options.

Equity considerations: All options provide dedicated transit guideway and dedicated wide multiuse path to create appealing and effective transit and active transportation opportunities. Exposure to noise – of particular importance to pedestrians who are blind or visually impaired and rely heavily on sound to navigate – could differ between the options. Options may also carry different implications in terms of displacement or other impacts to houseless populations living in the area.

Climate considerations: All options provide dedicated transit guideway and dedicated multi-use path space to create appealing and effective transit and active transportation opportunities. Current and future river conditions are taken into consideration.

Figure 1: The 2013 LPA alignment option has two bridges and a curved alignment, with highway lanes on the top level and transit and a multi-use path on the bottom level.

- **Technical considerations:** This option provides a narrowed footprint, with the transit and multi-use path under the highway (in comparison with all modes on one level). The curved alignment connects the new bridge to the existing North Portland Harbor bridge and the existing highway corridor in Vancouver.

Figure 1. 2013 LPA option

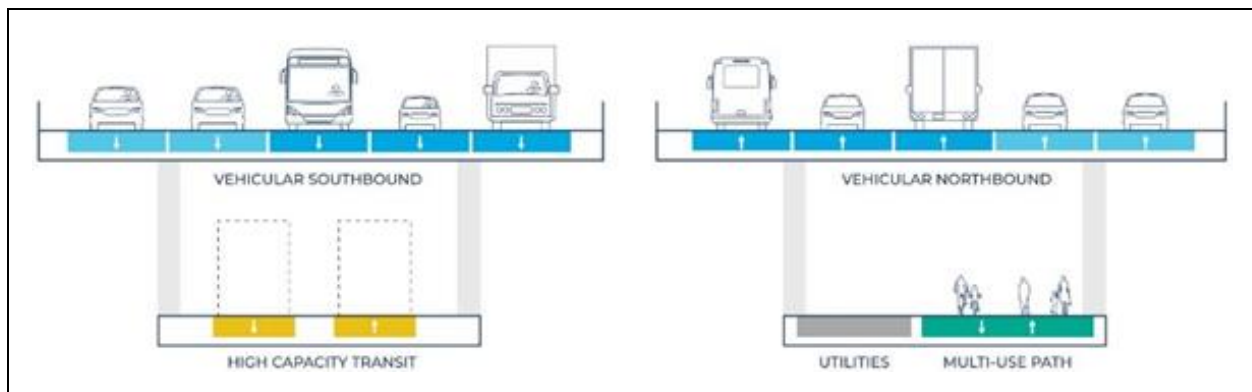


Figure 2. 2013 LPA option, continued



Figure 2: The straight alignment option removes the curve as much as possible while maintaining the two bridge/two-level highway over the transit/multi-use path configuration shown in Figure 2.

- **Technical considerations:** The straight alignment is west of the Interstate 5 (I-5) corridor on Hayden Island. This alignment makes the likely North Portland Harbor bridge replacement less complex. A straight alignment is less complex to construct than a curving structure.

Figure 3. Straight alignment option

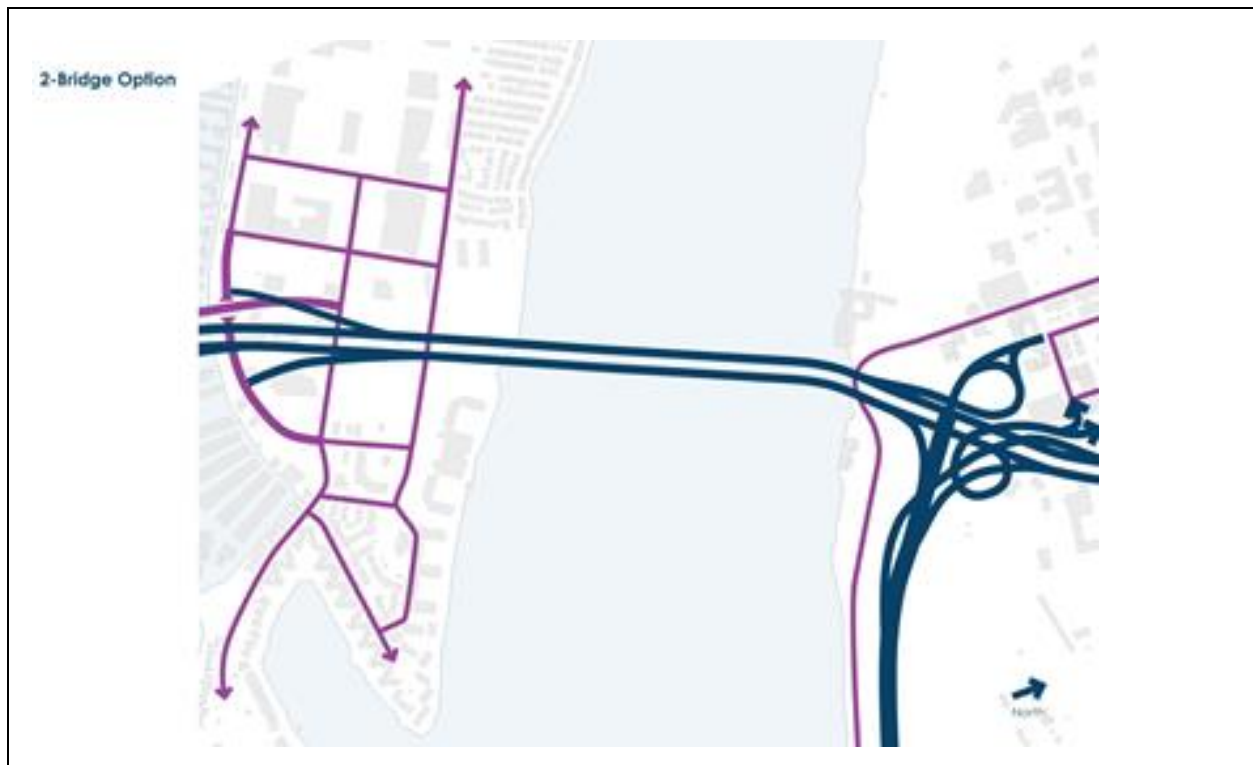
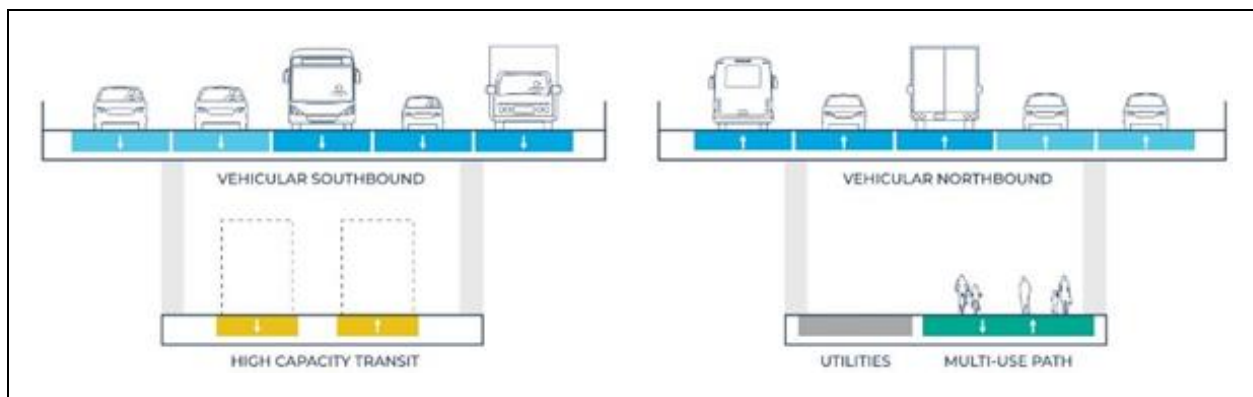
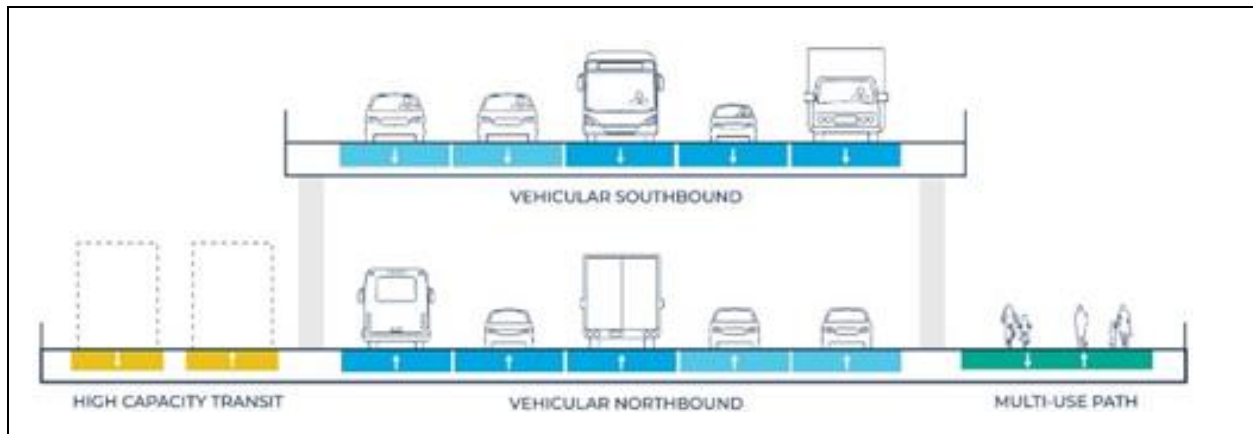


Figure 3: The stacked alignment option consolidates all elements into one bridge, with southbound highway lanes on top of northbound highway lanes. Transit and the multi-use path would be on the lower level on each side of the bridge.

- **Technical considerations:** This one-bridge solution would have a smaller footprint over the river and reduce the number of foundations in the water compared to the other options, thus minimizing impacts to the natural environment and surrounding areas.

Figure 4. Stacked alignment option



DOWNTOWN VANCOUVER OPTIONS

Summary: Preliminary design options in this location consider the alignment and configuration for the downtown and State Route 14 interchange. These options consider ways to connect downtown into a higher I-5 corridor (necessary for bridge replacement options), connect local roadways under I-5, extend Main Street connections under I-5, and connect pedestrian paths from local streets to the river crossing. Additional analysis is needed to identify how to connect from downtown into the river crossing options being considered. The modeling and screening process will help identify additional tradeoffs to consider when analyzing the options.

Equity considerations: Downtown Vancouver has a high proportion of low-income households, people with disabilities, and zero-vehicle households, underscoring the importance of convenient access to transit and active transportation options. East-west connectivity, as emphasized by the EAG, is improved. Options may carry different implications in terms of displacement or other impacts to houseless populations living in the area.

Climate considerations: All design options land the transit and multi-use path in downtown Vancouver creating walkable access to these transportation options.

Figure 4: The interchange option based on the 2013 LPA reconstructs all ramp connections that are currently available and connects the ramps to the higher I-5 corridor. Local roads are extended under the I-5 corridor to extend Main Street and extend the east-west connections under the bridge. The path connects the river crossing to Columbia Street. This configuration is possible with either the curved or the straight alignment river crossing option.

Figure 5. 2013 LPA option

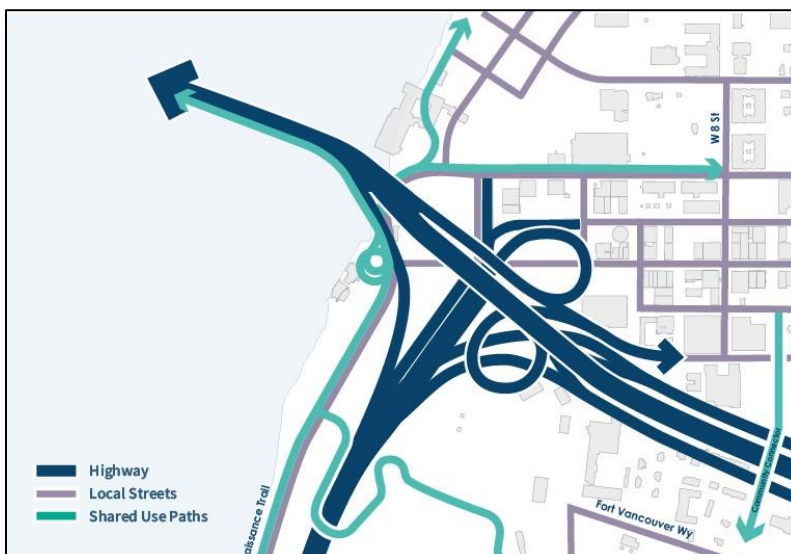
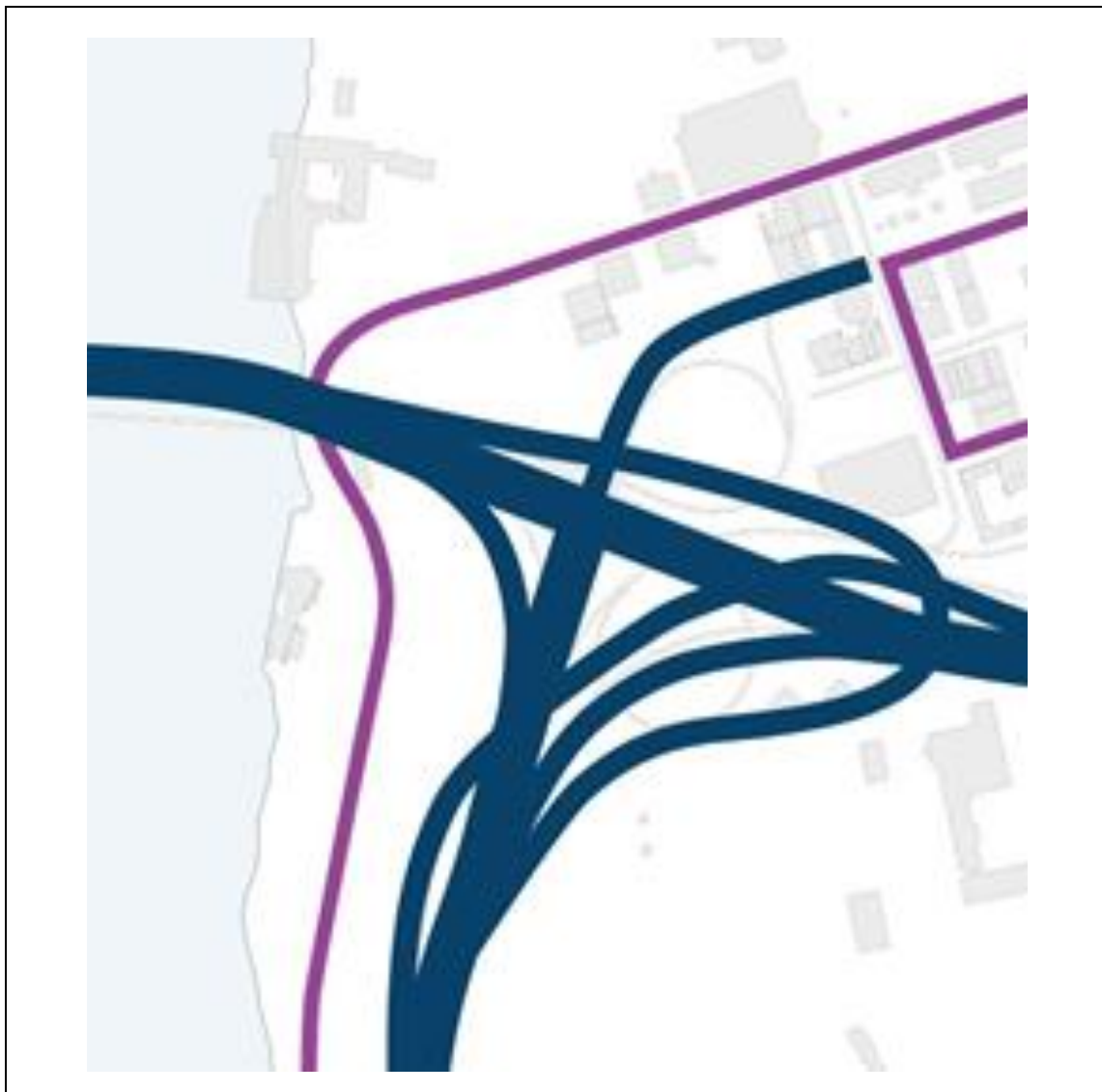


Figure 5: The stacked river crossing alignment over the river results in modified geometry for several ramps. Additional studies are needed to determine if C Street ramps to I-5 can be incorporated into the design.

- **Technical considerations:** The one-bridge solution requires a consistent bridge width across the water. Near land, the interchange can influence the structure width to accommodate ramps, but this location is farther north than it would be with the two-bridge configuration. Removing some ramps and reconfiguring others is required to fit within the bridge constraints.

Figure 6. Option with stacked river crossing alignment



VANCOUVER INTERCHANGE OPTION

Summary: The preliminary design option at the Mill Plain and Fourth Plain exits reconstructs the interchanges with braided ramps and auxiliary lanes at Mill Plain and Fourth Plain and replaces overpasses at other locations along I-5 leading up to the river. The option being considered will incorporate other improvements that require additional engagement, such as improvements to connect bike and pedestrian access across I-5. Additional work is needed after screening and into the design phase to look more closely at intersection improvements at Mill Plain and Fourth Plain.

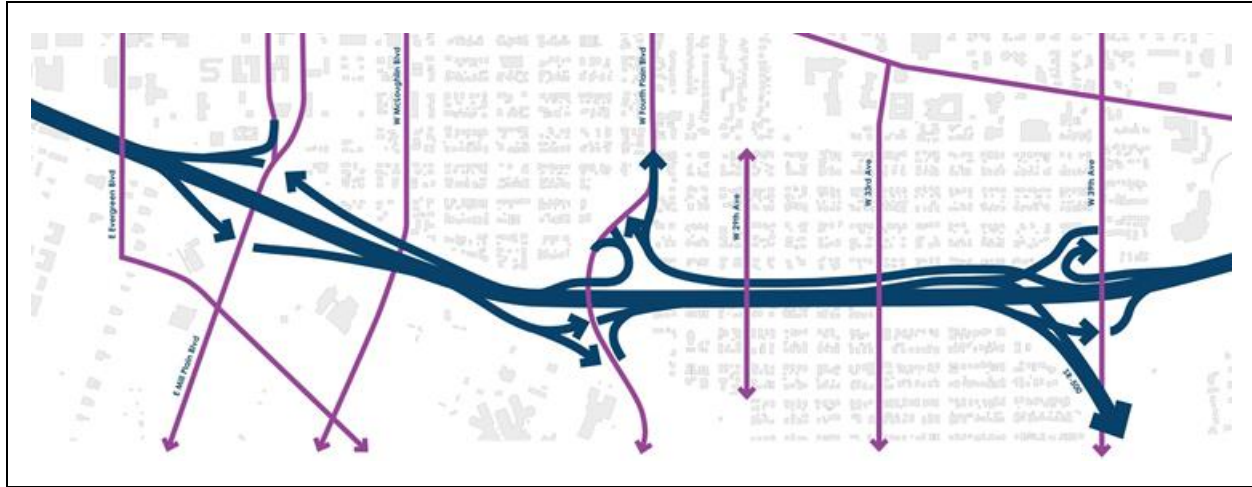
Equity considerations: All designs will improve pedestrian and bike pathways to support east to west travel (as emphasized by the EAG) and access to transit. Important destinations for equity priority communities include the Vancouver Community Library, the VA, Clark College, Hudson's Bay High School (a Title I school), and the Washington State School for the Blind. The Rose Village neighborhood (directly east of I-5 and south of SR-500) has a high proportion of multiple equity priority communities, including over half of households living below 200% of the federal poverty level.¹ Options may carry different implications in terms of displacement or other impacts to houseless populations living in the area.

Climate considerations: All designs will improve pedestrian and bike pathways to support east to west travel and access to transit.

Figure 6: The IBR program will reconstruct the interchanges at Mill Plain and Fourth Plain and will replace the crossing structures at Evergreen, 29th, and 33rd. Highway improvements include braided ramps and auxiliary lanes between closely spaced interchanges. Pedestrian and bike improvements will be incorporated into each bridge crossing I-5, streets under I-5, and a lid near Evergreen Road. As the project progresses into design phases, alternative intersection treatments will be considered at Mill Plain and Fourth Plain. These elements will be refined during the screening process and design.

¹ This is the threshold for the IBR program's definition of a low-income household.

Figure 7. Vancouver interchange option



HAYDEN ISLAND AND MARINE DRIVE INTERCHANGES OPTIONS

Summary: Design options being considered for roadway and interchange configurations include improvements to Marine Drive and a partial interchange, no interchange, or a full interchange on Hayden Island. The below drawings show high-level graphic representations of a variety of concepts being considered with small variations to local roadway connections. These options identify ways to access Hayden Island through Marine Drive if access from I-5 is not on the island and identify ways to connect local streets under I-5. Additional engagement is needed to determine details for connecting multi-use paths, with the intention to connect to the 40-mile loop trail.

Equity considerations: A significant number of retail and service industry jobs are located in this area. In terms of residents, Hayden Island has a high proportion of older adults and people with disabilities. All design options improve east-west connectivity, as emphasized by the Equity Advisory Group. A smaller footprint may result in more opportunities for ancillary development. Options may carry different implications in terms of displacement or other impacts to houseless populations living in the area that have not yet been determined.

Climate considerations: All design options strive to 1) improve access, safety and comfort for people walking and biking; 2) increase access and connection to transit options; and 3) foster walkable neighborhoods.

Figure 7: Full interchange configurations were included in the 2013 LPA. This configuration includes complete interchanges on both Hayden Island and Marine Drive. The multi-use path connects the river-crossing bridge to the 40-mile loop trail, with connections on Hayden Island. Local streets are reconnected under I-5 with some variations, including a third crossing under I-5 for Tomahawk Island Drive and an arterial bridge connecting Hayden Island to Expo Road. Roadway infrastructure is farther west in comparison with the LPA to replace the North Portland Harbor bridge. Note the graphic in Figure 7 is a sample and other options are also under consideration.

Figure 8. Full-interchange option

This shows a high-level graphic representation of a variety of concepts being considered with small variations to local roadway connections.

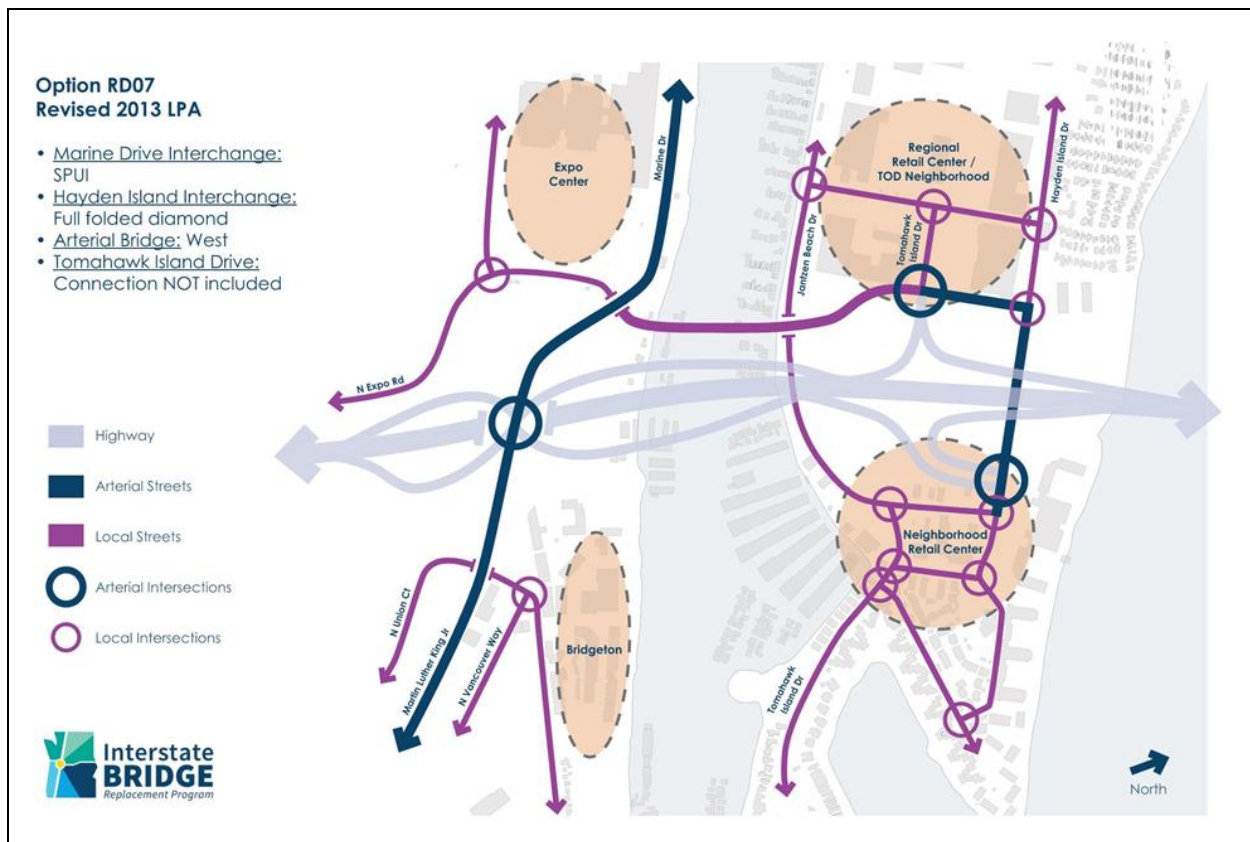


Figure 8: The partial interchange configurations provide ramps to/from the north to Hayden Island. A complete interchange at Marine Drive with access to/from the south is provided through the Marine Drive interchange and an arterial bridge connection between Marine Drive and Hayden Island. The multi-use path connects the river-crossing bridge to the 40-mile loop trail with connections on Hayden Island. Local streets are reconnected under I-5, including a third crossing under I-5 for Tomahawk Island Drive.

- **Technical considerations:** This configuration reduces the overall width, footprint, and associated impacts of the infrastructure improvements across North Portland Harbor and Hayden Island.

Figure 9. Partial-interchange option

This shows a high-level graphic representation of a variety of concepts being considered with small variations to local roadway connections.

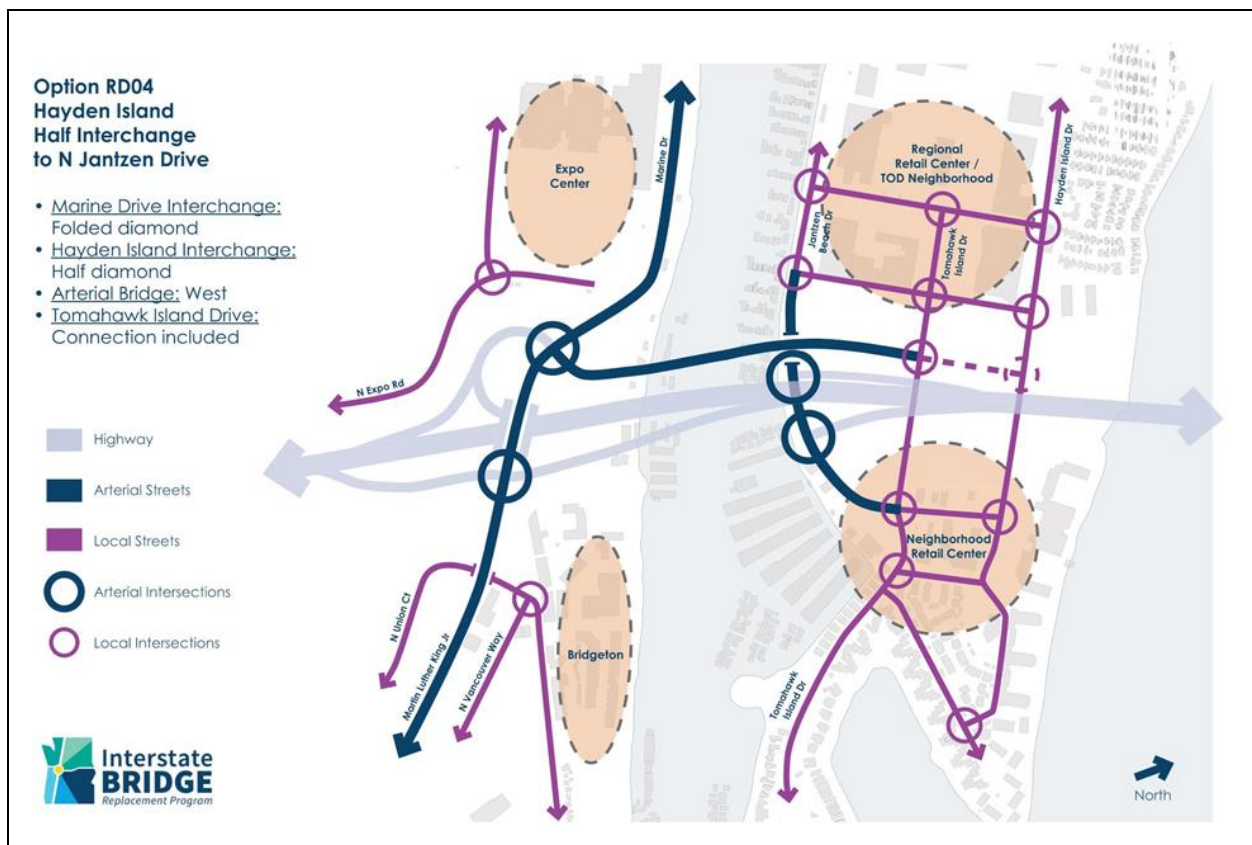
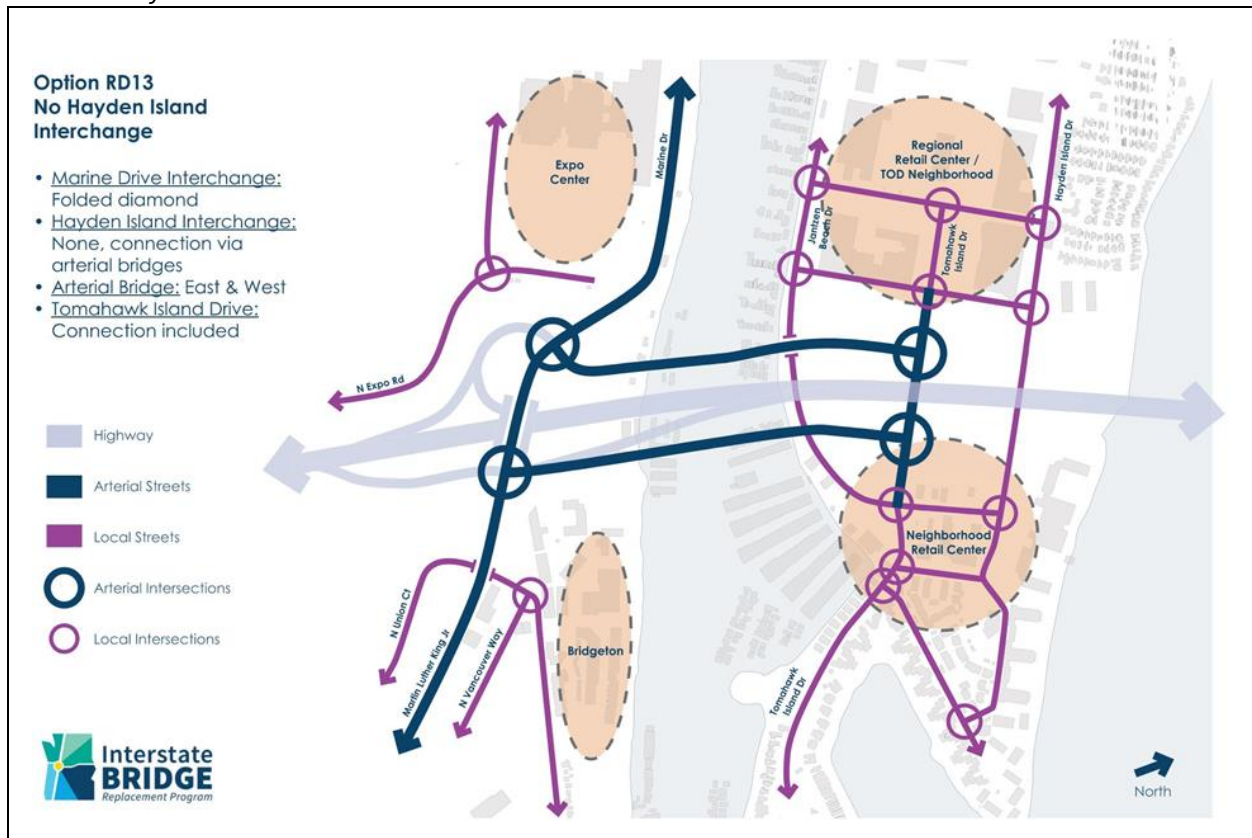


Figure 9: The no-interchange configurations provide a complete interchange on Marine Drive and access to Hayden Island through the Marine Drive interchange and arterial bridges.

- **Technical considerations:** This configuration minimizes the overall width, footprint, and associated impacts of the infrastructure improvements across North Portland Harbor and Hayden Island.

Figure 10. No-interchange option

This shows a high-level graphic representation of a variety of concepts being considered with small variations to local roadway connections.



TRANSIT OPTIONS

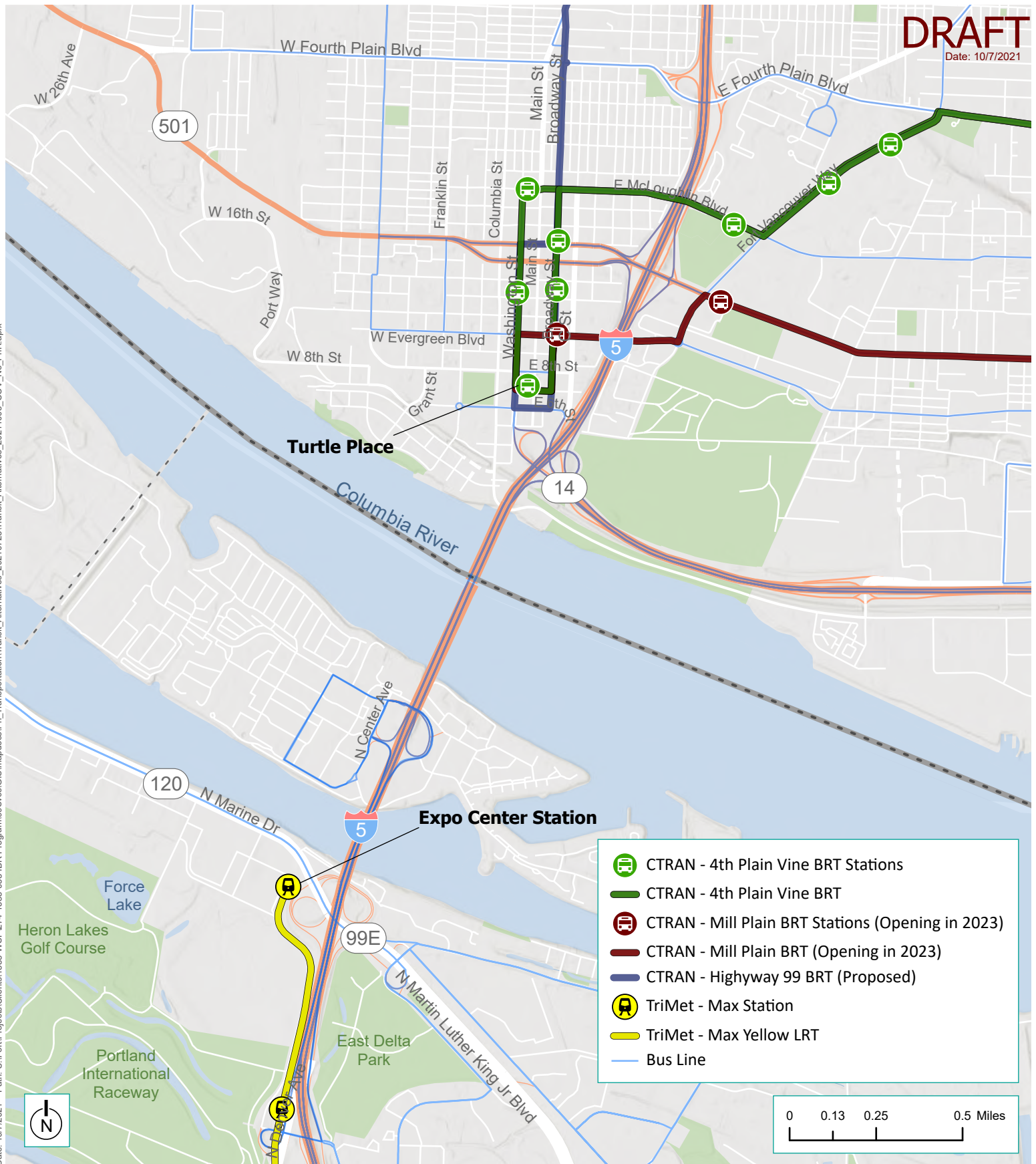
Transit options will have a unique set of data and analysis to inform decision making and support the data-driven process to identify how each transit option performs. The below measures will evaluate transit performance of the representative transit alignment options.

EVALUATION MEASURE	ALTERNATIVE SNAPSHOT
 Ridership	
 Transit Boardings	
 Corridor Transit Trips	
 I-5 Columbia River crossings	
 Station Mode of Access	
 Park and Ride Demand	
 Market Analysis	
 Transit Travel Time	
 Capital Costs	
 Operating and Maintenance Costs	
 Climate Resiliency	
 Proximity to HCT for Equity Priority Communities	
 Mobility for Equity Priority Communities	
 Potential Property Impacts	

Summary: Current preliminary transit options include various representative HCT alignments that expand transit service. These options extend both bus rapid transit and/or light rail from their current area of service to stations on Hayden Island and Vancouver. This list also includes an option with Express Bus.

Equity considerations: Station locations, mobility improvements, and property impacts are all key considerations in the development of transit options.

Climate considerations: All options increase transit choices for interstate travel in the program area.

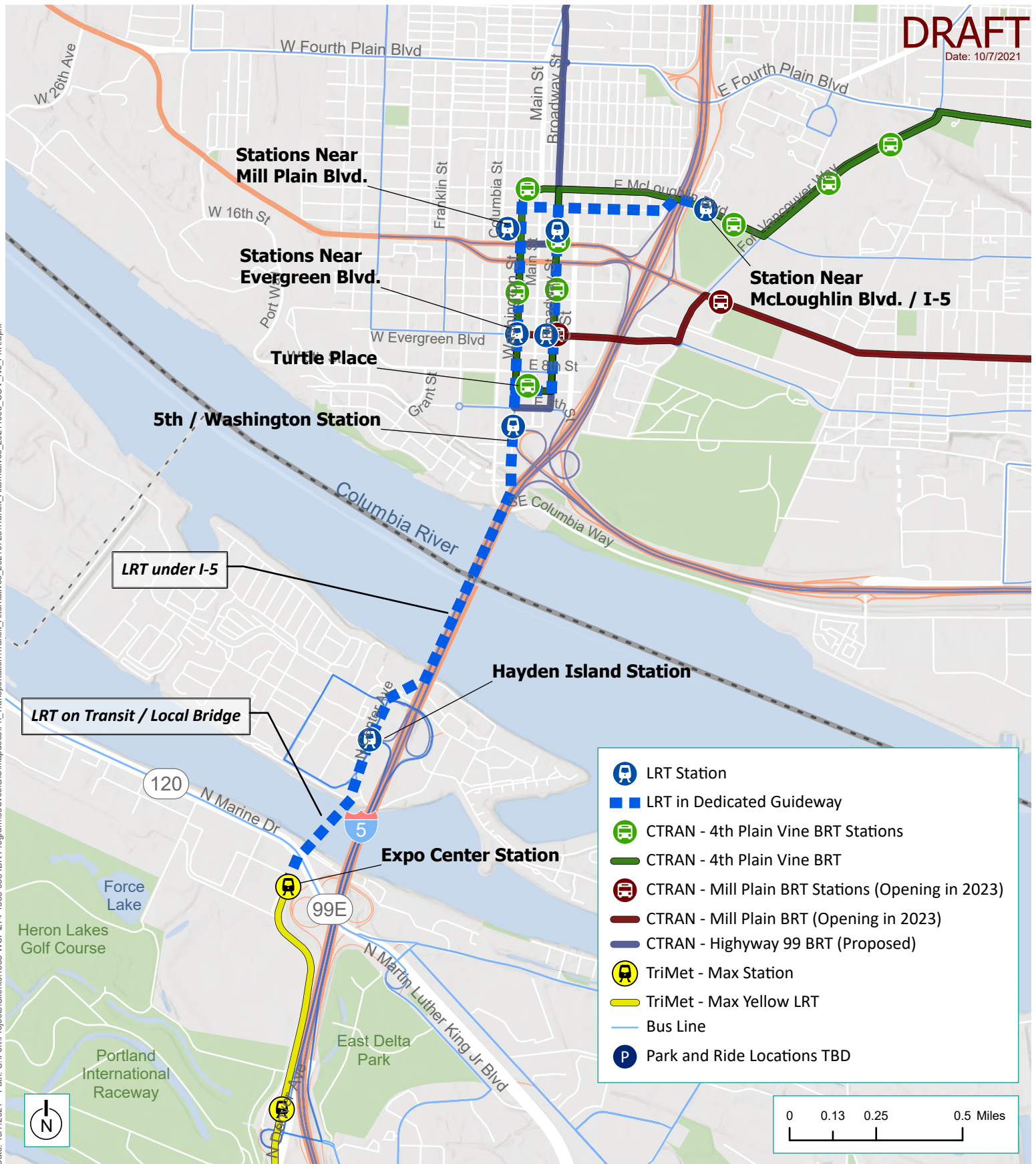


Source: ODOT, WSDOT, ESRI, Mapbox, OpenStreetMap

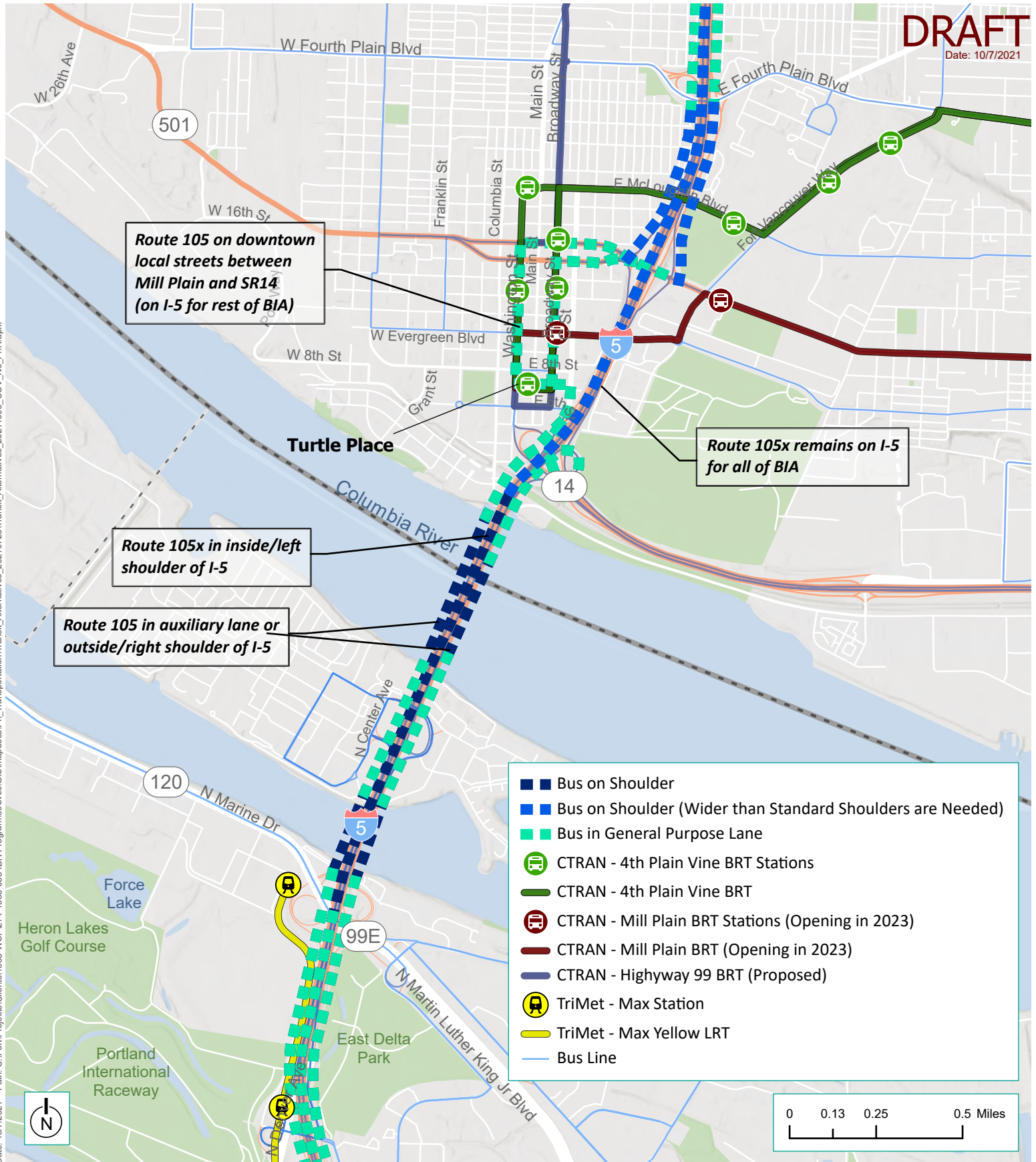
B 2045 Transit Project in the ROD

2045 IBR Model with RTP / MTP that includes CRC LPA

DRAFT
Date: 10/7/2021



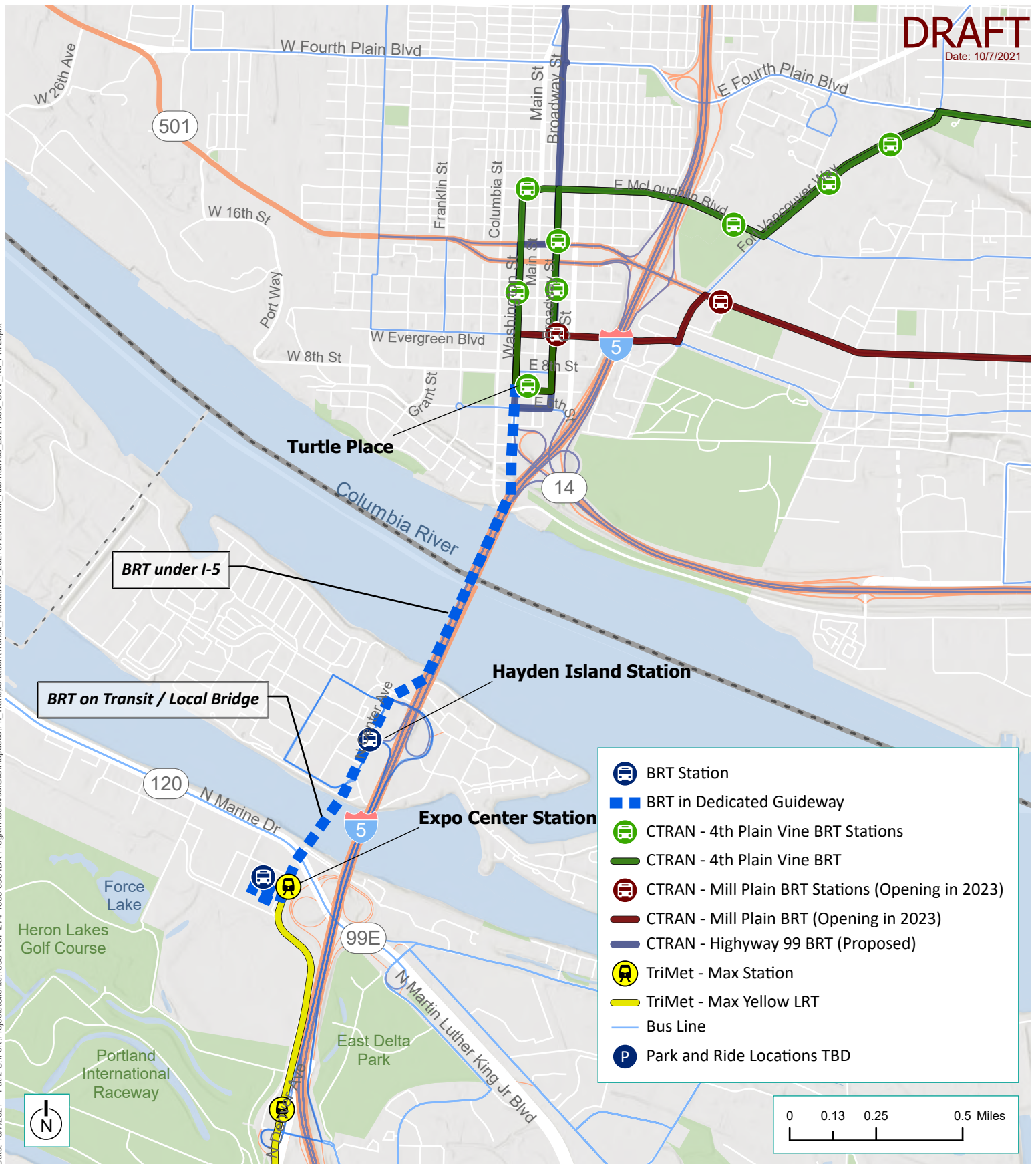
Source: ODOT, WSDOT, ESRI, Mapbox, OpenStreetMap



D Dedicated BRT Turtle to Expo

Dedicated BRT Connection - Extend Vine(s) from Turtle Place to Expo Center

DRAFT
Date: 10/7/2021

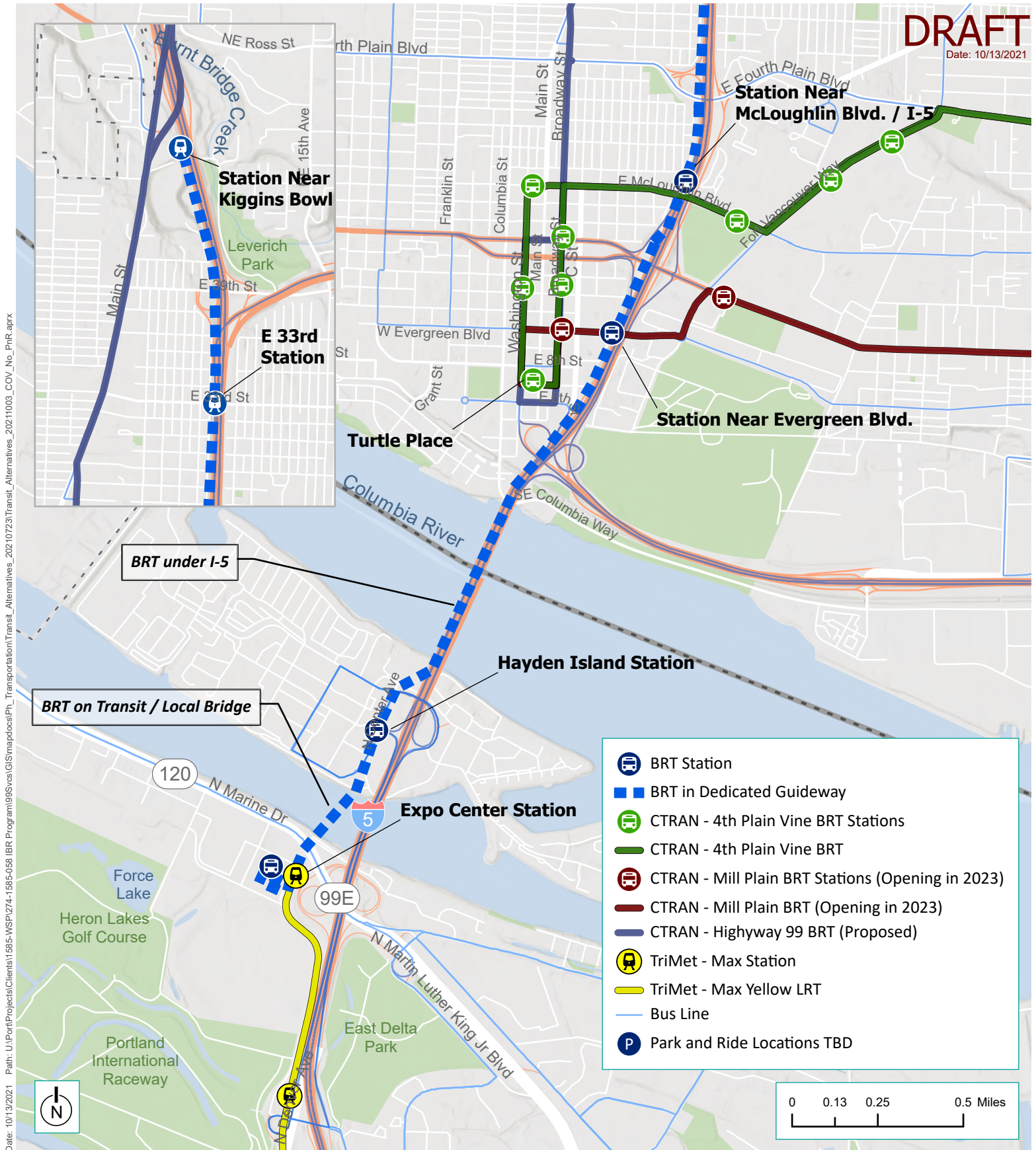


Source: ODOT, WSDOT, ESRI, Mapbox, OpenStreetMap

E Dedicated BRT Hugging I-5

Dedicated BRT Connection - Kiggins Bowl to Expo Center on an I-5 Adjacent Dedicated Guideway (West Side of I-5)

DRAFT
Date: 10/13/2021

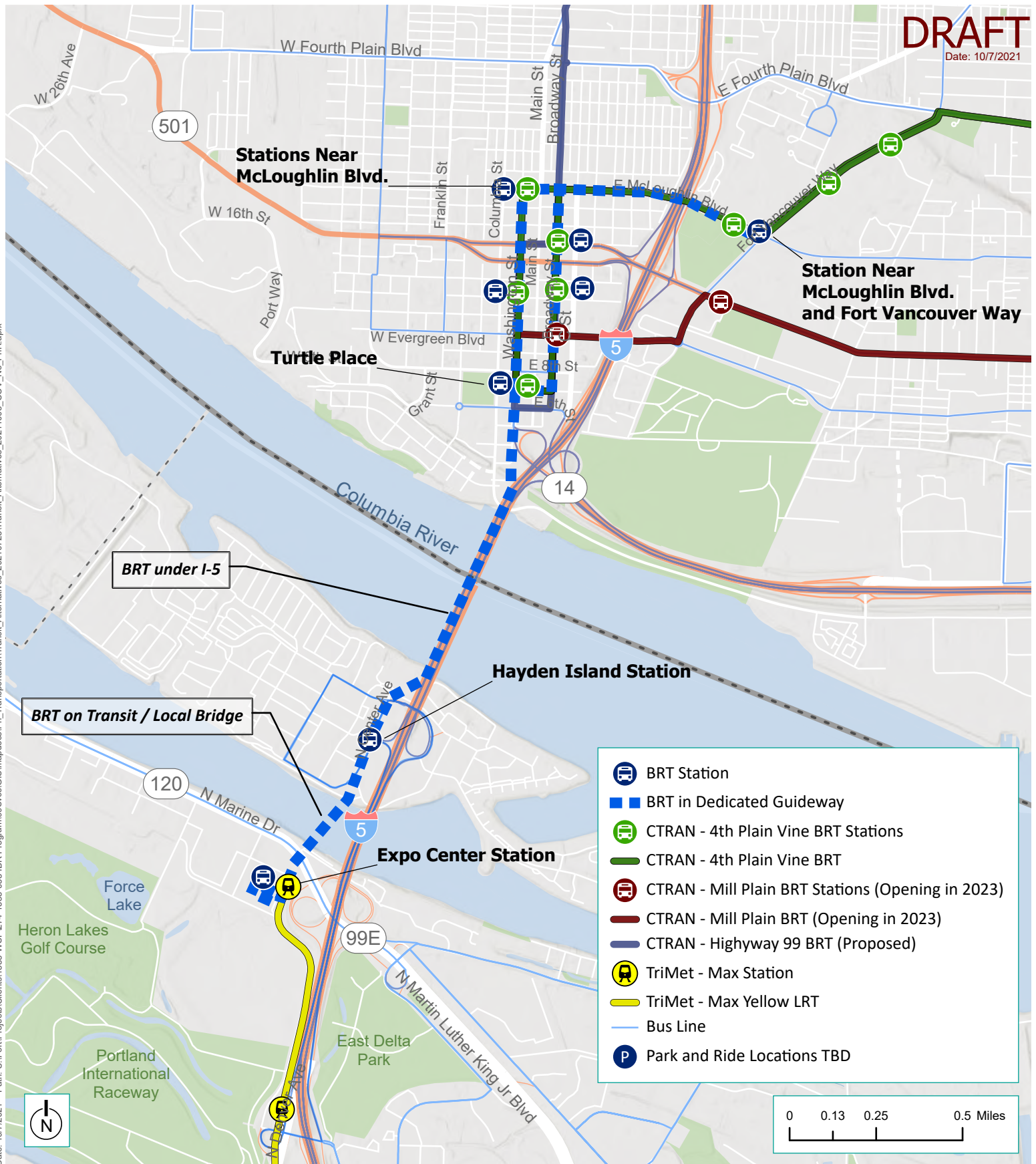


Source: ODOT, WSDOT, ESRI, Mapbox, OpenStreetMap

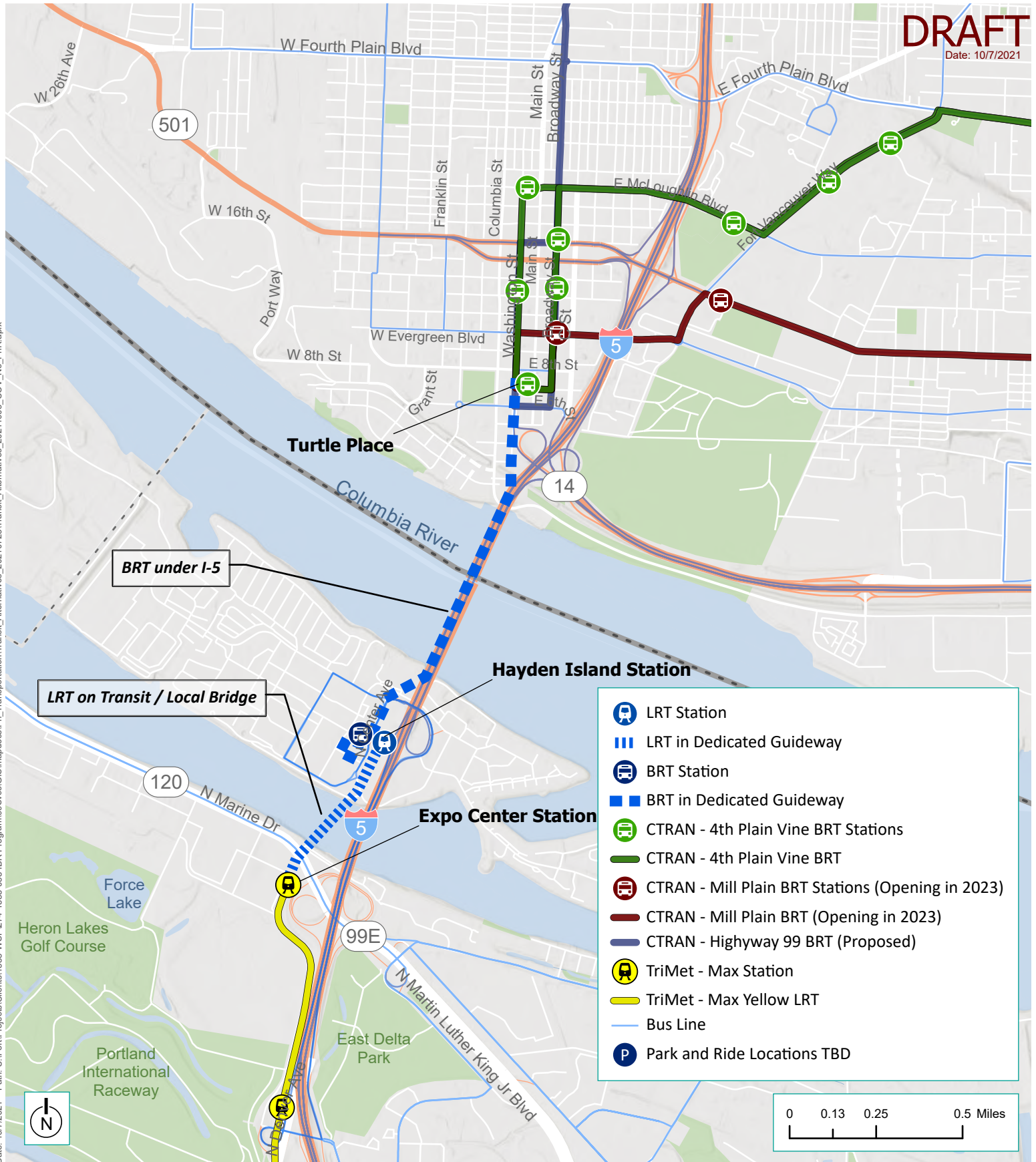
F Dedicated BRT through the CBD

Dedicated BRT Connection - McLoughlin/I-5 to Expo Center in a
Dedicated Guideway on the 2013 Transit Alignment

DRAFT
Date: 10/7/2021



Source: ODOT, WSDOT, ESRI, Mapbox, OpenStreetMap



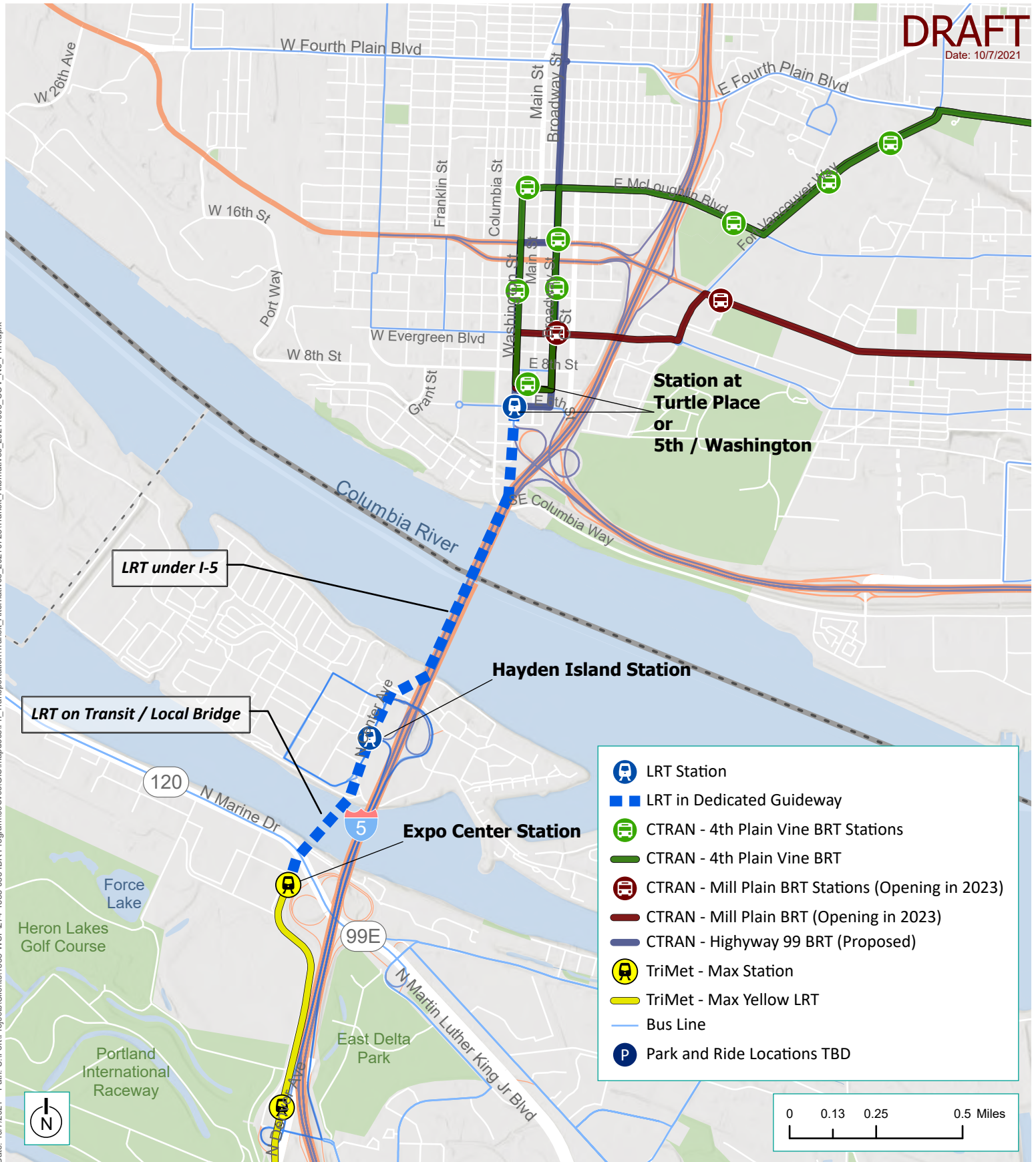
Source: ODOT, WSDOT, ESRI, Mapbox, OpenStreetMap



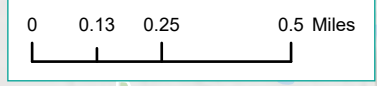
LRT One Station in Vancouver

LRT Extension from Expo Center to Hayden Island to a Single Station with Terminus in Vancouver

DRAFT
Date: 10/7/2021



- LRT Station
- LRT in Dedicated Guideway
- CTRAN - 4th Plain Vine BRT Stations
- CTRAN - 4th Plain Vine BRT
- CTRAN - Mill Plain BRT Stations (Opening in 2023)
- CTRAN - Mill Plain BRT (Opening in 2023)
- CTRAN - Highway 99 BRT (Proposed)
- TriMet - Max Station
- TriMet - Max Yellow LRT
- Bus Line
- Park and Ride Locations TBD

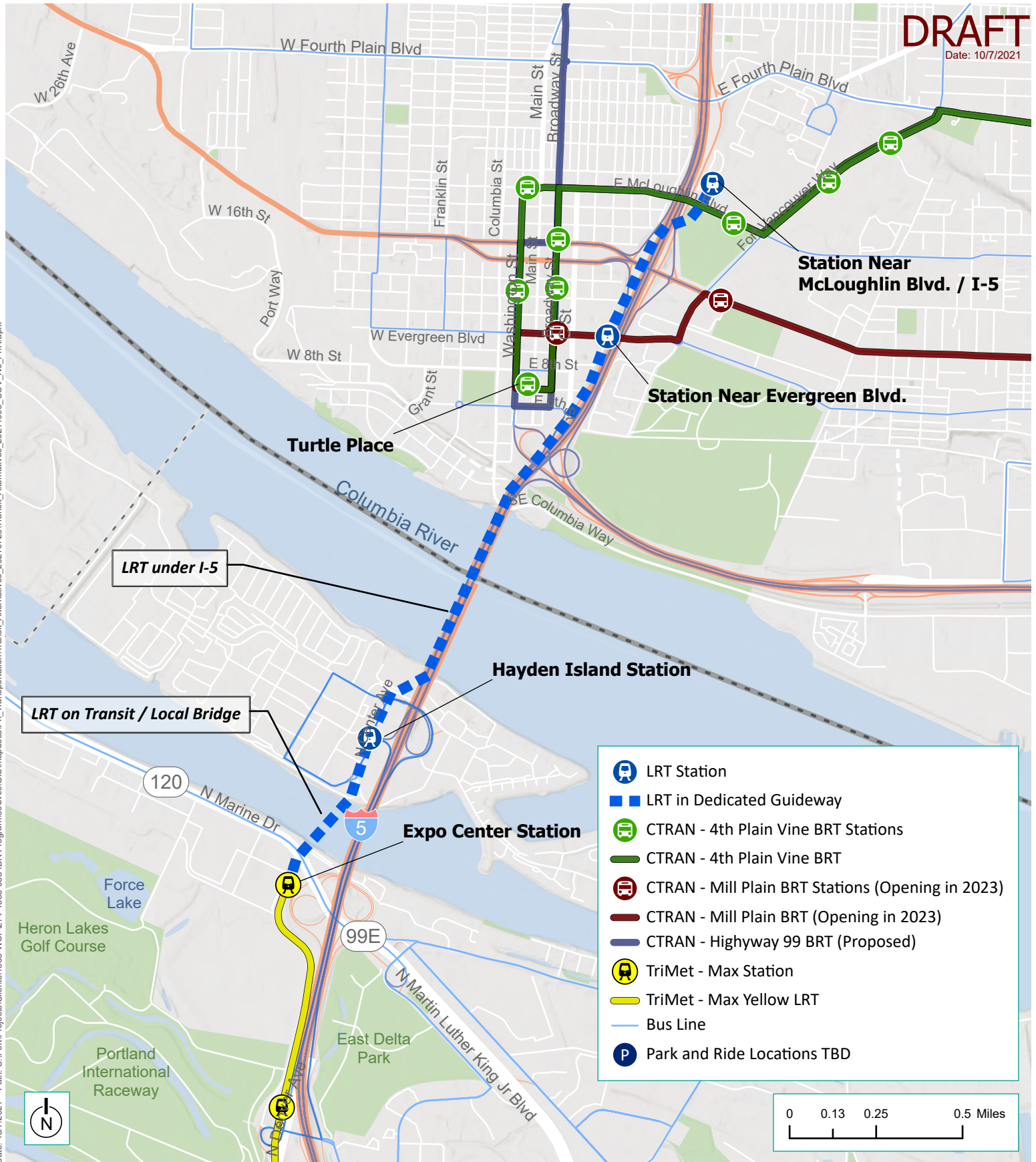


Source: ODOT, WSDOT, ESRI, Mapbox, OpenStreetMap

I LRT Hugging I-5 to near McLoughlin

LRT Extension from Expo Center to a Terminus near McLoughlin/I-5 on an I-5 Adjacent Alignment (Center/West Side of I-5)

DRAFT
Date: 10/7/2021



Source: ODOT, WSDOT, ESRI, Mapbox, OpenStreetMap

J LRT Hugging I-5 to Kiggins Bowl

LRT Extension from Expo Center to a Terminus near Kiggins Bowl on an I-5 Adjacent Alignment (Center / West Side of I-5)

DRAFT
Date: 10/7/2021

Date: 10/7/2021 Path: U:\Port\Projects\Clients\1585-WSP\274-1585-058 IBR Program\99\Srcs\GIS\mapdocs\Ph_T\Transportation\Transit_Alternatives_20211003_COV_No_PnR.aprx



Source: ODOT, WSDOT, ESRI, Mapbox, OpenStreetMap

Council Update: Interstate Bridge Replacement (IBR) Program

VANCOUVER
CITY HALL

CITY OF
Vancouver
WASHINGTON

January 24, 2022

Katherine Kelly, Senior Policy Advisor
Community Development Department

Identifying a Modified Locally Preferred Alternative (LPA)

January 24 Workshop: Design Options Overview

➤ ***Council Discussion***

April 11 Workshop:

- Review Refined Design Options
- Review draft language for a Modified Locally Preferred Alternative (LPA)

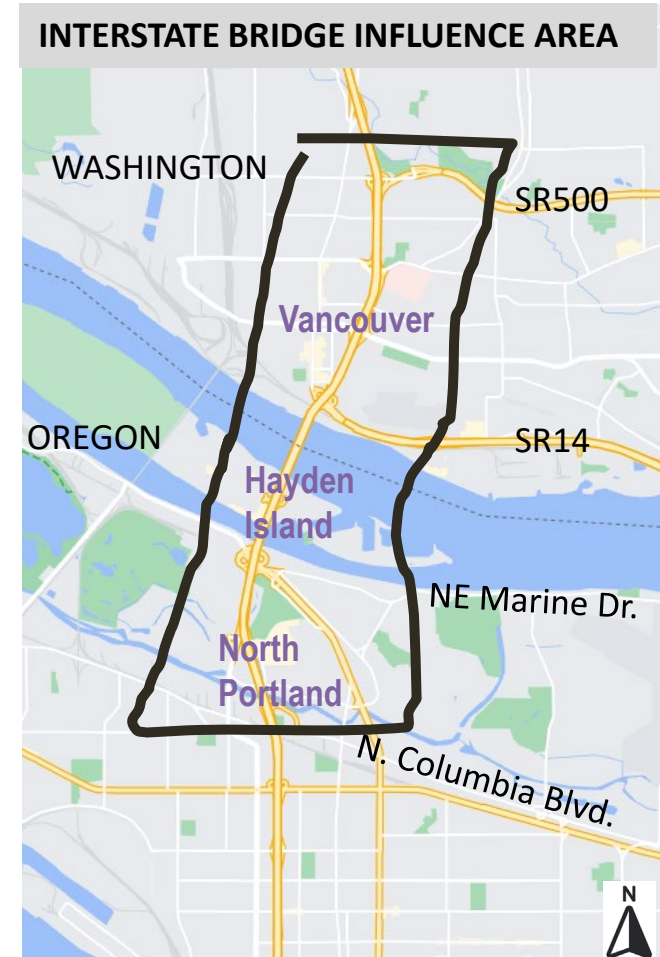
➤ ***Council Direction on draft Modified Locally Preferred Alternative***

June 6 Workshop: Review Draft Resolution for a Modified Locally Preferred Alternative

➤ ***Council Feedback on Draft Resolution***

June 27 Consent:

➤ ***Seeking Council Approval of Resolution endorsing a Modified Locally Preferred Alternative***



Today's Presentation

- Program Purpose and Need
- Recap of Vancouver Desired Outcomes
- Current Design Options
- Overview of Tolling
- Next Steps
- Council Discussion



Program Purpose and Need

There are six primary problems to be addressed:



**GROWING TRAVEL DEMAND
AND CONGESTION**



**SAFETY ISSUES WITH
CURRENT DESIGN**



**INADEQUATE BICYCLE AND
PEDESTRIAN FACILITIES**



**IMPAIRED FREIGHT
MOVEMENT**



**LIMITED PUBLIC
TRANSPORTATION**



**SEISMIC
VULNERABILITY**

Designs to address the problems must meet or exceed state, regional, local goals for
CLIMATE and **EQUITY**

Modified Locally Preferred Alternative (LPA) Components

- ✓ **Replacement Bridge across Columbia River**
- ✓ **Transit in a Dedicated Guideway**
 - **Alignment**
 - **Terminus**
 - **Mode**
- ✓ **Interchange Improvements**
- ✓ **Active Transportation Enhancements**
- ✓ **North Portland Harbor Bridge**
- ✓ **Tolling**

Bridge Design Considerations

Height Clearances

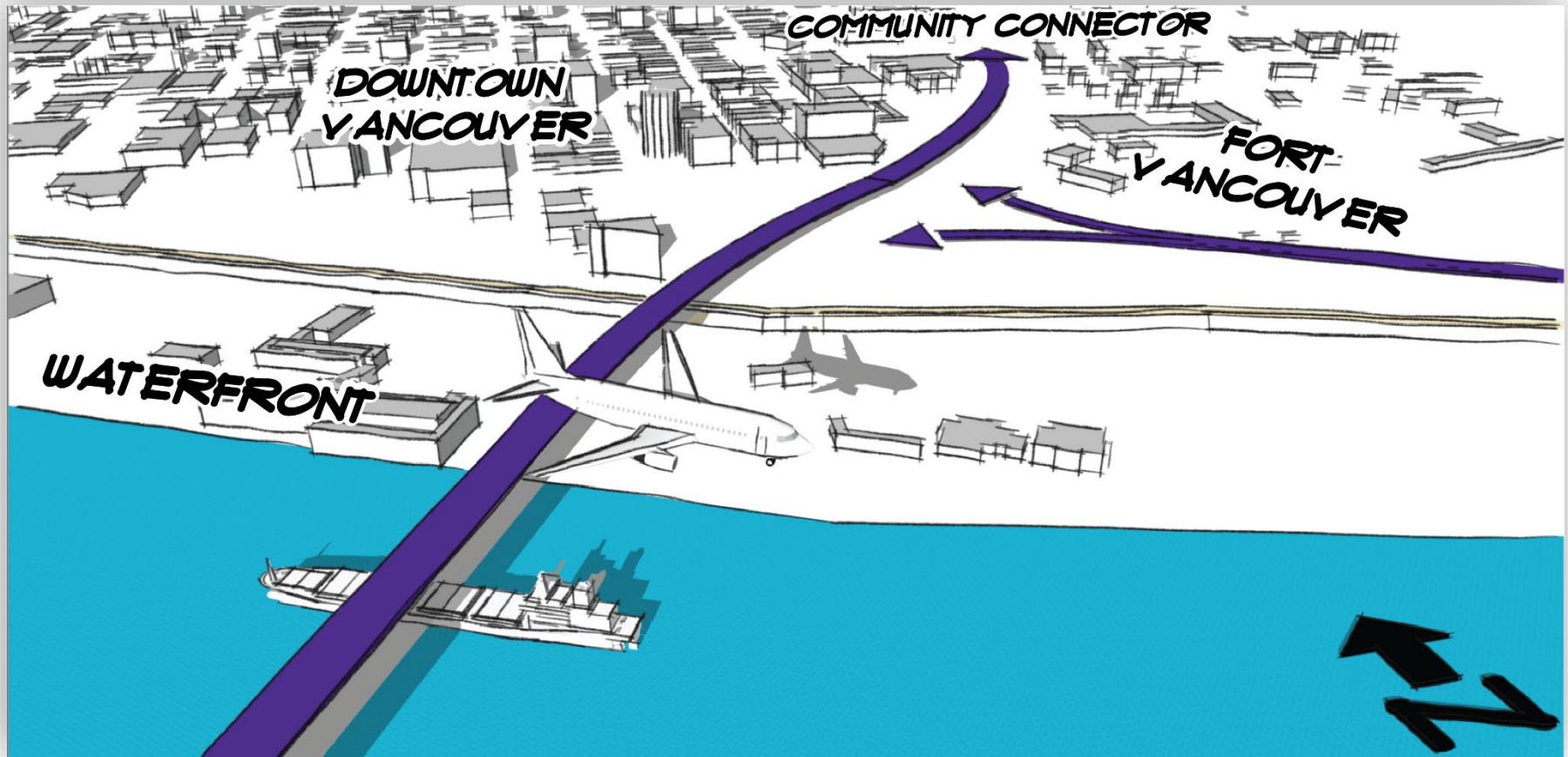
- PDX
- Marine navigation
- BNSF railroad line
- Overpasses

Grade Limits

- Access ramps
- Roadbed and Bike/Ped ways
- Freight movements must be accommodated

Limits on Width

- Downtown (west)
- Fort Vancouver /Historic Area/ land bridge (east)
- Community Connector over I-5 (North)



Desired Outcomes (Res. M-4140, 7/26/2021)

Enhance the Built Environment

- Seismically resilient
- Improve connectivity
- Improve access for all modes/users
- Extend Main St. to waterfront
- Dedicated guideway for transit
- Do placemaking
- Replace/upgrade subsurface assets

Ensure Mobility

- Efficient, connected, safe movement
- Reliable travel
- Reduce congestion and no lift span
- Reduce impact on local roads
- Reduce collisions
- Tolling to fund construction
- Retain 3 through travel lanes

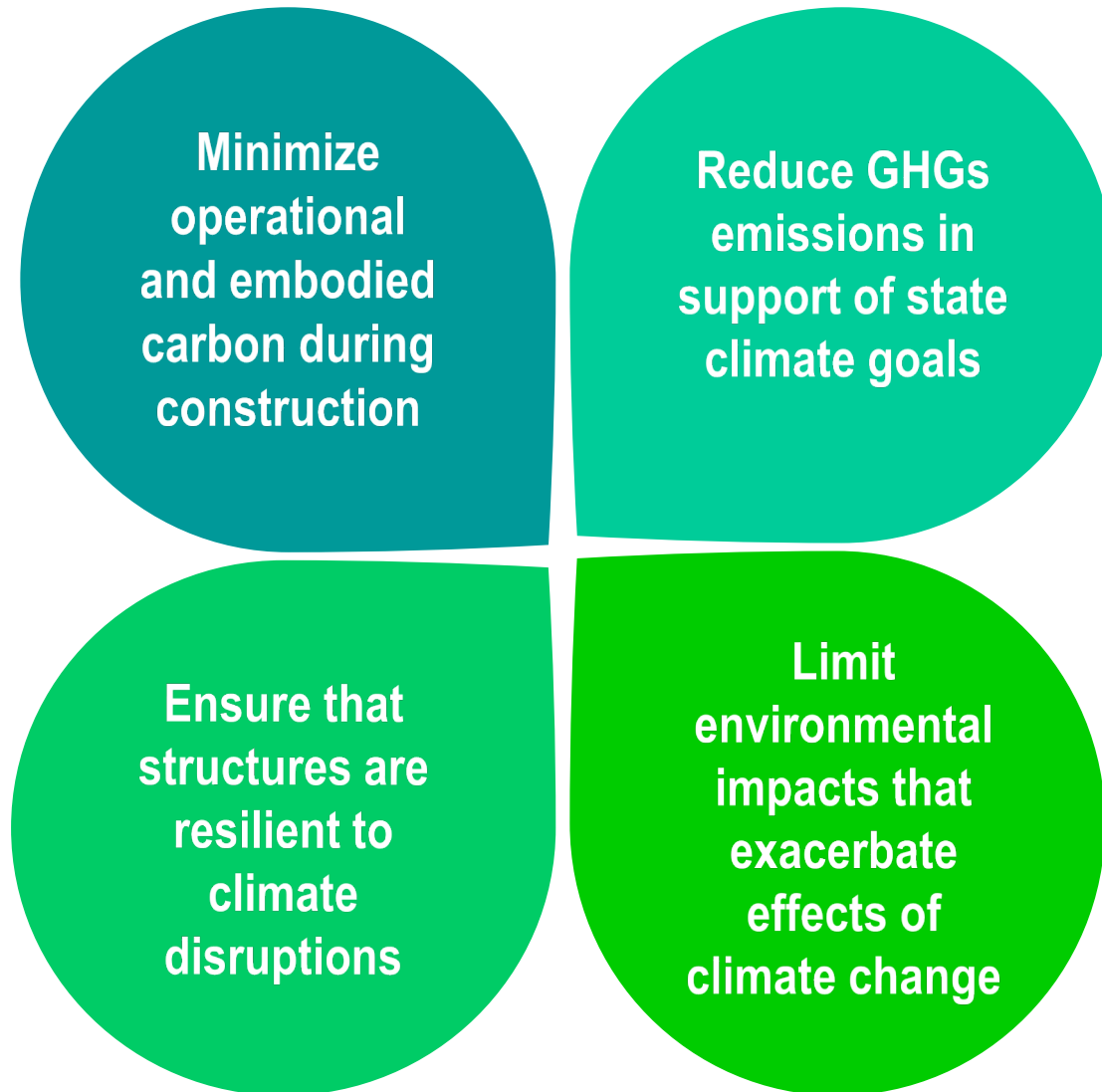
Do Excellent Urban Design

- Prioritize movement of people, freight, goods
- Center human and natural systems
- Connect east/west via a “lid”
- Create new public open spaces
- Integrate transit with existing and planned
- Aesthetics and landmark elements

Efficiently Construct, Operate, Maintain

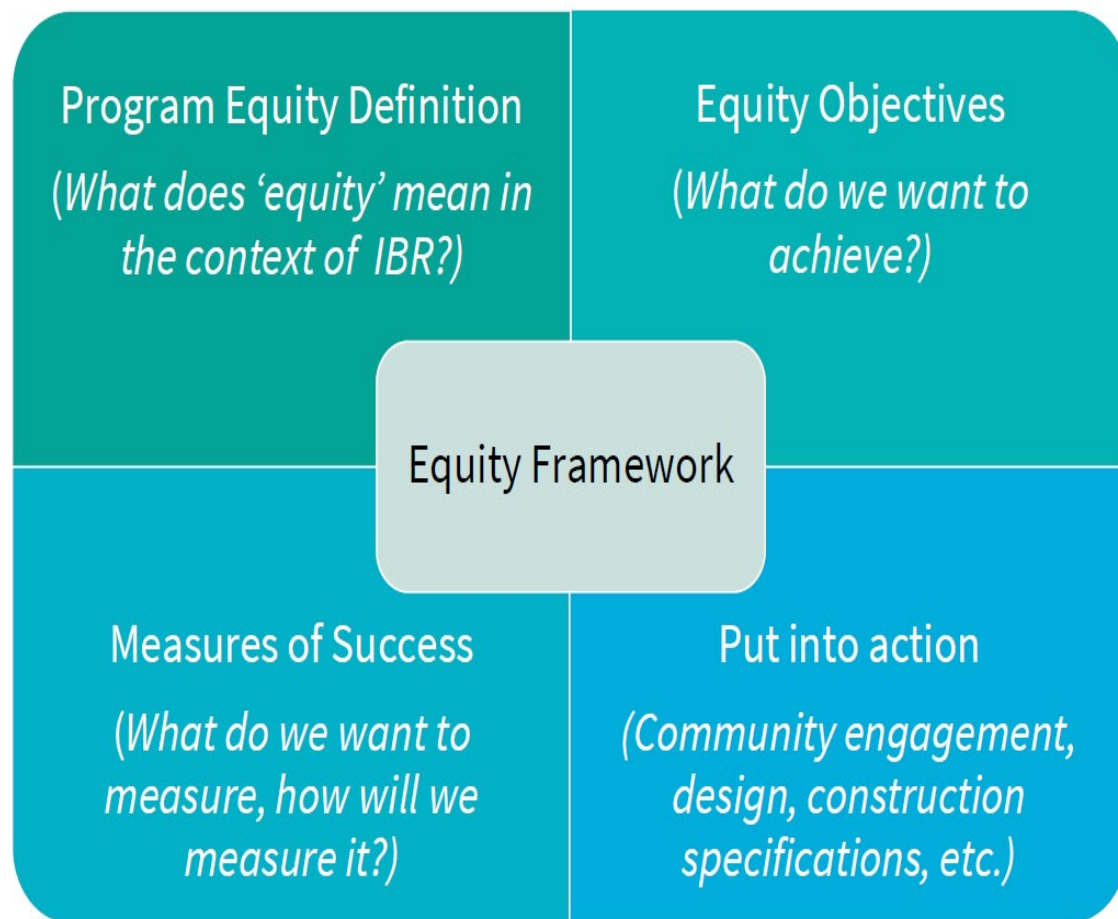
- Meet/exceed WMDBE requirements
- Create inter-generational wealth
- Implement tolling in equitable manner
- Mitigate impacts -businesses, residents, visitors
- Manage costs
- Use climate smart construction

Prioritizing Climate



*Minimize Impacts
and
Create Resiliency*

Prioritizing Equity

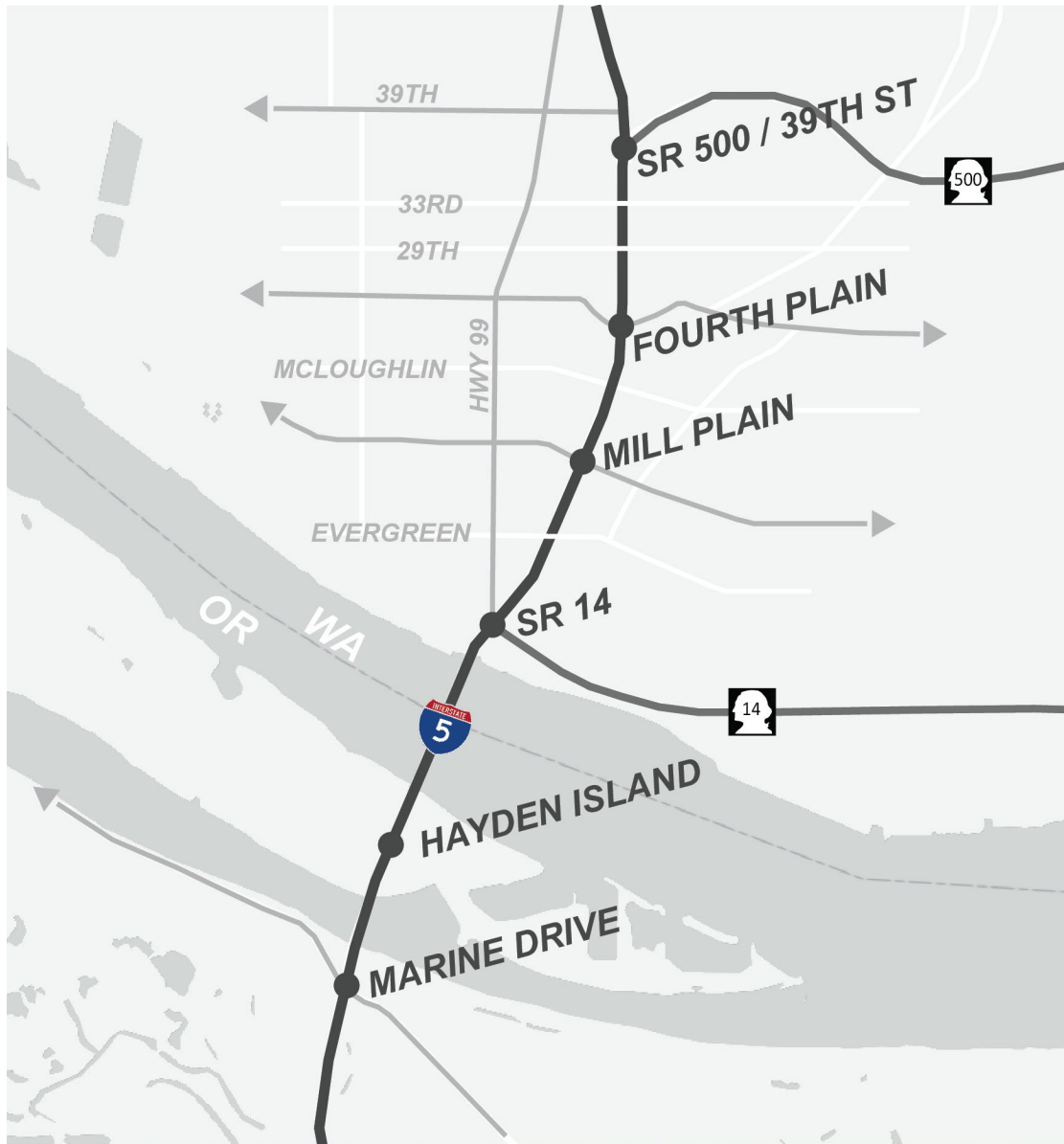


*Process Equity
and
Outcome Equity*



DESIGN OPTIONS: Interchanges, River Crossing, and Transit

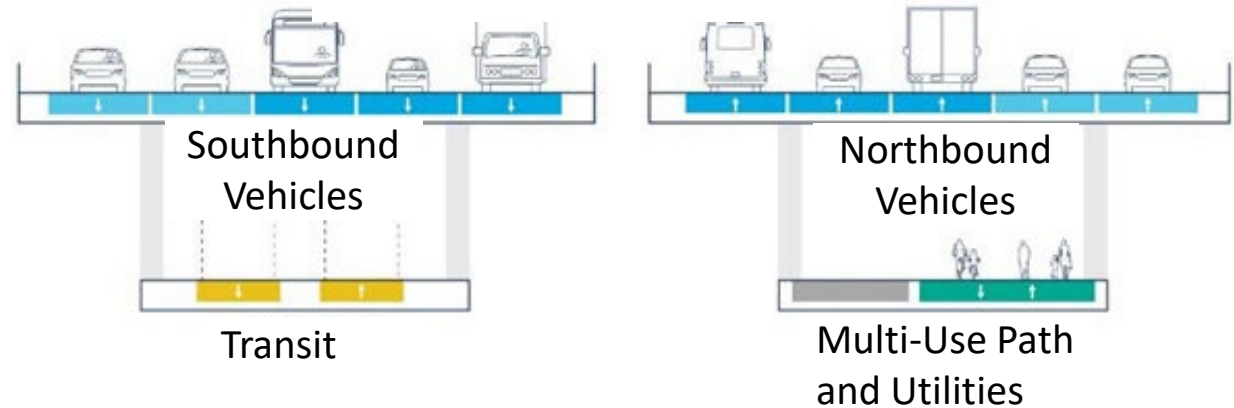
Interchanges and Enhanced Connections



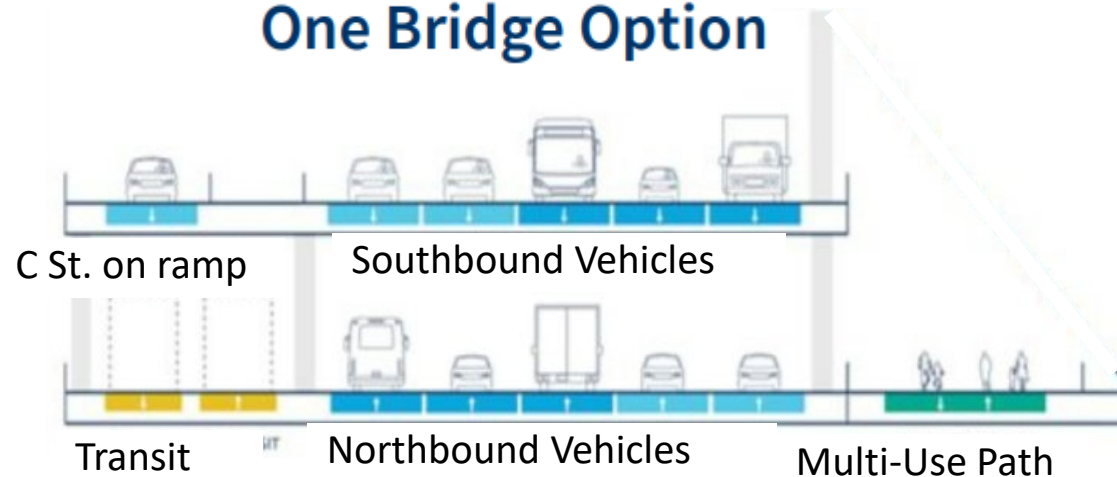
River Crossing Options

- All options provide a dedicated transit guideway and Multi-Use Path
- Options differ in constructability and footprint
- Additional design work will determine bridge height, width, and number of support columns required

Two Bridge Option

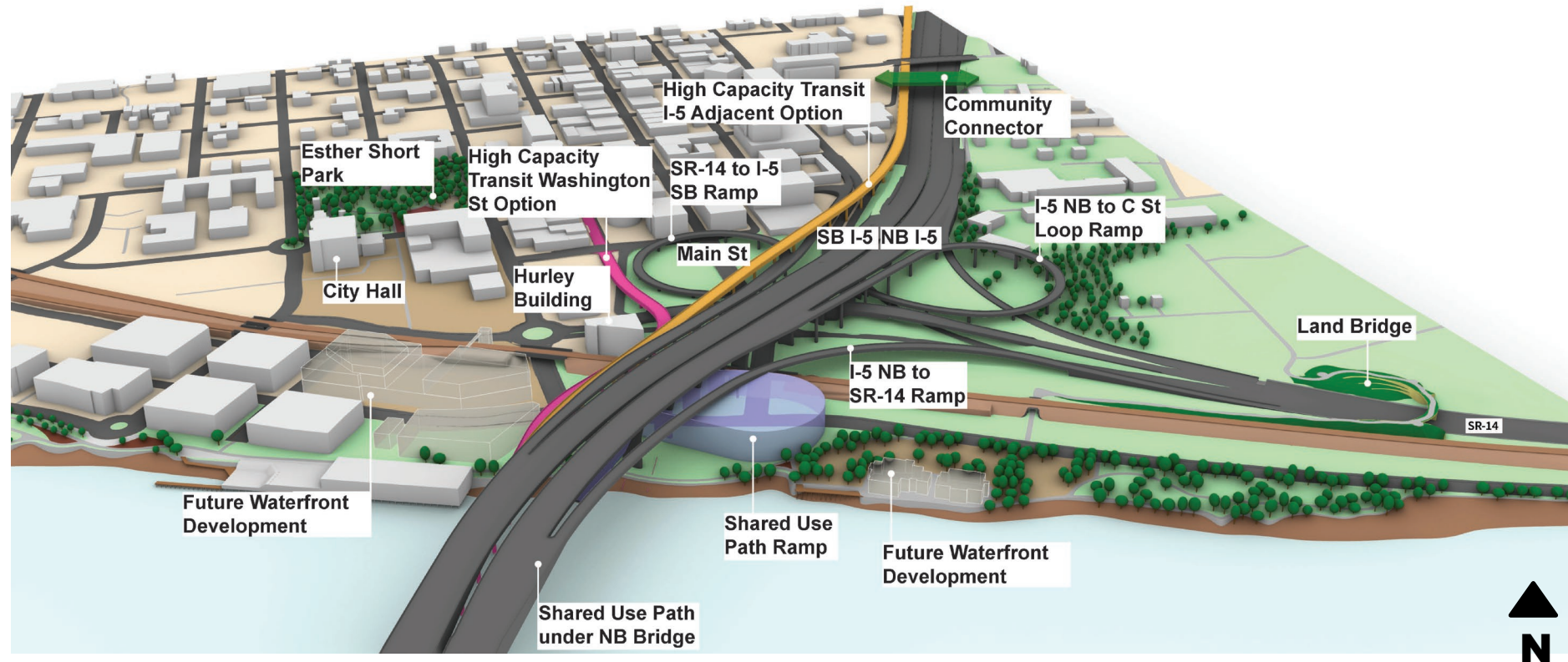


One Bridge Option



River Crossing: Two Bridge Option

Looking north toward Downtown Vancouver/ Historic Reserve

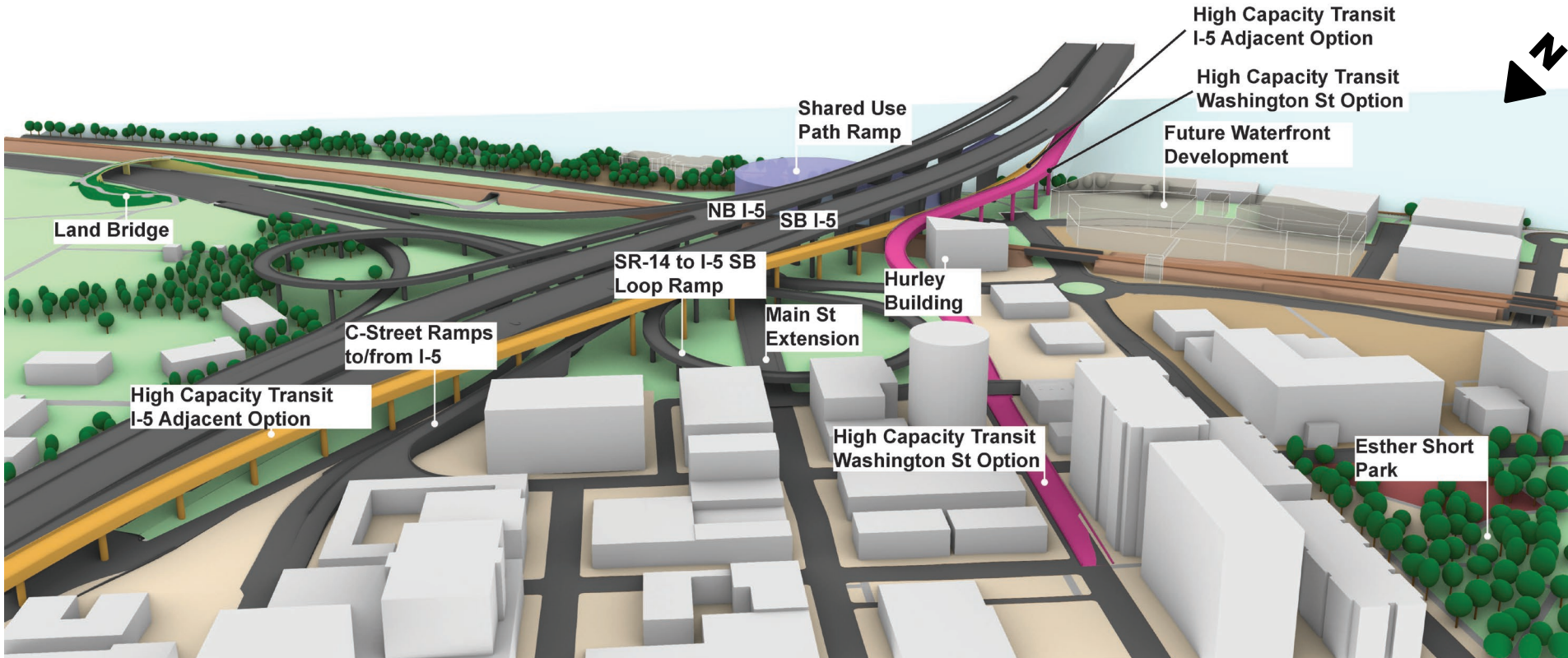


Draft 1/18/2022

Visuals are for illustration purposes only; not representative of specific property impacts or exact engineering alignments.

River Crossing: Two Bridge Option

Looking south from Downtown Vancouver toward Columbia River

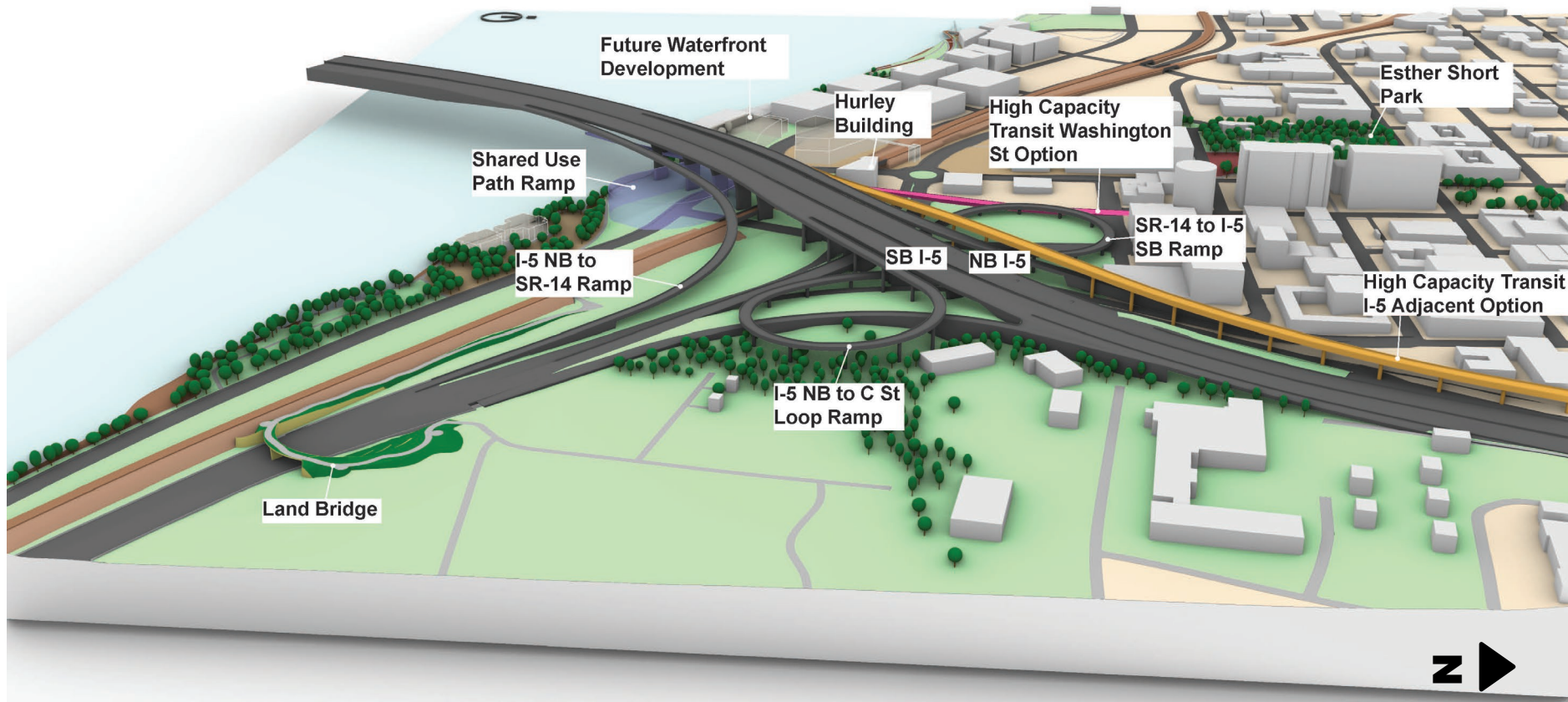


Draft 1/18/2022

Visuals are for illustration purposes only; not representative of specific property impacts or exact engineering alignments.

River Crossing: Two Bridge Option

Looking west towards Downtown Vancouver from Historic Reserve

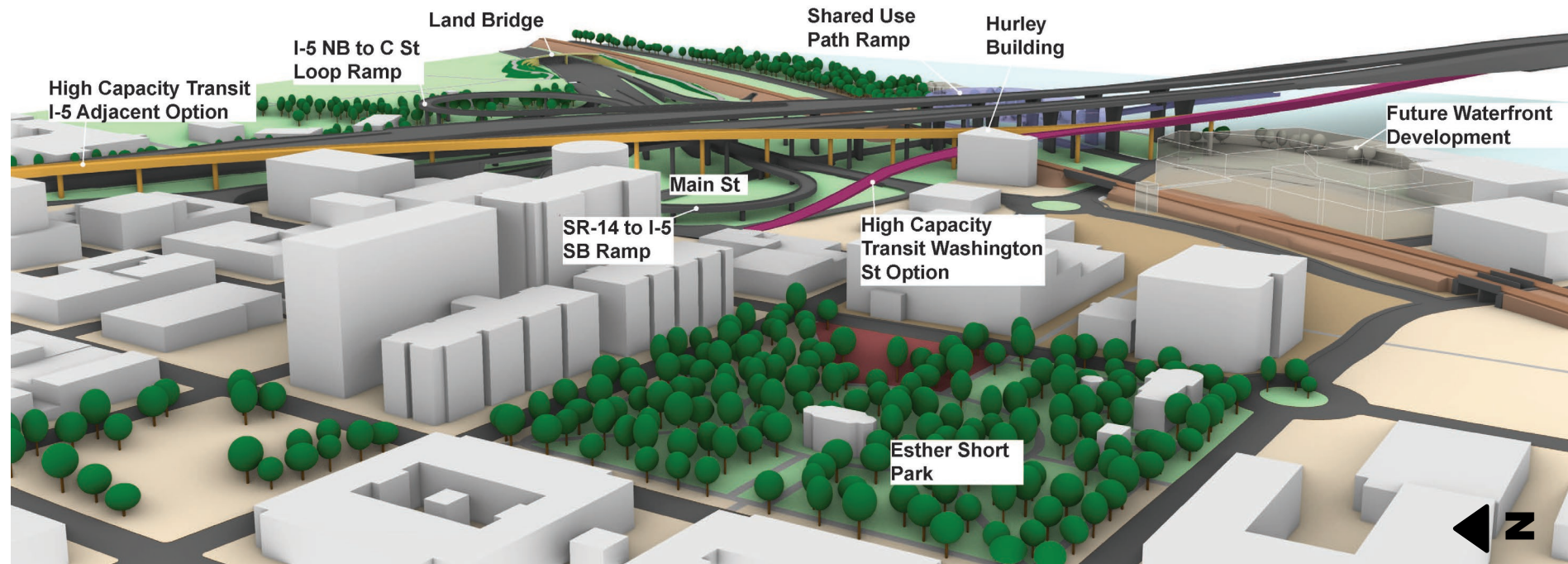


Draft 1/18/2022

Visuals are for illustration purposes only; not representative of specific property impacts or exact engineering alignments.

River Crossing: Two Bridge Option

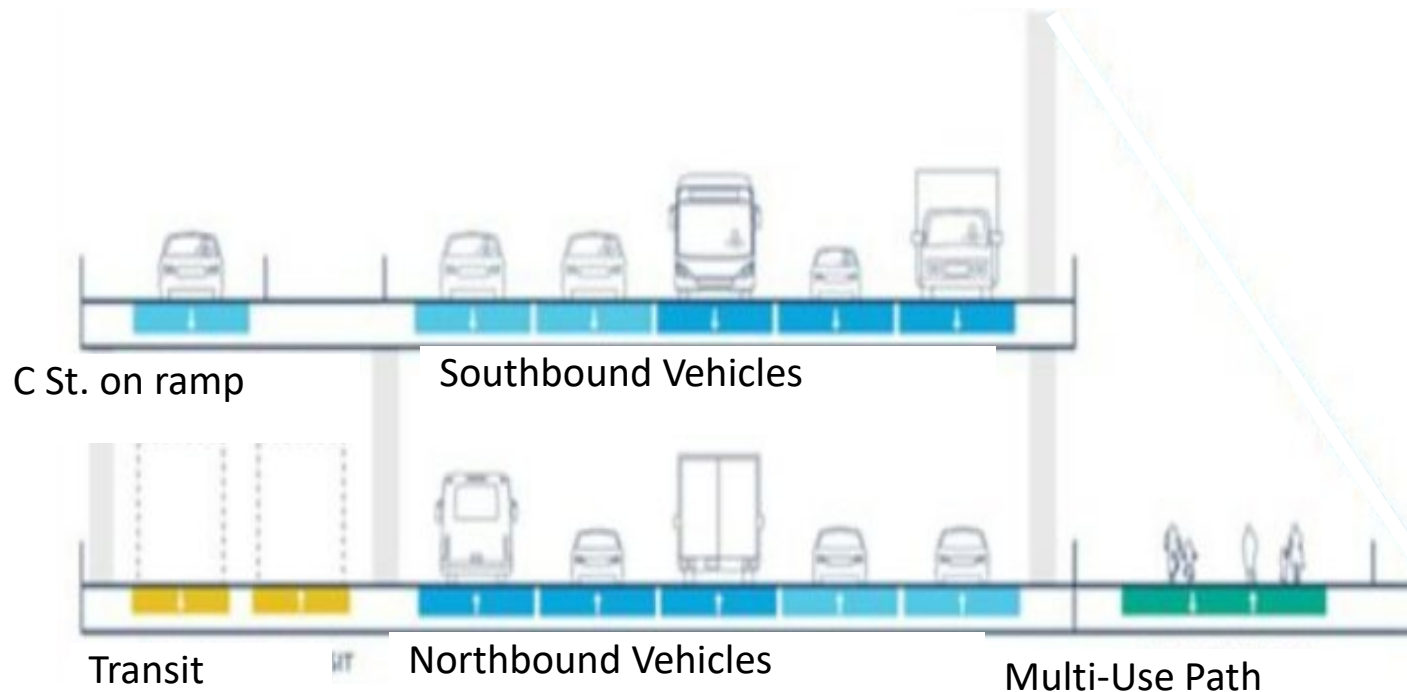
Looking east toward Historic Reserve from Downtown Vancouver



Draft 1/18/2022

Visuals are for illustration purposes only; not representative of specific property impacts or exact engineering alignments.

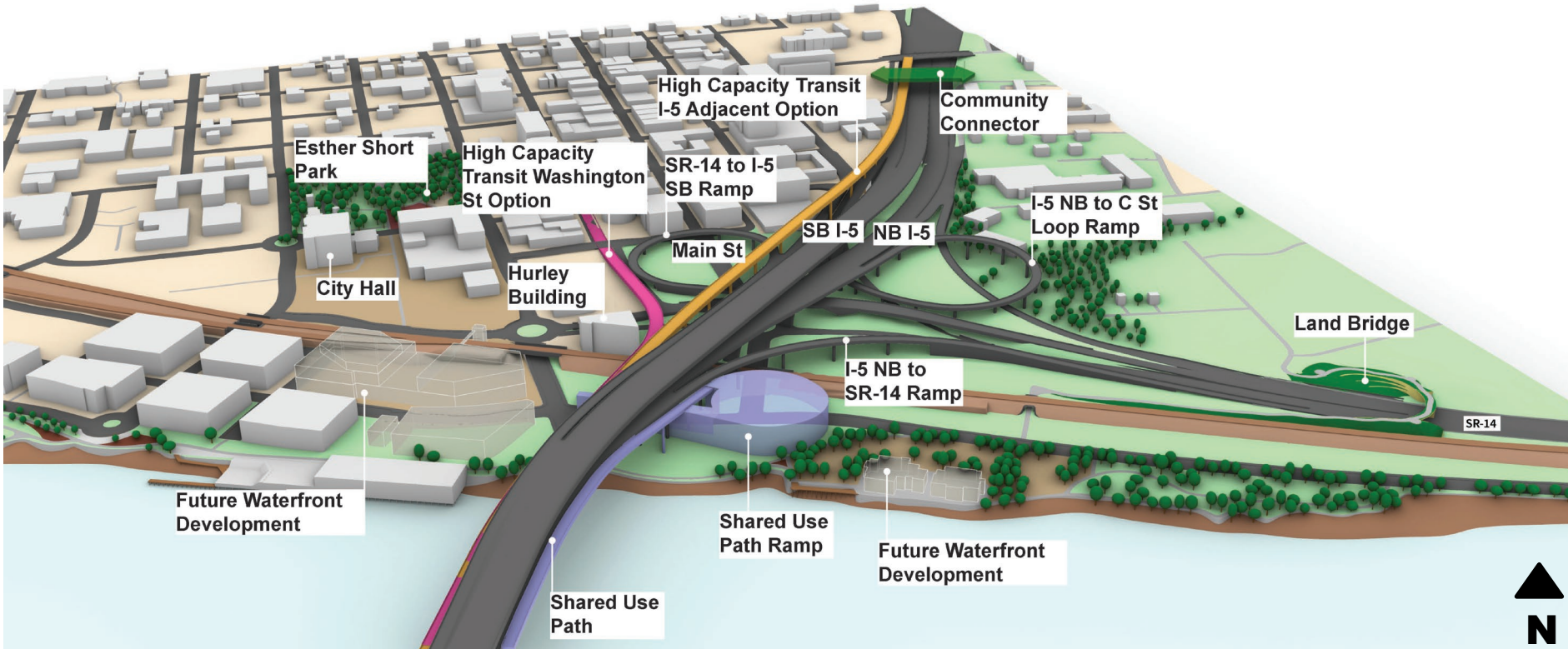
River Crossing: One Bridge Option



- Can be different configurations
- Slightly narrower footprint than two bridge option
- Option includes removal or retention of C St. access.

River Crossing: One Bridge Option

Looking north toward Downtown Vancouver/ Historic Reserve

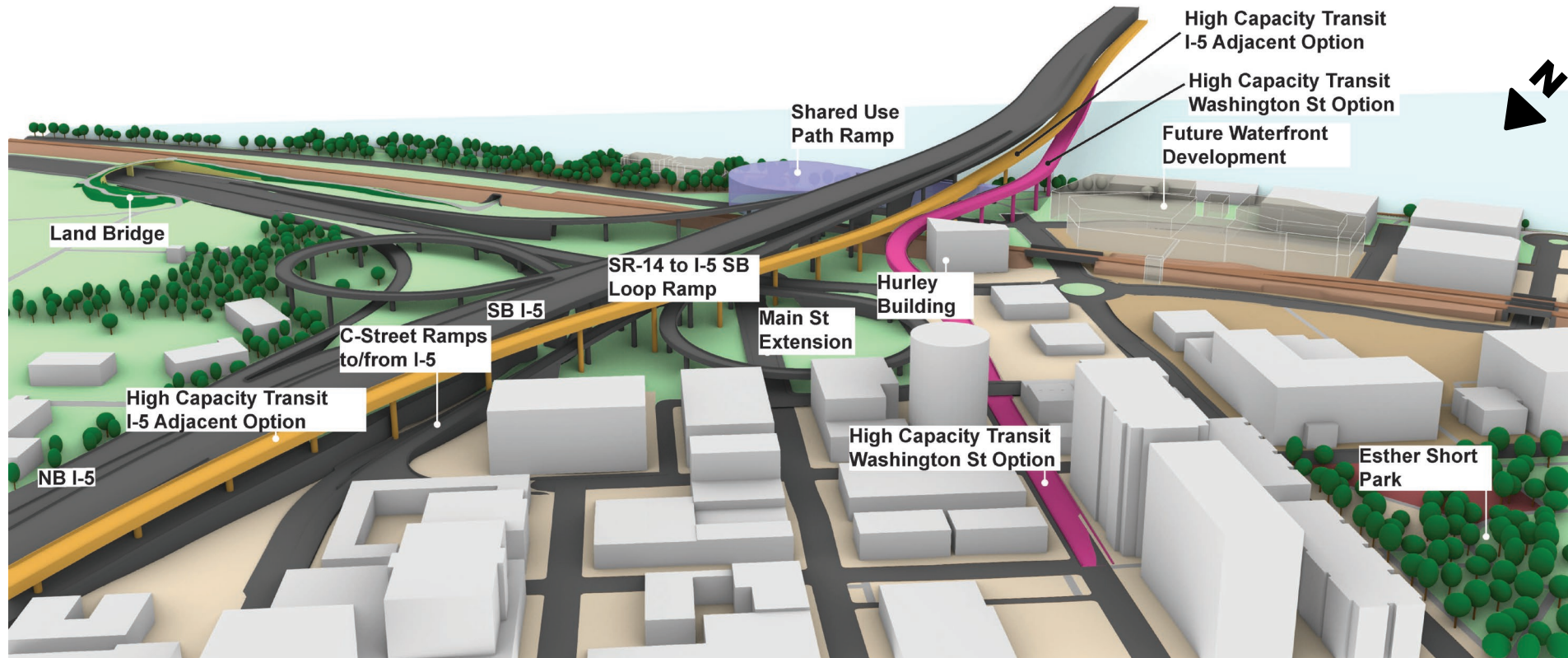


Draft 1/18/2022

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River Crossing: One Bridge Option

Looking south from Downtown Vancouver toward Columbia River

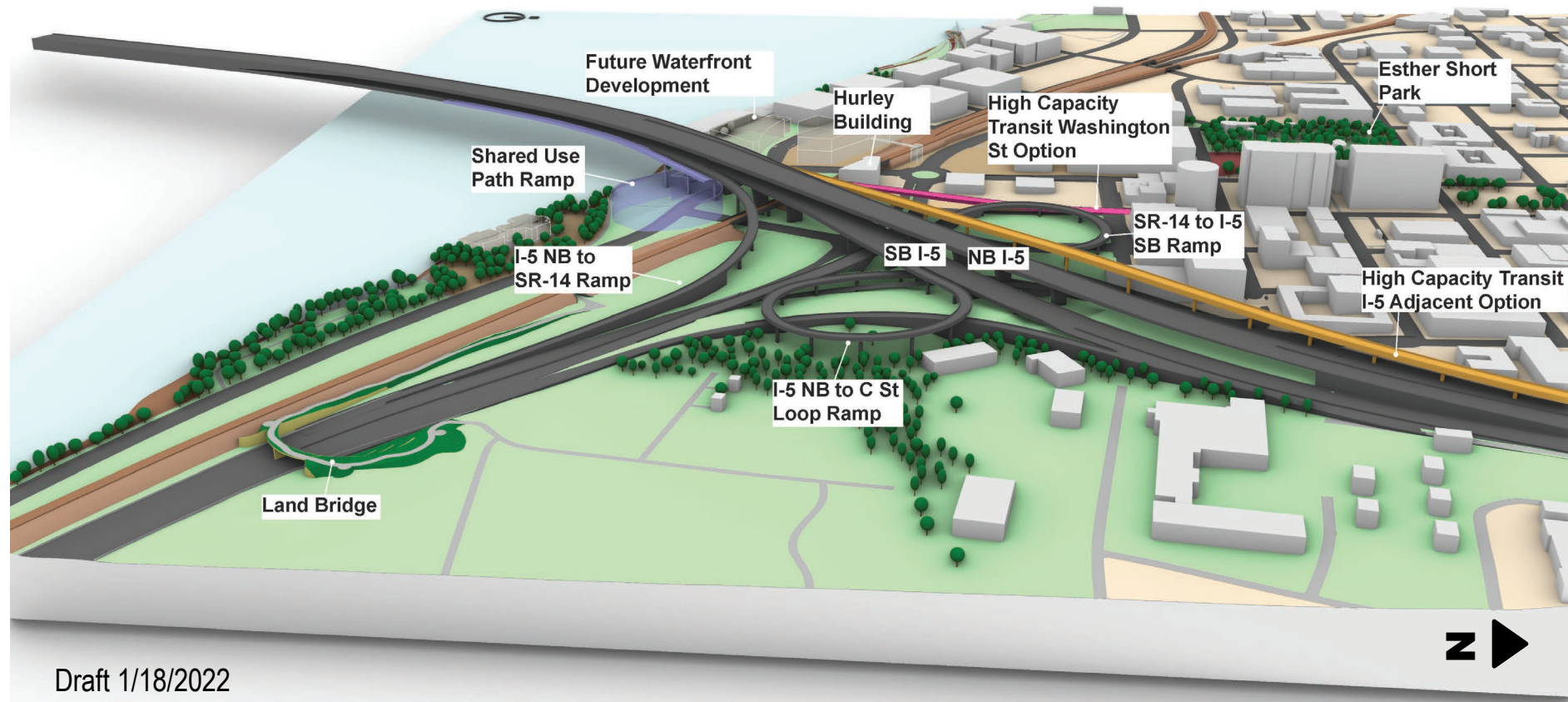


Draft 1/18/2022

Visuals are for illustration purposes only; not representative of specific property impacts or exact engineering alignments.

River Crossing: One Bridge Option

Looking west towards Downtown Vancouver from Historic Reserve

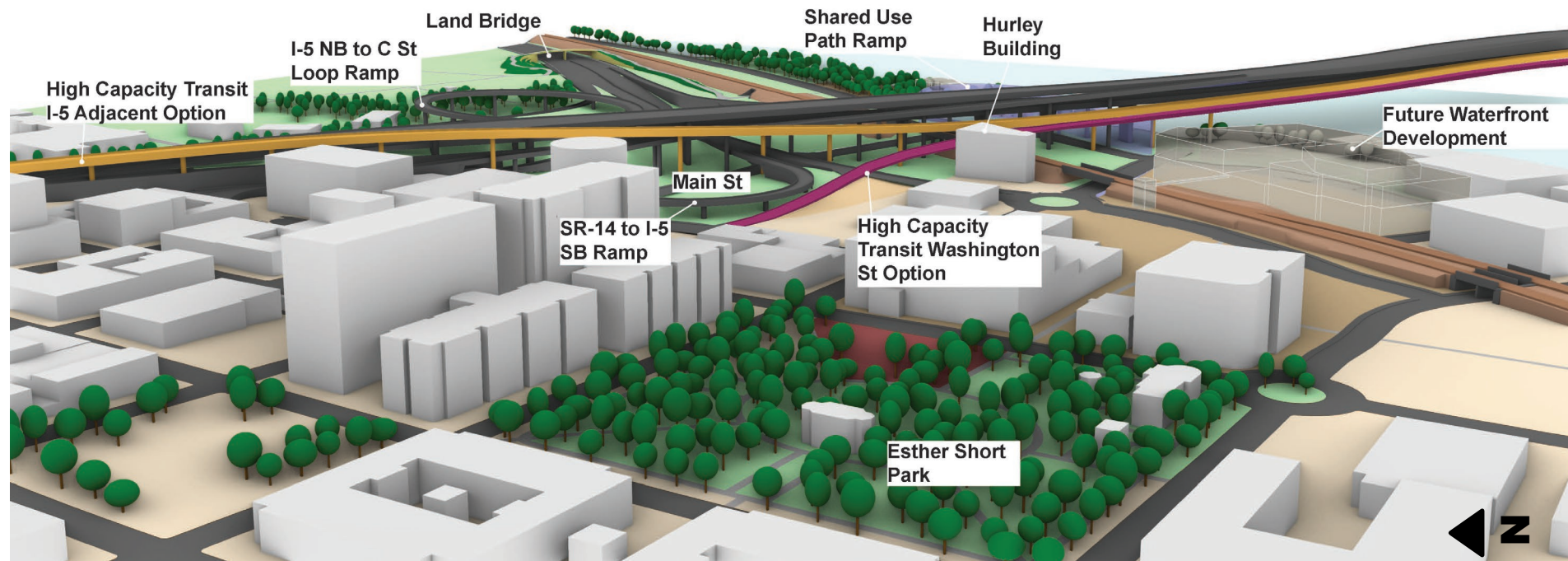


Draft 1/18/2022

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River Crossing: One Bridge Option

Looking east toward Historic Reserve from Downtown Vancouver

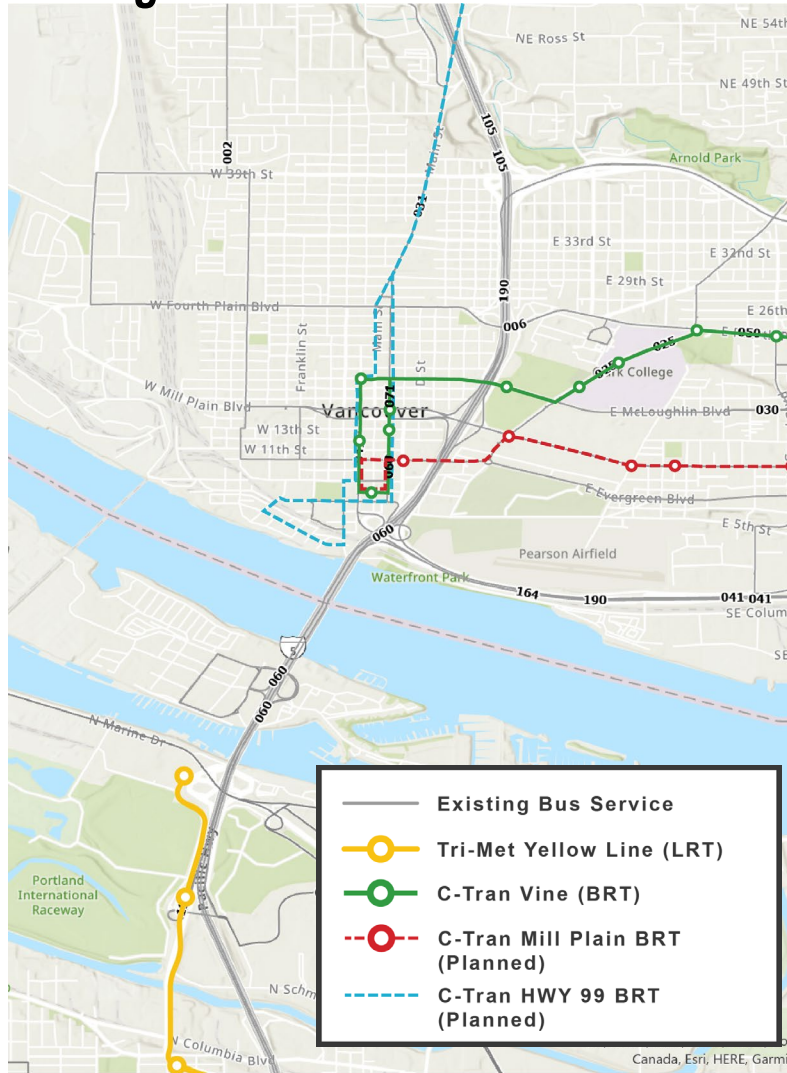


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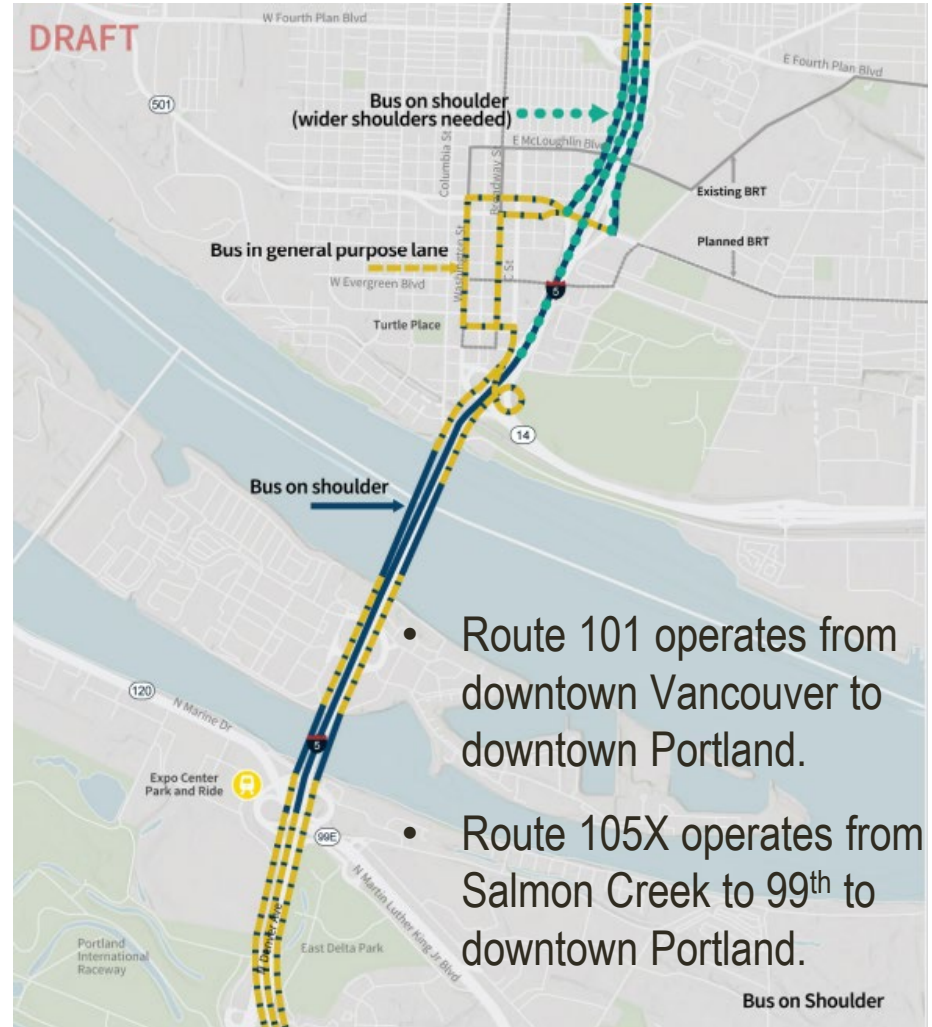
Visuals are for illustration purposes only; not representative of specific property impacts or exact engineering alignments.

Transit: Existing Service + Bus on Shoulder

Existing Transit Service



Bus on Shoulder Enhancement

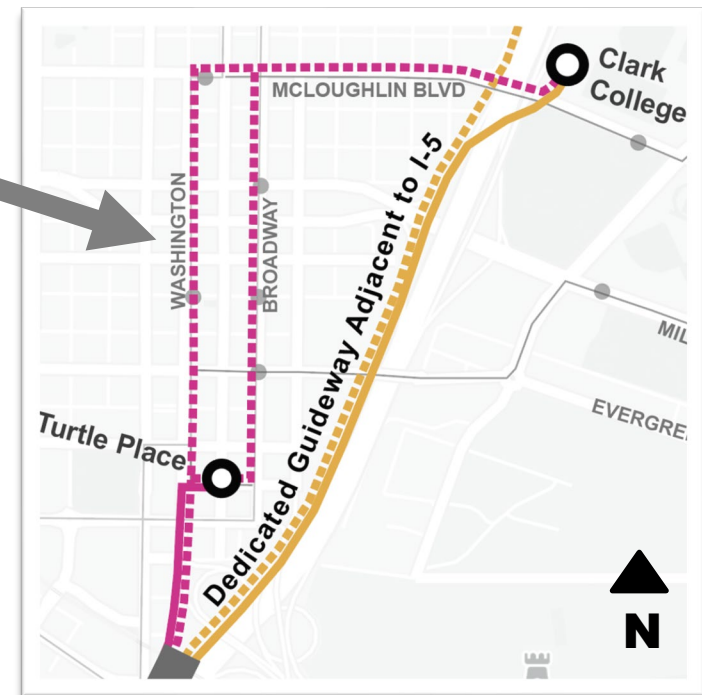


Light Rail & Bus Rapid Transit Options

Transit options for modeling purposes only



- **Bus Rapid Transit (BRT)** extended south to Expo Ctr. or Hayden Is.
- **Light Rail Transit (LRT)** extended north to Turtle Place, McLoughlin Blvd., Clark College, or Kiggins Bowl
- **Hybrid BRT/LRT** extended to Hayden Is.



Tolling

Objectives:

- Revenue generation to fund construction
- Congestion relief through Variable Rate Tolling (set rates that vary by time of day)

Process:

- Early 2022: Initial range of tolling rates in models to gauge how tolls influence demand
- Summer 2022 – Summer 2023: OR and WA Transportation Commissions – test toll rates scenarios and policies
- Early 2024 – Spring 2025: OR and WA Transportation Commissions set toll rates
- 2025: Earliest tolling could begin if legislature approves

Discussions: Exemptions and Discounts

- Policies exist or are being considered around exemptions and discounts for buses, emergency vehicles, low-income travelers
- IBRP Tolling is separate from but coordinated with ODOT Regional Tolling/Congestion Pricing

Next Steps – IBR Program



Now – June, 2022: Review and consideration of design options for inclusion in a Modified Locally Preferred Alternative by the Community, Boards, Councils, Commissions, Executive Steering Group, Bi-State Legislative Committee

Summer 2022 – Mid-2024: Additional analysis and design refinements that result in a *Supplemental Environmental Impact Statement (anticipated publication mid-2024)*

Mid 2024: Additional design details finalized plus off-site improvements and mitigations

2025: Construction begins

Identifying a Modified Locally Preferred Alternative (LPA)

January 24 Workshop: Design Options Overview

➤ ***Council Discussion***

April 11 Workshop:

- Review Refined Design Options
- Review draft language for a Modified Locally Preferred Alternative (LPA)

➤ ***Council Direction on draft Modified Locally Preferred Alternative***

June 6 Workshop: Review Draft Resolution for a Modified Locally Preferred Alternative

➤ ***Council Feedback on Draft Resolution***

June 27 Consent:

➤ ***Seeking Council Approval of Resolution endorsing a Modified Locally Preferred Alternative***

VANCOUVER
CITY HALL

Discussion



Staff Report 004-22

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 1/24/2022

SUBJECT Columbia Street Paving Project, construction acceptance and release of retainage

Key Points

- The City improved Columbia Street between Mill Plain Boulevard and Northwest 45th Street as part of the Westside Bike Mobility Project and in conjunction with the City's Pavement Management Program.
- Improvements included a new curb-to-curb paved surface, buffered bike lanes in each direction, and pavement markings.
- Granite Construction Company, of Vancouver, Washington, was awarded the contract for the Columbia Street Paving Project in May 2021, began work in mid-June 2021, and was physically complete in September 2021.
- The project had a 4% apprenticeship goal, which was not met by the contractor, although they did provide acceptable documentation of a good faith effort.

Strategic Plan Alignment

Goal 1, Objective 1.2: Ensure our infrastructure, including buildings and utilities, is safe, environmentally responsible and well maintained.

Present Situation

Granite Construction Company, of Vancouver, Washington, has satisfactorily completed the subject improvements in accordance with the plans and specifications. The original construction contract bid amount was \$1,477,167.50. Final construction costs were \$1,305,883.69, a decrease of approximately 12% from original bid amount. The decrease in costs were due to a decrease in flagging hours and asphalt required to complete the project.

Apprenticeship Utilization goal of 4% was not met with under 1% of qualified working hours delivered by apprentice employees. Granite delivered 4 hours of the required 151 hours. Granite is a union contractor, and their sole source of apprentices is the Laborers International Union of North America, Local 335 (LiUNA #335). Granite made multiple apprentice requests to LiUNA

#335, before and during the project. During the time Granite needed apprentices, LiUNA #335 did not have any available apprentices to dispatch. Granite provided City staff with documentation from LiUNA #335 confirming the requests.

Advantage(s)

1. Completes the City's contractual and statutory process for accepting the project.
2. Formal project acceptance allows for closure on third-party bond claims and facilitates release of retainage.

Disadvantage(s)

None

Budget Impact

This project was funded through the Pavement Management Program.

Prior Council Review

- The Westside Mobility Project has been shared with City Council in multiple work sessions and written correspondence. The most recent correspondence was a memorandum dated January 15, 2021.
- Award of construction contract for the Columbia Street Paving in May 2021.

Action Requested

Accept the Columbia Street Paving Project as constructed by Granite Construction Company, of Vancouver, Washington, and authorize release of the retainage in the amount of \$65,294.18, subject to receipt of all documentation required by law.

Ryan Knox, Senior Civil Engineer, 360-487-7761



Staff Report 005-22

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 1/24/2022

SUBJECT Existing Professional Services Agreement For On-Call services - Pearson Airport –
“Not to Exceed” Limit Increase

Key Points

- Vancouver uses on-call contracting for required airport-specific engineering needs at Pearson Field Airport
- After a competitive process, City Council approved an on-call contract with Century West Engineering in July of 2018.
- The on-call contract had a maximum duration of 5 years, and a "not to exceed" contract value of \$950,000.

Strategic Plan Alignment

Goal 1, Objective 1.1: Develop and maintain a safe, balanced and innovative transportation system that will meet the needs of future generations.

Present Situation

The City of Vancouver uses on-call contracts for the provision of engineering and other professional services. On-call contracting allows the City Council to approve one master contract to be executed with a consultant that establishes a fee schedule and a general scope of work. Once the master contract is established, staff can quickly and efficiently employ the consultant using administrative task orders that are scope specific and overall fee specific using the conditions of the master contract. The on-call contracts are typically time limited (up to 5 years) and have a "not to exceed" spending limit for the sum total of all task orders.

In July of 2018, after a competitive process, City Council awarded an on-call contract with Century West Engineering. Century West has specific past experience at Pearson Field Airport designing and managing capital improvements, and similar experience at other local airports. The Century West team also has extensive experience with the applicable regulating office of the FAA, which has been crucial in getting the capital improvement grants the City recently received. In 2018 and

2019, 90% of the design costs from this contract were reimbursed by the FAA through grants. In 2020 and 2021, 100 percent of costs were reimbursed.

Although there is 11/2 more years in the approved master contract duration, the City is very close to reaching the maximum allowable contract expenditure of \$950,000 as approved by City Council in 2018. This proposal is to raise the "not to exceed" limit on the master contract by \$250,000 to \$1.2 million so the master contract can continue to be used for the remaining contract duration.

Advantage(s)

1. Allows ongoing use of the successful Century West on-call master contract until the contract expiration date of July 2023.
2. Allows for the ongoing efficiency afforded by the ability to administratively write task orders for specific engineering services.

Disadvantage(s)

This request, if approved, would increase maximum allowable expenditures under the Century West on-call services contract by \$250,000. However, while the master contract amount is proposed to increase by \$250,000, staff estimates that at least 90 percent of those costs will be reimbursed by the FAA through grant funding. In the last 2 years, 100 percent has been reimbursed.

Budget Impact

This increase in allowable master contract expenditure does not create any financial commitment by itself. The task orders written through this contract are funded by budgets in the individual projects and almost completely reimbursed by the FAA.

Prior Council Review

Approval of the Century West master contract (C-90272) on July 16, 2018 (SR 107-18)

Action Requested

Authorize the City Manager or designee to execute a contract amendment to Century West Master on-call contract C-90272, increasing the "not to exceed" expenditure limit from \$950,000 to \$1,200,000.

Dan Swensen, Construction and Engineering Manager, 360-487-7754

ATTACHMENTS:

- ▣ Amendment No. 1
- ▣ Professional Services Agreement C-90272



Supplemental Agreement Number <u>1</u>		Organization and Address Century West Engineering Corporation 5331 SW Macadam Ave, #287 Portland, OR 97239	
Original Agreement Number C-90272		Phone:	
Project Number N/A	Execution Date July 20, 2018	Completion Date July 1, 2023	
Project Title On-Call Architectural, Engineering, Environmental	New Maximum Amount Payable \$1,200,000.00		
Description of Work Miscellaneous on-call architectural, engineering, environmental and other related professional services to be determined (TBD).			

The Local Agency of City of Vancouver

desires to supplement the agreement entered in to with Century West Engineering Corporation

and executed on July 20, 2018 and identified as Agreement No. C-90272

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:
no changes.

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: no changes.

III

Section V, PAYMENT, shall be amended as follows:
Maximum amount payable not to exceed \$1,200,000.00.

CITY OF VANCOUVER

A municipal corporation

CONTRACTOR:

Century West Engineering Corporation

Eric Holmes, City Manager

Signature

Date

Printed Name /Title

Attest:

Date

Natasha Ramras, City Clerk

Approved as to form:

Jonathan Young, City Attorney

Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement

Agreement Number: 90272

Firm/Organization Legal Name (do not use dba's): Century West Engineering Corporation	
Address 5331 SW Macadam Ave, #287, Portland OR 97239	Federal Aid Number
UBI Number 600 331 057	Federal TIN or SSN Number 93-0584951
Execution Date July 20th, 2018	Completion Date July 1st, 2023
1099 Form Required ☒ Yes ☐ No	Federal Participation ☒ Yes ☐ No
Project Title On-Call Architectural, Engineering, Environmental and other related professional services	
Description of Work Miscellaneous on-call architectural, engineering, environmental and other related professional services to be determined (TBD).	
☐ Yes TBD ☐ No DBE Participation ☐ Yes TBD ☐ No MBE Participation ☐ Yes TBD ☐ No WBE Participation ☐ Yes TBD ☐ No SBE Participation	Maximum Amount Payable: \$950,000.00

Index of Exhibits

Exhibit A	Scope of Work
Exhibit B	DBE Participation/SBE Plan
Exhibit C	Preparation and Delivery of Electronic Engineering and Other Data
Exhibit D	Prime Consultant Cost Computations
Exhibit E	Sub-consultant Cost Computations
Exhibit F	Title VI Assurances
Exhibit G	Certification Documents
Exhibit H	Liability Insurance Increase
Exhibit I	Alleged Consultant Design Error Procedures
Exhibit J	Consultant Claim Procedures

Agreement Number: 90272

THIS AGREEMENT, made and entered into as shown in the "Execution Date" box on page one (1) of this AGREEMENT, between the City of Vancouver hereinafter called the "AGENCY," and the "Firm / Organization Name" referenced on page one (1) of this AGREEMENT, hereinafter called the "CONSULTANT."

WHEREAS, the AGENCY desires to accomplish the work referenced in "Description of Work" on page one (1) of this AGREEMENT and hereafter called the "SERVICES;" and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the AGENCY.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. General Description of Work

The work under this AGREEMENT shall consist of the above-described SERVICES as herein defined, and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, and related equipment and, if applicable, sub-consultants and subcontractors necessary to conduct and complete the SERVICES as designated elsewhere in this AGREEMENT.

II. General Scope of Work

The Scope of Work and projected level of effort required for these SERVICES is described in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT. The General Scope of Work was developed utilizing performance based contracting methodologies.

III. General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress, and presentation meetings with the AGENCY and/or such State, Federal, Community, City, or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days' notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations, and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

Participation for Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE), if required, per 49 CFR Part 26, shall be shown on the heading of this AGREEMENT. If DBE firms are utilized at the commencement of this AGREEMENT, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is a DBE certified firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY's "DBE Program Participation Plan" and perform a minimum of 30% of the total amount of this AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of this AGREEMENT.

In the absents of a mandatory UDBE, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall submit a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

The CONSULTANT, on a monthly basis, shall enter the amounts paid to all firms involved with this AGREEMENT into the wsdot.diversitycompliance.com program. Payment information shall identify any DBE Participation. Non-minority, woman owned DBEs does not count towards UDBE goal attainment.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C – Preparation and Delivery of Electronic Engineering and other Data."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for these SERVICES, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this SERVICE, shall be without liability or legal exposure to the CONSULTANT.

Any and all notices or requests required under this AGREEMENT shall be made in writing and sent to the other party by (i) certified mail, return receipt requested, or (ii) by email or facsimile, to the address set forth below:

If to AGENCY:

Name: Scott Cramer
Agency: City of Vancouver
Address: P.O. Box 1995
City: Vancouver State: WA Zip: 98668
Email: scott.cramer@cityofvancouver.us
Phone: 360-487-8426
Facsimile: 360-487-8433

If to CONSULTANT:

Name: Bryan Condon
Agency: Century West Engineering Corporation
Address: 5331 SW Macadam Avenue, Suite 287
City: Portland State: OR Zip: 97239
Email: bcondon@centurywest.com
Phone: 765-532-8320
Facsimile: 503-639-2710

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall conform to the criteria agreed upon detailed in the AGREEMENT documents. These SERVICES must be completed by the date shown in the heading of this AGREEMENT titled "Completion Date."

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD, governmental actions, or other conditions beyond the control of the CONSULTANT. A prior supplemental AGREEMENT issued by the AGENCY is required to extend the established completion time.

Agreement Number: 90272

V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov).

- A. Hourly Rates: Hourly rates are comprised of the following elements - Direct (Raw) Labor, Indirect Cost Rate, and Fixed Fee (Profit). The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibits "D" and "E" attached hereto and by reference made part of this AGREEMENT. These negotiated hourly rates will be accepted based on a review of the CONSULTANT's direct labor rates and indirect cost rate computations and agreed upon fixed fee. The accepted negotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. The initially accepted negotiated rates shall be applicable from the approval date, as memorialized in a final written acknowledgment, to 180 days following the CONSULTANT's fiscal year end (FYE) date.

The direct (raw) labor rates and classifications, as shown on Exhibits "D" and "E" shall be subject to renegotiations for each subsequent twelve (12) month period (180 days following FYE date to 180 days following FYE date) upon written request of the CONSULTANT or the AGENCY. The written request must be made to the other party within ninety (90) days following the CONSULTANT's FYE date. If no such written request is made, the current direct (raw) labor rates and classifications as shown on Exhibits "D" and "E" will remain in effect for the twelve (12) month period.

Conversely, if a timely request is made in the manner set forth above, the parties will commence negotiations to determine the new direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period. Any agreed to renegotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. If requested, the CONSULTANT shall provide current payroll register and classifications to aid in negotiations. If the parties cannot reach an agreement on the direct (raw) labor rates and classifications, the AGENCY shall perform an audit of the CONSULTANT's books and records to determine the CONSULTANT's actual costs. The audit findings will establish the direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period.

The fixed fee as identified in Exhibits "D" and "E" shall represent a value to be applied throughout the life of the AGREEMENT.

The CONSULTANT shall submit annually to the AGENCY an updated indirect cost rate within 180 days of the close of its fiscal year. An approved updated indirect cost rate shall be included in the current fiscal year rate under this AGREEMENT, even if/when other components of the hourly rate are not renegotiated. These rates will be applicable for the twelve (12) month period. At the AGENCY's option, a provisional and/or conditional indirect cost rate may be negotiated. This provisional or conditional indirect rate shall remain in effect until the updated indirect cost rate is completed and approved. Indirect cost rate costs incurred during the provisional or conditional period will not be adjusted. The CONSULTANT may request an extension of the last approved indirect cost rate for the twelve (12) month period. These requests for provisional indirect cost rate and/or extension will be considered on a case-by-case basis, and if granted, will be memorialized in a final written acknowledgment.

The CONSULTANT shall maintain and have accessible support data for verification of the components of the hourly rates, i.e., direct (raw) labor, indirect cost rate, and fixed fee (profit) percentage. The CONSULTANT shall bill each employee's actual classification, and actual salary plus indirect cost rate plus fixed fee.

- B. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to lowest price available, unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the WSDOT's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and all revisions thereto. Air, train and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-salary Costs shall include an itemized listing of the charges directly identifiable with these SERVICES. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the SERVICES provided under this AGREEMENT.
- C. Maximum Amount Payable: The Maximum Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT on page one (1.) The Maximum Amount Payable does not include payment for extra work as stipulated in section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- D. Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in A and B above. The monthly billings shall be supported by detailed statements for hours expended at the rates established in Exhibit "D," including names and classifications of all employees, and billings for all direct non salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT's employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the SERVICES at the time of the interview.
- E. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the SERVICES under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.
- The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit all required adjustments will be made and reflected in a final payment. In the event that a final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. Per WSDOT's "Audit Guide for Consultants," Chapter 23 "Resolution Procedures," the CONSULTANT has twenty (20) working days after receipt of the final Post Audit to begin the appeal process to the AGENCY for audit findings
- F. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.
- An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and /or at the request of the AGENCY's Project Manager.

Agreement Number: 90272

VI. Sub-Contracting

The AGENCY permits subcontracts for those items of SERVICES as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any SERVICE under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and sub-consultant, any contract or any other relationship.

Compensation for this sub-consultant SERVICES shall be based on the cost factors shown on Exhibit "E" attached hereto and by this reference made part of this AGREEMENT.

The SERVICES of the sub-consultant shall not exceed its maximum amount payable identified in each sub consultant cost estimate unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, indirect cost rate, direct non-salary costs and fixed fee costs for the sub-consultant shall be negotiated and substantiated in accordance with section V "Payment Provisions" herein and shall be memorialized in a final written acknowledgement between the parties

All subcontracts shall contain all applicable provisions of this AGREEMENT, and the CONSULTANT shall require each sub-consultant or subcontractor, of any tier, to abide by the terms and conditions of this AGREEMENT. With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE's Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

VII. Employment and Organizational Conflict of Interest

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

Agreement Number: 90272

VIII. Nondiscrimination

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, sub-consultants, subcontractors and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964
(42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973
(23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973
(29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975
(42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987
(Public Law 100-259)
- American with Disabilities Act of 1990
(42 U.S.C. Chapter 126 § 12101 *et. seq.*)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time with or without cause upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred up to the time of termination of this AGREEMENT.

No payment shall be made for any SERVICES completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth in paragraph two (2) of this section, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

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The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee. The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed SERVICES or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under section XIII "Extra Work."

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J". In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

XII. Legal Relations

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall defend, indemnify, and hold the State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT

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to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and /or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and/or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable, in performance of the Work under this AGREEMENT or arising out of any use in connection with the AGREEMENT of methods, processes, designs, information or other items furnished or communicated to STATE and/or the AGENCY, their agents, officers and employees pursuant to the AGREEMENT; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from STATE and/or AGENCY's, their agents', officers and employees' failure to comply with specific written instructions regarding use provided to STATE and/or AGENCY, their agents, officers and employees by the CONSULTANT, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONSULTANT terminate this AGREEMENT if it is found after due notice and examination by the AGENCY that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONSULTANT in the procurement of, or performance under, this AGREEMENT.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees or its agents against the STATE and/or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the Parties.

Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

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Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for each policy period.
- C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any sub-consultant and/or subcontractor as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT's and the sub-consultant's and/or subcontractor's insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name: Scott Cramer
Agency: City of Vancouver
Address: P.O. Box 1995
City: Vancouver State: WA Zip: 98668
Email: scott.cramer@cityofvancouver.us
Phone: 360-487-8426
Facsimile: 360-487-8433

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY, including that which may arise in reference to section IX "Termination of Agreement" of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT or one million dollars (\$1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third part , and no third party beneficiary is intended or created by the execution of this AGREEMENT.

The AGENCY will pay no progress payments under section V "Payment Provisions" until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

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XIII. Extra Work

- A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment," hereafter referred to as "CLAIM," under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the section XI "Disputes" clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XV. Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

XVI. Certification of the Consultant and the Agency

Attached hereto as Exhibit "G-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "G-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "G-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "G-4" Certificate of Current Cost or Pricing Data. Exhibit "G-3" is required only in AGREEMENT's over one hundred thousand dollars (\$100,000.00) and Exhibit "G-4" is required only in AGREEMENT's over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III "General Requirements" prior to its performance of any SERVICES under this AGREEMENT.

XVII. Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a supplement to this AGREEMENT.

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XVIII. Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and AGREEMENT's contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

XIX. Protection of Confidential Information

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles credit card information, driver's license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, STATE and AGENCY security data, or information which may jeopardize any part of the project that relates to any of these types of information. The CONSULTANT agrees to hold the State's Confidential Information in strictest confidence and not to make use of the State's Confidential Information for any purpose other than the performance of this AGREEMENT, to release it only to authorized employees, sub-consultants or subcontractors requiring such information for the purposes of carrying out this AGREEMENT, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the AGENCY's express written consent or as provided by law. The CONSULTANT agrees to release such information or material only to employees, sub-consultants or subcontractors who have signed a nondisclosure AGREEMENT, the terms of which have been previously approved by the AGENCY. The CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to the State's Confidential Information

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information

As required under Executive Order 00-03, the CONSULTANT shall maintain a log documenting the following: the State's Confidential Information received in the performance of this AGREEMENT; the purpose(s) for which the State's Confidential Information was received; who received, maintained and used the State's Confidential Information; and the final disposition of the State's Confidential Information. The CONSULTANT's records shall be subject to inspection, review, or audit upon reasonable notice from the AGENCY.

The AGENCY reserves the right to monitor, audit, or investigate the use of the State's Confidential Information collected, used, or acquired by the CONSULTANT through this AGREEMENT. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by the CONSULTANT or its sub-consultants or subcontractors may result in termination of this AGREEMENT and demand for return of all State's Confidential Information, monetary damages, or penalties

It is understood and acknowledged that the CONSULTANT may provide the AGENCY with information which is proprietary and/or confidential during the term of this AGREEMENT. The parties agree to maintain the confidentiality of such information during the term of this AGREEMENT and afterwards. All materials containing such proprietary and/or confidential information shall be clearly identified and marked as "Confidential" and shall be returned to the disclosing party at the conclusion of the SERVICES under this AGREEMENT.

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The CONSULTANT shall provide the AGENCY with a list of all information and materials it considers confidential and/or proprietary in nature: (a) at the commencement of the term of this AGREEMENT; or (b) as soon as such confidential or proprietary material is developed. "Proprietary and/or confidential information" is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

The parties also acknowledge that the AGENCY is subject to Washington State and federal public disclosure laws. As such, the AGENCY shall maintain the confidentiality of all such information marked proprietary and or confidential or otherwise exempt, unless such disclosure is required under applicable state or federal law. If a public disclosure request is made to view materials identified as "Proprietary and/or confidential information" or otherwise exempt information, the AGENCY will notify the CONSULTANT of the request and of the date that such records will be released to the requester unless the CONSULTANT obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the CONSULTANT fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified.

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant's proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY's said disclosure of sub-consultants' information.

XX. Records Maintenance

During the progress of the Work and SERVICES provided hereunder and for a period of not less than six (6) years from the date of final payment to the CONSULTANT, the CONSULTANT shall keep, retain and maintain all "documents" pertaining to the SERVICES provided pursuant to this AGREEMENT. Copies of all "documents" pertaining to the SERVICES provided hereunder shall be made available for review at the CONSULTANT's place of business during normal working hours. If any litigation, claim or audit is commenced, the CONSULTANT shall cooperate with AGENCY and assist in the production of all such documents. "Documents" shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim or audit continues past the six (6) year retention period.

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENTs, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbles, recordings, visual displays, photographs, minutes of meetings, tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

For purposes of this AGREEMENT, "ESI" means any and all computer data or electronic recorded media of any kind, including "Native Files", that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as: Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the CONSULTANT may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops or any other electronic device that CONSULTANT uses in the performance of its Work or SERVICES hereunder, including any personal devices used by the CONSULTANT or any sub-consultant at home.

"Native files" are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified.

The CONSULTANT shall include this section XX "Records Maintenance" in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

DATED this 20th day of August, 2018

CITY OF VANCOUVER, a municipal corporation

BY: 

Eric Holmes, City Manager

Attest:



Natasha Ramras, City Clerk

~~By: Carrie Lewellen, Deputy City Clerk~~

CENTURY WEST ENGINEERING CORPORATION, Contractor

BY: 

Title Vice President

Approved as to form:



E. Bronson Potter, City Attorney

Exhibit A

Scope of Work

Project No.

On-call professional architectural, engineering, environmental and other related professional services for the City of Vancouver per Request for Qualifications #1-18 (RFQu) and the respondents response to said RFQu on file in City of Vancouver Procurement Services and by reference hereto made a part of this agreement.

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Exhibit B ***DBE Participation/SBE Plan***

In the absents of a mandatory UDBE, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall submit a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

TBD

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Preparation and Delivery of Electronic Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

I. Surveying, Roadway Design & Plans Preparation Section

A. Survey Data

TBD

B. Roadway Design Files

TBD

C. Computer Aided Drafting Files

TBD

D. Specify the Agency's Right to Review Product with the Consultant

TBD

E. Specify the Electronic Deliverables to Be Provided to the Agency

TBD

F. Specify What Agency Furnished Services and Information Is to Be Provided

TBD

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II. Any Other Electronic Files to Be Provided

TBD

III. Methods to Electronically Exchange Data

TBD

A. Agency Software Suite

Oracle Business Suite

B. Electronic Messaging System

Microsoft Outlook

C. File Transfers Format

TBD

Exhibit D
Prime Consultant Cost Computations

Per the attached fee schedule and by reference hereto made a part of this agreement

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FEE SCHEDULE FOR ENGINEERING & RELATED SERVICES

EFFECTIVE JANUARY 1, 2018
(This schedule is subject to change)

The compensation for work done on the basis of personnel services plus incurred expenses will be established using the rates as set forth below:

A. PERSONNEL SERVICES

The following rates and classifications shall be in effect through 12/31/2018 for this contract.

120 Receptionist	\$60.00
117 Project Coordinator/Clerical I	\$73.00
118 Project Coordinator/Clerical II	\$100.00
153 Graphic Designer	\$120.00
147 Staff Technician	\$88.00
142 Senior Technician	\$109.00
133 Civil Designer	\$102.00
111 Intermediate CAD Tech	\$81.00
123 Engineer-in-Training (EIT)	\$95.00
106 Project Engineer	\$110.00
104 Senior Project Engineer	\$121.00
114 Staff Airport Planner	\$77.00
112 Senior Airport Planner	\$168.00
103 Project Manager	\$147.00
102 Senior Project Manager	\$180.00
163 Vice President	\$215.00
101 Principal	\$250.00

B. OUTSIDE EXPENSES

Any outside expenses including subconsultant and subcontractor services incurred for this project by Century West Engineering will be charged at 110% of the actual cost of the expense.

C. IN-HOUSE EXPENSES

1. Equipment Expenses:

Vehicle Mileage	0.60/mile
Nuclear Density Gauge	45.00/day
	125.00/wk
	450.00/mo

2. Field Supplies:

Field supplies provided from stock will be charged as follows:

Stakes, Hubs, Guineas, Laths	.40/each
2-inch x 2-inch Painted Property Stake	1.50/each

3. Drafting Supplies and Reproduction Costs:

Drafting supplies and reproduction materials provided from stock will be charged at the following rates:

Blue/line/Black/line	1.80/sheet
Vellum Cut Sheets	.50/sq. ft.
Plot	2.00/sheet
Mylar Plat Boards	7.00/each
Sepia	.50/sq. ft.
Photocopy	.05/copy
Mylar	1.50/sq. ft.



**Washington State
Department of Transportation**

Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300
360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

May 21, 2018

Century West Engineering Corp
5331 Macadem Avenue, Suite 207
Portland, OR 97239

Subject: Acceptance FYE 2017 ICR – Risk Assessment Review

Dear Ms. Dolly Garrick:

Based on Washington State Department of Transportation's (WSDOT) Risk Assessment review of your Indirect Cost Rate (ICR), we have accepted your proposed FYE 2017 ICR of 168.70%. These rates are applicable to Washington Local Agency Contracts only. These rates may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

This was not a cognizant review. Any other entity contracting with your firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at (360) 705-7019 or via email consultantrates@wsdot.wa.gov.

Regards;

Jonson, Erik
May 21 2018 10:52 AM

cosign

ERIK K. JONSON
Manager, Consultant Services Office

EKJ:kms

Exhibit E

Sub-consultant Cost Computations

There isn't any sub-consultant participation at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI "Sub-Contracting" of this AGREEMENT.

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Exhibit F

Title VI Assurances

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "REGULATIONS"), which are herein incorporated by reference and made a part of this AGREEMENT.
2. **Non-discrimination:** The CONSULTANT, with regard to the work performed during this AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when this AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
3. **Solicitations for Sub-consultants, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the REGULATIONS relative to non-discrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the AGENCY, the STATE, or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the AGENCY, the STATE, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of the CONSULTANT's non-compliance with the non-discrimination provisions of this AGREEMENT, the AGENCY shall impose such AGREEMENT sanctions as it, the STATE, or the FHWA may determine to be appropriate, including, but not limited to:
 - Withholding of payments to the CONSULTANT under this AGREEMENT until the CONSULTANT complies, and/or;
 - Cancellation, termination, or suspension of this AGREEMENT, in whole or in part.
6. **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any sub-consultant or procurement as the STATE, the AGENCY, or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY enter into such litigation to protect the interests of the STATE and/or the AGENCY and, in addition, the CONSULTANT may request the United States enter into such litigation to protect the interests of the United States.

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Exhibit G

Certification Document

- Exhibit G-1(a) Certification of Consultan
- Exhibit G-1(b) Certification of City of Vancouver
- Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters -
Primary Covered Transactions
- Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbyin
- Exhibit G-4 Certificate of Current Cost or Pricing Dat

Agreement Number: 90272

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of
Century West Engineering Corporation
whose address is
5331 SW Macadam Avenue, Suite 287, Portland, Oregon 97239
and that neither the above firm nor I have

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the City of Vancouver
and the Federal Highway Administration, U.S. Department of Transportation in connection with this
AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and
Federal laws, both criminal and civil.

Century West Engineering Corporation

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

8/1/18

Date

Agreement Number: 90272

Exhibit G-1 (b)
Certification of Agency Official

I hereby certify I am the Agency Official of the Local Agency of the City of Vancouver, Washington, and the consulting firm or its representative has not been required, directly or indirectly as an expressed or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- (a) Employ or retain, or agree to employ to retain, any firm or person; or
- (b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Date



Eric Holmes, City Manager

Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification such prospective participant shall attach an explanation to this proposal.

Century West Engineering Corporation

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

8/1/18

Date

Agreement Number: 90272

Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, 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 any 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 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 Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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 is 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 \$10,000.00, and not more than \$100,000.00 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier sub-contracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Century West Engineering Corporation

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

5/1/18

Date

Agreement Number: 90272

Exhibit G-4
Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.401 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4 submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of on-call architectural, engineering, environmental services are accurate, complete, and current as of July 16th, 2018. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm: Century West Engineering Corporation

Signature: 

Print Name: Matt Maclostie

Title: Vice President

Exhibit I

Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

Step 3 Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.
- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Agreement Number: 90272

Step 5 Forward Documents to Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General's Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

Exhibit J

Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

Agreement Number: 90272

Step 3 Preparation of Support Documentation Regarding Consultant's Claim(s)

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 Preparation of Supplement or New Agreement for the Consultant's Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit



Staff Report 006-22

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 1/24/2022

SUBJECT Bid Award for the Broadway Corridor Improvements Project Phase 2 (072822), per Bid #21-36

Key Points

- The Broadway Corridor Project Phase 2 is being constructed as part of the Pavement Management program. The City maintains approximately 1,900 lane miles of streets in its system in the Pavement Management Program.
- Interdepartmental coordination includes upgrading water and sewer utilities prior to paving.
- Replacing old high maintenance water mains and sewer mains will improve water system infrastructure.
- Upgrading and replacing failed sidewalks will improve pedestrian access.

Strategic Plan Alignment

Goal 1, Objective 1.2: Ensure our infrastructure, including buildings and utilities, is safe, environmentally responsible and well maintained.

Present Situation

The Broadway Corridor Project Phase 2 is being constructed as part of the Pavement Management program. This project involves paving with hot mix asphalt on Broadway from E. 6th Street to E. 13th St. It also involves replacing and upgrading existing sewer and water main. In addition, more than 100 linear feet of sidewalk and 18 existing curb ramps will be upgraded to current ADA standards along the corridor.

This is the second phase of a two-phase corridor improvement project. The first phase of this project was constructed in 2021. That phase extended from from E. 13th Street to McLoughlin Blvd.

On January 4, 2022, the City received four bids for the subject project. The bids ranged from \$2.1 to \$2.7 million dollars. The low bidder was responsive. The bids are as follows:

SUMMARY OF BIDS	
BIDDER	AMOUNT
Catworks Construction, Vancouver, WA	\$2,100,700.96
Nutter Corporation, Vancouver, WA	\$2,470,899.64
McDonald Excavating, Inc., Washougal, WA	\$2,606,106.65
Advanced Excavating, Kelso, WA	\$2,761,509.24
Engineer's Estimate	\$2,100,000.00

There is a minimum apprenticeship goal of 4% of the utilized labor hours for this project. Catworks Construction of Vancouver, Washington has submitted an Apprenticeship Utilization Plan to meet or exceed this goal by using approximately 200 hours of apprentice time of the estimated total of 3,530 applicable labor hours for the project.

Advantage(s)

1. Improves street surfaces and pavement longevity.
2. Increases sewer system integrity and reliability
3. Increases water system integrity and reliability.
4. Improves city sidewalks.

Disadvantage(s)

1. Neighborhood residents, businesses and local traffic will be inconvenienced during the construction period along the corridors; however, the construction duration is short and lane closures will be limited, which will minimize the temporary inconvenience.
2. Construction will generate noise and dust in the work areas. To mitigate for noise, the contractor will be required to comply with a noise variance for night time work. The contractor will also be required to implement a dust control and erosion control strategy at all locations.

Budget Impact

The project is currently funded through a combination of the Pavement Management Program (\$1,198,200), the Water Utility Capital Fund (\$549,900) and the Sewer Utility Capital Fund (\$352,600). Sufficient funds are budgeted within each of these programs to construct the project.

Prior Council Review

None

Action Requested

Award a construction contract for the Broadway Corridor Improvement Project Phase 2 to the lowest responsive and responsible bidder, Catworks Construction, Vancouver, Washington, at their bid price of \$2,100,700.96, which includes applicable Washington State sales tax, and authorize the City Manager or designee to execute the same.

Chris Sneider, Senior Civil Engineer, 360-607-3926

ATTACHMENTS:

- ▣ Vicinity map
- ▣ Contract



PLANS FOR PROPOSED

**BROADWAY CORRIDOR
IMPROVEMENTS PHASE 2**
FROM
FROM W 6TH STREET TO W 13TH ST

NOVEMBER 2021

BUDGET NUMBERS FOR CONSTRUCTION:

SCHEDULE A (PAVING)
PRJ072822-ACT00589

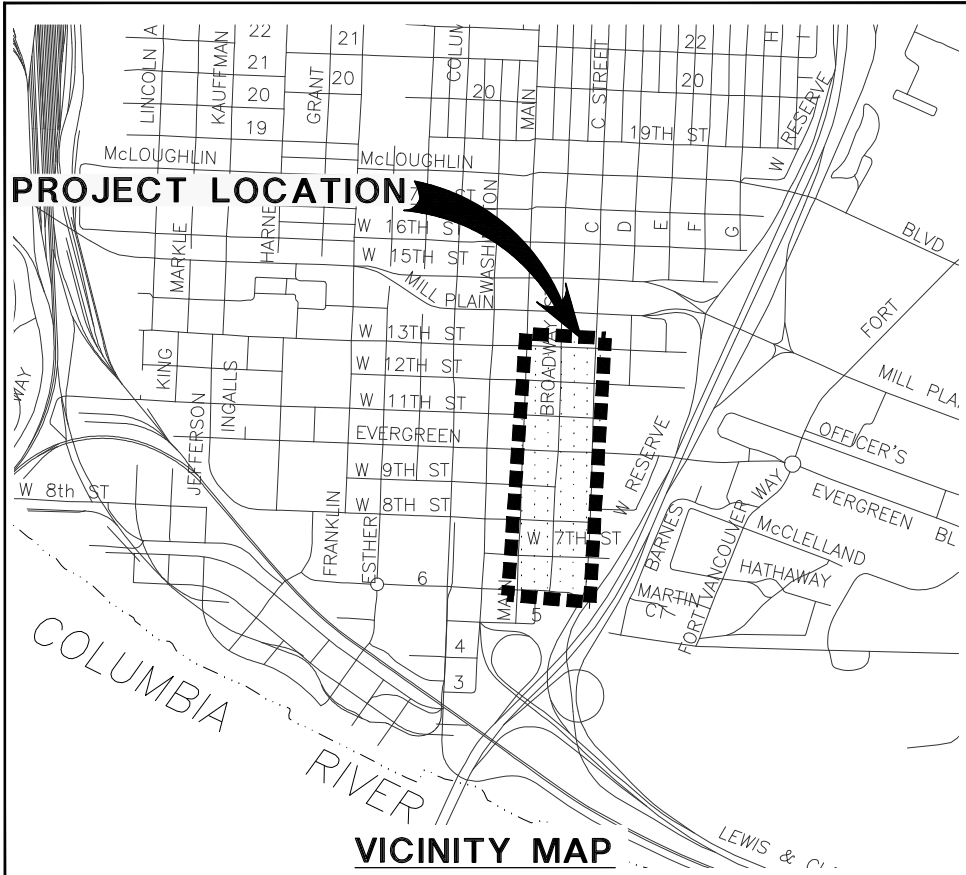
SCHEDULE B (CURB RAMPS)
PRJ072822-ACT00589

SCHEDULE C (SANITARY SEWER)
PRJ100342

SCHEDULE D (WATER)
PRJ100590

SHEET INDEX

	SHT. NO.	CAT. NO.	DESCRIPTION
GENERAL	1	G01	COVER SHEET
EROSION CONTROL	2	G02	GENERAL NOTES, ABBREVIATIONS AND LEGEND
STREET	3-7	E01-E05	EROSION CONTROL PLANS
STREET	8-12	C01-C05	PAVING PLANS
STREET	13-14	C06-C07	PLANTER DETAILS
ADA RAMPS	15-22	C08-C15	ADA RAMP PLANS
SIGNING AND STRIPING	23-27	SS01-SS05	STRIPING PLANS
SANITARY SEWER	28-31	S01-S04	SEWER IMPROVEMENTS
WATER	32-35	W1-W4	WATER IMPROVEMENTS
STANDARD DETAILS	36-47	D01-D12	STANDARD DETAILS



**PUBLIC WORKS - STREETS
& TRANSPORTATION**

P.O. BOX 1995
VANCOUVER, WA 98668-1995
360-487-7750
FAX: 360-487-4781

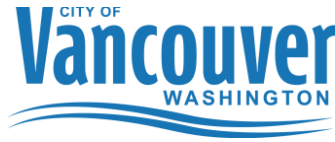


Know what's below.
Call before you dig.

APPROVAL BY: Dan Swensen
DESIGN AND CONSTRUCTION MANAGER
Digitally signed by Dan Swensen
Date: 2021.11.12 13:35:14
-08'00'

APPROVAL BY: Ryan Loposka
STREETS AND TRANSPORTATION
MANAGER
SHEET 1 OF 47
Digitally signed by Ryan
Loposka
Date: 2021.11.12 13:22:28
-08'00'

BROADWAY CORRIDOR IMPROVEMENTS PHASE 2



CONTRACT # _____

ITB 21-36: Broadway Corridor Improvements – Phase 2

THIS CONTRACT is entered into by and between the City of Vancouver, a municipal corporation under the laws of the State of Washington, hereinafter referred to as "City," and Cat Works LLC, dba Catworks Construction hereinafter referred to as "Contractor," whose address is 3501 Thompson Ave, Vancouver, WA 98660, hereinafter referred to "Parties."

WHEREAS, the City desires to engage the Contractor to provide public work and other related services for Broadway Corridor Improvements – Phase 2. Contractor has agreed to offer its services to perform said work per the City issued Invitation to Bid (ITB) No. 21-36 and all addenda thereto, Contractor's bid to said ITB, the Project Plans and Special Provisions, and City Council's approval on _____ per Staff Report No. _____; and

WHEREAS, the Contractor has represented by entering into this Contract that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, and to the standards required by the City.

- 1. STATEMENT OF WORK:** The Contractor hereby agrees to furnish all materials, labor, tools, machinery and implements of every description necessary to complete the work in a professional manner within the time limits stated in this Contract for the construction and installation of the following improvements and will make all necessary arrangements for the obtaining of permits from the United States, State of Washington, and/or any of its agencies as may be necessary to do the work required and covered by this Contract.

This contract provides for the improvement of Broadway Street within the City of Vancouver including pavement utility adjustments, planing, paving, curb ramps, striping, and other work, all in accordance with the attached Contract Plans, these Contract Provisions, and the Standard Specifications.

The Contractor shall furnish and install approximately 1343 lineal feet of 8-inch PVC gravity sewer main. The sewer will be installed within the existing City of Vancouver Sanitary Sewer right-of-way, including all laterals, manholes, and all appurtenances as shown on the plans and specified herein. This work will include Abandoning in place 1390 lineal feet of 8-inch of existing gravity sewer main and decommission 6 existing manholes per City of Vancouver Specifications.

The Contractor shall furnish and install 198 linear feet of 4-inch, 203 linear feet of 6-inch, 275 linear feet of 8-inch, 1033 linear feet of 12-inch, 48 linear feet of 16-inch and 35 linear feet of 18-inch ductile iron water main. Also, furnish and install fittings, valves and all appurtenances as shown on the plans and specified herein and hereafter referred to as "Work."

The Work shall be fully complete within 100 Working Days from the Notice to Proceed (NTP) date.

2. **EFFECTIVE DATE:** This Contract is effective as of the last signature dated below.
3. **E-VERIFY PROGRAM:** Contractor shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Agreement. Contractor shall ensure all Contractor employees and any sub-contractor(s) assigned to perform work under this Agreement are eligible to work in the United States. Contractor shall provide verification of compliance upon City request. Failure by Contractor to comply with this subsection shall be considered a material breach.
4. **CONTRACTOR RESPONSIBILITIES FOR SUBCONTRACTORS:** The Contractor shall include the language of this section in all tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier. The Contractor shall require all subcontractors to comply with all relevant federal, state and municipal laws, rules and regulations whatsoever.
At the time of subcontract execution, the Contractor shall verify that all tier subcontractors meet the following bidder responsibility criteria:
1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
 2. Have a current Washington Unified Business Identifier (UBI) number;
 3. Have received training on the requirements related to public works and prevailing wage as required by RCW 39.04.350;
 4. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.
 5. If applicable, have:
 - i. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - ii. A Washington Employment Security Department reference number, as required in Title 50 RCW;
 - iii. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - iv. An electrical contractor license, if required by Chapter 19.28 RCW;
 - v. An elevator contractor license, if required by Chapter 70.87 RCW.
 6. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
5. **DELINQUENT STATE TAXES:** The Contractor shall not owe delinquent taxes to the Washington State Department of Revenue without a payment plan approved by the Department of Revenue.
6. **COMPENSATION AND SCHEDULE OF PAYMENTS:** In consideration of the promises and agreements of the Contractor as set forth herein, and in consideration of the faithful performance and furnishing of the work and materials required by this Contract to the satisfaction of the City, the City agrees to pay to the Contractor in the manner and at the times provided hereinafter and in the Contract Documents, and in accordance with the ordinances of the City of Vancouver and the laws of the State of Washington, the following sum as indicated, which amount does includes 8.5% Washington State Sales Tax (if applicable) \$2,100,700.96 .

The amount finally to be paid is, however, variable upon the work actually performed and final payment will be made upon the basis of the amount of work performed and the materials furnished, and at the lump sum or unit prices fixed in the Contractor's Proposal and as modified by any and all approved Change Orders.

- 7. CONTRACTOR'S INSURANCE:** The Contractor agrees to procure insurance coverage as required below:

COVERAGE	LIMITS OF LIABILITY
I. Commercial General Liability:	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Occurrence	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000
II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.	
Combined Single Limit	\$1,000,000
III. Workers' Compensation (applicable to the State of Washington)	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000
IV. Pollution Legal Liability	
Each Claim	\$3,000,000
Annual Aggregate	\$6,000,000
V. Builders Risk	
Builder's "All Risk" Property Insurance	Contract Value
a. Coverage to include personal property of others in the care, custody and control of the contractor. Coverage should be written for 100% of the completed value.	
b. For additions or repairs of existing building structures, coverage to include contractor's interest in improvements, repairs, additions, alterations to completed buildings and subject to items described in "a".	

- 8. CONTRACTOR'S BOND:** The Contractor agrees that before it undertakes performance of this Contract, it will file with the City of Vancouver a Performance Bond and Payment Bond, in the forms prescribed by the City of Vancouver, in the full amount of the Contract price with a company

authorized to do business in the State of Washington as a surety. The bonds shall comply with the laws of the State of Washington, and especially with the provisions of Chapter 39.08 RCW.

- 9. DISPUTE RESOLUTION:** In the event of a dispute between the Parties which cannot be resolved by the contract managers, the Contractor and the City shall review such dispute and may attempt to resolve the dispute. Any controversy or claim arising out of or relating to this Contract or the alleged breach of this Contract that cannot be resolved by the Parties within 30 days of receipt of written notice may be submitted to mediation. If the dispute is not resolved through mediation, it shall be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04A RCW. The Parties agree to pay their own attorneys' fees and expenses.
- 10. EMPLOYMENT OF LABOR:** The Contractor agrees that all persons employed by Contractor and by any of its subcontractors and any of their lower tier contractors in work performed pursuant to this Contract shall not be employed in excess of eight (8) hours in any one day, except as provided or allowed by Chapter 49.28 RCW and WAC 296-127 and any amendment thereto.
- 11. PAYMENT OF LABOR:** The Contractor agrees that all laborers, workers, or mechanics employed by it or by any subcontractor in the performance of this Contract will be paid not less than the prevailing rate of wage for an hours work, in accordance with the provisions of the Chapter 39.12 RCW, and all rules and regulations promulgated pursuant thereto. The State of Washington prevailing wage rates applicable for this public works project, which is located in Clark County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. The prevailing wage rates in effect at the time of the bid submittal deadline shall apply for the duration of the project, no matter how long it lasts. However, if the Contract is awarded more than six months after the bids were due, the prevailing wage rates in effect on the award date shall apply.

In case any dispute arises as to what the prevailing rates of wages for work of a similar nature are and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the director of the Department of Labor and Industries of the State of Washington for arbitration, and the director's decision shall be final, conclusive and binding on all parties involved in the dispute.

- 12. PAYMENT TO THE CONTRACTOR:** Progress payments to the Contractor shall be made within 30 days of a fully executed Pay Estimate and are in compliance with all contractual requirements. A sum equal to 5% may be reserved and retained from monies earned by the Contractor in accordance with Chapter 60.28 RCW. The City reserves the right to require Contractor to correct any submitted or paid erroneous invoices according to the rates set forth herein. City and Contractor agree that any amount paid in error by City does not constitute a change in the agreed upon amount; Contractor agrees to issue a refund of any overages paid in error by the City.

Release of the retained percentage or the retainage bond shall be in accordance with Chapter 60.28 RCW. Every person performing labor or furnishing supplies toward the completion of said improvement of work shall have a lien upon said monies so reserved; provided, that such notice of the lien of such claimant shall be given in the manner provided in RCW 39.08.030 and within the time provided in Chapter 60.28 RCW as now existing and in accordance with any amendments that may hereafter be made thereto.

No payment shall be made to the Contractor, however, until the Contractor and all subcontractors who have performed work shall have filed and received approval of a Statement of Intent to Pay Prevailing Wage as required by RCW 39.12.040 from the Washington State Department of Labor and Industries. Said Contractor and all subcontractors shall also keep accurate payroll records for three years from the date of acceptance as described in RCW 39.12.120. A Contractor and all subcontractors shall, file a copy of its certified payroll records using the Department of Labor and Industries online system on a monthly basis. A Contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.

- 13. INDEMNIFICATION:** Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, including but not limited to demands, claims, causes of action, suits or judgments, claims of copyright or patent infringement, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by Contractor pursuant to this Contract.

In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the Contractor, the City retains the right to participate in said suit.

This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent of the Contractor, even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW. To the extent that such liability arises from the concurrent negligence of both the City and the Contractor, such cost, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. This indemnity and hold harmless shall NOT apply in the case where liability arises from the sole negligence of the City. Contractor specifically acknowledges that the provisions contained herein have been mutually negotiated by the Parties and it is the intent of the Parties that Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115.

- 14. OWNERSHIP OF RECORDS AND DOCUMENTS:** Any and all work product prepared by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Contract, the Contractor hereby further assigns all copyright interests in such work product to the City. A copy may be retained by the Contractor. Previously owned intellectual property of Contractor or any third party, and any know-how, methodologies or processes used by Contractor to provide the services or project deliverables under this Contract shall remain property of the original City.

- 15. PUBLIC DISCLOSURE COMPLIANCE:** The parties acknowledge that the City is an "agency" within the meaning of the Washington Public Records Act, Chapter 42.56 RCW, and that materials submitted by the Contractor to the City become public record. Such records may be subject to public disclosure, in whole or part and may be required to be released by the City in the event of a request for disclosure. In the event the City receives a public record request for any data or deliverable that is provided to the City and that is licensed from the Contractor, the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees or penalty assessment under Chapter 42.17 RCW for withholding or delaying public disclosure of such

information.

- 16. AMENDMENTS:** All changes to this Contract, including changes to the statement of work and compensation, must be made by written Change Order and/or Amendment and signed by all parties to this Contract.
- 17. AUTHORIZATION AND COMPLIANCE WITH THE LAW:** The Contractor certifies that the person signing the Contract is legally authorized to enter into this binding Contract and that the Contractor shall fully comply with all relevant, federal, state and municipal laws, rules, regulations and policies.
- 18. RELATION OF PARTIES:** The Contractor, its subcontractors, agents and employees are independent contractors performing services for The City and are not employees of City; shall not, as a result of this Contract, accrue leave, retirement, insurance, bonding or any other benefits afforded to City employees; and, shall not have the authority to bind the City in any way except as may be specifically provided in the Statement of Work.
- 19. JURISDICTION/VENUE:** In the event that any litigation should arise concerning the construction or interpretation of the terms and/or conditions of this Contract, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Clark. This Contract shall be governed by the law of the State of Washington.
- 20. COOPERATIVE PURCHASING:** The Washington State Inter-local Cooperation Act, Chapter 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By having executed this Contract, the Contractor agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City of Vancouver incurring any financial or legal liability for such purchases. The City of Vancouver agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City of Vancouver is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.
- 21. ASSIGNMENT:** This Contract is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party without the other party's express written authorization.
- 22. TERMINATION FOR CONVENIENCE:** The City, at its sole discretion, may terminate this Contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.
- In the event this Contract is terminated prior to the completion of Work, Contractor will only be paid for the Work completed at the time of termination of the Contract.
- 23. TERMINATION FOR CAUSE:** In the event the Contractor is, or has been, in violation of the terms of this Contract, including the solicitation, the City reserves the right, upon written notice to the Contractor, to cancel, terminate, or suspend this contract in whole or in part for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract

price for services performed in accordance with the manner of performance set forth in the Contract.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, or events which are not the fault of or are beyond the control of the Contractor, the City after setting up a new delivery or performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

- 24. OPPORTUNITY TO CURE:** The City at its sole discretion may in lieu of a termination allow the Contractor to cure the defect(s), by providing a "Notice to Cure" to Contractor setting forth the remedies sought by City and the deadline to accomplish the remedies. If the Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the time stated time, the City shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against the Contractor and its sureties for said breach or default, including but not limited to termination of this Contract for convenience.
- 25. WAIVER AND REMEDIES:** City's failure to enforce the terms or conditions herein or to exercise any right or privilege, or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type. Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.
- 26. ENTIRETY OF CONTRACT:** This Contract incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written Contract. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Contract.
- 27. USE OF CITY'S NAME:** Contractor may not use any of City's name, trademark, service marks, or logo in connection with the services contemplated by this Contract or otherwise without the prior written permission of City, which permission may be withheld for any or no reason and may be subject to certain conditions.
- 28. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY:** During the term of this Contract, Contractor will not discriminate against any employee or applicant for employment in accordance with RCW Chapter 49.60, including, but not limited to creed, religion, race, color, age, sex, marital status, sexual orientation, sexual identity, pregnancy, military status, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants and employees are treated fairly, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical disability. Such action shall include all terms and conditions of employment, compensation, and benefits, including apprenticeship.
- 29. BINDING EFFECT:** The provisions, covenants and conditions in this Contract bind the parties, their legal heirs, representatives, successors, and assigns.

30. RATIFICATION: Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and confirmed.

31. INCORPORATED CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE: The complete Contract includes these parts listed in this section below, which are incorporated by this reference as if fully as set forth herein. Any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Amendments to the Contract,
2. This Contract,
3. Addenda to the Solicitation,
4. The Solicitation,
5. Contractor's Proposal,
6. Special Provisions,
7. Contract Plan Set,
8. City of Vancouver Amendments to the specified WSDOT Standard Specifications,
9. City of Vancouver Standard Plans,
10. WSDOT Amendments to the WSDOT Standard Specifications,
11. WSDOT Standard Specifications,
13. WSDOT Standard Plans.

32. NOTICES: Whenever in this written Contract written notices are to be given or made, they may be sent by certified mail to the following people at the addresses as shown herein unless a different address is designated in writing or delivered to the respective party hereto.

Anna Vogel
City of Vancouver
415 W 6th St.
PO Box 1995
Vancouver WA 98668-1995

Cat Works LLC
3501 Thompson Ave.
Vancouver, WA 98660

By signing below, Contractor accepts the terms and conditions of this Contract and specifically acknowledges and agrees that the provisions contained herein have been mutually negotiated by the Parties.

CITY OF VANCOUVER
A municipal corporation

CONTRACTOR:
Cat Works LLC

Eric Holmes, City Manager

Signature

Date

Printed Name /Title

Attest:

Date

Natasha Ramras, City Clerk

Approved as to form:

Jonathan Young, City Attorney



Staff Report 007-22

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 1/24/2022

SUBJECT Waiver of monetary sanctions and authorization for settlement of litigation

Key Points

- If approved, this agenda item would authorize the Vancouver City Manager to execute a Settlement Agreement and Release resolving litigation with attorney Debra Quinn.
- The proposed settlement would require the City to waive collection of approximately \$50,000 in monetary sanctions that Ms. Quinn was ordered to pay to the City as sanctions in the pending lawsuit.
- All other financial terms of the proposed settlement would be satisfied exclusively by the City's former insurance companies.
- Resolution of the case through settlement will fully and finally conclude the litigation with Ms. Quinn with no adverse findings of any kind against the City of Vancouver or any of its officials.

Strategic Plan Alignment

N/A

Present Situation

In 2017, attorney Debra Quinn filed a lawsuit against the City of Vancouver et. al. In 2019, the City of Vancouver rescinded Ms. Quinn's authorization to act as an attorney on its behalf and lodged a complaint against Ms. Quinn with the Washington State Bar Association. In 2021, a United States District Court Magistrate Judge issued a report and recommendation imposing monetary sanctions against Ms. Quinn. An Article III United States District Court Judge partially adopted these recommendations and imposed monetary sanctions against Ms. Quinn, ordering that she pay the City of Vancouver \$50,843.66 plus interest. The City's former insurance companies have since decided to resolve pending litigation with Ms. Quinn through a cash settlement funded exclusively by the City's former insurance companies. The total value of the proposed cash settlement is estimated to be less than the attorney fees Ms. Quinn has incurred to date and also less than the expense of litigating the case to a verdict in a multi-week federal trial.

Chapter 3.25 of the Vancouver Municipal Code allows the City Manager to request approval from the City Council to waive amounts exceeding \$25,000 owed to the City of Vancouver, provided that final authorization for the waiver of judicially imposed sanctions remains subject to approval of the U.S. District Court. The City Manager hereby requests that the City Council approve waiver of the \$50,843.66 plus interest owed by Ms. Quinn to the City of Vancouver in consideration for settlement of this litigation.

Advantage(s)

1. Resolution of the case through settlement will fully and finally conclude the litigation with no adverse findings of any kind against the City of Vancouver or any of its officials.
2. Resolution of the case will not require the City to relinquish its attorney licensing complaint against Debra Quinn. That complaint will continue to be reviewed by the Washington State Bar Association for appropriate disposition.

Disadvantage(s)

None

Budget Impact

- Resolution of the case will require the City to enter a joint motion to waive imposition of the monetary terms of the United States District Court's sanction order and forego collection of \$50,843.66 plus interest.
- All other monetary components of the settlement will be satisfied by the City of Vancouver's former insurance companies and will not require financial contributions of any kind from the City.

Prior Council Review

Executive session(s) on pending litigation.

Action Requested

On Monday, January 24, 2022, authorize the City Manager to execute all documents necessary to resolve the case Debra Quinn v. City of Vancouver, et. al. through settlement on substantially the terms set forth above. Approve the City Manager's recommendation to join in requesting waiver and collection of \$50,843.66 plus interest in the form of monetary sanctions owed by Debra Quinn to the City of Vancouver by Order of the United States District Court.

Colleen Kinerk, External Legal Counsel of Record for City of Vancouver in the matter of Debra Quinn v. City of Vancouver, et. al.

ATTACHMENTS:

- ▣ Report and Recommendation of U.S. Magistrate Judge Richard Creatura
- ▣ Order Adopting Report and Recommendation in Part, U.S. District Court Judge Benjamin Settle

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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 DEBRA QUINN,

11 Plaintiff,

12 v.

13 CITY OF VANCOUVER, *et al.*,

14 Defendants.

CASE NO. 3:17-cv-05969-BHS

REPORT AND
RECOMMENDATION

NOTED FOR: January 22, 2021

15
16 Plaintiff, an attorney, is suing her former employer and client, defendant City of
17 Vancouver (“defendant City”), among others. She claims that she was the victim of gender
18 discrimination, harassment, and retaliation. While still employed, and for some time thereafter,
19 unbeknownst to defendant City, she communicated with current and former City employees
20 about her claims and theirs against the City. Throughout discovery in this case, plaintiff has
21 attempted to conceal the extent of these communications by falsely testifying under oath, failing
22 to disclose the existence of these communications, and asserting unfounded privileges—all in
23 violation of the Federal Rules of Civil Procedure and specific orders issued by this Court.
24

1 Defendant City has now brought a motion for sanctions against plaintiff for alleged
2 discovery violations, including willfully disobeying this Court's discovery orders. Dkt. 256.
3 Defendant City's motion for sanctions (Dkt. 256) has been referred to the undersigned by the
4 District Court. *See* Dkt.

5 Having been involved in addressing plaintiff's discovery conduct over the course of 11
6 months, and after deferring ruling on defendant City's requested sanctions, this Court now
7 recommends the imposition of both monetary and non-monetary sanctions to reflect the
8 seriousness of plaintiff's discovery misconduct, further discussed herein. Plaintiff should be
9 ordered to pay \$34,790.00 in attorney's fees and \$16,053.66 in expenses to defendant City,
10 which should be immediately payable, but payment may be delayed until a final judgment is
11 rendered in this case. The Court further recommends that any final award in favor of plaintiff be
12 paid into the registry of the Court for purposes of satisfying any unpaid portions of the award of
13 sanctions.

14 Defendant City's request for the ultimate sanction—dismissal of plaintiff's claims with
15 prejudice—should be denied because defendant City has not demonstrated that it cannot be fully
16 prepared to defend this case on its merits. However, for the purposes of this litigation, the Court
17 recommends that certain facts regarding plaintiff's conduct be designated as proven, as set forth
18 below.

19 Defendant City has filed a renewed motion to dismiss for plaintiff's alleged violation of
20 the Rules of Professional Conduct. Dkt. 264. The parties have also filed motions for summary
21 judgment. Dkts. 260, 262, 266, 268. Because the outcome of defendant City's renewed motion
22 to dismiss may depend, in part, on the District Court's ruling on this motion for sanctions (Dkt.
23
24

256), the undersigned also directs the Clerk to renote the remaining pending motions until after the District Court has entered its order on the motion for sanctions.

PLAINTIFF'S REQUEST TO POSTPONE RULING

As an initial matter, plaintiff requests that the Court postpone ruling on defendant City's motion for sanctions (Dkt. 256) until resolution of a separate state court action by plaintiff against defendant City regarding disclosures under Washington State's Public Records Act, RCW 42.56.001 *et seq.* See Dkt. 273, at 16–17. Defendant City opposes any stay. See Dkt. 280, at 4–5.

Plaintiff has not shown that any conduct by defendant City in that case is related to the present motion for sanctions based on *plaintiff's* discovery conduct in this case. Further, plaintiff has not articulated any harm or inequity she may suffer if the Court rules now on defendant City's motion for sanctions. See *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (discussing the interests to be weighed in considering whether to stay a proceeding). Therefore, the Court recommends denying plaintiff's request to defer ruling on defendant City's motion for sanctions.

DISCUSSION

In considering defendant City's motion for sanctions (Dkt. 256), the Court begins by discussing the history of the parties' discovery disputes and plaintiff's conduct in this matter, specifically: (1) plaintiff's false deposition testimony; (2) plaintiff's failure to disclose discoverable communications in response to defendants' valid discovery requests and failure to provide a privilege log; (3) plaintiff's violation of this Court's discovery orders; and (4) plaintiff's withholding of discoverable communications on the basis of asserted privileges that clearly do not apply. The Court will then discuss defendant City's requested sanctions.

I. Plaintiff's Discovery Violations

A. Plaintiff's Initiation of Litigation and Her September 2018 Deposition Testimony

At the time of filing suit, on November 21, 2017, plaintiff was an Assistant City Attorney for her employer and client, defendant City, and was under the supervision of defendants Eric Holmes, Bronson Potter, and Jonathan Young. Dkt. 1, at 4; Dkt. 256, at 2. In her initial complaint, plaintiff claimed that defendants subjected her to unlawful gender discrimination, hostile work environment, and retaliation for making discrimination complaints. *See* Dkt. 1.

On September 11, 2018, plaintiff testified at her first deposition in this case. *See* Dkt. 244-3. Plaintiff gave the following deposition testimony under oath:

Q: Have you ever encouraged any current employee of the City to file an internal complaint?

A: No.

Q: Have you ever encouraged any current City employee to file a lawsuit against the City claiming discrimination?

A: No.

Q: Have you encouraged any former employee of the City to file a complaint of discrimination against the City?

A: No.

Q: Have you ever encouraged any former employee of the City to file a complaint with the Equal Employment Opportunity Commission?

A: No.

Dkt. 244-3, at 2. Now, more than two years later, after a tortured battle for information, the Court and defendants have learned that this testimony was false. At the time of the September 2018 deposition and thereafter, plaintiff had in fact encouraged current and former City employees to bring claims of discrimination against the City and offered advice on how to

1 proceed. Plaintiff had even provided documentation to assist these employees in their efforts—
2 communications that plaintiff concealed from defendants—and this Court.

3 For instance, on October 20, 2017, plaintiff sent an email to former City employee Karen
4 Reed suggesting, “I am wondering if you sent the EEOC a copy of the whistle blower complaint,
5 if it would help you. They seem to want to know about other affected women.” Dkt. 265-11.

6 Additionally, on July 11, 2018—three months before her deposition testimony—plaintiff
7 sent a text message to current City employee Julie Ballou about Ms. Ballou’s allegations of
8 discrimination against the City. Plaintiff wrote, “You should talk to [an attorney] about this, but
9 I am not sure you should agree to let the City investigate. Just go directly to the EEOC.” Dkt.
10 285-3, at 1. Several days later, plaintiff again texted Ms. Ballou, “Don’t hold off on any action
11 because you want to wait until the investigation is done.” *Id.* at 2. Also in July 2018, plaintiff
12 sent a text message cautioning Ms. Ballou: “One thing to keep in mind is you likely want to file
13 an EEOC complaint within I think 180 days of the action. You have time but keep it in mind.”
14 Dkt. 285-3, at 2; *see also* Dkt. 285-3, at 3 (“Look at RCW 4.96.020[.] . . . It is critical [your
15 attorney] serves [the tort claim] on the right people.”).

16 These are examples of documents that were later revealed and that demonstrate that at the
17 time of her September 2018 deposition, plaintiff had already encouraged current or former City
18 employees to pursue discrimination claims against defendant City. Further, in January 2019,
19 after she had provided this false testimony but while she was still employed by the City, plaintiff
20 continued to email Ms. Reed. Plaintiff shared City documents, including City personnel files,
21 policy documents, and internal communications—all of which were sent less than two months
22 before Ms. Reed filed suit against defendant City. *See* Dkt. 194-6, at 5,14, 16–20, 24–26.

Whether these communications violated plaintiff's professional obligations to her client, defendant City, is the subject of another motion (*see* Dkt. 264) and will not be further addressed here. As an attorney, however, plaintiff should have been well aware of her legal duty to testify truthfully. *See* Fed. R. Civ. P. 30(c) ("The examination . . . of a deponent proceed[s] as [it] would at trial . . . [and] the deponent [is] under oath or affirmation."); Fed. R. Evid. 603 ("Before testifying, a witness must give an oath or affirmation to testify truthfully."). Plaintiff's testimony—in light of later-disclosed documents—was false.

B. Plaintiff's Failure to Disclose in Response to Defendant Holmes' RFP No. 13

Plaintiff also concealed communications she had with others about her own claims against the City, even though defendants validly requested this information. Specifically, on December 20, 2018, defendant Holmes propounded Request for Production ("RFP") No. 13:

Produce copies of all postcards, cards, letters, emails, text messages, social media messages . . . , or other communications that you have sent or received from [35 individuals, including Karen Reed and Julie Ballou] and any other person that relate to your allegations of discrimination, retaliation, outrage, negligent supervision, breach of implied contract, violations of the First Amendment, violation of equal protection, hostile work environment, the City of Vancouver's culture, or this litigation.

Dkt. 257-4, at 2. On January 18, 2019, plaintiff objected to defendant Holmes' request but stated that she would produce non-privileged, responsive documents currently in her possession, custody, or control. *Id.* But she did not. Months went by, and plaintiff failed to produce any documents, nor did she provide a privilege log to disclose the nature of any documents she was withholding.

As the Court and defendants would later learn, plaintiff did indeed possess a number of responsive documents, dating back to 2017, which she withheld without explanation and without preparing any form of privilege log, so that at least the existence of any such documents could be

1 reviewed and evaluated by defendants and the Court. The following is a small sampling of
2 documents that finally came to light years later and after multiple motions and hearings that will
3 be described further, *infra*. Plaintiff sent the following email to Ms. Reed in August of 2017:

4 [T]he EEOC finally contacted me to say they are planning to dismiss my case. . . .
5 They said comments made by [defendant Potter] were not severe or pervasive
6 enough to qualify as harassment. They also said that because [defendant Potter]
7 had a reason to put me on paid admin [sic] leave, there was no retaliation.

8 Dkt. 265-6. In October 2017, plaintiff again wrote to Ms. Reed, “[H]ere is the City’s reply to my
9 whistle blower and tort claim notice! . . . I will likely file suit in November.” Dkt. 265-11. In
10 August of 2018, plaintiff sent a text message to Ms. Ballou, “If you want to give me your email I
11 will send you a copy of the investigation the City just did.” Dkt. 285-3, at 2 (further discussing
12 plaintiff and Ms. Ballou’s complaints against defendant City). None of these emails were
13 disclosed in response to RFP 13.

14 These documents and others make clear that plaintiff was concealing validly requested
15 information. Plaintiff maintains that she was not required to reveal these documents and that she
16 was not even required to produce any privilege log in connection with these communications
17 because the communications were prepared after she had filed suit against the City. Dkt. 273, at
18 8–10. But at the time of responding to defendant Holmes’ RFP No 13, plaintiff failed to provide
19 any privilege log—even for communications that occurred *before* the commencement of
20 litigation. *See, e.g.*, Dkts. 265-6, 265-10, 265-11, 265-13, 265-14, 265-36 (August 2017 to
21 November 2017 emails exchanged with Ms. Reed discussing plaintiff’s claims against
22 defendants and this litigation). So, she had no reason for failing to prepare a privilege log at least
23 for those documents.

24 As for documents prepared after the initiation of litigation, plaintiff’s argument is also
flawed. Certainly, parties may agree that no privilege log is necessary for communications dated

1 after the commencement of litigation. However, to the Court’s knowledge, there was no such
 2 agreement between the parties here. Nor does the Rule requiring the preparation of a privilege
 3 log distinguish between communications occurring before and after litigation is commenced.
 4 See Fed. R. Civ. P. 26(b)(5)(A) (“When a party withholds information otherwise discoverable by
 5 claiming that the information is privileged or subject to protection . . . , the party must: (i)
 6 expressly make the claim; and (ii) describe the nature of the documents, communications, or
 7 tangible things not produced or disclosed—and do so in a manner that . . . will enable other
 8 parties to assess the claim.”). Plaintiff has not identified, nor is this Court aware of, any Ninth
 9 Circuit case holding that a party need not prepare a privilege log for communications with third
 10 parties occurring after litigation is commenced. Indeed, courts in this Circuit have only drawn
 11 such a line for communications between a party and her counsel. See, e.g., *Ryan Inc. Corp. v.*
 12 *Pedregal de Cabo San Lucas*, No. C 06-3219 JW (RS), 2009 WL 5114077, at *3 (N.D. Cal.
 13 Dec. 18, 2009) (denying motion to compel a log of post-litigation *counsel* communications and
 14 work product, but compelling a party to provide a privilege log for “any other materials withheld
 15 on privilege grounds”); see also *Grider v. Keystone Health Plan Central, Inc.* 580 F.3d 119, 139
 16 n. 22 (3d Cir. 2009) (“[A] privilege log may not be required for communications *with counsel*
 17 that takes place after the filing of a lawsuit.” (emphasis added)). In this case, the majority of
 18 documents that plaintiff concealed and failed to disclose in a privilege log were not
 19 communications between her and her attorney, but with third parties, such as current and former
 20 employees of the City. Further, this case presents a unique situation where plaintiff remained
 21 employed by defendant City—her client—after she filed suit and where she continued to
 22 communicate with former and current City employees—none of whom are co-parties to this
 23 litigation—regarding plaintiff’s claims and those individuals’ claims against defendant City.
 24

1 The purpose of a privilege log is to disclose the existence of otherwise discoverable
 2 information withheld under a claim of privilege so that the opposing party and the Court can
 3 have an opportunity to evaluate whether an asserted privilege is appropriate. Plaintiff deprived
 4 defendants and the Court of that opportunity by failing to produce any privilege log. Without
 5 any privilege log, there was no way for defendants to challenge plaintiff's asserted privileges for
 6 withholding those documents.

7 And as defendants and this Court learned, and as discussed in greater detail below, most
 8 of plaintiff's belatedly asserted privileges *did not* shield the disclosure of plaintiff's responsive
 9 and discoverable documents. Having now reviewed many of the documents withheld, it is clear
 10 that plaintiff used the purported work-product and common interest doctrines to conceal the
 11 existence of those documents—not to assert any good faith legal theory of protection over these
 12 documents.

13 Under these circumstances, the Court finds that plaintiff violated her duty to provide a
 14 privilege log under Fed. R. Civ. P. 26(b)(5)(A). The Court further finds that plaintiff failed to
 15 supplement defendant Holmes' RFP No. 13 pursuant to Fed. R. Civ. P. 26(e), which requires
 16 plaintiff to supplement or correct a response to a request for production "in a timely manner if
 17 [she] learns that in some material respect the . . . response is incomplete or incorrect," or "as
 18 ordered by the court."

19 **C. Plaintiff's June 2019 Deposition Testimony**

20 The saga continues.

21 On June 3, 2019, plaintiff testified at a second deposition. *See* Dkt. 257-2. At that
 22 deposition, plaintiff testified—under oath—that she never encouraged former City employee Ms.
 23 Reed to file a lawsuit against defendant City, stating "[t]hat was purely her decision, I did not
 24

encourage her.” *Id.*, at 6. However, at the time of her second deposition—as the Court and defendants would later learn—plaintiff had in fact exchanged multiple emails with Ms. Reed beginning in August 2017 through January 2019, discussing Ms. Reed’s EEOC complaint against defendant City (*see, e.g.*, Dkts. 194-6, at 2; 194-8, at 5–7; 265-11; 265-12); sharing City personnel files, policy documents, and internal communications (*see* Dkts. 194-6, at 5,14, 16–20, 24–26); and agreeing to be a witness in support of Ms. Reed’s EEOC complaint. *See* Dkt. 194-8, at 6 (“Absolutely you can use me as a witness.”). Indeed, even Ms. Reed thanked plaintiff for her “encouragement.” Dkt. 265-12 (“[t]hank you for your encouragement.”). Plaintiff’s testimony that she never encouraged Ms. Reed to file suit or bring a complaint of discrimination against defendant City—in light of later-disclosed documents—was false. *See* Fed. R. Civ. P. 30(c); Fed. R. Evid. 603.

D. Plaintiff’s November 2019 “Out of the Blue” Production

In March 2019, Ms. Reed separately sued defendant City. *See Reed v. City of Vancouver*, Case No. 3:19-cv-05182-RJB, Dkt. 1 (W.D. Wash. March 8, 2019). In fall 2019, several months after plaintiff’s second deposition, Ms. Reed produced to defendant City redacted emails exchanged between Ms. Reed and plaintiff from August 2017 to November 2018 regarding her and plaintiff’s claims against defendant City. *See* Dkt. 196-8. Around the same time, and in yet another separate lawsuit filed by current City Ms. Ballou, Ms. Ballou produced to defendant City text messages exchanged between her and plaintiff regarding each’s claims against defendant City. *See* Dkt. 196-7; *Ballou v. McElvain*, Case No. 3:19-cv-05002-JLR (W.D. Wash. Jan. 1, 2019).

Ms. Ballou and Ms. Reed’s productions in fall 2019 were the first time that these documents had come to light. Up to this time, despite defendant Holmes’ RFP No. 13 requesting

1 communications exchanged with Ms. Reed and Ms. Ballou regarding plaintiff's claims and this
2 litigation, plaintiff had not previously produced nor disclosed the existence of any of these
3 documents.

4 On November 22, 2019—apparently “out of the blue”—plaintiff provided a supplemental
5 response to defendant Holmes' RFP No. 13, producing nearly identical and redacted emails and
6 text messages previously disclosed by Ms. Reed and Ms. Ballou in their separate litigations. *See*
7 Dkts. 194-6 (2018 emails exchanged with Reed regarding plaintiff's claims and this litigation);
8 285-2 (undated text messages exchanged with Ballou regarding plaintiff's claims and this
9 litigation). Plaintiff provided no explanation for her 11-month delay in responding to defendant
10 Holmes' RFP No. 13, nor did she explain why she had failed to prepare a privilege log at least
11 acknowledging these communications' existence. And, as the Court later learned through
12 defendant City's motion for sanctions (Dkt. 256) and supporting exhibits (Dkts. 265, 287),
13 plaintiff continued to withhold—again without any privilege log—additional responsive
14 documents that had not been disclosed by Ms. Reed and Ms. Ballou. *See, e.g.*, Dkts. 265-6, 265-
15 11, 265-36 (copies of emails exchanged with Reed regarding plaintiff's claims); 285-3
16 (unredacted copies of text messages exchanged with Ballou regarding the same).

17 As noted above, plaintiff has a duty to supplement or correct a response to a request for
18 production “in a timely manner if [she] learns that in some material respect the . . . response is
19 incomplete or incorrect,” or “as ordered by the court.” Fed. R. Civ. P. 26(e)(1). Here, it is clear
20 that plaintiff should have produced these responsive documents before November 2019 and that
21 she failed to supplement her response to defendant Holmes' RFP No. 13 in a timely manner.
22 And, as previously discussed, she failed to provide any privilege log as required by Fed. R. Civ.
23 P. 26(b)(5).

1 On December 1, 2020, during oral argument on the motion for sanctions (Dkts. 265,
2 288), plaintiff admitted that she withheld responsive emails and text messages that were written
3 before November 2019. However, she asserted that she did so because these communications
4 were purportedly protected and withheld under the work-product and common interest doctrines.
5 Plaintiff contended that Ms. Reed and Ms. Ballou's productions in the fall of 2019 waived any
6 asserted privilege. Therefore, plaintiff subsequently supplemented her response to defendant
7 Holmes' RFP No. 13. However, this account does not explain plaintiff's failure to provide a
8 privilege log prior to her supplemental response, acknowledging the existence of such documents
9 and the basis for withholding them. *See* Fed. R. Civ. P. 26(b)(5). Indeed, it appears that plaintiff
10 failed to provide any privilege log regarding responsive documents until compelled to do so by
11 this Court on April 6, 2020 (*see* Dkt. 221), and then ordered again on June 16, 2020. *See* Dkt.
12 238. Further, it fails to explain plaintiff's continued concealment of other responsive documents
13 until compelled to do so by this Court.

14 Finally, plaintiff's arguments for asserting privilege based on the work-product and
15 common interest doctrines over many of these documents are ill-founded. The work-product
16 doctrine is a "qualified privilege" that protects "from discovery documents and tangible things
17 prepared by a party or [her] counsel in anticipation of litigation." *Admiral Ins. Co. v. U.S. Dist.*
18 *Court for Dist. of Arizona*, 881 F.2d 1486, 1494 (9th Cir. 1989) (citing Fed. R. Civ. P.
19 26(b)(3)(A)). This qualified privilege clearly does not apply when such information is shared
20 with third parties, such as Ms. Reed and Ms. Ballou, because such disclosures "substantially
21 increased the opportunities for potential adversaries to obtain the information." *United States v.*
22 *Sanmina Corp.*, 968 F.3d 1107, 1121 (9th Cir. 2020) (citation omitted). Indeed, Ms. Reed and
23 Ms. Ballou recognized that such documents were not protected communications and disclosed
24

1 the emails and text messages to defendant City—plaintiff’s opponent—in response to valid
 2 discovery requests. *See* Dkts. 194-7, 194-8. Instead, these communications were more along the
 3 lines of sharing litigation news (*see, e.g.*, Dkt. 194-6, at 1 (discussing that defendants did not
 4 make any motion to dismiss in this litigation), *id.* at 2 (Reed discussing the “Me Too Movement”
 5 and gender discrimination); Dkt. 285-2, at 1–2 (naming defendants’ attorneys in this litigation)),
 6 which would hardly qualify as work product.

7 Plaintiff also claims that such communications were protected under the “common
 8 interest” doctrine. This applies when “the parties [] make the communication in pursuit of a joint
 9 strategy in accordance with some sort of agreement—whether written or unwritten.” *In re Pac.*
 10 *Pictures Corp.*, 679 F.3d 1121, 1129 (9th Cir. 2012). Although plaintiff apparently approached
 11 at least Reed about pursuing some “joint strategy” (Dkt. 265-12, at 1), plaintiff has come forward
 12 with no evidence showing that there was an actual agreement—whether written or unwritten—to
 13 pursue a joint legal strategy prior to her disclosure of any alleged protected work product with
 14 either Reed or Ballou. *See In re Pac. Pictures Corp.*, 679 F.3d at 1129. And how odd it would
 15 be that she would have entered into an agreement with these third parties to pursue a common
 16 defense against her own client. *See* Dkt. 186, at 4, 8 (reflecting that plaintiff remained employed
 17 by and continued to represent defendant City at the time of these communications). Simply put:
 18 plaintiff’s asserted privileges do not shield the long-withheld communications with Ms. Reed
 19 and Ms. Ballou, and plaintiff’s failure to timely produce those documents—or at least produce a
 20 privilege log—is in violation of Fed. R. Civ. P. 26(e).

21 **E. Plaintiff’s Failure to Disclose in Response to Defendant City’s RFP**
 22 **No. 12**

23 Shortly after plaintiff’s November 2019 supplemental response to defendant Holmes’
 24 RFP No. 13, defendant City propounded its own RFP No. 12, requesting “full and complete

1 copies of every text message exchanged between [plaintiff] and [certain] persons,” including Ms.
2 Reed and Ms. Ballou, “which related to or referred to that person’s claims against the City of
3 Vancouver.” Dkt. 194-2, at 13. On December 23, 2019, plaintiff responded that she had already
4 provided all non-privileged, responsive documents to defendants. *See id.* at 14. As the Court
5 and defendants would later learn, plaintiff’s response was not entirely true. While she had
6 produced some such documents, she continued to withhold redacted portions of text messages
7 that were responsive to defendant City’s RFP No. 12 and were not protected by any privilege.
8 *See* Dkt. 285-3, at 1 (July 9, 2018, text message from Ms. Ballou to plaintiff: “I sent an email
9 today to [defendant] Holmes and chief telling them, in summary, that I believe I’m the victim of
10 discrimination and have been advised to get an attorney but would like to not have to. I didn’t
11 realize you also had a complaint against him.”); *id.* at 1 (another text message from Ms. Ballou to
12 plaintiff on July 9, 2018: “Did you have issues with attorneys telling you because haven’t been
13 fired or repeatedly passed over they aren’t excited to take a case? Seems to be a theme with
14 me.”); *id.* at 2 (July 14, 2018, text message from Ms. Ballou to plaintiff: “[Y]es I’ll file with
15 eeoc [sic] also because I’m not satisfied that whoever does my investigation will be fair.”).

16 On January 15, 2020, plaintiff provided a supplemental response to defendant City’s RFP
17 No. 12, again stating that she had already produced all non-privileged, responsive documents to
18 defendants and that any privileged documents were reflected on a privilege log previously
19 provided to defendants. *See* Dkt. 194-3, at 14. But plaintiff has not provided any such privilege
20 log that she allegedly sent to defendants. Defendant City contends that plaintiff has neither
21 provided any privilege log with her supplemental response (*see* Dkts. 194, at 2; 244, at 2), nor
22 identified any privilege log previously produced to defendants reflecting any potentially
23 responsive documents. Further, as noted above, neither the work-product nor the common
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1 interest doctrines were implicated because plaintiff did not represent that she actually pursued a
 2 joint legal strategy with Ms. Reed or Ms. Ballou. Thus, plaintiff's supplemental response was
 3 not entirely true because the redacted portions of these emails and text messages were indeed
 4 responsive to defendant City's RFP No. 12 and were not privileged as plaintiff continued to
 5 maintain. *See* Dkts. 245, at 3, 6; 273, at 6, 8 (arguing that plaintiff's continued withholding of
 6 these communications was proper based on the asserted work-product and common interest
 7 doctrines).

8 **F. Defendant City's January 2020 Motion to Compel and the Court's**
 9 **Order Regarding Forensic Examination of Plaintiff's Electronic**
 10 **Devices**

11 Following unsuccessful attempts to clarify which documents plaintiff had withheld and
 12 under what asserted privilege, defendant City requested access to plaintiff's laptop computer or
 13 cell phone so that they could be inspected for relevant documents. Plaintiff refused. Dkt. 194-3,
 14 at 3. Thereafter, on January 30, 2020, defendant City filed a motion to compel a forensic
 15 examination of plaintiff's electronic devices. Dkt. 193. In its motion to compel, defendant City
 16 argued that forensic examination of plaintiff's electronic devices was necessary due to plaintiff's
 17 failure to timely and fully respond to discovery requests propounded by defendants Holmes and
 18 the City and her inconsistent deposition testimony in light of documents produced in November
 19 2019. *See id.* Both in her opposition brief and during oral argument on this motion to compel
 20 (Dkt. 193), plaintiff maintained that she had searched her files and produced all non-privileged
 21 responsive documents within her possession, custody, or control. *See* Dkt. 198, at 3. As it
 22 would come to pass, this was not true, either. *See, e.g.,* Dkts. 247, at 2; 250, at 1.

23 During oral argument on defendant City's motion to compel (Dkt. 193), the Court noted
 24 that in light of plaintiff's conduct in discovery thus far, plaintiff's discovery responses could not

1 be accepted at face value and that a forensic examination of plaintiff's devices was warranted to
2 verify that plaintiff had in fact disclosed all responsive communications requested by defendant
3 City's RFP No. 12 and defendant Holmes' RFP No. 13.

4 On April 6, 2020, after additional briefing, the Court granted defendant City's motion to
5 compel forensic examination of plaintiff's electronic devices pursuant to an agreed-upon forensic
6 protocol. Dkt. 221 (citing Dkts. 202, 217 for the forensic protocol). Notably, plaintiff was given
7 the opportunity to review and object to defendant City's proposed forensic protocol. See Dkt.
8 212, at 2. She filed no objections.

9 In pertinent part, and as agreed to by the parties, the forensic protocol provides the
10 following:

11 [Forensic examiner] would utilize search terms to conduct the search of the stored
12 data. . . . The search terms would consist of the name of the Plaintiff and the names
13 of individuals listed as current or former employees of the City of Vancouver
14 referred to in the City's Discovery Request to [plaintiff], and the names of the
15 current and former employees of the City of Vancouver referenced in Defendant
16 Eric Holmes' [RFP] No. 13. . . .

17 Once the search of a device has been conducted, [forensic examiner] would provide
18 copies of the documents retrieved in the search to Plaintiff's counsel so that they
19 would review them with their client. Plaintiff's counsel would in turn provide
20 [forensic examiner] with written or electronic confirmation of the documents that
21 [forensic examiner] could in turn provide to the City of Vancouver. If the Plaintiff
22 and her counsel identify one or more documents located through the search process
23 which they object to having [the forensic examiner] provide to the Defendants and
24 their counsel, the Plaintiff and her counsel would provide copies of those
documents to the Court for *in camera* review.

*The Plaintiff's counsel would be required to concurrently provide the Defendants
and their counsel an electronic or written communication setting forth the date of
the withheld communication, the parties to the communication, and a sufficient
description of the communication so that the City could then bring a motion to
compel or otherwise provide the Court with a submittal stating the reasons why the
withheld document(s) should be produced to the City.*

Dkt. 217, at 3–4 (emphasis added).

1 A forensic examiner conducted the initial inspection of plaintiff's devices and presented
 2 search findings for plaintiff's review and her authorization to release documents pursuant to the
 3 forensic protocol and as ordered by the Court. *See* Dkts. 221, 217. However, plaintiff refused to
 4 authorize the forensic examiner to release recovered documents, as she was required to do under
 5 the agreed-upon protocol, and plaintiff failed to produce any written privilege log to
 6 defendants—despite this Court's Order. *See* Dkt. 221. Plaintiff's refusal to comply with the
 7 forensic examination protocol was a violation of this Court's forensic examination order, a
 8 violation of her obligation to provide a written privilege log, and a violation of her duty to timely
 9 supplement responses to valid discovery requests. *See* Fed. R. Civ. P. 26(b)(5)(A), (e)(1); Dkt.
 10 221.

11 **G. Defendant City's May 2020 Motion to Compel Plaintiff's Compliance**
 12 **with the Court's Forensic Examination Order**

13 On May 21, 2020, defendant City brought a second motion to compel plaintiff's
 14 compliance with the Court's forensic examination order (Dkt. 221). *See* Dkt. 224. After oral
 15 argument (Dkt. 237), the Court agreed with defendant City that plaintiff had failed to comply
 16 with the forensic examination order and granted defendant City's second motion to compel. Dkt.
 17 238. The Court again ordered that plaintiff produce complete copies of all electronic
 18 communications retrieved in the forensic examination and that plaintiff further provide a
 19 privilege log—as previously ordered by the Court—for any withheld documents. *See id.* at 2–3.

20 On July 1, 2020—almost three months after the Court had ordered the forensic
 21 examination—plaintiff finally produced thousands of documents retrieved in the forensic
 22 examination and provided a written privilege log. *See* Dkts. 244, at 1–2; 247, at 2. However,
 23 plaintiff continued to assert privilege over hundreds of documents. Following plaintiff's July 1,
 24 2020 production, defendant City challenged the sufficiency of plaintiff's written privilege log

1 and challenged her asserted privileges over these documents. *See* Dkt. 243. Although plaintiff
 2 revised her privilege log, the parties' dispute over withheld documents had still not been
 3 resolved. *See id.*

4 **H. Defendant City's August 2020 Motion to Compel Plaintiff's Disclosure**
 5 **of Withheld Documents Recovered in Forensic Examination**

6 On August 6, 2020, defendant City filed its third motion to compel, requesting that
 7 plaintiff be compelled to produce the withheld documents listed on her second-revised privilege
 8 log for *in camera* review. *See* Dkt. 243 at 4–9, 11.

9 On the same day that her responsive brief was due—and 11 days after defendant City
 10 filed its third motion to compel production—plaintiff produced most of the documents that she
 11 had previously withheld—apparently waiving her asserted privileges. She continued to assert
 12 privileges as to only 62 documents. *See* Dkt. 245. Plaintiff provided no explanation for
 13 releasing the other previously withheld documents, other than claiming that she wanted to
 14 “minimize the issues” before the Court. *Id.* at 1. Again—as the Court and defendants would
 15 learn—the newly produced documents revealed responsive information that had been withheld
 16 for nearly two years that *was not* protected under plaintiff's asserted privileges. *See, e.g.,* Dkt.
 17 265-11 (September 2017 email to Ms. Reed, “I am sending in my whistleblower and tort claim
 18 early this week. We'll see how it goes.”); Dkt. 265-14 (August 2017 email to Ms. Reed, “I have
 19 drafted this document to file with the City, but I am wondering if you are willing [to give] me
 20 your comments before I send.”) (attaching draft whistleblower memo regarding discrimination);
 21 Dkt. 287-9 (June 2017 email to Ms. Reed, “[W]anted to let you know the EEOC changed its
 22 rules . . . to allow complainants to receive a copy of the employer response upon written
 23 request.”).

1 Subsequently, the Court conducted an *in camera* review of the remaining 62 disputed
2 documents and ordered plaintiff to produce many of the documents she continued to withhold.
3 See Dkt. 255. In pertinent part, the Court found that many of plaintiff's documents were not
4 protected under the asserted work-product and common interest doctrines. See *id.* at 7–8.

5 Having now reviewed many of the documents that plaintiff attempted to conceal, it is
6 clear that plaintiff's asserted privileges were not made in good faith. A more plausible
7 explanation for the concealment is that the later-disclosed documents contradicted her 2018 and
8 2019 deposition testimony that plaintiff had not encouraged City employees to bring claims
9 against the City. For instance, on July 11, 2018, plaintiff texted Ms. Ballou, "I am not sure you
10 should agree to let the City investigate. Just go directly to the EEOC." Dkt. 285-3, at 1. On July
11 26, 2018—14 days later—plaintiff again texted Ms. Ballou, "Don't hold off on any action
12 because you want to wait until the [City's] investigation is done." *Id.* at 2. Nothing in these
13 communications is considered protected work product, nor are the communications protected
14 under the common interest doctrine. See *Sanmina Corp.*, 968 F.3d at 1121; *In re Pac. Pictures*
15 *Corp.*, 679 F.3d at 1129. What they do reveal is that plaintiff was consulting and advising
16 current and former City employees regarding their claims against the City and that plaintiff
17 discussed her own claims against defendant City. These documents were validly requested and
18 responsive to defendants' discovery requests and this Court's discovery orders, and plaintiff
19 should have disclosed them earlier. See Fed. R. Civ. P. 26(e).

20 In summary, plaintiff has a duty to testify truthfully (Fed. R. Civ. P. 30(c)), to timely
21 respond and supplement discovery requests (Fed. R. Civ. P. 26(e)(1)(A)), to prepare privilege
22 logs for documents withheld from discovery (Fed. R. Civ. P. 34(b)(2)(C)), and to comply with
23 Court orders regarding discovery (Fed. R. Civ. P. 26(e)(1)(B)). However, plaintiff did not testify
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truthfully, she withheld documents despite her duties to timely respond and supplement discovery responses, she failed to provide a written privilege log for withheld documents even after being ordered by the Court, and she otherwise disobeyed this Court's discovery orders and protocols that she had agreed to follow. Plaintiff's repeated and numerous violations of the Federal Rules of Civil Procedure are the type of conduct prohibited and sanctionable under Fed. R. Civ. P. 37.

II. Monetary Sanctions

Based on plaintiff's discovery conduct, defendant City seeks monetary sanctions totaling \$88,188.66. Dkt. 256, at 12. Specifically, defendant City seeks attorney's fees incurred regarding a prior motion to dismiss (Dkt. 74), three prior motions to compel (Dkts. 193, 224, 243), and the motion for sanctions (Dkt. 256), as well as expenses incurred in connection with the Court-ordered forensic examination. *See* Dkts. 256, at 12; 257, at 3–7; 257-3. Having considered defendant City's partial success in bringing the prior motions to compel, the Court finds that an award of attorney's fees and expenses as a sanction for plaintiff's discovery conduct is appropriate. However, as discussed below, the Court finds that defendant City is not entitled to all of the attorney's fees that it seeks.

If a motion to compel is granted—or if the disclosure or requested discovery is only provided after the motion to compel was filed—the court must, after giving an opportunity to be heard, require the party . . . whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. . . .

If a motion to compel is granted in part and denied in part, the court may . . . , after giving an opportunity to be heard, apportion reasonable expenses for the motion. . . .

Fed. R. Civ. P. 37 (a)(5)(A), (a)(5)(C).

1 Additionally, the Court has the discretion to order monetary sanctions, including
2 reasonable attorney's fees and expenses, where a party fails to obey a court order to provide or
3 permit discovery or where a party fails to supplement an earlier discovery response pursuant to
4 Fed. R. Civ. P. 26(e). *See* Fed. R. Civ. P. 37(b)(2)(C), (c)(1)(A).

5 As discussed above, plaintiff's conduct necessitated several motions to compel. *See* Dkt.
6 193 (granted in part and denied in part), Dkt. 224 (granted), Dkt. 243 (granted in part and denied
7 in part). Much of the information that was produced was not produced until after the motion—or
8 several motions—had been filed. And plaintiff failed to obey several orders of the Court to
9 permit discovery. Thus, the Court may award monetary sanctions for plaintiff's discovery
10 violations. *See* Fed. R. Civ. P. 37(b)(2)(C), (c)(1)(A).

11 A monetary sanction, such as the imposition of attorney's fees, when imposed pursuant to
12 civil procedures, "must be compensatory rather than punitive in nature." *Goodyear Tire &*
13 *Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017) (citing *Mine Workers v. Bagwell*, 512 U.S.
14 821, 826–30 (1994)). In determining whether to award attorney's fees, the Court must find a
15 "causal link" between plaintiff's misbehavior at issue and legal fees paid by defendant. *Id.*
16 Accordingly, defendant City "may recover 'only the portion of [its] legal fees that [it] would not
17 have paid but for' the misconduct." *Id.* at 1187 (quoting *Fox v. Vice*, 563 U.S. 826, 836 (2011)).

18 As an initial matter, defendant City seeks an award of attorney's fees in the sum of
19 \$54,810.00 incurred in bringing three prior motions to compel and attorney's fees for the present
20 motion for sanctions. Dkts. 193; 224; 243; 257, at 3–7. The Court notes that each of defendant
21 City's motions to compel was precipitated by plaintiff's discovery conduct in this matter. The
22 Court deferred ruling on defendant City's multiple requests for attorney's fees and/or sanctions
23 pending resolution of the discovery disputes at issue. *See* Dkts. 221, 238, 255. Now that the
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1 Court has had an opportunity to review the full scope of plaintiff's discovery conduct, the Court
2 is prepared to recommend the appropriate monetary sanctions.

3 First, with regard to fees, "[t]he starting point for determining a reasonable fee is the
4 'lodestar' figure, which is the number of hours reasonably expended multiplied by a reasonable
5 hourly rate." *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992) (citations omitted). The
6 amount of fees must be determined on the facts of each case. *See Camacho v. Bridgeport Fin.,*
7 *Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983)).
8 In determining the appropriate lodestar amount, the district court may exclude from the fee
9 request any hours that are "excessive, redundant, or otherwise unnecessary." *Welch v. Metro.*
10 *Life Ins. Co.*, 480 F.3d 942, 946 (9th Cir. 2007) (citation omitted).

11 Defendant City's counsel is requesting a primary hourly rate of \$350.00. Dkt. 257, at 3.
12 Although plaintiff opposes defendant City's counsel's hourly rate, plaintiff does little more than
13 conclude that the rate is unreasonable based on the number of hours billed. *See* Dkt. 273, at 15.
14 This is insufficient. Having reviewed defendant City's declarations in support of its motion for
15 sanctions (Dkt. 257, 281), the Court finds that the hourly rate of defendant City's counsel is
16 reasonable and prevailing in the community for similar work performed by attorneys of
17 comparable skill, experience, and reputation.

18 Plaintiff further argues that the attorney's fees sought should be reduced because
19 defendant City achieved only "limited success" in its motions to compel. Dkt. 273, at 14. While
20 the Court finds that the total hours spent in bringing the motions to compel and the motion for
21 sanctions is reasonable in this case, the Court notes that plaintiff's first and third motions to
22 compel (Dkts. 193, 243) were granted in part and denied in part. For instance, regarding the first
23 motion to compel (Dkt. 193), the Court granted defendant City's request for forensic
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1 examination of plaintiff's devices (Dkt. 221), but the Court denied defendant City's request for
2 plaintiff to respond to all other discovery requests by describing withheld documents because the
3 request lacked specificity. *See* Dkt. 212. Regarding the third motion to compel (Dkt. 243), the
4 Court granted in part and denied in part defendant City's request that plaintiff disclose all
5 withheld documents listed on the second-revised privilege log because some of those documents
6 were protected under the work-product doctrine. *See* Dkt. 255. Thus, the Court finds that an
7 award of attorney's fees should be reduced by 30% based on defendant City's rate of partial
8 success in bringing its first and third motions to compel, as well as this motion for sanctions. *See*
9 *Camacho*, 523 F.3d at 982 ("[A] district court may reduce attorneys' fees by a percentage, so
10 long as the court sets forth clear and concise reasons for adopting this approach." (citing *Ferland*
11 *v. Conrad Credit Corp.*, 244 F.3d 1145, 1151 (9th Cir. 2001)); *see also* Fed. R. Civ. P.
12 37(a)(5)(C) (noting apportionment of reasonable expenses when a motion to compel is granted in
13 part and denied in part).

14 Additionally, the Court further recommends reducing defendant City's requested
15 attorney's fees by 20% for "block-billed" time entries reflecting multiple activities. *See* Dkt.
16 257, at 4–6. Because it is difficult to determine how much time was spent on particular activities
17 (*e.g.* Dkt. 257, at 4 ("Participate in lengthy LR 37 conference []; continue reviewing documents;
18 conduct legal research re discovery issues")), the Court has reviewed each block-billed time
19 entry (18 entries from January 7, 2020, to August 19, 2020, representing 51.1 hours) and finds
20 that the requested fees for those entries should be reduced by 20% because it is difficult to
21 differentiate between what services were related specifically to matters upon which defendant
22 prevailed. *See Welch*, 480 F.3d at 948. Therefore, the Court recommends that defendant City
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1 should be awarded \$34,790.00 in attorney's fees for the motions to compel and motion for
2 sanctions, rather than the requested \$54,810.00.

3 Defendant City also requests an award of expenses in the sum of \$16,053.66 incurred in
4 connection with the forensic examination of plaintiff's electronic devices. Dkts. 257, at 3; 257-3.
5 Here, it is clear that the expenses associated with the forensic examination are directly linked to
6 plaintiff's discovery conduct at issue—providing inaccurate testimony regarding her
7 communications with former or current employees of defendant City, failing to fully and timely
8 respond to discovery requests regarding such communications, and failing to provide a privilege
9 log acknowledging the existence of responsive documents—which led this Court to require a
10 forensic examination of plaintiff's electronic devices. Then plaintiff failed to obey the Court's
11 Order regarding forensic examination of her electronic devices by refusing to release documents
12 recovered in the forensic examination and failing to provide a privilege log pursuant to the
13 agreed upon protocol. *See* Fed. R. Civ. P. 37(b)(2)(C), (c)(1)(A). Accordingly, defendant City
14 should be awarded \$16,053.66, the amount requested for expenses incurred related to the
15 forensic examination.

16 Finally, defendant City seeks attorney's fees in the sum of \$17,325.00, incurred in
17 bringing its first motion to dismiss, filed in April 2019. *See* Dkts. 74. In that motion to dismiss,
18 defendant City argued that plaintiff's lawsuit against all defendants should be dismissed with
19 prejudice due to plaintiff's violations of the Rules of Professional Conduct. *See* Dkt. 74, at 1.
20 Specifically, defendant City argued that plaintiff breached her duties of loyalty and preservation
21 of confidential information owed to her client, defendant City, and thus, plaintiff's conduct
22 "tainted" these proceedings and "destroyed" defendant City's right to a fair trial. *Id.* at 1, 4, 24.
23 However, in denying the motion to dismiss, the District Court found that defendant City failed to
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1 show facts supporting plaintiff's purported ethical breaches, nor had defendant City shown that
2 its right to a fair trial had been impaired by any such breach. *See* Dkt. 142, at 3–4.

3 The United States Supreme Court has stated that “when ‘the cost[] would have been
4 incurred in the absence of’ the discovery violation, then the court (possessing only the power to
5 compensate for harm the misconduct has caused)” “lacks a basis for shifting the expense.”
6 *Goodyear Tire & Rubber Co.*, 137 S. Ct. at 1187 (quoting *Fox*, 563 U.S. at 836). Here,
7 defendant City argues that the fees incurred in connection with the prior motion to dismiss are
8 directly related to plaintiff's wrongful withholding of discoverable information and documents.
9 Dkt. 289, at 5–6. However, defendant City has not shown that this matter would have in fact
10 been dismissed “as soon as” plaintiff “was supposed to disclose” responses to defendants’
11 discovery requests. Nor has defendant City shown that plaintiff would have been unable to
12 assert any colorable defense to the motion to dismiss even if she had made timely disclosures.
13 *Goodyear Tire & Rubber Co.*, 137 S. Ct. at 1189 (noting that although earlier disclosure of
14 discoverable information may have been favorable to a party, the disclosure would not have
15 deprived the opposing party of colorable defenses). The Court notes that disclosure of the
16 withheld documents was certainly relevant and more favorable to defendant City's claims that
17 plaintiff breached her ethical and fiduciary duties. However, the City failed to show that its right
18 to a fair trial in this matter had been prejudiced by this alleged breach, nor has the City shown
19 that the outcome of the prior motion to dismiss would necessarily have differed. Thus, although
20 plaintiff's timely disclosures may have been more favorable to defendant City's prior motion to
21 dismiss, defendant City has failed to prove that but for plaintiff's discovery abuses, the City
22 would be denied a fair trial. Accordingly, the Court should decline to award defendant City's
23 attorney's fees incurred in bringing the prior motion to dismiss.

1 Plaintiff also requests that the Court make monetary sanctions payable upon resolution of
2 this entire case. *See* Dkt. 273, at 17. In support of her request, plaintiff states that she is not
3 currently employed and has little income to satisfy any monetary sanctions at this time. *See id.*
4 As defendant City has not expressed any opposition to plaintiff's request, the Court finds that a
5 delay in payment of sanctions is reasonable. Accordingly, the undersigned recommends that
6 payment of monetary sanctions should be immediately due, accruing interest at the statutory rate,
7 but need not be paid until a final judgment is rendered in this matter. The Court further
8 recommends that the District Court provides that any final award in favor of plaintiff paid by any
9 party found to be responsible shall be paid into the registry of the Court for purposes of
10 satisfying any unpaid portions of the award of attorney's fees and expenses.

11 Additionally, the Court reminds plaintiff that whether or not plaintiff receives any award
12 in her favor, she still must comply with the Court's orders, including the timely payment of
13 attorney's fees and expenses. Her failure to do so may result in further sanctions. *See Walt*
14 *Disney Co. v. DeFabiis*, 168 F.R.D. 281, 285 (C.D. Cal. 1996) (citation omitted).

15 Accordingly, the Court recommends that plaintiff should be ordered to pay defendant
16 City \$34,790.00 in attorney's fees and \$16,053.66 in expenses incurred in bringing the prior
17 motions to compel and this motion for sanctions. The Court further recommends that the award
18 of attorney's fees and expenses should be immediately due, but payment may be delayed until
19 final judgment is rendered. And any final award in favor of plaintiff paid by any party found to
20 be responsible shall be paid into the registry of the Court for purposes of satisfying any unpaid
21 portions of the award of monetary sanctions.

III. Non-Monetary Sanctions

A. Dismissal with Prejudice

Defendant City requests that the Court dismiss plaintiff's lawsuit with prejudice as a sanction based on plaintiff's discovery conduct in this matter. *See* Dkt. 256, at 12. Defendant City argues that plaintiff's conduct prejudiced defendant in bringing its prior motion to dismiss (Dkt. 74) and that plaintiff "undermine[d] the justice system in order to benefit herself." *Id.* at 10; *see also* Dkt. 280, at 1–3.

The Court has the discretion to dismiss an action, in whole or in part, for a party's failure to comply with a court order to provide or permit discovery or failure to supplement a discovery request pursuant to Fed. R. Civ. P. 26(e). Fed. R. Civ. P. 37(b)(2)(A)(v), (c)(1)(C). However, the Court's discretion to dismiss an action as a sanction is limited. *Computer Task Grp., Inc. v. Brothby*, 364 F.3d 1112, 1115 (9th Cir. 2004) (citations omitted); *see also Fjelstad v. Am. Honda Motor Co.*, 762 F.2d 1334, 1337 (9th Cir. 1985).

In determining whether a sanction of dismissal for noncompliance with discovery is appropriate, the district court must weight five factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the [opposing party]; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Computer Task Group, Inc.*, 264 F.3d at 1115 (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)). "[W]here a court order is violated, factors 1 and 2 support sanctions and 4 cuts against case-dispositive sanctions, so 3 and 5, prejudice and availability of less drastic sanctions, are decisive." *Valley Engineers Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998) (quoting *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1412 (9th Cir. 1990)).

1 Here, defendant City has shown that plaintiff violated her discovery obligations pursuant
2 to Fed. R. Civ. P. 26(e) and 37(c). Defendant City has further shown that plaintiff violated the
3 Court's April 6, 2020 Order regarding the forensic examination of plaintiff's electronic devices
4 (Dkt. 221), which is also sanctionable. Fed. R. Civ. P. 37(b)(2).

5 However, while these violations are serious and must be addressed by appropriate
6 sanctions, defendant City has failed to show that plaintiff's delay in disclosing discovery
7 information and documents so prejudiced defendant City as to prevent defendant City from fully
8 preparing for trial or preparing its legal strategy. *See Payne v. Exxon Corp.*, 121 F.3d 503, 508
9 (9th Cir. 1997) (noting that "[b]elated compliance with discovery orders does not preclude the
10 imposition of sanctions[;]" however, the issue is whether the delay prejudiced the opposing
11 party's ability to prepare its case for trial or incorporate withheld discovery into its legal strategy
12 (internal citations omitted)). Such a sanction would be appropriate, if, for instance, critical
13 evidence is destroyed, which does not appear to be the case here. *See Leon v. IDX Sys. Corp.*,
14 464 F.3d 951, 960–61 (9th Cir. 2006) (affirming a dismissal sanction based on a party's
15 spoliation of evidence). Defendant City has argued, and no doubt will continue to argue, that
16 plaintiff violated her ethical obligations to her client—the City of Vancouver. And plaintiff's
17 failure to comply with her discovery obligations as discussed herein will only further defendant
18 City's arguments in its renewed motion to dismiss—not prejudice them. Therefore, depriving
19 plaintiff any opportunity to have her claims decided on the merits is not appropriate, since
20 defendant City is likely to be fully prepared to address the merits of this case now that plaintiff
21 has finally disclosed the pertinent information.

22 Additionally, the Court must also consider whether less drastic sanctions are available.
23 *See Computer Task Group, Inc.*, 364 F.3d at 1115. This requires the Court's analysis of
24

“whether the court has considered lesser sanctions, whether it tried them, and whether it warned the recalcitrant party about the possibility of case-dispositive sanctions.” *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007). In this case, plaintiff has been on notice that she may be subject to sanctions. *See* Dkts. 212, 221, 238, 255. However, the Court has not previously warned plaintiff of the possibility of involuntary dismissal—a fact that weighs against dismissal at present. *See Conn. Gen. Life Ins. Co.*, 482 F.3d at 1096.

Therefore, the Court recommends denying defendant City’s request to dismiss plaintiff’s lawsuit with prejudice at this time. However, the Court warns plaintiff that any newly discovered misconduct or her continued obstruction of this litigation may be grounds for future dismissal with prejudice.

B. Other Sanctions

Although the Court recommends against dismissing plaintiff’s action with prejudice as a sanction, the Court finds that plaintiff’s discovery conduct warrants other non-monetary sanctions. Pursuant to Fed. R. Civ. P. 37, in addition to monetary sanctions, the Court may impose appropriate non-monetary sanctions for a party’s failure to obey a court order or failure to supplement an earlier response to a discovery request. *See* Fed. R. Civ. P. 37(b)(2)(A), (c)(1). These sanctions may include designating facts as proven and informing the jury of a party’s failure to comply with its discovery duties, among others. *See* Fed. R. Civ. P. 37(b)(2)(A)(i)–(vii), (c)(1)(B)–(C). “Rule 37 sanctions must be applied diligently both to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent.” *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 763–64 (1980) (internal quotation omitted). Additionally, sanctions imposed under Rule

1 37(b)(2) “must be specifically related to the particular claim which was at issue in the order to
2 provide discovery.” *Fjelstad*, 762 F.2d at 1342 (citation omitted).

3 Although not specifically requested, the Court has carefully considered these other types
4 of sanctions in lieu of dismissal of this action. Here, plaintiff has maintained that she never
5 encouraged any current or former City employee to file suit or file a complaint of discrimination
6 against the City. *See* Dkts. 244-3, at 2; 257-2, at 6; 273, at 10–11. However, it is clear that not
7 only did plaintiff encourage other individuals to file claims against defendant City, but she also
8 continuously failed to disclose related information and documents in response to valid discovery
9 requests until the information was disclosed by non-parties Ms. Reed and Ms. Ballou (*see* Dkts.
10 194-7, 194-8), and even following orders by this Court. *See* Dkts. 212, 221, 238, 255. Plaintiff’s
11 continued delay in disclosure based on meritless assertions of privilege and her willful
12 noncompliance with Court orders has seriously impaired defendants’ ability to efficiently litigate
13 this matter. Thus, sanctions tied to plaintiff’s false deposition testimony and the compelled
14 disclosure of documents inconsistent with that testimony are appropriate. *See Fjelstad*, 762 F.2d
15 at 1342; *See also Gibson v. Chrysler Corp.*, 261 F.3d 927, 948 (9th Cir. 2001) (“[A] a sanction in
16 the form of an adverse factual finding rests on neither consent nor waiver. Rather, it rests on the
17 reasonable assumption that the party resisting discovery is doing so because the information
18 sought is unfavorable to its interest. In such a case, the sanction merely serves as a mechanism
19 for establishing facts that are being improperly hidden by the party resisting discovery.”).

20 Therefore, the Court recommends the following non-monetary sanctions pursuant to Fed.
21 R. Civ. P. 37:

- 22 (1) For purposes of this litigation, it shall be deemed admitted that when plaintiff
23 testified on September 11, 2018, and June 3, 2019, that she had not encouraged
24 any former or current City of Vancouver employee to file suit or file a complaint
of discrimination against the City, she failed to disclose:

(a) that she had in fact communicated with former City employee Karen Reed regarding Ms. Reed's EEOC complaint; that she had provided Ms. Reed with City documents and communications in support of Ms. Reed's EEOC complaint, and that she had agreed to act as a fact witness in support of Ms. Reed's EEOC complaint; and

(b) that she had in fact communicated with current City employee Julie Ballou and encouraged Ms. Ballou to file a complaint with the EEOC and encouraged Ms. Ballou not to "hold off on any action" against defendant City.

The imposition of this sanction—deeming certain facts admitted as true—is appropriate in light of plaintiff's conduct and does not act as a "default dismissal" of her claims. *See Network Appliance, Inc. v. Bluearc Corp.*, No. C 03-5665 MHP, 2005 WL 1513099, at *3 (N.D. Cal. June 27, 2005) (noting the severity of a sanction that may be tantamount to dismissal of a plaintiff's claims and that such sanctions based on discovery misconduct are generally improper absent undue prejudice to the opposing party) (citations omitted).

CONCLUSION

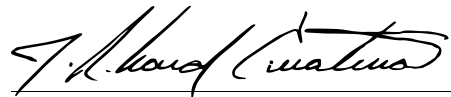
For the reasons set forth herein, the Court recommends that defendant City's motion for sanctions (Dkt. 256) be **GRANTED** in part and **DENIED** in part. Plaintiff should be ordered to pay defendant City \$34,790.00 in attorney's fees and \$16,053.66 in expenses, which should be immediately payable, but payment may be delayed until a final judgment is rendered in this matter. The Court further recommends that should there be an award in favor of plaintiff, that award should be paid into the registry of the Court for purposes of satisfying any unpaid portions of the award of sanctions.

Additionally, defendant City's request for dismissal of plaintiff's suit with prejudice as a sanction should be denied. However, in lieu of dismissal, the Court recommends imposing non-monetary sanctions, deeming certain facts admitted as true, as stated in this Report. *See supra*, Section III(B).

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo* review by the district judge, *see* 28 U.S.C. § 636(b)(1)(C), and can result in a result in a waiver of those objections for purposes of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations omitted). Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **January 22, 2021**, as noted in the caption.

The Clerk is directed to renote defendant City's renewed motion to dismiss (Dkt. 264) for **February 22, 2021**. The Clerk is further directed to renote defendant City's motion for summary judgment (Dkt. 260), plaintiff's motion for partial summary judgment (Dkt. 262), and defendants Young and Potter's motions for summary judgment (Dkts. 266, 268) for **March 12, 2021**.

Dated this 6th day of January, 2021.



J. Richard Creatura
United States Magistrate Judge

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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 DEBRA QUINN,

9 Plaintiff,

10 v.

11 CITY OF VANCOUVER, et al.

12 Defendants.

CASE NO. C17-5969 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION IN
PART

13 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 307, and Plaintiff Debra Quinn’s objections to the R&R, Dkt. 308.

16 This matter is a long-running employment discrimination case. Quinn, an attorney, is suing her former employer and client, Defendant City of Vancouver, among others. Quinn’s dilatory and evasive discovery conduct required Judge Creatura to expend substantial Court resources managing the pretrial discovery phase in this case.

20 The R&R is clear, detailed, and comprehensive. It addresses the City’s motion for sanctions, Dkt. 256, and details how throughout discovery in this case Quinn has concealed communications she had with current and former City employees about her

1 claims and theirs against the City. Judge Creatura concludes that both monetary and non-
2 monetary sanctions are warranted based on Quinn's deposition testimony about her
3 communications with the other claimants and based on the multiple motions and forensic
4 examination of Quinn's devices the City had to undertake as a result of her misconduct.

5 Quinn objects, contending that she did not testify falsely or disobey the Court's
6 order in connection with the forensic examination of her devices, and objects to the
7 award of fees and costs as excessive. The City did not respond to Quinn's objections.

8 **I. DISCUSSION**

9 On non-dispositive orders, the district judge in the case must consider timely
10 objections and modify or set aside any part of the order that is clearly erroneous or is
11 contrary to law. Fed. R. Civ. P. 72(a).

12 **A. Monetary Sanctions**

13 Judge Creatura recommends requiring Quinn to pay monetary sanctions in the
14 amount of \$50,843.66, consisting of \$34,790 in attorneys' fees and \$16,053.66 in costs.
15 The attorneys' fees compensate the City for its partially successful first and third motions
16 to compel, its successful second motion to compel, and the instant motion for sanctions
17 (reflecting Judge Creatura's recommendation to reduce by 20% for block-billed time).
18 The costs represent the amount incurred in connection with the forensic examination of
19 Quinn's devices.

20 Quinn has failed to establish that Judge Creatura's recommendation that monetary
21 sanctions be awarded is either clearly erroneous or contrary to law. She has also failed to
22 establish that the recommended costs and fees are excessive. Her argument that the City

1 misread the scope of the discovery requests, failed to resolve her objections, and then
2 unnecessarily incurred significant costs by seeking a forensic examination of her devices
3 was already considered and rejected by Judge Creatura.

4 As detailed in the R&R, Quinn delayed and failed to respond to the City's requests
5 for production, repeatedly failed to provide a privilege log, and asserted privileges that
6 did not apply, necessitating court-ordered forensic examination of her devices and a
7 further motion to compel production of the recovered documents and accompanying
8 privilege log. The attorneys' fees and costs Judge Creatura recommends are
9 compensatory rather than punitive, supported by a clearly-articulated causal link between
10 Quinn's misconduct and the legal fees and costs paid by the City, and represent only the
11 portion of fees and costs the City would not have paid but for the misconduct. *Goodyear*
12 *Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186–87 (2017) (citing *Mine Workers v.*
13 *Bagwell*, 51 U.S. 821, 826–30 (1994); citing and quoting *Fox v. Vice*, 563 U.S. 826, 836
14 (2011)). Therefore, Quinn's objections to the monetary sanctions are denied.

15 **B. Failure to Comply with a Court Order**

16 Quinn has similarly failed to establish that Judge Creatura's conclusion that she
17 failed to obey the Court's discovery orders is clear error or contrary to law. Quinn argues
18 that she only withheld documents following Court-ordered forensic examination based on
19 the City's expert's failure to follow the examination protocol he identified and based on a
20 lack of clarity in the Court's intent that the broader scope of documents be disclosed.
21 Judge Creatura has carefully considered and rejected Quinn's basis for withholding these
22 documents. He held oral argument on the City's second motion to compel compliance

1 with the forensic examination order, affording Quinn a thorough opportunity to present
2 her position. Dkt. 237. Quinn also presented these arguments to Judge Creatura in her
3 opposition to the motion for sanctions. Dkt. 273 at 4–5. Judge Creatura has carefully
4 considered and rejected these arguments, and the Court agrees with his conclusions. They
5 are not clearly erroneous or contrary to law. Therefore, Quinn’s objections to the
6 conclusion that she failed to comply with a court order are denied.

7 **C. Deposition Testimony**

8 The City asks the Court to dismiss Quinn’s lawsuit with prejudice as sanction for
9 her discovery misconduct. Judge Creatura correctly concluded that the Court’s discretion
10 to dismiss an action as a sanction is limited and is not warranted in this case. Dkt. 307 at
11 27–28 (citing, among others, *Comput. Task Grp., Inc. v. Brotby*, 364 F.3d 1112, 1115
12 (9th Cir. 2004); *Payne v. Exxon Corp.*, 121 F.3d 503, 508 (9th Cir. 1997)). Though the
13 Court agrees that the sanction of dismissal is too harsh, the Court finds it necessary to
14 mitigate the prejudice caused by the discovery violations by amending the scheduling
15 order to continue the trial date.

16 Though not specifically requested, Judge Creatura determined that lesser non-
17 monetary sanctions were warranted in lieu of dismissal as Quinn’s discovery conduct has
18 “seriously impaired defendants’ ability to efficiently litigate this matter.” *Id.* at 29–30
19 (citing, among others, *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 763–64 (1980)). He
20 recommends deeming the following facts as admitted under Federal Rule of Civil
21 Procedure 37(c) as a sanction for Quinn’s false deposition testimony and the compelled
22 disclosure of documents inconsistent with that testimony:

1 For purposes of this litigation, it shall be deemed admitted that when
 2 plaintiff testified on September 11, 2018, and June 3, 2019, that she had not
 3 encouraged any former or current City of Vancouver employee to file suit
 4 or file a complaint of discrimination against the City, she failed to disclose:

- 5 a) that she had in fact communicated with former City employee Karen
 6 Reed regarding Ms. Reed's EEOC complaint; that she had provided
 7 Ms. Reed with City documents and communications in support of
 8 Ms. Reed's EEOC complaint, and that she had agreed to act as a fact
 9 witness in support of Ms. Reed's EEOC complaint; and
- 10 b) that she had in fact communicated with current City employee Julie
 11 Ballou and encouraged Ms. Ballou to file a complaint with the
 12 EEOC and encouraged Ms. Ballou not to "hold off on any action"
 13 against defendant City.

14 *Id.* at 30–31. This formulation accurately characterizes what transpired.

15 However, Quinn asserts that the R&R erred in concluding she testified falsely. Her
 16 arguments parse the deposition questions closely.

17 Quinn's September 2018 deposition included the following exchange:

18 **Q:** Have you ever encouraged any current employee of the City to file an
 19 *internal complaint*?

20 **A:** No.

21 **Q:** Have you ever encouraged any current City employee to file a *lawsuit*
 22 against the City claiming discrimination?

A: No.

Q: Have you encouraged any former employee of the City to file a
complaint of discrimination against the City?

A: No.

Q: Have you ever encouraged any former employee of the City to file a
complaint with the Equal Employment Opportunity Commission?

A: No.

1 Dkt. 244-3 at 2 (emphasis added)

2 Quinn points out that only the first two questions ask about current City
3 employees, relevant to Julie Ballou. Dkt. 308 at 2. Quinn’s messages to Ballou in July
4 2018 include: “I am not sure you should agree to let the City investigate. Just go directly
5 to the EEOC,” Dkt. 285-3 at 1; “Don’t hold off on any action because you want to wait
6 until the investigation is done.” *id.* at 2.; “One thing to keep in mind is you likely want to
7 file an EEOC complaint within I think 180 days of the action. You have time but keep it
8 in mind,” *id.*; and “Look at RCW 4.96.020[.] . . . It is critical [your attorney] serves [the
9 tort claim] on the right people,” *id.* at 3.

10 Quinn contends that she testified truthfully because Ballou was a current
11 employee, and her communications with Ballou relate to an EEOC complaint and a tort
12 claim, rather than an internal complaint or a lawsuit. Of course, a tort claim under RCW
13 4.96.020 is a prerequisite to a tort suit against a local government entity and its agents in
14 Washington. RCW 4.96.020(4). By referring Ballou to the tort claim statute, Quinn did
15 not directly encourage Ballou to *file* a lawsuit. One purpose of the claim filing procedure
16 it to give the public entity an opportunity to resolve the case prior to a lawsuit being filed.
17 Thus, although Quinn’s answer did not clearly encourage the *filing* of a lawsuit, she was
18 giving counsel as to what the statutory prerequisite was if Ballou ultimately intended to
19 file a suit. Quinn’s use of the word “action” might be considered synonymous with the
20 word “lawsuit”, as is commonly used in the legal vernacular, but she did not use the word
21 “file.” Further, the word “action” in the context of Quinn’s statement is, at least,
22

1 ambiguous. As a result, the Court cannot conclude that Quinn gave false testimony on
2 this subject.

3 Quinn explains that the second two deposition questions ask only about former
4 employees, relevant to Karen Reed. She contends that since she did not encourage Reed
5 to *file* a complaint of discrimination against the City or *file* an EEOC complaint, it is
6 irrelevant that she may have sent documents to Reed, communicated with Reed about her
7 existing EEOC claim, or agreed to be a witness regarding Reed's EEOC claim. Dkt. 308
8 at 3. Quinn also contends that because Reed filed her EEOC complaint in February 2017,
9 Judge Creatura erred in concluding Quinn's substantially later email encouraged Reed to
10 file her complaint. *Id.* at 4.¹

11 A deponent is under oath to testify truthfully. *See* Fed. R. Civ. P. 30(c); Fed. R.
12 Evid. 603. In the most technical sense, Quinn is correct that her answers may be regarded
13 as truthful.

14 Quinn's objection to Judge Creatura's characterization of her June 2019 deposition
15 testimony relies on even more tenuous ground. Quinn was asked: "Did you encourage
16 [Karen Reed] to file a lawsuit against the City of Vancouver?" Dkt. 257-2 at 6. She
17 responded: "That was purely her decision. I did not encourage her." *Id.* Quinn
18 emphasizes that this question was "only one in a line of some thirty-five detailed question
19 the City asked [Quinn] about her interactions with Ms. Reed." Dkt. 308 at 4. She again
20 emphasizes that the City did not ask about any of the conduct she admittedly undertook

21
22 ¹ Quinn references an October 2017 email but appears to reference the September–
November 2018 email string cited in the R&R. *See* Dkt. 307 at 10 (citing Dkt. 265-12).

1 regarding Reed's EEOC claim (as opposed to Reed's lawsuit), such as sharing documents
2 with her and agreeing to be a witness in support of her claim. *Id.* at 6.

3 Quinn's position is seriously undermined by Defendant Eric Holmes's Request for
4 Production No. 13, propounded on December 20, 2018, which requested all
5 communications between Quinn and Reed among others, which related to Quinn's
6 allegations against the City. Dkt. 257-4 at 2. As Judge Creatura explains, Quinn did not
7 respond to this RFP or produce a responsive privilege log. Dkt. 307 at 6-7. While this
8 RFP related specifically to Quinn's claims, it is highly likely that timely and proper
9 responses to this RFP would have revealed the existence of Quinn's communication with
10 Reed about Reed's claims and permitted the City to better target its questions at the
11 second deposition.

12 In any event, Defendants are well-equipped to demonstrate Quinn's conduct to
13 compelling effect through cross examination at trial. Cross examination will permit
14 Defendants to fully examine Quinn's credibility before the jury, rather than in passing
15 through jury instructions. Therefore, the Court does not adopt the R&R as to the non-
16 monetary sanction of facts deemed admitted, despite its serious concern about Quinn's
17 persistent evasiveness and dilatory conduct during discovery.

18 II. ORDER

19 The Court having considered the R&R, Plaintiff's objections, and the remaining
20 record, does hereby find and order as follows:

21 (1) The R&R is **ADOPTED in part**; and
22

1 (2) Defendant City of Vancouver's motion for sanctions, Dkt. 265, is

2 **GRANTED** in part and **DENIED** in part as follows:

3 a. Defendant City's request for monetary sanctions is **GRANTED** in part
4 and **DENIED** in part. Plaintiff shall pay Defendant City \$34,790.00 in
5 attorney's fees and \$16,053.66 in expenses, which shall be immediately
6 payable, accruing interest at the statutory rate, but payment may be
7 delayed until a final judgment is rendered in this matter. Further, should
8 there be an award in favor of Plaintiff, that award shall be paid into the
9 registry of the Court for purposes of satisfying any unpaid portions of
10 the award of monetary sanctions.

11 b. Defendant City's request for dismissal of Plaintiff's claims with
12 prejudice as a sanction is **DENIED**.

13 Dated this 29th day of March, 2021.

14 

15
16 BENJAMIN H. SETTLE
United States District Judge

VOUCHER APPROVAL

We, the undersigned council members of the City of Vancouver, Clark County, Washington, do hereby certify that the merchandise or services hereinafter specified have been received and that the vouchers listed below are approved for payment in the amount of:

\$ 8,855,707.98 this 24th day of January 2022.

DocuSigned by:



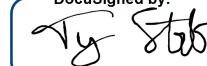
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MAYOR



AUDITING OFFICER

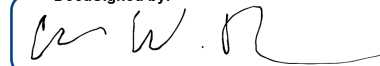
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COUNCILMEMBER

DocuSigned by:



COUNCILMEMBER

DATE	INCLUSIVE CHECK NUMBERS	CHECK TOTAL
January 3, 2021 - January 16, 2022	Accounts Payable Checks (see attached)	\$ 5,207,605.93
January 3, 2021 - January 16, 2022	Hansen City Payments (see attached)	\$ 360,618.71
January 3, 2021 - January 16, 2022	Visa Refunds (see attached)	\$ 6,798.20
January 3, 2021 - January 16, 2022	Payroll Checks (see attached)	\$ 3,280,685.14
TOTAL		\$ 8,855,707.98

INVOICE PAYMENTS REPORT

<u>Payment Category</u>	<u>Payment Type</u>	<u>Check Number</u>	<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Payee</u>	<u>Payment Memo if applicable</u>
Supplier Payment	Manual Wire	No Reference	1/3/2022	25,822.12	Gallagher Bassett Services Inc	
Supplier Payment	Manual Wire	No Reference	1/4/2022	21,097.64	Bank Of America N.A.	
Supplier Payment	Manual Wire	No Reference	1/4/2022	135,497.76	Blue Cross Blue Shield of Oregon	
Ad Hoc Payment	Manual Wire	No Reference	1/4/2022	100,000.00	United Business Bank	Workers' Comp funding for time loss payments to injured workers
Supplier Payment	Manual Wire	No Reference	1/4/2022	11,951.60	Washington Dental Service	
Supplier Payment	Manual Wire	No Reference	1/5/2022	11,318.16	Gallagher Bassett Services Inc	
Supplier Payment	Manual Wire	No Reference	1/6/2022	918.00	State of Washington Department of Licensing - Remit-To: DOL - Seattle Remit	
Supplier Payment	Manual Wire	No Reference	1/6/2022	427,375.03	Vancouver Firefighters Union Health & Welfare Trust	
Supplier Payment	Manual Wire	No Reference	1/6/2022	10,726.15	VSP Vision Care Inc	
Supplier Payment	Manual Wire	No Reference	1/6/2022	182,850.00	Western States Health & Welfare Trust	
Supplier Payment	Manual Wire	No Reference	1/7/2022	18,726.00	Bank Of America N.A. - Remit-To: Charlotte NC	
Supplier Payment	Manual Wire	No Reference	1/7/2022	36,868.17	Gallagher Bassett Services Inc	
Supplier Payment	Manual Wire	No Reference	1/7/2022	2,000.00	Gallagher Bassett Services Inc	
Supplier Payment	Manual Wire	No Reference	1/10/2022	200,849.67	Blue Cross Blue Shield of Oregon	
Supplier Payment	Manual Wire	No Reference	1/10/2022	6,424.21	ICMA 401A	
Supplier Payment	Manual Wire	No Reference	1/10/2022	267,752.12	ICMA Corp	
Supplier Payment	Manual Wire	No Reference	1/10/2022	223.50	Oregon SDU	
Supplier Payment	Manual Wire	No Reference	1/10/2022	49,980.79	State of Washington Department of Retirement System (PERS)	
Supplier Payment	Manual Wire	No Reference	1/10/2022	834.80	Vancouver Fire Command Officers	
Supplier Payment	Manual Wire	No Reference	1/10/2022	23,044.54	Vancouver Firefighters Union Health & Welfare Trust	
Supplier Payment	Manual Wire	No Reference	1/10/2022	17,994.90	Washington Dental Service	
Supplier Payment	Manual Wire	No Reference	1/10/2022	5,281.90	Washington SDU	
Supplier Payment	Manual Wire	No Reference	1/10/2022	63,266.71	Washington State Firefighters	
Supplier Payment	Manual Wire	No Reference	1/10/2022	18,784.56	Western States Health & Welfare Trust	
Supplier Payment	Manual Wire	No Reference	1/11/2022	953,396.65	Internal Revenue Service	
Supplier Payment	Manual Wire	No Reference	1/12/2022	362,065.00	Bank Of America N.A. - Remit-To: Charlotte NC	
Supplier Payment	Manual Wire	No Reference	1/12/2022	91,825.88	Blue Cross Blue Shield of Oregon	
Supplier Payment	Manual Wire	No Reference	1/12/2022	81,279.93	Gallagher Bassett Services Inc	
Supplier Payment	Manual Wire	No Reference	1/12/2022	28,833.45	State of Oregon Department of Revenue	
Supplier Payment	Manual Wire	No Reference	1/12/2022	77,948.88	Sun Life Assurance Company of Canada	
Supplier Payment	Manual Wire	No Reference	1/12/2022	989.90	VSP Vision Care Inc	
Supplier Payment	Manual Wire	No Reference	1/13/2022	582.00	State of Washington Department of Licensing - Remit-To: DOL - Seattle Remit	
Supplier Payment	Manual Wire	No Reference	1/14/2022	731,409.43	State of Washington Department of Retirement System (PERS)	
			Manual Wire Total	3,967,919.45		
Supplier Payment	EFT	EFT-00129869	1/6/2022	19,603.24	Evoqua Water Technologies LLC	
Supplier Payment	EFT	EFT-00129870	1/6/2022	15,780.26	Halme Excavating Inc	
Supplier Payment	EFT	EFT-00129871	1/6/2022	55.00	Emerald Services Inc	
Supplier Payment	EFT	EFT-00129872	1/5/2022	24,412.58	Lee Contractors LLC	
Supplier Payment	EFT	EFT-00129873	1/6/2022	7,619.65	Rockford H. Lang	
Supplier Payment	EFT	EFT-00129874	1/6/2022	23,978.53	Pacific Power Group LLC	
Supplier Payment	EFT	EFT-00129875	1/5/2022	850.50	Allegiance Benefit Plan Management Inc	
Supplier Payment	EFT	EFT-00129876	1/6/2022	1,862.69	Jacobs Engineering Group Inc	
Supplier Payment	EFT	EFT-00129877	1/6/2022	595.85	Praxair Distribution Inc	
Supplier Payment	EFT	EFT-00131585	1/10/2022	11,004.15	Vancouver Police Officer Guild	

INVOICE PAYMENTS REPORT

<u>Payment Category</u>	<u>Payment Type</u>	<u>Check Number</u>	<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Payee</u>	<u>Payment Memo if applicable</u>
Supplier Payment	EFT	EFT-00131586	1/10/2022	13,337.50	Allegiance Benefit Plan Management Inc	
Supplier Payment	EFT	EFT-00131587	1/10/2022	22,360.60	IAFF Local #452	
Supplier Payment	EFT	EFT-00131588	1/10/2022	68.12	Legal Shield	
Supplier Payment	EFT	EFT-00131589	1/10/2022	947.40	Vancouver Command Guild	
Supplier Payment	EFT	EFT-00131643	1/13/2022	1,460.00	Douglas Zenn	
Supplier Payment	EFT	EFT-00131644	1/13/2022	4,502.75	George Elevator Service LLC	
Supplier Payment	EFT	EFT-00131645	1/13/2022	346,644.53	Tapani Inc	
Supplier Payment	EFT	EFT-00131646	1/13/2022	13,749.00	Salazar Architect Inc	
Supplier Payment	EFT	EFT-00131647	1/13/2022	2,723.29	Pacific Power Group LLC	
Supplier Payment	EFT	EFT-00131648	1/13/2022	18,954.00	City Electric Co of WA	
Supplier Payment	EFT	EFT-00131649	1/13/2022	5,923.29	Outsiderinn.org	
Supplier Payment	EFT	EFT-00131650	1/13/2022	103,673.40	Jeffrey D. Barrar, PS	
Supplier Payment	EFT	EFT-00131651	1/13/2022	55,762.50	Vancouver Downtown Association	
Supplier Payment	EFT	EFT-00131652	1/13/2022	180,480.75	Share Inc	
Supplier Payment	EFT	EFT-00131653	1/13/2022	5,288.27	Council for the Homeless	
Supplier Payment	EFT	EFT-00131654	1/13/2022	18,637.50	The Gunter Group LLC	
Supplier Payment	EFT	EFT-00131655	1/13/2022	6,750.00	Arbutus Consulting LLC	
Supplier Payment	EFT	EFT-00131656	1/13/2022	4,667.64	Picard Corp	
Supplier Payment	EFT	EFT-00131657	1/13/2022	421.86	GeoDesign Inc	
Supplier Payment	EFT	EFT-00131658	1/13/2022	1,007.62	Otak Inc	
Supplier Payment	EFT	EFT-00131659	1/13/2022	6,079.26	Metro Overhead Door Inc	
Supplier Payment	EFT	EFT-00131660	1/13/2022	5,702.00	Greater Vancouver Chamber of Commerce	
Supplier Payment	EFT	EFT-00131661	1/13/2022	1,540.00	Brad Piesch Aggressive Enterprises, Inc	
Supplier Payment	EFT	EFT-00131662	1/13/2022	121,318.20	Consolidated Electrical Distribution	
Supplier Payment	EFT	EFT-00131663	1/13/2022	189,072.20	Rotschy Inc	
			EFT Total	1,236,834.13		
Expense Payment	Direct Deposit	EFT-00129860	1/6/2022	254.24	Craig Frantz	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00129861	1/6/2022	48.76	Robert Block	Employee Reimbursement
Cash Advance Payment	Direct Deposit	EFT-00129862	1/6/2022	118.50	Frank Mazna	Travel Advance
Expense Payment	Direct Deposit	EFT-00129863	1/6/2022	308.84	Mitch Bielas	Employee Reimbursement
Cash Advance Payment	Direct Deposit	EFT-00129864	1/6/2022	118.50	Jason VanderZanden	Travel Advance
Expense Payment	Direct Deposit	EFT-00129865	1/6/2022	101.15	Freddie Cruz	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00129866	1/6/2022	229.00	Susan McNutt-Koning	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00129867	1/6/2022	88.74	Kyle Jameson	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00129868	1/6/2022	225.00	Bryan Carter	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00131584	1/10/2022	88.85	Cole Rodriguez	Employee Reimbursement
Cash Advance Payment	Direct Deposit	EFT-00131633	1/13/2022	227.00	Anne McEnerny-Ogle	Travel Advance
Expense Payment	Direct Deposit	EFT-00131634	1/13/2022	126.00	Eric Stinson	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00131635	1/13/2022	74.75	Cody Uskoski	Employee Reimbursement

INVOICE PAYMENTS REPORT

<u>Payment Category</u>	<u>Payment Type</u>	<u>Check Number</u>	<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Payee</u>	<u>Payment Memo if applicable</u>
Expense Payment	Direct Deposit	EFT-00131636	1/13/2022	116.00	Lauren DiPalma	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00131637	1/13/2022	184.44	Steven Sampson	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00131638	1/13/2022	158.09	Eva Scherer	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00131639	1/13/2022	37.25	Tobiah Scott	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00131640	1/13/2022	150.00	Catherine Morey	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00131641	1/13/2022	42.25	Jaime Blas lopez	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00131642	1/13/2022	154.99	Michael Summerhill	Employee Reimbursement
			Direct Deposit Total	2,852.35		
			Manual Wire Total	3,967,919.45		
			EFT Total	1,236,834.13		
			Direct Deposit Total	2,852.35		
			SUBTOTAL	5,207,605.93		
			Payroll Total	3,280,685.14		
Hansen			1/10/2022	357,367.66	City Payments	Posted 01-03-22 to 01-09-22
Hansen			1/18/2022	3,251.05	City Payments	Posted 01-10-22 to 01-16-22
			Hansen Total	360,618.71		
VISA			1/10/2022	1,747.55	Miscellaneous	Parks Class Refunds - FCC 01-03-22 to 01-09-22
VISA			1/10/2022	841.29	Miscellaneous	Parks Class Refunds - MCC 01-03-22 to 01-09-22
VISA			1/10/2022	0.00	Miscellaneous	Parks Class Refunds - Special Events 01-03-22 to 01-09-22
VISA			1/10/2022	0.00	Miscellaneous	Parks Class Refunds - WREC 01-03-22 to 01-09-22
VISA			1/18/2022	2,811.35	Miscellaneous	Parks Class Refunds - FCC 01-10-22 to 01-16-22
VISA			1/18/2022	1,144.26	Miscellaneous	Parks Class Refunds - MCC 01-10-22 to 01-16-22
VISA			1/18/2022	0.00	Miscellaneous	Parks Class Refunds - Special Events 01-10-22 to 01-16-22
VISA			1/18/2022	253.75	Miscellaneous	Parks Class Refunds - WREC 01-10-22 to 01-16-22
			VISA Total	6,798.20		
			GRAND TOTAL	8,855,707.98		

City of Vancouver
Payroll Council Report
January 3, 2021 - January 16, 2021

Check No.	Date	Explanation	Amount
3561 - 3586	01/10/22	January 10 Checks	\$ 18,438.15
129885 - 131583	01/08/21	January 10 DD	\$ 3,262,246.99

\$ 3,280,685.14



Staff Report 195A-21

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 1/24/2022

SUBJECT Amendments to VMC Title 10.05, Pearson Field Airport

Key Points

- Staff is proposing changes to Title 10.05.040; and Title 10.05.050 of the Vancouver Municipal Code (VMC).
- The proposed changes help ensure accuracy, align with current best practices, and correct errors.
- During the second reading of this proposed ordinance change on 12/20/21, some changes were requested by City Council. This proposal includes those changes.

Strategic Plan Alignment

Goal 1: Ensure our built urban environment is one of the safest, most environmentally responsible and well maintained in the Pacific Northwest.

Goal 1, Objective 1.2: Ensure our infrastructure, including buildings and utilities, is safe, environmentally responsible and well maintained.

Present Situation

Staff regularly proposes code updates, clarifications, and changes as needed.

For VMC Title 10.05, staff is proposing the following changes:

- VMC 10.05.040 (A) (Aviation Advisory Committee - Purpose):
 - Clarify that the Aviation Advisory Committee shall advise on aviation-related issues affecting the City of Vancouver.
- VMC 10.05.040 (B) (Aviation Advisory Committee - Members - Appointment):
 - Remove redundant " subject to exception" language.

- VMC 10.05.040 (C) (Aviation Advisory Committee - Terms):
 - Correct length of terms for initial Aviation Advisory Committee. members
- VMC 10.05.050 (Grants):
 - Clarify language to recognize federal, state, or local grant opportunities.

Advantage(s)

1. Help ensure accuracy in the application of the code.
2. Help align code with current best practices.
3. Help correct errors in the code.

Disadvantage(s)

None

Budget Impact

None

Prior Council Review

- Council memo describing the proposed changes dated November 22, 2021
- Council first reading on December 6, 2021
- Council requested an amendment to the proposed ordinance on December 20, 2021 during second reading

Action Requested

On Monday, January 24, 2022, subject to second reading and public hearing, approve the ordinance.

Dan Swensen, Construction and Engineering Manager, 360-487-7754

ATTACHMENTS:

- ▢ Ordinance

12/06/21
12/20/21
01/24/22

ORDINANCE NO. M-_____

AN ORDINANCE relating to the aviation advisory committee, amending Sections 10.05.040 and 10.05.050 of Vancouver Municipal Code; providing for savings, severability, and an effective date.

WHEREAS, it is in the public interest to amend Sections 10.05.040 and 10.05.050 of the Vancouver Municipal Code to clarify membership appointments and federal and state grant opportunities, respectively; and

WHEREAS, with proper notice to the public, the City Council conducted a first reading of the proposed ordinance on December 13, 2021, and a public hearing concerning the ordinance and proposed code changes on December 20, 2021 and January 24, 2022.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

SECTION 1. Vancouver Municipal Code Section 10.05.040, adopted by Ordinance M-2733 and last amended by Ordinance M-4347, Section 5, is hereby amended to read as follows:

10.05.040 Aviation advisory committee.

A. *Purpose.* The purpose of the aviation advisory committee is to provide advice and recommendations to the airport manager, city manager, and city council, as well as other city departments, regarding the management and operations of the airport and other aviation-related issues affecting ~~Pearson Field Airport~~ the City of Vancouver. The committee shall provide advice and recommendations on:

1. Issues pertaining to maximizing the historic, economic, public safety, educational, and cultural value of the airport.
2. Airspace compatibility of any economic development projects with potential to affect the airport (ex. zoning, building standards, etc.).
3. General financial oversight of the airfield, including all proposed fees, commercial leases, rental rates, and rental agreement formats.
4. Proposals to construct or remove any building, capital improvements, or to enlarge airport facilities.
5. The adoption or amendment of airport rules and regulations, commercial minimum standards, and the development of airport-related plans including the master plan and airport layout plan.
6. Formal agreements with the National Park Service, or any other entity, with either operational or financial implications for the airport
7. Operations, changes and advancements in aviation technology and airspace use.
8. Aviation matters referred to the committee by city council, city manager, or their designee.
9. Other aviation matters that originate from within the committee.
10. Review all airport grants before application and before submission to the city council for acceptance of the grant. The exception will be if grant acceptance and council action are required sooner than the AAC can meet.

B. *Members – Appointment.* The aviation advisory committee shall consist of nine members selected by city council subcommittee and appointed by the city council. Committee members will serve without compensation. Members will have a demonstrable interest in the airport, and/or aviation and aeronautical activities, and preferably have skills in one or more relevant areas such as airport management, legal, marketing, finance, FAA knowledge, real estate, business, and engineering. Members shall demonstrate the ability to work effectively with others in a volunteer committee role.

If a suitable candidate is available, one member shall be a representative from the Port of Portland and one member will be from a surrounding neighborhood. In support of assuring a balanced range of community perspective on the AAC ~~and subject to exception~~ by the city council in their process of appointing members of the committee, no more than three members of the committee may be a tenant of the airport, subject to council exception. No members will be employees of the city of Vancouver.

C. *Terms.* Aviation advisory committee members shall be appointed for three-year terms; provided of the nine initial members, three shall be appointed to a three-year term, three to a two-year term and ~~one~~ three to a one-year term. Subsequent appointments shall be to fill any unexpired term or to a three-year term. Service of members may not exceed three consecutive full terms.

D. *Officers.* Each year, the committee shall elect by majority vote a chair and vice chair and such other officers as the committee finds necessary. Officers shall serve for one-year and may not serve for more than two consecutive years.

E. *Removal.* Any member may be removed, prior to the expiration of their term of appointment, by a majority vote of the city council

F. *Meeting – Quorum.* The committee shall hold meetings at least quarterly and may hold such other meetings as it finds necessary. A majority of the current members of the aviation advisory committee shall constitute a quorum.

G. *Bylaws.* The aviation advisory committee shall adopt bylaws that outline the transaction of its business. The bylaws will be consistent with city values and subject to review by the city manager or designee. The aviation advisory committee may thereafter amend the bylaws or repeal and replace the bylaws subject to review by the city manager or designee and referral, if appropriate, to the city council for ratification. The bylaws may only contain provisions for the regulation and management of the affairs of the aviation advisory committee as consistent with law and this chapter.

H. *Assistance.* The airport manager or the manager’s designee shall serve as staff liaison and secretary to the committee (“secretary”). The city’s staff and consultants, under direction of the secretary, shall furnish professional and technical information and advice to the committee.

SECTION 2. Vancouver Municipal Code Section 10.05.050, as enacted by Ordinance M-2733 and last amended by Ordinance M-4347, Section 6, is hereby amended to read as follows:

10.05.050 Federal and state grants.

All funds shall be disbursed only for the purposes approved by the FAA, and other federal, state, or local granting agency. ~~or granting state or local agency.~~ Such funds shall not be dispersed or loaned for any other reason unless permitted under the grant and approved by the city council.

SECTION 3. Savings. Those ordinances or parts of ordinances which are amended by

this ordinance shall remain in full force and effect until the effective date of this ordinance.

SECTION 4. Severability. If any clause, sentence, paragraph, section, or part of this ordinance or the application thereof to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not effect or invalidate the remainder of any parts thereof to any person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

SECTION 5. Effective date. This ordinance shall become effective as of February 1, 2022, following the date of final adoption.

Read First Time:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

Read Second Time:

PASSED BY THE FOLLOWING VOTE:

Ayes: Councilmember

Nays: Councilmembers

Absent: Councilmembers

SIGNED this _____ day of _____, 2021

Anne McEnerny-Ogle, Mayor

Attest:

Natasha Ramras, City Clerk

Approved as to form:

Jonathan Young, City Attorney

SUMMARY

ORDINANCE NO. _____

AN ORDINANCE relating to the aviation advisory committee, amending Sections 10.05.040 and 10.05.050 of Vancouver Municipal Code; providing for savings, severability, and an effective date.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via www.cityofvancouver.us (Go to City Government and Public Records).



Staff Report 007-22

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 1/24/2022

SUBJECT A Resolution expressing the City Council's support for Proposition 2, which would increase property taxes to fund fire and emergency services, equipment and facilities in the City of Vancouver

Key Points

- On December 6, 2021, the City Council adopted Resolution M-4155 and submitted a permanent levy lid lift proposition to City voters at the February 8, 2022 Special Election. If approved, this proposition would fund only fire and emergency services, including additional firefighters, equipment, and construction and seismic retrofitting of facilities to improve response times. If approved, this proposition would increase the City's levy regular property taxes by \$0.50/\$1,000 of assessed value, not to exceed \$2.56/\$1,000 for collection in 2023.
- The Clark County Auditor has designated the levy lid lift proposition submitted by the City Council as "Proposition 2."
- Pursuant to RCW 42.17A.555, the City Council may express a collective position regarding Proposition 2 by adopting a resolution.

Strategic Plan Alignment

Goal 2: Provide effective, innovative and well-resourced police, fire and emergency medical services.

Goal 2, Objective 2.1: Provide reliable and responsive police, fire and EMS service.

Present Situation

Since 2016, the Vancouver Fire Department (VFD) has been unable to achieve the response time level of service in the City's adopted standard of cover, particularly for priority 1 and 2 calls. This

performance shortfall is a result of community growth, which has resulted in increased calls for service while staffing has remained static at a level below that before the great recession of 2008. In 2020, the total call volume was 32% higher than 2016, with 8 fewer firefighter line staff than 2008. In recent years, the City has relied on seeking system efficiencies as well as call prioritization to address these growth pressures.

Currently, VFD is not meeting adopted service level standards for response times to priority 1 and 2 EMS calls and response times to full alarm structure fires. In addition, level of service gaps include limited surge capacity and system response resiliency, firefighting effective force and truck apparatus coverage.

To address this, Vancouver Fire has outlined a proposal to the City Council to help address deficiencies in response times by adding one new fully staffed ladder truck, staffing one new and two existing squad vehicles on a 24/7 schedule, and fortifying staffing at the new Fire Station 11. Over the last several years, several workshops were held with City Council outlining the capital needs of the city's fire and emergency capital facilities. City Council voiced its desire to add a request to the voters to address the fire and emergency operating and capital facility needs on a pay-as-you-go basis on the ballot proposition with the goal of improving fire response times.

At the November 22, 2021, Council meeting, City Council directed staff to prepare a resolution to put a permanent levy lid lift request before voters during the February 2022 special election to increase the City regular levy by \$0.50 per \$1,000 of assessed value in addition to the annual increase of 1% authorized by the Washington State law.

On December 6, 2021, the City Council adopted resolution Resolution M-4155 and submitted a permanent levy lid lift proposition to registered voters residing in the City at the February 8, 2022 Special Election. This proposition would fund only fire and emergency services, including additional firefighters, equipment, and construction and seismic retrofitting of facilities to improve response times. If approved, this proposition would increase the City's levy regular property taxes by \$0.50/\$1,000 of assessed value, not to exceed \$2.56/\$1,000 for collection in 2023.

If approved by voters, the proposed levy lid lift increase is anticipated to cost an owner of a \$440,000 house a total of \$220 more per year in City taxes, or approximately \$18 more per month.

Advantage(s)

If approved by a majority of voters, additional property tax revenues will increase the City's resources to provide fire and emergency services and allow the City to relocate/rebuild two fire stations and seismically remodel three additional stations on a pay-as-you go basis.

Disadvantage(s)

The increased property taxes may disproportionately impact some taxpayers. However, the levy, if passed, would include property tax relief for qualifying seniors, veterans and other individuals.

Budget Impact

If Proposition 2 is approved by a majority of voters, the budget increase will be incorporated in the

2023-2024 Biennial budget to add staffing, equipment and capital projects supported by this measure.

Prior Council Review

- April 26, 2021, workshop - Report on performance, Standard of Cover
- October 4, 2021 workshop - Review of outlined increases to services necessary to improve the response times
- November 8, 2021 workshop - Review of property tax tools
- November 22, 2021, workshop - Council direction on levy design
- December 6, 2021, Council Meeting- Approved Resolution M-4155 authorizing Proposition 2

Action Requested

Following a public hearing, adopt a resolution supporting Proposition 2.

Natasha Ramras, Chief Financial Officer, 360-487-8484; Brennan Blue, Vancouver Fire Chief, 360-487-7201; Taylor Hallvik, Assistant City Attorney, 360-487-8500

ATTACHMENTS:

- ▢ Resolution

1/24/22

RESOLUTION NO. M-_____

A RESOLUTION expressing the City Council's support for Proposition 2, which, if approved by voters, would increase property taxes to fund improvements to fire and emergency services in the City of Vancouver.

WHEREAS, community growth and the associated 32% increase in call volume for fire and emergency medical services (EMS) since 2016 has resulted in a decline in fire and EMS response times; and

WHEREAS, since 2016, the Vancouver Fire Department has not met the adopted response time standard for priority 1 and 2 EMS calls and full alarm structure fires; and

WHEREAS, the increased call volume and associated decline in response times has also combined to limit surge capacity and reliability of these emergency response resources; and

WHEREAS, there is an insufficient effective firefighting force to meet demand and insufficient truck apparatus coverage; and

WHEREAS, in addition to the operational gaps, five of the City's current 10 fire stations are functionally obsolete or structurally unable to withstand a moderate seismic event; and

WHEREAS, during 2021, Vancouver Fire Department staff identified the necessary additional operating resources to be added to increase the response rate of the department and worked with other City departments to estimate the cost of these additional resources; and

WHEREAS, the new Fire Station 11 that is currently under construction will need permanent staff beginning in 2025, including 4 Fire Captains and 9 Fire Fighters; and

RESOLUTION - 1

WHEREAS, operating demands citywide necessitate an additional 5.0 Fire Captain FTEs, 11.0 Fire Medic FTEs, 24.0 Firefighter FTEs and 3.0 FTE administrative positions, as well as two new vehicles: one squad apparatus and one new ladder truck; and

WHEREAS, two City Fire Stations, 3 and 6, are beyond their useful life and need to be rebuilt, and three additional Fire Stations, 4, 5, and 8, require seismic improvements; and

WHEREAS, during the workshop on October 4, 2021, Vancouver City Council reviewed the operating improvements necessary to increase call response time and asked staff to bring back additional information on available financial tools for the City to fund the additional operating resources and capital improvements; and

WHEREAS, to sustainably fund these potential fire and emergency services investments, the City must either identify new revenues or significantly reprioritize existing general fund programs such as parks maintenance, police or street maintenance, which rank as high priorities with City residents; and

WHEREAS, the City's preliminary regular property tax levy for taxes to be collected in 2022 is \$2.0585 per \$1,000 of assessed value, which includes a \$0.2061 per \$1,000 of assessed value affordable housing levy. The total current levy is approximately \$1.2665 per \$1,000 of assessed value less than what is statutorily authorized; and

WHEREAS, Washington State law limits the annual increase of a city's regular property tax levy to 1% plus an allowance for new construction, unless the voters of a city approve a levy lid lift permitting the collection of regular property taxes in a greater amount; and

WHEREAS, on November 15, 2021, City Council reviewed different levy lid lift property tax tools to raise additional revenues and requested staff bring back several possible scenarios for

RESOLUTION - 2

the funding of fire and emergency services, operating, equipment and capital improvements based on a pay-as-you-go manner utilizing a single year permanent levy lid lift; and

WHEREAS, on November 22, 2021, the City Council deliberated on the desired size of the levy increase and selected \$0.50/\$1,000 of assessed value as the levy rate increase to put before the voters during the special election to be held on February 8, 2022; and

WHEREAS, on December 6, 2021, the City Council adopted Resolution M-4155 and submitted a permanent levy lid lift proposition to registered voters residing in the City for the February 8, 2022 Special Election; and

WHEREAS, the Clark County Auditor, as ex officio supervisor of elections in Clark County, Washington has designated the levy lid lift proposition submitted by the City as “Proposition 2” and provided notice that the ballot title for Proposition 2 will appear as follows on the February 8, 2022 Special Election ballot:

PROPOSITION NO. 2

CITY OF VANCOUVER

FIRE AND EMERGENCY SERVICES AND FACILITIES LEVY LID LIFT

The City Council of the City of Vancouver adopted Resolution No. M-4155 concerning a levy lid lift to fund fire and emergency services. This proposition would fund only fire and emergency services, including additional firefighters, equipment, and construction and seismic retrofitting of facilities to improve response times. This proposition would increase the City’s regular property tax by \$0.50/\$1,000 assessed valuation; not exceeding a total rate of \$2.56/\$1,000 for collection in 2023. The 2023 levy amount, less expiring levies, will be the permanent basis to calculate subsequent levies, per RCW 84.55. Qualifying seniors, veterans, and others would be exempt, per RCW 84.36.

Should this proposition be approved?

YES ☐
NO ☐

RESOLUTION - 3

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VANCOUVER:

Section 1. The City Council hereby expresses its support for Proposition 2 because, if approved by voters, it will provide revenue that is necessary to fund critical enhancements to fire and emergency services, equipment and facilities in the City of Vancouver.

ADOPTED at a Regular Meeting of the Vancouver City Council this 24th Day of January, 2022.

Attest:

Anne McEnery-Ogle, Mayor

Natasha Ramras, City Clerk

Approved as to form:

Jonathan Young, City Attorney

RESOLUTION - 4

Staff Report 009-22

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 1/24/2022

SUBJECT Increasing the spending limit on contract C-91441 to support the purchase of replacement vehicles for three fire engines/pumpers from Cascade Fire & Safety

Key Points

- Three existing fire engines/pumpers need to be replaced earlier than originally anticipated due to higher than expected utilization.
- Price for each unit is set to increase by \$20,000 after February 1, 2022.
- The current contract with Cascade Fire & Safety is not capable to accommodate the purchase, so the total not to exceed amount needs to be increased.
- Staff is requesting a contract increase of \$2,500,000 to be added for the remainder of the contract ending December 10, 2023.
- There is sufficient capacity in the 2021-2022 biennial budget for this capital replacement

Strategic Plan Alignment

Goal 2: Provide effective, innovative and well-resourced police, fire and emergency medical services.

Present Situation

Three existing fire engines/pumpers were scheduled to be replaced after this biennium. Due to higher than anticipated utilization, units 50, 60, and 61 need to be replaced ahead of the schedule. The remaining balance left on this contract is not sufficient to support this purchase. Staff is requesting to increase the limit on the contract by \$2,500,000 to support this purchase through the remaining duration of the contract. The reason for the urgency is due to a scheduled contract price increase per unit of \$20,000 on February 1.

The fire engines/pumpers purchased with this contract are specialized equipment and have a fifteen year lifecycle.

Advantage(s)

1. Will avoid a price increase of \$20,000 per fire engine/pumper.
2. All three units are replacement units for current equipment.

Disadvantage(s)

None

Budget Impact

The vehicle capital budget to be utilized to support this purchase is sufficient in 2021-2022. The repair, replacement schedule and the resulting annual funding rates will be amended to accommodate the earlier purchase of the units during the budget process for development of the 2023-2024 Biennial Budget.

Prior Council Review:

None

Action Requested:

Approve an increase of \$2,500,000 to the authorized amount of the Contract with Cascade Fire & Safety for the purchase of fire engines/pumpers.

Dan Zenger, Equipment Services Manager, 487-8205