

CITY COUNCIL AGENDA

15728 Main Street, Mill Creek, WA 98012 (425) 745-1891



Pam Pruitt, Mayor • Brian Holtzclaw, Mayor Pro Tem • Sean Kelly
Donna Michelson • Vince Cavaleri • Mike Todd • Mark Bond

Regular meetings of the Mill Creek City Council shall be held on the first, second and fourth Tuesdays of each month commencing at 6:00 p.m. in the Mill Creek Council Chambers located at 15728 Main Street, Mill Creek, Washington. Your participation and interest in these meetings are encouraged and very much appreciated. We are trying to make our public meetings accessible to all members of the public. If you require special accommodations, please call the office of the City Clerk at (425) 921-5776 three days prior to the meeting.

The City Council may consider and act on any matter called to its attention at such meetings, whether or not specified on the agenda for said meeting. Participation by members of the audience will be allowed as set forth on the meeting agenda or as determined by the Mayor or the City Council.

To comment on subjects listed on or not on the agenda, ask to be recognized during the Audience Communication portion of the agenda. Please stand at the podium and state your name and address for the official record. Please limit your comments to the specific item under discussion. Time limitations shall be at the discretion of the Mayor or City Council.

Study sessions of the Mill Creek City Council may be held as part of any regular or special meeting. Study sessions are informal, and are typically used by the City Council to receive reports and presentations, review and evaluate complex matters, and/or engage in preliminary analysis of City issues or City Council business.

Next Ordinance No. 2017-815
Next Resolution No. 2017-566

June 6, 2017
City Council Meeting
6:00 PM

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

AUDIENCE COMMUNICATION

- A. Public comment on items on or not on the agenda

PRESENTATIONS

- B. Girl Scouts Silver Award Recipient
(*Rebecca C. Polizzotto, City Manager*)
- C. Mill Creek Youth Advisory Board Senior Recognition
(*Rebecca C. Polizzotto, City Manager*)
- D. Employee Milestone Presentation
(*Rebecca C. Polizzotto, City Manager*)

- E. Snohomish County Tourism Bureau Annual Report
(Amy Spain, Executive Director)

OLD BUSINESS

- F. Presentation and Discussion of Proposed Ordinance and Corresponding Policy/Procedure Governing the Adoption of Uniform City Policies and Procedures
(Rebecca C. Polizzotto, City Manager)

NEW BUSINESS

- G. Selection of City of Mill Creek Voting Delegates for AWC 2017 Annual Business Meeting
(Rebecca C. Polizzotto, City Manager)

STUDY SESSION

- H. Telecommunications Franchise Agreement with Zayo Group, LLC
(Rebecca C. Polizzotto, City Manager)
- I. Telecommunications Franchise Agreement with Astound Broadband, LLC, DBA Wave
(Rebecca C. Polizzotto, City Manager)
- J. Telecommunications Franchise Agreement with MCIMetro Access Transmission Services DBA Verizon Access Transmission Services
(Rebecca C. Polizzotto, City Manager)
- K. Ordinance Amending the Mill Creek Municipal Code to Revise and Update the Requirements and Functions of the Art & Beautification Board
(Rebecca C. Polizzotto, City Manager)
- L. Ordinance Amending the Mill Creek Municipal Code to Revise and Update the Requirements and Functions of the Park & Recreation Board
(Rebecca C. Polizzotto, City Manager)

CONSENT AGENDA

- M. City Council Meeting Minutes of May 23, 2017

REPORTS

- N. Mayor/Council
- O. City Manager
 - Council Planning Schedule

AUDIENCE COMMUNICATION

- P. Public comment on items on or not on the agenda

RECESS TO EXECUTIVE SESSION

(Confidential Session of the Council)

- Q. Discuss potential litigation pursuant to RCW 42.30.110 (1)(i)

No action anticipated

ADJOURNMENT



Agenda Item # C
Meeting Date: **June 6, 2017**

CITY COUNCIL AGENDA SUMMARY

City of Mill Creek, Washington

AGENDA ITEM: MILL CREEK YOUTH ADVISORY BOARD SENIOR RECOGNITION

PROPOSED MOTION: N/A

KEY FACTS AND INFORMATION SUMMARY:

The Mill Creek Youth Advisory Board is composed of dedicated and enthusiastic high school students who make a yearlong commitment to community service by planning, promoting and volunteering at various community events and projects. During 2016-2017, the Youth Advisory Board members contributed 1,200 hours of volunteer service to the community of Mill Creek by volunteering at events in our community.

Mayor Pruitt will present a Certificate of Appreciation to four members of the 2016-2017 Mill Creek Youth Advisory Board to recognize the graduating seniors for their exemplary participation and involvement. These include: Hannah Aho, Kevin Liang, Edan Ybarra, and Moses Yusaf. These seniors are graduating from Henry M. Jackson High School in June 2017.

These four students are motivated and passionate about giving back and making a difference in the Mill Creek community. The City of Mill Creek would like to thank and congratulate these seniors for their contribution in making a positive difference in their community.

A PowerPoint designed by Youth Advisory Board member Akaanksha Rishi will be presented highlighting projects and events that the Youth Advisory Board has participated in this year.

CITY MANAGER RECOMMENDATION:

None.

ATTACHMENTS:

Senior Summary Write-ups.

Respectfully Submitted:

A handwritten signature in blue ink that reads "Rebecca C. Polizzotto".

Rebecca C. Polizzotto
City Manager



YOUTH ADVISORY BOARD GRADUATING SENIORS

Hannah Aho has been a Mill Creek Youth Advisory Board member for two years. She currently is the Event Assistant officer. Her favorite event to volunteer with was the 3 on 3 Basketball Tournament because there were many fun things to help with during the event and exciting basketball games to watch. Next year, Hannah will attend the University of Washington to study Political Science.

Edan Ybarra has been on the Mill Creek Youth Advisory Board for two years. He currently is the Social Coordinator officer. His favorite event was Trunk or Treat because of all the fun interactions with participants and helping organize the Youth Advisory Board "Trunk" decorations. Edan's favorite memory as part of the board was the Laser Tag because of getting to build a strong teamwork bond with other members. Following graduation, he plans to travel abroad in Columbia for a year to further develop his Spanish language skills.

Moses Yusaf has been on the Mill Creek Youth Advisory Board for five years. He currently is the Co-Chair officer. His favorite event also was the 3 on 3 Basketball Tournament because he enjoys watching basketball games being played by all ages and the team comradery they have with one another. Moses' favorite memory is playing Laser Tag at the end of each school year to celebrate everyone's accomplishments during the year. Moses plans to attend college in the fall and study Architecture.

Kevin Liang has been on the Mill Creek Youth Advisory Board for one year. Kevin's favorite event was the Teen Flashlight Egg Hunt because it was an event specifically for middle school and high school students. His favorite memory is taking pictures with the Boston's Pizza mascot during the Kids Fun Run event. After high school, Kevin will attend the University of Washington to major in Electrical Engineering.



Tourism = \$1 Billion to Snohomish County

Snohomish County Tourism Bureau
2016 Annual Report



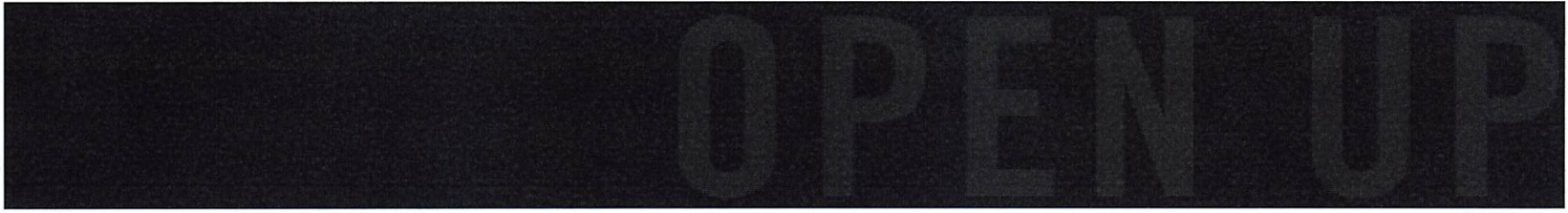
Purpose of the SCTB:

- **Economic development of Snohomish County through tourism.**
- **\$1.04 Billion Industry**
- **10,850 jobs**



Snohomish County Parks, Recreation and Tourism Department

An old new partnership creating synergy, inter-agency collaboration to facilitate tourism development and marketing in concert with our partners throughout Snohomish County.



Parks, Recreation and Tourism Department:

Destination and product development

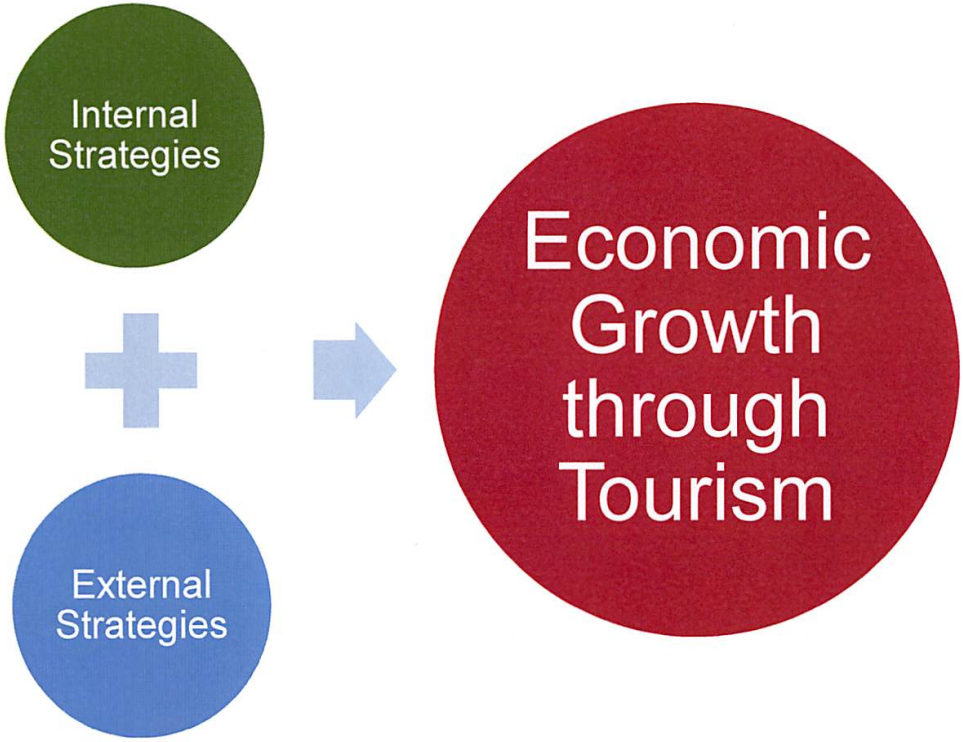


Snohomish County Tourism Bureau:

**Destination marketing, promotion,
industry education and
visitor services**



Snohomish County Tourism Bureau:





How we do it:



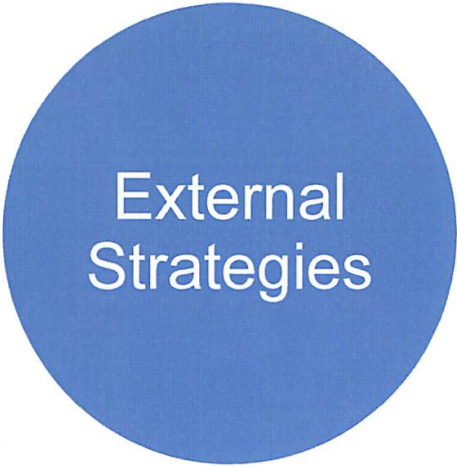
- Industry Education
- Marketing Platforms
- Referrals and Sponsorship Opportunities
- Lead Generation

OPEN UP

How we do it:

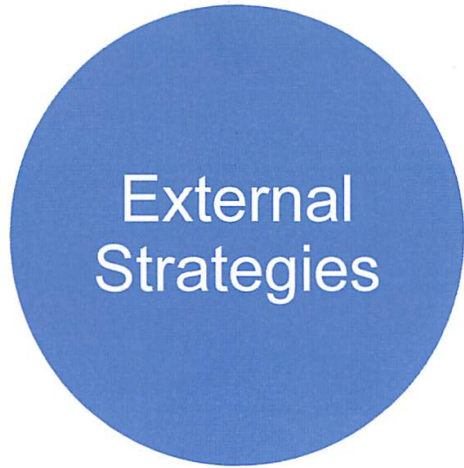
Marketing:

- Website
- Advertising
- Collateral Development and Distribution
- E-Newsletters
- Social Media





How we do it:

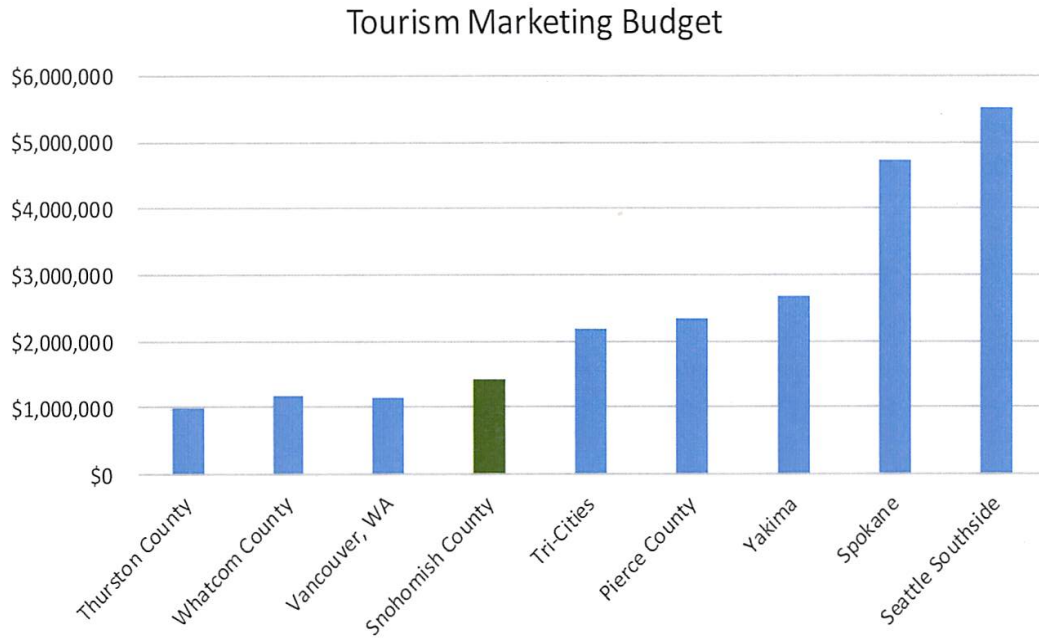


Direct Sales:

- Trade shows
- Sales Missions
- Direct Sales Calls
- Membership Organizations



Tourism Marketing Budget

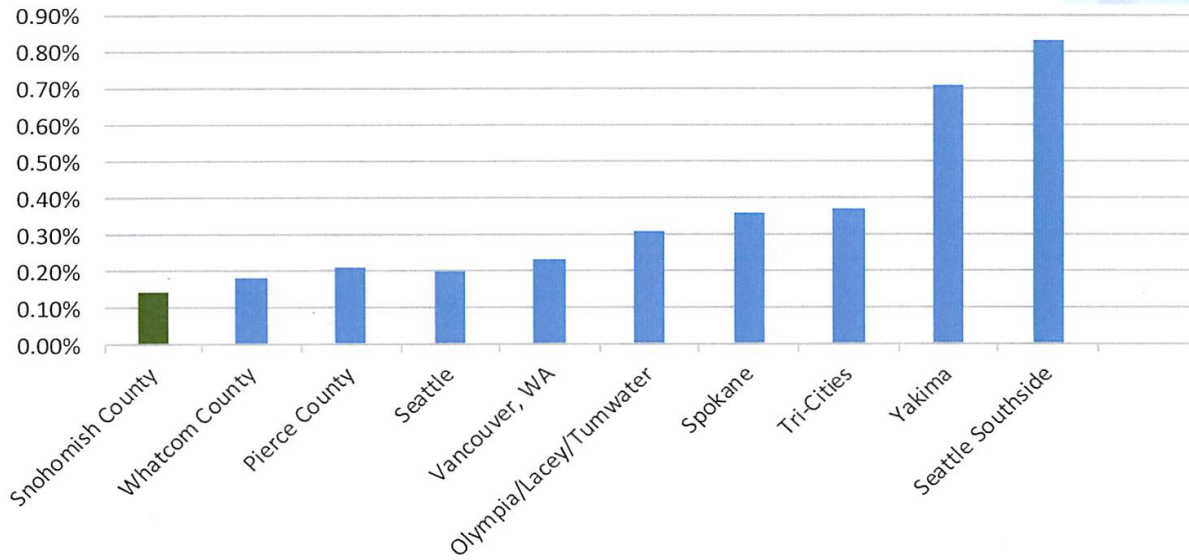


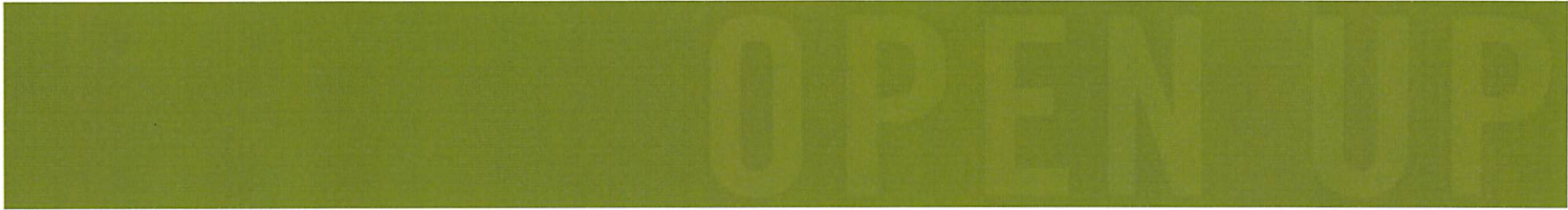


Budget and Economic Impact Comparisons



Budget as Percentage of Economic Impact





Visitors to Washington State
spent nearly **\$21.4 billion** in 2016;
accounting for **\$1.9 billion** in
local/state tax revenues; creating
177,120 jobs!

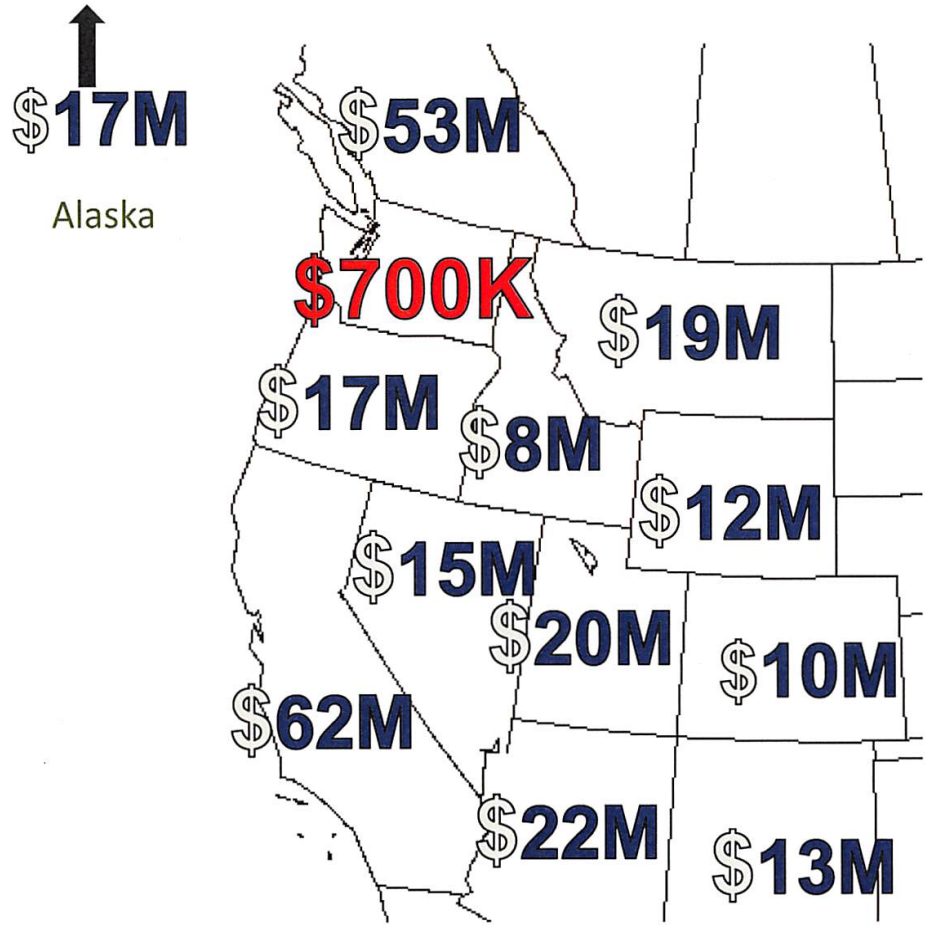


No State Tourism Office

Reality is....

- All other states have some form of State funding and/or involvement
- Washington Tourism Alliance is not a sustainable organization using a membership-funded model
- Legislation is being introduced this session
 - HB 1123 and SB 5251
- ROI = \$25:\$1

Our Competitors' Budgets



*Washington State reflects the WTA 2016 budget



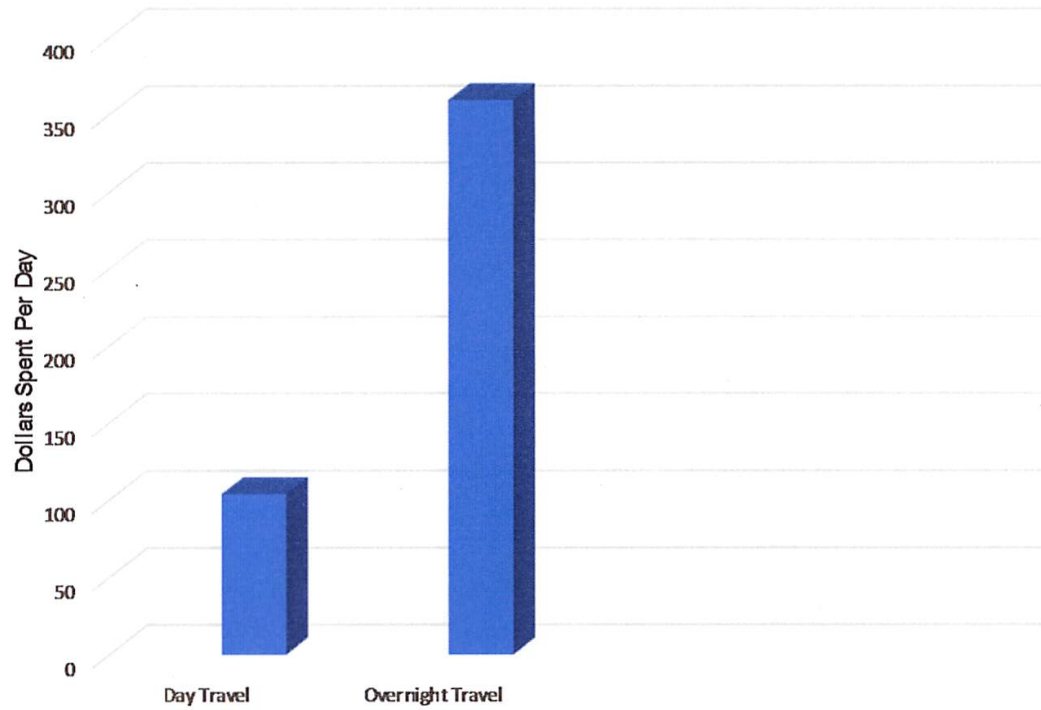
Impact of Travel to Local Economy

Overnight Travelers to Snohomish County (staying in commercial lodging)

- average 2.1 people per travel party
- stay 2.1 nights
- spend \$366 per travel party per day

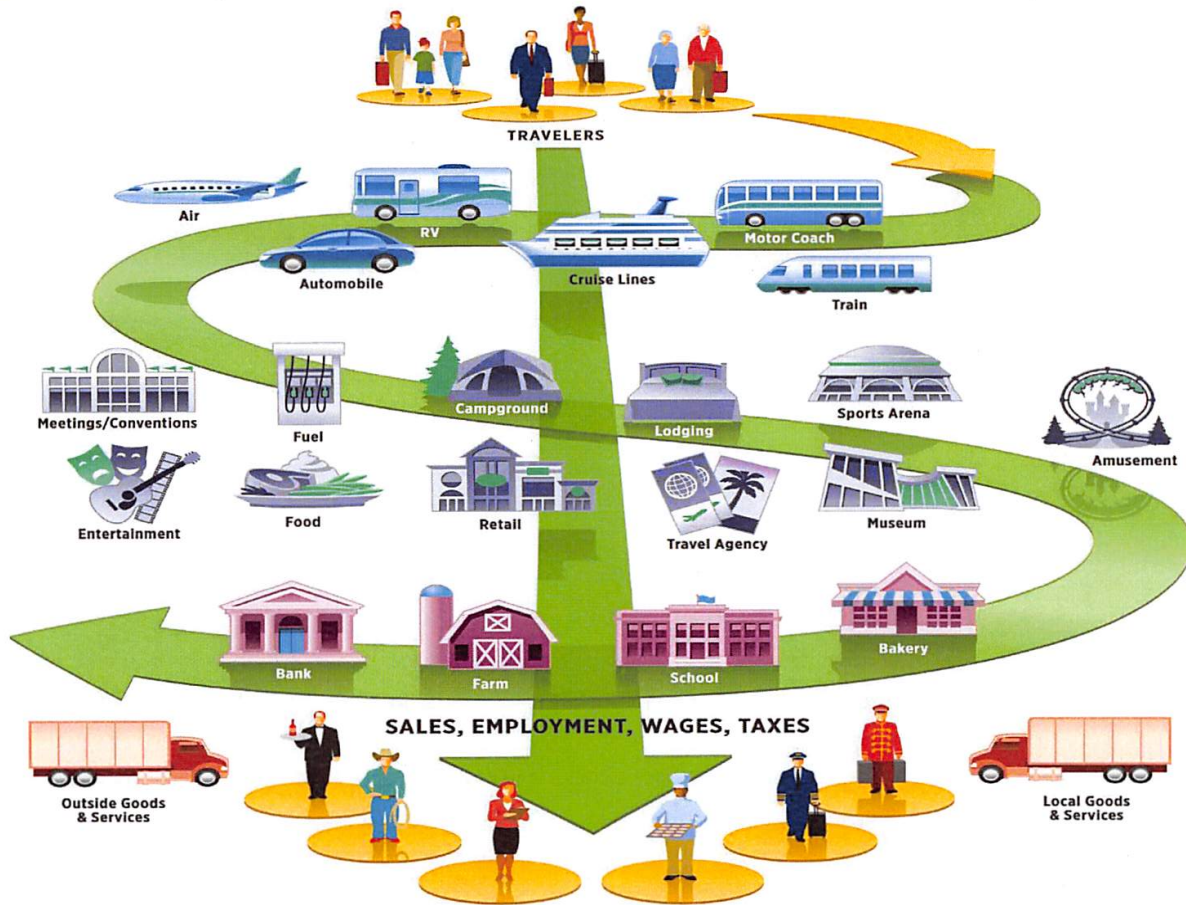
Impact of Travel to Local Economy

Day Vs. Overnight Traveler Expenditures



**Data provided by Dean Runyan and Associates April 2016

Impact of Tourism





Tourism Works for Snohomish County!

Visitor spending in Snohomish County is
\$1.04 billion per year;
Up 2.8% from previous year:

Restaurants	\$ 323 million
Transportation and fuel	\$ 147 million
Accommodations	\$ 145 million
Retail stores	\$ 141 million
Recreation and entertainment	\$ 139 million
Grocery stores	\$ 64 million

**Data provided by Dean Runyan and Associates, April 2017*



Because Tourism Matters

Effect of Tourism in Snohomish County

10,850	jobs
\$ 297.2 million	payroll
\$ 21.7 million	local taxes
\$ 54.3 million	state taxes

**Data provided by Dean Runyan and Associates April 2017

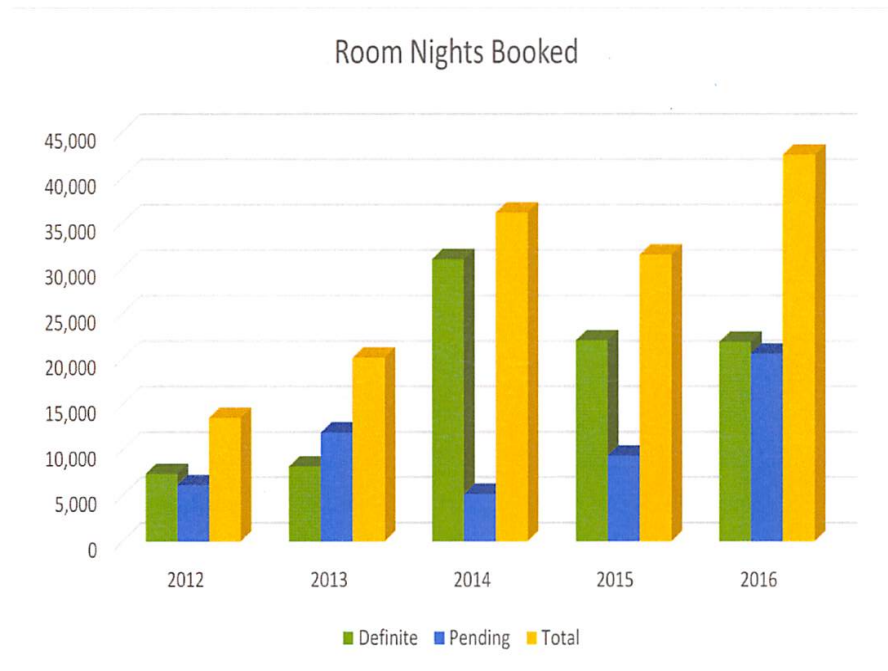


Stats At A Glance:

- 4,304 requests for information from ads
- Website visitation was up 17% - 231,000 unique visitors
- Achieved over \$277,900 of free media coverage
- T & D convention room nights represented \$58.9 million in economic impact
- Served over 30,000 visitors. Countywide centers served over 95,000 visitors
- Tourism spending = \$1 billion; up 1.8%
- Hotel occupancy: up 2.4%
- Average Daily Rate: down 1.3%
- RevPar: up 1.1%
- Hotel/Motel tax: up 2.8%

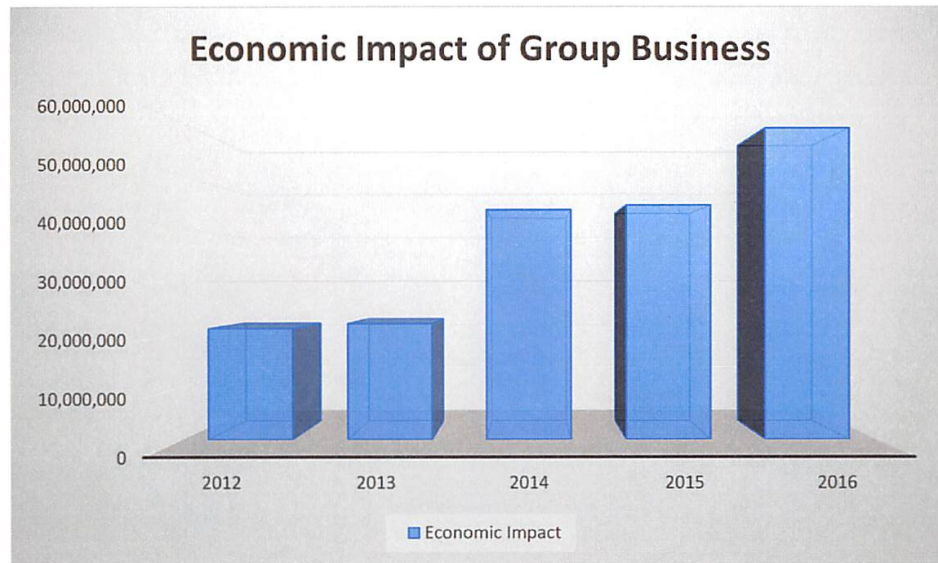
Convention, Sports and Group Tour Sales and Service

- **Group tour, meeting and event planner bids were prepared which resulted in 21,920 total definite room nights**
- **Additional pending bookings at year end totaled 20,614 room nights**
- **Totaling 42,534 room nights**



Convention, Sports and Group Tour Sales and Service

Economic Impact totals \$58.9 million



Sports Sales and Service

\$35.7 Million

Economic impact derived from Sports

- Pacific Rim Gymnastics Championships
- NWAC Basketball Championships
- USA Badminton Junior Nationals
- Centennial Sk8 Festival
- 71st Annual NFAA Outdoor Field Archery Nationals
- Washington Rush Cup
- Snohomish Bigfoot Soccer Tournament
- PNW/USTA Mixed 40 & Over/55 & Over Tennis Sectional Championships



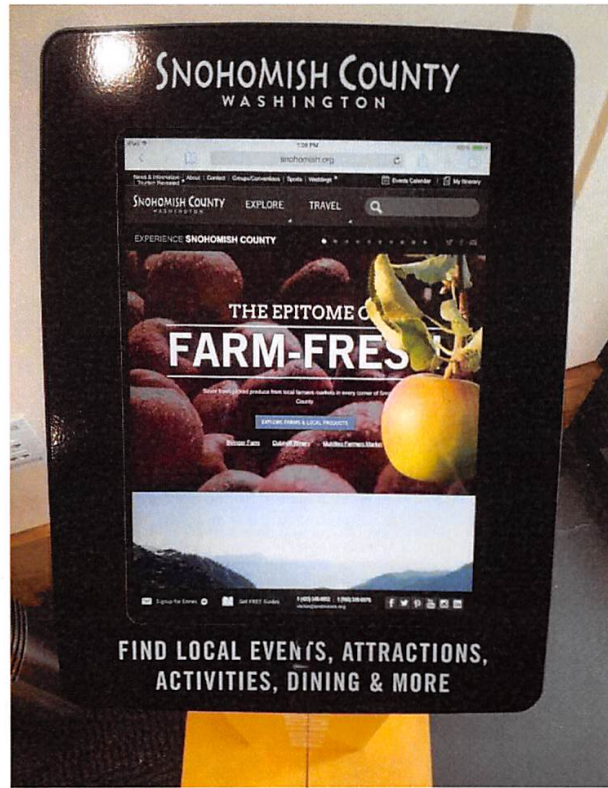
Visitor Services

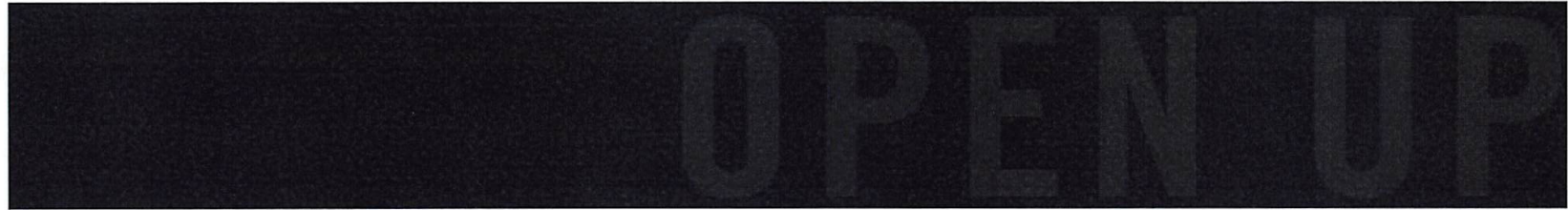
Partnerships Make it Happen!

- City of Snohomish, Snohomish Chamber of Commerce, Historic Downtown Snohomish and the Historical Society of Snohomish
- City of Lynnwood Tourism and Parks & Recreation, as well as Alderwood Manor Heritage Association and Snolsle Genealogical Society
- Future of Flight and Paine Field



Visitor Services Go Digital – Kiosks at Future of Flight, Lynnwood Convention Center and Tulalip Resort





Visitor Services

**Mobile VICs
operating at events
and festivals**

- Evergreen State Fair
- Sky Fair at Paine Field
- Fresh Paint
- Vintage Aircraft Weekend –
Historic Flight
- Community Days at Everett Mall





RESULTS:

- **\$58.9 million economic impact**
from direct sales efforts
- **Tourism spending = \$1 + billion in**
leisure travel and \$2 billion in
outdoor recreation

OPEN UP

**Tourism Matters to
Snohomish County!**

10,850 jobs

\$ 21.7 million in local taxes



**Thank you for
supporting tourism
in Snohomish County!**

SNOHOMISH COUNTY
WASHINGTON

OPEN UP



Agenda Item # F
 Meeting Date: **June 6, 2017**

CITY COUNCIL AGENDA SUMMARY

City of Mill Creek, Washington

AGENDA ITEM: PRESENTATION AND DISCUSSION OF PROPOSED ORDINANCE AND CORRESPONDING POLICY/PROCEDURE GOVERNING THE ADOPTION OF UNIFORM CITY POLICIES AND PROCEDURES.

PROPOSED MOTION: Motion to approve an ordinance amending and restating Mill Creek Municipal Code Chapter 1.24, adoption of uniform policies and administrative procedures, to revise and update the procedures and requirements for adoption, maintenance and publication of city policies; and establishing an effective date.

KEY FACTS AND INFORMATION SUMMARY: A significant management focus for the 2017-2018 biennium is the updating of the City's policies and procedures in all of its major functional areas. Generally speaking, policies and procedures governing City operations are either non-existent or were implemented more than 20 years ago and do not reflect the current needs and practices of the City.

Well-written policies and procedures allow employees to clearly understand their roles and responsibilities within predefined limits. The existence of current policies and procedures allow management to guide operations without constant management intervention. Because constant intervention equates to increased operating expenses, the City has not only an operational need to implement and keep current its policies, but such work also has a positive fiscal impact.

What is the difference between a policy and a procedure? A 'Policy' is a predetermined course of action, which is established to provide a guide toward accepted strategies and objectives. In other words, it is a direct link between the City's 'Vision' and its day-to-day operations. Policies identify the key activities and provide a general strategy to decision-makers on how to handle issues as they arise. This is accomplished by providing the reader with limits and a choice of alternatives that can be used to 'guide' their decision making process as they attempt to overcome problems.

The ultimate goal of every 'Procedure' is to provide the reader with a clear and easily understood plan of action required to carry out or implement a policy. A well-written procedure will also help eliminate common misunderstandings by identifying job responsibilities and establishing boundaries for the jobholders. Good procedures actually allow managers to control events in advance and prevent the City (and its employees) from making costly mistakes. You can think of a procedure as a road map where the trip details are highlighted in order to prevent a person from getting lost or 'wandering' off an acceptable path identified by the City's management team.

Updated and relevant policies and procedures provide the City with many benefits:

- Employees understand the constraints of their job without using a 'trial and error' approach, as key points are visible in well-written policies and procedures.

- Policies and procedures enable the workforce to clearly understand individual and team responsibilities, thus saving time and resources. Everyone is working off the same page; employees can get the “official” word on how they should go about their tasks quickly and easily.
- Clearly written policies and procedures allow managers to exercise control by exception rather than ‘micro-manage’ their staff.
- They send a “We Care!” message to employees. ‘The City wants us to be successful at our jobs.’
- Clearly written policies and procedures provide legal protection.

In order to allow work to begin with respect to policy/procedure development, the City Manager has collaborated with the City Attorney to update the Mill Creek Municipal Code and draft a policy/procedure governing the preparation, development, coordination, issuance and enforcement of policies and procedures.

The attached draft ordinance and draft policy/procedure were first reviewed and discussed with Council at its May 2, 2017 meeting. At that meeting, Council raised two areas of concern:

- Include a provision in Section 1.24.030 of the draft ordinance whereby administrative policies adopted by the City Manager are provided to Council for informational purposes.
- Clarify Section 1.24.060 of the draft ordinance to clarify that section is specific to administrative appeals only.

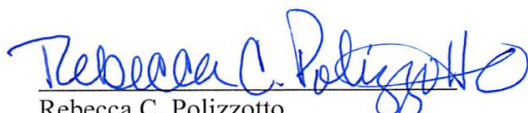
The City Attorney has updated the draft ordinance consistent with Council’s request and the revised ordinance is attached for Council consideration.

CITY MANAGER RECOMMENDATION: The City Manager recommends the Council adopt the proposed attached ordinance in order to provide the necessary framework for policy development/implementation.

ATTACHMENTS:

- Proposed Ordinance
- Proposed Policy/Procedure

Respectfully Submitted:


Rebecca C. Polizzotto
City Manager

ORDINANCE NO. 2017-_____

AN ORDINANCE OF THE CITY OF MILL CREEK, WASHINGTON, AMENDING AND RESTATING MILL CREEK MUNICIPAL CODE CHAPTER 1.24, ADOPTION OF UNIFORM POLICIES AND ADMINISTRATIVE PROCEDURES, TO REVISE AND UPDATE THE PROCEDURES AND REQUIREMENTS FOR ADOPTION, MAINTENANCE AND PUBLICATION OF CITY POLICIES; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Mill Creek Municipal Code (MCMC) Chapter 1.24 was adopted in 1996 to provide a uniform method of adopting policies and administrative procedures for the City; and

WHEREAS, the City Council finds those procedures are outdated, and that it is necessary and desirable to replace said procedures with new procedures and policies to establish a more comprehensive and transparent mechanism for the adoption, maintenance and publication of City policies;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILL CREEK, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. MCMC Chapter 1.24, adopted in 1996 and relating to the Adoption of Uniform Policies and Administrative Procedures, is repealed in its entirety.

Section 2. New MCMC Chapter 1.24, entitled Adoption, Maintenance and Publication of City Policies and Procedures, is hereby adopted as follows:

Chapter 1.24

Adoption, Maintenance and Publication of City Policies and Procedures

1.24.010 Purpose and Intent; Interpretation

A. The purpose of this chapter is to establish a uniform procedure for the administrative adoption, maintenance and publication of city policies and administrative procedures. The intent of this chapter is that it be used by the city manager consistently and routinely to adopt, maintain, amend, repeal, replace and publicize city policies and procedures for the benefit of the city and in the conduct of the city's affairs, and that such policies and procedures be readily available to city personnel and the public.

B. The procedures set forth in this chapter are not exclusive and shall not waive, limit or abrogate the city council's legislative authority or other prerogative, nor the city manager's administrative authority or other prerogative, to take any appropriate or necessary action, or to adopt and implement policies in a different manner, and

ADOPTION AND MAINTENANCE OF CITY POLICIES AND PROCEDURES - 1

760268.2/014455.00066

such other actions, policies and procedures shall be valid and enforceable notwithstanding that they were or were not adopted in conformance with this chapter.

1.24.020 Interpretation of Policies and Procedures

A. A policy or procedure adopted in accordance with this chapter that contains a statement that it does or is intended to supersede, replace or repeal an earlier-adopted or inconsistent policy or procedure shall be conclusive as to the status of the earlier-adopted policy or procedure.

B. In the event of a conflict between policies and procedures adopted in accordance with this chapter and those adopted pursuant to Section 1.24.010(B) above, they shall be harmonized to the extent possible giving greater weight to (i) the later-adopted policy or procedure; (ii) the policy or procedure's conformance with and furtherance of later-adopted state statutes; and (iii) the policy or procedure's conformance and integration with other pertinent policies and procedures of the City; provided that if the later-adopted policy or procedure contains a statement that it does or is intended to supersede, replace or repeal an earlier-adopted policy or procedure, such statement shall be conclusive as to the status of the earlier-adopted policy or procedure.

1.24.030 Systemization, Preparation and Adoption of Policies and Procedures

A. The city manager shall establish and maintain a uniform procedure for preparation, review, and adoption of policies and procedures adopted pursuant to this chapter.

B. Proposed policies and procedures to be adopted pursuant to this chapter shall be prepared by or at the direction of the city manager or a department head, and shall be subject to review and coordination within the city to ensure the content of such policy or procedure. A policy or procedure proposed under this chapter shall contain, or shall direct prompt promulgation of, the administrative procedures necessary to implement the proposed policy or procedure.

C. Every policy and procedure proposed for adoption pursuant to this chapter shall be reviewed and approved in writing by the city manager prior to adoption. The city manager shall advise the city council as to policies and procedures under consideration for adoption, and shall determine whether such policy or procedure requires presentation to or approval of the city council, in which case the applicable provisions of Section 1.24.040 will apply. If the policy or procedure is to be adopted by the city manager, the manager shall include a statement on the face of the policy or procedure specifying the date of adoption and the implementation or effective date thereof. Following adoption, the city manager shall **provide a copy to the city council** and shall implement such policies and procedures as specified or required.

1.24.040 Council Actions

A. The city council may in its discretion propose policies and procedures or direct the city manager to prepare or propose policies and procedures to be adopted by the council or the city manager pursuant to this chapter.

B. The city council may take whatever action it deems appropriate when presented with a policy or procedure proposed under this chapter, provided that the city council shall adopt any final policy or procedure at an open public meeting. At the city council's discretion, a public hearing may be scheduled before or after adopting or taking action on the proposed policy or procedure.

1.24.050 Publication of Policies and Procedures

A. The city manager shall establish and maintain a uniform system for organizing, tracking and publicizing policies and procedures adopted pursuant to this chapter.

1.24.060 Appeals

A. It is not the intent of this chapter to establish a right of **administrative** appeal pertaining to any policies or procedures adopted pursuant to this chapter. Accordingly:

1. Every policy or procedure adopted pursuant to this chapter by a final action of the city council shall be appealable only as provided by law or as expressly stated in such policy or procedure.

2. Every policy or procedure adopted pursuant to this chapter by action of the city manager shall be appealable only as provided by law or as expressly stated in such adopted policy or procedure.

3. There shall be no administrative appeal of an action taken in accordance with or pursuant to administrative procedures implemented pursuant to an adopted policy except as provided by law or as stated in such policy.

4. There shall be no **administrative or judicial** appeal of a decision to propose, forego, or not adopt any policy or procedure pursuant to this chapter except as provided by law.

B. An appeal of any policy or procedure adopted pursuant to this chapter, **if allowed**, shall not suspend adoption or implementation of such policy or procedure except as provided by law.

Section 3. The City Clerk is directed to take steps as required to implement and effectuate this Ordinance. The Clerk is authorized to correct scrivener's errors, internal references, and the like.

Section 4. This Ordinance shall be in full force and effect five days after publication of a summary hereof consisting of the title of this Ordinance, in accordance with RCW 35A.13.200.

ADOPTION AND MAINTENANCE OF CITY POLICIES AND PROCEDURES - 3
760268.2/014455.00066

Adopted this _____ day of _____, 2017, by a vote of _____ for, _____ against, and _____ abstaining.

APPROVED:

MAYOR PAMELA PRUITT

ATTEST/AUTHENTICATED:

CITY CLERK

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
SCOTT M. MISSALL, CITY ATTORNEY

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

ORDINANCE NO.: _____

ADOPTION AND MAINTENANCE OF CITY POLICIES AND PROCEDURES - 4
760268.2/014455.00066

**100-01
POLICY AND PROCEDURE DOCUMENTS**



Subject ESTABLISHMENT OF POLICIES AND PROCEDURES IMPLEMENTING MCMC Chapter 1.24 AS AMENDED 2017	Index: Administration Number: 100-01
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<u>Effective Date:</u>	<u>Supersedes:</u> All prior inconsistent policies and procedures regarding implementation measures for MCMC Ch. 1.24	<u>Staff Contact:</u>	<u>Clerk ID Number</u>	<u>Approved By and Date:</u>
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1.0 PURPOSE:

To establish uniform policies and procedures in accordance with MCMC Ch. 1.24 (2017) concerning the preparation, development, coordination, issuance and enforcement of policies and procedures hereafter adopted by the City pursuant to MCMC Ch. 1.24 (2017).

2.0 ORGANIZATIONS AFFECTED:

All departments/divisions.

3.0 REFERENCE:

Mill Creek Municipal Code Ch. 1.24, as amended 2017.

4.0 POLICY:

4.1 Policies and procedures hereafter adopted pursuant to MCMC Ch. 1.24 and this Policy 100-01 will conform to the requirements specified in MCMC Ch. 1.24 (2017) and this Policy 100-01.

4.2 The uniform processes established herein for adopting and implementing such policies and procedures will establish a unified approach to sound municipal government and provide consistent and available documentation describing the City's overall policy, rules of procedure, and methods of operation.

4.3 The City will maintain a Policies and Procedures Manual, which outlines the major systems and procedures relating to the interaction of the City's organizational departments and component parts, including employees, and city systems and procedures concerning interactions between the City, the Council, City Manager, department heads, vendors, contractors, subcontractors, and outside consultants.

4.4 The Policies and Procedures Manual will consist of all policies and procedures adopted pursuant to MCMC Ch. 1.24 and this Policy 100-01. The Manual will be organized as determined by the City Manager, and may include component parts (e.g., civil functions and police functions) as appropriate to account for different legal and operational procedures and requirements. The Manual will be routinely updated and made publically available in an online, searchable format.

4.5 All City personnel are responsible for timely reviewing and maintaining familiarity with the Policies and Procedures Manual and all adopted policies and procedures, and for timely implementation thereof as pertinent to their position and work functions.

5.0 DEFINITIONS:

5.1 Adopted Policies : Policies and procedures that have been adopted pursuant to MCMC Ch. 1.24 and this Policy 100-01.

5.2 Manual: The Policies and Procedures Manual.

5.3 Policy: A statement or statements of governing or operational principles, plans, or courses of conduct, often tailored to a certain set of circumstances, that are established by the City Manager or by Council action in accordance with MCMC Ch. 1.24.

5.4 Procedure: Instructions or actions required to implement policy.

5.5 Proposed Policies: New or revised policies and procedures that are proposed for adoption under MCMC 1.24 and this Policy 100-01.

6.0 PROCEDURES:**6.1 Preparation of Proposed Policies.**

6.1.1 Department directors are responsible for providing the City Manager with policy analysis, improved administrative practices and techniques, and recommendations pertinent to their position and work functions for consideration as new or revised policies or procedures. On their own initiative or at the request of the City Manager, directors will identify and prepare proposed policies as appropriate or useful to the conduct of their department and City's affairs.

6.1.2 Proposed policies shall be prepared by or at the specific direction of a director. When any existing policy is revised, changes must be denoted in "redline" fashion, or by cross-hatching, dashes, strike through, underlining, etc., to reflect the precise changes made. Proposed policies should generally mirror the format used in this Policy 100-01. When a proposed policy is completed, the director shall submit it to the City Clerk, accompanied by a cover letter outlining the key provisions and summarizing the purpose and effect of the proposed policy.

6.2 Review and Approval

6.2.1 The City Clerk will log and number each proposed policy as received, and confer with the originating director as needed for clarifications, corrections and to assure proper format and general subject matter. The Clerk will thereafter provide the proposed policy and cover letter to the City Manager's Executive Assistant for review by the City Manager.

6.2.2 The City Manager will review the proposed policy and may distribute the proposed policy for discussion at a leadership team or other internal staff meeting, and/or confer with directors, city attorney, Council, and/or others as appropriate. Following any changes to the proposed policy, the City Manager shall determine at her/his discretion, and subject to any applicable authority that may have been assigned by the City Council, MCMC, or Revised Code of Washington, whether the proposed policy is suitable and ready for adoption, whether it should be declined or delayed, or whether it requires review or comment by the Council. The City Manager's decision shall be final and not subject to any appeal.

6.2.3 If the City Manager determines to approve a proposed policy, the Manager shall sign and date the proposed policy and provide the original to the City Clerk. If the proposed policy requires Council approval or comment, the Manager shall complete such review and obtain such approval or comment as necessary, provide a copy thereof to the Clerk if the policy is adopted.

6.3 Post Approval Actions for Adopted Policies

6.3.1 The City Clerk shall review every adopted policy prior to dissemination and publication to assure completeness and compliance with the procedures of this Policy 100-01. If necessary, a final and complete version of the adopted policy shall be prepared by the originating department. The official copy of the adopted policy will be printed by the City Clerk, submitted to the City Manager or Council for signature, and placed on file with the City Clerk.

6.3.2 The City Clerk shall promptly notify all City personnel via e-mail that the adopted policy has been issued and provide a pdf copy for review. The adopted policy will be e-mailed to the codifier of the Manual to update the Manual as needed, and the codifier will then return a new CD-ROM of the updated Manual to the City Clerk. The CD-ROM will be transmitted to Information Services for posting on the network where it may be accessed online at the user's convenience.

6.3.3 No hard copies of the adopted policy or updated Manual will be prepared or distributed. If desired, hard copies may be printed by users and maintained in a departmental policy and procedure binder, provided that the current CD-ROM Manual as published shall comprise the City's official copy of all adopted policies. [Discuss]

6.4 Policy Updates

6.4.1 City policies and procedures should be reviewed periodically and updated as required. All policies will be reviewed at least every 5 years.



Agenda Item # G
Meeting Date: **June 6, 2017**

CITY COUNCIL AGENDA SUMMARY

City of Mill Creek, Washington

AGENDA ITEM: SELECTION OF CITY OF MILL CREEK VOTING DELEGATES FOR AWC 2017 ANNUAL BUSINESS MEETING

PROPOSED MOTION: Motion to appoint Mayor Pam Pruitt, Councilmember Mike Todd and City Manager Rebecca Polizzotto as the City of Mill Creek voting delegates for the 2017 AWC Annual Business Meeting.

KEY FACTS AND INFORMATION SUMMARY: The Association of Washington Cities, in conjunction with its annual conference, will hold its annual business meeting on Thursday, June 22, 2017 in Vancouver, Washington. AWC bylaws allow each city to appoint up to three voting delegates. Each voting delegate has one vote.

Voting delegates vote to:

- Elect members of the AWC Board of Directors;
- Amend the AWC bylaws; and
- Consider floor amendments to the Statement of Policy.

The names of the City's voting delegates must be submitted to AWC by June 15, 2017.

Mayor Pruitt, Councilmember Todd and City Manager Polizzotto have registered to attend the AWC Conference.

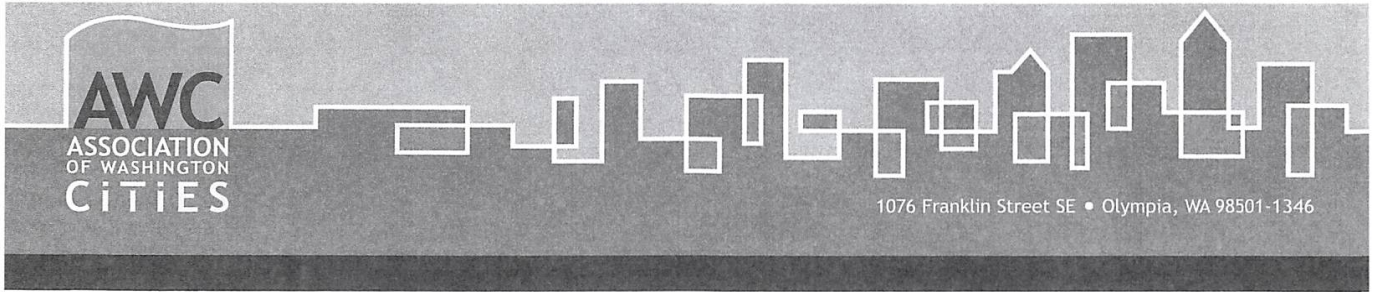
CITY MANAGER RECOMMENDATION: The City Manager recommends that Mayor Pruitt, Councilmember Todd and the City Manager be appointed to serve as the City's voting delegates for the 2017 AWC Annual Business Meeting.

ATTACHMENTS:

Respectfully Submitted:

A handwritten signature in blue ink that reads "Rebecca C. Polizzotto".

Rebecca C. Polizzotto
City Manager



May 15, 2017

To: Mayor Pamela Pruitt
From: Jim Restucci, AWC Board President
Subject: 2017 AWC Annual Business Meeting

AWC invites you to attend the **Annual Business Meeting on Thursday, June 22, 2017, 4 – 5:45 pm at the Hilton Vancouver Washington Convention Center, 301 W. 6th St. Vancouver, WA 98660** in the Heritage Ballrooms A, B, C, and D in conjunction with the AWC Annual Conference. On behalf of the AWC Board of Directors, I strongly encourage your city to participate by appointing voting delegates.

AWC bylaws allow each city to appoint up to three voting delegates. The bylaws do not specify a method or form cities must use to appoint delegates. If your city determines these appointments through council action, please share this information with your city council.

Each voting delegate has one vote. Voting delegates have the opportunity to influence the operations of AWC by:

- Electing the members of the AWC Board of Directors, who play a critical leadership role in the success of AWC;
- Voting on amendments to the AWC bylaws, which govern the association's operations; and
- Considering floor amendments to the Statement of Policy.

Once the Mayor, City Manager, or City Council has determined the city's voting delegates for 2017, please send their names and titles to Michelle Catlin, AWC Executive Assistant. **The deadline for submitting voting delegates is Thursday, June 15, 2017.** You may email or fax this information to Michelle Catlin at michellec@awcnet.org or Fax: (360) 753-0149.

AWC's Statement of Policy provides the basis for policy recommendations by AWC's Legislative Priorities Committee, the Board and staff. It is updated at least every six years and was recently updated with committee recommendations in 2014 and amended on the floor at the 2015 Business Meeting. Further changes are not proposed for 2017, but the AWC Bylaws provide for members to propose amendments for floor action. If your city plans to propose a floor amendment, please complete the amendment form on AWC's website www.awcnet.org/SOPAmendmentForm and send it to Regina Adams at reginaa@awcnet.org by Wednesday, June 14.

Additional information on the Business Meeting, the AWC Board of Directors, and the Annual Conference can be found on AWC's website: awcnet.org.

cc: Peggy Lauerman, Director of Finance/Acting City Clerk
Rebecca Polizzotto, City Manager


360.753.4137 • 800.562.8981



Agenda Item # H
Meeting Date: June 6, 2017

CITY COUNCIL AGENDA SUMMARY

City of Mill Creek, Washington

AGENDA ITEM: TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH ZAYO GROUP, LLC

PROPOSED MOTION:

Motion to adopt the attached Ordinance granting a non-exclusive telecommunications franchise to the Zayo Group.

KEY FACTS AND INFORMATION SUMMARY:

Section 35A.47.040 of the Revised Code of Washington (RCW) authorizes the City to grant non-exclusive telecommunication franchises for the use of public streets and rights-of-way for providing communication services. It is in the best interests of the City to clearly define with each company desiring the use of the City's rights-of-way exactly what conditions must be satisfied to gain this permission. The Zayo Group, LLC, desires to install fiber optic cables within the City and eventually serve city customers. Per Section 12.16.050 of the Mill Creek Municipal Code, any company providing telecommunications services to residents or businesses within the City must have a telecommunications franchise agreement with the City.

Negotiations with Zayo have been underway for several months and the attached ordinance reflects the final franchise agreement that protects the City's interests.

CITY MANAGER RECOMMENDATION:

The City Manager recommends the Council adopt the attached ordinance granting a non-exclusive telecommunications franchise to the Zayo Group.

ATTACHMENTS:

- Ordinance granting non-exclusive telecommunications franchise to Zayo Group, LLC.

Respectfully Submitted:

A handwritten signature in blue ink that reads "Rebecca C. Polizzotto".

Rebecca C. Polizzotto
City Manager

CITY OF MILL CREEK

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILL CREEK, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO ZAYO GROUP, LLC TO INSTALL, OPERATE, MAINTAIN AND REPAIR A TELECOMMUNICATIONS SYSTEM WITHIN THE CITY; PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Zayo Group, LLC, a Delaware limited liability company (“Zayo” or “Franchisee”), has requested that the City Council grant it a non-exclusive telecommunications franchise for the installation, operation, maintenance and repair of a multiple conduit and aerial fiber optic telecommunications system within the City’s rights-of-way; and

WHEREAS, pursuant to RCW 35A.47.040, the City is authorized to grant one or more non-exclusive franchises for use of public streets, roads, bridges, and other public rights-of-way, above and below the surface of the ground, for poles, conduits, tunnels, towers, structures, pipes, wires, and appurtenances and other facilities for the transmission and distribution of electrical energy, signals and other methods of communication; and

WHEREAS, the City has determined that it is in the best interests of the City and in the best interests of the health, safety, and welfare of the Mill Creek community and the general public to grant this non-exclusive Franchise to Zayo; now therefore,

THE CITY COUNCIL OF THE CITY OF MILL CREEK DO ORDAIN AS FOLLOWS:

SECTION 1. DEFINITIONS

For purposes of this Franchise, the following words, terms and phrases shall have the meanings stated in this section. 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.

1.1 "Affiliate" means a Person who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.

1 **1.2** "City" means the City of Mill Creek, Washington, and all the territory within its
2 present and future boundaries and including any area over which the City exercises
3 jurisdiction.

4
5 **1.3** "Communications Service" means telecommunications services, provided by the
6 Franchisee using its Facilities, either directly or by its Affiliates, including but not limited
7 to leasing telecommunications capacity or dark fiber, as well as the transmission of voice,
8 data, or other electronic information by wire, optical cable or other similar means. For
9 purposes of this Franchise, Communications Service excludes over-the-air transmission
10 of broadcast television, and broadcast radio signals, or the provision of cable services or
11 open video services as defined in the Communications Act of 1934, as amended, or the
12 provision of Personal Wireless Services. A separate franchise or an amendment to this
13 Franchise is required prior to offering such additional services.

14
15 **1.4** "Facilities" means plant, equipment and property, including but not limited to
16 cables, wires, conduits, ducts, pedestals, antennas, electronics and other appurtenances
17 used or to be used to transmit, receive, distribute, provide or offer Communications
18 Services under this Franchise.

19
20 **1.5** "FCC" means the Federal Communications Commission, or any successor
21 governmental agency.

22
23 **1.6** "Franchise" means the non-exclusive rights, privileges, and authority granted to
24 Franchisee to use its Facilities in the City's Rights-of-Way pursuant to this Franchise.

25
26 **1.7** "Person" means any individual, corporation, partnership, association, joint
27 venture, or organization of any kind and the lawful trustee, successor, assignee,
28 transferee, or personal representative thereof.

29
30 **1.8** "Personal Wireless Services" means the following types of facilities:
31 "microcells," "minor facilities," "small cell facilities," all as defined by RCW 80.36.375,
32 and "macrocell" facilities, including towers and new base stations and other similar
33 facilities. Personal Wireless Services does not include those facilities used to provide
34 power or fiber to wireless communications facilities.

35
36 **1.9** "Right-of-Way" means the surface of, and the space above and below, any public
37 street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, public
38 way, drive, circle, pathways, spaces, or other public right of way which, under City
39 ordinances or applicable laws, the City has authority to grant franchises, licenses, or
40 leases for use thereof, or has regulatory authority thereover and only to the extent such
41 Rights-of-Way are opened. Rights-of-Way for the purpose of this Franchise do not
42 include buildings, other City-owned physical facilities, parks, poles, conduits, fixtures,
43 real property or property rights owned by the City not reserved for transportation
44 purposes, or similar facilities or property owned by or leased to the City, including, by
45 way of example and not limitation, structures in the Rights-of-Way such as utility poles,
46 light poles and bridges.

1
2 **1.10** "Service Area" means the present municipal boundaries of the City and shall
3 include any future additions thereto by annexation or other legal means.
4

5 **SECTION 2. GRANT.**
6

7 **2.1 Grant of a Non-Exclusive Franchise.**
8

9 **2.1.1** The City hereby grants to Franchisee the non-exclusive right, privilege,
10 and authority to use and occupy the Rights-of-Way for the purpose of providing
11 Communications Services, including without limitation the right to lawfully install,
12 remove, construct, erect, operate, use, maintain, relocate, and repair Facilities in, along,
13 under, and across the Rights-of-Way subject to the terms and conditions of this
14 Franchise. In order to provide any other services over the Facilities, the Franchisee shall
15 be required to obtain any additional governmental authorizations required by law.
16

17 **2.1.2** The provisions of MCMC Chapter 12.16 are hereby incorporated by
18 reference. In the event of a conflict between the MCMC and this Franchise, the terms of
19 this Franchise shall prevail; except to the extent that it is an exercise of the City's police
20 power authority. In exercising its rights under this Franchise, Franchisee shall comply
21 with all lawfully enacted City Codes, ordinances, standards, procedures, and regulations.
22 The provisions of this Franchise are subject to the lawful exercise of the City's police
23 powers upon reasonable notice to Franchisee. In accepting this Franchise, the Franchisee
24 acknowledges that its rights hereunder are subject to the police power of the City to adopt
25 and enforce, from time to time and in the manner it deems reasonable, general ordinances
26 necessary for the safety, health, and welfare of the public. This Franchise shall not be
27 interpreted to prevent the City from imposing additional lawful conditions, including
28 additional compensation conditions for use of the Rights-of-Way, should Franchisee
29 provide service other than Communications Services. Franchisee agrees to comply with
30 all applicable laws that are now or may in the future be enacted by the City pursuant to
31 such police power.
32

33 **2.1.3** The authority granted herein to Franchisee is a limited authorization to
34 occupy and use the Rights-of-Way for providing Communications Services, and shall not
35 include or be a substitute for:
36

37 **a.** Any other permit or authorization required for the privilege of
38 transacting and carrying on a business within the City, including but not limited to a City
39 business license;
40

41 **b.** Any permit, agreement, authorization, or condition that may be
42 required by the City for using the Right-of-Way in connection with operations on or in
43 the Right-of-Way or public property, such as Right-of-Way use permits and approved
44 traffic control plans.
45

1 **2.1.4** This Franchise only conveys limited rights and interests as to those
2 Rights-of-Way in which the City has an actual interest. It is not a warranty of title or
3 interest, nor does it provide the Franchisee with any representation as to any location of a
4 City Right-of-Way or the nature of the City's interest in any Right-of-Way. No right to
5 install any facility, infrastructure, wires, lines, cables, or other equipment, on any City
6 property other than a Right-of-Way, or upon private property without the owner's
7 consent, or upon any City, public or privately owned utility poles or conduits is granted
8 herein.
9

10 **2.1.5** This Franchise shall not be construed as to deprive the City of any rights
11 or privileges which it now has or may hereafter have to regulate the use and control of the
12 Rights-of-Way, and public property. Nothing in this Franchise shall limit nor expand the
13 City's right of eminent domain under State law. If at any time the City exercises its
14 authority to vacate all or any portion of any Right-of-Way, the City shall not be liable for
15 any damages or loss to Franchisee by reason of such vacation. The City may, upon
16 ninety (90) days' written notice to Franchisee, terminate this Franchise with respect to
17 such vacated area.
18

19 **2.1.6** The City specifically reserves the right to grant, at any time, such
20 additional franchises for other similar systems to the Franchisee or to other persons or
21 entities, as the City deems appropriate; provided, however, such additional grants shall
22 not operate to materially modify, revoke, or terminate any rights previously granted to
23 Franchisee. The grant of any additional franchise shall not of itself be deemed to
24 constitute a modification, revocation, or termination of rights previously granted to
25 Franchisee
26

27 **2.1.7** This Franchise does not establish any priority for the use of the Rights-of-
28 Way by Franchisee or by any present or future franchisees or other permit holders. In the
29 event of any dispute as to the priority of use of the Rights-of-Way, the first priority shall
30 be to the City in the performance of its various functions, the second priority shall be to
31 the public generally, and thereafter, as between franchisees and other permit holders, as
32 reasonably determined by the City in the exercise of its powers, including the police
33 power and other powers reserved to and conferred on it by the State of Washington.
34

35 **2.1.8** To the extent that any of the Rights-of-Way within the Franchise Area are
36 a part of the State highway system ("State Highways") and are governed by the
37 provisions of Chapter 47.24 RCW and applicable Washington State Department of
38 Transportation regulations, Franchisee shall comply with said requirements in addition to
39 local ordinances and other applicable regulations. Franchisee shall correct any
40 noncompliant facilities identified by the City or by any other local, State or federal
41 governmental entity. Without limitation of the foregoing, Franchisee specifically agrees
42 that:
43

- 44 a. Any pavement trenching and restoration performed by Franchisee
45 within State Highways shall meet or exceed applicable WSDOT requirements;
46

1 b. Any portion of a State Highway damaged or injured by Franchisee
2 shall be restored, repaired and/or replaced by Franchisee to a condition that meets or
3 exceeds applicable WSDOT requirements; and
4

5 c. Without prejudice to any right or privilege of the City, WSDOT is
6 authorized to enforce in an action brought in the name of the State of Washington any
7 condition of this Franchise with respect to any portion of a State Highway.
8

9 **2.2 Term of Franchise.**

10
11 The term of this Franchise shall be for five (5) years, beginning on the effective date of
12 this franchise, set forth in Section 8 (the "Initial Term"). This Franchise shall
13 automatically renew for one (1) additional five (5) year period (the "Renewal Term"),
14 upon the same terms and conditions as set forth in this Franchise, unless either party
15 provides one hundred twenty (120) days written notice to the other party to request an
16 amendment to the Franchise. Following the Renewal Term, this Franchise may be
17 further renewed pursuant to the Mill Creek Municipal Code ("MCMC") Chapter 12.16,
18 as now exists or hereinafter amended.
19

20 **2.3 Non-Exclusive.**

21
22 This Franchise shall be non-exclusive, and subject to all prior rights, interests, easements,
23 or licenses granted by the City or its predecessors to any Person to use any property,
24 Right-of-Way, easement, right interest, or license. The City may at any time grant
25 authorization to use the Right-of-Way for any purpose not incompatible with the
26 Franchisee's rights under this Franchise and for such additional franchises as the City
27 deems appropriate.
28

29 **2.4 Effect of Acceptance.**

30
31 By accepting this Franchise, the Franchisee acknowledges and accepts the City's legal
32 right to issue and enforce the Franchise; accepts and agrees to comply with each and
33 every provision of this Franchise; and agrees that the Franchise was granted pursuant to
34 processes and procedures consistent with applicable law.
35

36 **SECTION 3. GENERAL RIGHT OF WAY USE AND CONSTRUCTION.**

37
38 **3.1 Use of Rights-of-Way.**

39
40 Franchisee shall not erect, install, construct, repair, replace, or maintain its Facilities in
41 such a fashion as to unduly burden the present or future use of the City's Rights-of-Way.
42 If the City in its reasonable judgment determines that any portion of the Franchisee's
43 Facilities is an undue burden, City shall provide notice to Franchisee. Following
44 reasonable advance written notice of not less than thirty (30) days, Franchisee at its
45 expense shall modify its Facilities or take such other actions as the City may determine
46 are in the public interest to remove or alleviate the burden, and Franchisee shall do so

1 within the time period established by the City. Franchisee may, subject to the terms of
2 this Franchise, erect, install, construct, repair, replace, reconstruct, and retain in, on, over,
3 under, upon, across, and along the Rights-of-Way within the City such lines, cables,
4 conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals,
5 attachments, and other appurtenances and equipment as are necessary to the provision of
6 its Communications Services.

7

8 **3.2 Construction or Alteration.**

9

10 Franchisee shall in all cases comply with all City laws, resolutions and regulations
11 regarding the acquisition of permits and/or such other items as may be reasonably
12 required in order to construct, alter, or maintain its Facilities and to provide
13 Communications Services. All work authorized and required under this Franchise shall
14 be accomplished in a safe, thorough, and workmanlike manner, or better. All
15 installations of Facilities shall be durable and installed in accordance with current
16 engineering standards.

17

18 **3.3 Non-Interference.**

19

20 Franchisee shall exert commercially reasonable efforts to construct and maintain its
21 Facilities so as not to interfere with other use of the Rights-of-Way. Franchisee shall,
22 where possible, in the case of above ground lines or facilities, make use of existing poles
23 and other facilities available to Franchisee. This Franchise does not grant Franchisee the
24 right to erect new poles without express permission from the City and only upon a
25 showing that no alternative existing locations for Franchisee's Facilities exist.

26

27 **3.4 Consistency with Designated Use.**

28

29 Notwithstanding any other provision of this Franchise, no Right-of-Way shall be used by
30 the Franchisee if the City, in its sole opinion, determines that such use is inconsistent
31 with the terms, conditions, or provisions by which such Right-of-Way was created or
32 dedicated, or presently used under City, County, State or federal laws.

33

34 **3.5 Undergrounding.**

35

36 Franchisee shall place underground, at Franchisee's expense unless stated otherwise, all
37 of its Facilities which are located or are to be located above or within the Rights-of-Way
38 of the City in the following cases:

39

40 a. When all other existing utilities, excluding electrical facilities, are
41 required to be placed underground by statute, resolution, policy or other regulation;

42

43 b. When all other existing utilities, except electrical facilities, have
44 been placed underground.

45

1 c. When Franchisee is unable to get pole attachment permits from
2 pole owners;

3
4 d. In all new developments and subdivisions where other wireline
5 utilities, except electrical, are constructed underground; and

6
7 e. When required by ordinances, resolutions, regulations, or policy of
8 the City or applicable State or federal law.

9
10 **3.5.1** Whenever the City may require the undergrounding of all aerial utilities,
11 which does not include electrical utilities or Personal Wireless Services facilities,
12 Franchisee shall underground its aerial Facilities in the manner specified by the City,
13 concurrently with and in the area of the other affected utilities, and at no cost to the City.
14 The location of any such relocated and underground Facilities shall be approved by the
15 City, following consultation with the Franchisee. Where other utilities are present and
16 involved in the undergrounding project, Franchisee shall only be required to pay its fair
17 share of the common costs borne by all utilities, in addition to the costs specifically
18 attributable to the undergrounding of Franchisee's Facilities. "Common costs" shall
19 include necessary costs not specifically attributable to the undergrounding of any
20 particular facility, such as costs for common trenching and utility vaults. "Fair share"
21 shall be determined for a project on the basis of the number and size of all other utility
22 facilities being undergrounded.

23
24 **3.5.2** To the extent Franchisee is providing Communication Services to Personal
25 Wireless Services facilities, Franchisee shall adhere to the design standards for such
26 Personal Wireless Services facilities, and shall underground its Facilities and/or place its
27 Facilities within the pole as may be required by such design standards. For the purposes
28 of clarity, this Section 3.5.2 does not require undergrounding or interior placement of
29 Facilities within the pole to the extent that the Personal Wireless Service facilities are
30 located on utility poles or other structures within the Right-of-Way with pre-existing
31 aerial telecommunications facilities and provided such construction of Franchisee's
32 Facilities continue to comply with this Section 3.5.

33
34 **3.5.3** If an ordinance is passed creating a local improvement district which
35 involves placing underground utilities including Franchisee's Facilities, if such Facilities
36 are located overhead, Franchisee shall participate in such underground project and shall
37 remove poles, cables, overhead wires and other facilities within such district if requested
38 to do so and place such Facilities underground. If such undergrounding of Franchisee's
39 Facilities is part of such a project, the costs thereof shall be included in such local
40 improvement district.

41
42 **3.5.4** Franchisee shall use conduit or its functional equivalent to the greatest
43 extent possible for undergrounding, except that drops from pedestals to Franchisee's
44 customer's homes and for cable on other private property where the owner requests that
45 conduit not be used. Cable and conduit shall be utilized which meets the highest industry
46 standards for electronic performance and resistance to interference or damage from

1 environmental factors. Franchisee shall use and construct, in conjunction and
2 coordination with other utility companies or providers, common trenches for
3 underground construction wherever available and possible.
4

5 **3.6 Joint Trenching**
6

7 In cases where Franchisee's Facilities will be placed underground, whenever it is possible
8 and reasonably and financially practicable to joint trench or share bores and cuts,
9 Franchisee shall work with other providers (such as telecommunications, cable, gas,
10 electric utilities, or the City), licensees, permittees, and franchisees to reduce as far as
11 possible the number of Right-of-Way disturbances.
12

13 **3.7 Maintenance and Restoration.**
14

15 **3.7.1 Restoration.** In case of disturbance of any Right-of-Way or public
16 improvement, Franchisee shall, at its own cost and expense and in accordance with the
17 requirements of the City, restore such Right-of-Way or public improvement to
18 substantially the same condition as existed before the work involving such disturbance
19 took place, less ordinary wear and tear, as determined by the City and in accordance with
20 any applicable City public works construction standards. This includes vegetation that is
21 damaged by or removed during the Right-of-Way disturbance. All requirements of this
22 Section pertaining to public property shall also apply to the restoration of private
23 easements and other private property. Franchisee shall perform all restoration work
24 promptly and in compliance with the permit requirements and appropriate safety
25 standards. If Franchisee fails, neglects, or refuses to make restorations as required under
26 this Section, then the City may (but is not required to) do such work or cause it to be
27 done, and Franchisee shall pay the cost thereof to the City within 30 days of the City
28 providing an itemized list of the costs and expenses incurred in performing such work. If
29 Franchisee causes any damage to private property in the process of restoring Facilities,
30 Franchisee shall repair such damage, ordinary wear and tear excepted. Franchisee shall
31 warrant any restoration work performed under this Franchise, including the maintenance
32 of any landscaping or vegetation installed as part of the restoration work, for a period of
33 two years. This restoration requirement shall survive the expiration, revocation and
34 termination of this Franchise.
35

36 **3.7.2 Maintenance.** Franchisee shall maintain all above ground improvements
37 that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid
38 interference with the City's ability to maintain the Right-of-Way, Franchisee shall
39 provide a clear zone of five feet on all sides of such improvements. If Franchisee fails to
40 comply with this provision, and by its failure, property is damaged, then Franchisee shall
41 be responsible for all damages caused thereby, including restoration.
42

43 **3.7.3 Disputes.** In any dispute over the adequacy of restoration or maintenance
44 under this Section, the City shall have the authority, in the exercise of its reasonable
45 discretion, to determine the adequacy of the restoration or maintenance.
46

1 **3.8 Relocation.**
2

3 **3.8.1 City Property.** If during the term of the Franchise the City or any
4 government entity elects or requires a third party, or if the City or other governmental
5 entity determines that it is necessary, to alter, repair, realign, abandon, improve, vacate,
6 reroute, or change the grade of any street, public way, or other public property; or to
7 construct, maintain, or repair any public improvement; or to replace, repair install,
8 maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding
9 structure, or other facility, including a facility used for the provision of utility or other
10 services or transportation of drainage, sewage, or other liquids, Franchisee shall, upon
11 request, except as otherwise hereinafter provided, at its sole expense remove or relocate
12 as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes,
13 and any other Facilities which it has installed.
14

15 **3.8.2 Utilities and Other Franchisees.** If during the term of the Franchise
16 another entity which holds a franchise or any utility requests Franchisee to remove or
17 relocate such Facilities to accommodate the construction, maintenance or repair of the
18 requesting party's facilities, or their more efficient use, or pursuant to an agreement
19 between Franchisee and such requesting party to "make ready" the requesting party's
20 facilities for use by others, or because Franchisee is using a facility which the requesting
21 party has a right or duty to remove, Franchisee and such requesting party shall mutually
22 negotiate the actions required in connection with the "make ready" relocation or removal.
23 The companies involved shall decide among themselves who is to bear the cost of "make
24 ready" removal or relocation, provided that the City shall not be liable for such costs.
25

26 **3.8.3 Notice to remove or relocate.** Any utility, other franchisee, or City request
27 to Franchisee to remove or relocate its Facilities shall give Franchisee reasonable advance
28 written notice of no less than ninety (90) days to Franchisee advising Franchisee of the
29 date or dates removal or relocation is to be undertaken; provided that the City may
30 provide whatever notice is reasonable under the circumstances in emergencies or in cases
31 where public health and safety or property is immediately endangered.
32

33 **3.8.4 Failure by Franchisee to remove or relocate.** If Franchisee fails, neglects
34 or refuses to remove or relocate its Facilities as directed by the City; or in emergencies
35 where public health and safety or property is endangered, the City may do such work or
36 cause it to be done, and the cost thereof to the City shall be paid by Franchisee. If
37 Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by
38 another franchisee or utility, that franchisee or utility may do such work or cause it to be
39 done, and if Franchisee would have been required to pay for the cost of performing such
40 work under the provisions of this Agreement, the cost thereof to the party performing the
41 work or having the work performed shall be paid by Franchisee.
42

43 **3.8.5 City's Immediate Repair.** If in the sole but reasonable opinion of the
44 City's Public Works Director, damage to the public Right-of-Way resulting from damage
45 or disturbance during the construction, operation, or maintenance of the Franchisee's
46 Facilities requires immediate repair, the City may perform such repairs, at the cost of the

1 Franchisee. In such event, the City will endeavor to notify the Franchisee of the
2 immediate repairs needed. The Franchisee shall pay to the City the City's costs,
3 including administrative costs related to such repairs within thirty (30) days of the date of
4 written notice of the costs to the Franchisee.
5

6 **3.8.6 Procedure for removal of Facilities.** Franchisee shall not remove any
7 underground Facilities which requires trenching or other opening of the streets along the
8 Facilities to be removed, except as hereinafter provided. Franchisee may remove any
9 underground Facilities from the streets which have been installed in such a manner that it
10 can be removed without trenching or other opening of the streets. Subject to applicable
11 law, Franchisee shall remove, at its sole cost and expense, any underground Facilities by
12 trenching or opening of the streets along the extension thereof or otherwise which is
13 ordered to be removed by the City based upon a determination, in the sole discretion of
14 the City, that removal is required in order to eliminate or prevent a hazardous condition.
15 Usable underground cable and conduit in the streets that is not removed as required in
16 this subsection shall be deemed abandoned and title thereto shall vest in the City at no
17 cost to the City.
18

19 **3.9 Movement of Buildings.**
20

21 Franchisee shall, on the request of any person holding a building moving permit issued
22 by the City, temporarily raise or lower its wires to permit the moving of such building.
23 Franchisee shall be entitled to ninety (90) days' notice to arrange the raising or lowering
24 of the wires. Franchisee may charge a reasonable fee no greater than its actual costs
25 incurred in raising or lowering its wires, for this service to the person or entity holding a
26 building moving permit and may request that the costs be paid in advance.
27

28 **3.10 City Right to Inspect and Cost Recovery.**
29

30 The City shall have the right to inspect all work performed by Franchisee in, on or above
31 City Rights-of-Way, whether during the performance of such work or after completion so
32 long as such inspection does not disrupt Franchisee's system operation. To the extent that
33 the City is required to perform any inspections, maintenance, or repairs to City streets,
34 Right-of-Way, or other City property due to Franchisee's use thereof, the City shall be
35 entitled to recover the costs and expenses incurred therefore from Franchisee and such
36 costs and expenses shall be payable on demand. In the event that the City incurs any
37 costs or expenses for designing, installing, repairing, or altering any City facilities that
38 would not have occurred but for Franchisee's exercise of the rights granted under this
39 Franchise, the City may bill Franchisee for reimbursement of such costs and expenses
40 and such shall be immediately due and payable to the City. Any such recovery of City
41 costs or reimbursements of such costs shall not be an off-set or credit against any
42 Franchise Fee to be paid to the City by the Franchisee.
43

44 **3.11 Construction Standards.**
45

1 **3.11.1** All work authorized or required under this Franchise shall be done in a
2 safe, thorough, and workmanlike manner, or better. All installations of Facilities shall be
3 durable and installed in accordance with current professional engineering standards.
4 Prior to commencement of construction or any work being performed in any Right-of-
5 Way, all of such work shall be conducted pursuant to engineering plans submitted by the
6 Franchisee to the City for review and approval, which may be conditional approval, by
7 the City Public Works Department. Franchisee shall take prompt corrective action if it or
8 the City finds that any Facilities are not operating as expected, or if it or the City finds
9 that Facilities do not comply with the requirements of this Franchise or applicable law,
10 the Mill Creek Municipal Code or any permit requirements.

11
12 **3.11.2** Franchisee shall comply with all applicable City construction and other
13 codes, ordinances, and regulations, including without limitation, all building and zoning
14 codes.

15
16 **3.11.3** Any erection of poles, antennae, wires, cables, and other installations,
17 upon the poles of the Franchisee located in the Right of Way or upon the poles of others
18 located in the Right of Way, shall be done only in accordance with a plan or maps first
19 submitted to and approved by the City or other person designated by the City. Antenna
20 supporting structures (towers) shall be designed for the proper loading as specified by the
21 Electronics Industries Association (EIA), as those specifications may be amended from
22 time to time, and shall meet all requirements and regulations adopted by the Federal
23 Communications Commission (FCC). Antenna supporting structures (towers) shall be
24 painted, lighted, erected, and maintained in accordance with all applicable rules and
25 regulations of the Federal Aviation Administration, the FCC, and all other applicable
26 federal, State, and local codes or regulations. Any repair work or replacement work
27 performed in the Right of Way shall be done under the supervision of the City and only
28 after permission from the City is received.

29
30 **3.11.4** Prior to placing any underground facilities, Franchisee shall join and
31 maintain membership in good standing with the Utility Coordinating Council One Call
32 Center or other similar or successor organization which is designated to coordinate
33 underground equipment locations and installations. Franchisee represents that it is
34 familiar with Chapter 19.122 RCW (Washington State's "Underground Utilities" statute),
35 and understands and will comply with local procedures and practices relating to the one
36 call locator service program.

37
38 **3.11.5** After underground construction is complete, Franchisee shall provide the
39 City with accurate copies of as-built plans and maps stamped and signed by a
40 professional land surveyor or professional engineer in a form and content acceptable to
41 the Public Works Director or his/her designee. Following any aerial construction,
42 Franchisee shall provide the City with accurate copies of as-built plans and maps
43 prepared by Franchisee's design and installation contractors. These plans and maps shall
44 be provided at no cost to the City, and shall include hard copies and digital files in
45 Autocad or other industry standard readable formats that are acceptable to the City and
46 delivered electronically. Franchisee shall also provide such maps within ten (10) days

1 following a request from the City. Further, if Franchisee's actual construction deviates
2 materially from its submitted construction plans as reasonably determined by the City,
3 Franchisee shall provide the City with these maps. Franchisee shall warrant the accuracy
4 of maps and as-builts provided to the City.
5

6 **3.12 Notice of Construction.**
7

8 **3.12.1** If at any time the Franchisee intends to perform construction work in any
9 Right-of-Way, the Franchisee shall obtain a Right-of-Way permit from the City and shall
10 provide the City with notice before commencing any such work as required by the Right-
11 of-Way Permit application process.
12

13 **3.12.2** The City may establish requirements for advance notification to residents
14 adjacent to the proposed construction areas to be provided by the Franchisee, and
15 Franchisee shall comply with such advance notification requirements.
16

17 **3.12.3** By February 1st of each year, or such date as the City may otherwise
18 prescribe, the City shall have the right to ask Franchisee for a conference, during which
19 Franchisee will provide to the City a schedule of its then-proposed or then-anticipated
20 construction activities that may affect the Rights-of-Way and any activities that will
21 entail excavation or tunneling with the Rights-of-Way. Further, Franchisee shall meet
22 with the City and other franchise holders and users of the Rights-of-Way upon written
23 notice as determined by the City, to schedule and coordinate construction in the Rights-
24 of-Way. All construction locations, activities, and schedules shall be coordinated as
25 ordered by the City to minimize public inconvenience, disruption, or damages.
26

27 **3.13 Safety Requirements.**
28

29 **3.13.4** The Franchisee shall, at all times, employ industry standards of care and
30 shall install and maintain and use commonly accepted methods for preventing failures
31 and accidents which are likely to cause damage, injuries, or nuisances to the public. All
32 structures and all lines, equipment, and connection in, over, under, and upon the streets,
33 sidewalks, alleys, and public ways or places of the Service Area, wherever situated or
34 located, shall at all times be kept and maintained in a safe condition. Franchisee shall
35 comply with all federal, State, and City safety requirements, rules, regulations, laws and
36 practices, and employ all necessary devices as required by applicable law during the
37 construction, operation, maintenance, upgrade, repair, or removal of its Facilities. By
38 way of illustration and not limitation, Franchisee shall also comply with the National
39 Electric Code, National Electrical Safety Code, FCC regulations, and Occupational
40 Safety and Health Administration (OSHA) Standards.
41

42 **3.13.5** If an unsafe condition is found to exist, the City agrees to give Franchisee
43 notice of such condition and afford Franchisee a reasonable opportunity to repair the
44 same. If Franchisee fails to start to make the necessary repairs and alterations within the
45 time frame specified by the City, then the City may make such repairs or contract for
46 them to be made. All costs, including administrative costs, incurred by the City in

1 repairing any unsafe conditions shall be borne by Franchisee. The Franchisee shall pay
2 to the City all of the City's costs, including administrative costs, incurred as a result of
3 circumstances herein within thirty (30) days of the date of the written notice of the costs
4 that is delivered to the Franchisee. If the Franchisee fails to comply with the time frames
5 herein, this Franchise shall terminate without further action required.

6
7 **3.14 Permits Required for Construction.**

8
9 **3.14.1** Prior to doing any work in the City, Franchisee shall apply for, and obtain,
10 appropriate permits from the City. As part of the permitting process, the City may
11 impose such conditions and regulations as are necessary for the purpose of protecting any
12 Rights-of-Way, the proper restoration of Rights-of-Way and structures, the protection of
13 the public, and the continuity of pedestrian or vehicular traffic, or as may be required by
14 law, ordinance, codes, or regulations. Such conditions may also include requiring the
15 provision of a construction schedule and maps showing the location of the Facilities to be
16 installed in the Right-of-Way. Franchisee shall pay all applicable fees for the requisite
17 City permits, reviews, and/or approvals required of or received by Franchisee.

18
19 **3.14.2** Franchisee shall, if requested by the City, provide a construction bond to
20 ensure the faithful performance of its responsibilities under this Franchise and applicable
21 law, including without limitation, its duty to restore City streets and other property. The
22 amount of the construction bond shall be at least one hundred twenty-five percent (125%)
23 of the estimated project cost. The bond shall be in a form and with a surety acceptable to
24 the City. Franchisee shall pay all premiums and costs associated with obtaining the bond,
25 and shall keep the bond in full force and effect until the completion of the construction
26 project, including all restoration of public and private property. The construction bond
27 shall remain in force for two (2) years following completion of the work, including any
28 restoration of the Right-of-Way and other related property affected by the construction,
29 unless the City allows Franchisee to provide a maintenance bond.

30
31 **3.14.3** In the event of any emergency in which any of Franchisee's Facilities
32 break, are in need of emergency repair or are damaged, or if the Franchisee's construction
33 area is otherwise in such a condition as to immediately endanger the property, life, health,
34 or safety of any person, the Franchisee shall immediately take proper emergency
35 measures to repair its Facilities, to cure or remedy the dangerous condition, without first
36 applying for and obtaining City permits otherwise required for said work; provided, that
37 the Franchisee shall immediately notify the City of said condition and of the emergency
38 work, and shall obtain all necessary permits as promptly as possible after the emergency
39 work is performed, and in any event no later than the second business day following the
40 discovery of the condition requiring the emergency work.

41
42 **3.15 Tree Trimming.**

43
44 In cases of emergency, the Franchisee shall notify the City of its intent to trim trees or
45 other natural growth necessary to access and maintain its Facilities immediately upon
46 determining that such an emergency exists and prior to engaging in such activity. Upon

1 receipt of such notice, the City may inspect such circumstance prior to the removal of the
2 emergency condition. In non-emergency conditions, Franchisee may, at its own expense,
3 trim trees or other natural growth overhanging any of its installed Facilities to prevent
4 branches from coming in contact with the Franchisee's wires, cables, or other equipment
5 upon twenty (20) days' notice of the actual trees and other natural growth that is intended
6 to be affected in non-emergency situations, and upon approval of the City Public Works
7 Department, which shall not be unreasonably withheld, and subject to the requirement to
8 obtain a Right-of-Way Use Permit and complying with any and all conditions of that
9 Permit. Nothing herein grants the Franchisee any authority to act on behalf of the City or
10 to enter upon any private property, or to trim any tree or natural growth not owned by the
11 City. The Franchisee shall be solely responsible and liable for any damage to any third-
12 parties' trees or natural growth, and in addition to the terms and conditions of Section 7,
13 the Franchisee shall indemnify, defend, and hold harmless the City from claims of any
14 nature arising from any act or negligence of the Franchisee with regard to tree and/or
15 natural growth trimming, damage, and/or removal. Franchisee shall reasonably
16 compensate the City or the property owner for any damage caused by such trimming,
17 damage or removal. The Franchisee, may, at their own discretion, but in a manner and of
18 a style approved by the City or property owner, provide replacement of any trees or
19 shrubbery damaged as a result of actions taken by the Franchisee in lieu of compensation.
20

21 **3.16 Temporary Disconnection.**
22

23 The City may direct the Franchisee to temporarily disconnect, relocate, or bypass any
24 equipment of the Franchisee in order to complete street construction or modification,
25 install and remove underground utilities, or for other reasons of public safety and
26 efficient operation of the City, including construction projects. Such removal, relocation,
27 or other requirement shall be at the sole expense of the Franchisee. Notwithstanding the
28 foregoing City shall provide a reasonable period of time to enable Franchisee to ensure
29 that telecommunications transmissions, including emergency 911 calls, are properly
30 rerouted and tested by way of diverse routing to ensure any temporary disconnection does
31 not cause any interruption of essential public communications services.
32

33 **3.17 Access to Open Trenches.**
34

35 **3.17.1** The Franchisee shall be entitled to reasonable access to open utility
36 trenches, provided that such access does not interfere with the City's placement of
37 utilities or increase the cost to the City thereby. The Franchisee shall pay to the City the
38 actual cost to the City resulting from providing the Franchisee access to an open trench,
39 including without limitation the pro rata share of the costs of access to an open trench and
40 any costs associated with the delay of the completion of a public works project.
41

42 **3.17.2** The City shall use reasonable efforts to include the Franchisee in any
43 platting process within the City, to exercise reasonable efforts to include as a condition of
44 issuing a permit for open trenching to any utility or developer that (a) the utility or
45 developer give the Franchisee at least ten- (10) business days' advance written notice of
46 the availability of the open trench and (b) that the utility or developer provide the

1 Franchisee with reasonable access to the open trench. The City's non-compliance with
2 this Section shall not be a breach or default by the City of this Franchise.

3
4 **3.17.3** Except in emergency situations, Franchisee shall inform the City with at
5 least ninety (90) days' advance written notice that it is constructing, relocating, or placing
6 ducts or conduits in the Right-of-Way and provide the City with an opportunity to request
7 that Franchisee provide the City with additional duct or conduit, and related structures
8 necessary to access the conduit pursuant to and subject to RCW 35.99.070. Such
9 notification shall be in addition to the requirement to apply for and obtain permits
10 pursuant to this Franchise.

11
12 **SECTION 4. PAYMENTS TO CITY.**

13
14 **4.1 Recovery of Costs.**

15
16 **4.1.1** Franchisee shall pay an administrative fee to the City for the City's
17 administrative, legal, and other costs incurred in drafting and processing this Franchise
18 and all work related thereto, in an amount up to \$3,500. Acceptance is invalid and no
19 construction permits shall be issued for the installation of Facilities authorized hereby
20 until such time as the City has received payment of the administrative fee.

21
22 **4.1.2** Franchisee shall be subject to all standard permit fees associated with
23 activities undertaken through the authority granted in this Franchise or under the laws of
24 the City. Where the City incurs costs and expenses for review, inspection, or supervision
25 of activities, including but not limited to reasonable fees associated with attorneys,
26 consultants, City staff, and City Attorney time, undertaken through the authority granted
27 in this Franchise or any ordinances relating to the subject for which a permit fee is not
28 established, Franchisee shall pay such costs and expenses directly to the City. In addition
29 to the above, Franchisee shall, within thirty days (30) upon receipt of a request from the
30 City, reimburse the City for any and all costs the City reasonably incurs in response to
31 any emergency involving Franchisee's Facilities. Franchisee shall reimburse the City
32 within thirty (30) days of submittal by the City of an itemized billing for incurred costs,
33 itemized by project, for the Franchisee's proportionate share of all actual, identified
34 expenses incurred by the City in planning, constructing, installing, repairing, altering, or
35 maintaining any City facility as the result of the presence of Franchisee's Facilities in the
36 Rights-of-Way. Such costs and expenses shall include but not be limited to the
37 Franchisee's proportionate cost of City personnel assigned to oversee or engage in any
38 work in the Rights-of-Way as the result of the presence of the Franchisee's Facilities in
39 the Rights-of-Way. Such costs and expenses shall also include the Franchisee's
40 proportionate share of any time spent reviewing construction plans in order to either
41 accomplish the relocation of the Franchisee's Facilities or the routing or rerouting of any
42 utilities so as not to interfere with the Franchisee's Facilities.

43
44 **4.2 Franchise Fees and Taxes.**

45

1 **4.2.1** Pursuant to RCW 35.21.860, the City is precluded from imposing a
2 franchise fee on a “telephone business” as defined in RCW 82.16.010, or a “service
3 provider” as defined in RCW 35.99.010, for use of the Right-of-Way, excepting actual
4 administrative expenses directly related to the Franchise or any tax authorized by state
5 law. Franchisee hereby warrants that its operations as authorized under this Franchise are
6 those of a “telephone business” as defined in RCW 82.16.010 or a “service provider” as
7 defined in RCW 35.99.010. As a result, the City will not impose a franchise fee under
8 the terms of this Franchise.
9

10 **4.2.2** Franchise acknowledges that some of its operation within the City
11 constitute a telephone business subject to a utility tax. Franchisee shall pay any and all
12 utility tax due to the City in accordance with any future provisions of City code.
13 Franchisee understands that RCW 35.21.870 currently limits the rate of city tax to six
14 percent (6%) of gross receipts from telephone business activities, unless a higher rate is
15 otherwise approved. The parties agree however that nothing in this Franchise shall limit
16 the City's power of taxation as may now or hereafter exist. Franchisee stipulates and
17 agrees that should its business activities be subject to taxation that Franchisee shall pay to
18 the City the rate then applicable to such services under the City's code, and consistent
19 with state and federal law. This provision does not limit the City's power to amend the
20 City's code as may be permitted by law.
21

22 **4.2.3** The City reserves its right to impose a franchise fee, in accordance with
23 state or federal law, on Franchisee for purposes other than to recover its administrative
24 expenses, if Franchisee's operations as authorized by this Franchise change such that
25 Franchisee's activities are not those of a “telephone business” as defined in RCW
26 82.16.010 and Franchisee is not a “service provider” as defined in RCW 35.99.010, and if
27 there are no statutory prohibitions on the imposition of such fees.
28

29 **4.3 Acceptance of Payment.**
30

31 No acceptance of any payment by the City shall be construed as an accord that the
32 amount paid is, in fact, the correct amount, nor shall such acceptance of payment be
33 construed as a release of any claim which the City may have for further or additional
34 sums payable under the provisions of this Franchise. Franchisee's payment to the City
35 shall not be construed as an acknowledgement by the Franchisee that the amount paid is
36 the correct amount and Franchisee reserves the right to subsequently seek to recover any
37 amount of such payments in the event of an erroneous overpayment or for other lawful
38 reasons. The costs of such verification shall be borne solely by the Franchisee.
39

40 **4.4 Audits and Examinations.**
41

42 **4.4.1** No more than twice per calendar year, the City may arrange with
43 Franchisee for an independent audit, on a non-contingent fee basis, of the Franchisee's
44 books and records to verify the accuracy of any payments made to the City under this
45 Franchise, including but not limited to any utility tax. Any additional identified amount
46 due to the City shall be paid within fourteen (14) calendar days of the City submitting an

1 undisputed invoice for such sum, and if such sum shall exceed five percent (5%) of the
2 total payment which the audit determines should have been paid for any calendar year,
3 the Franchisee shall pay the City's reasonable out of pocket costs of the audit.
4

5 **4.4.2** In addition to the forgoing, the City, upon thirty (30) days' written notice
6 to the Franchisee, shall have the right to inspect, upon reasonable notice, the books and
7 records of the Franchisee that enable City to determine, and pertain to, the taxes or fees
8 that may be due to City under applicable law for the purpose of determining the accuracy
9 and completeness of the financial reports. Any audit or such examination shall be done
10 in a professional manner during reasonable business hours and following not less than
11 30-days' notice to Franchisee.
12

13 **4.5 Interest and Penalties on Late Payments.**

14
15 In the event that any payment due to the City under this Franchise is not received by the
16 City by the date due interest shall be charged from such date at the greater of twelve
17 percent (12%) per annum or the maximum rate permitted by law.
18

19 **4.6 Taxes and Assessments.**

20
21 The payments required under this Franchise shall be in addition to any and all taxes,
22 levies, or other assessments which are now or hereafter required to be paid by businesses
23 or utilities by any law of the City, the State, or the federal government, including, without
24 limitation, sales, use, utilities, and business and occupation taxes, business license fees, or
25 other payments. Nothing stated herein shall limit Franchisee's obligation to pay lawful
26 and applicable local, state, or federal taxes, and payment of fees under this Franchise
27 shall not exempt Franchisee from payment of any other lawfully imposed license fee,
28 permit fee, tax, or other charge on the business, occupation, property, or income of
29 Franchisee.
30

31 **SECTION 5. Franchise renewal, extension and transfer.**

32
33 **5.1 Transfer of Franchise.**

34
35 **5.1.1** This Franchise may not be assigned or transferred (including by operation
36 of law) without the written approval of the City, which approval shall not be
37 unreasonably withheld, conditioned or delayed. Any transactions that singularly or
38 collectively result in a change of more than fifty percent (50%) of the: ultimate ownership
39 or working control of Franchisee, ownership or working control of the Facilities,
40 ownership or working control of affiliated entities having ownership or working control
41 of Franchisee or of the Facilities, or of control of the capacity or bandwidth of
42 Franchisee's Facilities, shall be considered an assignment or transfer requiring City
43 approval. Approval for a transfer or change of control of this Franchise shall comply
44 with the requirements of MCMC Chapter 12.16 as now exists and is hereafter amended.
45 The Franchisee shall reimburse the City for all direct and indirect costs and expenses
46 reasonably incurred by the City in considering a request to transfer or assign this

1 Franchise. Notwithstanding the above, Franchisee may, upon thirty (30) days' written
2 notice to the City, freely assign this Franchise in whole or in part to an Affiliate,
3 including without limitation a parent or subsidiary organization or as part of any
4 corporate financing, reorganization, or refinancing; provided, that the assignee or
5 transferee must have the legal, technical, financial, and other requisite qualifications to
6 own, hold, and operate the Franchisee's Facilities for the purpose of providing
7 Communications Services. In the case of transfer or assignment as security by mortgage
8 or other security instrument in whole or in part to secure indebtedness, such approval
9 shall not be required unless and until the secured party elects to realize upon the
10 collateral. No assignment or transfer of this Franchise shall be deemed to occur based on
11 the public trading of the Franchisee's stock.
12

13 **5.1.2** Franchisee may, without the prior written approval of the City: (i) grant an
14 indefeasible right of user interest in the Facilities, or any portion thereof, to another
15 entity; or (ii) offer or provide capacity or bandwidth from the Facilities to another person;
16 provided, that Franchisee at all times retains exclusive control over the Facilities and
17 remains responsible for locating, servicing, repairing, relocating, or removing its
18 Facilities pursuant to the terms of this Franchise and remains in compliance with this
19 Franchise.
20

21 **5.1.3** Notwithstanding the above, Franchisee may, without the prior written
22 approval of the City, lease the capacity or bandwidth to another telecommunications
23 provider for the purpose of providing services to customers in the City; provided, that
24 Franchisee shall furnish the City in advance with a copy of any such proposed lease or
25 agreement and the proposed lessee or person shall comply with all of the requirements of
26 this Franchise and the City code; and further provided, that the lessee's obligation to
27 comply with the requirements of this Franchise shall not apply to the leasing of dark fiber
28 or other conductive infrastructure for general business purposes, unless such lease is for
29 all or substantially all of the Facilities.
30

31 **5.2 Franchise Renewal.**
32

33 **5.2.1** Franchisee shall commence the renewal process consistent with the
34 requirements of MCMC Chapter 12.16. This Franchise shall not be renewed until any
35 ongoing violations or defaults in the Franchisee's performance under this Franchise, or
36 the requirements of the MCMC, have been cured, or a plan detailing the corrective action
37 to be taken by the Franchisee has been approved by the City.
38

39 **5.2.2** If this Franchise expires without renewal or is otherwise lawfully
40 terminated or revoked, the City may, subject to applicable law:
41

42 **a.** Allow Franchisee to maintain and operate its Facilities on a month-
43 to-month basis, provided that Franchisee maintains insurance for such Facilities during
44 such period and continues to comply with this Franchise; or
45

1 b. The City may order the removal of any and all Facilities at
2 Franchisee's sole cost and expense consistent with Section 6.4.
3

4 **SECTION 6. VIOLATIONS; ENFORCEMENT.**
5

6 **6.1 Enforcement.**
7

8 **6.1.1 Notice of Violation.** In the event that the City believes that the Franchisee
9 has not complied with any terms of the Franchise, the City, at its sole election may
10 informally discuss the matter with Franchisee. If discussions do not lead to resolution of
11 the problem or if the City elects not to informally discuss the matter with the Franchisee,
12 the City shall issue a written Notice of Violation to the Franchisee, stating with
13 particularity the alleged breach, violation or other non-compliance.
14

15 **6.1.2 Franchisee's Right to Cure or Respond.** The Franchisee shall have thirty
16 (30) days from receipt of the Notice of Violation to (i) respond to the City, contesting the
17 asserted breach, violation or non-compliance and requesting a meeting as provided in
18 section 6.2.1; (ii) cure such default; (iii) request a lesser sanction or remedy; or (iii) in the
19 event that, by the nature of default, such default cannot be cured within the thirty (30) day
20 period, initiate reasonable steps to remedy such default and notify the City of the steps
21 being taken and the estimated date that they will be completed.
22

23 **6.2 Franchisee Contests Non-Compliance.**
24

25 **6.2.1** If the Franchisee timely notifies the City that it contests the asserted
26 breach, violation or non-compliance and requests a meeting with the City, the City
27 Manager shall hold a meeting with the Franchisee within fourteen (14) days, provided
28 that said timeframe may be extended at the sole discretion of the City Manager.
29

30 **6.2.2** If after such meeting, the City Manager determines that the Franchisee is
31 in breach, violation or non-compliance with the Franchise, then the City Manager shall
32 notify the Franchisee of his/her decision in writing within seven (7) days, stating the
33 grounds of the breach, violation, or non-compliance, and revoking the Franchise. Said
34 revocation shall be effective immediately after the delivery of the written notice to the
35 Franchisee.
36

37 **6.2.3** After receiving the City Manager's written notice of decision, the
38 Franchisee may request a public hearing before the City Council as to whether or not a
39 violation, breach, or non-compliance with the Franchise has occurred. Said request must
40 be made in writing, stating with specificity the reasons why the Franchisee believes that
41 the alleged non-compliance has not occurred, and delivered to the City Clerk within
42 fourteen (14) days of receipt of the City Manager's decision.
43

44 **6.2.4** If the Franchisee does not request a public hearing before the City Council
45 under Section 6.2.3 above, at the next available meeting, the City Council shall pass an
46 ordinance declaring the Franchise revoked and terminated, and any security or bonds

1 shall be forfeited to the City. If the Franchisee does request a public hearing before the
2 City Council under Section 6.2.3 above, the City Clerk shall cause the public hearing to
3 be held at the next available City Council meeting, provided that the Franchisee shall be
4 provided at least ten (10) business days' notice of such hearing.
5

6 **6.2.5** At the City Council public hearing, the City shall have the burden of proof
7 that a violation, breach, or non-compliance with the Franchise has occurred, and must
8 demonstrate that a preponderance of evidence supports the conclusion that there is a
9 violation or breach of the Franchise and that such violation or breach was not timely
10 cured as required in this Franchise.
11

12 **6.2.6** The City Council's decision following the close of the public hearing shall
13 be made based upon a majority of the City Council present at the City Council meeting.
14 In the event of a tie vote, the decision of the City Manager shall be deemed to be upheld
15 as the decision of the City Council.
16

17 **6.2.7** If the City Council upholds the City Manager's decision that the
18 Franchisee is in breach, violation, or non-compliance, then the City Council shall
19 immediately pass an ordinance declaring the Franchise revoked and terminated, and any
20 security or bonds shall be forfeited to the City. Said revocation ordinance shall include
21 findings of fact and conclusions derived from those facts which support the decision of
22 the City Council and are consistent with the requirements of MCMC Chapter 12.16;
23 provided that the City Council may adopt the findings and conclusions of the City
24 Manager. In lieu of revocation, the City Council may determine that lesser remedies
25 (which may include liquidated damages) are appropriate or may pursue judicial action
26 against the Franchisee.
27

28 **6.2.8** The Franchisee shall be bound by the decision of the City Council, unless
29 an appeal is filed to a court of competent jurisdiction within thirty (30) days of the date of
30 the Council's decision.
31

32 **6.3 Failure to Timely Cure.**
33

34 If the Franchisee has not contested the asserted breach, violation, or non-compliance and
35 fails to timely cure the breach, violation, or non-compliance under Section 6.1.2 above,
36 then in addition to any other remedy at law or equity, or provided for in this Franchise,
37 the City may revoke the Franchise. Said revocation shall be effective immediately after
38 the delivery of a written notice of revocation approved by the City Council stating the
39 grounds of the breach, violation, or non-compliance with the Franchise.
40

41 **6.4 Removal.**
42

43 **6.4.1** If the Franchise has been terminated, revoked, canceled, or has expired,
44 and Franchisee has not exercised its rights, if any, to contest the termination, revocation,
45 cancelation or nonrenewal, the City may give Franchisee written notice to remove its
46 Facilities from the City's Rights-of-Way or it may, in the City's sole discretion, allow

1 Franchisee to abandon the system in place consistent with the requirements of Section
2 6.4.3. Any plan for abandonment or removal of the Facilities must be first approved by
3 the Public Works Director, and all necessary permits must be obtained prior to such
4 work. Work shall be completely done one hundred-eighty (180) days from notice to
5 complete such work. Prior to the commencement of such work, the Franchisee shall
6 submit to the City a performance bond in the amount of one hundred fifty percent (150%)
7 of the estimated cost of removal and the restoration required by this Franchise. Upon the
8 completion of such work, the City shall return the original bond to the Franchisee, but
9 may require a maintenance bond consistent with the MCMC, the Development Standards,
10 or other City rules.

11
12 **6.4.2** If the Franchisee fails to remove any of its Facilities as provided herein,
13 the City may elect to cause such removal and may recover its reasonable costs and
14 expenses from Franchisee, including its reasonable attorney's fees and costs incurred in
15 recovering such costs and expenses.

16
17 **6.4.3** The City may allow Franchisee to abandon the Facilities in place upon the
18 express written consent of the City. Upon permanent abandonment in place of the
19 Facilities, the Facilities shall become property of the City, and Franchisee shall submit to
20 the City an instrument in writing, approved by the City Attorney, transferring to the City
21 the ownership of the Facilities, free and clear of any lien or encumbrance.

22
23 **6.4.4** If Franchisee leases a structure located in the Right-of-Way from a
24 landlord and such landlord later abandons the structure, for example by building a
25 replacement structure or because the landlord's facilities have moved underground,
26 Franchisee shall remove or relocate its Facilities within the Right-of-Way within ninety
27 (90) days of such notification from the landlord.

28
29 **6.4.5** The provisions of this Section 6.4 shall survive the expiration, revocation,
30 or termination of this Franchise.

31
32 **6.5 Unauthorized Facilities.**

33
34 **6.5.1** Within thirty (30) days following written notice from the City, Franchisee
35 shall, at its own expense, remove any unauthorized Facilities from the Right-of-Way. A
36 Facility is unauthorized and subject to removal in any of the following circumstances:

37
38 a. Upon termination of this Franchise;

39
40 b. Upon abandonment of a Facility, unless such abandonment is
41 allowed by the City pursuant to Section 6.4.3.

42
43 c. If the Facility was constructed or installed without the prior
44 issuance of a required Right-of-Way work permit.

45

1 d. If Facility was constructed or installed at a location not permitted
2 by this Franchise or permit.

3
4 **SECTION 7. Financial and Insurance Requirements.**

5
6 **7.1 Indemnity and Hold Harmless.**

7
8 **7.1.1 General Indemnification.** The Franchisee shall indemnify, defend, and
9 hold the City, its officers, officials, employees, agents, and consultants (as used in this
10 Section 7 collectively the “City”), harmless from and against any and all liabilities,
11 claims, fees, costs, and damages, whether to person or property, or expense of any type or
12 nature which may occur to the City or to any third party, including without limitation
13 reasonable attorneys' fees, experts' fees, and other costs, by reason of the construction,
14 operation, maintenance, repair, and alteration of Franchisee's Facilities by Franchisee or
15 any other act or omission done under this Franchise by Franchisee, its employees or
16 agents, except to the extent any such liabilities, claims, fees, costs, and damages are
17 caused by or arise from the gross negligence or any willful, or criminal actions on the
18 part of the City.

19 **7.1.2 Relocation Indemnification.** To the extent not covered by the indemnity
20 requirements of Section 7.1.1, Franchisee shall indemnify, defend and hold the City
21 harmless from and against any and all liabilities, claims, fees, costs, and damages,
22 whether to person or property, or expense of any type or nature which may occur to the
23 City or any third party, including without limitation reasonable attorneys' fees, experts'
24 fees and other costs, arising out of, or resulting from, directly or indirectly, Franchisee's
25 failure to remove, adjust, or relocate any of its Facilities in the Right-of-Way in a timely
26 manner in accordance with any relocation required by the City under this Franchise,
27 except to the extent that such liabilities, claims, fees, costs, and damages are caused by
28 the gross negligence or any willful, or criminal actions of the City.

29
30 **7.1.3 Procedures and Defense.** In any case in which suit or action is instituted
31 against the City by reason of damages or injury caused in whole or in part by an act or
32 omission of Franchisee, the City shall cause written notice thereof to be given to the
33 Franchisee and Franchisee thereupon shall have the duty to appear and defend in any
34 such suit or action, without cost or expense to the City. The City's failure to so notify
35 and request indemnification shall not relieve Franchisee of any liability that Franchisee
36 might have, except to the extent that such failure prejudices Franchisee's ability to defend
37 such claim or suit. The City may participate in the defense of a claim, at its sole expense,
38 and in any event, Franchisee may not agree to any settlement of claims financially
39 affecting the City without the City's prior written consent, which consent shall not be
40 unreasonably withheld. The City shall not agree to any settlement of claims without the
41 prior written consent of Franchisee.

42
43 **7.1.4** In the event that Franchisee refuses the tender of defense in any suit or any
44 claim, as required pursuant to the indemnification provisions within this Franchise, and
45 said refusal is subsequently determined by a court having jurisdiction (or such other
46 tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal

1 on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for
2 defense of the action, including all expert witness fees, costs, and attorney's fees, and
3 including costs and fees incurred in recovering under this indemnification provision. If
4 separate representation to fully protect the interests of both parties is necessary, such as a
5 conflict of interest between the City and the counsel selected by Franchisee to represent
6 the City, then upon the prior written approval and consent of Franchisee, which shall not
7 be unreasonably withheld, the City shall have the right to employ separate counsel in any
8 action or proceeding and to participate in the investigation and defense thereof, and
9 Franchisee shall pay the reasonable fees and expenses of such separate counsel, except
10 that Franchisee shall not be required to pay the fees and expenses of separate counsel on
11 behalf of the City for the City to bring or pursue any counterclaims or interpleader action,
12 equitable relief, restraining order or injunction. The City's fees and expenses shall
13 include all out-of-pocket expenses, such as consultants and expert witness fees, and shall
14 also include the reasonable value of any services rendered by the counsel retained by the
15 City but shall not include outside attorneys' fees for services that are unnecessarily
16 duplicative of services provided the City by Franchisee. Each party agrees to cooperate
17 and to cause its employees and agents to cooperate with the other party in the defense of
18 any such claim and the relevant records of each party shall be available to the other party
19 with respect to any such defense.

20
21 **7.1.5** Inspection or acceptance by the City of any work performed by Franchisee
22 at the time of completion of construction shall not be grounds for avoidance by
23 Franchisee of any of its obligations under this Franchise. Said indemnification
24 obligations shall extend to claims which are not reduced to a suit and any claims which
25 may be compromised, with Franchisee's prior written consent, prior to the culmination of
26 any litigation or the institution of any litigation.

27
28 **7.1.6** The parties acknowledge that this Franchise is subject to RCW 4.24.115.
29 Accordingly, in the event of liability for damages arising out of bodily injury to persons
30 or damages to property caused by or resulting from the concurrent negligence of
31 Franchisee and the City, its officers, officials, employees, and volunteers, Franchisee's
32 liability shall be only to the extent of Franchisee's negligence. It is further specifically
33 and expressly understood that the indemnification provided constitutes Franchisee's
34 waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification.
35 This waiver has been mutually negotiated by the parties.

36
37 **7.1.7** Notwithstanding any other provisions of this Section 7, Franchisee
38 assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-
39 owned property from activities conducted by the City, except to the extent any such
40 damage or destruction is caused by or arises from any grossly negligent, willful, or
41 criminal actions on the part of the City. Franchisee releases and waives any and all such
42 claims against the City. Franchisee further agrees to indemnify, hold harmless and
43 defend the City against any claims for damages, including, but not limited to, business
44 interruption damages, lost profits and consequential damages, brought by or under users
45 of Franchisee's Facilities as the result of any interruption of service due to damage or
46 destruction of Franchisee's Facilities caused by or arising out of activities conducted by

1 the City, except to the extent any such damage or destruction is caused by or arises from
2 the gross negligence or any willful, or criminal actions on the part of the City.
3
4 **7.1.8** The provisions of this Section 7 shall survive the expiration, revocation, or
5 termination of this Franchise.
6
7 **7.2 Insurance.**
8
9 **7.2.1 General Requirement.** During the entire term of this Franchise, the
10 Franchisee shall have and maintain in full force and effect, at its own cost and expense, a
11 general comprehensive liability insurance policy, in protection of the City, its officers,
12 elected officials, boards, commissioners, agents, employees, and consultants, in a
13 company and a form satisfactory to the City, protecting the City and all persons against
14 liability for loss or damage or personal injury, death, and property damage, and errors or
15 omissions, occasioned by the operations of Franchisee under such Franchise.
16
17 **7.2.2 Minimum Insurance Limits.** Franchisee shall maintain in full force and
18 effect at its own cost and expense each of the following policies of insurance:
19
20 **a.** Comprehensive General Liability Insurance with limits of no less
21 than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars
22 (\$5,000,000.00) excess liability, aggregate for personal injury, bodily injury and property
23 damage. Coverage shall include but not be limited to: blanket contractual; premises;
24 operations; independent contractors; stop gap liability; personal injury; products, and
25 completed operations; broad form property damage; explosion, collapse, and
26 underground (XCU); and employer's liability.
27
28 **b.** Commercial Automobile Liability Insurance with minimum
29 combined single limits of Three Million Dollars (\$3,000,000) per occurrence and Five
30 Million Dollars (\$5,000,000) excess liability with respect to each of Franchisee's owned,
31 hired, and non-owned vehicles assigned to or used in the operation of the Facilities in the
32 City.
33
34 **c.** Professional Liability: One Million Dollars (\$1,000,000) per claim
35 for all professionals employed or retained by Franchisee to perform services under this
36 Franchise
37
38 **d.** Worker's Compensation coverage as required by the Industrial
39 Insurance laws of the State of Washington.
40
41 **7.2.3** Franchisee's insurance coverage shall be primary insurance with respect to
42 the City. Any insurance or self-insurance maintained by the City shall be in excess to the
43 Franchisee's insurance. The company shall be approved by the state insurance
44 Commissioner pursuant to Title 48 RCW, and have at least an A- Best Rating. Any
45 deductibles or self-insured retentions must be declared to and approved by the City if

1 greater than five percent of the coverage limit. Payment of any deductibles or self-
2 insured retentions are the sole responsibility of Franchisee.
3

4 **7.2.4** Each policy of insurance shall provide that a written notice of cancellation
5 shall be delivered to the City thirty (30) days in advance of the effective date thereof. If
6 the insurance is cancelled or materially altered so as to be out of compliance with the
7 requirements of this section, Franchisee shall provide a replacement policy. Franchisee
8 shall maintain continuous, uninterrupted insurance coverage, in at least the amounts
9 required, for so long as Franchisee maintains Facilities within the Rights-of-Way.
10

11 **7.2.5** Franchisee may utilize primary and umbrella liability insurance policies to
12 satisfy insurance policy limits required herein. Franchisee's umbrella liability insurance
13 policy shall provide "follow form" coverage over its primary liability insurance policies.
14

15 **7.2.6** The insurance policies, with the exception of Workers' Compensation
16 obtained by Franchisee shall name the City, its officers, officials, employees, agents, and
17 volunteers ("Additional Insureds"), as an additional insured with regard to activities
18 performed by or on behalf of Franchisee. The coverage shall contain no special
19 limitations on the scope of protection afforded to the Additional Insureds. In addition,
20 the insurance policy shall contain a clause stating that coverage shall apply separately to
21 each insured against whom a claim is made or suit is brought, except with respect to the
22 limits of the insurer's liability. Franchisee shall provide to the City prior to or upon
23 acceptance either (1) a true copy of the additional insured endorsement for each insurance
24 policy required in this Section 7.2 and providing that such insurance shall apply as
25 primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket
26 additional insured clause from the policies. Receipt by the City of any certificate
27 showing less coverage than required is not a waiver of Franchisee's obligations to fulfill
28 the requirements. Franchisee's insurance shall be primary insurance with respect to the
29 Additional Insureds, and the endorsement should specifically state that the insurance is
30 the primary insurance. Any insurance maintained by the Additional Insureds shall be in
31 excess of Franchisee's insurance and shall not contribute with it.
32

33 **7.2.7** Franchisee's maintenance of insurance as required by this Section 7.2
34 shall not be construed to limit the liability of Franchisee to the coverage provided by such
35 insurance, or otherwise limit the City's recourse to any remedy available at law or equity.
36 Further, Franchisee's maintenance of insurance policies required by this Franchise shall
37 not be construed to excuse unfaithful performance by Franchisee.
38

39 **7.2.8** As of the effective date of this Franchise, Franchisee is not self-insured.
40 Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a
41 later date, Franchisee must provide the City with thirty (30) days advanced written notice
42 of its intent to self-insure. In order to self-insure, Franchisee shall comply with the
43 following: (i) provide a written attestation that Franchisee possesses the necessary
44 amount of unencumbered financial assets to support the financial exposure of self-
45 insurance, as evidenced by an outside auditor's review of Franchisee's financial
46 statements; (ii) the City, upon request, may review Franchisee's financial statements; (iii)

1 Franchisee is responsible for all payments within the self-insured retention; and (iv)
2 Franchisee assumes all defense and indemnity obligations as outlined in the
3 indemnification section of this Franchise. These requirements may be modified by
4 written amendment executed by both parties.
5

6 **7.3 Security Fund.**
7

8 **7.3.1** If requested by the City, no later than the effective date of this Franchise,
9 Franchisee shall establish and provide to the City, as security for the faithful performance
10 of all of the requirements of this Franchise, a performance bond, from a surety or
11 financial institution acceptable to the City, in the amount of Twenty-Five Thousand
12 Dollars (\$25,000) the ("Security Fund"). The performance bond may be drawn upon by
13 the City for purposes, including but not limited to the following: (1) failure of Franchisee
14 to pay the City sums due under the terms of this Franchise; (2) reimbursement of costs
15 born by the City to correct Franchise violations not corrected by Franchisee; and (3)
16 monetary remedies or damages assessed against Franchisee due to default or breach of
17 Franchise requirements.
18

19 **7.3.2** The City shall give Franchisee written notice prior to any withdrawal from
20 the Security Fund:
21

22 **a.** Describing the act, default or failure to be remedied, or the
23 damages, cost or expenses which the City has incurred by reason of Franchisee's act or
24 default;
25

26 **b.** Providing a reasonable opportunity for Franchisee to first remedy
27 the existing or ongoing default or failure, if applicable;
28

29 **c.** Providing a reasonable opportunity for Franchisee to pay any
30 monies due the City before the City withdraws the amount thereof from the Security
31 Fund; and
32

33 **d.** That the Franchisee will be given an opportunity to review the act,
34 default or failure described in the notice with the City.
35

36 **7.3.3** Within fourteen (14) days following receipt of such notice, Franchisee
37 shall restore the performance bond to the amount required under this Franchise.
38 Franchisee's maintenance of the bond shall not be construed to excuse performance of
39 obligations under the Franchise, or to limit the liability of Franchisee or otherwise limit
40 the City's recourse to any other remedy available at law or equity.
41

42 **SECTION 8. Miscellaneous terms**
43

44 **8.1 Confirmation of Consistency with Federal Provisions.**
45

1 If any portion of this Franchise ordinance is deemed to be inconsistent with any federal or
2 state statute, rule or regulation now existing or hereinafter adopted, then to the extent of
3 the inconsistency, the statute, rule or regulation shall control for so long, but only for so
4 long, as such statute, rule or regulation shall remain in effect, and the remaining
5 provisions of this Franchise ordinance shall not thereby be affected. If that statute, rule
6 or regulation allows existing franchises to not be affected, then there shall be no effect to
7 this Franchise. If federal law changes, whether through legislative or rule-making action
8 or court or administrative interpretation during the term of this Franchise, then this
9 Franchise ordinance shall be considered modified to be consistent with such federal law
10 changes.

11
12 **8.2 Severability.**

13
14 Each section, subsection, or other portion of this Franchise shall be severable and the
15 invalidity of any section, subsection, or other portion shall not invalidate the remainder.

16
17 **8.3 Notice.**

18
19 Any notice or information required or permitted to be given to the parties under this
20 Franchise may be sent to the following addresses unless otherwise specified:

21
22 **CITY OF MILL CREEK:**

23 City of Mill Creek
24 City Clerk
25 15728 Main Street
26 Mill Creek, WA 98012

FRANCHISEE:

Zayo Group, LLC
Attn: General Counsel
1805 29th Street
Boulder, CO 80301

27
28 With a copy to:
29 Zayo Group, LLC
30 Attn: Underlying Rights Dept.
31 1805 29th Street
32 Boulder, CO 80301

33
34 Notice shall be deemed given upon actual receipt or refusal of delivery and shall be sent
35 by personal delivery, United States Certified Mail, return receipt requested, or by
36 overnight delivery.

37
38 **8.4 Entire Franchise.**

39
40 This Franchise and its acceptance constitutes the entire terms between the parties as to the
41 subject matter herein and no other agreements or understandings, written or otherwise,
42 shall be binding upon the parties. Any amendment to this Franchise shall only occur by
43 mutual written agreement of the parties and amendment of this Franchise.

44
45 **8.5 Records.**

46

1 **8.5.1** Within thirty (30) days of a written request from the City, Franchisee shall
2 furnish the City with information sufficient to demonstrate: 1) that Franchisee has
3 complied with all applicable requirements of this Franchise; and 2) that all taxes,
4 including but not limited to sales, utility and/or telecommunications taxes due the City in
5 connection with Franchisee’s Communications Services and Facilities have been properly
6 collected and paid by Franchisee.

7
8 **8.5.2** All books, records, maps, and other documents maintained by Franchisee
9 with respect to its Facilities within the Right-of-Way shall be made available for
10 inspection by the City at reasonable times and intervals; provided, however, that nothing
11 in this Section 8.5.2 shall be construed to require Franchisee to violate state or federal
12 law regarding customer privacy, nor shall this Section 8.5.2 be construed to require
13 Franchisee to disclose proprietary or confidential information without adequate
14 safeguards for its confidential or proprietary nature. Unless otherwise prohibited by State
15 or federal law, nothing in this Section 8.5 shall be construed as permission to withhold
16 relevant customer data from the City that the City requests in conjunction with a tax audit
17 or review; provided, however, Franchisee may redact identifying information such as
18 names, street addresses (excluding City and zip code), Social Security Numbers, or
19 Employer Identification Numbers related to any confidentiality agreements Franchisee
20 has with third parties.

21
22 **8.5.3** Franchisee shall not be required to disclose information that it reasonably
23 deems to be proprietary or confidential in nature. The City agrees to keep confidential
24 any proprietary or confidential books or records to the extent permitted by law.
25 Franchisee shall be responsible for clearly and conspicuously identifying the work as
26 confidential or proprietary, and shall provide a brief written explanation as to why such
27 information is confidential and how it may be treated as such under State or federal law.
28 In the event that the City receives a public records request under Chapter 42.56 RCW or
29 similar law for the disclosure of information Franchisee has designated as confidential,
30 trade secret, or proprietary, the City shall promptly provide written notice of such
31 disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing
32 in this Section 8.5 prohibits the City from complying with Chapter 42.56 RCW or any
33 other applicable law or court order requiring the release of public records, and the City
34 shall not be liable to Franchisee for compliance with any law or court order requiring the
35 release of public records. The City shall comply with any injunction or court order
36 obtained by Franchisee that prohibits the disclosure of any such confidential records;
37 however, in the event a higher court overturns such injunction or court order and such
38 higher court action is or has become final and non-appealable, Franchisee shall reimburse
39 the City for any fines or penalties imposed for failure to disclose such records as required
40 hereunder within sixty (60) days of a request from the City.

41
42 **8.6 Reserved Rights.**

43
44 **8.6.1** The City reserves all rights and powers under its police powers and
45 powers conferred by federal, state or local law. In particular the City reserves the right to
46 alter, amend, or repeal its municipal code as it determines shall be conducive to the

1 health, safety, and welfare of the public, or otherwise in the public interest. The City
2 agrees that by accepting this Franchise, Franchisee has not waived its right to object to
3 the application to it of actions by the City pursuant to its reserved rights or police powers.
4

5 **8.6.2** Both the City and the Franchisee expressly reserve all rights they may
6 have under law to the maximum extent possible; neither the City nor the Franchisee shall
7 be deemed to have waived any federal or state constitutional or statutory rights they may
8 now have or may acquire in the future by entering into this Franchise.
9

10 **8.6.3** All rights and remedies provided herein shall be in addition to and
11 cumulative with any and all other rights and remedies available to either the City or
12 Franchisee. Such rights and remedies shall not be exclusive, and the exercise of one or
13 more rights or remedies shall not be deemed a waiver of the right to exercise at the same
14 time or thereafter any other right or remedy. Provided, further, that by entering into this
15 Franchise, it is not the intention of the City or Franchisee to waive any other rights,
16 remedies, or obligations as provided by law, equity or otherwise, and nothing contained
17 in this Franchise shall be deemed or construed to affect any such waiver. The parties
18 reserve the right to seek and obtain injunctive relief with respect to this Franchise to the
19 extent authorized by applicable law and that the execution of this Franchise shall not
20 constitute a waiver or relinquishment of such right. The parties agree that in the event a
21 party obtains injunctive relief, neither party shall be required to post a bond or other
22 security and the parties agree not to seek the imposition of such a requirement.
23

24 **8.7 Jurisdiction**

25
26 This Franchise shall be construed in accordance with the laws of the State of Washington.
27 The United States District Court for the Western District of Washington, and Snohomish
28 County Superior Court have proper venue for any dispute related to this Franchise.
29

30 **8.8 No Third Party Beneficiaries.**

31
32 There are no third party beneficiaries to this Franchise.
33

34 **8.9 Franchise Acceptance.**

35
36 Franchisee shall execute and return to the City three originals of the Franchisee
37 Acceptance, attached to this Franchise. Within sixty (60) days of the effective date of
38 this Franchise, Franchisee shall submit to the City the administrative fee pursuant to
39 Section 4.1, any applicable performance bonds, security funds, and evidence of
40 insurance. In the event Franchisee fails to accept this Franchise, or fails to provide the
41 required documents and/or funds, by said date, this Franchise shall be null and void and
42 Franchisee shall have no rights or privileges hereunder.
43

44 **8.10 Effective Date.**

45

1 This ordinance shall take effect and be in force five (5) days from and after its passage
2 and publication as provided by law.
3
4 PASSED BY THE CITY COUNCIL this ____ day of _____, 2017.
5
6 APPROVED:
7
8 _____
9 MAYOR PAM PRUITT
10
11
12
13 ATTEST/AUTHENTICATED:
14
15 _____
16 _____, CITY CLERK
17
18 APPROVED AS TO FORM:
19
20 _____
21 CITY ATTORNEY SCOTT MISSALL
22
23 FILED WITH THE CITY CLERK: _____
24 PASSED BY THE CITY COUNCIL: _____
25 PUBLISHED: _____
26 EFFECTIVE DATE: _____
27 ORDINANCE NUMBER: _____
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FRANCHISEE ACCEPTANCE

Zayo Group, LLC, a Delaware limited liability company, for itself and for its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated by this reference. Zayo Group LLC expressly acknowledges that in accepting this Franchise it did so relying on its own investigation and understanding of the power and authority to grant this Franchise.

ACCEPTED this ____ day of _____, _____.

Zayo Group, LLC

Name:
Title:



Agenda Item # 1
Meeting Date: June 6, 2017

CITY COUNCIL AGENDA SUMMARY

City of Mill Creek, Washington

AGENDA ITEM: TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH ASTOUND BROADBAND , LLC, D/B/A WAVE

PROPOSED MOTION:

Motion to adopt the attached Ordinance granting a non-exclusive telecommunications franchise to Astound Broadband, LLC.

KEY FACTS AND INFORMATION SUMMARY:

Section 35A.47.040 of the Revised Code of Washington (RCW) authorizes the City to grant non-exclusive telecommunication franchises for the use of public streets and rights-of-way for providing communication services. It is in the best interests of the City to clearly define with each company desiring the use of the City’s rights-of-way exactly what conditions must be satisfied to gain this permission.

Astound Broadband, LLC (“Astound”, dba Wave) is a Washington limited liability company and is a Competitive Local Exchange Carrier in the States of Washington, Oregon and California. Astound is asking to replace its expired franchise (granted in 2006 to Black Rock Cable, Inc.) with a new telecommunications franchise. After Wave acquired the assets of Black Rock in late 2012, it began offering a wider range of services, such as voice, and Internet access, in addition to the dark-fiber-only services that Black Rock offered under its previous franchise.

The company first offered new competitive services to the City in 2007 as a part of a major fiber expansion in Snohomish County. Advanced fiber optic connections were installed for major health providers, school districts, Snohomish County and the City of Mill Creek, as well as a number of private businesses in the area. Through partnerships developed with the City, County and others that use this fiber network, critical economic development resources have provided significant benefits for the City. Gigabit Internet, secure dark fiber leasing, and diverse connections to area data centers enable Mill Creek businesses and organizations to compete and flourish, improve healthcare services, offer better education for our students, and reduce costs for vital connectivity for our local governments.

CITY MANAGER RECOMMENDATION:

The City Manager recommends the Council adopt the attached ordinance granting a non-exclusive telecommunications franchise to Astound Broadband, LLC.

ATTACHMENTS:

- Ordinance granting non-exclusive telecommunications franchise to Astound Broadband, LLC.

Respectfully Submitted:

A handwritten signature in blue ink that reads "Rebecca C. Polizzotto".

Rebecca C. Polizzotto
City Manager

CITY OF MILL CREEK

ORDINANCE NO. _____

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AN ORDINANCE OF THE CITY OF MILL CREEK, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO ASTOUND BROADBAND, LLC DBA WAVE TO INSTALL, OPERATE, MAINTAIN AND REPAIR A TELECOMMUNICATIONS SYSTEM WITHIN THE CITY; PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Astound Broadband, LLC d/b/a/ Wave (“Astound” or “Franchisee”), has requested that the City Council grant it a non-exclusive telecommunications franchise for the installation, operation, maintenance and repair of a multiple conduit and aerial fiber optic telecommunications system within the City’s rights-of-way; and

WHEREAS, pursuant to RCW 35A.47.040, the City is authorized to grant one or more non-exclusive franchises for use of public streets, roads, bridges, and other public rights-of-way, above and below the surface of the ground, for poles, conduits, tunnels, towers, structures, pipes, wires, and appurtenances and other facilities for the transmission and distribution of electrical energy, signals and other methods of communication; and

WHEREAS, the City has determined that it is in the best interests of the City and in the best interests of the health, safety, and welfare of the Mill Creek community and the general public to grant this non-exclusive Franchise to Astound now therefore,

THE CITY COUNCIL OF THE CITY OF MILL CREEK DO ORDAIN AS FOLLOWS:

SECTION 1. DEFINITIONS

For purposes of this Franchise, the following words, terms and phrases shall have the meanings stated in this section. 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.

1.1 "Affiliate" means a Person who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.

1 **1.2** "City" means the City of Mill Creek, Washington, and all the territory within its
2 present and future boundaries and including any area over which the City exercises
3 jurisdiction.
4

5 **1.3** "Communications Service" means telecommunications services, provided by the
6 Franchisee using its Facilities, either directly or by its Affiliates, including but not limited
7 to leasing telecommunications capacity or dark fiber, as well as the transmission of voice,
8 data, or other electronic information by wire, optical cable or other similar means. For
9 purposes of this Franchise, Communications Service excludes over-the-air transmission
10 of broadcast television, and broadcast radio signals, or the provision of cable services or
11 open video services as defined in the Communications Act of 1934, as amended, or the
12 provision of Personal Wireless Services. A separate franchise or an amendment to this
13 Franchise is required prior to offering such additional services.
14

15 **1.4** "Facilities" means plant, equipment and property, including but not limited to
16 cables, wires, conduits, ducts, pedestals, antennas, electronics and other appurtenances
17 used or to be used to transmit, receive, distribute, provide or offer Communications
18 Services under this Franchise.
19

20 **1.5** "FCC" means the Federal Communications Commission, or any successor
21 governmental agency.
22

23 **1.6** "Franchise" means the non-exclusive rights, privileges, and authority granted to
24 Franchisee to use its Facilities in the City's Rights-of-Way pursuant to this Franchise.
25

26 **1.7** "Person" means any individual, corporation, partnership, association, joint
27 venture, or organization of any kind and the lawful trustee, successor, assignee,
28 transferee, or personal representative thereof.
29

30 **1.8** "Personal Wireless Services" means the following types of facilities:
31 "microcells," "minor facilities," "small cell facilities," all as defined by RCW 80.36.375,
32 and "macrocell" facilities, including towers and new base stations and other similar
33 facilities. Personal Wireless Services does not include those facilities used to provide
34 power or fiber to wireless communications facilities.
35

36 **1.9** "Right-of-Way" means the surface of, and the space above and below, any public
37 street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, public
38 way, drive, circle, pathways, spaces, or other public right of way which, under City
39 ordinances or applicable laws, the City has authority to grant franchises, licenses, or
40 leases for use thereof, or has regulatory authority there over and only to the extent such
41 Rights-of-Way are opened. Rights-of-Way for the purpose of this Franchise do not
42 include buildings, other City-owned physical facilities, parks, poles, conduits, fixtures,
43 real property or property rights owned by the City not reserved for transportation
44 purposes, or similar facilities or property owned by or leased to the City, including, by
45 way of example and not limitation, structures in the Rights-of-Way such as utility poles,
46 light poles and bridges.

1
2 **1.10** "Service Area" means the present municipal boundaries of the City and shall
3 include any future additions thereto by annexation or other legal means.
4

5 **SECTION 2. GRANT.**
6

7 **2.1 Grant of a Non-Exclusive Franchise.**
8

9 **2.1.1** The City hereby grants to Franchisee the non-exclusive right, privilege,
10 and authority to use and occupy the Rights-of-Way for the purpose of providing
11 Communications Services, including without limitation the right to lawfully install,
12 remove, construct, erect, operate, use, maintain, relocate, and repair Facilities in, along,
13 under, and across the Rights-of-Way subject to the terms and conditions of this
14 Franchise. In order to provide any other services over the Facilities, the Franchisee shall
15 be required to obtain any additional governmental authorizations required by law.
16

17 **2.1.2** The provisions of Mill Creek Municipal Code ("MCMC") Chapter 12.16
18 are hereby incorporated by reference. In the event of a conflict between the MCMC and
19 this Franchise, the terms of this Franchise shall prevail; except to the extent that it is an
20 exercise of the City's police power authority. In exercising its rights under this
21 Franchise, Franchisee shall comply with all lawfully enacted City Codes, ordinances,
22 standards, procedures, and regulations. The provisions of this Franchise are subject to the
23 lawful exercise of the City's police powers upon reasonable notice to Franchisee. In
24 accepting this Franchise, the Franchisee acknowledges that its rights hereunder are
25 subject to the police power of the City to adopt and enforce, from time to time and in the
26 manner it deems reasonable, general ordinances necessary for the safety, health, and
27 welfare of the public. This Franchise shall not be interpreted to prevent the City from
28 imposing additional lawful conditions, including additional compensation conditions for
29 use of the Rights-of-Way, should Franchisee provide service other than Communications
30 Services. Franchisee agrees to comply with all applicable laws that are now or may in
31 the future be enacted by the City pursuant to such police power.
32

33 **2.1.3** The authority granted herein to Franchisee is a limited authorization to
34 occupy and use the Rights-of-Way for providing Communications Services, and shall not
35 include or be a substitute for:
36

37 **a.** Any other permit or authorization required for the privilege of
38 transacting and carrying on a business within the City, including but not limited to a City
39 business license;
40

41 **b.** Any permit, agreement, authorization, or condition that may be
42 required by the City for using the Right-of-Way in connection with operations on or in
43 the Right-of-Way or public property, such as Right-of-Way use permits and approved
44 traffic control plans.
45

1 This Franchise only conveys limited rights and interests as to those Rights-of-Way in
2 which the City has an actual interest. It is not a warranty of title or interest, nor does it
3 provide the Franchisee with any representation as to any location of a City Right-of-Way
4 or the nature of the City's interest in any Right-of-Way. No right to install any facility,
5 infrastructure, wires, lines, cables, or other equipment, on any City property other than a
6 Right-of-Way, or upon private property without the owner's consent, or upon any City,
7 public or privately owned utility poles or conduits is granted herein.
8

9 **2.1.4** This Franchise shall not be construed as to deprive the City of any rights
10 or privileges which it now has or may hereafter have to regulate the use and control of the
11 Rights-of-Way, and public property. Nothing in this Franchise shall limit nor expand the
12 City's right of eminent domain under state law. If at any time the City exercises its
13 authority to vacate all or any portion of any Right-of-Way, the City shall not be liable for
14 any damages or loss to Franchisee by reason of such vacation. The City may, upon
15 ninety (90) days' written notice to Franchisee, terminate this Franchise with respect to
16 such vacated area.
17

18 **2.1.5** The City specifically reserves the right to grant, at any time, such
19 additional franchises for other similar systems to the Franchisee or to other persons or
20 entities, as the City deems appropriate; provided, however, such additional grants shall
21 not operate to materially modify, revoke, or terminate any rights previously granted to
22 Franchisee. The grant of any additional franchise shall not of itself be deemed to
23 constitute a modification, revocation, or termination of rights previously granted to
24 Franchisee
25

26 **2.1.6** This Franchise does not establish any priority for the use of the Rights-of-
27 Way by Franchisee or by any present or future franchisees or other permit holders. In the
28 event of any dispute as to the priority of use of the Rights-of-Way, the first priority shall
29 be to the City in the performance of its various functions, the second priority shall be to
30 the public generally, and thereafter, as between franchisees and other permit holders, as
31 reasonably determined by the City in the exercise of its powers, including the police
32 power and other powers reserved to and conferred on it by the State of Washington.
33

34 **2.1.7** To the extent that any of the Rights-of-Way within the Franchise Area are
35 a part of the state highway system ("State Highways") and are governed by the provisions
36 of Chapter 47.24 RCW and applicable Washington State Department of Transportation
37 ("WSDOT") regulations, Franchisee shall comply with said requirements in addition to
38 local ordinances and other applicable regulations. Franchisee shall correct any
39 noncompliant facilities identified by the City or by any other local, state or federal
40 governmental entity. Without limitation of the foregoing, Franchisee specifically agrees
41 that:
42

43 **a.** Any pavement trenching and restoration performed by Franchisee
44 within State Highways shall meet or exceed applicable WSDOT requirements;
45

1 **b.** Any portion of a State Highway damaged or injured by Franchisee
2 shall be restored, repaired and/or replaced by Franchisee to a condition that meets or
3 exceeds applicable WSDOT requirements; and
4

5 **c.** Without prejudice to any right or privilege of the City, WSDOT is
6 authorized to enforce in an action brought in the name of the State of Washington any
7 condition of this Franchise with respect to any portion of a State Highway.
8

9 **2.2 Term of Franchise.**

10
11 The term of this Franchise shall be for five (5) years, beginning on the effective date of
12 this franchise, set forth in Section 8.10 (the "Initial Term"). This Franchise shall
13 automatically renew for one (1) additional five (5) year period (the "Renewal Term"),
14 upon the same terms and conditions as set forth in this Franchise, unless either party
15 provides one hundred twenty (120) days written notice to the other party to request an
16 amendment to the Franchise. Following the Renewal Term, this Franchise may be
17 further renewed pursuant to MCMC Chapter 12.16, as now exists or hereinafter amended.
18

19 **2.3 Non-Exclusive.**

20
21 This Franchise shall be non-exclusive, and subject to all prior rights, interests, easements,
22 or licenses granted by the City or its predecessors to any Person to use any property,
23 Right-of-Way, easement, right interest, or license. The City may at any time grant
24 authorization to use the Right-of-Way for any purpose not incompatible with the
25 Franchisee's rights under this Franchise and for such additional franchises as the City
26 deems appropriate.
27

28 **2.4 Effect of Acceptance.**

29
30 By accepting this Franchise, the Franchisee acknowledges and accepts the City's legal
31 right to issue and enforce the Franchise; accepts and agrees to comply with each and
32 every provision of this Franchise; and agrees that the Franchise was granted pursuant to
33 processes and procedures consistent with applicable law.
34

35 **SECTION 3. GENERAL RIGHT OF WAY USE AND CONSTRUCTION.**

36
37 **3.1 Use of Rights-of-Way.**

38
39 Franchisee shall not erect, install, construct, repair, replace, or maintain its Facilities in
40 such a fashion as to unduly burden the present or future use of the City's Rights-of-Way.
41 If the City in its reasonable judgment determines that any portion of the Franchisee's
42 Facilities is an undue burden, City shall provide notice to Franchisee. Following
43 reasonable advance written notice of not less than thirty (30) days, Franchisee at its
44 expense shall modify its Facilities or take such other actions as the City may determine
45 are in the public interest to remove or alleviate the burden, and Franchisee shall do so
46 within the time period established by the City. Franchisee may, subject to the terms of

1 this Franchise, erect, install, construct, repair, replace, reconstruct, and retain in, on, over,
2 under, upon, across, and along the Rights-of-Way within the City such lines, cables,
3 conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals,
4 attachments, and other appurtenances and equipment as are necessary to the provision of
5 its Communications Services.

6

7 **3.2 Construction or Alteration.**

8

9 Franchisee shall in all cases comply with all City laws, resolutions and regulations
10 regarding the acquisition of permits and/or such other items as may be reasonably
11 required in order to construct, alter, or maintain its Facilities and to provide
12 Communications Services. All work authorized and required under this Franchise shall
13 be accomplished in a safe, thorough, and workmanlike manner, or better. All
14 installations of Facilities shall be durable and installed in accordance with current
15 engineering standards.

16

17 **3.3 Non-Interference.**

18

19 Franchisee shall exert commercially reasonable efforts to construct and maintain its
20 Facilities so as not to interfere with other use of the Rights-of-Way. Franchisee shall,
21 where possible, in the case of above ground lines or facilities, make use of existing poles
22 and other facilities available to Franchisee. This Franchise does not grant Franchisee the
23 right to erect new poles without express permission from the City and only upon a
24 showing that no commercially reasonable alternative existing locations for Franchisee's
25 Facilities exist.

26

27 **3.4 Consistency with Designated Use.**

28

29 Notwithstanding any other provision of this Franchise, no Right-of-Way shall be used by
30 the Franchisee if the City, in its sole opinion, determines that such use is inconsistent
31 with the terms, conditions, or provisions by which such Right-of-Way was created or
32 dedicated, or presently used under city, county, state or federal laws.

33

34 **3.5 Undergrounding.**

35

36 Franchisee shall place underground, at Franchisee's expense unless stated otherwise, all
37 of its Facilities which are located or are to be located above or within the Rights-of-Way
38 of the City solely in the following cases:

39

40 a. When all other existing utilities, excluding electrical facilities, are
41 required to be placed underground by statute, resolution, policy or other regulation;

42

43 b. When all other existing utilities, except electrical facilities, have
44 been placed underground.

45

1 environmental factors. Franchisee shall use and construct, in conjunction and
2 coordination with other utility companies or providers, common trenches for
3 underground construction wherever available and possible. Amplifiers and connectors in
4 Franchisee's transmission and distribution lines may be in appropriate enclosures upon or
5 above the surface of the ground in locations approved by the City.

6

7 **3.6 Joint Trenching**

8

9 In cases where Franchisee's Facilities will be placed underground, whenever it is possible
10 and reasonably and financially practicable to joint trench or share bores and cuts,
11 Franchisee shall work with other providers (such as telecommunications, cable, gas,
12 electric utilities, or the City), licensees, permittees, and franchisees to reduce as far as
13 possible the number of Right-of-Way disturbances.

14

15 **3.7 Maintenance and Restoration.**

16

17 **3.7.1 Restoration.** In case of disturbance of any Right-of-Way or public
18 improvement, Franchisee shall, at its own cost and expense and in accordance with the
19 requirements of the City, restore such Right-of-Way or public improvement to
20 substantially the same condition as existed before the work involving such disturbance
21 took place, less ordinary wear and tear, as determined by the City and in accordance with
22 any applicable City public works construction standards. This includes vegetation that is
23 damaged by or removed during the Right-of-Way disturbance. All requirements of this
24 Section pertaining to public property shall also apply to the restoration of private
25 easements and other private property. Franchisee shall perform all restoration work
26 promptly and in compliance with the permit requirements and appropriate safety
27 standards. If Franchisee fails, neglects, or refuses to make restorations as required under
28 this Section, then the City may (but is not required to) do such work or cause it to be
29 done, and Franchisee shall pay the cost thereof to the City within thirty (30) days of the
30 City providing an itemized list of the costs and expenses incurred in performing such
31 work. If Franchisee causes any damage to private property in the process of restoring
32 Facilities, Franchisee shall repair such damage, ordinary wear and tear excepted.
33 Franchisee shall warrant any restoration work performed under this Franchise, including
34 the maintenance of any landscaping or vegetation installed as part of the restoration work,
35 for a period of two years. This restoration requirement shall survive the expiration,
36 revocation and termination of this Franchise.

37

38 **3.7.2 Maintenance.** Franchisee shall maintain all above ground improvements
39 that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid
40 interference with the City's ability to maintain the Right-of-Way, Franchisee shall
41 provide a clear zone of five (5) feet on all sides of such improvements. If Franchisee fails
42 to comply with this provision, and by its failure, property is damaged, then Franchisee
43 shall be responsible for all damages caused thereby, including restoration.

44

1 **3.7.3 Disputes.** In any dispute over the adequacy of restoration or maintenance
 2 under this Section, the City shall have the authority, in the exercise of its reasonable
 3 discretion, to determine the adequacy of the restoration or maintenance.
 4

5 **3.8 Relocation.**
 6

7 **3.8.1 City Property.** If during the term of the Franchise the City or any
 8 government entity elects or requires a third party, or if the City or other governmental
 9 entity determines that it is necessary, to alter, repair, realign, abandon, improve, vacate,
 10 reroute, or change the grade of any street, public way, or other public property; or to
 11 construct, maintain, or repair any public improvement; or to replace, repair install,
 12 maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding
 13 structure, or other facility, including a facility used for the provision of utility or other
 14 services or transportation of drainage, sewage, or other liquids, Franchisee shall, upon
 15 request, except as otherwise hereinafter provided, at its sole expense remove or relocate
 16 as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes,
 17 and any other Facilities which it has installed.
 18

19 **3.8.2 Utilities and Other Franchisees.** If during the term of the Franchise
 20 another entity which holds a franchise or any utility requests Franchisee to remove or
 21 relocate such Facilities to accommodate the construction, maintenance or repair of the
 22 requesting party's facilities, or their more efficient use, or pursuant to an agreement
 23 between Franchisee and such requesting party to "make ready" the requesting party's
 24 facilities for use by others, or because Franchisee is using a facility which the requesting
 25 party has a right or duty to remove, Franchisee and such requesting party shall mutually
 26 negotiate the actions required in connection with the "make ready" relocation or removal.
 27 The companies involved shall decide among themselves who is to bear the cost of "make
 28 ready" removal or relocation, provided that the City shall not be liable for such costs.
 29

30 **3.8.3 Notice to remove or relocate.** Any utility, other franchisee, or City request
 31 to Franchisee to remove or relocate its Facilities shall give Franchisee reasonable advance
 32 written notice of no less than ninety (90) days to Franchisee advising Franchisee of the
 33 date or dates removal or relocation is to be undertaken; provided that the City may
 34 provide whatever notice is reasonable under the circumstances in emergencies or in cases
 35 where public health and safety or property is immediately endangered.
 36

37 **3.8.4 Failure by Franchisee to remove or relocate.** If Franchisee fails, neglects
 38 or refuses to remove or relocate its Facilities as directed by the City, or in emergencies or
 39 where public health and safety or property is endangered, the City may do such work or
 40 cause it to be done, and the cost thereof to the City shall be paid by Franchisee. If
 41 Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by
 42 another franchisee or utility, that franchisee or utility may do such work or cause it to be
 43 done, and if Franchisee would have been required to pay for the cost of performing such
 44 work under the provisions of this Agreement, the cost thereof to the party performing the
 45 work or having the work performed shall be paid by Franchisee.
 46

1 **3.8.5 City's Immediate Repair.** If in the sole but reasonable opinion of the
2 City's Public Works Director, damage to the public Right-of-Way resulting from damage
3 or disturbance during the construction, operation, or maintenance of the Franchisee's
4 Facilities requires immediate repair, the City may perform such repairs, at the cost of the
5 Franchisee. In such event, the City will endeavor to notify the Franchisee of the
6 immediate repairs needed. The Franchisee shall pay to the City the City's costs,
7 including administrative costs related to such repairs within thirty (30) days of the date of
8 written notice of the costs to the Franchisee.
9

10 **3.8.6 Procedure for removal of Facilities.** Franchisee shall not remove any
11 underground Facilities which requires trenching or other opening of the streets along the
12 Facilities to be removed, except as hereinafter provided. Franchisee may remove any
13 underground Facilities from the streets which have been installed in such a manner that it
14 can be removed without trenching or other opening of the streets. Subject to applicable
15 law, Franchisee shall remove, at its sole cost and expense, any underground Facilities by
16 trenching or opening of the streets along the extension thereof or otherwise which is
17 ordered to be removed by the City based upon a determination, in the sole discretion of
18 the City, that removal is required in order to eliminate or prevent a hazardous condition.
19 Usable underground cable and conduit in the streets that is not removed as required in
20 this subsection shall be deemed abandoned and title thereto shall vest in the City at no
21 cost to the City.
22

23 **3.9 Movement of Buildings.**

24
25 Franchisee shall, on the request of any person holding a building moving permit issued
26 by the City, temporarily raise or lower its wires to permit the moving of such building.
27 Franchisee shall be entitled to ninety (90) days' notice to arrange the raising or lowering
28 of the wires. Franchisee may charge a reasonable fee no greater than its actual costs
29 incurred in raising or lowering its wires, for this service to the person or entity holding a
30 building moving permit and may request that the costs be paid in advance.
31

32 **3.10 City Right to Inspect and Cost Recovery.**

33
34 The City shall have the right to inspect all work performed by Franchisee in, on or above
35 City Rights-of-Way, whether during the performance of such work or after completion so
36 long as such inspection does not disrupt Franchisee's system operation. To the extent that
37 the City is required to perform any inspections, maintenance, or repairs to City streets,
38 Right-of-Way, or other City property due to Franchisee's use thereof, the City shall be
39 entitled to recover the costs and expenses incurred therefore from Franchisee and such
40 costs and expenses shall be payable on demand. In the event that the City incurs any
41 costs or expenses for designing, installing, repairing, or altering any City facilities that
42 would not have occurred but for Franchisee's exercise of the rights granted under this
43 Franchise, the City may bill Franchisee for reimbursement of such costs and expenses
44 and such shall be immediately due and payable to the City. Any such recovery of City
45 costs or reimbursements of such costs shall not be an off-set or credit against any
46 Franchise Fee to be paid to the City by the Franchisee.

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3.11 Construction Standards.

3.11.1 All work authorized or required under this Franchise shall be done in a safe, thorough, and workmanlike manner, or better. All installations of Facilities shall be durable and installed in accordance with current professional engineering standards. Prior to commencement of construction or any work being performed in any Right-of-Way, all of such work shall be conducted pursuant to engineering plans submitted by the Franchisee to the City for review and approval, which may be conditional approval, by the City Public Works Department. Franchisee shall take prompt corrective action if it or the City finds that any Facilities are not operating as expected, or if it or the City finds that Facilities do not comply with the requirements of this Franchise or applicable law, the Mill Creek Municipal Code or any permit requirements.

3.11.2 Franchisee shall comply with all applicable City construction and other codes, ordinances, and regulations, including without limitation, all building and zoning codes.

3.11.3 Any erection of poles, antennae, wires, cables, and other installations, upon the poles of the Franchisee located in the Right-of-Way or upon the poles of others located in the Right-of-Way, shall be done only in accordance with a plan or maps first submitted to and approved by the City or other person designated by the City. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (“EIA”), as those specifications may be amended from time to time, and shall meet all requirements and regulations adopted by the FCC. Antenna supporting structures (towers) shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the FCC, and all other applicable federal, state, and local codes or regulations. Any repair work or replacement work performed in the Right-of-Way shall be done under the supervision of the City and only after permission from the City is received.

3.11.4 Prior to placing any underground facilities, Franchisee shall join and maintain membership in good standing with the Utility Coordinating Council One Call Center or other similar or successor organization which is designated to coordinate underground equipment locations and installations. Franchisee represents that it is familiar with Chapter 19.122 RCW (Washington State's "Underground Utilities" statute), and understands and will comply with local procedures and practices relating to the one call locator service program.

3.11.5 After underground construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps stamped and signed by a professional land surveyor or Franchisee’s engineer in a form and content acceptable to the Public Works Director or his/her designee. Following any aerial construction, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee’s design and installation contractors. These plans and maps shall

1 be provided at no cost to the City, and shall include hard copies and digital files in
2 Autocad or other industry standard readable formats that are acceptable to the City and
3 delivered electronically. Franchisee shall also provide such maps within ten (10) days
4 following a request from the City. Further, if Franchisee's actual construction deviates
5 materially from its submitted construction plans as reasonably determined by the City,
6 Franchisee shall provide the City with these maps. Franchisee shall warrant the
7 reasonable accuracy of maps and as-builts provided to the City.
8

9 **3.12 Notice of Construction.**

10
11 **3.12.1** If at any time the Franchisee intends to perform construction work in any
12 Right-of-Way, the Franchisee shall obtain a Right-of-Way permit from the City and shall
13 provide the City with notice before commencing any such work as required by the Right-
14 of-Way Permit application process.
15

16 **3.12.2** The City may establish requirements for advance notification to residents
17 adjacent to the proposed construction areas to be provided by the Franchisee, and
18 Franchisee shall comply with such advance notification requirements.
19

20 **3.12.3** By February 1st of each year, or such date as the City may otherwise
21 prescribe, the City shall have the right to ask Franchisee for a conference, during which
22 Franchisee will provide to the City a schedule of its then-proposed or then-anticipated
23 construction activities that may affect the Rights-of-Way and any activities that will
24 entail excavation or tunneling with the Rights-of-Way. Further, Franchisee shall meet
25 with the City and other franchise holders and users of the Rights-of-Way upon reasonable
26 prior written notice as determined by the City, to schedule and coordinate construction in
27 the Rights-of-Way. All construction locations, activities, and schedules shall be
28 coordinated as ordered by the City to minimize public inconvenience, disruption, or
29 damages.
30

31 **3.13 Safety Requirements.**

32
33 **3.13.1** The Franchisee shall, at all times, employ industry standards of care and
34 shall install and maintain and use commonly accepted methods for preventing failures
35 and accidents which are likely to cause damage, injuries, or nuisances to the public. All
36 structures and all lines, equipment, and connection in, over, under, and upon the streets,
37 sidewalks, alleys, and public ways or places of the Service Area, wherever situated or
38 located, shall at all times be kept and maintained in a safe condition. Franchisee shall
39 comply with all federal, state, and city safety requirements, rules, regulations, laws and
40 practices, and employ all necessary devices as required by applicable law during the
41 construction, operation, maintenance, upgrade, repair, or removal of its Facilities. By
42 way of illustration and not limitation, Franchisee shall also comply with the National
43 Electric Code, National Electrical Safety Code, FCC regulations, and Occupational
44 Safety and Health Administration (OSHA) Standards.
45

1 **3.13.2** If an unsafe condition is found to exist, the City agrees to give Franchisee
 2 notice of such condition and afford Franchisee a reasonable opportunity to repair the
 3 same. If Franchisee fails to start to make the necessary repairs and alterations within the
 4 time frame specified by the City, then the City may make such repairs or contract for
 5 them to be made. All costs, including administrative costs, incurred by the City in
 6 repairing any unsafe conditions shall be borne by Franchisee. The Franchisee shall pay
 7 to the City all of the City's costs, including administrative costs, incurred as a result of
 8 circumstances herein within thirty (30) days of the date of the written notice of the costs
 9 that is delivered to the Franchisee. If the Franchisee fails to comply with the time frames
 10 herein, this Franchise shall terminate without further action required.

11
 12 **3.14 Permits Required for Construction.**

13
 14 **3.14.1** Prior to doing any work in the City, Franchisee shall apply for, and obtain,
 15 appropriate permits from the City. As part of the permitting process, the City may
 16 impose such conditions and regulations as are necessary for the purpose of protecting any
 17 Rights-of-Way, the proper restoration of Rights-of-Way and structures, the protection of
 18 the public, and the continuity of pedestrian or vehicular traffic, or as may be required by
 19 law, ordinance, codes, or regulations. Such conditions may also include requiring the
 20 provision of a construction schedule and maps showing the location of the Facilities to be
 21 installed in the Right-of-Way. Franchisee shall pay all applicable fees for the requisite
 22 City permits, reviews, and/or approvals required of or received by Franchisee.

23
 24 **3.14.2** Franchisee shall, if requested by the City, provide a construction bond to
 25 ensure the faithful performance of its responsibilities under this Franchise and applicable
 26 law, including without limitation, its duty to restore City streets and other property. The
 27 amount of the construction bond shall be at least one hundred twenty-five percent (125%)
 28 of the estimated project cost. The bond shall be in a form and with a surety acceptable to
 29 the City. Franchisee shall pay all premiums and costs associated with obtaining the bond,
 30 and shall keep the bond in full force and effect until the completion of the construction
 31 project, including all restoration of public and private property. The construction bond
 32 shall remain in force for two (2) years following completion of the work, including any
 33 restoration of the Right-of-Way and other related property affected by the construction,
 34 unless the City allows Franchisee to provide a maintenance bond.

35
 36 **3.14.3** In the event of any emergency in which any of Franchisee's Facilities
 37 break, are in need of emergency repair or are damaged, or if the Franchisee's construction
 38 area is otherwise in such a condition as to immediately endanger the property, life, health,
 39 or safety of any person, the Franchisee shall immediately take proper emergency
 40 measures to repair its Facilities, to cure or remedy the dangerous condition, without first
 41 applying for and obtaining City permits otherwise required for said work; provided, that
 42 the Franchisee shall immediately notify the City of said condition and of the emergency
 43 work, and shall obtain all necessary permits as promptly as possible after the emergency
 44 work is performed, and in any event no later than the second business day following the
 45 discovery of the condition requiring the emergency work.

46

1 **3.15 Tree Trimming.**
2

3 In cases of emergency, the Franchisee shall notify the City of its intent to trim trees or
4 other natural growth necessary to access and maintain its Facilities immediately upon
5 determining that such an emergency exists and prior to engaging in such activity. Upon
6 receipt of such notice, the City may inspect such circumstance prior to the removal of the
7 emergency condition. In non-emergency conditions, Franchisee may, at its own expense,
8 trim trees or other natural growth overhanging any of its installed Facilities to prevent
9 branches from coming in contact with the Franchisee's wires, cables, or other equipment
10 upon twenty (20) days' notice of the actual trees and other natural growth that is intended
11 to be affected in non-emergency situations, and upon approval of the City Public Works
12 Department, which shall not be unreasonably withheld, and subject to the requirement to
13 obtain a Right-of-Way Use Permit and complying with any and all conditions of that
14 Permit. Nothing herein grants the Franchisee any authority to act on behalf of the City or
15 to enter upon any private property, or to trim any tree or natural growth not owned by the
16 City. The Franchisee shall be solely responsible and liable for any damage to any third-
17 parties' trees or natural growth, and in addition to the terms and conditions of Section 7,
18 the Franchisee shall indemnify, defend, and hold harmless the City from claims of any
19 nature arising from any act or negligence of the Franchisee with regard to tree and/or
20 natural growth trimming, damage, and/or removal. Franchisee shall reasonably
21 compensate the City or the property owner for any damage caused by such trimming,
22 damage or removal. The Franchisee, may, at their own discretion, but in a manner and of
23 a style approved by the City or property owner, provide replacement of any trees or
24 shrubbery damaged as a result of actions taken by the Franchisee in lieu of compensation.
25

26 **3.16 Temporary Disconnection.**
27

28 The City may direct the Franchisee to temporarily disconnect, relocate, or bypass any
29 equipment of the Franchisee in order to complete street construction or modification,
30 install and remove underground utilities, or for other reasons of public safety and
31 efficient operation of the City, including construction projects. Such removal, relocation,
32 or other requirement shall be at the sole expense of the Franchisee.
33

34 **3.17 Access to Open Trenches.**
35

36 **3.17.1** The Franchisee shall be entitled to reasonable access to open utility
37 trenches, provided that such access does not interfere with the City's placement of
38 utilities or increase the cost to the City thereby. The Franchisee shall pay to the City the
39 actual cost to the City resulting from providing the Franchisee access to an open trench,
40 including without limitation the pro rata share of the costs of access to an open trench and
41 any costs associated with the delay of the completion of a public works project.
42

43 **3.17.2** The City shall use reasonable efforts to include the Franchisee in any
44 platting process within the City, to exercise reasonable efforts to include as a condition of
45 issuing a permit for open trenching to any utility or developer that (a) the utility or
46 developer give the Franchisee at least ten (10) business days' advance written notice of

1 the availability of the open trench and (b) that the utility or developer provide the
2 Franchisee with reasonable access to the open trench. The City's non-compliance with
3 this Section shall not be a breach or default by the City of this Franchise.
4

5 **3.17.3** Except in emergency situations, Franchisee shall inform the City with at
6 least ninety (90) days' advance written notice that it is constructing, relocating, or placing
7 ducts or conduits in the Right-of-Way and provide the City with an opportunity to request
8 that Franchisee provide the City with additional duct or conduit, and related structures
9 necessary to access the conduit pursuant to and subject to RCW 35.99.070. Such
10 notification shall be in addition to the requirement to apply for and obtain permits
11 pursuant to this Franchise.
12

13 **SECTION 4. PAYMENTS TO CITY.**

14
15 **4.1 Recovery of Costs.**

16
17 **4.1.1** Franchisee shall pay a one-time administrative fee to the City for the
18 City's actual administrative, legal, and other costs incurred in drafting and processing this
19 Franchise and all work related thereto, in an amount up to \$3,500.00. Acceptance is
20 invalid and no construction permits shall be issued for the installation of Facilities
21 authorized hereby until such time as the City has received payment of the administrative
22 fee.
23

24 **4.1.2** Franchisee shall be subject to all standard permit fees associated with
25 activities undertaken through the authority granted in this Franchise or under the laws of
26 the City. Where the City incurs costs and expenses for review, inspection, or supervision
27 of activities, including but not limited to reasonable fees associated with attorneys,
28 consultants, City staff, and City Attorney time, undertaken through the authority granted
29 in this Franchise or any ordinances relating to the subject for which a permit fee is not
30 established, Franchisee shall pay such costs and expenses directly to the City. In addition
31 to the above, Franchisee shall, within thirty days (30) upon receipt of a request from the
32 City, reimburse the City for any and all costs the City reasonably incurs in response to
33 any emergency involving Franchisee's Facilities. Franchisee shall reimburse the City
34 within thirty (30) days of submittal by the City of an itemized billing for incurred costs,
35 itemized by project, for the Franchisee's proportionate share of all actual, identified
36 expenses incurred by the City in planning, constructing, installing, repairing, altering, or
37 maintaining any City facility as the result of the presence of Franchisee's Facilities in the
38 Rights-of-Way. Such costs and expenses shall include but not be limited to the
39 Franchisee's proportionate cost of City personnel assigned to oversee or engage in any
40 work in the Rights-of-Way as the result of the presence of the Franchisee's Facilities in
41 the Rights-of-Way. Such costs and expenses shall also include the Franchisee's
42 proportionate share of any time spent reviewing construction plans in order to either
43 accomplish the relocation of the Franchisee's Facilities or the routing or rerouting of any
44 utilities so as not to interfere with the Franchisee's Facilities.
45
46

1 **4.2 Franchise Fees and Taxes.**
2

3 **4.2.1** Pursuant to RCW 35.21.860, the City is precluded from imposing a
4 franchise fee on a “telephone business” as defined in RCW 82.16.010, or a “service
5 provider” as defined in RCW 35.99.010, for use of the Right-of-Way, excepting actual
6 administrative expenses directly related to the Franchise or any tax authorized by state
7 law. Franchisee hereby warrants that its operations as authorized under this Franchise are
8 those of a “telephone business” as defined in RCW 82.16.010 or a “service provider” as
9 defined in RCW 35.99.010. As a result, the City will not impose a franchise fee under
10 the terms of this Franchise.
11

12 **4.2.2** Franchise acknowledges that some of its operation within the City
13 constitute a telephone business subject to a utility tax. Franchisee shall pay any and all
14 utility tax due to the City in accordance with any future provisions of City code.
15 Franchisee understands that RCW 35.21.870 currently limits the rate of city tax to six
16 percent (6%) of gross receipts from telephone business activities, unless a higher rate is
17 otherwise approved. The parties agree however that nothing in this Franchise shall limit
18 the City's power of taxation as may now or hereafter exist. Franchisee stipulates and
19 agrees that should its business activities be subject to taxation that Franchisee shall pay to
20 the City the rate then applicable to such services under the City's code, and consistent
21 with state and federal law. This provision does not limit the City's power to amend the
22 City's code as may be permitted by law.
23

24 **4.2.3** The City reserves its right to impose a franchise fee, in accordance with
25 state or federal law, on Franchisee for purposes other than to recover its administrative
26 expenses, if Franchisee's operations as authorized by this Franchise change such that
27 Franchisee's activities are not those of a “telephone business” as defined in RCW
28 82.16.010 and Franchisee is not a “service provider” as defined in RCW 35.99.010, and if
29 there are no statutory prohibitions on the imposition of such fees.
30

31 **4.3 Acceptance of Payment.**
32

33 No acceptance of any payment by the City shall be construed as an accord that the
34 amount paid is, in fact, the correct amount, nor shall such acceptance of payment be
35 construed as a release of any claim which the City may have for further or additional
36 sums payable under the provisions of this Franchise. Franchisee's payment to the City
37 shall not be construed as an acknowledgement by the Franchisee that the amount paid is
38 the correct amount and Franchisee reserves the right to subsequently seek to recover any
39 amount of such payments in the event of an erroneous overpayment or for other lawful
40 reasons. The costs of such verification shall be borne solely by the Franchisee.
41

42 **4.4 Audits and Examinations.**
43

44 **4.4.1** No more than twice per calendar year, the City may arrange with
45 Franchisee for an independent audit, on a non-contingent fee basis, of the Franchisee's
46 books and records to verify the accuracy of any payments made to the City under this

1 Franchise, including but not limited to any utility tax. Any additional identified amount
2 due to the City shall be paid within fourteen (14) calendar days of the City submitting an
3 undisputed invoice for such sum, and if such sum shall exceed three percent (3%) of the
4 total payment which the audit determines should have been paid for any calendar year,
5 the Franchisee shall pay the City's reasonable out of pocket costs of the audit.
6

7 **4.4.2** In addition to the forgoing, the City, no more than once per calendar year
8 upon thirty (30) days' written notice to the Franchisee, shall have the right to inspect, at
9 Franchisee's office, upon reasonable notice, the books and records of the Franchisee for
10 the purpose of determining the accuracy and completeness of the financial reports.
11 Franchisee may redact, for the purposes of such review, identifying information such as
12 names, street addresses (excluding City and zip code), Social Security Numbers, and
13 Employer Identification Numbers. Such examination shall occur in a professional
14 manner during reasonable business hours and following not less than thirty (30) days'
15 notice to Franchisee.
16

17 **4.5 Interest and Penalties on Late Payments.**
18

19 In the event that any payment due to the City under this Franchise is not received by the
20 City by the date due interest shall be charged from such date at the greater of twelve
21 percent (12%) per annum or the maximum rate permitted by law.
22

23 **4.6 Taxes and Assessments.**
24

25 The payments required under this Franchise shall be in addition to any and all taxes,
26 levies, or other assessments which are now or hereafter required to be paid by businesses
27 or utilities by any law of the City, the state, or the federal government, including, without
28 limitation, sales, use, utilities, and business and occupation taxes, business license fees, or
29 other payments. Nothing stated herein shall limit Franchisee's obligation to pay lawful
30 and applicable local, state, or federal taxes, and payment of fees under this Franchise
31 shall not exempt Franchisee from payment of any other lawfully imposed license fee,
32 permit fee, tax, or other charge on the business, occupation, property, or income of
33 Franchisee.
34

35 **SECTION 5. Franchise renewal, extension and transfer.**
36

37 **5.1 Transfer of Franchise.**
38

39 **5.1.1** This Franchise may not be assigned or transferred (including by operation
40 of law) without the written approval of the City, which approval shall not be
41 unreasonably withheld, conditioned or delayed. Any transactions that singularly or
42 collectively result in a change of more than fifty percent (50%) of the ultimate ownership
43 or working control of Franchisee, ownership or working control of the Facilities,
44 ownership or working control of affiliated entities having ownership or working control
45 of Franchisee or of the Facilities, or of control of the capacity or bandwidth of
46 Franchisee's Facilities, shall be considered an assignment or transfer requiring City

1 approval. Approval for a transfer or change of control of this Franchise shall comply
2 with the requirements of MCMC Chapter 12.16 as now exists and is hereafter amended.
3 The Franchisee shall reimburse the City for all direct and indirect costs and expenses
4 reasonably incurred by the City in considering a request to transfer or assign this
5 Franchise. Notwithstanding the above, Franchisee may, upon thirty (30) days' written
6 notice to the City, freely assign this Franchise in whole or in part to an Affiliate,
7 including without limitation a parent or subsidiary organization or as part of any
8 corporate financing, reorganization, or refinancing; provided, that the assignee or
9 transferee must have the legal, technical, financial, and other requisite qualifications to
10 own, hold, and operate the Franchisee's Facilities for the purpose of providing
11 Communications Services. In the case of transfer or assignment as security by mortgage
12 or other security instrument in whole or in part to secure indebtedness, such approval
13 shall not be required unless and until the secured party elects to realize upon the
14 collateral. No assignment or transfer of this Franchise shall be deemed to occur based on
15 the public trading of the Franchisee's stock.

16
17 **5.1.2** Franchisee may, without the prior written approval of the City: (i) grant an
18 indefeasible right of user interest in the Facilities, or any portion thereof, to another
19 entity; or (ii) offer or provide capacity or bandwidth from the Facilities to another person;
20 provided, that Franchisee at all times retains exclusive control over the Facilities and
21 remains responsible for locating, servicing, repairing, relocating, or removing its
22 Facilities pursuant to the terms of this Franchise and remains in compliance with this
23 Franchise.

24
25 **5.1.3** Notwithstanding the above, Franchisee may, without the prior written
26 approval of the City, lease the capacity or bandwidth to another telecommunications
27 provider for the purpose of providing services to customers in the City; provided, that
28 Franchisee shall furnish the City in advance with a copy of any such proposed lease or
29 agreement and the proposed lessee or person shall comply with all of the requirements of
30 this Franchise and the City code; and further provided, that the lessee's obligation to
31 comply with the requirements of this Franchise shall not apply to the leasing of dark fiber
32 or other conductive infrastructure for general business purposes, unless such lease is for
33 all or substantially all of the Facilities.

34
35 **5.2 Franchise Renewal.**

36
37 **5.2.1** Franchisee shall commence the renewal process consistent with the
38 requirements of MCMC Chapter 12.16. This Franchise shall not be renewed until any
39 ongoing violations or defaults in the Franchisee's performance under this Franchise, or
40 the requirements of the MCMC, have been cured, or a plan detailing the corrective action
41 to be taken by the Franchisee has been approved by the City.

42
43 **5.2.2** If this Franchise expires without renewal or is otherwise lawfully
44 terminated or revoked, the City may, subject to applicable law:
45

1 a. Allow Franchisee to maintain and operate its Facilities on a month-
2 to-month basis, provided that Franchisee maintains insurance for such Facilities during
3 such period and continues to comply with this Franchise; or
4

5 b. The City may order the removal of any and all Facilities at
6 Franchisee's sole cost and expense consistent with Section 6.4.
7

8 **SECTION 6. VIOLATIONS; ENFORCEMENT.**
9

10 **6.1 Enforcement.**
11

12 **6.1.1 Notice of Violation.** In the event that the City believes that the Franchisee
13 has not complied with any terms of the Franchise, the City, at its sole election may
14 informally discuss the matter with Franchisee. If discussions do not lead to resolution of
15 the problem or if the City elects not to informally discuss the matter with the Franchisee,
16 the City shall issue a written Notice of Violation to the Franchisee, stating with
17 particularity the alleged breach, violation or other non-compliance.
18

19 **6.1.2 Franchisee's Right to Cure or Respond.** The Franchisee shall have thirty
20 (30) days from receipt of the Notice of Violation to (i) respond to the City, contesting the
21 asserted breach, violation or non-compliance and requesting a meeting as provided in
22 section 6.2.1; (ii) cure such default; (iii) request a lesser sanction or remedy; or (iii) in the
23 event that, by the nature of default, such default cannot be cured within the thirty (30) day
24 period, initiate reasonable steps to remedy such default and notify the City of the steps
25 being taken and the estimated date that they will be completed.
26

27 **6.2 Franchisee Contests Non-Compliance.**
28

29 **6.2.1** If the Franchisee timely notifies the City that it contests the asserted
30 breach, violation or non-compliance and requests a meeting with the City, the City
31 Manager shall hold a meeting with the Franchisee within fourteen (14) days, provided
32 that said timeframe may be extended at the sole discretion of the City Manager.
33

34 **6.2.2** If after such meeting, the City Manager determines that the Franchisee is
35 in breach, violation or non-compliance with the Franchise, then the City Manager shall
36 notify the Franchisee of his/her decision in writing within seven (7) days, stating the
37 grounds of the breach, violation, or non-compliance, and revoking the Franchise. Said
38 revocation shall be effective immediately after the delivery of the written notice to the
39 Franchisee.
40

41 **6.2.3** After receiving the City Manager's written notice of decision, the
42 Franchisee may request a public hearing before the City Council as to whether or not a
43 violation, breach, or non-compliance with the Franchise has occurred. Said request must
44 be made in writing, stating with specificity the reasons why the Franchisee believes that
45 the alleged non-compliance has not occurred, and delivered to the City Clerk within
46 fourteen (14) days of receipt of the City Manager's decision.

1
2 **6.2.4** If the Franchisee does not request a public hearing before the City Council
3 under Section 6.2.3 above, at the next available meeting, the City Council shall pass an
4 ordinance declaring the Franchise revoked and terminated, and any security or bonds
5 shall be forfeited to the City. If the Franchisee does request a public hearing before the
6 City Council under Section 6.2.3 above, the City Clerk shall cause the public hearing to
7 be held at the next available City Council meeting, provided that the Franchisee shall be
8 provided at least ten (10) business days' notice of such hearing.
9

10 **6.2.5** At the City Council public hearing, the City shall have the burden of proof
11 that a violation, breach, or non-compliance with the Franchise has occurred, and must
12 demonstrate that a preponderance of evidence supports the conclusion that there is a
13 violation or breach of the Franchise and that such violation or breach was not timely
14 cured as required in this Franchise.
15

16 **6.2.6** The City Council's decision following the close of the public hearing shall
17 be made based upon a majority of the City Council present at the City Council meeting.
18 In the event of a tie vote, the decision of the City Manager shall be deemed to be upheld
19 as the decision of the City Council.
20

21 **6.2.7** If the City Council upholds the City Manager's decision that the
22 Franchisee is in breach, violation, or non-compliance, then the City Council shall
23 immediately pass an ordinance declaring the Franchise revoked and terminated, and any
24 security or bonds shall be forfeited to the City. Said revocation ordinance shall include
25 findings of fact and conclusions derived from those facts which support the decision of
26 the City Council and are consistent with the requirements of MCMC Chapter 12.16;
27 provided that the City Council may adopt the findings and conclusions of the City
28 Manager. In lieu of revocation, the City Council may determine that lesser remedies
29 (which may include liquidated damages) are appropriate or may pursue judicial action
30 against the Franchisee.
31

32 **6.2.8** The Franchisee shall be bound by the decision of the City Council, unless
33 an appeal is filed to a court of competent jurisdiction within thirty (30) days of the date of
34 the Council's decision.
35

36 **6.3 Failure to Timely Cure.**
37

38 If the Franchisee has not contested the asserted breach, violation, or non-compliance and
39 fails to timely cure the breach, violation, or non-compliance under Section 6.1.2 above,
40 then in addition to any other remedy at law or equity, or provided for in this Franchise,
41 the City may revoke the Franchise. Said revocation shall be effective immediately after
42 the delivery of a written notice of revocation approved by the City Council stating the
43 grounds of the breach, violation, or non-compliance with the Franchise.
44
45
46

1 **6.4 Removal.**
2

3 **6.4.1** If the Franchise has been terminated, revoked, canceled, or has expired,
4 and Franchisee has not exercised its rights, if any, to contest the termination, revocation,
5 cancelation or nonrenewal, the City may give Franchisee written notice to remove its
6 Facilities from the City's Rights-of-Way or it may, in the City's sole discretion, allow
7 Franchisee to abandon the system in place consistent with the requirements of Section
8 6.4.3. Any plan for abandonment or removal of the Facilities must be first approved by
9 the Public Works Director, and all necessary permits must be obtained prior to such
10 work. Work shall be completely done one hundred-eighty (180) days from notice to
11 complete such work. Prior to the commencement of such work, the Franchisee shall
12 submit to the City a performance bond in the amount of one hundred fifty percent (150%)
13 of the estimated cost of removal and the restoration required by this Franchise. Upon the
14 completion of such work, the City shall return the original bond to the Franchisee, but
15 may require a maintenance bond consistent with the MCMC, the Development Standards,
16 or other City rules.
17

18 **6.4.2** If the Franchisee fails to remove any of its Facilities as provided herein,
19 the City may elect to cause such removal and may recover its reasonable costs and
20 expenses from Franchisee, including its reasonable attorneys' fees and costs incurred in
21 recovering such costs and expenses.
22

23 **6.4.3** The City may allow Franchisee to abandon the Facilities in place upon the
24 express written consent of the City. Upon permanent abandonment in place of the
25 Facilities, the Facilities shall become property of the City, and Franchisee shall submit to
26 the City an instrument in writing, approved by the City Attorney, transferring to the City
27 the ownership of the Facilities, free and clear of any lien or encumbrance.
28

29 **6.4.4** If Franchisee leases a structure located in the Right-of-Way from a
30 landlord and such landlord later abandons the structure, for example by building a
31 replacement structure or because the landlord's facilities have moved underground,
32 Franchisee shall remove or relocate its Facilities within the Right-of-Way within ninety
33 (90) days of such notification from the landlord.
34

35 **6.4.5** The provisions of this Section 6.4 shall survive the expiration, revocation,
36 or termination of this Franchise.
37

38 **6.5 Unauthorized Facilities.**
39

40 **6.5.1** Within thirty (30) days following written notice from the City, Franchisee
41 shall, at its own expense, remove any unauthorized Facilities from the Right-of-Way. A
42 Facility is unauthorized and subject to removal in any of the following circumstances:
43

44 a. Upon termination of this Franchise;
45

- 1 b. Upon abandonment of a Facility, unless such abandonment is
- 2 allowed by the City pursuant to Section 6.4.3.
- 3
- 4 c. If the Facility was constructed or installed without the prior
- 5 issuance of a required Right-of-Way work permit.
- 6
- 7 d. If Facility was constructed or installed at a location not permitted
- 8 by this Franchise or permit.
- 9

10 **SECTION 7. Financial and Insurance Requirements.**

11

12 **7.1 Indemnity and Hold Harmless.**

13

14 **7.1.1 General Indemnification.** The Franchisee shall indemnify, defend, and

15 hold the City, its officers, officials, employees, agents, and consultants (as used in this

16 Section 7 collectively the “City”), harmless from and against any and all liabilities, third-

17 party claims, fees, costs, and damages, whether to person or property, or expense of any

18 type or nature which may occur to the City or to any third party, including without

19 limitation reasonable attorneys' fees, experts' fees, and other costs, by reason of the

20 construction, operation, maintenance, repair, and alteration of Franchisee's Facilities by

21 Franchisee or any other act or omission done under this Franchise by Franchisee, its

22 employees or agents, except to the extent any such liabilities, claims, fees, costs, and

23 damages are caused by or arise from the gross negligence or any willful, or criminal

24 actions on the part of the City.

25

26 **7.1.2 Relocation Indemnification.** To the extent not covered by the indemnity

27 requirements of Section 7.1.1, Franchisee shall indemnify, defend and hold the City

28 harmless from and against any and all liabilities, claims, fees, costs, and damages,

29 whether to person or property, or expense of any type or nature which may occur to the

30 City or any third party, including without limitation reasonable attorneys' fees, experts'

31 fees and other costs, arising out of, or resulting from, directly or indirectly, Franchisee's

32 failure to remove, adjust, or relocate any of its Facilities in the Right-of-Way in a timely

33 manner in accordance with any relocation required by the City under this Franchise,

34 except to the extent that such liabilities, claims, fees, costs, and damages are caused by

35 the gross negligence or any willful, or criminal actions of the City.

36

37 **7.1.3 Procedures and Defense.** In any case in which suit or action is instituted

38 against the City by reason of damages or injury caused in whole or in part by an act or

39 omission of Franchisee, the City shall cause written notice thereof to be given to the

40 Franchisee and Franchisee thereupon shall have the duty to appear and defend in any

41 such suit or action, without cost or expense to the City. The City's failure to so notify

42 and request indemnification shall not relieve Franchisee of any liability that Franchisee

43 might have, except to the extent that such failure prejudices Franchisee's ability to defend

44 such claim or suit. The City may participate in the defense of a claim, at its sole expense,

45 and in any event, Franchisee may not agree to any settlement of claims financially

46 affecting the City without the City's prior written consent, which consent shall not be

1 unreasonably withheld. The City shall not agree to any settlement of claims without the
2 prior written consent of Franchisee.
3

4 **7.1.4** In the event that Franchisee refuses the tender of defense in any suit or any
5 claim, as required pursuant to the indemnification provisions within this Franchise, and
6 said refusal is subsequently determined by a court having jurisdiction (or such other
7 tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal
8 on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for
9 defense of the action, including all expert witness fees, costs, and attorneys' fees, and
10 including costs and fees incurred in recovering under this indemnification provision. If
11 separate representation to fully protect the interests of both parties is necessary, such as
12 a conflict of interest between the City and the counsel selected by Franchisee to represent
13 the City, then upon the prior written approval and consent of Franchisee, which shall not
14 be unreasonably withheld, the City shall have the right to employ separate counsel in any
15 action or proceeding and to participate in the investigation and defense thereof, and
16 Franchisee shall pay the reasonable fees and expenses of such separate counsel, except
17 that Franchisee shall not be required to pay the fees and expenses of separate counsel on
18 behalf of the City for the City to bring or pursue any counterclaims or interpleader action,
19 equitable relief, restraining order or injunction. The City's fees and expenses shall
20 include all out-of-pocket expenses, such as consultants and expert witness fees, and shall
21 also include the reasonable value of any services rendered by the counsel retained by the
22 City but shall not include outside attorneys' fees for services that are unnecessarily
23 duplicative of services provided to the City by Franchisee. Each party agrees to
24 cooperate and to cause its employees and agents to cooperate with the other party in the
25 defense of any such claim and the relevant records of each party shall be available to the
26 other party with respect to any such defense.
27

28 **7.1.5** Inspection or acceptance by the City of any work performed by Franchisee
29 at the time of completion of construction shall not be grounds for avoidance by
30 Franchisee of any of its obligations under this Franchise. Said indemnification
31 obligations shall extend to claims which are not reduced to a suit and any claims which
32 may be compromised, with Franchisee's prior written consent, prior to the culmination of
33 any litigation or the institution of any litigation.
34

35 **7.1.6** The parties acknowledge that this Franchise is subject to RCW 4.24.115.
36 Accordingly, in the event of liability for damages arising out of bodily injury to persons
37 or damages to property caused by or resulting from the concurrent negligence of
38 Franchisee and the City, its officers, officials, employees, and volunteers, Franchisee's
39 liability shall be only to the extent of Franchisee's negligence. It is further specifically
40 and expressly understood that the indemnification provided constitutes Franchisee's
41 waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification.
42 This waiver has been mutually negotiated by the parties.
43

44 **7.1.7** Notwithstanding any other provisions of this Section 7, Franchisee
45 assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-
46 owned property from activities conducted by the City, except to the extent any such

1 damage or destruction is caused by or arises from any grossly negligent, willful, or
2 criminal actions on the part of the City. Franchisee releases and waives any and all such
3 claims against the City. Franchisee further agrees to indemnify, hold harmless and
4 defend the City against any claims for damages, including, but not limited to, business
5 interruption damages, lost profits and consequential damages, brought by or under users
6 of Franchisee's Facilities as the result of any interruption of service due to damage or
7 destruction of Franchisee's Facilities caused by or arising out of activities conducted by
8 the City, except to the extent any such damage or destruction is caused by or arises from
9 the gross negligence or any willful, or criminal actions on the part of the City.

10
11 **7.1.8** The provisions of this Section 7 shall survive the expiration, revocation, or
12 termination of this Franchise.

13
14 **7.2 Insurance.**

15
16 **7.2.1 General Requirement.** During the entire term of this Franchise, the
17 Franchisee shall have and maintain in full force and effect, at its own cost and expense, a
18 general comprehensive liability insurance policy, in protection of the City, its officers,
19 elected officials, boards, commissioners, agents, employees, and consultants, in a
20 company and a form satisfactory to the City, protecting the City and all persons against
21 liability for loss or damage or personal injury, death, and property damage, and errors or
22 omissions, occasioned by the operations of Franchisee under such Franchise.

23
24 **7.2.2 Minimum Insurance Limits.** Franchisee shall maintain in full force and
25 effect at its own cost and expense each of the following policies of insurance:

26
27 **a.** Comprehensive General Liability Insurance with limits of no less
28 than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars
29 (\$5,000,000.00) excess liability, aggregate for personal injury, bodily injury and property
30 damage. Coverage shall include but not be limited to: blanket contractual; premises;
31 operations; independent contractors; stop gap liability; personal injury; products, and
32 completed operations; broad form property damage; explosion, collapse, and
33 underground (XCU); and employer's liability.

34
35 **b.** Commercial Automobile Liability Insurance with minimum
36 combined single limits of Three Million Dollars (\$3,000,000) per occurrence and Five
37 Million Dollars (\$5,000,000) excess liability with respect to each of Franchisee's owned,
38 hired, and non-owned vehicles assigned to or used in the operation of the Facilities in the
39 City.

40
41 **c.** Professional Liability: One Million Dollars (\$1,000,000) per claim
42 for all professionals employed or retained by Franchisee to perform services under this
43 Franchise

44
45 **d.** Workers' Compensation coverage as required by the Industrial
46 Insurance laws of the State of Washington.

1 **7.2.3** Franchisee's insurance coverage shall be primary insurance with respect to
2 the City. Any insurance or self-insurance maintained by the City shall be in excess to the
3 Franchisee's insurance. The company shall be approved by the state insurance
4 Commissioner pursuant to Title 48 RCW, and have at least an A- Best Rating. Any
5 deductibles or self-insured retentions must be declared to and approved by the City if
6 greater than five percent of the coverage limit. Payment of any deductibles or self-
7 insured retentions are the sole responsibility of Franchisee.

8
9 **7.2.4** Franchisee shall give written notice of cancellation to the City twenty (20)
10 days in advance of the effective date of any insurance cancellation. If the insurance is
11 cancelled or materially altered so as to be out of compliance with the requirements of this
12 section, Franchisee shall provide a replacement policy. Franchisee shall maintain
13 continuous, uninterrupted insurance coverage, in at least the amounts required, for so
14 long as Franchisee maintains Facilities within the Rights-of-Way.

15
16 **7.2.5** Franchisee may utilize primary and umbrella liability insurance policies to
17 satisfy insurance policy limits required herein. Franchisee's umbrella liability insurance
18 policy shall provide "follow form" coverage over its primary liability insurance policies.

19
20 **7.2.6** The insurance policies, with the exception of Workers' Compensation
21 obtained by Franchisee shall name the City, its officers, officials, employees, agents, and
22 volunteers ("Additional Insureds"), as an additional insured with regard to activities
23 performed by or on behalf of Franchisee. The coverage shall contain no special
24 limitations on the scope of protection afforded to the Additional Insureds. In addition,
25 the insurance policy shall contain a clause stating that coverage shall apply separately to
26 each insured against whom a claim is made or suit is brought, except with respect to the
27 limits of the insurer's liability. Franchisee shall provide to the City prior to or upon
28 acceptance either (1) a true copy of the additional insured endorsement for each insurance
29 policy required in this Section 7.2 and providing that such insurance shall apply as
30 primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket
31 additional insured clause from the policies. Receipt by the City of any certificate
32 showing less coverage than required is not a waiver of Franchisee's obligations to fulfill
33 the requirements. Franchisee's insurance shall be primary insurance with respect to the
34 Additional Insureds, and the endorsement should specifically state that the insurance is
35 the primary insurance. Any insurance maintained by the Additional Insureds shall be in
36 excess of Franchisee's insurance and shall not contribute with it.

37
38 **7.2.7** Franchisee's maintenance of insurance as required by this Section 7.2
39 shall not be construed to limit the liability of Franchisee to the coverage provided by such
40 insurance, or otherwise limit the City's recourse to any remedy available at law or equity.
41 Further, Franchisee's maintenance of insurance policies required by this Franchise shall
42 not be construed to excuse unfaithful performance by Franchisee.

43
44 **7.2.8** As of the effective date of this Franchise, Franchisee is not self-insured.
45 Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a
46 later date, Franchisee must provide the City with thirty (30) days advanced written notice

1 of its intent to self-insure. In order to self-insure, Franchisee shall comply with the
 2 following: (i) provide a written attestation that Franchisee possesses the necessary
 3 amount of unencumbered financial assets to support the financial exposure of self-
 4 insurance, as evidenced by an outside auditor's review of Franchisee's financial
 5 statements; (ii) the City, upon request, may review Franchisee's financial statements; (iii)
 6 Franchisee is responsible for all payments within the self-insured retention; and (iv)
 7 Franchisee assumes all defense and indemnity obligations as outlined in the
 8 indemnification section of this Franchise. These requirements may be modified by
 9 written amendment executed by both parties.

10
 11 **7.3 Security Fund.**
 12

13 **7.3.1** If requested by the City, no later than the effective date of this Franchise,
 14 Franchisee shall establish and provide to the City, as security for the faithful performance
 15 of all of the requirements of this Franchise, a performance bond, from a surety or
 16 financial institution acceptable to the City, in the amount of Twenty-Five Thousand
 17 Dollars (\$25,000) the ("Security Fund"). The performance bond may be drawn upon by
 18 the City for the following purposes: (1) failure of Franchisee to pay the City sums due
 19 under the terms of this Franchise; (2) reimbursement of costs borne by the City to correct
 20 Franchise violations not corrected by Franchisee; and (3) monetary remedies or damages
 21 assessed against Franchisee due to default or breach of Franchise requirements.
 22

23 **7.3.2** The City shall give Franchisee written notice prior to any withdrawal from
 24 the Security Fund:
 25

26 **a.** Describing the act, default or failure to be remedied, or the
 27 damages, cost or expenses which the City has incurred by reason of Franchisee's act or
 28 default;
 29

30 **b.** Providing a reasonable opportunity for Franchisee to first remedy
 31 the existing or ongoing default or failure, if applicable;
 32

33 **c.** Providing a reasonable opportunity for Franchisee to pay any
 34 monies due to the City before the City withdraws the amount thereof from the Security
 35 Fund; and
 36

37 **d.** That the Franchisee will be given an opportunity to review the act,
 38 default or failure described in the notice with the City.
 39

40 **7.3.3** Within fourteen (14) days following receipt of such notice, Franchisee
 41 shall restore the performance bond to the amount required under this Franchise.
 42 Franchisee's maintenance of the bond shall not be construed to excuse performance of
 43 obligations under the Franchise, or to limit the liability of Franchisee or otherwise limit
 44 the City's recourse to any other remedy available at law or equity.
 45

46 **SECTION 8. Miscellaneous terms**

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8.1 Confirmation of Consistency with Federal Provisions.

If any portion of this Franchise ordinance is deemed to be inconsistent with any federal or state statute, rule or regulation now existing or hereinafter adopted, then to the extent of the inconsistency, the statute, rule or regulation shall control for so long, but only for so long, as such statute, rule or regulation shall remain in effect, and the remaining provisions of this Franchise ordinance shall not thereby be affected. If that statute, rule or regulation allows existing franchises to not be affected, then there shall be no effect to this Franchise. If federal law changes, whether through legislative or rule-making action or court or administrative interpretation during the term of this Franchise, then this Franchise ordinance shall be considered modified to be consistent with such federal law changes.

8.2 Severability.

Each section, subsection, or other portion of this Franchise shall be severable and the invalidity of any section, subsection, or other portion shall not invalidate the remainder.

8.3 Notice.

Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

CITY OF MILL CREEK:	FRANCHISEE:
City of Mill Creek	Astound Broadband, LLC
City Clerk	d/b/a Wave
15728 Main Street	Attn: CEO
Mill Creek, WA 98012	401 Parkplace Center, Suite 500
	Kirkland, WA 98033
	With a copy to:
	Attn: General Counsel
	At the same address

Notice shall be deemed given upon actual receipt or refusal of delivery and shall be sent by personal delivery, United States Certified Mail, return receipt requested, or by overnight delivery.

8.4 Entire Franchise.

This Franchise and its acceptance constitutes the entire terms between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties. Any amendment to this Franchise shall only occur by mutual written agreement of the parties and amendment of this Franchise.

1 **8.5 Records.**

2

3 **8.5.1** Except for financial reports which are covered by Section 4.4.2, within
4 thirty (30) days of a written request from the City, Franchisee shall furnish the City with
5 information sufficient to demonstrate that Franchisee has complied with all applicable
6 requirements of this Franchisee.

7

8 **8.5.2** All books, records, maps, and other documents maintained by Franchisee
9 with respect to its Facilities within the Right-of-Way shall be made available with thirty
10 (30) days' prior written notice, unless such shorter time is mutually agreed to by the
11 parties, for inspection by the City at reasonable times and intervals; provided, however,
12 that nothing in this Section 8.5.2 shall be construed to require Franchisee to violate state
13 or federal law regarding customer privacy, nor shall this Section 8.5.2 be construed to
14 require Franchisee to disclose proprietary or confidential information without adequate
15 safeguards for its confidential or proprietary nature. Unless otherwise prohibited by state
16 or federal law, nothing in this Section 8.5 shall be construed as permission to withhold
17 relevant customer data from the City that the City requests in conjunction with a tax audit
18 or review; provided, however, Franchisee may redact identifying information such as
19 names, street addresses (excluding City and zip code), Social Security Numbers, or
20 Employer Identification Numbers related to any confidentiality agreements Franchisee
21 has with third parties.

22

23 **8.5.3** Franchisee shall not be required to disclose information that it reasonably
24 deems to be proprietary or confidential in nature. The City agrees to keep confidential
25 any proprietary or confidential books or records to the extent permitted by law.
26 Franchisee shall be responsible for clearly and conspicuously identifying the work as
27 confidential or proprietary, and shall provide a brief written explanation as to why such
28 information is confidential and how it may be treated as such under state or federal law.
29 In the event that the City receives a public records request under Chapter 42.56 RCW or
30 similar law for the disclosure of information Franchisee has designated as confidential,
31 trade secret, or proprietary, the City shall promptly provide written notice of such
32 disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing
33 in this Section 8.5 prohibits the City from complying with Chapter 42.56 RCW or any
34 other applicable law or court order requiring the release of public records, and the City
35 shall not be liable to Franchisee for compliance with any law or court order requiring the
36 release of public records. The City shall comply with any injunction or court order
37 obtained by Franchisee that prohibits the disclosure of any such confidential records;
38 however, in the event a higher court overturns such injunction or court order and such
39 higher court action is or has become final and non-appealable, Franchisee shall reimburse
40 the City for any fines or penalties imposed for failure to disclose such records as required
41 hereunder within sixty (60) days of a request from the City.

42

43

44

45

46 **8.6 Reserved Rights.**

1
2 **8.6.1** The City reserves all rights and powers under its police powers and
3 powers conferred by federal, state or local law. In particular the City reserves the right to
4 alter, amend, or repeal its municipal code as it determines shall be conducive to the
5 health, safety, and welfare of the public, or otherwise in the public interest. The City
6 agrees that by accepting this Franchise, Franchisee has not waived its right to object to
7 the application to it of actions by the City pursuant to its reserved rights or police powers.
8

9 **8.6.2** Both the City and the Franchisee expressly reserve all rights they may
10 have under law to the maximum extent possible; neither the City nor the Franchisee shall
11 be deemed to have waived any federal or state constitutional or statutory rights they may
12 now have or may acquire in the future by entering into this Franchise.
13

14 **8.6.3** All rights and remedies provided herein shall be in addition to and
15 cumulative with any and all other rights and remedies available to either the City or
16 Franchisee. Such rights and remedies shall not be exclusive, and the exercise of one or
17 more rights or remedies shall not be deemed a waiver of the right to exercise at the same
18 time or thereafter any other right or remedy. Provided, further, that by entering into this
19 Franchise, it is not the intention of the City or Franchisee to waive any other rights,
20 remedies, or obligations as provided by law, equity or otherwise, and nothing contained
21 in this Franchise shall be deemed or construed to affect any such waiver. The parties
22 reserve the right to seek and obtain injunctive relief with respect to this Franchise to the
23 extent authorized by applicable law and that the execution of this Franchise shall not
24 constitute a waiver or relinquishment of such right. The parties agree that in the event a
25 party obtains injunctive relief, neither party shall be required to post a bond or other
26 security and the parties agree not to seek the imposition of such a requirement.
27

28 **8.7 Jurisdiction**

29
30 This Franchise shall be construed in accordance with the laws of the State of Washington.
31 The United States District Court for the Western District of Washington, and Snohomish
32 County Superior Court have proper venue for any dispute related to this Franchise.
33

34 **8.8 No Third Party Beneficiaries.**

35
36 There are no third party beneficiaries to this Franchise.
37

38 **8.9 Franchise Acceptance.**

39
40 Franchisee shall execute and return to the City three originals of the Franchisee
41 Acceptance, attached to this Franchise. Within sixty (60) days of the effective date of
42 this Franchise, Franchisee shall submit to the City the administrative fee pursuant to
43 Section 4.1.1, any applicable performance bonds, security funds, and evidence of
44 insurance. In the event Franchisee fails to accept this Franchise, or fails to provide the
45 required documents and/or funds, by said date, this Franchise shall be null and void and
46 Franchisee shall have no rights or privileges hereunder.

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8.10 Effective Date.

This ordinance shall take effect and be in force five (5) days from and after its passage and publication as provided by law.

PASSED BY THE CITY COUNCIL this ____ day of _____, 2017.

APPROVED:

MAYOR PAM PRUITT

ATTEST/AUTHENTICATED:

_____, CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY SCOTT MISSALL

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

ORDINANCE NUMBER: _____

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FRANCHISEE ACCEPTANCE

Astound Broadband, LLC d/b/a Wave, for itself and for its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated by this reference. Astound Broadband, LLC d/b/a Wave expressly acknowledges that in accepting this Franchise it did so relying on its own investigation and understanding of the power and authority to grant this Franchise.

ACCEPTED this ____ day of _____, _____.

Astound Broadband, LLC d/b/a Wave

Name: _____
Title: _____



Agenda Item # J
Meeting Date: June 6, 2017

CITY COUNCIL AGENDA SUMMARY

City of Mill Creek, Washington

AGENDA ITEM: TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH MCIMETRO ACCESS TRANSMISSION SERVICES D/B/A VERIZON ACCESS TRANSMISSION SERVICES

PROPOSED MOTION:

Motion to adopt the attached Ordinance granting a non-exclusive telecommunications franchise to MCIMetro Access Transmission Services.

KEY FACTS AND INFORMATION SUMMARY:

Section 35A.47.040 of the Revised Code of Washington (RCW) authorizes the City to grant non-exclusive telecommunication franchises for the use of public streets and rights-of-way for providing communication services. It is in the best interests of the City to clearly define with each company desiring the use of the City's rights-of-way exactly what conditions must be satisfied to gain this permission. MCIMetro Access Transmission Services, doing business as Verizon Access Transmission Services, here-in-after "Verizon," desires to install fiber optic cables within the City and eventually serve city customers. Per Section 12.16.050 of the Mill Creek Municipal Code, any company providing telecommunications services to residents or businesses within the City must have a telecommunications franchise agreement with the City.

Negotiations with Verizon have been underway for several months and the attached ordinance reflects the final franchise agreement that protects the City's interests.

CITY MANAGER RECOMMENDATION:

The City Manager recommends the Council adopt the attached ordinance granting a non-exclusive telecommunications franchise to MCIMetro Access Transmission Services.

ATTACHMENTS:

- Ordinance granting non-exclusive telecommunications franchise to MCIMetro Access Transmission Services.

Respectfully Submitted:

A handwritten signature in blue ink that reads "Rebecca C. Polizzotto".

Rebecca C. Polizzotto
City Manager

CITY OF MILL CREEK

ORDINANCE NO. _____

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AN ORDINANCE OF THE CITY OF MILL CREEK, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES TO INSTALL, OPERATE, MAINTAIN AND REPAIR A TELECOMMUNICATIONS SYSTEM WITHIN THE CITY; PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES (“Verizon” or “Franchisee”), has requested that the City Council grant it a non-exclusive telecommunications franchise for the installation, operation, maintenance and repair of a multiple conduit and aerial telecommunications system within the City’s rights-of-way; and

WHEREAS, pursuant to RCW 35A.47.040, the City is authorized to grant one or more non-exclusive franchises for use of public streets, roads, bridges, and other public rights-of-way, above and below the surface of the ground, for poles, conduits, tunnels, towers, structures, pipes, wires, and appurtenances and other facilities for the transmission and distribution of electrical energy, signals and other methods of communication; and

WHEREAS, the City has determined that it is in the best interests of the City and in the best interests of the health, safety, and welfare of the Mill Creek community and the general public to grant this non-exclusive Franchise to Verizon; now therefore,

THE CITY COUNCIL OF THE CITY OF MILL CREEK DO ORDAIN AS FOLLOWS:

SECTION 1. DEFINITIONS

For purposes of this Franchise, the following words, terms and phrases shall have the meanings stated in this section. 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.

- 1 **1.1** "Affiliate" means a Person who (directly or indirectly) owns or controls, is owned
2 or controlled by, or is under common ownership or control with another Person.
3
- 4 **1.2** "City" means the City of Mill Creek, Washington, and all the territory within its
5 present and future boundaries and including any area over which the City exercises
6 jurisdiction.
7
- 8 **1.3** "Communications Service" means telecommunications services, provided by the
9 Franchisee using its Facilities, either directly or by its Affiliates: including, but not
10 limited to, the transmission of voice, data, or other electronic information, by wire,
11 optical cable, or other similar means. Communications Services also includes the
12 provision of a portion of the Facilities, including without limitation, dark fiber to third
13 parties under a leasing or indefeasible right of use arrangement pursuant to Sections 5.1.2
14 and .3 of this Franchise. For purposes of this subsection, "information" means
15 knowledge or intelligence represented by writing, signs, signals, pictures, sounds, or any
16 other symbols. For purposes of this Franchise, Communications Service excludes
17 personal wireless services, over-the-air transmission of broadcast television, and
18 broadcast radio signals, or the provision of cable services or open video services as
19 defined in the Communications Act of 1934, as amended. A separate franchise or an
20 amendment to this Franchise is required prior to offering such additional services.
21
- 22 **1.4** "Facilities" means plant, equipment and property, including but not limited to
23 cables, wires, conduits, ducts, pedestals, antennas, electronics and other appurtenances,
24 vaults, manholes, handholes and equipment used or to be used to transmit, receive,
25 distribute, provide or offer Communications Services under this Franchise. For the
26 purposes of this franchise the term Facilities excludes "microcell" facilities, "minor
27 facilities," "small cell facilities," all as defined by RCW 80.36.375, and "macrocell"
28 facilities, including towers and new base stations and other similar facilities used for the
29 provision of "personal wireless services" as defined by RCW 80.36.375 (collectively
30 "Personal Wireless Facilities").
31
- 32 **1.5** "FCC" means the Federal Communications Commission, or any successor
33 governmental agency.
34
- 35 **1.6** "Franchise" means the non-exclusive rights, privileges, and authority granted to
36 Franchisee to use its Facilities in the City's Rights-of-Way pursuant to this Franchise.
37
- 38 **1.7** "Person" means any individual, corporation, partnership, association, joint
39 venture, or organization of any kind and the lawful trustee, successor, assignee,
40 transferee, or personal representative thereof.
41
- 42 **1.8** "Right-of-Way" means the surface of, and the space above and below, any public
43 street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, public
44 way, drive, circle, pathways, spaces, or other public right of way which, under City
45 ordinances or applicable laws, the City has authority to grant franchises, licenses, or
46 leases for use thereof, or has regulatory authority thereover and only to the extent such

1 Rights-of-Way are opened. Rights-of-Way for the purpose of this Franchise do not
2 include buildings, other City-owned physical facilities, parks, poles, conduits, fixtures,
3 real property or property rights owned by the City not reserved for transportation
4 purposes, or similar facilities or property owned by or leased to the City, including, by
5 way of example and not limitation, structures in the Rights-of-Way such as utility poles,
6 light poles and bridges.

7
8 **1.9** "Service Area" means the present municipal boundaries of the City and shall
9 include any future additions thereto by annexation or other legal means.

10
11 **SECTION 2. GRANT.**

12
13 **2.1 Grant of a Non-Exclusive Franchise.**

14
15 **2.1.1** The City hereby grants to Franchisee the non-exclusive right, privilege,
16 and authority to use and occupy the Rights-of-Way for the purpose of providing
17 Communications Services, including without limitation the right to lawfully install,
18 remove, construct, erect, operate, use, maintain, relocate, and repair Facilities in, along,
19 under, and across the Rights-of-Way subject to the terms and conditions of this
20 Franchise. In order to provide any other services over the Facilities, the Franchisee shall
21 be required to obtain any additional governmental authorizations required by law.

22
23 **2.1.2** The provisions of MCMC Chapter 12.16 are hereby incorporated by
24 reference. In the event of a conflict between the MCMC and this Franchise, the terms of
25 this Franchise shall prevail; except to the extent that it is an exercise of the City's police
26 power authority. In exercising its rights under this Franchise, Franchisee shall comply
27 with all lawfully enacted City Codes, ordinances, standards, procedures, and regulations.
28 The provisions of this Franchise are subject to the lawful exercise of the City's police
29 powers upon reasonable notice to Franchisee. In accepting this Franchise, the Franchisee
30 acknowledges that its rights hereunder are subject to the police power of the City to adopt
31 and enforce, from time to time and in the manner it deems reasonable, general ordinances
32 necessary for the safety, health, and welfare of the public. This Franchise shall not be
33 interpreted to prevent the City from imposing additional lawful conditions, including
34 additional compensation conditions for use of the Rights-of-Way, should Franchisee
35 provide service other than Communications Services. Franchisee agrees to comply with
36 all applicable laws that are now or may in the future be enacted by the City pursuant to
37 such police power.

38
39 **2.1.3** The authority granted herein to Franchisee is a limited authorization to
40 occupy and use the Rights-of-Way for providing Communications Services, and shall not
41 include or be a substitute for:

- 42
43 **a.** Any other permit or authorization required for the privilege of
44 transacting and carrying on a business within the City, including but not limited to a City
45 business license;

46

1 **b.** Any permit, agreement, authorization, or condition that may be
2 required by the City for using the Right-of-Way in connection with operations on or in
3 the Right-of-Way or public property, such as Right-of-Way use permits and approved
4 traffic control plans.
5

6 **2.1.4** This Franchise only conveys limited rights and interests as to those
7 Rights-of-Way in which the City has an actual interest. It is not a warranty of title or
8 interest, nor does it provide the Franchisee with any representation as to any location of a
9 City Right-of-Way or the nature of the City's interest in any Right-of-Way. No right to
10 install any facility, infrastructure, wires, lines, cables, or other equipment, on any City
11 property other than a Right-of-Way, or upon private property without the owner's
12 consent, or upon any City, public or privately owned utility poles or conduits is granted
13 herein.
14

15 **2.1.5** This Franchise shall not be construed as to deprive the City of any rights
16 or privileges which it now has or may hereafter have to regulate the use and control of the
17 Rights-of-Way, and public property. Nothing in this Franchise shall limit or expand the
18 City's right of eminent domain under State law. If at any time the City exercises its
19 authority to vacate all or any portion of any Right-of-Way, the City shall not be liable for
20 any damages or loss to Franchisee by reason of such vacation. To the extent that the
21 Franchisee has Facilities within such portion of the Right-of-Way to be vacated, or has a
22 permit to occupy such portion, the City will, if practicable, reserve an easement for
23 Franchisee to continue occupying that portion of the Rights-of-Way so vacated. The City
24 may, upon one hundred eighty (180) days' written notice to Franchisee, terminate this
25 Franchise with respect to such vacated area.
26

27 **2.1.6** The City specifically reserves the right to grant, at any time, such
28 additional franchises for other similar systems to the Franchisee or to other persons or
29 entities, as the City deems appropriate; provided, however, such additional grants shall
30 not operate to materially modify, revoke, or terminate any rights previously granted to
31 Franchisee. The grant of any additional franchise shall not of itself be deemed to
32 constitute a modification, revocation, or termination of rights previously granted to
33 Franchisee
34

35 **2.1.7** This Franchise does not establish any priority for the use of the Rights-of-
36 Way by Franchisee or by any present or future franchisees or other permit holders. In the
37 event of any dispute as to the priority of use of the Rights-of-Way, the first priority shall
38 be to the City in the performance of its various functions, the second priority shall be to
39 the public generally, and thereafter, as between franchisees and other permit holders, as
40 reasonably determined by the City in the exercise of its powers, including the police
41 power and other powers reserved to and conferred on it by the State of Washington.
42

43 **2.1.8** To the extent that any of the Rights-of-Way within the Franchise Area are
44 a part of the State highway system ("State Highways") and are governed by the
45 provisions of Chapter 47.24 RCW and applicable Washington State Department of
46 Transportation regulations, Franchisee shall comply with said requirements in addition to

1 local ordinances and other applicable regulations. Franchisee shall correct any
2 noncompliant facilities identified by the City or by any other local, State or federal
3 governmental entity. Without limitation of the foregoing, Franchisee specifically agrees
4 that:

5
6 **a.** Any pavement trenching and restoration performed by Franchisee
7 within State Highways shall meet or exceed applicable WSDOT requirements;

8
9 **b.** Any portion of a State Highway damaged or injured by Franchisee
10 shall be restored, repaired and/or replaced by Franchisee to a condition that meets or
11 exceeds applicable WSDOT requirements; and

12
13 **c.** Without prejudice to any right or privilege of the City, WSDOT is
14 authorized to enforce in an action brought in the name of the State of Washington any
15 condition of this Franchise with respect to any portion of a State Highway.

16
17 **2.2 Term of Franchise.**

18
19 The term of this Franchise shall be for five (5) years, beginning on the effective date of
20 this franchise, set forth in Section 8.10 (the "Initial Term"). This Franchise shall
21 automatically renew for one (1) additional five (5) year period (the "Renewal Term"),
22 upon the same terms and conditions as set forth in this Franchise, unless either party
23 provides one hundred twenty (120) days written notice to the other party to request an
24 amendment to the Franchise. Following the Renewal Term, this Franchise may be
25 further renewed pursuant to the Mill Creek Municipal Code ("MCMC") Chapter 12.16,
26 as now exists or hereinafter amended.

27
28 **2.3 Non-Exclusive.**

29
30 This Franchise shall be non-exclusive, and subject to all prior rights, interests, easements,
31 or licenses granted by the City or its predecessors to any Person to use any property,
32 Right-of-Way, easement, right interest, or license. The City may at any time grant
33 authorization to use the Right-of-Way for any purpose not incompatible with the
34 Franchisee's rights under this Franchise and for such additional franchises as the City
35 deems appropriate.

36
37 **2.4 Effect of Acceptance.**

38
39 By accepting this Franchise, the Franchisee acknowledges and accepts the City's legal
40 right to issue and enforce the Franchise; and accepts and agrees to comply with each and
41 every provision of this Franchise.

42
43 **SECTION 3. GENERAL RIGHT OF WAY USE AND CONSTRUCTION.**

44
45 **3.1 Use of Rights-of-Way.**

46

1 Franchisee shall not erect, install, construct, repair, replace, or maintain its Facilities in
2 such a fashion as to unduly burden the present or future use of the City's Rights-of-Way.
3 If the City in its reasonable judgment determines that any portion of the Franchisee's
4 Facilities is an undue burden, City shall provide notice to Franchisee. Following
5 reasonable advance written notice of not less than thirty (30) days, Franchisee at its
6 expense shall modify its Facilities or take such other actions as the City may determine
7 are in the public interest to remove or alleviate the burden, and Franchisee shall do so
8 within the time period established by the City.
9

10 **3.2 Construction or Alteration.**

11
12 Franchisee shall in all cases comply with all City laws, resolutions and regulations
13 regarding the acquisition of permits and/or such other items as may be reasonably
14 required in order to construct, alter, or maintain its Facilities and to provide
15 Communications Services. All work authorized and required under this Franchise shall
16 be accomplished in a safe, thorough, and workmanlike manner, or better. All
17 installations of Facilities shall be durable and installed in accordance with current
18 engineering standards.
19

20 **3.3 Non-Interference.**

21
22 Franchisee shall exert commercially reasonable efforts to construct and maintain its
23 Facilities so as not to interfere with other use of the Rights-of-Way. Franchisee shall,
24 where possible, in the case of above ground lines or facilities, make use of existing poles
25 and other facilities available to Franchisee. This Franchise does not grant Franchisee the
26 right to erect new poles without express permission from the City and only upon a
27 showing that no alternative existing locations for Franchisee's Facilities exist.
28

29 **3.4 Consistency with Designated Use.**

30
31 Notwithstanding any other provision of this Franchise, no Right-of-Way shall be used by
32 the Franchisee if the City, in its sole opinion, determines that such use is inconsistent
33 with the terms, conditions, or provisions by which such Right-of-Way was created or
34 dedicated, or presently used under City, County, State or federal laws.
35

36 **3.5 Undergrounding.**

37
38 Franchisee shall place underground, at Franchisee's expense unless stated otherwise, all
39 of its Facilities which are located or are to be located above or within the Rights-of-Way
40 of the City in the following cases:

- 41
42 **a.** When all other existing utilities, excluding electrical facilities, are
43 required to be placed underground by statute, resolution, policy or other regulation;
44
45 **b.** When all other existing utilities, except electrical facilities, have
46 been placed underground.

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c. When Franchisee is unable to get pole attachment permits from pole owners;

d. In all new developments and subdivisions where other wireline utilities, except electrical, are constructed underground; and

e. When required by ordinances, resolutions, regulations, or policy of the City that is publicly available and applicable to all similarly situated users of the Rights-of-Ways, or applicable State or federal law.

3.5.1 Whenever the City may require the undergrounding of aerial utilities, which does not include electrical utilities or Personal Wireless Facilities, Franchisee shall underground its aerial Facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities, and at no cost to the City. The location of any such relocated and underground Facilities shall be approved by the City, following consultation with the Franchisee. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of the common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee’s Facilities. “Common costs” shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. “Fair share” shall be determined for a project on the basis of the number and size of all other utility facilities being undergrounded.

3.5.2 To the extent Franchisee is providing Communications Services to Personal Wireless Facilities, Franchisee shall adhere to the design standards for such Personal Wireless Facilities, and shall underground its Facilities and/or place its Facilities within the pole as may be required by such design standards. For the purposes of clarity, this Section 3.5.2 does not require undergrounding or interior placement of Facilities within the pole to the extent that the Personal Wireless Facilities are located on utility poles that have pre-existing aerial telecommunications facilities and provided such construction of Franchisee’s Facilities continue to comply with Section 3.5.

3.5.3 If an ordinance is passed creating a local improvement district which involves placing underground utilities including Franchisee’s Facilities which are currently located overhead, Franchisee shall participate in such underground project and shall remove its owned poles, cables, overhead wires and other facilities within such district if requested to do so and place such facilities underground. If such undergrounding of Franchisee’s Facilities is part of such a project, the costs thereof shall be included in such local improvement district.

3.5.4 Franchisee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except that drops from pedestals to Franchisee’s customer’s homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry

1 standards for electronic performance and resistance to interference or damage from
2 environmental factors. Franchisee shall use and construct, in conjunction and
3 coordination with other utility companies or providers, common trenches for
4 underground construction wherever available and possible.
5

6 **3.6 Joint Trenching**

7
8 In cases where Franchisee's Facilities will be placed underground, whenever it is possible
9 and reasonably and financially practicable to joint trench or share bores and cuts,
10 Franchisee shall work with other providers (such as telecommunications, cable, gas,
11 electric utilities, or the City), licensees, permittees, and franchisees to reduce as far as
12 possible the number of Right-of-Way disturbances.
13

14 **3.7 Maintenance and Restoration.**

15
16 **3.7.1 Restoration.** In case of disturbance of any Right-of-Way or public
17 improvement, Franchisee shall, at its own cost and expense and in accordance with the
18 requirements of the City, restore such Right-of-Way or public improvement to
19 substantially the same condition as existed before the work involving such disturbance
20 took place, less ordinary wear and tear, as determined by the City and in accordance with
21 any applicable City public works construction standards. This includes vegetation that is
22 damaged by or removed during the Right-of-Way disturbance. All requirements of this
23 Section pertaining to public property shall also apply to the restoration of private
24 easements and other private property. Franchisee shall perform all restoration work
25 promptly and in compliance with the permit requirements and appropriate safety
26 standards. If Franchisee fails, neglects, or refuses to make restorations as required under
27 this Section, then the City may (but is not required to) do such work or cause it to be
28 done, and Franchisee shall pay the cost thereof to the City within 30 days of the City
29 providing an itemized list of the costs and expenses incurred in performing such work. If
30 Franchisee causes any damage to private property in the process of restoring Facilities,
31 Franchisee shall repair such damage, ordinary wear and tear excepted. Franchisee shall
32 warrant any restoration work performed under this Franchise, including the maintenance
33 of any landscaping or vegetation installed as part of the restoration work, for a period of
34 two years. This restoration requirement shall survive the expiration, revocation and
35 termination of this Franchise.
36

37 **3.7.2 Maintenance.** Franchisee shall maintain all above ground improvements
38 that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid
39 interference with the City's ability to maintain the Right-of-Way, Franchisee shall, if
40 practicable, provide a clear zone of five feet on all sides of such improvements. If
41 Franchisee fails to comply with this provision, and by its failure, property is damaged,
42 then Franchisee shall be responsible for all damages caused thereby, including
43 restoration.
44

1 **3.7.3 Disputes.** In any dispute over the adequacy of restoration or maintenance
2 under this Section, the City shall have the authority, in the exercise of its reasonable
3 discretion, to determine the adequacy of the restoration or maintenance.
4

5 **3.8 Relocation and Movement of Franchisee’s Facilities.**
6

7 **3.8.1 City Property.** If during the term of the Franchise the City or any
8 government entity elects or requires a third party, or if the City or other governmental
9 entity determines that it is necessary, to alter, repair, realign, abandon, improve, vacate,
10 reroute, or change the grade of any street, public way, or other public property; or to
11 construct, maintain, or repair any public improvement; or to replace, repair install,
12 maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding
13 structure, or other facility, including a facility used for the provision of utility or other
14 services or transportation of drainage, sewage, or other liquids, Franchisee shall, upon
15 request, except as otherwise provided in this Franchise, at its sole expense remove or
16 relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals,
17 manholes, and any other Facilities which it has installed.
18

19 **3.8.2 Utilities and Other Franchisees.** If during the term of the Franchise
20 another entity which holds a franchise or any utility requests Franchisee to remove or
21 relocate such Facilities to accommodate the construction, maintenance or repair of the
22 requesting party's facilities, or their more efficient use, or pursuant to an agreement
23 between Franchisee and such requesting party to "make ready" the requesting party's
24 facilities for use by others, or because Franchisee is using a facility which the requesting
25 party has a right or duty to remove, Franchisee and such requesting party shall mutually
26 negotiate the actions required in connection with the "make ready" relocation or removal.
27 The companies involved shall decide among themselves who is to bear the cost of "make
28 ready" removal or relocation, provided that the City shall not be liable for such costs.
29

30 **3.8.3 Notice to remove or relocate.** Any utility, other franchisee, or City request
31 to Franchisee to remove or relocate its Facilities shall give Franchisee reasonable advance
32 written notice of no less than ninety (90) days to Franchisee advising Franchisee of the
33 date or dates removal or relocation is to be undertaken; provided that the City may
34 provide whatever notice is reasonable under the circumstances in emergencies or in cases
35 where public health and safety or property is immediately endangered.
36

37 **3.8.4 Failure by Franchisee to remove or relocate.** If Franchisee fails, neglects
38 or refuses to remove or relocate its Facilities as directed by the City; or in emergencies or
39 where public health and safety or property is endangered, the City may do such work or
40 cause it to be done, and the cost thereof to the City shall be paid by Franchisee.
41

42 **3.8.5 City’s Immediate Repair.** If in the sole but reasonable opinion of the
43 City’s Public Works Director, damage to the public Right-of-Way resulting from damage
44 or disturbance during the construction, operation, or maintenance of the Franchisee’s
45 Facilities requires immediate repair, the City may perform such repairs, at the cost of the
46 Franchisee. In such event, the City will endeavor to notify the Franchisee of the

1 immediate repairs needed. The Franchisee shall pay to the City the City's costs,
2 including administrative costs related to such repairs within thirty (30) days of the date of
3 written notice of the costs to the Franchisee.

4
5 **3.8.6 Procedure for Removal of Facilities.** Franchisee shall not remove any
6 underground Facilities which requires trenching or other opening of the streets along the
7 Facilities to be removed, except as hereinafter provided. Franchisee may remove any
8 underground Facilities from the streets which have been installed in such a manner that it
9 can be removed without trenching or other opening of the streets. Subject to applicable
10 law, Franchisee shall remove, at its sole cost and expense, any underground Facilities by
11 trenching or opening of the streets along the extension thereof or otherwise which is
12 ordered to be removed by the City based upon a determination, in the sole discretion of
13 the City, that removal is required in order to eliminate or prevent a hazardous condition.
14 Usable underground cable and conduit in the streets that is not removed as required in
15 this subsection shall be deemed abandoned and title thereto shall vest in the City at no
16 cost to the City.

17
18 **3.8.7 Reimbursement for Relocation or Movement of Facilities.** Nothing
19 contained in this Franchise shall limit Franchisee's ability to seek reimbursement for
20 relocation costs when permitted by RCW 35.99.060.

21
22 **3.9 Movement of Buildings.**

23
24 Franchisee shall, on the request of any person holding a building moving permit issued
25 by the City, temporarily raise or lower its wires to permit the moving of such building.
26 Franchisee shall be entitled to ninety (90) days' notice to arrange the raising or lowering
27 of the wires. Franchisee may charge a reasonable fee no greater than its actual costs
28 incurred in raising or lowering its wires, for this service to the person or entity holding a
29 building moving permit and may request that the costs be paid in advance.

30
31 **3.10 City Right to Inspect and Cost Recovery.**

32
33 The City shall have the right to inspect all work performed by Franchisee in, on or above
34 City Rights-of-Way, whether during the performance of such work or after completion so
35 long as such inspection does not disrupt Franchisee's system operation. To the extent that
36 the City is required to perform any inspections, maintenance, or repairs to City streets,
37 Right-of-Way, or other City property due to Franchisee's use thereof, the City shall be
38 entitled to recover the costs and expenses incurred therefore from Franchisee and such
39 costs and expenses shall be payable on demand. In the event that the City incurs any
40 costs or expenses for designing, installing, repairing, or altering any City facilities that
41 would not have occurred but for Franchisee's exercise of the rights granted under this
42 Franchise, the City may bill Franchisee for reimbursement of such costs and expenses
43 and such shall be immediately due and payable to the City. Any such recovery of City
44 costs or reimbursements of such costs shall not be an off-set or credit against any
45 Franchise Fee to be paid to the City by the Franchisee.

46

1 **3.11 Construction Standards.**
2

3 **3.11.1** All work authorized or required under this Franchise shall be done in a
4 safe, thorough, and workmanlike manner, or better. All installations of Facilities shall be
5 durable and installed in accordance with current professional engineering standards.
6 Prior to commencement of construction or any work being performed in any Right-of-
7 Way, all of such work shall be conducted pursuant to engineering plans submitted by the
8 Franchisee to the City for review and approval, which may be conditional approval, by
9 the City Public Works Department. Franchisee shall take prompt corrective action if it or
10 the City finds that any Facilities are not operating as expected, or if it or the City finds
11 that Facilities do not comply with the requirements of this Franchise or applicable law,
12 the Mill Creek Municipal Code or any permit requirements.
13

14 **3.11.2** Franchisee shall comply with all applicable City construction and other
15 codes, ordinances, and regulations, including without limitation, all building and zoning
16 codes.
17

18 **3.11.3** Any erection of poles, antennae, wires, cables, and other installations,
19 upon the poles of the Franchisee located in the Right of Way or upon the poles of others
20 located in the Right of Way, shall be done only in accordance with a plan or maps first
21 submitted to and approved by the City or other person designated by the City. Antenna
22 supporting structures (towers) shall be designed for the proper loading as specified by the
23 Electronics Industries Association (EIA), as those specifications may be amended from
24 time to time, and shall meet all requirements and regulations adopted by the Federal
25 Communications Commission (FCC). Antenna supporting structures (towers) shall be
26 painted, lighted, erected, and maintained in accordance with all applicable rules and
27 regulations of the Federal Aviation Administration, the FCC, and all other applicable
28 federal, State, and local codes or regulations. Any repair work or replacement work
29 performed in the Right of Way shall be done under the supervision of the City and only
30 after permission from the City is received.
31

32 **3.11.4** Prior to placing any underground facilities, Franchisee shall join and
33 maintain membership in good standing with the Utility Coordinating Council One Call
34 Center or other similar or successor organization which is designated to coordinate
35 underground equipment locations and installations. Franchisee represents that it is
36 familiar with Chapter 19.122 RCW (Washington State's "Underground Utilities" statute),
37 and understands and will comply with local procedures and practices relating to the one
38 call locator service program.
39

40 **3.11.5** After underground construction is complete, Franchisee shall provide the
41 City with accurate copies of as-built plans and maps stamped and signed by a
42 professional land surveyor or professional engineer in a form and content acceptable to
43 the Public Works Director or his/her designee. Following any aerial construction,
44 Franchisee shall provide the City with accurate copies of as-built plans and maps
45 prepared by Franchisee's design and installation contractors. These plans and maps shall
46 be provided at no cost to the City, and shall include hard copies and digital files in

1 Autocad or other industry standard readable formats that are acceptable to the City and
2 delivered electronically. Franchisee shall also provide such maps within ten (10) days
3 following a request from the City. Further, if Franchisee's actual construction deviates
4 materially from its submitted construction plans as reasonably determined by the City,
5 Franchisee shall provide the City with these maps. Franchisee shall warrant the accuracy
6 of maps and as-builts provided to the City.
7

8 **3.12 Notice of Construction.**
9

10 **3.12.1** If at any time the Franchisee intends to perform construction work in any
11 Right-of-Way, the Franchisee shall obtain a Right-of-Way permit from the City and shall
12 provide the City with notice before commencing any such work as required by the Right-
13 of-Way Permit application process.
14

15 **3.12.2** The City may establish requirements for advance notification to residents
16 adjacent to the proposed construction areas to be provided by the Franchisee, and
17 Franchisee shall comply with such advance notification requirements.
18

19 **3.12.3** By February 1st of each year, or such date as the City may otherwise
20 prescribe, the City shall have the right to ask Franchisee for a conference, during which
21 Franchisee will provide to the City a schedule of its then-proposed or then-anticipated
22 construction activities that may affect the Rights-of-Way and any activities that will
23 entail excavation or tunneling within the Rights-of-Way. Further, Franchisee shall meet
24 with the City and other franchise holders and users of the Rights-of-Way upon written
25 notice as determined by the City, to schedule and coordinate construction in the Rights-
26 of-Way. All construction locations, activities, and schedules shall be coordinated as
27 ordered by the City to minimize public inconvenience, disruption, or damages.
28

29 **3.13 Safety Requirements.**
30

31 **3.13.1** The Franchisee shall, at all times, employ industry standards of care and
32 shall install and maintain and use commonly accepted methods for preventing failures
33 and accidents which are likely to cause damage, injuries, or nuisances to the public. All
34 structures and all lines, equipment, and connection in, over, under, and upon the streets,
35 sidewalks, alleys, and public ways or places of the Service Area, wherever situated or
36 located, shall at all times be kept and maintained in a safe condition. Franchisee shall
37 comply with all federal, State, and City safety requirements, rules, regulations, laws and
38 practices, and employ all necessary devices as required by applicable law during the
39 construction, operation, maintenance, upgrade, repair, or removal of its Facilities. By
40 way of illustration and not limitation, Franchisee shall also comply with the National
41 Electric Code, National Electrical Safety Code, FCC regulations, and Occupational
42 Safety and Health Administration (OSHA) Standards.
43

44 **3.13.2** If an unsafe condition is found to exist, the City agrees to give Franchisee
45 notice of such condition and afford Franchisee a reasonable opportunity to repair the
46 same. If Franchisee fails to start to make the necessary repairs and alterations within the

1 time frame specified by the City, then the City may make such repairs or contract for
2 them to be made. All costs, including administrative costs, incurred by the City in
3 repairing any unsafe conditions shall be borne by Franchisee. The Franchisee shall pay
4 to the City all of the City's costs, including administrative costs, incurred as a result of
5 circumstances herein within thirty (30) days of the date of the written notice of the costs
6 that is delivered to the Franchisee. If the Franchisee fails to comply with the time frames
7 herein, this Franchise shall terminate without further action required.

8

9 **3.14 Permits Required for Construction.**

10

11 **3.14.1** Prior to doing any work in the City, Franchisee shall apply for, and obtain,
12 appropriate permits from the City. As part of the permitting process, the City may
13 impose such conditions and regulations as are necessary for the purpose of protecting any
14 Rights-of-Way, the proper restoration of Rights-of-Way and structures, the protection of
15 the public, and the continuity of pedestrian or vehicular traffic, or as may be required by
16 law, ordinance, codes, or regulations. Such conditions may also include requiring the
17 provision of a construction schedule and maps showing the location of the Facilities to be
18 installed in the Right-of-Way. Franchisee shall pay all applicable fees for the requisite
19 City permits, reviews, and/or approvals required of or received by Franchisee.

20

21 **3.14.2** Franchisee shall, if requested by the City, provide a construction bond to
22 ensure the faithful performance of its responsibilities under this Franchise and applicable
23 law, including without limitation, its duty to restore City streets and other property. The
24 amount of the construction bond shall be at least one hundred twenty-five percent (125%)
25 of the estimated project cost. The bond shall be in a form and with a surety acceptable to
26 the City. Franchisee shall pay all premiums and costs associated with obtaining the bond,
27 and shall keep the bond in full force and effect until the completion of the construction
28 project, including all restoration of public and private property. The construction bond
29 shall remain in force for two (2) years following completion of the work, including any
30 restoration of the Right-of-Way and other related property affected by the construction,
31 unless the City allows Franchisee to provide a maintenance bond.

32

33 **3.14.3** In the event of any emergency in which any of Franchisee's Facilities
34 break, are in need of emergency repair or are damaged, or if the Franchisee's construction
35 area is otherwise in such a condition as to immediately endanger the property, life, health,
36 or safety of any person, the Franchisee shall immediately take proper emergency
37 measures to repair its Facilities, to cure or remedy the dangerous condition, without first
38 applying for and obtaining City permits otherwise required for said work; provided, that
39 the Franchisee shall immediately notify the City of said condition and of the emergency
40 work, and shall obtain all necessary permits as promptly as possible after the emergency
41 work is performed, and in any event no later than the second business day following the
42 discovery of the condition requiring the emergency work.

43

44 **3.15 Tree Trimming.**

45

1 In cases of emergency, the Franchisee shall notify the City of its intent to trim trees or
2 other natural growth necessary to access and maintain its Facilities immediately upon
3 determining that such an emergency exists and prior to engaging in such activity. Upon
4 receipt of such notice, the City may inspect such circumstance prior to the removal of the
5 emergency condition. In non-emergency conditions, Franchisee may, at its own expense,
6 trim trees or other natural growth overhanging any of its installed Facilities to prevent
7 branches from coming in contact with the Franchisee's wires, cables, or other equipment
8 upon twenty (20) days' notice of the actual trees and other natural growth that is intended
9 to be affected in non-emergency situations, and upon approval of the City Public Works
10 Department, which shall not be unreasonably withheld, and subject to the requirement to
11 obtain a Right-of-Way Use Permit and complying with any and all conditions of that
12 Permit. Nothing herein grants the Franchisee any authority to act on behalf of the City or
13 to enter upon any private property, or to trim any tree or natural growth not owned by the
14 City. The Franchisee shall be solely responsible and liable for any damage to any third-
15 parties' trees or natural growth, and in addition to the terms and conditions of Section 7,
16 the Franchisee shall indemnify, defend, and hold harmless the City from claims of any
17 nature arising from any act or negligence of the Franchisee with regard to tree and/or
18 natural growth trimming, damage, and/or removal. Franchisee shall reasonably
19 compensate the City or the property owner for any damage caused by such trimming,
20 damage or removal. The Franchisee, may, at their own discretion, but in a manner and of
21 a style approved by the City or property owner, provide replacement of any trees or
22 shrubbery damaged as a result of actions taken by the Franchisee in lieu of compensation.

23

24 **3.16 Temporary Disconnection.**

25

26 The City may direct the Franchisee to temporarily disconnect, relocate, or bypass any
27 equipment of the Franchisee in order to complete street construction or modification,
28 install and remove underground utilities, or for other reasons of public safety and
29 efficient operation of the City, including construction projects. Such temporary
30 disconnection, removal, relocation, or other requirement shall be at the sole expense of
31 the Franchisee.

32

33 **3.17 Access to Open Trenches.**

34

35 **3.17.1** The Franchisee shall be entitled to reasonable access to open utility
36 trenches, provided that such access does not interfere with the City's placement of
37 utilities or increase the cost to the City thereby. The Franchisee shall pay to the City the
38 actual cost to the City resulting from providing the Franchisee access to an open trench,
39 including without limitation the pro rata share of the costs of access to an open trench and
40 any costs associated with the delay of the completion of a public works project.

41

42 **3.17.2** The City shall use reasonable efforts to include the Franchisee in any
43 platting process within the City, to exercise reasonable efforts to include as a condition of
44 issuing a permit for open trenching to any utility or developer that (a) the utility or
45 developer give the Franchisee at least ten- (10) business days' advance written notice of
46 the availability of the open trench and (b) that the utility or developer provide the

1 Franchisee with reasonable access to the open trench. The City's non-compliance with
2 this Section shall not be a breach or default by the City of this Franchise.
3

4 **3.17.3** Except in emergency situations, Franchisee shall inform the City with at
5 least ninety (90) days' advance written notice that it is constructing, relocating, or placing
6 ducts or conduits in the Right-of-Way and provide the City with an opportunity to request
7 that Franchisee provide the City with additional duct or conduit, and related structures
8 necessary to access the conduit pursuant to and subject to RCW 35.99.070. Such
9 notification shall be in addition to the requirement to apply for and obtain permits
10 pursuant to this Franchise.

11
12 **SECTION 4. PAYMENTS TO CITY.**

13
14 **4.1 Recovery of Costs.**

15
16 **4.1.1** Franchisee shall pay an administrative fee to the City for the City's
17 administrative, legal, and other costs incurred in drafting and processing this Franchise
18 and all work related thereto, in an amount up to \$4,250. Acceptance is invalid and no
19 construction permits shall be issued for the installation of Facilities authorized hereby
20 until such time as the City has received payment of the administrative fee.
21

22 **4.1.2** Franchisee shall be subject to all standard permit fees associated with
23 activities undertaken through the authority granted in this Franchise or under the laws of
24 the City. Where the City incurs costs and expenses for review, inspection, or supervision
25 of activities, including but not limited to reasonable fees associated with attorneys,
26 consultants, City staff, and City Attorney time, undertaken through the authority granted
27 in this Franchise or any ordinances relating to the subject for which a permit fee is not
28 established, Franchisee shall pay such costs and expenses directly to the City. In addition
29 to the above, Franchisee shall, within thirty days (30) upon receipt of a request from the
30 City, reimburse the City for any and all costs the City reasonably incurs in response to
31 any emergency involving Franchisee's Facilities. Franchisee shall reimburse the City
32 within thirty (30) days of submittal by the City of an itemized billing for incurred costs,
33 itemized by project, for the Franchisee's proportionate share of all actual, identified
34 expenses incurred by the City in planning, constructing, installing, repairing, altering, or
35 maintaining any City facility as the result of the presence of Franchisee's Facilities in the
36 Rights-of-Way. Such costs and expenses shall include but not be limited to the
37 Franchisee's proportionate cost of City personnel assigned to oversee or engage in any
38 work in the Rights-of-Way as the result of the presence of the Franchisee's Facilities in
39 the Rights-of-Way. Such costs and expenses shall also include the Franchisee's
40 proportionate share of any time spent reviewing construction plans in order to either
41 accomplish the relocation of the Franchisee's Facilities or the routing or rerouting of any
42 utilities so as not to interfere with the Franchisee's Facilities.
43

44 **4.2 Franchise Fees and Taxes.**
45

1 **4.2.1** Pursuant to RCW 35.21.860, the City is precluded from imposing a
2 franchise fee on a “telephone business” as defined in RCW 82.16.010, or a “service
3 provider” as defined in RCW 35.99.010, for use of the Right-of-Way, excepting actual
4 administrative expenses directly related to the Franchise or any tax authorized by state
5 law. Franchisee hereby represents that its operations as authorized under this Franchise
6 are those of a “telephone business” as defined in RCW 82.16.010 or a “service provider”
7 as defined in RCW 35.99.010. As a result, the City will not impose a franchise fee under
8 the terms of this Franchise.
9

10 **4.2.2** Franchise acknowledges that some of its operation within the City may
11 constitute a telephone business subject to a utility tax. Franchisee shall pay any and all
12 utility tax due to the City in accordance with any future provisions of City code.
13 Franchisee understands that RCW 35.21.870 currently limits the rate of city tax to six
14 percent (6%) of gross receipts from telephone business activities, unless a higher rate is
15 otherwise approved. The parties agree however that nothing in this Franchise shall limit
16 the City's power of taxation as may now or hereafter exist as authorized under applicable
17 federal and state law. Franchisee stipulates and agrees that should its business activities
18 be subject to taxation that Franchisee shall pay to the City the rate then applicable to such
19 services under the City's code, and consistent with state and federal law. This provision
20 does not limit the City's power to amend the City's code as may be permitted by law.
21

22 **4.2.3** The City reserves its right to impose a franchise fee, in accordance with
23 state or federal law, on Franchisee for purposes other than to recover its administrative
24 expenses, if Franchisee's operations as authorized by this Franchise change such that
25 Franchisee's activities are not those of a “telephone business” as defined in RCW
26 82.16.010 or Franchisee is not a “service provider” as defined in RCW 35.99.010, and if
27 there are no statutory prohibitions on the imposition of such fees.
28

29 **4.3 Acceptance of Payment.**
30

31 No acceptance of any payment by the City shall be construed as an accord that the
32 amount paid is, in fact, the correct amount, nor shall such acceptance of payment be
33 construed as a release of any claim which the City may have for further or additional
34 sums payable under the provisions of this Franchise. Franchisee's payment to the City
35 shall not be construed as an acknowledgement by the Franchisee that the amount paid is
36 the correct amount and Franchisee reserves the right to subsequently seek to recover any
37 amount of such payments in the event of an erroneous overpayment or for other lawful
38 reasons. The costs of such verification shall be borne solely by the Franchisee.
39

40 **4.4 Audits and Examinations.**
41

42 **4.4.1** No more than twice per calendar year, the City may arrange with
43 Franchisee for an independent audit, on a non-contingent fee basis, of the Franchisee's
44 books and records to verify the accuracy of any payments made to the City under this
45 Franchise, including but not limited to any utility tax. Any additional identified amount
46 due to the City shall be paid within fourteen (14) calendar days of the City submitting an

1 undisputed invoice for such sum, and if such sum shall exceed five percent (5%) of the
2 total payment which the audit determines should have been paid for any calendar year,
3 the Franchisee shall pay the City's reasonable out of pocket costs of the audit.
4

5 **4.4.2** In addition to the forgoing, the City, upon thirty (30) days' written notice
6 to the Franchisee, shall have the right to inspect, upon reasonable notice, the books and
7 records of the Franchisee for the purpose of determining the accuracy and completeness
8 of the financial reports. Other records that may be required by the City for review
9 include, but are not limited to, annual financial statements and customer data. Any audit
10 or such examination shall be done in a professional manner during reasonable business
11 hours and following not less than 30-days' notice to Franchisee.
12

13 **4.5 Interest and Penalties on Late Payments.**

14
15 In the event that any payment due to the City under this Franchise is not received by the
16 City by the date due interest shall be charged from such date at the greater of twelve
17 percent (12%) per annum or the maximum rate permitted by law.
18

19 **4.6 Taxes and Assessments.**

20
21 The payments required under this Franchise shall be in addition to any and all taxes,
22 levies, or other assessments which are now or hereafter required to be paid by businesses
23 or utilities by any law of the City, the State, or the federal government, including, without
24 limitation, sales, use, utilities, and business and occupation taxes, business license fees, or
25 other payments. Nothing stated herein shall limit Franchisee's obligation to pay lawful
26 and applicable local, state, or federal taxes, and payment of fees under this Franchise
27 shall not exempt Franchisee from payment of any other lawfully imposed license fee,
28 permit fee, tax, or other charge on the business, occupation, property, or income of
29 Franchisee.
30

31 **SECTION 5. Franchise renewal, extension and transfer.**

32
33 **5.1 Transfer of Franchise.**

34
35 **5.1.1** This Franchise may not be assigned or transferred (including by operation
36 of law) without the written approval of the City, which approval shall not be
37 unreasonably withheld, conditioned or delayed. Any transactions that singularly or
38 collectively result in a change of more than fifty percent (50%) of the: ultimate ownership
39 or working control of Franchisee, ownership or working control of the Facilities,
40 ownership or working control of affiliated entities having ownership or working control
41 of Franchisee or of the Facilities, or of control of the capacity or bandwidth of
42 Franchisee's Facilities, shall be considered an assignment or transfer requiring City
43 approval. Approval for a transfer or change of control of this Franchise shall comply
44 with the requirements of MCMC Chapter 12.16 as now exists and is hereafter amended.
45 The Franchisee shall reimburse the City for all actual costs and expenses reasonably
46 incurred by the City in considering a request to transfer or assign this Franchise.

1 Notwithstanding the above, Franchisee may, upon thirty (30) days' written notice to the
2 City, freely assign this Franchise in whole or in part to an Affiliate, including without
3 limitation a parent or subsidiary organization or as part of any corporate financing,
4 reorganization, or refinancing; provided, that the assignee or transferee must have the
5 legal, technical, financial, and other requisite qualifications to own, hold, and operate the
6 Franchisee's Facilities for the purpose of providing Communications Services. In the
7 case of transfer or assignment as security by mortgage or other security instrument in
8 whole or in part to secure indebtedness, such approval shall not be required unless and
9 until the secured party elects to realize upon the collateral. No assignment or transfer of
10 this Franchise shall be deemed to occur based on the public trading of the Franchisee's
11 stock.
12

13 **5.1.2** Franchisee may, without the prior written approval of the City: (i) grant an
14 indefeasible right of user interest in the Facilities, or any portion thereof, to another
15 entity; or (ii) offer or provide capacity or bandwidth from the Facilities to another person;
16 provided, that Franchisee at all times retains exclusive control over the Facilities and
17 remains responsible for locating, servicing, repairing, relocating, or removing its
18 Facilities pursuant to the terms of this Franchise and remains in compliance with this
19 Franchise.
20

21 **5.1.3** Notwithstanding the above, Franchisee may, without the prior written
22 approval of the City, lease the capacity or bandwidth to another telecommunications
23 provider for the purpose of providing services to customers in the City; provided, that
24 Franchisee shall furnish the City in advance with a copy of any such proposed lease or
25 agreement and the proposed lessee or person shall comply with all of the requirements of
26 this Franchise and the City code; and further provided, that the lessee's obligation to
27 comply with the requirements of this Franchise shall not apply to the leasing of dark fiber
28 or other conductive infrastructure for general business purposes, unless such lease is for
29 all or substantially all of the Facilities.
30

31 **5.2 Franchise Renewal.**
32

33 **5.2.1** Franchisee shall commence the renewal process consistent with the
34 requirements of MCMC Chapter 12.16. This Franchise shall not be renewed until any
35 ongoing violations or defaults in the Franchisee's performance under this Franchise, or
36 the requirements of the MCMC, have been cured, or a plan detailing the corrective action
37 to be taken by the Franchisee has been approved by the City.
38

39 **5.2.2** If this Franchise expires without renewal or is otherwise lawfully
40 terminated or revoked, the City may, subject to applicable law:
41

42 **a.** Allow Franchisee to maintain and operate its Facilities on a month-
43 to-month basis, provided that Franchisee maintains insurance for such Facilities during
44 such period and continues to comply with this Franchise; or
45

1 b. The City may order the removal of any and all Facilities at
2 Franchisee's sole cost and expense consistent with Section 6.4.

3
4 **SECTION 6. VIOLATIONS; ENFORCEMENT.**

5
6 **6.1 Enforcement.**

7
8 **6.1.1 Notice of Violation.** In the event that the City believes that the Franchisee
9 has not complied with any terms of the Franchise, the City, at its sole election may
10 informally discuss the matter with Franchisee. If discussions do not lead to resolution of
11 the problem or if the City elects not to informally discuss the matter with the Franchisee,
12 the City shall issue a written Notice of Violation to the Franchisee, stating with
13 particularity the alleged breach, violation or other non-compliance.

14
15 **6.1.2 Franchisee's Right to Cure or Respond.** The Franchisee shall have thirty
16 (30) days from receipt of the Notice of Violation to (i) respond to the City, contesting the
17 asserted breach, violation or non-compliance and requesting a meeting as provided in
18 section 6.2.1; (ii) cure such default; (iii) request a lesser sanction or remedy; or (iii) in the
19 event that, by the nature of default, such default cannot be cured within the thirty (30) day
20 period, initiate reasonable steps to remedy such default and notify the City of the steps
21 being taken and the estimated date that they will be completed.

22
23 **6.2 Franchisee Contests Non-Compliance.**

24
25 **6.2.1** If the Franchisee timely notifies the City that it contests the asserted
26 breach, violation or non-compliance and requests a meeting with the City, the City
27 Manager shall hold a meeting with the Franchisee within fourteen (14) days, provided
28 that said timeframe may be extended at the sole discretion of the City Manager.

29
30 **6.2.2** If after such meeting, the City Manager determines that the Franchisee is
31 in breach, violation or non-compliance with the Franchise, then the City Manager shall
32 notify the Franchisee of his/her decision in writing within seven (7) days, stating the
33 grounds of the breach, violation, or non-compliance, and revoking the Franchise. Said
34 revocation shall be effective immediately after the delivery of the written notice to the
35 Franchisee.

36
37 **6.2.3** After receiving the City Manager's written notice of decision, the
38 Franchisee may request a public hearing before the City Council as to whether or not a
39 violation, breach, or non-compliance with the Franchise has occurred. Said request must
40 be made in writing, stating with specificity the reasons why the Franchisee believes that
41 the alleged non-compliance has not occurred, and delivered to the City Clerk within
42 fourteen (14) days of receipt of the City Manager's decision.

43
44 **6.2.4** If the Franchisee does not request a public hearing before the City Council
45 under Section 6.2.3 above, at the next available meeting, the City Council shall pass an
46 ordinance declaring the Franchise revoked and terminated, and any security or bonds

1 shall be forfeited to the City. If the Franchisee does request a public hearing before the
2 City Council under Section 6.2.3 above, the City Clerk shall cause the public hearing to
3 be held at the next available City Council meeting, provided that the Franchisee shall be
4 provided at least ten (10) business days' notice of such hearing.
5

6 **6.2.5** At the City Council public hearing, the City shall have the burden of proof
7 that a violation, breach, or non-compliance with the Franchise has occurred, and must
8 demonstrate that a preponderance of evidence supports the conclusion that there is a
9 violation or breach of the Franchise and that such violation or breach was not timely
10 cured as required in this Franchise.
11

12 **6.2.6** The City Council's decision following the close of the public hearing shall
13 be made based upon a majority of the City Council present at the City Council meeting.
14 In the event of a tie vote, the decision of the City Manager shall be deemed to be upheld
15 as the decision of the City Council.
16

17 **6.2.7** If the City Council upholds the City Manager's decision that the
18 Franchisee is in breach, violation, or non-compliance, then the City Council shall
19 immediately pass an ordinance declaring the Franchise revoked and terminated, and any
20 security or bonds shall be forfeited to the City. Said revocation ordinance shall include
21 findings of fact and conclusions derived from those facts which support the decision of
22 the City Council and are consistent with the requirements of MCMC Chapter 12.16;
23 provided that the City Council may adopt the findings and conclusions of the City
24 Manager. In lieu of revocation, the City Council may determine that lesser remedies
25 (which may include liquidated damages) are appropriate or may pursue judicial action
26 against the Franchisee.
27

28 **6.2.8** The Franchisee shall be bound by the decision of the City Council, unless
29 an appeal is filed to a court of competent jurisdiction within thirty (30) days of the date of
30 the Council's decision.
31

32 **6.3 Failure to Timely Cure.**
33

34 If the Franchisee has not contested the asserted breach, violation, or non-compliance and
35 fails to timely cure the breach, violation, or non-compliance under Section 6.1.2 above,
36 then in addition to any other remedy at law or equity, or provided for in this Franchise,
37 the City may revoke the Franchise. Said revocation shall be effective immediately after
38 the delivery of a written notice of revocation approved by the City Council stating the
39 grounds of the breach, violation, or non-compliance with the Franchise.
40

41 **6.4 Removal.**
42

43 **6.4.1** If the Franchise has been terminated, revoked, canceled, or has expired,
44 and Franchisee has not exercised its rights, if any, to contest the termination, revocation,
45 cancelation or nonrenewal, the City may give Franchisee written notice to remove its
46 Facilities from the City's Rights-of-Way or it may, in the City's sole discretion, allow

1 Franchisee to abandon the system in place consistent with the requirements of Section
2 6.4.3. Any plan for abandonment or removal of the Facilities must be first approved by
3 the Public Works Director, and all necessary permits must be obtained prior to such
4 work. Work shall be completely done one hundred-eighty (180) days from notice to
5 complete such work. Prior to the commencement of such work, the Franchisee shall
6 submit to the City a performance bond in the amount of one hundred fifty percent (150%)
7 of the estimated cost of removal and the restoration required by this Franchise. Upon the
8 completion of such work, the City shall return the original bond to the Franchisee, but
9 may require a maintenance bond consistent with the MCMC, the Development Standards,
10 or other City rules.

11
12 **6.4.2** If the Franchisee fails to remove any of its Facilities as provided herein,
13 the City may elect to cause such removal and may recover its reasonable costs and
14 expenses from Franchisee, including its reasonable attorney's fees and costs incurred in
15 recovering such costs and expenses.

16
17 **6.4.3** The City may allow Franchisee to abandon the Facilities in place upon the
18 express written consent of the City. Upon permanent abandonment in place of the
19 Facilities, the Facilities shall become property of the City, and Franchisee shall submit to
20 the City an instrument in writing, approved by the City Attorney, transferring to the City
21 the ownership of the Facilities, free and clear of any lien or encumbrance.

22
23 **6.4.4** If Franchisee leases a structure located in the Right-of-Way from a
24 landlord and such landlord later abandons the structure, for example by building a
25 replacement structure or because the landlord's facilities have moved underground,
26 Franchisee shall remove or relocate its Facilities within the Right-of-Way within ninety
27 (90) days of such notification from the landlord.

28
29 **6.4.5** The provisions of this Section 6.4 shall survive the expiration, revocation,
30 or termination of this Franchise.

31
32 **6.5 Unauthorized Facilities.**

33
34 **6.5.1** Within thirty (30) days following written notice from the City, Franchisee
35 shall, at its own expense, remove any unauthorized Facilities from the Right-of-Way. A
36 Facility is unauthorized and subject to removal in any of the following circumstances:

- 37
38 a. Upon termination of this Franchise;
39
40 b. Upon abandonment of a Facility, unless such abandonment is
41 allowed by the City pursuant to Section 6.4.3.
42
43 c. If the Facility was constructed or installed without the prior
44 issuance of a required Right-of-Way work permit.
45

1 d. If Facility was constructed or installed at a location not permitted
2 by this Franchise or permit.

3
4 **SECTION 7. Financial and Insurance Requirements.**

5
6 **7.1 Indemnity and Hold Harmless.**

7
8 **7.1.1 General Indemnification.** The Franchisee shall indemnify, defend, and
9 hold the City, its officers, officials, employees, agents, and consultants (as used in this
10 Section 7 collectively the “City”), harmless from and against any and all liabilities,
11 claims, fees, costs, and damages, whether to person or property, or expense of any type or
12 nature which may occur to the City or to any third party, including without limitation
13 reasonable attorneys' fees, experts' fees, and other costs, by reason of the construction,
14 operation, maintenance, repair, and alteration of Franchisee's Facilities by Franchisee or
15 any other act or omission done under this Franchise by Franchisee, its employees or
16 agents, except to the extent any such liabilities, claims, fees, costs, and damages are
17 caused by or arise from the gross negligence or any willful, or criminal actions on the
18 part of the City, its employees, agents, representatives or contractors and except as
19 provided in Section 7.1.6.

20
21 **7.1.2 Relocation Indemnification.** To the extent not covered by the indemnity
22 requirements of Section 7.1.1, Franchisee shall indemnify, defend and hold the City
23 harmless from and against any and all liabilities, claims, fees, costs, and damages,
24 whether to person or property, or expense of any type or nature which may occur to the
25 City or any third party, including without limitation reasonable attorneys' fees, experts'
26 fees and other costs, arising out of, or resulting from, directly or indirectly, Franchisee's
27 failure to remove, adjust, or relocate any of its Facilities in the Right-of-Way in a timely
28 manner in accordance with any relocation required by the City under this Franchise,
29 except to the extent that such liabilities, claims, fees, costs, and damages are caused by
30 the gross negligence or any willful, or criminal actions of the City, its employees, agents,
31 representatives or contractors and except as provided in Section 7.1.6.

32
33 **7.1.3 Procedures and Defense.** In any case in which suit or action is instituted
34 against the City by reason of damages or injury caused in whole or in part by an act or
35 omission of Franchisee, the City shall cause written notice thereof to be given to the
36 Franchisee and Franchisee thereupon shall have the duty to appear and defend in any
37 such suit or action, without cost or expense to the City. The City's failure to so notify
38 and request indemnification shall not relieve Franchisee of any liability that Franchisee
39 might have, except to the extent that such failure prejudices Franchisee's ability to defend
40 such claim or suit. The City may participate in the defense of a claim, at its sole expense,
41 and in any event, Franchisee may not agree to any settlement of claims financially
42 affecting the City without the City's prior written consent, which consent shall not be
43 unreasonably withheld. The City shall not agree to any settlement of claims without the
44 prior written consent of Franchisee.

45

1 **7.1.4** In the event that Franchisee refuses the tender of defense in any suit or any
2 claim, as required pursuant to the indemnification provisions within this Franchise, and
3 said refusal is subsequently determined by a court having jurisdiction (or such other
4 tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal
5 on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for
6 defense of the action, including all expert witness fees, costs, and attorney's fees, and
7 including costs and fees incurred in recovering under this indemnification provision. If
8 separate representation to fully protect the interests of both parties is necessary, such as a
9 conflict of interest between the City and the counsel selected by Franchisee to represent
10 the City, then upon the prior written approval and consent of Franchisee, which shall not
11 be unreasonably withheld, the City shall have the right to employ separate counsel in any
12 action or proceeding and to participate in the investigation and defense thereof, and
13 Franchisee shall pay the reasonable fees and expenses of such separate counsel, except
14 that Franchisee shall not be required to pay the fees and expenses of separate counsel on
15 behalf of the City for the City to bring or pursue any counterclaims or interpleader action,
16 equitable relief, restraining order or injunction. The City's fees and expenses shall
17 include all out-of-pocket expenses, such as consultants and expert witness fees, and shall
18 also include the reasonable value of any services rendered by the counsel retained by the
19 City but shall not include outside attorneys' fees for services that are unnecessarily
20 duplicative of services provided the City by Franchisee. Each party agrees to cooperate
21 and to cause its employees and agents to cooperate with the other party in the defense of
22 any such claim and the relevant records of each party shall be available to the other party
23 with respect to any such defense.

24
25 **7.1.5** Inspection or acceptance by the City of any work performed by Franchisee
26 at the time of completion of construction shall not be grounds for avoidance by
27 Franchisee of any of its obligations under this Franchise. Said indemnification
28 obligations shall extend to claims which are not reduced to a suit and any claims which
29 may be compromised, with Franchisee's prior written consent, prior to the culmination of
30 any litigation or the institution of any litigation.

31
32 **7.1.6** In the event that a particular activity conducted under this Franchise is
33 subject to RCW 4.24.115, this Section 7.1.6 shall apply. In the event of liability for
34 damages arising out of bodily injury to persons or damages to property caused by or
35 resulting from the concurrent negligence of Franchisee and the City, its officers, officials,
36 employees, and volunteers, Franchisee's liability shall be only to the extent of
37 Franchisee's negligence. It is further specifically and expressly understood that the
38 indemnification provided constitutes Franchisee's waiver of immunity under Title 51
39 RCW, solely for the purposes of this indemnification. This waiver has been mutually
40 negotiated by the parties.

41
42 **7.1.7** Notwithstanding any other provisions of this Section 7, Franchisee
43 assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-
44 owned property from activities conducted by the City, except to the extent any such
45 damage or destruction is caused by or arises from any grossly negligent, willful, or
46 criminal actions on the part of the City. Franchisee releases and waives any and all such

1 claims against the City. Franchisee further agrees to indemnify, hold harmless and
2 defend the City against any claims for damages, including, but not limited to, business
3 interruption damages, lost profits and consequential damages, brought by or under users
4 of Franchisee's Facilities as the result of any interruption of service due to damage or
5 destruction of Franchisee's Facilities caused by or arising out of activities conducted by
6 the City, except to the extent any such damage or destruction is caused by or arises from
7 the gross negligence or any willful, or criminal actions on the part of the City, its
8 employees, agents, representatives or contractors and except as provided in Section 7.1.6.
9

10 **7.1.8** The provisions of this Section 7 shall survive the expiration, revocation, or
11 termination of this Franchise.
12

13 **7.2 Insurance.**

14
15 **7.2.1 General Requirement.** During the entire term of this Franchise, the
16 Franchisee shall have and maintain in full force and effect, at its own cost and expense, a
17 commercial general liability insurance policy, in protection of the City, its officers,
18 elected officials, boards, commissioners, agents, employees, and consultants, in a
19 company and a form satisfactory to the City, protecting the City against liability for loss
20 or damage or bodily injury, (including death), and property damage, arising out of,
21 resulting from or occasioned by the operations of Franchisee under such Franchise.
22

23 **7.2.2 Minimum Insurance Limits.** Franchisee shall maintain in full force and
24 effect at its own cost and expense each of the following policies of insurance:
25

26 **a.** Commercial General Liability Insurance with limits of no less than
27 Five Million Dollars (\$5,000,000) per occurrence for bodily injury and property damage
28 and Five Million Dollars (\$5,000,000.00) general aggregate including personal and
29 advertising injury, blanket contractual; premises-operations; independent contractors;
30 products, and completed operations, and explosion, collapse, and underground (XCU);
31

32 **b.** Commercial Automobile Liability Insurance with minimum
33 combined single limits of Three Million Dollars (\$3,000,000) per occurrence and Five
34 Million Dollars (\$5,000,000) excess liability with respect to each of Franchisee's owned,
35 hired, and non-owned vehicles assigned to or used in the operation of the Facilities in the
36 City.
37

38 **c.** Professional Liability: One Million Dollars (\$1,000,000) per claim
39 and aggregate covering the negligent acts, errors and/or omissions of Franchisee in the
40 performance of professional services under this Franchise.
41

42 **d.** Worker's Compensation coverage as required by the Industrial
43 Insurance laws of the State of Washington and Employer's Liability with a limit of
44 \$1,000,000 each accident/disease/policy limit
45

1 **7.2.3** Franchisee's insurance coverage shall be primary insurance with respect to
2 the City. Any insurance or self-insurance maintained by the City shall be in excess to the
3 Franchisee's insurance. The company shall be approved by the state insurance
4 Commissioner pursuant to Title 48 RCW, and have at least an A- Best Rating. Payment
5 of any deductibles or self-insured retentions are the sole responsibility of Franchisee.
6

7 **7.2.4** Franchisee shall make all reasonable efforts to provide the City written
8 notice of cancellation at least thirty (30) days in advance of the effective date of such
9 cancellation. If the insurance is cancelled or materially altered so as to be out of
10 compliance with the requirements of this section, Franchisee shall provide a replacement
11 policy. Franchisee shall maintain continuous, uninterrupted insurance coverage, in at
12 least the amounts required, for so long as Franchisee maintains Facilities within the
13 Rights-of-Way.
14

15 **7.2.5** Franchisee may utilize primary and umbrella liability insurance policies to
16 satisfy insurance policy limits required herein. Franchisee's umbrella liability insurance
17 policy shall provide "follow form" coverage over its primary liability insurance policies.
18

19 **7.2.6** The insurance policies, with the exception of Workers' Compensation ,
20 employer's liability and professional liability obtained by Franchisee shall include the
21 City, its officers, officials, employees, and volunteers ("Additional Insureds"), as an
22 additional insured as their interest may appear under this Franchise with regard to
23 activities performed by or on behalf of Franchisee. The coverage shall contain no special
24 limitations on the scope of protection afforded to the Additional Insureds. In addition,
25 the insurance policy shall contain a clause stating that coverage shall apply separately to
26 each insured against whom a claim is made or suit is brought, except with respect to the
27 limits of the insurer's liability. Franchisee shall provide to the City upon acceptance
28 either (1) a certificate of insurance evidencing each insurance policy required in this
29 Section 7.2 and providing that such insurance shall apply as primary insurance on behalf
30 of the Additional Insureds and a copy of the blanket additional endorsement. Receipt by
31 the City of any certificate showing less coverage than required is not a waiver of
32 Franchisee's obligations to fulfill the requirements. Franchisee's Automobile Liability
33 and Commercial General Liability insurance policies are to contain, or be endorsed to
34 contain that they shall be primary insurance as respect the City. Any insurance, self-
35 insurance, or self-insured pool coverage maintained by the City shall be excess of the
36 Franchisee's insurance and shall not contribute with it.
37

38 **7.2.7** Franchisee's maintenance of insurance as required by this Section 7.2
39 shall not be construed to limit the liability of Franchisee to the coverage provided by such
40 insurance, or otherwise limit the City's recourse to any remedy available at law or equity.
41 Further, Franchisee's maintenance of insurance policies required by this Franchise shall
42 not be construed to excuse unfaithful performance by Franchisee.
43

44 **7.2.8** As of the effective date of this Franchise, Franchisee is not self-insured.
45 Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a
46 later date, Franchisee must provide the City with thirty (30) days advanced written notice

1 of its intent to self-insure. In order to self-insure, Franchisee shall comply with the
2 following: (i) provide a written attestation that Franchisee possesses the necessary
3 amount of unencumbered financial assets to support the financial exposure of self-
4 insurance, as evidenced by an outside auditor's review of Franchisee's financial
5 statements; (ii) the City, upon request, may review Franchisee's financial statements; (iii)
6 Franchisee is responsible for all payments within the self-insured retention; and (iv)
7 Franchisee assumes all defense and indemnity obligations as outlined in the
8 indemnification section of this Franchise. These requirements may be modified by
9 written amendment executed by both parties.

10

11 **7.3 Security Fund.**

12

13 **7.3.1** If requested by the City, no later than the effective date of this Franchise,
14 Franchisee shall establish and provide to the City, as security for the faithful performance
15 of all of the requirements of this Franchise, a performance bond, from a surety or
16 financial institution acceptable to the City, in the amount of Twenty-Five Thousand
17 Dollars (\$25,000) the ("Security Fund"). The performance bond may be drawn upon by
18 the City for purposes, including but not limited to the following: (1) failure of Franchisee
19 to pay the City sums due under the terms of this Franchise; (2) reimbursement of costs
20 borne by the City to correct Franchise violations not corrected by Franchisee; and (3)
21 monetary remedies or damages assessed against Franchisee due to default or breach of
22 Franchise requirements.

23

24 **7.3.2** The City shall give Franchisee written notice prior to any withdrawal from
25 the Security Fund:

26

27 **a.** Describing the act, default or failure to be remedied, or the
28 damages, cost or expenses which the City has incurred by reason of Franchisee's act or
29 default;

30

31 **b.** Providing a reasonable opportunity for Franchisee to first remedy
32 the existing or ongoing default or failure, if applicable;

33

34 **c.** Providing a reasonable opportunity for Franchisee to pay any
35 monies due the City before the City withdraws the amount thereof from the Security
36 Fund; and

37

38 **d.** That the Franchisee will be given an opportunity to review the act,
39 default or failure described in the notice with the City.

40

41 **7.3.3** Within fourteen (14) days following receipt of such notice, Franchisee
42 shall restore the performance bond to the amount required under this Franchise.
43 Franchisee's maintenance of the bond shall not be construed to excuse performance of
44 obligations under the Franchise, or to limit the liability of Franchisee or otherwise limit
45 the City's recourse to any other remedy available at law or equity.

46

1 **SECTION 8. Miscellaneous terms**

2

3 **8.1 Confirmation of Consistency with Federal Provisions.**

4

5 If any portion of this Franchise ordinance is deemed to be inconsistent with any federal or
6 state statute, rule or regulation now existing or hereinafter adopted, then to the extent of
7 the inconsistency, the statute, rule or regulation shall control for so long, but only for so
8 long, as such statute, rule or regulation shall remain in effect, and the remaining
9 provisions of this Franchise ordinance shall not thereby be affected. If that statute, rule
10 or regulation allows existing franchises to not be affected, then there shall be no effect to
11 this Franchise. If federal law changes, whether through legislative or rule-making action
12 or court or administrative interpretation during the term of this Franchise, then this
13 Franchise ordinance shall be considered modified to be consistent with such federal law
14 changes.

15

16 **8.2 Severability.**

17

18 Each section, subsection, or other portion of this Franchise shall be severable and the
19 invalidity of any section, subsection, or other portion shall not invalidate the remainder.

20

21 **8.3 Notice.**

22

23 Any notice or information required or permitted to be given to the parties under this
24 Franchise may be sent to the following addresses unless otherwise specified:

25

26 **CITY OF MILL CREEK:**

27 City of Mill Creek
28 City Clerk
29 15728 Main Street
30 Mill Creek, WA 98012

31

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FRANCHISEE:

MCImetro Access Transmission
Services Corp. d/b/a/ Verizon Access
600 Hidden Ridge
Mailcode: HQE02G295
Irving, TX 75038
Attn: Franchise Manager

With a copy to (except for invoices):
Verizon Business Services
1320 N. Courthouse Road, Suite 900
Arlington, VA 22201
Attn: Vice President and
Deputy General Counsel, Network
Services

Invoices:
Verizon
Attn: Contract Admin
6929 N. Lakewood Ave, MD.
5.3-4009

Tulsa, OK 74117

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Notice shall be deemed given upon actual receipt or refusal of delivery and shall be sent by personal delivery, United States Certified Mail, return receipt requested, or by overnight delivery.

8.4 Entire Franchise.

This Franchise and its acceptance constitutes the entire terms between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties. Any amendment to this Franchise shall only occur by mutual written agreement of the parties and amendment of this Franchise.

8.5 Records.

8.5.1 Within thirty (30) days of a written request from the City, Franchisee shall furnish the City with information sufficient to demonstrate: 1) that Franchisee has complied with all applicable requirements of this Franchise; and 2) that all taxes, including but not limited to sales, utility and/or telecommunications taxes due the City in connection with Franchisee’s Communications Services and Facilities have been properly collected and paid by Franchisee.

8.5.2 All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Right-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 8.5.2 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 8.5.2 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise prohibited by State or federal law, nothing in this Section 8.5 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

8.5.3 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing

1 in this Section 8.5 prohibits the City from complying with Chapter 42.56 RCW or any
2 other applicable law or court order requiring the release of public records, and the City
3 shall not be liable to Franchisee for compliance with any law or court order requiring the
4 release of public records. The City shall comply with any injunction or court order
5 obtained by Franchisee that prohibits the disclosure of any such confidential records;
6 however, in the event a higher court overturns such injunction or court order and such
7 higher court action is or has become final and non-appealable, Franchisee shall reimburse
8 the City for any fines or penalties imposed for failure to disclose such records as required
9 hereunder within sixty (60) days of a request from the City.

10

11 **8.6 Reserved Rights.**

12

13 **8.6.1** The City reserves all rights and powers under its police powers and
14 powers conferred by federal, state or local law. In particular the City reserves the right to
15 alter, amend, or repeal its municipal code as it determines shall be conducive to the
16 health, safety, and welfare of the public, or otherwise in the public interest. The City
17 agrees that by accepting this Franchise, Franchisee has not waived its right to object to
18 the application to it of actions by the City pursuant to its reserved rights or police powers.

19

20 **8.6.2** Both the City and the Franchisee expressly reserve all rights they may
21 have under law to the maximum extent possible; neither the City nor the Franchisee shall
22 be deemed to have waived any federal or state constitutional or statutory rights they may
23 now have or may acquire in the future by entering into this Franchise.

24

25 **8.6.3** All rights and remedies provided herein shall be in addition to and
26 cumulative with any and all other rights and remedies available to either the City or
27 Franchisee. Such rights and remedies shall not be exclusive, and the exercise of one or
28 more rights or remedies shall not be deemed a waiver of the right to exercise at the same
29 time or thereafter any other right or remedy. Provided, further, that by entering into this
30 Franchise, it is not the intention of the City or Franchisee to waive any other rights,
31 remedies, or obligations as provided by law, equity or otherwise, and nothing contained
32 in this Franchise shall be deemed or construed to affect any such waiver. The parties
33 reserve the right to seek and obtain injunctive relief with respect to this Franchise to the
34 extent authorized by applicable law and that the execution of this Franchise shall not
35 constitute a waiver or relinquishment of such right. The parties agree that in the event a
36 party obtains injunctive relief, neither party shall be required to post a bond or other
37 security and the parties agree not to seek the imposition of such a requirement.

38

39 **8.7 Jurisdiction**

40

41 This Franchise shall be construed in accordance with the laws of the State of Washington.
42 The United States District Court for the Western District of Washington, and Snohomish
43 County Superior Court have proper venue for any dispute related to this Franchise.

44

45 **8.8 No Third Party Beneficiaries.**

46

1 There are no third party beneficiaries to this Franchise.

2

3 **8.9 Franchise Acceptance.**

4

5 Franchisee shall execute and return to the City three originals of the Franchisee
6 Acceptance, attached to this Franchise. The executed Franchisee Acceptances shall be
7 returned to the City accompanied by performance bonds, security funds, and evidence of
8 insurance. In the event Franchisee fails to accept this Franchise, or fails to provide the
9 required documents and/or funds, this Franchise shall be null and void and Franchisee
10 shall have no rights or privileges hereunder.

11

12 **8.10 Effective Date.**

13

14 This ordinance shall take effect and be in force five (5) days from and after its passage
15 and publication as provided by law..

16

17 PASSED BY THE CITY COUNCIL this ____ day of _____, 2017.

18

19

APPROVED:

20

21

MAYOR PAM PRUITT

22

23

24

25

26 ATTEST/AUTHENTICATED:

27

28

, CITY CLERK

29

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31

APPROVED AS TO FORM:

32

33

34

CITY ATTORNEY SCOTT MISSALL

35

36

FILED WITH THE CITY CLERK: _____

37

PASSED BY THE CITY COUNCIL: _____

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PUBLISHED: _____

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EFFECTIVE DATE: _____

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ORDINANCE NUMBER: _____

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FRANCHISEE ACCEPTANCE

MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, for itself and for its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated by this reference. MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services expressly acknowledges that in accepting this Franchise it did so relying on its own investigation and understanding of the power and authority to grant this Franchise.

ACCEPTED this ____ day of _____, _____.

MCImetro Access Transmission Services Corp.
d/b/a Verizon Access Transmission Services

Name: Robert McGee
Title: Director Network Engineering and
Operations



Agenda Item # K
Meeting Date: **June 6, 2017**

CITY COUNCIL AGENDA SUMMARY

City of Mill Creek, Washington

AGENDA ITEM: **AN ORDINANCE AMENDING THE MILL CREEK MUNICIPAL CODE TO REVISE AND UPDATE THE REQUIREMENTS AND FUNCTIONS OF THE ART & BEAUTIFICATION BOARD.**

PROPOSED MOTION: Motion to adopt ordinance number 2017-_____, amending and restating chapter 4.30 of the Mill Creek Municipal Code to revise and update the requirements, functions, and attributes of the Art and Beautification Board and establishing an effective date.

KEY FACTS AND INFORMATION SUMMARY: The Art & Beautification Board has requested that section 4.30.020 of the Mill Creek Municipal Code (MCMC) be revised to eliminate certain requirements governing composition of the board. While preparing the requested code amendments, the entire code section was reviewed and updated as appropriate and corresponding updates were also made to the code section governing the Parks and Recreation Board to ensure consistency among boards.

The material changes to section 4.30 of the MCMC are as follows:

- Composition of the Board has been reduced from 9 members to 7 members and the reference to a non-voting liaison member has been eliminated.
- The requirement that one member represent the Mill Creek Garden Club has been eliminated.
- Terms of office have been designated as 3 years.

CITY MANAGER RECOMMENDATION: The City Manager recommends the Council adopt the ordinance as presented.

ATTACHMENTS:

- Proposed Ordinance
- Existing MCMC Chapter 4.30

Respectfully Submitted:

A handwritten signature in blue ink that reads "Rebecca C. Polizzotto".

Rebecca C. Polizzotto
City Manager

ORDINANCE NO. 2017-_____

AN ORDINANCE OF THE CITY OF MILL CREEK, WASHINGTON, AMENDING AND RESTATING CHAPTER 4.30 OF THE MILL CREEK MUNICIPAL CODE TO REVISE AND UPDATE THE REQUIREMENTS, FUNCTIONS, AND ATTRIBUTES OF THE ART AND BEAUTIFICATION BOARD; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Mill Creek Municipal Code (MCMC) Title 4 creates various boards, commissions and other entities and establishes the requirements, functions, and attributes applicable to such entities; and

WHEREAS, MCMC Chapter 4.30, concerning the Art and Beautification Board, is out of date and requires various changes to update the requirements, functions, and attributes applicable to the Art and Beautification Board; and

WHEREAS, the City Council finds it necessary and appropriate to revise and restate MCMC Chapter 4.30 in its entirety to accomplish such changes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILL CREEK, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. MCMC Chapter 4.30, relating to the Art and Beautification Board, is hereby amended and restated in its entirety as follows:

4.30.010 Art and Beautification Board established.

There is hereby established an Art and Beautification Board for the City of Mill Creek, which shall consist of such members and perform such functions as set forth below.

4.30.020 Composition of the board.

The board shall consist of seven members selected by and at the discretion of the Mill Creek City Council and shall meet the following minimum qualifications:

A. Each board member shall be a resident of the City of Mill Creek. Any member who ceases to reside within the city limits during the term of his/her office shall thereupon forfeit said office.

B. The term of each member shall be three years and shall expire on October 31st in the final year of each term.

4.30.030 Responsibilities of the board.

A. The board shall serve as an advisory board to the city council and the city's administrative staff concerning the following matters:

1. Special events and projects to enhance the aesthetics and beauty within the residential and business areas of the city.
2. Utilization of the city's municipal art fund.

3. Selection, acquisition and placement of artwork for the city.

4. Such other matters as from time to time may be referred to the board by the city council or city manager.

B. To the extent feasible, the board should be consulted during preliminary design and construction phases of municipal projects receiving municipal arts funding.

4.30.040 Meetings of the board.

The board shall hold regular meetings on the second Wednesday of each month at 4:00 p.m. and shall maintain summary minutes thereof. The board shall adopt such rules of procedure as it deems necessary and provide a current copy thereof to the city clerk.

Section 2. Restated MCMC Chapter 4.30 as set forth above shall replace and supersede the existing provisions of MCMC Chapter 4.30 as of the effective date of this Ordinance.

Section 3. The City Clerk is directed to take steps as required to implement and effectuate the terms of this Ordinance and incorporate the foregoing changes into the Mill Creek Municipal Code. The Clerk is authorized to correct scrivener's errors, internal references, and the like.

Section 4. This Ordinance shall be in full force and effect five days after publication of a summary hereof consisting of the title of this Ordinance, in accordance with RCW 35A.13.200.

Adopted this _____ day of _____, 2017, by a vote of _____ for, _____ against, and _____ abstaining.

APPROVED:

MAYOR PAMELA PRUITT

ATTEST/AUTHENTICATED:

CITY CLERK

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
SCOTT M. MISSALL, CITY ATTORNEY

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

ORDINANCE NO.: _____

**Chapter 4.30
ART/BEAUTIFICATION ADVISORY BOARD**

Sections:

- 4.30.010 Art/beautification advisory board established.
- 4.30.020 Composition of board.
- 4.30.030 Appointment – Term expiration.
- 4.30.040 Powers and duties.
- 4.30.050 Regular meetings and procedures.

Legislative history: Ords. 94-321, 97-422, 99-468, and 2000-478.

4.30.010 Art/beautification advisory board established.

There is hereby established an art/beautification advisory board for the city of Mill Creek, which shall consist of representatives and perform such functions as set forth below. (Ord. 2006-640 § 9. Formerly 2.40.010)

4.30.020 Composition of board.

The board shall consist of nine members, including one nonvoting liaison member, who shall meet the following qualifications:

- A. All members shall be residents of the city of Mill Creek.
- B. A minimum of one member shall be affiliated with and represent the Mill Creek garden club. (Ord. 2008-678 § 1; Ord. 2006-640 § 9. Formerly 2.40.020)

4.30.030 Appointment – Term expiration.

- A. Board members representing the park and recreation board and the Mill Creek garden club shall be appointed by the group they represent.
- B. Members that are citizens-at-large or that represent the business community shall apply for vacant positions on the board as they become available.
- C. The board member representing the parks and recreation board shall serve a one-year term.
- D. The term of each position shall expire on October 31st in the final year of each term. (Ord. 2006-640 § 9. Formerly 2.40.030)

4.30.040 Powers and duties.

- A. The art/beautification advisory board shall serve as an advisory board to the city council on matters that may be referred to the board by the city council or the city manager from time to time, including but not limited to:
 - 1. Special events and projects to enhance the aesthetics and beauty within the residential and business areas of the city;

2. Utilization of the municipal art fund;

3. Selection, acquisition and placement of artwork for the city.

B. To the extent feasible, the board should be consulted during preliminary design and construction phases of municipal projects receiving municipal arts funding.

C. The board shall develop a work program and associated budget for any projects involving or expected to involve the board every two years. (Ord. 2006-640 § 9. Formerly 2.40.050)

4.30.050 Regular meetings and procedures.

A. The board shall adopt such rules of procedure as it deems necessary.

B. The board shall hold a regular meeting on the second Wednesday of each month at 4:00 p.m. (Ord. 2006-644 § 1; Ord. 2006-640 § 9; Ord. 2000-497 § 1. Formerly 2.40.060)

The Mill Creek Municipal Code is current through Ordinance 2017-814, passed February 7, 2017.

Disclaimer: The City Clerk's Office has the official version of the Mill Creek Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.





Agenda Item # L
Meeting Date: **June 6, 2017**

CITY COUNCIL AGENDA SUMMARY

City of Mill Creek, Washington

AGENDA ITEM: AN ORDINANCE AMENDING THE MILL CREEK MUNICIPAL CODE TO REVISE AND UPDATE THE REQUIREMENTS AND FUNCTIONS OF THE PARK & RECREATION BOARD.

PROPOSED MOTION: Motion to adopt ordinance number 2017-_____, amending and restating chapter 4.26 of the Mill Creek Municipal Code to revise and update the requirements, functions, and attributes of the Park and Recreation Board and establishing an effective date.

KEY FACTS AND INFORMATION SUMMARY: The Art & Beautification Board requested the Mill Creek Municipal Code (MCMC) be revised to eliminate certain requirements governing composition of that board. While preparing the requested code amendments, corresponding updates were also made to the code section governing the Park and Recreation Board to ensure consistency among boards.

The material changes to section 4.26 of the MCMC are as follows:

- Terms of office have been designated as 3 years.

CITY MANAGER RECOMMENDATION: The City Manager recommends the Council adopt the ordinance as presented.

ATTACHMENTS:

- Proposed Ordinance
- Existing MCMC Chapter 4.26

Respectfully Submitted:

A handwritten signature in blue ink that reads "Rebecca C. Polizzotto".

Rebecca C. Polizzotto
City Manager

ORDINANCE NO. 2017-_____

AN ORDINANCE OF THE CITY OF MILL CREEK, WASHINGTON, AMENDING AND RESTATING CHAPTER 4.26 OF THE MILL CREEK MUNICIPAL CODE TO REVISE AND UPDATE THE REQUIREMENTS, FUNCTIONS, AND ATTRIBUTES OF THE PARK AND RECREATION BOARD; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Mill Creek Municipal Code (MCMC) Title 4 creates various boards, commissions and other entities and establishes the requirements, functions, and attributes applicable to such entities; and

WHEREAS, MCMC Chapter 4.26, concerning the Park and Recreation Board, is out of date and requires various changes to the requirements, functions, and attributes applicable to the Park and Recreation Board; and

WHEREAS, the City Council finds it necessary and appropriate to revise and restate MCMC Chapter 4.26 in its entirety to accomplish such changes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILL CREEK, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. MCMC Chapter 4.26, relating to the Park and Recreation Board, is hereby amended and restated in its entirety as follows:

4.26.010 Park and Recreation Board established.

There is hereby established a Park and Recreation Board for the City of Mill Creek, which shall consist of such members and perform such functions as set forth below.

4.26.020 Composition of the board.

The board shall consist of seven members selected by and at the discretion of the Mill Creek City Council and shall meet the following minimum qualifications:

A. Each board member shall be a resident of the City of Mill Creek. Any member who ceases to reside within the city limits during the term of his/her office shall thereupon forfeit said office.

B. The term of each member shall be three years and shall expire on October 31st in the final year of each term.

4.26.030 Responsibilities of the board.

A. The board shall serve as an advisory board to the city council and the city's administrative staff concerning the following matters:

1. Development, design and operation of park and recreation programming and facilities with exception of final landscaping plan;
2. Facility use fees and procedures.

3. Capital improvement planning.
4. Concessions.
5. Interlocal and cooperative use agreements regarding park and recreation activities.
6. Such other matters as from time to time may be referred to the board by the city council or city manager.

4.26.040 Meetings of the board.

The board shall hold regular meetings on the first Wednesday of each month at 5:00 p.m. and shall maintain summary minutes thereof. The board shall adopt such rules of procedure as it deems necessary and provide a current copy thereof to the city clerk.

Section 2. Restated MCMC Chapter 4.26 as set forth above shall replace and supersede the existing provisions of MCMC Chapter 4.26 as of the effective date of this Ordinance.

Section 3. The City Clerk is directed to take steps as required to implement and effectuate the terms of this Ordinance and incorporate the foregoing changes into the Mill Creek Municipal Code. The Clerk is authorized to correct scrivener's errors, internal references, and the like.

Section 4. This Ordinance shall be in full force and effect five days after publication of a summary hereof consisting of the title of this Ordinance, in accordance with RCW 35A.13.200.

Adopted this _____ day of _____, 2017, by a vote of _____ for, _____ against, and _____ abstaining.

APPROVED:

MAYOR PAMELA PRUITT

ATTEST/AUTHENTICATED:

CITY CLERK

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
SCOTT M. MISSALL, CITY ATTORNEY

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

ORDINANCE NO.: _____

Chapter 4.26 PARK AND RECREATION BOARD

**Chapter 4.26
PARK AND RECREATION BOARD**

Sections:

- 4.26.010 Created.
- 4.26.020 Term expiration.
- 4.26.030 Powers and duties.
- 4.26.040 Regular meetings.

Legislative history: Ords. 87-158, 90-231, 91-256, 92-280 and 97-407.

4.26.010 Created.

There is hereby established a park and recreation board for the city of Mill Creek, which shall consist of seven members appointed by the city council. At the time of their tenure in office, all members shall be residents of the city of Mill Creek. Any member who ceases to reside within the city limits during the term of his/her office shall forfeit said office. (Ord. 2006-640 § 8. Formerly 2.36.010)

4.26.020 Term expiration.

All terms shall expire on October 31st in the final year of each term. (Ord. 2006-640 § 8. Formerly 2.36.020)

4.26.030 Powers and duties.

The park and recreation board shall serve as an advisory board to the city council and the administrative staff concerning the following matters:

- A. Development, design and operation of park and recreation programming and facilities with exception of final landscaping plan;
- B. Facility use fees and procedures;
- C. Capital improvement planning;
- D. Concessions;
- E. Interlocal and cooperative use agreements regarding park and recreation activities;
- F. All matters as from time to time may be referred to the board by the city council, the city manager or administrative staff. (Ord. 2006-640 § 8. Formerly 2.36.030)

4.26.040 Regular meetings.

The board shall have a regular meeting on the first Wednesday of each month at 5:00 p.m. (Ord. 2007-662 § 1; Ord. 2006-640 § 8. Formerly 2.36.050)

The Mill Creek Municipal Code is updated through Ordinance





MINUTES

City Council Regular Meeting

6:00 PM - Tuesday, May 23, 2017

Council Chambers, 15728 Main Street, Mill Creek, WA 98012

Minutes are the official record of Mill Creek City Council meetings. Minutes document action taken at the council meeting, not what was said at the council meeting.

A recording of this City Council meeting can be found [here](#).

The agenda packet for this City Council meeting can be found [here](#).

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Pruitt called the meeting of the Mill Creek City Council to order at 6:00 p.m. and led the Pledge of Allegiance.

ROLL CALL

Councilmembers Present:

Pam Pruitt, Mayor
Brian Holtzclaw, Mayor Pro Tem
Sean Kelly, Councilmember
Donna Michelson, Councilmember
Vince Cavaleri, Councilmember
Mike Todd, Councilmember
Mark Bond, Councilmember

Councilmembers Absent:

AUDIENCE COMMUNICATION

- A. No public comment was made.

PRESENTATIONS

- B. Proclamation: National Safe Boating Week
(Pam Pruitt, Mayor)
A proclamation was read by Mayor Pruitt supporting the goals of the North American Safe Boating Campaign and United States Power Squadrons and proclaiming May 20-26, 2017 as National Safe Boating Week.
- C. AWC Scholarship Award and City Contribution
(Rebecca C. Polizzotto, City Manager)
City Manager Polizzotto presented Mill Creek student Abigail Brandt with a \$500 City of Mill Creek scholarship to go along with the Association of Washington Cities (AWC) Center for Quality Communities scholarship for \$1,000.
- D. Girl Scout Highest Award Earners from Mill Creek
(Rebecca C. Polizzotto, City Manager)
City Manager Polizzotto recognized Mill Creek resident and Girl Scout Gold Award recipient, Sarah Marsh. Miss Marsh has been a member of Girl Scouts since the first grade and reached this momentous milestone through years of dedication and hard

May 23, 2017 REGULAR COUNCIL MEETING MINUTES

work.

Mill Creek resident and Girl Scout Silver Award recipient, Katie Armstrong, will be recognized at a future council meeting.

OLD BUSINESS

E. Purple Heart Parking Designations

(Rebecca C. Polizzotto, City Manager)

City Manager Polizzotto presented information regarding Purple Heart Parking Designations for council consideration. The Council supported the City Manager's recommendations and moved to adopt the proposed resolution.

Councilmember Cavaleri made a motion to adopt the Resolution to add "combat-wounded" designated parking at City of Mill Creek facilities and to encourage Mill Creek businesses to support this project by creating their own "combat-wounded" parking stalls in their private parking lots. Councilmember Kelly seconded the motion. The motion passed unanimously.

CONSENT AGENDA

F. Approval of Checks #56936 through #56997 and ACH Wire Transfers in the Amount of \$1,053,478.12

(Audit Committee: Mayor Pruitt and Councilmember Bond)

G. Payroll and Benefit ACH Payments in the Amount of \$284,379.75

(Audit Committee: Mayor Pruitt and Councilmember Bond)

H. City Council Meeting Minutes of May 2, 2017

I. City Council Meeting Minutes of May 9, 2017

Councilmember Bond made a motion to approve the consent agenda. Councilmember Todd seconded the motion. The motion passed unanimously.

REPORTS

J. Mayor/Council

Mayor Pruitt reported that she was not able to attend the Puget Sound Regional Council (PSRC) General Assembly meeting; however Councilmember Todd confirmed that he was planning to attend and would fill in as the voting delegate. She also reported attending the SERS and SNOCOM/SNOPAC board meetings where progress is being made but there was nothing new to report at this time.

Councilmember Cavaleri attended the Northshore & Mill Creek Senior Center charity auction last week and reported that they were able to raise enough to purchase two handicap-accessible vehicles for their members. He thanked local businesses and everyone who was able to attend for their participation.

Councilmember Michelson reminded everyone of the Art Walks being held the second Thursday of June, July and August. The first walk will be held on June 8.

Councilmember Todd reminded the Council that Miss Abigail Brandt is the second Mill Creek resident to win the AWC Center for Quality Communities Scholarship in the last few years. He credited these two award selections to the outstanding candidates from Mill Creek and their commitment to student government, leadership and community

May 23, 2017 REGULAR COUNCIL MEETING MINUTES

service.

K. City Manager

- Council Planning Schedule
- Legislative Summary
- Legislative Review - Operational Impacts

City Manager Polizzotto advised the Council that several finalized franchise agreements will be brought for their review at the June 6 council meeting. This is an added item and will likely extend the meeting slightly.

The City Manager reported that staff have been tracking legislation. As seen in this council packet, directors are reviewing the legislation relating to their department and providing legislative summaries to identify potential impacts for consideration. This information will continue to be added as bills are signed and the analyses are completed.

Two new pieces of legislation relating to the Public Records Act were signed last week. City Manager Polizzotto reported working with City Attorney Scott Missall to draft new code sections for the municipal code and a policy governing public records functions. Provisions from the new legislation will be incorporated into that separate body of work, which is expected to be available for presentation to the Council in June.

Mayor Pro Tem Holtzclaw asked the City Manager to include an update to the 35th Avenue project in the agenda for the next meeting. He also thanked Communications and Marketing Director Kirk for launching the City's social media and asked staff to bring an update on the number of followers, etc. in a few weeks.

Councilmember Todd thanked staff for the legislative summaries provided in the packet. He asked the City Manager to take a close look at the FileLocal option provided in House Bill 2005, over the option to work directly with the Department of Revenue. City Manager Polizzotto reported discussing these options with Finance and Administration Director Lauerman and ensuring Director Lauerman's attendance at meetings put on by the Department of Revenue in June on this topic. She also stated that a broader analysis of City fees, current costs and overall structure will be included before a recommendation is brought to Council.

Councilmember Michelson asked for an update on designated parking stalls at City Hall for the safety of internet buyers and sellers. She recalled proposing the stalls be placed by the Police Department and cameras installed to provide a safe place for these transactions. City Manager Polizzotto shared that this item is in the work plan for the biennium as well as the budget, and an update will be brought to Council soon.

Mayor Pruitt asked the City Manager when she planned to start on the Capital Improvement Plan. The City Manager reported working on finalizing that now. Once the work plan is finalized, she will present it to the Council.

AUDIENCE COMMUNICATION

- L. No public comment was made.

BRIEF RECESS FOR COUNCIL PHOTO AND THEN RECESS TO EXECUTIVE SESSION

(Confidential Session of the Council)

- M. The Council briefly recessed at 6:33 p.m. in order to take a Council photo in front of

May 23, 2017 REGULAR COUNCIL MEETING MINUTES

the newly designated Purple Heart parking spot at City Hall South. Directly after, the Council recessed to executive session for the purpose of discussing the status of collective bargaining negotiations. No action was taken.

RECONVENE TO REGULAR SESSION

The meeting reconvened to regular session at approximately 7:43 p.m.

ADJOURNMENT

With no objection, Mayor Pruitt adjourned the meeting at 7:43 p.m.

Pam Pruitt, Mayor

Peggy Lauerman, City Clerk

May 23, 2017 REGULAR COUNCIL MEETING MINUTES



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Pam Pruitt, Mayor

Peggy Lauerman, City Clerk

May 23, 2017 REGULAR COUNCIL MEETING MINUTES

JUNE						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
		Council				
11	12	13	14	15	16	17
		Council				
18	19	20	21	22	23	24
25	26	27	28	29	30	
		Council				

JULY						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
		CLOSED				
9	10	11	12	13	14	15
		Council				
16	17	18	19	20	21	22
23	24	25	26	27	28	29
		Council				

AUGUST						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

Tentative Council Meeting Agendas
Subject to change without notice

Last updated: June 2, 2017

June 13, 2017

(Agenda Summary due May 30)

- Snohomish Health District
 - 2016 Health District Year in Review Video <https://youtu.be/Zq8LoPWVSAs>
 - Introduction – Interim Administrator
 - Rucker Bldg
- ICART ILA
- Public Safety Presentation:
 - Traffic Unit Year in Review
- Reports
 - 35th Ave Update (Contract)

June 27, 2017

(Agenda Summary due June 13)

- Presentation: Pianos on Main
- North Pointe Park Construction Contract
- North Pointe Park name recommendation
- Work Session:
 - Code Revision – Repeal of Board of Appeals/Adjustment
- Public Safety Presentation
 - Body Camera Pilot Project
 - Internet Exchange Safe Location Program
- Reports:
 - Festival Update

July 11, 2017

(Agenda Summary due June 27)

- Presentation: Code Enforcement Updates
- Work Session: Draft City Code & Policy – Public Records Act Compliance

July 25, 2017

(Agenda Summary due July 11)

- Presentation: Sno Isle Library Update
- Traffic Calming Manual
- Reports
 - Twitter/Facebook Update

Work in Progress – Upcoming Agenda Items

- City Hall North HVAC Control System Replacement Contract
- Fire Contract
- Public Works Shop Design
- Development code change to allow redevelopment along Mill Creek Blvd/North Creek
- SNOCOM Consolidation Updates
- SERS Radio Acquisition Updates
- Partnerships with Everett School District
- Council Chambers Configuration