



CITY COUNCIL MEETING AGENDA
Council Chambers, 1000 Laurel Street

June 6, 2016, 2016
Monday

Regular Meeting
7:00 p.m.

- 1. Call to Order and Flag Salute**
- 2. Roll Call of Councilmembers**
- 3. Additions/Deletions**
- 4. Citizen Participation**

Citizens may comment on any topic that is not on the Regular Agenda. To comment, please raise your hand to request recognition by the Mayor. Once so recognized, please step to the podium and state your name and address for the record before making your comments. Also, please limit your comments to no more than three (3) minutes.

The public may comment on individual agenda items on the Regular Agenda prior to Council's action.

The public may also submit written communications, via letters or emails to dperry@cityofmilton.net. Any item received by noon on the day of the meeting will be distributed to Council.

5. Proclamation

- A. Planning Commissioner Tom Boyle

6. Consent Agenda

- A. Minutes – Approval of the minutes of:
 - i. May 16, 2016 Regular Meeting
- B. Claims Approval:
 - i. Approval of the checks/vouchers numbers 59362-59401 & 59403-59446 in the amount of \$422,088.56

Council may add and take action on other items not listed on this agenda.

If you need ADA accommodations, please contact City Hall at (253) 517-2705 prior to the meeting.

Thank you.

- ii. Approval of the payroll disbursement of 3986-3988, 3990 & 59353-59361 in the amount of \$166,038.55

7. Regular Agenda

- A. Contract Approval – Telecommunications Franchise – Astound Broadband
- B. Contract Approval – Pole Agreement – Astound Broadband
- C. Contract Approval – On-call Engineering Services – Gray & Osborne
- D. 2015 Annual Report Review and Information

8. Council Reports

9. Director's Reports

10. Mayor's Report

11. Adjournment

Council may add and take action on other items not listed on this agenda.

If you need ADA accommodations, please contact City Hall at (253) 517-2705 prior to the meeting.

Thank you.



PROCLAMATION

WHEREAS, the City of Milton relies on its volunteer citizen boards and commissions to accomplish much city business; and

WHEREAS, in 2010, the City advertised to fill vacancies on the Planning Commission; and

WHEREAS, Tom Boyle responded to the ad and agreed to serve on the Planning Commission; and

WHEREAS, Tom Boyle has been a diligent, committed and well-prepared member of the Planning Commission since his 2010 appointment;

NOW, THEREFORE, I, Debra Perry, Mayor of the City of Milton, do hereby proclaim that Tom Boyle is a valued and appreciated citizen volunteer of the City of Milton.

Dated this 6th day of June, 2016

Debra Perry, Mayor



DRAFT CITY COUNCIL MINUTES

Regular Meeting
Monday, May 16, 2016
7:00 p.m.

CALL TO ORDER

Mayor Perry called the Regular Meeting to order at 7:00 p.m., and led the flag salute.

ROLL CALL

Present: Councilmembers Whalen, Bennest, Manley, Morton, and Johnson

Absent: Mayor Pro Tem Zaroudny and Councilmember Ott – **MOTION TO EXCUSE** (Johnson/Whalen) – **Passed 5/0**

STAFF PRESENT

Police Chief Hernandez, Finance Director Garrison, Interim Public Works Director Howlett, Surface Water Compliance Inspector Carter, IT Services Director Tiedeman, Deputy Clerk Schwerzler and City Clerk Bolam

ADDITIONS / DELETIONS

Councilmember Whalen requested a brief discussion of the Storm Water Annual Report before Item D.

CITIZEN PARTICIPATION

Speaker	Comments
Tom Boyle	<p>Not in favor of new Clearing & Grading Permit – inspections have long been part of the building permit process where it should stay – unnecessary fee</p> <p>The Planning Commission is being tasked with looking at Low Impact Development fees – this is the reason for stepping down from the Commission – time on the Commission has been a great learning experience</p> <p>Police issue – unwelcome person on property reported by neighbor – great job Milton PD and Detective Camden – always call 911!</p>

APPOINTMENTS TO BOARDS & COMMISSIONS

Kassandra Crabb addressed City Council regarding her purpose for joining the Park Board. Council confirmed her appointment at the May 9 meeting, and welcomed her.

Betty Taylor introduced herself to the City Council regarding her purpose for joining the Event Committee. **COUNCILMEMBER JOHNSON MOVED**, seconded by Councilmember Bennest, to confirm the appointment of Betty Taylor to the Event Committee for a four-year term. **Passed 5/0.**

CONSENT AGENDA

Approval of:

- A. Minutes
 - i. April 18, 2016 Regular Meeting
 - ii. May 9, 2016 Study Session
- B. Voucher and Payroll Approval
 - i. Approval of the checks/vouchers numbered 59194-59232, 59234-59251, and 59269-59352 in the amount of \$1,000,141.30.
 - ii. Approval of the payroll disbursement of 4/20/2016 and 5/5/2016 and related checks numbered 3979-3981 and 59185-59193, 59252-59265, 59267-59268, in the amount of \$413,236.14.
- C. Planning Commission Work Plan

Director Garrison provided clarifying information regarding some vouchers.

COUNCILMEMBER MORTON MOVED, seconded by Councilmember Whalen, to approve the Consent Agenda. **Passed 5/0.**

REGULAR MEETING

- A. Interlocal Agreement with City of Normandy Park for IT Services

Director Tiedeman introduced a new contract with the City of Normandy Park. He noted an error in the agenda bill showing a fee of \$2,500/year – it is actually \$2,500/month.

Council noted that it is known that the city has a very good and viable service to offer other jurisdictions, and it is good to see another city sign on.

COUNCILMEMBER BENNEST MOVED, seconded by Councilmember Morton, to approve and authorize the Mayor to sign the attached Interlocal Agreement with the City of Normandy Park for Information Technology Services and Support. **Passed 5/0.**

- B. Interlocal Agreement with Pierce Transit/Pierce County for Emergency Radios and associated equipment

Chief Hernandez provided an overview of the radio system and the status of the necessary subscriber, repair and maintenance fees.

Director Garrison reported on the Criminal Justice Fund and other available General Fund dollars.

COUNCILMEMBER BENNEST MOVED, seconded by Councilmember Whalen, to approve the Pierce Transit/Pierce County Combined Communications Network contract pursuant to which the Milton Police Department will be provided access to the Single County-Wide Communication System, for use of its approved mobile and portable radios and associated approved equipment, with an increase to the Criminal Justice Fund of \$24,586, and approving the associated budget amendment.

Mayor called for the vote, followed by a roll-call vote. **Passed 4/1** (Johnson).

C. Interlocal Agreement with South Sound 911 for Dispatch Services

Chief Hernandez provided an overview of this contract, which Council reviewed at the study session on May 9.

COUNCILMEMBER MORTON MOVED, seconded by Councilmember Bennest, to approve the attached amendment to the South Sound 911 contract, increasing the annual cost for 2016 to \$169,352.50, and authorizing a budget amendment in the amount of \$19,352.50.

Mayor called for the vote, followed by a roll-call vote. **Passed 4/1** (Johnson).

D. Storm Water Annual Report

Mayor Perry called for a 5-minute recess to read the storm water report for 2016.

At Councilmember Whalen's request, Storm Water Compliance Inspector Jamie Carter provided a brief overview of the annual budget.

Councilmember Whalen explained that his purpose in asking for this discussion was to request that the line referring to Gray & Osborne's continued involvement in the audit be stricken.

Mr. Carter explained that their continued involvement is needed and will be explained in Item E, below. Councilmember Whalen deferred to the agenda.

E. Ordinance 1st Read Stormwater Rates

Storm Water Compliance Inspector Jamie Carter provided a slideshow presentation, explaining the proposed ordinance and answered Council's questions.

Discussion ensued. Council expressed a desire to see a model established for a full surface water department.

Speaker	Comments
Jacquelyn Whalen	Studying this topic closely – what is proposed is an ordinance that accomplishes a very specific goal – there are more goals, but perhaps

	<p>taking this step will boost revenue while giving staff the method to build a program – there’s value in going forward with a simple system, and this will accomplish much of the hardest work to go forward with a comprehensive plan.</p> <p>Referring to the packet, and starting on page 90, she made the following comments:</p> <ul style="list-style-type: none"> • Paragraph A – add “per the tax assessor’s land use code” – red-lined “on the property” should be clarified whether it’s an individual parcel or some other definition • Paragraph B – agrees with need to set rate and supports raising it above the proposed \$15.50 • Paragraph F – service charge credit needs strengthening • Reconsider scope of definition for “Undeveloped Parcel” • Consider setting delineations between surfaces such as decks • Consider codifying specifics regarding decimal point billing threshold <p>She suggested that Council consider implementing a “sunset clause” if there’s concern that a simple solution now will go on too long.</p>
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STAFF REPORTS

Director Howlett

- Milton Way pedestrian improvement project will be underway in about 2 weeks
- Lots of private development going now
- Planning Commission sign code conversations have started – appreciation to outgoing Commissioner Tom Boyle
- Steering Committee for the SR167 working on alternative strategies
- Park Board meets this week – Jamie Carter is staffing that board

Director Garrison

- Annual report at the end of this month

Chief Hernandez

- Milton Police sponsored a police bike class – as the sponsoring agency it is free to our department – there were eight agencies participating

COUNCIL REPORTS

Councilmember Whalen

- Noticed the bike police presence in town

Councilmember Manley

- Attended SCA PIC meeting last week – session on Robert’s Rules was excellent

Councilmember Morton

- Not sure there’s a need for a “utility committee,” but there may be a short-term need for a stormwater utility committee

Councilmember Johnson

- Any utility committee should include citizen involvement

MAYOR'S REPORT

- Attended SCA PIC meeting – SCA responded to ST3 public involvement with a #1 request for more park-and-rides far outside of Seattle
- Growth projections for the area is 1.9% – staggering
- King Co Metro's proposed long range plan is out – would like to see connectivity with Pierce Transit – 40% of Pierce County travels to King County for work
- Participated in the Chamber luncheon, where Pierce County Councilman Dan Roach spoke on many county issues
- Utility Committee – there are a lot of details council could dive into and report back to the rest of council
- Attended the Steering Committee meeting for SR167 – very interesting with lots of agendas – big moves, such as moving the Hylebos and effects on our wells, mean we must be at the table

ADJOURNMENT

Adjourned at 10:00 p.m.

Debra Perry, Mayor

ATTEST:

Katie Bolam, City Clerk

2016

CONSENT AGENDA ITEM #

CITY OF MILTON
PAYROLL and CLAIMS VOUCHER APPROVAL
 June 6, 2016

I HEREBY CERTIFY THAT THE EXPENDITURES SHOWN BELOW REFLECT THE TRUE AND CORRECT EXPENDITURES TO THE BEST OF MY KNOWLEDGE. I FURTHER CERTIFY THE EXPENDITURES BELOW TO BE VALID AND CORRECT.

Finance Director			Date		
Claim Vouchers:			Payroll Disbursements:		
Dates	Check #	Amount	Date	Check #	Amount
5/24/2016	59362-59363	395.98	5/20/2016	ACH	91,275.98
5/26/2016	59364	18,662.87	5/20/2016	3986-3988 & 3990	6,871.99
5/27/2016	59365-59401, 59403-59408	122,952.98	5/20/2016	59353-59361	67,890.58
5/31/2016	59409	8,705.00			
6/3/2016	59410-59418	217,727.24			
6/6/2016	59419-59446	53,644.49			

Total Accounts Payable:	\$ 422,088.56	Total Payroll:	\$ 166,038.55
Voids - 59002, 59402 Printer Error Checks - 3989			

WE, THE UNDERSIGNED COUNCILMEMBERS OF THE CITY OF MILTON, WASHINGTON, DO HEREBY CERTIFY AND APPROVE THE PAYROLL AND CLAIM VOUCHERS FOR THE TOTAL AMOUNT OF:

\$ 588,127.11 Dated: **June 6, 2016**

COUNCILMEMBER	COUNCILMEMBER
COUNCILMEMBER	COUNCILMEMBER

CHECK REGISTER

City Of Milton
MCAG #: 0590

05/14/2016 To: 06/06/2016

Time: 10:10:29 Date: 06/02/2016
Page: 1

Trans Date	Type	Acct #	Chk #	Claimant	Amount	Memo
3279	05/24/2016	Claims	1	59362 FRED LEENSTRA	13.23	Refund inactive customer credit balance
		406 - 343 10 00 000 - Storm Drainage Fees			-9.33	
		401 - 343 30 00 000 - Electric Sales			-4.14	
		403 - 343 40 10 000 - Water Sales			-14.76	
		401 - 369 91 00 401 - Misc Revenue			15.00	
3280	05/24/2016	Claims	1	59363 US BANK - ST PAUL	382.75	Debt Services Payment
		107 - 592 21 81 000 - LOCAL Financing-Interest			382.75	Revenue Bond Interest
3290	05/26/2016	Claims	1	E59364 US BANK PROCUREMENT CARD	18,662.87	Procurement Credit Card
		001 - 511 60 31 000 - Operating Supplies			11.98	Council Snacks
		001 - 511 60 31 000 - Operating Supplies			23.16	Council Snacks
		001 - 511 60 43 000 - Travel			17.50	Good Egg Breakfast - Bennest
		001 - 511 60 49 002 - Misc/Trng,Registrations			375.00	AWC Conference - S. Johnson
		001 - 513 10 32 000 - Fuel			36.03	Fuel
		001 - 513 10 43 000 - Travel			25.10	PCCTA Meal - Mayor
		001 - 513 10 43 000 - Travel			35.88	Business Lunch - Mayer, Bolam & Planner
		001 - 513 10 43 000 - Travel			39.36	Working Dinner - Conference
		001 - 513 10 43 000 - Travel			17.04	Cab Fare
		001 - 513 10 43 000 - Travel			10.29	Working Lunch - Conference
		001 - 513 10 43 000 - Travel			80.39	Lodging - Bolam Training
		001 - 513 10 43 000 - Travel			49.12	Meals LRI Training
		001 - 513 10 43 000 - Travel			53.00	Meals Travel To LRI
		001 - 513 10 43 000 - Travel			19.90	LRI Meal - Mayor/Garrison
		001 - 513 10 43 000 - Travel			17.49	Good Egg Breakfast - Mayor
		001 - 513 10 43 000 - Travel			44.93	Business Lunch Economic Development
		001 - 513 10 43 000 - Travel			18.08	Dave Reichert Mayor Mtg
		001 - 513 10 43 000 - Travel			100.00	Womens Summit - Mayor & April B.
		001 - 513 10 43 000 - Travel			100.00	NWSA Breakfast - Mayor & Lewis
		001 - 513 10 49 001 - Misc/Dues & Memberships			790.00	FW Chamber - Double Payment - Credit Next Month
		001 - 513 10 49 001 - Misc/Dues & Memberships			10.00	Health Card - Schwerzler
		001 - 513 10 49 002 - Misc/Trng, Registrations			75.00	2016 LEIRA Training - Bolam
		001 - 513 10 49 002 - Misc/Trng, Registrations			375.00	AWC Conference - Mayor
		001 - 514 20 43 000 - Travel			24.55	Meals LRI Training
		001 - 514 20 43 000 - Travel			44.03	WPTA Conference - Garrison
		001 - 518 30 20 002 - Uniforms			88.77	Boot Allowance - Thacher
		001 - 518 30 31 000 - Operating Supplies			42.15	Eye Protection, Earplugs & Gloves
		001 - 518 30 31 000 - Operating Supplies			20.45	Gloves
		001 - 518 30 31 000 - Operating Supplies			22.94	Resolve Cleaner For Activity Center Chairs
		001 - 518 30 48 000 - Repairs & Maintenance			300.92	Landscape Plants
		503 - 518 80 36 001 - Small Tools - IT			26.15	Adabe Converter - Hernandez
		503 - 518 80 43 000 - Travel			22.02	WPTA Conference - Garrison
		503 - 518 80 48 000 - Repairs & Maintenance			1,230.78	Server Software Warranty
		503 - 518 80 49 002 - Misc/Training Registrations			710.01	Remote Log Me In Annual Renewal
		107 - 521 20 31 000 - Office and Operating Supplie			10.94	Vehicle Detail Supplies
		107 - 521 20 31 000 - Office and Operating Supplie			19.00	Essential Insights Resources
		107 - 521 20 31 000 - Office and Operating Supplie			48.98	Retreat Supplies - Easel Pad & Markers
		107 - 521 20 31 000 - Office and Operating Supplie			30.59	Safety Whistles (7)
		107 - 521 20 31 000 - Office and Operating Supplie			21.85	Safety Whistles (4)
		107 - 521 20 31 000 - Office and Operating Supplie			17.48	Safety Whistles (4)
		107 - 521 20 31 000 - Office and Operating Supplie			105.00	Evidence Rulers
		107 - 521 20 31 000 - Office and Operating Supplie			29.99	Surveillance Drone Parts
		107 - 521 20 31 000 - Office and Operating Supplie			62.73	CAD Backup Power Supply
		107 - 521 20 31 000 - Office and Operating Supplie			52.70	Microphone Holder Magnet
		107 - 521 20 31 000 - Office and Operating Supplie			24.00	Car Wash Supplies

CHECK REGISTER

City Of Milton
MCAG #: 0590

05/14/2016 To: 06/06/2016

Time: 10:10:29 Date: 06/02/2016
Page: 2

Trans Date	Type	Acct #	Chk #	Claimant	Amount	Memo
		107 - 521 20 31 000		Office and Operating Supplie	38.22	Zip Ties
		107 - 521 20 31 000		Office and Operating Supplie	145.71	Kitchen Supplies
		107 - 521 20 31 000		Office and Operating Supplie	72.22	Cleaning Supplies
		107 - 521 20 31 000		Office and Operating Supplie	26.26	Cleaning Supplies
		107 - 521 20 31 000		Office and Operating Supplie	7.99	Seat Gap Filler
		107 - 521 20 32 000		Fuel	262.92	Fuel
		107 - 521 20 32 000		Fuel	96.83	Fuel
		107 - 521 20 32 000		Fuel	40.88	Fuel
		107 - 521 20 35 000		Small Tools and Equipment	53.52	Vehicle Storage Bins
		107 - 521 20 35 000		Small Tools and Equipment	330.25	Training Mats
		107 - 521 20 35 000		Small Tools and Equipment	330.25	Training Mats
		107 - 521 20 35 000		Small Tools and Equipment	330.25	Training Mats
		107 - 521 20 35 000		Small Tools and Equipment	164.53	MTX Supplies
		107 - 521 20 35 000		Small Tools and Equipment	85.65	Charger For Batteries
		107 - 521 20 35 000		Small Tools and Equipment	390.00	Evidence Tents
		107 - 521 20 35 000		Small Tools and Equipment	228.00	Camera For 743
		107 - 521 20 35 000		Small Tools and Equipment	228.00	Camera For 747
		107 - 521 20 35 000		Small Tools and Equipment	58.49	Charging Cables For Battery Box
		107 - 521 20 35 000		Small Tools and Equipment	990.75	Training Mats
		107 - 521 20 35 000		Small Tools and Equipment	44.95	Hydration Pack
		107 - 521 20 35 000		Small Tools and Equipment	15.99	Rechargeable 123CR Battery For LIDAR
		107 - 521 20 35 000		Small Tools and Equipment	61.30	Evidence Bags
		107 - 521 20 36 000		Small Assets/IT	29.00	Wondershare Software
		107 - 521 20 41 000		Professional Services	25.00	Transunion
		107 - 521 20 41 000		Professional Services	19.95	Mobilelock
		107 - 521 20 42 000		Communication	17.79	Postage
		107 - 521 20 43 000		Travel	24.55	Meals LRI Training
		107 - 521 20 43 000		Travel	44.92	Host KC Detective Training Mtg
		107 - 521 20 43 000		Travel	16.41	Host KC Detective Training Mtg
		107 - 521 20 43 000		Travel	44.03	WPTA Conference - Garrison
		107 - 521 20 43 000		Travel	34.89	Working Lunch - Rent Study Fire - Mayor, Bolam& Hernandez
		107 - 521 20 43 000		Travel	173.95	Pizza For Scouts At Shred Event
		107 - 521 20 43 000		Travel	19.69	LRI Travel Dinner
		107 - 521 20 43 000		Travel	106.22	Active Shooter Training Meals
		107 - 521 20 43 000		Travel	52.00	Training Meal - Sarff, Hobbs, Camden & Takiguchi
		107 - 521 20 43 000		Travel	39.00	Training Meal - Sarff, Hobbs, Camden & Takiguchi
		107 - 521 20 43 000		Travel	9.88	Training Meal - Sarff, Hobbs, Camden & Takiguchi
		107 - 521 20 48 001		Vehicle Repairs and Mainten:	99.90	Fuse Supplies
		107 - 521 20 48 001		Vehicle Repairs and Mainten:	440.96	#514 FOB Replacement
		107 - 521 40 49 002		Misc/Trng, Registrations	26.00	Survey Monkey
		105 - 521 80 35 000		Small Tools & Equipment	306.31	Detective Online Crime HP Notebook
		105 - 521 80 35 003		Bike Equipment	59.79	Bike Repair
		105 - 521 80 35 003		Bike Equipment	38.35	Chain Cleaner & Supplies
		105 - 521 80 35 003		Bike Equipment	146.26	2 Bike Shirts & Mic Magnets
		105 - 521 80 35 003		Bike Equipment	129.96	Bike Shirts
		105 - 521 80 35 003		Bike Equipment	129.96	Bike Shirt & Shorts - Torgenson
		105 - 521 80 35 003		Bike Equipment	143.71	Bikes Shoes - Hobbs
		105 - 521 80 35 003		Bike Equipment	134.33	Bike Shirt & Shorts
		105 - 521 80 35 003		Bike Equipment	160.82	Patches Sewn On Bike Uniforms
		105 - 521 80 35 003		Bike Equipment	139.33	Bike Equipment
		105 - 521 80 35 003		Bike Equipment	31.73	Bike Shirt Decals
		105 - 521 80 35 003		Bike Equipment	19.98	Bike Patches

CHECK REGISTER

City Of Milton
MCAG #: 0590

05/14/2016 To: 06/06/2016

Time: 10:10:29 Date: 06/02/2016
Page: 3

Trans Date	Type	Acct #	Chk #	Claimant	Amount	Memo
		105 - 521 80 35 003		- Bike Equipment	19.98	Bike Patches
		105 - 521 80 35 003		- Bike Equipment	73.19	BIke Floor Pump
		105 - 521 80 35 003		- Bike Equipment	91.08	Bike Rack
		105 - 521 80 35 003		- Bike Equipment	98.98	Bike Tires
		105 - 521 80 35 003		- Bike Equipment	16.41	Bike Shirt Decal
		105 - 521 80 35 003		- Bike Equipment	164.10	Bike Boots - Alexander
		105 - 521 80 35 003		- Bike Equipment	170.10	Bike Boots - Torgenson
		105 - 521 80 35 003		- Bike Equipment	979.94	Large Frame Police Bike
		105 - 521 80 35 003		- Bike Equipment	10.94	Bike Shirt Decal
		105 - 521 80 35 003		- Bike Equipment	71.16	Bike Shoes - Takiguchi
		406 - 531 10 43 000		- Travel	66.05	WPTA Conference - Garrison
		406 - 531 10 43 000		- Travel	5.04	WSAPT Conference Meal - Reeves
		406 - 531 10 43 000		- Travel	7.86	WSAPT Conference Meal - Reeves
		406 - 531 10 43 000		- Travel	74.36	WSAPT Conference Lodging - Reeves
		406 - 531 10 49 000		- Misc/Other Exp	54.71	Shrubs For Earth Day Event
		406 - 531 30 31 000		- Operating Supplies	95.76	Cold Asphalt Mix
		406 - 531 30 31 000		- Operating Supplies	26.98	Footrest - Zahn
		406 - 531 30 32 000		- Fuel	4.27	Fuel
		406 - 531 30 43 000		- Travel	62.37	Lunch Earth Day Event
		401 - 533 10 43 000		- Travel	12.28	Meals LRI Training
		401 - 533 10 43 000		- Travel	110.09	WPTA Conference - Garrison
		401 - 533 10 43 000		- Travel	9.96	LRI Meal - Mayor/Garrison
		401 - 533 50 31 000		- Operating Supplies	62.95	Footrest - Zahn
		401 - 533 50 32 000		- Fuel	21.77	Propane For Forklift
		401 - 533 50 32 000		- Fuel	28.42	Diesel Exhaust Fluid For New Crane
		401 - 533 50 32 000		- Fuel	9.96	Fuel
		401 - 533 50 42 000		- Communication	18.26	Return Of Safety Videos
		401 - 533 50 43 000		- Travel	145.42	PCCPA Milton Hosted Mtg
		403 - 534 10 43 000		- Travel	13.55	PCCTA Meal - Howlett
		403 - 534 10 43 000		- Travel	12.29	Meals LRI Training
		403 - 534 10 43 000		- Travel	110.09	WPTA Conference - Garrison
		403 - 534 10 43 000		- Travel	9.95	LRI Meal - Mayor/Garrison
		403 - 534 50 31 000		- Office and Operating Supplie	98.66	Cold Asphalt Mix
		403 - 534 50 31 000		- Office and Operating Supplie	62.95	Footrest - Zahn
		403 - 534 50 32 000		- Fuel	14.46	Fuel
		403 - 534 50 32 000		- Fuel	9.96	Fuel
		403 - 534 50 43 000		- Travel	57.19	Working Lunch PW Mtg - Hernandez, Howlett & Baker
		403 - 534 50 43 000		- Travel	98.00	Water District Manager 2 Exam
		403 - 534 50 43 000		- Travel	22.00	Noxious Weed Training Meal - Russell
		403 - 534 51 31 000		- Office and Operating Supplie	5.43	PVC Union - Leak Repair
		403 - 534 51 42 000		- Communication	6.47	Postage - Cross Connection Letter
		403 - 534 51 43 000		- Travel	175.00	Hach Water Analysis Workshop - Walston
		101 - 542 30 31 000		- Office and Operating Supplie	95.76	Cold Asphalt Mix
		101 - 542 30 31 000		- Office and Operating Supplie	23.55	Irrigation Part Credit
		101 - 542 30 31 000		- Office and Operating Supplie	-23.55	Irrigation Part To Be Returned
		101 - 542 30 31 000		- Office and Operating Supplie	32.89	Irrigation Part
		101 - 542 30 31 000		- Office and Operating Supplie	88.86	Parts For Milton Way Irrigation Repair
		101 - 542 30 31 000		- Office and Operating Supplie	98.48	Weed Killer For Milton Way Strips
		101 - 542 30 31 000		- Office and Operating Supplie	136.77	Weed Killer For Planter Beds In Town
		101 - 542 30 31 000		- Office and Operating Supplie	8.99	Footrest - Zahn
		101 - 542 30 42 000		- Communication	1.42	Fuel
		101 - 542 30 43 000		- Travel	22.02	WPTA Conference - Garrison
		101 - 542 30 43 000		- Travel	22.00	Noxious Weed Training Lunch
		501 - 548 30 31 000		- Office & Operating Supplies	53.11	Weather Stripping & Dent Puller
		501 - 548 30 31 000		- Office & Operating Supplies	72.15	Antifreeze & Adaptor

CHECK REGISTER

City Of Milton
MCAG #: 0590

05/14/2016 To: 06/06/2016

Time: 10:10:29 Date: 06/02/2016
Page: 4

Trans Date	Type	Acct #	Chk #	Claimant	Amount	Memo
		501 - 548 30 31 000 - Office & Operating Supplies			65.90	Repair Manuals
		501 - 548 30 31 000 - Office & Operating Supplies			17.99	Footrest - Zahn
		501 - 548 30 32 000 - Fuel			40.05	Fuel
		501 - 548 30 32 000 - Fuel			2.84	Fuel
		501 - 548 30 34 000 - Parts			91.78	#25 Rocker Switch, Mount Panel, Tailgate Cables & Bulb
		501 - 548 30 34 000 - Parts			32.80	#16 Tailgate Cables
		501 - 548 30 34 000 - Parts			225.16	#12 Solenoid
		501 - 548 30 34 000 - Parts			91.81	#3 Parts To Recharge Air Conditioner
		501 - 548 30 34 000 - Parts			59.84	#3 Primer, Filler & Lacquer For Body Repair
		501 - 548 30 34 000 - Parts			92.96	#16 Replace Part For Tow Hitch Assembly
		501 - 548 30 35 000 - Small Tools & Equipment			341.31	Engine Hoist & Chain
		501 - 548 30 43 000 - Travel			22.02	WPTA Conference - Garrison
		501 - 548 30 48 000 - Repairs & Maintenance			50.00	#16 Bedliner Deposit
		501 - 548 30 48 000 - Repairs & Maintenance			644.69	#16 Bedliner
		001 - 558 50 31 000 - Office and Operating Supplie			29.53	Envelopes
		001 - 558 50 32 000 - Fuel			30.34	Fuel
		001 - 558 50 32 000 - Fuel			15.23	WSAPT Conference Meal - Reeves
		001 - 558 50 43 000 - Travel			233.94	WABO Lodging - Herron
		001 - 558 50 43 000 - Travel			13.00	WABO Dinner - Herron
		001 - 558 50 43 000 - Travel			8.08	WABO Dinner - Herron
		001 - 558 50 43 000 - Travel			12.75	WABO Lunch - Herron
		001 - 558 50 43 000 - Travel			5.05	WSAPT Conference Meal - Reeves
		001 - 558 50 43 000 - Travel			7.86	WSAPT Conference Meal - Reeves
		001 - 558 50 43 000 - Travel			74.36	WSAPT Conference Lodging - Reeves
		001 - 558 60 32 000 - Fuel			15.24	WSAPT Conference Meal - Reeves
		001 - 558 60 43 000 - Travel			5.05	WSAPT Conference Meal - Reeves
		001 - 558 60 43 000 - Travel			7.87	WSAPT Conference Meal - Reeves
		001 - 558 60 43 000 - Travel			8.67	WSAPT Conference Meal - Reeves
		001 - 558 60 43 000 - Travel			148.73	WSAPT Conference Lodging - Reeves
		001 - 576 80 20 002 - Uniforms			88.77	Boot Allowance - Thacher
		001 - 576 80 31 000 - Operating Supplies			42.15	Eye Protection, Earplugs & Gloves
		001 - 576 80 31 000 - Operating Supplies			20.44	Gloves
		001 - 576 80 31 000 - Operating Supplies			263.00	Turf Maintenance Products
		001 - 576 80 31 000 - Operating Supplies			67.87	Top Soil For Trail
		001 - 576 80 43 000 - Travel			22.00	Noxious Weeds Training Lunch - Magana
		001 - 576 80 43 000 - Travel			15.64	Noxious Weed Control Training Lunch
		001 - 586 00 00 003 - Misc Non-Expenditure			80.39	Bolam CC To Be Reimbursed
		001 - 586 00 00 003 - Misc Non-Expenditure			2.91	Reimb Of Over Per Diem
		001 - 586 00 00 003 - Misc Non-Expenditure			0.10	Reimb - Over Per Diem For Training Lunch
		001 - 586 00 00 003 - Misc Non-Expenditure			0.39	Over Per Diem Conference Meal - Russell
		631 - 586 00 00 006 - Credit Card Fraud Issues			-375.00	Fraud Credit - Magana
		310 - 594 21 61 106 - Police Compound			250.61	Landscape Plants
3291	05/27/2016	Claims	1	59365 AED BRANDS	169.00	AED Supplies
		401 - 533 50 31 000 - Operating Supplies			169.00	AED Battery
3292	05/27/2016	Claims	1	59366 AHBL, INC	3,800.00	Site Plan Review; Planning Services; Planning Services; Planning Services; Planning Services; Planning Services;
		001 - 558 50 41 000 - Professional Services			100.00	Hunt Short Plat Site Review
		001 - 558 50 41 000 - Professional Services			2,575.00	On-Site Staffing
		001 - 558 50 41 000 - Professional Services			250.00	Lakeside Estates Public Hearing
		001 - 558 50 41 000 - Professional Services			50.00	Nagy Short Plat Project Review
		001 - 558 50 41 000 - Professional Services			725.00	Aerie Crest Project Review

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		001 - 558 50 41 000		Professional Services	50.00	T-Mobile Minor Site Plan Project Review
		001 - 558 50 41 000		Professional Services	50.00	AT&T Minor Site Plan Pre Application Review
3293	05/27/2016	Claims	1	59367 ANIXTER INC	161.64	Electric Material
		401 - 533 50 31 000		Operating Supplies	161.64	Cord Grip
3294	05/27/2016	Claims	1	E59368 KATIE BOLAM	192.24	Mileage Reimbursement
		001 - 513 10 43 000		Travel	192.24	LRI Conference & PDR Training Mileage
3295	05/27/2016	Claims	1	59369 KATHLEEN BRAMMER	250.00	Rental Deposit Refund
		001 - 586 00 00 002		Refund Facility Deposit	250.00	Rental Deposit Refund
3296	05/27/2016	Claims	1	59370 CDW GOVERNMENT, INC.	1,757.44	IT Support Start Up; IT Equipment
		503 - 518 80 36 002		Equipment - IT	1,325.84	Citrix Goto Assistant Remote For Normandy Park
		503 - 518 80 36 002		Equipment - IT	431.60	Chief Computer
3297	05/27/2016	Claims	1	59371 CHUCKALS	787.47	Office Supplies; PW Office Supplies; Planning Supplies
		001 - 511 60 31 000		Operating Supplies	21.44	Window Envelope With Logo
		001 - 513 10 31 000		Office and Operating Supplie	85.76	Window Envelope With Logo
		001 - 514 20 31 000		Office and Operating Supplie	21.44	Window Envelope With Logo
		107 - 521 20 31 000		Office and Operating Supplie	64.32	Window Envelope With Logo
		406 - 531 10 31 000		Office and Operating Supplie	42.88	Window Envelope With Logo
		406 - 531 30 31 000		Operating Supplies	13.98	Envelopes, Pens, Staplers & Folders
		401 - 533 10 31 000		Office and Operating Supplie	128.63	Window Envelope With Logo
		401 - 533 50 31 000		Operating Supplies	43.33	Envelopes, Pens, Staplers & Folders
		403 - 534 10 31 000		Office and Operating Supplie	128.63	Window Envelope With Logo
		403 - 534 50 31 000		Office and Operating Supplie	43.33	Envelopes, Pens, Staplers & Folders
		101 - 542 30 31 000		Office and Operating Supplie	11.40	Envelopes, Pens, Staplers & Folders
		501 - 548 30 31 000		Office & Operating Supplies	115.71	Envelopes, Pens, Staplers & Folders
		001 - 558 50 31 000		Office and Operating Supplie	21.44	Window Envelope With Logo
		001 - 558 50 31 000		Office and Operating Supplie	23.74	Custom Stamp
		001 - 558 60 31 000		Operating Supplies	21.44	Window Envelope With Logo
3298	05/27/2016	Claims	1	59372 COLUMBIA BANK	3,674.52	Service Charges April
		001 - 512 50 41 000		Professional Services	36.01	Service Charges April
		001 - 514 20 41 000		Professional Services	14.33	Service Charges April
		107 - 521 20 41 000		Professional Services	906.14	Service Charges April
		406 - 531 10 41 000		Professional Services	906.14	Service Charges April
		401 - 533 10 41 000		Professional Services	906.14	Service Charges April
		403 - 534 10 41 000		Professional Services	905.76	Service Charges April
3299	05/27/2016	Claims	1	59373 COMPASS PLUMBING & DRAIN SERVICES INC	2,007.77	Plumbing
		001 - 518 30 48 000		Repairs & Maintenance	2,007.77	Plumbing Reconfigure Admin/PW Bldg
3300	05/27/2016	Claims	1	59374 ENUMCLAW, CITY OF	300.00	Jail Services
		107 - 523 60 51 000		Intergov. Jail Services	300.00	Jail Services - April 2016
3301	05/27/2016	Claims	1	59375 EVERGREEN EQUIPMENT CO INC	531.53	Street Supplies; Fleet Supplies; Street Supplies
		101 - 542 30 31 000		Office and Operating Supplie	130.84	Blade, Spool & Mix
		101 - 542 30 31 000		Office and Operating Supplie	251.85	Safety Chaps & Chain Oil
		501 - 548 30 32 000		Fuel	148.84	Small Equipment Fuel
3302	05/27/2016	Claims	1	59376 EXCEL SUPPLY COMPANY, INC	86.36	PW Material

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		406 - 531 30 31 000		- Operating Supplies	17.27	Rain Gear, Gloves & Safety Glasses - Rodrigues
		403 - 534 50 31 000		- Office and Operating Supplie	43.18	Rain Gear, Gloves & Safety Glasses - Rodrigues
		101 - 542 30 31 000		- Office and Operating Supplie	25.91	Rain Gear, Gloves & Safety Glasses - Rodrigues
3303	05/27/2016	Claims	1	59377 FERGUSON ENTERPRISES, INC. #1539	637.70	Electric Material; Equipment Repair; Water Material
		401 - 533 50 35 000		- Small Tools and Equipment	48.74	Flashlight
		401 - 533 50 48 000		- Repairs and Maintenance	286.28	Meter Program/Handheld Repair
		403 - 534 50 31 000		- Office and Operating Supplie	16.39	Meter Washers & Gasket
		403 - 534 50 48 000		- Repairs and Maintenance	286.29	Meter Program/Handheld Repair
3304	05/27/2016	Claims	1	59378 FIRE KING OF SEATTLE INC.	271.70	Electric Material; Electric Material; Electric Supplies
		401 - 533 50 31 000		- Operating Supplies	20.73	Dry Chemical Fire Extinguisher Recharge
		401 - 533 50 31 000		- Operating Supplies	78.17	Fire Extinguisher & Inspection
		401 - 533 50 31 000		- Operating Supplies	172.80	Safety Glasses & First Aid Kits
3305	05/27/2016	Claims	1	59379 GALLS, LLC-DBA BLUMENTHAL UNIFORMS	701.19	Uniform; Uniform; Uniform
		107 - 521 20 20 002		- Uniforms	635.11	Uniform - Beauchamp
		107 - 521 20 20 002		- Uniforms	17.47	Uniform - Beauchamp
		107 - 521 20 20 002		- Uniforms	48.61	Ear Piece
3306	05/27/2016	Claims	1	59380 GOOD TO GO!	14.00	Bridge Toll; Bridge Toll
		107 - 521 20 43 000		- Travel	7.00	Bridge Toll
		107 - 521 20 43 000		- Travel	7.00	Bridge Toll
3307	05/27/2016	Claims	1	59381 GOODYEAR - FIFE	93.82	Fleet Material
		501 - 548 30 34 000		- Parts	93.82	#60 Tire
3308	05/27/2016	Claims	1	59382 GRAY & OSBORNE INC	13,417.10	Enginerring Services
		101 - 542 30 41 001		- Professional Services - IT	433.90	Engineering Milton Way/11th Ave Legal Description
		407 - 594 31 63 087		- Stormwater Retrofit Project	660.91	Engineering Stormwater LID Retrofit Project
		404 - 594 34 63 100		- Well #10 Design Project	2,151.73	Engineering Well No. 10 Reconstruction
		310 - 595 30 63 082		- Milton Way Ped Improv	10,170.56	Engineering Milton Way Ped Impr (17th-22nd Ave)
3309	05/27/2016	Claims	1	59383 GSR POLYGRAPH SERVICES	150.00	Police Service
		118 - 521 23 49 000		- Miscellaneous	150.00	Polygraph Exam - Jarrod Beauchamp
3310	05/27/2016	Claims	1	59384 HD FOWLER	14.33	Water Supplies
		403 - 534 51 31 000		- Office and Operating Supplie	14.33	PVC Union
3311	05/27/2016	Claims	1	59385 KORUM AUTOMOTIVE GROUP	3,828.30	Vehicle Repair; Vehicle Repair; Vehicle Repair; Vehicle Repair; Vehicle Repair
		107 - 521 20 48 001		- Vehicle Repairs and Mainten:	702.15	#140 Brakes, Oil Change, Seat Belt & Wiper Blades
		107 - 521 20 48 001		- Vehicle Repairs and Mainten:	45.90	#650 Oil Change
		107 - 521 20 48 001		- Vehicle Repairs and Mainten:	1,448.50	#868 Oil Change, Suspension, Clean Lights & Transmission Diagnosis
		107 - 521 20 48 001		- Vehicle Repairs and Mainten:	457.22	#283 Oil Change, Cooling System & Brake System Flush

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		107 - 521 20 48 001 -		Vehicle Repairs and Mainten:	1,174.53	#636 Heating System Diagnosis, Rear Differential Service & 60,000 Mile Service
3312	05/27/2016	Claims	1	E59386 MERCHANT CARD SVCS	152.21	Court Credit Card Service Fees
		001 - 512 50 41 000 -		Professional Services	152.21	Court Bank Service Fees
3313	05/27/2016	Claims	1	59387 MICROFLEX	376.66	Tax Audit Program; Tax Audit Program
		001 - 514 20 41 000 -		Professional Services	122.27	Tax Audit Program (Re-issue)
		107 - 521 20 41 000 -		Professional Services	254.39	Tax Audit Program
3314	05/27/2016	Claims	1	59388 MILTON CITY OF	43,572.18	City Utility Tax
		401 - 533 10 44 001 -		Utility Tax	23,448.21	City Utility Tax
		403 - 534 10 44 001 -		Utility Tax	13,619.23	City Utility Tax
		406 - 597 04 07 406 -		Transfer to FUND 407/Capita	6,504.74	City Utility Tax
3315	05/27/2016	Claims	1	59389 NAVIA BENEFIT SOLUTIONS	50.00	FSA Admin Fee
		001 - 517 30 49 000 -		FSA Plan Fees	50.00	FSA Administrative Fee
3316	05/27/2016	Claims	1	E59390 DEBRA PERRY	98.28	Mileage Reimbursement
		001 - 513 10 43 000 -		Travel	98.28	Mileage Dave Reichert's Mayor Mtg
3317	05/27/2016	Claims	1	59391 PIERCE CO BUDGET & FINANCE	530.36	Liquor Tax
		001 - 586 00 51 000 -		Liquor Board Tax Remit	530.36	Liquor Tax - 1st Qtr 2016
3318	05/27/2016	Claims	1	59392 PIERCE COUNTY COMMUNITY NEWSPAPER GROUP	600.00	Monthly Mailing Services
		001 - 513 10 41 002 -		Advertising	600.00	Monthly Mailing Services
3319	05/27/2016	Claims	1	59393 CITY OF PUYALLUP	7,695.00	Jail Services
		107 - 523 60 51 000 -		Intergov. Jail Services	7,695.00	Jail Services - March 2016
3320	05/27/2016	Claims	1	E59394 ROSE REEVES	9.99	Training
		001 - 558 50 43 000 -		Travel	9.99	Conference Lunch
3321	05/27/2016	Claims	1	E59395 JILL SCHWERZLER	23.99	Mileage & Parking
		001 - 513 10 43 000 -		Travel	23.99	Training Mileage & Parking
3322	05/27/2016	Claims	1	59396 SCORE	1,570.00	Jail Services
		107 - 523 60 51 000 -		Intergov. Jail Services	1,570.00	Jail Services - April 2016
3323	05/27/2016	Claims	1	59397 SECOMA FENCE INC.	4,786.25	Park Fencing
		001 - 576 80 48 000 -		Repair & Maintenance	4,786.25	Olympic View Fencing
3324	05/27/2016	Claims	1	E59398 SHELL FLEET PLUS	4,555.94	Fuel
		001 - 518 30 32 000 -		Operating Supplies/Fuel	44.65	Fuel
		107 - 521 20 32 000 -		Fuel	2,486.05	Fuel
		406 - 531 30 32 000 -		Fuel	374.46	Fuel
		401 - 533 50 32 000 -		Fuel	794.64	Fuel
		403 - 534 50 32 000 -		Fuel	568.86	Fuel
		101 - 542 30 32 000 -		Operating Supplies/Fuel	158.20	Fuel
		001 - 576 80 32 000 -		Fuel	129.08	Fuel
3325	05/27/2016	Claims	1	59399 SHRED-IT USA LLC	60.37	Shredding Services
		001 - 514 20 41 000 -		Professional Services	19.92	Shredding Services Finance
		107 - 521 20 41 000 -		Professional Services	40.45	Shredding Services Police
3326	05/27/2016	Claims	1	59400 JOSHUA/TANYA SMITH	250.00	Bldg Rental Deposit Refund
		001 - 586 00 00 002 -		Refund Facility Deposit	250.00	Bldg Rental Deposit Refund
3327	05/27/2016	Claims	1	59401 SONSRAY	487.63	Fleet Repair

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		501 - 548 30 48 000 -		Repairs & Maintenance	487.63	#31 Reset Pressure & Window Replacement
3328	05/27/2016	Claims	1	59402 STANDARD PARTS CORPORATION (NAPA)		To be re-issued with discount
3329	05/27/2016	Claims	1	59403 SUPPLYWORKS	567.91	Facility Supplies; Facility Supplies-Returned; Facility Supplies
		001 - 518 30 31 000 -		Operating Supplies	600.49	Glass Cleaner, Paper Towels, Gloves & Garbage Liners
		001 - 518 30 31 000 -		Operating Supplies	-52.45	Credit For Returned Paper Towels
		001 - 518 30 31 000 -		Operating Supplies	19.87	Gloves
3330	05/27/2016	Claims	1	59404 TMG SERVICES INC.	12.58	Water Material
		403 - 534 51 31 000 -		Office and Operating Supplie	12.58	Union Joints
3331	05/27/2016	Claims	1	59405 UNIFIRST CORPORATION	549.48	Uniforms; Uniforms; Uniforms; Uniforms
		001 - 518 30 20 002 -		Uniforms	9.00	Uniforms
		001 - 518 30 20 002 -		Uniforms	8.25	Uniforms
		406 - 531 30 20 002 -		Uniforms	14.40	Uniforms
		406 - 531 30 20 002 -		Uniforms	13.19	Uniforms
		401 - 533 50 20 002 -		Uniforms	77.94	Uniforms
		401 - 533 50 20 002 -		Uniforms	77.94	Uniforms
		403 - 534 50 20 002 -		Uniforms	7.09	Uniforms
		403 - 534 50 20 002 -		Uniforms	74.70	Uniforms
		403 - 534 50 20 002 -		Uniforms	7.09	Uniforms
		403 - 534 50 20 002 -		Uniforms	68.45	Uniforms
		101 - 542 30 20 002 -		Uniforms	36.92	Uniforms
		101 - 542 30 20 002 -		Uniforms	33.84	Uniforms
		501 - 548 30 20 002 -		Uniforms	53.97	Uniforms
		501 - 548 30 20 002 -		Uniforms	49.45	Uniforms
		001 - 576 80 20 002 -		Uniforms	9.00	Uniforms
		001 - 576 80 20 002 -		Uniforms	8.25	Uniforms
3332	05/27/2016	Claims	1	E59406 WA ST DEPT OF REVENUE	23,871.16	Excise Tax
		503 - 518 80 35 000 -		Small Tools And Minor Equip	5.01	Tax Owed Monoprice.com
		107 - 521 20 31 000 -		Office and Operating Supplie	5.00	Tax Owed Amazon
		107 - 521 20 35 000 -		Small Tools and Equipment	25.38	Tax Owed Amazon
		118 - 521 23 35 000 -		Small Tools & Equipment	11.05	Tax Owed Amazon
		105 - 521 80 35 003 -		Bike Equipment	14.10	Tax Owed Amazon
		105 - 521 80 35 003 -		Bike Equipment	38.06	Tax Owed Amazon
		105 - 521 80 35 003 -		Bike Equipment	25.37	Tax Owed Amazon
		105 - 521 80 35 003 -		Bike Equipment	4.70	Tax Owed Amazon
		406 - 531 10 44 002 -		Excise Tax	1,084.12	Excise Tax - Stormwater
		401 - 533 10 44 002 -		Elect Excise Tax	14,914.41	Excise Tax - Electric
		403 - 534 10 44 002 -		Water Excise Tax	7,695.83	Excise Tax - Water
		501 - 548 30 34 000 -		Parts	34.87	Tax Owed BGFIC Fuel Systems
		001 - 558 50 31 000 -		Office and Operating Supplie	1.49	Tax Owed Amazon
		001 - 558 50 31 000 -		Office and Operating Supplie	5.14	Tax Owed Amazon
		001 - 558 50 35 000 -		Small Tools and Equipment	1.49	Tax Owed Amazon
		001 - 558 50 35 000 -		Small Tools and Equipment	5.14	Tax Owed Amazon
3333	05/27/2016	Claims	1	59407 WATER MANAGEMENT LABORATORIES	158.25	Water Testing; Water Testing
		403 - 534 51 31 000 -		Office and Operating Supplie	53.25	BacDown
		403 - 534 51 41 000 -		Professional Services	105.00	Coliform
3346	05/27/2016	Claims	1	59408 STANDARD PARTS CORPORATION (NAPA)	128.63	Fleet Material

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		501 - 548 30 34 000		Parts	128.63	#3 & #60 Floor Mats
3407	05/31/2016	Claims	1	E59409 OGDEN MURPHY WALLACE	8,705.00	Legal Services
		001 - 515 30 41 000		City Attorney	3,100.00	Executive
		001 - 515 30 41 000		City Attorney	190.00	Personnel
		001 - 515 30 41 000		City Attorney	760.00	Planning
		001 - 515 30 41 000		City Attorney	1,100.00	Public Records Act
		001 - 515 30 41 000		City Attorney	450.00	Negotiation IBEW
		406 - 531 30 41 000		Professional Services	660.00	Engineering
		401 - 533 10 41 000		Professional Services	1,955.00	Astound Franchise
		401 - 533 50 41 000		Professional Services	490.00	Public Works
3408	06/03/2016	Claims	1	E59410 BONNEVILLE POWERADMINISTRATION	200,136.00	Monthly Power
		401 - 533 50 33 000		BPA-Electricity for Resale	200,136.00	Monthly Power April 2016
3409	06/03/2016	Claims	1	E59411 CIT TECHNOLOGY (QDS)	649.86	Copier Lease Fin/PW; Copier Lease
		001 - 513 10 45 000		Operating Rentals and Lease	49.12	Copier Lease City Hall & PW Admin
		001 - 514 20 45 000		Operating Rentals and Lease	24.56	Copier Lease City Hall & PW Admin
		001 - 518 30 45 000		Operating Rentals and Lease	4.91	Copier Lease City Hall & PW Admin
		001 - 518 90 45 000		Operating Rentals and Lease	4.91	Copier Lease City Hall & PW Admin
		107 - 521 20 45 000		Operating Rentals and Lease	158.64	Police Copier Lease
		406 - 531 10 45 000		Operating Rentals and Lease	66.31	Copier Lease City Hall & PW Admin
		401 - 533 10 45 000		Operating Rentals and Lease	147.36	Copier Lease City Hall & PW Admin
		403 - 534 10 45 000		Operating Rentals and Lease	142.46	Copier Lease City Hall & PW Admin
		101 - 542 30 45 000		Operating Rentals and Lease	9.82	Copier Lease City Hall & PW Admin
		501 - 548 30 45 000		Operating Rentals & Leases	12.28	Copier Lease City Hall & PW Admin
		001 - 558 50 45 000		Operating Rentals and Lease	12.28	Copier Lease City Hall & PW Admin
		001 - 558 60 45 000		Operating Rentals and Lease	12.28	Copier Lease City Hall & PW Admin
		001 - 576 80 45 000		Operating Rentals and Lease	4.93	Copier Lease City Hall & PW Admin
3410	06/03/2016	Claims	1	59412 TOM L HARPER JR	425.63	Refund inactive customer credit balance
		406 - 343 10 00 000		Storm Drainage Fees	-46.73	
		401 - 343 30 00 000		Electric Sales	-82.95	
		403 - 343 40 10 000		Water Sales	-295.95	
3411	06/03/2016	Claims	1	59413 ZACHERY & LAUREL KREISS	94.16	Refund inactive customer credit balance
		403 - 343 40 10 000		Water Sales	-109.16	
		401 - 369 91 00 401		Misc Revenue	15.00	
3412	06/03/2016	Claims	1	E59414 LAKEHAVEN UTILITY DISTRICT	921.70	Intertie Ready To Serve Fee
		403 - 534 51 47 001		Public Utility Services	921.70	Intertie Ready To Serve Fee
3413	06/03/2016	Claims	1	59415 CITY OF MILTON	12,326.00	City Utility Bills
		001 - 518 30 47 000		Public Utility Service	50.67	City Utility Bill
		107 - 521 20 47 000		Utilities	614.59	City Utility Bill
		406 - 531 30 47 000		Public Utility Services	195.65	City Utility Bill
		401 - 533 50 47 000		Public Utility Services	700.97	City Utility Bill
		403 - 534 51 47 001		Public Utility Services	7,499.89	City Utility Bill
		101 - 542 30 47 000		Utilities	1,384.59	City Utility Bill
		001 - 558 50 47 000		Public Utility Services	75.90	City Utility Bill
		001 - 558 60 47 000		Public Utilities	48.66	City Utility Bill
		001 - 569 00 47 000		Public Utilities-SC	580.32	City Utility Bill
		001 - 576 80 47 000		Public Utility Service	1,174.76	City Utility Bill
3414	06/03/2016	Claims	1	E59416 PUGET SOUND ENERGY	284.93	Electric Intertie; Natural Gas

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		107 - 521 20 47 000 -		Utilities	27.88	Police Natural Gas
		403 - 534 50 47 000 -		Public Utility Services	192.01	Electric Intertie
		001 - 569 00 47 000 -		Public Utilities-SC	65.04	MAC Natural Gas
3415	06/03/2016	Claims	1	E59417 ROB REED	64.80	Mileage Reimbursement
		503 - 518 80 43 000 -		Travel	64.80	Mileage Reimbursement IT
3416	06/03/2016	Claims	1	E59418 VERIZON WIRELESS	2,824.16	Data Line For Flex Net; Smart Phones; PW Cell Phone
		001 - 513 10 42 000 -		Communication	83.38	Cell Phones
		001 - 514 20 42 000 -		Communication	5.88	Cell Phones
		001 - 518 30 42 000 -		Communication	32.81	Cell Phones
		001 - 518 30 42 000 -		Communication	17.08	Cell Phones
		503 - 518 80 42 503 -		Communications	199.68	Cell Phones
		001 - 518 90 42 000 -		Communication	14.69	Cell Phones
		001 - 518 90 42 000 -		Communication	2.85	Cell Phones
		107 - 521 20 42 000 -		Communication	1,297.13	Cell Phones
		118 - 521 23 42 000 -		Communications	101.38	Cell Phones
		406 - 531 10 42 000 -		Communication	43.13	Cell Phones
		406 - 531 10 42 000 -		Communication	23.35	Cell Phones
		406 - 531 30 42 000 -		Communication	162.17	Cell Phones
		401 - 533 10 42 000 -		Communications	72.28	Data Line For Flex Net
		401 - 533 10 42 000 -		Communications	66.63	Cell Phones
		401 - 533 10 42 000 -		Communications	60.36	Cell Phones
		401 - 533 50 42 000 -		Communication	132.76	Cell Phones
		403 - 534 10 42 000 -		Communication	72.28	Data Line For Flex Net
		403 - 534 10 42 000 -		Communication	66.63	Cell Phones
		403 - 534 10 42 000 -		Communication	46.13	Cell Phones
		403 - 534 50 42 000 -		Communication	108.39	Cell Phones
		101 - 542 30 42 000 -		Communication	32.24	Cell Phones
		101 - 542 30 42 000 -		Communication	24.49	Cell Phones
		501 - 548 30 42 000 -		Communications	2.94	Cell Phones
		501 - 548 30 42 000 -		Communications	20.21	Cell Phones
		001 - 558 50 42 000 -		Communications	58.75	Cell Phones
		001 - 558 50 42 000 -		Communications	9.67	Cell Phones
		001 - 558 50 42 000 -		Communications	1.14	Cell Phones
		001 - 558 60 42 000 -		Communication	14.69	Cell Phones
		001 - 575 50 42 000 -		Communication -	0.69	Cell Phones
		001 - 575 50 42 000 -		Communication -	1.48	Cell Phones
		001 - 576 80 42 000 -		Communication	32.13	Cell Phones
		001 - 576 80 42 000 -		Communication	16.74	Cell Phones
3421	06/06/2016	Claims	1	59419 AABERG'S	690.48	Equipment Rental
		401 - 533 50 45 000 -		Operataing Rentals and Lease	345.24	Chipper Rental
		101 - 542 30 45 000 -		Operating Rentals and Lease	345.24	Chipper Rental
3422	06/06/2016	Claims	1	59420 ALTEC INDUSTRIES INC.	308.59	Electric Material
		401 - 533 50 31 000 -		Operating Supplies	308.59	Helmet Light
3423	06/06/2016	Claims	1	59421 ASSOCIATED PETROLEUM PRODUCTS	954.45	Fuel
		401 - 533 50 32 000 -		Fuel	106.05	Fuel
		403 - 534 50 32 000 -		Fuel	265.12	Fuel
		101 - 542 30 32 000 -		Operating Supplies/Fuel	477.23	Fuel
		001 - 576 80 32 000 -		Fuel	106.05	Fuel
3424	06/06/2016	Claims	1	59422 KATHLEEN BRAMMER	100.00	Deposit Facility Refund
		001 - 586 00 00 002 -		Refund Facility Deposit	100.00	Deposit Facility Refund

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Trans Date	Type	Acct #	Chk #	Claimant	Amount	Memo	
3425	06/06/2016	Claims	1	59423	CASCADE RECREATION, INC.	236.30	Park Material
					001 - 576 80 31 000 - Operating Supplies	236.30	Waste Bags
3426	06/06/2016	Claims	1	59424	CENTURYLINK	223.19	T1 Lines
					107 - 521 20 42 000 - Communication	74.39	T1 Lines
					401 - 533 10 42 000 - Communications	74.41	T1 Lines
					403 - 534 10 42 000 - Communication	74.39	T1 Lines
3427	06/06/2016	Claims	1	59425	CHUCKALS	343.14	Return PW Supplies; PW Supplies; PW Supplies; PW Supplies
					001 - 518 90 31 000 - Office and Operating Supplie	6.81	Custom Stamp
					406 - 531 10 31 000 - Office and Operating Supplie	-17.87	Return Folders
					406 - 531 10 31 000 - Office and Operating Supplie	322.73	Office Chair - Timm
					406 - 531 10 31 000 - Office and Operating Supplie	6.81	Custom Stamp
					406 - 531 30 31 000 - Operating Supplies	7.02	Dry Erase Markers
					401 - 533 10 31 000 - Office and Operating Supplie	-17.86	Return Folders
					401 - 533 50 31 000 - Operating Supplies	16.37	Dry Erase Markers
					403 - 534 10 31 000 - Office and Operating Supplie	-17.87	Return Folders
					403 - 534 50 31 000 - Office and Operating Supplie	16.36	Dry Erase Markers
					101 - 542 30 31 000 - Office and Operating Supplie	7.02	Dry Erase Markers
					001 - 558 50 31 000 - Office and Operating Supplie	6.81	Custom Stamp
					001 - 558 60 31 000 - Operating Supplies	6.81	Custom Stamp
3428	06/06/2016	Claims	1	59426	DATA BAR INCORPORATED	5,695.61	Past Due Statement Production; Consumer Confidence Report Flyer; Utility Billing Statements
					406 - 531 10 49 003 - Misc/Outside Printing	240.15	Past Due Statements Print & Mail
					406 - 531 10 49 003 - Misc/Outside Printing	690.82	Utility Billing Print & Mail
					401 - 533 10 49 003 - Misc/Outside Printing	480.30	Past Due Statements Print & Mail
					401 - 533 10 49 003 - Misc/Outside Printing	1,381.63	Utility Billing Print & Mail
					403 - 534 10 49 003 - Misc/Outside Printing	480.31	Past Due Statements Print & Mail
					403 - 534 10 49 003 - Misc/Outside Printing	1,381.63	Utility Billing Print & Mail
					403 - 534 51 49 003 - Printing	1,040.77	Consumer Confidence Report Flyer
3429	06/06/2016	Claims	1	59427	DATEC, INC.	19,122.03	Police Material
					107 - 521 20 36 000 - Small Assets/IT	19,122.03	Panasonic Toughbooks (7)
3430	06/06/2016	Claims	1	59428	EVERGREEN EQUIPMENT CO INC	67.93	Water Material; Electric Material
					401 - 533 50 31 000 - Operating Supplies	39.43	Bar & Chain Oil
					403 - 534 50 48 000 - Repairs and Maintenance	28.50	Sharpen Chains
3431	06/06/2016	Claims	1	59429	FERGUSON ENTERPRISES, INC. #1539	584.73	Water Material; Water Material
					403 - 534 50 31 000 - Office and Operating Supplie	318.33	Pipe
					403 - 534 50 31 000 - Office and Operating Supplie	266.40	Service Saddles With Straps
3432	06/06/2016	Claims	1	E59430	GATEWAY SERVICES	5.00	Web Payments Services
					406 - 531 10 41 000 - Professional Services	1.00	Web Payment Service Fee
					401 - 533 10 41 000 - Professional Services	2.00	Web Payment Service Fee
					403 - 534 10 41 000 - Professional Services	2.00	Web Payment Service Fee
3433	06/06/2016	Claims	1	59431	JENNINGS EQUIPMENT INC.	132.87	Fleet Material
					501 - 548 30 34 000 - Parts	132.87	#12 Filters, Cartridge, Oil & Paint
3434	06/06/2016	Claims	1	59432	KIMBALL MIDWEST	478.56	Fleet Supplies
					501 - 548 30 31 000 - Office & Operating Supplies	478.56	Hex Nuts, Washers & Bolts
3435	06/06/2016	Claims	1	59433	NAVIA BENEFIT SOLUTIONS	50.00	FSA Admin Fee

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			001 - 517 30 49 000		FSA Plan Fees	50.00	FSA Administrative Fee
3436	06/06/2016	Claims	1	59434	OWEN EQUIPMENT COMPANY	1,967.58	Fleet Material; Fleet Material
			501 - 548 30 34 000		- Parts	1,609.56	#41 Clamps, Gaskets, Hose Ends & Bolts
			501 - 548 30 34 000		- Parts	358.02	#41 Flange Offset & Toggle Bolt
3437	06/06/2016	Claims	1	59435	PIERCE CO BUDGET & FINANCE	11,181.52	Traffic Operations Maintenance; Traffic Operations Maintenance; Traffic Operations Maintenance
			101 - 542 30 31 000		- Office and Operating Supplie	4,434.63	Traffic Operations Maintenance - January 2016
			101 - 542 30 48 000		- Repairs and Maintenance	4,315.61	Traffic Operations Maintenance - March 2016
			101 - 542 30 48 000		- Repairs and Maintenance	977.99	Traffic Operations Maintenance - February 2016
			101 - 542 30 48 004		- Street Sign Retrofit Program	1,453.29	Traffic Operations Maintenance - January 2016
3438	06/06/2016	Claims	1	59436	PUMPTECH, INC.	180.67	Water Supplies
			403 - 534 51 31 000		- Office and Operating Supplie	180.67	Impeller
3439	06/06/2016	Claims	1	59437	RANDLES SAND & GRAVEL INC	688.51	PW Material
			401 - 533 50 31 000		- Operating Supplies	229.31	Crushed Rock
			403 - 534 50 31 000		- Office and Operating Supplie	229.60	Crushed Rock
			101 - 542 30 31 000		- Office and Operating Supplie	229.60	Crushed Rock
3440	06/06/2016	Claims	1	59438	SEATTLE PUMP AND EQUIPMENT CO	553.73	Fleet Material
			501 - 548 30 34 000		- Parts	553.73	#41 Cuffed Rubber Debris Hose
3441	06/06/2016	Claims	1	59439	SOUND CHRISTIAN FELLOWSHIP	500.00	Refund Facility Rental Deposit
			001 - 586 00 00 002		- Refund Facility Deposit	500.00	Refund Facility Rental Deposit
3442	06/06/2016	Claims	1	59440	STANDARD PARTS CORPORATION (NAPA)	197.43	Fleet Material; Fleet Material
			501 - 548 30 31 000		- Office & Operating Supplies	87.16	Oil Dry & Car Wash Supplies
			501 - 548 30 31 000		- Office & Operating Supplies	67.97	Bulbs, Lamps & Lift Kit
			501 - 548 30 34 000		- Parts	42.30	#24 Trailer Connector & Wire
3443	06/06/2016	Claims	1	59441	SURPLUS AMMO & ARMS, LLC	7,032.51	Ammunition
			107 - 521 20 31 001		- Ammunition	7,032.51	Ammunition
3444	06/06/2016	Claims	1	59442	UNIFIRST CORPORATION	234.19	Uniforms; Uniforms
			001 - 518 30 20 002		- Uniforms	6.78	Uniforms
			406 - 531 30 20 002		- Uniforms	10.85	Uniforms
			401 - 533 50 20 002		- Uniforms	77.94	Uniforms
			403 - 534 50 20 002		- Uniforms	7.09	Uniforms
			403 - 534 50 20 002		- Uniforms	56.27	Uniforms
			101 - 542 30 20 002		- Uniforms	27.83	Uniforms
			501 - 548 30 20 002		- Uniforms	40.65	Uniforms
			001 - 576 80 20 002		- Uniforms	6.78	Uniforms
3445	06/06/2016	Claims	1	59443	UNIVAR	303.59	Water Material
			403 - 534 51 31 000		- Office and Operating Supplie	303.59	Chemicals
3446	06/06/2016	Claims	1	59444	VALLEY FREIGHTLINER INC.	29.48	Credit Key Refund; Fleet Keys



To: Mayor Perry and City Council Members
From: Mark Howlett, Interim Public Works Director
Date: June 6, 2016
Re: Telecommunications Franchise with Astound Broadband LLC

ATTACHMENTS: Franchise Agreement with Astound Broadband LLC

TYPE OF ACTION:

Information Only Discussion Action Public Hearing Expenditure

Recommended Motion: I move to authorize the Mayor to sign an ordinance granting Astound Broadband LLC a franchise to install and maintain facilities for a telecommunications network within the public rights-of-way of the City.

Fiscal Impact/Source of Funds: The City is able to recover the costs of drafting and processing the franchise. (See Page 18, Section 15.) Permit fees for specific projects will be charged separately.

Issue: Astound Broadband, LLC is a telecommunications company that wishes to install and operate telecommunications equipment in the city's streets.

Discussion: Private utility companies wishing to install facilities in the public right-of-way must first obtain a franchise from the City. Astound Broadband wishes to install equipment in Milton's right-of-way. This equipment will be used to provide telecommunications services, private lines, internet access services, dark fiber services and lit fiber services. Astound Broadband has requested that the City grant them a franchise laying out the terms and conditions under which this equipment is installed and the services provided.

Pursuant to RCW 35A.47.040 the City has the authority to grant non-exclusive franchises for use of public streets and other rights-of-way.

This franchise does not grant Astound Broadband authority to install any facilities without first obtaining appropriate permits, leases, easements, or other approvals as required.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILTON, WASHINGTON, GRANTING TO ASTOUND BROADBAND, LLC D/B/A WAVE AND ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A FIBER OPTIC CABLE NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF MILTON, WASHINGTON.

WHEREAS, the City is authorized to grant and renew telecommunications franchises for the installation, operation, and maintenance of telecommunication systems and otherwise regulate telecommunications services within the City boundaries by virtue of federal and state statutes, by the City’s police powers, by its authority over its public rights-of-way, and by other City powers and authority; and

WHEREAS, Astound Broadband, LLC d/b/a Wave (“Franchisee”), desires to provide telecommunications services and to construct, operate and maintain a telecommunications system within the City; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040; and

WHEREAS, the City Council has determined that the terms of the Franchise are consistent with their desired objectives and serves the interest of the community and its citizens.

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Grantee do hereby agree as follows:

Section 1. Franchise Granted.

1.1 Pursuant to RCW 35A.47.040, the City of Milton, a Washington municipal corporation (the “City”), grants to Franchisee, its successors, legal representatives and assigns, subject to the terms and conditions set forth below, a Franchise for a period of ten (10) years, beginning on the effective date of this ordinance, set forth in Section 40.

1.2 This Franchise grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, acquire, sell, lease, and use all necessary Facilities for a telecommunications network in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City, including such additional areas as may be subsequently included in the corporate limits of the City during the term of this Franchise (the “Franchise Area”), as approved pursuant to City permits issued pursuant to Section 8.2. The phrase “Rights-of-Way” (singular “Right-of-Way”) as used in this Franchise, means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, lane, public way, drive, or circle, including, but not limited to, public utility easements, or dedicated utility strips, provided the City has authority to grant permits, licenses or franchises for use thereof, or has regulatory authority thereover, excluding railroad right-of-way, airports, harbor areas, buildings, parks, poles, conduits, dedicated but un-opened right-of-way, and any land, facilities, or property owned, maintained, or leased by the City in its governmental or proprietary capacity or as an operator of a utility. To the extent that easements are designated for only certain functions or do not permit such Facilities, such easements will not be considered part of the Rights-of-Way. “Facilities” as used in this Franchise means one or more elements of Franchisee’s telecommunications network, with all necessary cables, wires, conduits, ducts, pedestals, electronics, and other necessary appurtenances; provided that new utility poles for overhead wires or cabling are specifically excluded. Equipment enclosures with air conditioning or other noise generating equipment are also excluded from “Facilities,” to the extent such equipment is located in zoned residential areas of the City.

Section 2. Authority Limited to Occupation of Public Rights-of-Way.

2.1 The authority granted by this Franchise is a limited, non-exclusive authorization to occupy and use the City’s Rights-of-Way subject to the terms of this Franchise and applicable permits. Such use must be in compliance with the Milton Municipal Code provisions. Franchisee represents that it expects to provide the following services within the City: telecommunications services, private line, internet access services, dark fiber services and lit fiber services (the “Services”). Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the

purpose of providing the Services. A more detailed description of Franchisee's telecommunications system and Services is described in Exhibit A. If Franchisee desires to expand the types of Services provided within the City, it shall provide written notification of the addition of such services prior to the addition of the service; provided, however, that Franchisee may not offer Cable Services pursuant to Section 2.3.

2.2 As described in Section 8, construction is not authorized without the appropriate permits, leases, easements, or approvals. This Franchise does not and shall not convey any right to Franchisee to install its Facilities on, under, over, across, or to otherwise use City owned or leased properties of any kind outside of the incorporated area of the City or to install Facilities on, under, over, across, or otherwise use any City owned or leased property other than the City's Rights-of-Way. This Franchise does not convey any right to Franchisee to install its Facilities on, under, over, or across any facility or structure owned by a third-party without such written approval of the third-party. Further this Franchise does not convey any right to continue in any streets, avenues, alleys, roads or public places which are eliminated from the City limits by reason of subsequent disincorporation or reduction of City limits. No substantive expansions, additions to, or modifications or relocation of any of the Facilities shall be permitted without first having received appropriate permits from the City pursuant to Section 8.2. As of the effective date of this Franchise, Franchisee has no owned Facilities located in the City's Rights-of-Way.

2.3 Under this Franchise, the Facilities shall not be used for Cable Services as that term is defined in 47 U.S.C. § 522(6).

2.4 Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise.

Section 3. Non-Exclusive Franchise Grant. This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any Rights-of-Way. This Franchise shall in no way prevent or prohibit the City from using any Rights-of-Way or affect its jurisdiction over any Rights-of-Way or any part of Right-of-Way, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of Right-of-Way as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares, and other public properties of every type and description.

Section 4. Location of Telecommunications Facilities. Franchisee is maintaining a telecommunications network consisting of Facilities within the City. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Design and Construction Standards, the Milton Municipal Code, and subject to the City's applicable permit requirements. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area.

Section 5. Relocation of Facilities.

5.1 Franchisee agrees and covenants to protect, support, temporarily disconnect, relocate, or remove from any Rights-of-Way any of its Facilities when reasonably required by the City by reason of traffic conditions or public safety, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Franchisee shall in all such cases have the privilege to temporarily bypass in the

authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. Except as otherwise provided by law, the costs and expenses associated with relocations ordered pursuant to this Section 5.1 shall be borne by Franchisee. Nothing contained within this Franchise shall limit Franchisee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

5.2 Upon request of the City and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the City's improvements shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

5.3 If the City determines that the project necessitates the relocation of Franchisee's existing Facilities, the City shall:

(a) At least sixty (60) days prior to commencing the project, provide Franchisee with written notice requiring such relocation; provided, however, that in the event of an emergency situation, defined for purposes of this Franchise as a condition posing an imminent threat to property, life, health, or safety of any person or entity, the City shall give Franchisee written notice as soon as practicable; and

(b) At least forty-five (45) days prior to commencing the project, provide Franchisee with copies of pertinent portions of the plans and specifications for the improvement project and a proposed location for Franchisee's Facilities so that Franchisee may relocate its Facilities in other City Rights-of-Way in order to accommodate such improvement project; and

(c) After receipt of such notice and such plans and specifications, Franchisee shall complete relocation of its Facilities at least ten (10) days prior to commencement

of the City's project at no charge or expense to the City, except as otherwise provided by law. Relocation shall be accomplished in such a manner as to accommodate the City's project.

5.4 Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. Such alternatives must be submitted to the City at least thirty (30) days prior to commencement of the project. The City shall evaluate the alternatives and advise Franchisee in writing if one or more of the alternatives are suitable to accommodate the work that would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit at its sole cost and expense additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Franchisee full and fair consideration. In the event the City ultimately determines that there is no other reasonable or feasible alternative, Franchisee shall relocate its Facilities as otherwise provided in this Section 5.

5.5 The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

5.6 Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 17, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities in a timely manner; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

5.7 Whenever any person shall have obtained permission from the City to use any Right-of-Way for the purpose of moving any building, Franchisee, upon ten (10) business days' written notice from the City, shall raise, remove, or relocate to another part of the Right-of-Way, at

the expense of the person desiring to move the building, any of Franchisee's Facilities that may obstruct the removal of such building.

5.8 If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.4 the City may perform such work or cause it to be done, and the City's costs shall be paid by Franchisee pursuant to Section 15.3 and Section 15.4.

5.9 Unless Franchisee's Facilities are abandoned or transferred to the City under Section 19, the provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6. Undergrounding of Facilities.

6.1 Franchisee must place its Facilities underground except as otherwise expressly provided herein or in available City standards, or in areas where any other telecommunications or cable company has placed Facilities above ground. Except as specifically authorized by permit of the City, Franchisee shall not be permitted to erect poles. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its Facilities at the time of a permit application, the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to underground installation at Franchisee's expense at such time as the City requires all other utilities, except electrical utilities, with aerial facilities in the area to convert them to underground installation. Unless otherwise permitted by the City, Franchisee shall underground its Facilities in all new developments and subdivisions where other utilities are to be constructed underground and any development or subdivision where utilities are currently underground.

6.2 Whenever the City may require the undergrounding of the aerial utilities in any area of the City, Franchisee shall underground its aerial facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of

common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own 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 of conduits of Franchisee's Facilities being undergrounded in comparison to the total number of conduits of all other utility facilities being undergrounded. This Section 6.2 shall only apply to the extent Franchisee has existing aerial utilities in the City or is specifically authorized to build aerial utilities by the City.

6.3 Within forty-eight (48) hours (excluding weekends and City-recognized holidays) following a request from the City, Franchisee shall locate underground Facilities by marking the location on the ground. The location of the underground Facilities shall be identified using orange spray paint, unless otherwise specified by the City, and within two (2) feet of the actual location.

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

6.5 Franchisee shall not remove any underground cable or conduit that requires trenching or other opening of the Rights-of-Way along the extension of cable to be removed, except as provided in this Section 6.5. Franchisee may remove any underground cable from the Right-of-Way that has been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way along the extension of cable to be removed, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5. When the City determines, in the City's sole discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove the cable

or conduit at Franchisee's sole cost and expense. If Franchisee ceases to use all or a portion of the underground cable and conduit in the Right-of-Way for a period of twelve consecutive months or more, and such cable or conduit is not removed, then it shall be deemed abandoned and title thereto shall vest in the City at no cost to the City. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground cable or conduit from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

6.6 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of Franchisee's Facilities.

Section 7. Maps and Records.

7.1 After construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps in compliance with the Milton permitting process. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in AutoCAD or other industry standard readable formats that are acceptable to the City and delivered electronically. Franchisee shall provide such maps within ten (10) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps and as-builts provided to the City.

7.2 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 Services and Facilities have been properly collected and paid by Franchisee.

7.3 All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall

this Section 7.3 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 7.3 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.

7.4 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 upon request 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 in this Section 7.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

Section 8. Work in the Rights-of-Way.

8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so as to minimize interference with the free passage of traffic and the free use of adjoining property,

whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares, and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the Milton Municipal Code or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair, and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or any interference with City services. The provisions of this Section 8 shall survive the expiration of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

8.2 Whenever Franchisee shall commence work in any public Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its cable or equipment, it shall apply to the City for a permit to do so and shall comply with the requirements of the Milton Municipal Code. In addition, except in the case of an emergency, Franchisee shall give the City at least ten (10) working days' prior written notice of its intent to commence work in the Rights-of-Way. During the progress of the work, Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise or in the Milton Municipal Code.

8.3 If either the City or Franchisee shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section 8.3, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

(a) Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties and in accordance with the applicable codes, rules and regulations; and

(c) To the extent reasonably possible, the Franchisee shall, at the direction of the city, cooperate with the City and provide other franchisees with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the right-of-way as well as to minimize traffic related impacts.

(d) Either party may deny such request for safety reasons.

8.4 Except for emergency situations, Franchisee shall give at least seven (7) days' prior notice of intended construction to residents in the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. At least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property, Franchisee shall physically post a notice on the property indicating the nature and location of the work to be performed. Door hangers are permissible methods of notifications to residents. Franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Following performance of the work, Franchisee shall restore the private property as nearly as possible to its condition prior to construction, except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

8.5 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 8.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree

trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification of the City and at the expense of Franchisee. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth not owned by the City. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Public Works Director or his/her designee.

8.6 Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon written notice as determined by the City, to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated as ordered by the City to minimize public inconvenience, disruption, or damages.

8.7 The granting of this Franchise shall not preclude the City, its accredited agents or its contractors, from blasting, grading or doing other necessary road work contiguous to the Franchisee's improvements. The City shall provide Franchisee with twenty-four (24) hours written notice of any blasting, grading, excavating or doing other necessary road work contiguous to Franchisee's improvement.

Section 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities nor for interruptions in service to Franchisee's customers that are a direct result of

Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 10. Safety Requirements.

10.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

10.2 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 15.3 and Section 15.4.

10.3 Additional safety standards include:

(a) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities.

(b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

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

- (a) Be in writing;
- (b) Be given to the person doing the work or posted on the work site;
- (c) Be sent to Franchisee by overnight delivery;
- (d) Indicate the nature of the alleged violation or unsafe condition; and
- (e) Establish conditions under which work may be resumed.

Section 11. Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12. City Conduit. Except in emergency situations, Franchisee shall inform the Public Works Director with at least thirty (30) days' advance written notice that it is constructing,

relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit, and related structures necessary to access the conduit pursuant to and subject to RCW 35.99.070. Such notification shall be in addition to the requirement to apply for and obtain permits pursuant to Section 8.2.

Section 13. Restoration after Construction.

13.1 Franchisee shall, after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 19, at Franchisee's own cost and expense, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to a condition as nearly as possible to the condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee. All trees, landscaping and grounds removed, damaged or disturbed as a result of the installation, construction, relocation, maintenance or repair, shall be replaced or restored, at Franchisee's cost and expense to a condition as nearly as possible to their condition immediately prior to any such work. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (Chapter 332-120 WAC), and local standards and specifications.

13.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the permits issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted for a period of two (2) years and for undiscovered defects as is standard and customary for this type of work.

13.3 If conditions (e.g. weather) make the complete restoration required under Section 13 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall

promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

13.4 In the event Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way within the time agreed to by the Public Works Director, or his/her designee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an itemized invoice to Franchisee in accordance with the provisions of Section 15.3 and Section 15.4. In addition, and pursuant to Section 15.3 and Section 15.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work.

13.5 The provisions of this Section 13 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 14. Emergencies.

14.1 In the event of any emergency in which any of Franchisee's Facilities located in, above, or under any street endangers the property, life, health, or safety of any person, entity or the City, or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities and to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of any person, entity or the City, without first applying for and obtaining a permit as required by this Franchise. Franchisee shall notify the City, verbally or in writing, as soon as practicable following the onset of the emergency. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than forty-eight hours after beginning emergency work in the Rights-of Way. The City retains the right and privilege to cut or move any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If the City becomes aware of an emergency before the Franchisee, then the City shall notify Franchisee by telephone promptly upon learning of the emergency and shall exercise reasonable efforts to avoid an interruption of Franchisee's operations.

14.2 Whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, an adjoining public place, street utilities, City property, Rights-of-Way, or private property (collectively “Endangered Property”) or endangers the public, the Public Works Director or his/her designee, may direct Franchisee, at Franchisee’s own expense, to take reasonable action to protect the Endangered Property or the public, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if an emergency situation exists that requires immediate action before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the Endangered Property and take such reasonable actions as are necessary to protect the Endangered Property or the public. Franchisee shall be liable to the City for the costs of any such repairs in accordance with the provisions of Section 15.3 and Section 15.4.

14.3 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the gross negligence or willful acts of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City’s actions under this Section 14 except to the extent caused by the gross negligence or willful acts of the City, its employees, contractors, or agents.

Section 15. Recovery of Costs.

15.1 Franchisee shall pay a grant fee in an amount not to exceed Four Thousand Five Hundred and No/100 Dollars (\$4,500.00) for the City’s legal and administrative costs incurred in drafting and processing this Franchise and all work related thereto. No construction permits shall be issued for the installation of Facilities authorized until such time as the City has received payment of the grant fee. Franchisee shall further be subject to all generally applicable permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the

City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 15.3.

15.2 In addition to Section 15.1, Franchisee shall promptly reimburse the City in accordance with the provisions of Section 15.3 and Section 15.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

15.3 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

15.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 16. Franchise Fees and Utility Taxes.

16.1 Franchisee represents that its Services, as authorized under this Franchise, are a telephone business as defined in RCW 82.16.010, or that it is a service provider as used in RCW 35.21.860 and defined in RCW 35.99.010. As a result, the City will not impose franchise fees under the terms of this Franchise. The City reserves its right to impose a franchise fee on Franchisee if Franchisee's Services as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are otherwise removed. The City also reserves its right to require that Franchisee obtain a separate franchise for a change in use, which franchise may include provisions intended to regulate Franchisee's operations as allowed under applicable law. Nothing contained within this Franchise shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

16.2 Franchisee acknowledges that its operation with the City constitutes a telecommunication business subject to the utility tax imposed pursuant to the Milton City Code Chapter 5.32. Franchisee stipulates and agrees that certain of its business activities are subject to taxation as a telecommunication business and that Franchisee shall pay to the City the rate applicable to such taxable services under Milton City Code Chapter 5.32, and consistent with state and federal law. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Milton City Code Chapter 5.32 as may be permitted by law.

Section 17. Indemnification.

17.1 Franchisee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise.

17.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 17. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

17.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 17.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

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

17.5 Notwithstanding any other provisions of this Section 17, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any grossly negligent, willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

17.6 The provisions of this Section 17 shall survive the expiration, revocation, or termination of this Franchise.

Section 18. Insurance.

18.1 Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to

Franchisee, its agents, representatives or employees. Franchisee shall require that every subcontractor maintain insurance coverage and policy limits consistent with this Section 18. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement to the City for its inspection at the time of or prior to acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage.

(b) Commercial General Liability insurance, written on an occurrence basis with limits no less than \$3,000,000 combined single limit per occurrence and \$5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

(c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. No deductible is presently required for this insurance; and

(d) Umbrella liability policy with limits not less than \$10,000,000 per occurrence and in the aggregate.

18.2 Any deductibles or self-insured retentions must be declared to and approved by the City. Such approval shall not be unreasonably withheld or delayed. The City acknowledges that Franchisee's current deductibles are subject to change based on business needs and the commercial insurance market. Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Additionally, Franchisee shall pay all premiums for the insurance on a timely basis. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 18. Franchisee's umbrella liability insurance policy provides "follow form" coverage over its primary liability insurance policies.

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

18.4 Franchisee is obligated to notify the City of any cancellation or intent not to renew any insurance policy, required pursuant to this Section 18, thirty (30) days prior to any such cancellation. Within five (5) days prior to said cancellation or intent not to renew, Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section 18. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 18 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 21 below. Notwithstanding the cure period described in Section 21.1 and 21.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

18.5 Franchisee's maintenance of insurance as required by this Section 18 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

Section 19. Abandonment of Franchisee's Telecommunications Network. Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Notwithstanding the above, the City may permit Franchisee's improvements to be abandoned and placed in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any Facilities that are not permitted to be abandoned in place and that are not removed within thirty (30) days of receipt of City's notice shall automatically become the property of the City. Provided, however, that nothing contained within this Section 19 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place. The provisions of this Section 19 shall survive the expiration, revocation, or termination of this Franchise.

Section 20. Bonds.

20.1 Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety acceptable to the City equal to at least 125% of the estimated value of the work and the estimated cost to restore existing improvements as determined by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Warranty Bond as described in Section 20.2.

20.2 Franchisee shall furnish a two-year warranty bond (“Warranty Bond”), or other surety acceptable to the City, at the time of final acceptance of construction work on the Facilities within the Rights-of-Way. The Warranty Bond amount will be the greater of equal to twenty-five percent (25%) of the actual construction costs or five thousand dollars (\$5,000). The Warranty Bond in this Section 20.2 must be in place prior to City’s release of the Performance Bond required by Section 20.1.

20.3 Franchisee shall provide City with a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) (“Franchise Bond”) running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise, following written notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of Facilities. Franchisee specifically agrees that its failure to comply with the terms of this Section 20.3 shall constitute a material breach of this Franchise, subject to the notice and cure provisions of Section 21.2. Franchisee further agrees to replenish the Franchise Bond within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the Franchise Bond. The amount of the Franchise Bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 21. Remedies to Enforce Compliance.

21.1 In addition to any other remedy provided in this Franchise, the City reserves the right to pursue any remedy available at law or in equity to compel or require Franchisee and/or its successors and assigns to comply with the terms of this Franchise and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation for breach of the conditions. In addition to any other remedy provided in this Franchise, Franchisee reserves the right to pursue any remedy available at law or in equity to compel or require the City, its officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms

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

21.2 If either party violates or fails to comply with any of the provisions of this Franchise, or a permit issued as required by Section 8.2, or should it fail to heed or comply with any notice given to such party under the provisions of this Franchise (the “Defaulting Party”), the other Party (the “Non-defaulting Party”) shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of any such breach and the Defaulting Party shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the Non-defaulting Party reasonably determines the breach cannot be cured within thirty (30) days, the Non-defaulting Party may specify a longer cure period, and condition the extension of time on the Defaulting Party’s submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Defaulting Party does not comply with the specified conditions, the Non-defaulting Party may pursue any available remedy at law or in equity as provided in Section 21.1 above, or in the event Franchisee has failed to timely cure the breach, the City, at its sole discretion, may elect to (1) revoke this Franchise pursuant to Section 22, (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against Franchisee (and collect from the Franchise Bond if necessary), or (3) extend the time to cure the breach if under the circumstances additional time is reasonably required. Liquidated damages described in this Section 21.2 shall not be offset against any sums due to the City as a tax

or reimbursement pursuant to Section 15. Nothing in this Franchise shall be construed as limiting any remedies that the City may have, at law or in equity, from enforcement of this Franchise.

Section 22. Revocation.

If Franchisee willfully violates or fails to comply with any material provisions of this Franchise, then at the election of the Milton City Council after at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure, the City may revoke all rights conferred and this Franchise may be revoked by the Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Milton City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Milton City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Milton City Council does not grant any additional period, the Milton City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Section 23. Non-Waiver. The failure of either party to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such covenants, agreements, or option or any other covenants, agreements or option.

Section 24. Police Powers and City Regulations. Nothing within this Franchise shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise and the franchises of similarly-situated entities, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations, consistent with 47 U.S.C. § 253, the location,

elevation, manner of construction, and maintenance of any Facilities by Franchisee and other similarly-situated franchisees, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. The City reserves the right to promulgate any additional regulations of general applicability as it may find necessary in the exercise of its lawful police powers consistent with 47 U.S.C. § 253. In the event of a conflict between the provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over this Franchise.

Section 25. Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Section 26. Acceptance. This Franchise may be accepted by Franchisee by its filing with the City Clerk of an unconditional written acceptance, within thirty (30) days from the City's execution of this Franchise, in the form attached as Exhibit B. Failure of Franchisee to so accept this Franchise shall be deemed a rejection by Franchisee and the rights and privileges granted shall cease. In addition, Franchisee shall file the certificate of insurance and the additional insured endorsements obtained pursuant to Section 18, any Performance Bonds, if applicable, pursuant to Section 20.1, the Franchise Bond required pursuant to Section 20.3, and the costs described in Section 15.1.

Section 27. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 7, Section 8, Section 13, Section 14, Section 16, Section 17, Section 18, Section 19, Section 20, and Section 28 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive this Franchise, and any renewals or extensions, to the extent provided for in those sections. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the successors, executors, administrators, legal representatives, and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its successors and assigns equally as if they were specifically mentioned where Franchisee is named.

Section 28. Changes of Ownership or Control.

28.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The above notwithstanding, Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 28.2 below, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 28, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

28.2 Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the: ultimate ownership or working control of Franchisee, ownership or working control of the Facilities, ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee's Facilities, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval if there is a change in control as described in the preceding sentence. Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. The City shall approve or deny such request for an assignment or transfer requiring City's consent within one-hundred twenty (120) days of a completed application from Franchisee, unless a longer period of time is mutually agreed to by the parties or when a delay in the action taken by the City is due to the schedule of the City Council and action cannot reasonably be obtained within the one hundred twenty (120) day period. In the event that the City adopts a resolution denying its consent and such change, transfer, or acquisition of control has been affected,

the City may revoke this Franchise, following the revocation procedure described in Section 22 above. The assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate Franchisee's Services. Franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Franchise, in accordance with the provisions of Section 15.3 and Section 15.4, and shall pay the applicable application fee.

28.3 Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 28.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Section 29. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter within this Franchise and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 30. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of Franchisee's Facilities for the fair market value. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 31. Vacation. If at any time the City, by ordinance and in accordance with applicable laws, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall use reasonable efforts to reserve an appurtenant easement for public utilities within the vacated portion of the Rights-of-Way within which Franchisee may continue to operate existing Facilities under the terms of this Franchise for the remaining period of the term set forth in Section 1.1. Notwithstanding the preceding sentence, the City shall incur no liability for failing to reserve such easement. The City shall notify Franchisee in writing not less than ninety (90) days before vacating all or any portion of any such area. The City may, after ninety (90) days' written notice to Franchisee, terminate this Franchise with respect to such vacated area.

Section 32. Notice. Any notice or information required or permitted to be given to the parties under this Franchise shall be sent to the following addresses unless otherwise specified by personal delivery, overnight mail by a nationally recognized courier, or by U.S. certified mail, return receipt requested and shall be effective upon receipt or refusal of delivery:

CITY OF MILTON
Attn: City Clerk
1000 Laurel St.
Milton, WA 98354

Astound Broadband, LLC
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
Attn: Steve Weed, CEO and
Jim Penney, EVP
Telephone: 425-896-1891

Section 33. Severability. If any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

Section 34. Compliance with all Applicable Laws. Each party agrees to comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police

powers. The City reserves the right at any time to amend this Franchise to conform to any enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation, when such statute, regulation, or ordinance necessitates this Franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days' written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations regarding the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, either party may pursue any available remedies at law or in equity.

Section 35. Attorney Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, each party shall pay all its legal costs and attorney fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this section shall be construed to limit the City's right to indemnification under Section 17 of this Franchise.

Section 36. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors, or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify, and hold the City, its officers, officials, employees, agents, and volunteers harmless from and against any and all claims, costs, and liabilities including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property to the extent caused by Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage, or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional.

Section 37. Licenses, Fees and Taxes. Prior to constructing any Facilities or providing Services within the City, Franchisee shall obtain a business or utility license from the City.

Franchisee shall pay all applicable taxes on personal property and Facilities owned or placed by Franchisee in the Rights-of-Way and shall pay all applicable license fees, permit fees, and any applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees properly imposed by the City under this Franchise.

Section 38. Miscellaneous.

38.1 The City and Franchisee respectively represent that their respective signatories are duly authorized and have full right, power, and authority to execute this Franchise on such party's behalf.

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

38.3 Section captions and headings are intended solely to facilitate the reading of this Franchise. Such captions and headings shall not affect the meaning or interpretation of the text within this Franchise.

38.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

38.5 Franchisee shall be responsible for obtaining all other required approvals, authorizations, and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty, or covenant whether any of the foregoing approvals, authorizations, or agreements are required or have been obtained by Franchisee.

38.6 This Franchise is subject to all applicable federal, State and local laws, regulations and orders of governmental agencies as amended, including but not limited to the Communications Act of 1934, as amended, the Telecommunications Act of 1996, as amended and the Rules and Regulations of the FCC. Neither the City nor Franchisee waive any rights they may have under any such laws, rules or regulations.

38.7 There are no third party beneficiaries to this Franchise.

38.8 This Franchise may be enforced at both law and in equity.

Section 39. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

Section 40. 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 OF THE CITY OF MILTON THIS ____ DAY OF _____, 2016; AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS ____ DAY OF _____, 2016.

Mayor Debra Perry

Attest: _____
Katie Bolam, City Clerk

APPROVED AS TO FORM:

Greg Rubstello, City Attorney

PUBLISHED:

EFFECTIVE:

EXHIBIT A

Services: Telecommunications services, private line, internet access services, dark fiber services and lit fiber services.

EXHIBIT B

STATEMENT OF ACCEPTANCE

Astound Broadband, LLC d/b/a Wave (“Astound”) for itself, its successors and assigns, accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached and incorporated by this reference. Astound declares that it has carefully read the terms and conditions of this Franchise and unconditionally accepts all of the terms and conditions of the Franchise and agrees to abide by such terms and conditions. Astound has relied upon its own investigation of all relevant facts and it has not been induced to accept this Franchise and it accepts all reasonable risks related to the interpretation of this Franchise.

Astound Broadband, LLC

By: _____
Name: _____
Title: _____

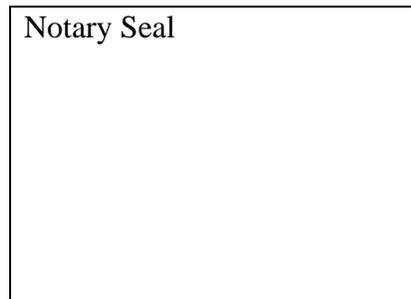
Date: _____

ACKNOWLEDGEMENT

STATE OF WASHINGTON)
)SS.
COUNTY OF _____)

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

DATED: _____.



(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of
Washington
My appointment expires: _____

Agenda Item #: 7B



To: Mayor Perry and City Council Members
From: Mark Howlett, interim Public Works Director
Date: May 31, 2016
Re: Pole Attachment License Agreement with Astound Broadband LLC

ATTACHMENTS: Pole Attachment License Agreement with Astound Broadband LLC

TYPE OF ACTION:

Information Only Discussion Action Public Hearing Expenditure

Recommendations/Actions: I move to authorize the Mayor to sign a Pole Attachment License Agreement with Astound Broadband LLC to attach their telecommunications facilities to city-owned poles.

Fiscal Impact/Source of Funds: Astound Broadband will pay the City a fee of \$23.15 per year for each attachment made to City poles. This fee will be escalated by 5-percent per year throughout the duration of this agreement. Astound Broadband will also pay the City a fee of \$34.74 per month for each power supply attached to City poles. These funds will be credited to the City's Electric Utility Fund.

Issue: Astound Broadband, LLC is a telecommunications company that wishes to install and operate telecommunications equipment in the city's streets. They wish to attach their facilities to city-owned power poles.

Discussion: The City of Milton's electrical utility owns the poles to which their facilities are attached. It is common practice for several utilities to attach their facilities to the same poles. This allows for ease of operation.

The City has extra space on our poles which is readily available for other utilities to utilize. Astound has identified routes in the City that they wish to attach their facilities to our poles. This agreement identifies the terms and conditions under which the City will grant authority to Astound to utilize the City's poles.

POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment License Agreement (“Agreement”), dated this ____ day of June, 2016, is made by and between CITY OF MILTON, WASHINGTON (“CITY”), a Washington municipality, and Astound Broadband, LLC, a limited liability company organized under the laws of the State of Washington (hereinafter referred to as “Licensee”).

RECITALS

- A. Whereas, Licensee proposes to install and maintain Communications Facilities and associated communications equipment on Poles to provide Communications Services to the public; and
- B. Whereas, City is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee’s Attachments on Poles, provided that City may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes and/or any other Applicable Code; and

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

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AGREEMENT

Article 1—Definitions

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

- 1.1 **Affiliate**: when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2 **Applicable Codes**: means all applicable engineering and safety codes governing the installation, maintenance and operation of facilities and the performance of all work in or around electric City Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), Washington Administrative Code (“WAC”), Revised Codes of Washington (“RCW”) and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of City or other federal, state or local authority with jurisdiction over City Facilities.
- 1.3 **Attaching Entity**: means any public or private entity, other than City, Licensee, or Licensee Affiliate, who, pursuant to a license agreement with City, places an Attachment on Poles to provide Communications Service.
- 1.4 **Attachment(s)**: means Licensee’s Communications Facilities that are authorized for placement directly on Poles. A riser or a service drop attached to a single Pole where Licensee has an existing Attachment on such Pole is not considered an additional Attachment.
- 1.5 **Capacity**: means the ability of a Pole to accommodate an additional Attachment based on Applicable Codes, including space and loading considerations.
- 1.6 **Climbing Space (see Drawing SP1780)**: means that portion of a Pole’s surface and surrounding space that is free from encumbrances to enable City employees and contractors to safely climb, access and work on City Facilities and equipment, in accordance with

Applicable Code requirements.

- 1.7 **Common Space (see Drawing SP1780):** means space on Poles that is not used for the placement of wires or cables but which jointly benefits all users of the Poles by supporting the underlying structure (support space) and/or providing safety clearance between attaching entities and electric City Facilities (safety space).
- 1.8 **Communication Space (see Drawing SP1780):** means space defined by City on Poles that can be used, as defined by the Applicable Codes, for the attachment or placement of wires, cables and associated equipment for the provision of Communications Service. The neutral zone or safety space is not considered Communication Space. The Common Space which includes the support and safety space is not considered Communication Space.
- 1.9 **Communications Facilities:** means wire or cable facilities including but not limited to fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Service including any and all associated equipment. Unless otherwise specified by the parties, the term “Communications Facilities” does not include wireless antennas, amplifiers, receivers, or transceivers.
- 1.10 **Communications Service:** means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Communications Facilities.
- 1.11 **Licensee:** means Astound Broadband, LLC, its authorized successors, Affiliates, and assignees.
- 1.12 **Make-Ready Work:** means all work, as reasonably determined by City, required to accommodate Licensee’s Communications Facilities in accordance with all Applicable Codes. Such work includes, but is not limited to, Pre-Construction Survey, rearrangement and/or relocation of City Facilities or any existing attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), or Pole replacement and construction.
- 1.13 **Nonfunctional:** means no longer able to be used or no longer useful for transmission of Communications Service.
- 1.14 **Occupancy:** means the use or specific reservation of Communication Space for Attachments on the same Pole.
- 1.15 **Overlash:** means to place an additional wire or cable onto an existing Attachment owned by Licensee.
- 1.16 **Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are used to

enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or provide a service connection point and that are not attached to Poles (see **Appendix D - Specifications**).

- 1.17 Permit:** means written or electronic authorization (in the form of **Appendix C**) from City for Licensee to make or maintain Attachments on specific Poles pursuant to the requirements of this Agreement.
- 1.18 Pole:** means a pole owned by City used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments for Communications Facilities, in accordance with Applicable Codes.
- 1.19 Post-Construction Inspection:** means the inspection that may be performed by City to determine and verify that the Attachments have been made in accordance with Applicable Codes and the Permit.
- 1.20 Pre-Construction Survey:** means all work or operations required by Applicable Codes and/or City to determine the potential Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole in accordance with Applicable Codes. Such work includes, but is not limited to, field inspection and administrative processing. The Pre-Construction Survey may be coordinated with City and include Licensee.
- 1.21 Reserved Capacity:** means capacity or space on a Pole that City has identified and reserved for its own electric City requirements, including the installation of communications circuits, pursuant to a reasonable projected need or business plan.
- 1.22 Riser:** means rigid metallic or plastic encasement materials placed vertically on the Pole to guide and protect communications wires and cables.
- 1.23 Tag:** means to place distinct markers on wires and cables, coded by color or other means that will readily identify the type of attachment (*e.g.*, cable TV, telephone, high-speed broadband data, public safety) and its owner.
- 1.24 City Facilities:** means all personal property and real property owned or controlled by City, including Poles.

Article 2—Scope of Agreement

- 2.1 Grant of License.** Subject to the provisions of this Agreement, City hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Attachments on Poles.
- 2.2 Parties Bound by Agreement.** Licensee and City agree to be bound by all provisions of

this Agreement, except to the extent the Agreement conflicts with applicable law or any subsequent law made following the execution of the Agreement.

- 2.3 Permit Issuance Conditions.** City will issue a Permit(s) to Licensee only when City determines, in its sole judgment, exercised reasonably, that
- (i) It has sufficient Capacity to accommodate the requested Attachment(s),
 - (ii) Licensee meets all requirements set forth in this Agreement, and
 - (iii) Such Permit(s) comply with all Applicable Codes.
- 2.4 Access to Reserved Capacity.** Access to Reserved Capacity on City Poles will be made available to Licensee with the understanding that such access is subject to being reclaimed by the City on giving Licensee at least ninety (90) calendar days prior notice. City may reclaim such Reserved Capacity anytime during the period following the installation of Licensee's Attachment in which this Agreement is effective if required for City's future electric service use. City shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 9.
- 2.5 No Interest in Property.** No use, however lengthy, of any City Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such City Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of City's rights to City Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.
- 2.6 Licensee's Right to Attach.** Unless otherwise specified in this Agreement, Licensee must have a Permit issued pursuant to Article 6, prior to attaching Licensee's Communications Facilities to any specific Pole.
- 2.7 City's Rights over Poles.** The parties agree that this Agreement does not in any way limit City's lawful right to locate, operate, maintain or remove its Poles in the manner that will best enable it to fulfill its service requirements.
- 2.8 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit City, on a non-discriminatory basis, from fulfilling any agreement or arrangement regarding Poles into which City has previously entered, or may enter in the future, with any third parties.

- 2.9 Expansion of Capacity.** City will take reasonable steps to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require City to install, retain, extend or maintain any Pole for use when such Pole is not needed for City's service requirements.
- 2.10 Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without City's express written consent to such use. Nothing in this Agreement shall be construed to require City to allow Licensee to use Poles after the termination of this Agreement, subject to the provisions of Article 11 and Article 23 of this Agreement.
- 2.11 Overlashing.** Licensee shall provide written notice to City within thirty (30) days of Overlashing and Overlashing shall not increase the Annual Pole Attachment Fee paid by Licensee pursuant to **Appendix A**, Item 1.
- 2.12 Enclosures.** Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within ten (10) feet of any Pole or other City Facilities without City's prior written permission. If permission is granted, all such installations shall comply with the Specifications and Drawings in **Appendix D** of this Agreement and charges as provided in **Appendix A**. Such permission shall not be unreasonably withheld. Failure to obtain such permission prior to placement of such enclosures may result in the assessment of Unauthorized Attachment Penalty Fees. (per **Appendix A**)

Article 3—Fees and Charges

- 3.1 Payment of Fees and Charges.** Licensee shall pay to City the fees and charges specified in **Appendix A** and shall comply with the terms and conditions specified herein.
- 3.1.1 Licensee shall pay the City fees for the attachment of equipment to the poles as follows:
- (i) The Licensee shall pay to the City an annual rate per pole ("Annual Payment") of \$23.15 for the remainder of 2016 and increased by 5% for each subsequent calendar year.
 - (ii) The Licensee shall pay the City on a prorated annual basis an Annual Payment for all poles contacted since the last annual anniversary in the amount equal to the number of newly contacted poles times the current Annual Rate, divided by the number of calendar months during which the pole was actually contacted.
 - (iii) The Licensee shall also pay the City a \$34.74 usage fee ("Usage Fee") per month

for each power supply unit attached to a pole. The monthly Usage Fee shall be paid in advance on or before the 1st day of each month. No invoice shall be sent by the City for Usage Fees.

- 3.2 Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from City pursuant to this Agreement within thirty (30) calendar days after City issues the invoice.
- 3.3 Billing of Annual Pole Attachment Fees.** City shall invoice Licensee for the Annual Pole Attachment Fee on a calendar year basis. City will submit to Licensee an invoice for the annual rental period on or about January 15 of each year. The initial annual rental period shall commence on _____, 2016 and conclude on December 31, 2016. Any billing period not paid under a previous pole attachment agreement shall be prorated for a partial initial period. Each subsequent annual billing period shall commence on the beginning of the calendar year and conclude on the end of the calendar year. The invoice shall set forth the total number of Poles on which Licensee is obligated to pay Annual Pole Attachment Fees, and if requested the City will provide calculations and underlying data used to determine the Annual Pole Attachment Fee.
- 3.4 Refunds.** No fees and charges specified in **Appendix A** shall be refunded on account of any surrender of a Permit granted under this Agreement. Nor shall any refund be owed if a Pole is abandoned by City.
- 3.5 Late Charge.** If City does not receive payment for any fee or other amount owed within thirty (30) calendar days after it becomes due, Licensee, upon receipt of fifteen (15) calendar days written notice from City, shall pay interest to City, at the rate of 12% per year/(1%) per month, on the amount due.
- 3.6 Determination of Billing Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by City, the charge for such work shall include all necessary and reasonable material, engineering, and labor costs associated with such work. City shall invoice its services based upon actual costs, and such costs will be determined in accordance with City's cost accounting systems used for recording capital and expense activities. If requested, City invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. If Licensee was required to perform work and fails to perform such work necessitating its completion by City, Licensee will reimburse City upon demand City's cost per above.
- 3.7 Payment for Work.** Licensee will be responsible for payment to City for all necessary and reasonable work City or City's contractors perform pursuant to this Agreement to accommodate Licensee's Communications Facilities and ensure safety, including but not

limited to, Make-Ready Work and other work performed for the benefit of Licensee.

- 3.8 Advance Payment.** At the discretion of City, Licensee may be required to pay in advance all reasonable costs or a part of the charges for work, including but not limited to construction, inspections, and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in Articles 6 and 7 below.
- 3.9 True Up.** Whenever City, at its discretion, requires advance payment of estimated charges prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the advance payment of estimated charges, Licensee agrees to pay City for the difference in cost provided that City shall, when possible, provide Licensee of prompt notice when it determines that such actual costs may exceed the amount of the estimated charges by ten (10) percent or more. To the extent that the actual cost of the activity is less than the estimated cost, City agrees to refund to Licensee the difference in cost.
- 3.10 Work Performed by City.** Wherever this Agreement requires City to perform any work, Licensee acknowledges and agrees that City, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.
- 3.11 Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute a default of this Agreement.

Article 4—Specifications

- 4.1 Installation/Maintenance of Communications Facilities.** When a Permit is issued pursuant to this Agreement, Licensee's Communications Facilities shall be installed and maintained in accordance with the requirements and specifications identified in **Appendix D**. All of Licensee's Communications Facilities must comply with all Applicable Codes. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Codes. Licensee is not required to update or upgrade its Attachments in any way if not required to meet either the NESC or the NEC, unless otherwise required in this Agreement.
- 4.2 Tagging.** Licensee shall Tag all Attachments installed after the execution of this Agreement as specified in **Appendix D** and/or applicable federal, state and local regulations upon installation of such Attachments. Prior authorized Attachments shall be

Tagged within five years of the execution of this Agreement. Failure to provide proper Tagging will be considered a violation of the Applicable Codes.

- 4.3 Interference.** Based on the order in which the facilities were attached, Licensee shall not allow its Communications Facilities to impair the ability of City or any third party to use Poles, nor shall Licensee allow its Communications Facilities to interfere with the operation of any City Facilities.
- 4.4 Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall at its own expense install protective devices designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor. Except as provided in Paragraph 16.1, City shall not be liable for any actual or consequential damages to Licensee's Communications Facilities or Licensee's customers' facilities.
- 4.5 Violation of Specifications/Applicable Codes.** If Licensee's Communications Facilities, or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from City, City at its option, may correct such conditions. City will attempt to notify Licensee in writing prior to performing such work whenever practicable. When City reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of City's service obligations or pose an immediate threat to the physical integrity of City Facilities, City may perform such work and/or take such action as it deems necessary, including termination of Permit, without first giving written notice to Licensee. As soon as practicable thereafter, City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all reasonable costs incurred by City in taking action pursuant to this Paragraph.
- 4.6 Restoration of City Service.** City's service restoration requirements shall take precedence over any and all work operations of Licensee on Poles.
- 4.7 Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to any applicable Permit(s) within one hundred eighty (180) calendar days of the effective date of such right and any extension thereof, City may use the space scheduled for Licensee's Attachment(s) for its own needs or other Attaching Entities. In such instances, City shall endeavor to make other space available to Licensee, upon written application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.
- 4.8 Interference Test Equipment.** To the extent Licensee furnishes Communication Services

it shall maintain test equipment to identify signal interference to its customers, and shall not identify City as the source of such interference absent a test report verifying the source.

- 4.9** Removal of Nonfunctional Attachments. At its sole expense, Licensee shall remove any of its Attachments or any part thereof that become nonfunctional and/or no longer fit for service (“Nonfunctional Attachment”) as provided in this Paragraph 4.9. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from City that earlier removal is necessary to accommodate City’s or another Attaching Entity’s use or removal of the affected Pole(s). Upon such notice, Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until City notifies Licensee that removal is necessary to accommodate City’s or another Attaching Entity’s use, or removal of the affected Pole(s). If Licensee does not remove the Nonfunctional Attachment according to this paragraph 4.9, then City shall have the right to remove the Nonfunctional Attachment and bill Licensee for all associated costs for the removal per paragraph 3.6.

Article 5—Private and Regulatory Compliance

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

state and local laws.

- 5.3 Forfeiture of CITY's Rights.** No Permit granted under this Agreement shall extend to any Pole on which the Attachment of Licensee's Communications Facilities would result in a forfeiture of City's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of City's rights, is invalid. Further, if any of Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its facilities upon receipt of written notice from City. If Licensee fails to remove its facilities upon request, City will perform such removal at Licensee's expense not sooner than the expiration of thirty (30) calendar days from City's issuance of the written notice.
- 5.4 Effect of Consent to Construction/Maintenance.** Consent by City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each new Attachment from all appropriate parties or agencies.

Article 6—Pole Attachment Permit Application Procedures

- 6.1 Permit Required.** Except for service drops, Licensee shall not install any new Attachments on any Pole without first applying for and obtaining a Permit pursuant to the applicable requirements of **Appendices B and C**. Unless otherwise notified, pre-existing authorized Attachment(s) of Licensee as of the effective date of this Agreement shall be grandfathered with respect to Permitting, but shall be subject to the Attachment Fees and Paragraph 13.1. Licensee shall provide City with a list, in the format shown in **Appendix E**, of all such pre-existing Attachments within twelve (6) months of the effective date of this Agreement. Rights to occupy City Facilities not covered by this Agreement must be separately negotiated.
- 6.2 Service Drops.** The Licensee will notify the City within thirty (30) days of the attachment of a service drop where an existing permitted Attachment exists.
- In the event that a service drop constitutes the initial Attachment to a given pole, Licensee will be required to follow the permitting process set forth in paragraph 6.1. In this case, the Licensee will be allowed 30 days after the Attachment is made to complete the permitting process.
- 6.3 Professional Certification.** Excluding the placement of service drops, at Licensee's sole expense, a qualified and experienced professional engineer, or a qualified employee or

contractor of Licensee who may be required to be approved by City at City's discretion, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Communications Facilities can be and were installed on the identified Poles in compliance with the codes in Paragraph 4.1 and in accordance with the Permit. The professional engineer's or Licensee's qualified employee's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems.

- 6.4** **CITY Review of Pole Attachment Permit Application.** A Pole Attachment Permit Application shall include the Pre-Construction Survey and detailed plans for the proposed Attachments in the form specified in **Appendix C**. Upon receipt of a properly executed Pole Attachment Permit Application, City will grant or deny the Permit Application as promptly as possible, but in no event longer than forty-five (45) days unless extenuating circumstances require additional time, and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. City acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.
- 6.5** **Authorization to Proceed.** If Make-Ready Work is required to proceed, written notice from City of completion shall serve as authorization for Licensee to make its Attachment(s). If no Make-Ready Work is required, City will issue permit(s) within forty five (45) days of receipt of properly executed Permit Application.

Article 7—Make-Ready Work/Installation

- 7.1** **Estimate for Make-Ready Work.** In the event City determines that it can accommodate Licensee's request for Attachment(s), it will advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachments, within the forty-five (45) day timeframe provided in Section 6.5.
- 7.2** **Who May Perform Make-Ready Work.** Make-Ready Work shall be performed only by City and/or a contractor authorized by City to perform such work. If City cannot perform the Make-Ready Work to accommodate Licensee's Communications Facilities within forty-five (45) calendar days of the execution of an Acceptance of Cost Estimate per **Appendix C**, Licensee may seek permission from City for Licensee to employ a qualified contractor to perform such work.
- 7.3** **Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Communications Facilities, City will endeavor to include such

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

7.4 Licensee's Installation/Removal/Maintenance Work.

7.4.1 All of Licensee's installation, removal and maintenance work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Poles, City Facilities, or other Attaching Entity's facilities or equipment existing prior to Licensee's Attachment installation. All such work is subject to the insurance requirements of Article 18.

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

Article 8—Relocations

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

8.2 Billing for Relocations Performed by City. If City performs the relocation(s), City will bill Licensee for actual costs per Paragraph 3.6. Licensee shall reimburse City within thirty (30)

calendar days of the receipt of the invoice.

Article 9—Pole Modifications and/or Replacements

- 9.1 Licensee’s Action Requiring Modification/Replacement.** In the event that any Pole to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Codes or the City determines sufficient Communication Space is not available, City will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole and rearrangement or relocation of City’s Facilities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities’ existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to City the cost of the Make-Ready Work performed by City, per Paragraphs 3.6-3.9. City, at its discretion, may require advance deposit.
- 9.2 Treatment of Multiple Requests for Same Pole.** If City receives Permit Applications for the same Pole from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodating their respective requests would require modification or replacement of the Pole, City will allocate among such licensees the applicable costs associated with such modification or replacement. Such allocation applies only to those attachments involving cable/wire and not Risers and/or service drops. Notwithstanding the above, once a permit has been issued, and within the agreed upon timeframe to exercise any access right, the attaching licensee will be responsible for their own costs resulting from Make-Ready Work and any other attaching entity will be responsible for their own cost resulting from any associated Make-Ready Work.
- 9.3 Guying.** The use of guying to accommodate Licensee’s Attachments shall be provided by and at the expense of Licensee and to the satisfaction of City as specified in **Appendix D**. On a going-forward basis Licensee shall not attach its guy wires to City’s anchors without prior written permission of City, if permission is granted a Make Ready charge may apply.
- 9.4 Allocation of Costs.** The costs for any rearrangement or relocation of Licensee’s Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of City’s cables or wires) shall be allocated to City and/or Licensee and/or other Attaching Entity on the following basis:
- 9.4.1** If City intends to modify or replace a Pole solely for its own requirements, it

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

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

9.4.3 If the Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities (*e.g.*, storm, accident, deterioration), City shall pay the costs of such modification or replacement; provided, however, that Licensee shall be responsible for the costs of rearranging or relocating its Communications Facilities.

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

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

Article 10—Abandonment or Removal of City Facilities

- 10.1 Notice of Abandonment or Removal of City Facilities.** If City desires at any time to abandon or remove any City Facilities to which Licensee’s Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least ninety (90) calendar days prior to the date on which it intends to abandon or remove such City Facilities. Notice may be limited to less than ninety (90) calendar days if City is required to remove or abandon its City Facilities as the result of the action of a third-party or authority and the greater notice period is not practical or permissible. Such notice shall indicate whether City is offering Licensee an option to purchase the Pole(s). If, following the expiration of the notice period, Licensee has not yet removed and/or relocated all of its Communications Facilities and has not entered into an agreement to purchase City Facilities pursuant to Paragraph 10.2, City shall have the right, subject to any applicable laws and regulations, to have Licensee’s Communications Facilities removed and/or relocated from the Pole at Licensee’s expense. City shall give Licensee prior written notice of any such removal or relocation of Licensee’s Facilities.
- 10.2 Option to Purchase Abandoned Poles.** Should City desire to abandon any Pole, City, in its sole discretion, may grant Licensee the option of purchasing such Pole at a price negotiated with City. Licensee must notify City in writing within thirty (30) calendar days of the date of City’s notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should City and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. City is under no obligation to sell to Licensee Poles that it intends to remove or abandon.
- 10.3 Underground Relocation.** If City moves any portion of its aerial system underground (other than pursuant to any private party requests), Licensee shall remove its Communications Facilities from any affected Poles within ninety (90) calendar days of receipt of notice from City and either relocate its affected Communication Facilities underground or find other means to accommodate its Communication Facilities. If Licensee was required to remove its Communication Facilities and fails to perform such work necessitating its completion by City, City will charge Licensee per Paragraph 3.6 through 3.9.

Article 11—Removal of Licensee’s Facilities

Removal Upon Termination. Upon the termination of this License Agreement or individual Permit(s), Licensee shall remove its Communications Facilities from the affected Poles at its own expense. If Licensee fails to remove such Communications Facilities within one-hundred-eighty (180) calendar days of termination of this License Agreement or sixty (60) calendar days upon termination of individual Permit(s), or some greater period as allowed by City, City shall have the right to have such Communications Facilities removed at Licensee’s expense.

Article 12—Termination of Permit

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

12.2 Surrender of Permit. Licensee may at any time surrender any Permit and remove its Communications Facilities from the affected Pole(s). All such work is subject to the insurance requirements of Article 18. No refund of any fees or costs will be made upon removal. Licensee shall be liable for Annual Pole Attachment Fees until it surrenders the relevant Permit, removes its Attachments from City Facilities, and submits a completed Notice of Removal of Attachments per Appendix C.

Article 13—Inspection of Licensee’s Facilities

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

- 13.2 Notice.** City will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without delay.
- 13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.
- 13.4 Attachment Records.** Notwithstanding the above inspection provisions, Licensee shall furnish on an annual basis, an up-to-date map depicting the locations of its Attachments on paper and in an electronic format specified by City.
-

Article 14—Unauthorized Occupancy or Access

- 14.1 Penalty Fee.** If any of Licensee’s Attachments are found occupying any Pole for which no Permit has been issued, City, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Attachment Penalty Fee as specified in **Appendix A**, Item 3. In the event Licensee fails to pay such Fee within forty-five (45) calendar days of the billing date of the invoice thereof, City has the right to remove such Communications Facilities at Licensee’s expense.
- 14.2 No Ratification of Unlicensed Use.** No act or failure to act by City with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by City of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.
-

Article 15—Reporting Requirements

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

Article 16—Liability and Indemnification

16.1 Liability. City reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its statutory service requirements. Licensee agrees to use Poles at Licensee's sole risk. Notwithstanding the foregoing, City shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 16.5, City agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by the negligence or willful misconduct of City.

16.2 Indemnification by Licensee. In addition to the indemnification obligations in Paragraphs 5.1, 16.5 and 18.3, Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless City and its officials, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of City and all other costs and expenses of litigation) arising from third-party claims or actions ("Licensee Covered Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, use, relocation, removal or operation by Licensee or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Communications Facilities, except to the extent of City's negligence or willful misconduct giving rise to such Licensee Covered Claims. Such Licensee Covered Claims include, but are not limited to, the following:

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

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

16.2.3 Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents or contractors, pursuant to this Agreement, except to the extent of City's negligence or willful

misconduct;

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

16.3 **Indemnification by City.** City, and any agent, contractor or subcontractor of City, shall defend, indemnify and hold harmless Licensee and its members, officers, directors, affiliated entities under common ownership or control, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by Licensee under any Workers’ Compensation Laws or under any plan for employees’ disability and death benefits), and expenses (including reasonable attorney’s fees of Licensee and all other costs and expenses of litigation) arising from third-party claims or actions (“City Covered Claims”) arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, relocation, removal or operation by City’s officials, commissioners, employees, agents or contractors, of City’s Facilities, except to the extent of Licensee’s negligence or willful misconduct giving rise to such City Covered Claims. Such City Covered Claims include, but are not limited to, the following:

16.3.1 Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by City, or City’s officials, commissioners, employees, agents or contractors, pursuant to this Agreement, except to the extent of Licensee’s negligence or willful misconduct;

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

16.4 **Procedure for Indemnification.**

16.4.1 The party to be indemnified (“Indemnitee”) shall give prompt notice to the party to provide the indemnification (“Indemnitor”) of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against Indemnitee, Indemnitee shall give the notice to Indemnitor no later than fifteen (15) calendar days after Indemnity receives written notice of the action, suit or proceeding.

16.4.2 Indemnitee's failure to give the required notice will not relieve Indemnitor from its obligation to indemnify Indemnitee unless Licensee is materially prejudiced by such failure.

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

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

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

Should Poles be declared to contain Hazardous Substances, City, Licensee and all

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

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

Article 17—Duties, Responsibilities, And Warranties

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

17.2 Knowledge of Work Conditions. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties and restrictions attending the execution of such work.

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

17.4 Duty of Competent Supervision and Performance. The parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other City Facilities, and it is the intention that energy therein will not be

interrupted during the continuance of this Agreement, except in an emergency endangering life or grave personal injury or property damage. Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of City and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of City's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

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

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

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

Article 18—Insurance

18.1 Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which

may arise from or in connection with the exercise of rights, privileges and authority granted to Franchisee, its agents, representatives or employees. Franchisee shall require that every subcontractor maintain insurance coverage and policy limits consistent with this Section 18. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement to the City for its inspection at the time of or prior to acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage.

(b) Commercial General Liability insurance, written on an occurrence basis with limits no less than \$3,000,000 combined single limit per occurrence and \$5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

(c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. No deductible is presently required for this insurance; and

(d) Umbrella liability policy with limits not less than \$10,000,000 per occurrence and in the aggregate.

18.2 Any deductibles or self-insured retentions must be declared to and approved by the City. Such approval shall not be unreasonably withheld or delayed. The City acknowledges that Franchisee's current deductibles are subject to change based on business needs and the commercial insurance market. Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Additionally, Franchisee shall pay all premiums for the insurance on a timely basis. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 18. Franchisee's umbrella liability insurance policy provides "follow form" coverage over its primary liability insurance policies.

81.3 The insurance policies, with the exception of Workers' Compensation obtained by Franchisee shall name the City, its officers, officials, employees, agents, and volunteers ("Additional Insureds"), as an additional insured with regard to activities performed by or on behalf of Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall

provide to the City prior to or upon acceptance either (1) a true copy of the additional insured endorsement for each insurance policy required in this Section 18 and providing that such insurance shall apply as primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's insurance shall be primary insurance with respect to the Additional Insureds, and the endorsement should specifically state that the insurance is the primary insurance. Any insurance maintained by the Additional Insureds shall be in excess of Franchisee's insurance and shall not contribute with it.

18.4 Franchisee is obligated to notify the City of any cancellation or intent not to renew any insurance policy, required pursuant to this Section 18, thirty (30) days prior to any such cancellation. Within five (5) days prior to said cancellation or intent not to renew, Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section 18. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 18 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 21 below. Notwithstanding the cure period described in Section 21.1 and 21.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

18.5 Franchisee's maintenance of insurance as required by this Section 18 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

18.1

Article 19—Authorization Not Exclusive

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

Article 20—Assignment

- 20.1 Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of City, which consent shall not be unreasonably withheld, except in case of the assignment to an affiliate under common ownership or control with Licensee or to an entity that acquires all or substantially all of the assets of Licensee.
- 20.2 Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement.
- 20.3 Sub-licensing.** Without City’s prior written consent, Licensee shall not sub-license or sub-lease to any third party, including but not limited to allowing third parties to place attachments on City’s Facilities or to place attachments for the benefit of such third parties on Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee’s Communications Facilities by third parties (including but not limited to the lease of dark fiber) that involves no additional Attachment is not subject to this Paragraph 20.3.

Article 21—Failure to Enforce

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

Article 22—Termination of Agreement

- 22.1** Notwithstanding Licensee’s rights under Article 12, City shall have the right, pursuant to the procedure set out in Paragraph 22.2, to terminate this Agreement, whenever Licensee is in default of any term or condition of this Agreement, including but not limited to the following circumstances:
- 22.1.1** Construction, operation or maintenance of Licensee’s Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or
 - 22.1.2** Construction, operation or maintenance of Licensee’s Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority, subject to Section 12.1; or

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

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

22.2 City will notify Licensee in writing of any condition(s) applicable to Paragraph 22.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to City that the cited condition(s) has (have) ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, City may terminate this Agreement or any Permit(s) thirty (30) days after issuance of the written notice. In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, City may seek removal of Licensee's Communications Facilities pursuant to the terms of Article 11, provided, that Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to City until Licensee's Communications Facilities are actually removed.

Article 23—Term of Agreement

23.1 This Agreement shall be effective when executed and continue in force and effect for an initial term of three (3) years and thereafter for successive one (1) year terms and shall terminate by either party giving two hundred seventy (270) calendar days written notice of its intention to do so prior to the end of any such term. Upon termination of this Agreement, Licensee shall remove its attachments from the poles of City within sixty (60) days after the effective date of such termination. Should the Licensee fail to comply, the City may elect to do such work and the Licensee shall pay the City the cost.

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

Article 24—Amending Agreement

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

Article 25—Notices

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

If to City, at: City of Milton
 Attn: Public Works Director
 1000 Laurel Street
 Milton, WA 98354

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

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

25.2 Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where City can contact Licensee to report damage to Licensee’s facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to City’s concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a penalty of \$100 per incident, and shall eliminate City’s liability to Licensee for any actions that City deems reasonably necessary given the specific circumstances.

Article 26—Entire Agreement

This Agreement supersedes all previous agreements, whether written or oral, between City and Licensee for placement and maintenance of Licensee’s Communications Facilities on City’s Poles covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein. Except as provided for in Article 4.1, any Attachments existing under prior authorization shall continue in effect, provided they meet the terms of this Agreement.

Article 27—Severability

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

Article 28—Governing Law, Venue, and Attorney’s Fees

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

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

Article 29—Incorporation of Recitals and Appendices

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

Article 30—Performance Bond

On execution of this Agreement, Licensee shall provide to City a performance bond in an amount in an amount equal to two (2) times the annual Pole attachment fee set forth in Appendix A, Item 1 per Licensee Pole Attachment or Ten Thousand Dollars (\$10,000.00), whichever is greater. The required bond amount may be adjusted periodically to account for additions or reductions in the total number of Licensee’s Pole Attachments. The bond shall be with an entity and in a form acceptable to the City. The purpose of the bond is to ensure Licensee’s performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties and fees due to City which arise by reason of the construction, operation, maintenance or removal of Licensee’s Communications Facilities on or about Poles.

The City, in its sole discretion, may waive the requirement of a Performance Bond if the propose Licensee, or its predecessor, is a regionally or nationally recognized company having formally been in existence for a minimum of ten years and can demonstrate to City financial responsibility. The City may waive the provisions of this Article for small government

Licensees.

Article 31—Force Majeure

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

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

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

CITY OF MILTON

By: _____
Mayor Debra Perry

ATTEST/AUTHENTICATED:

By: _____
Katie Bolam, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY:

By: _____
W. Scott Snyder

ASTOUND BROADBAND, LLC.

By: _____
Its: _____



Agenda Item #: 7C

To: Mayor Perry and City Council Members
From: Mark Howlett, P.E., Interim Public Works Director
Date: May 27, 2016
Re: Contract for On-Call Consulting Engineering Services

ATTACHMENTS: **A. Contract**
 B. Scope of Work

TYPE OF ACTION:

Information Only Discussion Action Public Hearing Expenditure

Recommendations/Actions: I move to authorize the Mayor to execute a consultant services agreement with Gray & Osborne, Inc. for a duration of three years to provide on-call engineering services on an as-needed basis.

Fiscal Impact/Source of Funds: All work assigned to Gray & Osborne through this agreement will be authorized by the Public Works Director on an individual task work order basis and will be within approved budget numbers.

Issue: The City desires to enter into a new contract with Gray and Osborne to continue providing on-call engineering services to the City. This is a “house-keeping” routine renewal of the contract.

Discussion: Gray and Osborne has been providing engineering services to the City for over 25 years. This year it was decided that the City would advertise to other engineering firms to ensure the City is using the most qualified firm.

The City received Statements of Qualifications (SOQ's) from 21 engineering firms. A selection panel reviewed the SOQ's and invited three firms to participate in interviews. Based on this process the selection committee determined that Gray and Osborne is the most-qualified firm to provide these services to the City.

This contract is not intended to take the place of a formal contract for planned, large-scale capital improvement projects. It is in the City's best interests to authorize the on-call engineering consultant to perform a smaller piece of larger capital improvement projects.

CITY OF MILTON PROFESSIONAL SERVICES AGREEMENT
(Gray & Osborne, Inc. – On Call Engineering Services)

THIS Agreement is made effective as of the _____ day of June, 2016, by and between the City of Milton, Washington (“City”) and Gray & Osborne, Inc. (“Consultant”).

WHEREAS, the City desires to accomplish the above-referenced project; and

WHEREAS, the City does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a Consultant to provide the necessary services for the project; and

WHEREAS, the Consultant has represented to the City that the Consultant is in compliance with the professional registration statutes of the State of Washington, if applicable, and has signified a willingness to furnish consulting services to the City, NOW, THEREFORE,

IN CONSIDERATION OF the terms and conditions set forth below, or attached and incorporated and made a part hereof, the parties agree as follows:

1. General Purpose and Intent.

On-Call Engineering Services, as needed basis per attached Scope, Exhibit A.

2. Services by the Consultant.

A. The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the Scope of Work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement. The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

3. Schedule of Work.

The Consultant shall not begin any work under the terms of this Agreement until authorized in writing by the City. The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Agreement. Consultant shall complete the work described in Section I by May 31, 2017. A failure to complete the work within the specific timeframe, except where such failure is due to circumstances beyond the control of the Consultant, shall be deemed a breach of this Agreement. The established completion time shall not be extended because of any delays attributable to the Consultant, but may be extended by the City, in the event of a delay attributable to the City, or because of unavoidable delays caused by circumstances beyond the control of the Consultant. All such extensions shall be in writing and shall be executed by both parties.

4. Compensation.

TIME AND MATERIALS. Compensation for the services described in the Scope of Work shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit C.

A. The Consultant shall be paid by the City for satisfactorily completed work and services satisfactorily rendered under this Agreement as provided in **Exhibit B**, attached hereto and incorporated herein by this reference as if set forth in full. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Work attached. If the services rendered do not meet the requirements of the Agreement, the Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement. Correction of typographical and other clerical errors made by the Consultant shall be made at no cost to the City.

B. The Consultant shall be entitled to invoice the City no more frequently than once per month during the course of the completion of work and services by the Consultant. Invoices shall detail the work performed or services rendered, the time involved (if compensation is based on an hourly rate) and the amount to be paid. The City shall pay all such invoices within 45 days of submittal, unless the City gives notice that the invoice is in dispute. In no event shall the total of all invoices paid exceed the maximum amount payable set forth above, if any, and the Consultant agrees to perform all services contemplated by this Agreement for no more than said maximum amount. The Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by the City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

5. Corrective Changes in Work.

The Consultant shall promptly make such changes and revisions in the complete work provided by this Agreement as may be necessary to correct errors made by the Consultant and appearing therein when required to do so by the City. The Consultant shall make such corrective changes and revisions without additional compensation from the City. Should the City find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the Consultant shall make such revisions as directed by the City. This work shall be considered as extra work and will be paid for as negotiated through a written amendment to the Agreement as provided in Section 2.B.

6. Coordination of Contract Documents.

This Agreement consists of this Professional Services Agreement form and **Exhibits A and B**. If there is any inconsistency between this Professional Services Agreement form and any of the Exhibits, the Professional Services Agreement form shall take precedence. Any limitations on liability and indemnification expressed in the attached exhibits beyond those specified in Sections 12 and 13 shall be null and void.

7. Discrimination and Compliance with Laws.

A. The Consultant agrees not to discriminate against any employee, or applicant for employment, subcontractor, supplier or materialman, or any other person in the performance of this Agreement because of race, creed, color, religion, national origin, marital status, sex, sexual orientation,

age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. In the performance of work under this Agreement, the Consultant shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. The Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

C. Consultant shall obtain a City of Milton business license pursuant to the provisions of Chapter 5. 04 MMC prior to receipt of written authorization to proceed.

D. Violation of this paragraph shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in ineligibility for further work for the City.

8. Termination.

A. The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified in Section 15(A). In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services satisfactorily performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

B. The City may suspend this Agreement, at its sole discretion, upon one week's advance notice to the Consultant. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

9. Standard of Care.

The Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by the Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

10. Ownership of Work Product.

Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the

work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant. Electronic versions of all work products shall be provided to the City in a format compatible with the City software, except to the extent expressly waived in the attached exhibits.

11. Indemnification/Hold Harmless.

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees (collectively, "Claims"), specifically including without limitation Claims resulting from injuries, sickness, or death of employees of the Consultant and/or damage to property, arising out of or resulting from the acts, errors or omissions of the Consultant, its officers, agents, sub-Consultants or employees, in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Agreement.

12. Insurance.

The Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. The Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

The Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

The Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. Excepting the professional liability insurance, the City will be named on all insurance as an additional insured. The Consultant shall submit a certificate of insurance to the City evidencing the coverages specified above, together with an additional insured endorsement naming the City, within fifteen (15) days of the execution of this Agreement and prior to the performance of any work specified hereunder. The certificates of insurance shall cover the work specified in or performed under this Agreement. The certificate and endorsement must be project and/or site specific. No cancellation, reduction or modification of the foregoing policies shall be effective without thirty (30) days prior written notice to the City.

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

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

F. Notice of Cancellation

The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

G. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

13. Assigning or Subcontracting.

The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City. Any sub-Consultants approved by the City at the outset of this Agreement are named on **Exhibit A** attached hereto and incorporated herein by this reference as if set forth in full.

14. Independent Contractor.

The Consultant is an independent contractor for the performance of services under this Agreement. The City shall not be liable for, nor obligated to pay to the Consultant, or any employee of the Consultant, sick leave, vacation pay, overtime or any other benefit applicable to employees of the City, nor to pay or deduct any social security, income tax, or other tax from the payments made to the Consultant which may arise as an incident of the Consultant performing services for the City. The City shall not be obligated to pay industrial insurance for the services rendered by the Consultant.

15. Notice.

A. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph. Such notices or communications shall be given to the parties at their addresses set forth below:

City of Milton
Attn: Mayor Debra Perry
1000 Laurel Street
Milton, WA 98354

Consultant:
Gray & Osborne, Inc.
Attn: Mike Johnson
701 Dexter Ave. N., Ste. 200
Seattle, WA 98109

B. Either party may change its contact information by sending its new contact information to the other party in the same manner as is provided for sending the other party notice under the provisions of Section 15.A.

16. Non-Waiver.

Payment for any part of the work or services by the City shall not constitute a waiver by the City of any remedies of any type it may have against the Consultant for any breach of the Agreement by the Consultant, or for failure of the Consultant to perform work required of it under the Agreement by the City. Waiver of any right or entitlement under this Agreement by the City shall not constitute waiver of any other right or entitlement

17. Resolution of Disputes; Governing Law and Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If any dispute arises out of or in connection with this Agreement, including any question regarding its existence, enforceability, interpretation, or validity, the parties will, if practicable, meet and confer in good faith for a period of fourteen (14) days to attempt to resolve such dispute without an adversary proceeding. If at the end of the fourteen (14) day period such attempt at resolution is unsuccessful, the parties may resort to litigation. The exclusive venue for any litigation arising out this Agreement shall be the Pierce County Superior Court. The substantially prevailing party in any such litigation shall be entitled to an award of its reasonable attorneys' fees.

18. Taxes.

The Consultant will be solely responsible for the payment of any and all applicable taxes related to the services provided under this Agreement and if such taxes are required to be passed through to the City by law, the same shall be duly itemized on any billings submitted to the City by the Consultant.

19. Entire Agreement.

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

20. Risk of Loss.

The Consultant shall be solely responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be solely responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

CITY OF MILTON, WASHINGTON

By: _____
Debra Perry, Mayor

Date: _____

ATTEST:

By: _____
Katie Bolam, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: _____
Greg Rubstello

CONSULTANT

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

SCOPE OF ENGINEERING SERVICES

Although this on-call scope of work is not intended to substitute for a formal contract for large-scale capital improvement projects, it is acknowledged that there are situations where the Agency may desire individual pieces of work on larger projects to be completed by the Engineer or that an emergency situation could necessitate the scale of work necessary on a large capital improvement project.

Upon written direction of the Agency to proceed, the Engineer shall provide engineering services more fully described as follows:

1.0 PRELIMINARY ENGINEERING, STUDIES, REPORTS, PLAN REVIEWS AND LID OR ULID FORMATIONS

1.1 BACKGROUND DATA AND PRELIMINARY ANALYSIS

Assemble background information for a project utilizing as much as possible available information to include assessors maps, plat maps and records of surveys. The Engineer shall be entitled to rely upon the accuracy of such background information.

Undertake preliminary investigations providing a conceptual plan and layout sufficient for accurate cost estimating. Analysis will include environmental, economic, and schedule constraints, but shall not, without specific authorization, including geologic or environmental testing, drilling, or analysis.

Furnish the Agency with project construction and operational cost estimates, and assist in the development of the financial feasibility of a proposed project, as may be desired by the Agency.

Furnish the Agency with a description of a proposed project, as needed, in preparation for procedural and financing resolutions.

Assist the Agency in making application to such governmental agencies as required to obtain loans or grants to aid in financing a proposed project.

Prepare any evaluation reports and investigations which may be requested by the Agency.

1.2 DEVELOPMENT REVIEW

Conduct "developer" submitted plan reviews and SEPA reviews, to include utility or transportation review as may be applicable in regard to Agency standards and policies. Provide written review comments to the Agency in a mutually agreeable format and within a time period acceptable to the Agency. These reviews will be on a "case by case" basis as may be specifically desired and authorized by the Agency.

1.3 FORMATION OF LOCAL IMPROVEMENT DISTRICTS (LID) OR UTILITY LOCAL IMPROVEMENT DISTRICT (ULID)

When directed by the Agency, the Engineer shall furnish the following:

1. Formation of the District

Review with the Agency the boundaries of the proposed LID or ULID. Prepare and/or verify an Agency provided preliminary system plan and cost estimate for servicing the properties within the boundaries of the proposed LID. Furnish to the Agency a description of boundaries, system improvements, total estimate costs and divisions therefore. Prepare assessment maps showing therein the general plan of improvement, individual lots and parcels, ownerships and assessments for each. Prepare assessment roll and individual assessment notices to property owners within the LID or ULID. Attend hearing on preliminary assessment roll and evaluate and advise the Agency on protests received.

2. Final Assessment Rolls and Records

Prepare final assessment rolls and assessment maps to show ownerships of properties and final cost to each property description. Prepare final assessment notices to each property owner of record within the LID or ULID. Attend the final hearing and advise the Agency on protests, if any, received. Revise assessment roll to comply with any changes directed by the Agency as a result of the final hearing. Furnish such additional advice as may be required by the Agency in furtherance of the project.

2.0 DESIGN

2.1 DESIGN SURVEYS

Schedule and conduct surveys to establish horizontal and vertical control as necessary for a proposed project. Establish right-of-way centerline, reference existing monumentation, property corners, and other miscellaneous right-of-way marks as may be desired. Acquire relevant recorded documentation of plats, record surveys, and utility maps. Absent specific written direction to the contrary providing for verification, the Engineer shall be entitled to rely upon the completion and accuracy of such documentation.

Survey control points will be physically set for site reference control. Cross sections and profile(s) will be provided as may be desired/required. Physical features including structures, valves, streets, fences, utility poles, signs, edges of pavement, ditches, fire hydrants, etc., will be noted for plotting.

2.2 PREDESIGN ANALYSIS

Prepare a Predesign Analysis if desired by the Agency, discussing design criteria, alignments, layouts, schematics, and addressing problems, conflicts and mitigation measures. Identify easement acquisition areas, geotechnical and environmental concerns, alignment alternatives and interfacing and phasing with existing facilities to include schedules and cost estimate for construction and operation and maintenance.

2.3 ENGINEERING DESIGN

Prepare design plans, specifications and cost estimates (PS&E) sufficient for the bidding and construction of the proposed projects consistent with generally accepted industry standards.

Plans and specifications review will be provided, as required by the Agency, at appropriate levels of design. Unless otherwise specified by the Agency, the following sequence of work shall apply:

A preliminary draft of the plans will be presented for the Agency's review at the approximate 35 percent level of design. With this preliminary submittal, there will be furnished a preliminary construction cost estimate, as may be desired by the Agency. Upon review by the Agency of these preliminary plans, the Engineer will then make such additions or changes as directed by the Agency, and proceed with the final design and editing of the plans and specifications. A final draft of the plans, specifications, and cost estimates will be presented for review and comment at the approximate 90 percent level of design. A final construction cost estimate along with the final plans, specifications and cost estimates will be delivered to the Agency for review, prior to the Agency authorizing construction bid notices.

2.4 ENVIRONMENTAL ASSESSMENT/SEPA

Prepare an environmental assessment and/or SEPA checklist for submittal to the Agency as required. Provide additional information in response to the Agency's review and comments. Should an Environmental Impact Study or special environmental documentation be required, they will be addressed as "Special Services."

2.5 PUBLIC MEETINGS AND HEARINGS

Assist the Agency as directed to schedule, participate in, or conduct a public meeting and hearing. Provide follow-up responses to the issues expressed.

2.6 IDENTIFICATION AND APPLICATION OF NECESSARY PERMITS

The Engineer will assist the Agency by preparing and submitting permit applications, franchise applications, and agreements required for project construction. The Engineer will be available to provide information at a hearing or review to obtain the necessary permit. The Engineer will incorporate and reference relevant special provisions, requirements and conditions warranted by the permits into the project plans and specifications.

2.7 EASEMENTS/R-O-W

Evaluate and provide engineering recommendations for projects requiring utilization of private properties. If further directed by the Agency, the Engineer shall prepare right-of-way maps and individual property parcel maps to assist the Agency in easement or property acquisition. Parcel maps may include dimensioned property lines, structures, prominent physical features, permanent and temporary easement limits and proposed facilities. The Engineer, if directed, shall further obtain title reports for properties to be encumbered with easements and prepare legal recording of documents associated thereto. Appraisals, easement negotiation and acquisition, recording of documents, records of survey, together with condemnation procedures, should they be required, will be addressed as "Special Services."

2.8 BID AND AWARD SERVICES

Prepare and submit project "advertisements" for public bid and distribute bid documents to prospective bidders, suppliers, regulatory agencies and selected plan centers. Bid documents shall generally consist of specifications, plans, and addenda thereto, as applicable.

Respond to bidder's questions during bid period, schedule and conduct a prebid conference should it be required by the Agency, and prepare and distribute addenda to the bid documents, as may be applicable.

Attend bid opening, review bids tendered and prepare recommendation to Agency for consideration of Contract award. If further directed by the Agency, the Engineer shall prepare and issue a formal written notice of Contract award, prepare Contracts for Agency and Contractor execution, receive required contractor bid documents and issue formal, written "notice to proceed" to contractor.

3.0 CONSTRUCTION ADMINISTRATION

3.1 CONSTRUCTION CONTRACT ADMINISTRATION

SCHEDULE AND RECORD JOB MEETING

Coordinate and conduct a preconstruction conference to establish administrative procedures for the project. Conduct regularly scheduled job meeting with the contractor(s) and the Agency and/or Agency's representatives. Prepare written documentation (meeting minutes) of the construction meetings as may be required.

MONITOR CONSTRUCTION SCHEDULE

Review and provide applicable comments on the contractor's submitted construction schedule. Monitor the contractor's progress in relation to the schedule. Issue regular reports to the Agency and contractor on construction time consumed on the Project. Keep the contractual parties advised on the contractual time limits as it relates to the performance schedule.

PREPARE MONTHLY PROGRESS ESTIMATES

Review and/or prepare the contractor's monthly progress payment requests and prepare monthly progress estimates based on the Engineer's judgement of the value of work completed during each pay period.

NEGOTIATE CHANGE ORDERS

Represent the Agency's interest in negotiation of change orders with the contractor. Prepare change orders for execution by the contractor subject to approval and authorization of the Agency.

PREPARE AND MAINTAIN PROJECT RECORDS

Prepare and maintain project records, such as daily logs, weekly schedule reports, job site photos, quantity measurements, and correspondence, etc., as applicable.

CONDUCT PROJECT CLOSEOUT

Review contractor sponsored and submitted bonds, warranties, O&M manuals and record drawings. Assist Agency in final closeout paperwork regarding compliance with State law and/or funding agency requirements.

3.2 OFFICE ENGINEERING

REVIEW SHOP DRAWING SUBMITTALS

Review shop drawing submittals for compliance with design intent and general conformity to the Contract drawings and specifications.

REVIEW "OR EQUAL" PRODUCTS

Review proposals from the contractor to substitute an "or equal" product for a specified product based on design intent and general conformity to the Contract drawings and specifications.

CLARIFY DESIGN INTENT

Respond to the contractor's questions and provide interpretation of the Contract specifications and drawings, which address and clarify design intent. Prepare supplementary sketches to assist contractor as may be necessary. Maintain written record of contractor sponsored inquiries and/or requests concerning design intent.

EVALUATE CHANGE ORDERS

Estimate the added reduced cost of changes during construction to be used in negotiation of Contract change orders. Evaluate the impact of change orders on the construction schedule and recommend contract time revisions, as may be applicable. Provide additional engineering design for change orders as may be further directed by the Agency.

PREPARE RECORD DRAWINGS

Prepare reproducible set of record drawings from "marked up" set of drawings maintained and submitted by the contractor and/or the Agency's Resident Engineer. Furnish the Agency with one copy of the record drawings.

3.3 CONSTRUCTION MONITORING

PROVIDE FIELD OBSERVATION

Provide Resident Engineer and/or inspectors to provide field observation of the contractor's work. The Engineer shall not, however, be responsible for construction means, methods, sequences, or for safety measures used in carrying on the work of the contractors or the contractor's subcontractors.

PROVIDE CONSTRUCTION SURVEY

Where specified or directed by the Agency, the Engineer shall provide field surveys to assist the contractor in the construction and prosecution of the contractor's work.

CONDUCT FINAL INSPECTIONS

Conduct substantial completion inspection, issue preliminary and final punch lists, review contractor's compliance with the contract documents and recommend project acceptance by the Agency.

3.4 PROJECT MANAGEMENT

ASSIST THE AGENCY IN PROJECT ADMINISTRATION

Coordinate and identify project costs. Maintain project accounting to aid in the final project audit, as may be required.

ASSIST THE AGENCY IN COMMUNITY INVOLVEMENT

Attend project related meetings with the community and other vested stakeholders to provide information about the project. Respond to questions and concerns of the public regarding the proposed project.

COORDINATE AND REVIEW THE WORK OF SUBCONSULTANTS

Obtain the services of specialty subconsultants. Coordinate and review their work.

PREPARE PROGRESS UPDATES

Prepare monthly progress updates. The updates will include a brief summary of the past month's construction and consultant activity for the next month.

4.0 SPECIAL SERVICES

- 4.1 Special services may be required during the performance of the services contemplated within this Contract, and as described in the budget which are outside the professional expertise of the staff of Gray & Osborne, Inc., such as geotechnical investigations and analyses, groundwater analyses, environmental analyses, laboratory testing, right-of-way services, historical and cultural surveys, and other special services.

The Agency may employ the special professional expertise and pay the cost thereof, or, the Agency at its option, may direct the Engineer to employ the special expertise.

The information so secured shall be made available to the Agency and the Engineer for the use and development of the Agency's projects.

EXHIBIT "B"



PROFESSIONAL ENGINEERING SERVICES CONTRACT FULLY BURDENED BILLING RATES* THROUGH JUNE 15, 2016**

<u>Employee Classification</u>	<u>Fully Burdened Billing Rates</u>		
AutoCAD/GIS Technician/Engineering Intern	\$ 45.00	to	\$ 90.00
AutoCAD/GIS Manager/Graphic Artist	\$ 92.00	to	\$118.00
Senior Electrical Engineer	\$140.00	to	\$182.00
Senior Structural Engineer	\$114.00	to	\$168.00
Electrical Engineer	\$102.00	to	\$148.00
Structural Engineer	\$ 98.00	to	\$130.00
Environmental Technician/Specialist	\$ 80.00	to	\$108.00
Geomorphologist/Geologist	\$116.00	to	\$130.00
Civil Engineer	\$ 75.00	to	\$118.00
Project Engineer	\$110.00	to	\$142.00
Project Manager	\$115.00	to	\$176.00
Principal-in-Charge	\$112.00	to	\$176.00
Resident Engineer	\$123.00	to	\$164.00
Field Inspector	\$ 82.00	to	\$130.00
Field Survey (2 Person)***	\$144.00	to	\$210.00
Field Survey (3 Person)***	\$219.00	to	\$274.00
Professional Land Surveyor	\$109.00	to	\$128.00
Secretary/Word Processor***	N/A		

* Fully Burdened Billing Rates include overhead and profit.

** Updated annually, together with the overhead.

All actual out-of-pocket expenses incurred directly on the project are added to the billing. The billing is based on direct out-of-pocket expenses; meals, lodging, laboratory testing and transportation. The transportation rate is \$0.54 per mile or the current maximum IRS rate without receipt IRS Section 162(a).

*** Administration expenses include secretarial and clerical work; GIS, CADD, and computer equipment; owned survey equipment and tools (stakes, hubs, lath, etc. – Note: mileage billed separately at rate noted); miscellaneous administration tasks; facsimiles; telephone; postage; and printing costs, which are less than \$150.



To: Mayor Perry and City Council Members
From: Betty J. Garrison, Finance Director
Date: June 6, 2016
Re: 2015 Annual Report Review and Information

ATTACHMENTS: None

TYPE OF ACTION:

Information Only Discussion Action Public Hearing Expenditure

Recommendation/Action: None.

Issue: Every year, the City files an Annual Report with the Washington State Auditor's Office for the preceding year's activity, which is due within 150 days of the end of the prior Fiscal Year per RCW. The deadline was May 29, 2016 for fiscal year 2015, and the report was filed and accepted on May 24, 2016.

Discussion: The presentation will review the basic requirements placed on the City for Financial Reporting, and it will review the 2015 Annual Report as filed with the State Auditor.

The information presented provides financial transparency and allows for fiscal oversight by City Council.