

Councilmembers

Position No.

1. Tod Gunther
2. Barbara Ford
3. William Birkes, Deputy Mayor
4. Dave Harman
5. Nicola McDonald
6. Josh Penner
7. Scott Drennen



ORTING CITY COUNCIL

Regular Business Meeting Agenda

(REVISED)

Orting Public Safety Building
401 Washington Ave. SE, Orting, WA

April 13, 2016
7 p.m.

Audience members are welcome to speak on any topic on the agenda after Councilmembers have finished their discussion.

Mayor Joachim Pestinger

7:00 P.M. - CALL MEETING TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL

REQUEST FOR ADDITIONS OR CORRECTIONS TO THE AGENDA

CONSENT AGENDA:

- Minutes of March 30, 2016
- Payroll and Claims Warrants
- Treasurer's Report

Motion: *Move to approve Consent Agenda as prepared.*

PUBLIC COMMENTS: *Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name and address for the record. Please limit your comments to 3 minutes. Thank you for attending.*

PRESENTATIONS:

- Police Presentation - • Chief Drake
(5 Minute Break)

COMMISSION REPORTS:

- Planning Commission

COMMITTEE AND COUNCIL STANDING REPORTS:

Council Standing Committees and other Reports

- Public Works – **CM McDonald/CM Penner**
- Finance – **CM Ford/DM Birkes**
- Public Safety – **CM Gunther/CM Harman**
- Mayor Report – **Mayor Pestinger**
- Miscellaneous activity reports, i.e. PSRC, special meetings, etc.

OLD BUSINESS:

- Emergency Evacuation Bridge System • **CM Drennen**
- Economic Development RFQ • **Mayor Pestinger**

Americans with Disabilities Act – reasonable accommodations provided upon request (360) 893-2219

NEW BUSINESS:

1) AB16-30 - (First Read) Ordinance No. 2016-983, Astound Broadband Franchise Agreement • Mayor Pestinger

- *First Reading of Ordinance No. 2016-983*

2) AB16-31 - SWAT V-150 Vehicle • Mayor Pestinger/Chief Drake

Motion: *Move to approve acceptance of a V-150 vehicle from the Federal Government via the Washington State Patrol.*

3) AB16-32 – RCO Grant Application Authorizing Resolution No. 2016-18(a) and Authorizing Resolution 2016-18(b) for Gratzner Park • DM Birkes

Motion: *Move to adopt RCO Authorizing Resolution No. 2016-18(a) from WA. Wildlife and Recreation Program (WWRP) and RCO Authorizing Resolution No. 2016-18(b) from Land and Water Conservation Fund (LWCF) for grant funding assistance for Gratzner Park Athletic Field.*

PUBLIC COMMENTS: *Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name and address for the record. Please limit your comments to 3 minutes. Thank you for attending.*

EXECUTIVE SESSION:

Executive Session to discuss potential litigation, as authorized by RCW 42.30.110(i) no action is anticipated to follow.

ADJOURNMENT

Motion: *Move to Adjourn.*

Upcoming Meetings:

Next Regular Meeting: April 27, 2016 (PSB)



ORTING CITY COUNCIL MEETING MINUTES

Multi-Purpose Center, 202 Washington Avenue S.

March 30, 2016

Mayor Joachim Pestinger called the meeting to order with the flag salute at 7:00 pm in the Orting Public Safety Building. Roll call found in attendance Deputy Mayor William Birkes, Councilmembers Scott Drennen, Barbara Ford, Josh Penner, Tod Gunther, and Dave Harman.

ATTENDANCE:

Councilmember Harman made a motion to excuse Councilmember McDonald. Second by Councilmember Penner. Motion carried (6-0).

City Employees Mark Bethune, City Administrator Scott Larson, Treasurer
 Rachel Pitzel, City Clerk

Professional Jay Long, Attorney – Kenyon Disend
Representatives JC Hungerford, Engineer – Parametrix

Visitors (signed in) None.

REQUEST FOR ADDITIONS OR CORRECTIONS TO THE AGENDA:

None.

CONSENT AGENDA:

Councilmember Ford moved to approve the Consent Agenda as prepared. Second by Councilmember Gunther. Motion carried (6-0).

COMMENTS FROM CITIZENS:

None.

COMMITTEE AND STANDING REPORTS: (7:04)

Rules Councilmember Harman reported that he will have a full report at the next Council meeting.

Transportation Councilmember Penner reported on the Chip Sealing; Two-Way Left turn lane and the cameras at WhiteHawk.

Emergency Preparedness Councilmember Drennen reported on the May 20th All City Evacuation Drill; discussed the Emergency Preparedness Plan; Hazard Mitigation Plan; Community Involvement.

Mayor Report

Mayor Pestinger reported he attended the Pierce County Regional Council meeting and the County Executive meeting; he noted he will be attending the Puget Sound Regional Council that week and discussed the News Tribune story on the Light Rail Plan.

Miscellaneous

Councilmember Ford noted the website that citizens can get information on the Sound Transit project: www.soundtransit3.org.

PUBLIC HEARINGS: (7:20)

Closed Record Hearing – Village Green Div. 1, Ph. 7

Mayor Pestinger opened the closed record hearing at 7:20 p.m.

City Treasurer Larson explained that the City would first like to have a guarantee payment of the impact fees and are recommending another postponement of the hearing until the next meeting.

Mayor Pestinger closed the closed record hearing at 7:22 p.m.

Postponed to the April 13, 2016 meeting.

Public Hearing – Animal License Fee Changes

Tabled to the April 13, 2016 meeting.

Public Hearing – SW Connector

Councilmember Penner asked Mayor Pestinger if he could conduct the hearing this evening on the SW Connector.

Councilmember Penner opened the public hearing at 7:31 p.m.

Mr. JC Hungerford from Parametrix, gave a brief presentation on the SW Connector and the three options.

Public comments:

Karen Wilson asked for clarification on route.

Rita Marshall discussed concern for safety and what determines the safest place for route; asked why it is being brought so far in to town; discussed wetlands.

Councilmember Drennen gave a brief history of the previous hearing and the bypass; discussed school zones; calming devices and environmental costs. He noted this is not a high speed bypass.

Carrie (last name not provided) also discussed safety issues; concerns of bypassing the city center and diverting traffic away

from small businesses; costs of hiring more police and other avenues that will come with the connector.

Greg Hogan noted that the impact on businesses and stated people are already bypassing the businesses.

Doug Bishop asked if the three choices include an intersection with a light.

Parametrix Engineer JC Hungerford responded “no” on the intersection light and discussed signals and the previous hearings that discussed them.

Councilmember Penner closed the public hearing at 7:44 p.m.

OLD BUSINESS: (7:47)

Orting Emergency
Evacuation Bridge Lead
Agency Agreement

Councilmember Drennen reported no report at this time.

Resolution No. 2016-17 •
Amending City Facility Fees

Councilmember Ford discussed the rate changes as well as the nonprofit rate being extended. She also noted the rate for those events that serve alcohol and the process.

Councilmember Ford moved to adopt Resolution No. 2016-17, adopting a Use Fee schedule for City Facilities and a Service Fee schedule for city services for Special Events. Second by Councilmember Harman. Motion carried (6-0).

Ordinance No. 2016-982 •
Amending City Facility
Rentals Code

Councilmember Ford moved to adopt Ordinance No. 2016-982, relating to use rates for use of City Facilities; amending Orting Municipal Code Section 3-8-5A; 3-8-5B4 and repealing section 3-8-5C4. Second by Councilmember Harman. Motion carried (6-0).

NEW BUSINESS: (7:51)

Vehicle Maintenance RFP

Councilmember Drennen discussed the project and the process. Discussion took place regarding OEM parts and the different brands of trucks the City owns; discussion also took place regarding transporting the vehicles for service.

Councilmember Drennen moved to approve Korum Ford as the vehicle maintenance service provider and request that the Mayor enter into contract negotiations. Second by Councilmember Penner. Motion carried (6-0).

Councilmember Penner asked to suspend the agenda and return back to the SW Connector to allow Councilmembers to speak on the issue.

Councilmember Ford discussed doing research from the first public hearing in 2007 and noted she talked with some citizens and she stated she is for staying on course with the original plan of option C which has less impact on citizens and wetlands.

Councilmember Penner asked about the options A, B and C and the existing infrastructure – Mr. Hungerford stated he believed option A had the most impact, option B none that he knows of and option C has none since the home that was there has been demolished since the levee project.

Councilmember Penner also asked regarding the WhiteHawk/162 if any of the 3 options will have a traffic light and is concerned that all option should require one.

Councilmember Harman discussed the businesses that have been mentioned and noted that 65% of traffic make a right turn at Calistoga St. W. at the time of the study.

Discussion took place regarding alignment and future development.

Councilmember Drennen stated option B there will be a new Public Works building in the future - moving our facilities away from that spot and the sale of that land is something to consider; he noted that option B has some pluses to work with regarding that property. He also stated that the original public hearing conceptual drawing would be nice to have and display at City Hall so citizens can visualize the impacts.

Mayor Pestinger asked if there was any more Council comments on this issue, hearing none he moved to the next agenda item.

RFP Expense for Economic Development

City Administrator Bethune reported he is continuing to work on putting together a proposed RFP and noted the difficulty in getting information on advertising nationally and he will have more information at the April 13, 2016 meeting.

Discussion took place regarding RFP vs. RFQ; sustainability, growth; cost for putting out the RFP and what part of budget is would come out of; it was mentioned by Councilmember Gunther that it would be nice to talk with other cities who have used this and how it benefited them.

2015 TBD Annual Report

Councilmember Penner discussed the goal of repairing the streets within a ten year period; he highlighted some of the 2015 projects and the expenditure and revenues.

Councilmember Penner moved to approve the 2015 Transportation Benefit District Annual report. Second by Councilmember Drennen. Motion carried (6-0).

Mayor Pestinger reminded folks of the Daffodil Parade on April 9th at 5 p.m. (Downtown Orting) and noted Orting always has the best attendance. He also recognized City Staff on its wellness and once again receiving the Well City Award through AWC,

COMMENTS FROM CITIZENS:

None.

ADJOURN:

Councilmember Ford moved to adjourn. Second by Councilmember Penner. Motion carried (6-0).

ATTEST:

Joachim Pestinger, Mayor

Rachel Pitzel, City Clerk

CITY OF ORTING
VOUCHER/WARRANT REGISTER
FOR APRIL 13, 2016 COUNCIL

CLAIMS/PAYROLL VOUCHER APPROVAL

CITY OF ORTING

WE, THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN AND THAT THE CLAIM IS A JUST, DUE AND UNPAID OBLIGATION AGAINST THE CITY OF ORTING, AND THAT WE ARE AUTHORIZED TO AUTHENTICATE AND CERTIFY TO SAID CLAIM.

CLAIMS WARRANTS #43390 THRU #43435
IN THE AMOUNT OF \$ 148,806.16

PAYROLL WARRANTS # 22436 THRU #22453
IN THE AMOUNT OF \$ 172,993.21

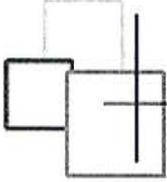
ARE APPROVED FOR PAYMENT ON APRIL 13, 2016

FINANCE COMMITTEE CHAIR _____

COUNCILPERSON _____

COUNCILPERSON _____

CITY CLERK _____

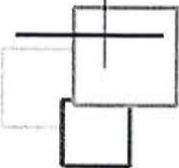


Fund Transaction Summary

Transaction Type: Invoice
Fiscal: 2016 - April 2016 - 1st Council
System Types: Financials

Fund Number	Description	Amount
001	Current Expense	\$44,751.41
101	City Streets	\$1,373.00
104	Cemetery	\$138.66
105	Parks Department	\$551.42
320	Transportation Impact	\$54.02
401	Water	\$3,485.94
408	Wastewater	\$5,677.58
410	Stormwater	\$92,774.13
	Count: 8	\$148,806.16

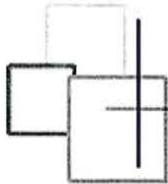
Register



Fiscal: 2016
 Deposit Period: 2016 - April 2016
 Check Period: 2016 - April 2016 - 1st Council
 Bank Accounts: Key Bank - 2000073
 Register Types: Warrant
 Show Outstanding: All
 System Types: Financials
 Outstanding Date: 4/8/2016 12:39:44 PM
 Show Details: Hide

Number	Name	Print Date	Clearing Date	Amount
Key Bank	2000073			
43390	Association of Wash. Citi	4/5/2016		\$75.00
43391	Business Solutions Center	4/5/2016		\$601.92
43392	Centurylink	4/5/2016		\$1,837.54
43393	CenturyLink/Qwest	4/5/2016		\$274.50
43394	Verizon Wireless	4/5/2016		\$2,237.55
43395	Alarm Center, Inc	4/13/2016		\$73.26
43396	Alpine Products Inc.	4/13/2016		\$669.38
43397	Arrow Lumber	4/13/2016		\$292.63
43398	Bhc Consultants	4/13/2016		\$5,708.30
43399	Capital One Commercial	4/13/2016		\$989.88
43400	Cintas Corporation #461	4/13/2016		\$116.76
43401	Comcast	4/13/2016		\$482.34
43402	Dell Financial Services Payment	4/13/2016		\$1,235.41
43403	Processing Services	4/13/2016		\$758.79
43404	Equipment Experts INC	4/13/2016		\$36.13
43405	Javelina Trading Company	4/13/2016		\$161.40
43406	Jennings Equipment Inc	4/13/2016		\$9,728.26
43407	Keybank	4/13/2016		\$158.63
43408	Kibbey's Battery Service	4/13/2016		\$288.00
43409	Lewis, Jennifer	4/13/2016		\$127.23
43410	Mclendon Hardware, Inc	4/13/2016		\$24.89
43411	Mountain Mist	4/13/2016		\$483.00
43412	Murphy-Brown, Mary	4/13/2016		\$47.84
43413	O'Reilly Auto Parts	4/13/2016		\$290.63
43414	Orting Auto Parts	4/13/2016		\$60.49
43415	Orting Valley Senior Cent	4/13/2016		\$1,083.33
43416	P County Budget & Finance	4/13/2016		\$110.72
43417	Platt	4/13/2016		\$443.89
43418	Popular Networks, Llc	4/13/2016		\$4,034.24

Number	Name	Print Date	Cleating Date	Amount
43419	Puget Sound Energy	4/13/2016		\$91,709.60
43420	Pumpteck Inc	4/13/2016		\$239.36
43421	Secure Pacific Corp/Mountain Alarm	4/13/2016		\$260.85
43422	Smith, Jason	4/13/2016		\$256.00
43423	South Sound 911	4/13/2016		\$17,757.50
43424	Spectral Laboratories	4/13/2016		\$366.00
43425	Sumner Lawn'n Saw	4/13/2016		\$291.22
43426	The News Tribune	4/13/2016		\$1,048.92
43427	The Walls Law Firm	4/13/2016		\$1,833.33
43428	Tucci & Sons	4/13/2016		\$183.98
43429	U.S. Bank	4/13/2016		\$425.00
43430	UniFirst Corporation	4/13/2016		\$252.54
43431	United Laboratories	4/13/2016		\$407.52
43432	US Bank Equipment Finance	4/13/2016		\$326.54
43433	Vision Forms LLC	4/13/2016		\$269.86
43434	Water Management Lab Inc.	4/13/2016		\$474.00
43435	Whitworth Pest Solutions, INC	4/13/2016		\$272.00
	Total		Check	\$148,806.16
	Total		2000073	\$148,806.16
	Grand Total			\$148,806.16



Custom Council Report

Vendor	Number	Invoice	Account Number	Notes	Amount
Alarm Center, Inc	43395	1013309	001-521-20-31-06	PSB Alarm	\$73.26
				Total	\$73.26
Alpine Products Inc.	43396	TM-156268	101-542-30-48-02	Traffic Cones	\$196.77
		TM-156269	401-534-10-31-04	Rain Gear	\$71.18
		TM-156540	101-542-64-49-01	Spray Wand-Paint	\$401.43
				Total	\$669.38
Arrow Lumber	43397	600186-April2016	001-514-21-48-01	Pushbroom	\$16.31
			101-542-30-48-02	Plastic Pail Main Park Ramp	\$22.83
			101-542-30-48-07	Tarp for Big Toy Sidewalk	\$5.21
			101-542-30-48-07	Plasic for Mazza Sidewalk	\$17.35
			104-536-20-31-00	Redimix-Cemetery Vases	\$3.47
			105-576-80-35-00	Bow Rake	\$23.93
			105-576-80-48-00	Caution Tape-Big Toy	\$5.97
			105-576-80-48-00	Cable	\$6.40
			105-576-80-48-00	Wrench/Wire/Cable for Saw Dust Burner Repair	\$12.52
			105-576-80-48-00	Bow Rake for Main Park ADA Ramp	\$23.93
			105-576-80-48-03	Keys for Park Restrooms-PD Copies	\$7.35
			401-534-10-31-00	Wood-Display Sign	\$7.81
			401-534-50-48-02	WD-40/Outlet Plate/Hillman Fasteners	\$11.69
			401-534-50-48-02	Coupling & Nipple	\$23.67
			401-534-50-48-03	LED Light-Well 1	\$20.66
			408-535-10-31-05	Gloves	\$8.69
			408-535-50-35-00	WWTP F450- Ratchet Tie Downs	\$26.10
			408-535-60-48-04	Hillman Fasteners	\$1.83
			408-535-60-48-04	Hillman Fasteners	\$2.22
			408-535-60-48-04	Hillman Fasteners	\$4.90
			408-535-60-48-04	Painter Tape for Park Restroom	\$9.35
			408-535-60-48-04	Paint for Park Restrooms	\$15.22
			408-535-60-48-04	Paint for Park Restrooms	\$15.22
				Total	\$292.63

Vendor	Number	Invoice	Account Number	Notes	Amount
Association of Wash. Citi	43390	42419	001-514-40-41-49	2016-Basics of Collective Bargaining	\$75.00
				Total	\$75.00
Bhc Consultants	43398	0007633	001-558-60-41-02	Planning Consultant	\$5,708.30
				Total	\$5,708.30
Business Solutions Center	43391	April2016-352	001-521-20-31-03	24 Hour Tow Tags for Vehicles	\$109.89
			001-521-20-31-03	Creating 15 Bond Books	\$120.60
			001-521-21-41-49	Shipping Tox Lab Evidence	\$8.34
		March2016-352	001-512-50-31-00	NCR Forms	\$43.52
			001-512-50-31-00	Forms-Conditions of Release-Infraction Order	\$176.26
			001-521-20-31-03	Forms-Voluntary-Involuntary Commit	\$65.28
			001-521-21-31-01	Mailing of Evidence	\$12.75
			401-534-10-31-00	Service Forms	\$21.76
			408-535-10-31-00	Service Forms	\$21.76
			410-531-38-31-00	Service Forms	\$21.76
				Total	\$601.92
Capital One Commercial	43399	7003731100048356-Apr2016	001-514-23-31-02	Office Supplies	\$157.42
			001-521-20-31-03	Copy Paper	\$294.33
			001-521-20-31-03	Office Supplies	\$538.13
				Total	\$989.88
Centurylink	43392	300549818-April 2016	001-514-23-42-00	City Phones	\$746.01
			001-521-50-42-00	City Phones	\$121.02
			001-522-20-42-01	City Phones	\$274.19
			001-524-20-42-00	City Phones	\$27.63
			320-595-30-63-01	City Phones	\$54.02
			401-534-10-42-01	City Phones	\$173.15
			408-535-10-42-01	City Phones	\$371.54
		409178327-April 2016	001-521-50-42-01	PD Transmitter	\$69.98
				Total	\$1,837.54
CenturyLink/Qwest	43393	464B-April 2016	001-521-20-45-02	Cell Connection	\$116.53
		465B-April 2016	001-521-20-45-02	Cell Connection	\$81.50
		492B-April 2016	001-521-20-45-02	Cell Connection	\$76.47
				Total	\$274.50
Cintas Corporation #461	43400	461738122	408-535-60-48-04	Cleaning of Park Restrooms	\$116.76
				Total	\$116.76
Comcast	43401	0221105-April2016	001-514-23-42-00	City Hall Internet	\$60.29
			001-524-20-31-00	City Hall Internet	\$60.29
			401-534-10-42-01	City Hall Internet	\$60.29
			408-535-10-42-01	City Hall Internet	\$60.30
		0221113-April2016	001-521-50-42-00	PSB Internet	\$120.58

Vendor	Number	Invoice	Account Number	Notes	Amount
Comcast	43401	0221113-April2016	001-522-20-42-01	PSB Internet	\$120.59
				Total	\$482.34
Dell Financial Services Payment Processing Services	43402	78434264	001-594-12-75-03	PSB Server	\$25.00
			001-594-14-75-03	City Hall Server	\$50.00
			001-594-21-75-02	PSB Server	\$753.41
			001-594-24-75-05	City Hall Server	\$37.00
			001-594-76-75-06	City Hall Server	\$12.00
			101-594-42-75-41	City Hall Server	\$12.00
			105-594-76-75-04	City Hall Server	\$12.00
			401-594-34-75-02	City Hall Server	\$111.00
			408-594-35-64-44	City Hall Server	\$149.00
			410-594-31-74-02	City Hall Server	\$74.00
				Total	\$1,235.41
Equipment Experts INC	43403	140000959	401-534-50-48-04	Clutch & Light Repair-Backhoe-FA1034	\$379.40
			408-535-50-48-04	Clutch & Light Repair-Backhoe-FA1034	\$379.39
				Total	\$758.79
Javelina Trading Company	43404	1603017	408-535-10-31-00	Gloves	\$36.13
				Total	\$36.13
Jennings Equipment Inc	43405	64533	104-536-50-48-01	Parts for Kubota-FA321	\$48.42
			105-576-80-48-01	Parts for Kubota-FA321	\$64.56
			410-531-38-48-01	Parts for Kubota-FA321	\$48.42
				Total	\$161.40
Keybank	43406	4412-April 2016	001-521-20-31-01	Shirts for Rape Aggression Defense Class	\$100.00
			001-521-20-31-01	Headset Earpiece for Radios	\$119.75
			001-521-20-31-01	Engraving & Plaque for Officer of the Year	\$200.11
			001-521-20-31-01	MOE Magazines for Rifles	\$500.48
			001-521-21-31-01	Breath Tubes for Portable Breath Machine	\$71.81
			001-521-30-31-04	HDMI Cable	\$7.06
			001-521-30-31-04	HDMI Cable	\$17.99
			001-521-30-31-04	10-Flash Drive Memory Sticks	\$89.98
			001-521-50-48-02	Safety Glasses	\$68.93
			001-521-50-48-02	Toughbook Docking Station	\$149.99

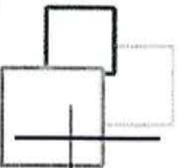
Vendor	Number	Invoice	Account Number	Notes	Amount		
Keybank	43406	4412-April 2016	001-521-50-48-04	Refund on AED-Charger	(\$224.00)		
			001-594-21-64-37	Computer Docking Station	\$133.96		
			001-594-21-64-37	Intoximeter Breath Test Machine for Portable Testing	\$502.12		
			001-594-21-64-46	Computer for New Ford Vehicle	\$3,026.30		
			001-594-21-75-03	Computer Docking Station	\$260.00		
			001-594-21-75-03	2-Toughbook	\$430.64		
			4438-April 2016	001-512-50-49-03	Docking Stations Lodging for National Court Coference-Woods	\$349.67	
				001-513-10-49-00	Management Meeting Lunch	\$61.53	
				001-513-10-49-00	Seminar for Notary-Helgelien	\$125.00	
				001-513-10-49-00	Supplies for Notary-Helgelien	\$191.52	
				001-514-21-48-01	Plunger & Flapper-City Hall	\$42.04	
				001-575-50-48-02	Detail on 08 Escape	\$109.35	
		101-542-30-31-00		Printer Toner	\$65.97		
		101-542-30-48-04		Repair to Jack Hammer	\$49.27		
		105-576-80-31-00		Printer Toner	\$65.98		
		401-534-10-31-00		Storage for I-Pad	\$3.33		
		401-534-10-31-00		Battery for Cell Phone	\$16.09		
		401-534-10-31-00		Printer Toner	\$98.97		
		401-534-50-48-02	Security Siren-Well 1	\$41.50			
		401-534-50-48-02	High Security Contacts/ Armored Cable Well 1	\$300.97			
		401-594-34-64-58	Laptop & Desktop Computers-Public Works	\$935.76			
		408-535-10-31-00	Storage for I-Pad	\$3.33			
		408-535-10-31-00	Battery for Cell Phone	\$16.10			
		408-535-10-31-00	Printer Toner	\$98.97			
		408-535-10-31-00	Toilet Trash Brochure	\$592.58			
		408-594-35-64-30	Laptop & Desktop Computers-Public Works	\$1,000.00			
		410-531-38-31-00	Storage for I-Pad	\$3.33			
		410-531-38-31-00	Printer Toner	\$65.98			
		4461-April 2016	401-534-10-31-00	Well 1 Vinegar	\$28.74		
			408-535-50-48-02	Hose Repair	\$7.16		
						Total	\$9,728.26
		Kibbey's Battery Service	43407	April2016-206	101-542-30-48-02	Battery for Grader-FA1010	\$158.63

Vendor	Number	Invoice	Account Number	Notes	Amount
Lewis, Jennifer	43408	April2016-201	001-571-20-31-34	Dog Training Classes-March 2016 Total	\$288.00 \$288.00
Mclendon Hardware, Inc	43409	106220-Apr2016	101-542-30-48-02 408-535-60-48-04	Stencils to Mark Cones Supplies for Working on Park Bathrooms Total	\$4.34 \$122.89 \$127.23
Mountain Mist	43410	039199-April 2016	001-514-23-31-02	Water for City Hall Total	\$24.89 \$24.89
Murphy-Brown, Mary	43411	April2016-204	001-571-20-31-21	Dance Class-March 2016 Total	\$483.00 \$483.00
O'Reilly Auto Parts	43413	1265583-April2016	001-521-50-48-02 101-542-30-48-04 101-542-30-48-04 101-542-30-48-04 104-536-20-31-00 105-576-80-31-00 105-576-80-48-01 105-576-80-48-01 105-576-80-48-01 401-534-50-48-06 408-535-50-48-08	Car Maintenance Supplies Brushes-Wire Wheel-Taper Grater FA1010 U-Joint for Grader- FA1010 Oil-Filter for Fuel & Oil-FA1010 Power Cord for Camaras Power Cord for Camaras Battery Ring Air Filter & Plug for Edger Tow Strap for Trailer Transmission Fluid- FA1051 Wiper Blades- FA1031 Total	\$39.52 \$13.34 \$23.21 \$110.76 \$16.31 \$16.32 \$9.88 \$11.18 \$28.28 \$6.73 \$15.10 \$290.63
Olsen, Keri	43412	April2016-200	001-571-20-31-19	Zumba-March Total	\$47.84 \$47.84
Orting Auto Parts	43414	1000	101-542-30-48-04 105-576-80-48-01 410-531-38-48-01	Battery Cable for Grader-FA1010 Grease & Degreaser FA-1017 Grease & Degreaser FA-1017 Total	\$31.04 \$14.73 \$14.72 \$60.49
Orting Valley Senior Cent	43415	April2016-203	001-571-20-31-06	Monthly Support- April 2016 Total	\$1,083.33 \$1,083.33

Vendor	Number	Invoice	Account Number	Notes	Amount		
P County Budget & Finance	43416	0419251024-2016	105-539-20-50-01	0419251024-Williams CT NW-Forest Protection	\$21.85		
			410-531-20-50-01	0419251024-Williams CT NW-Noxious Weed	\$7.71		
			001-539-20-50-01	401 Whitehawk BLVD NW-Noxious Weed	\$7.49		
		0519304037-2016	105-539-20-50-01	401 Whitehawk BLVD NWForest Protection	\$21.85		
			001-539-20-50-01	0519311113-Leach Road-Noxious Weed	\$4.93		
		0519311113-2016	105-539-20-50-01	0519311113-Leach Road-Forest Protection	\$21.85		
			001-539-20-50-01	051931114-Leach Road-Noxious Weed	\$2.15		
		0519311114-2016	105-539-20-50-01	051931114-Leach Road-Forest Protection	\$22.89		
				Total	\$110.72		
		Platt	43417	J056702	408-535-50-48-02	Light Bulbs	\$443.89
						Total	\$443.89
		Popular Networks, Llc	43418	17803	001-512-50-41-01	Computer Maintenance	\$15.37
					001-513-23-41-01	Computer Maintenance	\$76.87
001-514-23-41-04	Computer Maintenance				\$199.85		
001-524-20-41-01	Computer Maintenance				\$153.73		
001-525-60-41-03	Disaster Recovery-Server Backup				\$802.03		
001-575-50-41-03	Computer Maintenance				\$138.36		
101-542-30-41-04	Computer Maintenance				\$76.87		
104-536-20-41-01	Computer Maintenance				\$30.75		
401-534-10-41-05	Computer Maintenance				\$322.84		
408-535-10-41-05	Computer Maintenance				\$322.84		
410-531-38-41-04	Computer Maintenance				\$199.86		
17809	001-521-30-31-04				Computer Maintenance-PD PSB	\$1,672.26	
	001-525-60-41-03				Disaster Recovery Backup-Server	\$22.61	
	Total			\$4,034.24			
Puget Sound Energy	43419			400001171018-Levee	410-594-31-63-15	Relocating of a Utility Pole for Levee	\$91,709.60
			Total		\$91,709.60		

Vendor	Number	Invoice	Account Number	Notes	Amount
Pumpteck Inc	43420	0104244-IN	408-535-50-48-02	Wire Pump @ Rainier Meadows Total	\$239.36 \$239.36
Secure Pacific Corp/Mountain Alarm	43421	81501	001-514-23-31-02	City Hall Alarm	\$83.85
			408-535-10-41-07	WWTP Alarm Total	\$177.00 \$260.85
Smith, Jason	43422	April2016-205	001-571-20-31-33	Karate Instruction- March 2016 Total	\$256.00 \$256.00
South Sound 911	43423	01858	001-521-50-51-00	2nd QRT Police Dispatch Total	\$17,757.50 \$17,757.50
Spectral Laboratories	43424	107845	408-535-10-41-03	Lab Testing	\$366.00
				Total	\$366.00
Sumner Lawn'n Saw	43425	278281	105-576-80-48-01	Weedeater Line	\$45.89
			105-576-80-48-01	Repair for Edger	\$114.06
			410-531-38-31-00	Back Pack Sprayer	\$131.27
			Total	\$291.22	
The News Tribune	43426	257635	001-511-60-49-03	Publications	\$102.53
			001-511-60-49-03	Publications	\$158.52
			001-558-60-41-00	Publications	\$82.26
			001-558-60-41-00	Publications- Bridgewater Sub	\$114.74
			001-558-60-41-00	Publications	\$158.52
			001-558-60-41-00	Publications- Bridgewater Sub	\$190.46
			001-558-60-41-00	Publications	\$241.89
			Total	\$1,048.92	
The Walls Law Firm	43427	605	001-515-30-41-03	Prosecuting Attorney-March 2016 Total	\$1,833.33 \$1,833.33
Tucci & Sons	43428	51889	101-542-30-48-02	Rock Total	\$183.98 \$183.98
U.S. Bank	43429	4043544	408-592-35-89-00	Administration Fees- ORTWATREF10 Total	\$425.00 \$425.00
UniFirst Corporation	43430	3301177472-3301179551- 3301181620-3301183708	408-535-10-31-03	Lab Supplies	\$252.54
				Total	\$252.54

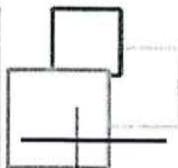
Vendor	Number	Invoice	Account Number	Notes	Amount
United Laboratories	43431	INV149428	410-531-38-48-00	Smack Down- WWTP	\$407.52
				Total	\$407.52
US Bank Equipment Finance	43432	301439956	001-594-14-75-00	City Hall Copier Lease	\$326.54
				Total	\$326.54
Verizon Wireless	43394	9762190772	001-514-23-42-00	Cell Phones	\$186.84
			001-524-20-42-00	Cell Phones	\$58.53
			104-536-20-42-00	Cell Phones	\$39.71
			401-534-10-42-01	Cell Phones	\$286.45
			408-535-10-42-01	Cell Phones	\$286.46
		9762190773	001-512-50-42-00	Cell Phones	\$58.53
			001-521-20-45-01	Cell Phones	\$760.89
			001-521-20-45-02	Cell Phones	\$560.14
				Total	\$2,237.55
Vision Forms LLC	43433	3519	401-534-10-31-00	Utility Bill Processing & Mailing	\$25.26
			401-534-10-42-00	Utility Bill Processing & Mailing	\$64.69
			408-535-10-31-00	Utility Bill Processing & Mailing	\$25.27
			408-535-10-42-00	Utility Bill Processing & Mailing	\$64.68
			410-531-38-31-00	Utility Bill Processing & Mailing	\$25.27
			410-531-38-42-00	Utility Bill Processing & Mailing	\$64.69
				Total	\$269.86
Water Management Lab Inc.	43434	147834-147962-148119- 148258	401-534-10-41-03	Lab Testing	\$474.00
				Total	\$474.00
Whitworth Pest Solutions, INC	43435	302260	001-575-50-48-00	MPC Spraying for Ants	\$272.00
				Total	\$272.00
				Grand Total	\$148,806.16



Cash and Investment Activity

Period: 2016 - March 2016
Fiscal Totals

Fund	Beginning		Beginning		Activity		Activity		Ending		Ending		Ending Balance
	Cash	Investments	In	Out	Cash	Investments	Cash	Investments					
001	Current Expense	\$109,242.61	\$1,710,550.83	\$1,442,991.26	\$1,236,071.18	\$11,193.71	\$1,718,418.12	\$1,729,611.83					
101	City Streets	\$32,886.91	\$261,199.48	\$115,701.31	\$101,193.50	\$9,903.39	\$289,172.61	\$299,076.00					
104	Cemetery	\$4,448.58	\$6,999.15	\$9,908.42	\$6,913.29	\$7,443.71	\$7,005.57	\$14,449.28					
105	Parks Department	\$49,422.15	\$281,315.31	\$52,863.18	\$45,323.60	\$56,961.73	\$268,546.91	\$325,508.64					
107	Tourism Fund	\$0.00	\$5,349.96	\$1,407.16	\$693.14	\$20.99	\$5,357.20	\$5,378.19					
108	TBD	\$0.00	\$0.00	\$192,632.69	\$116,376.44	\$13,821.12	\$62,473.24	\$76,294.36					
120	Police Department Drug	\$51.07	\$2,350.71	\$474.16	\$2.16	\$523.07	\$2,352.87	\$2,875.94					
201	Public Safety Bldg Ltgo Debt	\$667.24	\$8,456.02	\$7.76	\$7.76	\$667.24	\$8,463.78	\$9,131.02					
320	Transportation Impact	\$77,417.64	\$488,043.13	\$77,906.31	\$2,822.06	\$152,501.89	\$462,437.83	\$614,939.72					
401	Water	\$144,743.80	\$1,435,798.32	\$576,309.47	\$406,504.49	\$164,548.78	\$1,472,990.11	\$1,637,538.89					
408	Wastewater	\$616,444.27	\$5,406,640.93	\$1,452,319.74	\$1,128,349.56	\$440,414.45	\$5,422,686.76	\$5,863,101.21					
410	Stormwater	\$241,329.67	\$514,726.26	\$348,690.07	\$222,680.82	\$267,338.92	\$575,792.85	\$843,131.77					
412	Utility Land Acquisition	\$45,893.91	\$1,033,911.81	\$129,338.38	\$30,402.37	\$114,829.92	\$986,602.96	\$1,101,432.88					
631	Payroll Fund	\$144,816.96	\$0.00	\$362,060.36	\$463,601.22	\$43,276.10	\$0.00	\$43,276.10					
632	Claims Fund	\$85,454.60	\$0.00	\$913,228.39	\$867,665.57	\$131,027.42	\$0.00	\$131,027.42					
633	Treasurer's Trust	\$0.00	\$0.00	\$17,823.88	\$17,823.88	\$0.00	\$0.00	\$0.00					
634	Customer Deposits	\$38,108.88	\$111,400.33	\$5,850.00	\$4,200.00	\$39,758.88	\$111,400.33	\$151,159.21					
635	Transportation Benefit District	\$67,724.32	\$31,151.13	\$31,151.13	\$98,875.45	\$0.00	\$0.00	\$0.00					
701	Cemetery Perpetual Fund	\$541.02	\$491,019.15	\$134,399.73	\$67,112.95	\$714.85	\$493,958.71	\$494,673.56					
704	Skinner Estate Fund	\$1,640.96	\$458,778.08	\$122,282.27	\$61,837.93	\$247.37	\$460,659.17	\$460,906.54					
		\$1,660,834.59	\$12,247,690.60	\$3,454,778.52	\$3,559,791.15	\$1,455,193.54	\$12,348,319.02	\$13,803,512.56					



Cash and Investment Activity

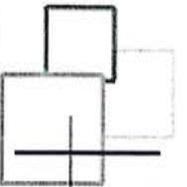
Period: 2016 - March 2016
 Period Totals

Fund	Beginning		Beginning		Activity		Activity		Ending		Ending		Ending Balance
	Cash	Investments	In	Out	Cash	Investments	Cash	Investments					
001	Current Expense	\$5,421.83	\$1,797,895.34	\$501,446.48	\$415,445.83	\$11,193.71	\$1,718,418.12	\$1,729,611.83					
101	City Streets	\$26,132.42	\$276,369.93	\$33,648.02	\$37,143.64	\$9,903.39	\$289,172.61	\$299,076.00					
104	Cemetery	\$3,011.55	\$7,003.28	\$6,425.29	\$1,993.13	\$7,443.71	\$7,005.57	\$14,449.28					
105	Parks Department	\$69,298.00	\$268,487.29	\$14,153.36	\$26,489.63	\$56,961.73	\$268,546.91	\$325,508.64					
107	Tourism Fund	\$19.25	\$5,357.16	\$1.78	\$0.04	\$20.99	\$5,357.20	\$5,378.19					
108	TBD	\$13,821.12	\$50,418.33	\$24,093.31	\$12,054.91	\$13,821.12	\$62,473.24	\$76,294.36					
120	Police Department Drug	\$523.07	\$2,352.10	\$0.77	\$0.77	\$523.07	\$2,352.87	\$2,875.94					
201	Public Safety Bldg Ligo Debt	\$667.24	\$8,461.01	\$2.77	\$2.77	\$667.24	\$8,463.78	\$9,131.02					
320	Transportation Impact	\$133,531.68	\$462,343.02	\$19,493.36	\$523.15	\$152,501.89	\$462,437.83	\$614,939.72					
401	Water	\$134,498.40	\$1,472,803.56	\$104,389.21	\$74,338.83	\$164,548.78	\$1,472,990.11	\$1,637,538.89					
408	Wastewater	\$646,644.55	\$5,422,132.59	\$158,775.14	\$365,005.24	\$440,414.45	\$5,422,686.76	\$5,863,101.21					
410	Stormwater	\$233,062.93	\$575,721.83	\$73,302.97	\$39,026.98	\$267,338.92	\$575,792.85	\$843,131.77					
412	Utility Land Acquisition	\$107,772.30	\$986,459.46	\$7,201.12	\$143.50	\$114,829.92	\$986,602.96	\$1,101,432.88					
631	Payroll Fund	\$37,192.00	\$0.00	\$151,980.05	\$145,895.95	\$43,276.10	\$0.00	\$43,276.10					
632	Claims Fund	\$71,855.29	\$0.00	\$240,981.63	\$181,809.50	\$131,027.42	\$0.00	\$131,027.42					
633	Treasurer's Trust	\$0.00	\$0.00	\$8,318.64	\$8,318.64	\$0.00	\$0.00	\$0.00					
634	Customer Deposits	\$39,608.88	\$111,400.33	\$2,250.00	\$2,100.00	\$39,758.88	\$111,400.33	\$151,159.21					
635	Transportation Benefit District	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00					
701	Cemetery Perpetual Fund	\$383.29	\$493,958.71	\$331.56	\$0.00	\$714.85	\$493,958.71	\$494,673.56					
704	Skinner Estate Fund	\$93.91	\$460,659.17	\$153.46	\$0.00	\$247.37	\$460,659.17	\$460,906.54					
		\$1,523,537.71	\$12,401,823.11	\$1,081,948.34	\$1,203,796.60	\$1,455,193.54	\$12,348,319.02	\$13,803,512.56					

INVESTMENTS POOL FOR MONTH ENDING March 2016

FUNDS:	001	101	104	105	107	108	120	201	320	401	408	410	412	634	701	704	TOTAL
GENERAL FUND	\$786,959.05	\$211,865.91	\$7,003.28	\$182,108.59	\$123.32	\$50,418.33	\$2,352.10	\$8,461.01	\$389,588.63	\$569,774.05	\$1,692,468.49	\$316,511.95	\$438,266.03	\$11,400.33	\$0.00	\$0.00	\$4,547,712.87
BEG. BAL	\$786,959.05	\$211,865.91	\$7,003.28	\$182,108.59	\$123.32	\$50,418.33	\$2,352.10	\$8,461.01	\$389,588.63	\$569,774.05	\$1,692,468.49	\$316,511.95	\$438,266.03	\$11,400.33	\$0.00	\$0.00	\$4,547,712.87
Pool Interest	\$294.01	\$69.27	\$2.29	\$59.64	\$0.04	\$16.51	\$0.77	\$4.77	\$94.81	\$186.95	\$554.17	\$71.02	\$143.50	\$0.00	\$0.00	\$0.00	\$1,699.33
Invest Sale 1	(\$160,000.00)																(\$160,000.00)
Invest Sale 2																	\$0.00
Share Rent (to ODP)	\$80,228.77	\$12,733.44															\$105,000.88
Invest Pctd (to ODP)																	\$0.00
Invest Pctd (to ODP)																	\$0.00
Subtotal	\$707,077.83	\$224,388.59	\$7,005.57	\$182,168.21	\$123.36	\$52,473.24	\$2,352.87	\$8,465.78	\$289,680.44	\$569,960.60	\$1,693,162.66	\$216,982.57	\$438,428.53	\$11,400.33	\$0.00	\$0.00	\$4,513,648.98
US Bank	\$1,011,340.29	\$64,784.02	\$0.00	\$86,378.70	\$5,233.84	\$0.00	\$0.00	\$0.00									\$1,167,767.85
Negative Invest Purchase																	\$0.00
Invest Purchase																	\$0.00
Invest Sale 1																	\$0.00
Invest Sale 2																	\$0.00
Inv Sale/IV Account Int																	\$0.00
Subtotal	\$1,011,340.29	\$64,784.02	\$0.00	\$86,378.70	\$5,233.84	\$0.00	\$0.00	\$0.00									\$1,167,767.85
END BAL	\$1,718,418.12	\$289,172.61	\$7,005.57	\$268,546.91	\$5,237.20	\$52,473.24	\$2,352.87	\$8,465.78	\$482,437.83	\$1,172,990.11	\$3,379,524.10	\$358,810.28	\$548,174.43	\$11,400.33	\$0.00	\$0.00	\$7,834,650.44

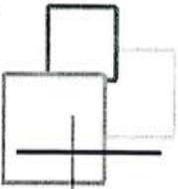
NOTE: 635 Transportation Benefit District (TBD) Vehicle Fees was Fund 109, Changed 1/21/15 per SMO retroactive to 1/1/14
Fund 108s Changed to be consistent with OMC Ordinances, e.g., 701 was Investment Trust and Cemetery Perpetual
108 Transportation Benefit District (TBD) was changed from 635 on 1/1/16



Cash Activity In

Period: 2016 - March 2016
 Period Totals: Period

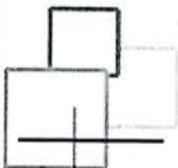
Fund	Description	Beginning Balance	Receipts	Investment Liquidated	Transfers In	Total Available
001	Current Expense	\$5,421.83	\$261,217.71	\$160,000.00	\$0.00	\$426,639.54
101	City Streets	\$26,132.42	\$20,914.61	\$0.00	\$0.00	\$47,047.03
104	Cemetery	\$3,011.55	\$6,425.29	\$0.00	\$0.00	\$9,436.84
105	Parks Department	\$69,298.00	\$14,153.36	\$0.00	\$0.00	\$83,451.36
107	Tourism Fund	\$19.25	\$1.78	\$0.00	\$0.00	\$21.03
108	TBD	\$13,821.12	\$12,054.91	\$0.00	\$0.00	\$25,876.03
120	Police Department Drug	\$523.07	\$0.77	\$0.00	\$0.00	\$523.84
201	Public Safety Bldg Ltgo Debt	\$667.24	\$2.77	\$0.00	\$0.00	\$670.01
320	Transportation Impact	\$133,531.68	\$19,493.36	\$0.00	\$0.00	\$153,025.04
401	Water	\$134,498.40	\$104,389.21	\$0.00	\$0.00	\$238,887.61
408	Wastewater	\$646,644.55	\$158,775.14	\$0.00	\$0.00	\$805,419.69
410	Stormwater	\$233,062.93	\$73,302.97	\$0.00	\$0.00	\$306,365.90
412	Utility Land Acquisition	\$107,772.30	\$326.12	\$0.00	\$6,875.00	\$114,973.42
631	Payroll Fund	\$37,192.00	\$0.00	\$0.00	\$151,980.05	\$189,172.05
632	Claims Fund	\$71,855.29	\$0.00	\$0.00	\$240,981.63	\$312,836.92
633	Treasurer's Trust	\$0.00	\$0.00	\$0.00	\$0.00	\$8,318.64
634	Customer Deposits	\$39,608.88	\$8,318.64	\$0.00	\$0.00	\$41,858.88
635	Transportation Benefit District	\$0.00	\$2,250.00	\$0.00	\$0.00	\$2,250.00
701	Cemetery Perpetual Fund	\$383.29	\$164.56	\$0.00	\$167.00	\$714.85
704	Skinner Estate Fund	\$93.91	\$153.46	\$0.00	\$0.00	\$247.37
		\$1,523,537.71	\$681,944.66	\$160,000.00	\$400,003.68	\$2,765,486.05



Cash Activity In

Period: 2016 - March 2016
 Period Totals: Fiscal

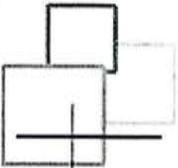
Fund	Description	Beginning Balance	Receipts	Investment Liquidated	Transfers In	Total Available
001	Current Expense	\$109,242.61	\$840,153.33	\$297,868.95	\$0.00	\$1,247,264.89
101	City Streets	\$32,886.91	\$68,508.29	\$9,701.69	\$0.00	\$111,096.89
104	Cemetery	\$4,448.58	\$9,908.42	\$0.00	\$0.00	\$14,357.00
105	Parks Department	\$49,422.15	\$39,927.60	\$12,935.58	\$0.00	\$102,285.33
107	Tourism Fund	\$0.00	\$28.23	\$685.90	\$0.00	\$714.13
108	TBD	\$0.00	\$31,322.11	\$0.00	\$98,875.45	\$130,197.56
120	Police Department Drug	\$51.07	\$474.16	\$0.00	\$0.00	\$525.23
201	Public Safety Bldg Ltgo Debt	\$667.24	\$7.76	\$0.00	\$0.00	\$675.00
320	Transportation Impact	\$77,417.64	\$52,035.15	\$25,871.16	\$0.00	\$155,323.95
401	Water	\$144,743.80	\$312,978.17	\$113,331.30	\$0.00	\$571,053.27
408	Wastewater	\$616,444.27	\$466,811.65	\$485,508.09	\$0.00	\$1,568,764.01
410	Stormwater	\$241,329.67	\$209,557.52	\$39,132.55	\$0.00	\$490,019.74
412	Utility Land Acquisition	\$45,893.91	\$1,002.16	\$77,711.22	\$20,625.00	\$145,232.29
631	Payroll Fund	\$144,816.96	\$0.00	\$0.00	\$362,060.36	\$506,877.32
632	Claims Fund	\$85,454.60	\$0.00	\$0.00	\$913,228.39	\$998,682.99
633	Treasurer's Trust	\$0.00	\$0.00	\$0.00	\$0.00	\$17,823.88
634	Customer Deposits	\$38,108.88	\$17,823.88	\$0.00	\$0.00	\$43,958.88
635	Transportation Benefit District	\$67,724.32	\$5,850.00	\$0.00	\$0.00	\$98,875.45
701	Cemetery Perpetual Fund	\$541.02	\$0.00	\$31,151.13	\$0.00	\$67,827.80
704	Skinner Estate Fund	\$1,640.96	\$522.39	\$64,173.39	\$2,591.00	\$67,827.80
		\$1,660,834.59	\$487.50	\$59,956.84	\$0.00	\$62,085.30
			\$2,057,398.32	\$1,218,027.80	\$1,397,380.20	\$6,333,640.91



Cash Activity Out

Period: 2016 - March 2016
 Period Totals: Period

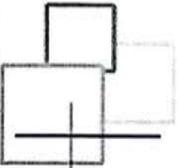
Fund	Description	Investments		Transfer	Other	Disbursements	Total	Ending
		Acquired	Claims/Payroll					
001	Current Expense	\$80,522.78	\$198,761.14	\$0.00	\$0.00	\$136,161.91	\$415,445.83	\$11,193.71
101	City Streets	\$12,802.68	\$21,604.56	\$417.00	\$0.00	\$2,319.40	\$37,143.64	\$9,903.39
104	Cemetery	\$2.29	\$1,229.13	\$167.00	\$0.00	\$594.71	\$1,993.13	\$7,443.71
105	Parks Department	\$59.62	\$24,142.78	\$208.00	\$0.00	\$2,079.23	\$26,489.63	\$56,961.73
107	Tourism Fund	\$0.04	\$0.00	\$0.00	\$0.00	\$0.00	\$0.04	\$20.99
108	TBD	\$12,054.91	\$0.00	\$0.00	\$0.00	\$0.00	\$12,054.91	\$13,821.12
120	Police Department Drug	\$0.77	\$0.00	\$0.00	\$0.00	\$0.00	\$0.77	\$523.07
201	Public Safety Bldg Ltgo Debt	\$2.77	\$0.00	\$0.00	\$0.00	\$0.00	\$2.77	\$667.24
320	Transportation Impact	\$94.81	\$428.34	\$0.00	\$0.00	\$0.00	\$523.15	\$152,501.89
401	Water	\$186.55	\$46,563.86	\$2,500.00	\$0.00	\$25,088.42	\$74,338.83	\$164,548.78
408	Wastewater	\$554.17	\$73,969.66	\$3,333.00	\$0.00	\$287,148.41	\$365,005.24	\$440,414.45
410	Stormwater	\$71.02	\$26,262.21	\$417.00	\$0.00	\$12,276.75	\$39,026.98	\$267,338.92
412	Utility Land Acquisition	\$143.50	\$0.00	\$0.00	\$0.00	\$0.00	\$143.50	\$114,829.92
631	Payroll Fund	\$0.00	\$0.00	\$0.00	\$0.00	\$145,895.95	\$145,895.95	\$43,276.10
632	Claims Fund	\$0.00	\$0.00	\$0.00	\$0.00	\$181,809.50	\$181,809.50	\$131,027.42
633	Treasurer's Trust	\$0.00	\$0.00	\$0.00	\$0.00	\$8,318.64	\$8,318.64	\$0.00
634	Customer Deposits	\$0.00	\$0.00	\$0.00	\$0.00	\$2,100.00	\$2,100.00	\$39,758.88
635	Transportation Benefit District	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
701	Cemetery Perpetual Fund	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$714.85
704	Skinner Estate Fund	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$247.37
		\$106,495.91	\$392,961.68	\$7,042.00	\$803,792.92	\$1,310,292.51	\$1,455,193.54	



Cash Activity Out

Period: 2016 - March 2016
 Period Totals: Fiscal

Fund	Description	Investments		Transfer	Other	Disbursements	Total	Ending
		Acquired	Claims/Payroll					
001	Current Expense	\$305,736.24	\$554,801.59	\$0.00	\$0.00	\$375,533.35	\$1,236,071.18	\$11,193.71
101	City Streets	\$37,674.82	\$57,281.07	\$1,251.00	\$0.00	\$4,986.61	\$101,193.50	\$9,903.39
104	Cemetery	\$6.42	\$2,727.43	\$2,591.00	\$0.00	\$1,588.44	\$6,913.29	\$7,443.71
105	Parks Department	\$167.18	\$39,600.47	\$624.00	\$0.00	\$4,931.95	\$45,323.60	\$56,961.73
107	Tourism Fund	\$693.14	\$0.00	\$0.00	\$0.00	\$0.00	\$693.14	\$20.99
108	TBD	\$62,473.24	\$53,903.20	\$0.00	\$0.00	\$0.00	\$116,376.44	\$13,821.12
120	Police Department Drug	\$2.16	\$0.00	\$0.00	\$0.00	\$0.00	\$2.16	\$523.07
201	Public Safety Bldg Ltgo Debt	\$7.76	\$0.00	\$0.00	\$0.00	\$0.00	\$7.76	\$667.24
320	Transportation Impact	\$265.86	\$2,556.20	\$0.00	\$0.00	\$0.00	\$2,822.06	\$152,501.89
401	Water	\$150,523.09	\$183,903.06	\$7,500.00	\$0.00	\$64,578.34	\$406,504.49	\$164,548.78
408	Wastewater	\$501,553.92	\$292,379.51	\$9,999.00	\$0.00	\$324,417.13	\$1,128,349.56	\$440,414.45
410	Stormwater	\$100,199.14	\$88,136.22	\$1,251.00	\$0.00	\$33,094.46	\$222,680.82	\$267,338.92
412	Utility Land Acquisition	\$30,402.37	\$0.00	\$0.00	\$0.00	\$0.00	\$30,402.37	\$114,829.92
631	Payroll Fund	\$0.00	\$0.00	\$0.00	\$0.00	\$463,601.22	\$463,601.22	\$43,276.10
632	Claims Fund	\$0.00	\$0.00	\$0.00	\$0.00	\$867,655.57	\$867,655.57	\$131,027.42
633	Treasurer's Trust	\$0.00	\$0.00	\$0.00	\$0.00	\$17,823.88	\$17,823.88	\$0.00
634	Customer Deposits	\$0.00	\$0.00	\$0.00	\$0.00	\$4,200.00	\$4,200.00	\$39,758.88
635	Transportation Benefit District	\$0.00	\$0.00	\$98,875.45	\$0.00	\$0.00	\$98,875.45	\$0.00
701	Cemetery Perpetual Fund	\$67,112.95	\$0.00	\$0.00	\$0.00	\$0.00	\$67,112.95	\$714.85
704	Skinner Estate Fund	\$61,837.93	\$0.00	\$0.00	\$0.00	\$0.00	\$61,837.93	\$247.37
		\$1,318,656.22	\$1,275,288.75	\$122,091.45	\$2,162,410.95	\$4,878,447.37	\$1,455,193.54	



Investments Activity

Period: 2016 - March 2016
 Period Totals: Period

Fund	Description	Beginning Balance	Investments Acquired	Liquidated	Reinvested Interest	Ending Balance
001	Current Expense	\$1,797,895.34	\$80,228.77	\$160,000.00	\$294.01	\$1,718,418.12
101	City Streets	\$276,369.93	\$12,733.41	\$0.00	\$69.27	\$289,172.61
104	Cemetery	\$7,003.28	\$0.00	\$0.00	\$2.29	\$7,005.57
105	Parks Department	\$268,487.29	\$0.00	\$0.00	\$59.62	\$268,546.91
107	Tourism Fund	\$5,357.16	\$0.00	\$0.00	\$0.04	\$5,357.20
108	TBD	\$50,418.33	\$12,038.40	\$0.00	\$16.51	\$62,473.24
120	Police Department Drug	\$2,352.10	\$0.00	\$0.00	\$0.77	\$2,352.87
201	Public Safety Bldg Ltgo Debt	\$8,461.01	\$0.00	\$0.00	\$2.77	\$8,463.78
320	Transportation Impact	\$462,343.02	\$0.00	\$0.00	\$94.81	\$462,437.83
401	Water	\$1,472,803.56	\$0.00	\$0.00	\$186.55	\$1,472,990.11
408	Wastewater	\$5,422,132.59	\$0.00	\$0.00	\$554.17	\$5,422,686.76
410	Stormwater	\$575,721.83	\$0.00	\$0.00	\$71.02	\$575,792.85
412	Utility Land Acquisition	\$986,459.46	\$0.00	\$0.00	\$143.50	\$986,602.96
631	Payroll Fund	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
632	Claims Fund	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
633	Treasurer's Trust	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
634	Customer Deposits	\$111,400.33	\$0.00	\$0.00	\$0.00	\$111,400.33
635	Transportation Benefit District	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
701	Cemetery Perpetual Fund	\$493,958.71	\$0.00	\$0.00	\$0.00	\$493,958.71
704	Skinner Estate Fund	\$460,659.17	\$0.00	\$0.00	\$0.00	\$460,659.17
		\$12,401,823.11	\$105,000.58	\$160,000.00	\$1,495.33	\$12,348,319.02

Totals by Fund

Fund Number	Title	Period	Total	Budget	% of Total	Balance
001-000-00-00-00	Current Expense	\$331,447.94	\$926,622.51	\$3,195,000.00	29.00 %	\$2,268,377.49
101-000-00-00-00	City Streets	\$23,652.16	\$62,829.88	\$490,300.00	12.81 %	\$427,470.12
104-000-00-00-00	Cemetery	\$1,990.84	\$6,906.87	\$38,100.00	18.13 %	\$31,193.13
105-000-00-00-00	Parks Department	\$26,430.01	\$45,156.42	\$617,900.00	7.31 %	\$572,743.58
107-000-00-00-00	Tourism Fund	\$0.00	\$0.00	\$5,100.00	0.00 %	\$5,100.00
108-000-00-00-00	TBD	\$0.00	\$53,903.20	\$121,200.00	44.47 %	\$67,296.80
120-000-00-00-00	Police Department Drug	\$0.00	\$0.00	\$1,300.00	0.00 %	\$1,300.00
201-000-00-00-00	Public Safety Bldg Ltgo Debt	\$0.00	\$0.00	\$95,700.00	0.00 %	\$95,700.00
320-000-00-00-00	Transportation Impact	\$428.34	\$2,556.20	\$1,315,000.00	0.19 %	\$1,312,443.80
401-000-00-00-00	Water	\$74,152.28	\$255,031.40	\$2,482,800.00	10.27 %	\$2,227,768.60
408-000-00-00-00	Wastewater	\$364,451.07	\$626,795.64	\$4,923,000.00	12.73 %	\$4,296,204.36
410-000-00-00-00	Stormwater	\$38,955.96	\$122,481.68	\$1,171,900.00	10.45 %	\$1,049,418.32
412-000-00-00-00	Utility Land Acquisition	\$0.00	\$0.00	\$1,162,300.00	0.00 %	\$1,162,300.00
631-000-00-00-00	Payroll Fund	\$0.00	\$0.00	\$0.00		\$0.00
632-000-00-00-00	Claim's Trust	\$0.00	\$0.00	\$0.00		\$0.00
633-000-00-00-00	Treasurer's Trust	\$8,318.64	\$17,823.88	\$0.00		(\$17,823.88)
634-000-00-00-00	Customer Deposits	\$2,100.00	\$4,050.00	\$0.00		(\$4,050.00)
635-000-00-00-00	Transportation Benefit District	\$0.00	\$0.00	\$0.00		\$0.00
701-000-00-00-00	Cemetery Perpetual Fund	\$0.00	\$0.00	\$0.00		\$0.00
704-000-00-00-00	Skinner Estate Fund	\$0.00	\$0.00	\$4,000.00	0.00 %	\$4,000.00
Grand Totals		\$871,927.24	\$2,124,157.68	\$15,623,600.00	13.60 %	\$13,499,442.32



**City Of Orting
Council Agenda Summary Sheet**

AB16-30 SUBJECT: FIRST READ - Ordinance No. 2016-983, Astound Broadband, LLC franchise agreement	Agenda Item #:	AB16-30
	For Agenda of:	4/13/16
	Department:	Public Works
	Date Submitted:	4/8/16

Orting Staff & Professional Representatives			
Mayor, Joachim Pestinger		Cost of Item:	<u>\$0</u>
City Administrator, Mark Bethune	X	Amount Budgeted:	<u>\$0</u>
City Attorney, Jay Long	X	Unexpended Balance:	<u>\$0</u>
City Clerk, Rachel Pitzel		Timeline:	
City Treasurer, Scott Larson		BARS:	
Police Chief, Bill Drake		Fiscal Note:	
Public Works, Dean Kaelin			
Recreation and Parks, Beckie Meek			
Municipal Court, Kaaren Woods			
Parametrix, JC Hungerford	X		
BHC Consultants, Roger Wagoner			
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Councilmember <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator			

Attachments: Ordinance No. 2016-983
SUMMARY STATEMENT: <i>Astound Broadband, LLC, has made application to the City to construct, install, maintain, repair and operate an optic-based telecommunications system with the public rights-of-way of the City.</i> <i>The Franchisee represents that it has the legal, technical and financial qualifications to operate in the rights-of-way of the City as a wireline telephone business and a telecommunications company within the meaning of Title 80 RCW. Based on representations and information provided by Franchisee, and in response to its request for the grant of a franchise, the City Council will determine that the grant of a nonexclusive franchise is consistent with the public interest.</i>
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: No committee recommendation. Recommendation is from the Mayor and City Attorney.
RECOMMENDED ACTION: FIRST READ of Ordinance No. 2016-983.

**CITY OF ORTING
WASHINGTON**

ORDINANCE NO. 2016-983

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

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

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

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

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

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

Table of Contents.

ARTICLE 1. DEFINITIONS

ARTICLE 2. FRANCHISE GRANT

- 2.1 Public Right-of-Way Use Authorized
- 2.2 Authorized Services
- 2.3 No Rights Shall Pass to Franchisee by Implication

- 2.4 Interest in the Public Right-of-Way; Release; Indemnity
- 2.5 Rights Subordinate
- 2.6 Condition of Franchise Area
- 2.7 Franchise Nonexclusive
- 2.8 Transfer
- 2.9 Street Vacation
- 2.10 Reservation of City Use of Public Right-of-Way

ARTICLE 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE

- 3.1 Alteration of Material Terms and Conditions
- 3.2 Compliance with Laws
- 3.3 Reservation of Rights/Wavier
- 3.4 Change in Form of Government

ARTICLE 4. ACCEPTANCE

- 4.1 Acceptance
- 4.2 Failure to Timely File Acceptance
- 4.3 Effective Date; Term
- 4.4 Effect of Acceptance
- 4.5 Effect of Expiration/Termination

ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC

- 5.1 Limitation of Liability
- 5.2 Insurance Requirements – Attached Exhibit D
- 5.3 Financial Security – Attached Exhibit E
- 5.4 Contractors/Subcontractors
- 5.5 Liens
- 5.6 Financial Conditions

ARTICLE 6. ENFORCEMENT AND REMEDIES

- 6.1 Communication and Discussion
- 6.2 Remedies
- 6.3 Right to Cure Default
- 6.4 Termination/Revocation
- 6.5 Receivership

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

- 7.1 Regulatory Permit
- 7.2 Submission; Approval of Design Documents
- 7.3 Compliance with Standards/Codes
- 7.4 Conditions Precedent to Work

- 7.5 Work in the Public Rights-of-Way
- 7.6 Alterations
- 7.7 General Conditions
- 7.8 Facility Relocation at Request of the City
- 7.9 Movement of Facilities for Others
- 7.10 Movement of Facilities During Emergencies
- 7.11 Record of Installations
- 7.12 Restoration of Public Rights-of-Way, Public and Private Property
- 7.13 Approvals
- 7.14 Abandonment of Facilities
- 7.15 Location of Facilities

ARTICLE 8. MISCELLANEOUS

- 8.1 Headings
- 8.2 Entire Agreement
- 8.3 Incorporation of Exhibits
- 8.4 Calculation of Time
- 8.5 Time Limits Strictly Construed
- 8.6 No Joint Venture
- 8.7 Approval Authority
- 8.8 Binding Effect upon Successors and Assigns
- 8.9 Waiver
- 8.10 Severability
- 8.11 Signs
- 8.12 Discriminatory Practices Prohibited
- 8.13 Notice
- 8.14 Survival of Terms
- 8.15 Force Majeure
- 8.16 Attorneys' Fees
- 8.17 Venue/Choice of Law
- 8.18 Publication

EXHIBITS:

- A. Form of Acceptance of Franchise
- B. Form of Transfer Agreement
- C. Description of Franchise Area
- D. Insurance Requirements
- E. Financial Security
- F. Contractor/Subcontractor Insurance Requirements

ARTICLE 1. DEFINITIONS.

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

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

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

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

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

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

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

- i. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of such activity or activities and any taxes, insurance, and interest expenses related thereto, including costs for crews and equipment;

ii. All costs and expenses of labor inclusive of payroll benefits, non-productive time and overhead for each of the labor classifications of the employees performing work for the activity and determined in accordance with the City's ordinary governmental accounting procedures; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2. FRANCHISE GRANT.

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

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

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

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

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

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

2.3.4 Any permits or other authorizations that may be required under the land use code and development regulations of the City for the construction of Facilities within

a particular zoning district in the City, including by way of example and not limitation, a conditional use permit or a variance.

2.4 Interest in the Public Right-of-Way/Release/Indemnity. This Franchise shall not operate or be construed to convey title, equitable or legal, in the Public Rights-of-Way. This Franchise shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give. The grant given herein does not confer rights other than as expressly provided in the grant hereof and is subject to the limitations in applicable Law. Such right may not be subdivided or subleased to a person other than the Franchisee except as set forth in Section 2.8 below.

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

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

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

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

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

CONSTITUTING ANY FRANCHISE AREA, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES, EXCEPT TO THE EXTENT ANY DAMAGES RELATING TO THE CONDITION, QUALITY, OR SAFETY OF ANY PART OF THE PUBLIC RIGHT-OF-WAY ARISE FROM THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

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

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

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

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

2.9 Street Vacation. If any Public Right-of-Way or portion thereof used by Franchisee is to be vacated during the term of this Franchise, unless as a condition of such

vacation the Franchisee is granted the right to continue to occupy the vacated Public Right-of-Way, Franchisee shall, without delay or expense to City, remove its Facilities from such Public Right-of-Way, and restore, repair or reconstruct the Public Right-of-Way where such removal has occurred, and place the Public Right-of-Way in such condition as may be required by the City. Nothing herein is intended to operate as a waiver of Franchisee's right or entitlement under state law or City ordinance to receive notice of or to object to vacation of the Public Right-of-Way occupied by Franchisee Facilities.

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

ARTICLE 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE.

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

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

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

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

ARTICLE 4. ACCEPTANCE.

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

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

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

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

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

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

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

4.3 Effective Date; Term.

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

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

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

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

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

to accept a Franchise; and, that this Franchise represents the entire agreement between the Franchisee and the City;

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

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

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

ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC.

5.1 Limitation of Liability.

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

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

5.1.1.2 FRANCHISEE'S OPERATION OF THE TELECOMMUNICATIONS SYSTEM;

5.1.1.3 ENVIRONMENTAL CONTAMINATION OF THE PUBLIC RIGHTS-OF-WAY CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY FRANCHISEE OR ITS CONTRACTORS, SUBCONTRACTORS, OR AGENTS (BUT ONLY TO THE EXTENT OF SUCH AGGRAVATION OR CONTRIBUTION); OR

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

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

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

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

5.1.2 Tender of Defense. Upon written notice from the City, Franchisee agrees to assume the defense of any lawsuit, claim or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Franchise for which Franchisee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Franchisee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Further, said indemnification obligations shall extend to claims that are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend and may participate in the defense of a claim and, in any event, Franchisee may not agree to any settlement of claims financially affecting the City without the City's prior written approval which shall not be unreasonably withheld. If separate representation to fully protect the interests of both Parties is necessary, such as a

conflict of interest between the City and the counsel selected by Franchisee to represent the City, Franchisee shall select additional counsel with no conflict with the City. Franchisee's indemnification obligations do not apply to any lawsuit, claim, or proceeding, including any settlement or compromise of a claim that is not reduced to a suit, if the City fails to provide timely notice to Franchisee, or if City enters into a settlement or compromise, or consents to entry of judgment, without Franchisee's prior written consent.

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

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

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

5.2 Insurance Requirements. See Attached Exhibit "D".

5.3 Financial Security. See Attached Exhibit "E".

5.4 Contractors/Subcontractors. Franchisee contractors and subcontractors performing Work in the Public Rights-of-Way shall comply with such bond, indemnity and insurance requirements as may be required by the City. The Franchisee contractors and subcontractors shall comply with the requirements set forth in attached Exhibit "F".

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

5.6 Financial Conditions.

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

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

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

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

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

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

5.6.7 Taxes and Fees. Nothing contained in this Franchise Agreement shall exempt Franchisee from Franchisee's obligation to pay any utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on Franchisee. Any fees, charges and/or fines provided for in the Orting Municipal Code or any other City ordinance, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from Franchisee.

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

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

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

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

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

5.6.13 Administrative Cost of Drafting Franchise Ordinance. Franchisee shall pay for the City's reasonable administrative costs in drafting and processing this Ordinance and all work related thereto, which payment shall not exceed \$5,000. Subject to RCW 35.21.860, Franchisee shall further be subject to all potential future fees and costs under Section 5.6 including but not limited to fees associated with activities and the provisions of any permit, approval, license, agreement or other document.

ARTICLE 6. ENFORCEMENT AND REMEDIES.

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

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

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

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

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

6.3 Right to Cure Default.

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

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

6.3.1.2 Cure the default; or

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

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

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

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

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

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

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

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

hereof and public notice of the hearing shall be provided in the same manner as notice is provided for regular meetings of the City Council.

6.4.2.3 Within sixty (60) days after the close of the hearing, the City Council shall issue a written decision regarding the termination/revocation of the Franchise. If the City Council has designated another hearing body/officer to conduct the public hearing, such hearing body/officer shall make a recommendation to the City Council within thirty (30) days following the close of the public hearing, and the City Council shall make a decision upon the recommendation of the Hearing Body/Officer after a closed record hearing and within sixty (60) days following receipt of the recommendation of the Hearing Body/Officer. The decision of the City Council shall be final. The Parties recognize that a decision to terminate/revoke a Franchise is not a land use decision that is subject to appeal pursuant to the Land Use Petition Act (Chapter 36.70C RCW). Failure to render a decision within the required time period shall not be a basis for invalidation of the decision that is made. Any appeal to which the Franchisee may be entitled (e.g., constitutional or statutory writ of review) shall be filed within 30 calendar days of issuance of the final decision of the City Council.

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

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

6.4.3.2 Whether other remedies will achieve compliance with this Franchise;

6.4.3.3 Whether the Franchisee has acted in good faith;

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

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

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

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

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

6.4.3.9 Whether consent, permission, adjudication, an order or other authorization of a governmental agency or body, is required as a condition precedent to the

City ordering the Franchisee to abandon or remove Facilities from the Public Rights-of-Way or to cease operations (temporarily or otherwise) of the Facilities.

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

6.5 Receivership. At the option of the City, subject to applicable law and lawful orders of courts of competent jurisdiction, this Franchise may be revoked after the appointment of a receiver or trustee to take over and conduct the business of Franchisee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

6.5.1 The receivership or trusteeship is timely vacated; or

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

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

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

7.2 Submission; Approval of Design Documents.

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

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

7.2.3 Approval of Plans. Work may not commence without prior approval by the City of the Design Documents submitted by the Franchisee, which

approval will not be unreasonably withheld, conditioned or delayed. The City may review and approve the Franchisee’s Design Documents with respect to:

7.2.3.1 Location/Alignment/Depth;

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

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

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

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

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

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

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

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

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

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

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

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

7.3.6 Industry Standards. All Facilities shall be durable and Constructed in accordance with good engineering practices and standards promulgated by the government and industry for placement, Construction, design, type of materials and operation of Franchisee Facilities;

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

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

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

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

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

7.5 Work in the Public Rights-of-Way.

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

improvements are interfered with and whose consent is required pursuant to agreements with the City existing prior to the Effective Date.

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

7.5.4 Notice to the Public. Except in the case of an Emergency, City retains the right to require the Franchisee to notify the public prior to commencing any significant planned Construction that Franchisee reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

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

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

7.5.7 Stop Work. On notice from the City that any Work does not comply with the Franchise, the approved Design Documents for the Work, the Standards, or other applicable Law, or is being performed in an unsafe or dangerous manner as reasonably determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be in writing, given to the Person doing the Work and be posted on the Work site, indicate the nature of the alleged violation or unsafe condition; and establish conditions under which Work may be resumed. If so ordered, Franchisee shall cease and shall cause its contractors and subcontractors to cease such activity until the City is reasonably satisfied that Franchisee is in compliance. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable Law, may order Franchisee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes in its reasonable discretion. The

City has the right to inspect, repair and correct the unsafe condition if Franchisee fails to do so, and to reasonably charge Franchisee for the costs incurred to perform such inspection, repair or correction. Payment by Franchisee will be made in accordance with Section 5.6.9. The authority and remedy set forth herein in this section is in addition to, and not a substitute for, any authority the City may otherwise have to take enforcement action for violation of City Codes or Standards.

7.5.8 Discovery of Hazardous Substances/Indemnity. In the event that the Work of the Franchisee in, on, and upon the Franchise Area results in the discovery of the presence of Hazardous Substances (“**Discovered Matters**”) in, on or upon the areas excavated or otherwise opened or exposed by Franchisee within the Franchise Area (the “**Excavated Areas**”), the Franchisee shall immediately notify the City and, take whatever other reporting action is required by applicable Environmental Law as it relates to the Discovered Matters in the Excavated Areas.

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

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

7.7 General Conditions.

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

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

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

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

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

7.7.6 No Duty. Notwithstanding the right of the City to inspect the Work, issue a stop work order, and order or make repairs or alterations, the City has no duty or obligation to observe or inspect, or to halt Work on, the applicable Facilities, it being solely Franchisee's responsibility to ensure that the Facilities are Constructed and operated in strict accordance with this Franchise, the approved Design Documents, the Standards, and

applicable Law. Neither the exercise nor the failure by the City to exercise any right set forth in this Article 7 shall alter the liability allocation set forth in this Franchise.

7.7.7 Roadside Hazard. All of Franchisee's Facilities shall be kept by Franchisee at all times in a safe and hazard-free condition. Franchisee shall ensure that Facilities within the Public Rights-of-Way do not become or constitute an unacceptable roadside obstacle and do not interfere with or create a hazard to maintenance of and along the Public Rights-of-Way. In such event, the Franchisee shall take corrective action. In the event that the City determines that a Facility within the Public Rights-of-Way has become or constitutes an unacceptable roadside obstacle or may interfere with or create a hazard to maintenance of and along the Public Rights-of-Way, following written notice explaining with reasonable specificity the nature of any such matter and a reasonable opportunity to cure of not less than thirty (30) days, the Franchisee shall take corrective action; provided that, nothing herein shall relieve the Franchisee from keeping its Facilities at all times in safe and hazard-free condition.

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

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

7.8 Facility Relocation at Request of the City.

7.8.1 Public Improvement. The City may require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way when reasonably necessary for construction, alteration, repair, or improvement of any portion of the Public Rights-of-Way for purposes of public welfare, health, or safety ("Public Improvements"). Such Public Improvements include, by way of example but not

limitation, Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, communication lines, or any other type of government-owned communications, utility or public transportation systems, public work, public facility, or improvement of any government-owned utility; Public Rights-of-Way vacation, and the Construction of any public improvement or structure by any governmental agency acting in a governmental capacity for the public benefit.

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

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

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

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

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

7.9 Movement of Facilities for Others.

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

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

7.10 Movement of Facilities During Emergencies.

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

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

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

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

7.11 Record of Installations.

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

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

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

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

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

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

7.12.4 Temporary Restoration. If weather or other conditions do not allow the complete restoration required by this Section, Franchisee shall temporarily restore the affected Public Right-of-Way or public property. Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

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

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

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

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

7.12.9 Failure to Restore per City Standards. If Franchisee should fail to leave any portion of the excavation in a condition that meets the City's Standards, the City may on five (5) days' notice to Franchisee, which notice shall not be required in case of an Emergency, cause all work necessary to restore the excavation to a safe condition. Franchisee shall pay to the City the reasonable cost of such work; which shall include,

among other things, the City's overhead in obtaining completion of said work (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).

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

7.14 Abandonment of Facilities. Except as may be otherwise provided by Law, Franchisee may not abandon in place any Facilities in the Public Rights-of-Way without written consent from the City. Franchisee shall provide written notice of its intent to abandon and such notice shall include a description of the Facilities it intends to abandon, the specific location in the Public Rights-of-Way of such Facilities, and the condition of such Facilities. If the City determines within 180 days of the receipt of notice of abandonment from the Franchisee, that it wants the Facilities to be removed, then the operator must remove its abandoned Facilities by a date specified by the City and restore the Public Rights-of-Way in accordance with City Standards. Franchisee shall be and remain responsible in perpetuity for any Facilities abandoned in the Public Rights-of-Way.

7.15 Location of Facilities. Grantee shall place any new Facilities underground where existing telecommunications and cable facilities are located underground; provided, however, that any new Facilities may be located above-ground where existing aerial routes are available from utility pole owners. Any new Facilities to be located above-ground shall be placed on existing utility poles. No new utility poles shall be installed in connection with placement of new above-ground Facilities.

ARTICLE 8. MISCELLANEOUS.

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

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

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

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

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

8.6 No Joint Venture. It is not intended by this Franchise to, and nothing contained in this Franchise shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between Franchisee and the City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other. The Parties intend that the rights, obligations, and covenants in this Franchise and the collateral instruments shall be exclusively enforceable by the City and Franchisee, their successors, and assigns. No term or provision of this Franchise is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, the Franchisee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. Nothing in this Section 8.6 shall be construed to prevent an assignment as provided for at Sections 2.8 or 7.8.5 of this Franchise.

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

8.8 Binding Effect upon Successors and Assigns. All of the provisions, conditions, and requirements contained in this Franchise shall further be binding upon the

heirs, successors, executors, administrators, receivers, trustees, legal representatives, transferees and assigns of the Franchisee; and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

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

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

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

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

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

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

The City's Address: City Administrator
City of Orting
110 Train Street SE - PO Box 489
Orting, WA 98360
Attention: Mark Bethune

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

8.14 Survival of Terms. Upon the expiration, termination, revocation or forfeiture of the Franchise, the Franchisee shall no longer have the right to occupy the Franchise Area for the purpose of providing services authorized herein. However, the Franchisee's obligations under this Franchise to the City shall survive the expiration, termination, revocation or forfeiture of these rights according to its terms for so long as the Franchisee's Telecommunications System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, or until such time as the Franchisee transfers ownership of all Facilities in the Franchise Area to the City or a third-Party, or until such time as the Franchisee abandons said Facilities in place, all as provided herein. Said obligations include, by way of illustration and not limitation, Franchisee's obligations to indemnify, defend, and protect the City, to provide insurance, to relocate its Facilities, and to reimburse the City for its costs to perform Franchisee's Work.

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

If Franchisee believes that circumstances beyond its control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Franchise, Franchisee shall provide documentation as reasonably required by the City to substantiate the Franchisee's claim. Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is reasonably satisfactory to the City; provided that, the

Franchisee shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible, provided that the Franchisee takes prompt and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

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

8.17 Venue/Choice of Law. This Franchise shall be governed by, and construed in accordance with, the laws of the State of Washington. Any action brought relative to enforcement of this Franchise, or seeking a declaration of rights, duties or obligations herein, shall be initiated in the Superior Court of the County in which the City is located, and shall not be removed to a federal court, except as to claims over which such Superior Court has no jurisdiction. Removal to federal court shall be to the Federal Court of the Western District of Washington.

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

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING
THEREOF ON THE ____ DAY OF _____, 2016, AND SIGNED IN
AUTHENTICATION OF ITS PASSAGE THIS ____ DAY OF _____, 2016.**

CITY OF ORTING

Joachim Pestinger, Mayor

ATTEST/AUTHENTICATED:

Rachel Pitzel, City Clerk

Approved as to form:

John P. Long, Jr., City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:

EXHIBIT "A"

(Acceptance of Franchise)

Franchise issued pursuant to Ordinance No. _____.

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

DATED this ____ day of _____, 20__.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____ |
CITY OF _____ | ss.

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

Dated this ____ day of _____, _____.

(Signature of Notary)

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

EXHIBIT “B”

(Form of Transfer Agreement)

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

1. PARTIES.

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

1.2 _____ (“Franchisee”).

1.3 _____ (“Transferee”).

RECITALS

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

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

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

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

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

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

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

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

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

2.2 Payment to the City of the Transfer fees; and

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

3. ACCEPTANCE OF FRANCHISE OBLIGATIONS.

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

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

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

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

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

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

4. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

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

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

And to: **
 **

**

**

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

CITY:

FRANCHISEE:

By: City Administrator

By: _____

Title: _____

TRANSFeree:

By: _____

Title: _____

Tax Id. No. _____

TRANSFER EXHIBIT B-1

Acceptance of Franchise

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

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

DATED this _____ day of _____, 20____.

By _____

Its _____

Tax Payer ID# _____

STATE OF _____

CITY OF _____

ss.

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

Dated this _____ day of _____, _____.

(Signature of Notary) _____

Print Name _____

Notary public in and for the state of _____, residing at _____

My appointment expires: _____

EXHIBIT “C”

(Description of Franchise Area)

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

EXHIBIT "D"

(Insurance Requirements)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT “E”

(Financial Security)

1. Performance Bond.

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT “F”

(Contractor/Subcontractor Insurance Requirements)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



City Of Orting Council Agenda Summary Sheet

AB16-31 SUBJECT: Acceptance of a V-150 vehicle from the Federal Government via WA State Patrol.	Agenda Item #:	AB16-31
	For Agenda of:	4/13/2016
	Department:	Police Department
	Date Submitted:	4/8/2016

Orting Staff & Professional Representatives			
Mayor, Joachim Pestinger	X	Cost of Item:	<u>Up to \$500 – first year maintenance</u>
City Administrator, Mark Bethune		Amount Budgeted:	<u>\$1000</u>
City Attorney, Jay Long		Unexpended Balance:	<u>\$500</u>
City Clerk, Rachel Pitzel		Timeline: April / May 2016	
City Treasurer, Scott Larson			
Police Chief, Bill Drake	X	BARS: 001.525.60.41.01	
Public Works, Dean Kaelin		Fiscal Note: No anticipated impact on current budget. Money for routine maintenance is available via the above BARS number, which is intended for "Equipment – Hazard Mitigation".	
Recreation and Parks, Beckie Meek			
Municipal Court, Kaaren Woods			
Parametrix, JC Hungerford			
BHC Consultants, Roger Wagoner			
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Councilmember <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator			

Attachments:

SUMMARY STATEMENT:

The City has the opportunity to accept a V-150 vehicle from the Federal Government via the Washington State Patrol at no purchase expense. The vehicle would be used primarily for law enforcement & emergency management operations to provide patrol during floods / major storm hazards & clear roads impacted by these hazards. The vehicle is amphibious for use in flooding and earthquake liquefaction. It will also be available to the METRO Critical Response Team (SWAT) for those issues needing the use of this type of asset in or near Orting.



Maintenance will be provided at little or no labor expense by Bates Technical College Diesel Mechanic School. Parts for maintenance, are to be acquired via the Law Enforcement Support Organization (when available) or mutual agreement with others having possession of like vehicle assets (there are ten vehicles with local agencies within WA state). This vehicle acquisition includes three large crates of additional new parts at no-cost.

All Orting Police officers will train on the vehicle and be capable of driving it. Training is to be provided at no-cost by a Lewis County Deputy, who is a qualified trainer & mechanic for this vehicle.

(Continued to next page)

Storage of the vehicle has been arranged via the Washington Soldiers Home, which can provide 24-hour monitored security.

The V-150 can be used and / or recalled by the Federal Government at any time. Likewise, the City can relinquish the vehicle to the federal government at any time, without financial impact.



COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: *To be reviewed by the Public Safety Committee on 4/12/2016.*

RECOMMENDED ACTION: MOTION to approve acceptance of a V-150 vehicle from the Federal Government via the Washington State Patrol.



**City Of Orting
Council Agenda Summary Sheet**

AB16-32 SUBJECT: Resolutions from RCO WWRP and LWCF for grant funding assistance for Gratzer Park Athletic Field	Agenda Item #:	AB16-32
	For Agenda of:	4/13/16
	Department:	Parks
	Date Submitted:	4/8/16

Orting Staff & Professional Representatives			
Mayor, Joachim Pestinger		Cost of Item:	<u>\$480,000-580,000</u>
City Administrator, Mark Bethune		Amount Budgeted:	<u>\$0</u>
City Attorney, Jay Long		Unexpended Balance:	<u>\$0</u>
City Clerk, Rachel Pitzel		Timeline: May 2016 grant application deadline; Grants awarded 2017.	
City Treasurer, Scott Larson		BARS:	
Police Chief, Bill Drake		Fiscal Note:	
Public Works, Dean Kaelin		<ul style="list-style-type: none"> • WWRP Grant – 45-50% of project cost • LWCF Grant – 45-50% of project cost • \$45,800 in material donations committed 	
Recreation and Parks, Beckie Meek	X		
Municipal Court, Kaaren Woods			
Parametrix, JC Hungerford			
BHC Consultants, Roger Wagoner	X		
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Councilmember <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator			

Attachments: RCO WWRP Authorizing Resolution No. 2016-18(a) Form; RCO LWCF Authorizing Resolution No. 2016-18(b) Form

SUMMARY STATEMENT:
 The City of Orting is pursuing the state Recreation and Conservation Office (RCO) Washington Wildlife and Recreation Program (WWRP) – Local Parks Category – grant and a Land Water and Conservation Fund (LWCF) grant for the development of a multi-purpose athletic field and playground at Gratzer Park. This development project is Phase II of the Gratzer Park master plan concept.

This project will allow Orting to expand its capacity for community sports leagues and play equipment for younger children. Phase II of Gratzer Park is identified as a priority in the Orting Parks, Trails and Open Space Plan, and the multi-purpose field also helps satisfy the athletic field inventory deficit. Approximately \$200,000 in state appropriations and \$50,000 in material donations have been committed to this project, and furthermore, community groups such as the Lions Club, Orting School District, Orting Lacrosse Club, and Orting Junior Cardinals strongly support this project.

Each grant requires a 50-percent city match, this match can consist of state appropriations, donations, staff and volunteer labor. However, if awarded both grants, the City can use each grant to match the other. This significantly minimizes the cost to the City. Adoption of the WWRP and LWCF Authorizing Resolutions is an application requirement.

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COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:

The Parks Commission recommends the City Council adopt the WWRP and LWCF Authorizing Resolutions, allowing the City to complete the RCO grant applications.

RECOMMENDED ACTION: MOTION to adopt the RCO Authorizing Resolution No. 2016-18(a) from WA. Wildlife and recreation Program (WWRP) and RCO Authorizing Resolution No. 2016-18(b) from Land and Water Conservation Fund (LWCF) for grant funding assistance for Gratzer Park Athletic Field.

April 7, 2016

RE: Parks Commission Recommendation

Dear Orting City Council Members,

The Parks Commission did not meet on Wednesday, April 6, 2016 due to not having a quorum. But due to the fact that a recommendation was needed to have done at the meeting and an email was sent out to the Parks Commissioners regarding the RCO Grant for Gratzler Park.

Hearing back from 3 of the 5 Commissioners (Chairperson Dannat, Co-Chairperson Linkem and Commissioner Gehring) they are recommending to move forward and approve the Resolutions for the RCO grant: Washington Wildlife and Recreation Program – Local Parks Division (WWRP) AND Land and Water Conservation Fund (LWCF) which Funds cover a variety of projects, including the development of outdoor recreational facilities, both grants are available every 2 years, funds awarded in 2017.

Moving forward and authorizing the resolutions show that there is city support for the project of Gratzler Park for a Multi-purpose athletic field – soccer, football, lacrosse, Frisbee, etc. – and play area.

Thank you,
Beckie Meek,
Parks Commission Secretary

**Recreation and Conservation Office
Washington Wildlife and Recreation Program (WWRP)
Application Resolution/Authorization**

Organization Name: City of Orting Resolution No. **2016-18(a)**

Project Name and Number (s): Gratzer Park Athletic Field 2016, App. No. 16-1391 D

This form authorizes submitting application(s) for grant funding assistance for Washington Wildlife and Recreation Program (WWRP) project(s) to the Recreation and Conservation Funding Board as provided in Chapter 79A.15 and 79A.25 RCW, WAC 286, and other applicable authorities.

WHEREAS, our organization has approved a comprehensive parks and recreation or habitat conservation plan that includes this project; [*not required for farmland preservation projects*] and

WHEREAS, under provisions of the WWRP program, state grant assistance is requested to aid in financing the cost of **development** [*choose all that apply: acquisition, facility development or renovation, restoration*]; and

WHEREAS, our organization considers it in the best public interest to complete the project described in the application(s).

NOW, THEREFORE, BE IS RESOLVED that:

1. The **City of Orting Parks and Recreation Department** [*insert NAME AND TITLE*] is authorized to make formal application to the Recreation and Conservation Funding Board for grant assistance.
2. Our organization has reviewed the sample project agreement on the Recreation and Conservation Office's web site at: <http://www.rco.wa.gov/documents/manuals&forms/SampleProjAgreement.pdf> and authorizes **the City of Orting Parks and Recreation Department** [*insert NAME AND TITLE*] to enter into such a project agreement, if funding is awarded. We understand and acknowledge that the project agreement will contain the indemnification (applicable to any sponsor) and waiver of sovereign immunity (applicable to Tribes) and other terms and conditions that are contained in the sample project agreement. The sample project agreement may be revised periodically by the Recreation and Conservation Office. Our organization recognizes that such changes might occur prior to our authorized representative signing the actual project agreement, and we accept the responsibility and the presumption that our authorized representative shall have conferred with us as to any such changes before he/she executes the project agreement on behalf of our organization and so executes with our authorization.
3. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.
4. Our organization expects our matching share of project funding will be derived from **general funds, labor and donations** [*insert your anticipated sources*] and that pursuant to WAC 286-13-040 we must certify the availability of match at least one month before funding approval. In addition, our organization understands it is responsible for supporting all non-cash commitments to this project should they not materialize.
5. We acknowledge that if the Recreation and Conservation Funding Board approves grant assistance for the project(s), the Recreation and Conservation Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Recreation and Conservation Office after we incur eligible and allowable costs and pay them. The Recreation and Conservation Office may also determine an amount of retainage and hold that amount until the project is complete.
6. [*Acquisition Projects Only*] We acknowledge that any property acquired with grant assistance must be dedicated for the purposes of the grant in perpetuity unless otherwise agreed to by our organization and

the Recreation and Conservation Funding Board. We agree to dedicate the property in a signed "Deed of Right" for fee acquisitions, or an "Assignment of Rights" for other than fee acquisitions (which documents will be based upon RCO's standard versions of those documents), to be recorded on the title of the property with the county auditor.

7. *[Acquisition Projects Only]* We acknowledge that any property acquired in fee title must be immediately made available to the public unless the Recreation and Conservation Office director or the Recreation and Conservation Funding Board agrees to other restrictions.
8. *[Development, Renovation, and Restoration Projects Only – If your organization owns the property]* We acknowledge that any property owned by our organization that is developed, renovated or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity after the project is complete unless otherwise provided and agreed to by our organization and the Recreation and Conservation Funding Board in the project agreement or an amendment thereto.
9. *[Development, Renovation, and Restoration Projects only – If your organization DOES NOT own the property]* We acknowledge that any property not owned by our organization that is developed, renovated or restored with grant assistance must be dedicated for the purpose of the grant for at least twenty-five (25) years after the project is complete unless otherwise provided and agreed to by our organization and the Recreation and Conservation Funding Board in the project agreement or an amendment thereto.
10. *[Projects located in Water Resources Inventory Areas 1 – 19 and applying for funds from the Critical Habitat, Natural Areas, State Lands Restoration and Enhancement, and Urban Wildlife Habitat categories only]* We certify that the project(s) does not conflict with the *Puget Sound Action Agenda* developed by the Puget Sound Partnership under RCW 90.71.310. When completed, the project will not result in water quality degradation in Puget Sound, nor loss of ecosystem process, structure, or functions. The project will meet or exceed all permitting requirements.
11. *[Nonprofit Nature Conservancy Organizations Only]* Our organization certifies it is a registered nonprofit corporation with the Washington Secretary of State and has been active in managing similar types of projects for a minimum of three (3) years. Should our organization dissolve or disband during the period of this project, we agree to name a successor organization pursuant to Recreation and Conservation Funding Board policy.
12. This application authorization becomes part of a formal application to the Recreation and Conservation Funding Board for grant assistance.
13. We provided appropriate opportunity for public comment on this application.
14. We certify that this application authorization was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that the person signing as authorized representative is duly authorized to do so.

[Native American Tribes, Local Governments, and Nonprofit Organizations Only] This application authorization was adopted by our organization during the meeting held:

Location _____ Date _____

[All Applicants] Signed and approved on behalf of the resolving body of the organization by the following authorized representative:

Signed _____

Title _____ Date _____

Washington State Attorney General's Office

Approved as to form *Brian Tallen* March 15, 2016
Assistance Attorney General *Date*

You may reproduce this form in your own format; text however may not change.

**Recreation and Conservation Office
Land and Water Conservation Fund (LWCF)
Application Resolution/Authorization**

Organization Name: **City of Orting** **Resolution No. 2016-18(b)**

Project Name and Number (s): **Gratzer Park Athletic Field 2016, App. No. 16-1724 D**

This form authorizes submitting application(s) for grant funding assistance for Land and Water Conservation Fund (LWCF) project(s) to the Recreation and Conservation Funding Board as provided in Title 54, U.S.C. Section 200305, 79A.25 RCW, WAC 286, and other applicable authorities.

WHEREAS, our organization has approved a comprehensive parks and recreation or habitat conservation plan that includes this project; and

WHEREAS, under provisions of the LWCF program, state grant assistance is requested to aid in financing the cost of **development** [*choose all that apply: acquisition, facility development or renovation, restoration*]; and

WHEREAS, our organization considers it in the best public interest to complete the project described in the application(s).

NOW, THEREFORE, BE IS RESOLVED that:

1. The **City of Orting Parks and Recreation Department** [*insert NAME AND TITLE*] is authorized to make formal application to the Recreation and Conservation Funding Board for grant assistance.
2. Our organization has reviewed the sample project agreement on the Recreation and Conservation Office's web site at: www.rco.wa.gov/documents/manuals&forms/SampleProjAgreement.pdf and authorizes **the City of Orting Parks and Recreation Department** [*insert NAME AND TITLE*] to enter into such a project agreement, if funding is awarded. We understand and acknowledge that the project agreement will contain the indemnification (applicable to any sponsor) and waiver of sovereign immunity (applicable to Tribes) and other terms and conditions that are contained in the sample project agreement. The sample project agreement may be revised periodically by the Recreation and Conservation Office. Our organization recognizes that such changes might occur prior to our authorized representative signing the actual project agreement, and we accept the responsibility and the presumption that our authorized representative shall have conferred with us as to any such changes before he/she executes the project agreement on behalf of our organization and so executes with our authorization.
3. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.
4. Our organization expects our matching share of project funding will be derived from **general funds, labor and donations** [*insert your anticipated sources*] and that pursuant to WAC 286-13-040 we must certify the availability of match at least one month before funding approval. In addition, our organization understands it is responsible for supporting all non-cash commitments to this project should they not materialize.
5. We acknowledge that if the Recreation and Conservation Funding Board approves grant assistance for the project(s), the Recreation and Conservation Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Recreation and Conservation Office after we incur eligible and allowable costs and pay them. The Recreation and Conservation Office may also determine an amount of retainage and hold that amount until the project is complete.
6. [*Acquisition Projects Only*] We acknowledge that any property acquired with grant assistance must be dedicated for the purposes of the grant in perpetuity unless otherwise agreed to by our organization, the Recreation and Conservation Funding Board, and the National Park Service in the project agreement or an amendment thereto. We agree to dedicate the property in a signed "Deed of Right" for fee acquisitions, or

an "Assignment of Rights" for other than fee acquisitions (which documents will be based upon RCO's standard versions of those documents), to be recorded on the title of the property with the county auditor.

7. *[Acquisition Projects Only]* We acknowledge that any property acquired in fee title must be immediately made available to the public unless the Recreation and Conservation Office director or the Recreation and Conservation Funding Board, and National Park Service agree to other restrictions in the project agreement or an amendment thereto.
8. *[Development, Renovation, and Restoration Projects Only – If your organization owns the property]* We acknowledge that any property owned by our organization that is developed, renovated or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity after the project is complete unless otherwise provided and agreed to by our organization, the Recreation and Conservation Funding Board, and the National Park Service in the project agreement or an amendment thereto.
9. *[Development, Renovation, and Restoration Projects only – If your organization DOES NOT own the property]* We acknowledge that any property not owned by our organization that is developed, renovated or restored with grant assistance must be dedicated for the purpose of the grant for at least twenty-five (25) years after the project is complete unless otherwise provided and agreed to by our organization, the Recreation and Conservation Funding Board, and the National Park Service in the project agreement or an amendment thereto.
10. We have read both the federal guidelines and state policies for the LWCF program and agree to abide by those guidelines and policies, and as LWCF grants are federal funds, our organization must comply with all applicable federal laws.
11. This application authorization becomes part of a formal application to the Recreation and Conservation Funding Board for grant assistance.
12. We provided appropriate opportunity for public comment on this application.
13. We certify that this application authorization was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that the person signing as authorized representative is duly authorized to do so.

[Native American Tribes, Local Governments, and Nonprofit Organizations Only] This application authorization was adopted by our organization during the meeting held:

Location _____ Date _____

[All Applicants] Signed and approved on behalf of the resolving body of the organization by the following authorized representative:

Signed _____

Title _____ Date _____

Washington State Attorney General's Office

Approved as to form *Brian Toller* March 18, 2016

Assistance Attorney General

Date

You may reproduce this form in your own format; text however may not change.