



City Council, Regular Meeting/Study Session

AGENDA REVISED

May 19, 2015

6:30 pm – 9:30 pm
Council Chambers

Call to Order

Roll Call

Pledge of Allegiance

Approval of Agenda

Student Liaison Reports

Presentations/Proclamations

- **Proclamation** – National Prevention Week

Public Comment

Note: *This is an opportunity for the public to address the Council. Three-minutes limit per person or five-minutes if representing the official position of a recognized community organization. If you would like to show a video or PowerPoint, it must be submitted or emailed by 5 pm, the end of the business day, to the City Clerk, Melonie Anderson at manderson@sammamish.us*

Consent Agenda

- Payroll for period ending April 30, 2015 for pay date May 5, 2015 in the amount of \$ 316,205.13
- 1. **Approval:** Claims for period ending May 19, 2015 in the amount of \$3,450,984.47 for Check No. 40312 through 40460
- 2. **Ordinance:** Second Reading Amending Ordinance No. O2014-381, The 2015-2016 City Budget, For The Purpose Of Revising The 2015-2016 Biennial Budget.
- 3. **Ordinance:** Second Reading Granting To Astound Broadband, LLC, A Limited Liability Company, A Nonexclusive Telecommunications Franchise To Install, Construct, Maintain, Repair, And

City Council meetings are wheelchair accessible. American Sign Language (ASL) interpretation is available upon request. Please phone (425) 295-0500 at least 48 hours in advance.

Assisted Listening Devices are also available upon request.

Operate A Telecommunications System Within The Public Rights Of Way; Providing For Severability; And Establishing An Effective Date

4. **Bid Award:** 2015 Pavement Management Program – Overlays/Lakeside Industries
5. **Approval:** April 14, 2015 Study Session Notes
6. **Approval:** April 20, 2015 Committee of the Whole Notes
7. **Approval:** April 21, 2015 Regular Meeting Minutes

Public Hearings – None

Unfinished Business - None

New Business - None

Council Reports

City Manager Report

- AWC Voting Delegates

Executive Session – Litigation pursuant to RCW 42.30.110(1)(i)

Adjournment

STUDY SESSION

1. 2015 Comprehensive Plan

AGENDA CALENDAR

May 2015			
Mon 5/18	6:30 pm	COW Meeting	2015 Comp Plan Update Q & A: Transportation, Environment, Capital Facilities, Utilities
Tues 5/19	6:30 pm	Regular Meeting	Presentation: East Lake Sammamish Trail Update Ordinance: Second Reading 2015 Carry Forwards (consent) Ordinance: Second Reading Franchise Agreement Astound (WAVE) Broadband (consent) 2015 Pavement Management-Overlays/Lakeside Industries (consent) Comp Plan – if necessary Proclamation: Nat’l Prevention Week (Council Reports) AWC Voting Delegates (CM)
June 2015			
Tues 6/2	6:30 pm	Regular Meeting	Presentation: Boys and Girls Club Operations Report Presentation: Volunteer Recognition Community Development Department Report Public Hearing: Public Benefit Rating System/Soin-Sodhi Public Hearing: Public Benefit Rating System/Dhinsa Public Hearing/first reading: 2015 Comp Plan Update Ordinance: First Reading Klahanie Annexation (tent)
Tues 6/9	6:30 pm	Study Session	2015 Comp Plan
Mon 6/15	6:30 pm	COW Meeting	Discussion: Initiative and Referendum 2015 Comp Plan Update (If needed)
Tues 6/16	6:30 pm	Regular Meeting	Flag Ceremony: Boy Scout Troop Ordinance: Second Reading 2015 Comp Plan Update Ordinance: Second Reading Klahanie Annexation (tent)
July 2015			
Tues 7/7	6:30 pm	Regular Meeting	Bid Award: Big Rock Park Phase I/TBD Bid Award: Lower Commons ADA Trail/TBD
Tues 7/14	6:30 pm	Study Session	
Mon 7/20	6:30 pm	COW Meeting	
Tues 7/21	6:30 pm	Regular Meeting	
August 2015			
			NO MEETINGS
Sept 2015			
Tues 9/1	6:30 pm	Regular Meeting	
Tues 9/8	6:30 pm	Study Session	YMCA Property Development Discussion
Tues 9/15	6:30 pm	Regular Meeting	
Mon 9/21	6:30 pm	COW Meeting	To be held in Klahanie (tent)
Oct 2015			
Tues 10/6	6:30 pm	Regular Meeting	Presentation: LWSD STEM School/Big Rock Park Project
Tues 10/13	6:30 pm	Study Session	
Mon 10/19	6:30 pm	COW Meeting	
Tues 10/20	6:30 pm	Regular Meeting	
Nov 2015			

If you are looking for facility rentals, please click [here](#).

<< April

May 2015

June >>

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2 10 a.m. Sammamish Walks - Haiku in the Woods
3 7:30 a.m. Sammamish-Redmond Boys & Girls Club 10K/5K Fun Run	4	5 5 p.m. City Council Office Hour 6:30 p.m. City Council Meeting	6 1:30 p.m. Transportation Committee Meeting 6:30 p.m. Parks and Recreation Commission Meeting	7 10 a.m. "Block Printing" Senior Art Workshop 6:30 p.m. Planning Commission Meeting	8	9 1 p.m. "Au-some Artists" Special Arts Sammamish
10	11	12 6:30 p.m. City Council Study Session	13	14	15 7 p.m. "Opera Ole"	16 10 a.m. Volunteer at Lower Commons Park 10 a.m. Sammamish Walks - Pine Lake Park History 12 p.m. Rig-A-Palooza
17 5 p.m. "Call to Artists"	18 6:30 p.m. Committee of the Whole 6:30 p.m. Arts Commission Meeting	19 6:30 p.m. City Council Meeting	20 4 p.m. Sammamish Chamber of Commerce Farmer's Market 6 p.m. Sammamish Youth Board Meeting	21 10 a.m. "Pushing the Puddle" watercolor workshop 6:30 p.m. Planning Commission Meeting	22	23
24	25 Memorial Day City offices closed	26	27 4 p.m. Farmer's Market	28	29	30 6:30 a.m. Flying Wheels Bike Ride
31						

If you are looking for facility rentals, please click [here](#).

<< May

June 2015

July >>

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2 5 p.m. City Council Office Hour 6:30 p.m. City Council Meeting	3 4 p.m. Farmer's Market 6:30 p.m. Parks and Recreation Commission Meeting	4 6:30 p.m. Planning Commission Meeting	5 4 p.m. Teen Fest Skate Competition	6 7 a.m. Issaquah Triathlon
7	8	9 6:30 p.m. City Council Special Study Session	10 4 p.m. Farmer's Market	11 10 a.m. Family Volunteering: Native Plant Garden	12	13
14	15 6:30 p.m. Committee of the Whole	16 6:30 p.m. City Council Meeting	17 4 p.m. Farmer's Market	18 6:30 p.m. Planning Commission Meeting	19	20 10 a.m. Sammamish Walks - Hazel Wolf and Beaver Lake Preserves
21	22 6:30 p.m. Arts Commission Meeting	23	24 4 p.m. Farmer's Market	25 10 a.m. Family Volunteering: Native Plant Garden	26	27
28	29	30				



MEMORANDUM

TO: Melonie Anderson/City Clerk
FROM: Marlene/Finance Department
DATE: May 14, 2015
RE: Claims for May 19, 2015

\$ 1,950.94
 183,868.80
 2,933,138.55
 332,026.18

Over \$10,000 Payments

Porter Brothers	\$2,011,380.40	Community & Aquatic Ctr - April 2015
Eastside Fire	\$477,715.75	Fire Services May 2015
Heritage Bank	\$96,238.30	Porter Brothers Retainage
Public Restroom Co	\$76,902.20	Sammamish Landing Restroom Project
Kenyon Disend	\$61,474.32	Attorney Fees April 2015
Eversons Econo Vac	\$49,258.70	Vactor & Jetting April 2015
ELM Environments	\$48,181.67	Big Rock Park Design Feb/March/April 2015
Osborn Consulting	\$37,012.61	Inglewood Drainage Project February/March 2015
King County Finance	\$35,328.93	Road Services - March 2015
Lk Wa School District	\$33,680.50	School Impact Fees - April 2015

TOTAL \$ 3,450,984.47

Checks # 40312 – 40460

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 0•00G+
 1,950•94 +
 183,868•80 +
 2,933,138•55 +
 332,026•18 +
 004
 3,450,984•47G+

Accounts Payable

Check Register Totals Only

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Check	Date	Vendor No	Vendor Name	Amount	Voucher
40312	05/01/2015	CENTLIN2	Century Link	65.99	40,312
40313	05/01/2015	COMCDUTH	Comcast	104.08	40,313
40314	05/01/2015	PSE	Puget Sound Energy	916.65	40,314
40315	05/01/2015	SAM	Sammamish Plateau Water Sewer	864.22	40,315
Check Total:				1,950.94	

Accounts Payable

Check Register Totals Only

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Check	Date	Vendor No	Vendor Name	Amount	Voucher
40316	05/05/2015	AWCMED	AWC Employee Benefits Trust	118,134.84	40,316
40317	05/05/2015	COMCAST2	Comcast	129.13	40,317
40318	05/05/2015	deSimas	Carl deSimas	104.88	40,318
40319	05/05/2015	FLEXPLAN	Flex-Plan Services Inc	1,849.66	40,319
40320	05/05/2015	ICMA401	ICMA 401	42,429.17	40,320
40321	05/05/2015	ICMA457	ICMA457	10,635.57	40,321
40322	05/05/2015	IDHW	Idaho Child Support Receipting	326.50	40,322
40323	05/05/2015	PREPAIDL	LegalShield	109.60	40,323
40324	05/05/2015	PSE	Puget Sound Energy	9,420.65	40,324
40325	05/05/2015	SAM	Sammamish Plateau Water Sewer	238.30	40,325
40326	05/05/2015	WASUPPOR	Wa State Support Registry	490.50	40,326
Check Total:				183,868.80	

Accounts Payable

Check Register Totals Only

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Check	Date	Vendor No	Vendor Name	Amount	Voucher
40327	05/19/2015	AGREEMEN	Agreement Dynamics, Inc	3,137.03	40,327
40328	05/19/2015	ANDERMEL	Melonie Anderson	41.40	40,328
40329	05/19/2015	BACKGROU	Background Source Intl	372.00	40,329
40330	05/19/2015	BOHANAN	Martin Bohanan	126.75	40,330
40331	05/19/2015	BRIDGE	Bridge Disability Ministries	750.00	40,331
40332	05/19/2015	BRIM	Brim Tractor Co, Inc	385.26	40,332
40333	05/19/2015	CADMAN	Cadman, Inc.	4,798.39	40,333
40334	05/19/2015	CERTIFIE	Certified Backflow Testing,Inc	1,020.00	40,334
40335	05/19/2015	CEZAR	Susan Cezar	58.29	40,335
40336	05/19/2015	ISSCITY	City Of Issaquah	7,794.66	40,336
40337	05/19/2015	CODEPUB	Code Publishing Inc	486.88	40,337
40338	05/19/2015	COMCAST2	Comcast	104.08	40,338
40339	05/19/2015	COMCAST3	Comcast	1,246.97	40,339
40340	05/19/2015	DEJONG	Cory de Jong & Son Inc	722.70	40,340
40341	05/19/2015	COSTCO	Costco Wholesale	761.73	40,341
40342	05/19/2015	DAILY	Daily Journal of Commerce	354.90	40,342
40343	05/19/2015	DELL	Dell Marketing L.P.	1,758.05	40,343
40344	05/19/2015	EASTFIRE	Eastside Fire & Rescue	477,715.75	40,344
40345	05/19/2015	ECOTONE	Ecotone Commissioning Group LL	2,704.00	40,345
40346	05/19/2015	ELM	ELM Environments	46,181.67	40,346
40347	05/19/2015	EPICENTE	Epicenter Services LLC	965.25	40,347
40348	05/19/2015	FASTENAL	Fastenal Industrial Supplies	2,476.55	40,348
40349	05/19/2015	FIREPROT	Fire Protection, Inc.	1,182.60	40,349
40350	05/19/2015	FRONTIR2	Frontier	387.57	40,350
40351	05/19/2015	GRAINGER	Grainger	483.37	40,351
40352	05/19/2015	GRANGE	Grange Supply, Inc.	666.25	40,352
40353	05/19/2015	GREATAME	Great America Financial Services	130.31	40,353
40354	05/19/2015	HDFOWL	H. D. Fowler Company	462.79	40,354
40355	05/19/2015	HERITAGE	Heritage Bank	96,238.30	40,355
40356	05/19/2015	HOLLOWCHU	Holowchuk Wood Services	443.48	40,356
40357	05/19/2015	HOWARD	Lyman Howard	45.85	40,357
40358	05/19/2015	IPS	Integrated Print Solutions, Inc	8,846.84	40,358
40359	05/19/2015	HONDAKU	Issaquah Honda Kubota	147.83	40,359
40360	05/19/2015	ISSAQ1	Issaquah Press, Inc.	499.40	40,360
40361	05/19/2015	ISD	Issaquah School District	11,400.00	40,361
40362	05/19/2015	ISSFOUND	Issaquah Schools Foundation	1,250.00	40,362
40363	05/19/2015	DEERE	John Deere Landscapes	413.98	40,363
40364	05/19/2015	KCBLANK	King County Finance	2,771.83	40,364
40365	05/19/2015	KINGFI	King County Finance A/R	930.00	40,365
40366	05/19/2015	KINGPET	King County Pet Licenses	380.00	40,366
40367	05/19/2015	KLEINFEL	Kleinfelder, Inc.	14,098.48	40,367
40368	05/19/2015	LWSD	Lake Washington School Dist	33,680.50	40,368
40369	05/19/2015	LAKESIDE	Lakeside Industries	79.56	40,369
40370	05/19/2015	LAMB	Lamb Hanson Lamb App	5,000.00	40,370
40371	05/19/2015	LEXIS	Lexis Nexis Risk Data Mgmt	58.75	40,371
40372	05/19/2015	LEYTON	Kimberly Leyton	850.73	40,372
40373	05/19/2015	LIGHTLOA	Light Loads Concrete, LLC	423.04	40,373
40374	05/19/2015	LINCOLNT	Lincoln Towing	245.01	40,374
40375	05/19/2015	MAC	Mac Towing	196.01	40,375
40376	05/19/2015	MAILPO	Mail Post	279.70	40,376

Check	Date	Vendor No	Vendor Name	Amount	Voucher
40377	05/19/2015	MOBERLY	Lynn Moberly	9,350.00	40,377
40378	05/19/2015	NC MACH	NC Machinery Co	3,157.71	40,378
40379	05/19/2015	NESAM	NE Sammamish Sewer & Water	280.08	40,379
40380	05/19/2015	ACENB	North Bend Ace Hardware LLC	17.41	40,380
40381	05/19/2015	OILCAN	Oil Can Henry's	100.72	40,381
40382	05/19/2015	OER	Olympic Environmental Resource	25,412.84	40,382
40383	05/19/2015	OSBORN	Osborn Consulting, Inc	37,012.61	40,383
40384	05/19/2015	PACAIR	Pacific Air Control, Inc	936.86	40,384
40385	05/19/2015	POA	Pacific Office Automation	248.43	40,385
40386	05/19/2015	PORTER	Porter Brothers Construction, Inc	2,011,380.40	40,386
40387	05/19/2015	PUBLICRE	Public Restroom Company	76,902.20	40,387
40388	05/19/2015	PSE	Puget Sound Energy	10,154.00	40,388
40389	05/19/2015	QBS	Quality Business Systems Inc.	189.14	40,389
40390	05/19/2015	PLATT	Rexel, Inc.	413.35	40,390
40391	05/19/2015	ROBERTST	Steve Roberts	3,938.10	40,391
40392	05/19/2015	ROTARSAM	Rotary Club of Sammamish	52.00	40,392
40393	05/19/2015	SALMI	Marie Salmi	500.00	40,393
40394	05/19/2015	SEATIM	Seattle Times	5,056.88	40,394
40395	05/19/2015	SEQUOYAH	Sequoyah Electric, LLC	970.78	40,395
40396	05/19/2015	STOECKL	Jane C. Stoecklin	135.00	40,396
40397	05/19/2015	THOMASJE	Jeff Thomas	40.34	40,397
40398	05/19/2015	THOMASTE	Thomas Testing, Inc.	1,522.05	40,398
40399	05/19/2015	THYSSENK	Thyssenkrupp Elevator Corp.	560.30	40,399
40400	05/19/2015	TOGETHER	Together Center	500.00	40,400
40401	05/19/2015	ULINE	ULINE	672.72	40,401
40402	05/19/2015	VOYAGER	Voyager	6,052.08	40,402
40403	05/19/2015	WAFISH	Wa Dept of Fish & Wildlife	150.00	40,403
40404	05/19/2015	WAWORK	Washington Workwear Stores Inc	197.09	40,404
40405	05/19/2015	WESCOM	Wescom	87.60	40,405
40406	05/19/2015	WESSPUR	WesSpur Tree Equipment, Inc.	196.61	40,406
40407	05/19/2015	NWNUISAN	Willard's Pest Control Company	89.24	40,407
40408	05/19/2015	NAPA/RED	Woodinville Auto Parts	494.03	40,408
40409	05/19/2015	ZEE	Zee Medical Service	270.96	40,409
40410	05/19/2015	ZUMAR	Zumar Industries, Inc.	542.53	40,410

Check Total:

2,933,138.55

Accounts Payable

Check Register Totals Only

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Check	Date	Vendor No	Vendor Name	Amount	Voucher
40411	05/19/2015	BADGLEY	Badgley Landscape LLC	4,209.73	40,411
40412	05/19/2015	BEST	Best Parking Lot Cleaning, Inc	10,304.74	40,412
40413	05/19/2015	BLUELNGR	The Blue Line Group, LLC	842.60	40,413
40414	05/19/2015	BMI	Broadcast Music, Inc	335.00	40,414
40415	05/19/2015	BRAMMER	Tate Brammer	5.52	40,415
40416	05/19/2015	BRICKMAN	Brickman Group Ltd LLC	5,781.05	40,416
40417	05/19/2015	BRUNE	Susan Brune	8.28	40,417
40418	05/19/2015	BUILDERS	Builders Exchange of WA	45.00	40,418
40419	05/19/2015	CADMAN	Cadman, Inc.	6,476.18	40,419
40420	05/19/2015	COMCAST2	Comcast	9.42	40,420
40421	05/19/2015	DEERE	John Deere Landscapes	807.42	40,421
40422	05/19/2015	EVANS	David Evans & Associates, Inc	2,217.61	40,422
40423	05/19/2015	EVERSONS	Everson's Econo Vac, Inc.	49,258.70	40,423
40424	05/19/2015	GRAYOS	Gray & Osborne, Inc.	3,956.56	40,424
40425	05/19/2015	HDFOWL	H. D. Fowler Company	192.23	40,425
40426	05/19/2015	HERMANSO	Hermanson Co LLP	602.25	40,426
40427	05/19/2015	HONEY	Honey Bucket	601.00	40,427
40428	05/19/2015	HWA	HWA GeoSciences, Inc	8,141.58	40,428
40429	05/19/2015	IRELAND	Jed Ireland	67.29	40,429
40430	05/19/2015	ISSIGNS	Issaquah Signs	240.90	40,430
40431	05/19/2015	JACOBSEN	Jacobs Engineering Group, Inc	671.13	40,431
40432	05/19/2015	JONESELB	Dylan L.B. Jones	85.96	40,432
40433	05/19/2015	KENYON2	Kenyon Disend PLLC	61,474.32	40,433
40434	05/19/2015	KINGFI	King County Finance A/R	35,328.93	40,434
40435	05/19/2015	LABRAKES	LaBrake's Garden Path & Pond LLC	688.00	40,435
40436	05/19/2015	MALLORY	Mallory Paint Store	2,198.18	40,436
40437	05/19/2015	MARTINJO	Joanna Martin	86.70	40,437
40438	05/19/2015	MATIAS	Elizabeth Matias	200.00	40,438
40439	05/19/2015	MILAM	Janet Mlam	500.00	40,439
40440	05/19/2015	MINUTE	Mike Immel	199.62	40,440
40441	05/19/2015	MORUP	Morup Signs Inc	16.43	40,441
40442	05/19/2015	NELSONCO	Walter E. Nelson Company	252.51	40,442
40443	05/19/2015	NESAM	NE Sammamish Sewer & Water	364.00	40,443
40444	05/19/2015	NWLSVC	NW Landscape Services of WA LLC	26,354.22	40,444
40445	05/19/2015	OSBORN	Osborn Consulting, Inc	2,423.00	40,445
40446	05/19/2015	PACSOIL	Pacific Topsoils, Inc	22,486.93	40,446
40447	05/19/2015	RED-D-AR	Red-D-Arc Inc.	10,530.40	40,447
40448	05/19/2015	REDMOND	City Of Redmond	32.30	40,448
40449	05/19/2015	RUBBER	Rubber Granulators Inc.	1,778.76	40,449
40450	05/19/2015	SEQUOYAH	Sequoyah Electric, LLC	223.31	40,450
40451	05/19/2015	SPRAGUE	SPRAGUE	93.36	40,451
40452	05/19/2015	STANTEC	Stantec Consulting Services	27,764.90	40,452
40453	05/19/2015	SWIFTTRE	Swift Tree Care	3,504.00	40,453
40454	05/19/2015	UNITRENT	United Rentals NA, Inc	1,989.00	40,454
40455	05/19/2015	US BANK	U. S. Bank Corp Payment System	220.00	40,455
40456	05/19/2015	VERIZON	Verizon Wireless	2,377.68	40,456
40457	05/19/2015	WAECOL	Wa State Dept of Ecology	28,287.00	40,457
40458	05/19/2015	WAWORK	Washington Workwear Stores Inc	34.22	40,458
40459	05/19/2015	WHPACIFI	WH Pacific, Inc.	7,540.35	40,459
40460	05/19/2015	ZEE	Zee Medical Service	217.91	40,460

Check Date Vendor No Vendor Name Amount Voucher

Check Total: 332,026.18



Meeting Date: May 19, 2015

Date Submitted: May 13, 2015

Originating Department: Finance IT

Clearances:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> Attorney | <input type="checkbox"/> Community Development | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Admin Services | <input type="checkbox"/> Eastside Fire and Rescue | <input type="checkbox"/> Police |
| <input checked="" type="checkbox"/> City Manager | <input checked="" type="checkbox"/> Finance & IT | <input type="checkbox"/> Public Works |

Subject: 2nd Reading of an ordinance amending the 2015-2016 City Biennial Budget to update 2015 beginning fund balances based on actual 2014 ending fund balances, carry forward expenditures from 2014 to 2015, and make technical adjustments to the 2015-2016 budget.

Action Required: This is the 2nd Reading. The ordinance may be adopted, thereby adopting the beginning fund balance adjustments to the 2015-2016 budget, the 2014 carryforward expenditures, and the 2015 technical adjustments.

Exhibits:

- 1 Draft Ordinance
- 2 Table A, 2015-2016 Biennial Budget Summary
- 3 Budget Carryforward and Technical Adjustments Summary

Budget: \$212,072,340 for 2015-2016 with Transfers and Ending Fund Balance.

Summary Statement:

This ordinance increases total Beginning Fund Balance by \$12,705,069 to reflect the actual 2014 activity through the end of 2014, allows for carry forward requests of \$4,946,850, and technical adjustments of \$6,200,000. The carry forward requests include \$2,259,982 for the Community Center, \$1,000,000 for Town Center stormwater expenditures in partnership with private developers, and funds to complete work that was budgeted in the 2013-2014 Biennial Budget but not completed by the end of 2014. The technical adjustments include increasing the budget for the purchase of the Mars Hill Church property. The end result of this update to the 2015-2016 Biennial Budget is a net increase in total budgeted Ending Fund Balance of \$1,558,219.

Background:

2014 expenditures were \$19,137,099 below budgeted levels. \$4,946,850 reflects costs that were budgeted in 2014 but are not anticipated to be incurred until 2015. The remaining \$14,190,249 reflects savings realized across all funds.

The City Council's decision to purchase the Mars Hill Church property was reached after the 2015-2016 Biennial Budget was adopted. The technical adjustments include a \$6,200,000 transfer from the General Fund to the General Government CIP Fund and a corresponding increase in the expenditure budget in the General Government CIP Fund for the purchase.

The 2015-2016 Biennial Budget was adopted by Council on November 17, 2014 (Ordinance No. O2014-381). The adjustments proposed would update the current biennial budget with the amended 2015-2016 Biennial Budget outlined in Table A.

Financial Impact:

The total 2015-2016 Biennial Budget with Transfers and Ending Fund Balance will increase from \$193,035,271 to \$212,072,340.

Recommended Motion:

Motion to adopt O2015-XXX, adopting 2015 beginning fund balance adjustments to the 2015-2016 budget, the 2014 carryforward expenditures, and the 2015 technical adjustments.

**CITY OF SAMMAMISH
WASHINGTON
ORDINANCE No. O2015-_____**

**AN ORDINANCE OF THE CITY OF SAMMAMISH,
WASHINGTON, AMENDING ORDINANCE NO. O2014-381,
THE 2015-2016 CITY BUDGET, FOR THE PURPOSE OF
REVISING THE 2015-2016 BIENNIAL BUDGET.**

WHEREAS, the City Council adopted Ordinance No. O2014-381, establishing the City's Biennial Budget for the years 2015-2016; and

WHEREAS, the City budget set forth anticipated revenues and expenditures for the forthcoming years; and

WHEREAS, during 2014, certain budgeted revenues and expenditures have increased or decreased and the City Council wishes to amend the City Budget to reflect the 2014 actual beginning fund balances resulting from the revenues and expenditures as received and incurred; and

WHEREAS, certain commitments were made as part of the 2013-2014 Biennial Budget for projects that were not completed by December 31, 2014 and funds related to these commitments need to be carried forward for payment into 2015; and

WHEREAS, the decision was made to purchase real property after the 2015-2016 budget was adopted and certain technical adjustments are needed related to the property purchase;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF SAMMAMISH, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Ordinance No. O2014-381, adopted November 17, 2014, relating to the City of Sammamish's 2015-2016 budget, is hereby amended to adopt the revised budget for the 2015-2016 biennium in the amounts and for the purposes as shown on the attached Table A.

Section 2. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 3. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**PASSED BY THE CITY COUNCIL OF THE CITY OF SAMMAMISH,
WASHINGTON ON THIS 19th DAY OF MAY 2015.**

CITY OF SAMMAMISH

Mayor Thomas E. Vance

Attest:

Melonie Anderson, City Clerk

Approved as to form:

Michael Kenyon, City Attorney

Filed with the City Clerk: April 29, 2015
First Reading: May 5, 2015
Passed by the City Council:
Date of Publication:
Effective Date:

CITY OF SAMMAMISH ORDINANCE O2015-XXX 2015-2016 BIENNIAL BUDGET AMENDMENT: TABLE A

2015-2016 BIENNIAL BUDGET = \$212,072,340									
FUND	BEGINNING BALANCE 2015-2016		REVENUES & OTHER SOURCES 2015-2016		EXPENDITURES & OTHER USES 2015-2016		ENDING BALANCE 2015-2016		
	Original	Revised	Original	Revised	Original	Revised	Original	Revised	
	001 General Fund	\$ 20,085,806	\$ 22,244,298	\$ 67,156,220	\$ 67,156,220	\$ 75,546,057	\$ 82,306,513	\$ 11,695,969	\$ 7,094,005
101 Street Fund	5,523,474	6,130,211	12,573,000	12,573,000	11,536,035	11,546,691	6,560,439	7,156,520	
201 G.O. Debt Service Fund	-	-	1,101,333	1,101,333	1,101,333	1,101,333	-	-	
301 CIP General Fund	8,793,778	8,793,748	1,698,750	7,898,750	8,580,000	14,780,000	1,912,528	1,912,498	
302 CIP Parks Fund	9,197,609	13,950,775	21,463,000	21,463,000	28,180,500	30,713,482	2,480,109	4,700,293	
340 CIP Transportation	17,509,147	21,262,384	10,130,000	10,130,000	19,691,333	20,155,294	7,947,814	11,237,090	
408 Surface Water Management-Operating Fund	1,304,506	1,675,280	7,224,897	7,224,897	7,090,800	7,101,456	1,438,603	1,798,721	
438 Surface Water Management-CIP Fund	1,797,069	2,783,783	2,754,000	2,754,000	3,609,968	5,026,542	941,101	511,241	
501 Equipment Replacement Fund	746,396	761,778	745,666	745,666	328,658	343,758	1,163,404	1,163,686	
502 Information Services Replacement Fund	327,989	339,113	1,952,000	2,084,000	2,155,900	2,224,365	124,089	198,748	
503 Risk Management Fund	153,831	203,304	796,800	796,800	836,325	836,325	114,306	163,779	
2015-2016 TOTAL BIENNIAL BUDGET	\$ 65,439,605	\$ 78,144,674	\$ 127,595,666	\$ 133,927,666	\$ 158,656,909	\$ 176,135,759	\$ 34,378,362	\$ 35,936,581	

2015 ANNUAL BUDGET FOR REFERENCE PURPOSES

	FY 2015		FY 2015		FY 2015		FY 2015		
	Original	Revised	Original	Revised	Original	Revised	Original	Revised	
001 General Fund	\$ 20,085,806	\$ 22,244,298	\$ 33,313,440	\$ 33,313,440	\$ 41,174,755	\$ 47,935,211	\$ 12,224,491	\$ 7,622,527	
101 Street Fund	5,523,474	6,130,211	6,286,500	6,286,500	5,826,675	5,837,331	5,983,299	6,579,380	
201 G.O. Debt Service Fund	-	-	552,000	552,000	552,000	552,000	-	-	
301 CIP General Fund	8,793,778	8,793,748	899,750	7,099,750	8,555,000	14,755,000	1,138,528	1,138,498	
302 CIP Parks Fund	9,197,609	13,950,775	18,653,000	18,653,000	23,980,500	26,513,482	3,870,109	6,090,293	
340 CIP Transportation	17,509,147	21,262,384	6,105,000	6,105,000	5,817,000	6,280,961	17,797,147	21,086,423	
408 Surface Water Management-Operating Fund	1,304,506	1,675,280	3,556,354	3,556,354	3,458,775	3,469,431	1,402,085	1,762,203	
438 Surface Water Management-CIP Fund	1,797,069	2,783,783	1,304,000	1,304,000	989,984	2,406,558	2,111,085	1,681,225	
501 Equipment Replacement Fund	746,396	761,778	372,833	372,833	175,879	190,979	943,350	943,632	
502 Information Services Replacement Fund	327,989	339,113	976,000	1,108,000	1,102,300	1,170,765	201,689	276,348	
503 Risk Management Fund	153,831	203,304	380,000	380,000	379,500	379,500	154,331	203,804	
TOTAL BUDGET	\$ 65,439,605	\$ 78,144,674	\$ 72,398,877	\$ 78,730,877	\$ 92,012,368	\$ 109,491,218	\$ 45,826,114	\$ 47,384,333	

2016 ANNUAL BUDGET FOR REFERENCE PURPOSES

	FY 2016		FY 2016		FY 2016		FY 2016		
	Original	Revised	Original	Revised	Original	Revised	Original	Revised	
001 General Fund	\$ 12,224,491	\$ 7,622,527	\$ 33,842,780	\$ 33,842,780	\$ 34,371,302	\$ 34,371,302	\$ 11,695,969	\$ 7,094,005	
101 Street Fund	5,983,299	6,579,380	6,286,500	6,286,500	5,709,360	5,709,360	6,560,439	7,156,520	
201 G.O. Debt Service Fund	-	-	549,333	549,333	549,333	549,333	-	-	
301 CIP General Fund	1,138,528	1,138,498	799,000	799,000	25,000	25,000	1,912,528	1,912,498	
302 CIP Parks Fund	3,870,109	6,090,293	2,810,000	2,810,000	4,200,000	4,200,000	2,480,109	4,700,293	
340 CIP Transportation	17,797,147	21,086,423	4,025,000	4,025,000	13,874,333	13,874,333	7,947,814	11,237,090	
408 Surface Water Management-Operating Fund	1,402,085	1,762,203	3,668,543	3,668,543	3,632,025	3,632,025	1,438,603	1,798,721	
438 Surface Water Management-CIP Fund	2,111,085	1,681,225	1,450,000	1,450,000	2,619,984	2,619,984	941,101	511,241	
501 Equipment Replacement Fund	943,350	943,632	372,833	372,833	152,779	152,779	1,163,404	1,163,686	
502 Information Services Replacement Fund	201,689	276,348	976,000	976,000	1,053,600	1,053,600	124,089	198,748	
503 Risk Management Fund	154,331	203,804	416,800	416,800	456,825	456,825	114,306	163,779	
TOTAL BUDGET	\$ 45,826,114	\$ 47,384,333	\$ 55,196,789	\$ 55,196,789	\$ 66,644,541	\$ 66,644,541	\$ 34,378,362	\$ 35,936,581	

2014 to 2015 Carryforwards**Operating Expense Commitments****General Fund**

\$ 37,723,441	2014 Budgeted Expenditures-includes 2013 to 2014 carry forwards
31,154,983	2014 Actual Expenditures
<u>\$ 6,568,458</u>	2014 Expenditure Savings

\$ 184,000	One time bonus for Police Sergeants and Officers included in the union contract settlement reached in early 2015.
10,656	Public Works Standards update. Tetra Tech contract awarded at the 4/7/2015 City Council meeting.
112,500	Comprehensive Plan, Environmentally Critical Area, Shoreline Master Plan Amendment, FEMA.
111,000	Trails, bikeways, and paths plan update.
10,300	Community Garden Gate project and Nest project to coincide with the opening of Big Rock Park. Partly grant funded.
<u>\$ 428,456</u>	General Fund Commitments

\$ 10,656	Public Works Standards. Tetra Tech contract awarded at the 4/7/2015 City Council meeting.
<u>\$ 10,656</u>	Street Fund Commitments

\$ 10,656	Public Works Standards. Tetra Tech contract awarded at the 4/7/2015 City Council meeting.
<u>\$ 10,656</u>	SWM Operating Fund Commitments

\$ 15,100	Replacement of Toro Workman equipment.
<u>\$ 15,100</u>	Equipment Rental Fund Commitments

\$ 68,465	Consultant contract to install the Asset Management System. Timmons contract approved at the 9/16/2014 City Council meeting.
<u>\$ 68,465</u>	Technology Fund Commitments

Capital Expense Commitments

\$ 50,000	Beaver Lake Park Preserve. Project deferred to 2015. \$200,000 is re-budgeted in the 2015 budget for this project.
2,259,982	Ongoing Community Center project. This is the unspent portion of the 2014 budget.
78,000	Parks capital replacement. The ADA trail improvement project in the Lower Commons was scheduled for 2014 but deferred to 2015.
145,000	Big Rock Park project was planned to start in 2014. Consultant contract awarded to ELM Environments for park access and natural playscapes project design and construction administration at the December 2, 2014 City Council meeting.
296,297	ITS project delayed by federal funding requirements. Pioneer Construction contract approved at the 3/17/2015 City Council meeting.
167,664	SE 14th St. extension construction.
83,238	Contract for stormwater improvements received zero bids in 2014. Re-bid in early 2015. Contract approved at the 4/7/2015 City Council meeting.
38,247	Stormwater Comprehensive Plan.
295,089	Design work on Inglewood Neighborhood Drainage project.
1,000,000	Waiting to expend funds in partnership with Towncenter development
<u>\$ 4,413,517</u>	Subtotal Capital Expenditure Commitments

\$ 4,946,850 Grand Total

\$19,137,099 TOTAL available (all funds)
--

NET Savings

Exhibit 3

2014 Fiscal Year

Savings NET

	<u>Bgt-Act</u>	<u>of CF Request</u>	<u>Major Savings Component</u>
101	\$ 278,986	\$ 268,330	Operating contingency, engineering prof. svcs.
201	-	-	
301	3,620,000	3,620,000	Town Center contingency-re budgeted in 2013
302	2,706,506	173,524	Project expenditures
340	3,827,515	3,363,554	Contingencies, ITS on 228th, 218th project, 212th project.
408	157,584	146,928	M&O personnel & professional services.
438	1,897,074	480,500	TC regional stormwater & small capital projects
501	18,578	3,478	Vehicle replacements, R&M exp.
502	11,612	(56,853)	Equipment purchases
503	50,786	50,786	Insurance premium
Subtotal	<u>\$ 12,568,641</u>	<u>\$ 8,050,247</u>	

GF \$ 6,568,458 \$ 6,140,002

TOTAL \$ 19,137,099 \$ 14,190,249

Savings by Area

\$ 337,000	Personnel
1,035,000	GF operating contingency
500,000	Development revenue contingency
2,034,900	Fire Department start up costs
1,500,000	GF capital contingency
733,102	Other GF Savings not carried forward
\$ 6,140,002	Subtotal General Fund Savings

2015 Technical Adjustments

General Fund

\$ 132,000 Transfer to Technology Fund to cover the amount the Council Chambers AV upgrade was over the 2014 budgeted amount.

6,200,000 Transfer to General Government CIP to purchase Mars Hill Church.

\$ 6,332,000 **General Fund Adjustments**

General Government CIP Fund

\$ (6,200,000) Transfer from the General Fund to purchase Mars Hill Church

\$ 6,200,000 Purchase of Mars Hill Church

Technology Replacement Fund

\$ (132,000) Transfer from General Fund to cover Council Chambers AV upgrade in excess of 2014 budgeted amount. Brings Tech Fund EFB to desired balance.

\$ (132,000) **Technology Fund Revenue Adjustment**



Meeting Date: May 19, 2015

Date Submitted: 5/13/2015

Originating Department: Admin Services

Clearances:

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Attorney | <input type="checkbox"/> Community Development | <input type="checkbox"/> Public Safety |
| <input checked="" type="checkbox"/> Admin Services | <input type="checkbox"/> Finance & IT | <input type="checkbox"/> Public Works |
| <input checked="" type="checkbox"/> City Manager | <input type="checkbox"/> Parks & Recreation | |

Subject: An ordinance granting Astound Broadband, LLC, d/b/a "Wave" a nonexclusive franchise to install, construct, maintain, repair and operate a telecommunications system within the City of Sammamish's public rights of way

Action Required: A motion adopting the ordinance that grants a nonexclusive telecommunications franchise agreement to Astound Broadband, LLC to install, construct, maintain, repair and operate a telecommunications system with in the public rights of way.

Exhibits: 1. Ordinance

Budget: Budget neutral

Summary Statement:

An ordinance that, if approved by the City Council, would grant a nonexclusive franchise authorizing Astound Broadband, LLC, d/b/a "Wave" to install, construct, maintain, repair and operate a telecommunications system in public rights of way within the City of Sammamish.

This is the second reading of the ordinance. Following the first reading, staff received direction from Council to adjust the language in the franchise agreement to explicitly require Wave to go through the City's permitting process in the event that Wave wishes to install additional utility poles. While Wave does not anticipate needing additional utility poles at this time, the revised language in in section 2.3.2 formally outlines the City's expectations that this be handled through the permitting process if Wave determines later that additional utility poles are needed.

Council also requested clarification during the first reading of the ordinance about the route that Wave intends on following along 228th. Originally, Wave indicated that it would follow an aerial route along 228th. However, Wave has now clarified that it does not need to lay any new fiber along 228th at this time. Wave has existing fiber along 228th – fiber it acquired when it purchased another cable company that originally laid the fiber under a franchise agreement with King County – to meet its current needs. As the table below demonstrates, the combination of existing fiber (38,000 feet) and the new fiber that Wave will install under the new franchise agreement (33,000 feet), Wave will own 71,000 feet of fiber within

Sammamish's public rights of way. If Wave's future business needs require the installation of additional fiber beyond what is currently anticipated, Wave would need to go through the City's permitting process per the terms of the franchise agreement.

**Astound Broadband Fiber
Presence in the City of
Sammamish**

Fiber	Feet
Existing underground	33,000
Existing aerial	5,000
New underground	15,000
New aerial	18,000
TOTAL	71,000

Background:

Company Overview: Wave is a Kirkland-based limited liability company that provides cable and telecommunications services from the Canadian border to northern California (e.g. Bay Area and Sacramento). The company was formed in 2003. While Wave started as a cable service provider and still has a presence in a number of regions, its primary focus today is in providing commercial telecommunications services.

The Proposal: Wave is looking to install a backhaul fiber network along the west coast to expand telecommunications services to local, regional, and national customers. Wave is seeking franchise agreements from those cities along the west coast, including Sammamish, where franchise agreements are not already in place.

Potential Benefits to the City of Sammamish: While Wave's work in Sammamish is motivated primarily by its obligations to lay fiber optics cable along the west coast to support enhanced telecommunications services, Wave intends on laying additional fiber capacity to its new fiber optic network that would allow it in the future to potentially serve businesses and residents in Sammamish with high speed broadband services. In addition, Wave may also be in a position to provide broadband capacity to the City and other public sector entities operating in Sammamish at a discounted rate. Staff is currently in discussions with Wave about how the City might benefit from this opportunity. These discussions are separate from the franchise agreement currently before Council.

The Process for Approving a Telecommunications Franchise Agreement: State law dictates that cities must approve or deny telecommunications franchise agreements within 120 days of receipt of the application. Wave submitted its application to the City on January 28, 2015. Staff and the City Attorney

have been negotiating the terms of the proposed franchise agreement in the period since the application was received. Federal law prohibits cities from regulating telecommunications services. However, cities can ensure that the applicant complies with all permitting and right-of-way regulations. In addition, cities may charge applicants for the cost of processing the permit. Wave has provided the City with a \$5,000 deposit to cover costs associated with processing the franchise application.

Highlights of the Franchise Agreement: The telecommunications franchise agreement presented for City Council consideration includes the following features:

Basic Features:

- The Franchise Ordinance authorizes Wave to construct, maintain, operate, and repair a fiber-optic broadband telecommunications system using the public rights-of-way within city limits. The Franchise is non-exclusive, meaning the City remains free to grant a similar franchise to another qualified telecommunications system operator during the same time period, so long as the terms are competitively neutral and nondiscriminatory consistent with federal law.
- The Franchise does not include the right to install or operate cable television or commercial mobile radio (i.e., cellular) services, and Wave expressly disclaims any right to provide cable service without a separate franchise or an amendment to this one. The City may impose additional compensation requirements for use of public rights-of-way to provide services beyond those specifically authorized in the Franchise Ordinance.
- The Franchise Ordinance does not exempt Wave from having to obtain other licenses, easements, or agreements needed to place devices on other City or private property (e.g., on utility poles, pipelines, or buildings), nor does it exempt Wave from having to comply with applicable land-use or development regulations (e.g., conditional use permits or zoning variances).

Conditions of Acceptance:

If the City Council approves the Franchise Ordinance, Wave has 30 days to accept the Franchise by paying certain administrative costs of the City, submitting proof of financial security, submitting required insurance certificates, and paying the costs of publication of the Franchise Ordinance. Otherwise, the Franchise will be deemed rejected by Wave.

Transferability of Franchise

With prior notice to the City, Wave is permitted to transfer the Franchise to another provider, so long as the transferee agrees in writing to assume and be responsible for all of Wave's obligations and guarantees their performance. The transferee must also supply the required insurance certificates, security fund, and performance bond.

Term of Franchise and Renewal

The Franchise runs for a term of 10 years following acceptance by Wave. Within 180 days of expiration, and with the agreement of the parties, the City Manager may renew the Franchise for an additional 5 years without further action by the City Council.

Powers Retained by City

The City retains full authority to use the public rights-of-way, including construction of sanitary and storm sewers; paving, widening, or altering rights-of-way; laying down water mains; etc. The City also retains its full police powers to make and enforce laws, although it may not enact new ordinances or amendments that unilaterally alter or impair material rights or benefits granted to Wave under this Franchise Ordinance.

Liability Protections

- The City has disclaimed liability to Wave (and its contractors) for any damages relating to the design, condition, or safety of the public rights-of-way within the Franchise area, except for damages due to gross negligence or willful misconduct by the City.
- Wave has also agreed to a very broad indemnification of the City and its officials and employees for claims by third parties that arise out of or relate to Wave's occupation and use of the public rights-of-way, its operation of the Telecommunications System, environmental contamination that Wave causes or contributes to, and any acts or omission of Wave or its contractors, agents, and employees in connection with its work in the rights-of-way. The City retains liability for third-party damages caused by its own gross negligence or intentional misconduct.
- Wave is required to obtain a performance bond in the amount of \$50,000 to ensure full and faithful performance of Wave's obligations under the Franchise.
- Wave and its subcontractors are required to maintain commercial general liability insurance with minimum coverage limits. For Wave, the applicable limits are \$2,000,000 per occurrence, \$4,000,000 general aggregate, and \$1,000,000 products/completed operations aggregate. For subcontractors, the applicable limits are \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$1,000,000 products/completed operations aggregate. Wave is also required to maintain umbrella or excess liability insurance with limits of at least \$5,000,000.

Reimbursement of City Costs

- Wave is required to reimburse the City for costs (including labor, materials, equipment, and consultant fees) it incurs in approving and inspecting Wave's work on its facilities (e.g., the City's review of design documents and inspections for compliance with the City's Design Standards) to the extent such costs are not included in the issuance of regulatory permits (construction permits, street excavation permits, clearing and grading permits, etc.). Any required work that the City has to perform after Wave has failed to perform it will be charged to Wave. The City is required to invoice Wave for such costs.

- Additionally, Wave is required to reimburse the City up to \$3,000 per year for costs incurred in administering the Franchise or amending the Ordinance at Wave's request or for its benefit. Finally, Wave must pay the costs of publication of the Franchise Ordinance and any other public notices prior to any public hearings on the Franchise Ordinance.

Construction Standards, Permit Application, and Approval Process

- Wave may not commence work without the City's prior approval of its design documents. The City may require Wave to install facilities at a particular time, or in a particular place or manner as a condition of access, and may require removal of any facilities not installed in compliance with the current edition of the City Standards for Public Work Engineering and Construction, or any of the other federal, state, and City standards and codes specified in Section 7.3 of the Franchise Ordinance.
- The City may review and approve Wave's design documents with respect to, among other things: location, alignment, and depth; any measures needed to preserve the free flow of traffic; structural integrity, functionality, and compatibility with roadways, sidewalks, traffic signals, etc.; ease of road maintenance; appearance; and compatibility with the City's longer-term plans.
- Before performing any work in public rights-of-way, Wave must apply for and obtain all regulatory permits required by City ordinance or rule, at Wave's expense.
- Any contractors or subcontractors of Wave must adhere to the conditions and limitations of the Franchise Ordinance, and Wave must ensure that they are familiar with the Franchise Ordinance and that all work performed by them is in compliance with it.
- Wave is required to use suitable barricades, flags, lights, and other measures as required for the safety of the general public and to prevent accidents and injuries to persons, vehicles, or other property due to work done in public rights-of-way.

Right of Inspection

Upon 72 hours' notice, or without notice in case of emergency, the City may inspect Wave's facilities to determine compliance with the Franchise Ordinance or other applicable requirements. The City retains the power to immediately stop all work that the City learns or determines is non-compliant or is being performed in an unsafe or dangerous manner, and may compel Wave to take actions necessary to correct the unsafe condition or otherwise bring the work into compliance.

Facility Relocations

- The City may require Wave to alter, adjust, or relocate any facilities when reasonably necessary for the construction, repair, or improvement of any public rights-of-way in furtherance of the public health, safety, or welfare. The City must give 180 days' notice, and must make reasonable efforts to provide an alternate location for Wave's facilities. The City also must, within budgetary constraints, consider any alternative designs proposed by Wave to mitigate the

impact on its facilities. Wave may seek reimbursement of its relocation costs when authorized by law to do so.

- If there is an immediate threat to public health or safety, the City may require Wave, at Wave's expense, to shut down, relocate, remove, or modify its facilities in a public right-of-way, without regard to fault. A party seeking alteration, adjustment or temporary relocation of Wave facilities for something other than a public improvement project must compensate Wave for its time, engineering, design, and material costs.
- After construction of any facilities, or upon request by the City, Wave must provide up-to-date maps showing the horizontal and vertical location and configuration of located or relocated facilities in the public rights-of-way. Wave does not, however, warrant the accuracy of such maps; it represents only that its Telecommunications Systems are shown in approximate locations.

Duty of Restoration

Wave has a duty to leave the public rights-of-way and other property disturbed by its work in as good or better condition as it was before commencement of construction. Wave must complete restoration work to the reasonable satisfaction of the City, as determined by the City Engineer, and warrant restoration work for at least two years. Restoration work for adjacent private property disturbed or damaged by Wave must be performed to the private owner's reasonable satisfaction.

Revocation of Franchise

Upon an uncured default by Wave, the City may give notice of intent to revoke the Franchise. If Wave objects to the revocation, it may object in writing and provide its rationale. The City may then conduct a public hearing, at which evidence and witness may be examined, before deciding whether to terminate or revoke the Franchise. The City Council's decision is final, subject only to other appeal rights provided by law.

Financial Impact:

Because the requirements on Astound Broadband to reimburse the City's costs associated with developing, implementing and monitoring this Franchise Agreement, the financial impact of approving the Franchise agreement is budget neutral.

Recommended Motion:

A motion adopting the ordinance that grants a non-exclusive telecommunications franchise agreement to Astound Broadband, LLC to install, construct, maintain, repair and operate a telecommunications system within the public rights of way.

**CITY OF SAMMAMISH
WASHINGTON
ORDINANCE NO. ____**

**AN ORDINANCE OF THE CITY OF SAMMAMISH,
WASHINGTON, GRANTING TO ASTOUND
BROADBAND, LLC, A LIMITED LIABILITY
COMPANY, A NONEXCLUSIVE
TELECOMMUNICATIONS FRANCHISE TO
INSTALL, CONSTRUCT, MAINTAIN, REPAIR, AND
OPERATE A TELECOMMUNICATIONS SYSTEM
WITHIN THE PUBLIC RIGHTS OF WAY;
PROVIDING FOR SEVERABILITY; AND
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, Astound Broadband, LLC, a Washington limited liability company d/b/a Wave (hereinafter “Franchisee”) has made application to the City to construct, install, maintain, repair and operate a fiber optic-based telecommunications system with the public rights-of-way of the City; and

WHEREAS, Franchisee represents that it has the legal, technical and financial qualifications to operate in the rights-of-way of the City as a wireline telephone business and a telecommunications company within the meaning of Title 80 RCW; and

WHEREAS, based on representations and information provided by Franchisee, and in response to its request for the grant of a franchise, the City Council has determined that the grant of a nonexclusive franchise, on the terms and conditions herein and subject to applicable law, are consistent with the public interest; and

WHEREAS, the City is authorized by applicable law to grant such a nonexclusive franchises within the boundaries of the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAMMAMISH, WASHINGTON, DO ORDAIN AS FOLLOWS:

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- C. Description of Franchise Area
- D. Insurance Requirements
- E. Financial Security
- F. Contractor/Subcontractor Insurance Requirements

ARTICLE 1. DEFINITIONS.

Exhibit 1

For the purposes of this Franchise and the Exhibits attached hereto, the following terms, phrases, words and their derivations where capitalized shall have the meanings given herein. Words not defined herein shall have the meaning given in Title 14 of the Sammamish Municipal Code. Words not defined herein or in Title 14 of the Sammamish Municipal Code, shall have the meaning given pursuant to such federal statutes, rules, or regulations that apply to and regulate the services provided by the Franchisee. Words not otherwise defined, shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word “shall” is always mandatory and not merely directory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision.

“Affiliate” when used in connection with Franchisee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Franchisee.

“City” shall mean the City of Sammamish, a municipal corporation organized as a non-charter code city, operating under the laws of the state of Washington.

“Construct” shall mean to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, remove, or support.

“Default” shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise.

“Design Document(s)” shall mean the plans and specifications for the Construction of the Facilities meeting the minimum applicable general plan submittal requirements for engineering services plan review as set forth in the City’s Design Standards manual, illustrating and describing the refinement of the design of the Telecommunications System Facilities to be Constructed, establishing the scope, relationship, forms, size and appearance of the Facilities by means of plans, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

“Direct Costs” shall mean and include all costs and expenses incurred by the City and directly related to a particular activity or activities, including by way of example:

- i. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of such activity or activities and any taxes, insurance, and interest expenses related thereto, including costs for crews and equipment;
- ii. All costs and expenses of labor inclusive of payroll benefits, non-productive time and overhead for each of the labor classifications of the employees

Exhibit 1

performing work for the activity and determined in accordance with the City's ordinary governmental accounting procedures; and,

iii. All costs and expenses to the City for any work by consultants or contractors to the extent performing work for a particular activity or activities, including by way of example and not limitation, engineering and legal services.

“Dispute” shall mean a question or controversy that arises between the Parties concerning the observance, performance, interpretation or implementation of any of the terms, provisions, or conditions contained in this Franchise or the rights or obligations of either Party under this Franchise.

“Effective Date” shall mean and refer to that term as it is defined at Section 4.3 herein.

“Emergency” shall mean and refer to a sudden condition or set of circumstances that, (a) significantly disrupts or interrupts the operation of Facilities in the Public Rights-of-Way and Franchisee's ability to continue to provide services if immediate action is not taken, or (b) presents an imminent threat of harm to persons or property if immediate action is not taken.

“Environmental Law(s)” means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

“Facility” or “Facilities” means any part or all of the facilities, equipment and appurtenances of Franchisee whether underground or overhead and located within the Public Rights-of-Way as part of the Franchisee's Telecommunications System, including but not limited to, conduit, case, pipe, line, fiber, cabling, equipment, equipment cabinets and shelters, vaults, generators, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, anchors, transmitters, receivers, antennas, and signage.

“Franchise” shall mean the grant, once accepted, giving general permission to the Franchisee to enter into and upon the Public Rights-of-Way to use and occupy the same for the purposes authorized herein, all pursuant and subject to the terms and conditions as set forth herein.

“Franchisee” shall mean Astound Broadband, LLC d/b/a Wave and any of its Affiliates.

“Franchise Area” shall mean collectively or individually the Public Rights-of-Way located within the area described in Exhibit “C”.

“Franchise Ordinance” shall mean the Ordinance authorizing the Franchise.

“Hazardous Substance” means those substances which have been recognized as dangerous or potentially dangerous to health, welfare, or to the environment by any federal, municipal, state, City, or other governmental or quasi-governmental authority, and/or any department or agency thereof; those substances which use, or have as its component thereof or therein, asbestos or lead-based paint; and petroleum oil and any of its fractions; and as such has been defined, listed or regulated under any Environmental Law.

“Law(s)” shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, environmental standards, orders, decrees and requirements of all federal, state, and local governments, the departments, bureaus or commissions thereof, or other governmental authorities, including the City acting in its governmental capacity. References to Laws shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

“Noticed Party” shall mean the Party in receipt of notice that it is in Default.

“Person” means and includes any individual, corporation, partnership, association, joint-stock-company, limited liability company, political subdivision, public corporation, taxing districts, trust, or any other legal entity, but not the City or any Person under contract with the City to perform work in the Public Rights-of-Way.

“Party(ies)” shall mean either the City or the Franchisee or both.

“Private telecommunications system” means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. “Private telecommunications system” does not include a system offered for hire, sale, or resale to the general public.

“Public Rights-of-Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, any easement now or hereafter held by the City within the corporate boundaries of the City as now or hereafter constituted for the purpose of public travel, and over which the City has authority to grant permits, licenses or franchises for use thereof, or has regulatory authority thereover, excluding railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, and excluding such similar facilities or property owned, maintained or leased by the City in its proprietary capacity or as an operator of a utility.

“Public Works Director” means and refers to the Public Works Director for the City or his or her designee or such officer or person who has been assigned the duties of public works director or his or her designee.

“Regulatory Permit” means a permit issued under the regulatory authority of the City that provides specific requirements and conditions for Work to Construct Facilities within the Public Rights-of-Way and includes by way of example and not limitation, a permit for installation of a new pole, construction permit, building permit, street excavation permit, barricade permit, and clearing and grading permit.

“Remedy”, “Remediate” and “Remedial Action” shall have the same meaning as these are given under the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing regulations at Chapter 173-340 WAC.

“Service” shall mean the service or services authorized to be provided by the Franchisee under the terms and conditions of this Franchise.

“Telecommunications Service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications Service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications Service excludes, radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include but are not limited to cable service as defined in 47 U.S.C. Sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in section 20.3, Title 47 C.F.R.

“Transfer” shall mean any transaction in which all or a portion of the Telecommunications System is sold, leased or assigned (except a sale or transfer that results in removal of a particular portion of the Telecommunications System from the Public Rights-of-Way); or the rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another Person. A transfer of control of an operator shall not constitute a transfer as long as the same person continues to hold the Franchise both before and after the transfer of control.

“Telecommunications System” shall mean collectively the Facilities that together with other facilities, appurtenances and equipment of Franchisee or other Persons are used to provide Telecommunications Services.

“Work” shall mean any and all activities of the Franchisee, or its officers, directors, employees, agents, contractors, subcontractors, volunteers, invitees, or licensees, within the Public Rights-of-Way to Construct the Facilities.

ARTICLE 2. FRANCHISE GRANT.

2.1 Public Right-of-Way Use Authorized. Subject to the terms and conditions of this Franchise, the City hereby grants to Franchisee a nonexclusive Franchise authorizing the Franchisee to Construct, maintain, repair and operate Facilities in, along, among, upon, across, above, over, and under the Public Rights-of-Ways located within the Franchise Area.

2.2 Authorized Services. The grant given herein expressly authorizes Franchisee to use the Public Rights-of-Way to Construct, maintain, repair and operate its Facilities as part of its Telecommunications System to provide Telecommunications Services. This authorization is limited and is not intended nor shall it be construed as granting Franchisee or any other Person the right, duty or privilege to use its Facilities or the Public Rights-of-Way to provide Services not specifically authorized herein. This Franchise shall not be interpreted to prevent the City from lawfully imposing additional conditions, including additional compensation conditions, if authorized by applicable law for use of the Public Rights-of-Way, should Franchisee provide Service other than Service specifically authorized herein. However, this Franchise shall not be read as a concession by the Franchisee that it needs authorization to provide any services not otherwise authorized herein. Notwithstanding the foregoing, this Franchise does not authorize Franchisee to provide cable service as defined in 47 U.S.C. Sec. 522(6). Franchisee understands and acknowledges that a separate franchise, or amendment to this Franchise, is required for the provision of cable service.

2.3 No Rights Shall Pass to Franchisee by Implication. No rights shall pass to the Franchisee by implication. Without limiting the foregoing and by way of example, this Franchise shall not include or be a substitute for:

2.3.1 Any other authorization required for the privilege of transacting and carrying on a business within the City that may be lawfully required by the Laws of the City;

2.3.2 Any Regulatory Permit required by the City for Public Rights-of-Way users in connection with operations on or in Public Rights-of-Way or public property, including Regulatory Permits for installation of new poles; or

2.3.3 Any licenses, leases, easements or other agreements for occupying any other property or infrastructure of the City or other Persons to which access is not specifically granted by this Franchise including, without limitation, agreements for placing devices on poles, light standards, in conduits, in vaults, in or on pipelines, or in or on other structures or public buildings.

2.3.4 Any permits or other authorizations that may be required under the land use code and development regulations of the City for the construction of Facilities within a particular zoning district in the City, including by way of example and not limitation, a conditional use permit or a variance.

2.4 Interest in the Public Right-of-Way/Release/Indemnity. This Franchise shall not operate or be construed to convey title, equitable or legal, in the Public Rights-of-Way. This Franchise shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give. The grant given herein does not confer rights other

than as expressly provided in the grant hereof and is subject to the limitations in applicable Law. Such right may not be subdivided or subleased to a person other than the Franchisee except as set forth in Section 2.8 below.

CITY DOES NOT WARRANT ITS TITLE OR PROPERTY INTEREST IN OR TO ANY FRANCHISE AREA NOR UNDERTAKE TO DEFEND FRANCHISEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

Franchisee hereby releases City from any and all liability, cost, loss, damage or expense in connection with any claims that City lacked sufficient legal title or other authority to convey the rights described herein. In case of eviction of Franchisee or Franchisee's contractors by anyone owning or claiming title to, or any interest in the Franchise Area, City shall not be liable to Franchisee or Franchisee's contractors for any costs, losses or damages of any Party.

2.5 Rights Subordinate. Franchisee further acknowledges that Franchisee's rights under this Franchise to Construct Facilities in the Franchise Area, are subject and subordinate to all outstanding rights and encumbrances on the City's Public Rights-of-Way.

2.6 Condition of Franchise Area. Franchisee has inspected or will inspect the Franchise Area described on the attached Exhibit C, and enters upon each such Franchise Area with knowledge of its physical condition and the danger inherent in operations conducted in, on or near any Franchise Area. Franchisee acknowledges that Hazardous Substances or other adverse matters may affect the Franchise Area that were not revealed by Franchisee's inspection.

CITY HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE FRANCHISE AREA, INCLUDING THE ENVIRONMENTAL CONDITION OF THE FRANCHISE AREA, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE PUBLIC RIGHT-OF-WAY, OR THE CONFORMITY OF ANY PART OF THE PUBLIC RIGHT-OF-WAY TO ITS INTENDED USES. CITY SHALL NOT BE RESPONSIBLE TO FRANCHISEE OR ANY OF FRANCHISEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PART OF THE PUBLIC RIGHT-OF-WAY PRESENT ON OR CONSTITUTING ANY FRANCHISE AREA, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES, EXCEPT TO THE EXTENT ANY DAMAGES RELATING TO THE CONDITION, QUALITY, OR SAFETY OF ANY PART OF THE PUBLIC RIGHT-OF-WAY ARISE FROM THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

2.7 Franchise Nonexclusive. This Franchise shall be nonexclusive. Subject to the terms and conditions herein, the City may at any time grant authorization to others to use the Public Rights-of-Way for any lawful purpose on terms and conditions that are competitively neutral and nondiscriminatory among similarly situated franchisees; provided that, no other Person holding a valid franchise shall have superior rights to Franchisee to use and occupy the space within the Public Right-of-Way lawfully occupied by Franchisee Facilities, except as provided pursuant to Section 7.8 (Facility Relocation) hereof.

2.8 Transfer. Franchisee may Transfer this Franchise after prior written notice to the City and Transferee's written commitment, in substantially the form of the agreement attached hereto as Exhibit "B", delivered to the City, that transferee(s) shall thereafter be responsible for all obligations of Franchisee with respect to the Franchise and guaranteeing performance under the terms and conditions of the Franchise and that transferees will be bound by all the conditions of the Franchise and will assume all the obligations of its predecessor. Such a Transfer shall relieve the Franchisee of any further obligations under the Franchise, including any obligations not fulfilled by Franchisee's Transferee; provided that, the Transfer shall not in any respect relieve the Franchisee, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, which acts or omissions occur prior to the time of the Transfer. This Franchise may not be transferred without filing or establishing with the City the insurance certificates, security fund and performance bond as required pursuant to this Franchise and paying all Direct Costs to the City related to the Transfer.

Notwithstanding the foregoing, notice to the City shall not be required for a mortgage, hypothecation or an assignment of Franchisee's interest in the Franchise in order to secure indebtedness.

Franchisee may, without the prior written notice to or consent of the City: (i) lease the Telecommunications System, or any portion thereof, to another Person; (ii) grant an Indefeasible Right of User Interest in the Telecommunications System, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Telecommunications System to another Person; provided that, Franchisee at all times retains exclusive control over its Telecommunications System and remains responsible for Constructing its Facilities pursuant to the terms and conditions of this Franchise, and provided further that, Franchisee may grant no rights to any such Person that are greater than any rights Franchisee has pursuant to this Franchise; such Persons shall not be construed to be a third-party beneficiary hereunder; and, no such Person may use the Telecommunications System for any purpose not authorized herein.

2.9 Street Vacation. If any Public Right-of-Way or portion thereof used by Franchisee is to be vacated during the term of this Franchise, unless as a condition of such vacation the Franchisee is granted the right to continue to occupy the vacated Public Right-of-Way, Franchisee shall, without delay or expense to City, remove its Facilities from such Public Right-of-Way, and restore, repair or reconstruct the Public Right-of-Way where such removal has occurred, and place the Public Right-of-Way in such condition as may be required by the City. Nothing herein is intended to operate as a waiver of Franchisee's

right or entitlement under state law or City ordinance to receive notice of or to object to vacation of the Public Right-of-Way occupied by Franchisee Facilities.

2.10 Reservation of City Use of Public Right-of-Way. Nothing in this Franchise shall prevent the City from constructing sanitary or storm sewers; grading, changing grade, paving, repairing, widening or otherwise altering any Public Right-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable.

ARTICLE 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE.

3.1 Alteration of Material Terms and Conditions. Subject to federal and State preemption, the material rights, benefits, obligations or duties as specified in this Franchise may not be unilaterally altered or impaired by the City through subsequent amendments to, or enactment of, any ordinance, regulation, resolution or other enactment of the City. Notwithstanding the foregoing, the City specifically reserves its right to make and enforce those laws that are within the lawful exercise of the City's police power.

3.2 Compliance with Laws. Except as provided herein pursuant to Section 3.1, the Franchisee agrees to comply with all applicable Laws as now or hereafter in effect, and any lawful orders from regulatory agencies or courts with jurisdiction over Franchisee and its Facilities, or over the City and the Public Rights-of-Way.

3.3 Reservation of Rights/Wavier. The City expressly reserves all of its rights, authority and control arising from any relevant provisions of federal, State or local Laws granting the City rights, authority or control over the Public Rights-of-way or the activities of the Franchisee.

3.4 Change in Form of Government. Any change in the form of government of the City shall not affect the validity of this Franchise. Any governmental unit succeeding the City shall, without the consent of Franchisee, succeed to all of the rights and obligations of the City provided in this Franchise.

ARTICLE 4. ACCEPTANCE.

4.1 Acceptance. Within thirty (30) days after the passage and approval of this Franchise by the City Council, this Franchise shall be accepted by Franchisee by filing with the City Clerk during regular business hours, or to the City Attorney, three originals of this Franchise with its original signed and notarized written acceptance of all of the terms, provisions and conditions of this Franchise in conformance with Exhibit "A", together with the following, if required herein:

4.1.1 Payment in readily available funds of the administrative costs for issuance of the Franchise in conformance with the requirements of Section 5.6 herein.

4.1.2 Submission of proof of financial security in accordance with Section 5.3 herein.

4.1.3 Submission of an insurance certificate in accordance with Section 5.2 herein.

4.1.4 Payment of the costs of publication of this Franchise Ordinance in conformance with the requirements of Section 8.18 herein.

In the event that the thirtieth day falls on a Saturday, Sunday or legal holiday during which the City is closed for business, the filing date shall fall on the last business day before such Saturday, Sunday or legal holiday.

4.2 Failure to Timely File Acceptance. The failure of Franchisee to timely file its written acceptance shall be deemed a rejection by Franchisee of this Franchise, and this Franchise shall then be void.

4.3 Effective Date; Term.

4.3.1 Effective Date. Except as provided pursuant to Section 4.2 of this Franchise, the Effective Date of this Ordinance and Franchise shall be 12:01 a.m. on the day following Franchisee's acceptance under Section 4.1 and not later than the 31st day following passage and approval of this Franchise by the City Council. This Franchise and the rights, privileges, and authority granted hereunder and the relationship established hereby shall take effect and be in force from and after the Effective Date of this Ordinance for the term hereof.

4.3.2 Term. The term of this Franchise shall commence on the Effective Date and shall continue in full force and effect for a period of ten (10) years, unless sooner terminated, revoked or rendered void. No more than one hundred eighty (180) days prior to expiration, the Parties may mutually agree in writing to extend the term of this Franchise for an additional five (5) year term upon the same terms and conditions as provided herein. The City Manager is authorized to execute such an extension on behalf of the City without further action or approval by the City Council.

4.4 Effect of Acceptance. By accepting the Franchise the Franchisee:

4.4.1 Accepts and agrees to comply with and abide by all of the lawful terms and conditions of this Franchise;

4.4.2 Acknowledges and agrees that it has carefully read the terms and conditions of this Franchise; it unconditionally accepts all of the terms and conditions of this Franchise; it unconditionally agrees to abide by the same; it has relied upon its own investigation of all relevant facts; it has had the assistance of counsel; it was not induced to accept a Franchise; and, that this Franchise represents the entire agreement between the Franchisee and the City;

4.4.3 Warrants that Franchisee has full right and authority to enter into and accept this Franchise in accordance with the terms hereof, and by entering into or performing this Franchise, Franchisee is not in violation of its charter or by-laws, or any law, regulation, or agreement by which it is bound or to which it is subject; and

4.4.4 Warrants that Franchisee has full right and authority to enter into and accept this Franchise in accordance with the terms hereof, that the signatories for Franchisee hereto are authorized to sign the Franchise acceptance, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Franchise.

4.5 Effect of Expiration/Termination. Upon expiration, revocation or termination of the Franchise without renewal or other authorization, Franchisee shall no longer be authorized to operate the Facilities within the Franchise Area and shall, to the extent it may lawfully do so, cease operation of the Facilities. Forthwith thereafter, except as provided in this Section, or as otherwise provided by ordinance, Franchisee shall: (1) remove its Facilities from the Public Rights-of-Ways and restore the Public Right-of-Way in accordance with Section 7.12.1 (Restoration of Public Rights-of-Way) hereof; (2) sell its Facilities to another entity authorized to operate Facilities within the Franchise Area (which may include the City) in accordance with the transfer provisions under Section 2.8; or (3) abandon any Facilities in place in the Public Rights-of-Way in accordance with Section 7.14 (Abandonment of Facilities) hereof.

ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC.

5.1 Limitation of Liability.

5.1.1 INDEMNITY/RELEASE/DEFENSE. TO THE FULLEST EXTENT PERMITTED BY LAW, FRANCHISEE SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS (ELECTED OR APPOINTED), EMPLOYEES, AND AGENTS (COLLECTIVELY, "**INDEMNITEES**") FOR, FROM, AND AGAINST CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, REASONABLE ATTORNEYS' FEES, AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "**LIABILITIES**") ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

5.1.1.1 FRANCHISEE'S OCCUPATION AND USE OF THE PUBLIC RIGHT-OF-WAY;

5.1.1.2 FRANCHISEE'S OPERATION OF THE TELECOMMUNICATIONS SYSTEM;

5.1.1.3 ENVIRONMENTAL CONTAMINATION OF THE PUBLIC RIGHTS-OF-WAY CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY FRANCHISEE OR ITS CONTRACTORS,

SUBCONTRACTORS, OR AGENTS (BUT ONLY TO THE EXTENT OF SUCH AGGRAVATION OR CONTRIBUTION); OR

5.1.1.4 ANY ACT OR OMISSION OF FRANCHISEE OR FRANCHISEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS AND SERVANTS, OFFICERS OR EMPLOYEES IN CONNECTION WITH WORK IN THE PUBLIC RIGHTS-OF-WAY.

THE ONLY LIABILITIES WITH RESPECT TO WHICH FRANCHISEE'S OBLIGATION TO RELEASE AND INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF AN INDEMNITEE OR FOR LIABILITIES THAT BY LAW THE INDEMNITEES CANNOT BE INDEMNIFIED FOR.

This covenant of indemnification shall include, but not be limited by this reference, to Liabilities arising, (1) as a result of the negligent acts or omissions of Franchisee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public Rights-of-Way or other public place in performance of work or services Permitted under this Franchise; and (2) solely by virtue of the City's ownership or control of the Public Rights-of-Way or other public properties occupied or used by Franchisee.

The fact that Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Franchisee's duties of defense and indemnification under this Section 5.1.

5.1.2 Tender of Defense. Upon written notice from the City, Franchisee agrees to assume the defense of any lawsuit, claim or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Franchise for which Franchisee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Franchisee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Further, said indemnification obligations shall extend to claims that are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend and may participate in the defense of a claim and, in any event, Franchisee may not agree to any settlement of claims financially affecting the City without the City's prior written approval which shall not be unreasonably withheld. If separate representation to fully protect the interests of both Parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, Franchisee shall select additional counsel with no conflict with the City. Franchisee's indemnification obligations do not apply to any lawsuit, claim, or proceeding, including any settlement or compromise of a claim that is not reduced to a suit, if the City fails to provide timely notice to Franchisee, or if City enters into a settlement or compromise, or consents to entry of judgment, without Franchisee's prior written consent.

5.1.3 Refusal to Accept Tender. In the event Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the Parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, then Franchisee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

5.1.4 Title 51 Waiver. THE FRANCHISEE WAIVES IMMUNITY UNDER RCW TITLE 51 AND AFFIRMS THAT THE CITY AND THE FRANCHISEE HAVE SPECIFICALLY NEGOTIATED THIS PROVISION, AS REQUIRED BY RCW 4.24.115, TO THE EXTENT IT MAY APPLY.

5.1.5 Inspection. Inspection or acceptance by the City of any Work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification.

5.2 Insurance Requirements. See Attached Exhibit "D".

5.3 Financial Security. See Attached Exhibit "E".

5.4 Contractors/Subcontractors. Franchisee contractors and subcontractors performing Work in the Public Rights-of-Way shall comply with such bond, indemnity and insurance requirements as may be required by City code or regulations, or other applicable Law. If no such requirements are set forth in the City code or regulations, the Franchisee contractors and subcontractors shall comply with the requirements set forth in attached Exhibit "F".

5.5 Liens. In the event that any City property becomes subject to any claims for mechanics', artisans', or materialmen's liens, or other encumbrances chargeable to or through Franchisee which Franchisee does not contest in good faith, Franchisee shall promptly, and in any event within 30 days from receipt of written notice of such lien, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit, or other means), without cost to the City, and shall indemnify the City against all costs and expenses (including attorneys' fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Franchisee after first giving Franchisee five business days' advance notice of its intention to do so. Nothing herein shall preclude Franchisee's or the City's contest of a claim for lien or other encumbrance chargeable to or through Franchisee or the City, or of a contract or action upon which the same arose.

5.6 Financial Conditions.

5.6.1 Franchise Fees. During the term of this Franchise, should federal and/or state Law change or the statutory prohibition or limitation upon assessment of Franchise fees be invalidated, amended, or modified allowing revenues derived by Franchisee from any Services provided by Franchisee using the Franchise Area to be subject to a Franchise fee or other fee in lieu of a Franchise fee that was otherwise prohibited or limited on the Effective Date, the City and Franchisee shall in good faith endeavor to negotiate a reasonable Franchise fee or other fee or other consideration in lieu of a Franchise fee, consistent with federal and/or state Law. The fee or other consideration shall be comparable to Franchise or similar fees received by the City, or other cities of comparable population or assessed property value, for other similar uses of the Public Rights-of-Way by similar users.

5.6.2 Reimbursement of Direct Costs of Amendment, Administration, and Renewal. Franchisee shall reimburse the City for the City's Direct Costs relating to the amendment (if requested by or for the benefit of the Franchisee), administration of this Franchise; provided, however, such reimbursement shall not exceed \$3,000 in any calendar year of the initial ten (10) year term of this Franchise. In the event of renewal, the Parties shall renegotiate the annual reimbursement cap on the City's Direct Costs.

5.6.3 Reimbursement of Direct Costs of Design Review and Inspection. City approvals and inspections, as provided for in this Franchise, are for the sole purpose of protecting the City's rights as the owner or manager of the road Public Rights-of-Way and are separate and distinct from the approvals and inspections and fees that may be required pursuant to a Regulatory Permit. Therefore, Franchisee shall reimburse to the City, its Direct Costs of approvals and inspections, to the extent that such Direct Costs are not included in the costs for issuance of and compliance with a Regulatory Permit. Approvals and inspection, by way of example and not limitation, include review of design documents and inspection for compliance with Standards and Design Document submittal.

5.6.4 Franchisee Responsibility for Costs. Except as expressly provided otherwise in this Franchise, any act that Franchisee, its contractors or subcontractors are required to perform under this Franchise shall be performed at their sole cost and expense.

5.6.5 Franchisee Work Performed by the City. Any work performed by the City that Franchisee has failed to perform as required pursuant to this Franchise and which is performed by the City in accordance with the terms of this Franchise, shall be performed at the cost and expense of the Franchisee. Franchisee shall be obligated to pay the Direct Costs to the City for performing such work.

5.6.6 Costs to be Borne by Franchisee. Franchisee shall reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, contemporaneous with its acceptance of this Franchise.

5.6.7 Taxes and Fees. Nothing contained in this Franchise Agreement shall exempt Franchisee from Franchisee's obligation to pay any utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within

the City, or against any local improvement assessment imposed on Franchisee. Any fees, charges and/or fines provided for in the City Municipal Code or any other City ordinance, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from Franchisee.

5.6.8 Itemized Invoice. Upon request and as a condition of payment by the Franchisee of Direct Costs payable by Franchisee under this Franchise, City shall submit an itemized billing so as to specifically identify the Direct Costs incurred by the City for each project for which the City claims reimbursement.

5.6.9 Time for Payment. All non-contested amounts owing shall be due and paid within sixty (60) days of receipt of invoice, or itemized invoice if requested; provided that, in the event that an itemized invoice is not provided at the time of receipt of invoice and the City receives a request from Franchisee for an itemized invoice within 30 days of receipt of invoice, such amounts shall be due and paid within sixty (60) days of receipt of the itemized invoice.

5.6.10 Overdue Payments. Any amounts payable under this Franchise by Franchisee which shall not be paid upon the due date thereof, shall bear interest at the lower of (x) the maximum interest rate allowed by law, and (y) a rate of twelve (12%) percent per annum.

5.6.11 Contesting charges. Franchisee may contest all or parts of amounts owed within sixty (60) days of receipt of any invoice. The City will investigate Franchisee's contest and will make appropriate adjustments to the invoice, if necessary, and resubmit the invoice to Franchisee. Franchisee shall pay any amounts owing as itemized in the resubmitted invoice which amounts shall be due within thirty (30) days of receipt of the resubmitted invoice. However, Franchisee does not waive its rights to further dispute resolution processes pursuant to Section 6.1 of this Franchise. Submittal of a dispute over amounts owing pursuant to Section 6.1 does not relieve the Franchisee of its obligation to pay amounts due under the resubmitted invoice.

5.6.12 Receivables. Either Party hereto may assign any monetary receivables due them under this Franchise upon notice to the other; provided, however, (i) such transfer shall not relieve the assignor of any of its rights or obligations under this Franchise, and (ii) Franchisee shall have no such notice obligation with respect to any receivables other than those owed by the City.

ARTICLE 6. ENFORCEMENT AND REMEDIES.

6.1 Communication and Discussion. The Parties are fully committed to working with each other throughout the term of this Franchise and agree to communicate regularly with each other at all times so as to avoid or minimize Disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a Dispute. The Parties each commit to resolving a Dispute in an amicable, professional and expeditious manner.

The Parties further agree that in the event a Dispute arises, they will attempt to resolve any such Disputes through discussions between representatives of each Party. Each Party will exchange relevant information that will assist the Parties in resolving the Dispute.

6.2 Remedies. The Parties have the right to seek any and all remedies, in equity, at law or in contract. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Franchise shall be deemed to bar either Party from seeking appropriate judicial relief.

Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either Party to recover monetary damages, as allowed under applicable Law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or to commence an action for equitable or other relief, and/or proceed against the other Party and any guarantor for all direct monetary damages, costs and expenses arising from the Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law.

6.3 Right to Cure Default.

6.3.1 Notice. If a Party believes that the other Party is in default, such Party shall give written notice to the Noticed Party stating with reasonable specificity the nature of the alleged default. The Noticed Party shall have thirty (30) days, or such greater time as specified in the notice or such lesser time as specified in the event that there is an imminent threat of harm to the public health, safety or welfare resulting from the default, from the receipt of such notice to:

6.3.1.1 Respond to the other Party, contesting that Party's assertion that a Default has occurred; or

6.3.1.2 Cure the default; or

6.3.1.3 Notify the other Party that the Noticed Party cannot cure the default within the time provided in the notice, because of the nature of the Default. In the event the Default cannot be cured within the time provided in the notice, the Noticed Party shall promptly take all reasonable steps to begin to cure the Default and notify the other Party in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the other Party may set a meeting to determine whether additional time beyond the time provided in the notice is indeed needed, and whether the Noticed Party's proposed completion schedule and steps are reasonable.

6.3.2 Time to Cure. When specifying the time period for cure, the Party giving notice shall take into account, the nature and scope of the alleged Default, the nature and scope of the work required to cure the Default, whether the Default has created or will allow to continue an unsafe condition, the extent to which delay in implementing a cure will result in adverse financial consequences or other harm to the Party giving notice, and whether delay in implementing a cure will result in a violation of Law or Default of contract.

6.3.3 Failure to Cure. If the Noticed Party fails to promptly commence and diligently pursue cure of a Default to completion to the reasonable satisfaction of the Party giving notice and in accordance with the agreed upon time line or the time provided for in the Notice of Default, then the parties may pursue any remedies available to them.

6.4 Termination/Revocation. In addition to the remedies available to the City as provided at Law, in equity or in this Franchise, upon a Default without cure, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in accordance with the following:

6.4.1 Notice. Prior to termination of the Franchise, the City shall give written notice to the Franchisee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the Default. If Franchisee objects to such termination, Franchisee shall object in writing and state its reasons for such objection and provide any explanation.

6.4.2 Hearing. The City may then seek a termination/revocation of the Franchise in accordance with this Subsection.

6.4.2.1 The City Council, or its designee, shall conduct a public hearing to determine if termination/revocation of the Franchise is warranted.

6.4.2.2 At least fourteen (14) days prior to the public hearing, the City shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the Hearing Body/Officer shall hear any Persons interested therein; and provide that the Franchisee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses. The public hearing notice shall be provided to Franchisee in accordance with Section 8.13 hereof and public notice of the hearing shall be provided in the same manner as notice is provided for regular meetings of the City Council.

6.4.2.3 Within sixty (60) days after the close of the hearing, the City Council shall issue a written decision regarding the termination/revocation of the Franchise. If the City Council has designated another hearing body/officer to conduct the public hearing, such hearing body/officer shall make a recommendation to the City Council within thirty (30) days following the close of the public hearing, and the City Council shall make a decision upon the recommendation of the Hearing Body/Officer after a closed record hearing and within sixty (60) days following receipt of the recommendation of the Hearing Body/Officer.

The decision of the City Council shall be final. The Parties recognize that a decision to terminate/revoke a Franchise is not a land use decision that is subject to appeal pursuant to the Land Use Petition Act (Chapter 36.70C RCW). Failure to render a decision within the required time period shall not be a basis for invalidation of the decision that is made. Any appeal to which the Franchisee may be entitled (e.g., constitutional or statutory writ of review) shall be filed within 30 calendar days of issuance of the final decision of the City Council.

6.4.3 Decision to Terminate. The City Council may consider one or more of the following when determining whether or not to terminate/revoke the Franchise based upon the material Default:

6.4.3.1 The history of repeated non-compliance by Franchisee with material terms and conditions of this Franchise;

6.4.3.2 Whether other remedies will achieve compliance with this Franchise;

6.4.3.3 Whether the Franchisee has acted in good faith;

6.4.3.4 Whether the acts or omissions that gave rise to the Default were willful or indifferent to the requirements that gave rise to the Default;

6.4.3.5 Whether the type of services provided by the Franchisee will be available to the general public through other providers;

6.4.3.6 Whether services provided by the Franchisee are essential public services or regulated utilities;

6.4.3.7 The impact or potential impact of the Default upon the public health, safety and welfare;

6.4.3.8 The economic risk the City is exposed to as a result of the Default;

6.4.3.9 Whether consent, permission, adjudication, an order or other authorization of a governmental agency or body, is required as a condition precedent to the City ordering the Franchisee to abandon or remove Facilities from the Public Rights-of-Way or to cease operations (temporarily or otherwise) of the Facilities.

6.4.3.10 Such other facts and circumstances that are relevant to the controversy that gave rise to the Default and/or to whether or not the continued presence and operation of the Franchisee Facilities with the Franchise Area will be harmful to the public health, safety or welfare.

6.5 Receivership. At the option of the City, subject to applicable law and lawful orders of courts of competent jurisdiction, this Franchise may be revoked after the

appointment of a receiver or trustee to take over and conduct the business of Franchisee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

6.5.1 The receivership or trusteeship is timely vacated; or

6.5.2 The receiver or trustee has timely and fully complied with all the terms and provisions of this Franchise, and has remedied all defaults under the Franchise. Additionally, the receiver or trustee shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver or trustee assumes and agrees to be bound by each and every term, provision and limitation of this Franchise.

ARTICLE 7. CONDITIONS UPON USE OF PUBLIC RIGHTS-OF-WAY.

7.1 Regulatory Permit. If Franchisee has submitted an application for a Regulatory Permit to perform work in the Public Rights-of-Way, the City shall, to the extent practicable, consider such application contemporaneously with the design review requirements hereunder.

7.2 Submission/Approval of Design Documents.

7.2.1 Submission. At the time of application for a Regulatory Permit, or in the event that Franchisee seeks to alter or change the location of Facilities in a Franchise Area, Franchisee shall submit its Design Documents to the City for review and approval in accordance with the City's plan review process.

7.2.2 Use of Public Rights-of-Way. Within parameters reasonably related to the City's role in protecting the public health, safety and welfare and except as may be otherwise preempted by Law, the City may require that Facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to the proposed Franchise Area and may deny access if Franchisee is not willing to comply with such requirements; and, may require removal of any Facility that is not installed in compliance with the Standards (defined in Section 7.3 below) or which is installed without prior City approval of the time, place, or manner of installation.

7.2.3 Approval of Plans. Work may not commence without prior approval by the City of the Design Documents submitted by the Franchisee, which approval will not be unreasonably withheld, conditioned or delayed. The City may review and approve the Franchisee's Design Documents with respect to:

7.2.3.1 Location/Alignment/Depth;

7.2.3.2 The manner in which the Facility is to be installed;

7.2.3.3 Measures to be taken to preserve safe and free flow of traffic;

7.2.3.4 Structural integrity, functionality, appearance, compatibility with and impact upon roadways, bridges, sidewalks, planting strips, signals, traffic control signs, intersections, or other facilities and structures in the Public Rights-of-Way;

7.2.3.5 Ease of future road maintenance, and appearance of the roadway;

7.2.3.6 Compliance with applicable Standards (as defined below) and codes; and

7.2.3.7 Compliance and compatibility with the City's comprehensive plan, six-year transportation plan, capital improvements plan, and regional transportation improvement plans.

7.3 Compliance with Standards/Codes. Except as may be preempted by federal or state Laws, all Facilities shall conform to and all Work shall be performed in compliance with the following "Standards" as now or may be hereafter revised, updated, amended or re-adopted:

7.3.1 Standards for Public Works Engineering and Construction. The most current edition of the City Standards for Public Works Engineering and Construction as adopted from time to time by the City. This document includes the City Design Standards Manual, Design Standards Detail, and appendixes, and the most recently City adopted edition of the Standard Specifications for Road, Bridge and Municipal Construction as prepared by the Washington State Department of Transportation ("WSDOT") and the Washington State Chapter of American Public Works Association ("APWA");

7.3.2 MUTCD. The Washington State Department of Transportation Manual of Uniform Traffic Control Devices ("MUTCD");

7.3.3 Special Conditions. Requirements and standards set forth as additional conditions in a Regulatory Permit.

7.3.4 City Regulations. City ordinances, codes, and regulations establishing standards for placement of Facilities in Public Rights-of-Way, including by way of example and not limitation, the specific location of Facilities in the Public Rights-of-Way.

7.3.5 Other Regulatory Requirements. Applicable requirements of federal or state governmental authorities that have regulatory authority over the placement, construction, or design of Franchisee Facilities;

7.3.6 Industry Standards. All Facilities shall be durable and Constructed in accordance with good engineering practices and standards promulgated by the government

and industry for placement, Construction, design, type of materials and operation of Franchisee Facilities;

7.3.7 Safety Codes and Regulations. Franchisee Facilities and Work shall comply with all applicable federal, State and City safety requirements, rules, regulations, Laws and practices. By way of illustration and not limitation, Franchisee shall comply with the National Electrical Safety Code and the Occupational Safety and Health Administration (OSHA) Standards; and

7.3.8 Building Codes. Franchisee Facilities and Work shall comply with all applicable City Building Codes.

7.4 Conditions Precedent to Work. Except as may be otherwise required by applicable City code, rule, regulation or Standard, Franchisee shall comply with the following as a condition precedent to Work:

7.4.1 Regulatory Permits Required. Except in the event of an Emergency, prior to performing any Work in the Public Right-of-Way requiring a Regulatory Permit, Franchisee shall apply for, and obtain, in advance, such appropriate Regulatory Permits from the City as are required by ordinance or rule. Franchisee shall pay all generally applicable and lawful fees for the requisite City Regulatory Permits.

7.4.2 Compliance with Franchise. Franchisee shall be in material compliance with the Franchise.

7.5 Work in the Public Rights-of-Way.

7.5.1 Least Interference. Work in the Public Rights-of-Way shall be done in a manner that does not unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property and which causes the least interference with the rights and reasonable convenience of property owners, businesses and residents along the Public Rights-of-Way. Franchisee Facilities shall be designed, located, aligned and Constructed so as not to disturb or impair the use or operation of any street improvements, utilities, and related facilities of City or City's existing lessees, licensees, permittees, franchisees, easement beneficiaries or lien holders, without prior written consent of City or the Parties whose improvements are interfered with and whose consent is required pursuant to agreements with the City existing prior to the Effective Date.

7.5.2 Work Subject to Inspection. The City may observe or inspect the Construction Work, or any portion thereof, at any time to ensure compliance with applicable Regulatory Permits, this Franchise, applicable Law, the applicable approved Design Documents, the Standards, and to ensure the Work is not being performed in an unsafe or dangerous manner.

7.5.4 Notice to the Public. Except in the case of an Emergency, City retains the right to require the Franchisee to notify the public prior to commencing any

significant planned Construction that Franchisee reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

7.5.5 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors performing Work in the Franchise Area shall be licensed and bonded in accordance with the City's and State's applicable regulations and requirements. Any contractors or subcontractors performing Work within the Public Rights-of-Way on behalf of the Franchisee shall be deemed servants and agents of the Franchisee for the purposes of this Franchise and are subject to the same restrictions, limitations and conditions as if the Work were performed by Franchisee. Franchisee shall be responsible for all Work performed by its contractors and subcontractors and others performing Work on its behalf as if the Work were performed by it, and shall ensure that all such Work is performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractors or other Persons performing Work on Franchisee's behalf are familiar with the requirements of this Franchise and other applicable Laws governing the Work performed by them.

7.5.6 Emergency Permits. In the event that Emergency repairs are necessary, Franchisee shall perform such Work, provide such notices, and obtain Regulatory Permits in conformance with applicable Standards.

7.5.7 Stop Work. On notice from the City that any Work does not comply with the Franchise, the approved Design Documents for the Work, the Standards, or other applicable Law, or is being performed in an unsafe or dangerous manner as reasonably determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be in writing, given to the Person doing the Work and be posted on the Work site, indicate the nature of the alleged violation or unsafe condition; and establish conditions under which Work may be resumed. If so ordered, Franchisee shall cease and shall cause its contractors and subcontractors to cease such activity until the City is reasonably satisfied that Franchisee is in compliance. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable Law, may order Franchisee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes in its reasonable discretion. The City has the right to inspect, repair and correct the unsafe condition if Franchisee fails to do so, and to reasonably charge Franchisee for the costs incurred to perform such inspection, repair or correction. Payment by Franchisee will be made in accordance with Section 5.6.9. The authority and remedy set forth herein in this section is in addition to, and not a substitute for, any authority the City may otherwise have to take enforcement action for violation of City Codes or Standards.

7.5.8 Discovery of Hazardous Substances/Indemnity. In the event that the Work of the Franchisee in, on, and upon the Franchise Area results in the discovery of the presence of Hazardous Substances ("**Discovered Matters**") in, on or upon the areas excavated or otherwise opened or exposed by Franchisee within the Franchise Area (the

“**Excavated Areas**”), the Franchisee shall immediately notify the City and, take whatever other reporting action is required by applicable Environmental Law as it relates to the Discovered Matters in the Excavated Areas.

In the event the Franchisee’s Work, in, on or upon the Franchise Area within the Excavated Areas results in a release (as determined under applicable Environmental Laws) of Hazardous Substances which were, before such activities, confined to areas within the Excavated Areas, but which after such activities by Franchisee are released beyond the Excavated Areas, and if the release is caused in whole or in part by the Franchisee, then the Franchisee shall indemnify, defend and hold the City harmless from the costs of all necessary Remedial Actions which are required under the applicable Environmental Laws, to the extent of Franchisee’s share of the liability for the release. Franchisee’s liability for the release may, inter alia, be determined by a final non-appealable decision by a court of competent jurisdiction, or as provided in a final non-appealable administrative order issued by the Environmental Authority, or by a consent decree entered by Franchisee and the Environmental Authority.

7.6 Alterations. Except as may be shown in the Design Documents or Regulatory Permits approved by the City or the record drawings, or as may be necessary to respond to an Emergency, Franchisee, and Franchisee’s contractors and subcontractors, may not make any material alterations to the Franchise Area, or permanently affix anything to the Franchise Area, without the City’s prior written consent. Material alteration shall include by way of example and not limitation, a change in the dimension or height of the above ground Facilities. If Franchisee desires to change either the location of any Facilities or otherwise materially deviates from the approved design of any of the Facilities, Franchisee shall submit such change to the City in writing for its approval pursuant to Section 7.2 of this Franchise. Franchisee shall have no right to commence any such alteration change until after Franchisee has received the City’s approval of such change in writing.

7.7 General Conditions.

7.7.1 Right-of-Way Meetings. Subject to receiving advance notice, Franchisee will make reasonable efforts to attend and participate in meetings of the City regarding Right-of-Way issues that may impact the Telecommunications System.

7.7.2 Compliance Inspection. Franchisee’s Facilities shall be subject to the City’s right of periodic inspection upon at least seventy-two (72) hours’ notice, or, in case of an emergency, upon demand without prior notice, to determine compliance with the provisions of this Franchise or other applicable Law over which the City has jurisdiction. Franchisee shall respond to reasonable requests for information regarding its Telecommunications System as the City may from time to time issue in writing to determine compliance with this Franchise, including requests for information regarding the Franchisee’s plans for Construction and the purposes for which the Facility is being Constructed.

7.7.3 One Call. If Franchisee places Facilities underground, Franchisee shall, at its own expense, continuously be a member of the State of Washington one number locator service under Chapter 19.122 RCW, or an approved equivalent, and shall comply with all such applicable rules and regulations. The Franchisee shall locate and field mark its Facilities for the City at no charge.

7.7.4 Graffiti Removal. Within 5 business days after notice from the City, Franchisee shall remove any graffiti on any part of its Telecommunications System, including, by way of example and not limitation, equipment cabinets. If either the Franchisee fails to do so within 5 business days or in the City's discretion and subject to advance communication with the Franchisee, the City may remove the graffiti and bill the Franchisee for the reasonable cost thereof.

7.7.5 Dangerous Conditions, Authority for City to Abate. Whenever Construction of Facilities has caused or contributed to a condition that in the reasonable opinion of the City Engineer, substantially impairs the lateral support of the adjoining Public Right-of-Way, street, or public place, or endangers the public, any utilities, or City-owned property, the City may reasonably require the Franchisee to take action to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities. Such action may include compliance within a prescribed time. In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if Emergency conditions exist which require immediate action, the City may, to the extent it may lawfully do so, take such actions as are necessary to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the reasonable costs thereof to the extent Franchisee is determined to be the proximate cause of such condition.

7.7.6 No Duty. Notwithstanding the right of the City to inspect the Work, issue a stop work order, and order or make repairs or alterations, the City has no duty or obligation to observe or inspect, or to halt Work on, the applicable Facilities, it being solely Franchisee's responsibility to ensure that the Facilities are Constructed and operated in strict accordance with this Franchise, the approved Design Documents, the Standards, and applicable Law. Neither the exercise nor the failure by the City to exercise any right set forth in this Article 7 shall alter the liability allocation set forth in this Franchise.

7.7.7 Roadside Hazard. All of Franchisee's Facilities shall be kept by Franchisee at all times in a safe and hazard-free condition. Franchisee shall ensure that Facilities within the Public Rights-of-Way do not become or constitute an unacceptable roadside obstacle and do not interfere with or create a hazard to maintenance of and along the Public Rights-of-Way. In such event, the Franchisee shall take corrective action. In the event that the City determines that a Facility within the Public Rights-of-Way has become or constitutes an unacceptable roadside obstacle or may interfere with or create a hazard to maintenance of and along the Public Rights-of-Way, following written notice explaining with reasonable specificity the nature of any such matter and a reasonable

opportunity to cure of not less than thirty (30) days, the Franchisee shall take corrective action; provided that, nothing herein shall relieve the Franchisee from keeping its Facilities at all times in safe and hazard-free condition.

Franchisee, at all times, shall employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to Franchisee's agents or employees. Franchisee, at its own expense, shall repair, renew, change, and improve its Facilities from time to time as may be necessary to accomplish this purpose. Franchisee shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such Work in or affecting such Public Rights-of-Way or property. All excavations made by Franchisee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents.

7.7.8 Verification of Alignment/Depth. Upon the reasonable request and prior written notice, in non-Emergency situations at least thirty (30) days' notice by the City and in order to facilitate the location, alignment and design of Public Improvements (defined below), the Franchisee agrees to locate, and if reasonably determined necessary by the City, to excavate and expose portions of its Facilities for inspection so that the location of same may be taken into account in the Public Improvement design; PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless the Franchisee's record drawings and maps of its Facilities submitted pursuant to Section 7.11 of this Franchise are reasonably determined by the City to be inadequate for purposes of this paragraph.

7.8 Facility Relocation at Request of the City.

7.8.1 Public Improvement. The City may require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way when reasonably necessary for construction, alteration, repair, or improvement of any portion of the Public Rights-of-Way for purposes of public welfare, health, or safety ("Public Improvements"). Such Public Improvements include, by way of example but not limitation, Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, communication lines, or any other type of government-owned communications, utility or public transportation systems, public work, public facility, or improvement of any government-owned utility; Public Rights-of-Way vacation, and the Construction of any public improvement or structure by any governmental agency acting in a governmental capacity for the public benefit.

7.8.2 Alternatives. If the City requires Franchisee to relocate its Facilities, the City shall make a reasonable effort to provide Franchisee with an alternate location within the Public Right-of-Way. The Franchisee may, after receipt of written notice

requesting a relocation of its Facilities, propose design alternatives that would mitigate or lessen the impact upon Franchisee's Facilities. The City shall provide a full and fair evaluation of such proposed design alternatives that, in the reasonable judgment of the City, would not impair, interfere with, or materially alter the scope, purpose or functioning of the Public Improvement and would not increase the anticipated public costs of the Public Improvement. If so requested by the City, Franchisee shall submit additional information to assist the City in making such evaluation. In the event that the City reasonably determines that it does not have available resources within the existing Public Improvement budget to fully and fairly evaluate Franchisee's proposal, the City shall not be obligated to further consider such proposal unless and until the Franchisee funds the additional costs to the City to complete its evaluation.

7.8.3 Notice. The City shall notify Franchisee in writing as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of Emergency such notice shall be no less than one hundred and eighty (180) days. In calculating the date that relocation must be completed, City shall consult with Franchisee and consider the extent of Facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the date specified, unless the City, or a reviewing court, establishes a later date for completion, after a showing by the Franchisee that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

7.8.4 Coordination of Work. Franchisee acknowledges and understands that any delay by Franchisee in performing the Work to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way may delay, hinder, or interfere with the work performed by the City and its contractors and subcontractors in furtherance of construction, alteration, repair, or improvement of the Public Improvement, and result in damage to the City and/or its contractors, including but not limited to, delay and disruption claims. Franchisee shall cooperate with the City and its contractors and subcontractors to coordinate such Franchisee Work to accommodate the Public Improvement project and project schedules to avoid delay, hindrance, or disruption of such project.

7.8.5 Assignment of Rights. In addition to any other rights of assignment the City may have, the City may from time to time assign or transfer to its contractors or subcontractors its rights under Section 7.10 of this Franchise.

7.8.6 Reimbursement for Costs. Notwithstanding the cost allocation provisions set forth in this Franchise, Franchisee does not waive its right(s) to and shall be entitled to seek reimbursement of its relocation costs as may be otherwise specifically set forth and authorized by Law, including in statute. Further, if the City reimburses or pays the relocation costs of a similarly situated franchisee for a given Public Improvement project, the City shall reimburse or pay Franchisee's relocation costs on the same basis

7.9 Movement of Facilities for Others.

7.9.1 Private Benefit. If any alteration, adjustment, temporary relocation, or protection in place of the Telecommunications System is required solely to accommodate the Construction of facilities or equipment that are not part of a Public Improvement project, Franchisee shall, after at least one hundred eighty (180) days advance written notice, take action to effect the necessary changes requested by the responsible Person; provided that, (a) the Person requesting the same pays for the Franchisee's time, design, engineering and material costs associated with the requested work; (b) the alteration, adjustment, relocation or protection in place is reasonably necessary to accommodate such work; (c) Franchisee's services are not interrupted; and (d) such alteration, adjustment, or relocation is not requested for the purpose of obtaining a competitive advantage over the Franchisee.

7.9.2 Temporary Changes for Other Franchisees. At the request of any Person holding a valid permit and upon reasonable advance notice, Franchisee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder. Franchisee shall be given not less than thirty (30) days' advance notice to arrange for such temporary wire changes.

7.10 Movement of Facilities During Emergencies.

7.10.1 Immediate Threat. In the event of an unforeseen event, condition or circumstance that creates an immediate threat to the public safety, health, or welfare, the City shall have the right to require Franchisee to shut down, relocate, remove, replace, modify, or temporarily disconnect Franchisee's Facilities located in the Public Rights-of-Way at the expense of the Franchisee without regard to the cause or causes of the immediate threat.

7.10.2 Emergency. In the event of an Emergency, or where a Facility creates or is contributing to an imminent danger to health, safety, or property, the City retains the right and privilege to protect, support, temporarily disconnect, remove, or relocate any or all parts of the Telecommunications System located within the Public Rights-of-Way, as the City may determine to be reasonably necessary, appropriate or useful in response to any public health or safety Emergency and charge the Franchisee for costs incurred.

7.10.3 Notice. During Emergencies the City shall endeavor to, as soon as practicable, provide notice to Franchisee of such Emergency at a designated Emergency response contact number, to allow Franchisee the opportunity to respond and rectify the problem without disrupting Telecommunications Service. If after providing notice, there is no immediate response, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Telecommunications System located within the Public Rights-of-Way in accordance with this Section 7.10.

7.10.4 Limitation on Liability. The City shall not be liable for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

7.11 Record of Installations.

7.11.1 Map/Record Drawing of Telecommunications System. Upon request by the City, Franchisee shall search for and provide the City with the most accurate and available maps and record drawings in a form and content reasonably prescribed by the City reflecting the horizontal and vertical location and configuration of its Telecommunications System within the Public Rights-of-Way and upon City property in a format reasonably acceptable to the City. Franchisee shall provide the City with updated record drawings and maps within a reasonable period of time following receipt of written request. As to any such record drawings and maps so provided, Franchisee does not warrant the accuracy thereof and to the extent the location of the Telecommunications System is shown, such Telecommunications System is shown in its approximate location.

7.11.2 Maps/Record Drawings of Improvements. After Construction involving the locating or relocating of Facilities, the Franchisee shall provide the City with accurate copies of all record drawings and maps showing the horizontal and vertical location and configuration of all located or relocated Facilities within the Public Rights-of-Way. These record-drawings and maps shall be provided at no cost to the City, and shall include hard copies and digital copies in a format reasonably specified by the City. As to any such record drawings and maps so provided, Franchisee does not warrant the accuracy thereof and to the extent the location of the Telecommunications System is shown, such Telecommunications System is shown in its approximate location.

7.12 Restoration of Public Rights-of-Way, Public and Private Property.

7.12.1 Restoration after Construction. Franchisee shall, after completion of Construction of any part of its Telecommunications System, leave the Public Rights-of-Way and other property disturbed thereby, in as good or better condition in all respects as it was in before the commencement of such Construction. Franchisee agrees to promptly complete restoration work to the reasonable satisfaction of the City and in conformance with City Standards, including by way of example and not limitation, backfilling and restoration requirements as set forth in City Standards.

7.12.2 Notice. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-of-Way or other public or private property, the Franchisee shall promptly notify the property owner within twenty-four (24) hours.

7.12.3 Duty to Restore. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-of-Way or other public property, it shall promptly remove any obstructions therefrom and restore such Public Rights-of-Way and public property to the reasonable satisfaction of the City and in accordance with City Standards.

7.12.4 Temporary Restoration. If weather or other conditions do not allow the complete restoration required by this Section, Franchisee shall temporarily restore the

affected Public Right-of-Way or public property. Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

7.12.5 Survey Monuments. All survey monuments which are disturbed or displaced by any Work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications.

7.12.6 Approval. The City Engineer, or designee, shall be responsible for observation and final approval of the condition of the Public Rights-of-Way and City property following any restoration activities therein. Franchisee is responsible for all testing and monitoring of restoration activities.

7.12.7 Warranty. Franchisee shall warrant any restoration work performed by Franchisee in the Public Rights-of-Way or on other public property for two (2) years, unless a longer period is required by applicable City Standards. If restoration is not satisfactorily and timely performed by the Franchisee, the City may, after prior notice to the Franchisee, or without notice where the disturbance or damage may create an imminent risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from the Franchisee. Franchisee shall pay the City for such costs in accordance with Section 5.6.9.

7.12.8 Restoration of Private Property. When Franchisee does any Work in the Public Rights-of-Way that affects, disturbs, alters, or damages any adjacent private property, it shall, at its own expense, be responsible for restoring such private property to the reasonable satisfaction of the private property owner.

7.13 Approvals. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Franchisee's Design Documents or to ascertain whether Franchisee's proposed or actual Construction is adequate or sufficient or in conformance with the Design Documents reviewed and approved by the City. No approval given, inspection made, review or supervision performed by the City pursuant to or under authority of this Franchise shall constitute or be construed as a representation or warranty express or implied by the City that such item reviewed, approved, inspected, or supervised, complies with applicable Laws or this Franchise or meets any particular Standard, code or requirement, or is in conformance with the approved Design Documents, and no liability shall attach with respect thereto. City approvals and inspections as provided herein, are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or Construction of the Facilities or Telecommunications System, suitability of the Franchise Area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a governmental entity. The City is under no obligation or duty to supervise the design, Construction, or operation of the Telecommunications System.

7.14 Abandonment of Facilities. Except as may be otherwise provided by Law, Franchisee may abandon in place any Facilities in the Public Rights-of-Way upon written notice to the City, which notice shall include a description of the Facilities it intends to abandon, the specific location in the Public Rights-of-Way of such Facilities, and the condition of such Facilities. However, if the City determines within 180 days of the receipt of notice of abandonment from the Franchisee, that the safety, appearance, functioning, or use of the Public Rights-of-Way and other facilities in the Public Rights-of-Way, including without limitation, utilities and related facilities, will be adversely affected, the operator must remove its abandoned Facilities by a date specified by the City and restore the Public Rights-of-Way in accordance with City Standards. Franchisee shall be and remain responsible in perpetuity for any Facilities abandoned in the Public Rights-of-Way.

ARTICLE 8. MISCELLANEOUS.

8.1 Headings. Titles to articles and sections of this Franchise are not a part of this Franchise and shall have no effect upon the construction or interpretation of any part hereof.

8.2. Entire Agreement. This Franchise contains all covenants and agreements between the City and the Franchisee relating in any manner to the Franchise, use, and occupancy of the Public Rights-of-Way and other matters set forth in this Franchise. No prior agreements or understanding pertaining to the same, written or oral, shall be valid or of any force or effect and the covenants and agreement of this Franchise shall not be altered, modified, or added to except in writing signed by the City and Franchisee and approved by the City in the same manner as the original Franchise was approved.

8.3 Incorporation of Exhibits. All exhibits annexed hereto at the time of execution of this Franchise or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

8.4 Calculation of Time. Except where a period of time refers to “business days,” all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington; provided that, the Effective Date shall be determined as provided at Section 4.3 of this Franchise.

8.5 Time Limits Strictly Construed. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a Default of this Franchise.

8.6 No Joint Venture. It is not intended by this Franchise to, and nothing contained in this Franchise shall, create any partnership, joint venture, or principal-agent

relationship or other arrangement between Franchisee and the City. 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. The Parties intend that the rights, obligations, and covenants in this Franchise and the collateral instruments shall be exclusively enforceable by the City and Franchisee, their successors, and assigns. No term or provision of this Franchise is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, the Franchisee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. Nothing in this Section 8.6 shall be construed to prevent an assignment as provided for at Sections 2.8 or 7.8.5 of this Franchise.

8.7 Approval Authority. Except as may be otherwise provided by Law or herein, any approval or authorization required to be given by the City, shall be given by the Public Works Director (or its successor), or by the Public Works Director's designee.

8.8 Binding Effect upon Successors and Assigns. All of the provisions, conditions, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, receivers, trustees, legal representatives, transferees and assigns of the Franchisee; and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

8.9 Waiver. No failure by either Party to insist upon the performance of any of the terms of this Franchise or to exercise any right or remedy consequent upon a Default thereof, shall constitute a waiver of any such Default or of any of the terms of this Franchise. None of the terms of this Franchise to be kept, observed or performed by either Party, and no Default thereof, shall be waived, altered or modified except by a written instrument executed by the injured Party. No waiver of any Default shall affect or alter this Franchise, but each of the terms of this Franchise shall continue in full force and effect with respect to any other then existing or subsequent Default thereof. No waiver of any default of the defaulting Party hereunder shall be implied from any omission by the injured Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the injured Party shall not be construed as a waiver of a subsequent Default of the same covenant, term or conditions.

8.10 Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence set forth herein, or its application to any person or circumstance (collectively referred to as "Term"), shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, such Term declared illegal, invalid or unconstitutional shall be severable and the remaining Terms of the Franchise shall remain in full force and effect unless to do so would be inequitable or would result in a material change in the rights and obligations of the Parties hereunder.

8.11 Signs. No signs or advertising shall be permitted in the Franchise Area except as may be required by Law or as may be required by the City for the protection of the public health, safety and welfare, to the extent it has authority to do so.

8.12 Discriminatory Practices Prohibited. Throughout the term of this Franchise, Franchisee shall fully comply with all equal employment and nondiscrimination provisions of applicable Law.

8.13 Notice. Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective either, (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) or when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, properly sealed and addressed as follows:

Franchisee's address: Astound Broadband, LLC
401 Kirkland Parkplace
Suite 500
Kirkland, WA 98033
Attention: Steve Weed, CEO, and Jim Penney, EVP

The City's Address: City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075
Attention: Director of Administrative Services

And to the City Attorney Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027
Attention: Michael R. Kenyon

The City and Franchisee may designate such other address from time to time by giving written notice to the other, but notice cannot be required to more than two addresses, except by mutual agreement.

8.14 Survival of Terms. Upon the expiration, termination, revocation or forfeiture of the Franchise, the Franchisee shall no longer have the right to occupy the Franchise Area for the purpose of providing services authorized herein. However, the Franchisee's obligations under this Franchise to the City shall survive the expiration, termination, revocation or forfeiture of these rights according to its terms for so long as the Franchisee's Telecommunications System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, or until such time as the Franchisee transfers ownership

of all Facilities in the Franchise Area to the City or a third-Party, or until such time as the Franchisee abandons said Facilities in place, all as provided herein. Said obligations include, by way of illustration and not limitation, Franchisee's obligations to indemnify, defend, and protect the City, to provide insurance, to relocate its Facilities, and to reimburse the City for its costs to perform Franchisee's Work.

8.15 Force Majeure. In the event Franchisee is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, severe weather conditions, employee strikes and unforeseen labor conditions not attributable to Franchisee's employees, Franchisee shall not be deemed in Default of provisions of this Franchise.

If Franchisee believes that circumstances beyond its control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Franchise, Franchisee shall provide documentation as reasonably required by the City to substantiate the Franchisee's claim. Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is reasonably satisfactory to the City; provided that, the Franchisee shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible, provided that the Franchisee takes prompt and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

8.16 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, whether in contract or in tort or both, is instituted to enforce any word, article, section, subsection, paragraph, provision, condition, clause or sentence of this Franchise or its application to any person or circumstance, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys, paralegals, accountants, and other experts fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as allowed by Washington law and as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by Law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law. This provision shall not apply to the extent that the suit, action, arbitration or other proceeding is brought to interpret any term, condition, provision, section, article or clause of this Franchise.

8.17 Venue/Choice of Law. This Franchise shall be governed by, and construed in accordance with, the laws of the State of Washington. Any action brought relative to enforcement of this Franchise, or seeking a declaration of rights, duties or obligations herein, shall be initiated in the Superior Court of the County in which the City is located,

and shall not be removed to a federal court, except as to claims over which such Superior Court has no jurisdiction. Removal to federal court shall be to the Federal Court of the Western District of Washington.

8.18 Publication. This ordinance, or a summary thereof, shall be published in the official newspaper of the City, the expense of which shall be borne by Franchisee, and shall take effect and be in full force in accordance with Section 4.3 herein.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE ____ DAY OF _____, 20____, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS ____ DAY OF _____, 20____.

CITY OF SAMMAMISH

Thomas E Vance, Mayor

ATTEST/AUTHENTICATED:

Melonie Anderson, City Clerk

Approved as to form:

Michael R Kenyon, City Attorney

Filed with the City Clerk: April 30, 2015
First Reading: May 5, 2015
Passed by the City Council:
Date of Publication:
Effective Date:

EXHIBIT "A"

(Acceptance of Franchise)

Franchise issued pursuant to Ordinance No. _____.

I, _____, am the _____, and am the authorized representative to accept the above-referenced Franchise on behalf of _____. In my capacity as _____, and not individually, I certify that this Franchise and all terms and conditions thereof are accepted by _____, without qualification or reservation and that _____ unconditionally guarantee(s) performance of all such terms and conditions.

DATED this ____ day of _____, 20__.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____ |
CITY OF _____ | ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it (as the _____ of _____, a _____ corporation,) to be the free and voluntary act of such corporation/individual for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, _____.

(Signature of Notary)

Print Name
Notary public in and for the state of _____, residing at _____
My appointment expires _____

EXHIBIT “B”

(Form of Transfer Agreement)

THIS TRANSFER AGREEMENT (“Agreement”) is made this ___ day of _____, 20___, by and between:

1. PARTIES.

1.1 City of Sammamish, a legal subdivision of the state of Washington (“City”).

1.2 _____ (“Franchisee”).

1.3 _____ (“Transferee”).

RECITALS

WHEREAS the City has issued a single Franchise (the “Franchise”) to Franchisee, which was authorized on the ___ day of _____, 20___, pursuant to Ordinance No. _____, and

WHEREAS Franchisee has reached an agreement with Transferee on a *(describe transaction, example: conveyance of benefited property)*

_____ with Transferee, to *(example: acquire from Franchisee its facilities and equipment located in the Public Rights-of-Way)* _____, and

WHEREAS Franchisee and Transferee have requested that the City approve a transfer of the Franchise from Franchisee to Transferee, and

WHEREAS, as a result of the transfer of the Franchise, Transferee will assume all rights, duties, and obligations that Franchisee has under the Franchise, will be responsible for full compliance with the Franchise, and will meet or exceed all applicable and lawful federal, state, and local requirements, and

WHEREAS, relying on the representations made by the Transferee and Franchisee, the City, on the ___ day of _____, 20___, has, pursuant to Resolution No. _____ and the Franchise, approved the transfer upon the terms and conditions as stated herein;

NOW, THEREFORE, in consideration of the City's approval of the transfer, subject to the terms and conditions of this Agreement, THE PARTIES DO HEREBY AGREE as follows:

2. TRANSFER. Transfer of the Franchise shall be effective upon the following conditions precedent:

2.1 Receipt by the City of the fully executed acceptance of Franchise attached hereto as Exhibit B-1 together with all required certificates of insurance, security fund and performance bond;

2.2 Payment to the City of the Transfer fees; and

2.3 The date of closing of the sale/conveyance of the property benefited by this Franchise and/or the Facilities located in the Franchise Area or upon a date as mutually agreed to by the City, Franchisee and Transferee as follows:_____

3. ACCEPTANCE OF FRANCHISE OBLIGATIONS.

3.1 The Franchisee and Transferee hereby accept, acknowledge, and agree that neither the proposed transaction between Franchisee and Transferee nor the City's approval of this Agreement shall diminish or affect the existing and continuing commitments, duties, or obligations, present, continuing, and future, of the Franchisee and Transferee embodied in the Franchise.

3.2 Transferee and Franchisee agree that neither the transfer nor the City's approval of this Agreement and the resulting transfer shall in any respect relieve Franchisee, or any of its successors in interest, of any obligation or liability arising from acts or omissions occurring prior to the transfer of the Franchise, whether known or unknown, or the consequences thereof.

3.3 The transfer is not intended and shall not be construed to authorize the Franchisee to take any position or exercise any right that could not have been exercised prior to the Transfer.

3.4 Notwithstanding anything to the contrary herein, Transferee shall not be responsible for any of Franchisee's financial liabilities and obligations under the Franchise or pursuant to the City code, rules, and regulations that accrued before the Transfer of the Franchise, and Franchisee shall not be responsible for any financial liabilities and obligations under the Franchise or pursuant to the City code, rules, and regulations that accrue on or after the Transfer of the Franchise.

3.5 The City waives none of its rights with respect to the Franchisee's or Transferee's compliance with the terms, conditions, requirements, and obligations set forth in the Franchise. The City's approval of this Agreement shall in no way be deemed a

representation by the City that Franchisee is in compliance with all of Franchisee's obligations under the Franchise.

3.6 Franchisee and Transferee acknowledge and agree that the City's approval and acceptance of this Agreement and the resulting transfer is made in reliance upon the representations, documents, and information provided by the Franchisee and Transferee in connection with the request for Transfer.

4. MISCELLANEOUS PROVISIONS.

4.1 Conditions Precedent. The Agreement shall be effective and binding upon the signatories once it has been signed by all signatories; provided that, within 30 days of execution of the Agreement by all of the signatories, Transferee has provided to the City the following: (1) all fees required for this Transfer, (2) its acceptance of the Franchise in substantially the form of the document attached hereto as Exhibit B-1; (3) its insurance certificate in conformance with the requirements of the Franchise; (4) a performance bond or cash deposit in conformance with the requirements of the Franchise.

4.2 Entire Agreement. The Agreement constitutes the entire agreement of the Parties with respect to the matters addressed herein. No statements, promises, or inducements inconsistent with the Agreement made by any Party shall be valid or binding, unless in writing and executed by all Parties.

4.3 Binding Acceptance. The Agreement shall bind and benefit the Parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors, and assigns, and the promises and obligations herein shall survive the expiration date hereof. Any purported transfer of the Agreement is void without the express written consent of the signatories.

4.4 Severability. In the event that any provision of the Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

4.5 Defined Terms. Terms not defined in this Agreement shall have the same meaning as given in the Franchise.

4.6 Governing Law. The Agreement shall be governed in all respects by the laws of the state of Washington.

4.7 Notice. Pursuant to Section 8.13 of the Franchise, Notices to Transferee shall be delivered to:

Transferee's address: **
 **
 **
 **

And to:

**
**
**
**

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first written above.

CITY:

FRANCHISEE:

By: City Manager

By: _____
Title: _____

TRANSFeree:

By: _____
Title: _____

Tax Id. No. _____

TRANSFER EXHIBIT B-1

Acceptance of Franchise

Franchise issued pursuant to Ordinance No. _____ and accepted _____, 20____; Transfer authorized pursuant to Resolution No. _____, effective _____, 20____.

I, _____, am the _____, and am the authorized representative to accept the above-referenced Franchise on behalf of _____. In my capacity as _____, and not individually, I certify that this Franchise and all terms and conditions thereof are accepted by _____, without qualification or reservation and that _____ unconditionally guarantee(s) performance of all such terms and conditions.

DATED this _____ day of _____, 20____.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____ |
CITY OF _____ | ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it (as the _____ of _____, a _____ corporation,) to be the free and voluntary act of such corporation/individual for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name
Notary public in and for the state of _____, residing at _____
My appointment expires: _____

EXHIBIT “C”

(Description of Franchise Area)

The incorporated area (entire existing territorial limits) of the City of Sammamish and such additional areas as may be included in the corporate (territorial) limits of the City of Sammamish during the term of this Franchise.

EXHIBIT “D”

(Insurance Requirements)

1. General Requirement. Franchisee shall have adequate insurance at all times while Franchisee owns or operates Facilities in the Public Rights-of-Way, to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with the Work, the Facilities, or the activities of Franchisee, its employees, agents, representatives, contractors, subcontractors and their employees, within the Franchise Area.

2. Minimum Insurance Limits. The Franchisee shall maintain the following minimum insurance coverages and limits:

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, and shall provide coverage for any and all costs, including reasonable defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Such insurance shall include broad form and blanket contractual coverage, including coverage for the Franchise as now or hereafter amended. Coverage must be written with the following limits of liability:

\$2,000,000 per occurrence,
\$4,000,000 general aggregate and
\$1,000,000 products/completed operations aggregate.

2.2 Automobile Liability: shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$2,000,000 per occurrence.

2.3 Workers Compensation Insurance: shall be maintained during the life of this Franchise to comply with statutory limits for all employees, and in the case any work is sublet, the Franchisee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all the employees. The Franchisee shall also maintain, during the life of this policy, employer's liability insurance with limits of \$1,000,000 each occurrence.

2.4 Excess or Umbrella Liability: \$5,000,000 each occurrence and \$5,000,000 policy limit.

3. Endorsements. Franchisee Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

3.1 The Franchisee's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Franchisee's insurance and shall not contribute to it.

3.2 Franchisee, through policy endorsement, shall waive its rights of subrogation against the City for all claims and suits.

3.3 That the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.4 The Franchisee's insurance shall name the City as an additional insured, to protect or insure as an additional insured, from and against Liabilities arising out of work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Franchisee's insurance shall include a requirement that the "railroad exclusion" be deleted or may include, in the alternative, ISO endorsement CG 24 17 or the equivalent.

3.6 The insurance coverages and limits provided herein shall not be canceled without thirty (30) days' prior written notice first being given to the City, with the exception that ten (10) days' notice shall be required for cancellation resulting from non-payment of premium. If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4. Acceptability of Insurers. Each insurance policy obtained pursuant to this Franchise shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "VII", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Franchisee shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

5. Verification of Coverage. The Franchisee shall furnish the City with signed certificates of insurance and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Automobile Liability, Commercial General Liability and Umbrella or Excess insurance of the Franchisee upon acceptance of this Franchise. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

6. Deductible. Commercial General Liability Insurance policies and coverage required herein may include a deductible; provided, however, that if Franchisee elects to include any deductible, Franchisee shall itself directly cover, in lieu of insurance, any and all City Liabilities that would otherwise in accordance with the provisions of this Franchise be covered by Franchisee insurance if Franchisee elected not to include a deductible. Such

Exhibit 1

direct coverage by Franchisee shall be in an amount equal to the amount of Franchisee's actual deductible.

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

EXHIBIT “E”

(Financial Security)

1. Performance Bond.

1.1 Franchisee shall provide to the City a faithful performance and payment bond in the initial amount of **\$50,000** to ensure the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example and not limitation, its obligations to relocate and remove its Facilities, to restore the Public Rights-of-Way and other property when damaged or disturbed, to reimburse the City for its Direct Costs and keeping Franchisee’s insurance in full force.

1.2 The performance bond shall be in a form with terms and conditions reasonably acceptable to the City and reviewed and approved by the City Attorney.

1.3 The performance bond shall be with a surety with a rating no less than “A- VII” in the latest edition of “Bests Rating Guide,” published by A.M. Best Company.

1.4 The Franchisee shall pay all premiums or costs associated with maintaining the performance and payment bond, and shall keep the same in full force and effect at all times. If Franchisee fails to provide or maintain the bond, then the City, in its sole discretion, may require Franchisee to substitute an equivalent cash deposit as described below in lieu of the bond.

1.5 Franchisee’s maintenance of the bond(s) shall not be construed to excuse unfaithful performance by Franchisee, or limit the liability of Franchisee to the amount of the bond(s), or otherwise limit the City’s recourse to any other remedy available at law or in equity.

1.6 The amount of the bond may, in the reasonable discretion of the City, be adjusted by the City to take into account (1) cumulative inflation, (2) increased risk to the City, (3) the experiences of the Parties regarding Franchisee compliance with its obligations under the Franchise, and (4) issuance of Site Specific Permits for installation of new Facilities. Prior to adjusting the amount of the bond, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.

2. Cash Deposit/Irrevocable Letter of Credit in Lieu of Bond.

Franchisee may, at its election substitute an equivalent cash deposit with an escrow agent approved by the City or an irrevocable letter of credit in form and content reasonably approved by the City Attorney, instead of a performance and payment bond. This cash deposit or irrevocable letter of credit shall ensure the full and faithful performance of all of Franchisee’s responsibilities hereto under this Franchise and all applicable Laws. This

Exhibit 1

includes but, is not limited to, its obligations to relocate or remove its facilities, restore the Public Rights-of-Way and other property to their original condition, reimbursing the City for its costs, and keeping Franchisee's insurance in full force.

In the event that the Franchisee fails to cure a Default as provided in Section 6 of the Franchise, the City may, at its option, draw upon the cash deposit or letter of credit up to the amount of the City's costs incurred to cure Franchisee's default. Upon the City's cure of Franchisee's default, the City shall notify Franchisee in writing of such cure.

In the event that the City draws upon the cash deposit or letter of credit, Franchisee shall thereupon replenish the cash deposit or letter of credit to the full amount as specified herein or provide a replacement performance and payment bond.

EXHIBIT “F”

(Contractor/Subcontractor Insurance Requirements)

1. General Requirement. Prior to commencing and during the period of Work performed within the Franchise Area, Franchisee contractors and subcontractors (hereafter the “Contractors”) must have in place adequate insurance to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with this such Work.

2. Minimum Insurance Limits. The Contractors shall maintain the following minimum insurance coverages and limits:

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, , and shall provide coverage for any and all costs, including reasonable defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Coverage must be written with the following limits of liability:

\$1,000,000 per occurrence,
\$2,000,000 general aggregate and
\$1,000,000 products/completed operations aggregate.

2.2 Automobile Liability: shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$1,000,000 per occurrence.

2.3 Workers Compensation Insurance: shall be maintained during the period of such Work to comply with statutory limits for all employees.

3. Endorsements. Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

3.1 The Contractor’s insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor’s insurance and shall not contribute to it.

3.2 Contractor, through policy endorsement, shall waive its rights of subrogation against the City for all claims and suits.

3.3 That the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

3.4 The Contractor's insurance shall name the City as an additional insured, to protect or insure as an additional insured, from and against Liabilities arising out of Work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Contractor's insurance shall include a requirement that the "railroad exclusion" be deleted or may include, in the alternative, ISO endorsement CG 24 17 or equivalent.

3.6 The insurance coverages and limits provided herein shall not be canceled without thirty (30) days written notice first being given to the City, with the exception that ten (10) days' notice shall be required for cancellation resulting from non-payment of premium. If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4. Acceptability of Insurers. Each insurance policy required herein shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "VII", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Contractor shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

5. Verification of Coverage. The Franchisee shall furnish the City with Contractors' signed certificates of insurance and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Automobile Liability, and Commercial General Liability policies of the Contractors. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices.

6. No Limitation. Contractor's maintenance of insurance policies required herein shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee or contractor to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at law or in equity.



Meeting Date: May 19, 2015

Date Submitted: May 13, 2015

Originating Department: Public Works

Clearances:

- | | | |
|--|---|--|
| <input type="checkbox"/> Attorney | <input type="checkbox"/> Community Development | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Admin Services | <input type="checkbox"/> Eastside Fire and Rescue | <input type="checkbox"/> Police |
| <input checked="" type="checkbox"/> City Manager | <input type="checkbox"/> Finance & IT | <input checked="" type="checkbox"/> Public Works |

Subject: 2015 Pavement Program - Overlays

Action Required: Authorize the City Manager to award and execute a contract with Lakeside Industries Inc. for construction of the 2015 Pavement Program – Overlays Project.

Exhibits:

1. Overlay Vicinity Map
2. Bid Summary

Budget: Street Maintenance Fund (101-000-542-30-48-51) 2015 Approved Budget:
\$3,000,000

Summary Statement:

The Public Works Department recommends that the City Council authorize the City Manager to award and execute a contract with Lakeside Industries Inc., the lowest responsible bidder, for construction of the 2015 Pavement Program – Overlays for arterial and local streets and administer a ten percent construction contingency.

Background:

Bids were opened on May 12, 2015. Two (2) bids were submitted. Lakeside Industries Inc. submitted the lowest responsible bid in the amount of \$2,338,414.14.

This project provides for pavement preservation through localized pavement patching and Hot Mix Asphalt (HMA) overlays. The streets were selected based on engineering judgment and data records created through the City's on-going pavement management program. A review of the streets warranting pavement rehabilitation, along with selection criteria, was presented to City Council at the March 12, 2013 Study Session. The streets that are included in this contract are consistent with the direction received at that time.

Financial Impact:

The work to be performed is anticipated to fit within the adopted 2015 budget.

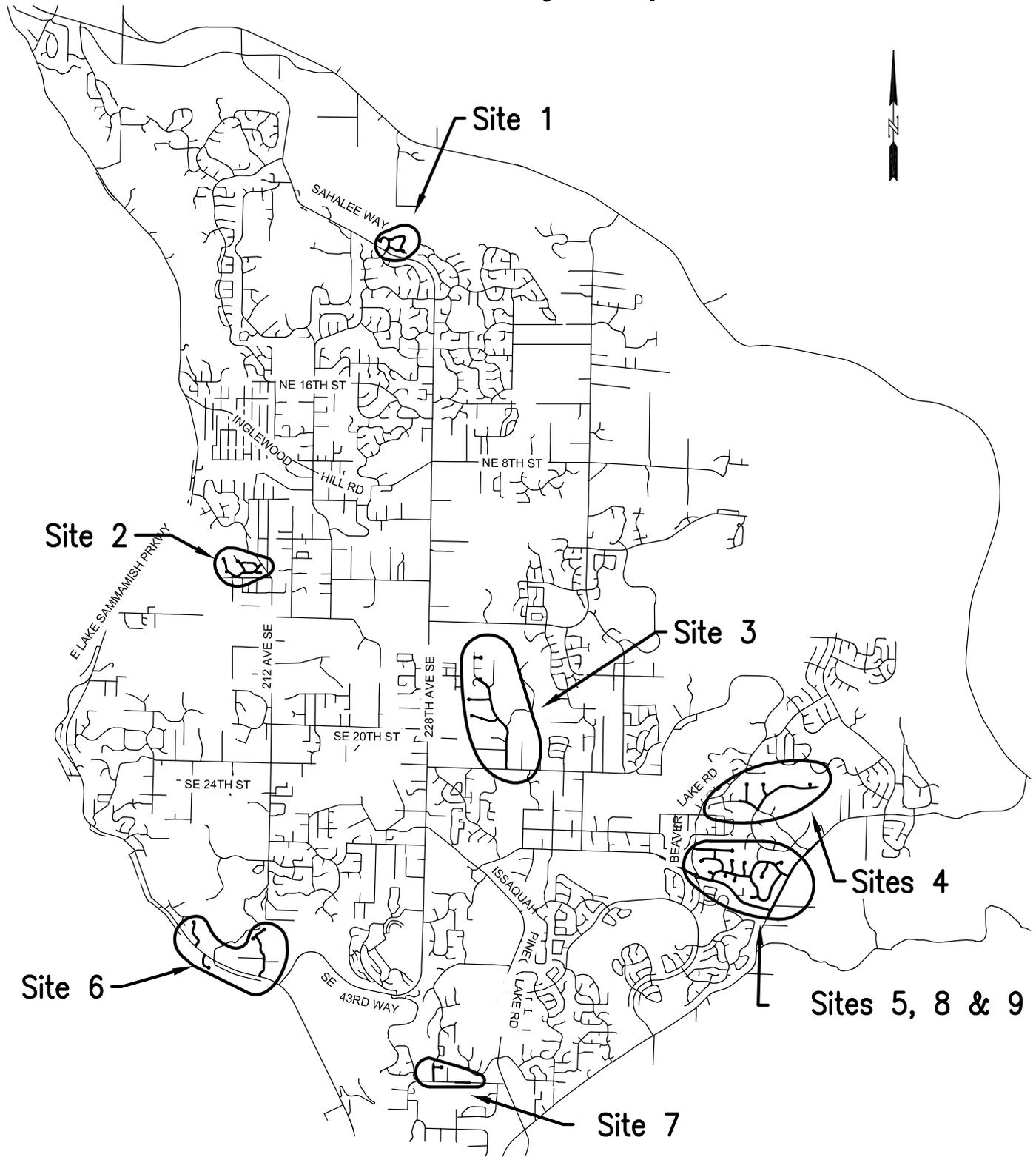
Program Budget (101-000-542-30-48-51)	\$ 3,000,000.00
2015 Construction Contract	\$ (2,338,414.14)
2015 Construction Contingency (10%)	\$ (233,841.00)
Remaining 2015 Pavement Management Program Items ¹	\$ 427,744.86

¹Remaining budget is allocated to pavement patching, crack sealing, material testing and design assistance for localized pavement repairs and a city wide pavement condition survey.

Recommended Motion:

Move to authorize the City Manager to award and execute a contract with Lakeside Industries Inc. for construction of the 2015 Pavement Program – Overlays in an amount of \$2,338,414.14 and to administer a construction contingency in the amount of \$233,841.00.

2015 Pavement Program - Overlays Vicinity Map



CITY OF SAMMAMISH DEPARTMENT OF PUBLIC WORKS		2015 PAVEMENT PROGRAM – OVERLAYS VICINITY MAP		
REV		DWN JG	SCALE N.T.S.	DATE 5/12/15
				SHEET



Bid Opening
City of Sammamish Public Works Department

Project: **2015 Pavement Program - Overlays**
 Bid Date & Time: **May 12th, 2015, 2:00 pm**

Bidder	Signed Proposal	Schedule of Prices	Bid Security Form	Acknowledgement of Receipt of Addenda	Bidder Information and Signature	Non-Collusion and Debarment Affidavit	Minimum Wage Affidavit Form	¹ List of Subcontractors	² Statement of Bidder's Qualifications	² Responsible Bidder Criteria	Total Bid Price
1 WATSON ASPHALT	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	\$3,179,268.10
2 LAKE SIDE INDUSTRIES	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	\$2,338,414.14
3											
4											
5											
6											
7											
8											

Engineer's Estimate: \$2,540,492

¹Form must be submitted within one hour after published bid submittal time.
²Form must be submitted within 48 hours after the published bid submittal time.



STUDY SESSION NOTES

Study Session April 14, 2015

Mayor opened the study session of the Sammamish City Council at 6:30 p.m.

Public Comment

This is an opportunity for the public to address the Council. Three-minutes limit per person or 5 minutes if representing the official position of a recognized community organization.

Gene Morel, 2933 E. Lake Sammamish Pkwy SE, Spoke regarding the lawsuit filed by the Sammamish Home Owners (SHO) against King County regarding the East Lake Sammamish Trail right of way, which would stop any improvements on the trail until the lawsuit is settle.

Loreen Leo, 2320 Sahalee Dr. E, She spoke about the regulations governing adult family homes in neighborhoods.

Lynn Ramon, 24908 SE 30th Street, She would like to ask the Council to direct Parks staff to contact Forterra to see if they would be interested in purchasing property near Beaver Lake for preservation purposes.

Max Hochanadel, 24738 SE 30th Street, Expressed concerns about plans to subdivide property adjacent to his property. He would like to see the City compensating the owner for his property so it won't be developed.

Karma Chapman, 2831 E Lake Sammamish Pkwy NE, Spoke regarding how the construction of the ELS Trail is impacting their property.

Caroline Schlepp, 2825 E Lake Sammamish Pkwy NE, She spoke regarding the ELS Trail

Assistant City Manager/Public Works Director Laura Philpot gave a status report on the issues regarding the trail. She reported that many of issues brought up tonight are on the County's punch list of items to be addressed.

Topics

- Comprehensive Plan Update
 - Introduction
 - Housing
 - Land Use

- Uses in the R-Zone
- Discussion: Community Services Coordinator Position

Executive Session – Personnel Pursuant to RCW42.30.110(1)(g)

Council retired to Executive Session at 10:30 pm and returned at 10:45 pm. No action was taken.

Adjournment

10:45 pm



STUDY SESSION NOTES

Committee of the Whole Study Session April 20, 2015

Mayor opened the study session of the Sammamish City Council at 6:30 p.m.

Public Comment

This is an opportunity for the public to address the Council. Three-minutes limit per person or 5 minutes if representing the official position of a recognized community organization.

Topics

- **Update:** 2015 Comprehensive Plan (Capital Facilities, Utilities)
- **Update:** Solid Waste Contract

Adjournment

9:10 pm

COUNCIL MINUTES

Regular Meeting April 21, 2015

Mayor Tom Vance called the regular meeting of the Sammamish City Council to order at 6:30 pm.

Councilmembers present:

Mayor Tom Vance
Deputy Mayor Kathy Huckabay
Councilmember Don Gerend
Councilmember Bob Keller
Councilmember Ramiro Valderrama
Councilmember Nancy Whitten

Excused: Councilmember Tom Odell

MOTION: Councilmember Valderrama moved to excuse Councilmember Odell. Councilmember Gerend seconded. Motion was approved unanimously 6-0.

Staff present:

Ben Yazici, City Manager
Lyman Howard, Deputy City Manager
Jessi Bon, Parks and Recreation Director
Kyle Endelman, Parks and Recreation Deputy Director
Anjali Meyer, Parks and Recreation Project Manager
Kellye Hilde, Parks and Recreation Project Manager
Joanna Martin, Parks and Recreation, Recreation Supervisor
Cheryl Paston, Public Works Deputy Director
Kari Sand, City Attorney
Lita Hachey, Deputy City Clerk

Roll Call/Pledge of Allegiance

Roll was called. Boy Scout Troop 695 performed the Flag Ceremony and led the pledge.

Approval of Agenda and the Consent Agenda

Mayor Vance requested that the City Manager's report be removed from the end of the agenda and place as the first item under Presentations/Proclamations.

MOTION: Councilmember Valderrama moved to approve the Agenda as amended, including the Consent Agenda. Councilmember Keller seconded. Motion carried unanimously 6-0.

Presentations/Proclamations

City Manager's Position Transition - Ben Yazici, City Manager, gave a report regarding the transition plan for a new City Manager after his retirement. (MEMO available on the City website at www.sammamish.us)

MOTION: Councilmember Gerend moved that the City conduct an internal search to select a candidate for the City Manager's position. A committee, comprised of Mayor Vance, and Councilmembers Odell and Keller will evaluate the applications and make a recommendation to the full Council. Deputy Mayor Huckabay seconded. Motion was approved unanimously 6-0.

AMENDMENT: Councilmember Keller requested that his name be removed from the committee and that another Councilmember take his place. This position will be discussed and determined by Council at a later date. Councilmember Valderrama seconded. Motion was approved unanimously 6-0.

Parks and Recreation Department Report - Jessi Bon, Parks and Recreation Director gave an update on the Parks and Recreation department and showed a presentation (available on the City of Sammamish website www.sammamish.us)

Councilmember Valderrama requested the utilization percentages of the parks.

Community Center Update – Ms. Bon and Project Manager, Anjali Myer gave an update and showed a presentation (available on the City of Sammamish website www.sammamish.us).

Don Gerend questioned the contingency fund and the remaining budget.

Public Comment

John Southwick, 413 209 Ave NE; spoke regarding the drainage problems on his property with sinkholes and front yard water in the Tamarack neighborhood. He would like something done in 2015. (showed a powerpoint presentation, available upon request from the City Clerk, Melonie Anderson)

Mary Wictor, 408 208th Ave NE; spoke about the Tamarack neighborhood stormwater and surface water taxes. (showed a powerpoint presentation, available upon request from the City Clerk, Melonie Anderson)

Bob McNeal, 400 E Lake Sammamish Pkwy SE; spoke regarding the East Lake Sammamish Trail. He would not like to see any further delays.

Consent Agenda

Approval: Claims for period ending April 21, 2015 in the amount of \$2,751,749.72 for Check No. 40111 through 40204

Approval: Community Services Coordinator position

Contract: Fourth on the Plateau Fireworks/Wolverine West

Contract: Special Event Sound/Live Sound

Contract: Beauty Bark Installation 228th Avenue SE/NE: Pacific TopSoils

Contract: Graphic Design Services/Uproar

Approval: March 16, 2015 Committee of the Whole meeting notes

Approval: April 7, 2015 Regular Meeting minutes

Public Hearing - None

Unfinished Business - None

New Business

Ms. Bon gave a brief update on the facility policy process and showed a presentation (*available on the City of Sammamish website www.sammamish.us*).

Resolution: A Resolution Of The City Of Sammamish, Washington, Adopting An Amended Policy For Co-Sponsorship For City Facility Use.

MOTION: Councilmember Valderrama moved to approve the resolution adopting an amended policy for Co-Sponsorship for Facility Use. Deputy Mayor Huckabay seconded.

AMENDMENT: Councilmember Gerend requested to remove the words “be based in the City of Sammamish and”. Councilmember Valderrama seconded. Motion was approved unanimously 5-0.

MAIN MOTION: Motion as amended was approved unanimously 5-0 (R2015-629).

Resolution: Of The City Of Sammamish, Washington, Adopting An Amended Policy For Non-Profit Use Of City Facilities.

MOTION: Deputy Mayor Huckabay moved to approve the resolution adopting an amended policy for Non-Profit Use of City Facilities. Councilmember Keller seconded.

AMENDMENT: Councilmember Gerend requested to change to “political activities; however open candidate forums are allowed consistent with RCW42.17A.555 subsection 3.” Councilmember Valderrama seconded. Amendment was approved unanimously 5-0.

MAIN MOTION: Motion as amended was approved unanimously 5-0 (R2015-630).

Resolution: Of The City Of Sammamish, Washington, Adopting An Amended Policy For Facility Rentals At The Sammamish City Hall.

MOTION: Deputy Mayor Huckabay moved to approve the resolution adopting an amended policy for facility rentals at City Hall. Councilmember Gerend seconded. Motion was approved unanimously 5-0 (R2015-631).

Resolution: Of The City Of Sammamish, Washington, Adopting An Amended Policy For Facility Rentals At The Beaver Lake Lodge And Pavilion.

MOTION: Councilmember Gerend moved to approve the resolution adopting an amended policy for facility rentals at the Beaver Lake Lodge and Pavilion. Councilmember Keller seconded.

AMENDMENT: Councilmember Gerend moved to amend by changing the definition of dusk to one half hour after sunset. Councilmember Valderrama seconded. Amendment was approved unanimously 5-0.

MAIN MOTION: Motion as amended was approved unanimously 5-0 (R2015-632).

Resolution: Of The City Of Sammamish, Washington, Adopting An Amended Policy For Athletic Field Rentals.

MOTION: Councilmember Gerend moved to approve the resolution adopting an amended policy for Athletic Field rentals. Councilmember Keller seconded.

AMENDMENT: Councilmember Gerend moved to change the definition of dusk to one half hour after sunset. Councilmember Valderrama seconded. Amendment was approved unanimously 5-0.

MAIN MOTON: Motion as amended was approved unanimously 5-0 (R2015-633).

Resolution: Of The City Of Sammamish, Washington, Adopting An Amended Policy For Picnic Shelter Rentals.

MOTION: Deputy Maryor Huckabay moved to approve the resolution adopting an amended policy for Picnic Shelter Rentals. Councilmember Gerend seconded.

AMENDMENT: Councilmember Gerend moved to change the definition of dusk to one half hour after sunset. Councilmember Valderrama seconded. Amendment was approved unanimously 5-0.

MAIN MOTON: Motion as amended was approved unanimously 5-0 (R2015-634).

Council Reports

Mayor Tom Vance – would like the following change to the long term calendar: Monday, May 18, 2015 will be a Committee of the Whole meeting for the Comprehensive Plan Update.

Deputy Mayor Kathy Huckabay – attended an Eastside Fire & Rescue Finance Committee meeting tonight.

Councilmember Ramiro Valderrama – met with ninety Girl Scouts and would like to thank staff for their assistance. He would like to know when the 90% plan for the Eastlake Sammamish Trail will be completed and presented to Council. He would like a date to give to residents, who have been asking him about this.

Councilmember Bob Keller – attended an Eastside Fire and Rescue board meeting. Everyone is invited to the FIRE OPS 101 training on May 13, 2015 at Station 83, from 4 PM – 7 PM. Also commented on the Sound Cities Association, Public Issues committees. They discussed two issues. One is the Committee to End Homelessness and the other is King County Solid Waste division's draft report.

Councilmember Don Gerend- is seeking financial planning advice for use with the Sound Cities Association and his role as Treasurer.

City Manager Report – moved to beginning of Presentations

Meeting adjourned at 9:30 pm

Lita Hachey, Deputy City Clerk

Thomas E. Vance, Mayor

