



McCleary City Council

AGENDA

January 28, 2015

7:00 City Council Meeting

Flag Salute
Roll Call
Public Hearings:
Public Comment:

Minutes: (Tab A)
Mayor's Report/Comments: Appoint Todd Baun as the GHCOG Representative

Staff Reports: Dan Glenn, City Attorney (Tab B)

Old Business: HB 162 ATV Vehicles (Tab C)

New Business: Children's Advocacy Agreement (Tab D)
BPA Revision No. 1 to Exhibit H Settlement (Tab E)
Astound Networks WAVE Broadband Franchise Ord. Discussion (Tab F)

Ordinances:

Resolutions:

Vouchers
Mayor/Council Comments
Public Comment
Executive Session
Adjournment

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

Please Turn Off Cell Phones – Thank You

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

CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, January 8, 2015

ROLL CALL AND FLAG SALUTE Councilmember's Reed, Schiller, Catterlin, Ator and Peterson.

ABSENT None.

STAFF PRESENT Present at the meeting were Todd Baun, Wendy Collins, George Crumb, Dan Glenn, and Paul Nott.

PUBLIC COMMENT Karen Peterson stated she is married to Councilmember Peterson and she has her own opinion about things and she has a right to give her opinion. She addressed Mayor Dent and said he called her home about two weeks ago and told her husband, Councilmember Larry Peterson, there was going to be a law suit against him and quoted a RCW and said they should be receiving papers shortly and he was only going to tell him this one time. She asked Mayor Dent if this was true, a threat, or an error in judgment. Mayor Dent said he did not make that call. Mrs. Peterson said that is not true because she was right there when it happened and heard him on the phone. She said this was an error in judgment and does not make him look good. Mayor Dent said whatever it means, if he did, he certainly didn't mean that, and that's not where things stand. Mrs. Peterson responded stating that is not true, and asked the Mayor, "Is it not true"? Mayor Dent said no, it's not true. She added all she needed was an explanation because she needs to know if she has to start saving money for attorney's fees. She said it's been very upsetting.

Fred Miller from WAVE Broadband and Astound Networks spoke to the Council regarding a project they are working on in our area. They are in the process of adding a fiber network around the region. They will own and operate the network system. They will bring in more capacity than needed in preparation for the future. He is working with Dan Glenn for a franchise agreement, which enables them to work in our area. Dan Glenn added that the WAVE Broadband will not be doing business in McCleary. They will just be doing franchise agreement work.

MINUTES APPROVED **It was moved by Councilmember Peterson, seconded by Councilmember Catterlin to approve the minutes from the December 10, 2014 meeting. Motion Carried 5-0.**

CITY ATTORNEY REPORT None.

MAYOR'S COMMENTS None.

DIRECTOR OF PUBLIC WORKS REPORT Todd Baun provided a report and is available for questions.

Councilmember Catterlin asked to bring up a couple old business items. He wants to revisit the HB 1642 again regarding the 4 wheel RV vehicles. He said they did not come to a consensus on it. Mayor Dent said it would be added to the next meeting. Dan Glenn will send the Council some information regarding this topic prior to the next meeting.

Councilmember Catterlin announced he will be having extensive surgery in February and will miss some meetings during that time. He reminded them that he and Councilmember Peterson were appointed to handle the contract negotiations with the County. Councilmember Catterlin asked Dan Glenn how to appoint Brent Schiller to the negotiations committee to fill in for him during his medical absence. After Mr. Schiller agreed to the appointment, Mr. Glenn told Mr. Catterlin he could just make the motion. **It was moved by Councilmember Catterlin, seconded by Councilmember Schiller to appoint Councilmember Schiller to the negotiations committee to fill in for him during his medical absence. Motion Carried 5-0.**

INDIGENT DEFENSE COUNCIL INTERIM CONTRACT Mr. Jordan will no longer be providing public defense services for the City. Dan Glenn has contacted Amanda Kleespie to provide defense services on an interim basis. She currently provides these services for Elma and Oakville and is willing to assume the task for the City during the interim period. **It was moved by Councilmember Catterlin seconded by Councilmember's Reed and Peterson to authorize the interim contract for indigent defense services on a month to month basis with an increase of only \$75.00 per month. Motion Carried 5-0.**

RESOLUTION 674 - INDIGENT DEFENSE CASE WEIGHTING	<p>The Supreme Court has established restrictions upon the number of criminal cases which an attorney providing public defender services may assume during a time period. There is a recognized difference among criminal cases as to the amount of time required to properly provide services to the individual defendant by authorizing a case weighting system. It was moved by Councilmember Ator, seconded by Councilmember Reed to adopt Resolution 674 relating to the provision of public defense services to indigent defendants, adopting a case weighting schedule. Resolution Adopted 5-0.</p>
RESOLUTION 675 - PUBLIC DEFENSE STANDARDS	<p>RCW requires cities operating a court to adopt standards for the delivery of public defense services. It was moved by Councilmember Ator, seconded by Councilmember Schiller to adopt Resolution 675 relating to the adoption of public defense standards. Resolution Adopted 5-0.</p>
APPROVAL OF VOUCHERS	<p>Accounts Payable vouchers/checks approved were 38931 - 38990 including EFT's in the amount of \$208,353.44 and 38991 - 39058 including EFT's in the amount of \$41,470.59.</p> <p>Payroll vouchers/checks approved were 38899 - 38994 including EFT's in the amount of \$154,132.15.</p> <p>Bank reconciliations approved for December 2014.</p> <p>It was moved by Councilmember Ator, seconded by Councilmember Reed to approve the vouchers. Motion Carried 5-0.</p>
EXECUTIVE SESSION	<p>At 7:20 PM, Councilmember Schiller made a motion for a ten minute executive session per RCW 42.30.110 Paragraph (f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge.</p> <p>The executive session ended at 7:27 PM. No action was taken.</p>
PUBLIC COMMENT	<p>Councilmember Catterlin says he believes it's important for the Council to have consensus over the response to the auditor over the Finding during the last audit. He thought the letter was vague and didn't discern between the operating funds and reserve funds, and made no mention of what the state of the reserve funds should be. The figures regarding the capital improvement plan were very vague and he doesn't think they are accurate. He addressed Paul Nott from the audience and asked if he could talk about the cutover project and how much is left. Paul wasn't prepared but knows the capital improvement plan was created six years ago and states a timeline to get the cutover completed. The project is designed in stages on a yearly basis and could be impacted due to other things that could take priority.</p> <p>Councilmember Catterlin is looking for a dollar amount for what is remaining on the project. Paul believes it could be between \$2.7 - \$3 million. Councilmember Catterlin made a motion to take a roll call of support or non support of the auditor response letter for the record. He stated this is because the auditors read the minutes. Dan Glenn said with all due respect, the City attorney did not prepare the figures but he has confidence in the figures developed by Mr. Baun. Mr. Glenn said when Mr. Catterlin goes down this path and makes those types of comments, it doesn't smell very good. He said he has every right as a Councilmember but he needs to be consistent. Mr. Glenn said the letter was prepared by Mr. Baun and Mrs. Collins and he did most of the drafting himself and the Mayor signed off on it. The auditor has acknowledged receipt of it and has not indicated a position on it other than checking the numbers. He told Mr. Catterlin he can take any action he wants but needs to make it clear that this is his position but he respects his rights. Councilmember Catterlin restated his motion. There was no second. Mayor Dent said the motion failed.</p> <p>Councilmember Peterson wanted to thank the McCleary Fire Department for the Christmas food drive. The received 389 pounds of food and had to do it in some bad weather. The Food Bank really appreciates everything they did.</p>
MEETING ADJOURNED	<p>It was moved by Councilmember Ator, seconded by Councilmember Peterson to adjourn the meeting at 7:35 pm. The next meeting will be Wednesday, January 28, 2015 at 7:00 pm. Motion Carried 5-0.</p>

MEMORANDUM

TO: MAYOR AND CITY COUNCIL, City of McCleary
FROM: DANIEL O. GLENN, City Attorney
DATE: January 23, 2015
RE: LEGAL ACTIVITIES as of JANUARY 28, 2015

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. **ASTOUND COMMUNICATIONS**: As you will remember from the last session, a representative of this company was present to summarize why they are requesting authority to install their fiber-optic lines in the City's rights of way. As he noted, at this stage it all ties to the installation of the necessary infrastructure to support expansion of a faster system to be used by various entities. He indicated, at this stage, no direct business will be served in McCleary. They have made the same request of Elma and were granted the authority to install the infrastructure by the County.

I have prepared a draft franchise ordinance which seeks both to be consistent with the approach taken by the County and to recognize the areas in which the City differs from the County. Among the issues for you are the following:

A. The length of the franchise. Normally, with the entities such as Comcast, we have used a term no longer than 25 years. The County granted it for 50 years, but I would not recommend that duration without a careful review.

B. **Taxation**: I have not included a franchise tax as such although the County set forth a 6% figure. Bluntly, I do not know upon what income that will be based. I have reserved the right to the City to later modify the agreement unilaterally either to impose a franchise tax or gross revenue tax.

I have forwarded the draft to the Company's counsel. As of the time of the preparation of this report, I have not received a response with questions or suggestions. I anticipate updating you at the next meeting.

2. **SEWER COALITION INTERLOCAL:** Ms. Collins has informed me that Mr. Baun has received a draft interlocal agreement proposed by the City of Shelton in terms of setting up a coalition. While I have not yet been provided a copy of the document, I have seen a document which I assume will be identical during the course of my representation of Montesano. I have asked Ms. Collins to provide me with a copy for review.

The document received by Montesano basically proposed setting up a group through which funding of a lobbyist to seek to convince the Legislature to implement certain funding in relation to sewer funding would occur. The draft I saw had certain elements which were of concern to me from a member's standpoint. For example, the selection of the "legislative representative" would be in the sole discretion of the City of Shelton.

As a general comment, I must admit that it has been my perception one of the purposes of belonging to the Association of Washington Cities is precisely the purpose of this separate group. I anticipate speaking with the counsel for AWC as to the situation which has resulted in the desire of Shelton to have this separate group.

3. **CAC AGREEMENT:** This agreement is the annual renewal in relation to the provision of services in the event of the necessity of interviewing children in relation to crimes involving minors. While I have not yet been provided a copy, it is my assumption that its terms will be as in the past. They include a maximum number of hours to be provided for the amount and with no "carryover" of hours if the Department does not utilize all of the hours during the calendar year.

The bottom line is, while I would like to see the carryover provision added, the management of the Center has noted that can not be done due to their budgeting protocols. That being said, Chief Crumb has affirmed in the past that the service is both needed and beneficial.

4. **USE OF "ENHANCED" ATVS ON PUBLIC RIGHTS OF WAY:** Pursuant to the pending discussions, I believe you have received information on this matter. That includes the statutory reference confirming that, as is true with operators of motorcycles, ATV users are not required to have insurance covering the operation of the vehicles. I believe that Chief

Crumb has previously expressed concerns about such utilization and may well have more comments at this stage.

The utilization continues to be in the sole discretion of the Council and Mayor and requires affirmative action through adoption of an ordinance. In the absence of such action, the use is not allowed.

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

DG/le

Wendy Collins

From: Daniel Glenn <glennsatsop@msn.com>
Sent: Thursday, January 15, 2015 8:43 AM
To: Wendy Collins
Subject: ATV Information
Attachments: atv.ins.pdf; atv.pdf

Wendy,

I am providing this for forwarding to the Mayor, Council Members, and Chief Crumb.

I have attached the relevant portion of the legislation relating to the use of the "enhanced" ATVs on public streets. There was also information in the August 27 Council Report which the Council Members may still have available on their iPads.

Among the items they will note are the following:

- A. Utilization requires formal authorization by the City.
- B. There are special equipment requirements the compliance with which must be certified by an authorized shop.
- C. There are somewhat unusual operator requirements.
- D. There is an absence of requiring insurance for an operator. Thus, if something were to go wrong and the operator had not insurance, if damage were done to someone's property they would have to hope that their uninsured motorist coverage or homeowner's policy would step in.
- E. The State retains all revenue from the licensing.

If there are any questions, I would ask that they direct them to me.

Thanks.

Dan

Dan Glenn
360 943 7700
360 943 7721 Fax

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1	<u>(r) Wheeled all-terrain vehicle,</u>	<u>\$12.00</u>	<u>\$12.00</u>	<u>Section 10 of this act</u>
2	<u>on-road use</u>			
3	<u>(s) Wheeled all-terrain vehicle,</u>	<u>\$18.00</u>	<u>\$18.00</u>	<u>RCW 46.09.510</u>
4	<u>off-road use</u>			

5 (2) The vehicle license fee required in subsection (1) of this
6 section is in addition to the filing fee required under RCW 46.17.005,
7 and any other fee or tax required by law.

8 **Sec. 20.** RCW 46.30.020 and 2013 c 157 s 1 are each amended to read
9 as follows:

10 (1) (a) No person may operate a motor vehicle subject to
11 registration under chapter 46.16A RCW in this state unless the person
12 is insured under a motor vehicle liability policy with liability limits
13 of at least the amounts provided in RCW 46.29.090, is self-insured as
14 provided in RCW 46.29.630, is covered by a certificate of deposit in
15 conformance with RCW 46.29.550, or is covered by a liability bond of at
16 least the amounts provided in RCW 46.29.090. Proof of financial
17 responsibility for motor vehicle operation must be provided on the
18 request of a law enforcement officer in the format specified under RCW
19 46.30.030.

20 (b) A person who drives a motor vehicle that is required to be
21 registered in another state that requires drivers and owners of
22 vehicles in that state to maintain insurance or financial
23 responsibility shall, when requested by a law enforcement officer,
24 provide evidence of financial responsibility or insurance as is
25 required by the laws of the state in which the vehicle is registered.

26 (c) When asked to do so by a law enforcement officer, failure to
27 display proof of financial responsibility for motor vehicle operation
28 as specified under RCW 46.30.030 creates a presumption that the person
29 does not have motor vehicle insurance.

30 (d) Failure to provide proof of motor vehicle insurance is a
31 traffic infraction and is subject to penalties as set by the supreme
32 court under RCW 46.63.110 or community restitution.

33 (e) For the purposes of this section, when a person uses a portable
34 electronic device to display proof of financial security to a law
35 enforcement officer, the officer may only view the proof of financial

1 security and is otherwise prohibited from viewing any other content on
2 the portable electronic device.

3 (f) Whenever a person presents a portable electronic device
4 pursuant to this section, that person assumes all liability for any
5 damage to the portable electronic device.

6 (2) If a person cited for a violation of subsection (1) of this
7 section appears in person before the court or a violations bureau and
8 provides written evidence that at the time the person was cited, he or
9 she was in compliance with the financial responsibility requirements of
10 subsection (1) of this section, the citation shall be dismissed and the
11 court or violations bureau may assess court administrative costs of
12 twenty-five dollars at the time of dismissal. In lieu of personal
13 appearance, a person cited for a violation of subsection (1) of this
14 section may, before the date scheduled for the person's appearance
15 before the court or violations bureau, submit by mail to the court or
16 violations bureau written evidence that at the time the person was
17 cited, he or she was in compliance with the financial responsibility
18 requirements of subsection (1) of this section, in which case the
19 citation shall be dismissed without cost, except that the court or
20 violations bureau may assess court administrative costs of twenty-five
21 dollars at the time of dismissal.

22 (3) The provisions of this chapter shall not govern:

23 ~~(a) The operation of a motor vehicle registered under RCW 46.18.220~~
24 or 46.18.255, governed by RCW 46.16A.170, or registered with the
25 Washington utilities and transportation commission as common or
26 contract carriers; or

27 (b) The operation of a motorcycle as defined in RCW 46.04.330, a
28 motor-driven cycle as defined in RCW 46.04.332, ~~((or))~~ a moped as
29 defined in RCW 46.04.304, or a wheeled all-terrain vehicle as defined
30 in RCW 46.09.310.

31 (4) RCW 46.29.490 shall not be deemed to govern all motor vehicle
32 liability policies required by this chapter but only those certified
33 for the purposes stated in chapter 46.29 RCW.

34 **Sec. 21.** RCW 46.63.020 and 2013 c 135 s 2 are each amended to read
35 as follows:

36 Failure to perform any act required or the performance of any act
37 prohibited by this title or an equivalent administrative regulation or

ENGROSSED SUBSTITUTE HOUSE BILL 1632

Passed Legislature - 2013 2nd Special Session

State of Washington 63rd Legislature 2013 2nd Special Session

By House Transportation (originally sponsored by Representatives Shea, Blake, Kristiansen, Sells, Warnick, Upthegrove, Wilcox, Scott, Moscoso, Fagan, and Condotta)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to regulating the use of off-road vehicles in
2 certain areas; amending RCW 46.09.310, 46.09.310, 46.09.360, 46.09.400,
3 46.09.410, 46.09.420, 46.09.450, 46.09.460, 46.09.530, 46.17.350,
4 46.30.020, 46.63.020, 79A.80.010, 46.63.030, 43.84.092, and 43.84.092;
5 reenacting and amending RCW 46.09.470; adding new sections to chapter
6 46.09 RCW; creating a new section; prescribing penalties; providing
7 effective dates; providing a contingent effective date; providing an
8 expiration date; providing a contingent expiration date; and declaring
9 an emergency.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 NEW SECTION. Sec. 1. (1) The legislature finds that off-road
12 vehicle users have been overwhelmed with varied confusing rules,
13 regulations, and ordinances from federal, state, county, and city land
14 managers throughout the state to the extent standardization statewide
15 is needed to maintain public safety and good order.

16 (2) It is the intent of the legislature to: (a) Increase
17 opportunities for safe, legal, and environmentally acceptable motorized
18 recreation; (b) decrease the amount of unlawful or environmentally
19 harmful motorized recreation; (c) generate funds for use in

1 recreational purposes, including but not limited to riding an all-
2 terrain vehicle, motorcycling, or driving a four-wheel drive vehicle or
3 dune buggy.

4 (14) "ORV sports park" means a facility designed to accommodate
5 competitive ORV recreational uses including, but not limited to,
6 motocross racing, four-wheel drive competitions, and flat track racing.
7 Use of ORV sports parks can be competitive or noncompetitive in nature.

8 (15) "ORV trail" means a multiple-use corridor designated by the
9 managing authority and maintained for recreational use by motorized
10 vehicles.

11 (16) "Direct supervision" means that the supervising adult must be
12 in a position, on another wheeled all-terrain vehicle or specialty off-
13 highway vehicle or motorbike or, if on the ground, within a reasonable
14 distance of the unlicensed operator, to provide close support,
15 assistance, or direction to the unlicensed operator.

16 (17) "Emergency management" means the carrying out of emergency
17 functions related to responding and recovering from emergencies and
18 disasters, and to aid victims suffering from injury or damage,
19 resulting from disasters caused by all hazards, whether natural,
20 technological, or human caused, and to provide support for search and
21 rescue operations for persons and property in distress.

22 (18) "Primitive road" means a linear route managed for use by four-
23 wheel drive or high-clearance vehicles that is generally not maintained
24 or paved, a road designated by a county as primitive under RCW
25 36.75.300, or a road designated by a city or town as primitive under a
26 local ordinance.

27 (19) "Wheeled all-terrain vehicle" means (a) any motorized
28 nonhighway vehicle with handlebars that is fifty inches or less in
29 width, has a seat height of at least twenty inches, weighs less than
30 one thousand five hundred pounds, and has four tires having a diameter
31 of thirty inches or less, or (b) a utility-type vehicle designed for
32 and capable of travel over designated roads that travels on four or
33 more low-pressure tires of twenty psi or less, has a maximum width less
34 than seventy-four inches, has a maximum weight less than two thousand
35 pounds, has a wheelbase of one hundred ten inches or less, and
36 satisfies at least one of the following: (i) Has a minimum width of
37 fifty inches; (ii) has a minimum weight of at least nine hundred
38 pounds; or (iii) has a wheelbase of over sixty-one inches.

1 (b) Snowmobile or any military vehicles;

2 (c) Any vehicle eligible for a motor vehicle fuel tax exemption or
3 rebate under chapter 82.38 RCW while an exemption or rebate is claimed.
4 This exemption includes but is not limited to farm, construction, and
5 logging vehicles.

6 (9) "Nonmotorized recreational facilities" means recreational
7 trails and facilities that are adjacent to, or accessed by, a
8 nonhighway road and intended primarily for nonmotorized recreational
9 users.

10 (10) "Nonmotorized recreational user" means a person whose purpose
11 for consuming fuel on a nonhighway road or off-road is primarily for
12 nonmotorized recreational purposes including, but not limited to,
13 walking, hiking, backpacking, climbing, cross-country skiing,
14 snowshoeing, mountain biking, horseback riding, and pack animal
15 activities.

16 (11) "Organized competitive event" means any competition,
17 advertised in advance through written notice to organized clubs or
18 published in local newspapers, sponsored by recognized clubs, and
19 conducted at a predetermined time and place.

20 (12) "ORV recreation facilities" include, but are not limited to,
21 ORV trails, trailheads, campgrounds, ORV sports parks, and ORV use
22 areas, designated for ORV use by the managing authority (~~that are~~
23 ~~intended primarily for ORV recreational users~~).

24 (13) "ORV recreational user" means a person whose purpose for
25 consuming fuel on nonhighway roads or off-road is primarily for ORV
26 recreational purposes, including but not limited to riding an all-
27 terrain vehicle, motorcycling, or driving a four-wheel drive vehicle or
28 dune buggy.

29 (14) "ORV sports park" means a facility designed to accommodate
30 competitive ORV recreational uses including, but not limited to,
31 motocross racing, four-wheel drive competitions, and flat track racing.
32 Use of ORV sports parks can be competitive or noncompetitive in nature.

33 (15) "ORV trail" means a multiple-use corridor designated by the
34 managing authority and maintained for recreational use by motorized
35 vehicles.

36 (16) "Direct supervision" means that the supervising adult must be
37 in a position, on another wheeled all-terrain vehicle or specialty off-

1 highway vehicle or motorbike or, if on the ground, within a reasonable
2 distance of the unlicensed operator, to provide close support,
3 assistance, or direction to the unlicensed operator.

4 (17) "Emergency management" means the carrying out of emergency
5 functions related to responding and recovering from emergencies and
6 disasters, and to aid victims suffering from injury or damage,
7 resulting from disasters caused by all hazards, whether natural,
8 technological, or human caused, and to provide support for search and
9 rescue operations for persons and property in distress.

10 (18) "Primitive road" means a linear route managed for use by four-
11 wheel drive or high-clearance vehicles that is generally not maintained
12 or paved, a road designated by a county as primitive under RCW
13 36.75.300, or a road designated by a city or town as primitive under a
14 local ordinance.

15 (19) "Wheeled all-terrain vehicle" means (a) any motorized
16 nonhighway vehicle with handlebars that is fifty inches or less in
17 width, has a seat height of at least twenty inches, weighs less than
18 one thousand five hundred pounds, and has four tires having a diameter
19 of thirty inches or less, or (b) a utility-type vehicle designed for
20 and capable of travel over designated roads that travels on four or
21 more low-pressure tires of twenty psi or less, has a maximum width less
22 than seventy-four inches, has a maximum weight less than two thousand
23 pounds, has a wheelbase of one hundred ten inches or less, and
24 satisfies at least one of the following: (i) Has a minimum width of
25 fifty inches; (ii) has a minimum weight of at least nine hundred
26 pounds; or (iii) has a wheelbase of over sixty-one inches.

27 NEW SECTION. Sec. 4. A new section is added to chapter 46.09 RCW
28 under the subchapter heading "registrations and use permits" to read as
29 follows:

30 (1) Any wheeled all-terrain vehicle operated within this state must
31 display a metal tag to be affixed to the rear of the wheeled all-
32 terrain vehicle. The initial metal tag must be issued with an original
33 off-road vehicle registration and upon payment of the initial vehicle
34 license fee under RCW 46.17.350(1)(s). The metal tag must be replaced
35 every seven years at a cost of two dollars. Revenue from replacement
36 metal tags must be deposited into the nonhighway and off-road vehicle

1 activities program account. The department must design the metal tag,
2 which must:

3 (a) Be the same size as a motorcycle license plate;

4 (b) Have the words "RESTRICTED VEHICLE" listed at the top of the
5 tag;

6 (c) Contain designated identification through a combination of
7 letters and numbers;

8 (d) Leave space at the bottom left corner of the tag for an off-
9 road tab issued under subsection (2) of this section; and

10 (e) Leave space at the bottom right corner of the tag for an on-
11 road tab, when required, issued under subsection (3) of this section.

12 (2) A person who operates a wheeled all-terrain vehicle must have
13 a current and proper off-road vehicle registration, with the
14 appropriate off-road tab, and pay the annual vehicle license fee as
15 provided in RCW 46.17.350(1)(s), which must be deposited into the
16 nonhighway and off-road vehicle activities program account. The off-
17 road tab must be issued annually by the department upon payment of
18 initial and renewal vehicle license fees under RCW 46.17.350(1)(s).

19 (3) A person who operates a wheeled all-terrain vehicle upon a
20 public roadway must have a current and proper on-road vehicle
21 registration, with the appropriate on-road tab, which must be of a
22 bright color that can be seen from a reasonable distance, and pay the
23 annual vehicle license fee as provided in RCW 46.17.350(1)(r). The on-
24 road tab must be issued annually by the department upon payment of
25 initial and renewal vehicle license fees under RCW 46.17.350(1)(r).

26 (4) A wheeled all-terrain vehicle may not be registered for
27 commercial use.

28 NEW SECTION. Sec. 5. A new section is added to chapter 46.09 RCW
29 under the subchapter heading "registrations and use permits" to read as
30 follows:

31 (1) A person may not operate a wheeled all-terrain vehicle upon a
32 public roadway of this state, not including nonhighway roads and
33 trails, without (a) first obtaining a valid driver's license issued to
34 Washington residents in compliance with chapter 46.20 RCW or (b)
35 possessing a valid driver's license issued by the state of the person's
36 residence if the person is a nonresident.

1 (2) A person who operates a wheeled all-terrain vehicle under this
2 section is granted all rights and is subject to all duties applicable
3 to the operator of a motorcycle under RCW 46.37.530 and chapter 46.61
4 RCW, unless otherwise stated in this act, except that wheeled all-
5 terrain vehicles may not be operated side-by-side in a single lane of
6 traffic.

7 (3) Wheeled all-terrain vehicles are subject to chapter 46.55 RCW.

8 (4) Any person who violates this section commits a traffic
9 infraction.

10 (5) The department may develop and implement an online training
11 course for persons that register wheeled all-terrain vehicles and
12 utility-type vehicles for use on a public roadway of this state. The
13 department is granted rule-making authority for the training course.
14 Any future costs associated with the training course must be
15 appropriated from the highway safety account and any fees collected
16 must be distributed to the highway safety account.

17 NEW SECTION. **Sec. 6.** A new section is added to chapter 46.09 RCW
18 under the subchapter heading "uses and violations" to read as follows:

19 (1) A person may operate a wheeled all-terrain vehicle upon any
20 public roadway of this state, not including nonhighway roads and
21 trails, having a speed limit of thirty-five miles per hour or less
22 subject to the following restrictions and requirements:

23 (a) A person may not operate a wheeled all-terrain vehicle upon
24 state highways that are listed in chapter 47.17 RCW; however, a person
25 may operate a wheeled all-terrain vehicle upon a segment of a state
26 highway listed in chapter 47.17 RCW if the segment is within the limits
27 of a city or town and the speed limit on the segment is thirty-five
28 miles per hour or less;

29 (b) A person operating a wheeled all-terrain vehicle may not cross
30 a public roadway, not including nonhighway roads and trails, with a
31 speed limit in excess of thirty-five miles per hour, unless the
32 crossing begins and ends on a public roadway, not including nonhighway
33 roads and trails, or an ORV trail, with a speed limit of thirty-five
34 miles per hour or less and occurs at an intersection of approximately
35 ninety degrees, except that the operator of a wheeled all-terrain
36 vehicle may not cross at an uncontrolled intersection of a public
37 highway listed under chapter 47.17 RCW;

1 (c)(i) A person may not operate a wheeled all-terrain vehicle on a
2 public roadway within the boundaries of a county, not including
3 nonhighway roads and trails, with a population of fifteen thousand or
4 more unless the county by ordinance has approved the operation of
5 wheeled all-terrain vehicles on county roadways, not including
6 nonhighway roads and trails.

7 (ii) The legislative body of a county with a population of fewer
8 than fifteen thousand may, by ordinance, designate roadways or highways
9 within its boundaries to be unsuitable for use by wheeled all-terrain
10 vehicles.

11 (iii) Any public roadways, not including nonhighway roads and
12 trails, authorized by a legislative body of a county under (c)(i) of
13 this subsection or designated as unsuitable under (c)(ii) of this
14 subsection must be listed publicly and made accessible from the main
15 page of the county web site.

16 (iv) This subsection (1)(c) does not affect any roadway that was
17 designated as open or closed as of January 1, 2013;

18 (d)(i) A person may not operate a wheeled all-terrain vehicle on a
19 public roadway within the boundaries of a city or town, not including
20 nonhighway roads and trails, unless the city or town by ordinance has
21 approved the operation of wheeled all-terrain vehicles on city or town
22 roadways, not including nonhighway roads and trails.

23 (ii) Any public roadways, not including nonhighway roads and
24 trails, authorized by a legislative body of a city or town under (d)(i)
25 of this subsection must be listed publicly and made accessible from the
26 main page of the city or town web site.

27 (iii) This subsection (1)(d) does not affect any roadway that was
28 designated as open or closed as of January 1, 2013.

29 (e) Any person who violates this subsection commits a traffic
30 infraction.

31 (2) Local authorities may not establish requirements for the
32 registration of wheeled all-terrain vehicles.

33 (3) A person may operate a wheeled all-terrain vehicle upon any
34 public roadway, trail, nonhighway road, or highway within the state
35 while being used under the authority or direction of an appropriate
36 agency that engages in emergency management, as defined in RCW
37 46.09.310, or search and rescue, as defined in RCW 38.52.010, or a law

1 enforcement agency, as defined in RCW 16.52.011, within the scope of
2 the agency's official duties.

3 (4) A wheeled all-terrain vehicle is an off-road vehicle for the
4 purposes of chapter 4.24 RCW.

5 NEW SECTION. Sec. 7. A new section is added to chapter 46.09 RCW
6 under the subchapter heading "uses and violations" to read as follows:

7 (1) A person may operate a wheeled all-terrain vehicle upon any
8 public roadway of this state, not including nonhighway roads and
9 trails, subject to the following equipment and declaration
10 requirements:

11 (a) A person who operates a wheeled all-terrain vehicle must comply
12 with the following equipment requirements:

13 (i) Headlights meeting the requirements of RCW 46.37.030 and
14 46.37.040 and used at all times when the vehicle is in motion upon a
15 highway;

16 (ii) One tail lamp meeting the requirements of RCW 46.37.525 and
17 used at all times when the vehicle is in motion upon a highway;
18 however, a utility-type vehicle, as described under RCW 46.09.310, must
19 have two tail lamps meeting the requirements of RCW 46.37.070(1) and to
20 be used at all times when the vehicle is in motion upon a highway;

21 (iii) A stop lamp meeting the requirements of RCW 46.37.200;

22 (iv) Reflectors meeting the requirements of RCW 46.37.060;

23 (v) During hours of darkness, as defined in RCW 46.04.200, turn
24 signals meeting the requirements of RCW 46.37.200. Outside of hours of
25 darkness, the operator must comply with RCW 46.37.200 or 46.61.310;

26 (vi) A mirror attached to either the right or left handlebar, which
27 must be located to give the operator a complete view of the highway for
28 a distance of at least two hundred feet to the rear of the vehicle;
29 however, a utility-type vehicle, as described under RCW 46.09.310(19),
30 must have two mirrors meeting the requirements of RCW 46.37.400;

31 (vii) A windshield meeting the requirements of RCW 46.37.430,
32 unless the operator wears glasses, goggles, or a face shield while
33 operating the vehicle, of a type conforming to rules adopted by the
34 Washington state patrol;

35 (viii) A horn or warning device meeting the requirements of RCW
36 46.37.380;

37 (ix) Brakes in working order;

1 (x) A spark arrester and muffling device meeting the requirements
2 of RCW 46.09.470; and

3 (xi) For utility-type vehicles, as described under RCW
4 46.09.310(19), seatbelts meeting the requirements of RCW 46.37.510.

5 (b) A person who operates a wheeled all-terrain vehicle upon a
6 public roadway must provide a declaration that includes the following:

7 (i) Documentation of a safety inspection to be completed by a
8 licensed wheeled all-terrain vehicle dealer or repair shop in the state
9 of Washington that must outline the vehicle information and certify
10 under oath that all wheeled all-terrain vehicle equipment as required
11 under this section meets the requirements outlined in state and federal
12 law. A person who makes a false statement regarding the inspection of
13 equipment required under this section is guilty of false swearing, a
14 gross misdemeanor, under RCW 9A.72.040;

15 (ii) Documentation that the licensed wheeled all-terrain vehicle
16 dealer or repair shop did not charge more than fifty dollars per safety
17 inspection and that the entire safety inspection fee is paid directly
18 and only to the licensed wheeled all-terrain vehicle dealer or repair
19 shop;

20 (iii) A statement that the licensed wheeled all-terrain vehicle
21 dealer or repair shop is entitled to the full amount charged for the
22 safety inspection;

23 (iv) A vehicle identification number verification that must be
24 completed by a licensed wheeled all-terrain vehicle dealer or repair
25 shop in the state of Washington; and

26 (v) A release signed by the owner of the wheeled all-terrain
27 vehicle and verified by the department, county auditor or other agent,
28 or subagent appointed by the director that releases the state from any
29 liability and outlines that the owner understands that the original
30 wheeled all-terrain vehicle was not manufactured for on-road use and
31 that it has been modified for use on public roadways.

32 (2) This section does not apply to emergency services vehicles,
33 vehicles used for emergency management purposes, or vehicles used in
34 the production of agricultural and timber products on and across lands
35 owned, leased, or managed by the owner or operator of the wheeled all-
36 terrain vehicle or the operator's employer.

1 NEW SECTION. Sec. 8. A new section is added to chapter 46.09 RCW
2 under the subchapter heading "general provisions" to read as follows:

3 The department must track wheeled all-terrain vehicles in a
4 separate registration category for reporting purposes.

5 NEW SECTION. Sec. 9. A new section is added to chapter 46.09 RCW
6 under the subchapter heading "uses and violations" to read as follows:

7 (1) A person who operates a wheeled all-terrain vehicle consistent
8 with RCW 46.09.470(1) (g), (h), or (i) or inconsistent with the
9 emergency exemption under RCW 46.09.420 is a traffic infraction.

10 (2) Any law enforcement officer may issue a notice of traffic
11 infraction for a violation of subsection (1) of this section whether or
12 not the infraction was committed in the officer's presence, as long as
13 there is reasonable evidence presented that the operator of the wheeled
14 all-terrain vehicle committed a violation of subsection (1) of this
15 section. At a minimum, the evidence must include information relating
16 to the time and location at which the violation occurred, and the
17 wheeled all-terrain vehicle metal tag number or a description of the
18 vehicle involved in the violation. If, after an investigation of a
19 reported violation of subsection (1) of this section, the law
20 enforcement officer is able to identify the operator and has probable
21 cause to believe a violation of subsection (1) of this section has
22 occurred, the law enforcement officer shall prepare a notice of traffic
23 infraction and have it served upon the operator of the wheeled all-
24 terrain vehicle.

25 NEW SECTION. Sec. 10. A new section is added to chapter 46.09 RCW
26 under the subchapter heading "revenue" to read as follows:

27 (1) The multiuse roadway safety account is created in the motor
28 vehicle fund. All receipts from vehicle license fees under RCW
29 46.17.350(1)(r) must be deposited into the account. Moneys in the
30 account may be spent only after appropriation. Expenditures from the
31 account may be used only for grants administered by the department of
32 transportation to: (a) Counties to perform safety engineering analysis
33 of mixed vehicle use on any road within a county; (b) local governments
34 to provide funding to erect signs providing notice to the motoring
35 public that (i) wheeled all-terrain vehicles are present or (ii)
36 wheeled all-terrain vehicles may be crossing; (c) the state patrol or

Children's Advocacy Center of Grays Harbor



514 Broadway Ave. East
Montesano, Washington 98563
Voice: 360.249.0005 or 1.800.959.1467
Fax: 360.249.0030

January 15, 2015

Chief George Crumb
City of McCleary Police Department
100 S Third Street
McCleary, WA 98557

Dear Chief Crumb:

I am writing this letter with the understanding that your department wishes to enter into a contract for services with the Children's Advocacy Center of Grays Harbor. The contract is attached and if you have any questions about the contract or the services that we provide, please feel free to contact me at any time. Once you have had an opportunity to review the contract, please forward both copies to your mayor for a signature and send them back to me. I will have our Board president sign both copies and we will send you a copy and keep one for our records.

We would like to invite your officers to attend our Multi-Disciplinary Team meetings that are held the first and third Weds of every month at 12:30 PM at the CAC. The first meeting each month will be devoted to Case Review, in which we discuss cases and review the team's progress on any given case. The second monthly meeting will be reserved for team trainings and logistical issues, such as reviewing and revising our County Guidelines. Law Enforcement Professionals are an invaluable addition to this team and we rely on their presence in our meetings.



"Making a difference, one child at a time."

Children's Advocacy Center of Grays Harbor



514 Broadway Ave. East
Montesano, Washington 98563
Voice: 360.249.0005 or 1.800.959.1467
Fax: 360.249.0030

The following information highlights the pertinent components of the contract:

- The annual \$4,000 fee remains the same as last year. Your funds pay for interviewer services. As an accredited CAC, we receive state and federal grants. These grants and other solicited funds supplement the costs of these services. Monthly salary for a full time position is approximately \$3,267.00 per month.
- The interviewer's reports will be reviewed by the Sheriff's Department.
- Your detective will receive a completed report within seven business days of the interview.
- The position is yours to use for up to 87 hours in a calendar year for any and all interviews of children for any purpose you deem necessary. I would encourage you to use these hours as best fits with your current resources.

The CAC hires the interviewer on a monthly salary and provides benefits. We have not refunded funds for unused hours at the end of the year because that would necessitate laying off the person at the end of the year. This would cause a great deal of difficulty with the other cities that use their hours and need the interviewer. This employment insecurity could make it virtually impossible to hire and retain a qualified employee.

The CAC staff (myself and the Child Abuse Interviewer) will present a status report quarterly (January, April, July, and October) during the chief's meeting. In addition to meeting with the chiefs, we will generate a written report every quarter that details the activities that we perform related to your cases.



"Making a difference, one child at a time."

Children's Advocacy Center of Grays Harbor



514 Broadway Ave. East

Montesano, Washington 98563

Voice: 360.249.0005 or 1.800.959.1467

Fax: 360.249.0030

Your cost for this service has remained the same for at least the past nine years and due to increases in salaries and other costs, the Executive Board will be reviewing the amount we charge for our service during the summer of 2015. Please contact me with any feedback about a possible increase in our cost prior to May 1, so that we can consider your concerns during our discussions. Any cost increase would not take place until January 1, 2016 at the earliest.

Thank you for past participation in this unique and mutually beneficial contract. I look forward to another year of working together.

Sincerely,

A handwritten signature in cursive script that reads "Angela M Coulter". The signature is written in black ink and is positioned above the typed name.

Angela M Coulter,
Executive Director



"Making a difference, one child at a time."

MUNICIPAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this day by and between the CITY OF McCleary, a municipal corporation, hereinafter referred to as the "CITY", and the CHILDREN'S ADVOCACY CENTER of GRAYS HARBOR, hereinafter referred to as the "AGENCY".

WITNESSETH: It is hereby covenanted and agreed as follows:

WHEREAS, the CITY desires to have certain services performed, as hereinafter set forth, requiring specialized skills and other support capabilities; and

WHEREAS, the AGENCY represents that it is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise where required, to perform the services set forth in this contract;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, the parties hereto agree as follows:

1. **SERVICES.** The AGENCY shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance, as are identified as AGENCY responsibilities throughout this Agreement. The AGENCY agrees to provide child assault criminal investigation consultation when requested, forensic child victim interviews when requested, training to law enforcement personnel when requested, full case investigations when requested, suspect interviews when requested, investigation related documentation and reports, court related testimony and child and family support services.
2. **REPORTING REQUIREMENTS.** The AGENCY shall submit periodic reports as required by the CITY, which may include, but not be limited to, a fiscal year, revenue and expenditure report, and final evaluation report.
3. **DURATION OF AGREEMENT.** The effective date of this Agreement shall be **January 1, 2015** and shall terminate on **December 31, 2015**. The Agreement may be extended or amended upon mutual agreement between the parties hereto and pursuant to the terms and conditions of this Agreement.
4. **COMPENSATION AND METHOD OF PAYMENT.** The CITY shall compensate the AGENCY for the services performed under this Agreement in an amount of **\$4,000** payable in one annual or in four quarterly installments. The AGENCY will provide up to **87** hours of service for this fee. The AGENCY will provide a quarterly report denoting hours used and the balance remaining.

5. **ESTABLISHMENT AND MAINTENANCE OF RECORDS.** The AGENCY agrees to maintain books, records, documents and accounting procedures, and practices, which accurately reflect all direct and indirect costs related to the performance of this Agreement. The AGENCY shall retain all books, records, documents, and other material relevant to this Agreement for three (3) years after its expiration. The AGENCY agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

6. **COMPLIANCE WITH LAWS.** The AGENCY, in performance of this Agreement, agrees to comply with all applicable Federal, State, and local laws or ordinances, including standards for licensing, certification, and operation of facilities, programs, and accreditation, and licensing of individuals and any other standards or criteria as described in this Agreement to assure quality of services.

7. **NON-DISCRIMINATION.** AGENCY agrees not to discriminate against any client, employee, or applicant for employment or for services because of race, creed, national origin, marital status, sex, age, or disability except for a bona fide occupational qualification with regard to, but not limited to, the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or termination, rates of pay or other forms of compensation, selection for training, or rendition of services. During the performance of this agreement AGENCY shall comply with federal and state nondiscrimination statutes and regulations, including the Americans with Disabilities Act of 1990, as amended.

8. **INDEMNIFICATION/HOLD HARMLESS.** The Contractor shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been *mutually negotiated* by the parties. The *provisions* of this section shall survive the expiration or termination of this Agreement.

9. **TERMINATION.** If the AGENCY fails to comply with the terms and conditions of this Agreement, the CITY may pursue such remedies as are legally available including, but not limited to, the suspension or termination of this Agreement. Either party may terminate this Agreement upon giving 30 days notice in writing of intent to terminate.

10. **RECAPTURE OF FUNDS.** In the event that the AGENCY fails to expend funds under this Agreement in accordance with State law, or Federal law where applicable, and/or the provisions of this Agreement, or fails to perform any and all tasks under this Agreement, the CITY reserves the right to recapture CITY funds in an amount equivalent to the extent of the noncompliance.

Such right of recapture shall exist for a period not to exceed three (3) years following contract termination.

11. **NOTICE AND CONTRACT ADMINISTRATION.** The contract administrator for the CITY for this Agreement shall be the **Chief of Police**. Any official notice that either party hereto desires to give the other shall be deemed delivered upon deposit thereof in the United States mail by certified mail, return receipt requested, with postage thereon fully prepaid, addressed as follows:

CITY: CITY OF McCleary
POLICE DEPARTMENT
100 S. Third Street
McCleary, WA 98557
Attention: **Chief George Crumb**

AGENCY: GRAYS HARBOR CHILDREN'S ADVOCACY CENTER
514 Broadway Avenue East
Montesano, WA 98563
Attention: **Angela Coulter, Executive Director**

Either party may change the addresses above specified hereto by giving written notice thereof to the other pursuant to this paragraph.

12. **ENTIRE AGREEMENT.** The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties.

DATED: _____

**CHILD ADVOCACY CENTER
OF GRAYS HARBOR**

By _____
JoAnn Yost, Board President

CITY OF McCleary

By _____
Gary Dent, Mayor

STAFF REPORT

To: Mayor Dent
From: Todd Baun, Interim Director of Public Works
Date: January 22, 2015
Re: BPA Revision No. 1 to Exhibit H settlement

At the April 9th, 2014 Council Meeting, Council chose to reject the BPA signing Revision No. 1 to Exhibit H settlement. At that time Grays Harbor PUD had not signed it, so we basically followed suit with them.

In November/December of 2014, the PUD signed Revision No. 1 to Exhibit H settlement and that leaves the City of McCleary as the only utility that has not signed this agreement. BPA recently reached out to us to see if we would reconsider signing Revision No. 1 to Exhibit H settlement.

I have attached my previous Staff Report and Revision No. 1 to Exhibit H settlement

Staff Recommendation:

Staff has discussed and will recommend the advice/opinion of the city attorney.

Action Requested:

Please consider authorizing the City to sign Revision No. 1 to Exhibit H of McCleary's FY 2012-2028 Power Sales Contract.

LAW OFFICES
OF
GLENN & ASSOCIATES, P.S.
A PROFESSIONAL SERVICES CORPORATION

DANIEL O. GLENN

2424 EVERGREEN PARK DRIVE S.W.
P. O. BOX 49
OLYMPIA, WASHINGTON 98507-0049

PHONE (360)943-7700
FAX (360)943-7721

January 16, 2015

Wendy Collins
Clerk-Treasurer
100 South 3rd Street
McCleary, WA 98557

RE: Ordinance

Dear Wendy:

Enclosed you will find a draft ordinance in relation to the Astound Communications Franchise. Please provide copies to the Council Members if you feel it appropriate.

Thank you.

Yours truly,

GLENN & ASSOCIATES, P.S.



Daniel O. Glenn

DG/le

Enclosure

carpe' diem

ORDINANCE NO. _____

AN ORDINANCE GRANTING A REQUESTED FRANCHISE TO ASTOUND COMMUNICATIONS UPON CERTAIN TERMS AND CONDITIONS, ESTABLISHING AN EFFECTIVE DATE AS PROVIDED BY RCW 35A.47.040, AND PROVIDING FOR SEVERABILITY.

R E C I T A L S:

1. Astound Communications, a limited liability company licensed to do business in the State of Washington, has submitted a request to be granted a non-exclusive franchise to utilize rights of way within the corporate limits for the installation, utilization, and maintenance of fiberoptic tele-communication lines and associated facilities.

2. As authorized by RCW 35A.21.020 and RCW 35A.47.040, the Council has considered the request after having the opportunity to receive citizen input.

3. After consideration of the potential benefits to the citizens of the City and the County, the Council finds such a grant to be in the best interests of the City subject to compliance with certain terms and conditions.

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

SECTION I: A Franchise is hereby granted to ASTOUND BROADBAND, LLC, a limited liability company in the State of Washington, its successors and assigns; hereinafter referred to

as the GRANTEE, for a period of _____ () years from and after the date of adoption of this ordinance to construct, operate, and maintain fiber optic telecommunication lines and system facilities in, over, along, and under public rights of way within the corporate limits of the City, as they now exist and may hereafter be expanded.

This franchise is granted upon the terms and conditions set forth in the following sections.

SECTION II: Scope of Authority: Subject to compliance with any requirements for prior notice, permitting, and authorization, ASTOUND BROADBAND, LLC, its successors and assigns, (hereinafter the GRANTEE) shall have the right and authority to enter upon the public roads and rights-of-way within the corporate limits for the purpose of constructing its fiber optic telecommunication lines and system and all necessary facilities connected therewith (hereinafter referred to collectively as the DISTRIBUTION SYSTEM) and for repairing, operating, and maintaining said distribution system.

SECTION III: Construction Conditions:

3.1. Construction to be Approved by the Director of Public Works. All construction and installation work where crossing roads, streets, alleys, or rights-of-way within the corporate limits shall be subject to the prior approval of and pass the inspection of the Building Official, after consultation

with the Director of Public Works (the Director) or their respective designees.

3.2. Permit Application, Review & Approval.

A. Prior to commencement of construction or modification of any portion or element of the distribution system and associated elements which will result in or require utilization or modification of City property or restriction upon utilization or public access, Grantee shall first file with the Building Official its application for a permit to do such work, together with duplicate plans and specifications showing the position, depth, and location of all lines and facilities sought to be constructed, laid, installed or erected at that time, which shows their relative position to existing streets, roads, alleys, or rights-of-way upon plans drawn to scale, hereinafter collectively referred to as the "Map of Definite Location." It shall concurrently provide a copy of the documents to the Director.

B. The plans and specifications shall designate the class and type of material and equipment to be used, manner of excavation, construction, installation, back fill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts, road obstructions, etc. No such construction shall begin without the Grantee first securing a written permit from the Building Official, including approval endorsed on one set of plans and specifications which will be

returned to the Grantee. All such work shall be subject to the approval of and shall pass the inspection of the Building Official, in consultation with the Director.

C. In addition to any permit fee required, in recognition of the potentiality of the requirement of specialized inspection services, the Grantee shall pay those reasonable costs and expenses incurred in the examination, inspection, and approval of such work on account of granting of the permit.

D. The improvements installed pursuant to the authorization of a permit issued pursuant to this grant, including the initial distribution system, shall be laid in substantial conformity with said Map of Definite Location, except in instances where deviation may be allowed thereafter in writing by the Building Official pursuant to application by Grantee.

E. A set of as-built maps of Grantee's lines or facilities shall be furnished to the Director within sixty (60) days after completion of the work.

3.3. Roads to be Replaced & Restoration Guaranteed by Bond.

A. In any work which requires breaking of surface of a public road, street, alley, or right-of-way subject to this franchise for the purpose of laying, relaying, connecting, disconnecting, and repairing the said distribution system, and making connections between the same to structures and buildings of consumers, or making connections to other facilities of the

Grantee now in existence or hereafter constructed, the Grantee shall be governed by and conform to the standards and specifications set forth by the Director.

B. The Grantee at its own expense and within a reasonable time period shall complete the work for which the surface has been broken and promptly replace the work and make good the street, road, alley or right-of-way, restoring the same to as good condition as before the work was commenced; PROVIDED, however, that no such breaking of the surface of the streets, alleys, roads, or rights-of-way shall be done prior to the obtaining of the permit issued by the Building Official; PROVIDED, however, that in cases of emergency arising outside of normal office hours when an immediate excavation may be necessary for protection of public or private property, the necessary excavation may be made and shall be reported to the Director in the manner herein provided as soon as practical, but in no case later than the next following business day.

C. Application for the permit required as a condition precedent of the work covered by this section shall be accompanied by specifications for the restoration of the street, alley road, or rights-of-way to the same condition as it was in prior to such breaking, and such specifications must be approved by the Director before such breaking of the surface is commenced. The Grantee shall pay those costs and expenses incurred in the examination, inspection, and approval of such restoration.

ORDINANCE - 5
1-16-15
DG/le

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

D. In the event the Grantee, after receiving notice from the Director or designee, fails to correct a condition in a timely manner, the Director may undertake, order, or have done any and all work that is reasonably considered necessary to restore to a safe condition any such street, alley road, or right-of-way left by the Grantee or its agents in a condition dangerous to life or property, and the Grantee, upon demand, shall pay to the City all costs associated with or arising from such corrective action.

3.4. General Conditions & Reservation of Rights.

A. Minimum Interference with Public Travel, Grantee Liable for Damage. All work done under this franchise shall be done in a thorough and workmanlike manner. The Grantee shall leave trenches, ditches, and tunnels necessary in the laying of fiber optic or other telecommunications system distribution lines, the openings of trenches and the construction of other facilities in such a way as to interfere as little as possible with public travel and shall take all due and necessary precautions to guard the same so that damage or other injury shall not arise or occur by reason of such work; where any such trenches, ditches, or tunnels are left open at night, the Grantee shall place warning lights and barricades at such a position as to give adequate warning of such work. The Grantee shall be liable for any injury to person or persons, or damage to property sustained through its carelessness or neglect, or through any

failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by the Grantee.

B. All City Road Rights Reserved. The City in granting this franchise does not waive any rights which it now has or may hereafter acquire with respect to City roads, rights-of-way, or other City property, and this franchise shall not be construed to deprive the City of any powers, rights, or privileges which it now has or may hereafter acquire to regulate the use of and to control the City roads, rights-of-way, and other City property covered by this franchise.

C. City may Change and Improve Roads Without Liability.

1. If at any time the City determines it appropriate to improve or change any City road, right-of-way, or other City property subject to this franchise, whether by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same, by construction of drainage facilities, or in any other manner, the Grantee shall, upon reasonable notice by the City and after reasonable evaluation of alternatives by the City in cooperation with the Grantee, at its own expense, move and change any items, attachments, or appurtenances it has installed pursuant to the rights granted by this ordinance to conform to such public improvement. The City will avoid the need for such moving or changing whenever reasonably possible.

ORDINANCE - 7
1-16-15
DG/le

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

2. In the event Federal, State, or other funds are specifically available for utility relocating purposes, the City shall apply for such funds and the Grantee will be reimbursed to the extent any such funds are actually obtained for utility relocating purposes.

3. The City shall in no way be held liable for any damage to said Grantee that may occur by reason of any of the City's improvements, changes, or works above enumerated, except for damage caused solely by negligence of the City's employees or agents.

4. All work performed by the Grantee under this section shall be under the direction and approval of the Director and shall be subject to the Director's approval. The Grantee shall pay those costs and expenses incurred in the examination, inspection and approval of such work.

D. Notice of Activities by the City. The laying, construction, operation, and maintenance of the Grantee's distribution system authorized by this franchise shall not preclude the said City, its agents or its contractors from blasting, grading, excavating, or doing other necessary road work contiguous to the said lines and facilities of the Grantee providing the Grantee shall be given five (5) business days' notice of said work: PROVIDED THAT, the necessity of such notice shall be deemed waived if the work in question is required to be commenced immediately due to the threat to public safety.

E. Reference, Monuments and Markers. Before any work is performed under this franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the City Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the Director. The cost of monuments or other markers lost, destroyed or disturbed and the expense of replacement by approved monuments shall be borne by the Grantee.

F. Vacation of City Streets, Roads, Alleys, or Rights of Way. If at any time the City determines it appropriate to vacate any City road, street, alley, or right-of-way which is subject to rights granted by this franchise and said vacation, then the City shall give ninety (90) days written notice to the Grantee, and may at their option, after granting a reasonable alternate route, terminate this franchise with reference to such vacated City street, alley, road, right-of-way: PROVIDED THAT, the vacation shall be subject to the grant to the Franchisee of a reasonable time to relocate at its sole expense the facilities it had installed in the vacated property. The City shall not be

liable for any damages or loss to the Grantee by reason of such termination.

SECTION IV: Franchise Fee and Financial Controls.

4.1. As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's streets, alleys, rights of way, and roads, the City may required the Grantee to pay a Franchise fee to City, throughout the duration of this Franchise. As of this time, the City will not require the payment of such a fee, but specifically reserves the right to require the commencement of such a payment under the following terms and conditions:

A. Commencement: The City shall give the Grantee written notice no less than six months before the date upon which the fee will begin to be assessed. The fee shall be in an amount no greater than six percent (6%) of Grantee's Gross Subscriber Revenues derived from the operation of the telecommunications system to provide telecommunications service in the Franchise Area; PROVIDED THAT, the fee may be initially set at a lesser figure, but may be adjusted by action of the City Council on an annual basis.

B. For purposes of determination of the amount to be paid in the event a franchise fee is established, the following definitions shall apply:

1. "Gross Subscriber Revenues" is defined to mean all amounts derived by Grantee in whatever form and from all sources,

from the operation of Grantee's telecommunications system to provide telecommunications service within the Franchise Area.

"Gross Subscriber Revenues" shall include all amounts for all telecommunications services including internet services to the extent permitted by applicable law.

2. "Gross Subscriber Revenues" shall not include bad debt, sales taxes, or other taxes and fees that are collected by Grantee on behalf of, and for payment to, the local, state, or federal government. The Franchise fees are in addition to all other fees, assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state or local law.

This Franchise and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.

3. Grantee's Franchise fee payments to City shall be computed semiannually on June 30 and December 31. Each semiannual payment shall be due and payable no later than thirty (30) days after the last day of the preceding semiannual calendar period.

4.2 Acceptance of Payment and Recomputation. No acceptance of any payment shall be construed as an accord by City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim

City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

4.3. Semiannual Franchise Fee Reports. Each payment shall be accompanied by a report to the City, containing an accurate statement in summarized form.

4.4. Audits. Upon thirty (30) days' prior written notice, City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with generally accepted accounting principles. The City may hire an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant. If the audit shows that Franchise fees have been underpaid by ten percent (10%) or more, Grantee shall pay the cost of the audit in an amount not to exceed five thousand dollars (\$5,000) per year being audited.

4.5. Additional Commitments Not Franchise Fees. No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise fees to City. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than the percentage of Grantee's Gross Subscriber Revenues set as the franchise fee in any 12-month period, Grantee agrees that the additional commitments herein are not Franchise fees as defined under any federal law, nor are they to be offset or credited

against any Franchise fee payments due to City. Notwithstanding the foregoing, Grantee may, in lieu of all or a portion of the franchise fee payment required pursuant to the provisions of this ordinance, provide telecommunications or other services to the City or its affiliated entities. Any agreement for the provision of such services will be as mutually agreed by the parties in separate documentation, and the offset value of any such services provided to the City or its affiliated entities will be determined based on the standard rates Grantee charges to third-party customers for substantially equivalent services.

4.6. Costs of Publication. Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Franchise and any amendments thereto, as such notice or publication is reasonably required by City or applicable law.

4.7. Tax Liability. Payment of the Franchise fees under this Franchise shall not exempt Grantee from the payment of any generally applicable license, permit fee, or other generally applicable fee, tax or charge on the business, occupation, property, or income of Grantee that may be imposed by City.

4.8. Payment on Termination. If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Subscriber Revenues received by the Grantee since the end of the previous fiscal year. The

City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in security provided by the Grantee.

SECTION V: Grantee to Indemnify City; Liability Insurance.

5.1. The Grantee does hereby agree to protect and save harmless said City from all claims, actions, or damages of every kind and description which may be asserted against such City by reason of the Grantee's negligent or intentional acts in connection with the construction, operation, and maintenance of said distribution system.

A. In case that a suit or action is brought against the City for damages arising out of or by reason of the above-mentioned causes, the Grantee will, upon notice to it of the commencement of said action, defend the same at its sole cost and expense.

B. In case a final judgment shall be rendered against the City in such suit or action, the Grantee will fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined by a trial court, appellate court or courts, if appeal be taken, if determined adversely to said City.

C. Upon Grantee's failure to satisfy any such final judgment within the ninety (90) day period, the City, by action of the City Council, may upon due notice terminate this franchise

and the City shall have a lien upon the distribution system which may be enforced against the property for the full amount of any such final judgment so taken against said City: PROVIDED THAT, such lien shall not restrict the City from taking any lawful action to collect any balance of such judgment, as well as the reasonable costs and fees incurred by the City in taking the collection action.

5.2. For the purpose of securing to the City full and complete performance of the covenants contained in this paragraph, the Grantee shall, at its own expense, procure and keep in force during the life of this franchise, liability insurance in a company or companies to be approved by the City, the minimum limits of such insurance to be not less than \$2,000,000 and such additional proof thereof shall be furnished to the City from time to time as it shall require. The policy shall be of an occurrence nature. Upon request of the City, the minimum limits of insurance shall be changed to reflect inflationary (cost of living) costs increases.

5.3. Acceptance by the City of any work performed by the Grantee at the time of completion shall not be grounds for avoidance of this covenant.

SECTION VI: Franchise Not Exclusive. This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit said City from granting other franchises of like nature or franchises for other public or private utilities under,

ORDINANCE - 15
1-16-15
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CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

along, across, over, and upon any of the City streets, alleys, roads, or rights-of-way subject to this franchise.

SECTION VII: Provisions Bind Successor. All provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the Grantee, and all privileges, as well as all obligations and liabilities of the Grantee, shall inure to its successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned.

SECTION VIII: Revocation for Non-Compliance. If the Grantee shall willfully violate or fail to comply with any of the provisions of this franchise through willful or unreasonable neglect after the giving of written notice of such violation or failure to comply or fail to heed or comply with any other notice given the Grantee under the provisions of this grant, then Grantee shall forfeit all rights conferred hereunder, and this franchise may be revoked or annulled by the City, by action of the City Council, PROVIDED, however, that the City shall give thirty (30) days written notice of its intention to revoke or annul the franchise during which period the Grantee shall have the opportunity to remedy the situation.

SECTION IX: Grantee to File Acceptance. The full acceptance of this franchise and all its terms and conditions by Astound Broadband, LLC, in writing within thirty (30) days from the date of execution of this Ordinance by the Mayor, is to be

filed with the Clerk-treasurer of the City, and shall be a condition precedent to its taking effect, and unless the franchise is accepted within such time, this grant shall be null and void.

SECTION X: Notifications, Venue & Associated Matters.

10.1. Any notice provided for or concerning this franchise to be sent to the Grantee shall be in writing and be deemed sufficiently given when either [a] personally served upon the authorized representative of the other party or [b] sent by certified or registered mail, return receipt requested, and first class mail to the address of the other set forth in the following paragraphs.

A. The address of the Grantee is Astound Broadband, LLC, 401 Kirkland Parkplace, Kirkland, WA 98033 Attention: Steve Weed, CEO, and Jim Penney, EVP.

B. The address of the City is 100 South 3rd Street, McCleary, Washington 98557, Attention: Wendy Collins, Clerk-treasurer.

In recognition that the individuals named may leave those positions or the parties relocate, a notice shall be deemed properly addressed if it is sent to the indicated address to the attention of the position designate unless a successor address has been provided pursuant to the following paragraph. A notice shall be deemed to have been given upon the date of service, if

personally served, or upon the fifth business day following its mailing, properly addressed and postage prepaid.

Either party may from time to time notify the other party in writing of a change of address to which notifications are to be sent. In the absence of such notification, the addresses set forth above shall be deemed applicable,

10.2. In the event of any litigation arising out of the performance of this Contract, it is agreed the Courts of the County of Grays Harbor, State of Washington, shall be Courts of proper venue. Further, in addition to any other relief which may be granted to the prevailing party, the Court may award the prevailing party reasonable attorneys' fees and costs.

SECTION XI: 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 XII: In recognition of the provisions of state law, including but not limited to RCW 35A.47.040, this Ordinance

shall take effect upon the fifth day following date of publication.

SECTION XIII: 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 _____, 2015, by the City Council of the City of McCleary, and signed in approval therewith this _____ day of _____, 2015.

CITY OF McCLEARY:

D. GARY DENT, Mayor

ATTEST:

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney

ORDINANCE - 19
1-16-15
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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 _____, 2015, by WENDY COLLINS.

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