

Lowell City Council
Work Session and Executive Session Agenda
Tuesday, April 6th at 7:00 P.M.
Maggie Osgood Library, 70 N. Pioneer Street

This meeting will be held electronically through Zoom. Limited seating is available at the Library.

- Join by phone, tablet, or PC. For details, click on the event at www.ci.lowell.or.us.

Work Session Agenda

Call to Order/Roll Call

Councilors: Mayor Bennett ____ Harris ____ Stratis ____ Dragt ____ Myers ____

Work sessions are held for the City Council to receive background information on City business and to give Council members an opportunity to ask questions and express their individual views. No decisions are made, and no votes are taken on any agenda item. The public is invited to attend, however, there is generally no public comment period.

Work Session Topic(s)

1. Presentation and update from Andy Vobora, VP of Stakeholder Relations with Travel Lane County.
2. Presentation and update from Becky Taylor, Senior Transportation with Lane County Public Works, regarding the Safe Routes to School project.
3. Review proposed Ordinance #303, "An ordinance granting Douglas Services, Inc., locally known as Douglas Fast Net (DFET), a non-exclusive franchise for the construction, operations, and maintenance of a fiber optics telecommunications system."
4. Review scope of services from City Engineer on water treatment plant tracer study.
5. Presentation from Public Works Director Max Baker on department updates, including digester blower purchase, green waste drop-off program, and back flow inspection opt in/ opt out program.

Adjourn the work session.

The Executive Session will take place immediately following the work session.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to the City Clerk, Joyce Donnell, at 541-937-2157.

Executive Session Agenda

Executive Sessions are closed to the public. Representatives of the news media and designated staff may attend Executive Sessions. Representatives of the news media are specifically directed not to report on any of the deliberations during the Executive Session, except to state the general subject of the session as previously announced. No Executive Session may be held for the purpose of taking final action or making any final decision.

Call to Order/Roll Call

Councilors: Mayor Bennett _____ Myers _____ Harris _____ Stratis _____ Dragt _____

Executive Session:

To conduct deliberations with persons designated by the governing body to negotiate real property transactions, pursuant to ORS 192.660(2)(e).

Adjourn

Agenda Item Sheet

City of Lowell City Council



Type of item:	Presentation
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Item title/recommended action:

Presentation and update from Becky Taylor, Senior Transportation Planner with Lane County Public Works, regarding the "Safe Routes to School" project.

Justification or background:

Lane County has received Safe Routes to School infrastructure grant funding for sidewalk construction in the City of Lowell. The project includes: 1) sidewalk reconstruction on both sides of Main Street; 2) new sidewalk construction on both sides of West Boundary Road, between Main Street and Jasper-Lowell Road (Pioneer Street); and 3) pedestrian crossing improvements at the west leg of the Jasper-Lowell (Pioneer Street)/West Boundary Road intersection to include a pedestrian-refuge island to reduce the crossing distance for pedestrians while still enabling through truck movements. Construction is anticipated to begin in April 2022. Currently, Lane County is conducting public outreach with the City and other stakeholders to address concerns and questions about the project.

Budget impact:

N/A

Department or Council sponsor:

N/A

Attachments:

Lane County SRTS: Lowell Sidewalk Public Involvement Plan, DRAFT March 2021

Meeting date:	04/06/2021
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Lane County Safe Routes to School (SRTS) City of Lowell / Lundy Elementary Sidewalk Project



*Improving safety and
supporting kids walking to
school in the City of Lowell*



Lane County Public Works
**PUBLIC INVOLVEMENT
PLAN**

DRAFT March 2021

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APPENDIX: SRTS Grant Application and Letters of Support

Introduction

The purpose of this plan is to: describe the public involvement approach for this project; provide the project team with methods and strategies for effective and meaningful public participation; and ensure decision makers have reliable, community-based information. Detailing the approach and activities within this plan provides all project stakeholders with the details as to how public involvement will be achieved. In accordance with Lane Manual, this project requires Design Concept approval by Board Order which includes stakeholder engagement and a public hearing before the Lane County Transportation Advisory Committee. The approach, methods, and strategies for public involvement described in this plan were developed to ensure consistency with procedural requirements and project goals, and in consideration of both the community the project is intended to serve and Lane County's commitment to inclusive, equitable public participation.

The purpose of the project is to improve the safety and comfort of children walking to the schools within the City of Lowell, especially to Lundy Elementary School. This is a Safe Routes to Schools (SRTS) grant-funded project which aims to improve physical safety through engineering improvements and to encourage children to walk to school. Supporting children walking to schools includes providing students, school faculty, and guardians with safety education and encouragement. The SRTS grant agreement includes specific public outreach activities, including Spanish translation materials, with the schools which will be accomplished in coordination with the Lane County SRTS Rural Education Program.

The purpose of public involvement is to:

- Increase transparency
- Earn public trust
- Ensure compliance with law
- Establish expectations for Lane County employees
- Ensure everyone has the opportunity to participate
- Consider the needs of all affected users and communities

The elements included in this plan have been developed to achieve the above purpose statements.

Project Need

Schools in the City of Lowell, including Lundy Elementary School, are located within its downtown area. Roads that connect Downtown Lowell to surrounding residential areas currently lack: a complete and connected sidewalk network; and safe and comfortable crossings. These deficiencies create unsafe conditions that limit the ability for children to safely and comfortably walk or bike to school. The location that this project addresses is a vital connection between Lundy Elementary School and its surrounding residential areas.

In summer 2020, Lane County constructed ADA ramps and installed an RRFB at the intersection of West Boundary Road/Main Street and replaced deficient ADA ramps at the intersection of

Main Street/Jasper-Lowell Road (Pioneer Street). These pedestrian crossing improvements address only part of the problem. There are no sidewalks on West Boundary Road and deteriorated sidewalks on Main Street between the new ADA ramps and the schools. This project will build sidewalks on both sides of West Boundary Road and will reconstruct the sidewalks on Main Street -- from Main Street to Jasper-Lowell Road (Pioneer Street).

Existing Conditions (2019)



South side of E. Main Street (looking west)



W. Boundary at Pioneer St. (looking east)

The intersection of West Boundary Road/Jasper-Lowell Rd (Pioneer Street) is very wide (36 feet), making it difficult for people walking, especially school children, to cross. Further, northbound traffic on Jasper-Lowell Road (Pioneer Street) is permitted to make left-hand turns onto Jasper-Lowell Road (North Shore Drive) without stopping, increasing risks to people trying to cross the intersection on-foot. This project will install a pedestrian-refuge island at the west leg of this intersection.

Project Selection

Lane County applied for SRTS Infrastructure Grant funding for sidewalk construction in the City of Lowell in 2018 and 2020. Learning from the first attempt at the funding, which was broader in scope (included Jasper-Lowell Road and Moss Street), and leveraging the support developed with regional partners and the relationship strengthened with the City of Lowell, Lane County narrowed the scope of the project and was able to secure the grant funding the second round. Between the two grant cycles, in 2019 and 2020, Lane County constructed ADA ramps at the Jasper-Lowell/Main Street and West Boundary/Main Street intersections with County Road Funds earmarked for implementing Public Works' ADA Transition Plan.

Consistent with the SRTS grant funding eligibility requirements, the project is within one mile of an elementary school (Lundy Elementary). The application received high scores for the Lowell School District having the highest percentage in Lane County of students eligible for free and reduced lunch. The crossing distance exceeding 30 feet at the proposed pedestrian-refuge location at Jasper-Lowell Road (Pioneer St.)/West Boundary Road qualified the project as a safety priority resulting in additional points.

Project Support

Project support was garnered through the grant application process. The application was signed by the City of Lowell Administrator and the Lowell School District Superintendent. Letters of support were provided by the Lundy Elementary School Principal, the Lane Area Commission on Transportation; and the Safe Lane Transportation Coalition. Lane County staff worked closely, for several years, with the City of Lowell to develop the grant application. The partnership

Lowell Downtown Tour (2018)



begin in 2018, when Lane County staff participated in the City's Downtown Master Plan update process, walking the streets, and identifying priority infrastructure needs to improve pedestrian safety and comfort.

Public Involvement Goals

To increase transparency, earn public trust, ensure compliance with law, ensure everyone has the opportunity to participate, and consider the needs of all affected users and communities, the following goals are expressed as expectations for Lane County employees on the project team.

- **REALISTIC** Be clear about the project constraints, objectives, and parameters
- **ACCOUNTABLE** Respond to public feedback in a timely manner
- **INCLUSIVE** Reach out to project area stakeholders and reduce participation barriers
- **MEANINGFUL** Ensure that the public's input will be taken into account by decision makers
- **TRANSPARENT** Make the decision-making process easily understandable and accessible with key project materials available on the project website
- **TIMELY** Provide early, accurate, easily accessible, and widely available project information for the public to provide well-informed feedback

The public involvement strategies detailed in this plan were designed to achieve these goals, with an eye towards diversity, equity, and inclusion to identify opportunities for engaging transportation-disadvantaged populations, such as youth, the elderly, and people with disabilities, people of color, people with limited English proficiency, and low-income people. Further the methods were developed in consideration of the following questions intended **to identify potential equity issues**:

- **People:** Who is positively and negatively affected and how?
- **Process:** How are we meaningfully including or excluding people who are affected?
- **Place:** How are you considering environmental impacts as well as environmental justice?
- **Power:** What are the benefits and burdens that communities will experience?

Lane County Public Works 2020 Transportation Equity Report:

Equity...is defined as trying to understand and provide disadvantaged communities with what they need to live healthy and productive lives. These needs include access to jobs, housing, and other critical services. Equity recognizes that different people experience different barriers to securing their needs.

Stakeholders

The key to developing meaningful and inclusive public participation is to understand the needs of stakeholders – to identify the people and communities affected by the project. Of particular concern are populations typically underrepresented in planning and decision-making processes, but often bear transportation burdens and experience other barriers to opportunity at disproportionate rates. An analysis of demographic data surrounding the project area is provided below.

Schools

The purpose of the project is to improve safety for children walking to the schools in the City of Lowell; therefore, school children, parents/guardians, teachers/faculty are natural stakeholders. The Safe Routes to School program includes not only the ODOT oversight associated with the grant funding, but leveraging Lane County's SRTS Rural Program which was created in 2019 to provide elementary and middle school children in rural Lane County with bicycle and pedestrian safety education programs. The Lowell School District is the pilot for this new education program which made the infrastructure grant application compete so successfully.

The Lane County SRTS Rural Program Coordinator will be involved in outreach and education activities for this project. In August 2020, the Coordinator partnered with the school district and PeaceHealth to donate helmets and providing fitting instructions to families as part of the summer meals program. In the grant application for the project, the principal of Lundy Elementary School committed to the following activities:

- Support current walking and biking programming at our school and ensure walking and biking education programs continue for our students during the construction and after the completion of this project in order to educate our community about the new safety feature and how to use it.

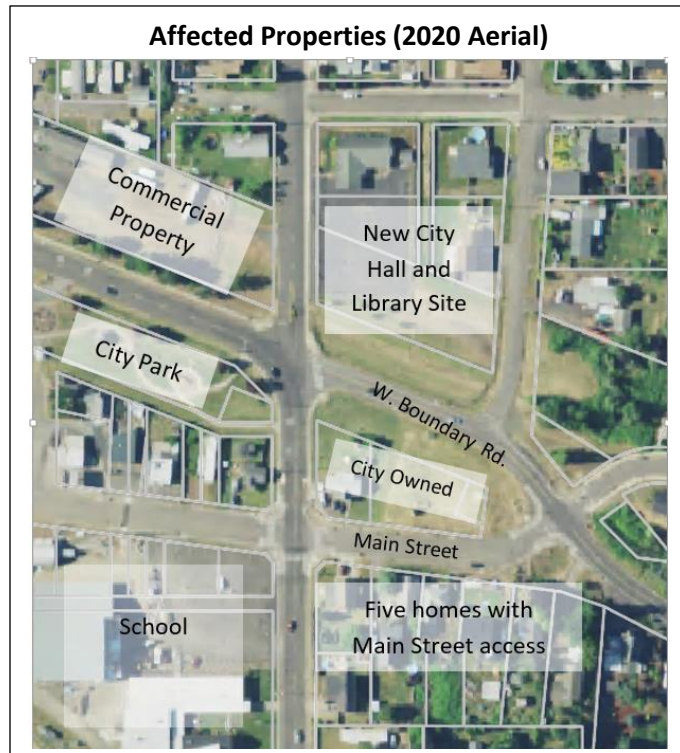
Helmet Donation and Fitting in Lowell (2020)



- Publish a newsletter article submitted by partner road authority (grant applicant) and send provided flyer home with students containing educational safety information about the project.

Community

The entire City of Lowell will benefit from the project. Making streets safer for children improves the safety and comfort for everyone. A major focus of the Lowell Downtown Master Plan is improving the walkability of the city core which is where the schools are located. The City owns property on both sides of West Boundary Road abutting the proposed sidewalks as well as the park located at the southwest corner of the Jasper-Lowell Road/West Boundary Road intersection. A new city hall and library is proposed on the north side of West Boundary Road.



Abutting Property Owners

The proposed sidewalk construction directly affects abutting property owners and residents. There are five private residences located on the south side of Main Street. The project is not expected to need additional right-of-way, but the construction may affect front yards and driveways.

Freight/Trucks

None of the affected roads are officially-designated freight routes; however, the permissive left turn with wide truck-turning radius at the proposed location of the pedestrian-island refuge needs careful consideration; the preliminary design of the refuge is a "pork chop" to accommodate truck turning movements.

Elected Officials

Lane County Commission Heather Buch, representing the affected area, is very supportive of the project and announced the grant award at the Lane Area of Commission on Transportation. The Mayor of Lowell has expressed appreciation and excitement about the project.

Equity: Title VI/Environmental Justice

Title VI of the Civil Rights Act of 1964 is the federal law which protects individuals from discrimination on the basis of their race, color, or national origin in programs that receive federal financial assistance, such as Lane County Public Works.

Environmental Justice (EJ) is a term that comes from the Presidential Executive Order 12898, building upon the antidiscrimination provisions of Title VI of the Civil Rights Act. EJ is also expressed as “social justice” and “equity” all of which is grounded in the practice of making sure that both benefits and burdens of transportation investments are shared as equitably as possible among all affected communities. The focus is on inclusive planning approaches that reach out to traditionally underrepresented populations, particularly low-income and minority populations.

Lane County’s Title VI Policy Statement

(Lane County Public Works Title VI Plan, 2016):

Lane County, acting through its Public Works Department, assures that no person shall, on the grounds of race, color, national origin, sex, age, disability or income as provided by the Title VI of the Civil Rights Act of 1964 and related authorities, be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination under any County sponsored program or activity. The County further assures that every effort will be made to ensure non-discrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

Populations of Concern

Based on the 2019 5-year estimates from the US Census Bureau American Community Survey, which is the most recent data available, **the project area has the greatest proportions of youth (22%), elderly (23%), and disabled (45%) populations.** The data indicates less than one percent of the population in the project area includes people of color or people with limited English proficiency. Although the area as a whole does not have a significant proportion of the population in poverty, the Lowell School District has the greatest percentage of students eligible for free and reduced lunches based on household income than any other school district in Lane County.

- **Youth:** Children and young adults under the age of 18 have very different transportation needs than the adult population. The vast majority of people under 18 are unable to drive a car, and therefore rely more on walking, bicycling, public transit, carpooling, or rides from family, if available. Other youth-related vulnerabilities may include lacking knowledge of safe travel behaviors. Road design and sidewalk conditions are key factors in determining youth physical activity. Safe crossings, well-built sidewalks, and traffic calming strategies are all associated with greater physical activity in children and young adults.¹ Promoting physical activity among this demographic is important for physical and social development, boosting academic achievement and self-esteem, and preventing costly chronic diseases.² Further, physical and cognitive development impact a child's ability to safely walk and bicycle in a high traffic scenario.³⁴ For younger children in particular, this means that children lack the full awareness and ability to scan for traffic and identify safe locations to cross the street.
 - This project is intended to directly benefit this population by constructing sidewalks and reducing the crossing distance of a busy intersection.
 - Outreach activities will include providing safety education resources through Lane County's SRTS Rural Program.
- **Seniors:** The population over 64 years of age may require more alternatives to driving and thus have more mobility needs than the general adult population. Older adults increasingly depend on active transportation modes, such as using public transit, walking and/or biking when they decrease or stop driving. Prioritizing active transportation needs enables older adults to maintain positive

¹ Carver A, Timperio A, Crawford D. Neighborhood Road Environments and Physical Activity Among Youth: the Clan Study.

Nournal Urban Heal Bull New York Acad Med. 2008;85:532-544.

² CDC Division of Adolescent and School Health. The Association Between School-Based Physical Activity, Including Physical Education, and Academic Performance.; 2010. www.cdc.gov/HealthyYouth. Accessed October 15, 2016.

³ National Highway Traffic Safety Administration. Bicycle Safety Education for Children from a Developmental and Learning Persepctive. 2014.

⁴ National Highway Traffic Safety Administration. Child Pedestrian Safety Education: Applying Learning and Developmental Theories to Develop Safe Street-Crossing Behaviors. 2009.

well-being, despite the onset of functional limitations.⁵ Walkable access to adequate public transportation is essential for older adults to maintain their daily activities and independence.⁶ Additionally, safe, walkable communities that promote physical activity help prevent or delay chronic diseases such as arthritis, osteoporosis, and diabetes in older adults.⁷ As 61% of American adults ages 65 years or older have at least one activity-based limitation, creating communities where older adults can safely be active and access necessary resources is crucial to the future prevention of such disability.⁸ Lastly, older adults are especially vulnerable to social isolation, which can result in significant declines in physical health; increasing walkability enhances older adults' ability to connect with others.

- This project will benefit this population by providing sidewalks, reducing the crossing distance of a busy intersection, and constructing ADA ramps.
 - Outreach activities will include reducing the need travel to participate and providing written materials in larger font, such as direct-mail postcards.
- **Disability:** Mobility is a top issue for most people with disabilities, and often determines the extent to which they can participate in the community and retain employment^{9,10}. Most people experience disability at some point in their lives, if

⁵ Cvitkovich Y, Wister A. The Importance of Transportation and Prioritization of Environmental Needs to Sustain Well-Being among Older Adults. *Environ Behav.* 2001;33(6):809-829. doi:10.1177/00139160121973250.

⁶ Michael YL, Green MK, Farquhar SA. *Neighborhood Design and Active Aging*. Vol 12.; 2006. doi:10.1016/j.healthplace.2005.08.002.

⁷ National Institute on Aging. Exercise & Physical Activity. *Natl Inst Heal.* 2015. <https://www.nia.nih.gov/health/publication/exercise-physical-activity/introduction>.

⁸ National Center for Health Statistics. Health, United States, 2015. *Cent Dis Control Prev.* 2016.

⁹ Cmar J, Crudden A, McDonnall M. Transportation self-efficacy and employment among individuals with visual impairments. *Journal of Vocational Rehabilitation.* 2018;48(2):257-268. <https://content.iospress.com/articles/journal-of-vocational-rehabilitation/jvr925>. Accessed January 22, 2020.

¹⁰ Bascom G, Christensen K. The impacts of limited transportation access on persons with disabilities' social participation. *Journal of Transport and Health.* 2017;7(B):227-234. <https://www.sciencedirect.com/science/article/pii/S2214140517300075>. Accessed January 22, 2020.

only temporarily in some cases. A variety of temporary and permanent cognitive, visual, and physical disabilities can prevent people from being able to drive a car, making a variety of transportation options essential. Active and public transportation options are essential for the inclusion of people with disabilities in our communities. While not all disabled individuals will have the option of bicycle transportation, there are many adaptive bicycle designs developed to serve a population that is extremely varied in their abilities and mobility options¹¹.

- This project will benefit this population by providing sidewalks, reducing the crossing distance of a busy intersection, and constructing ADA ramps.
- Outreach activities will include reducing the need travel to participate and providing written materials in larger font, such as direct-mail postcards.

Public Involvement Strategy

The spectrum of public participation ranges from Inform (providing the public with information) to Empower (placing the final decision in the hands of the public). The decision making process established by *Lane Manual 15.580 Citizen Input with Regard to Individual Road Projects* is an **Involve** public participation model in which the County works directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered. The Involve process commits to providing feedback on how public input influenced the decision.

Decision Making

The public involvement process for this project ensures stakeholders and the environment are considered. Lane County has made a strong policy commitment through Lane Manual Chapter 15 by requiring all projects (other than maintenance and bridges) to have design concepts approved by Board Order. The process requires stakeholder identification and involvement, notices to abutting property owners, and a public hearing and recommendation by the Lane County Transportation Advisory Committee. A written report documenting the process, public comments received, alternatives considered, and the recommended design concept is required to be

¹¹ DeVault, Nancy, Adaptive Bicycles Pave the Way for Riders with Disabilities, AmeriDisability, 2019. <https://www.ameridisability.com/post/adaptive-bicycles-pave-the-way-for-riders-with-disabilities>. Accessed January 12, 2021.

provided as part of the Board Order. The public involvement plan accounts for this decision making process.

The anticipated level of conflict, concern or controversy on this project is low, as is the probable level of difficulty in solving the problems and advancing the project. The project does not have significant physical impacts on properties or the environment. Further, the scope of the project is defined by the grant contract, thereby limiting the ability to significantly alter the design. Therefore, the participation tools do not include design charrettes and workshops, but the decision making process includes a public hearing.

Outreach Tools

- **Direct mailings** -- will be provided to affected property owners and occupants at project milestones, such as pre-survey work, invitations to meetings, and pre-construction activities
- **Webpage** -- this project has webpage that will be updated throughout the process with relevant project information
- **Interested Parties (IP) List** – interested parties will be updated regularly throughout the life of the project
- **Press Release and Social Media** – the project team will work with the County's Public Information Officer
- **School Newsletters** – the Lundy Elementary School principal committed to providing educational information to students. The Lane County SRTS Rural Program coordinator will also work with students on pedestrian safety education
- **Stakeholder Interviews** -- the project team will solicit input from affected stakeholders
- **Public Meetings** – there will be a public hearing before the Lane County Transportation Advisory Committee (TrAC) which is a citizen body appointed by the Board of County Commissioners

Outreach Activities

The outreach tools listed above will be used to support public involvement through the duration of the project. Targeted activities at the project milestones are listed in the following table.

Involvement Milestone	Timing
Project Introduction	
Project webpage	February 2021

Stakeholder Interviews	March 2021
Direct Mailings	April 2021
Design Concept Approval	
Design Drawings – Solicit Public Input	May 2021
Written Report – Summarize Public Input	May 2021
TrAC Recommendation - Public Hearing	June 2021
Board Order – Public Meeting	July 2021
Design Development/Refinement	
30% - Design Concept approval process	8/10/21
70% - Property owner consultation	9/7/21
95% - Acquire temporary construction easements	12/28/21
Final	1/11/22
Construction	
Contract Award – Information about construction schedule, traffic delays	4/2/22
Construction Commence	4/16/22
Construction Complete	ODOT Project Milestone – 7/17/22
Project Site Visit (Required by ODOT Contract) Ribbon cutting event, invite elected officials, media?	August 2022

Tracking Results

Project completion will include an evaluation of the public involvement process with stakeholders and the project team to review the information tracked and discuss areas that went well versus areas that have room for improvement in future outreach efforts. Any loose ends with stakeholders will also be wrapped up as part of the evaluation and tracking process.

The following information will be tracked:

- Number of activities/actions/events and participants/respondents
- Comments received / comment themes / key concerns
- Responses delivered / How concerns were addressed / Communicating results to stakeholders

Agenda Item Sheet

City of Lowell City Council



Type of item:	Ordinance
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Item title/recommended action:

Review proposed Ordinance #303, "An ordinance granting Douglas Services, Inc., locally known as Douglas Fast Net (DFET), a non-exclusive franchise for the construction, operations, and maintenance of a fiber optics telecommunications system."

Justification or background:

In fall of 2019, Douglas Fast Net (DFN) approached the City about negotiating a franchise agreement for constructing and operating a fiber optics telecommunications system. In late winter/spring of 2020, the City and DFN drafted the language for the agreement, but it was never approved. In March 2021, DFN contacted the City and stated that they were ready to being constructing the fiber optics system within the City. The proposed franchise ordinance and agreement is placed on the agenda for discussion, with the goal of having first reading approval at your regular April meeting. Two readings are required to approve an ordinance. Afterwards, the ordinance is effective 30 days after approval.

Budget impact:

The Grantee would be required to pay the City an annual franchise fee of 5% of gross revenue.

Department or Council sponsor:

N/A

Attachments:

Draft copy of Ordinance #303

Meeting date:	04/06/2021
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CITY OF LOWELL
ORDINANCE NO.
30~~32~~

AN ORDINANCE GRANTING DOUGLAS SERVICES, INC., LOCALLY KNOWN AS DOUGLAS FAST NET (DFN), A NON-EXCLUSIVE FRANCHISE FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A FIBER OPTICS TELECOMMUNICATIONS SYSTEM.

This Franchise ("Franchise") is between the CITY of LOWELL, OREGON, hereinafter referred to as the "Grantor" and DOUGLAS SERVICES, INC., locally known as DOUGLAS FAST NET, hereinafter referred to as the "Grantee."

WHEREAS, the Grantee has applied to the City for permission to use certain streets and public right-of-way for the placement of a Fiber Optics Telecommunication System under, in, along, over and across certain streets and public right-of-way in the City; and the City Council has the authority to grant franchises for the use of its right-of-way.

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a fiber optics telecommunication system on the terms set forth herein; now therefore

THE CITY OF LOWELL ORDAINS AS FOLLOWS:

SECTION 1
Definition of Terms

11 Terms. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them as set forth below. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Fiber Optics Telecommunication System" or "Fiber System" means an interstate network of fiber optic cables and all related property including conduit, carrier pipe, cable fibers, repeaters, power sources and other attachments and appurtenances necessary for transmitting high speed voice, data and (for such applications as teleconferencing) video signals in connection with a long distance Telecommunications system or systems. The authority granted by this Franchise to use the streets and public ways does not authorize the use of the Fiber Optics Telecommunication System or fiber optic cable for operating a cable television system, nor authorize Grantee to operate as a cable operator as those terms are defined in the Telecommunications Act of 1934 as amended, state law, or the City Code.

The authority granted by this Franchise does not authorize the use of the streets and public ways for an open video system as defined in the Telecommunications Act of 1996 or as defined or authorized by the FCC.

- B. "Council" shall mean the governing body of the Grantor.
- C. "FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.
- D. "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Fiber Optics Telecommunication System along the public ways within the Service Area.
- E. "Gross Revenue" shall mean any and all revenue, of any kind, nature or form, without deduction for expense of whatsoever nature, of Grantee and any affiliates of the Grantee derived from the operation of the Fiber System. Grantee may deduct uncollectible amounts from customers within the corporate limits of City from these gross revenues, unless and until full or partial collection is made. Gross revenue does not include taxes, fees or assessments of general applicability required by law to be collected from subscribers for pass-through to a government agency, or revenue paid directly by the United States of America or any of its agencies, nor does it include credits, refunds and deposits paid to Subscribers. Franchise fees are not fees required by law to be collected from subscribers. Grantor acknowledges and agrees that Grantee maintains its books and records in accordance with generally accepted accounting principles. Any net uncollectables, bad debts, or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected.
- F. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- G. "Service Area" shall mean the geographic boundaries of the Fiber System and shall include any additions thereto by extension of service, annexation or by other legal means, subject to the exception in Section 6 hereto.
- H. "State" shall mean the State of Oregon.
- I. "Street" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area,

which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Fiber System.

- J. "Subscriber" shall mean any Person lawfully receiving Fiber Service from the Grantee.
- K. "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities' uses.

SECTION 2

Grant of Franchise

2.1 Grant. The Grantor hereby grants to the Grantee, its successors and assigns as authorized herein, a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the City's Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Fiber System .

2.2 Term and Termination. The Franchise and the rights, privileges and authority hereby granted shall be for a term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in Section 14.10. Renewal discussion will be initiated in accordance with applicable law.

Upon termination or expiration of the Franchise, if not further renewed, Grantee shall, within one hundred and eighty days (180), remove all its facilities from the Grantor's Streets. During such period, Grantee shall remit to the Grantor any payments due under this Franchise, as if this Franchise were in full force and effect. Should the Grantee fail to remove its facilities within such one-hundred-eighty-day period, the Grantor may do so, and the Grantee shall immediately remit to the Grantor the costs of such removal.

2.3 Police Powers and Conflicts with Franchise. Nothing in this Franchise limits the Grantor's right to exercise its police powers by adopting ordinances necessary for the public's health, safety and general welfare. The Grantee agrees to comply with the terms of any such ordinance adopted subsequent to the adoption of this Ordinance. In the event of any conflict between this Franchise and any such ordinance adopted as an exercise of police powers, Grantee and Grantor agree to a timely negotiation in good faith of modifications to this Ordinance to accommodate these changes in law. In the event of any conflict between this Franchise and any Grantor ordinance or regulation that is not generally applicable, this Franchise shall control.

SECTION 3
Franchise Renewal

3.1 Procedures for Renewal. In the event the parties are actively negotiating in good faith for a new Franchise or an amendment to this Franchise upon the termination date of this Franchise, the parties by written mutual agreement may extend the termination date of this Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Franchise and not as a new Franchise or amendment.

SECTION 4
Indemnification and Insurance

~~**4.1 Indemnification.** The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of Grantee in the construction or operation of the Fiber System and in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Fiber System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Fiber System.~~

~~**4.2 Insurance.** The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:~~

Workers' Compensation	Statutory Limits Commercial
General Liability	\$2,000,000 per occurrence, Combined Single Limit (C.S.L.) \$3,000,000 General Aggregate
Auto Liability including coverage on	\$1,000,000 per occurrence
C.S.L. all owned, non-owned hired autos	Umbrella

**CITY OF LOWELL
ORDINANCE NO. 302**

**~~AN ORDINANCE GRANTING DOUGLAS SERVICES, INC., LOCALLY KNOWN AS DOUGLAS FAST
NET (DFN), A NON-EXCLUSIVE FRANCHISE FOR THE CONSTRUCTION, OPERATION, AND
MAINTENANCE OF A FIBER OPTICS TELECOMMUNICATIONS SYSTEM.~~**

~~This Franchise ("Franchise") is between the CITY of LOWELL, OREGON, hereinafter referred to as the "Grantor" and DOUGLAS SERVICES, INC., locally known as DOUGLAS FAST NET, hereinafter referred to as the "Grantee."~~

~~WHEREAS, the Grantee has applied to the City for permission to use certain streets and public right of way for the placement of a Fiber Optics Telecommunication System under, in, along, over and across certain streets and public right of way in the City; and the City Council has the authority to grant franchises for the use of its right of way.~~

~~WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a fiber optics telecommunication system on the terms set forth herein; now therefore~~

~~THE CITY OF LOWELL ORDAINS AS FOLLOWS:~~

**SECTION 1
Definition of Terms**

~~**11 — Terms.** For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them as set forth below. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.~~

~~A. — "Fiber Optics Telecommunication System" or "Fiber System" means an interstate network of fiber optic cables and all related property including conduit, carrier pipe, cable fibers, repeaters, power sources and other attachments and appurtenances necessary for transmitting high speed voice, data and (for such applications as teleconferencing) video signals in connection with a long distance Telecommunications system or systems. The authority granted by this Franchise to use the streets and public ways does not authorize the use of the Fiber Optics Telecommunication System or fiber optic cable for operating a cable television system, nor authorize Grantee to operate as a cable operator as those terms are defined in the Telecommunications Act of 1934 as amended, state law, or the City Code.~~

~~The authority granted by this Franchise does not authorize the use of the streets and public ways for an open video system as defined in the Telecommunications Act of 1996 or as defined or authorized by the FCC.~~

- ~~B. "Council" shall mean the governing body of the Grantor.~~
- ~~C. "FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.~~
- ~~D. "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Fiber Optics Telecommunication System along the public ways within the Service Area.~~
- ~~E. "Gross Revenue" shall mean any and all revenue, of any kind, nature or form, without deduction for expense of whatsoever nature, of Grantee and any affiliates of the Grantee derived from the operation of the Fiber System. Grantee may deduct uncollectible amounts from customers within the corporate limits of City from these gross revenues, unless and until full or partial collection is made. Gross revenue does not include taxes, fees or assessments of general applicability required by law to be collected from subscribers for pass through to a government agency, or revenue paid directly by the United States of America or any of its agencies, nor does it include credits, refunds and deposits paid to Subscribers. Franchise fees are not fees required by law to be collected from subscribers. Grantor acknowledges and agrees that Grantee maintains its books and records in accordance with generally accepted accounting principles. Any net uncollectables, bad debts, or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected.~~
- ~~F. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.~~
- ~~G. "Service Area" shall mean the geographic boundaries of the Fiber System and shall include any additions thereto by extension of service, annexation or by other legal means, subject to the exception in Section 6 hereto.~~
- ~~H. "State" shall mean the State of Oregon.~~
- ~~I. "Street" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights of way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area,~~

~~which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Fiber System.~~

~~J. "Subscriber" shall mean any Person lawfully receiving Fiber Service from the Grantee.~~

~~K. "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities' uses.~~

SECTION 2

Grant of Franchise

~~**2.1 Grant.** The Grantor hereby grants to the Grantee, its successors and assigns as authorized herein, a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the City's Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Fiber System.~~

~~**2.2 Term and Termination.** The Franchise and the rights, privileges and authority hereby granted shall be for a term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in Section 14.10. Renewal discussion will be initiated in accordance with applicable law.~~

~~Upon termination or expiration of the Franchise, if not further renewed, Grantee shall, within one hundred and eighty days (180), remove all its facilities from the Grantor's Streets. During such period, Grantee shall remit to the Grantor any payments due under this Franchise, as if this Franchise were in full force and effect. Should the Grantee fail to remove its facilities within such one hundred eighty day period, the Grantor may do so, and the Grantee shall immediately remit to the Grantor the costs of such removal.~~

~~**2.3 Police Powers and Conflicts with Franchise.** Nothing in this Franchise limits the Grantor's right to exercise its police powers by adopting ordinances necessary for the public's health, safety and general welfare. The Grantee agrees to comply with the terms of any such ordinance adopted subsequent to the adoption of this Ordinance. In the event of any conflict between this Franchise and any such ordinance adopted as an exercise of police powers, Grantee and Grantor agree to a timely negotiation in good faith of modifications to this Ordinance to accommodate these changes in law. In the event of any conflict between this Franchise and any Grantor ordinance or regulation that is not generally applicable, this Franchise shall control.~~

SECTION 3
Franchise Renewal

~~**3.1 Procedures for Renewal.** In the event the parties are actively negotiating in good faith for a new Franchise or an amendment to this Franchise upon the termination date of this Franchise, the parties by written mutual agreement may extend the termination date of this Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Franchise and not as a new Franchise or amendment.~~

SECTION 4
Indemnification and Insurance

4.1 Indemnification. The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of Grantee in the construction or operation of the Fiber System and in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Fiber System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Fiber System.

4.2 Insurance. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits Commercial
General Liability	\$2,000,000 per occurrence, Combined Single Limit (C.S.L.) \$3,000,000 General Aggregate
Auto Liability including coverage on	\$1,000,000 per occurrence
C.S.L. all owned, non-owned hired autos	Umbrella

Liability

Umbrella Liability \$1,000,000 per occurrence C.S.L.

- A. The Grantor shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- B. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

4.3 Evidence Required. Within thirty (30) days of the effective date of this Franchise, the Grantee shall provide the City with a certificate of Insurance executed by an authorized representative of the insurer or insurers, evidencing that Grantee insurance complies with this section.

SECTION 5

Service Obligations

5.1 No Discrimination. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, age or sex.

5.2 Privacy. The Grantee shall fully comply with the privacy rights of Subscribers as contained in State or Federal law.

SECTION 6

Service Availability

6.1 Service Area. The Grantee shall make Fiber Service distributed over the Fiber Optics Telecommunication System available to every residence within the corporate boundaries of the Grantor where there is a minimum density of at least thirty (30) residences per linear strand mile of cable as measured from Grantee's closest trunk line or distribution cable that is actively delivering Fiber Service as of the date of such request for service. If such residence is located within one hundred fifty (150) feet of Grantee's feeder service, the Fiber Service will be provided at Grantee's published rate for standard installations. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Fiber System into any portion of the corporate boundaries of the Grantor where another operator is providing Fiber Service and into any area which is not contiguous to the present Service Area of the Grantee. Grantee need not make an extension to any area which is financially or technically infeasible, if it provides documentation substantiating such infeasibility to Grantor. Fiber Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal

access to any such Subscriber's dwelling unit or other units wherein such Fiber Service is provided. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.

6.2 Subscriber Charges for Extensions of the Fiber System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 6.1 above, the Grantee shall only be required to extend the Fiber System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Fiber System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the Fiber System from the tap to the residence.

6.3 New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the five day period, the cost of new trenching is to be borne by Grantee.

6.4 Annexation. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Fiber Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and Section 6.1 above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the corporate boundaries of the Grantor. Any identified Subscriber addresses shall be included in Grantee's franchise fee calculations within ninety (90) days after receipt of the annexation notice, which shall include the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall include the identified Subscriber addresses in the franchise fee calculations within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 14.5. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received

notification and information that meets the standards set forth in this section.

SECTION 7

Construction and Technical Standards

- 7.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with the National Electric Safety Code.
- 7.2 Construction Standards and Requirements.** All of the Grantee's plant and equipment, including but not limited to the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, fiber, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.
- 7.3 Safety.** The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.
- 7.4 Network Technical Requirements.** The Fiber System shall be designed, constructed and operated so as to meet any technical standards adopted by the FCC relating to Fiber Systems as may be amended from time to time, regardless of the transmission technology utilized.
- 7.5 Performance Monitoring.** Grantee shall test the Fiber System consistent with the FCC regulations.
- 7.6 Right to Inspect Construction.** The Grantor or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law relating to the management of the Grantor's Streets.

SECTION 8

Conditions on Street Occupancy

- 8.1 General Conditions.** Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor.
- 8.2 Underground Construction.** The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone

or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of fiber underground or the movement of fiber, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities.

8.3 Construction Codes and Permits. Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Fiber System in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Service Area.

8.4 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8.5 Restoration of Public Ways. Grantee shall, at its own expense, restore any damage or disturbance caused to City Streets, or adjacent private property, as a result of its operation, construction, or maintenance of the Fiber System to a condition reasonably comparable to the condition of the Streets or adjacent private property immediately prior to such damage or disturbance.

8.6 Removal in Emergency. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.

8.7 Tree Trimming. Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

8.8 Relocation for the Grantor. The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor. Grantee shall be responsible for any costs associated with these obligations to the same extent that all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities.

8.9 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

8.10 Reimbursement of Costs. If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

8.11 No Limitation on Grantor Authority. Except as provided in this Section, nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the Grantor from modifying or performing any work in its Streets, or granting other franchises for use of its Streets, or of adopting general ordinances regulating use of or activities in its Streets, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its Streets, whether now owned or hereinafter acquired.

SECTION 9 **Service and Rates**

9.1 Phone Service. The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

9.2 Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases or other substantive service changes.

9.3 Rate Regulation. Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC.

9.4 Continuity of Service. It shall be the right of all Subscribers to continue receiving Fiber Service insofar as their financial and other obligations to the Grantee are satisfied. However, notwithstanding anything to the contrary, Grantee may discontinue or refuse to provide Fiber Service to any person that is abusive and/or exhibits threatening behavior toward the Grantee's employees or representatives.

SECTION 10 **Franchise Fee**

10.1 Amount of Fee. Grantee shall pay to the Grantor an annual franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue. Such payment shall be in addition to taxes of general applicability owed to the Grantor by the Grantee that are not included as franchise fees under federal law, Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.

10.2 Payment of Fee. Payment of the fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 14.10. In the event of a dispute, the Grantor, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges.

10.3 Accord and Satisfaction. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

10.4 Limitation on Recovery. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due. If any Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from the last day of the fiscal year in which payment was due, at the annual rate of one (1%) percent over the prime interest rate.

SECTION 11 **Transfer of Franchise**

11.1 Franchise Transfer. This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the consent of the Grantor, expressed in writing, such consent not to be unreasonably withheld. If the Grantee wishes to transfer this Franchise, the Grantee shall give Grantor written notice of the proposed transfer and shall require consent of the transfer by the Grantor. The granting of such consent in one instance shall not render unnecessary any subsequent consent in another instance.

Any transfer of ownership effected without the written consent of the Grantor shall render this Franchise subject to revocation. The Grantor shall have 60 days to act upon any request for approval of a transfer. If the Grantor fails to render a final decision on the request within 60 days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

The Grantee, upon any transfer as heretofore described, shall within sixty (60) days thereafter file with the Grantor a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless Grantee shall, within sixty (60) days after the same shall have been made, file such certified copy as is required.

The requirements of this section shall not be deemed to prohibit the use of the Grantee's property as collateral for security in financing the construction or acquisition of all or part of a telecommunications system of the Grantee or any affiliate of the Grantee. However, the telecommunications system franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

The requirements of this section shall not be deemed to prohibit the sale of tangible assets of the Grantee in the ordinary conduct of the Grantee's business without the consent of the Grantor. The requirements of this section shall not be deemed to prohibit, without the consent of the Grantor, a transfer to a transferee whose primary business is telecommunications system operation and having a majority of its beneficial ownership held by the Grantee, a parent of the Grantee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Grantee.

SECTION 12
Records, Reports and Maps

12.1 Reports Required. The Grantee's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Grantor upon request.

12.2 Records Required.

The Grantee shall at all times maintain:

- A. A record of all written complaints received regarding interruptions or degradation of Fiber Service, which record shall be maintained for one (1) year.
- B. A full and complete set of plans, records and strand maps showing the location of the Fiber System.

12.3 Inspection of Records. Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine at Grantee's local office or another mutually agreeable location during normal business hours and on a non-disruptive basis any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. The Grantor agrees to protect from disclosure to third parties, to the maximum extent allowed by Oregon law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created by using information obtained pursuant to the exercise of its rights hereunder. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

12.4 Right to Perform Franchisee Fee Audit or Review. In addition to all rights granted under Section 12 of this Ordinance, the Grantor shall have the right to have performed, upon advance written notice of not less than 30 days, a formal audit or a professional review of the Grantee's books and records by an independent private auditor, for the sole purpose of determining the Gross Receipts of the Grantee generated through the provision of fiber optics telecommunication service under this Franchise and the accuracy of amounts paid as Franchise fees to the Grantor by the Grantee; provided, however, that any audit or review must be commenced not later than three (3) years after the date on which the franchise fees for any period being audited or reviewed were due. Any such audit or review shall be conducted during normal business hours. The cost of any such audit or review shall be borne by the Grantor, except that if it is established that the Grantee has made underpayment of five (5) percent or more of the total Franchise fees due during the year or years subject to the audit required by this Franchise, then the Grantee shall, within 30 days of being requested to do so by the Grantor, reimburse the Grantor for the full cost of the audit or review. The Grantor agrees to protect from disclosure to third parties, to the maximum extent allowed by Oregon law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created by using information obtained pursuant to the exercise of its rights hereunder.

SECTION 13 **Enforcement or Revocation**

13.1 Notice of Violation. If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first make reasonable attempts to informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

13.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

13.3 Public Hearing. If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Council shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the Grantor in accordance with Section 14 hereof. The Grantee shall have the right to present evidence and to question witnesses. The Grantor shall determine

if the Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Grantee may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

13.4 Enforcement. Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 13.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 13.5 below.

13.5 Revocation.

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- B. At the hearing, the Council shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and an audio or video recording of the public hearing ~~written transcript~~ shall be made available to the Grantee within ten (10) business days. The decision of the Council shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Council *de novo*. The Grantee may continue to operate the Fiber System until all legal appeals procedures have been exhausted.

- C. Notwithstanding the above provisions, the Grantee does not waive any of its rights under federal law or regulation.
- D. Upon revocation of the Franchise, Grantee may remove the Fiber System from the Streets of the Grantor or abandon the Fiber System in place.

SECTION 14

Customer Rights and Protections

14.1 Customer Rights and Protections. Upon installing initial service, reconnecting a customer, and upon request thereafter Grantee must advise the customer of:

- A. The equipment and services currently available and the rates and charges which apply; and
- B. The amount of any deposit required by Grantee, if applicable, and the manner in which the deposit will be refunded; and
- C. The availability of parental controls, which shall be made available in accordance with federal law to each subscriber upon request and which shall enable parents or subscribers to control access to both the audio and/or video portions of any and all channels; and
- D. All current charges, rates, and fees, including but not limited to installation and reconnection fees, that may be applied to current or potential subscribers in the franchise area; and
- E. Any information relating to a contact for the franchise authority unless the Grantor requests otherwise in writing.

14.2 The information and statements required in Section 14.1 shall be available in writing upon request.

SECTION 15

Miscellaneous Provisions

15.1 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather

conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Fiber System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

15.2 Minor Violations. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

15.3 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

15.4 Equal Protection. The Grantee acknowledges and agrees that the Grantor may be required by federal law, and reserves the right, to grant one or more additional franchises to provide Fiber Service within the Service Area. If any other provider of Fiber Services is lawfully and expressly authorized by the Grantor to use the Streets to provide such services, and if the material obligations applicable to Grantee are more burdensome or less favorable than those imposed on any such competing provider (such determination to be made after good faith negotiations between Grantee and Grantor), then upon thirty (30) days prior written notice to the Grantor, the Grantee shall have the right to elect, to the extent consistent with applicable state and federal laws and orders and rules adopted pursuant thereto:

- A. To modify this Franchise to incorporate less burdensome or more favorable terms or conditions imposed by Grantor on a comparable provider; or
- B. To deem this Franchise expired thirty-six (36) months from the date of the above written notice; or
- C. To terminate this Franchise and take in its place the same franchise agreement of a competing provider of Fiber Services or video services authorized by the Grantor. The Grantor and the Grantee agree that any undertakings that relate to the renewal of the Grantee's Franchise with the Grantor shall be subject to the provisions of Section 626 of the Fiber Act or any such successor statute. Nothing in this Franchise shall impair the right of the Grantor or Grantee to seek other remedies available under law.

15.5 Notices. Unless otherwise provided by federal, State or local law, all notices, reports

or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. Grantee shall provide thirty (30) days' written notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor: City of Lowell, Oregon
City Administrator
PO Box 490
Lowell, OR 97452
E-mail: jcobb@ci.lowell.or.us

Grantee: Manager
Douglas Services Inc.
2350NW Aviation Dr.
Roseburg, OR 97470
E-Mail:

15.6 Public Notice. Any public meeting held relating to this Franchise or additional, similar franchises shall comply with the public meetings requirements of Oregon law. Grantee will be considered an interested party for any additional requests for franchises for Fiber Services.

15.7 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

15.8 Entire Agreement. The terms of this Franchise have been mutually negotiated by the Grantor and Grantee. This Franchise constitutes an agreement by the Grantor to grant permission to the Grantee to use the Grantor's rights of way subject to the terms and conditions set forth herein. The Franchise terms and conditions set forth herein, including the Grantor's rights to protect the public's general welfare, subject to Section 2.3, constitute the entire agreement between Grantor and Grantee and supersedes all prior or contemporaneous agreements, representations or understandings (whether written

or oral) of the parties regarding the subject matter hereof.

15.9 Administration of Franchise. Subject to Section 2.3, this Franchise is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee.

15.10 Effective Date. This Ordinance shall be effective 30 days after passage by the City Council. The Franchise granted herein will take effect and be in full force from the date of acceptance by Grantee recorded on the signature page of this Franchise, provided that the Grantor must receive a fully executed copy of the acceptance within thirty days of the date of acceptance. The initial term of this franchise shall expire ten (10) years from the Effective Date defined herein, subject to Section 2.2 of this franchise. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

Adopted by the City Council of the City of Lowell, this ____ day of _____,

~~2020~~2021. Yea: _____

Nay: _____

Approved: _____

Don Bennett, Mayor

First Reading:

Second Reading:

Adopted:

Signed:

Effective Date:

Attest: _____

Jeremy Caudle ~~Jared Cobb~~, City
Administrator

Accepted this _____ day of _____, 2020, subject to applicable federal, State and local law.

Douglas Services Inc.

By:

Signature: _____

Agenda Item Sheet

City of Lowell City Council



Type of item:	Procurement
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Item title/recommended action:

Review scope of services from City Engineer on water treatment plant tracer study.

Justification or background:

The Public Works Department is requesting that the City Engineer complete a water treatment plant tracer study. The last tracer study was completed in 2013. This study would determine the maximum amount of water that the water treatment plant can process. Depending on the results of the study, the water plant may be able to process a greater amount of water than currently permitted according to the Oregon Health Authority. If we can increase our water production capacity within our existing system, then we can better meet demands during summer. This study is necessary to demonstrate to the Oregon Health Authority that we are able to increase our production capacity.

Budget impact:

Expenditures of \$9,003 in engineering fees.

Department or Council sponsor:

Public Works Department

Attachments:

March 30, 2021 "Engineering Scope of Services"

Meeting date:	04/06/2021
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March 30, 2021



ENGINEERING SCOPE OF SERVICES

To: Max Baker – Public Works Director – City of Lowell

From: Matt Wadlington, Principal – Civil West Engineering Services, Inc.

RE: **City of Lowell: Water Treatment Plant Tracer Study**
Civil West Project Number: TBD

The purpose of this scope of services is to describe the proposed approach, costs, and schedule that Civil West will follow to support the City of Lowell to develop and facilitate a CT tracer study at the Water Treatment Plant (WTP) as required by the Oregon Health Authority (OHA) to allow potable water production at a rate for the City to be better able to keep up with varying demands.

Background Summary

The City of Lowell last had a tracer study completed in 2013 as a product of the State's Circuit Rider program. The study made certain assumptions in regards to the water flows and temperatures that were conservative and perhaps necessary given the data provided. However, because production rates are different (higher) in the summer than they are in the winter, and water temperature is different (higher) in the summer rather than in the winter, it may be beneficial for the City to evaluate multiple flow/temperature scenarios to be able to produce more water than currently allowed in the summer.

Goal for the Project

Upon completion, and depending on contract options selected by the City, one, two or three different studies will be completed to map out the maximum rate for the City to produce water. The results of the studies will be submitted to OHA for their review. We will coordinate with OHA to have the studies approved and although we anticipate a higher water production rate will be approved, we cannot guarantee the outcome of the review.

Part A: Scope of Work

The following scope of work describes the tasks, activities, and work that will take place to complete the work associated with this project. The description of each task below is a summary of the estimated process, steps, and procedures that will be required for completion of the work. While there may be many subtasks included within these major task areas, only the major tasks are discussed below.

Task 1 – Project Management and Administrative Services – This task includes administrative and project management efforts related to the management of this project. This shall include processing of internal paperwork and correspondence between Civil West and the City, coordination on financial matters, directing resources internally, and meeting with staff on routine issues.

Task 2 – Tracer Study #1 (155 gallons per minute)

Civil West will prepare the tracer test methodology and will submit the methodology to OHA for review prior to the execution of the test. Once approved, we will coordinate with Public Works to configure the system appropriately and will schedule and run the test. After the data is collected, we will generate a completed study for submittal to OHA.

Task 3 – Tracer Study #2 and #3 (140 gpm and 180 gpm)

Civil West will duplicate task 2 up to two more times at different flow rates as directed by the City.

Task 4 – Reimbursables – This task will cover direct reimbursable expenses anticipated for the project. These include travel and per diem costs, reproduction and office expenses, and other reimbursable costs

- a. Travel costs – We have included an allowance for travel costs for meetings, site visits, and other travel related to this project.
- b. Equipment costs – This item includes any fees associated with specialized equipment usage.
- c. Publication, reproduction, and office costs – Under this item, we have included a reimbursable allowance to provide the City with copies of any draft and final report(s), plans, contract documents and specifications, including digital deliverables upon request.

Part B: Project Fee Proposal

A summary of the proposed fee schedule is provided below:

Task	Summary of Proposed Engineering Budget:	Budget
1	Project Management and Administration	\$495.00
2	Tracer Study #1 (155 gpm)	\$3,484.00
3	Tracer Study #2 (140 gpm)	\$2,412.00
4	Tracer Study #3 (180 gpm)	\$2,412.00
5	Reimbursables	\$200.00
Total Proposed Budget - Phase 1		\$9,003.00

The above budget is considered as a fixed fee for the scope of work described and will be billed on a percent complete basis to a maximum.

Part C: Project Schedule

We are prepared to start work on this project as soon as we are given authorization. Tracer studies will need to be completed separately, and are likely to need a week between test days.

We are grateful for this opportunity to provide these services to the City of Lowell. Please let me know if you have any questions or if you wish to see any alterations to our proposed approach. If this proposed approach is acceptable, please sign below and return a copy to our office for our records.

Sincerely,
Civil West Engineering Services, Inc.



Matt Wadlington, PE
Willamette Valley Regional Manager

Authorized Representative Signature Accepting Scope of Services

Date

Agenda Item Sheet

City of Lowell City Council



Type of item:	Discussion
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Item title/recommended action:

Presentation from Public Works Director Max Baker on department updates, including digester blower purchase, green waste drop-off program, and back flow inspection opt in/ opt out program.

Justification or background:

Public Works Director Max Baker will provide an update on other Public Works projects, including:

Digester blower purchase. One of the digester blowers at the wastewater treatment plant needs to be replaced. Staff are soliciting quotes for the replacement equipment.

Green waste drop-off program. Demand for this program is high, requiring a significant investment in staff time and resources. This is placed on the agenda for discussion among staff and City Council on options, including directing more resources at the program or possibly scaling back the services provided.

Back flow prevention inspection program. A brief update on staff's progress on drafting a resolution for City Council approval.

Budget impact:

To be determined

Department or Council sponsor:

Public Works Department

Attachments:

None

Meeting date:	04/06/2021
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