



# McCleary City Council Agenda

**October 12th, 2016- 6:30 PM**

**Flag Salute**

**Roll Call:** \_\_\_ Pos. 1- Orffer, \_\_\_ Pos. 2-Richey , \_\_\_ Pos. 3- Peterson, \_\_\_ Pos. 4- Blankenship, \_\_\_ Pos. 5- Ator

**Public Hearing**

**City Revenue Hearing**

**Mayor Comments**

Rate Study, Budget Workshop- Oct. 21st

**Public Comment**

**Executive Session**

**Minutes**

**Tab A** None- 2 @ next meeting

Introduction      Action

**Approval of Vouchers**

Introduction      **X** Action      **X**

**Purchase Orders**

**Staff Reports**

**Tab B** Dan Glenn

**Tab C** Todd Baun

**Old Business**

**Tab D** Rainer Communications Franchise Agreement

**Tab E** Pole Attachment Rates/Agreement

**New Business**

**Tab F** AFG Grant Writer

**Tab G** BIAS 2017 Annual Service Agreement

**Tab H** Itron Contract

**Tab I** TCMS Chiller Maintenance Agreement

**Ordinances**

**Tab J** Grinder Pump Allowance

**Tab K** SEPA Efficiency Process

**Resolutions**

**Mayor Council Comments**

**Public Comments**

**Executive Session**

**Adjournment or Recess Meeting**

**Please turn off Cell Phones- Thank you**

Americans with Disabilities Act (ADA) Accommodation is Provided Upon Request

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La ciudad de McCleary es un proveedor de igualdad de oportunidades y el empleador

**MEMORANDUM**

TO: MAYOR AND CITY COUNCIL, City of McCleary  
FROM: DANIEL O. GLENN, City Attorney  
DATE: October 6, 2016  
RE: LEGAL ACTIVITIES as of OCTOBER 12, 2016

THIS DOCUMENT is prepared by the City Attorney for utilization by the City of McCleary and its elected officials and is subject to the attorney-client privileges to the extent not inconsistent with laws relating to public disclosure.

1. **SEPA EXEMPTION MODIFICATION ORDINANCE**: Provided for your consideration is the ordinance which would implement the modification in the levels below which projects are exempt from certain SEPA reviews. Rather than having a separate section in the Code, it made sense to me to have the general provisions and this specific modification to the general provisions in one section. That way, if an interested person goes to the Municipal Code online and downloads the general section, the exemption level modification will come with it and be readily available for recognition.

2. **ANNEXATION REQUEST HEARING**: Pursuant to the request filed by the applicant, a hearing had been scheduled tonight in terms of whether or not the Council wishes to move forward with annexing the subject property. However, due to the necessity of insuring giving of notice by the City in the manner required by law, it is my understanding that it will actually occur on October 26.

Since I will be out of the area on the 26<sup>th</sup>, one of my compatriots will be present in my absence. Given Council Member Blankenship's comment about the benefit of early information, with which I agree, I am going to provide operational information in relation to that matter now and follow up, if there is additional information, with the Report for the 26<sup>th</sup>.

As general information, this is a process commenced through the filing of a petition by landowners under RCW

35A.14.120, et seq. The provisions of RCW 35A.14 authorize commencement by a couple of other methods but this is the most frequently chosen alternative. You took the initial step at the prior meeting authorizing the public hearing. Annexation under this process is a matter completely within the discretion of the City Council. I would note that, while Grays Harbor is not a county subject to the Growth Management Act, the Commissioners some years ago implemented a Boundary Review Board process due to some dissatisfaction with annexation by Aberdeen. However, if you authorize the annexation after your hearing at the next meeting, hopefully we will be able to obtain an exemption from that process under the valuation and size of the subject property.

Now, to the specifics of this situation.

A. The application provided to and submitted by the owner, CMH Homes, Inc., confirms that it agreed, if so determined by the Council during the annexation process, the property will become subject to having any outstanding debt or obligations, such as bonds, currently burdening the City.

B. As to zoning classification, under the provisions of Section 17.16.060, unless a different classification is requested by the applicant or recommended by you, the property will come in as R-1 unless a different classification were to be shown on a future land use map in place. Mr. Baun has confirmed to me that if, after the hearing, you choose to go forward with the annexation, that will be the classification applied.

C. As usual, if you decide that annexation is appropriate, it will be done through your enactment of an ordinance. To avoid doing the proverbial "kicking the ball down the road" situation, I will have prepared and provided a draft ordinance approving the annexation if that is the consensus position. It may be acted upon that evening following the closing of the public hearing.

3. **MASHELL TELECOMMUNICATIONS FRANCHISE DRAFT**: As has been reported in prior reports, this company has requested to be granted a franchise for utilization of the City's rights of way and utility poles in furtherance of telecommunication services it desires to provide.

As background the Company does business as Rainier Connect in Lewis County and apparently purchased Reach One earlier this year. (If you wish to read a bit about the company, its basic website can be found at "rainierconnect.com".) I have spoken to Centralia's City Attorney, Ms. Shannon Murphy, who years ago practiced in Elma with Mr. Dudenbostel, about the firm.

She indicated that they have been a responsible provisioner of services. Given the fact that the City was requested to and did grant a franchise to Astound Broadband, it is clear that this area is one which is becoming more competitive.

In any event, I have prepared an updated draft ordinance. It has been reviewed by Mr. Nott, given the likely use of the L&P's poles, and Mr. Baun, since it involves the use of the right of way which is core to the operation of his Department. Both have indicated they feel it appropriate in terms of implementation. The initial ordinance has also been reviewed by representatives of the company who have also indicated tentative approval. I have provided the updated draft for the Company's review and anticipate having a response by the time of this meeting.

4. **POLE ATTACHMENT FEES:** This is a matter about which we will be providing you more information. When we began working through the Astound Broadband franchise request, it became clear that certain of the users of the City's power poles had not had a pole attachment rate adjustment for an extended period of time. Thus the request that the consultant include as part of their study information on and recommendations in relation to such fees. I anticipate being provided a copy of the pertinent portion of the Report.

From that point of receipt, I will be discussing with Mr. Pitt, GHPUD's legal counsel, the rates which it currently charges for allowing use of their poles. At that stage, we will be looking at each user. Thanks to Mr. Nott's work, we do have a listing of what entities use the poles and how many poles are used by each. Then, the meeting with the Finance Committee and discussions with the utilizers with the hope of coming to a common agreement.

5. **EMERGENCY PREPAREDNESS DOCUMENTS:** Mr. Baun referenced this area in his report of a couple of meetings ago. So as to make certain we will be working with consistency with the County, I have been in contact with Mr. Wallace, the deputy director of the County's agency. He will be providing further information which will then be integrated into drafts for your review.

6. **GRINDER PUMP SYSTEM USE AUTHORIZATION:** As of the time of the preparation of this Report, the matter will be on this agenda for formal consideration. If any of you have questions or suggestions in relation to the draft, please direct them to me. Since I will be out of the office Thursday and Friday attending the WSAMA Conference, sending the query by email

is likely the best alternative. I will be back in the office Monday so feel free to give me a call.

It is clear that Mr. Brogan is hoping for adoption of this ordinance. The City has received notification from the County that his company has filed a plat application for his property indicating in that application the use of the grinder pump system.

As always, this is not meant to be all inclusive. If you have any questions or comments, please direct them to me.

DG/le

**STAFF REPORT**

To: Mayor Schiller  
From: Todd Baun, Director of Public Works  
Date: October 7, 2016  
Re: Current Non-Agenda Activity

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**Annexation Public Hearing Oct. 26th**

The public hearing for the annexation request is set for the Oct. 26<sup>th</sup> meeting. This is a .5 acre parcel that is next to City limits on McCleary Road.

**Boundary Line Adjustment**

There has been an application for a Boundary line adjustment on Cedar Street. This is a simple line adjustment of 5 ft. Once Gray and Osbourne has finished their review, and if there is no issues, I will be approving the application.

**Budget**

The 2017 Budget is taking up a lot of my time right now. We are working hard to get a draft budget to you by the October 26<sup>th</sup> meeting.

# Building and Planning Staff Report

To: Mayor and City Council

From: Paul Morrison

Date: October 1st, 2016

Re: September, Building and Planning Department activities.

## New Permit Activities for September 2016

222 East Mommsen Road	Interior Renovations	Total Fee \$ 250.00
810 North Summit Road	Finishing home addition	Total Fee \$ 354.50
610 North Summit Road	New SFR	Total Fee \$ 10,502.30
Wave Broadband	Fiber Optics	Total Fee \$ 93.00
606 Evergreen Place	Driveway Approach	Total Fee \$ 93.00
Power Fees For New SFR		Total Fees \$ 7,297.18
<b>Permit Revenues</b>	Total fees charged for July \$ 18,589.98	Total amount collected for July \$ 31,876.24

## Permit Activity Totals

New Homes Built for 2016 20	All Permits Issued for 2016 133	Total Fees Charged for 2016 \$ 215,942.12
New Homes Built for 2015 2	All Permits Issued for 2015 52	Total Fees Charged for 2015 \$ 52,499.28
New Homes Built for 2014 3	All Permits Issued for 2014 89	Total Fees Charged for 2014 \$ 59,695.93
New Homes Built for 2013 3	All Permits Issued for 2013 79	Total Fees Charged for 2013 69,743.57
New Homes Built for 2012 6	All Permits Issued for 2012 97	Total Fees Charged for 2012 \$ 123,164.28
New Homes Built for 2011 1	All Permits Issued for 2011 37	Total Fees Charged for 2011 \$ 24,803.65

## 3 Unresolved Nuisances for the Month of August

### Unresolved Nuisance Letters for the Month of September (MMC 8.16 & 8.20)

511 South 3<sup>rd</sup> Street

- Tarps covering roof of the home

417 West Pine Street

- Junk & garbage along alley

1101 North Summit Road

- Not retaining collection service (Lemay's)

330 South 2<sup>nd</sup> Street

- Property Nuisance

# **Building and Planning Staff Report**

## **0 Unresolved Abatements for the Month of August**

### **Abatements Issued for the Month of September (Correction Notice)**

- No Abatements Issued for September

## **Notice of Infractions Issued for the Month of September**

No infractions issued for the month of September

## **Resolved Municipal Code Violations for the Month of September**

108 North 10<sup>th</sup> Street (Lemay's)

411 West Pine Street (Lemay's)

527 South 3<sup>rd</sup> Street (Lemay's)

503 South 3<sup>rd</sup> Street (Lemay's)

1000 West Simpson Ave (Lemay's)

629 South 2<sup>nd</sup> Street (Lemay's)

1101 North Summit Road (Lemay's)

120 South 5<sup>th</sup> Street (Removed RV & Utility Trailer on City ROW)

There are several properties that have contacted me and I am currently working with them to comply.

There are several that have yet to contact me or comply.



City Of McCleary Police Chief Report:  
 Reporting Officer: Chief Crumb *JMC*  
 Month Of October (as of the 6<sup>th</sup>, 0930 hrs)

City Mayor: Brent Schiller

- Position 1: Brenda Orffer
- Position 2: Dustin Richey
- Position 3: Larry Peterson
- Position 4: Ben Blankenship
- Position 5: Pan Ator

<b>Violent &amp; Property Crimes</b>	<b>Total</b>	<b>Traffic Stops and Violations</b>	<b>Total</b>
Murder	0	DUI	1
Rape	0	Accident	2
Aggravated Assault	0	Stolen Vehicle	0
Robbery	0	Abandon Vehicle	1
Harassment / Domestic	0	Parking Enforcement	0
Theft	0	Motorist	0
Stalking	0	Fatal Accident	0
Found Property	0	Subject Stop	0
Warrant Arrest	2		

<b>Other Emergent Calls</b>	<b>Total</b>	<b>Other Non Emergent Calls</b>	<b>Total</b>
FIRE	5	Noise Complaints	0
Suicide/Attempt/	0	Code Enforcement	1
Missing Person	0	Agency Assist	2
Disorderly Conduct	1	Police Referrel-Info	4
Drug Incidents	2	Public Work Assist	1
Man Down/Death in city	0		

	Sept	Oct
<b>Total Calls For The Month</b>	137	26

Calls for The Year: 1873    Calls In City Limits Oct 20

Regular Hours                      Overtime Hours

Regular Hours                      Overtime Hours

**Time Spent On Reaction Calls**

**Time Spent On Non Reaction Calls**

**Items of Special Attention:**

- PoliceOne Computerized Training opportunity.
- Calls concerning subjects with mental illness
- Jail transports
- No City resources to assist citizens of age or disability

MEMEMORANDUM

Date: October 6, 2016

To: Mayor and City Council Members  
City of McCleary

From: George Crumb, Chief of Police  
City of McCleary

RE: Computerized Police Training by PoliceOne Academy

Dear Mayor and Council;

This training site has been brought to my attention. In the past it has been difficult to schedule McCleary officers to attend out of city training opportunities without completely rearranging the schedule. The state has mandated an additional yearly in-service training of 24 hours. I believe this computerized style of training will help us achieve that goal and be beneficial to the officer's

The PoliceOne program offers a 12 month contract for up to five (5) officer users per year for \$575. The amount should reduce after the 1<sup>st</sup> year. I would like to have the opportunity to try this style of training system.

Thank you;

A handwritten signature in black ink, appearing to read 'GMC', is written over the typed name of George Crumb.

George Crumb, Chief of Police



by Praetorian Digital

**Academy Contact Information**

Prepared By Monique Childers Phone (626) 239-6922  
 Title Senior Business Development Manager Email monique@p1academy.com

**Department Information**

Account Name McCleary Police Department Address 100 S 3rd St  
 Contact Name George Crumb McCleary, WA 98557  
 Title Chief Payment Type Invoice  
 Phone 360-495-3107 Billing Contact George Crumb  
 Email george.c@cityofmcclary.com Billing Notes Referral from: Squaxin Island Tribal PD  
 Contract Start Date 11/1/2016  
 Contract End Date 10/31/2017

**Subscription Platform**

Product	Additional Details	Standard Price	Sales Price
PoliceOne Academy Annual Rate Per User	5	\$375.00	\$375.00
Set Up Fee	1	\$200.00	\$200.00
Subtotal			\$575.00
Discounted Amount			\$0.00
Contract Total			\$575.00

**Terms & Conditions**

*Billing Contact Info: Hilary Barham, hilary.barham@praetoriandigital.com  
 200 Green Street Ste. 200, San Francisco, CA 94111  
 phone: (415) 992-4252 ; Fax: (415) 962-8340*

**Billing:** A yearly subscription billing period begins at the effective starting date of service as stated above. A payment is due in full at the beginning of the 12-month period unless otherwise specified.

**Renewal:** Term of subscription will be automatically renewed upon contract end date using current rate card rates at the time of renewal, unless written notice of non-renewal is received at least thirty-days prior to contract end date.

**Cancellation:** Contract cannot be cancelled prior to effective contract end date.

**Department Personnel Use Only:** Passwords and videos can be used by department personnel during the term of the subscription. Sharing department login access to the PoliceOne Academy or CorrectionsOne Academy or any downloaded or video content with other departments is expressly prohibited. Any violation of this policy will result in revocation of department access.

**Limitation of Liability:** The PoliceOne and/or CorrectionsOne Academy videos contained herein serve as examples of best practices and should not in any way replace, interfere, or override individual agency protocol, tactics or policies. The Academy platforms are provided on an "as is, as available" basis without warranty of any kind, expressed, implied or statutory, and any and all warranties of merchantability, fitness for a particular purpose or non-infringement of third parties' rights are specifically disclaimed. Although PoliceOneAcademy.com and

CorrectionsOneAcademy.com have made best efforts to provide accurate training information on the site, it makes no guarantee or warranty, express or implied, as to the reliability, accuracy, timeliness or completeness of that information and assumes no liability for errors or omissions therein.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**STAFF REPORT**

To: Mayor Schiller  
From: Todd Baun- Director of Public Works  
Date: October 7, 2016  
Re: Rainer Communications Franchise Agreement

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The City received the Franchise Request from Rainier, back at the July 5<sup>th</sup> Council meeting. Dan has been working on getting the draft agreement ironed out and we now have a franchise agreement to bring to the Council.

For reference, Rainier Connect is a telecommunications company and Internet service provider of long standing in the State of Washington. Rainier Connect has provided telecommunications service to the City of Eatonville and the surrounding areas for over one hundred years.

**Action Requested:**

Please allow the City move forward with the franchise agreement with Rainier Connect.

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

**AN ORDINANCE GRANTING A NONEXCLUSIVE  
TELECOMMUNICATIONS FRANCHISE TO MASHELL  
TELECOM, INC., A WASHINGTON CORPORATION,  
SETTING FORTH TERMS AND CONDITIONS,  
PROVIDING AN EFFECTIVE DATE AND  
SEVERABILITY.**

**R E C I T A L S:**

1. The City has been contacted by Mashell Telecom, Inc, a Washington corporation having the UBI #272000375 and doing business as Rainier Connect, hereinafter referred to collectively either as Rainier or Franchisee.

2. Rainier has requested authority to locate, construct, operate, and maintain poles, wires, fiber optics lines, underground cables and appurtenances over, under, along and across all of the City's rights of way and public property in the City of McCleary, State of Washington, and setting forth conditions accompanying the grant of Franchise.

3. After review, the City, by and through the City Council and Mayor, has determined that it is in the best interest of and consistent with the convenience and necessity of the City and its citizens to grant a Franchise within the confines of the City to the Franchisee.

4. In doing so, the City through this ordinance is setting forth the terms and conditions governing the grant and utilization of the franchise.

5. The grant is conditioned upon Rainier's written acceptance of the terms and conditions set forth herein and upon its continued compliance with those terms and conditions.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE  
CITY COUNCIL OF THE CITY OF McCLEARY:

**ARTICLE I. DEFINITIONS**

For the purpose of this Franchise the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever required. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. "City" is the City of McCleary, Washington.

B. "Franchisee" means Mashell Telecom, Inc., the grantee of rights under this Franchise Ordinance or its lawful successor, transferee, or assignee.

C. "Easement" shall be limited to those Rights-of-Way owned or controlled by the City.

D. "Facilities" means any and all fiber optic lines, equipment, and related appurtenances in any way comprising a part of the System.

E. "Force Majeure" means any delays caused by reason of (1) civil commotion; (2) riots; (3) Acts of God and nature, including but not limited to floods, earthquakes, ice storms and tornadoes; (4) strikes or labor unrest; (5) the inability to secure materials; and (6) any other events or circumstances reasonably beyond the control of the Franchisee.

F. "Franchise" means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of the System in, on and under the City's Rights-of-Way.

G. "Franchise Area" shall mean the area within the City limits of the City of McCleary, Washington, including areas annexed during the term of this Franchise.

H. "Rights-of-Way" or "Right-of-Way" means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of the System. No reference in this Franchise to a "Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of the System, and the Franchisee shall be deemed to gain only those rights which the City has the right and power to give and only to the extent necessary to carry out the purposes of this Franchise.

I. "System" means the poles, wires, fiber optic lines and all necessary or desirable appurtenances for the purpose of a communications business in accordance with applicable law.

## **ARTICLE II. GRANT OF FRANCHISE**

### **SECTION 1. GRANT:**

A. There is hereby granted to the Franchisee a non-exclusive right, privilege, and Franchise to have, acquire, construct, reconstruct, maintain, use and operate within the corporate limits of the City, the System and to have, acquire, construct, reconstruct, maintain, use and operate in, over, under, along, and across the present and future Rights-of Way all necessary or desirable wires, cables, underground conduits, manholes and other structures and appurtenances in connection with the System.

B. Limited Rights. This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the



Franchisee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof. This Franchise does not deprive the City of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the City's Rights-of-Way covered by this Franchise, including without limitation the right to perform work on its roadways, streets or appurtenant drainage facilities, water and waste water facilities and including constructing, altering, paving, widening, grading, or excavating such streets.

#### **SECTION 2. TERM:**

A. The Franchise granted hereunder shall be for a term of twenty-five (25) years from and after the effective date of this ordinance, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

#### **SECTION 3. FRANCHISE SUBJECT TO OTHER LAWS:**

This Franchise is subject to and shall be governed by all applicable provisions of law. Notwithstanding any other provisions of this Franchise to the contrary, the Franchisee shall at all times comply with all applicable laws and regulations of the state and federal government or any administrative agencies thereof, provided, however, if any such law or regulations shall require the Franchisee to perform any service, or shall permit the Franchisee to perform any service, or shall prohibit the Franchisee from performing any service, in conflict with the terms of this Franchise, City ordinance, or any regulation of the City Council, then as soon as possible following knowledge thereof, the Franchisee shall notify the attorney for the City of the point of conflict believed to exist between such regulation or law and regulations of the City Council, the City's ordinance, or this Franchise.

#### **SECTION 4. OTHER FRANCHISES:**

This Franchise shall not be construed as any limitation upon the right of the City to grant to other persons rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other Rights-

of-Way, public ways or public places. The City specifically reserves the right to grant at any time during the term of this Franchise or renewal thereof, if any, such additional Franchises as it deems appropriate.

**SECTION 5. WAIVERS:**

A. The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this Franchise, or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City, nor shall it excuse the Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by the City.

B. No waiver by the City of any breach or violation of any provision of this Franchise or any ordinance shall be deemed to be a waiver or a continuing waiver by the City of any subsequent breach or violation of the same or any other provision. Neither the granting of the Franchise, nor any provision herein, nor any action by the City hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the City, as provided for under state and federal law, including without limitation the right of eminent domain.

C. No waiver of any provisions of this Franchise by the City shall be effective unless authorized in writing by the City.

**SECTION 6. FRANCHISE ACCEPTANCE; PRIOR FRANCHISE SUPERSEDED AND REPEALED:**

A. Upon adoption of this Franchise and acceptance hereof by the Franchisee, the Franchisee agrees to be bound by all the terms and conditions contained herein, which acceptance shall constitute an absolute and unconditional acceptance of the Franchise and promise to comply with and abide by all its provisions, terms, and conditions. The Franchisee's signature at the end of this Franchise shall constitute compliance with this section.

B. By accepting the Franchise, the Franchisee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise; and (3) agrees that the Franchise was authorized pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

#### **SECTION 7. POLICE POWERS:**

In accepting this Franchise, the Franchisee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public, and the Franchisee agrees to comply with all generally applicable laws and ordinances enacted by the City pursuant to such power that do not alter the Franchisee's material obligations under this Agreement.

Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies specifically to the Franchisee or which contains provisions inconsistent with this Franchise shall prevail only if upon such exercise, the City finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

#### **SECTION 8. PERMITS REQUIRED:**

In addition to this Franchise, in order for the Franchisee to be allowed to occupy or use the Rights-of-Way of the City, the Franchisee shall obtain all other required authorizations, certificates, licenses and permits, in accordance with federal, state and local law. The City shall not unreasonably withhold any permits requested by the Franchisee as determined by applicable law.

### **ARTICLE III. STANDARDS FOR USE OF RIGHT OF WAY**

#### **SECTION 1. USES OF RIGHTS-OF-WAY:**

A. **Non-exclusive Grant:** This grant for the use of all City Rights-of-Way is nonexclusive and does not establish priority for use over other franchise holders, permit holders and the City's own use of public property. Additionally, Franchisee shall respect rights and property of the City and other authorized users of the Rights-of-Way. Disputes between the Franchisee and other entities over the use of the Rights-of-Way shall first be submitted to the Mayor or Administrator of the City for possible resolution.

B. **Interference with Persons and Improvements:** The Franchisee's System shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of Rights-of-Way or other public property. The City shall have power at any time to order and require Franchisee to remove and abate any pole, wire, cable, or other structure that is dangerous to life or property, and in case Franchisee, after notice, fails or refuses to act within a reasonable time, the City shall have the power to remove or abate the same at the expense of the Franchisee.

C. **Relocation of the Facilities:** Franchisee shall continuously provide the City a current map of the location of Franchisee's facilities within the City. In the event that at any time during the period of this Franchise the City shall elect to alter or change the grade of any Right-of-Way, the Franchisee, upon reasonable notice by the City, shall begin removing and/or relocating as necessary, its poles, wires, cables, underground conduits, manholes and other fixtures at the Franchisee's expense, provided, if Franchisee's wires, cable, or other fixtures are placed within or attached to conduit, poles, or appliances owned or maintained by others, such as utility poles of a public utility pursuant to a pole attachment agreement, Franchisee shall undertake such removal or relocation in cooperation with the public utility. If Franchisee fails or refuses to act within thirty (30) days of notice from the City, the City shall have the power to remove or abate the same at the expense of the Franchisee.

Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Franchisee's share of the cost of

relocation will be paid by the City if it requested the subsequent relocation.

**D. Interference with utilities:** The Franchisee with the consent of the Public Works Director shall place poles, equipment or other fixtures in such a manner that does not unreasonably interfere with existing gas, electric or telephone facilities, traffic control signalization, street lights, fire alarm lines or communications lines, or obstruct or hinder in any manner the various utilities serving the residents of the City.

**E. Additional Easements:** If additional private easements are necessary, it shall be the Franchisee's responsibility to secure the same. The grant of this Franchise is limited to the City's control of its Rights-of-Way and does not extend to any other public or private property.

**F. Cooperation with Building Movers:** The Franchisee shall, at the request of any person holding a building-moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Franchisee shall have the authority to require such payment from such person in advance. Unless otherwise agreed, the Franchisee shall be given not less than fourteen (14) calendar days advance notice to arrange for such temporary wire changes.

**G. Construction and Maintenance, Excavation:**

1. The route of any underground portions of the system shall be subject to review and approval by the City. Engineering plans for construction in Rights-of-Way shall be submitted to the City prior to construction.

2. Except in an emergency, the Franchisee shall comply with generally applicable City ordinances, policies and rules pertaining to notification when excavating pavement in any Right-of-Way.

**H. Coordination of Placement of Manholes:** The Franchisee shall coordinate the placement of its manholes, if any, with the affected City Departments.

I. **Movement of Facilities during Emergencies:** During emergencies, the City may move the Franchisee's Facilities, but shall first make reasonable attempts to notify the Franchisee.

J. **Payment of the City's Locate Costs:** The Franchisee shall only pay for the City's locate costs that specifically relate to the Franchisee and so long as those costs are not already included in the permit fees. The Franchisee shall be required to obtain verifiable locates prior to any digging, trenching or excavation.

K. **Acquisition of Facilities:** Upon the Franchisee's acquisition of Facilities in any Right-of-Way, or upon the addition or annexation of any area in which the Franchisee owns or operates any Facility, the Franchisee shall, at the City's request, submit to the City a statement describing all Facilities involved, whether authorized by the Franchisee, permit, license or other prior right, and specifying the location of all such Facilities to the extent the Franchisee has possession of such information. Such Facilities shall immediately be subject to the terms of this Franchisee.

L. **Discontinuing Use of Facilities:** Whenever the Franchisee intends to discontinue using any Facility within the Rights-of-Way, the Franchisee shall submit for the City's approval a complete description of the Facility and the date on which the Franchisee intends to discontinue using the Facility. The Franchisee may remove the Facility or request that the City permit it to remain in place. Notwithstanding the Franchisee's request that any such Facility remain in place, the City may require the Franchisee to remove the Facility from the Right-of-Way or modify the Facility as a condition of its remaining in place to protect the public health, welfare, safety or convenience, or otherwise serve the public interest. The Franchisee shall complete such removal or modification in accordance with a schedule to be mutually agreed upon, but in no event shall Franchisee fail to remove said Facility within ninety (90) days of written demand by the City. Until such time as the Franchisee removes or modifies the Facility, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, the Franchisee shall be responsible for all necessary repairs and relocations of

the Facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the Facility were in active use, and the Franchisee shall retain all liability for such Facility.

**M. Hazardous Substances:**

1. The Franchisee shall comply with all applicable local, state and federal laws, statutes, regulations, ordinances and orders concerning hazardous substances relating to the Franchisee's System in the Rights-of-Way.

2. The Franchisee shall maintain and inspect its System located in the Rights-of-Way. At any time, the City may inspect the Franchisee's Facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to the Franchisee's System. In removing or modifying the Franchisee's Facilities as provided in this Franchise, the Franchisee shall also remove and properly dispose of all residues of hazardous substances related thereto.

3. The Franchisee shall indemnify and hold the City harmless against any and all liability, claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances caused by the Franchisee's System in the Rights-of-Way.

**N. Completion of Work by the City:** On failure of the Franchisee to commence, pursue or complete any work required by law or by the provisions of this Franchise or any applicable permit to be done in any Right-of-Way, within the time prescribed, and to the satisfaction of the City, the City may at its discretion cause the work to be done. The Franchisee shall pay to the City the reasonable costs of the work in the itemized amount reported by the City to the Franchisee within thirty (30) days after receipt of the itemized report.

**SECTION 2. USE OF FRANCHISEE FACILITIES:**

The City shall have the right, at no cost, during the life of this Franchise, to make additional use, for any public purpose, of any poles controlled or maintained exclusively by

or for the Franchisee, provided that such uses do not unreasonably interfere with the operations of the Franchisee.

**SECTION 3. JOINT USE OF POLES, TRENCHES AND CONDUITS:**

A. The Franchisee may be required to attach its wires to poles owned and maintained by another person or entity, or to permit the wires of another person or entity to be attached to the poles owned by the Franchisee, upon reasonable terms and for just compensation. All of the Franchisee's requirements pertaining thereto must be in accordance with applicable law.

B. Lines shall be located on poles in compliance with applicable safety standards and shall not interfere with the erection, replacement, operation, repair, or maintenance of the wires and appurtenances of the persons or entities occupying the poles.

C. The Franchisee may be required by the City to share trench space with another person or entity for the placement of facilities underground. Compensation to the Franchisee, as well as terms of sharing trench space, shall be resolved between the affected entities. Ducts, cables, or wires shall be placed in trenches in compliance with applicable safety standards and pursuant to the space allocation plan of the City.

**SECTION 4. CHANGES FOR GOVERNMENTAL PURPOSES:**

A. Whenever by reason of changes in the grade of any Right-of-Way or in the location or manner of construction of any water pipe, gas pipe, sewer or other underground or overhead structure for any governmental purpose whatsoever, it shall be deemed necessary by the Director of Public Works of the City to remove, alter, change, adapt, or conform the underground or overhead facilities of the Franchisee, such alterations or changes shall be made as soon as practicable by the Franchisee and begin within ninety (90) days of notice from the City, without claim for reimbursement or damages against the City; provided, however, if said requirements impose a financial hardship upon the Franchisee, the Franchisee shall have the right to present alternative proposals for the City's consideration, provided, further if



Franchisee's wires, cable, or other fixtures are placed within or attached to poles, conduits, or appliances owned or maintained by others, such as utility poles of a public utility pursuant to a pole attachment agreement, Franchisee shall undertake such removal, alteration, change or adaption in cooperation with the public utility. Except for Franchise revocation or termination or System abandonment, the City shall not require Franchisee to remove its facilities entirely from a Right-of-Way unless suitable alternatives are available for relocation at a reasonable cost. If Franchisee fails or refuses to begin such alterations or changes within such ninety (90) day period the City shall have the power to remove or abate the same at the expense of the Franchisee, all without compensation or liability for damages to the Franchisee.

B. In cases of emergency the City may require relocation of the Franchisee's facilities at the Franchisee's expense in the event the emergency creates an immediate threat to the public safety, health and welfare.

#### **SECTION 5. WORK BY OTHERS:**

A. The City reserves the right to lay, and permit to be laid, sewer, electric, phone, gas, water, and other pipelines, cables, conduits and related appurtenances, and to do and permit to be done any underground or overhead work in, across, along, over, or under a Right-of-Way or other public place occupied by the Franchisee. The City also reserves the right to construct new streets and to alter the design of existing streets. In performing such work, provided the City complies with notification requirements of the Northwest Utility Notification Center ("call before you dig"), the City shall not be liable to the Franchisee for any damage so occasioned, but nothing herein shall relieve any other person or entity from the responsibility for damages to the facilities of the Franchisee.

B. In the event that the City subsequently authorizes someone other than the Franchisee to occupy space under the surface of a Right-of-Way, such grant shall be subject to the rights herein granted or heretofore obtained by the Franchisee. In the event that the City shall close or abandon any Right-of-Way which contains existing facilities of the

Franchisee, any conveyance of land within such closed or abandoned Right-of-Way shall be subject to the rights herein granted or heretofore obtained by Franchisee; provided, that the Franchisee may be ordered to vacate any land so conveyed if an alternate route is practicable and if the Franchisee is reimbursed by the person to whom the property is conveyed for the reasonable costs of service disruptions, removal and relocation of facilities.

C. If the City shall require the Franchisee to adapt or conform its facilities or in any way or manner to alter, relocate, or change its facilities to enable any other entity or person, except the City, to use, or use with greater convenience, said Right-of-Way, the Franchisee shall not be bound to make any such changes until such other entity or person shall have undertaken, with good and sufficient bond, to reimburse the Franchisee for any costs, loss, or expense which will be caused by, or arise out of such change, alteration, or relocation of Franchisee's property; provided, however, that the City shall never be liable for such reimbursement.

#### **SECTION 6. CONSTRUCTION PROVISIONS:**

A. **Standards:** The Franchisee's System constructed within the City shall comply with all applicable federal, state and local laws.

B. **Tree Trimming and Removal:** To the extent permitted by law, the Franchisee shall have the authority, after obtaining any consent legally required from any affected property owner, to trim trees or other natural growth overhanging any of its Facilities in the City so as to prevent branches or foliage from coming in contact with the Franchisee's wires, cables, or other equipment. The Franchisee shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, at its own cost and expense, reasonably replace all trees or shrubs destroyed as a result of any construction, operation or maintenance of the System. The Franchisee shall make reasonable efforts not to unreasonably harm such trees or shrubs. Any pruning or removal of trees or shrubs in the City shall comply with practices outlined in the American National Standards Institute, Inc., (ANSI) Tree Care Operations - Tree, Shrub, and Other Woody

Plant Maintenance Standard Practices and with City Code provisions, including licensing and permitting provisions.

C. **Inspection:** The City shall have the right, but not a duty, to inspect all construction and installation work performed by the Franchisee pursuant to this Franchise as it shall find necessary to ensure compliance by the Franchisee. Such inspection shall be in accordance with the provisions of this Franchise.

D. **Restoration of City Property:** The Franchisee at its own cost and expense and in the manner approved by the City shall replace and restore all City property, including Right-of-Way, which is disturbed by the Franchisee's construction, installation, maintenance or operation of its Facilities, in accordance with the City's Design Standards and Standard Construction Specifications. Nothing herein shall prevent the City from charging the Franchisee its usual and customary fees of general applicability for inspection of such restoration or replacement work. The Franchisee shall be solely responsible for protecting the public health, safety and welfare on such City property from the time of disturbance until proper restoration. Failure of the Franchisee to replace or restore such City property within a reasonable time period after written notification by the City shall entitle the City to cause the proper restoration to be made at the Franchisee's expense. The Franchisee shall pay to the City the cost thereof, in the itemized amounts reported by the City to the Franchisee, within thirty (30) days after receipt of such itemized report. Such payment shall not excuse a breach of the Franchise caused by the Franchisee's failure to commence, pursue or complete the required work.

E. **Restoration of Property:** Whenever the Franchisee shall cause or any person acting on its behalf shall cause any disturbance, injury or damage to any private property or City property by or because of the installation, maintenance or operation of its Facilities, such disturbance, injury or damage shall be remedied fully by the Franchisee at its expense. Further, the Franchisee shall, at its own cost and expense, replace and restore the respective property in accordance with the City's Design Standards and Standard Construction Specifications within a reasonable time of the disturbance, injury or damage.

F. **Construction Necessary For Operation:** Subject to applicable laws, regulations and ordinances of the City and the provisions of this Franchise, the Franchisee may perform all construction necessary for the operation of its System. All construction and maintenance of any and all Facilities within the Right-of-Way incident to the Franchisee's Facilities shall, regardless of who performs the construction, be and remain the Franchisee's responsibility.

G. **Joint Trenching and Boring:** The Franchisee may make excavations in the Rights-of-Way for any Facility needed for the maintenance or extension of the Franchisee. Prior to doing such work, the Franchisee shall give appropriate notice to the City and the notification associated in accordance with applicable law (namely the Northwest Utility Notification Center). When obtaining a permit, the Franchisee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, the Franchisee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of street cuts within the City. If the Franchisee reasonably anticipates that trenching will encounter tree roots, the Franchisee shall consult with the City prior to trenching.

H. **Emergency Repairs:** In the event that emergency repairs are necessary to any part of its System, the Franchisee shall immediately notify the City of the need for such repairs. The Franchisee may initiate such emergency repairs, and shall apply for appropriate permits within seventy-two (72) hours after discovery of the emergency. The Franchisee shall comply with all applicable City regulations relating to such excavations or construction, including the payment of permits or license fees, and shall reimburse the City for any damage to City utilities as a result of the emergency repairs. Likewise, in the event emergency repairs are necessary to any underground municipal utility to ameliorate a serious risk to the public health and/or safety, if the City knows or has reason to believe part of Franchisee's system is buried in the area which is to be

excavated, the City shall immediately notify Franchisee of the City's intent to excavate. Such notification shall be done in such manner as may be reasonably calculated under the circumstances of the emergency to provide Franchisee with an opportunity to identify the location of any part of its system buried within the proposed excavation site. If the City then damages the system while making the emergency excavation, so long as its actions are not wanton, the City and its officers, employees, and contractor shall have no liability for the damage.

I. **Location of Facilities:** The Franchisee shall be a member of the Northwest Utility Notification Center. After any City department, franchisee, licensee, or permittee notifies the Franchisee of a proposed street excavation, in accordance with the rules applicable to such a member, the Franchisee shall, at the Franchisee's expense:

1. Mark on the surface of all of its locatable underground Facilities within the area of the proposed excavation;

2. Notify the excavator of any unlocatable underground Facilities in the area of the proposed excavation; or

3. Notify the excavator that the Franchisee does not have any underground Facilities in the vicinity of the proposed excavation.

J. **Restoration of Streets:** If the Franchisee excavates the surface of any Right-of-Way, the Franchisee shall be responsible for restoration of the Right-of-Way in accordance with generally applicable specifications and regulations of the City. The City may, after providing notice to the Franchisee, resurface any opening made by the Franchisee in the Right-of-Way, and the expense thereof shall be paid by the Franchisee. The City may, after providing notice to the Franchisee, remove and/or repair any work done by the Franchisee which, in the determination of the City, is inadequate or unsatisfactory. The cost thereof, including the costs of inspection and supervision, shall be paid by the Franchisee. All of the Franchisee's work under this Franchise, and this Section in particular, shall be performed and completed in strict compliance with all generally applicable rules, regulations and ordinances of the City.

K. **Reservation of City Rights:** Nothing in this Franchise shall prevent the City from constructing or establishing any public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of the Franchisee's System. However, if any of the Franchisee's System unreasonably interferes with the construction, maintenance or repair of any public improvement, the Franchisee's System shall be removed or replaced.

Any and all such removal or replacement shall be at the expense of the Franchisee. Should the Franchisee fail to remove, adjust or relocate its Facilities by the date established by the City's written notice of not less than 60 calendar days to the Franchisee, the City may affect such removal, adjustment or relocation, and the expense thereof shall be paid by the Franchisee.

**L. Building Codes:**

1. The Franchisee shall strictly adhere to all building and zoning codes currently or hereafter in effect. The Franchisee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any person. In the event of such interference, the City may require the removal or relocation of the Franchisee's lines, cables, and other appurtenances from the property in question.

2. All plans for aerial crossings near existing or proposed traffic signals, signs, flashers, or other traffic control devices shall be submitted to the City for approval. No crossings shall be permitted that obstruct traffic signals or other official traffic control devices.

**M. Underground and Overhead Construction:**

1. **Preference for Underground Installation.** In all sections of the City where the cables, wires, utilities or other like facilities are placed underground, the Franchisee shall place its wires, or other like facilities underground. If at any time the City determines that existing wires, cables, utilities or other like facilities anywhere in the City shall be changed from an overhead to an underground installation, the Franchisee shall convert its facilities to an underground installation. If Franchisee's wire, cable, utilities or other facilities are to be placed underground in a common trench or bore shared by others, Franchisee shall share equally the expense of the trenching and/or boring in proportion to the number of joint users. The Franchisee shall pay for all cable, wire conduit, or facilities installed for Franchisee's own use. If the Franchisee owns the aerial supporting structures, the additional incremental cost of undergrounding compared to aerial allocation will be paid by the City. Where no overhead poles exist, all wires and facilities shall be constructed underground.

Where aerial to underground relocation of authorized facilities is required by the City where the Franchisee has ownership share in the aerial supporting structures, the

additional incremental cost of underground compared to aerial relocation will be paid by the City.

Where the City requests relocation solely for aesthetic purposes, the cost shall be paid by the City.

2. **Overhead.** In areas of the City where electrical or telephone systems are installed on poles above ground, the Franchisee shall have the option of installing its System in like manner above ground or, alternatively, underground.

N. **Rights-Of-Way Occupancy:**

1. Nothing in this Franchise shall give the Franchisee the right to attach its Facilities to structures or poles owned by the City without prior written consent of the City. Such attachment shall be authorized through and governed by a separate agreement between the Parties when such action is desired by Franchisee.

2. The Franchisee shall:

(a) Locate and install all transmission lines, equipment and structures so as to cause minimum interference with the rights and reasonable convenience of property owners;

(b) Keep and maintain all transmission lines, equipment and structures in a safe condition, and in good order and repair;

(c) Place any fixtures in any Right-of-Way in such manner as not to interfere with the usual travel of the Right-of-Way or cause unsafe conditions of any sort;

(d) Submit a traffic control plan to the City for approval and receive such approval at least 48 hours prior to commencing construction except in the case of emergency. Such traffic control plan shall be available for public inspection on the construction site at all times; and

(e) Notify adjacent property owners, businesses, residents, and others specified by the City prior to construction and major maintenance projects.



3. The Franchisee shall not make street cuts or curb cuts unless absolutely necessary, and only after a permit has been obtained from the City under such conditions as the City shall in its sole discretion determine.

4. Before beginning any excavation or other construction activity on a Right-of-Way which crosses or abuts any private property, the Franchisee shall clearly mark and delineate with flags, stakes or non-polluting water-soluble spray paint the boundaries of that Right-of-Way where it abuts or crosses the private property. After such excavation or other construction activity, the Franchisee shall restore such property to not less than the City's standards.

5. The Franchisee shall locate, mark and map any of its installed System for the City at no expense to the City. The Franchisee shall install underground warning tape with a metallic tracer at least twelve (12) inches above all feeder and trunk lines and above all fiber optic cable.

O. **Stop Work:** On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.

P. **Franchisee's Contractors:** The Franchisee and its contractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements for any contractors working in the Rights-of-Way. Any act or omission of any contractor of the Franchisee which violates any provision of this Franchise shall be considered an act or omission of the Franchisee for the purposes of this Franchise.

Q. **Private Property:** Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the Franchisee shall give reasonable notice to the property owners or legal tenants prior to entering upon any private premises, and said notice shall specify the work to be performed; provided that in the case of construction operations, such notice shall be delivered or provided at least forty-eight (48) hours prior to entry. If any damage is caused by any Franchisee activity or omission,

the Franchisee shall reimburse the property owner one hundred percent (100%) of the cost of the damage or replace the damaged property. In the case of an emergency, the Franchisee shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made.

#### **ARTICLE IV. ADMINISTRATION AND REGULATION**

##### **SECTION 1. TRANSFER OF OWNERSHIP OR CONTROL:**

A. This Franchise shall not be assigned or transferred, leased or disposed of either in whole or in part by voluntary sale or involuntary sale, merger or consolidation, either legal or equitable or any right, interest or property therein, pass to or vest in any person, or entity without the prior written consent of the City Council, which consent shall not be unreasonably withheld. No consent will be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness.

B. The Franchisee shall promptly notify the City of any actual or proposed change in, or transfer of, or disposition of or acquisition by any other party of control of the Franchisee. The word "control" as used herein is not limited to major stockholders, but includes actual working control in whatever manner is exercised. Every change, transfer, or acquisition of control of the Franchisee shall make the Franchise subject to cancellation unless and until the City Council shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, disposition, or acquisition of control, the City Council may inquire into the qualifications of the prospective controlling party, and the Franchisee shall assist the City Council in any such inquiry.

C. The proposed assignee must show its legal and technical qualifications and its financial responsibility as determined by the City Council and must agree to comply with all the provisions of the Franchise. Unless the Franchisee and the City Council otherwise agree on an extension of time, the City Council shall be deemed to have consented to a proposed

transfer or assignment in the event it has not acted within ninety (90) days of notice.

D. The consent or approval of the City Council to any transfer of the Franchise shall not constitute a waiver or release of the right of the City in and to the Rights-of-Way, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.

E. By its acceptance of this Franchise, the Franchisee specifically agrees that any such transfers occurring without prior approval of the City Council shall constitute a violation of this Franchise by the Franchisee. In no event shall a transfer of ownership or change of control be approved without the successor in interest becoming a signatory to this Franchise.

F. Within thirty (30) days of any transfer or sale and upon request, if approved or deemed granted by the City, the Franchisee shall file with the City a copy of the deed, agreement, or other written instrument evidencing such sale or transfer of ownership or control certified and sworn to as correct by the Franchisee.

G. **Standards:** The City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and the Franchisee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, the City shall not unreasonably withhold its approval and any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by the Franchisee.

H. **Common Control Exemption:** Notwithstanding anything to the contrary in this Section, the prior written approval of the City Council shall not be required for any sale, assignment or transfer of the Franchise, the System or ownership to an entity controlling, controlled by, or under the same common control as the Franchisee.

## **ARTICLE V. FINANCIAL AND INSURANCE REQUIREMENTS**

### **SECTION 1. LIABILITY INSURANCE:**

A. **General Requirement.** The Franchisee must have adequate insurance during the entire term of the Franchise to protect against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with this Franchise or involve the Franchisee, its agents, representatives, contractors, subcontractors and their employees.

B. **Verification of Coverage.** If requested, the Franchisee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

C. **Other Insurance** The Franchisee shall also provide Workers Compensation Insurance as required by Washington law.

D. **Insurance - No Limitation.** The Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by the Franchisee or to limit the liability of the Franchisee to the coverage provided in the insurance policies, or otherwise to limit the City's recourse to any other remedy available at law or in equity.

### **SECTION 2. INDEMNITY:**

The Franchisee shall, at its sole cost and expense, indemnify and hold harmless the City, City Council, and any officers, employees and agents who have acted in their official capacities, boards and commissions, (collectively referred to as the "City" in this Section) and shall pay all damages and penalties which the City may be legally required to pay as a result of any act or omission by the Franchisee in

the operation of the System throughout the term of this Franchise. Such damages and penalties shall include, without limitation, damages arising out of copyright infringements, and the construction, erection, operation, maintenance and repair of the System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise. If legal action is filed against the City, to recover for any claim or damages as a result of any act or omission by the Franchisee in the operation of the System, the Franchisee, upon notice to it by the City, shall defend the City against the action. The Franchisee shall have the right to defend, settle or compromise any claims arising hereunder. In the event of a final judgment being obtained against the City as a result of any act or omission by the Franchisee in the operation of the System, the Franchisee shall pay the judgment and all costs and hold the City harmless therefrom. Nothing in this Franchise shall be interpreted to abridge or otherwise affect the City's right to intervene or participate in any suit, action or proceeding involving any provisions of this Franchise. The Franchisee shall pay all expenses incurred by the Franchisee and the City in defending with regard to all damages as set forth in this Section. These expenses shall include, without limitation, all out-of-pocket expenses, reasonable attorneys' fees, witness and discovery costs and the reasonable value of any services rendered by the City Attorney and its office, and any other agents and employees of the City.

The Franchisee will not be required to indemnify the City for the negligent acts of the City or its officials, boards, commissions, agents or employees. The City will indemnify and hold the Franchisee harmless from any claims or causes of action arising from any acts by the City involving the City's use of the access channel(s) or the emergency alert system.

## **ARTICLE VI. ENFORCEMENT AND TERMINATION**

### **SECTION 1. FORFEITURE AND TERMINATION:**

A. In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right (after notice and the opportunity to cure as provided by Subsection C below) to forfeit and terminate the Franchise and all rights and privileges of the Franchisee

hereunder in the event of a material breach of this Franchise's terms and conditions. A material breach by Franchisee shall include, but shall not be limited to the following:

1. Violation of any material provision of the Franchise or any material rule, order, regulation, or determination of the City Council made pursuant to the Franchise;

2. Attempt to evade any material provision of the Franchise or practice any fraud or deceit upon the City;

3. The Franchisee abandons the System or terminates the system's operations.

B. The foregoing shall not constitute a breach if the violation occurs, but it is without fault of the Franchisee. The Franchisee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

C. The City shall make a written demand that the Franchisee comply with any such provision, rule, order, or determination under or pursuant to this Franchise. If the violation by the Franchisee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City Council may appoint a hearing examiner to take under consideration the issue of termination of the Franchise. The City shall cause to be served upon the Franchisee, at least twenty (20) days prior to the date of such hearing, a written notice of intent to request such termination and the time and place of the hearing. Public notice shall be given of the hearing and the issue(s) which the City Council or hearing examiner is to consider.

D. The City Council or hearing examiner, if appointed, shall hear and consider the issue(s) and hear any person interested therein, and determine in its discretion, whether or not any violation by the Franchisee has occurred. The Franchisee shall be entitled to participate fully in the hearing process, including a presentation of evidence and questioning of witnesses, so that the record will include all information pertaining to the alleged violation.

E. If the City Council or hearing examiner, if appointed, shall determine the violation by the Franchisee was the fault of the Franchisee and within its control, the City Council or hearing examiner, if appointed, shall determine if the violation can be cured. If the violation cannot be cured, the Franchise may be forfeited or terminated. If the violation can be cured, the City Council or hearing examiner, if appointed, shall specify the action or actions to be taken by the Franchisee to cure the violation and set a compliance date. If there is no compliance within the period stated, then the City Council may terminate the Franchise. Such determination shall be subject to judicial review.

## **SECTION 2. FORECLOSURE:**

Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of the System, the Franchisee shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of the Franchisee has taken place, and the provisions of this Franchise governing the consent of the City Council to such change in control of the Franchisee shall apply.

## **SECTION 3. RECEIVERSHIP:**

The City shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Franchisee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

A. Within one hundred twenty (120) days after the election or appointment of a receiver or trustee, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults hereunder; and

B. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

**SECTION 4. BANKRUPTCY:**

The City shall have the right to cancel this Franchise immediately should the Franchisee liquidate, become insolvent, make a transfer for the benefit of creditors, or reorganize and enter into an arrangement for the benefit of creditors or file a voluntary petition in bankruptcy; or an involuntary petition in bankruptcy is filed against the Franchisee and is not dismissed within one hundred twenty (120) days after the filing.

**SECTION 5. REMOVAL OF SYSTEM:**

At the expiration of the term for which this Franchise has been granted if not renewed or upon its lawful termination or revocation as provided herein, the Franchisee shall forthwith, upon notice by the City, remove at the Franchisee's own expense all designated portions of the System from all Rights-of-Way within the City, and shall restore said Rights-of-Way in accordance with the City's Design Standards and Standard Construction Specifications; provided, however, the Franchisee shall have the right to sell its physical plant to a subsequent franchisee, subject to City approval as provided in Article IV, Section 2, in which case said plant need not be removed and the Franchisee shall continue to operate the System during such interim period prior to the sale. If the Franchisee fails to commence removing or operating its Facilities within thirty (30) days of request and proceeds diligently with the removal, the City may perform the work at the Franchisee's expense. Any property of the Franchisee remaining in place in any Right-of-Way one hundred eighty (180) days after the expiration, termination, or revocation of this Franchise shall be considered permanently abandoned and may become the property of the City at the City's discretion.

**ARTICLE VII. MISCELLANEOUS PROVISIONS**

**SECTION 1. NOTICES:**



All legal notices from the Franchisee to the City pursuant to this Franchise shall be to:

City of McCleary  
Attn: City Clerk-Treasurer  
100 South 3<sup>rd</sup> Street  
McCleary, WA 98557

or to another person as designated by the City.

All notices to the Franchisee pursuant to this Franchise shall be sent to:

Mashell Telecom, Inc  
Attn: Brian Haynes  
2516 Holgate Street  
Tacoma, WA 98502

or to such other person or address designated by the Franchisee. The Franchisee shall maintain with the Finance Director, throughout the term of the Franchise, an address for service of notices by mail. The Franchisee shall also maintain with the City, an office address and telephone number for the conduct of matters related to this Franchise during normal business hours. A new address and telephone number of the office shall be furnished to the City Clerk-treasurer within fifteen (15) days after any change thereof.

**SECTION 2. TIME LIMITS STRICTLY CONSTRUED:**

Whenever this Franchise sets forth a time for any act to be performed by the Franchisee, such time shall be deemed to be of the essence, and any failure of the Franchisee to perform within the allotted time may be considered a material violation of this Franchise and sufficient grounds for the City to invoke any relevant remedy. However, in the event that the Franchisee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of Force Majeure, the Franchisee's performance shall be excused during the force majeure occurrence and the Franchisee thereafter shall, under the circumstances, promptly perform the affected obligations under this Franchise or procure a substitute which is satisfactory to the City.

**SECTION 3. CUMULATIVE PROVISION:**

The rights and remedies reserved to the City and the Franchisee by this Franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City and the Franchisee may have with respect to the subject matter of this Franchise, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time. Further, either the City or the Franchisee may seek any legal or equitable relief allowed by law provided that, if both parties agree, the City and the Franchisee may seek methods of alternative dispute resolution.

**SECTION 4. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS:**

The Franchisee, its contractors, subcontractors, employees, and agents shall comply with all applicable federal, state, and local laws, rules, and regulations issued pursuant thereto. The Franchisee and the City have carefully reviewed this Franchise and believe that all provisions hereof are enforceable and in full compliance with all applicable local, state, and federal laws and regulations in effect on the date of execution. If the Franchisee shall discover that any significant aspect of the operation or of any provision of the plans, specifications, or configurations of the Franchisee's System is contrary to or inconsistent with any applicable law, ordinance, rule, or regulation, the Franchisee shall promptly report such fact to the City in writing. The Franchisee and the City shall also be entitled to all rights and be bound by all changes in applicable local, state, and federal law which occur subsequent to the date of this Franchise. The Franchisee and the City acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes.

**SECTION 5. CAPTIONS:**

The captions to sections and subsections contained herein are intended solely to facilitate the reading thereof and such captions shall not affect the meaning or interpretation of the text herein.

**SECTION 6. CONSTRUCTION OF AGREEMENT:**

This Franchise shall be governed, construed, and enforced in accordance with the laws of the State of Washington (as amended), and any other applicable local, state and federal laws, rules, regulations, legislation, or orders (as such now exist or are later amended or subsequently adopted).

**SECTION 7. NO JOINT VENTURE:**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

**SECTION 8. ENTIRE AGREEMENT:**

This Franchise represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties. This Franchise can be amended, supplemented, modified, or changed only by an agreement in writing which makes specific reference to this Franchise and which is signed on behalf of both parties.

**SECTION 9. ACTIONS OF THE CITY OR THE FRANCHISEE:**

In any action by the City or the Franchisee mandated or permitted under the terms hereof, it shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**SECTION 10. SEVERABILITY, PREEMPTION, AND PRECEDENCE:**

A. If any section, subsection, sentence, clause, phrase, provision, or portion of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or any state or federal regulatory agency having jurisdiction thereof, the remainder of this Franchise shall not be affected thereby, and each remaining section, subsection sentence, clause, phrase, provision, and portion of

this Franchise shall be valid and enforceable to the fullest extent permitted by law.

B. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or Franchisee, and any amendments to this Franchise negotiated as a result of such provision being preempted shall no longer be of any force or effect with respect to that provision.

**SECTION 11. VENUE:**

Any action concerning a dispute arising under this Franchise shall be convened in Grays Harbor County Superior Court, Grays Harbor County Washington.

**SECTION 12. INTERPRETATION:**

As a further condition of this Franchise, the parties acknowledge that this Franchise shall be deemed and construed to have been prepared mutually by both parties.

**SECTION 13. ATTORNEYS' FEES:**

In the event that either party shall take action, whether judicial or otherwise, to enforce or interpret any of the provisions of this Franchise, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in such action, including attorneys' fees and costs, whether incurred in a court of law or otherwise.

**ARTICLE VIII.**

This Ordinance shall take effect upon the fifth day following date of publication or upon written acceptance by the Franchisee.

**ARTICLE IX.**

Corrections by the Clerk-treasurer or Code Reviser. Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016, by the City Council of the City of McCleary, and signed in approval therewith this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF McCLEARY:

\_\_\_\_\_  
BRENT SCHILLER, Mayor

ATTEST:

\_\_\_\_\_  
WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

\_\_\_\_\_  
DANIEL O. GLENN, City Attorney



**STAFF REPORT**

To: Mayor and Council  
From: Todd Baun- Director of Public Works  
Date: October 7, 2016  
Re: Pole Attachment Agreement

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Since November of 2015, Paul, Dan and I have been working on a pole attachment agreement. This is an agreement that will allow companies to attach communication wires to our poles for a small fee for each connection.

This draft of the agreement is the same agreement that they have with Grays Harbor PUD. Grays Harbor PUD charges somewhere in the area of \$20 + per attachment. Other utilities are all charging similar pole attachment rates.

In our draft, we will be asking for a charge of \$14.00 per attachment. This is after our rate study suggested our attachment fee should be in the \$12.00 to \$15.93 range. I believe that our attachment fees should also be reviewed an adjusted annually or bi-annually.

Currently, we charge CenturyLink and Comcast, each April, a “pole rental fee” of \$7.00 per pole. CenturyLink is charged for 574 poles for a total of \$4,018.00. Comcast is charged for 539 poles for a total of \$3,773.00.

**Action Requested:**

Please discuss and let me know if you would like to move forward with the pole attachment agreement and if the \$14.00 recommendation for pole attachment fee is sufficient.

## **POLE ATTACHMENT LICENSE AGREEMENT**

This Pole Attachment License Agreement ("Agreement"), dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is made by and between CITY OF McCLEARY ("City"), a municipal corporation organized under the laws of the State of Washington, and ASTOUND BROADBAND, LLC dba WAVE, a limited liability company organized under the laws of the State of Washington (hereinafter referred to as "Licensee").

### **R E C I T A L S :**

A. Whereas, Licensee proposes to install and maintain Communications Facilities and associated communications equipment on Poles to provide Communications Services to the public; and

B. Whereas, City is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on Poles, provided that City may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, or the inability to meet generally applicable engineering standards and practices;

Now, therefore, in consideration of the mutual covenants, terms and conditions and remuneration herein provided, and the rights and obligations created hereunder, the parties agree as set out below.



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## **AGREEMENT**

### **Article 1—Definitions**

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

**1.1. Affiliate:** when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.

**1.2. Applicable Standards:** means all applicable engineering and safety codes governing the installation, maintenance and operation of facilities and the performance of all work in or around electric City Facilities and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), Washington Administrative Code ("WAC"), Revised Codes of Washington ("RCW") and the regulations of the Occupational Safety and Health Administration ("OSHA"), the Washington Industrial Safety and Health Act ("WISHA"), as well as the engineering and safety standards established by the City, each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of the City or other federal, state or local authority with jurisdiction over City Facilities.

**1.3. Attaching Entity:** means any public or private entity, other than City, Licensee, who, pursuant to a license agreement with City, places an Attachment on City's Poles to provide Communications Service.

**1.4. Attachment(s):** means Licensee's Communications Facilities that are authorized for placement directly on Poles. A riser or a service drop attached to a single Pole where

Licensee has an existing Attachment on such Pole is not considered an additional Attachment. This definition of Attachment shall exclude Overlapping, which is addressed in Article 2, Section 11.

**1.5. Capacity:** means the ability of a Pole to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

**1.6. Climbing Space:** means that portion of a Pole's surface and surrounding space that is free from encumbrances to enable City employees and contractors to safely climb, access and work on City Facilities and equipment.

**1.7. Common Space (see Pole Attachment Guidelines, Figure 4.3):** means space on Poles that is not used for the placement of wires or cables, but which jointly benefits all users of the Poles by supporting the underlying structure and/or providing safety clearance between attaching entities and electric City Facilities.

**1.8. Communication Space (see Pole Attachment Guidelines, Figure 4.2):** means space defined by City on Poles that can be used, as defined by the Applicable Codes, for the attachment or placement of wires, cables, and associated equipment for the provision of Communications Service. The neutral zone or safety space is not considered Communication Space. The Common Space which includes the support and safety space is not considered Communication Space.

**1.9. Communications Facilities:** means wire or cable facilities including, but not limited to, fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Service including any and all associated equipment. Unless otherwise specified by the parties, the term "Communications Facilities" does not include pole-mounted wireless antennas, receivers, or transceivers. Strand-mounted wireless equipment that does not restrict climbing space shall be considered Communication Facilities.

**1.10. Communications Service:** means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Communications Facilities.

1.11. **Licensee**: means Astound Broadband LLC, its authorized successors, Affiliates, and assignees.

1.12. **Make-Ready Work**: means all work, as reasonably determined by City, required to accommodate Licensee's Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, Pre-Construction Survey, rearrangement, relocation, or transfer of City Facilities or any existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), or pole replacement and construction.

1.13. **Nonfunctional**: means no longer able to be used or no longer useful for transmission of Communications Service.

1.14. **Occupancy**: means the use or specific reservation of Communication Space for Attachments on the same Pole.

1.15. **Overlash**: means to place an additional wire, cable or Communications Facility onto an existing Attachment owned by Licensee.

1.16. **Pedestals/Vaults/Enclosures**: means above- or below-ground housings that are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or provide a service connection point and that are not attached to Poles (see **Appendix D** -Specifications).

1.17. **Permit**: means written or electronic authorization (in the form of **Appendix C**) from City for Licensee to make or maintain Attachments on specific Poles pursuant to the requirements of this Agreement.

1.18. **Pole**: means a pole owned by City used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments for Communications Facilities.

1.19. **Post-Construction Inspection**: means the inspection that may be performed by City to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.

**1.20. Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or City to determine the potential Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection and administrative processing. The Pre-Construction Survey shall be coordinated with City and include Licensee.

**1.21. Reserved Capacity:** means capacity or space on a Pole that City has identified and reserved for its own electric City requirements, including the installation of communications circuits, pursuant to a reasonable projected need or business plan.

**1.22. Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect communications wires and cables.

**1.23. Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by City and/or applicable federal, state or local regulations that will readily identify from the ground, type of attachment (e.g., cable TV, telephone, high-speed broadband data, public safety) and its owner.

**1.24. City Facilities:** means all personal property and real property owned or controlled by City, including Poles and anchors.

## **Article 2—Scope of Agreement**

**2.1. Grant of License.** Subject to the provisions of this Agreement, City hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Attachments on Poles.

**2.2. Parties Bound by Agreement.** Licensee and City agree to be bound by all provisions of this Agreement and by any subsequent laws.

**2.3. Permit Issuance Conditions.** City will issue a Permit(s) to Licensee only when City determines, in its sole judgment, exercised reasonably, that

(i) It has sufficient Capacity to accommodate the requested Attachment(s),

(ii) Licensee meets all requirements set forth in this Agreement, and

(iii) Such Permit(s) comply with all Applicable Standards.

**2.4. Access to Reserved Capacity.** Access to Reserved Capacity on City Poles will be made available to Licensee with the understanding that such access is subject to being reclaimed by the City on giving Licensee at least sixty (60) calendar days prior notice. City may reclaim such Reserved Capacity anytime during the period following the installation of Licensee's Attachment in which this Agreement is effective if required for City's future electric service use. City shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 9.

**2.5. No Interest in Property.** No use, however lengthy, of any City Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such City Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of City's rights to City Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.

**2.6. Licensee's Right to Attach.** Unless otherwise specified in this Agreement, Licensee must have a Permit issued pursuant to Article 6, prior to attaching Licensee's Communications Facilities to any specific Pole.

**2.7. City's Rights over Poles.** The parties agree that this Agreement does not in any way limit City's right to



locate, operate, maintain or remove its Poles in the manner that will best enable it to fulfill its service requirements.

**2.8. Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit City from fulfilling any agreement or arrangement regarding Poles which City has previously entered into, or, may in the future enter into, with any third parties.

**2.9. Expansion of Capacity.** City will take reasonable steps to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require City to install, retain, extend or maintain any Pole for use when such Pole is not needed for City's service requirements.

**2.10. Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without City's express written consent to such use. Nothing in this Agreement shall be construed to require City to allow Licensee to use Poles after the termination of this Agreement, subject to the provisions of Article 11 and Article 23 of this Agreement.

**2.11. Overlapping.** The following provisions will apply to Overlapping:

**2.11.1.** Licensee shall apply for and obtain a permit from City for each Overlapping pursuant to Article 6. Absent such authorization, Overlapping constitutes an unauthorized Attachment and is subject to the Unauthorized Attachment Penalty Fee specified in **Appendix A**, Item 3.

**2.11.2.** If Licensee demonstrates that the Overlapping of Licensee's Attachments is required to accommodate Licensee's Communication Facilities, City shall not withhold Permits for such Overlapping if it can be done consistent with Paragraph 2.3. Overlapping performed pursuant to this Paragraph 2.11.2 shall not increase the Annual Pole Attachment Fee paid by Licensee pursuant to **Appendix A**, Item 1. Licensee, however, shall be responsible for all Make-Ready Work and other charges associated with the Overlapping, but

shall not be required to pay a separate Annual Pole Attachment Fee for such overlashed Attachment.

**2.11.3.** If Overlashing is an option to accommodate facilities of a third party, such third party must enter into a license agreement with City, obtain a permit and pay a separate Annual Pole Attachment Fee (**Appendix A**, Item 1), as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. No such permits to third parties may be granted by City allowing Overlashing of Licensee's Communications Facilities unless Licensee has consented in writing to such Overlashing. Overlashing performed under this Paragraph 2.11.3 shall not increase the fees and charges paid by Licensee pursuant to **Appendix A**, Item 1.

**2.11.4.** Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlashing.

**2.12. Enclosures.** Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within ten (10) feet of any Pole or other City Facilities without City's prior written permission. If permission is granted, all such installations shall comply with the Specifications and Drawings in **Appendix D** of this Agreement and charges as provided in **Appendix A**. Such permission shall not be unreasonably withheld. Failure to obtain such permission prior to placement of such enclosures may result in the assessment of Unauthorized Attachment Penalty Fees. (per **Appendix A**).

## **Article 3—Fees and Charges**

**3.1. Payment of Fees and Charges.** Licensee shall pay to City the fees and charges specified in **Appendix A** and shall comply with the terms and conditions specified herein.

**3.2. Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from City pursuant to this Agreement within thirty (30) calendar days of the billing date of the invoice.

**3.3. Billing of Annual Pole Attachment Fees.** City shall invoice Licensee for the Annual Pole Attachment Fee on a calendar year basis. City will submit to Licensee an invoice

for the annual rental period on or about January 15 of each year. The initial annual rental period shall commence on \_\_\_\_\_, 2016, and conclude on December 31, 2016. Any billing period not paid under a previous pole attachment agreement shall be prorated for a partial initial period. Each subsequent annual rental period shall commence on the beginning of the calendar year and conclude on the end of the calendar year. The invoice shall set forth the total number of Poles on which Licensee is obligated to pay Annual Pole Attachment Fees and, if requested, the City will provide calculations and underlying data used to determine the Annual Pole Attachment Fee.

**3.4. Refunds.** No fees and charges specified in **Appendix A** shall be refunded on account of any surrender of a Permit granted under this Agreement. Nor shall any refund be owed if a Pole is abandoned by City.

**3.5. Late Charge.** If City does not receive payment for any fee or other amount owed within thirty (30) calendar days of the billing date, Licensee, upon receipt of fifteen (15) calendar days' written notice from City, shall pay interest on the amount due to City, at the rate of 12% per year/(1%) per month.

**3.6. Determination of Billing Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by City, the charge for such work shall include all reasonable material, labor, engineering, and applicable overhead costs associated with such work. City shall invoice its services based upon actual costs, and such costs will be determined in accordance with City's cost accounting systems used for recording capital and expense activities. If requested, City invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. If Licensee was required to perform work and fails to perform such work necessitating its completion by City, Licensee will reimburse City upon demand City's cost per above plus 10% (ten percent).

**3.7. Payment for Work.** Licensee will be responsible for payment to City for all reasonable work City or City's contractors perform pursuant to this Agreement to accommodate Licensee's Communications Facilities and ensure safety,

including but not limited to, Make-Ready Work and other work performed for the benefit of Licensee.

**3.8. Advance Payment.** At the discretion of City, Licensee may be required to pay in advance all reasonable costs or a part of the charges for work, including but not limited to construction, inspections, and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in Articles 6 and 7 below.

**3.9. True Up.** Whenever City, at its discretion, requires advance payment of estimated charges prior to undertaking an activity on behalf of Licensee and the actual cost of the activity exceeds the advance payment of estimated charges, Licensee agrees to pay City for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, City agrees to refund to Licensee the difference in cost.

**3.10. Work Performed by City.** Wherever this Agreement requires City to perform any work, Licensee acknowledges and agrees that City, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.

**3.11. Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute a material default of this Agreement.

## **Article 4—Specifications**

**4.1. Installation/Maintenance of Communications Facilities.** When a Permit is issued pursuant to this Agreement, Licensee's Communications Facilities shall be installed and maintained in accordance with the requirements and specifications identified in **Appendix D**. All of Licensee's Communications Facilities must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards. Upon execution of this Agreement, Licensee is not required to update or upgrade its existing

Attachments in any way if not required to meet either the NESC or the NEC, unless otherwise required in this Agreement.

**4.2. Tagging.** Licensee shall Tag all Attachments installed after the execution of this Agreement as specified in **Appendix D** and/or applicable federal, state and local regulations upon installation of such Attachments. Prior authorized Attachments shall be Tagged within five (5) years of the execution of this Agreement. Failure to provide proper Tagging will be considered a violation of the Applicable Standards.

**4.3. Interference.** Based on the order in which the facilities were attached, Licensee shall not allow its Communications Facilities to impair the ability of City or any third party to use Poles, nor shall Licensee allow its Communications Facilities to interfere with the operation of any City Facilities.

**4.4. Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall at its own expense install protective devices designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor. Except as provided in Paragraph 16.1, City shall not be liable for any actual or consequential damages to Licensee's Communications Facilities or Licensee's customers' facilities.

**4.5. Violation of Specifications/Applicable Codes.** If Licensee's Communications Facilities, or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from City, City at its option, may correct such conditions. City will attempt to notify Licensee in writing prior to performing such work whenever practicable. When City reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of City's service obligations or pose an immediate threat to the physical integrity of City Facilities, City may perform such work and/or take such action as it deems necessary, including termination of Permit, without first giving written

notice to Licensee. As soon as practicable thereafter, City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all reasonable costs incurred by City in taking action pursuant to this Paragraph.

**4.6. Restoration of City Service.** City's service restoration requirements shall take precedence over any and all work operations of Licensee on Poles.

**4.7. Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to any applicable Permit(s) within one hundred eighty (180) calendar days for major construction (Permits involving 15 poles or more) or ninety (90) calendar days for minor construction (Permits involving 14 poles or less) of the effective date of such right and any extension thereof, City may use the space scheduled for Licensee's Attachment(s) for its own needs or other Attaching Entities. In such instances, City shall endeavor to make other space available to Licensee, upon written application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.

**4.8. Interference Test Equipment.** To the extent Licensee furnishes Communication Services it shall maintain test equipment to identify signal interference to its customers, and shall not identify City as the source of such interference absent a test report verifying the source.

**4.9. Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that become nonfunctional and/or no longer fit for service ("Nonfunctional Attachment") as provided in this Paragraph 4.9. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from City that earlier removal is necessary to accommodate City's or another Attaching Entity's use or removal of the affected Pole(s), in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving

the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until City notifies Licensee that removal is necessary to accommodate City's or another Attaching Entity's use, or removal of the affected Pole(s). **UPON BECOMING NONFUNCTIONAL, LICENSEE SHALL GIVE CITY NOTICE OF ANY NONFUNCTIONAL ATTACHMENTS.** If Licensee does not remove the Nonfunctional Attachment according to this paragraph 4.9, then City shall have the right to remove the Nonfunctional Attachment and bill Licensee for all associated costs for the removal per paragraph 3.6.

## **Article 5—Private and Regulatory Compliance**

**5.1. Necessary Authorizations.** Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any authorization required to construct, operate and/or maintain its Communications Facilities on public and/or private property before it occupies any portion of Pole. Evidence that appropriate authorization has been obtained shall be provided to City before any Permit is issued to Licensee. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith. Licensee shall defend, indemnify and reimburse City for all loss and expense, including reasonable attorneys' fees, that City may incur as a result of valid claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Facilities on Poles.

**5.2. Lawful Purpose and Use.** Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.

**5.3. Forfeiture of City's Rights.** No Permit granted under this Agreement shall extend to any Pole on which the Attachment of Licensee's Communications Facilities would result in a forfeiture of City's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of City's rights, is invalid. Further, if any of

Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its facilities upon receipt of written notice from City. If Licensee fails to remove its facilities upon request, City will perform such removal at Licensee's expense not sooner than the expiration of thirty (30) calendar days from City's issuance of the written notice.

**5.4. Effect of Consent to Construction/Maintenance.**

Consent by City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

## **Article 6—Pole Attachment Permit Application Procedures**

**6.1. Permit Required.** Except for service drops, Licensee shall not install any new Attachments or Overlashings on any Pole without first applying for and obtaining a Permit pursuant to the applicable requirements of **Appendices B and C**. Unless otherwise notified, pre-existing authorized Attachment(s) of Licensee as of the effective date of this Agreement shall be grandfathered with respect to Permitting, but shall be subject to the Attachment Fees and Paragraph 13.1. Licensee shall provide City with a list, in the format shown in **Appendix E**, of all such pre-existing Attachments within six (6) months of the effective date of this Agreement. All pre-existing Attachments shall comply with the terms of this Agreement within twelve (12) months of the effective date of this Agreement. Attachments to or rights to occupy City Facilities not covered by this Agreement must be separately negotiated.

**6.2. Service Drops.** The Licensee will notify the City within thirty (30) days of the attachment of a service drop where an existing permitted Attachment exists.

In the event that a service drop constitutes the initial Attachment to a given pole, Licensee will be required to follow the permitting process set forth in paragraph 6.1. In this



case, the Licensee will be allowed 30 days after the Attachment is made to complete the permitting process.

**6.3. Permits for Overlashing.** As set out in Paragraph 2.11, Permits are required for any Overlashing allowed under this Agreement. Licensee, Licensee's Affiliate or other third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlashing.

**6.4. Professional Certification.** Excluding the placement of service drops, at Licensee's sole expense, a qualified and experienced professional engineer, or a qualified employee or contractor of Licensee who may be required to be approved by City at City's discretion, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Communications Facilities can be and were installed on the identified Poles in compliance with the codes in Paragraph 4.1 and in accordance with the Permit. The professional engineer's or Licensee's qualified employee's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems. The City, in its sole discretion, may waive the requirements of this Paragraph 6.4 with respect to service drops.

**6.5. City Review of Pole Attachment Permit Application.** Upon receipt of a properly executed and complete Pole Attachment Permit Application which shall include the certified Pre-Construction Survey and detailed plans for the proposed Attachments in the form specified in **Appendix C**, City will review the Permit Application as promptly as possible, but in no event longer than forty-five (45) days, and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. On or before the end of the 45-day review, City will notify Licensee in writing whether the application has been accepted or rejected, providing its reasons in the event of rejection. In extraordinary circumstances, and with the approval of Licensee, City may extend the forty-five (45) day time line. City acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.

**6.6. Authorization to Proceed.** After receipt of payment for any necessary Make-Ready Work, City will sign and return the Permit Application which shall serve as authorization for Licensee to make its Attachment(s).

## **Article 7—Make-Ready Work/Installation**

**7.1. Estimate for Make-Ready Work.** In the event City determines that it can accommodate Licensee's request for Attachment(s), including Overlapping of an existing Attachment, it will advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.

**7.2. Payment for Make-Ready Work.** Upon completion of the Make-Ready Work, City shall invoice Licensee for City's actual cost of the Make-Ready Work. Alternatively, City may require payment in advance for Make-Ready Work based on the estimated cost of such work which payment shall be true-up and paid by Licensee upon completion of the work.

**7.3. Who May Perform Make-Ready Work.** Make-Ready Work shall be performed only by City and/or a contractor authorized by City to perform such work. If City cannot perform the Make-Ready Work to accommodate Licensee's Communications Facilities within forty-five (45) calendar days of the execution of an Acceptance of Cost Estimate per **Appendix C**, Licensee may seek permission from City for Licensee to employ a qualified contractor to perform such work.

**7.4. Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Communications Facilities, City will endeavor to include such work in its normal work schedule. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of City's normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee's work before other scheduled work or City service restoration.

**7.5. Licensee's Installation/Removal/Maintenance Work.**

**7.5.1.** All of Licensee's installation, removal and maintenance work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not

adversely affect the structural integrity of Poles, City Facilities, or other Attaching Entity's facilities or equipment existing prior to Licensee's Attachment installation. All such work is subject to the insurance requirements of Article 18.

**7.5.2.** All of Licensee's installation, removal and maintenance work performed on City's Poles or in the vicinity of other City Facilities, either by its employees or contractors, shall be in compliance with Paragraph 4.1. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Pole Attachments Requirements for Telecommunications contained in **Appendix D**.

## **Article 8—Relocations**

**8.1. Required Relocations of Licensee's Communications Facilities.** If City reasonably determines that a relocation of Licensee's Communications Facilities is necessary, Licensee agrees to allow such relocation. In such instances, City will, at its option, either perform the relocation using its personnel and/or contractors and/or require Licensee to perform such relocation at its own expense within forty-five (45) calendar days after receiving written notice from City. If Licensee fails to relocate its facilities within forty-five (45) calendar days after receiving such notice from City, City shall have the right to relocate Licensee's Facilities using its personnel and/or contractors at Licensee's expense. City shall not be liable for damage to Licensee's Facilities except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph shall not apply to emergency situations, in which case City shall provide such advance notice as is practical given the urgency of the particular situation. City shall then provide written notice of any such actions taken within ten (10) days of the occurrence. Irrespective of who owns the overlashed equipment, Licensee is responsible for the relocation of facilities that are overlashed onto Licensee's Attachments.

**8.2. Billing for Relocations Performed by City.** If City performs the relocation(s), City will bill Licensee for actual

costs per Paragraph 3.6. Licensee shall reimburse City within thirty (30) calendar days of the receipt of the invoice.

## **Article 9—Pole Modifications and/or Replacements**

**9.1. Licensee's Action Requiring Modification/Replacement.** In the event that any Pole to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Standards or the City determines sufficient Communication Space is not available, City will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole and rearrangement or relocation of Licensor's or City's Facilities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities' existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to City, and any other existing licensees, the cost of the Make-Ready Work performed by City, per Paragraphs 3.6-3.9. City, at its discretion, may require advance payment.

**9.2. Treatment of Multiple Requests for Same Pole.** If City receives Permit Applications for the same Pole from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodating their respective requests would require modification or replacement of the Pole, City will allocate among such licensees the applicable costs associated with such modification or replacement. Such allocation applies only to those attachments involving cable/wire and not Risers and/or service drops. Notwithstanding the above, once a permit has been issued, and within the agreed upon timeframe to exercise any access right, the attaching licensee will be responsible for their own costs resulting from Make-Ready Work and any other attaching entity will be responsible for their own cost resulting from any associated Make-Ready Work.

**9.3. Guying.** The use of guying to accommodate Licensee's Attachments shall be provided by and at the expense of Licensee and to the satisfaction of City as specified in **Appendix D**. On a going-forward basis Licensee shall not attach its guy wires to City's anchors without prior written

permission of City. If permission is granted a Make Ready charge may apply.

**9.4. Allocation of Costs.** The costs for any rearrangement or relocation of Licensee's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of City's cables or wires) shall be allocated to City and/or Licensee and/or other Attaching Entity on the following basis:

**9.4.1.** If City intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Licensee, however, shall be responsible for all costs associated with the rearrangement or relocation of Licensee's Communications Facilities. Licensee shall not be responsible for rearrangement or relocation costs necessary to accommodate City's own communication fiber. Prior to making any such modification or replacement City shall provide Licensee written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify or add to its existing Attachment. Should Licensee so elect, it must seek City's written permission per this Agreement. The notification requirement of this Paragraph 9.4.1 shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Communications Facilities, Licensee shall bear the total incremental costs incurred by City in making the space on the Poles accessible to Licensee.

**9.4.2.** If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than City or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or relocating Licensee's Communications Facilities. Licensee shall cooperate with such third party Attaching Entity to determine the costs of moving Licensee's facilities.

**9.4.3.** If the Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities (e.g., storm, accident, deterioration), City shall

pay the costs of such modification or replacement; provided, however, that Licensee shall be responsible for the costs of rearranging or relocating its Communications Facilities.

**9.4.4.** If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the relocation or rearrangement of any other Attaching Entity's Communications Facilities. Licensee shall submit to City written evidence that it has made arrangements to reimburse all affected Attaching Entities for the cost to relocate or rearrange such Entities' Facilities at the time Licensee submits a Permit Application to City. City shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the relocation or rearrangement of another Attaching Entity's Facilities pursuant to Paragraphs 9.4.2, 9.4.4, and 5.1.

**9.5. City Not Required to Relocate.** No provision of this Agreement shall be construed to require City to relocate its Attachments or modify/replace its Poles for the benefit of Licensee, provided, however, any denial by City for modification of the Pole is based on nondiscriminatory standards of general applicability.

## **Article 10—Abandonment or Removal of City Facilities**

**10.1. Notice of Abandonment or Removal of City Facilities.** If City desires at any time to abandon or remove any City Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such City Facilities. Notice may be limited to less than sixty (60) calendar days if City is required to remove or abandon its City Facilities as the result of the action of a third-party or authority and the greater notice period is not practical or permissible. Such notice shall indicate whether City is offering Licensee an option to purchase the Pole(s). If, following the expiration of the notice period, Licensee has not yet removed and/or relocated all of its Communications Facilities and has not entered into an agreement to purchase City Facilities pursuant to Paragraph 10.2, City shall have

the right, subject to any applicable laws and regulations, to have Licensee's Communications Facilities removed and/or relocated from the Pole at Licensee's expense. City shall give Licensee prior written notice of any such removal or relocation of Licensee's Facilities.

**10.2. Option to Purchase Abandoned Poles.** Should City desire to abandon any Pole, City, in its sole discretion, may grant Licensee the option of purchasing such Pole at a price negotiated with City. Licensee must notify City in writing within thirty (30) calendar days of the date of City's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should City and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. City is under no obligation to sell to Licensee Poles that it intends to remove or abandon.

**10.3. Underground Relocation.** If City moves any portion of its aerial system underground, Licensee shall remove its Communications Facilities from any affected Poles within sixty (60) calendar days of receipt of notice from City and either relocate its affected Communication Facilities underground or find other means to accommodate its Communication Facilities. If Licensee was required to remove its Communication Facilities and fails to perform such work necessitating its completion by City, City will charge Licensee per Paragraph 3.6 through 3.9.

## **Article 11—Removal of Licensee's Facilities**

**Removal Upon Termination.** At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its facilities from the affected Poles at its own expense. If Licensee fails to remove such facilities within ninety (90) calendar days of expiration or termination, or some greater period as allowed by City, City shall have the right to have such facilities removed at Licensee's expense.

## **Article 12—Termination of Permit**

**12.1. Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have lawful authority to construct and operate its Communications Facilities on public or private property at the location of the particular Pole(s) covered by the Permit. Notwithstanding the foregoing, to the extent Licensee is actively pursuing a challenge of the revocation of any such permission, Licensee may remain on the particular Pole(s) until such time as all appeals and remedies are exhausted.

**12.2. Surrender of Permit.** Licensee may at any time surrender any Permit and remove its Communications Facilities from the affected Pole(s) provided, however, that before commencing any such removal, Licensee must obtain City's acceptance of Licensee's written notice of removal including the identity of the party performing such work and the dates and times when such work will occur. All such work is subject to the insurance requirements of Article 18. No refund of any fees or costs will be made upon removal. Licensee shall be liable for Annual Pole Attachment Fees until it surrenders the relevant Permit, removes its Attachments from City Facilities, and submits a completed Notice of Removal of Attachments per **Appendix C**. If Licensee fails to remove its Attachments from the City's Facilities within the approved time frame, City shall have the right to remove Licensee's Attachments at Licensee's expense.

## **Article 13—Inspection of Licensee's Facilities**

**13.1. Inspections.** City may conduct an inventory and inspection of Attachments at any time. Licensee shall correct all Attachments that are not found to be in compliance with Applicable Standards within sixty (60) calendar days of notification unless City determines a significant safety condition exists, where in such case the correction shall be made immediately. Except as provided for in Article 6.1, if it is found that Licensee has made an Attachment without a Permit, Licensee shall pay a fee as specified in **Appendix A**, Item 3, in addition to applicable Permit and Make-Ready charges. If it is found that five percent (5%) or more of Licensee's Attachments are either in non-compliance or not permitted, Licensee shall



reimburse City for all costs associated with such inventory and inspection.

**13.2. Notice.** City will give Licensee reasonable notice of such inspections, except in those instances where safety considerations justify the need for such inspection without delay. When notified, Licensee will promptly notify City if it wishes to participate in the inspection.

**13.3. No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

**13.4. Attachment Records.** Notwithstanding the above inspection provisions, Licensee shall furnish on an annual basis, an up-to-date map depicting the locations of its Attachments on paper and in an electronic format specified by City.

## **Article 14—Unauthorized Occupancy or Access**

**14.1. Unauthorized Occupancy or Access Fee.** If any of Licensee's Attachments are found occupying any Pole for which no Permit has been issued, City, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Fee as specified in **Appendix A**, Item 3. In the event Licensee fails to pay such Fee within forty-five (45) calendar days of the billing date of the invoice, City has the right to remove such Communications Facilities at Licensee's expense.

**14.2. No Ratification of Unlicensed Use.** No act or failure to act by City with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by City of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

## **Article 15—Reporting Requirements**

Concurrently with Licensee's Attachment Fee payment, Licensee shall report attachments per Article 13.4.

## **Article 16—Liability and Indemnification**

**16.1. Liability.** City reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its statutory service requirements. Licensee agrees to use Poles at Licensee's sole risk. Notwithstanding the foregoing, City shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 16.5, City agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by the negligence or willful misconduct of City provided, however, that the aggregate liability of City to Licensee in any fiscal year shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to City for that year.

**16.2. Indemnification.** In addition to the indemnification obligations in Paragraphs 5.1, 16.4 and 18.3, Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless City and its officers, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorneys' fees of City and all other costs and expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, removal or operation by Licensee or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Communications Facilities, except to the extent of City's negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

**16.2.1.** Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;

**16.2.2.** Cost of work performed by City or others that was necessitated by Licensee's failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, relocate or remove Licensee's Communications Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes City to perform on Licensee's behalf;

**16.2.3.** Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents or contractors, pursuant to this Agreement;

**16.2.4.** Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents or contractors, of any law, rule, or regulation of the United States, State of Washington or any other governmental entity or administrative agency.

**16.3. Procedure for Indemnification.**

**16.3.1.** City shall give prompt notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against City, City shall give the notice to Licensee no later than fifteen (15) calendar days after City receives written notice of the action, suit or proceeding.

**16.3.2.** City's failure to give the required notice will not relieve Licensee from its obligation to indemnify City unless Licensee is materially prejudiced by such failure.

**16.3.3.** Licensee will have the right at any time, by notice to City, to participate in or assume control of the defense of the claim with counsel of its choice. The parties

agree to cooperate fully with each other. If Licensee assumes control of the defense of any third party claim, City shall have the right to participate in the defense at its own expense. If Licensee does not so assume control or otherwise participate in the defense of any third party claim, Licensee shall be bound by the results obtained by City with respect to the claim, to the extent permitted by applicable law.

**16.3.4.** If Licensee assumes the defense of a third party claim as described above, then in no event will City admit any liability with respect to, or settle, compromise or discharge, any third party claim without Licensee's prior written consent, and City will agree to any settlement, compromise or discharge of any third party claim which Licensee may recommend which releases City completely from such claim.

**16.4. Environmental Hazards.** Licensee represents and warrants that its use of Poles will not generate any Hazardous Substances, that it will not store or dispose on or about Poles or transport to Poles any hazardous substances and that Licensee's Communications Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Communications Facilities would not release any Hazardous Substances. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless City and its respective officials, commissioners, representatives, employees, agents and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage or discovery of any Hazardous Substances on, under or adjacent to Poles attributable to

Licensee's use of Poles, except to the extent of City's negligence or willful misconduct.

Should Poles be declared to contain Hazardous Substances, City, Licensee and all Attaching Entities shall share proportionately in the cost of disposal of the affected Poles based on each entity's individual percentage use of same. For Attaching Entities, such percentage shall be derived from the sum of Communication Space occupied by each Attaching Entity. For City, such percentage shall be equal to the space above the NESC 40-inch safety space. Provided, however, if the source or presence of the Hazardous Substance is solely attributable to particular parties, such costs shall be borne solely by those parties.

**16.5. Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by City of any applicable State limits on municipal liability. No indemnification provision contained in this Agreement under which Licensee indemnifies City shall be construed in any way to limit any other indemnification provision contained in this Agreement.

## **Article 17—Duties, Responsibilities, And Warranties**

**17.1. Duty to Inspect.** Licensee acknowledges and agrees that City does not warrant the condition or safety of City's Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Poles and/or premises surrounding the Poles, prior to commencing any work on Poles or entering the premises surrounding such Poles.

**17.2. Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties and restrictions attending the execution of such work. Licensee shall be solely responsible for site conditions, but only to the extent necessary to perform Licensee's work.

**17.3. DISCLAIMER. CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO CITY POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND CITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**17.4. Duty of Competent Supervision and Performance.** The parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other City Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, grave personal injury or property. Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of City and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of City's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

**17.5. Requests to De-energize.** In the event City de-energizes any equipment or line at Licensee's request and for Licensee's benefit and convenience in performing a particular segment of any work, Licensee shall reimburse City in full for all costs and expenses incurred, in accordance with Paragraph 3.6, in order to comply with Licensee's request. Before City de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request. Notwithstanding the foregoing, de-energization shall be at the City's sole discretion and the City shall determine the schedule for de-energization.

**17.6. Interruption of Service and Damage to City's Equipment.** In the event that Licensee, and any agent, contractor or subcontractor of Licensee, causes an interruption of service by damaging or interfering with any equipment of City, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify City immediately. Additionally, Licensee shall reimburse City for all actual costs and expenses incurred to replace service and/or repair or replace such damaged equipment.

**17.7. Duty to Inform.** Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on Poles by Licensee's employees, agents, contractors or subcontractors, and accepts as its duty and sole responsibility to notify and inform Licensee's employees, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

## **Article 18—Insurance**

**18.1. Policies Required.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

**18.1.1. Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Washington law at the time of the application of this provision for each accident. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

**18.1.2. Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.

**18.1.3. Automobile Liability Insurance.** Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles used in connection with work under this Agreement. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

**18.1.4. Umbrella Liability Insurance.** Coverage is to be in excess of the sum of employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$4,000,000 each occurrence, \$4,000,000 aggregate.

**18.1.5. Property Insurance.** Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

**18.2. Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the State of Washington and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 18 with the same limits.

**18.3. Certificate of Insurance; Other Requirements.** Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish City with a certificate of insurance ("Certificate") and, upon request, copies of the required insurance policies and endorsements. The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. City shall be given thirty (30) calendar days' advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. City, its agencies,



officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by City. Licensee shall defend, indemnify and hold harmless City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to City upon request.

**18.4. Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee's exposure to risk.

**18.5. Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with City except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to City's employees or agents caused by the negligence of Licensee, or (4) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

**18.6. Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

## **Article 19—Authorization Not Exclusive**

The grant of license and permits issued pursuant to this Agreement shall be nonexclusive. City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement, by contract or otherwise, to use City Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

## **Article 20—Assignment**

**20.1. Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of City, which consent shall not be unreasonably withheld or delayed. Licensee shall provide City with not less than thirty (30) days' written notice of the transfer or assignment, together with the name and address of the transferee or assignee. It shall be unreasonable for City to withhold consent without cause to an assignment of all of Licensee's interests in this Agreement to its Affiliate.

**20.2. Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement.

**20.3. Sub-licensing.** Without City's prior written consent, Licensee shall not sub-license or sub-lease to any third party including, but not limited to, allowing third parties to place attachments on City's Facilities, including Overlapping, or to place attachments for the benefit of such third parties on Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Communications Facilities by third parties (including but not limited to the lease of dark fiber) that involves no additional Attachment or Overlapping is not subject to this Paragraph 20.3.

## **Article 21—Failure to Enforce**

Failure of City or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

## **Article 22—Termination of Agreement**

**22.1.** Notwithstanding Licensee's rights under Article 12, City shall have the right, pursuant to the procedure set out in Paragraph 22.2, to terminate this Agreement, or any Permit issued hereunder, whenever Licensee is in default of any term or condition of this Agreement, including but not limited to the following circumstances:

**22.1.1.** Construction, operation or maintenance of Licensee's Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or

**22.1.2.** Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority, subject to Paragraph 12.1; or

**22.1.3.** Construction, operation or maintenance of Licensee's Communications Facilities without the insurance coverage required under Article 18; or

**22.1.4.** Failure to pay any amount due under this Agreement beyond ninety (90) days; or

**22.1.5.** Violation of any other agreement with City.

**22.2.** City will notify Licensee in writing of any condition(s) applicable to Paragraph 22.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to City that the cited condition(s) has (have) ceased or been corrected. If Licensee fails to discontinue or correct

such condition(s) and/or fails to give the required confirmation, City may terminate this Agreement or any Permit(s) thirty (30) days after issuance of the written notice. In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, City may seek removal of Licensee's Communications Facilities pursuant to the terms of Article 11, provided, that Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to City until Licensee's Communications Facilities are actually removed.

## **Article 23—Term of Agreement**

**23.1.** This Agreement shall become effective upon its execution and, unless terminated in accordance with other provisions of this Agreement, shall continue in force and effect for an initial term of three (3) years. Either party may terminate this Agreement at the end of the initial three (3) year term by giving one hundred eighty (180) calendar days' written notice of its intention to do so prior to the end of any the term. If no such notice is given, this Agreement shall automatically be extended for successive one (1) year terms until terminated by either party by written notice at least one hundred eighty (180) days prior to the end of the term. Upon termination of this Agreement, Licensee shall remove its attachments from the poles of City within sixty (60) days after the effective date of such termination. Should the Licensee fail to comply, the City may elect to do such work and the Licensee shall pay the City the cost.

**23.2.** Even after the termination of this Agreement, each party's responsibility and indemnity obligations shall continue with respect to any claims or demands related to this Agreement.

## **Article 24—Amending Agreement**

Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and signed by authorized representatives of both parties.

## **Article 25—Notices**

**25.1.** Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when sent by certified mail, return receipt requested, with postage prepaid or sent via overnight delivery by a nationally-recognized carrier and, except where specifically provided for elsewhere, properly addressed as follows:

If to City, at:

City of McCleary  
Attn: \_\_\_\_\_  
100 South 3<sup>rd</sup> Street  
McCleary, WA 98563

If to Licensee, at:

Astound Broadband, LLC  
Attn: James A. Penney  
401 Parkplace Center  
Suite 500  
Kirkland, WA 98033

Or to such other address as either party, from time to time, may give the other party in writing.

**25.2.** Licensee shall maintain a staffed 24-hour emergency telephone number where City can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to City's concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a fee of \$100 per incident, and shall eliminate City's liability to Licensee for any actions that City deems reasonably necessary given the specific circumstances.

## **Article 26—Entire Agreement**

This Agreement supersedes all previous agreements, whether written or oral, between City and Licensee for placement and maintenance of Licensee's Communications Facilities on City's Poles covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as

expressed herein. Except as provided for in Article 4.1, any Attachments existing under prior authorization shall continue in effect, provided they meet the terms of this Agreement.

## **Article 27—Severability**

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement, but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

## **Article 28—Governing Law, Venue, and Attorney's Fees**

The validity, performance and all matters relating to this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Washington. The sole and exclusive venue of any legal action in regard to this Agreement shall be the Superior Court of Grays Harbor County, Washington.

If litigation arises out of this Agreement, the substantially prevailing party shall be entitled to recover all reasonable legal expenses including, but not limited to, attorneys' fees, expert witness fees, and travel and lodging expenses at trial and appellate court level.

## **Article 29—Incorporation of Recitals and Appendices**

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

## **Article 30—Performance Bond**

On execution of this Agreement, Licensee shall provide to City a performance bond in an amount equal to two (2) times the annual Pole attachment fee set forth in Appendix A, Item 1, per Licensee Pole Attachment or Ten Thousand Dollars (\$10,000.00), whichever is greater. The required bond amount may be adjusted periodically to account for additions or reductions in the total number of Licensee's Pole Attachments. The bond shall be with

an entity and in a form acceptable to the City. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties and fees due to City which arise by reason of the construction, operation, maintenance or removal of Licensee's Communications Facilities on or about Poles.

Notwithstanding the foregoing bond requirements, the City, in its sole discretion, agrees to waive the requirement of a Performance Bond if Licensee, can demonstrate to City financial responsibility.

### **Article 31—Force Majeure**

**31.1.** In the event that either City or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible. Licensee shall not be responsible for any charges associated with City Facilities for any periods that such facilities are unusable.

**31.2.** With the exception of emergency work done to Licensees facilities to correct for a violation in Licensee's attachments (including emergency transfers), the City shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of unavoidable delay as described in Paragraph 31.1, provided that Licensee presents City with a written description of such *force majeure* within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse Licensee from the timely payment of any fees or charges due City under this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement in duplicate on the day and year first written above.

ASTOUND BROADBAND, LLC

CITY OF McCLEARY:

By:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: BRENT SCHILLER

Title: \_\_\_\_\_

Title: Mayor

Date: \_\_\_\_\_, 2016

Date: \_\_\_\_\_,  
2016



**STAFF REPORT**

To: Mayor Schiller  
From: Todd Baun- Director of Public Works  
Date: September 26, 2016  
Re: AFG Grant Writer

---

The Fire Department has been applying for the AFG (Assistance to Firefighters Grant). This grant is getting extremely competitive and the Firemen that have been completing this grant would like to have assistance with writing this grant. This grant is for Bunker gear, SCBA's and radios and they are requesting \$250,000 from the grant to purchase these items.

The proposed cost for The Ferguson Group to assist with the design, writing, and submission of a competitive 2016 Assistance to Firefighter Grant (AFG) federal grant application will cost \$5,959.00, which \$2,975.00 will be billed up front.

**Action Requested:**

Please discuss and decide if you want to allow The Ferguson Group to assist the Fire Department with the design, writing, and submission of a competitive 2016 Assistance to Firefighter Grant (AFG) federal grant application for a cost \$5,959.00.



1130 Connecticut Avenue, NW  
Suite 300  
Washington, D.C. 20036  
202.331.8500  
202.331.1598 fax

October 5, 2016

Mr. Todd Baun  
Public Works Director  
City of McCleary  
100 South 3rd Street  
McCleary, WA 98557

RE: Assistance to Firefighter Grant (AFG) Grant FY 2016

Dear Mr. Baun:

The Ferguson Group, L.L.C. (TFG)/eCivis Grant Writing Team appreciates the opportunity to provide this technical cost proposal to the City of McCleary to assist with the design, writing, and submission of a competitive 2016 Assistance to Firefighter Grant (AFG) federal grant application. The 2016 AFG officially begins October 11, 2016 and the deadline for application submission is November 18, 2016.

TFG/eCivis understands that City of McCleary Fire Department will request funding to purchase Self Contained Breathing Apparatus (SCBA) and turnout gear. Under the AFG program, SCBAs and turnout gear are classified as Personal Protective Equipment (PPE). AFG funds used to acquire PPE may only be used to acquire compliant PPE for firefighting personnel. Only the acquisition of PPE compliant with the most current edition of NFPA 1971, 1976, 1977, 1981, and 1999 are eligible activities. The acquisition of used, refurbished, or updated PPE will be ineligible for reimbursement. PPE requested should have the goal of increasing firefighter safety. When requesting to replace obsolete or damaged PPE (e.g., turnout gear and SCBA), applicants will be asked to provide the age of the items being replaced.

According to AFG's 2016 priorities, Departments replacing obsolete or damaged PPE would be considered a competitive request. In order for PPE to be considered obsolete, the items must be a minimum of two NFPA cycles and 10 years of age or older from the date they were manufactured. The City understands that if the items requested do not meet the definition of "obsolete" that the application will be less competitive. The City of McCleary also understands that the AFG program requires a match. Fire Departments serving a jurisdiction of 20,000 residents or fewer must provide a cash match of not less than 5% of the grant awarded.

As part of the service offering, TFG/ECivis will work with the McCleary Fire Department to complete the entire AFG application, including:

- 1) Assisting in defining the most competitive project scope
- 2) Entering all required data into the online FEMA platform
- 3) Drafting and finalizing required narratives, including:

- a. Critical Infrastructure
- b. Firefighter Training
- c. A description of your organization and the community you serve
- d. Need for Federal Financial Assistance
- e. Budget Detail language
- f. Project Description
- g. Cost-Benefit Analysis
- h. Statement of Effect

As the federal grants consultant for ECivis, TFG will work at the direction of the City of McCleary. TFG will prepare all federal grant application forms, as well as the project narrative that is required as part of the application, and provide to the City a completed application prior to the grant deadline. The City of McCleary will be responsible for providing TFG with the required data, all log in information for the FEMA grant portal, participate on grant conference calls and provide any additional documentation or information requested by the grant writer.

Based on the above parameters, TFG proposes to be compensated through a set retainer fee of \$5,950.00 for all time expended for professional services. TFG will invoice the City of McCleary for one half of the professional fee retainer \$2,975.00 as a deposit upon signing the contract. Work will be billed against the initial deposit, and all work billed thereafter will be invoiced at the end of the month for payment. Any expenses incurred in this effort will be billed separately, and TFG expects payment within 30 days. A detailed time billing summary will be provided.

Heidi Schott, TFG Grant Services Manager, will be responsible for managing the project, and we may call upon other employees of our firm to assist in this engagement on an as-needed basis.

TFG appreciates the opportunity to work with the City of McCleary. If this letter correctly reflects your understanding of the terms and conditions of TFG's representation, please indicate your acceptance by signing two originals of this letter and returning one to us for our records.

Sincerely,



W. Roger Gwinn  
Chief Executive Officer

**ACKNOWLEDGED AND AGREED TO BY:**



W. Roger Gwinn Todd Baun  
Chief Executive Officer Public Works Director  
The Ferguson Group, LLC City of McCleary

October 5, 2016

Date

Date

## 2016 BUDGET POSITION

City Of McCleary  
MCAG #: 0344

Time: 12:18:11 Date: 10/07/2016  
Page: 1

001 Current Expense 01/01/2016 To: 12/31/2016

Expenditures	Amt Budgeted	Expenditures	Remaining	
<b>522 Fire Control</b>				
522 20 10 00 Salaries And Wages	20,800.00	3,336.60	17,463.40	16.0%
522 20 20 00 Personnel Benefits	4,250.00	425.78	3,824.22	10.0%
522 20 31 00 Supplies - Operating	5,000.00	3,326.23	1,673.77	66.5%
522 20 31 10 Fuel	750.00	543.44	206.56	72.5%
522 20 31 20 Fema Grant Expenditures	0.00	0.00	0.00	0.0%
522 20 41 00 Professional Services	2,300.00	447.18	1,852.82	19.4%
522 20 41 10 Professional Service-computer	100.00	0.00	100.00	0.0%
522 20 42 00 Communications	100.00	158.65	(58.65)	158.7%
522 20 43 00 Travel	0.00	0.00	0.00	0.0%
522 20 45 00 Rent - City Hall	0.00	0.00	0.00	0.0%
522 20 46 00 Insurance	5,200.00	5,451.59	(251.59)	104.8%
522 20 47 00 Public Utility Serv.(city)	1,900.00	1,503.92	396.08	79.2%
522 20 48 00 Repair And Maintenance	4,000.00	1,500.16	2,499.84	37.5%
522 20 49 00 Miscellaneous	50.00	0.00	50.00	0.0%
522 20 49 10 Miscellaneous-training	1,000.00	490.00	510.00	49.0%
522 20 53 00 External Taxes	50.00	0.00	50.00	0.0%
<b>522 Fire Control</b>	<b>45,500.00</b>	<b>17,183.55</b>	<b>28,316.45</b>	<b>37.8%</b>
<b>Fund Expenditures:</b>	<b>45,500.00</b>	<b>17,183.55</b>	<b>28,316.45</b>	<b>37.8%</b>
<b>Fund Excess/(Deficit):</b>	<b>(45,500.00)</b>	<b>(17,183.55)</b>		

## 2016 BUDGET POSITION TOTALS

City Of McCleary  
MCAG #: 0344

Time: 12:18:11 Date: 10/07/2016

Page: 2

Fund	Revenue Budgeted	Received		Expense Budgeted	Spent	
001 Current Expense	0.00	0.00	0.0%	45,500.00	17,183.55	37.8%
	<u>0.00</u>	<u>0.00</u>	<u>0.0%</u>	<u>45,500.00</u>	<u>17,183.55</u>	<u>37.8%</u>

Order form for: **City of McCleary**

Prepared on: **September 29, 2016**

Account Contact: Wendy Collins

**2017 Annual Service Fee: \$9,469.13**

## ORDER FORM

### ORDER PREPARED FOR:

Company: **City of McCleary**  
 Contact: **Wendy Collins**  
 Address: **100 S 3rd**  
**McCleary, Washington 98557**  
 Phone: **(360) 495-3667**  
 Email: [wendyc@cityofmccleary.com](mailto:wendyc@cityofmccleary.com)

### ORDER PREPARED BY:

Company: **BIAS Software**  
 Contact: **Sue Cronk**  
 Address: **327 E. Pacific**  
**Spokane, WA 99202**  
 Phone: **(509) 443-3332**  
 Email: [sue@biassoftware.com](mailto:sue@biassoftware.com)

## ORDER DETAILS

ORDER DETAILS			
PRODUCT	DESCRIPTION	QTY.	SUB-TOTAL
Annual Support	Financial	1	\$1,552.50
Annual Support	Payroll	1	\$1,653.75
Annual Support	Cash Receipting	1	\$1,440.00
Annual Support	Utilities	1	\$2,070.00
Annual Support	Permitting	1	\$1,395.00
Total IT Services:		BIAS Managed Back-up - All	\$600.00
Total Cloud Licenses:			\$0.00
Other Fees:			
<b>SIGN &amp; RETURN BY 11.30.16</b>		Discounts:	
Tax:			\$757.88
<b>Remarks:</b>	<b>Grand Total</b> (Tax Included)		<b>\$9,469.13</b>

### ENHANCEMENTS

Purchase Orders , Online Payments, Job Costing, Itron Interface,

**CONTRACT SUMMARY**

**Contract Period:** January 1<sup>st</sup> – December 31<sup>st</sup>, 2017

**Licensed Services:**

Financial | Payroll | Utilities | Cash Receipting | Permitting

**IT Services:**

BIAS Managed Back-up - All

**Support Remarks:**

**Enhancements:**

Purchase Orders , Online Payments, Job Costing, Itron Interface,

**Annual Support (Includes Tax) - \$9,469.13**

**PAYMENT**

Annual Support Fee is due on the contract year by January 31<sup>st</sup>. Invoice will be generated upon receiving signed Order Form.

**REMARKS**

Upon signature by Customer and submission to BIAS, this Order Form shall become legally binding and governed by the [Master Subscription Agreement v.6.10.16](#) between BIAS and Customer unless otherwise agreed by BIAS and Customer.

During the Contract Term and for one year thereafter, Customer shall not disclose the pricing or terms hereunder to any third party (unless required by law) without BIAS prior written consent.

<p><b>Name:</b> _____</p> <p><b>Title:</b> _____</p> <p><b>Date:</b> _____</p>	<p><b>Signature:</b></p>
--	--------------------------

**PLEASE SIGN DIGITALLY OR PRINT AND FAX TO 888.228.0030 OR EMAIL TO [SUE@BIASSOFTWARE.COM](mailto:SUE@BIASSOFTWARE.COM)**



**US\_001\_OU**

Date Printed : 28-SEP-2016

Maintenance Renewal Quote

Page: 1 of 1

Customer Name: City of McCleary, WA  
Customer Number: 17451  
Bill To Contact: Lindsay Blumberg  
Customer Address: 100 S. 3rd St.  
McCleary, WA 98557-9652

Contract Number: SC00004517  
Description: City of McCleary, WA - MVRS & HW

Contract Duration: 01-FEB-2017 - 31-JAN-2018

<u>Description</u>	<u>Serial Number</u>	<u>Start Date</u>	<u>End Date</u>	<u>Quantity</u>	<u>Total Amount</u>
<b>HARDWARE</b>					
FC300, SREAD RADIO, WLAN, GPS	FC300160425015	01-MAY-2017	31-JAN-2018	1	346.50
			<b>Subtotal :</b>	<b>1</b>	<b>346.50</b>
FC300, DESK DOCK	FC300216022298	01-MAY-2017	31-JAN-2018	1	28.35
			<b>Subtotal :</b>	<b>1</b>	<b>28.35</b>
FC3006 VEHICLE MOUNT CRADLE	FC300616046304	01-MAY-2017	31-JAN-2018	1	56.25
			<b>Subtotal :</b>	<b>1</b>	<b>56.25</b>
MOBILE COLLECTOR LITE	72502830	01-FEB-2017	31-JAN-2018	1	728.82
			<b>Subtotal :</b>	<b>1</b>	<b>728.82</b>
	<b>HARDWARE</b>			<b>4</b>	<b>1,159.92</b>
<b>SOFTWARE</b>					
MVRS,UP TO 2500 METERS SERVICED,ELECTRONIC DELIVERY		01-FEB-2017	31-JAN-2018	1	1,062.87
			<b>Subtotal :</b>	<b>1</b>	<b>1,062.87</b>
	<b>SOFTWARE</b>			<b>1</b>	<b>1,062.87</b>
			<b>Contract Grand Total :</b>	<b>5</b>	<b>2,222.79</b>

**NOTE: This is not an invoice**



**STAFF REPORT**

To: Mayor Schiller  
From: Todd Baun- Director of Public Works  
Date: October 7, 2016  
Re: TCMS Chiller Maintenance Agreement

---

The WWTP, (Waste Water Treatment Plant), has a large chiller unit, which is needed during the summer months, to keep our outflow water cool enough to meet Department of Ecology standards. This unit was installed in 2006, when the WWTP was upgraded. Since that time, we have had several small issues with the unit, which TCMS has repaired.

We are requesting a maintenance agreement with TCMS, to be move to a more preventive maintenance approach, instead of the reactive maintenance that we have been doing.

This agreement will provide testing, inspection and preventive maintenance, 3 times a year, for a cost of \$3057 for the first year, and \$3209 for the next 2 years.

**Action Requested:**

Please discuss and allow the Mayor to sign the maintenance contract with TCMS.



## MAINTENANCE AGREEMENT FOR BUILDING ENVIRONMENTAL SYSTEMS

Proposal Date	Proposal Number	Agreement No.
09/21/2016	PC16252	

### BY AND BETWEEN:

Temp-Control Mechanical Service  
 8310 30th Avenue NE  
 Lacey, WA 98516  
 WA# TEMPCMS065QP / OR CCB# 103165

AND

City of McCleary  
 100 S 3rd St  
 McCleary, WA  
 98557

hereinafter CONTRACTOR

hereinafter CUSTOMER

### SERVICES WILL BE PROVIDED AT THE FOLLOWING LOCATION(S):

#### Waste Water Treatment Facility

Contractor will provide the services described in the maintenance program indicated below, which are attached hereto and made a part of this Agreement, in accordance with the terms and conditions set forth on the following maintenance program pages.

#### **MAINTENANCE PROGRAM:**

#### **Customized Professional Maintenance II**

and associated Terms and Conditions

AGREEMENT coverage will commence on October 01, 2016 (date). The AGREEMENT price is \$3,057.00 per year, payable \$3,057.00 per Annual in advance beginning on the effective date of October 01, 2016.

This AGREEMENT price will be \$3,209.00 per Annual from October 01, 2017 (date) through September 30, 2019 (date).

IN WARRANTY ONLY: During the warranty, the AGREEMENT price will be \_\_\_\_\_ per \_\_\_\_\_. It is understood that the warranty expires on \_\_\_\_\_ (date).

#### **SCHEDULES INCLUDED:**

- 1-Inventory Of Equipment
- 5-Special Services/Provisions

This proposal is the property of Contractor and is provided for Customer's use only. Contractor guarantees the price stated in this Agreement for thirty (30) days from proposal date above. This proposal will become a binding Agreement only after acceptance by Customer and approved by an officer of Contractor as evidenced by their signatures below. This Agreement sets forth all of the terms and conditions binding upon the parties hereto; and no person has authority to make any claim, representation, promise or condition on behalf of Contractor which is not expressed herein. This annual Agreement shall continue in effect from year to year unless either party gives written notice to the other of intention not to renew thirty (30) days prior to any anniversary date.

#### **CONTRACTOR**

Signature (Sales Representative)

Lance Haver

#### **CUSTOMER**

Signature (Authorized Representative)

#### **Approved For Contractor**

Signature

Todd Wyche, General Manager

Name & Title

Date

Todd Baun

Name (Print/Type)

Director of Public Works

Title

Date



## CUSTOMIZED PROFESSIONAL MAINTENANCE PROGRAM II

Proposal Date	Proposal Number	Agreement No.
09/21/2016	PC16252	

Our Customized Professional Maintenance II (CPM-II) is designed to provide the Customer with an ongoing maintenance program. The CPM-II program will be initiated, scheduled, administered, monitored and updated by the Contractor. The service activities will be directed and scheduled, on a regular basis, by our comprehensive equipment maintenance scheduling system based on manufacturers' recommendations, equipment location, application, type, run time, and Contractor's own experience. The Customer is informed of the program's progress and results on a continuing basis via a detailed Service Report, presented after each service call for Customer's review, approval signature and record.

**CONTRACTOR WILL PROVIDE THE FOLLOWING PROFESSIONAL MAINTENANCE SERVICES FOR THE BUILDING ENVIRONMENTAL MECHANICAL SYSTEM(S) COMPRISED OF THE EQUIPMENT LISTED ON SCHEDULE 1 (INVENTORY OF EQUIPMENT):**

**TEST AND INSPECT:** Job labor, travel labor and travel and living expenses required to visually INSPECT and TEST equipment to determine its operating condition and efficiency. Typical activities include:  
 -TESTING for excessive vibration; motor winding resistance; refrigerant charge; fan RPM; refrigerant oil (acid); water condition; flue gas analysis; safety controls; combustion and draft; crankcase heaters; control system(s), etc.  
 -INSPECTING for worn, failed or doubtful parts; mountings; drive couplings; oil level; rotation; soot; flame composition and shape; pilot and igniter; steam, water, oil and/or refrigerant leaks, etc.

**PREVENTIVE MAINTENANCE:** Job labor, travel labor and travel and living expenses required to clean, align, calibrate, tighten, adjust, lubricate and paint equipment. These activities are intended to extend equipment life and assure proper operating condition and efficiency. Typical activities include:  
 -CLEANING coil surfaces; fan impellers and blades; electrical contacts; burner orifices; passages and nozzles; pilot and igniter; cooling tower baffles, basin, sump and float; chiller, condenser and boiler tubes, etc.  
 -ALIGNING belt drives; drive couplings; air fins, etc.  
 -CALIBRATING safety controls; temperature and pressure controls, etc.  
 -TIGHTENING electrical connections; mounting bolts; pipe clamps; refrigerant piping fittings; damper sections, etc.  
 -ADJUSTING belt tension; refrigerant charge; super heat; fan RPM; water chemical feed and feed rate; burner fuel/air ratios; gas pressure; set point of controls and limits; compressor cylinder unloaders; damper close-off; sump floats, etc.  
 -LUBRICATING motors; fan and damper bearings; valve stems; damper linkages; fan vane linkages, etc.  
 -PAINTING, for corrosion control, as directed by our scheduling system and on an as-needed basis.

**CUSTOMIZED PROFESSIONAL MAINTENANCE PROGRAM II TERMS AND CONDITIONS**

1. Customer shall permit Contractor free and timely access to areas and equipment, and allow Contractor to start and stop the equipment as necessary to perform required services. All planned work under this Agreement will be performed during the Contractor's normal working hours.
2. In case of any failure to perform its obligations under this Agreement, Contractor's liability is limited to repair or replacement at its option and such repair or replacement shall be Customer's sole remedy. This warranty is conditioned upon proper operation and maintenance by Customer and shall not apply if the failure is caused or contributed to by accident, alteration, abuse or misuse, and shall not extend beyond the term of this Agreement.
3. The annual Agreement price is conditioned upon the system(s) covered being in a maintainable condition. If the initial inspection or initial seasonal start-up indicates repairs are required, a firm quotation will be submitted for Customer's approval. Should Customer not authorize the repairs, Contractor may either remove the unacceptable system(s), component(s) or part(s) from its scope of responsibility and adjust the annual agreement price accordingly or cancel this Agreement.
4. The annual Agreement price is subject to adjustment on each commencement anniversary to reflect increases in labor, material and other costs.
5. Customer shall be responsible for all taxes applicable to the services and/or materials hereunder.
6. Customer will promptly pay invoices within ten (10) days of receipt. Should a payment become thirty (30) days or more delinquent, Contractor may stop all work under this Agreement without notice and/or cancel this Agreement, and the entire Agreement amount shall become due and payable immediately upon demand.
7. Any alteration to, or deviation from, this Agreement involving extra work, cost of materials or labor will become an extra charge (fixed price amount to be negotiated or on a time-and-material basis at Contractor's rates then in effect) over the sum stated in this Agreement.
8. Contractor will not be required to move, replace or alter any part of the building structure in the performance of this Agreement.
9. Customer shall permit only Contractor's personnel or agent to perform the work included in the scope of this Agreement. Should anyone other than Contractor's personnel perform such work, Contractor may, at its option, cancel this Agreement or eliminate the involved item of equipment from inclusion in this Agreement.
10. In the event Contractor must commence legal action in order to recover any amount payable under this Agreement, Customer shall pay Contractor all court costs and attorneys' fees incurred by Contractor.
11. Any legal action against the Contractor relating to this Agreement, or the breach thereof, shall be commenced within one (1) year from the date of the work.
12. Contractor shall not be liable for any delay, loss, damage or detention caused by unavailability of machinery, equipment or materials, delay of carriers, strikes, including those by Contractor's employees, lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature, or by any cause beyond its control.
13. To the fullest extent permitted by law, Customer shall indemnify and hold harmless Contractor, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of work hereunder, provided that such claim, damage, loss or expense is caused in whole or in part by an active or passive act or omission of Customer, anyone directly or indirectly employed by Customer, or anyone for whose acts Customer may be liable, regardless of whether it is caused in part by the negligence of Contractor.
14. Customer shall make available to Contractor's personnel all pertinent Material Safety Data Sheets (MSDS) pursuant to OSHA'S Hazard Communication Standard Regulations.
15. Contractor expressly disclaims any and all responsibility and liability for the indoor air quality of the customer's facility, including without limitation injury or illness to occupants of the facility or third parties, arising out of or in connection with the Contractor's work under this agreement.
16. Contractor's obligation under this proposal and any subsequent contract does not include the identification, abatement or removal of asbestos or any other toxic or hazardous substances, hazardous wastes or hazardous materials. In the event such substances, wastes and materials are encountered, Contractor's sole obligation will be to notify the Owner of their existence. Contractor shall have the right thereafter to suspend its work until such substances, wastes or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted.
17. UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE, WILL CONTRACTOR BE RESPONSIBLE FOR LOSS OF USE, LOSS OF PROFIT, INCREASED OPERATING OR MAINTENANCE EXPENSES, CLAIMS OF CUSTOMER'S TENANTS OR CLIENTS, OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.
18. This Agreement does not include repairs to the system(s), the provisions or installation of components or parts, or service calls requested by the Customer. These services will be charged for at Contractor's rates then in effect.



### Inventory Of Equipment

Proposal Date	Proposal Number	Agreement No.
09/21/2016	PC16252	

### City of McCleary

Qty	Description	Manufacturer	Model	Serial #	Rating	Location
	<b>Chiller System</b>					
1	Chiller 1 4 - Compressors	Trane	CGAFC60AK A10000E00	C05EO4456	60 Tons	Water Treatment
1	Condenser 1 6 - Fan Motors	Trane			1 HP	
1	CHWP 1  Included are thermostats and controls related to equipment.	Baldor			5 HP	



Schedule 5

**Special Services/Provisions**

Proposal Date	Proposal Number	Agreement No.
09/21/2016	PC16252	

Maintenance on Chiller will be 3 times per year.  
-End year Shut down Procedure and scheduled maintenance.  
-Restarting chiller and scheduled maintenance.  
-Mid season maintenance.

**EMERGENCY STICKERS:**

Will be placed on or near the equipment with a unique identification code and our 24-hour telephone number.

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

AN ORDINANCE RELATING TO PUBLIC UTILITIES,  
AUTHORIZING THE USE OF CERTAIN METHODOLOGIES  
UNDER CONDITIONS, ADDING A NEW SECTION TO  
ARTICLE IV, CHAPTER 13.12.020, PROVIDING AN  
EFFECTIVE DATE AND FOR SEVERABILITY.

R E C I T A L S:

1. The City maintains a wastewater collection and treatment system to serve its citizens and those of the surrounding area.

2. The Council and Mayor have received the recommendations of City Staff to allow the use of an alternative means of collection and transfer to the City's main gravity system, specifically a low pressure sewer system using grinder pumps commonly referred to as a "grinder system."

3. They have determined it appropriate to allow such utilization under certain terms and conditions when it is found not feasible to utilize the gravity system for collection and transmission.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY:

SECTION I: There shall be added to Article IV of Chapter 13.12 of the Municipal Code a new section to read as follows:



Authorization of Use of Grinder Pump Sewer Systems and  
Conditions Related Thereto:

A. Grinder pump sewer systems, as defined in Section 13.12.020[29], as now existing or hereafter amended or succeeded, shall not be installed and used in lieu of the orderly extension of gravity sewers unless such installation and utilization is approved as provided in the following provisions.

B. Grinder pump installation and use shall be subject to the following requirements and/or limitations:

1. New individual grinder pump system use is limited where:

a. A public gravity sewer line is contiguous to the property, but terrain, natural features, or other physical barriers prohibit a gravity connection; or

b. For the conversion of onsite sewage systems to public sewer or for infill development only where it is specifically determined by the Director of Public Works, hereinafter the Director, to be in the best interest of the City.

c. The nearest public gravity sewer line capable of providing service to the property is more than \_\_\_\_\_ hundred (\_\_\_\_\_) feet from the boundaries of the property.

2. Grinder pumps and side sewers which are installed as part of a grinder pump sewer system shall be purchased, owned, maintained and operated by the property owner.



3. Grinder pump force mains receiving effluent from more than one property shall be publicly owned and maintained. Publicly-owned grinder pump force mains shall be permitted only where the City Council, after review of recommendations received from the Director of Public Works, determines it to be in the best interest of the City and construction of a gravity and lift station sewer system is not a reasonable alternative, whether for physical or fiscal reasons.

When such approval is given, upon approval of the plans and specifications by the Director, the installation of the public grinder pump force mains shall be carried out by the applicant and all costs, including permit and inspection fees, shall be borne by the applicant. As indicated, any such installation shall be in accordance with the applicable Engineering Design and Development Standards of the City.

C. In the event that any time the City approves the utilization of Septic Tank Effluent Pump (STEP) systems, as defined in Section 13.12.020[29], as now existing or hereafter amended or succeeded, grinder pump side sewers and force mains shall not be permitted to discharge to designated STEP force mains unless it is determined by the Director or his/her designee to be in the best interest of the City.

SECTION II: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the

validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION III: This Ordinance shall take effect upon the fifth day following date of publication.

SECTION IV: Corrections by the Clerk-treasurer or Code Reviser. Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2016, by the City Council of the City of McCleary, and signed in  
approval therewith this \_\_\_\_\_ day of \_\_\_\_\_,  
2016.

CITY OF McCLEARY:

\_\_\_\_\_  
BRENT SCHILLER, Mayor

ATTEST:

\_\_\_\_\_  
WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

\_\_\_\_\_  
DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON     )  
                                      : ss.  
GRAYS HARBOR COUNTY    )

I, WENDY COLLINS, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number \_\_\_\_\_ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number \_\_\_\_\_, as it was published, is on file in the appropriate records of the City of McCleary.

\_\_\_\_\_  
WENDY COLLINS

SIGNED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by WENDY COLLINS.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, Residing at:  
My appointment expires:

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

AN ORDINANCE RELATING TO PUBLIC UTILITIES, AUTHORIZING THE USE OF CERTAIN METHODOLOGIES UNDER CONDITIONS, ADDING A NEW SECTION TO ARTICLE IV, CHAPTER 13.12.020, PROVIDING AN EFFECTIVE DATE AND FOR SEVERABILITY.

R E C I T A L S:

1. The City maintains a wastewater collection and treatment system to serve its citizens and those of the surrounding area.

2. The Council and Mayor have received the recommendations of City Staff to allow the use of an alternative means of collection and transfer to the City's main gravity system, specifically a low pressure sewer system using grinder pumps commonly referred to as a "grinder system."

3. They have determined it appropriate to allow such utilization under certain terms and conditions when it is found not feasible to utilize the gravity system for collection and transmission.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY:

SECTION 1: There shall be added to Article IV of Chapter 13.12 of the Municipal Code a new section to read as follows:

Authorization of Use of Grinder Pump Sewer Systems and  
Conditions Related Thereto:

A. Grinder pump sewer systems, as defined in Section 13.12.020[29], as now existing or hereafter amended or succeeded, shall not be installed and used in lieu of the orderly extension of gravity sewers unless such installation and utilization is approved as provided in the following provisions.

B. Grinder pump installation and use shall be subject to the following requirements and/or limitations:

1. New individual grinder pump system use is limited to situations where:

a. A public gravity sewer line is contiguous to the property, but terrain, natural features, or other physical barriers prohibit a gravity connection; or

b. For the conversion of onsite sewage systems to public sewer or for infill development only where it is specifically determined by the Director of Public Works, hereinafter the Director, to be in the best interest of the City.

c. The nearest public gravity sewer line capable of providing service to the property is more than \_\_\_\_\_ hundred (\_\_\_\_) feet from the boundaries of the property.

2. Grinder pumps and side sewers which are installed as part of a grinder pump sewer system shall be purchased, owned, maintained and operated by the property owner. At all times they

are connected to the City's system, such installations shall be in compliance with such rules and regulations as may be adopted by action of the Council or issued by the Director after approval by the Council.

3. Grinder pump force mains receiving effluent from more than \_\_\_\_\_ property/properties shall be publicly owned and maintained. Publicly-owned grinder pump force mains shall be permitted only where the City Council, after review of recommendations received from the Director of Public Works, determines it to be in the best interest of the City and construction of a gravity and lift station sewer system is not a reasonable alternative, whether for physical or fiscal reasons.

When such approval is given, upon approval of the plans and specifications by the Director, the installation of the public grinder pump force mains shall be carried out by the applicant and all costs, including permit and inspection fees, shall be borne by the applicant. As indicated, any such installation shall be in accordance with the applicable Engineering Design and Development Standards of the City.

4. Any applicant requesting authorization to connect a grinder system to the City's system shall execute such agreement as may be required by the City. Such agreement shall include confirmation of the following and such other elements as may from time to time be deemed necessary:

a. recognition of the responsibility of the applicant and the applicant's successors to maintain the system in compliance with the City's requirements as they from time to time exist;

b. that the City may terminate access to the City's system in the event of a failure to comply with the requirements, as then existing or thereafter implemented; and

c. the responsibility to reimburse the City for any costs resulting from the failure to comply, including any expense incurred by the City to obtain compliance.

C. In the event that any time the City approves the utilization of Septic Tank Effluent Pump (STEP) systems, as defined in Section 13.12.020[29], as now existing or hereafter amended or succeeded, grinder pump side sewers and force mains shall not be permitted to discharge to designated STEP force mains unless it is determined by the Director or his/her designee to be in the best interest of the City.

SECTION II: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared

invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION III: This Ordinance shall take effect upon the fifth day following date of publication.

SECTION IV: Corrections by the Clerk-treasurer or Code Reviser. Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016, by the City Council of the City of McCleary, and signed in approval therewith this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF McCLEARY:

\_\_\_\_\_  
BRENT SCHILLER, Mayor

ATTEST:

\_\_\_\_\_  
WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

\_\_\_\_\_  
DANIEL O. GLENN, City Attorney

**ORDINANCE -B- 5**  
**09/22/2016**  
DG/le

CITY OF McCLEARY  
100 SOUTH 3RD STREET  
McCLEARY, WASHINGTON 98557



STATE OF WASHINGTON )  
 : ss.  
GRAYS HARBOR COUNTY )

I, WENDY COLLINS, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number \_\_\_\_\_ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number \_\_\_\_\_, as it was published, is on file in the appropriate records of the City of McCleary.

\_\_\_\_\_  
WENDY COLLINS

SIGNED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by WENDY COLLINS.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, Residing at:  
My appointment expires:

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

AN ORDINANCE RELATING TO ENVIRONMENTAL PROTECTION, IMPLEMENTING A MODIFICATION OF THE EXEMPTION THRESHOLDS FOR CERTAIN PROJECTS, AMENDING SECTION 18.04.250, PROVIDING FOR AN EFFECTIVE DATE, SEVERABILITY, AND CORRECTION.

R E C I T A L S:

1. The City has been made aware of the authority to modify the threshold exemption levels in relation to environmental review for certain projects.

2. The proposal to do so has been provided to all required parties and notification of the consideration of such action has been given through publication as well. All necessary hearings have been held.

3. Based upon the information provided to it, the Council finds it to be in the public interest to implement those modifications which are set out below.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY:

SECTION I: Section 18.04.250 MMC is amended to read as follows:

A. Except as set forth in Subsection B, the ((The)) city adopts by reference the following rules for categorical



and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION IV: This Ordinance shall take effect upon the fifth day following date of publication.

SECTION V: Corrections by the Clerk-treasurer or Code Reviser. Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016, by the City Council of the City of McCleary, and signed in approval therewith this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF McCLEARY:

\_\_\_\_\_  
BRENT SCHILLER, Mayor

ATTEST:

\_\_\_\_\_  
WENDY COLLINS, Clerk-Treasurer

ORDINANCE - 3  
09/26/2016  
DG/1a

CITY OF McCLEARY  
100 SOUTH 3RD STREET  
McCLEARY, WASHINGTON 98557

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON    )  
                                  : ss.  
GRAYS HARBOR COUNTY    )

I, WENDY COLLINS, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number \_\_\_\_\_ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number \_\_\_\_\_, as it was published, is on file in the appropriate records of the City of McCleary.

WENDY COLLINS

SIGNED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by WENDY COLLINS.

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, Residing at:  
My appointment expires: