



**PLEASE NOTE: This meeting will be held at City Hall, 920 SE Cedar Falls Way, North Bend, WA.**  
Members of the public may choose to attend in person or by teleconference. It is strongly encouraged that members of the public that are attending by teleconference provide comments in advance of the meeting. Please email comments on any agenda items prior to the meeting to the City Clerk at [soppedal@northbendwa.gov](mailto:soppedal@northbendwa.gov). Please provide comments by 5 p.m., Tuesday, June 6, 2023 so a copy can be provided to the City Council prior to the meeting.

Members of the public that wish to attend by teleconference may do so by using the Zoom Meetings platform. Instructions on how to access the meeting and provide public comment are available at the following link: [June 6, 2023 City Council Meeting Calendar Item](#). You will be required to have a registered Zoom account and display your full name to be admitted to the online meeting.

Zoom Meeting Information:

To Sign Up for a Zoom Account: <https://zoom.us/join>

Meeting ID: 881 2610 1456

Password: 658184

Call In Phone Number: 1-253-215-8782

## CITY COUNCIL MEETING

### June 6, 2023 – Agenda

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

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

#### CONSENT AGENDA:

		Pg.#
1) Minutes	City Council Meeting of May 16, 2023	1
2) Payroll	May 19, 2023 – 28645 through 28651, in the amount of \$287,475.31	
3) Checks	June 6, 2023 – 74085 through 74156, in the amount of \$752,858.25	
4) AB23-066	Resolution – Awarding Contract to Fury Site Works, Inc. for Stilson Ave Sidewalk Project	Mr. Rigos 5
5) AB23-067	Resolution – Accepting FHWA Grant for Tanner Trail Extension Project	Mr. Rigos 11
6) AB23-068	Motion – Authorizing Parametrix Contract for South Fork Levee Project	Mr. Rigos 35
7) AB23-069	Motion – Approving Economic Development Action Plan	Ms. Deming 55

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

#### FINAL READING:

8) AB23-070	Ordinance – Amending NBMC 9.45 RE Drug & Alcohol Possession	Mr. Kenyon 99
9) AB23-071	Resolution – Authorizing Agreement for Wholesale Supply of Water	Mr. Kenyon 115



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

**ADJOURNMENT:**

**NORTH BEND CITY COUNCIL MINUTES**

**May 16, 2023**

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

**CALL TO ORDER, ROLL CALL:**

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

**Councilmembers Present:** Gothelf, Joselyn, Koellen, Loudenback, Miller and Rosen. Councilmember Elwood was excused.

Councilmember Gothelf **MOVED**, seconded by Councilmember Joselyn to pull AB23-060 – Motion Authorizing Lease with Snoqualmie Valley Historical Society and to move AB23-063 – Resolution Accepting FHWA Funds & Authorizing LA Agreement RE Bendigo/4<sup>th</sup> Street Roundabout to the first item on the Main Agenda. The motion **PASSED** 6-0.

**CONSENT AGENDA:**

**Minutes** – City Council Workstudy of April 25, 2023 & City Council Meeting of May 2, 2023

**Payroll – May 5, 2023 – 28638** through **28644**, in the amount of **\$347,090.57**

**Checks – May 16, 2023 – 74016** through **74084**, in the amount of **\$2,394,640.02**

**AB23-059** – Ordinance 1795 Authorizing Franchise Agreement with PSE

Councilmember Miller **MOVED**, seconded by Councilmember Joselyn to approve the consent agenda as amended. The motion **PASSED** 6-0.

**COMMISSION AND COMMITTEE REPORTS:**

**Community & Economic Development Committee** – Councilmember Miller, Chair  
A report of the May 16<sup>th</sup> meeting was provided.

**Finance & Administration Committee** – Councilmember Gothelf, Chair  
A report of the May 9<sup>th</sup> meeting was provided.

**Public Health & Safety Committee** – Councilmember Rosen, Chair  
A report of the May 2<sup>nd</sup> meeting was provided.

**Transportation & Public Works Committee** – Councilmember Loudenback, Chair  
A report of the April 25<sup>th</sup> meeting was provided.

**Council Workstudy** – Mayor Pro Tem Koellen  
A report of the April 25<sup>th</sup> meeting was provided.

**Planning Commission**

A report of the May 3<sup>rd</sup> meeting was provided.

**Parks Commission**

A report of the April 19<sup>th</sup> meeting was provided.

**Economic Development Commission**

No report.

**Eastside Fire & Rescue Board Meeting** – Councilmember Gothelf

A report of the May 11<sup>th</sup> meeting was provided.

**Sound Cities Association Board of Health** – Councilmember Koellen

A report of the April 20<sup>th</sup> meeting was provided.

**Sound Cities Association Public Issues Committee** – Councilmember Loudenback

A report of the May 10<sup>th</sup> meeting was provided.

**MAIN AGENDA:**

**AB23-063** – Resolution Accepting FHWA Funds & Authorizing  
LA Agreement RE Bendigo/4<sup>th</sup> Street Roundabout

**Audio: 15:00**

Deputy City Administrator/Public Works Director Rigos provided the staff report.

Councilmember Loudenback **MOVED**, seconded by Councilmember Miller to approve AB23-063, a resolution accepting Federal STP Funds for preliminary engineering of the Bendigo Blvd and 4th Street Roundabout Capital Project. The motion **FAILED** 2-4 (Gothelf, Koellen, Miller, Rosen).

**AB23-061** – **Public Hearing**, Resolution Adopting Six Year  
Transportation Improvement Plan 2024-2029

**Audio: 41:17**

Deputy City Administrator/Public Works Director Rigos provided the staff report.

**Mayor McFarland opened the Public Hearing on a Resolution Adopting the Six Year TIP 2024-2029 at 7:48 p.m.**

**There was no public comment and Mayor McFarland announced the Public Hearing would remain open until the June 20, 2023 City Council meeting.**

Councilmember Loudenback **MOVED**, seconded by Councilmember Miller to approve AB23-061, a resolution adopting the 6-Year Transportation Improvement Plan 2024 – 2029, as a first reading, and continuing the public hearing until the June 20, 2023 City Council Meeting. The motion **PASSED** 6-0.

**AB23-062 – Ordinance Amending NBMC 9.45 RE Drug & Alcohol Possession****Audio: 55:56**

City Attorney Marshall provided the staff report.

Councilmember Rosen **MOVED**, seconded by Councilmember Gothelf to approve AB23-062, an ordinance repealing NBMC 9.45 Controlled Substances & adopting NBMC 9.45 Drug and Alcohol Possession, as a first reading. The motion **PASSED** 6-0.

**AB23-064 – Motion Authorizing Contract with North Bend Downtown Foundation** **Audio: 1:19:31**

Economic Development Manager Noll provided the staff report. North Bend Downtown Foundation Interim Board President Beth Burrows provided a presentation on the organization.

Councilmember Miller **MOVED**, seconded by Councilmember Loudenback to approve AB23-064, authorizing a contract with the North Bend Downtown Foundation, in a form and content acceptable to the City Attorney. The motion **PASSED** 6-0.

**AB23-065 – Motion Approving Economic Development Action Plan** **Audio: 1:45:46**

Councilmember Miller **MOVED**, seconded by Councilmember Joselyn to postpone discussion on AB23-065 – approval of Economic Development Action Plan to the May 23, 2023 Council Workstudy. The motion **PASSED** 6-0.

**MAYOR, COUNCIL, AND ADMINISTRATOR CONCERNS AND INITIATIVES:**

Councilmember Miller encouraged all to attend the Sip Suds & Si event on Saturday, May 20<sup>th</sup> from 6 to 9 p.m. in Downtown North Bend.

Councilmember Joselyn mentioned his recent patronage of a local restaurant and how nice it was to get out and enjoy the community. He also thanked the North Bend Downtown Foundation for all of their hard work.

Councilmember Rosen extended his appreciation to the North Bend Downtown Foundation for all of their hard work.

Councilmember Koellen encouraged caution when visiting local waterways due to high, fast and cold water.

City Administrator Miller introduced Information Technology Manager Phil Davenport to the City Council.

Mayor McFarland spoke regarding the following items:

- Sip, Suds & Si Event – May 20<sup>th</sup> 6 – 9 p.m., Downtown North Bend
- King County Regional Animal Services “License to Love” Pet Licensing Campaign

**ADJOURNMENT:**

Councilmember Gothelf **MOVED** to adjourn, seconded by Councilmember Joselyn. The motion **PASSED** 6-0.

The meeting adjourned at 8:53 p.m.

ATTEST:

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Rob McFarland, Mayor

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Susie Oppedal, City Clerk

DRAFT



SUBJECT:	Agenda Date: June 6, 2023	AB23-066
<b>Resolution Accepting Bids and Awarding Construction Contract for the Stilson Avenue SE Sidewalk Capital Project to Fury Site Works, Inc.</b>	Department/Committee/Individual	
Cost Impact: \$388,718.90 NTE	Mayor Rob McFarland	
Fund Source: Capital Streets Project	City Administrator – David Miller	
Timeline: Immediate	City Attorney – Lisa Marshall	
	City Clerk – Susie Oppedal	
	Administrative Services – Lisa Escobar	
	Comm. & Economic Development – Rebecca Deming	
	Finance – Richard Gould	
	Public Works – Mark Rigos, P.E.	X
<b>Attachments:</b> Resolution, Bid Tabulation		
<b>SUMMARY STATEMENT:</b>		
The City Council has approved funding in 2023 to fill in sidewalk gaps throughout the City.		
A sidewalk gap along the west side of Stilson Avenue SE from the entrance to Opstad Elementary School north to Cedar Falls Way was rated by the City's Transportation and Public Works Committee (TPW) in late 2021 as one of the highest priority sidewalk gap projects. City staff agreed with TPW's recommendation and have been moving this public safety project forward.		
The Stilson Avenue sidewalk capital project includes, but is not limited to, traffic control, new curb and gutter, new sidewalk, new ADA ramps, landscape strip, stormwater infrastructure, crosswalks, Rectangular Rapid Flashing Beacons (RRFB) for Cedar Falls Way and street striping.		
Bids were due by 2:00 p.m. Wednesday May 17 <sup>th</sup> and ten (10) bids were received. The bid results are attached and ranged from \$388,718 to \$584,780. The engineer's estimate was \$481,000.		
The lowest bid came from Fury Site Works, Inc. in the amount of \$388,718.90 including all applicable taxes. City staff have conducted the appropriate background checks on Fury Site Works, Inc. and recommend awarding this contract to Fury Site Works, Inc.		
This project is funded through Capital Streets Project budget with revenues from the City's Transportation Impact Fee (TIF) and Transportation Benefit District (TBD).		
<b>APPLICABLE BRAND GUIDELINES:</b> Consistent delivery of quality basic services including transportation and traffic management.		
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> The Transportation and Public Works Committee reviewed this item on May 23, 2023 and recommended approval and placement on the Consent Agenda.		
<b>RECOMMENDED ACTION:</b> <b>MOTION to approve AB23-066, a resolution accepting bids and awarding the construction contract for the Stilson Avenue SE Sidewalk Capital Project to Fury Site Works, Inc.</b>		
<b>RECORD OF COUNCIL ACTION</b>		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 6, 2023		



# RESOLUTION

## A RESOLUTION OF THE CITY OF NORTH BEND, WASHINGTON, ACCEPTING BIDS AND AWARDING CONSTRUCTION CONTRACT FOR THE STILSON AVENUE SE SIDEWALK PROJECT

**WHEREAS**, City staff and the Transportation and Public Works Committee determined that the Stilson Avenue SE Sidewalk project was one of the highest priority sidewalk gap project in 2021; and

**WHEREAS**, the City Council has allocated funds in the 2023 budget for this project; and

**WHEREAS**, work shall include, but is not limited to traffic control, new curb and gutter, new sidewalk, new ADA ramps, landscape strip, stormwater infrastructure, crosswalks, Rectangular Rapid Flashing Beacons (RRFB) for Cedar Falls Way and street striping; and

**WHEREAS**, the project is funded by Streets Capital Project funds; and

**WHEREAS**, bid documents were advertised and posted on Builders Exchange of Washington as required and the City accepted bids up until Wednesday, May 17, 2023 at 2:00 p.m.; and

**WHEREAS**, the City received bids from ten (10) contractors with the lowest bid coming from Fury Site Works, Inc. in the amount of \$388,718.90 including all applicable taxes;

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

**Section 1.** The construction bids for the Stilson Avenue SE Sidewalk Project are accepted.

**Section 2.** The construction contract for the Stilson Avenue SE Sidewalk Project is awarded to Fury Site Works, Inc., in the amount of \$388,718.90 including all applicable taxes, on a form to be approved by the City Attorney.

**PASSED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON,  
AT A REGULAR MEETING THEREOF, THIS 6<sup>TH</sup> DAY OF JUNE, 2023.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

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**Rob McFarland, Mayor**

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**Lisa Marshall, City Attorney**

Effective:  
Posted:

**ATTEST/AUTHENTICATED:**

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**Susie Oppedal, City Clerk**



Rodarte Construction, Inc.									
Pro Grade Enterprises, Inc.									
Blue Mountain Construction Group, LLC									
1			2			3			4
Engineer's Estimate			Average of All Bids			Contract Amount			Unit Price
Item No.			Unit Price			Unit Price			Contract Amount
SCHEDULE OF BID ITEMS									
Quantity	Units	Contract Amount	Quantity	Units	Contract Amount	Quantity	Units	Contract Amount	Unit Price
1	EST	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
2	LS	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
3	LS	\$7,500.00	\$7,500.00	\$9,181.69	\$9,181.69	\$8,016.12	\$8,016.12	\$7,500.00	\$7,500.00
4	LS	\$500.00	\$500.00	\$414.93	\$414.93	\$238.58	\$238.58	\$500.00	\$250.00
5	LS	\$500.00	\$500.00	\$4,176.32	\$4,176.32	\$6,607.91	\$6,607.91	\$4,500.00	\$5,000.00
6	LS	\$49,000.00	\$49,000.00	\$41,993.02	\$41,993.02	\$17,035.13	\$17,035.13	\$70,000.00	\$42,000.00
7	LS	\$40,000.00	\$40,000.00	\$42,402.37	\$42,402.37	\$26,190.21	\$26,190.21	\$33,000.00	\$45,000.00
8	SY	\$5,500.00	\$5,500.00	\$2,474.50	\$2,474.50	\$9,139.50	\$9,139.50	\$16.00	\$30.00
9	EA	\$2,000.00	\$2,000.00	\$12,000.00	\$12,000.00	\$1,365.87	\$1,365.87	\$1,323.00	\$3,840.00
10	LS	\$2,500.00	\$2,500.00	\$12,377.23	\$12,377.23	\$5,946.36	\$5,946.36	\$9,300.00	\$8,000.00
11	LF	\$5,00	\$4,750.00	\$4.40	\$4.40	\$4,176.83	\$4,176.83	\$6.00	\$4.00
12	SY	\$25.00	\$16,875.00	\$10.94	\$10.94	\$7,384.50	\$7,384.50	\$7.00	\$15.00
13	CY	\$60.00	\$3,000.00	\$62.98	\$62.98	\$3,149.17	\$3,149.17	\$25.00	\$25.00
14	CY	\$50.00	\$7,500.00	\$83.28	\$83.28	\$12,491.50	\$12,491.50	\$123.00	\$9,285.00
15	TN	\$30.00	\$6,450.00	\$65.73	\$65.73	\$14,131.95	\$14,131.95	\$91.00	\$45.00
16	CY	\$20.00	\$1,300.00	\$90.50	\$90.50	\$5,882.61	\$5,882.61	\$110.00	\$130.00
17	TN	\$200.00	\$23,000.00	\$220.64	\$220.64	\$25,373.98	\$25,373.98	\$176.00	\$20,240.00
18	LS	\$1,000.00	\$1,000.00	\$4,351.95	\$4,351.95	\$869.99	\$869.99	\$1.00	\$3,400.00
19	EA	\$750.00	\$750.00	\$802.95	\$802.95	\$2,067.00	\$2,067.00	\$400.00	\$450.00
20	EA	\$5,000.00	\$5,000.00	\$9,833.39	\$9,833.39	\$8,957.35	\$8,957.35	\$5,400.00	\$4,500.00
21	EA	\$2,500.00	\$12,500.00	\$2,097.01	\$2,097.01	\$10,485.03	\$10,485.03	\$1,284.03	\$1,420.15
22	EA	\$55.00	\$6,175.00	\$8,023.18	\$8,023.18	\$9,632.05	\$9,632.05	\$141.00	\$5,567.00
23	EA	\$5,000.00	\$5,000.00	\$3,665.04	\$3,665.04	\$3,964.23	\$3,964.23	\$1.00	\$3,200.00
24	EA	\$50.00	\$44,500.00	\$41.07	\$41.07	\$36,555.27	\$36,555.27	\$40.24	\$49.20
25	EA	\$50.00	\$4,750.00	\$3,768.33	\$3,768.33	\$41.00	\$3,895.00	\$28.00	\$2,660.00
26	EA	\$150.00	\$19,500.00	\$101.56	\$101.56	\$13,202.15	\$13,202.15	\$102.33	\$9,750.00
27	EA	\$4,500.00	\$18,000.00	\$3,010.22	\$3,010.22	\$12,040.89	\$12,040.89	\$2,812.00	\$2,500.00
28	EA	\$5,000.00	\$5,000.00	\$3,624.34	\$3,624.34	\$3,340.05	\$3,340.05	\$3,281.00	\$3,200.00
29	SY	\$80.00	\$24,800.00	\$83.39	\$83.39	\$25,850.38	\$25,850.38	\$91.90	\$28,489.00
30	SY	\$3,000.00	\$3,000.00	\$12,247.80	\$12,247.80	\$12,712.81	\$12,712.81	\$13,124.00	\$10,000.00
31	EA	\$250.00	\$750.00	\$750.00	\$750.00	\$991.05	\$991.05	\$1,089.00	\$3,000.00
32	EA	\$400.00	\$2,000.00	\$813.49	\$813.49	\$4,067.45	\$4,067.45	\$832.00	\$4,800.00
33	LF	\$2.00	\$3,660.00	\$1.49	\$1.49	\$2,723.65	\$2,723.65	\$2.00	\$3,660.00
34	LF	\$20.00	\$1,000.00	\$15.21	\$15.21	\$760.33	\$760.33	\$11.80	\$1,150.00
35	SF	\$25.00	\$7,000.00	\$9.73	\$9.73	\$2,723.00	\$2,723.00	\$13.00	\$3,640.00
36	SF	\$50.00	\$27,500.00	\$35,380.58	\$35,380.58	\$71.57	\$71.57	\$63.40	\$85.00
37	SF	\$120,000.00	\$120,000.00	\$37,688.67	\$37,688.67	\$32,185.00	\$32,185.00	\$40,000.00	\$40,000.00
		\$500,235.00	\$500,235.00	\$442,869.38	\$442,869.38	\$388,118.90	\$388,118.90	\$454,610.00	\$460,290.00

Contract amount was calculated at \$4,420 not \$14,620 shown on bid  
Bid schedule total was \$574,580 with error above

5 Northwest Cascade, Inc		6 Reed Trucking and Excavating, Inc		7 NPM Construction Co		8 Kamins Construction Inc		9 RW Scott Construction		10 A-1 Landscaping and Construction, Inc.	
Unit Price	Contract Amount	Unit Price	Contract Amount	Unit Price	Contract Amount	Unit Price	Contract Amount	Unit Price	Contract Amount	Unit Price	Contract Amount
\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,500.00	\$ 1,500.00
\$ 7,700.00	\$ 7,700.00	\$ 15,000.00	\$ 15,000.00	\$ 11,200.00	\$ 11,200.00	\$ 9,045.00	\$ 9,045.00	\$ 10,000.00	\$ 10,000.00	\$ 14,500.00	\$ 14,500.00
\$ 500.00	\$ 500.00	\$ 1,000.00	\$ 1,000.00	\$ 1,210.00	\$ 1,210.00	\$ 5,000.00	\$ 5,000.00	\$ 550.00	\$ 550.00	\$ 3,540.00	\$ 3,540.00
\$ 2,700.00	\$ 2,700.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 1,400.00	\$ 1,400.00	\$ 8,500.00	\$ 8,500.00	\$ 18,700.00	\$ 18,700.00
\$ 43,350.00	\$ 43,350.00	\$ 40,000.00	\$ 40,000.00	\$ 45,000.00	\$ 45,000.00	\$ 57,375.00	\$ 57,375.00	\$ 80,000.00	\$ 80,000.00	\$ 48,000.00	\$ 48,000.00
\$ 56,250.00	\$ 56,250.00	\$ 65,000.00	\$ 65,000.00	\$ 30,000.00	\$ 30,000.00	\$ 51,705.00	\$ 51,705.00	\$ 50,000.00	\$ 50,000.00	\$ 75,600.00	\$ 75,600.00
\$ 13.25	\$ 5,962.50	\$ 25.00	\$ 11,250.00	\$ 22.50	\$ 10,125.00	\$ 31.50	\$ 14,175.00	\$ 35.00	\$ 15,750.00	\$ 15.00	\$ 6,750.00
\$ 1,450.00	\$ 8,700.00	\$ 800.00	\$ 4,800.00	\$ 1,550.00	\$ 9,300.00	\$ 945.00	\$ 5,670.00	\$ 1,300.00	\$ 7,800.00	\$ 1,600.00	\$ 9,600.00
\$ 34,125.00	\$ 34,125.00	\$ 9,000.00	\$ 9,000.00	\$ 3,410.00	\$ 3,410.00	\$ 6,750.00	\$ 6,750.00	\$ 12,000.00	\$ 12,000.00	\$ 21,580.00	\$ 21,580.00
\$ 3.50	\$ 3,325.00	\$ 5.00	\$ 4,750.00	\$ 4.60	\$ 4,370.00	\$ 5.40	\$ 5,130.00	\$ 4.00	\$ 3,800.00	\$ 4.00	\$ 3,800.00
\$ 8.00	\$ 5,400.00	\$ 20.00	\$ 13,500.00	\$ 42.15	\$ 28,451.25	\$ 25.00	\$ 16,875.00	\$ 25.81	\$ 17,421.75	\$ 13.00	\$ 8,775.00
\$ 63.00	\$ 3,150.00	\$ 80.00	\$ 4,000.00	\$ 1.00	\$ 50.00	\$ 67.50	\$ 3,375.00	\$ 77.00	\$ 3,850.00	\$ 70.00	\$ 3,500.00
\$ 63.00	\$ 9,450.00	\$ 70.00	\$ 10,500.00	\$ 65.00	\$ 9,750.00	\$ 83.25	\$ 12,487.50	\$ 140.00	\$ 21,000.00	\$ 88.00	\$ 13,200.00
\$ 77.50	\$ 16,662.50	\$ 65.00	\$ 13,975.00	\$ 62.00	\$ 13,330.00	\$ 53.84	\$ 11,575.60	\$ 40.00	\$ 8,600.00	\$ 60.00	\$ 12,900.00
\$ 139.00	\$ 9,035.00	\$ 60.00	\$ 3,900.00	\$ 100.00	\$ 6,500.00	\$ 61.17	\$ 3,976.05	\$ 106.30	\$ 6,909.50	\$ 68.00	\$ 4,420.00
\$ 202.00	\$ 23,230.00	\$ 350.00	\$ 40,250.00	\$ 316.00	\$ 36,340.00	\$ 282.66	\$ 30,205.90	\$ 195.00	\$ 22,425.00	\$ 220.00	\$ 25,300.00
\$ 10,650.00	\$ 10,650.00	\$ 2,500.00	\$ 2,500.00	\$ 2,215.00	\$ 2,215.00	\$ 3,375.00	\$ 3,375.00	\$ 7,000.00	\$ 7,000.00	\$ 23,450.00	\$ 23,450.00
\$ 300.00	\$ 300.00	\$ 1,200.00	\$ 1,200.00	\$ 615.00	\$ 615.00	\$ 1,080.00	\$ 1,080.00	\$ 1,100.00	\$ 1,100.00	\$ 2,250.00	\$ 2,250.00
\$ 8,650.00	\$ 8,650.00	\$ 8,500.00	\$ 8,500.00	\$ 10,110.00	\$ 10,110.00	\$ 7,695.00	\$ 7,695.00	\$ 9,500.00	\$ 9,500.00	\$ 11,500.00	\$ 11,500.00
\$ 1,625.00	\$ 8,125.00	\$ 1,800.00	\$ 9,000.00	\$ 2,850.00	\$ 14,250.00	\$ 3,915.00	\$ 19,575.00	\$ 4,300.00	\$ 21,500.00	\$ 4,487.00	\$ 22,435.00
\$ 100.00	\$ 9,500.00	\$ 85.00	\$ 8,075.00	\$ 82.00	\$ 7,900.00	\$ 87.75	\$ 8,336.25	\$ 87.00	\$ 8,265.00	\$ 70.00	\$ 6,650.00
\$ 2,825.00	\$ 2,825.00	\$ 7,500.00	\$ 7,500.00	\$ 10,000.00	\$ 10,000.00	\$ 8,100.00	\$ 8,100.00	\$ 5,000.00	\$ 5,000.00	\$ 8,800.00	\$ 8,800.00
\$ 40.00	\$ 35,600.00	\$ 40.00	\$ 35,600.00	\$ 56.60	\$ 50,374.00	\$ 61.74	\$ 54,948.60	\$ 41.00	\$ 36,490.00	\$ 66.00	\$ 58,740.00
\$ 40.00	\$ 3,800.00	\$ 40.00	\$ 3,800.00	\$ 48.00	\$ 4,560.00	\$ 40.50	\$ 3,847.50	\$ 41.00	\$ 3,895.00	\$ 60.00	\$ 5,700.00
\$ 112.00	\$ 14,560.00	\$ 110.00	\$ 14,300.00	\$ 122.00	\$ 15,860.00	\$ 131.78	\$ 17,131.40	\$ 101.00	\$ 13,130.00	\$ 88.00	\$ 11,440.00
\$ 3,225.00	\$ 12,900.00	\$ 3,700.00	\$ 14,800.00	\$ 3,716.00	\$ 14,864.00	\$ 3,510.00	\$ 14,040.00	\$ 2,800.00	\$ 11,200.00	\$ 3,000.00	\$ 12,000.00
\$ 3,925.00	\$ 3,925.00	\$ 4,500.00	\$ 4,500.00	\$ 3,716.00	\$ 3,716.00	\$ 4,320.00	\$ 4,320.00	\$ 3,700.00	\$ 3,700.00	\$ 3,500.00	\$ 3,500.00
\$ 82.50	\$ 25,575.00	\$ 95.00	\$ 29,450.00	\$ 76.00	\$ 23,560.00	\$ 120.85	\$ 37,463.50	\$ 81.00	\$ 25,110.00	\$ 68.00	\$ 21,080.00
\$ 9,150.00	\$ 9,150.00	\$ 7,500.00	\$ 7,500.00	\$ 40,000.00	\$ 40,000.00	\$ 9,720.00	\$ 9,720.00	\$ 10,000.00	\$ 10,000.00	\$ 18,000.00	\$ 18,000.00
\$ 1,035.00	\$ 3,105.00	\$ 800.00	\$ 2,400.00	\$ 716.00	\$ 2,148.00	\$ 486.00	\$ 1,458.00	\$ 1,000.00	\$ 3,000.00	\$ 900.00	\$ 2,700.00
\$ 975.00	\$ 4,875.00	\$ 500.00	\$ 2,500.00	\$ 516.00	\$ 2,580.00	\$ 675.00	\$ 3,375.00	\$ 1,100.00	\$ 5,500.00	\$ 850.00	\$ 4,250.00
\$ 1.00	\$ 1,830.00	\$ 3.00	\$ 5,490.00	\$ 1.15	\$ 2,104.50	\$ 1.11	\$ 2,031.30	\$ 2.00	\$ 3,660.00	\$ 1.00	\$ 1,830.00
\$ 12.00	\$ 600.00	\$ 20.00	\$ 1,000.00	\$ 15.00	\$ 750.00	\$ 14.08	\$ 704.00	\$ 12.50	\$ 625.00	\$ 12.00	\$ 600.00
\$ 7.00	\$ 1,960.00	\$ 15.00	\$ 4,200.00	\$ 10.00	\$ 2,800.00	\$ 8.29	\$ 2,321.20	\$ 8.00	\$ 2,240.00	\$ 8.00	\$ 2,240.00
\$ 78.00	\$ 42,900.00	\$ 50.00	\$ 27,500.00	\$ 59.20	\$ 32,560.00	\$ 58.30	\$ 32,065.00	\$ 78.45	\$ 43,147.50	\$ 65.00	\$ 35,750.00
\$ 36,500.00	\$ 36,500.00	\$ 45,000.00	\$ 45,000.00	\$ 41,672.00	\$ 41,672.00	\$ 54,000.00	\$ 54,000.00	\$ 54,500.00	\$ 54,500.00	\$ 40,000.00	\$ 40,000.00
\$ 477,870.00	\$ 485,240.00	\$ 485,240.00	\$ 505,064.75	\$ 505,064.75	\$ 531,331.80	\$ 531,331.80	\$ 548,168.75	\$ 548,168.75	\$ 574,580.00	\$ 574,580.00	



SUBJECT:	Agenda Date: June 6, 2023	AB23-067
<b>Resolution Accepting Federal Highway Administration (FHWA) TA (UL) Funds for the Tanner Trail Extension Capital Project</b>	Department/Committee/Individual	
Cost Impact: \$24,673 (local match)	Mayor Rob McFarland	
Fund Source: TIF	City Administrator – David Miller	
Timeline: Immediate	City Attorney – Lisa Marshall	
	City Clerk – Susie Oppedal	
	Administrative Services – Lisa Escobar	
	Comm. & Economic Development – Rebecca Deming	
	Finance – Richard Gould	
	Public Works – Mark Rigos, P.E.	X
<b>Attachments:</b> Resolution; Obligation Package		
<b>SUMMARY STATEMENT:</b>		
<p>In 2022, City staff applied for and were awarded \$158,087 in Federal Highway Administration (FHWA) TAPP funds for engineering design of the Tanner Trail Extension Capital Project. As a condition of the funding, the City has a match requirement of \$24,673. The total engineering budget for this project is \$182,760. The City's match will be covered using Transportation Impact Fees (TIF). City staff are currently looking into several other potential outside funding sources to support the local match.</p> <p>This project includes a shared use path along North Bend Way at 42901 North Bend Way extending a ten-foot-wide recreational shared use path/trail connection to the Snoqualmie Valley Trail (SVT). The proposed project will provide a paved recreational trail through the City that will serve as a safe trail alternative route for bicyclists, pedestrians, and other users away from motor vehicle traffic. This project will improve 6,000 lineal feet of trail on the former Burlington Northern Santa Fe (BNSF) Railroad grade right of way. Improvements will include installing a ten-foot-wide asphalt paved trail section with a 2-foot gravel shoulder on each side, and electrical conduits and handholes for future pedestrian lighting. In accordance with City ordinances, trees will be planted along the corridor to enhance the experience for trail users.</p> <p>This project is listed in the City's 2023-2028 6-Year Transportation Improvement Plan (TIP), which was adopted by the City Council at the June 21, 2022, City Council meeting.</p> <p>The attached resolution accepts the federal grant of \$158,087, authorizes a local match of \$24,673, for a total engineering budget of \$182,760, and authorizes the Mayor to execute the Local Agency Agreement, Project Prospectus, and all other documents necessary to obligate funds for this project.</p>		
<b>APPLICABLE BRAND GUIDELINES:</b> Consistent delivery of quality basic services including transportation and traffic management.		
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> This item was discussed at the May 23 <sup>rd</sup> , 2023 Transportation and Public Works Committee meeting and was recommended for approval and placement on the Consent Agenda.		
<b>RECOMMENDED ACTION:</b> <b>MOTION to approve AB23-067, a resolution accepting Federal Highway Administration (FHWA) TA (UL) funds for the Tanner Trail Extension Capital Project.</b>		
<b>RECORD OF COUNCIL ACTION</b>		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 6, 2023		



# RESOLUTION

**A RESOLUTION OF THE CITY OF NORTH BEND,  
WASHINGTON, ACCEPTING FEDERAL HIGHWAY  
ADMINISTRATION TA (UL) PROGRAM FUNDS IN THE  
AMOUNT OF \$158,087, AND AUTHORIZING A MATCH OF  
\$24,673 IN LOCAL FUNDS, FOR ENGINEERING SERVICES  
FOR THE TANNER TRAIL EXTENSION CAPITAL  
PROJECT**

**WHEREAS**, in 2022, the City of North Bend applied for and was awarded \$158,087 in Federal Highway Administration TA (UL) Program (“Program”) funds for preliminary engineering of the Tanner Trail Extension Capital Project (“Project”); and

**WHEREAS**, the Program requires a match of \$24,673 in local funds, which will be funded with Transportation Impact Fees, for a total preliminary engineering budget of \$182,760; and

**WHEREAS**, the Project includes construction of a shared use trail extension including but not limited to new landscaping; complete Americans with Disability Act compliance; stormwater infrastructure improvements; pavement markings; and other improvements and/or work as required to complete the Project; and

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

**WHEREAS**, the City Council desires to accept the Program grant funds and authorizes the Mayor to execute the Local Agency Agreement, Project Prospectus, and all other documents necessary to proceed with obligation of the grant funds, and further authorizes the Program’s required local match in the amount of \$24,673, to be funded with City transportation impact fees;

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

**Section 1.** The City Council accepts the Federal Highway Administration TA (UL) grant of \$158,087 and authorizes a local match of \$24,673 to be funded with City Transportation Impact Fees, for engineering services for the Tanner Trail Extension Capital Project.

**Section 2.** The Mayor is authorized to enter into the Local Agency Agreement and Project Prospectus, attached hereto collectively as Exhibit A, and any other agreements necessary to complete acceptance of the grant funds set forth in Section 1 of this Resolution.

**PASSED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6<sup>TH</sup> DAY OF  
JUNE, 2023.**

**CITY OF NORTH BEND:**

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**Rob McFarland, Mayor**

**APPROVED AS TO FORM:**

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**Lisa Marshall, City Attorney**

**ATTEST/AUTHENTICATED:**

Effective:  
Posted:

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**Susie Oppedal, City Clerk**



**Washington State  
Department of Transportation**

Agency City of North Bend

Address 920 SE Cedar Falls Way  
North Bend, WA 98045

**Local Agency Agreement**

**CFDA No. 20.205 - Highway Planning and Construction**  
(Catalog of Federal Domestic Assistance)

**Project No.**

**Agreement No.**

For WSDOT Use Only

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

**Project Description**

Name Tanner Trail Extension

Length 1.1 Miles

Termini 42901 SE North Bend Way to Snoqualmie Valley Trail

**Description of Work**

Extend a paved multi-use trail with gravel shoulders, install storm-water mitigation, plant trees between the trail and North Bend Way and make utility improvements.

Project Agreement End Date Dec. 30, 2026

Proposed Advertisement Date

Claiming Indirect Cost Rate

Yes  No

Type of Work	Estimate of Funding		
	(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE 86.5 % a. Agency	23,673.00	3,196.00	20,477.00
b. Other Consultant	158,087.00	21,342.00	136,745.00
Federal Aid Participation Ratio for PE			
c. Other			
d. State Services	1,000.00	135.00	865.00
e. Total PE Cost Estimate (a+b+c+d)	182,760.00	24,673.00	158,087.00
Right of Way % f. Agency			
g. Other			
h. Other			
i. State Services			
j. Total R/W Cost Estimate (f+g+h+i)	0.00	0.00	0.00
Construction 86.5 % k. Contract			
l. Other Consultant			
m. Other			
n. Other			
o. Agency			
p. State Services			
q. Total CN Cost Estimate (k+l+m+n+o+p)	0.00	0.00	0.00
r. Total Project Cost Estimate (e+j+q)	182,760.00	24,673.00	158,087.00

**Agency Official**

By

Title Mayor

Agency Date

**Washington State Department of Transportation**

By

Director, Local Programs

Date Executed

## State Ad and Award

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

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

at \$9 per month for 12 months.

#### **Local Force or Local Ad and Award**

### Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on Resolution/Ordinance No.

, Resolution/Ordinance No. \_\_\_\_\_

## Provisions

## I. Scope of Work

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

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

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

## II. Delegation of Authority

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

### III. Project Administration

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

#### **IV. Availability of Records**

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

## V. Compliance with Provisions

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

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

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

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

If actual construction of the road for which right of way has been purchased is not started by the close of the tenth fiscal year following the fiscal year in which the right of way phase was authorized, the Agency will repay to the State the sum or sums of federal

funds paid to the Agency under the terms of this agreement (see Section IX).

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

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

## VI. Payment and Partial Reimbursement

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

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

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

### 1. Project Construction Costs

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

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

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

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

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

## VII. Audit of Federal Consultant Contracts

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

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

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

## VIII. Single Audit Act

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

promptly to the State.

#### **IX. Payment of Billing**

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

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

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

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

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

#### **XI. Indemnity**

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

#### **XII. Nondiscrimination Provision**

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

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

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

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

The Agency also agrees:

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

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

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

(c) Refer the case to the Department of Justice for appropriate legal proceedings.

### **XIII. Liquidated Damages**

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

### **XIV. Termination for Public Convenience**

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

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

### **XV. Venue for Claims and/or Causes of Action**

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

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

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

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

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

### **XVII. Assurances**

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

## **Additional Provisions**



**Washington State  
Department of Transportation**

**Local Agency Federal Aid  
Project Prospectus**

Prefix		Route	( )		
Federal Aid Project Number					
Local Agency Project Number	004		( WSDOT Use Only )		
Agency City of North Bend		CA Agency <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Federal Program Title <input checked="" type="checkbox"/> 20.205 <input type="checkbox"/> Other		
Project Title Tanner Trail Extension			Start Latitude N 47.4980 End Latitude N 47.4974	Start Longitude W -121.7851 End Longitude W -121.7849	
Project Termini From-To 42901 SE NB Way Snoq. Valley Tr.			Nearest City Name North Bend		Project Zip Code (+4) 98045-8260
Begin Mile Post	End Mile Post	Length of Project 1.1 Miles		Award Type <input checked="" type="checkbox"/> Local <input type="checkbox"/> Local Forces <input type="checkbox"/> State <input type="checkbox"/> Railroad	
Route ID 202	Begin Mile Point	End Mile Point	City Number 0875	County Number 17	County Name King
WSDOT Region Northwest Region	Legislative District(s) 12		Congressional District(s) 8		Urban Area Number 80389

Phase	Total Estimated Cost (Nearest Hundred Dollar)	Local Agency Funding (Nearest Hundred Dollar)	Federal Funds (Nearest Hundred Dollar)	Phase Start Date	
				Month	Year
P.E.	182,800	24,700	158,100	June	2023
R/W					
Const.	1,218,400	164,500	1,053,900	January	2025
Total	1,401,200	189,200	1,212,000		

**Description of Existing Facility (Existing Design and Present Condition)**

Roadway Width 0	Number of Lanes 0
New trail extension/ non-existing.	

**Description of Proposed Work**

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

Extend a paved multi-use trail with gravel shoulders, install storm-water mitigation, plant trees between the trail and North Bend Way and make utility improvements.

Local Agency Contact Person Mark Rigos		Title Public Works Director		Phone (425) 888-7650	
Mailing Address 920 SE Cedar Falls Way			City North Bend		State WA
Project Prospectus		By _____			
		Approving Authority			
Title Mayor		Date			

Agency City of North Bend	Project Title Tanner Trail Extension	Date 05/24/2023
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### Type of Proposed Work

Project Type (Check all that Apply)

<input checked="" type="checkbox"/> New Construction	<input checked="" type="checkbox"/> Path / Trail	<input type="checkbox"/> 3-R
<input type="checkbox"/> Reconstruction	<input type="checkbox"/> Pedestrian / Facilities	<input type="checkbox"/> 2-R
<input type="checkbox"/> Railroad	<input type="checkbox"/> Parking	<input type="checkbox"/> Other
<input type="checkbox"/> Bridge		

Roadway Width

10 ft. wide trail

Number of Lanes

### Geometric Design Data

Description	Through Route	Crossroad
<b>Federal Functional Classification</b>	<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural <input type="checkbox"/> NHS	<input type="checkbox"/> Principal Arterial <input checked="" type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Local Access
Terrain	<input checked="" type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain	<input checked="" type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain
Posted Speed	35	35
Design Speed	35	35
Existing ADT	13,500	13,500
Design Year ADT	NA	NA
Design Year	NA	NA
Design Hourly Volume (DHV)	NA	NA

### Performance of Work

Preliminary Engineering Will Be Performed By Consultant	Others 100 %	Agency 0 %
Construction Will Be Performed By Contractor	Contract 100 %	Agency 0 %

### Environmental Classification

<input type="checkbox"/> Class I - Environmental Impact Statement (EIS)	<input checked="" type="checkbox"/> Class II - Categorically Excluded (CE)
<input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement	<input checked="" type="checkbox"/> Projects Requiring Documentation (Documented CE)
<input type="checkbox"/> Class III - Environmental Assessment (EA)	
<input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreements	

Environmental Considerations

Agency City of North Bend	Project Title Tanner Trail Extension	Date 05/24/2023
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**Right of Way**

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

Right of Way Needed  
 No Relocation       Relocation Required

**Utilities**

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

**Railroad**

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

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

**FAA Involvement**

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

**Remarks**

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

Agency City of North Bend

Date

By \_\_\_\_\_

Mayor/Chairperson

Project Number: NB-15			Title: Tanner Trail Extension		
Phase	Programmed Year	Obligation Date	Funding Source	Federal Funds	State Funds
PI/E-Design	2023	7/15/2023	TA(JL)	\$158,087	\$0
PI/E-Design	2023	7/15/2023	Local	\$0	\$24,672
<b>WSDOT PIN:</b>			<b>Totals:</b>	<b>\$158,087</b>	<b>\$0</b>
					<b>\$24,672</b>
					<b>\$182,759</b>

**Federal Aid/FTA Grant Number(s):****Functional Class:** Rural Principal Arterial**Location:** North Bend Way**MTP Reference(s):** N/A**MTP Status:** Exempt**Total Cost:** \$1,401,159**Regionally Significant:** No**Environmental Status:** CE**Description:** Extend a paved multi-use trail with gravel shoulders, install stormwater mitigation, plant trees between the trail and North Bend Way, and make utility improvements.**Improvement Type:** Regional Trail (Separate Facility)**From:** 42901 SE North Bend Way**To:** Snoqualmie Valley Trail

**Washington State S. T. I. P.****2023 to 2026****(Project Funds to Nearest Dollar)****MPO/RTPO: PSRC****Y Inside****N Outside****May 17, 2023****County: King****Agency: North Bend**

Func Cls	Project Number	PIN	STIP ID	Imp Type	Total Project Length	Environmental Type	RW Required	Begin Terminl	End Terminl	Total Est. Cost of Project	STIP Amend. No.
03		NB-15		28	1.100	CE	No	42901 SE North Bend Way	Snoqualmie Valley Trail	1,401,159	23-04

Tanner Trail Extension

Extend a paved multi-use trail with gravel shoulders, install stormwater mitigation, plant trees between the trail and North Bend Way, and make utility improvements.

**Funding**

Phase	Start Date	Federal Funds		State Fund Code	State Funds	Local Funds	Total
		Federal	Fund Code				
PE	2023		TA(UL)	158,087	0	24,672	182,759
<b>Project Totals</b>				<b>158,087</b>	<b>0</b>	<b>24,672</b>	<b>182,759</b>

**Expenditure Schedule**

Phase	1st	2nd	3rd	4th	5th & 6th
ALL	182,759	0	0	0	0
<b>Totals</b>	<b>182,759</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

	Federal Funds	State Funds	Local Funds	Total
<b>Agency Totals for North Bend</b>	<b>4,066,784</b>	<b>0</b>	<b>387,375</b>	<b>4,454,159</b>

# Council Packet June 6, 2023

## Local Programs Authorization Package Checklist

Agency: City of North Bend

Project Title: Tanner Trail Extension

Fed Aid/State Project #:

By Phase (check all that apply)			
Funding Request	PL*	PE**	RW
New Phase Authorization	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Phase Modification	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CN			
Non-Funding Request <input type="checkbox"/>			

\*PL - Planning. Used for stand-alone planning and study projects.

\*\*PE - Preliminary Engineering. This is the full design phase of a construction project. Once PE is authorized, the construction phase must be completed, or all federal expenditures must be repaid.

Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Region Check	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HQ Check	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Miscellaneous Items

In addition to this checklist, all Region submittals must utilize the standard Region IDC, memo, or cover letter.

If authorizing a subsequent phase on an existing project, has at least one bill for the prior phase been fully processed by Local Programs (Posted date is present in SPORT)? If not, supplement can't be processed.

Has the scope changed (description of work, limits, staging, RW needs, etc.) since previous submittal?

No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
----	--------------------------	--------------------------	--------------------------

### Project Prospectus (DOT Form 140-101) - LAG Chapter 21

Are all three pages of the current form included?

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
-------------------------------------	--------------------------	--------------------------

Does information (title, termini, description, RW needs, cost, etc.) agree with STIP/LAA/NEPA-CE?

Is the project description written such that the project scope is clear to an average person?

Are pages 1 and 3 signed?

If the LPE or another agency is acting as CA, enter CA agency name below and include copy of CA agreement (LOU, MOU, etc.).

CA Agency: \_\_\_\_\_

Are the Latitude and Longitudes (decimal format preferred) included and correct?

Are Congressional and Legislative Districts included and correct?

Project Zip Code includes the +4?

Are estimated costs included for all phases of the project?

Are the Functional Classification and Urban/Rural designation correct?

Are the Right of Way, Utilities, and Railroad sections filled out?

### Typical Sections & Vicinity Map - LAG Chapter 21

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
-------------------------------------	--------------------------	--------------------------

When necessary, are the Vicinity Map(s) and Roadway Section(s) included?

Can someone unfamiliar with the project's location easily tell where it's located using the vicinity map?

Are the project limits clearly marked on the map?

Does the section include all elements, with dimensions, of the roadway prism?

Are section changes, if applicable, throughout the project limits noted/displayed?

### STIP/Funding Documentation - LAG Chapter 12

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
-------------------------------------	--------------------------	--------------------------

Is the currently approved STIP page included?

Does STIP information (termini, description, etc.) match the LAA and Prospectus?

Is the phase being authorized (or a later phase) programmed in the STIP?

Is funding from all requested programs shown in the STIP?

Are the requested funds supported by the STIP?

If funded through a HQ managed program (ex. Bridge, HSIP), is the award letter included when these funds are **first** obligated?

If funded through a HQ managed program, does the submitted scope match the project summary scope?

### Local Agency Agreement (DOT Forms 140-039 & 140-041) - LAG Chapter 22

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
-------------------------------------	--------------------------	--------------------------

Is at least one LAA or LAA supplement, with an original signature, included?

Current form used? (check revision date at bottom left)

All pages of Agreement included?

Are the Agency information, Project #, LAA #, Supplement #, and date of original agreement execution correct?

Does project information (title, termini, length, description, etc.) agree with STIP/Prospectus/NEPA-CE?



City of \*\*\*\*\*

F.A. No. \*\*\*\*-\*\*\*\*(\*\*\*)

**Letter of Understanding for Project Administration**

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May 24, 2023

City of \*\*\*\*\*

\*\*\*\*\* \*\*\*\*\* \*\*\*\*\*

\*\*\*\*\* , WA \*\*\*\*\*-\*\*\*\*

F.A. No. \*\*\*\*-\*\*\*\*(\*\*\*)

\*\*\*\*\*-\*\*\*\*\*-\*\*\*\*\*

**Letter of Understanding for Project Administration**

Attn.: \*\*\*\*\* \*\*\*\*\*

Public Works Director

Dear Sir:

The Washington State Department of Transportation Northwest Region Local Programs Office (STATE) is responsible for assuring that grant administration, consultant selection, consultant agreements, development of plans, specifications, and estimates, environmental documents, acquisition of right of way, advertisement, award and execution of contract, and construction administration including but not limited to inspection, change orders and final project documentation, are all in accordance with Local Agency Guidelines (LAG) and federal law.

The CITY, operating under an extension of Local Programs Certification Acceptance (CA), shall administer all associated projects entirely in accordance with the LAG, this Letter of Understanding (LOU) and direction as provided by the Local Programs Engineer (LPE). Failure to comply with the LAG, this LOU or the direction of the LPE may result in loss of Federal funds.

- 1) The STATE and the CITY have designated CA managers as shown below:

STATE  
WA State Department of Transportation  
Mehrdad Moini, Local Programs Engineer  
PO Box 330310  
15700 Dayton Avenue North, NB82-121  
Seattle, WA, WA 98133-9710  
(206) 440-4734  
moinim@wsdot.wa.gov

CITY  
\*  
\*  
\*\*\*\*\* , WA \*\*\*\*\*-\*\*\*\*  
(\*\*\*) \*\*\*-\*\*\*\*  
Email address

The CITY CA Manager designated above, or his/her designee, shall be the “Responsible Charge” (See LAG Chapter 13.6). All formal submittals outlined herein either from the STATE or the CITY, will be sent through the designated CA Managers.

City of \*\*\*\*\*

F.A. No. \*\*\*\*-\*\*\*\*(\*\*\*)

**Letter of Understanding for Project Administration**

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- 2) The CITY shall obtain approval from the STATE in the solicitation and selection of a Consulting Engineering firm for Preliminary Engineering, Right of Way and Construction Engineering services. The CITY shall utilize qualified consultants, approved by the STATE, for contract administration, inspection, and materials testing. In addition, the CITY shall obtain the approval from the STATE of the Consulting Engineering Agreement prior to execution. (See LAG chapter 31).
- 3) The CITY shall be responsible for all required environmental documentation (SEPA and NEPA) and shall submit all required NEPA documentation to the STATE for further processing and approval. (See LAG chapter 24). The CITY shall be responsible for obtaining all required permits and approvals.
- 4) Any deviations to design standards must be approved and stamped by a Professional Engineer licensed in the State of Washington. The CITY shall submit the design deviation to the STATE for further processing and approval.
- 5) No R/W action shall proceed until the CITY contacts the Local Agency Right of Way Coordinator. The CITY shall follow its current approved Right of Way (R/W) Procedures as described in the LAG (see LAG chapter 25). The STATE shall be advised of all meetings preliminary to R/W acquisition. All acquisitions of R/W such as construction easements, donations, permits, etc. shall be certified by the CITY and the STATE.
- 6) Contract plans, specifications and cost estimates (PS&E) shall be prepared in accordance with the current State of Washington Standard Specifications for Road, Bridge and Municipal Construction, and amendments thereto, and adopted design standards (see LAG chapter 44). The STATE will review the PS&E to ensure compliance with the LAG.
- 7) The CITY shall forward the proposed advertisement for bids to the STATE for approval. Upon approval, the CITY may begin advertisement for bids (see LAG chapter 46). The CITY shall keep the STATE advised on any pre-award issues affecting the quality and timing of the contract. Any required addenda to the contract documents shall be approved by the STATE prior to issuance.
- 8) The CITY shall notify the STATE of the Bid Opening date and time. The CITY shall transmit to the STATE, the Engineer's Estimate and Bid Tabulations along with the complete Bid Proposals of the apparent three (3) lowest bidders. Upon approval by the STATE, the CITY may Award the Contract to the lowest responsive bidder (see LAG chapter 46).
- 9) Upon the CITY's execution of the contract for construction, the CITY shall administer and inspect the Project in accordance with the contract documents, WSDOT Standard Specifications for Road Bridge and Municipal Construction, the WSDOT Construction Manual, and all applicable State and Federal laws (see LAG chapter 52). Per Item 2 in this LOU, the CITY shall utilize consultants, approved by the STATE, for this work. The CITY shall notify the STATE of the date, time, and location of the pre-construction meeting with

City of \*\*\*\*\*

F.A. No. \*\*\*\*-\*\*\*\*(\*\*\*)

**Letter of Understanding for Project Administration**

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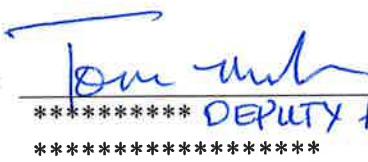
the contractor. The STATE will conduct periodic construction documentation reviews as warranted.

- 10) The CITY shall notify the STATE of changes to the contract. If warranted, the STATE will grant verbal approval to proceed with the change order as defined per Section 1-04.4 of the current edition of the WSDOT Standard Specifications for Road, Bridge, and Municipal Construction. The CITY Project Manager shall initiate, negotiate, and document all change orders. Prior to obtaining the contractor signature, the City Project Manager shall submit the change order to the STATE for review. All signed changed orders shall be sent to the STATE for final approval.
- 11) The CITY shall request the STATE to inspect the project following Substantial Completion to the Contractor (see LAG chapter 53).

Signature below constitutes concurrence with this Letter of Understanding.

CITY OF \*\*\*\*\*

By:

  
\*\*\*\*\* DEPUTY PRO DIRECTOR  
\*\*\*\*\*

Date:

5/24/23

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION

By:

Mehrdad Moini, P.E.  
Local Programs Engineer

Date:



## Puget Sound Regional Council

1011 WESTERN AVENUE, SUITE 500 SEATTLE, WA 98104-1035 [psrc.org](http://psrc.org) 206-464-7090

April 27, 2023

The Honorable Rob McFarland  
 City of North Bend  
 920 SE Cedar Falls Way  
 North Bend, WA 98045

Dear Mayor McFarland:

Congratulations! I'm pleased to let you know that City of North Bend is receiving \$158,087 in PSRC funding for the following project:

PROJECT	AWARD AMOUNT	FUNDING DEADLINE
Tanner Trail Extension Project	\$158,087	July 15, 2023

Additional funding from the Federal Highway Administration has become available in 2023. In April, PSRC's Executive Board approved distribution of these funds to projects on the contingency lists from our last major project selection process in 2022.

Securing federal transportation funding for communities in the region is one of the key roles of the Puget Sound Regional Council. Through our merit-based project selection process, PSRC ensures that federal transportation funds are put to work on priority projects that support the region's VISION 2050 growth plan.

As the region continues to work on maintaining and improving our transportation infrastructure, we are grateful for partners like you working to enhance mobility, support a resilient economy, and sustain a healthy environment and quality of life for people in the region.

Thank you for your leadership and for the excellent work by your staff. I look forward to continuing to partner with you on efforts to help the region thrive now and into the future.

Sincerely,

*Josh Brown*

Josh Brown  
 Executive Director  
 Puget Sound Regional Council

*I'm glad we could  
 be a partner on this  
 project!*

CC: Mark Rigos, Public Works Director

**PROJECT TITLE** TANNER TRAIL EXTENSION  
**AGENCY** CITY OF NORTH BEND  
**FEDERAL AID #** *Not assigned*

### Preliminary Engineering (Design) Phase

Design Estimate	Estimated Hours	Average Rate	Totals
Design (Agency)	158	\$ 150.00	\$ 23,673.00
Project Management (Agency)		\$	-
Design (Consultant)	632.4	\$ 250.00	\$ 158,087.00
Environmental Permit		\$	-
State Review		\$ 1,000.00	
		<b>Preliminary Engineering (Design) phase Total</b>	<b>\$ 182,760.00</b>

### Right-of-Way Phase

Right of Way Estimate			
Right of Way		\$	-
<b>Right-Of-Way Total</b>			

### Construction Phase

#### Construction estimate

Construction Estimate  
10% Contingency

#### Construction Engineering

Agency Construction Engineering  
State Construction Engineering

Constructin Phase Total \$ -

**TOTAL PROJECT ESTIMATE** \$ **182,760.00**

**City of North Bend**  
**Tanner Trail Extension Project**  
**Engineer's Est. April 2023**

Length: 6000 LF

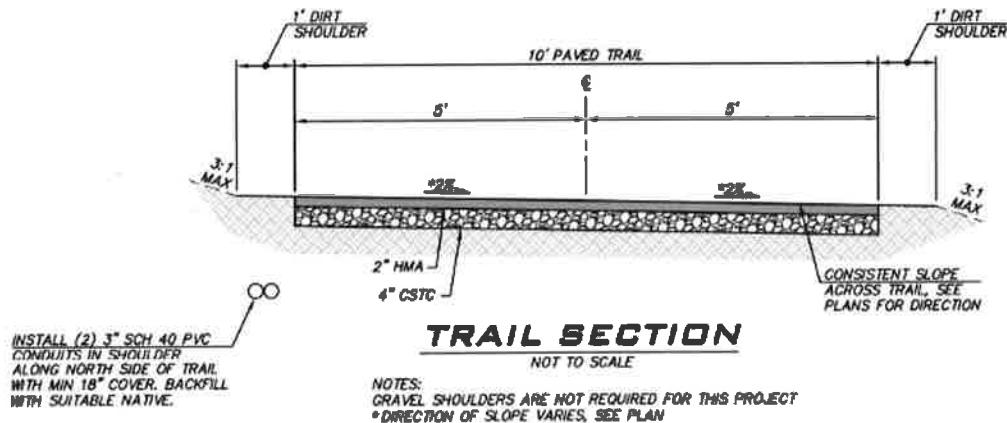
Width: 10 ft.

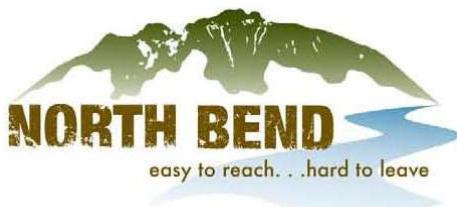
Depth: 4 inches of asphalt

Base: 6 inches of gravel base

No.	ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
1	Mobilization and Demobilization	1	LS	\$ 15,000	\$ 15,000
2	Temporary Erosion/Sediment Control	1	LS	\$ 7,500	\$ 7,500
3	Engineering Surveying	1	LS	\$ 5,000	\$ 5,000
4	Temporary Traffic Control	1	LS	\$ 10,000	\$ 10,000
5	Excavation Incl. Haul	2814	CY	\$ 25	\$ 70,350
6	Landscape Restoration	3	LS	\$ 20,000	\$ 60,000
7	New landscape trees	150	EA	\$ 900	\$ 135,000
8	Crushed Surfacing Top/Base Course	2400	TN	\$ 45	\$ 108,000
9	HMA	1500	TN	\$ 200	\$ 300,000
10	Driveway approach	125	TN	\$ 250	\$ 31,250
11	Cement Conc. Traffic Curb and Gutter	575	LF	\$ 75	\$ 43,125
12	Geotextile for Separation in Bioswale	450	SY	\$ 3	\$ 1,350
13	Bioswale Planting	1	LS	\$ 50,000	\$ 50,000
14	RRFB	3	EA	\$ 20,000	\$ 60,000
15	Crosswalk/ Striping	5	LS	\$ 4,500	\$ 22,500
16	Striping/Stop Bars	400	LF	\$ 5.00	\$ 2,000
17	Permanent Signing/ Wayfinding signs	5	LS	\$ 2,500	\$ 12,500
<b>Subtotal (Construction Costs)</b>					<b>\$ 933,575</b>
Construction Management (15%)					\$ 140,036
Contingency (15%)					\$ 93,358
Sales Tax (Exempt)					\$ 110,862
<b>Total Construction Budget</b>					<b>\$ 1,277,831</b>







SUBJECT:	Agenda Date: June 6, 2023	AB23-068
<b>Motion Authorizing Contract with Parametrix for Preliminary Engineering Services on the South Fork Snoqualmie River Levee Setback Capital Project</b>	Department/Committee/Individual	
Cost Impact: \$0 (No local match required)	Mayor Rob McFarland	
Fund Source: N/A	City Administrator – David Miller	
Timeline: Immediate	City Attorney – Lisa Marshall	
	City Clerk – Susie Oppedal	
	Administrative Services – Lisa Escobar	
	Comm & Econ Development – Rebecca Deming	
	Finance – Richard Gould	
	Public Works – Mark Rigos, P.E.	X

**Attachments:** Work Scope & Fee**SUMMARY STATEMENT:**

During the November 1, 2022 Council meeting, the City Council accepted a King County Rivers and Corridors Grant in the amount of \$800,000 for the City's South Fork Snoqualmie River Levee Setback Capital Project to perform preliminary engineering. This project is located along the left (west) bank of the South Fork Snoqualmie River between Bendigo Blvd (SR-202) and North Bend Way (NBW) near the Nintendo Warehouse.

This capital project includes removing the existing left bank levee between SR-202 and NBW and constructing a new levee further away from the river with the objectives being to create more flood storage volume, mitigate within the riparian zone by removing invasive species, and planting many new trees and shrubs. The added flood storage volume will decrease the flooding impact on downstream communities such as the City of Snoqualmie. In summary, once the objectives are accomplished, it will result in a substantial environmental benefit. The City owns the land necessary to build this project.

Attached is the work scope and fee from the City staff's selected consultant Parametrix for the preliminary engineering design. The Parametrix contract is in the amount of \$756,200.77. The King County Rivers and Corridors Grant has a **zero-match** requirement for the preliminary engineering design of this project.

Parametrix's services include Supplemental Survey Coordination, Critical Areas Determination, Cultural Resources Survey, Hydrologic/Hydraulic Analysis, Geomorphic Analysis, Geotechnical Engineering Analysis, Development of Alternatives for the location of the Levee Setback, environmental documentation (permit ready), and developing a preliminary design of a preferred alternative. This work is substantial and will take approximately 18 - 24 months to perform. The South Fork Levee Setback project is listed in the City's 2023-2028 6-Year Transportation Improvement Plan (TIP), which was adopted by the City Council in June 2022.

City staff have selected Parametrix to perform this work based on their extensive knowledge of the Snoqualmie River Basin and are recommending this contract move forward.

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

**COMMITTEE REVIEW AND RECOMMENDATION:** This item was discussed at the May 23<sup>rd</sup>, 2023 Transportation and Public Works Committee meeting and was recommended for approval and placement on the Consent Agenda.

RECOMMENDED ACTION: **MOTION to approve AB23-068, authorizing the Mayor to execute a contract with Parametrix for the South Fork Snoqualmie River Levee Setback Capital Project, in a form and content approved by the City Attorney, in an amount not to exceed \$756,200.77.**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
June 6, 2023		

## SCOPE OF WORK

### South Fork Snoqualmie River Levee Setback and Trail

#### Preliminary Design

The South Fork Snoqualmie River Levee Project (SFLS Project) project will remove up to 2,500 feet of the existing levee along the south bank at river mile 2.85 of the South Fork of the Snoqualmie River (River) between Bendigo Blvd. S (SR 202 at mile post 30.50) and West North Bend Way at river mile 2.50. This levee setback is Project H in the South Fork Snoqualmie River Capital Investment Strategy (CIS), titled “Nintendo Levee Setback”, or alternatively called the “Bendigo Upper Left Levee”.

A new setback levee, approximately 3,500 feet long, 1 to 9 feet high, that meets current US Army Corps of Engineers (USACE) standards, will be constructed. The existing levee is immediately adjacent to the south side of the River and will be removed as part of this project. The new levee will be constructed between 300 and 750 feet away from the River to reduce impediments to the river flow, provide approximately 17 acres of additional connected floodplain, and provide increased areas for river-connected fish habitat.

At least 12 acres of the newly-connected floodplain will undergo riparian and floodplain restoration as part of this project including riparian restoration along the South Fork Snoqualmie River and Ribary Creek. This project will replace or enhance the two Ribary Creek culverts (under Bendigo Blvd and South Fork Ave) to reduce upstream flood risk. A separate but related study started in 2022, is looking at Ribary Creek flood risk reduction solutions, which may influence the levee setback project.

The existing levee provides a primitive recreational walking path trail that allows public access and views of the river. This project will include a replacement and improvement to this current access by including a new trail on top of the new setback levee that will be designed to accommodate bicycles in addition to pedestrians. The City plans to link this trail to the existing trail network and eventually to King County’s regional Snoqualmie Valley Trail. Recreation and trails are a high priority for the City of North Bend.

The Transportation element of the City’s Comprehensive Plan also includes a capital project for a collector roadway (South Fork Ave Extension) that would construct a motorized vehicle bypass of the City downtown core and will be located adjacent to the new setback levee. The levee setback project will not preclude the future construction of the collector roadway.

The levee setback alignment would position the new levee within the dedicated right-of-way running adjacent to the Nintendo Property or adjacent to it on City property. The city acquired this land in 2010. Incorporation of that property into the City park/open space system also provides opportunities for soft path trails and access to the shoreline for fishing and swimming.

#### GENERAL PROJECT ASSUMPTIONS:

- The King County Flood Control District, King County Water and Land Resources Division, , Washington State Department of Ecology (Ecology), North Bend Premium Outlets, Nintendo of America, and the Northwest Railway Museum are key project stakeholders.

- The Snoqualmie Tribe is a key partner in this project to ensure that the project is protecting and helping to restore ancestral lands.
- The project will not preclude the future construction of the extension of South Fork Avenue SW, adjacent to the levee alignment and connection to West North Bend Way.
- A condition assessment of the railroad bridge adjacent to West North Bend Way will be completed, along with receiving available inspection and bridge condition information from the NW Railway Museum. The alternatives analysis will consider potential bridge and trestle protection measures.
- All levee design will be to USACE standards.
- Improvements to Ribary Creek facilities upstream of Bendigo Boulevard South will not be included in this project. This is a separate project that is underway to determine the flood risk solutions up stream of Bendigo Blvd.

## SCOPE OF WORK

### Task 100 Project Management and Coordination

#### 100.10 Monthly Progress Reports and Invoicing

Prepare and submit monthly progress reports and maintain the detailed CPM project design schedule. Monthly and weekly informal progress reports will describe the work underway or completed, the status of individual tasks, meetings attended, and issues/risks that are being monitored. The monthly schedule updates will include the status of key milestones and the critical path. This information is provided to allow the city to monitor the Consultant's progress performance. Monthly progress reports will be included with the monthly invoices.

#### 100.20 Records Documentation

Maintain an organized system for maintaining key project documentation, including necessary information for King County grant management and reimbursement. The document management system will be available to all team members and selected key stakeholders. Document management will be guided by the Project Management Plan. This system will be housed on a project Teams / SharePoint site. The information will be filed based on the scope Tasks.

#### 100.30 Project Management Plan

Develop a Project Management Plan (PMP) that defines the framework under which the project will be managed, including risk, change, communications, schedule, scope, quality, project closeout, and budget control.

#### 100.40 Project Coordination

Coordination of efforts include conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the team, the City, all affected local, state, or federal jurisdictions, key project stakeholders, and the public. This also includes the project kick off meeting and monthly progress meetings with the City.

#### Deliverables:

1. Monthly Progress Reports and Invoices

2. Monthly Schedule Updates (pdf)
3. Project Management Plan (pdf)
4. Meeting Agendas and Notes

## Task 200 Supplemental Survey and Critical Area Determination

### 200.10 Supplemental Survey Coordination

The project area has already been surveyed by Axis Survey & Mapping in early 2018. Additional topographic survey will be needed to support the preliminary design and the critical area review. The Consultants will coordinate with Axis for all supplemental survey needs. The Consultants will provide a detailed survey request and be available on site during the survey to guide the surveyors to specific key locations, such as additional habitat/wetland flagging, existing levee features, Ribary Creek alignment, selected large trees, railroad rails, railroad and roadway bridge piers, and other key elements of the site.

### 200.20 Critical Areas Determination

The Consultant will conduct a critical areas review to supplement previous review efforts completed in 2018.

The Consultant will re-delineate the Ordinary High Water Mark (OHWM) on the west bank of the South Fork of the Snoqualmie River in the project area using methods in Determining the Ordinary High Water Mark for Shoreline Management Act Compliance in Washington State (Anderson et al. 2016). The previous report by Wetland Resources Inc, titled “Wetland Delineation Report for South Fork Avenue Extension,” dated December 28, 2020 will be used as a base for the verification. The OHWM for both banks of Ribary Creek will also be re-delineated with flagging at similar intervals.

The Consultant will re-delineate wetlands within the study area. The study area is defined as the proposed project footprint plus 250 feet beyond the footprint. Areas on the east bank of the South Fork of the Snoqualmie River are not included within the study area. The delineation of wetlands within the study area will be conducted using wetland criteria in the Corps of Engineers Wetland Delineation Manual (Environmental Laboratory 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0) (USACE 2010). No wetlands will be delineated below the OHWM.

New or revised wetland boundaries and OHWM identified and flagged in the field will be located by Axis as part of Task 200.10. Wetland ratings and buffers requirements will be determined as required by City of North Bend Municipal Code. Field sketch maps of the revised/new OHWM and wetland locations will be provided to Axis for the supplemental survey as part of task 200.10. Wetland data sheets and rating forms and figures will be submitted as part of the critical areas report completed 600.10.

This review will also identify fish and wildlife habitats (fish and wildlife conservation areas) in the project area. The results of the field investigation will be documented in a critical area report for project planning and preliminary design under Task 600.

### Assumptions:

1. Additional survey and boundary information to be provided by Axis Survey & Mapping as part of Task 200.10.
2. The wetland and stream OHWM delineation will be performed by Wetland Resources Incorporated (WRI).

3. Axis Survey & Mapping will provide an updated basemap in AutoCAD.

#### Deliverables:

1. Amended 3D mapping in AutoCAD
2. Sketch maps of wetland and stream boundaries for surveyors (if necessary)

### Task 300 Hydraulics and Hydrology

The Consultant shall prepare a complete hydrologic and hydraulics analysis in support of an alternatives analysis study for the project. Key elements of the hydrologic and hydraulic analysis will include an updated flood frequency for flows in the South Fork Snoqualmie River, developing revised estimates for peak design events (if necessary), and development of a HEC-RAS 2D model of the project reach.

#### 300.10 Hydrologic Analysis

The hydrology for the South Fork Snoqualmie River was developed by King County and Tetra Tech as part of a Levee Risk Assessment project. The 100-year flood discharge (base level flood) of 14,140 cubic feet per second (cfs) was established for this study. Peak flow estimates for the South Fork Snoqualmie River developed with the King County Levee Risk Assessment project will be used as design flows for evaluating alternative performance for existing and future conditions. The design event hydrograph developed for the Levee Risk Assessment will also be used in this project. A future climate change scenario will be evaluated using the design event hydrographs adjusted with the scalers developed for the Levee Risk Assessment project.

The Ribary Creek hydrology was developed by Tetra Tech as part of the Ribary Creek Flood Risk Reduction project. Peak flows estimated with the Ribary Creek study will be used as design flows for project culvert and levee designs. The return period analysis performed for the Levee Risk Assessment comparing South Fork and Ribary Creek peak flows will be updated to determine the corresponding flood frequency between the two systems.

#### 300.20 Hydraulic Analysis

A Hydrologic Engineering Center River Analysis System (HEC-RAS) two-dimensional (2D) hydraulics model was developed for the South Fork Snoqualmie River and Ribary Creek by Tetra Tech for the King County Levee Breach Analysis Project. This model was calibrated for the South Fork Snoqualmie River reach and Ribary Creek was calibrated with the Ribary Creek Flood Risk Reduction project upstream of Bendigo Boulevard South (SR 202). The hydraulic analysis will include the following:

- Refine the existing HEC-RAS 2D-hydraulic model to reflect the current condition in Ribary Creek downstream of Bendigo Boulevard South.
- The existing conditions hydraulic model will be used to support hydraulic analysis of up to three alternatives and evaluate changes with the main channel, proposed floodplain modifications (e.g., water surface elevations, velocities, downstream impacts, and likelihood of scour and/or fine and coarse sediment deposition). Perform evaluations for the selected flow quantiles to evaluate relative changes associated in water surface elevations with each alternative and areas of inundation within the adjacent floodplains on both sides of the river.
- Each alternative will be evaluated to assess upstream and downstream impacts. For the selected alternative, up to three iterations will be performed until no rise in water surface elevation is shown, or

until rises in water surface elevation can be isolated in uninhabited areas or property owned by either the City of North Bend or King County.

- Estimate scour potential at critical locations in the study reach for existing conditions and the three alternatives. Critical scour locations will be selected in consultation with the project team.
- Perform hydraulic modeling of the preferred alternative and one future scenario for implementing projects proposed under the South Fork Snoqualmie River CIS to evaluate downstream impacts. CIS projects to consider for inclusion in the project implementation scenario may include levee setbacks, gravel removal, and culvert replacement. The future project scenario will be developed in consultation with City and County staff.
- Evaluate future climate impacts using the techniques and scaling factors developed with the King County Levee Risk Analysis project for the South Fork
- Prepare technical report materials that document the methods, analysis, and results.
- Key findings and results shall be integrated into the Task 300.30 Technical Memorandum.

The hydraulic model will be used to characterize flow conditions at the project site including flood flow depths and extents. Recurrence interval flows to be analyzed shall include the following:

- 2-year
- 10-year
- 100-year
- 500-year

### 300.30 Geomorphic Analysis

The Consultant shall review and make updates to the previous geomorphic analysis of the project site with the intent of characterizing the existing conditions, the geomorphic processes influencing the project site and study reach, and the infrastructure that could be impacted by these processes. The purpose of the analysis is to identify geomorphic processes or other factors that need to be considered during alternative analysis, either related to the proposed alternatives or the geomorphic response of the reach to the alternative. The Consultant's responsibilities shall include the following:

- Review existing information, data, reports, and other resources that are relevant to present day and historical geomorphic conditions and processes that influence the project site and are to be considered during the alternatives analysis process. Geomorphology for this reach was evaluated in 2017 by Tetra Tech and Watershed GeoDynamics as part of the I-90 Flood Risk Reduction project and also peripherally in 2022 by Watershed GeoDynamics for with the Circle River Ranch Flood Risk Reduction project.
- Update existing geomorphic analysis to define, describe, and quantify the geomorphic conditions and processes that influence the project site, to be addressed during the subsequent alternatives analysis. The updated geomorphic analysis and characterization shall include:
  - Characterization and analysis of historical and current reach characteristics, channel morphology, fluvial processes, channel migration, and planform change, including discussion of current regulatory channel migration zone (CMZ) mapping.

- Delineation of channel locations within the study reach for up to three (3) additional sets of aerial photography representing different time periods. Documentation of channel locations shall be consistent with methods used in studies by the Puget Sound River History Project.
- Characterization of river bed and exposed natural and artificial (e.g., riprap, debris) bank materials.
- Characterization of local bank stability and apparent mechanisms for bank erosion throughout the project site based on visible surficial bank conditions. Analysis of scour shall be conducted as part of Task 300.20.
- Characterization of sediment transport processes into, within, and through the project site. This shall include a qualitative analysis of sediment transport potential based on existing river bed materials, output from the 2D hydraulic model (Task 300.20), anticipated future hydrologic conditions and potential upstream sediment input.
- Characterization of large woody debris (LWD) within the project site.
- Characterization and analysis of channel bedforms and bed scour potential.
- Discussion of reach geomorphic and geologic characteristics and their importance for alternative development and eventual project design and implementation.
- Characterization of anthropogenic actions or features that have altered river dynamics, sedimentation and channel migration and discussion of the geomorphic implications of human alterations of the floodplain that have affected geomorphic processes in the vicinity of the project site, including the influence of channel and floodplain confinement due to revetments, levees, and other infrastructure.

- The alternatives will likely be similar from geomorphic perspective so the geomorphic response will be qualitatively evaluated for one alternative.
- Evaluate the geomorphic response of the preferred alternative and one future scenario for implementing projects proposed under the South Fork Snoqualmie River CIS to evaluate downstream impacts. CIS projects to consider for inclusion in the project implantation scenario may include levee setbacks, gravel removal, and culvert replacement. Alternatives may also include temporary facilities to mitigate potential increase in flood stage. The future project scenario will be developed in consultation with City and County staff.
- Meet with the project team to discuss findings.
- Prepare technical report materials that document the methods, analysis, and results.
- Key findings and results shall be integrated into the Task 300.40 Technical Memorandum.

#### 300.40 Hydrologic, Hydraulics, and Geomorphic Analysis Technical Memorandum

The Consultant will prepare a draft and final Hydrologic, Hydraulic, and Geomorphic Analysis Technical Memorandum that documents the coincident peak analysis, update hydraulic model development, scour analysis, geomorphology, and alternatives analysis.

#### Assumptions:

1. Three alternatives will be evaluated. A design charrette will be used to support this evaluation process and will include the key project stakeholders.
2. The hydrologic analysis will use the peak flood-frequency and design hydrograph developed with the Ribary Creek Flood Risk Reduction project and the Levee Risk Analysis project.

3. The alternatives will be configured such that the findings from a qualitative evaluation of the geomorphic response would be identical between the alternatives.
4. Performance of the recommended alternative will be evaluated for a future climate change scenario and one future CIS implementation scenarios.

#### Deliverables:

1. Updated 2D HEC-RAS model with refinements for Ribary Creek downstream of Bendigo Boulevard South.
2. Depth, velocity, and water surface elevation raster shapefiles for each event analyzed for the existing condition and three alternatives.
3. Draft and final Hydrologic and Hydraulic Analysis Technical Memorandum (pdf).

#### Task 400 Geotechnical Engineering

The Consultant shall conduct a geotechnical engineering investigation and provide geotechnical analysis and design services to support development of the project preliminary design. Additional geotechnical investigation will be necessary as part of the final design. The Consultant shall provide the following services:

1. Review available background information and previous studies performed at and near the site. This review will include existing subsurface exploration logs at and near the site, available published geology maps, geologic hazard maps, local well logs, soil surveys, light detection and ranging (LiDAR), aerial imagery, and topographic maps for the site area. Any additional, pertinent information will also be included.
2. Perform site reconnaissance to review current site conditions. The reconnaissance will be performed by traversing the accessible portions of the site and near-site areas and noting the existing levee condition, topography, and visible geologic features such as outcrops, scarps, erosion patterns, evidence of seepage, vegetation patterns, and drainage characteristics. Pertinent observations and features will be photo-documented and marked on a base map for inclusion in the reporting.
3. Conduct aquifer tests (slug tests) in the existing monitoring wells to determine the in-situ hydraulic conductivity of the aquifer beneath the site, to inform seepage analyses.
4. Characterize the subsurface conditions at the site and conduct geotechnical engineering analyses to provide preliminary design recommendations addressing levee settlement, levee through-seepage and underseepage, levee embankment stability, seismic design considerations including liquefaction, potential modes of levee failure, the recommended typical levee section, and earthwork considerations relevant to preliminary design. Analyses will be conducted at two typical sections of the proposed levee in general accordance with the following guidance;
  - EM 1110-2-1913, USACE Design and Construction of Levees Manual, dated April 30, 2000
  - EM 1110-2-1902, USACE Slope Stability Manual, dated October 31, 2003
  - ETL 1110-2-569, Design Guidance for Levee Underseepage, dated May 1, 2005
  - ER 1110-2-1806, Earthquake Design and Evaluation for Civil Works Projects, dated July 31, 1995
  - EC 1110-2-6067, USACE Process for the National Flood Insurance Program (NFIP) Levee System Evaluation, dated August 31, 2010

Levee embankment stability evaluations will consider the following scenarios; End of Construction, Static (Steady State), Rapid Drawdown, and Earthquake (if applicable).

5. Prepare a draft preliminary geotechnical report summarizing the methods and results of the geotechnical investigation.

6. Address City comments and prepare a final preliminary geotechnical report.

#### Assumptions:

1. No subsurface explorations are planned within the existing levee embankment. Preliminary design will rely on the existing data along the levee reach.
2. Preliminary settlement, seepage, and slope stability evaluations will be conducted at two critical locations along the proposed levee alignment. Water surface elevation (WSE) data will be provided by others for the mean annual WSE, the design flood WSE, and appropriate WSE's for a rapid drawdown scenario.
3. No subsurface explorations will be completed at the proposed culvert replacement locations. Preliminary considerations for the culvert replacements will be developed based on existing data and the results of the borings and test pits completed nearby.
4. An assessment of existing or potential environmental concerns associated with the site and project is not included in this task.
5. The city will provide one set of consolidated comments on the draft preliminary geotechnical report.
6. Eight (8) hours have been assumed for preliminary design support, meetings, and correspondence.
7. The geotechnical evaluations under this scope of work are intended to inform preliminary design of the project. Additional geotechnical explorations, testing, analyses, and design will be required for final design of the project.

#### Deliverables:

1. Field Exploration Plan for approval by the City (pdf).
2. Draft and final preliminary geotechnical report (pdf).

### Task 500 Alignment and Alternatives Analysis

The Consultant shall conduct an Alignment and Alternatives Analysis to identify, assess and document project alternatives, and to identify and recommend a potential preferred alternative that best meets the project purpose, objectives, and performance requirements. The Consultant will prepare an Alternatives Analysis report describing and comparing the developed and evaluated alternatives and documenting the process of identifying the preferred alternative. The preferred alternative will be identified in collaboration with the city.

#### 500.10 Evaluation Criteria

The Consultant will develop project evaluation criteria, including descriptive, quantitative, and site-specific performance criteria for the purpose of comparing the project alternatives. Evaluation criteria may include, but not be limited to: (1) potential to reduce flood hazards from the South Fork Snoqualmie; (2) effect on wetlands, riparian zone and aquatic habitat conditions; (3) implementation feasibility; (4) conformance with regulatory constraints; (5) construction complexity and costs; and (6) maintenance complexity and lifecycle cost over a 50 year period, (7) project implementation and performance risks; and (8) consistency with the King County Capital Improvement Strategy.

#### 500.20 Develop Alternatives

The Consultant will develop conceptual engineering designs for up to three (3) alignment/section alternatives, with input from the findings from the other task work completed as part of this project. Each alternative will be developed to a concept level such that the evaluation criteria can be applied to select a recommended

alternative. This evaluation of conceptual designs will more closely examine each alternative for design performance, constructability, agency approval, unacceptable risk factors (e.g. offsite impacts, catastrophic failures), and be the basis for conceptual level construction cost estimates.

This task will also include early preliminary design of the future extension of South Fork Avenue adjacent to the levee as that affects the levee placement design. Horizontal and vertical alignments will be laid out using C3D corridor analysis to establish the road prism and footprint within City owned property for the purpose of identifying the western limits of the new levee.

The Consultant will develop concept level cost estimates for each of the alternatives. The conceptual level cost estimates will contain planning level construction, and operations and maintenance costs.

### 500.30 Alternatives Analysis and Ranking

The Consultant will work with the City and key stakeholders to rank the alternatives relative to how well they satisfy the project purpose, objectives, and performance requirements, in addition to the evaluation criteria. The project ranking will be documented in an Alternatives Comparison Matrix to be included within the Alternatives Analysis Technical Memorandum.

### 500.40 Alternatives Analysis Technical Memorandum

The Consultant will prepare a draft and final Alternatives Analysis Technical Memorandum that documents the alternatives development and evaluation.

#### Assumptions:

1. The City of North Bend will review the draft Alternatives Analysis Technical Memorandum and provide one set of consolidated comments to the Consultant.
2. Concept designs will be schematic representations of the alternatives.

#### Deliverables:

1. Conceptual designs for up to three (3) levee alignment alternatives
2. Alternatives evaluation matrix
3. Draft and final Alternatives Analysis Technical Memorandum (pdf)

## Task 600 Environmental Documentation and Permitting Support

### 600.10 Critical Areas Report

The Consultant shall prepare a draft and final critical areas report to document wetlands and streams delineated during the field investigation in Task 200. The report will be prepared to support the City of North Bend Land Use and Critical Areas Reviews. The Critical Areas Report will include descriptions of existing resources, functional assessments and ratings, figures, and wetland determination forms. A wetland and stream delineation figure will be included in the report. This report will satisfy reporting requirements in NBMC 14.05.145 and include an impact analysis and mitigation strategies and measures describing habitat enhancement designs and benefits. The report will include by reference information on other critical areas, such as aquifer recharge areas, geologic hazards, or flood hazards, or channel migration zones developed as part of the Task 300 and Task 400 deliverables. The 30 percent mitigation plan and drawings will be produced under separate task below.

**Assumptions:**

1. The 30 percent mitigation plan and drawings will be produced under task 600.20 and be based on the preferred alternative.
2. Draft and final maps of surveyed resources will be produced by Axis Surveying and Mapping as part of Task 200.

**Deliverables:**

1. Draft and Final Critical Areas Report

**600.20 Conceptual Mitigation Plan**

A written mitigation plan is needed by reviewing agencies to assess the project impacts and to determine if sufficient mitigation has been provided for unavoidable adverse impacts to aquatic resources. The mitigation plan will comply with Part 332 of the Federal Rule on Compensatory Mitigation for Losses of Aquatic Resources (33 CFR Part 332, 2008) and the Washington State Wetland Mitigation Guidance (2006) and North Bend municipal code. The conceptual mitigation plan will be prepared to support the City of North Bend Land Use and Critical Areas Reviews.

The Consultant will prepare a Conceptual Mitigation Plan including a descriptive report that references the preliminary engineering design. The mitigation report will follow mitigation sequencing and include the following components: existing conditions; assessment of impacts both quantitatively and qualitatively; project approach for avoiding and minimizing impacts to these resources; proposed mitigation; mitigation goals, objectives, and performance standards; monitoring; maintenance; contingency measures; site protection; and long-term site management.

Conceptual mitigation drawings will be prepared including landscape plans for the restored river floodplain. The landscape plan drawings will include approximate locations, area and shapes of planting areas with a hatch pattern that denotes a particular planting regime. Approximate locations and general types of habitat features will be shown on the plans.

**Assumptions:**

1. Mitigation will focus on restoring floodplain habitat functions for the areas where the old levee is removed.
2. Draft and final maps of surveyed resources will be produced by Axis Surveying and Mapping as part of Task 200.
3. The Conceptual Mitigation Plan will be prepared to the 30 percent project design level.

**Deliverables:**

1. Draft and Final Conceptual Mitigation Plan (pdf)

**600.30 Preliminary Cultural Resources Assessment**

The project is anticipated to require various local, state, and federal environmental permits and approvals (see subtask 600.40) that trigger the need for the evaluation of potential affects to cultural resources. The project includes two potential historic properties (the existing levee and the railroad). A known archeological site abuts

the project area. The project is anticipated require federal permits or approvals and will be required to comply with Section 106 of the National Historic Preservation Act. The evaluation of project impacts on Cultural Resources is also a component of the City of North Bend's land use permitting (via the State Environmental Policy Act (SEPA) review process). The purpose of the preliminary cultural resources assessment task to support review of the project pursuant to SEPA and inform the alternatives evaluation process to identify key project issues that will be required to be addressed during the Section 106 Consultation process initiated during final design.

The preliminary cultural resources assessment will include: the identification of the study area and limits of anticipated project affects; a literature review to identify historic and archaeological resources (collectively known as "Historic Properties") within the study area boundaries; conducting field studies to evaluate elements of the built environment, evaluation of geotechnical data to identify the potential of encountering cultural resources, completion of up to two Historic Property Inventory Forms, and preparation of a summary report for inclusion with the project SEPA Environmental Checklist (per task 600.50).

#### Assumptions:

1. The existing levee and portion of the railroad within the APE will be recorded as Historic Properties. No standing structures are anticipated to be included in the study area.
2. No subsurface geotechnical investigations, potholing, or other work will occur that will require archaeological monitoring during the preliminary design phase.
3. Consultant will define a preliminary study area boundary. The federal lead agency will be responsible for formally defining the APE, which would occur during final design.
4. No archeological field work (shovel probes, etc.) will be conducted during preliminary design. Archeological field work will be conducted, if needed, during final design.
5. The project can be designed to avoid impacts to known archaeological sites.

#### Deliverables:

1. Draft and Final Preliminary Cultural Resources Assessment Report (pdf)
2. Two (2) Historic Property Inventory Forms

#### 600.40 Regulatory Compliance and Agency Coordination

The project will require various local, state, and federal environmental permits and land use approvals and permits from the City. Anticipated environmental permits and land use approvals are listed below. The approach for environmental documentation and regulatory compliance permitting during the preliminary design phase of the project is to coordinate with regulatory agencies to verify environmental permit requirements and prepare applications and technical materials for City of North Bend Land Use reviews, which includes a Shoreline Conditional Use Permit, Floodplain Development Permit, SEPA documentation, and Critical Areas review.

Anticipated environmental permits or approvals are anticipated to include:

- Corps of Engineers 404 Permit
- Section 7 Endangered Species Act
- Section 106 National Historical Preservation Act
- Washington Department of Ecology 401 Water Quality Certification
- Washington Department of Ecology Stormwater General Permit
- Washington Department of Fish and Wildlife Hydraulic Project Approval

- City of North Bend Shoreline Permit
- City of North Bend SEPA
- City of North Bend Floodplain Development Permit
- City of North Bend Critical Areas Review

### Permit Matrix

Prepare a preliminary permit matrix identifying anticipated environmental permits and approvals for the selected project alternative. The matrix will list the anticipated environmental permit or approval, permit nexus or trigger, issuing agency and contact information, required predecessors, and design information required for submittal. The preliminary matrix will be updated based on the selected preferred alternative during completion of the 30 percent design.

### Agency and Tribal Coordination and Preapplication Meetings

Lead coordination with regulatory agencies and tribes. Prepare for and attend informal Corps Section 404 and Ecology 401 preapplication/Presubmittal meetings. Other anticipated agency coordination meetings are WDFW, City Planning, and Tribes.

### Meetings

1. Four (4) onsite agency coordination meetings (assumes joint meetings)
2. One (1) informal Corps preapplication meeting
3. One (1) permit matrix review meeting at City
4. Two (2) mitigation coordination meetings at City
5. Up to eight (8) permit coordination conference calls.

### Assumptions:

1. The City will be responsible for agency outreach and coordination that requires government to government consultations.

### Deliverables:

1. Preliminary and Revised Permit Matrix

### 600.50 City of North Bend Land Use, SEPA, and Critical Areas Review

The Consultant will assist the City to prepare and assemble materials to support the review of the project pursuant to City land use code. This includes preparing pre application submittals and participating in coordination meetings with City land use officials. The project is anticipated to require a Shoreline Conditional Use Permit, Floodplain Development Permit, and Environmental Review (SEPA and Critical Areas) reviews. The Consultant will prepare and/or compile the following material to support review of the project:

1. City of North Bend Pre Application Review (PAR) Form
2. City of North Bend Land Use Application (form 62022)
3. SEPA Environmental Checklist
4. City of North Bend Floodplain Development Permit Application
5. Floodplain Habitat Assessment

6. Geotechnical Report (per Task 400)
7. Critical Areas Study (per Task 600.10)
8. Mitigation Plan (per Task 600.20)
9. Cultural Resource Survey (under Task 600.30)
10. No rise certification (per Task 300)
11. City of North Bend Shoreline Management Act Application – Conditional Use Permit
12. Site Plan (per Task 700)
13. Shoreline Conditional Use Consistency Memorandum

### Coordination/Permit Support

Provide ongoing coordination and support for the city during the preliminary design phase. The Consultant anticipates that ongoing coordination will be required to provide the city with additional project information to support the land use application process as design is advanced. This task includes assisting the city with comment responses, requests for information, and providing support for a land use hearing, if necessary. Support will be provided up to the level of effort identified in the budget for this subtask.

#### Assumptions:

1. The City of North Bend will be the SEPA lead agency.
2. The City will be responsible for reviewing, finalizing, signing, and submitting land use applications and submittals.
3. The City will be responsible for obtaining owner's authorization and approvals for land use applications, if required.
4. The City will be responsible for all permit application fees and third-party review fees.
5. The City will be responsible for the publication of all notices and announcements.
6. All deliverables will be in PDF file format. The City will be responsible for duplication and distribution of permit submittals and materials.
7. No additional technical analysis or special studies other than those included in this scope of work will be required to support a City SEPA Determination or issuance of City land use permits.
8. Additional submittal requirements may be identified during the City PAR process and preliminary coordination. Additional permit support documents are not included in this scope will be developed and prepared during final design phase.
9. The Coordination/Permit Support task includes up to 40 hours of consultant staff time.

#### Deliverables:

1. Draft and Final City of North Bend Pre-Application Review (PAR) Form and submittals package
2. Draft and Final City of North Bend Land Use Application (form 62022) and submittals package
3. Draft and Final City of North Bend Floodplain Development Permit Application
4. Draft and Final Floodplain Habitat Assessment Form
5. Draft and Final City of North Bend Shoreline Management Act Application – Conditional Use Permit
6. Draft and Final Shoreline Conditional Use Consistency Memorandum
7. Draft and Final SEPA Environmental Checklist

## Task 700 Preliminary Design

### 700.10 Levee Design

The Consultant shall provide preliminary design and analysis of the selected levee setback alternative as chosen in Task 500. Based on the design criteria, preliminary design inputs, and additional design analysis to be conducted under this task, the Consultant will produce 30 percent design submittals.

Specific elements of the Levee preliminary design shall include:

- Scour and hydrodynamic force balance calculations: Calculate scour depths, drag and buoyant forces as required for the revetment reconstruction design.
- Potential temporary setback alignments depending on the sequence of this project along with the next two downstream projects.
- Flood and erosion hazard analysis.
- Culvert design analysis.
- Conduct no-rise analysis using a 1-D HECRAS model and prepare the no-rise certification documentation.
- The calculations shall be documented in the 30 percent Basis of Design Report and updated in subsequent versions of the report as required.
- Preliminary design should incorporate design criteria and consideration of how to maximize the quality of, and minimize adverse impacts to, riparian, wetland, and aquatic habitat at the project site.
- Develop preliminary temporary erosion and sedimentation control (TESC) plan.
- Calculate the following earthwork quantities:
  - Total quantities of earthwork including cut, fill, import and export, all by general material type throughout the site.
  - Total fill and excavation volume and extents within wetlands and buffers.
  - Total fill and excavation below the ordinary high-water mark (OHWM).
  - Approximate allocation of cut or fill quantities that include all grading throughout the site into the following compensatory storage “bins”:
    - Below the OHWM elevation
    - OHWM elevation to 10-year recurrence flood elevation
    - 10-year recurrence flood elevation to 50-year recurrence flood elevation
    - 50-year flood recurrence elevation to 100-year flood recurrence elevation
- 30 percent design submittal including detailed basemap and design drawings of project elements, including preliminary plans, profiles, sections, and details as appropriate. Anticipated design sheets are listed below:
  - Levee Site Plan
  - Levee Plan and Profile
  - Typical levee cross sections
- 30 percent construction cost estimates.
- Revise 30 percent design documentation based on City and stakeholder input.

### 700.20 Ribary Creek Channel Design

The Consultant shall provide preliminary design and required analysis of the selected project alternative as chosen in Task 500. Based on the design criteria, levee alignment, preliminary design inputs, and additional design

analysis to be conducted under this task, the Consultant will produce 30 percent design submittals and the Basis of Design report.

### 700.30 SWM Report

The Consultant shall provide preliminary design and required analysis of the selected project alternative as chosen in Task 500. Based on the design criteria, levee alignment, preliminary design inputs, and additional design analysis to be conducted under this task, the Consultant will produce 30 percent design submittals and the SWM report.

#### Assumptions:

1. Report prepared in compliance with the 2021 King County Surface Water Design Manual.
2. Trail surface is not pollution generating.
3. Basic Dispersion will meet Flow Control requirements via an adjustment.

### 700.40 Trail Design

The Consultant shall provide preliminary design and required analysis of the selected project trail alternative as chosen in Task 500. Based on the design criteria, levee alignment, preliminary design inputs, and additional design analysis to be conducted under this task, the Consultant will produce 30 percent design submittals and the Basis of Design report. The trail will be consistent with the County's permanent river protection easement as agreed upon between the City and the County.

Specific elements of the trail/roadway preliminary design shall include:

- Cross section details that incorporate the chosen trail dimensions and pavement/surfacing type and depths.
- Traffic analysis that includes both motorized and Active Transportation needs for the design year chosen by the City.
- Intersection improvements (if necessary) at the South Fork Avenue SW / Bendigo Boulevard S (SR 202).
- Stormwater design for the trail.
- Railroad crossing treatment and signing near the intersection of W North Bend Way (coordination with the Northwest Railway Museum).
- Consideration of Crime Prevention Through Environmental Design (CPTED), such as lighting, cameras, emergency communication pedestals, etc.
- 4. allowed by the City.

### 700.50 Railroad Bridge Assessment and Design Support

The Northwest Railroad Museum operates Bridge 35.0 over the South Fork of the Snoqualmie River just west of North Bend, WA. The bridge was originally constructed by the Northern Pacific Railroad around 1924. It consists of a west approach of 28 spans of ballast deck timber pile trestle, a main section constructed with a second-hand 6-panel wrought iron thru truss fabricated in 1891 (later moved to the current site) on timber pile piers, and an east approach of 16 spans of ballast deck timber pile trestle. It is an important feature of the train rides provided to the public by the Museum. The main span over the river, a wrought iron truss over 130 years old, is especially historically valuable. The bridge is in good condition and is inspected annually by Railstar Engineering, LLC. No drawings or records are known to exist aside from Northern Pacific standard plans for a 160-ft thru truss.

## Railroad Bridge Assessment

Railstar Engineering will assist with describing the existing structure and providing information regarding current condition, typical modifications used by railroads for pile and pier protections, means for attachment, practices to avoid, etc.

## Railroad Bridge Protection Design

Railstar Engineering will review and comment on proposed levee modifications, new levee design, scour study information and provide sketches and/or AutoCAD drawings of suggested pile and pier protection. Railstar will advise on precautions to be considered for construction near railroads and suggest means for avoiding typical issues that may arise working on or near railroad structures. Deliverables will include formal comment on proposed modification and new construction, marked-up drawings of preliminary alternatives, hand sketches and AutoCAD drawings of proposed pile and pier protection.

### Task 700 Assumptions:

1. Levee will be designed according to the EM-1110-2-1913 and consistent with King County easement provisions.
3. Culverts will be designed to meet WDFW fish passage design criteria.
4. Stormwater design for the trail will be per the 2005 King County Surface Water Design Manual, including the 2008 amendments (per City Municipal Code Chapter 14.16).
5. No contract specifications will be developed at this design level.
6. City of North Bend will review the draft 30 percent design plans and construction cost estimate and provide one set of consolidated comments to the Consultant.

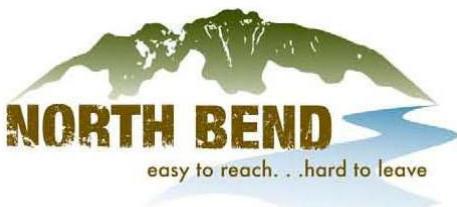
### Task 700 Deliverables:

1. Draft and final permit ready plans and figures
2. Draft and final 30 percent engineering drawings including; plan, profile and sections of the levee/trail, surface water management facility locations and basic conveyance; utility conflict/preservation/relocation identification; illumination and permanent traffic control features (including railroad crossing treatment and control); construction staging plan; levee demolition plans; mitigation plans for the floodplain and Ribary creek; type, size, and location of culvert replacements; TESC plan
3. AutoCAD based quantity takeoffs
4. Engineer's Cost Estimate in MS Excel format.
5. Draft and final SWM report (pdf)

END OF SCOPE







SUBJECT:	Agenda Date: June 6, 2023	AB23-069
<b>Motion Approving Economic Development Action Plan</b>	Department/Committee/Individual Mayor Rob McFarland City Administrator – David Miller City Attorney – Lisa Marshall City Clerk – Susie Oppedal Administrative Services – Lisa Escobar Comm. & Economic Development – Rebecca Deming Finance – Richard Gould Public Works – Mark Rigos Economic Development Manager – Mark Noll	
Cost Impact: \$0		
Fund Source: N/A		
Timeline: Immediate		X
<b>Attachments:</b> Economic Development Action Plan		
<b>SUMMARY STATEMENT:</b>		
<p>In 2020 City Council directed staff and the Economic Development Commission (EDC) to develop a citywide economic development strategy. In response, the EDC developed a vision and high-level goals for economic development consistent with the City's Comprehensive Plan and Branding Guidelines. The EDC also completed a SWOT (strengths, weaknesses, opportunities, threats) analysis outlining many of the primary issues and opportunities relevant to economic development in North Bend. These items were presented to Council by the previous chair of the EDC, Coreen Wilson, in April 2022.</p>		
<p>On June 7, 2022, Council approved a contract with Place + Main Advisors to assist the City in developing an economic development action plan. As a result of extensive stakeholder outreach and data analysis, including updates to demographic and retail leakage data collected in the 2018 Economic Profile, Place + Main identified primary economic development challenges and opportunities in North Bend and developed a list of actionable strategies that 1) align with the Plan's visions and goals, 2) address challenges identified throughout the planning process, and 3) pursue long-term fiscal strength.</p>		
<p>On Nov. 29, 2022, Place + Main presented the preliminary data analysis at a joint City Council/EDC Workstudy meeting. The draft plan was presented to City Council at a February 14<sup>th</sup> Workstudy. Following updates to the plan based on Council feedback, the draft plan was shared with community stakeholders and the public for comment on March 13<sup>th</sup>. On March 28<sup>th</sup> the EDC recommended the City Council approve the Plan.</p>		
<p><b>UPDATE #1: Council voted to postpone the Action Plan to the May 16<sup>th</sup> Council Meeting for further action. Staff recommends postponing further action until the May 23<sup>rd</sup> Council Workstudy.</b></p>		
<p><b>UPDATE #2: At the May 23<sup>rd</sup> Workstudy, Council agreed to minor text revisions reflected in the attached Action Plan and reached consensus to place the Action Plan on the consent agenda for approval at the June 6, 2023 Council meeting.</b></p>		
<b>APPLICABLE BRAND GUIDELINES:</b> Economic Viability / Balanced Budget		
<b>COMMITTEE REVIEW AND RECOMMENDATION:</b> The Economic Development Action Plan went to Council Workstudy on Nov. 29, 2022 and Feb. 14, 2023 for review and direction. The CED Council Committee Chair agreed to take this item to the City Council on the Apr. 18 Main Agenda for discussion. Council voted to postpone the Action Plan to the May 16 Council Meeting for further discussion.		
<b>RECOMMENDED ACTION:</b> <b>MOTION to approve AB23-069, approving the Economic Development Action Plan, as a final reading.</b>		

<b>RECORD OF COUNCIL ACTION</b>		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
April 18, 2023	AB23-047 Remanded to 05/16/23 Council Meeting	5-1 (Loudenback)
May 16, 2023	Remanded to Workstudy	6-0
June 6, 2023		



# 2023 ECONOMIC DEVELOPMENT ACTION PLAN



# 2023 ECONOMIC DEVELOPMENT ACTION PLAN

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## STATEMENT FROM MAYOR MCFARLAND

It is my honor and privilege to share with you the City of North Bend's Economic Development Action Plan. This plan is the culmination of an eight-month process and is one of several interconnected plans that seek to improve the quality of life and advance the economic conditions of the city and our residents.

This Action Plan will serve as a roadmap for the City and its partners in the implementation of strategies that create opportunities for residents, businesses, and the City while addressing the unique challenges our community faces. These challenges include the growing unaffordability of housing for existing and potential residents, the lack of needed infrastructure that will allow for more housing and jobs within the city's urban growth boundary, enticing visitors to stay and spend more money in our community, and to provide long-term stability for the City's finances.

These challenges are daunting. But we are prepared to do the hard work necessary to create an environment that protects our community's character, respects our planet, and provides ample opportunities for our residents and businesses to improve their economic condition.

# Background and Purpose

The gateway to countless recreational adventures and outdoor experiences in the Washington Cascades and Snoqualmie Valley, at the foot of prominent Mt. Si and just 30 miles east of Seattle, North Bend is experiencing a period of unprecedented interest as a place to live, work, shop, and play.

As the Puget Sound region continues to thrive, and quality of life becomes a chief factor in residential and business decisions, development pressure in North Bend is accelerating and will continue to do so for the foreseeable future. This critical period of growth presents both challenges and opportunities for North Bend that merit attention and understanding to inform decisions and direct growth in a way that best meets the needs and desires of the community.

The city of North Bend is located within a designated Urban Growth Area and required to meet population growth targets as established under the Washington State Growth Management Act. Following a development moratorium in the early 2000s,



North Bend has experienced rapid residential growth since 2010 that has greatly increased demand for commercial goods and services, employment opportunities, and quality of life amenities such as parks, safe streets, pathways, and gathering places.

In response to this growing list of needs, City Council directed staff to create an economic development strategy to inform and guide decision making related to the city's recent,

ongoing, and anticipated growth and ensure balanced and sustainable revenue sources to meet the needs of a growing community.

This Action Plan is the culmination of this directive and is intended to serve as a living document that guides economic development decisions into the future and tracks progress toward stated goals and objectives.

## URBAN GROWTH AREA

The City of North Bend exists in an Urban Growth Area (UGA) within King County. UGAs were created by the Washington State Legislature as a way to focus growth and protect undeveloped natural areas from sprawl and development unfriendly to the environment. Under RCW 36.70A.110, designated counties must identify areas where growth will be focused.

These areas are the only places where large scale development is allowed to occur. Furthermore, in order to meet demand, these areas also have growth targets they must meet to remain in compliance with state law. The purpose of these growth targets is to allow communities to meet development demand without artificially increasing costs due to the limiting geography.

# Planning Process and Timeline

Following City Council's directive in 2020 to develop an economic development strategy, City staff worked alongside the Economic Development Commission through 2021 to develop an economic development vision and high-level set of goals that would guide the direction of the city's economic development strategy.

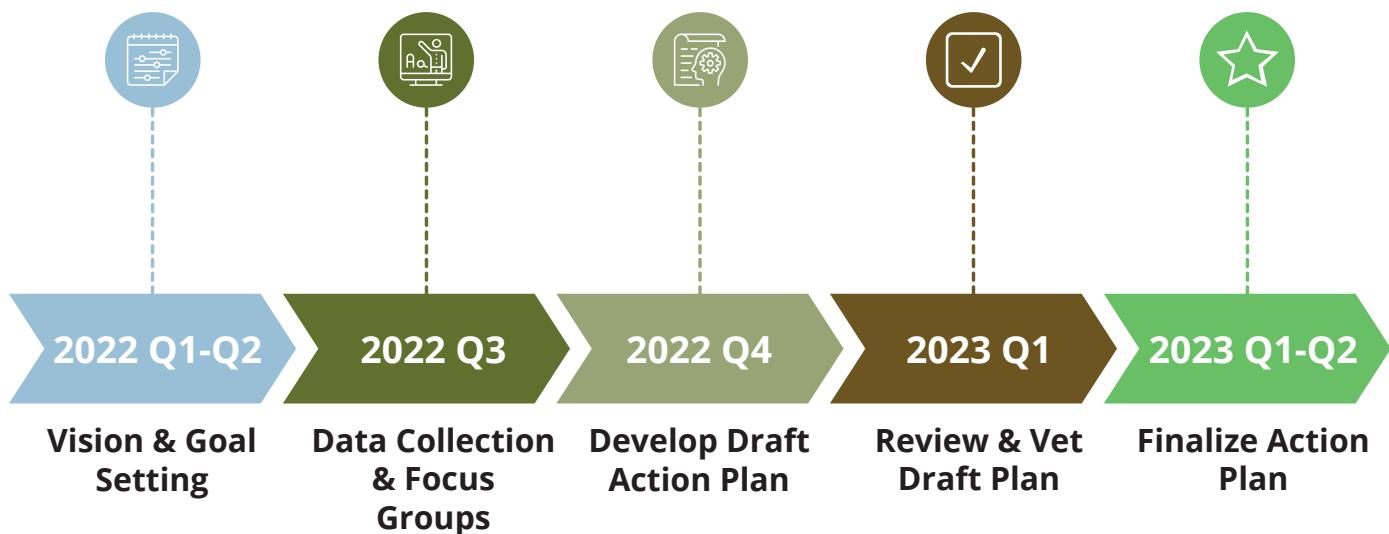
In June 2022, City Council approved a contract with Place + Main Advisors to expand upon these goals and assist in the development of an Economic Development Action Plan. The process for developing this Action Plan has included extensive stakeholder outreach including multiple focus groups, meetings, and individual interviews with

local business owners, property owners and developers, City staff, members of City Council and Commissions, and key local and regional partners. This outreach resulted in a deep understanding of existing issues and challenges as well as needs and opportunities that help inform the strategies within this Action Plan.

In addition, this Action Plan takes into account findings from extensive data analysis that highlight key trends in demographics, housing, employment, and retail and commercial activity since completion of the City 2018 Economic Profile. A snapshot of key findings are included in the

following Existing Conditions section and complete results are included in the Appendix. Finally, the planning process for this Action Plan included an inventory and review of previously proposed recommendations and strategies in existing documents, including the 2008 Downtown Master Plan, 2015 Economic Development Element of the Comprehensive Plan, 2018 Brand Implementation Guidelines, and 2018 Economic Profile. Many of the themes and recommendations in these documents remain relevant. The strategies within this Action Plan align with and build upon many of these earlier recommendations.

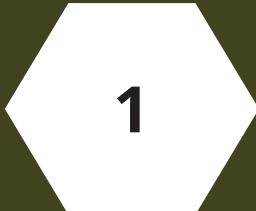
## Economic Development Action Plan Timeline



# VISION

**An economically diverse and sustainable community reflecting North Bend's unique identity as a highly livable town and outdoor recreation destination**

## GOALS

1

### **Healthy, Thriving Businesses**

Businesses are successful in North Bend and can access City services with predictability and consistency

2

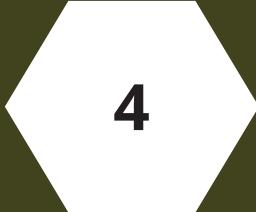
### **Fiscal Sustainability**

The City of North Bend is able to meet its financial obligations, promotes efficient development, and creates the conditions for development to be successful

3

### **Increase Housing Opportunity**

There are a variety of housing types and price ranges to make North Bend more livable

4

### **Leverage Tourism, Arts & Culture, & Recreation Opportunities**

Using the area's natural resources, arts & cultural assets, and recreation system to attract both visitors and potential residents

5

### **Increase Walkability of Downtown, Commercial Districts, & Neighborhoods**

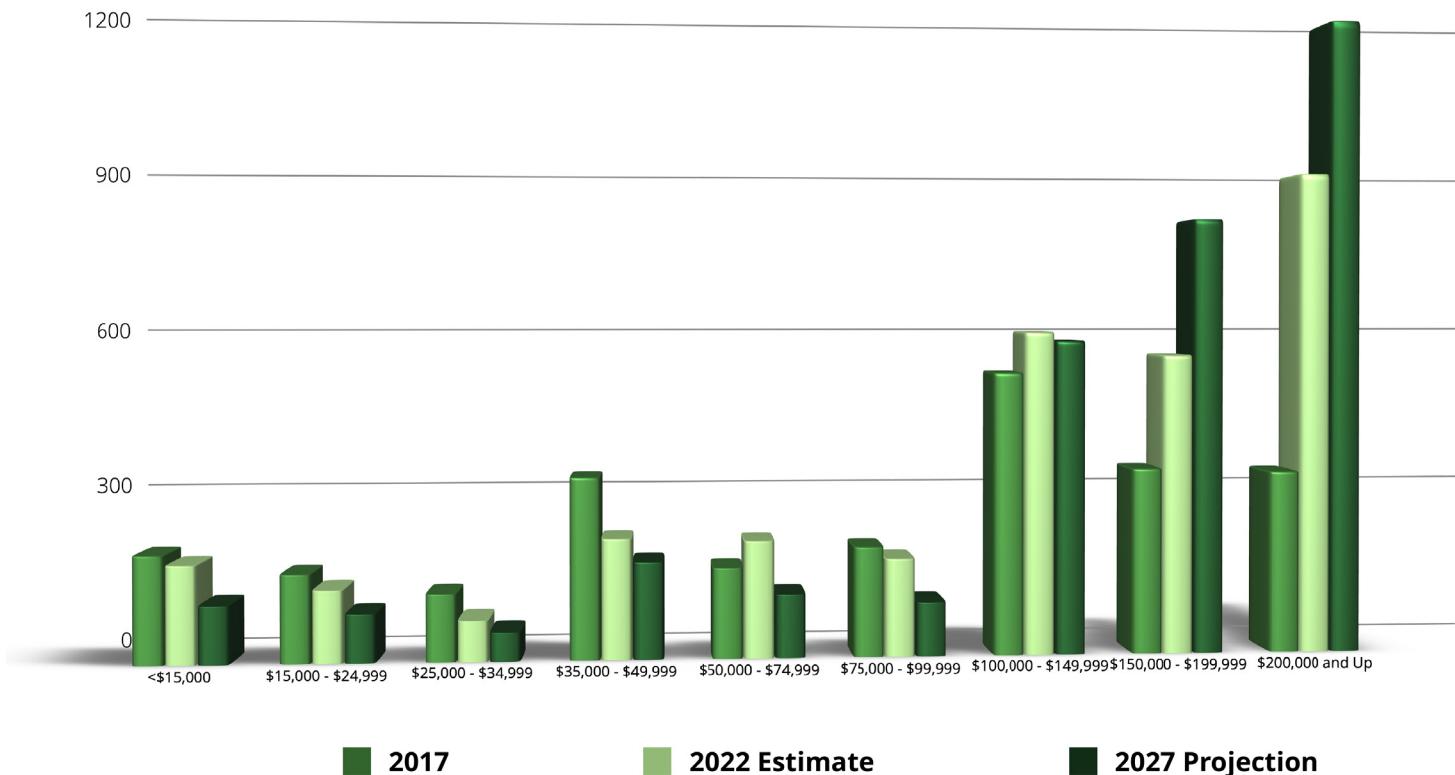
Make the community safe for pedestrians of all ages and abilities to traverse the community on foot or bicycle

# Existing Conditions

An assessment of existing conditions based on many stakeholder conversations and in-depth data analysis provide an up-to-date snapshot of North Bend. Key takeaways from the demographic analysis are shown below and the complete Economic Profile is included as an Appendix beginning on page 21.

## Key Data Points- Household Income Detail

Source: US Census, ESRI 2022

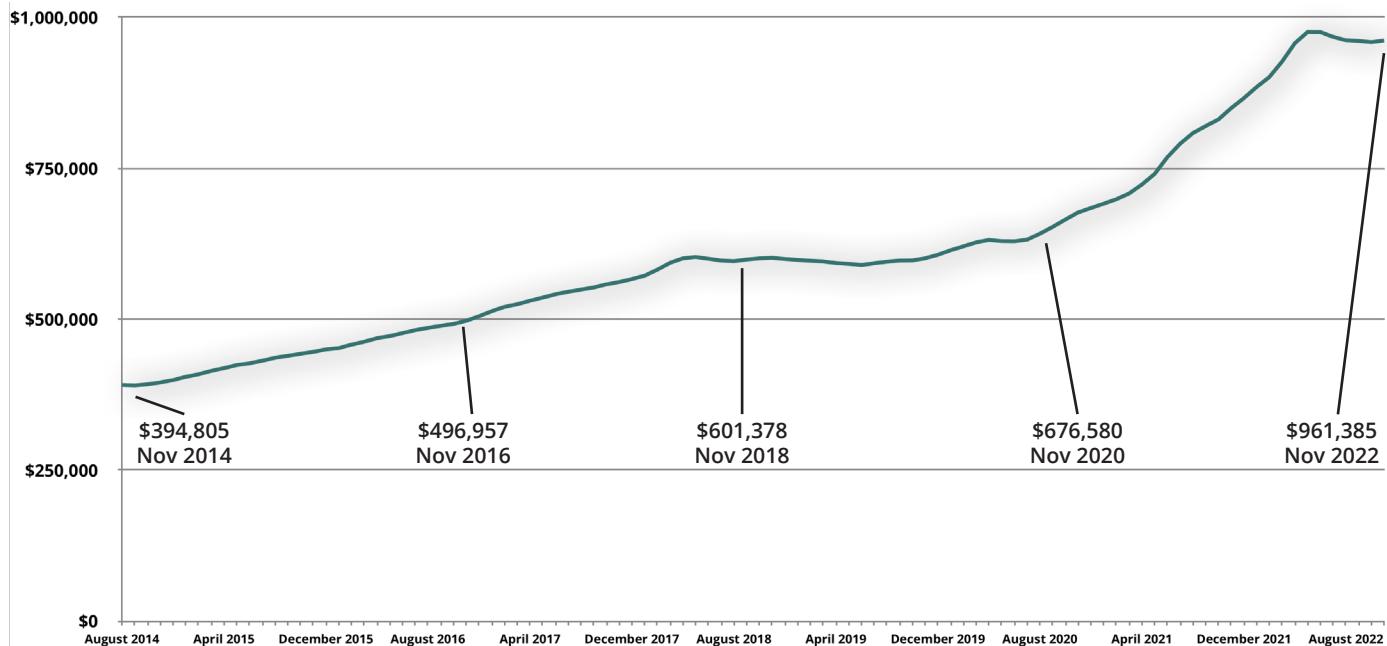


The graph (above) and chart (right) show the current estimates and future projections for the breakdown in household income among all households in the city. There are a significant number of households above \$100,000, and those above \$150,000 are expected to grow by 2027. However, the households below \$100,000 are expected to shrink, meaning the city's more affluent residents will continue to grow in affluence and those who are struggling financially will do the opposite.

	2017	2022 Estimate	2027 Projection
<\$15,000	198	180	107
\$15,000 - \$24,999	162	133	89
\$25,000 - \$34,999	124	75	53
\$35,000 - \$49,999	334	222	179
\$50,000 - \$74,999	167	216	117
\$75,000 - \$99,999	203	181	100
\$100,000 - \$149,999	523	598	582
\$150,000 - \$199,999	344	555	808
\$200,000 and Up	337	893	1,179

# Existing Conditions

## Key Data Points- Average Home Sale Price

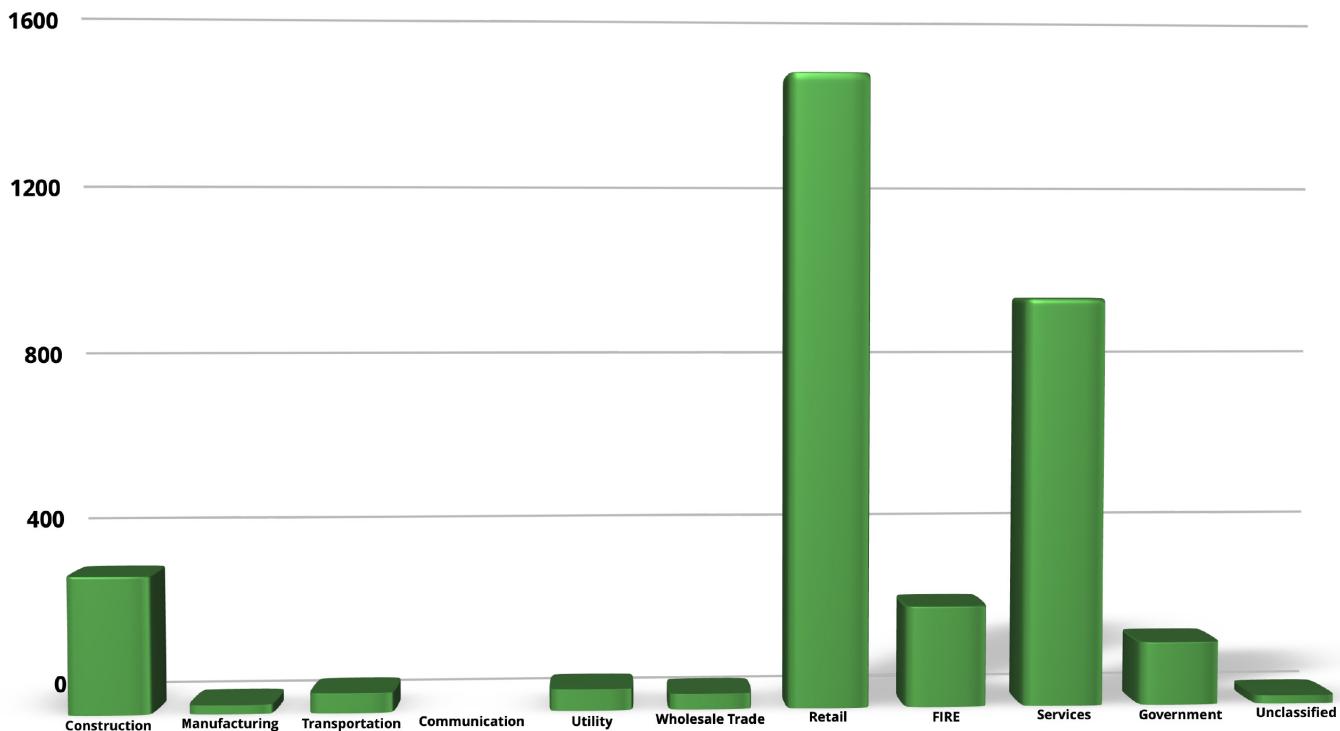


Source: ZILLOW, 2022

The graph (above) shows the increase in average home sales in the city from August 2014 through November of 2022. During the last eight years, home prices have more than doubled. While North Bend is hardly alone in the Puget Sound region facing this challenge, it is still a formidable challenge to those seeking to remain in the community or move to it. This sales data combined with Household Income trends shows that home ownership, the single biggest financial asset most Americans have, is out of reach for a significant portion of the community.

# Existing Conditions

## Key Data Points- Employment in North Bend



Source: ESRI 2022

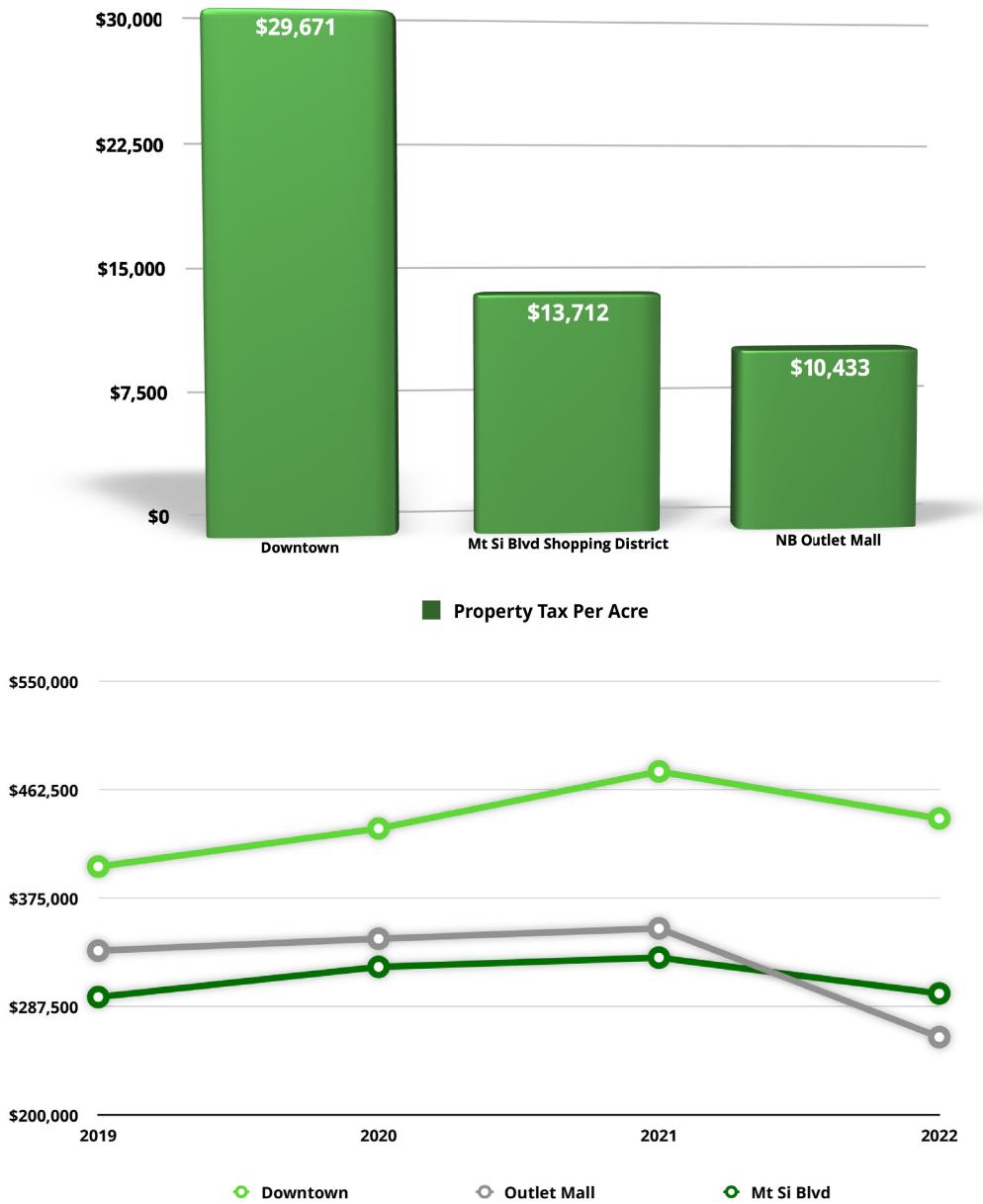
As the chart (right) and graph (above) demonstrate, the diversity of jobs available in the city are not as balanced as those jobs held by residents. The city's local economy has a heavy reliance on retail and service-based businesses and reflect that in employment data. These two sectors often have lower paying wages and, combined with increasing housing costs, likely contribute to why workers live outside the city and commute in.

A diversity of employment opportunities as well as a diversity in housing opportunities would bring more balance to the community.

Business Type	Employees
Agriculture & Mining	22
Construction	313
Manufacturing	21
Transportation	45
Communication	0
Utility	49
Wholesale Trade	36
Retail Trade Summary	1,445
Finance, Insurance, Real Estate Summary	232
Services Summary	935
Government	145
Unclassified Establishments	19

# Existing Conditions

## Key Data Points- Business District Property Tax Revenue Comparison



Source: City of North Bend, WA, 2021, 2022

The graphs above shows a comparison of the three major commercial districts in the city. The top graph show a comparison of the three districts based on property tax revenue per acre in 2022, while the graph below shows the total property tax revenue from the three districts over the past four years. Both of these graphs demonstrate how much more productive the Downtown district is in terms of property tax revenue.

# Existing Conditions

## Key Data Points- Vacancy Rates

Vacancy rates for retail, office, industrial space and multi-family residential units are below national averages suggesting a need for additional development of these uses. A breakdown of these sectors is below:

### Retail

Retail vacancy rate fluctuated from 5% to 3% in the last 5 years, and as of November 2022, it stood at 3.9%. The US average for the same period was 4.3%. Despite some notable vacancies in the Outlet Mall and downtown, a 4% vacancy rate is considered almost fully occupied.

### Office

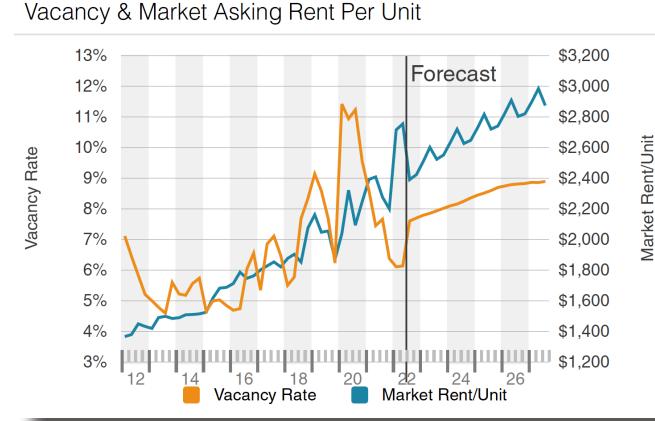
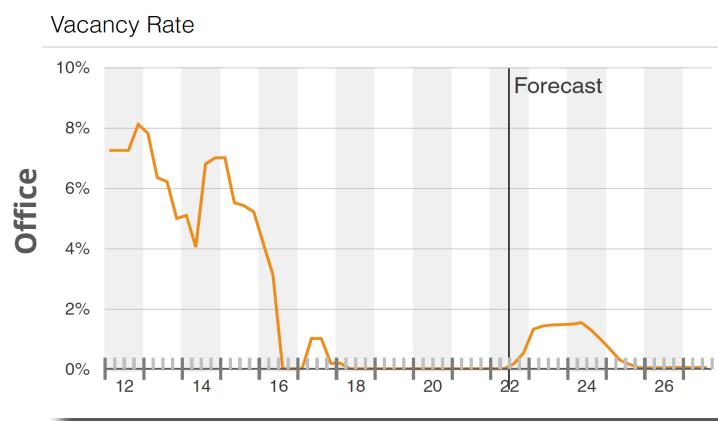
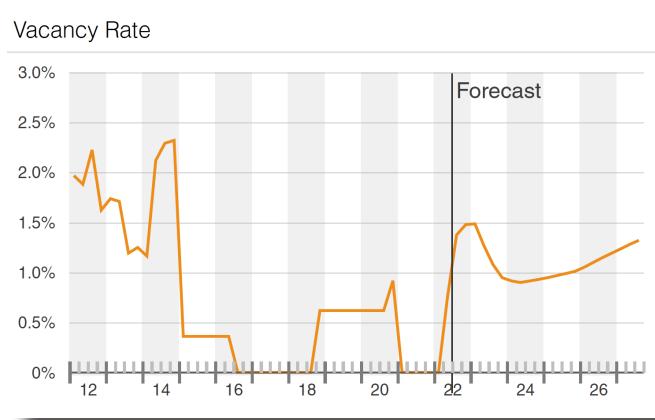
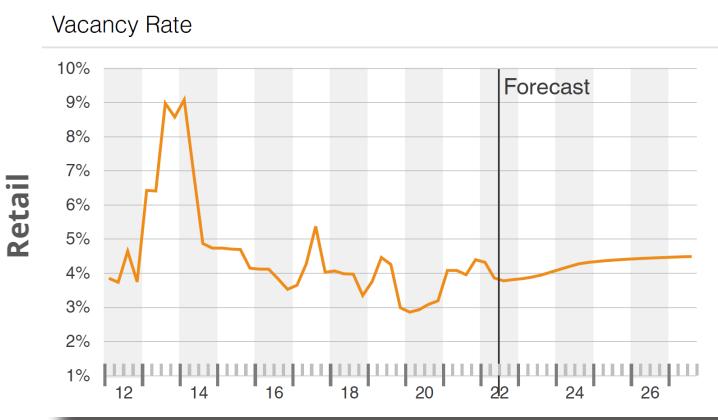
North Bend's Office sector is robust, with a 0% vacancy rate since 2016, and all available space occupied as of November 2022. Although limited, there is a market to support more office real estate in the city, as the US average for Office vacancy during the same period was 12.4%.

### Industrial

Arguably as strong of a market as Office, the city's Industrial space has a very strong ten year history. It's "high" point was 2.3% and is currently near 1%. There is opportunity for additional Industrial space, preferably for businesses that dovetail with the community's values.

### Multi-Family

The city's Multi-Family sector has high demand but also the highest vacancy rate due to expensive housing production and unaffordability for potential residents. Rent prices have doubled in the last decade and are predicted to rise by 21% in the next five years, as shown in the graph (bottom right).



# Primary Challenges

This analysis of existing conditions, along with comments from stakeholders, reveal the following primary challenges that point toward areas of need and opportunity as North Bend proceeds through its existing evolution of growth.

Primary Challenges
1. A lack of housing options stemming from dramatically rising home prices and rents is a growing challenge for much of the city's workforce and longer-term residents
2. Development is perceived as burdensome and expensive by small-scale developers and business owners looking to develop or expand in North Bend
3. Lack of basic infrastructure is limiting economic potential of commercial and industrial zoned properties
4. Lack of non-motorized connectivity, and general awareness between commercial areas and major destinations, is reducing "secondary stops", meaning less time and money spent in North Bend
5. Underutilized properties and abundance of auto-oriented uses in downtown reduce walkability, vibrancy, and sense of place
6. Current utilization of space at Trucktown (Exit 34) leads to unsafe semi-truck parking and is limiting development potential at the eastern gateway to North Bend
7. Vacancies and abundant surface parking at the outlet mall are limiting revenue and have significant redevelopment potential
8. Lack of proactive community marketing may be limiting North Bend as a place to locate a business
9. Shortage of celebrated public gathering spaces and organizational capacity of downtown business community is limiting vibrancy of historic business district
10. Absence of a full-service hotel limits overnight visitors and tourism-related revenue
11. Limited inventory of commercial buildings is reducing opportunities for businesses and leading to significant North Bend resident spending that is "leaking" to other communities

# Economic Development Objectives

Based on findings from the data analysis and the primary challenges identified above, this Action Plan identifies the following objectives that align with North Bend's economic development goals. Each objective includes a set of potential metrics the City may baseline and track to help measure success and monitor trends.

Objective	Possible Metrics
<b>A. Strengthen &amp; Diversify Economic Base</b> Increase the number and type of businesses located within the city to better match demand for services <ul style="list-style-type: none"> <li>- Increase information and resources to facilitate (re) development of priority vacant or underused properties within existing infrastructure footprint</li> <li>- Extend, acquire, or upgrade infrastructure needed to develop vacant or underutilized parcels in appropriately zoned areas</li> </ul>	<ul style="list-style-type: none"> <li>• Jobs/housing ratio</li> <li>• Commercial acres readily developable</li> <li>• Property tax revenue by geographic area or by zone type</li> <li>• B&amp;O and/or sales tax receipts</li> <li>• Retail/commercial vacancy rate</li> <li>• Number of active business licenses</li> </ul>
<b>B. Increase &amp; Diversify Housing</b> Increase the number and typology of housing units to provide housing opportunities for an economically diverse population <ul style="list-style-type: none"> <li>- Consider recommendations included in the Housing Needs Action Plan (expected completion: June 2023)</li> <li>- Develop partnerships that will provide funding for workforce housing</li> </ul>	<ul style="list-style-type: none"> <li>• Number of residential units that are not detached, single family homes</li> <li>• Number of residential units offered below market rate or with max income restrictions</li> </ul>
<b>C. Invest in Quality of Life Infrastructure and Activities</b> Increase community connectivity and vibrancy to foster a strong sense of place and build upon North Bend's brand as a highly livable town and outdoor recreation destination <ul style="list-style-type: none"> <li>- Improve physical connections throughout the city, including non-motorized mobility options</li> <li>- Celebrate and expand upon cultural and historic resources through events, marketing, and art</li> </ul>	<ul style="list-style-type: none"> <li>• Miles of sidewalk and pathways</li> <li>• Number of attractions or events</li> </ul>
<b>D. Make North Bend a Desirable Place to Do Business</b> Pursue actions that entice and support businesses and build upon North Bend's brand and identity <ul style="list-style-type: none"> <li>- Improve development services for prospective businesses &amp; small-scale developers, especially those within the recreation, technology, and medical/health care economies</li> <li>- Improve resources for, and communication with, existing businesses owners that will strengthen their operations</li> </ul>	<ul style="list-style-type: none"> <li>• Time to achieve building and occupancy permits</li> <li>• Number of sector-specific incentives provided</li> <li>• Number of existing businesses receiving support services</li> </ul>

# Actions to Address Challenges

This section outlines strategies the City plans to pursue that 1) respond to one or more of the Primary Challenges outlined above and 2) align with the City's Economic Development Goals and Objectives. Each Strategy is followed by a brief description, the City's role, key partners, priority rating, estimated timeline, and summary of resource needs.

Strategies are ordered roughly based on priority, though all strategies listed are considered important. The tier system ranks the respective strategies based on the level of complexity required for their execution. The tier rating and timeline may change pending new information, unforeseen opportunities, availability of funding, and coordination with implementation partners. Strategies will be further refined and incorporated into workplans based on further research and conversations with key stakeholders.

Tier 1	Tier 2	Tier 3
Projects in this tier will likely require significant action by the City Council as well as coordination with other entities.	Projects in this tier may need coordination with other entities, but can be executed at the administration level.	Projects in this tier can be executed by front-line staff along with administration support.

## Action I. Create a Development Guide and Dedicated Support Services for Small Businesses and Developers to Encourage Targeted Development

To encourage incremental development, the creation of an easy-to-understand guide and designated staff support will help facilitate the development review process for smaller developers and businesses.

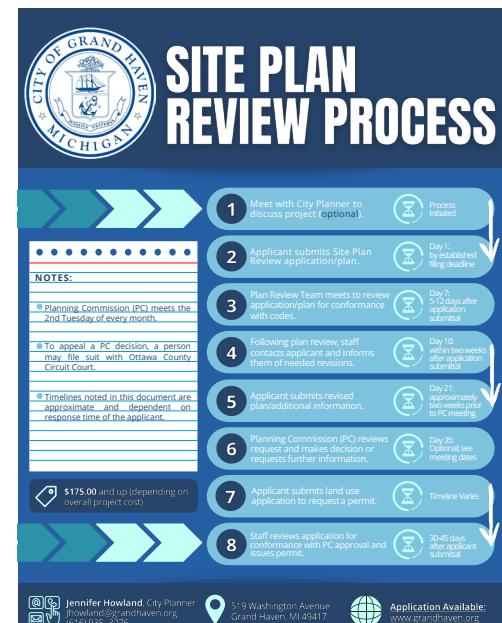
**City Role:** Lead

**Key Partner(s):** Local Developers

**Tier:** 2

**Timeline:** 1-2 years

**Resources:** Low-cost internal initiative



*Creating a process map that shows a simple outline of the steps needed would help small developers understand the development process the City uses.*

# Actions to Address Challenges

## Action II. Continue Addressing Critical Infrastructure Needs Including Water, Sewer, and Streets

Addressing critical infrastructure needs will encourage development that matches current zoning expectations within the Urban Growth Area. Three main areas of focus include:

- Continue pursuing the recently formed Utility Local Improvement District (ULID) and build out of sewer infrastructure in the Meadowbrook area west of downtown
- Ensuring appropriate water allocation to all commercial properties on East North Bend Way to mitigate the impact of Sallal Water's moratorium
- Continue pursuing funding and implementation strategies for improvements to North Bend Way identified in the concurrent North Bend Way Complete Streets Plan

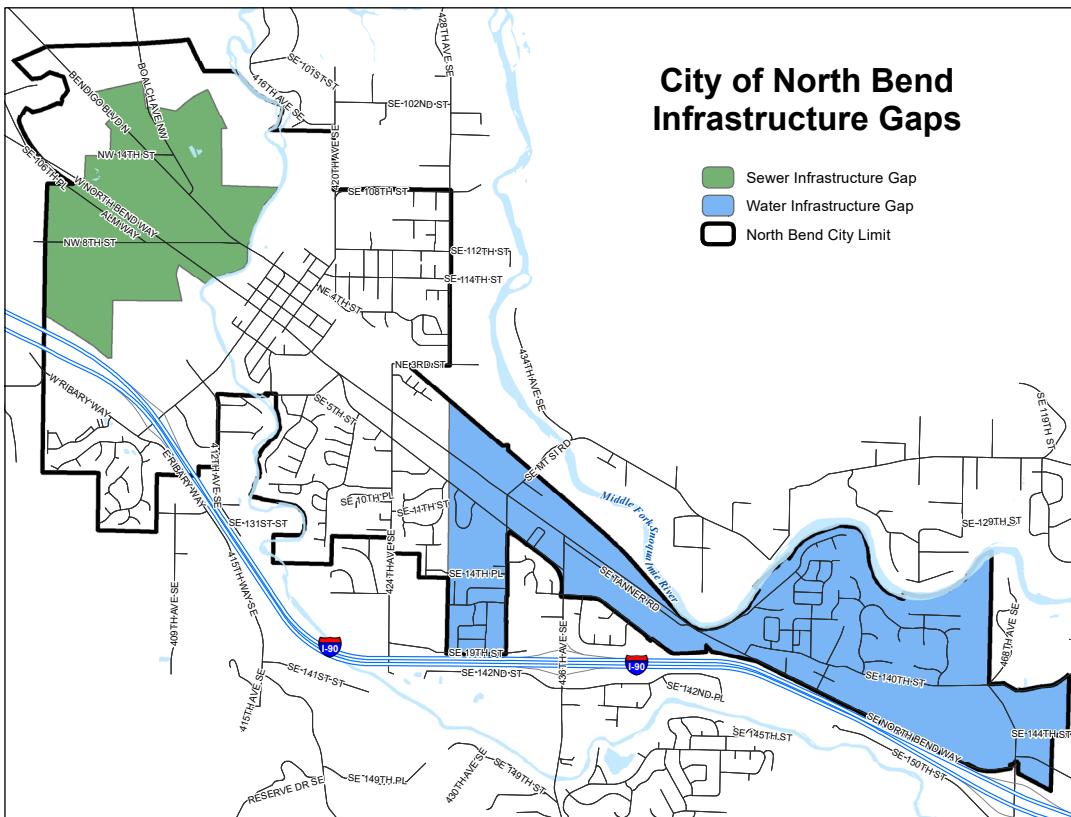
## City Role: Lead

**Key Partner(s):** Sallal Water Association

Tier: 1

Timeline: 2-10 years

**Resources:** Significant capital project; complex financing; design, engineering, and construction



# Actions to Address Challenges

## Action III. Partner With Public, Private, and Nonprofit Sectors to Assist in Solving Housing Challenges Related to Workforce and Affordability

Pursuing partnership and funding to create attainable and affordable housing opportunities in North Bend is vital to making sure those who work in the city can afford to live in the city. The City's concurrent Housing Action Plan and Needs Assessment (expected completion in mid-2023) will look to address this issue and create new housing options for all segments of the city.

**City Role:** Partner

**Key Partner(s):** State, County

**Tier:** 1

**Timeline:** Ongoing

**Resources:** TBD

## Action IV. Enhance Presence of Marketing Materials to Attract Prospective Businesses

Creating marketing materials will help "tell the story" of North Bend and attract targeted sectors such as light manufacturing, technology, incubator space, and/or health care. This may include sharing the available inventory of properties suitable for businesses, demographic trends, and retail leakage data through one-page summaries, robust marketing packets, or a targeted website.

**City Role:** Lead

**Key Partner(s):** TBD

**Tier:** 3

**Timeline:** 1-3 years

**Resources:** Relatively low; staff time

## Action V. Advocate for Improved Transit to Better Connect North Bend to the Region

Ensuring the availability of transit to and from North Bend to surrounding communities will help improve safe, affordable, and convenient mobility options for both residents and workers. The City should continue building partnerships with local, regional, and state agencies to improve transit convenience and connectivity.

**City Role:** Partner

**Key Partner(s):** Snoqualmie Valley Transportation, King County Metro; WDOT

**Tier:** 2

**Timeline:** Ongoing

**Resources:** Low cost; Staff time



*Existing transit options are limited for North Bend residents and employees. Further investment in reliable and convenient transit options will improve North Bend's connection to the region and increase access between homes and jobs.*

# Actions to Address Challenges

## Action VI. Inventory the Current Network of Sidewalks and Pathways and Identify Key Gaps

Walking and biking are key elements of increasing vitality and quality of life. An inventory of sidewalks, trails, and pathways throughout North Bend will allow for identification of key gaps that should be prioritized for design and construction funding.

**City Role:** Lead

**Key Partner(s):** Si View Metro Parks

**Tier:** 2

**Timeline:** 1-3 years

**Resources:** Mid cost; Some consultant support

## Action VII. Partner with Business and Nonprofit Community to Enhance Marketing Strategies to Attract Tourists and Outdoor Enthusiasts

Creating or supporting sustained marketing materials to showcase the city and its surrounding outdoor, historic, and cultural assets will attract more visitors and businesses to the community and encourage visitors to spend more time in North Bend.

**City Role:** Partner

**Key Partner(s):** SnoValley Chamber, North Bend Downtown Foundation

**Tier:** 3

**Timeline:** Ongoing

**Resources:** Relatively low cost; financial support for partners

## Action VIII. Partner with Developers and Property Owners to Complete Hotel at Outlet Mall and Consider Additional Hotel Sites to Encourage Longer Stays in North Bend

Working with key property owners and developers to bring full-service hotels to the community will further increase the community's ability to attract visitors to the city and increase support of local businesses. A developer has submitted plans for a hotel at the Outlet Mall and the project is currently under review by city staff.

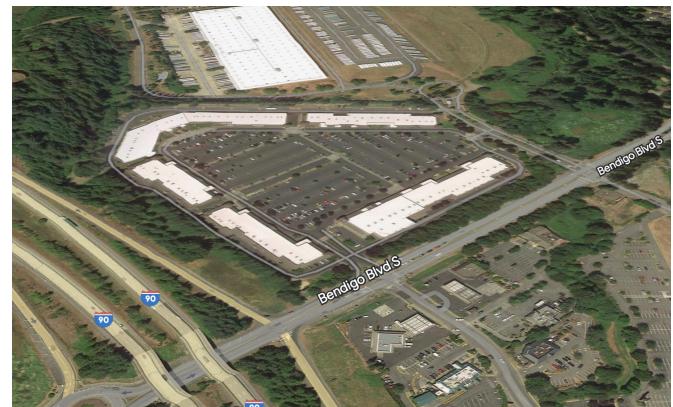
**City Role:** Partner

**Key Partner(s):** Hotel Developers, Simon Properties

**Tier:** 2

**Timeline:** 1-2 years

**Resources:** Low cost; staff time



*The Outlet Mall is a prime site for a new hotel.*

# Actions to Address Challenges

## Action IX. Develop and Market a Prioritized Inventory of Redevelopment Opportunities in the Downtown Core

Creating an inventory of vacant and underutilized parcels that are prime for redevelopment will help the city define priority locations for redevelopment and create additional commercial, office, or housing opportunities. The City may also consider additional incentives to accelerate desirable redevelopment process for targeted areas.

**City Role:** Lead

**Key Partner(s):** North Bend Downtown Foundation

**Tier:** 2

**Timeline:** 1-3 years

**Resources:** Mid cost; staff time, consultant support may be needed

## Action X. Convene a Team of Stakeholders and Create a Redevelopment Strategy for Trucktown and Surrounding Properties at Exit 34

Convening a team of private and public stakeholders will allow for a coordinated plan to improve the functionality of the truck stop and enhance the appearance of North Bend's eastern gateway and launch point into the Cascades.

**City Role:** Partner

**Key Partner(s):** Port of Seattle, WSDOT, Travel Centers of America, King County

**Tier:** 1

**Timeline:** 2-5 years

**Resources:** Mid cost; staff time; consultant support may be needed

## Action XI. Partner with Downtown Business Community to Identify and Pursue Projects and Programs Aimed at Enhancing Downtown as a Destination

Pursuing designation as a Main Street Community will bring added awareness to the city and its downtown and build organizational capacity to pursue programs that will increase economic vitality and sense of place in and around downtown.

**City Role:** Partner

**Key Partner(s):** North Bend Downtown Foundation; SnoValley Chamber

**Tier:** 2

**Timeline:** 1-3 years

**Resources:** Mid cost; financial support of partners may be needed



*The area around Trucktown is in need of a re-envisioning process to improve functionality of the area and prevent congestion along the freeway.*

# Actions to Address Challenges

**Action XII. Partner with Property Owner(s) to Develop a Master Plan for the Outlet Mall**  
Coordinating with the property owners of the outlet mall to pursue a shared vision will facilitate increased utilization of the land, enhance economic activity, and improve connectivity between the property and the remainder of the city.

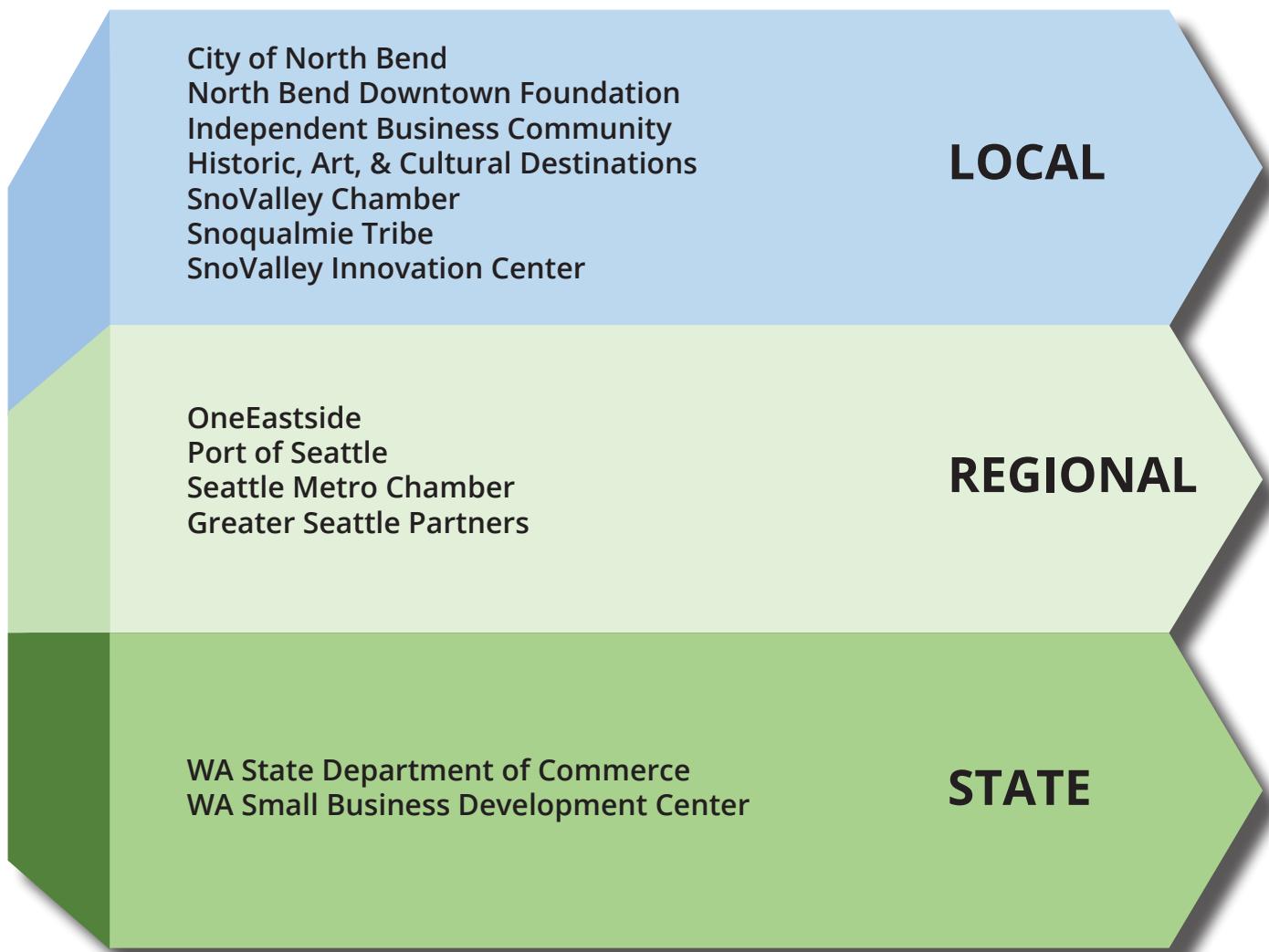
**City Role:** Partner  
**Key Partner(s):** Simon Properties  
**Tier:** 2  
**Timeline:** 2-5 years  
**Resources:** Mid cost; staff time; consultant support



*The Outlet Mall, built in 1990, and surrounding area needs a Master Plan in order to explore options to increase utilization of the property.*

# Economic Development Partners

The creation of a successful economic development ecosystem in North Bend requires the involvement, commitment, and coordination of multiple entities that span local, regional, and state levels. While not an exhaustive list, the chart below outlines many of the key partners that help support North Bend's economic development ecosystem.



# Economic Development Partners

At the local level, there is near constant communication and coordination to move initiatives forward. This is particularly true between the City, North Bend Downtown Foundation, and SnoValley Chamber of Commerce. While there is always some level of overlap between activities, the chart below offers an overview of the primary roles and strengths of each organization to help facilitate implementation of the recommended strategies and actions.



# Appendix

# Economic Profile

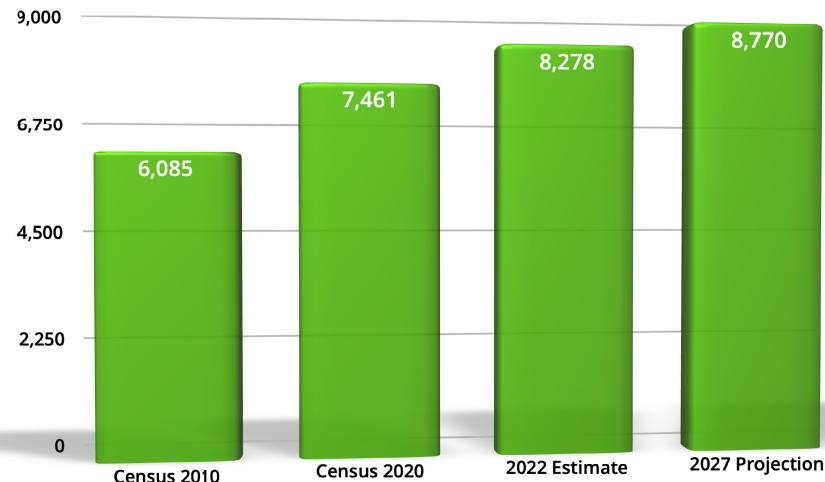
## Key Data Points- Population and Household Trends

North Bend's population and households have grown steadily since the 2010 Census where the City's population was 6,085 people. In the 2020 Census, North Bend registered 7,461 residents, an average increase of 2.2% a year over the previous Census. By 2027, this number is expected to be 8,770 residents, reflecting an average annual increase of 2.5% over 2020 Census numbers.

The number of Households in the city shows a similar trend, growing an average of 2% per year between 2010 and 2020. By 2027, Household growth should average about 2.5% a year over 2020 Census numbers. This follows much of the same trends for King County and the Puget Sound region.

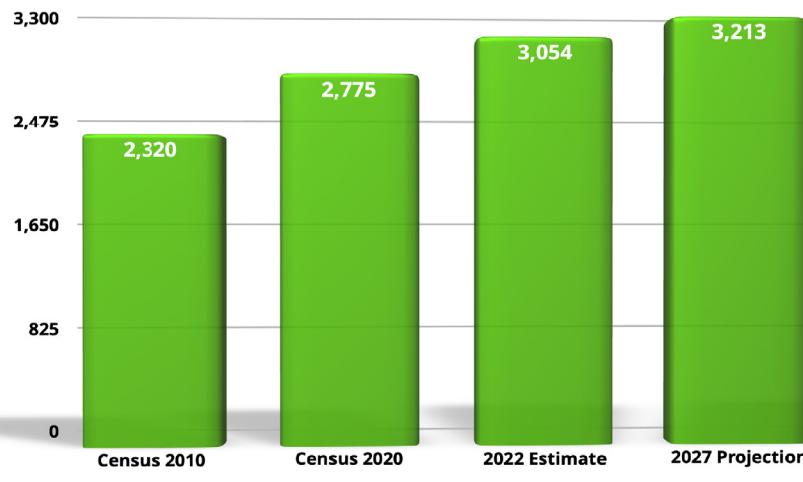
As a designated Urban Growth Area for King County, this trend should continue with development focused in the city and its neighboring communities. This growth provides both economic opportunity for residents and local businesses, but also offers challenges to the City as its infrastructure will need to continue accommodate future growth.

### Population 2010-2027



Source: ESRI forecasts for 2022 and 2027

### Households 2010-2027



Source: ESRI forecasts for 2022 and 2027

# Economic Profile

## Key Data Points- Household Income

Household and Per Capita income are expected to continue to rise for city residents.

Average Household Income is the total amount of income for all residents divided by the number of households. Median Household Income removes large outliers and is often regarded as a more accurate reflection of income. Per Capita income is the total amount of income divided by the number of residents

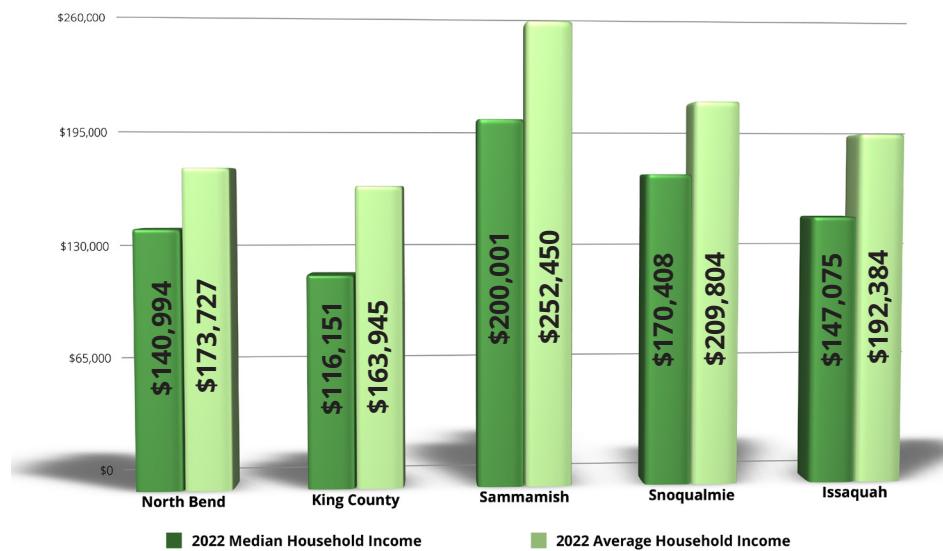
### Household Income 2017 vs 2022 vs 2027



Source: US Census, ESRI forecasts for 2022 and 2027

Comparing North Bend's Household Incomes with that of neighboring communities and the King County average, the City has respectable Median and Average Household Incomes. It is below the Median and Averages of Sammamish, Snoqualmie, and Issaquah, but above the average for the County.

### Household Income Comparisons

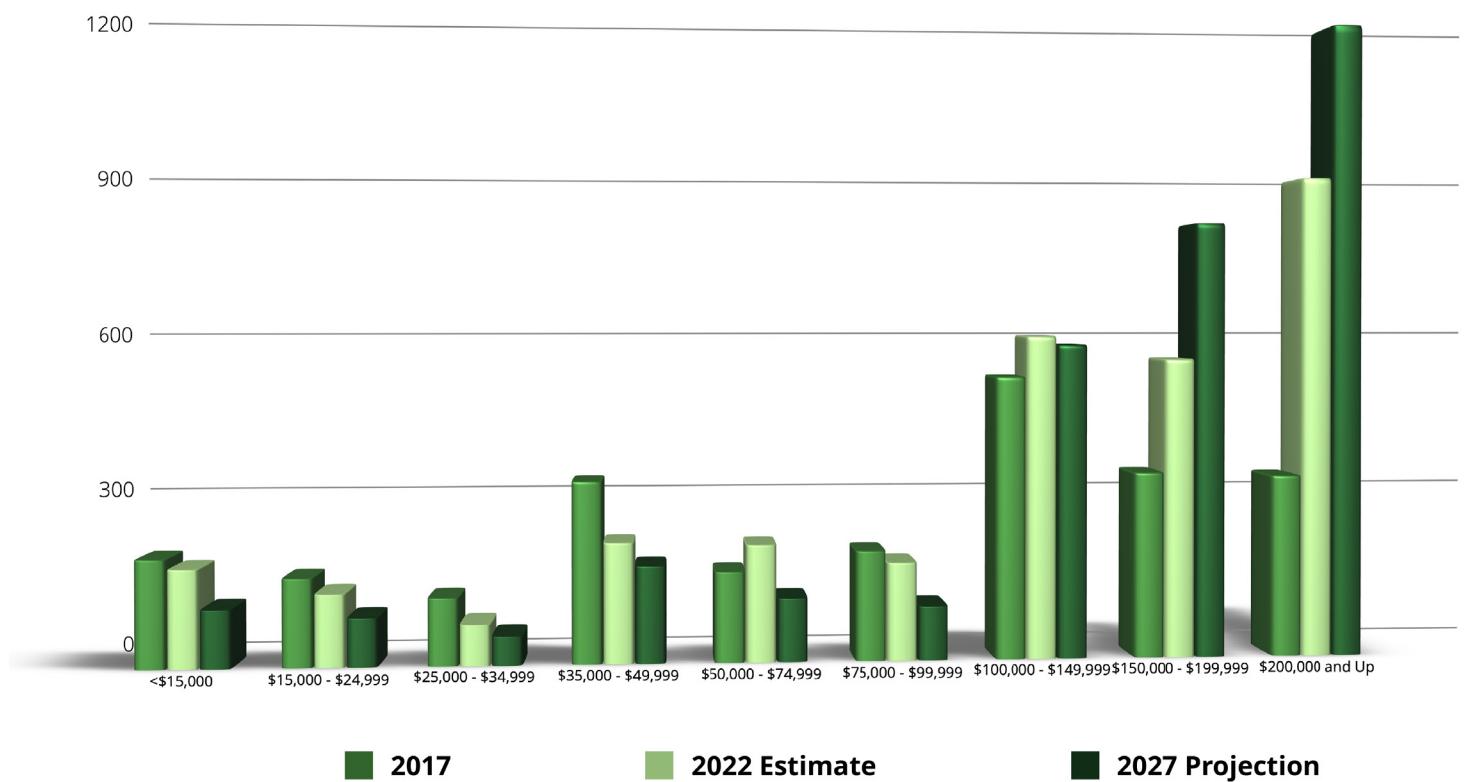


Source: ESRI forecasts for 2022 and 2027

# Economic Profile

## Key Data Points- Household Income Detail

Source: US Census, ESRI 2022

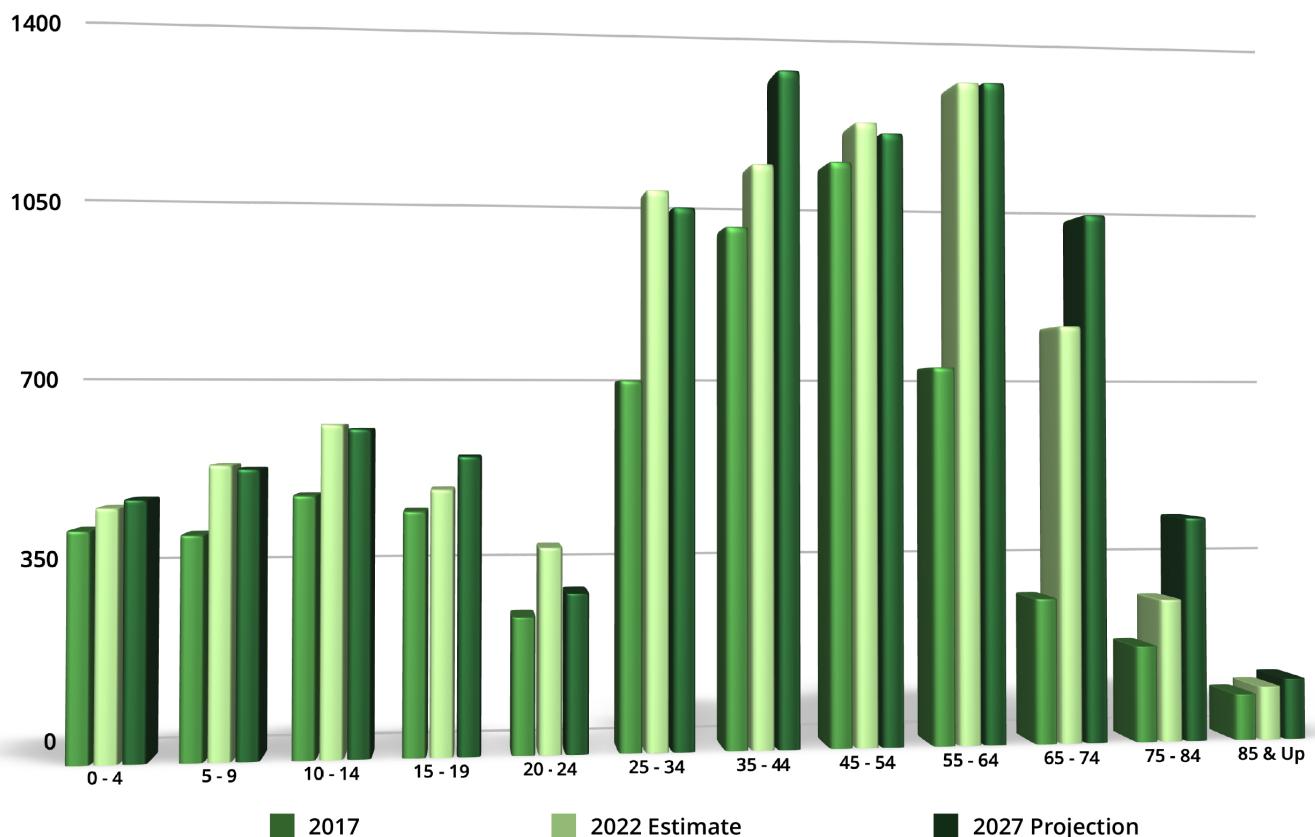


The graph (above) and chart (right) show the current estimates and future projections for the breakdown in household income among all households in the city. There are a significant number of households above \$100,000, and those above \$150,000 are expected to grow by 2027. However, the households below \$100,000 are expected to shrink, meaning the city's more affluent residents will continue to grow in affluence and those who are struggling financially will do the opposite.

	2017	2022 Estimate	2027 Projection
<\$15,000	198	180	107
\$15,000 - \$24,999	162	133	89
\$25,000 - \$34,999	124	75	53
\$35,000 - \$49,999	334	222	179
\$50,000 - \$74,999	167	216	117
\$75,000 - \$99,999	203	181	100
\$100,000 - \$149,999	523	598	582
\$150,000 - \$199,999	344	555	808
\$200,000 and Up	337	893	1,179

# Economic Profile

## Key Data Points- Age Trends



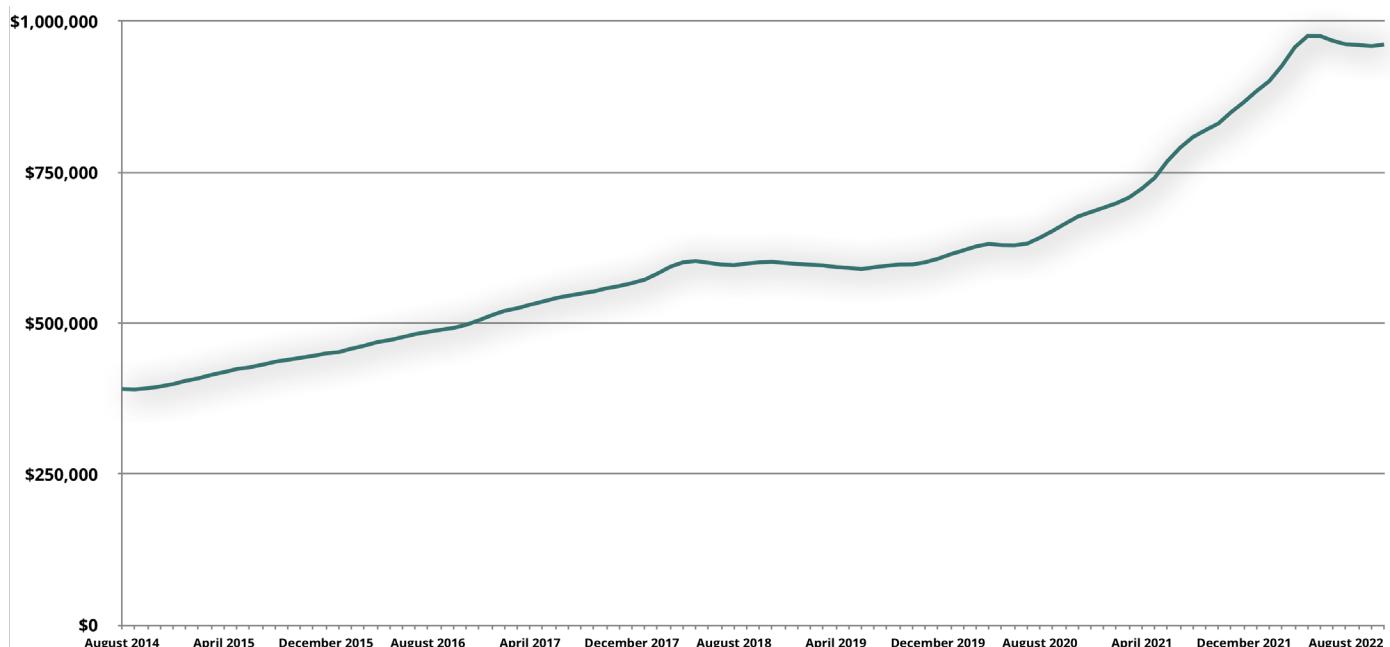
Source: US Census, ESRI forecasts for 2022 and 2027

Population by Age	2017	2022 Estimate	2027 Projection
0 - 4	421	462	477
5 - 9	412	539	532
10 - 14	483	613	605
15 - 19	453	493	554
20 - 24	256	384	299
25 - 34	695	1,052	1,020
35 - 44	985	1,104	1,284
45 - 54	1,111	1,187	1,167
55 - 64	721	1,269	1,269
65 - 74	278	801	1,016
75 - 84	184	273	431
85 & Up	88	102	117

The graph (above) and chart (left) show 2017 estimates, 2022 estimates, and future projections for the breakdown in age of the population in the city. Most age groups are expected to either remain relatively steady or increase with the exception of two notable categories: 20-24 year olds and 25-34 year olds. These two age groups are significant as they qualify as "young professionals." While not at an alarming rate, it is still important to note.

# Economic Profile

## Key Data Points- Average Home Sale Price



Source: ZILLOW, 2022

The graph (above) shows the increase in average home sales in the city from August 2014 through November of 2022. During the last eight years, home prices have nearly doubled. While North Bend is hardly alone in the Puget Sound region facing this challenge, it is still a formidable challenge to those seeking to remain in the community or move to it. This sales data combined with Household Income trends shows that home ownership, the single biggest financial asset most Americans have, is out of reach for a significant portion of the community.

# Economic Profile

## Key Data Points- Pre-Covid Commute Patterns

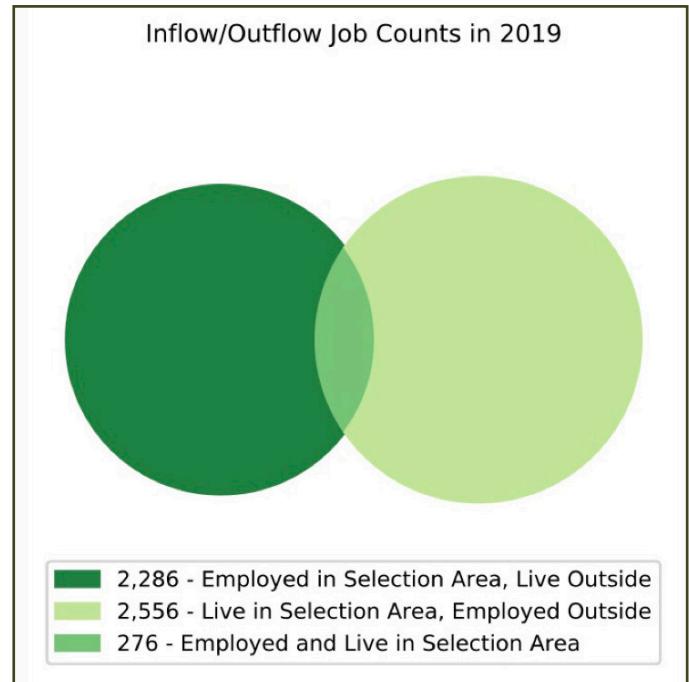
The Covid Pandemic had an incredible impact on the lives of every American and saw a seismic shift in how companies conducted their business. In a matter of weeks, millions of jobs across the United States, and thousands in the metro Seattle region, went “work from home” for most of their corporate and non-public facing (retail or service-based) positions. Most major employers in the region, including Amazon, Boeing, Microsoft, T-Mobile, Nordstrom, and Starbucks have continued to allow many of their corporate employees to at least work part-time from home on a hybrid basis, needing to go into their office location a few times a week. Of the major employers, the most notable exception is Costco, which is requiring its employees to return to the office full-time.

U.S. Census estimates on commute patterns lag significantly from real-time, with the most recent data coming from 2019. Furthermore, prior to 2020, the hybrid office-work from home job was not common and not reflected in commute patterns as commutes were typically five days a week. It is unclear how the Census will reflect this new job dynamic in future reports.

The existing pre-pandemic commute patterns though do reveal the huge inflow/outflow of workers (by percentage) demonstrating the 2,832 employed residents in the city, only 276 lived and worked inside the city, compared to the 2,556 who lived in the city and commuted elsewhere.

This new, and increasingly more common, hybrid approach for employees presents opportunity for North Bend. As a community that has more recently been viewed as a “bedroom” community, it now has the opportunity to be a premiere “work from home” destination.

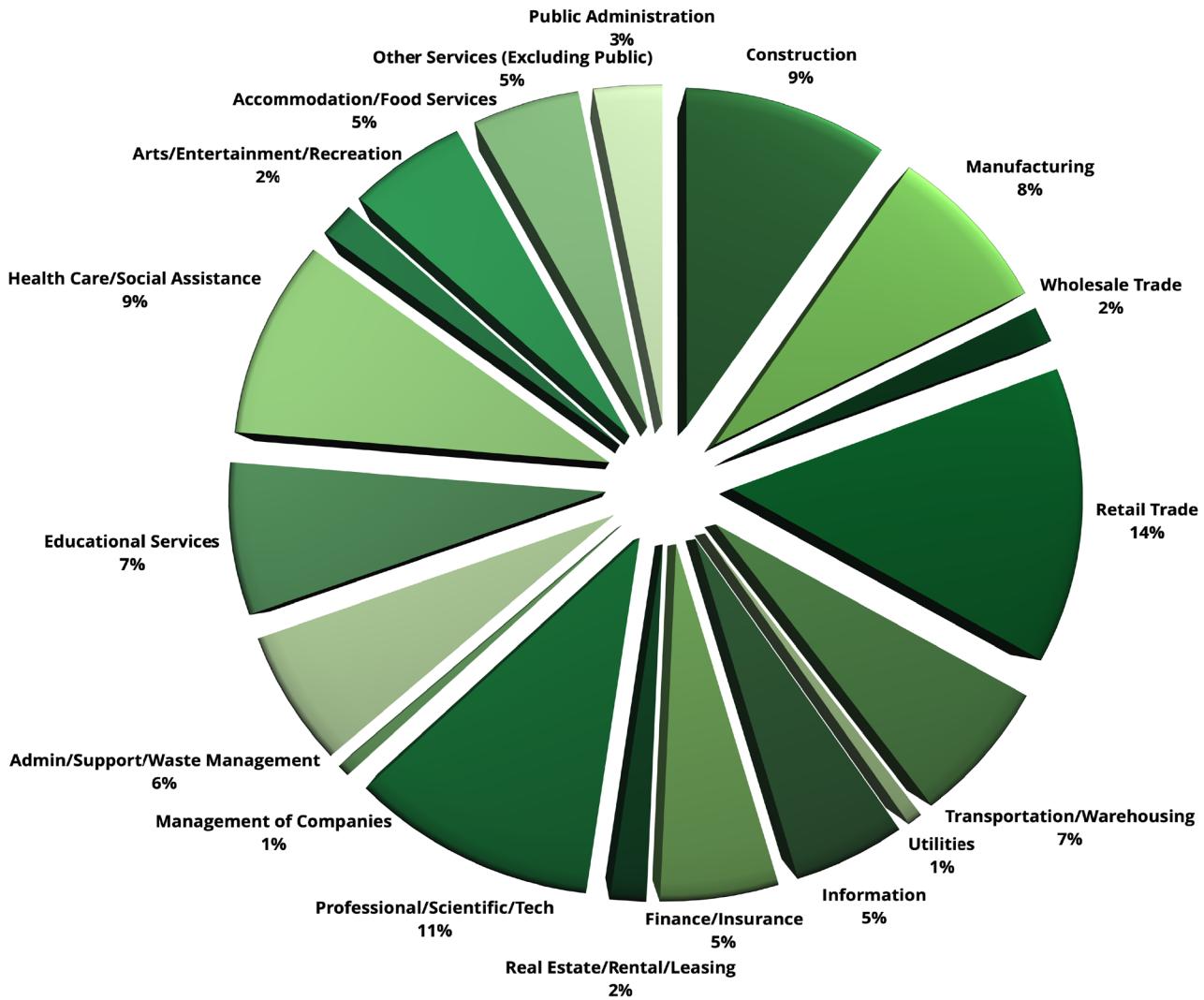
Furthermore, commute data shows of the 2,562 jobs located inside the city, 2,286 of those employees lived outside the city limits. This data suggests that housing has become unaffordable or unattainable for the majority of the people who work in North Bend on a daily basis.



Source: U.S. Census Bureau, 2019

# Economic Profile

## Key Data Points- Resident Employment Sectors



Source: ESRI 2022

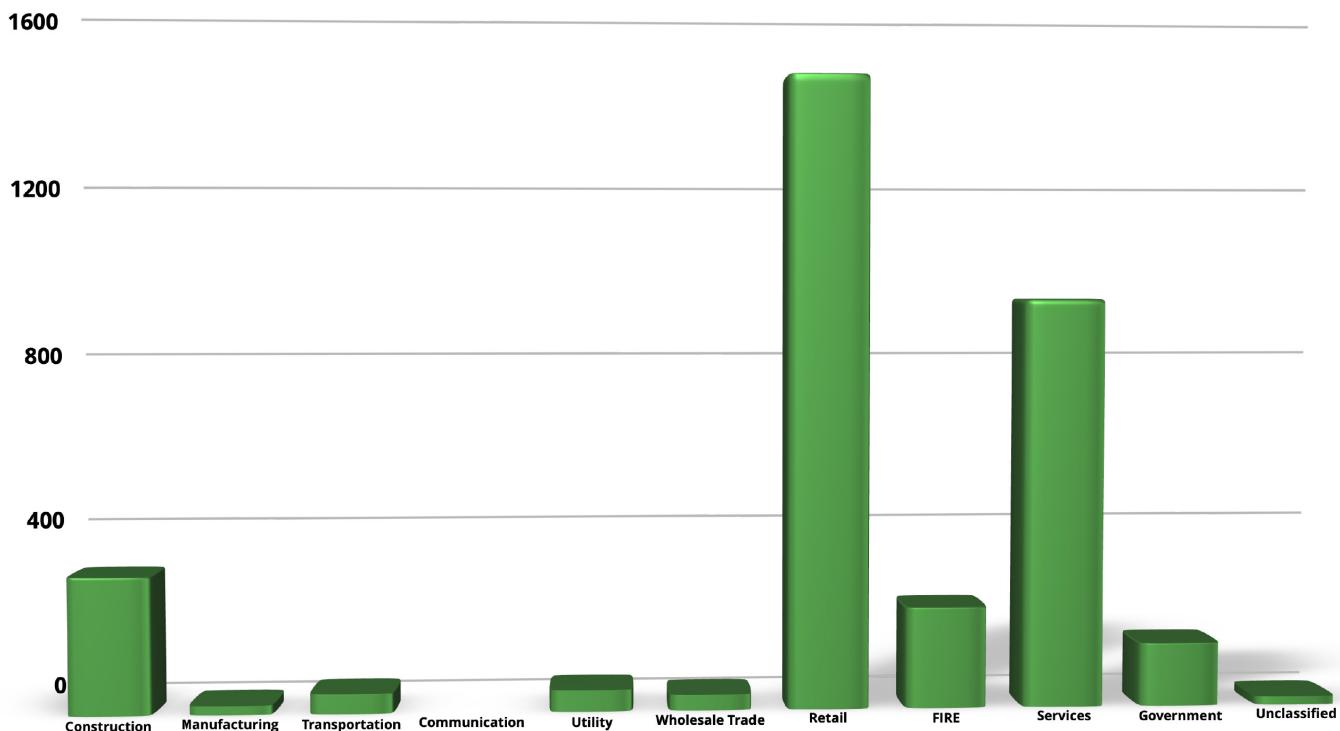
The pie chart (above) shows the breakdown of the various sectors of employment where city residents work. As pre-pandemic commute patterns showed earlier, approximately 90% of residents work outside the city limits. The sectors shown above demonstrate a very balanced employment base for residents. This means there is a significant amount of resilience for the community. Should one sector experience significant disruption, the impact among families, neighborhoods, and local businesses would not be as great as if employment were

concentrated in a particular sector, like mining or manufacturing for example, both have had major upheavals in the latter half of the last century.

As subsequent data will show, the base of jobs within the city are not as diversified and present a separate set of challenges.

# Economic Profile

## Key Data Points- Employment in North Bend



Source: ESRI 2022

As the chart (right) and graph (above) demonstrate, the diversity of jobs available in the city are not as balanced as those jobs held by residents. The city's local economy has a heavy reliance on retail and service-based businesses and reflect that in employment data. These two sectors often have lower paying wages and, combined with increasing housing costs, likely contribute to why workers live outside the city and commute in.

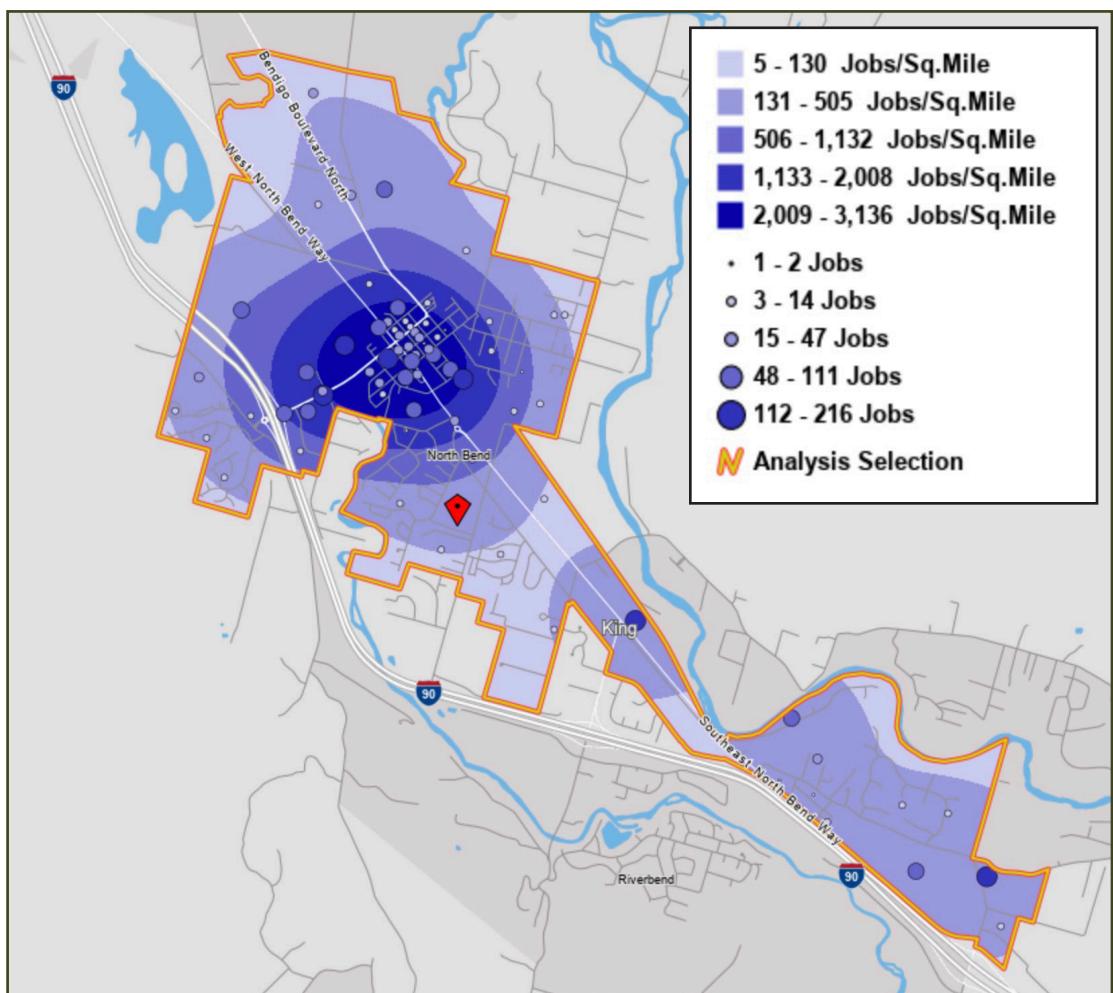
A diversity of employment opportunities as well as a diversity in housing opportunities would bring more balance to the community.

Business Type	Employees
Agriculture & Mining	22
Construction	313
Manufacturing	21
Transportation	45
Communication	0
Utility	49
Wholesale Trade	36
Retail Trade Summary	1,445
Finance, Insurance, Real Estate Summary	232
Services Summary	935
Government	145
Unclassified Establishments	19

# Economic Profile

## Key Data Points- North Bend Employment Density

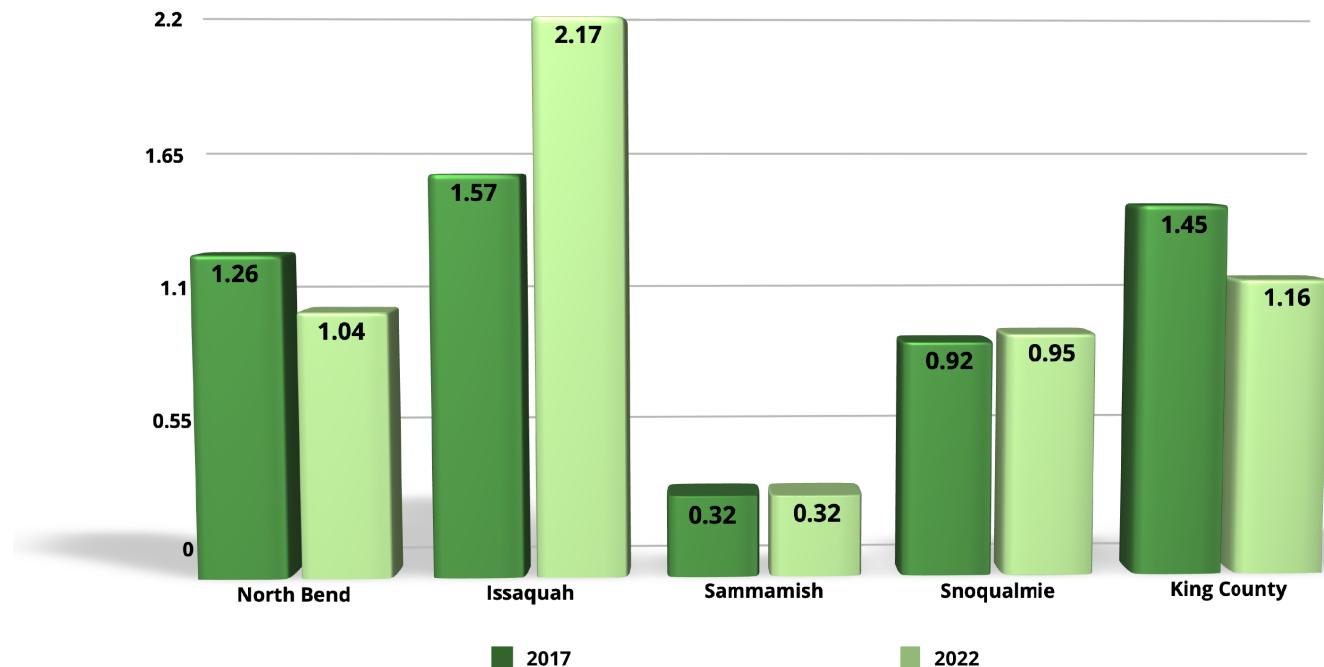
The graph (below) represents the density of jobs in North Bend. This graph, using shades of purple, shows the number of jobs per square mile within the city, with the deepest color of purple being the most dense. Downtown, likely due to its high physical density and high number of businesses, shows as the most dense place in the city for jobs. This density also follows Bendingo Boulevard to I-90. Some moderate density also occurs to the west into the city's more industrial areas and into Trucktown.



Source: U.S. Census Bureau, 2019

# Economic Profile

## Key Data Points- Jobs to Housing Ratio Change & Comparison



Source: Washington OFM, 2022, ESRI 2022

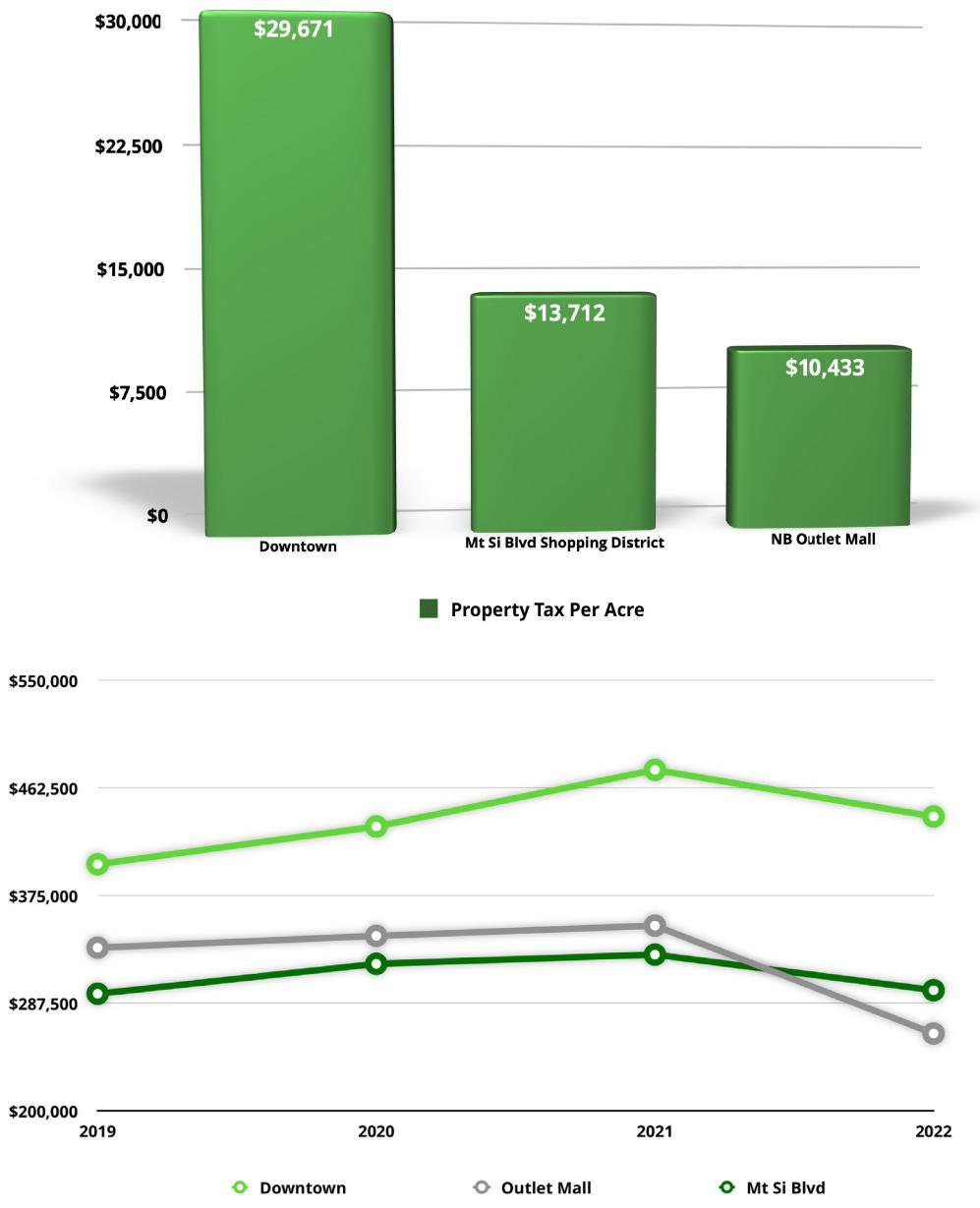
Jobs to Housing Ratio is a common measure to indicate whether or not a community has enough housing to meet the demand created by the number of jobs in the area. The chart (above) shows the overall Jobs to Housing Ratio for North Bend, Issaquah, Sammamish, Snoqualmie, and King County.

North Bend has made good progress over the last five years, lowering its ratio from 1.26 to 1.04. Other neighboring communities, with the notable exception of Issaquah, have also either relatively maintained or improved their ratio as well. Conversely, Issaquah's Jobs to Housing Ratio has risen significantly. Since none of the municipalities exist in a vacuum, this dramatic increase is also felt with housing pressure in neighboring communities, such as North Bend.

It is important to note when reviewing the Jobs to Housing Ratio, this measurement does not take into account wages of the jobs nor the affordability of the housing units in relation to those jobs. There is an assumption of appropriateness of the housing units compared to jobs, but as North Bend's pre-pandemic commute patterns have shown earlier in this report, 90% of the employed residents of the city don't work within the city and 89% of those who work in the city don't reside within its borders. The employed residents now working from home help alleviate some of this stark number, but it still shows the growing problem of a disconnect of those who work in North Bend cannot afford to live in North Bend.

# Economic Profile

## Key Data Points- Business District Tax Revenue Comparison



Source: City of North Bend, WA, 2021, 2022

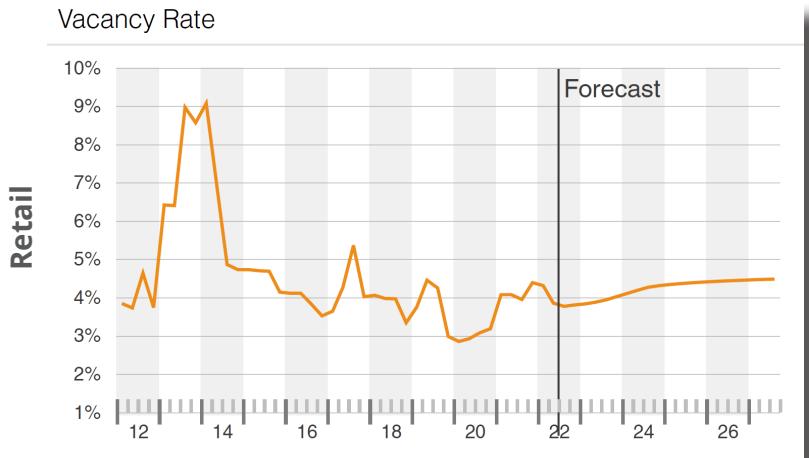
The graphs above shows a comparison of the three major commercial districts in the city. The top graph show a comparison of the three districts based on property tax revenue per acre in 2022, while the graph below shows the total property tax revenue from the three districts over the past four years. Both of these graphs demonstrate how much more productive the Downtown district is in terms of property tax revenue.

# Economic Profile

## Key Data Points- Vacancy Rates

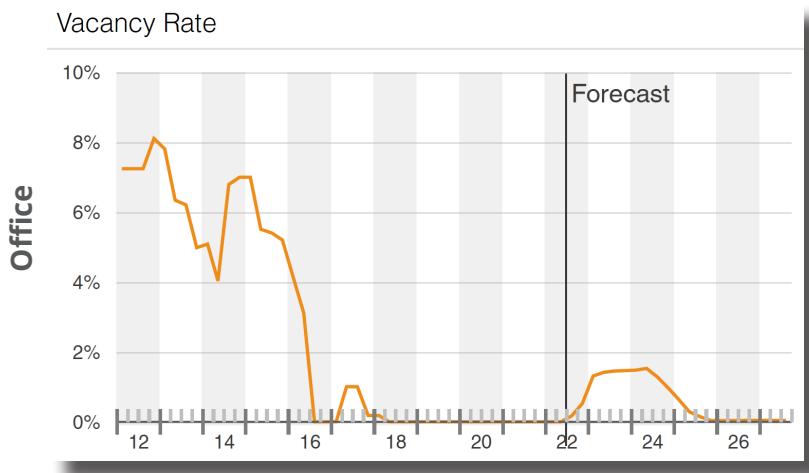
### Retail

Retail vacancy rate fluctuated from 5% to 3% in the last 5 years, and as of November 2022, it stood at 3.9%. The US average for the same period was 4.3%. Despite some notable vacancies in the Outlet Mall and downtown, a 4% vacancy rate is considered almost fully occupied.



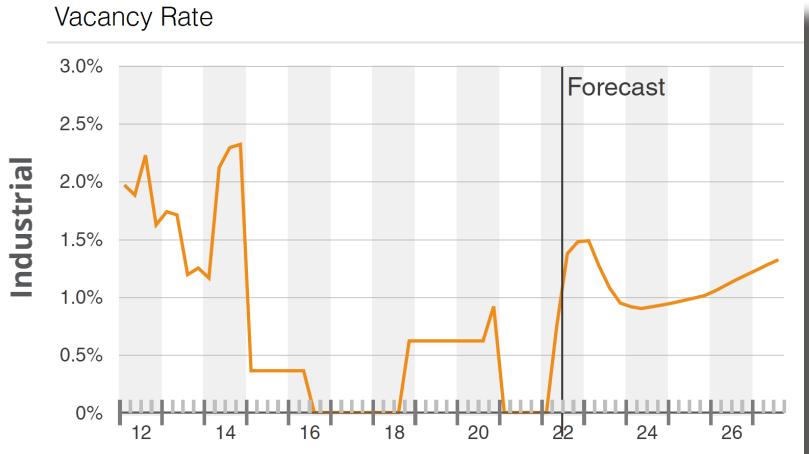
### Office

North Bend's Office sector is robust, with a 0% vacancy rate since 2016, and all available space occupied as of November 2022. Although limited, there is a market to support more office real estate in the city, as the US average for Office vacancy during the same period was 12.4%.



### Industrial

Arguably as strong of a market as Office, the city's Industrial space has a very strong ten year history. It's "high" point was 2.3% and is currently near 1%. There is opportunity for additional Industrial space, preferably for businesses that dovetail with the community's values.



Source: COSTAR, 2022

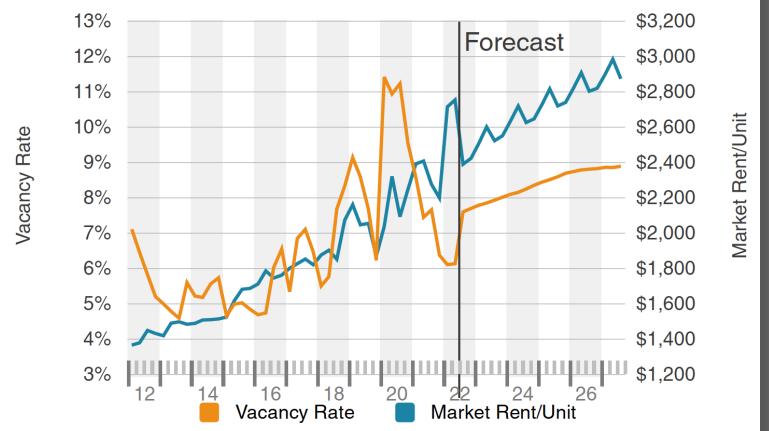
# Economic Profile

## Key Data Points- Vacancy Rates

### Multi-Family

The city's Multi-Family sector has high demand but also the highest vacancy rate due to expensive housing production and unaffordability for potential residents. Rent prices have doubled in the last decade and are predicted to rise by 21% in the next five years, as shown in the graph (bottom right).

Vacancy & Market Asking Rent Per Unit



# Economic Profile

## Geofencing Data

As part of this report, GPS-enabled technology called geofencing (or mobility data) was utilized to understand where visitors originated before coming to in the city of North Bend. An eighteen-month capture period was used, from January 1, 2021 to June 30, 2022. During this time, all visitors who were within the city limits for at least 10 minutes, were captured in this data. This data allows the community to understand where, at a zip code level, people are coming from.

This data is widely available to national-level retailers and allows for the identification of geographic areas that make up the district's primary and secondary areas. Once these areas were identified, Place + Main Advisors, LLC used this map to pull additional market data, including the following visitor and retail leakage data from data sources including Claritas, the U.S. Census, ESRI, and augmented with their own analysis and extrapolation of data.

The analysis of this data shows that North Bend draws visitors from all over the country, but not surprisingly, most strongly from surrounding Puget Sound and metro Seattle area. There were a significant number of visits during the capture period (approximately 9.2 million) spread among roughly 2M visitors. This is most likely from visitors going to and coming from surrounding natural areas.

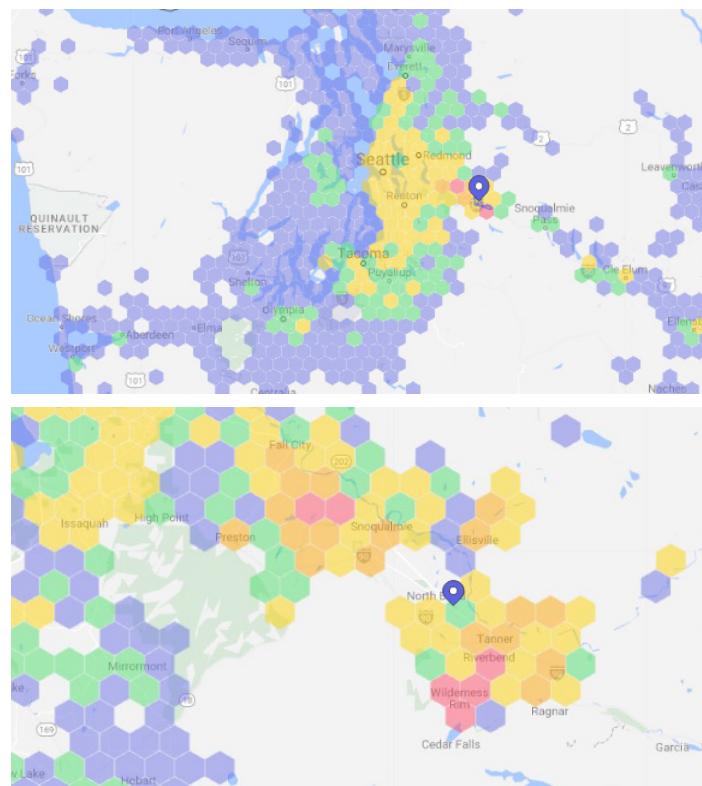
### GEOFENCING HIGHLIGHTS

**CAPTURE PERIOD:**  
January 1, 2021 to June 30, 2022

**TOTAL VISITS:**  
Approximately 9,200,000

**UNIQUE INDIVIDUALS VISITING:**  
Approximately 2,000,000

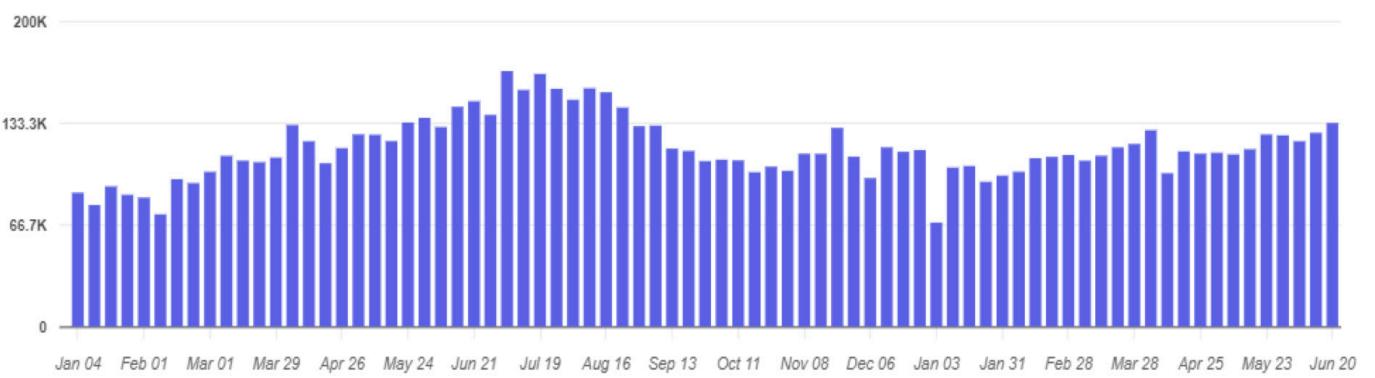
**AVERAGE VISITS PER INDIVIDUAL:**  
4.92



# Economic Profile

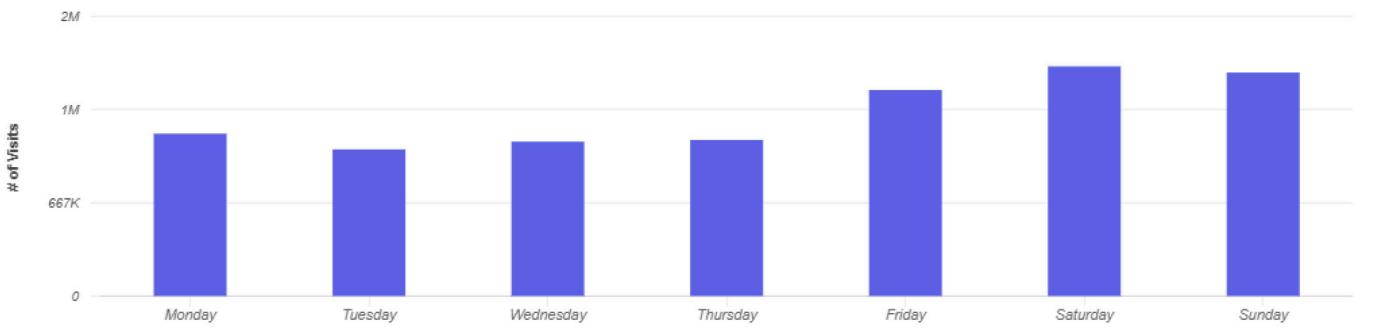
## Geofencing Data- Visits

### Weekly Visits



The chart (above) shows the weekly visits to North Bend. Not surprisingly, there is a pronounced increase in traffic during late spring into early fall, corresponding with warmer weather and higher use of the area's natural features. Notable is the smaller spike in December likely corresponding to holiday shopping.

### Visits By Day of the Week

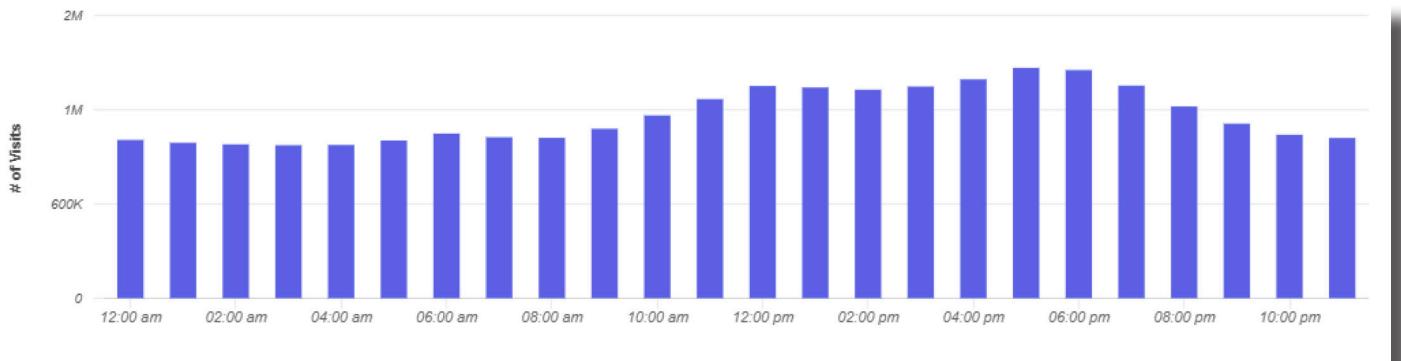


The chart (above) shows the overall visits by days of the week. There is a definite spike on Fridays, Saturdays, and Sundays as visitors come to the community on weekends. North Bend's geography in the region, being farthest east, and not "on the way" for most residents of the region during the work week, is likely the reason for it being more of a weekend destination. An interesting point is for Monday-Thursday, Monday is the highest trafficked day. Local restaurants in particular should take note of this, as many close on Mondays. According to this data, Tuesdays would be a more advantageous day to be closed as it has the least amount of visitors.

# Economic Profile

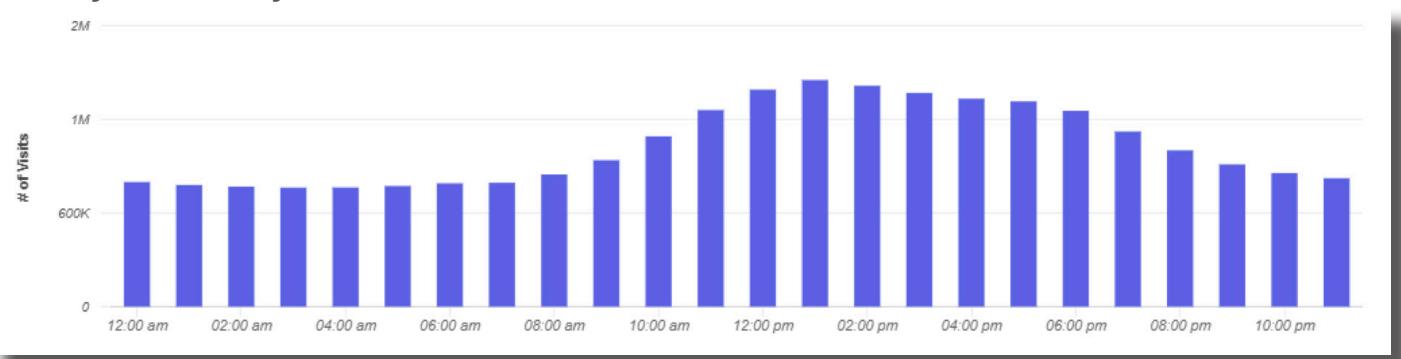
## Geofencing Data- Visits

### Visits By Time of Day (Mon-Thurs)



The chart (above) illustrates the times of the day visitors are coming to North Bend on Mondays through Thursdays. Peak times during these days are from noon until around 8pm.

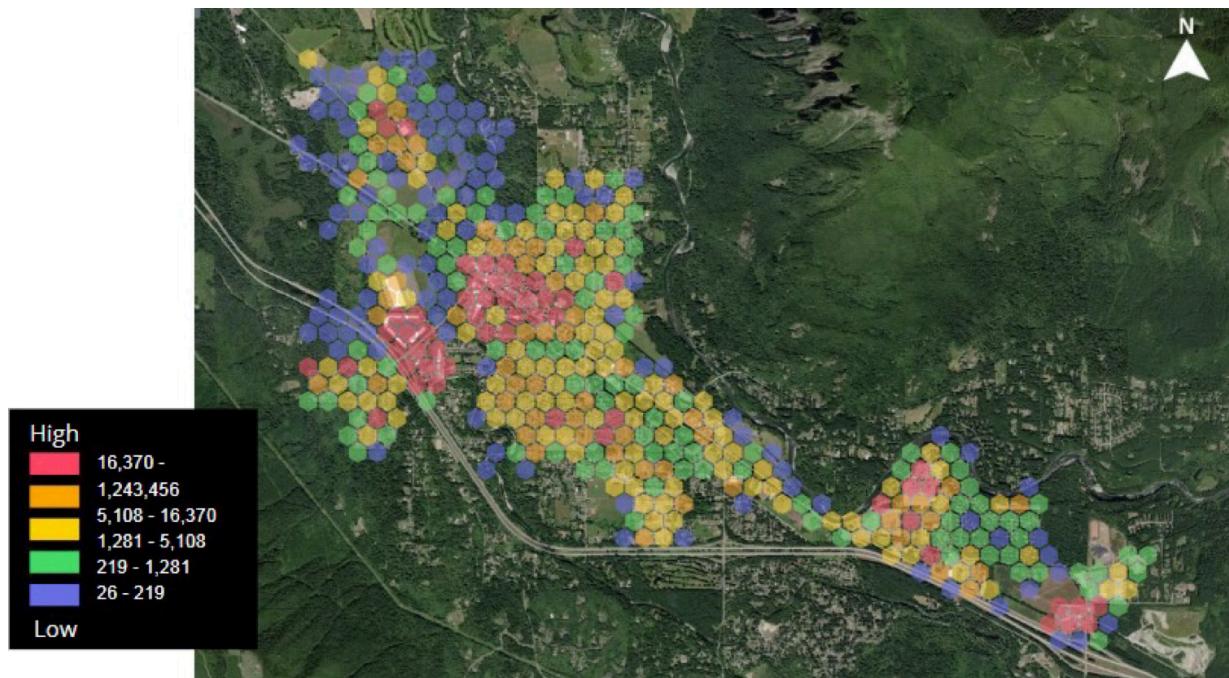
### Visits By Time of Day (Fri-Sun)



The chart (above) for times of the day where visitors come to North Bend from Friday through Sunday, somewhat mirrors mid-week, but the 11am to 8pm timeframe is much more pronounced. This coincides with visitors coming to town to either enjoy the natural beauty of the area and/or shop and dine in the community.

# Economic Profile

## Geofencing Data- Where Visitors Go



The heat map (above) illustrates the areas of the city that were visited the most during the study period. The most visited areas of the city were downtown, the outlet mall and surrounding commercial spaces, Trucktown, Mt. Si Sports + Fitness/Sirius Sports Complex, and Cascade Canyon.

# Economic Profile

## Primary Trade Area & Retail Leakage

### North Bend's Primary Trade Area

Using the aforementioned geofencing technology, a geographic area that captures the most frequent visitors to the community was identified. This area represents the most likely customers to businesses in the city, defining it as the city's "Primary Trade Area." Trade areas differ from municipal boundaries as they are defined by the consumers' shopping habits and not arbitrary lines drawn by government entities. The map (right) shows what is defined in this report as North Bend's Primary Trade Area. Data references relating to Retail Leakage are based on this area and not the city boundaries.

### Retail Leakage

Retail leakage occurs when the demand for goods or services within a trade area does not meet the supply. Consumers then leave the trade area to fill those demands. When these goods and services are purchased elsewhere, money leaves the local economy. One of the goals of economic development is to retain as many of these purchases in the trade area as possible, thereby benefiting local businesses, strengthening the local economy and increasing the local tax base.



Retail leakage data comes from businesses and are classified into retail categories they self identify. As such, misclassification sometimes occurs. Readers should take this into account if data seems "off."

Totals	2023 Demand (\$)	2023 Supply (\$)	Leakage/ (Surplus) (\$)	2028 Demand (\$)	Projected Gap
Total retail trade including food and drink (NAICS 44, 45 and 722)*	\$930,800,896	\$570,360,477	\$360,440,419	\$1,177,487,332	\$607,126,855
Total retail trade (NAICS 44 and 45)*	\$815,045,609	\$455,941,855	\$359,103,754	\$1,233,476,331	\$777,534,476
Food services and drinking places (NAICS 722)	\$115,755,287	\$117,360,973	(\$1,605,686)	\$149,417,177	\$32,056,204

\* NAICS 4541 (Electronic shopping and mail-order houses) has been removed from this data as the presence of a national distribution center in the community drastically skews overall supply and resulting leakage data.

# Economic Profile

## Retail Leakage

The Chart (below) lists the retail sectors that have a significant amount of retail leakage that could be good fits for North Bend. The chart outlines the anticipated demand, supply, and leakage for 2023, the projected demand for 2028 and the resulting leakage if supply remains the same, and finally the maximum supportable square footage based on this leakage. Important note: The existence of retail leakage does not guarantee success of a specific business. It only indicates where opportunity exists.

	2023 Demand (\$)	2023 Supply (\$)	2023 Leakage/ Surplus (\$)	2028 Demand (\$)	Projected Leakage	Max. Supportable Sq Ft
Furniture stores (NAICS 4421)	\$11,023,199	\$9,073,253	\$1,949,946	\$14,890,480	\$5,817,227	17,899
Home furnishings stores (NAICS 4422)	\$8,739,096	\$8,021,066	\$718,030	\$11,224,620	\$3,203,554	15,183
Hardware stores (NAICS 44413)	\$5,294,214	\$2,810,918	\$2,483,297	\$6,106,589	\$3,295,671	23,882
Nursery, garden center, and farm supply stores (NAICS 44422)	\$7,137,445	\$5,301,289	\$1,836,156	\$8,603,078	\$3,301,789	6,604
Supermarkets and other grocery (except convenience) stores (NAICS 44511)	\$121,104,628	\$78,873,266	\$42,231,361	\$153,048,498	\$74,175,232	148,350
Meat markets (NAICS 44521)	\$1,112,970	\$375,952	\$737,017	\$1,421,072	\$1,045,120	2,090
Beer, wine, and liquor stores (NAICS 4453)	\$10,694,331	\$3,234,972	\$7,459,359	\$13,685,686	\$10,450,714	9,501
Pharmacies and drug stores (NAICS 44611)	\$49,643,660	\$29,951,600	\$19,692,060	\$60,294,603	\$30,343,003	48,862
Other health and personal care stores (NAICS 44619)	\$3,137,851	\$1,934,818	\$1,203,033	\$3,816,587	\$1,881,769	5,376
Women's clothing stores (NAICS 44812)	\$6,281,569	\$3,778,303	\$2,503,267	\$7,204,082	\$3,425,779	11,419
Shoe stores (NAICS 4482)	\$5,350,879	\$4,992,553	\$358,326	\$7,175,113	\$2,182,560	7,275
Jewelry stores (NAICS 44831)	\$6,092,869	\$4,173,996	\$1,918,873	\$7,211,272	\$3,037,276	3,894
Sporting goods stores (NAICS 45111)	\$8,904,072	\$7,107,182	\$1,796,890	\$11,828,120	\$4,720,938	24,717
Hobby, toy, and game stores (NAICS 45112)	\$3,589,094	\$2,515,198	\$1,073,896	\$4,423,327	\$1,908,129	5,452
Pet and pet supplies stores (NAICS 45391)	\$4,082,703	\$3,900,444	\$182,259	\$5,182,869	\$1,282,425	4,137
Art dealers (NAICS 45392)	\$1,819,598	\$0	\$1,819,598	\$2,100,884	\$2,100,884	3,501
Full-service restaurants (NAICS 722511)	\$50,964,888	\$59,459,639	(\$8,494,752)	\$65,784,116	\$6,324,477	10,368
Limited-service restaurants (NAICS 722513)	\$44,453,626	\$20,310,352	\$24,143,275	\$57,581,132	\$37,270,780	186,354

This Report  
Produced By

**PLACE**  
**+MAIN**  
A D V I S O R S



SUBJECT:	Agenda Date: June 6, 2023	AB23-070
<b>Ordinance Repealing NBMC 9.45 Controlled Substances &amp; Adopting NBMC 9.45 Drug and Alcohol Possession</b>	Department/Committee/Individual	
	Mayor Rob McFarland	
	City Administrator – David Miller	
	City Attorney – Lisa Marshall/Mike Kenyon	X
	City Clerk – Susie Oppedal	
	Administrative Services – Lisa Escobar	
	Comm. & Economic Development – Rebecca Deming	
	Finance – Richard Gould	
	Public Works – Mark Rigos	
Cost Impact: N/A		
Fund Source: N/A		
Timeline: Immediate		
<b>Attachments:</b> Ordinance, Exhibit A		

#### SUMMARY STATEMENT:

During the legislative session for 2023 the Washington State Legislature failed to approve a replacement law dealing with the invalidated RCW 69.50.4013, a statute that made it a felony to unknowingly possess drugs. This previous statute was invalidated by a Washington State Supreme Court decision in State v. Blake. The Supreme Court held that criminalizing for the unknowing possession of drugs is unconstitutional. Later the Legislature imposed a temporary fix by making drug possession a misdemeanor and requiring that the person possessing a controlled substance be aware of the possession. The version of RCW 69.50.4013 sunsets (expires) at midnight on June 30, 2023. In response, the Washington State Legislature, on May 16, 2023, passed the Second Engrossed Second Substitute Senate Bill 5536 that will, effective August 14, 2023, make possession or public use of small amounts of illegal drugs a modified gross misdemeanor. While much of the Second Engrossed Second Substitute Senate Bill 5536 becomes effective July 1, 2023, some sections of the bill are not effective until August 14, 2023. Therefore, City staff, our City Attorney, and our Police Chief recommend adopting this ordinance for the period of time between July 1 and August 14 to provide clarity on local regulation and prosecution of drug-related offenses. Effective August 14, 2023, this local ordinance shall sunset and be replaced by State law.

**APPLICABLE BRAND GUIDELINES:** Consistent delivery of quality basic services.

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

**RECOMMENDED ACTION:** **MOTION to approve AB23-070, an ordinance repealing NBMC 9.45 Controlled Substances & adopting NBMC 9.45 Drug and Alcohol Possession, as a final reading.**

#### RECORD OF COUNCIL ACTION

Meeting Date	Action	Vote
May 16, 2023	Passed in First Reading	6-0
June 6, 2023		



# ORDINANCE

**AN ORDINANCE OF THE CITY OF NORTH BEND,  
WASHINGTON, REPEALING AND REPLACING  
CHAPTER 9.45 OF THE NORTH BEND MUNICIPAL  
CODE TO BE ENTITLED "DRUG AND ALCOHOL  
POSSESSION"; PROVIDING FOR SEVERABILITY;  
AND ESTABLISHING AN EFFECTIVE DATE; AND  
ESTABLISHING AN EXPIRATION DATE**

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

**WHEREAS**, the Washington State Legislature, on May 16, 2023, passed the Second Engrossed Second Substitute Senate Bill 5536 that will make possession or public use of small amounts of illegal drugs a modified gross misdemeanor; and

**WHEREAS**, substance use disorder is ravaging this region, and the number of controlled substance-related deaths continues to rapidly increase. The lack of adequate laws surrounding controlled substances creates an opportunity for those who produce, import, and sell deadly drugs to prey on those suffering from addiction. The illicit drug market drives violent crime throughout the region. Property crimes, which are committed to fund addiction, have impacted our residents and business community; and

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

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

**WHEREAS**, although state law preempts the field of setting penalties for violations of the state's Uniform Controlled Substances Act, Chapter 69.50 RCW, cities are authorized to enact local laws that are not inconsistent with state law. Because the Uniform Controlled Substances Act does not expressly permit or otherwise protect the public use of controlled substances, the City is authorized to regulate or prohibit that use; and

**WHEREAS**, while the bulk of the Second Engrossed Second Substitute Senate Bill 5536 becomes effective July 1, 2023, portions of the bill are not effective until August 14, 2023; and

**WHEREAS**, the City Council finds it is in the best interest to establish a local ordinance to provide similar regulation for the period of time between July 1 and August 14, 2023;

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

**Section 1. NBMC Chapter 9.45 (Controlled Substances), Repealed and Replaced:**  
North Bend Municipal Code Chapter 9.45 relating to Controlled Substances is hereby repealed in its entirety and replaced to read as set forth in Exhibit A attached hereto by this reference as if fully set forth herein.

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

**Section 3. Effective Date:** This ordinance shall be published in the official newspaper of the City and shall take effect and be in full force on July 1, 2023.

**Section 4. Expiration Date:** The following sections shall expire effective August 14, 2023:

- 9.45.030, Controlled substances—Possession or use in public—Penalty.
- 9.45.040, Legend drugs—Possession or use in public—Penalty.
- 9.45.050, Counterfeit controlled substances—Possession or use in public—Penalty.
- 9.45.060, Possession of drug paraphernalia.

- 9.45.080, Unlawful deposit of dangerous drugs and drug paraphernalia.
- 9.45.090, Alternative deferred prosecution program.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6<sup>TH</sup> DAY OF  
JUNE, 2023.**

**CITY OF NORTH BEND:**

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**Rob McFarland, Mayor**

**APPROVED AS TO FORM:**

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**Lisa Marshall, City Attorney**

**ATTEST/AUTHENTICATED:**

Published:

Effective: July 1, 2023

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**Susie Oppedal, City Clerk**



## CHAPTER 9.45

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N. *Conditions of granting.*

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

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

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

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

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

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

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

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

DRAFT



SUBJECT:	Agenda Date: June 6, 2023	AB23-071
<b>Final Reading of Resolution Authorizing the Mayor to Sign Agreement for the Wholesale Supply of Water with Sallal Water Association</b>	Department/Committee/Individual	
Cost Impact:	Mayor Rob McFarland	X
Fund Source:	City Administrator – David Miller	
Timeline: Immediate	City Attorney – Lisa Marshall/Mike Kenyon	X
	City Clerk – Susie Oppedal	
	Administrative Services – Lisa Escobar	
	Comm & Econ Development – Rebecca Deming	
	Finance – Robert Gould	
	Public Works – Mark Rigos, P.E.	X

**Attachments:** Resolution, Exhibit A – Agreement

#### SUMMARY STATEMENT:

In September 2007, the Washington State Department of Ecology (“Ecology”) approved Permit No. G1-26617(A) (“Permit”) for the City of North Bend’s (“City”) Centennial Well. The Permit includes a required mitigation plan designed to ensure that the City’s water use satisfies minimum requirements for instream flow to the Snoqualmie River when the river is low. The Permit identifies Hobo Springs as one approved source of mitigation water, and Sallal Water Association’s (“Sallal”) Rattlesnake Lake Wellfield as another approved source. After lengthy negotiations, the City and Sallal have agreed on the form of an Agreement for the Wholesale Supply of Water (“Agreement”) that will benefit both parties. Sallal will provide an additional source of potable water to the City for mitigation purposes, and the City will provide an additional source of potable water to Sallal needed to serve new growth in Sallal’s water service area.

#### Additional Background:

The City provides water to the area encompassing approximately the westerly two-thirds of the City limits, and also to an area of unincorporated King County within the City’s urban growth area (“UGA”) northeast of the City limits. Sallal provides water to the remainder of the City limits, and also to a separate area of unincorporated King County.

Ecology issued the Permit for the Centennial Well which included a mitigation plan designed to ensure that the City meets the minimum instream flow requirements of the Permit. In short, the Permit obligates the City to develop supplies of “mitigation water” for delivery to the Snoqualmie River in amounts required to offset the net stream depletion resulting from withdrawals of water under the Permit when flows are below minimum instream flow levels established at certain control points on the Snoqualmie River.

The Centennial Well has been in operation since 2008. Under the Permit, one source of mitigation water is Seattle Public Utilities’ (“SPU”) Hobo Springs. In order to utilize Hobo Springs as a mitigation water source, the City contracted with SPU and constructed the Boxley Creek Pipeline for delivery of mitigation water through Boxley Creek and ultimately into the Snoqualmie River. While the Hobo Springs source has been a reliable source of mitigation water over the years, it may not always be adequate to meet the total mitigation requirement of the Permit at all times of every year.

In addition to Hobo Springs, the Permit also identifies Sallal’s wellfield located adjacent to Rattlesnake Lake as an additional approved source of mitigation water. Approval of the Agreement attached to this Agenda Bill as Exhibit A is a necessary first step for the City to obtain an additional reliable source of mitigation water under the Permit.

Approval of the Agreement also provides a clear benefit to Sallal. On several occasions in the past, Sallal has been unable to serve new development within its water service area. For at least two of those applicants

(the Dahlgren and National Guard projects), the City worked with Sallal, the property owners, and the King County Utilities Technical Review Committee (“UTRC”) to obtain authorization for the City to serve those properties in Sallal’s water service area. Approval of the Agreement should ensure that Sallal has sufficient water to serve its water service area in the future. Without this Agreement, a significant number of properties generally located on the east side of the City may not have access to water unless the UTRC again reviews and approves applications for the City to serve those properties. The Agreement should resolve these issues.

The negotiating teams for both parties intend to cooperate and collaborate as the Agreement is fully implemented. In order to best ensure a positive and mutually beneficial working relationship, the Agreement includes provision for an Intertie Management Committee (Section III of Exhibit A). Given the mutual benefits accruing from the Agreement, the negotiating teams for both Sallal and the City are also eager to promptly construct the interties necessary for each to physically convey water to the other (see Sections 4.3 and 5.3 of the Agreement attached as Exhibit A). Once construction of the interties is complete, mitigation water can flow from Sallal to the City and municipal water can flow from the City to Sallal.

Under Section 4.1 of the Agreement, Sallal is obligated to provide 100 acre feet per year (“AFY”) of mitigation water to the City. The City is obligated to provide municipal water to Sallal in an amount reasonably determined by Sallal (Section 5.1), but with the important caveat that the supply of “Municipal Water provided to Sallal combined with the City’s operational water production needs shall not exceed the withdrawal quantities (both annual and instantaneous) authorized by the Permit in the amounts of 3,094 AFY and 2,646 GPM, or violate the mitigation terms of the Permit.” The City is not concerned that this supply of water to Sallal could jeopardize the City’s ability to serve its own customers because the withdrawal quantities authorized by the Permit greatly exceed the City’s historical withdrawal quantities. The City has never exceeded 500 AFY and the calculated peak demand for 2023 is 1,110 GPM.

The City intends to obtain the full 100 AFY available from Sallal each year, and the City will likewise provide at least 100 AFY to Sallal each year. These quantities will simply be exchanged, without separate payment (Section 6.1). In the unlikely event that the City chooses not to acquire the full 100 AFY in any particular year, the City will still be obligated to provide Sallal with 100 AFY without additional charge (Section 6.1). The City has every incentive to obtain the full 100 AFY each year from Sallal, however, because the cost of mitigation water from Hobo Springs and SPU is greater than the cost to the City in this exchange of water with Sallal. To the extent that Sallal purchases water from the City in excess of 100 AFY, Sallal will pay the City’s actual cost to produce that water (Section 6.3).

Section VII of the Agreement reflects the mutual desire of Sallal and the City to preserve the water resource. In Section 7.1, Sallal acknowledges that it will not oppose or object to the application of the City’s water conservation ordinance (“WCO”) and any future amendments to the WCO within the City limits of the City of North Bend, including that portion of the City limits within Sallal’s water service area. In Section 7.2, Sallal likewise commits to adopt a resolution with terms substantially similar to the WCO to be applicable in the remainder of Sallal’s water service area outside of the City limits.

Finally, Section VIII of the Agreement includes a number of terms commonly included in commercial contracts. The Agreement will be in effect for 40 years (Section 8.5).

Included with this Agenda Bill is a Resolution authorizing the Mayor to sign the Agreement. The proposed final form of Agreement is attached as Exhibit A. This version of Exhibit A includes one minor change from the version included with the Agenda Bill at first reading on April 18. The earlier version of Section 4.1.2 read, “4.1.2 Mitigation Water provided to the City combined with Sallal’s operational water production needs shall not exceed the withdrawal quantities (both instantaneous and annual) authorized by

Sallal's water rights for the Rattlesnake Lake Wellfield in the amounts of 696 AFY and 1,691 GPM." Sallal subsequently advised that, while its total instantaneous water right is in fact 1,691 gpm, 91 gpm comes from a separate water right certificate for a well near Edgewick Road. The version of Exhibit A with this Agenda Bill simply deletes "for the Rattlensake Lake Wellfied" from Section 4.1.2.

**APPLICABLE BRAND GUIDELINES:** Consistent delivery of quality basic services.

**COMMITTEE REVIEW AND RECOMMENDATION:** Issues involving this Agreement have been reviewed on multiple prior occasions in a Committee of the Whole format. The City Council approved this Resolution and Agreement as a first reading on April 18, 2023.

**RECOMMENDED ACTION:** **MOTION to approve AB23-071, a resolution authorizing the Mayor to sign an Agreement for the Wholesale Supply of Water with Sallal Water Association, as a final reading.**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
April 18, 2023	AB23-050 – Passed in 1 <sup>st</sup> Reading	6-0
June 6, 2023		



# RESOLUTION

## **A RESOLUTION OF THE CITY OF NORTH BEND, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR THE WHOLESALE SUPPLY OF WATER BETWEEN THE CITY OF NORTH BEND AND SALLAL WATER ASSOCIATION**

**WHEREAS**, the City of North Bend and Sallal Water Association each provide water to customers to separate areas inside the North Bend city limits and also to separate areas of unincorporated King County outside the North Bend city limits; and

**WHEREAS**, the Washington State Department of Ecology (“Ecology”) approved Permit No. G1-26617(A) (“Permit”) for the City’s Centennial Well in 2007; and

**WHEREAS**, the Permit includes a required mitigation plan that obligates the City to develop supplies of mitigation water for delivery to the Snoqualmie River in amounts required to offset the net stream depletion resulting from withdrawals of water under the Permit under defined low flow conditions; and

**WHEREAS**, the Permit identifies Hobo Springs as one approved source of mitigation water, and Sallal’s Rattlesnake Lake Wellfield as another approved source. Hobo Springs is currently operational, and the City and Sallal have now agreed on the form of an Agreement for the Wholesale Supply of Water under which Sallal will provide an additional source of potable water to the City for mitigation purposes, and the City will provide an additional source of potable water to Sallal needed to serve new growth in Sallal’s water service area; and

**WHEREAS**, the City Council desires to authorize the Mayor to execute the Agreement for the Wholesale Supply of Water between the City of North Bend and Sallal Water Association in order to satisfy the City’s and Sallal’s respective water supply needs;

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

**Section 1.** The Mayor is authorized to execute the Agreement for the Wholesale Supply of Water between the City of North Bend and Sallal Water Association, in the form attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6<sup>TH</sup> DAY OF  
JUNE, 2023.**

**CITY OF NORTH BEND:**

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**Rob McFarland, Mayor**

**APPROVED AS TO FORM:**

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**Lisa Marshall, City Attorney**

Effective:

Posted:

**ATTEST/AUTHENTICATED:**

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**Susie Oppedal, City Clerk**

## **AGREEMENT FOR THE WHOLESALE SUPPLY OF WATER**

THIS AGREEMENT FOR THE WHOLESALE SUPPLY OF WATER (“Agreement”) is entered into by and between the City of North Bend, a municipal corporation of the state of Washington (the “City”), and Sallal Water Association, a member-owned Washington non-profit corporation (“Sallal”), as of the date of last execution below.

### **I. RECITALS**

1.1 The City supplies potable water to customers within its water service area through a public water system. The City operates a production well (“Centennial Well”) on the City’s public works property located at 1155 E. North Bend Way, North Bend, WA for the purposes of providing potable water for customers and to serve anticipated growth demands inside the City limits and within the City’s Urban Growth Area.

1.2 The Centennial Well lies within the Snoqualmie River Basin which does not continuously meet minimum instream flows set forth in WAC 173-507. The Washington State Department of Ecology (“Ecology”) issued water right permit No. G1-26617(A) (“Permit”) for the Centennial Well which included a mitigation plan designed to ensure that the City meets the minimum instream flow requirements of the Permit. The Centennial Well has been operating to serve City customers since 2008. As required by the Permit, the City must contract for and develop supplies of water for delivery to the Snoqualmie River in amounts required to offset the net stream depletion resulting from withdrawals of water under the Permit when flows are below minimum instream flow levels for control points on the Snoqualmie River. One source of such water identified in the Permit is Seattle Public Utilities’ Hobo Springs source (“Hobo Springs Source”), which has been constructed and under contract with Seattle Public Utilities (“SPU”) since 2008 and which flows through a pipeline (“Boxley Creek Pipeline”) into Boxley Creek and ultimately into the Snoqualmie River.

1.3 The Hobo Springs Source may not always be adequate to meet the total mitigation requirement of the Permit at all times of the year. An additional approved source of water that may be used for stream flow mitigation purposes as identified in the Permit is Sallal’s wellfield located adjacent to Rattlesnake Lake. The Permit also provides the City may seek water for stream flow mitigation purposes from other sources subject to additional approvals.

1.4 Sallal supplies potable water to customers within its water service area. Sallal’s water service area includes property inside and outside the City limits, and also inside and outside the City’s Urban Growth Area which is larger than the City limits. The Permit authorizes the City to sell wholesale water to Sallal so that Sallal may continue to serve its water service area that is within the City’s Urban Growth Area.

1.5 Sallal currently lacks sufficient water availability to serve new development within its water service area. In order to ensure sufficient water availability for its customers in the future, Sallal desires to purchase water on a wholesale basis from the City for domestic water supply purposes for service within that portion of Sallal's water service area that is within the City Limits or the City's Urban Growth Area. The City likewise desires to purchase water from Sallal for purposes of instream flow mitigation to assure continued operation of the Centennial Well.

1.6 The parties have negotiated terms for water supply as set forth herein in order to satisfy their respective water supply needs. The parties are willing to supply each other with wholesale water for the purposes and on the terms and conditions provided for herein, and each is willing to purchase wholesale water from the other for such purposes, and on such terms and conditions.

Now, therefore, in consideration of the mutual covenants herein contained, the parties agree as follows.

## II. DEFINITIONS

For purposes of this Agreement:

2.1 “AFY” means acre feet per year.

2.2 “Boxley Creek Intertie” shall mean the facilities to connect the Rattlesnake Lake Wellfield (defined below) to the City’s existing mitigation water line from Hobo Springs to Boxley Creek. A predesign graphical depiction of the Boxley Creek Intertie is shown on Exhibit A.

2.3 “GPM” means gallons per minute.

2.4 “North Bend Way Intertie” shall mean an intertie between the parties’ respective water systems located on City property at a point along East North Bend Way or as otherwise agreed in writing. A map showing two possible alternative locations on City-owned property or right of way for the North Bend Way Intertie is shown on Exhibit B.

2.5 “Mitigation Water” shall mean untreated ground water supplied by Sallal from the Rattlesnake Lake Wellfield to the City through the Boxley Creek Intertie to Boxley Creek for stream flow mitigation purposes identified in the Permit.

2.6 “Municipal Water” shall mean water treated by the City for potable consumption and delivered by the City to Sallal through the North Bend Way Intertie.

2.7 “Rattlesnake Lake Wellfield” shall mean well nos. 1, 2 and 4 collectively (or, respectively “Well No. 1,” “Well No. 2” and “Well No. 4”) as identified in Sallal’s records that are situated upon an easement granted by SPU within SPU’s Cedar River Watershed in the vicinity of Rattlesnake Lake.

2.8     “UGA/Annexation Area” shall mean that part of Sallal’s water service area that is inside the City’s municipal boundary or the North Bend Urban Growth Area at any time during the term of this Agreement.

2.9     “WSA” or “water service area” shall mean a water service area shown in a party’s water system plan prepared in accordance with WAC 246-290-100 as it may be adjusted from time to time.

### III.     INTERTIE MANAGEMENT COMMITTEE AND PLAN

3.1     Intertie Management Committee. Within two weeks of mutual execution of this Agreement, the parties shall each appoint one or more representatives to an Intertie Management Committee (“Intertie Committee”). The Intertie Committee shall be advisory in nature and shall have no legal authority to obligate the parties. The Intertie Committee members shall meet at least once every six months and they may otherwise establish a meeting schedule and a system of governance.

3.2     Water Usage Plan. Intertie Committee members shall meet within thirty (30) days of its formation and commence development of a water usage plan (“Water Usage Plan”) to plan the usage under this Agreement of both Mitigation Water to be supplied to the City and Municipal Water to be supplied to Sallal for use within the UGA/Annexation Area. The Water Usage Plan may include such other provisions as the Intertie Committee deems appropriate. The parties shall use their best efforts to cause the Water Usage Plan to be in place prior to the provision of any water hereunder; provided, however, that the failure of the parties to implement the Water Usage Plan prior to the provision of any water hereunder shall not otherwise affect or excuse the parties’ rights and obligations hereunder. In the event of such failure, this Agreement shall remain in full force and effect. The Water Usage Plan shall be reviewed by the Intertie Committee at least once every year. Such review shall include a review of compliance with Permit requirements. The provisions of this Agreement shall prevail over the terms of the Water Usage Plan.

3.3     Coordination of Water Usage. A primary purpose of the Water Usage Plan shall be to forecast and coordinate the parties’ respective needs for water to maximize both parties’ capabilities to supply their respective customers and minimize the City’s mitigation requirements under the Permit. The Water Usage Plan shall contain guidelines for timing and amounts of withdrawals by both parties and be reviewed and adjusted from time to time as the Intertie Committee deems prudent.

3.4     Reporting and Access to Records. In order to implement best management practices associated with water use by the parties as set forth in this Agreement, each party shall provide the other a copy of its water system plan and water rate studies. Each party shall provide the other with such records during meetings of the Intertie Committee and otherwise as reasonably required to implement this Agreement. Each party shall at least annually report to the other its aggregate water system pumping and usage data.

#### IV. MITIGATION WATER SUPPLY AND PURCHASE

4.1 Mitigation Water Supply. In consideration of the benefits provided by this Agreement, Sallal shall sell up to and not more than 100 AFY of Mitigation Water to the City subject to the following terms, conditions and limitations:

4.1.1 Mitigation Water shall not be available until both the Boxley Creek Intertie and North Bend Way Intertie are complete and in operation.

4.1.2 Mitigation Water provided to the City combined with Sallal's operational water production needs shall not exceed the withdrawal quantities (both instantaneous and annual) authorized by Sallal's water rights in the amounts of 696 AFY and 1,691 GPM. In order that Sallal's water rights are not exceeded:

(a) The quantity of all Mitigation Water provided to or reserved for use by the City shall be replaced with Municipal Water at the North Bend Way Intertie pursuant to the subsections that follow but no later than the end of the same calendar year in which Mitigation Water is provided or reserved for City use. The Mitigation Water shall be provided or reserved not later than the end of each calendar year during the term of this Agreement;

(b) No later than January 30 of each calendar year that this Agreement is in effect, the Intertie Committee shall forecast the City's need for up to and including 100 AFY of Mitigation Water subject to reasonable adjustment during the course of the year;

(c) Unless doing so would violate Sallal's Rattlesnake Lake Wellfield water right or other law, Sallal shall reserve water rights capacity during each such calendar year in order to reasonably ensure that the forecasted quantity of Mitigation Water is available for use by the City during each such calendar year; and

(d) In addition to the Municipal Water supply provided to Sallal under Article V of this Agreement and in replacing Mitigation Water actually provided to the City, Sallal may utilize and consume Municipal Water in the amount forecasted or reserved pursuant to the above subsections in advance of or subsequent to providing Mitigation Water.

4.1.3 The instantaneous quantity of Mitigation Water shall be at the rate requested by the City up to the following maximum amounts:

(a) Maximum Pump Capacity: 700 GPM when only Well No. 2 in the Rattlesnake Lake Wellfield is connected to the Boxley Creek Intertie; 1,000 GPM when Well No. 1 is also connected.

(b) The maximum daily instantaneous GPM amount of available Mitigation Water shall be further limited by the following formula which Sallal shall calculate and promptly provide to the City each 24-hour period commencing at 8:00 a.m. when Mitigation Water is requested: Sallal's total existing instantaneous water rights of 1,691 GPM minus Sallal's total

instantaneous peak day demand from all of Sallal's members as estimated by Sallal for such 24-hour period.

4.1.4 The level of reliability of Mitigation Water shall reasonably approximate that which Sallal provides within its own distribution system subject to emergencies as set forth below and the understanding that water is transmitted directly from wellhead(s).

4.1.4.1 In the event of a general emergency or water shortage affecting the entire Sallal Water Supply System, Sallal may establish water use restrictions intended to address such emergency. For purposes of this Section, a water shortage shall mean a physical or legal limitation on Sallal's ability to withdraw water from its wells at the Rattlesnake Lake Wellfield. Any such restrictions shall be applied equally to Sallal's distribution system and its customers, including the sale of Mitigation Water under this Agreement. Sallal may develop and amend from time to time an emergency water shortage plan for such purpose. To the extent such plan applies to the City or to the purchase and sale of Mitigation Water, Sallal shall provide a written copy to the City at least thirty (30) days prior to implementation of such plan or any amendment thereto. The City shall support reasonable emergency curtailment measures included in such plan.

4.1.4.2 In the event of localized emergency problems, Sallal may impose temporary, localized service interruptions for the duration of the emergency. A localized emergency shall consist of water system emergencies or the lawful demands of federal or state resource agencies to install equipment, make repairs and replacements, conduct investigations and inspections, or to perform other maintenance work on the Sallal Water Supply System. Except in cases of emergency, and in order that the City's operations will not be unreasonably interrupted, Sallal shall give the City reasonable notice of any such interruption or reduction in deliveries, including the supporting rationale and probable duration. Sallal shall use reasonable efforts to minimize service interruptions to deliveries of Mitigation Water to the City.

4.2 Notice of Changes. Sallal shall provide reasonable advance notice to the City of any proposed changes in operations or future improvements that would likely result in a reduction in the quantities of Mitigation Water available at Rattlesnake Lake Wellfield in order to allow the City adequate time to propose operational changes and/or conservation measures. The City shall provide reasonable advance notice to Sallal of any known or reasonably foreseeable impending reduction in the quantities of Mitigation Water available from Hobo Springs in order to allow Sallal and the City adequate time to propose purchases and sales of water or other operational changes and conservation measures with a goal of minimizing the impact on the water users and ratepayers of both parties.

#### 4.3 Work.

4.3.1 The Boxley Creek Intertie shall be designed and constructed pursuant to sound engineering judgment and applicable law. The Boxley Creek Intertie shall be located within King County right of way. The Boxley Creek Intertie shall be designed and installed by the City at its sole cost and expense by June 30, 2025, or other mutually agreed date ("City Completion Date"). Sallal shall have the right to review all plans for the work and inspect the work. Upon

completion, the Boxley Creek Intertie shall be owned, maintained, and operated by the City; however, Sallal may inspect and access the facilities and read the meter.

4.3.2 Sallal shall (a) design and construct modifications to Well No. 2 to install a variable speed drive and controls to allow Well No. 2 to supply a range of pumping to the Boxley Creek Intertie in quantities between 100 GPM and 1,000 GPM, and (b) use reasonable efforts to connect Well No. 1 to the system of mains that connect to the Boxley Creek Intertie. The modifications described in this Section 4.3.2 shall be completed by June 30, 2025, or other mutually agreed date. The City shall reimburse Sallal for its actual costs of design and construction of the modifications described in this Section 4.3.2 promptly after Sallal provides (a) receipts or other written proof of such actual costs and (b) certification that Sallal paid prevailing wages for the construction of such modifications pursuant to RCW 39.12.

4.4 Ownership. Sallal shall own and operate all of its water system facilities on its side of the Boxley Creek Intertie, and the City shall own and operate all of its water system facilities on its side of the Boxley Creek Intertie. The valve separating the two water systems shall be kept closed except pursuant to a mutually agreed upon maintenance and flushing schedule set forth in the Water Usage Plan established by the Intertie Committee and when Mitigation Water is supplied under this Agreement.

4.5 Notice of Mitigation Water Withdrawals. The City shall give Sallal reasonable notice of its intent to commence withdrawals of Mitigation Water through the Boxley Creek Intertie. In the event of planned, non-emergency usage, the notice shall be not less than three business days in advance. In the event of emergency usage, the notice shall be as prompt as possible under the exigent circumstances at the time. When periods of routine or daily needs for Mitigation Water commences, the parties may mutually agree on alternate notice.

4.6 Conditions of Service Through the Boxley Creek Intertie. The following terms and conditions shall apply to Mitigation Water supplied through the Boxley Creek Intertie.

4.6.1 The Mitigation Water supplied to the City shall not be altered or treated by Sallal in any way that would be inconsistent with the City's intended use of the water for direct discharge to Boxley Creek (which discharges into the South Fork of the Snoqualmie River) for instream flow augmentation.

4.6.2 Sallal shall give the City 120 days' notice of any substantial changes to water treatment, hydraulic gradient, or water pressure from its Rattlesnake Lake Wellfield. Sallal will send water quality testing information to the City as Sallal performs such testing.

4.6.3 The City, at its expense, shall install, own, and operate the City's meter at the Boxley Creek Intertie, including telemetry and SCADA needed to monitor Mitigation Water taken from Sallal's wells. The City's meter shall be calibrated at least once every three years at the City's expense by an independent representative of the meter manufacturer and shall be maintained to be accurate within the manufacturer specifications. Sallal shall have access to the City's intertie meter for inspection and testing at Sallal's expense. Sallal shall read the City's

intertie meter monthly and bill the City for water supplied according to the terms of this Agreement. Sallal may also measure deliveries of Mitigation Water through its own metering equipment. In the event that the parties' metering equipment provides different readings, in the absence of clear error on the part of one or both parties' equipment, the readings shall be averaged.

4.6.4 Sallal may require the Boxley Creek Intertie to have appropriate backflow prevention in order to prevent cross-contamination between the two systems, including but not limited to the City constructing a back-flow preventor vault beyond the new meter. The City shall test and maintain the backflow assembly in accordance with North Bend Municipal Code ("NBMC") Chapter 13.16 or other code provisions applicable at the time of such testing, and all other applicable state and federal laws and regulations.

4.6.5 The parties shall each require that their respective water system operators work with the operators of the other water system to reasonably ensure that the purchase and sale of Mitigation Water and Municipal Water maximizes the availability of water for both Sallal customers and City customers.

## V. MUNICIPAL WATER SUPPLY AND PURCHASE

5.1 Municipal Water Supply. In consideration of the benefits provided by this Agreement, the City shall sell Municipal Water to Sallal as follows:

5.1.1 Municipal Water provided to Sallal combined with the City's operational water production needs shall not exceed the withdrawal quantities (both annual and instantaneous) authorized by the Permit in the amounts of 3,094 AFY and 2,646 GPM, or violate the mitigation terms of the Permit.

5.1.2 Municipal Water Source and Quantity. In recognition of Sallal's right and obligation to provide water service within that portion of its WSA that is within the UGA/Annexation Area and subject to Section 5.1.1, the City shall provide Municipal Water to Sallal in instantaneous and annual quantities reasonably determined by Sallal to meet such service needs and to replace Mitigation Water supplied to the City as set forth in Article IV of this Agreement. Municipal Water shall not be available until both the Boxley Creek Intertie and North Bend Way Intertie are complete and in operation.

5.1.3 Municipal Water shall be supplied through the North Bend Way Intertie at an instantaneous flow rate of up to 1,000 GPM. If growth in the UGA/Annexation Area results in increased requirements for instantaneous flows from the North Bend Way Intertie, then the Intertie Committee, or other representatives of the parties as may be necessary, shall confer and cooperate on upsizing the pump to a mutually agreeable size. In such case, the City shall provide receipts or other written proof of its actual costs of such upsizing, and Sallal shall reimburse the City for such actual costs of upsizing.

5.1.4 Municipal Water provided by the City to Sallal shall be supplied in the same manner as the City provides water to its customers and shall meet federal and State of Washington

drinking water standards.

5.1.5 The parties shall use reasonable efforts to forecast and plan withdrawals of Municipal Water through the Intertie Committee.

5.1.6 The supply of Municipal Water shall be subject to operational limits and capacities of the City's wells, pumps, and reservoirs and at a level of service that reasonably approximates the level of service the City provides its own distribution system except as follows:

5.1.6.1 In the event of a general emergency or water shortage affecting the entire North Bend Water Supply System including a shortage of Municipal Water, general restrictions placed upon Municipal Water deliveries to Sallal shall be determined by the City and applied equally to the City's distribution system, its retail customers, and to Sallal's customers in the UGA/Annexation Area. The procedures to be used in the event of a weather-related water shortage, or shortages caused by other factors, shall be as described in the City's Water Conservation Ordinance ("WCO") codified at NBMC Chapter 13.50 as now in effect or as may be amended during the term of this Agreement. To the extent that the City Council amends the WCO during the term of this Agreement and any such amendment applies to Sallal's purchase of Municipal Water, the City shall provide a written copy of the proposed amendment to Sallal at least thirty (30) days prior to final adoption of such amendment. Sallal shall support reasonable emergency curtailment measures that are implemented by the City.

5.1.6.2 In the event of localized emergency problems, the City may impose localized service interruptions for the duration of the emergency. A localized emergency shall consist of system emergencies or the lawful demands of federal or state resource agencies, to install equipment, make repairs and replacements, conduct investigations and inspections, or to perform other maintenance work on the North Bend Water Supply System. Except in cases of emergency, and in order that Sallal's operations will not be unreasonably interrupted, the City shall give Sallal reasonable notice of any such interruption or reduction, including the reasons for and the probable duration. The City shall use reasonable efforts to minimize service interruptions to deliveries of Municipal Water to Sallal.

5.2 Improvements. The City reserves the right to operate and make improvements to its water supply and distribution system for the benefit of all ratepayers including Sallal.

5.3 North Bend Way Intertie and Easement. The City shall grant Sallal an easement ("Easement") and access license at no charge for the term of this Agreement to install, operate, maintain, repair, and replace the North Bend Way Intertie generally consisting of a pump station, controls, and underground piping located on City property at a location approximately depicted on Exhibit B and agreed upon in writing.

5.3.1 All work to design and install the North Bend Way Intertie (and possible piping relocation and future main to North Bend Way) shall be performed by Sallal at its sole cost and expense by no later than June 30, 2025, or other mutually agreed upon date ("Sallal Completion Date"). The City shall have the right to review and approve all plans for the work and

inspect the work and any modifications to ensure operational compatibilities. Upon completion, the North Bend Way Intertie shall be owned, maintained, and operated by Sallal but the City may access and inspect the facilities and read the meter.

5.3.2 The City may require that the North Bend Way Intertie have appropriate backflow prevention in order to prevent cross-contamination between the two systems, including but not limited to Sallal constructing a back-flow preventor vault beyond the new meter. Sallal shall test and maintain the backflow assembly in accordance with NBMC Chapter 13.16 or other code provisions applicable at the time of such testing, and all other applicable state and federal laws and regulations.

5.3.3 If any North Bend Way Intertie facilities located on City property or City right-of-way are abandoned by Sallal, Sallal shall, upon written demand by the City, promptly remove them at Sallal's sole cost and expense and repair the surface of the ground to as good or better condition than existed before the removal of the facilities.

5.4 Notice of Municipal Water Withdrawals. Sallal shall give the City reasonable notice of its intent to commence withdrawals of Municipal Water through the North Bend Way Intertie. In the event of planned, non-emergency usage, the notice shall be not less than three business days in advance. In the event of emergency usage, the notice shall be as prompt as possible under the exigent circumstances at the time. When periods of routine or daily needs for Municipal Water commences, the parties may mutually agree on alternate notice.

5.5 Other Conditions of Service Through the North Bend Way Intertie. The following terms and conditions shall apply to the sale of Municipal Water from the City to Sallal:

5.5.1 Sallal, at its sole cost and expense, shall install, own, and operate the meter at the North Bend Way Intertie, including telemetry and SCADA. The meter shall be calibrated at least once every three years at Sallal's sole cost and expense by an independent representative of the meter manufacturer and shall be maintained to be accurate within the manufacturer's specification. The City shall have access to the intertie meter for reading, inspection, and testing at the City's expense. The City shall read the intertie meter monthly and bill Sallal for water supplied according to the terms of this Agreement. The City may also measure deliveries of Municipal Water through its own metering equipment. In the event that the parties' metering equipment provides different readings, in the absence of clear error on the part of one or both parties' equipment, the readings shall be averaged.

## VI. RATES AND CHARGES

6.1 Mitigation and Municipal Water Exchange. There shall be no charge to either party to the extent that Mitigation Water is supplied and replenished (including advancements) with like quantities of Municipal Water within the same calendar year or such other period as the parties may mutually agree. To the extent that Mitigation Water is reserved for City use pursuant to Article IV of this Agreement but is not utilized by the City, Sallal shall not be charged. With respect to purchases by Sallal of Municipal Water in excess of annual quantities of Mitigation

Water supplied to or reserved for the City, the terms below shall apply.

6.2 Invoicing. Each party shall bill the other every two months for water supplied by invoice due and payable thirty (30) days after the date thereof. Each bill shall be comprised of the bi-monthly usage at the applicable water rate as set forth below. Delinquent and unpaid balances shall bear interest at the rate of 12 percent (12%) per annum.

6.3 Rates for Additional Supply. For the supply of water other than as set forth in Section 6.1, each party may charge the other a wholesale rate for such water based on quantity usage and their respective actual cost to produce and transmit such water. Such actual costs shall consist of a reasonable allocation of amounts incurred for operations, repairs, replacements, and maintenance costs attributable to that portion of the selling party's water system facilities used to produce and transmit water to the other. Each party shall have the right to review and audit the other's calculations and backup materials used to generate the wholesale rate.

6.4 Accounting Records. The City shall keep full and complete books of account for sale of Municipal Water described herein in the manner required by the State Auditor. Sallal shall keep full and complete books of account for sale of Mitigation Water described herein in compliance with generally accepted accounting standards as applied to non-profit corporations. Either party may request independent reviews or audits by in-house personnel or consultants at its own expense to review charges and credits made in accordance with or resulting from this Agreement.

## VII. CONSERVATION OF WATER RESOURCE

7.1 Conservation of Water Resource. The parties agree that preservation of water, a limited natural resource, benefits both City customers and Sallal members, and that both parties' water systems are subject to the Water Use Efficiency ("WUE") rule at WAC 246-290-800 et seq., including the establishment of distribution system leakage standards, water use efficiency goals, and related requirements. Each party agrees to implement adopted conservation measures and WUE plans consistent with its authority as a municipal water supplier under RCW 90.03.386 and WAC 246-290-810 to govern its own water system operations. Consistent with the WUE rule, the City Council adopted a WCO, codified at NBMC Chapter 13.50. Sallal shall not oppose or object to the application of the WCO and future amendments to the WCO, if any, within the city limits of the City of North Bend as the city limits may exist at any time during the term of this Agreement, including to customers of Sallal's water system residing within the city limits at any time during the term of this Agreement.

7.2 Applicability of City Water Conservation Ordinance. Within 180 days of mutual execution of this Agreement, the Sallal Board of Trustees shall adopt a water conservation policy including material terms that are substantially similar to the WCO presently in effect. Such policy shall remain in place for the duration of this Agreement but may be amended from time to time in the reasonable discretion of Sallal's Board of Trustees.

## VIII. GENERAL AND ADMINISTRATION

8.1 Authority. Each party warrants and represents to the other that the person signing this Agreement on the party's behalf has the requisite power and authority to do so and the party's respective governing bodies have duly authorized and approved this Agreement and that each has the right, title, power, and authority to carry out and perform the terms of this Agreement.

8.2 Service Area/Amendment of Planning Documents. Neither party shall serve or attempt to serve water to any project, parcel, firm, or person in the other party's water service area except by mutual written consent or as may otherwise be authorized by the King County Utilities Technical Review Committee ("UTRC") or other agency with jurisdiction. Each party shall seek to amend its water system plan and other applicable planning documents as necessary to authorize the conveyances of water and interties described in this Agreement.

8.3 Franchise Agreement to Use City Right of Way. The provisions of any franchise agreement between Sallal and the City, if any, shall be subordinate to the provisions of this Agreement unless the parties agree otherwise in writing.

8.4 Force Majeure. In the event of loss, damage, or destruction of water system facilities described in this Agreement, the owner of the damaged facility shall use reasonable efforts to repair or replace it as soon as reasonably possible. A party's performance that is prevented by a natural catastrophe, act of terrorism, act of God, or similar unforeseen event not of the parties' own making, shall be excused until the event subsides and performance can be reasonably accomplished.

8.5 Term. This Agreement shall commence on the date of mutual execution hereof and shall remain in effect 40 years from the date of mutual execution of this Agreement.

8.6 Dispute Resolution. Any dispute arising out of the terms and conditions of this Agreement, except for a billing dispute, shall be first submitted for non-binding mediation to a mediator agreed to by the parties. If mediation is unsuccessful, the parties may exercise any applicable judicial remedies. This Agreement shall be governed by the laws of the State of Washington without reference to its choice of law rules or conflicts of law provisions, unless limited or preempted by federal law. Any action relating to the Agreement shall be brought in King County Superior Court, or in the case of a federal cause of action or defense under federal law, in the United States District Court for the Western District of Washington at Seattle. The prevailing party shall be entitled to an award of its reasonable attorneys' fees, including expert witness costs and fees.

8.7 Remedies. The parties have the right to seek any and all of the following remedies, singly or in combination, in the event of breach of this Agreement:

8.7.1 Specific Performance. Each party shall be entitled to specific performance of each and every obligation of the other party under this Agreement without any requirement to prove or establish that such party does not have an adequate remedy at law. The parties hereby

waive the requirement of any such proof and acknowledge that either party would not have an adequate remedy at law for a breach of this Agreement.

8.7.2 Injunction. Each party shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of breach of this Agreement and to obtain a judgment or order specifically prohibiting a violation or breach of this Agreement without, in either case, being required to prove or establish that such party does not have an adequate remedy at law. The parties hereby waive the requirement of any such proof and acknowledge that the other party would not have an adequate remedy at law for the commission of a material default under this Agreement.

8.7.3 Alternative Remedies. Except as otherwise provided herein, neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to commence an action for equitable or other relief, and/or proceed against the other party and any guarantor for all direct monetary damages, costs, and expenses arising from the breach and to recover all such damages, costs, and expenses, including reasonable attorneys' fees.

8.7.4 Damages. Except as otherwise provided or limited herein, this Agreement does not limit the right of either party to bring a legal action for damages and/or commence an action at law for monetary damages or impose liquidated damages as set forth below or seek other equitable relief.

8.7.5 Remedies Cumulative. The remedies provided in this Agreement are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Agreement shall be deemed to bar either party from seeking appropriate judicial relief. Neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. The parties specifically do not, by any provision of this Agreement, waive any right, immunity, limitation, or protection otherwise available to them, their officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law.

8.8 Binding on Successors/No Third-party Beneficiary/Entire Agreement. This Agreement shall inure to the benefit of and be binding upon successors of interest and assigns of the parties. Neither this Agreement nor obligations to perform hereunder may be assigned voluntarily by either party without the other party's written consent. The parties by this Agreement do not intend to confer, and do not confer, rights or benefits upon any third party. This Agreement represents the entire agreement of the parties concerning the subject matter.

8.9 Notice. All notices relating to this Agreement shall be hand-delivered to the then-current physical address of the receiving party or sent to the following addresses, certified mail, return receipt requested, unless the other party is previously notified in writing of a different address:

To the City:  
City Administrator  
920 SE Cedar Falls Way  
North Bend, WA 98045

To Sallal:  
Manager  
P.O. Box 378  
North Bend, WA 98045

Provided, however, that monthly invoices and payments thereof may be delivered by regular mail or electronically.

8.10 Indemnification. Each party agrees to indemnify the other and hold it harmless from and against any loss, cost, damage, or expense of any kind and nature, including reasonable attorneys' fees and expert witness fees, arising out of injury to person or damage to property in any manner caused by the negligence, intentional act, or omission of the party in the performance of its work pursuant to or in connection with this Agreement.

8.11 No Joint Venture. This Agreement is intended to be and is a contract for the purchase and sale of a commodity and no provision hereof shall be construed to make the parties partners or joint ventures. Neither party is the agent of the other nor shall either party be held liable for the acts of the other on a theory of agency or any other representative capacity.

8.12 Mutually Dependent Provisions/Partial Invalidity. The obligation contained in this Agreement for one party to provide water service to the other is mutually dependent on the obligation and performance of the other party to provide water service. If any provision of this Agreement or its application is held by a court of competent jurisdiction to be illegal, invalid, or void, the validity of the remaining provisions shall not be affected; provided, however, if the invalid provision or its application is found to be substantive and to render performance of the remaining provisions infeasible or is found to materially affect the consideration and is inseparably connected to the remainder of the Agreement (such as the obligation of one party to provide water service to the other), the entire Agreement shall be invalid.

8.13 Non-Exclusivity. The parties may pursue sources of water and water rights without restriction in order to supply their respective water supply needs from alternative sources.

8.14 City Public Utility Tax. The City's public utility tax applies to monthly base rates and water usage charges paid by retail customers located within the City. Sallal revenues derived from wholesale sales of Mitigation Water shall not be taxable under the City's public utility tax.

8.15 Non-Waiver. By executing and performing this Agreement, neither party waives any right available at any time during the term of this Agreement under any State or federal law pertaining to municipal powers of eminent domain or other municipal powers nor any defenses thereto including but not limited to defenses provided by and derived from 7 USC 1926(b).

8.16 Membership. In consideration of the benefits provided by this Agreement, Sallal shall issue one membership to the City at no charge, in addition to the City's existing membership resulting from City-owned meters, for use of Mitigation Water.

8.17 Exhibits. Exhibits A and B attached hereto are incorporated by reference as if set forth in full herein.

CITY OF NORTH BEND

SALLAL WATER ASSOCIATION

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By: Rob McFarland, Mayor

Attest/Authenticated:

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Susie Oppedal, City Clerk

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By: \_\_\_\_\_, President

Attest/Authenticated:

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Secretary

**EXHIBIT A:**  
**Boxley Creek Intertie Drawing**

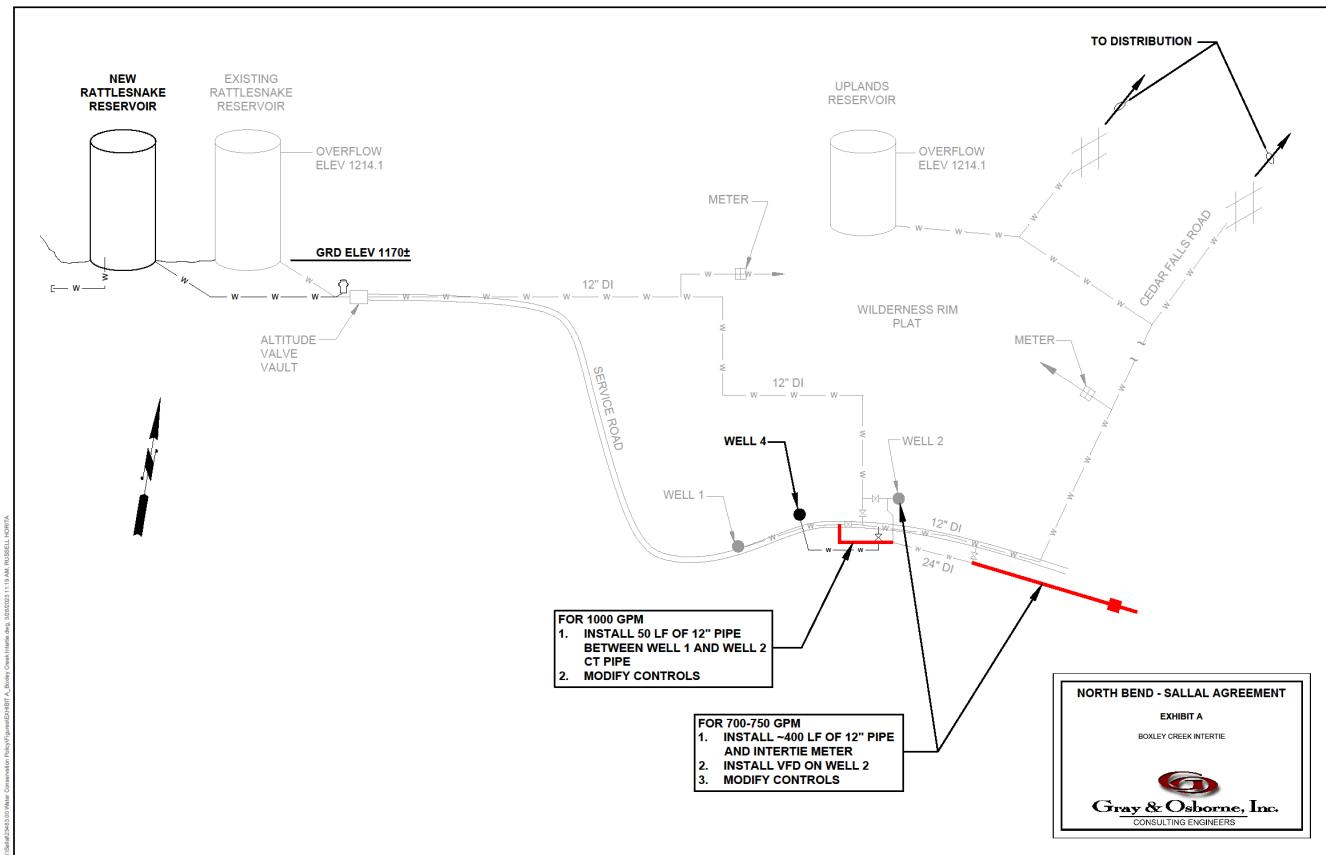


EXHIBIT B:  
North Bend Way Intertie Drawing

