

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 27, 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 April 13, 2016
- Payroll and Claims Warrants

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:

- Civil Service Appointment, Greg Hogan • **Mayor Pestinger**
- Sound Transit – ST3, Souder Station at McMillan

COMMITTEE AND COUNCIL STANDING REPORTS:

Council Standing Committees and other Reports

- Rules - **CM Harman/CM Drennen**
- Transportation – **CM Penner/CM McDonald**
- Emergency Preparedness – **CM Drennen/CM Ford**
- Mayor Report – **Mayor Pestinger**
- Miscellaneous activity reports, i.e. PSRC, special meetings, etc.

PUBLIC HEARINGS:

1) **AB16-33** – Closed Record Hearing -Village Green Ph.1 Div. 7 • **Roger Wagoner**

Motion: *Move to approve or deny the Planning Commission recommendation on the Final Plat Phasing submittal of Village Green, Phase 1-Division 7.*

2) **AB16-34** – **Public Hearing** – Resolution No. 2016-19, Animal License Fee Changes

- **CM Ford**

Motion: *Move to adopt Resolution No. 2016-19, adopting the new annual pet license fees that are set forth pursuant to OMC 6-3A-3(E).*

3) **AB16-35** – **Public Hearing** – Resolution No. 2016-20, Six Year TIP 2017-2022

- **JC Hungerford, Parametrix-City Engineer**

No Motion, Public Hearing Only – This will be brought back for action at the May 11, 2016 regular Council meeting.

OLD BUSINESS:

4) AB16-36 - Ordinance No. 2016-983, Astound Broadband Franchise Agreement

• Mayor Pestinger

Motion: to adopt Ordinance No. 2016-983, 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.

- Emergency Evacuation Bridge System • CM Drennen
- Economic Development RFQ • Mayor Pestinger
- SWAT V-150 Vehicle • Mayor Pestinger/Chief Drake

5) AB16-37 - Bridgewater Plat Alternative Analysis • Mayor Pestinger

Motion: to authorize the use of up to \$10,000 of Transportation Impact Fees to reimburse the owner of the Bridgewater Plat for alternative plat layout analysis that would mitigate the impact of the City's planned SW Connector roadway.

NEW BUSINESS:

6) AB16-40 - Ordinance No. 2016-981, Animal Control • CM Gunther

Motion: to adopt Ordinance No. 2016-981, relating to nuisance regulations relating to dogs and cats; amending Orting Municipal Code Section 6-3A-6A7.

7) AB16-41 - Interlocal Agreement, Nisqually Indian Tribe • CM Gunther

Motion: to approve the Interlocal Agreement with the Nisqually Indian Tribe for Jail Services.

8) AB16-42 - Approval of Low Bidder for Landscape Contract for Maintenance of City Parks • CM Birkes

Motion: to approve low bidder Frost Landscape to provide landscape maintenance to City Parks and Right-of-Way from May1, 2016 to August 30, 2016 for the amount of \$32,561.66, and for the Mayor to enter into contract with the vendor per the contract provided to Council.

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.

ADJOURNMENT

Motion: Move to Adjourn.

Upcoming Meetings:

Next Regular Meeting: May 11, 2016 (PSB)



ORTING CITY COUNCIL MEETING MINUTES

Public Safety Building, 401 Washington Ave. SE

April 13, 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, Dave Harman and Nicola McDonald.

ATTENDANCE:

City Employees	Mark Bethune, City Administrator Rachel Pitzel, City Clerk	Bill Drake, Police Chief Scott Larson, Treasurer
Professional Representatives	Jay Long, Attorney – Kenyon Disend JC Hungerford, Engineer – Parametrix	
Visitors (signed in)	Chris Hopfauf	Peggy Ryals

REQUEST FOR ADDITIONS OR CORRECTIONS TO THE AGENDA:

Mayor added Zoo and Trek Authority Board discussion to the Mayors report.

Councilmember Harman asked that Rules Committee be added to the Committee and Standing Reports.

CONSENT AGENDA:

Councilmember Ford moved to approve the Consent Agenda as prepared. Second by Councilmember Gunther. Motion carried (7-0).

COMMENTS FROM CITIZENS:

Chris Hopfauf discussed opposition on the V-150 SWAT vehicle. Noted the cost that is budgeted for \$500 and wondered why the City would consider this when it is already at a deficit; discussed it being stored at the Soldiers Home and how it can be ready in an emergency if you have to go and get it at another facility.

Tony Schneider discussed Support U located at the Saints Cosmas and Damian Catholic Church which fosters caregiver wellness. He noted the dates and times of the classes and that they are free.

Patty Ryals discussed the V-150 SWAT vehicle and thought the initial intent was to use as an emergency preparedness vehicle and now it being a tactical vehicle and not being suited for the City. Ben Hilderbrand noted he agrees with the previous comments made regarding the V-150 SWAT vehicle.

PRESENTATIONS: (7:11)

Chief Drake presented Detective Mike Cassatt with the Jim Dowd Award in appreciation for his faithful service to Orting.

Mayor recessed the meeting at 7:17 p.m. for 5 minutes for pictures and for citizens/staff to congratulate Detective Cassatt. He reconvened the meeting at 7:22 p.m.

COMMISSION REPORTS: (7:22)

Planning Commission Commissioner Hoyt reported on the pet code, adding exotic animals; still working on the livestock code; discussed the real estate signs and still working with DR Horton.

COMMITTEE AND STANDING REPORTS: (7:24)

Public Works Councilmember McDonald reported on processes that will be taken on for the maintenance of Levee; Public Works Shop and the new building; and current penalties for water billing.

Finance Councilmember Ford discussed that the committee meeting will meet on the first Monday before Council meeting at 4:30 p.m.; discussed the finance report; animal license fee changes to be brought forward to Council at the next meeting; and discussed the cemetery fund.

Public Safety Councilmember Gunther reported on community policing; building success of the prior committees; river signage; speeding issues; policing award and submitted Officer Taylor; discussed crime signage, police discretionary fund and a robust community policing model.

Mayor Report Mayor Pestinger discussed the Zoo and Trek Authority Board appointment.

Councilmember Penner moved to authorize the City to support Justin Evans for Position No. 2 of the Zoo and Trek Authority Board. Second by Councilmember Ford. Motion carried (7-0).

Discussed the Puget Sound Gateway long term project; discussed still being on track for the mini train station ST3 project; attended the Mid-County Leadership Team meeting which focused on Emergency Management and the Cascadia Rising event. Mayor Pestinger encourage citizens to have enough provisions to sustain themselves for three days in case of an emergency.

City Administrator Bethune gave an update on the May 20th Evacuation Drill event that is being planned for the City of Orting which would start at 9 a.m.

Discussion took place regarding the Daffodil Parade and what a huge successful turnout the City of Orting had. It was also

mentioned that the Orting High School Band won Best Overall Band.

Rules

Councilmember Harman reported the Committee discussed the scope and noted the Rules Committee will keep in line with what was the Community and Government Affairs Committee and handle those issues that were under that committee including Economic Development. He also noted he will be bringing forward the Sponsorship policy that Councilmember Ford was working on; he noted he would like to get a survey out the Builders and have them rate the City on its permitting/building processes. He also noted he represented the City at the PSRC meeting where they discussed Phase III and noted there is an survey for the ST3 Project and citizens should go to www.soundtransit3.org to take the survey online.

Miscellaneous

Councilmember Ford asked if she could add to new business-discussion on Council Retreat.

OLD BUSINESS: (7:52)

Emergency Evacuation Bridge System

Councilmember Drennen reported that they are still looking at the first phase of this project which is the ROW on Rocky Road; he discussed the May 20th Evacuation Drill and noted working with the School. Councilmember Gunther added they are working on an answer sheet to provide to the community.

AB16-31- SWAT V-150 Vehicle

Chief Drake presented the Mayor/Council/Staff and citizens with a PowerPoint presentation regarding the V-150 vehicle.

Councilmember Gunther moved to authorize the City to proceed with the procurement of this vehicle with a limitation that its use and badging shall be for search and rescue purposes only. Second by Councilmember Drennen.

Councilmember Penner move to amend the motion to define "Search and Rescue". Second by Councilmember McDonald.

Roll Call vote on amendment to motion. Motion carried (5-2, Birkes & McDonald).

Roll Call vote on original motion with amendment. Motion carried (4-3, Birkes, McDonald & Penner).

Economic Development RFQ NEW BUSINESS:

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

Consensus with Council to postpone until the April 27, 2016 meeting.

Consensus to approve the first reading and add the franchise agreement to the April 27, 2016 agenda as an action item.

AB16-32 RCO Grant Application Authorizing Resolutions 2016-18(a) & (b)

Deputy Mayor Birkes moved to adopt the RCO Authorizing Resolution No. 2016-18(a) from WA. Wildlife and Recreation Program and RCO Authorizing Resolution No. 2016-18(b) from Land and Water Conservation Fund for grant funding assistance for Gratzner Park Athletic Field. Second by Councilmember McDonald. Motion carried (7-0).

AB16-33 Temporary City Clerk Contract

City Administrator Bethune explained the need for a temporary City Clerk since the current Clerk's last day is April 29, 2016 and the application process will not be complete by then.

Deputy Mayor Birkes moved to accept the temporary City Clerk contract for Jane Montgomery, beginning May 2, 2016. Second by Councilmember Ford. Motion carried (7-0).

Council Retreat

Councilmember Ford discussed the Spring Council Retreat and thought it would be a good idea to get a date and time set.

Consensus was that the Spring Council Retreat should be set for Sunday, May 22, 2016 at 1 p.m.

COMMENTS FROM CITIZENS:

None.

EXECUTIVE SESSION:

Mayor Pestinger recessed to Executive Session at 10:29 p.m. to discuss potential litigation, as authorized by RCW 42.30.110(i) which would last 15 minutes with no action to follow.

Mayor Pestinger called for a 10 minute extension to the Executive Session.

Mayor Pestinger reconvened the Council meeting at 10:54 p.m.

ADJOURN:

Deputy Mayor Birkes moved to adjourn. Second by Councilmember Ford. Motion carried (7-0).

Meeting ended at 10:55 p.m.

ATTEST:

Joachim Pestinger, Mayor

Rachel Pitzel, City Clerk

CITY OF ORTING
VOUCHER/WARRANT REGISTER
FOR APRIL 27, 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 #43436 THRU #43472
IN THE AMOUNT OF \$ 70,874.10

PAYROLL WARRANTS # 22454 THRU #22465
IN THE AMOUNT OF \$ 125,135.02

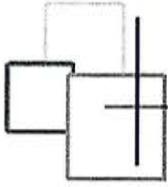
ARE APPROVED FOR PAYMENT ON APRIL 27, 2016

FINANCE COMMITTEE CHAIR _____

COUNCILPERSON _____

COUNCILPERSON _____

CITY CLERK _____



Fund Transaction Summary

Transaction Type: Invoice
Fiscal: 2016 - April 2016 - 2nd Council
System Types: Financials

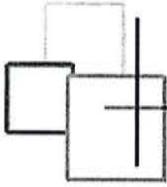
Fund Number	Description	Amount
001	Current Expense	\$46,917.05
101	City Streets	\$6,405.13
104	Cemetery	\$128.10
105	Parks Department	\$964.42
320	Transportation Impact	\$28.31
401	Water	\$3,789.82
408	Wastewater	\$11,642.49
410	Stormwater	\$998.78
	Count: 8	\$70,874.10

Register

Fiscal: 2016
 Deposit Period: 2016 - April 2016
 Check Period: 2016 - April 2016 - 2nd Council
 Bank Accounts: Key Bank - 2000073
 Register Types: Warrant
 Show Outstanding: All
 System Types: Financials
 Outstanding Date: 4/21/2016 2:59:57 PM
 Show Details: Hide

Number	Name	Print Date	Clearing Date	Amount
Key Bank	2000073			
Check	Advanced Safety & Fire SE	4/27/2016		\$782.92
43436	Alpine Products Inc.	4/27/2016		\$693.24
43437	ASCAP	4/27/2016		\$336.00
43438	Big J'S Outdoor Store	4/27/2016		\$858.21
43439	Brisco Inc.	4/27/2016		\$433.93
43440	BSN Sports INC	4/27/2016		\$2,837.31
43441	Bucky's of Orting Inc	4/27/2016		\$876.85
43442	Cascade Towing-Bonney Lak	4/27/2016		\$115.87
43443	Comcast	4/27/2016		\$20.87
43444	Crystal & Sierra Springs	4/27/2016		\$119.86
43445	Enumclaw, City of	4/27/2016		\$300.00
43446	Honey Bucket-NW Cascade Inc	4/27/2016		\$892.50
43447	Kenyon Disend PLLC	4/27/2016		\$30,307.09
43448	Konica Minolta Business Solutions	4/27/2016		\$331.54
43449	Konica Minolta Business-Usa Inc	4/27/2016		\$493.45
43450	Larsen Sign Co	4/27/2016		\$175.04
43451	Law Offices of Matthew J Rusnak	4/27/2016		\$1,833.33
43452	Lemay Mobile Shredding	4/27/2016		\$35.02
43453	Maicolm & Josephine Fround	4/27/2016		\$1,000.00
43454	Orca Pacific, Inc	4/27/2016		\$517.24
43455	Orting Lions Community Park	4/27/2016		\$1,725.00
43456	P.c. Budget & Finance	4/27/2016		\$158.00
43457	Pathways-Providence Community	4/27/2016		\$96.00
43458	Corrections			
43459	Pitney Bowes Purchase Power	4/27/2016		\$459.00
43460	Puget Sound Energy	4/27/2016		\$17,847.76
43461	Pumpteck Inc	4/27/2016		\$1,416.71
43462	SCORE	4/27/2016		\$330.82
43463	Sports Connection, LLC	4/27/2016		\$551.93
43464	Staples Advantage-Dept LA	4/27/2016		\$142.78

Number	Name	Print Date	Clearing Date	Amount
43465	The Evergreen Arborist , INC	4/27/2016		\$175.00
43466	The Humane Society Tac/p.	4/27/2016		\$103.00
43467	United Laboratories	4/27/2016		\$291.11
43468	US BankNA Custody Treasury Div-Mony Cntr	4/27/2016		\$160.00
43469	Utilities Underground Location Center	4/27/2016		\$52.36
43470	Vision Forms LLC	4/27/2016		\$2,168.42
43471	Wex Bank	4/27/2016		\$2,071.85
43472	Woods, Kaaren	4/27/2016		\$164.09
	Total		Check	\$70,874.10
	Total		2000073	\$70,874.10
	Grand Total			\$70,874.10



Custom Council Report

Vendor	Number	Invoice	Account Number	Notes	Amount		
Advanced Safety & Fire SE	43436	210060	001-514-21-48-01	Annual Fire Extinguisher Service	\$25.94		
			001-521-50-48-03	Annual Fire Extinguisher Service	\$83.44		
			001-575-50-48-00	Annual Fire Extinguisher Service	\$17.29		
			101-542-30-48-02	Annual Fire Extinguisher Service	\$69.29		
			104-536-50-48-00	Annual Fire Extinguisher Service	\$69.29		
			105-576-80-48-00	Annual Fire Extinguisher Service	\$69.29		
			401-534-50-48-02	Annual Fire Extinguisher Service	\$281.56		
			408-535-50-48-02	Annual Fire Extinguisher Service	\$97.53		
			410-531-38-48-00	Annual Fire Extinguisher Service	\$69.29		
			Total				\$782.92
			Alpine Products Inc.	43437	TM-156680 TM-156720	101-542-64-49-01	Paint for Streets
101-542-64-49-01	Paint for Streets-Daffodil for Parade	\$92.36					
Total						\$693.24	
ASCAP	43438	500716897-2016	001-575-50-31-01	Special Events License fee for Parks & Rec	\$336.00		
				Total			
Big J'S Outdoor Store	43439	APRIL2016-402	001-521-20-31-01	Ammunition for Hattaway	\$43.50		
			001-521-20-31-01	Boots for Officer Scott	\$357.40		
			001-521-50-48-04	Glass Cleaner-Lubricant-Patches	\$43.04		
			001-524-20-31-01	Work Pants-Wolfe	\$138.03		
			401-534-10-31-04	Rain Bibs-Bingham	\$44.06		
			401-534-10-31-04	Boots for Ewing	\$50.00		
			408-535-10-31-05	Rain Bibs-Bingham	\$44.06		
			408-535-10-31-05	Boots for Ewing	\$50.00		
			408-535-10-31-05	Rain Pants-Kurkov	\$88.12		
Total				\$858.21			
Brisco Inc.	43440	APRIL2016-401	001-524-20-32-01	Fuel	\$191.29		
			105-576-80-32-00	Fuel	\$46.34		
			105-576-80-32-00	Fuel	\$84.14		
			410-531-38-32-01	Fuel	\$70.80		
			410-531-38-32-02	Fuel	\$41.36		
			Total				\$433.93
BSN Sports INC	43441	97802816	001-571-20-31-25	T-Ball Uniforms	\$978.67		

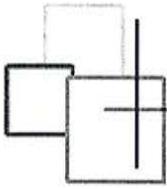
Vendor	Number	Invoice	Account Number	Notes	Amount
BSN Sports INC	43441	97802819	001-571-20-31-25	Coach Pitch-Uniforms	\$1,357.30
		97810650	001-571-20-31-25		\$342.51
		97814623	001-571-20-31-25	T-Ball Uniforms	\$158.83
				Total	\$2,837.31
Bucky's of Orting Inc	43442	026903	001-521-50-48-02	Oil Change & Spark Plugs-2006 Explorer	\$185.80
		027018	001-521-50-48-02	New Radiator-06 Crown Vic	\$691.05
				Total	\$876.85
Cascade Towing-Bonney Lak	43443	22063	001-521-21-49-00	Towing for 06 Charger-Radiator Leak	\$115.87
				Total	\$115.87
Comcast	43444	5839-April2016	001-514-23-42-00	City Hall Cable	\$6.96
			401-534-10-42-01	City Hall Cable	\$6.95
			408-535-10-42-01	City Hall Cable	\$6.96
				Total	\$20.87
Crystal & Sierra Springs	43445	5225720 040216	401-534-10-31-00	Water for Public Works	\$80.95
			408-535-10-31-00	Water for Public Works	\$38.91
				Total	\$119.86
Enumclaw, City of	43446	04698	001-523-60-41-00	Jail Fees-March 2016	\$300.00
				Total	\$300.00
Honey Bucket-NW Cascade Inc	43447	2-1623711	408-535-60-48-04	Honey Bucket-Service	\$200.00
		2-1625805	408-535-60-48-04	Honey Bucket-Gratzer Park	\$267.50
		2-1625806	408-535-60-48-04	Honey Bucket-Calistoga Park	\$187.50
		2-1625807	408-535-60-48-04	Honey Bucket-Whitehawk Park	\$187.50
		2-1629402	408-535-60-48-04	Honey Bucket-Service	\$50.00
				Total	\$892.50
Kenyon Disend PLLC	43448	183975-183977-183978-183980	001-515-30-41-01	Monthly Attorney Retainer	\$3,500.00
			001-515-30-41-02	Legal Fees	\$20,679.09
			001-521-20-41-02	Legal Fees	\$6,128.00
				Total	\$30,307.09
Konica Minolta Business Solutions	43449	00281276	001-594-21-75-00	PD Copier Lease	\$331.54
				Total	\$331.54
Konica Minolta Business-Usa Inc	43450	238935073	001-594-21-75-00	Copier Lease PD	\$493.45
				Total	\$493.45

Vendor	Number	Invoice	Account Number	Notes	Amount
Larsen Sign Co	43451	20313	001-521-50-48-02	Harley Lettering- Helmet Lettering	\$175.04
				Total	\$175.04
Law Offices of Matthew J Rusnak	43452	99	001-512-50-49-01	Court Appointed Attorney -March 2016	\$1,833.33
				Total	\$1,833.33
Lemay Mobile Shredding	43453	4471534	001-521-20-31-06	PD Shredding	\$35.02
				Total	\$35.02
Malcolm & Josephine Fround	43454	2016-6	401-594-34-63-02	Orville Road Water Main Replacement Compensation- Parcel 051808-1007	\$1,000.00
				Total	\$1,000.00
Orca Pacific, Inc	43455	20681	401-534-10-31-01	Sodium Hypochlorite	\$517.24
				Total	\$517.24
Orting Lions Community Park	43456	APRIL2016-403	001-571-20-31-25	Fields Usage for T- Ball & Coach Pitch	\$1,725.00
				Total	\$1,725.00
P.c. Budget & Finance	43457	CI-214888-C104188	001-345-83-07-00	Utility Extension Agreement	\$158.00
				Total	\$158.00
Pathways- Providence Community Corrections	43458	5Z0401172	001-523-21-41-00	Feb 2016-Home Monitoring- 5Z0401172	\$96.00
				Total	\$96.00
Pitney Bowes Purchase Power	43459	8000-9090-0050-3682Apr2016	001-512-50-31-01	Monthly Postage	\$69.58
			001-513-10-31-01	Monthly Postage	\$21.78
			001-514-23-31-01	Monthly Postage	\$194.88
			001-521-20-31-07	Monthly Postage	\$7.09
			001-521-20-31-07	Monthly Postage	\$16.81
			001-524-20-31-02	Monthly Postage	\$2.61
			001-558-60-31-02	Monthly Postage	\$34.44
			001-575-50-31-02	Monthly Postage	\$2.43
			104-536-20-31-01	Monthly Postage	\$0.49
			401-534-10-42-00	Monthly Postage	\$10.98
			401-534-10-42-00	Monthly Postage	\$41.28
			408-535-10-42-00	Monthly Postage	\$10.98
			408-535-10-42-00	Monthly Postage	\$24.00
			410-531-38-42-00	Monthly Postage	\$10.67
			410-531-38-42-00	Monthly Postage	\$10.98
				Total	\$459.00
Puget Sound Energy	43460	200001247663-April2016	408-535-50-47-07	VC Lift Station	\$199.64

Vendor	Number	Invoice	Account Number	Notes	Amount		
Puget Sound Energy	43460	200001247812-April2016	320-542-30-41-03	SR 162 Signal	\$28.31		
		200001248034-April2016	401-534-50-47-07	Harman Springs	\$26.76		
		200001248190-April2016	105-576-80-47-01	North Park	\$10.80		
		200001248372-April2016	401-534-50-47-08	Well 3	\$432.06		
		200001248539-April2016	001-525-50-47-01	Lahar Siren	\$10.90		
		200001532189-April2016	105-576-80-47-02	Main Park	\$315.41		
			105-576-80-47-03	Bell Tower	\$135.18		
		200002708986-April2016	408-535-50-47-05	VG Lift Station	\$358.35		
		200003766280-April2016	001-514-21-32-01	City Hall/City Shop	\$24.78		
			001-514-21-47-01	City Hall/City Shop	\$160.00		
			001-524-20-32-05	City Hall/City Shop	\$24.77		
			401-534-50-47-01	City Hall/City Shop	\$160.00		
			401-534-50-47-09	City Hall/City Shop	\$24.77		
			408-535-50-47-01	City Hall/City Shop	\$160.01		
			408-535-50-47-08	City Hall/City Shop	\$24.77		
		200009717931-April2016	401-534-50-47-04	Well 2	\$65.91		
		200010396329-April2016	001-521-50-47-00	PSB	\$837.67		
			001-522-50-47-00	PSB	\$837.67		
		200010396543-April2016	105-576-80-47-01	North Park	\$120.26		
		200010629349-April2016	101-542-63-47-01	City Shop	\$23.54		
			104-536-50-47-01	City Shop	\$18.83		
			401-534-50-47-01	City Shop	\$28.24		
			408-535-50-47-01	City Shop	\$23.54		
		200013874264-April2016	408-535-50-47-04	WWTP	\$6,968.69		
		200014994137-April2016	410-531-38-47-00	VG Storm Pond	\$129.08		
		200019613294-April2016	104-536-50-47-02	Cemetery Shop	\$39.49		
		200019646914-April2016	101-542-63-47-03	Street Lights	\$61.52		
		200021141250-April2016	408-535-50-47-03	Lift Station 2	\$85.87		
		200021421298-April2016	408-535-50-47-06	Rainier Meadows	\$29.31		
		200022934653-April2016	001-575-50-47-01	MPC/Library	\$809.44		
		200024404523-April2016	408-535-50-47-02	Lift Station-Puyallup River	\$122.65		
		220000846174-April2016	101-542-63-47-03	Street Lights	\$23.22		
		300000002406-April2016	101-542-63-47-03	Street Lights	\$5,526.32		
				Total	\$17,847.76		
		Pumptech Inc	43461	0104837-IN	408-535-50-48-02	Gasket-Terminal Hermetic Seal Probes-Oil	\$1,416.71
						Total	\$1,416.71
		SCORE	43462	1844	001-523-60-41-00	Health Services- Hastings	\$173.82
				1877	001-523-60-41-00	Jail Fees-March 2016	\$157.00
						Total	\$330.82
		Sports Connection, LLC	43463	16288	001-571-20-31-23	Uniforms Tots Soccer	\$551.93
				Total	\$551.93		
Staples Advantage- Dept LA	43464	43298833097	001-513-10-31-00	Office Supplies	\$28.56		
			001-514-23-31-02	Office Supplies	\$28.56		
			401-534-10-31-00	Office Supplies	\$28.55		
			408-535-10-31-00	Office Supplies	\$28.55		

Vendor	Number	Invoice	Account Number	Notes	Amount
Staples Advantage- Dept LA	43464	43298833097	410-531-38-31-00	Office Supplies	\$28.56
				Total	\$142.78
The Evergreen Arborist , INC	43465	APRIL2016-400	105-576-80-40-01	Tree Inspection	\$175.00
				Total	\$175.00
The Humane Society Tac/p.	43466	IVC0001625	001-554-30-31-00	Animal Control- March 2016	\$103.00
				Total	\$103.00
United Laboratories	43467	INV151530	408-535-10-31-00	Wasp Spray	\$291.11
				Total	\$291.11
US BankNA Custody Treasury Div-Mony Cntr	43468	386000122-1st QRT	001-514-23-49-06	Fees for Safekeeping-1st QRT	\$56.00
			101-542-90-40-01	Fees for Safekeeping-1st QRT	\$8.00
			105-576-80-41-09	Fees for Safekeeping-1st QRT	\$8.00
			401-534-90-40-02	Fees for Safekeeping-1st QRT	\$24.00
			408-535-90-40-02	Fees for Safekeeping-1st QRT	\$40.00
			410-531-90-40-02	Fees for Safekeeping-1st QRT	\$24.00
				Total	\$160.00
Utilities Underground Location Center	43469	6030181	401-534-60-41-00	Locates-March 2016	\$26.18
			408-535-60-41-00	Locates-March 2016	\$26.18
				Total	\$52.36
Vision Forms LLC	43470	3530	401-534-10-31-00	Utility Bill Processing & Mailing	\$179.78
			401-534-10-42-00	Utility Bill Processing & Mailing	\$434.28
			401-534-70-44-00	Water-CCR Insert	\$326.27
			408-535-10-31-00	Utility Bill Processing & Mailing	\$179.77
			408-535-10-42-00	Utility Bill Processing & Mailing	\$434.28
			410-531-38-31-00	Utility Bill Processing & Mailing	\$179.77
			410-531-38-42-00	Utility Bill Processing & Mailing	\$434.27
				Total	\$2,168.42

Vendor	Number	Invoice	Account Number	Notes	Amount
Wex Bank	43471	44821654	001-521-20-32-00	Fuel-PD	\$2,071.85
				Total	\$2,071.85
Woods, Kaaren	43472	16-7	001-512-50-31-00	Refrigerator-Court	\$164.09
				Total	\$164.09
				Grand Total	\$70,874.10



Fund Transaction Summary

Transaction Type: Invoice
Fiscal: 2016 - April 2016 - 2nd Council
System Types: Financials

<u>Fund Number</u>	<u>Description</u>	<u>Amount</u>
001	Current Expense	\$46,917.05
101	City Streets	\$6,405.13
104	Cemetery	\$128.10
105	Parks Department	\$964.42
320	Transportation Impact	\$28.31
401	Water	\$3,789.82
408	Wastewater	\$11,642.49
410	Stormwater	\$998.78
	Count: 8	\$70,874.10



City Of Orting Council Agenda Summary Sheet

AB16-33 SUBJECT: Close Record Hearing – Village Green, Phase One-Division 7, Final Planned Development and Plat	Agenda Item #:	AB16-33
	For Agenda of:	04/27/16
	Department:	Planning
	Date Submitted:	02/26/16

Orting Staff & Professional Representatives			
Mayor, Joachim Pestinger	X	Cost of Item:	\$0
City Administrator, Mark Bethune	X	Amount Budgeted:	\$0
City Attorney, Jay Long		Unexpended Balance:	\$0
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			
BHC Consultants, Roger Wagoner	X		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Councilmember <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator			

Attachments: City of Orting Staff Report SUMMARY STATEMENT: <i>The applicant requests Final Plat approval for Phase 1 Division 7 of the subject development, pursuant to OMC 12-6. The initial Village Green preliminary subdivision (PP01-03) was approved by the Orting City Council in 1993. Divisions 1, 2, 3 and 5 of that subdivision were constructed. In 2001, the remaining divisions (4, 6, 7 and 8) were redesigned and approved as a combined Preliminary Planned Development (PD01-01) and Subdivision (PP02-01). In 2016, Mitchell Development requested approval to phase final platting of Division 7 in two sections. Phase 1 will have 32 single family lots and Phase 2 (to be approved at a later date) will have 45 single family lots. No change in density from the approved 77 units is proposed. The Administration approved the minor amendment for phasing on February 3, 2016. This includes the construction of Williams Street NW and Van Ogle Lane NW as a "loop". Lots 31 and 32 will be accessed by a private easement extending from the end of Van Ogle Lane NW. The average lot size is 7,550 square feet. This recommendation pertains only to the Phase 1 final plat for 32 lots of the Division.</i>
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:
RECOMMENDED ACTION: MOTION to approve/deny the Planning Commission recommendation on the Final Plat phasing submittal of Village Green, Division 7, Phase One.

**CITY OF ORTING PLANNING COMMISSION REVIEW, FINDINGS OF FACT
AND RECOMMENDATIONS TO THE CITY COUNCIL
VILLAGE GREEN PHASE ONE-DIVISION 7 (# PD-1-01 & PP02-01)
DIVISION 7 FINAL PLANNED DEVELOPMENT AND PLAT**

APPLICANT: AHBL
2215 North 30th Street, Suite 300
Tacoma, WA 98043

OWNER: Mitchell Development, LLC
910 Traffic Avenue
Sumner, WA 98390

PROPERTY LOCATION:

Between Washington Ave. N (SR162) and the Puyallup River, south of Village Green Divisions 1, 2, 3 and 5, north of Ptarmigan Ridge School.

DESCRIPTION OF PROPOSAL:

The applicant requests Final Plat approval for Phase 1 Division 7 of the subject development, pursuant to OMC 12-6.

The initial Village Green preliminary subdivision (PP01-03) was approved by the Orting City Council in 1993. Divisions 1,2,3 and 5 of that subdivision were constructed. In 2001, the remaining divisions (4,6,7 and 8) were redesigned and approved as a combined Preliminary Planned Development (PD01-01) and Subdivision (PP02-01). In 2016, Mitchell Development requested approval to phase final platting of Division 7 in two sections. Phase 1 will have 32 single family lots and Phase 2 (to be approved at a later date) will have 45 single family lots. No change in density from the approved 77 units is proposed. The Administration approved the minor amendment for phasing on February 3, 2016. This includes the construction of Williams Street NW and Van Ogle Lane NW as a “loop”. Lots 31 and 32 will be accessed by a private easement extending from the end of Van Ogle Lane NW. The average lot size is 7,550 square feet. This recommendation pertains only to the Phase 1 final plat for 32 lots of the Division.

PLANNING COMMISSION REVIEW:

Final planned developments and final plats are “Type 4” permits subject to approval by the City Council. Per Section 12-6-4 OMC, final approvals are based on recommendations by the Planning Commission and City Engineer. The Planning Commission held a public hearing on the proposal on March 7, 2016. A staff report was submitted to the Commission prior to the hearing. Minutes of the hearing are attached separately.

CRITERIA FOR APPROVAL:

Per 12-6-5 OMC, final approval shall be approved if the proposal:

- A. Meets approval requirements as set forth in chapter 8 (see findings below);
- B. Conforms to the preliminary approval conditions;
- C. Meets other applicable requirements such as state laws; and
- D. Has been contained in written findings of fact by the City Council.

FINDINGS OF FACT:

A. Phase 1 Meets Plat Approval Requirements: Meets all general requirements for plat approval as set forth in Chapter 8 of this Title;

OMC 12-8-1:

- Land Use Controls: Complies
- Dedications: Dedications of right of way to City – to be completed prior to bill of sale.
- Dedication of Public Park: Not applicable for this phase.
- Release From Damages: Complies
- Flood, Inundation or Swamp Conditions: Not applicable for this phase.
- Bonds: Maintenance bond to be issued prior to bill of sale.
- Payment of General Facilities Charges

OMC 12-8-2:

Final Plat Certificate: Complies

OMC 12-8-3:

General Filing Requirements: Complies

OMC 12-8-4:

Compliance with Public Works Standards: Complies

B. Conforms to Preliminary Plat Approval: Conforms to all terms of the preliminary plat approval;

Specific mitigations for land use, schools, transportation, utilities and parks were required in the “Requirements and Conditions” of the original Preliminary Planned Development and Plat approval (PD01-01 & PP02-01) including payment of impact fees for schools, parks and traffic at the time of building permit issuance. Following is a summary of remaining conditions of approval and their current status:

1. Land Use

- a. *Restrict all residential development to that which lies outside designated wetlands and their buffers, and shorelines protected by the Shorelines Management Program.*

Complies.

2. *Transportation*

Does not apply

3. *Design*

- a. *All design plans and specifications, to include erosion control, grading and filling, road, water, sanitary and storm sewer, landscaping and park facilities, shall be reviewed and approved by the City Engineer and City Council prior to the start of construction.*

To Be Completed and Certified by the City Engineer Including As-Built Drawings.

- b. *The developer and the City shall enter into a Developer Extension Agreement prior to construction of any type.*

Completed.

4. *Public Utilities*

a. *Water*

1. *All water infrastructure projects shall be consistent with the Water Comprehensive Plan currently being developed by the City of Orting.*

The City of Orting Water System Plan was adopted by the City in 2009. The current phase meets the requirements of this plan. **To Be Completed and Certified by the City Engineer Including As-Built Drawings.**

b. *Sanitary Sewer*

1. *All sanitary sewer infrastructure projects shall be consistent with the City of Orting General Sewer Plan and the Washington State Department of Ecology Criteria for Sewer Works Design.*

To Be Completed and Certified by the City Engineer Including As-Built Drawings.

c. *Storm Sewer*

1. *The developer shall construct a storm sewer system to serve each phase of development prior to the issuance of any certificates of occupancy for homes to be built within said phases.*

To Be Completed and Certified by the City Engineer Including As-Built Drawings.

- C. *Meets Other Applicable Requirements: Meets the requirements of chapter 58.17 RCW, other applicable State laws, this Title, Title 9, Chapter 4 of this code, and any other applicable City Ordinances which were in effect at the time of preliminary approval.*

Phase 1 of Division 7 complies with all other applicable requirements.

- D. *Approval and Inscription: The City Council shall make written findings of fact relating to its decision on the final plat, and if approved, shall suitably inscribe and execute its written approval on the face of the plat.*

To be completed after Council approval.

SUMMARY OF RECOMMENDATIONS:

The Planning Commission recommends Council approval of the proposal as described in this report with the following conditions:

- Final recording will not occur until the City Engineer certifies that the grading/paving; water testing; and as-built documents are reviewed and approved.
- The applicant will sign an amended Developers Extension Agreement which will include payment of General Facility Charges and Impact Fees; to be paid at the time of permitting.
- The Developers Extension Agreement will be recorded with title.

Signed



Jennifer Sargent, Planning Commission Chair

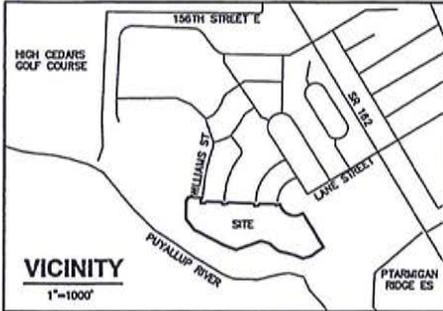
March 8, 2016

Date

VILLAGE GREEN DIVISION VII PHASE 1

SHEET 1 OF 6

A PORTION OF THE THOMAS HEADLEY DLC No. 37 & 38 IN THE NE 1/4 AND SE 1/4 OF THE NE 1/4 OF SECTION 25, TOWNSHIP 19 NORTH, RANGE 4 EAST, AND THE NW 1/4, THE SW 1/4, AND THE SE 1/4 OF THE NW 1/4 OF SECTION 30, TOWNSHIP 19 NORTH, RANGE 5 EAST, AND A PORTION OF THE HENRY WHITESSELL DLC No. 40 IN THE SE 1/4 OF THE NW 1/4 OF SECTION 30, TOWNSHIP 19 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN, CITY OF ORTING, PIERCE COUNTY, WASHINGTON.



DEDICATION

WE, THE UNDERSIGNED OWNERS OF THE HERIN DESCRIBED PROPERTY DEDICATE THESE LOTS TO THE PURCHASERS THEREOF. WE DEDICATE THE ROADS AND THE EASEMENTS HERIN TO THE USE OF THE PUBLIC FOREVER AND HEREBY GRANT TO THE PUBLIC THE RIGHT TO MAKE ALL NECESSARY CUTS AND FILLS OCCASIONED BY THE ORIGINAL GRADING BY THE CITY OF ORTING AND NECESSARY TO ACCOMPLISH AND MAINTAIN SUCH ORIGINAL GRADE OF SAID STREETS, ALLEY AND PUBLIC PLACES. SAID OWNERS, FOR THEMSELVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, WAIVE ALL CLAIMS FOR DAMAGES TO THE PROPERTY INCLUDED IN THIS PLAT BY REASON OF ANY CUTS OR FILLS MADE IN STREETS, ALLEYS AND PUBLIC PLACES, AND FURTHER CERTIFY AND SWEAR THAT SAID LAND IS FREE FROM ALL TAXES AND ASSESSMENTS WHICH HAVE HERETOFORE BEEN LEVIED AND BECOME CHARGEABLE AGAINST SAID PROPERTY, AND FURTHER CERTIFY AND SWEAR THAT THERE ARE NO ENCUMBRANCES EXISTING UPON ANY OF THE LAND UPON WHICH STREETS, ALLEYS AND PUBLIC PLACES HAVE BEEN HERIN DONATED AND DEDICATED TO THE PUBLIC.

MITCHELL DEVELOPMENT, LLC, A WASHINGTON LIMITED LIABILITY COMPANY

BY: _____

STATE OF _____
COUNTY OF _____

J.S.S.

BY ITS PROPER OFFICERS THIS _____ DAY OF _____, 20____,
ON THE DAY AND YEAR FIRST ABOVE WRITTEN, BEFORE ME PERSONALLY APPEARED:

TO ME KNOWN TO BE THE _____ OF THE CORPORATION THAT EXECUTED THE WITHIN AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID CORPORATION, FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT HE WAS AUTHORIZED TO EXECUTE SAID INSTRUMENT.

IN WITNESS WHEREOF, I HAVE HEREON SET MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.

PRINT NAME _____ SIGN NAME _____

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
RESIDING AT _____

VALLEY HIGH INVESTMENTS, INC

BY: _____

STATE OF _____
COUNTY OF _____

J.S.S.

BY ITS PROPER OFFICERS THIS _____ DAY OF _____, 20____,
ON THE DAY AND YEAR FIRST ABOVE WRITTEN, BEFORE ME PERSONALLY APPEARED:

TO ME KNOWN TO BE THE _____ OF THE CORPORATION THAT EXECUTED THE WITHIN AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID CORPORATION, FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT HE WAS AUTHORIZED TO EXECUTE SAID INSTRUMENT.

IN WITNESS WHEREOF, I HAVE HEREON SET MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.

PRINT NAME _____ SIGN NAME _____

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
RESIDING AT _____

CAPSTONE HOMES, INC

BY: _____

STATE OF _____
COUNTY OF _____

J.S.S.

BY ITS PROPER OFFICERS THIS _____ DAY OF _____, 20____,
ON THE DAY AND YEAR FIRST ABOVE WRITTEN, BEFORE ME PERSONALLY APPEARED:

TO ME KNOWN TO BE THE _____ OF THE CORPORATION THAT EXECUTED THE WITHIN AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID CORPORATION, FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT HE WAS AUTHORIZED TO EXECUTE SAID INSTRUMENT.

IN WITNESS WHEREOF, I HAVE HEREON SET MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.

PRINT NAME _____ SIGN NAME _____

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
RESIDING AT _____

ASSESSOR-TREASURER

I HEREBY CERTIFY THAT ALL STATE AND COUNTY TAXES HERETOFORE LEVIED AGAINST THE PROPERTY DESCRIBED HERIN, ACCORDING TO THE BOOKS AND RECORDS OF MY OFFICE HAVE BEEN FULLY PAID AND DISCHARGED.

ASSESSOR - TREASURER, PIERCE COUNTY _____ DATE _____

CITY ENGINEER

I HAVE EXAMINED AND APPROVED THE REQUIRED ENGINEERING ASPECTS OF THIS PLAT ON BEHALF OF THE CITY OF ORTING.

CITY ENGINEER _____ DATE _____

CITY CLERK-TREASURER

I HEREBY CERTIFY THAT ALL CITY OF ORTING TAXES HERETOFORE LEVIED AGAINST THE PROPERTY DESCRIBED HERIN, ACCORDING TO THE BOOKS AND RECORDS OF MY OFFICE HAVE BEEN FULLY PAID AND DISCHARGED.

CITY CLERK - TREASURER _____ DATE _____

PLANNING COMMISSION

EXAMINED AND APPROVED THIS _____ DAY OF _____, 20____, A.D. FOR THE CITY OF ORTING.

CHAIRPERSON OF PLANNING COMMISSION _____ DATE _____

CITY COUNCIL

EXAMINED AND APPROVED THIS _____ DAY OF _____, 20____, A.D. FOR THE CITY OF ORTING.

CHAIR _____ DATE _____

CITY MAYOR _____ DATE _____

CITY CLERK

EXAMINED AND APPROVED THIS _____ DAY OF _____, 20____, A.D. FOR THE CITY OF ORTING.

CITY CLERK _____

AUDITOR'S CERTIFICATE

FILED FOR RECORD THIS _____ DAY OF _____, 20____, AT _____ MINUTES PAST _____ M. RECORDS OF THE PIERCE COUNTY AUDITOR, TACOMA, WASHINGTON.

RECORDING NUMBER _____

COUNTY AUDITOR _____

FEE _____

SURVEY FOR

MITCHELL DEVELOPMENT, LLC
910 TRAFFIC AVENUE
SUMNER, WA 98390

SURVEYOR'S CERTIFICATE

I, DAVID C. FOLLANSBEE, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF WASHINGTON, HEREBY CERTIFY THAT THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION IN JANUARY, 2016, IN COMPLIANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT, CHAPTER 58.09 R.C.W. AND 332-130 W.A.C., AT THE REQUEST OF MITCHELL DEVELOPMENT, LLC.

[Signature] 3-7-16
DAVID C. FOLLANSBEE, PLS 45191 DATE

DWN. BY DATE
TO 3/7/16
CHKD. BY JOB NO.
OF 2140302



LEGAL DESCRIPTION

PER STEWART TITLE INSURANCE COMPANY
ORDER NO. 205051 DATED: NOVEMBER 13, 2014

ALL THOSE PORTIONS OF THE THOMAS HEADLEY DONATION LAND CLAIM NO. 37 & 3A, IN SECTION 25, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M., AND IN SECTION 30, TOWNSHIP 19 NORTH, RANGE 5 EAST, W.M., AND OF THE HENRY WHITESELL DONATION LAND CLAIM, IN SECTION 30, TOWNSHIP 19 NORTH, RANGE 5 EAST, W.M., LYING SOUTHERLY OF VILLAGE GREEN DIVISION IV AS RECORDED UNDER RECORDING NO. 200306135002 AND LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF A 60 FOOT STRIP OF LAND CONVEYED TO PUGET SOUND POWER AND LIGHT COMPANY BY INSTRUMENTS RECORDED UNDER RECORDING NOS. 166447 AND 167491 AND LYING NORTHERLY AND EASTERLY OF THAT CERTAIN PROPERTY CONVEYED TO THE CITY OF ORTING BY DEDICATION DEED RECORDED MAY 8, 2000 UNDER PIERCE COUNTY RECORDING NO. 200005060504; SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL NO. 0519302028

TRACT TABLE

TRACT	PURPOSE	OWNERSHIP
A	FUTURE PHASE 2	RETAINED BY OWNER

EASEMENT TABLE

1. 10' UTILITY EASEMENT
2. SHARED ACCESS/UTILITIES EASEMENT
3. 5' DRAINAGE EASEMENT
4. WALL ACCESS/MAINTENANCE/REPAIR EASEMENT

LEGEND

- ⊙ FOUND MONUMENT PER VILLAGE GREEN DIV. 4
- ⊙ SET PC STANDARD MONUMENT
- SET REBAR AND CAP LS 45161
- (R) RADIAL
- RD# RADIAL BEARING
- (P) PLAT OF VILLAGE GREEN DIVISION IV
- (M) MEASURED
- ① SEE EASEMENT TABLE

EASEMENT PROVISIONS

AN EASEMENT, WITHIN THE BOUNDARIES OF THIS SUBDIVISION IS HEREBY RESERVED FOR AND GRANTED TO CITY OF ORTING, PUGET SOUND ENERGY, INC., ANY WATER COMPANY, ANY TELEPHONE COMPANY, ANY GAS COMPANY, ANY CABLE TELEVISION COMPANY, U.S. POSTAL SERVICE, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, UNDER AND UPON THE FRONT 10 FEET PARALLEL WITH AND ADJOINING THE STREET FRONTAGE OF ALL LOTS AND TRACTS IN WHICH TO INSTALL, LAY, CONSTRUCT, REIN, OPERATE AND MAINTAIN UNDERGROUND PIPE, CONDUIT, CABLES, WIRES AND SANITARY SEWER LINES AND APPURTENANCES WITH NECESSARY FACILITIES AND OTHER EQUIPMENT FOR THE PURPOSE OF SERVING THIS SUBDIVISION AND OTHER PROPERTY WITH ELECTRIC, TELEPHONE, GAS, SEWER AND UTILITY SERVICE, TOGETHER WITH THE RIGHT TO ENTER UPON THE LOTS AT ALL TIMES FOR THE PURPOSES HEREIN STATED. THESE EASEMENTS ENTERED UPON FOR THESE PURPOSES SHALL BE RESTORED AS NEAR AS POSSIBLE TO THEIR ORIGINAL CONDITION, NO LINES OR WIRES FOR THE TRANSMISSION OF ELECTRIC CURRENT OR FOR TELEPHONE USE OR CABLE TELEVISION SHALL BE PLACED OR PERMITTED TO BE PLACED UPON ANY LOT UNLESS THE SAME SHALL BE UNDERGROUND OR IN CONDUIT ATTACHED TO A BUILDING.

AN EASEMENT IS HEREBY CONVEYED TO THE CITY OF ORTING OVER PORTIONS OF LOTS 6, 13, 14 AND 15 FOR ACCESS TO THE RETAINING WALLS FOR INSPECTION, MAINTENANCE, REPAIR, NO STRUCTURES OR FENCES SHALL BE CONSTRUCTED WITHIN THIS EASEMENT.

PROTECTIVE COVENANTS

SEE PROTECTIVE COVENANTS AS FILED UNDER AUDITOR'S FEE NOS. 200105170130, 200409021138 AND 201406240657, RECORDS OF PIERCE CO. AUDITOR.

DWN. BY	DATE
TD	3/7/16
CHKD. BY	JOB NO.
DF	2140302



2215 North 30th Street, Suite 300 Tacoma, WA 98403
253.383.2422 TEL 253.383.2572 FAX www.ahbl.com WEB

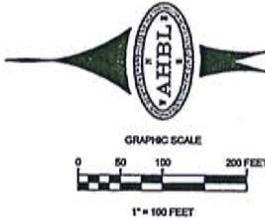
3.7.16

BASIS OF BEARING

N 87°50'43"W FOR THE NORTH LINE OF VILLAGE GREEN DIVISION I AS RECORDED UNDER A.F.N. 9507060091, RECORDS OF PIERCE COUNTY, WASHINGTON.

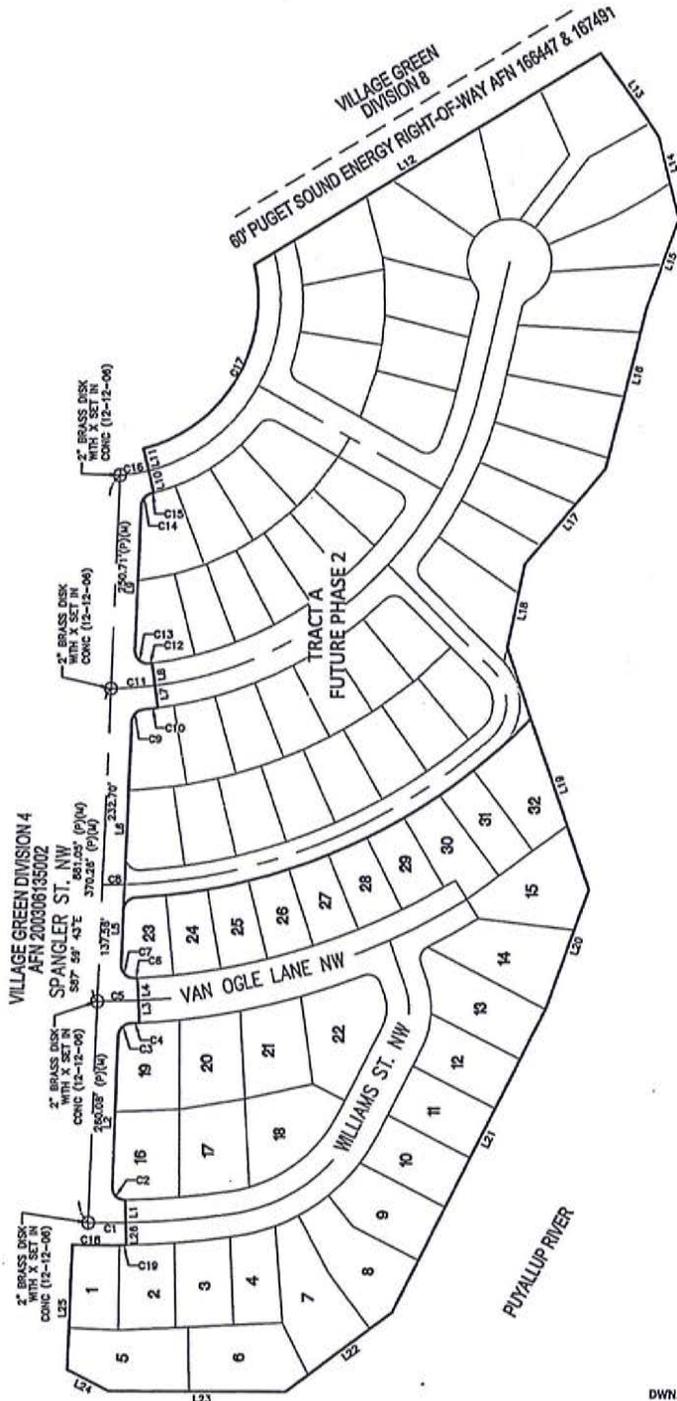
EQUIPMENT USED

3" TOTAL STATION USING STANDARD FIELD TRAVERSE METHODS FOR CONTROL AND STAKING.



LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	26.50	N88° 26' 05"E
L2	176.41	S87° 59' 43"E
L3	26.50	S87° 00' 47"W
L4	26.50	N87° 00' 47"E
L5	94.58	S87° 59' 43"E
L6	192.98	S87° 59' 43"E
L7	26.50	S82° 31' 22"W
L8	26.50	N82° 31' 22"E
L9	189.56	S87° 59' 43"E
L10	26.50	S76° 04' 27"W
L11	26.50	N76° 04' 27"E
L12	478.68	S31° 28' 00"E
L13	122.12	N53° 54' 11"E
L14	99.46	N73° 45' 13"E
L15	111.85	S87° 43' 06"E
L16	194.36	S76° 08' 42"E
L17	147.31	S49° 51' 49"E
L18	100.00	S78° 13' 20"E
L19	302.91	S70° 52' 48"W
L20	150.00	S70° 39' 11"E
L21	400.33	S63° 09' 34"E
L22	157.24	N36° 48' 13"W
L23	211.14	N0° 05' 35"W
L24	54.80	S26° 50' 26"W
L25	147.57	S87° 59' 43"E
L26	26.50	S88° 26' 05"W

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD DIRECTION	CHORD LENGTH
C1	44.66	1085.00	2 21 30	S0° 23' 10"E	44.65
C2	25.31	15.50	93 34 12	S45° 13' 11"W	22.59
C3	23.19	15.50	85 42 14	N45° 00' 36"W	21.08
C4	10.34	851.50	0 41 45	S2° 36' 21"E	10.34
C5	48.94	825.00	3 23 55	S1° 17' 17"E	48.93
C6	3.26	798.50	0 14 03	S2° 52' 13"E	3.26
C7	25.63	15.50	94 45 28	S44° 37' 33"W	22.81
C8	26.54	687.50	2 12 44	S1° 00' 49"E	26.54
C9	22.32	15.50	82 29 29	N46° 44' 59"W	20.44
C10	16.59	481.50	1 58 27	S6° 29' 28"E	16.59
C11	52.35	455.00	6 35 33	S4° 10' 55"E	52.32
C12	3.25	428.50	0 26 06	S7° 15' 39"E	3.25
C13	26.80	15.50	99 02 53	S42° 28' 51"W	23.58
C14	20.22	15.50	74 45 20	N50° 37' 03"W	18.82
C15	2.77	231.99	0 41 04	S13° 34' 58"E	2.77
C16	34.01	205.00	9 30 17	S9° 10' 25"E	33.97
C17	279.97	178.50	89 51 58	S58° 51' 32"E	252.14
C18	56.00	1111.50	2 53 11	S0° 18' 29"W	55.99
C19	8.34	1111.50	0 25 49	S1° 21' 01"E	8.34



DWN. BY DATE
 TO 3/7/16
 CHKD. BY JOB NO.
 DF 2140302

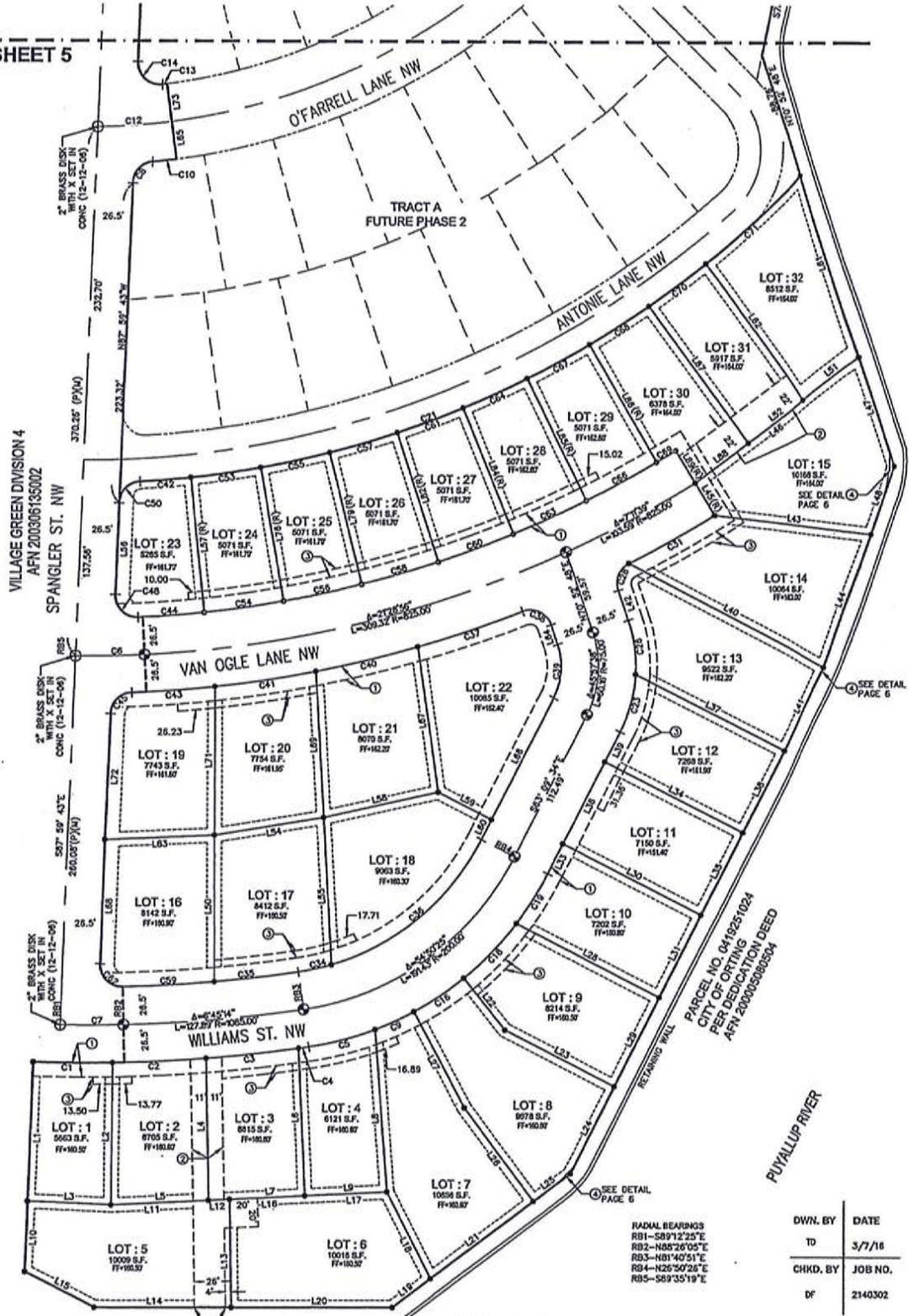


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SEE SHEET 5

VILLAGE GREEN VII PH1

Lot #	Address
1	725 Williams St NW
2	723 Williams St NW
3	721 Williams St NW
4	719 Williams St NW
5	717 Williams St NW
6	715 Williams St NW
7	713 Williams St NW
8	711 Williams St NW
9	709 Williams St NW
10	707 Williams St NW
11	705 Williams St NW
12	703 Williams St NW
13	701 Williams St NW
14	904 Van Ogle Ln NW
15	902 Van Ogle Ln NW
16	720 Williams St NW
17	716 Williams St NW
18	710 Williams St NW
19	708 Van Ogle Ln NW
20	1006 Van Ogle Ln NW
21	1004 Van Ogle Ln NW
22	1002 Van Ogle Ln NW
23	1009 Van Ogle Ln NW
24	1007 Van Ogle Ln NW
25	1005 Van Ogle Ln NW
26	1003 Van Ogle Ln NW
27	1001 Van Ogle Ln NW
28	909 Van Ogle Ln NW
29	907 Van Ogle Ln NW
30	905 Van Ogle Ln NW
31	903 Van Ogle Ln NW
32	901 Van Ogle Ln NW



LINE/CURVE DATA

SEE SHEET 6 FOR LINE AND CURVE TABLES

BASIS OF BEARING

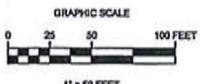
N 87°56'43"W FOR THE NORTH LINE OF VILLAGE GREEN DIVISION I AS RECORDED UNDER A.F.N. 9507060091, RECORDS OF PIERCE COUNTY, WASHINGTON.

EQUIPMENT USED

3" TOTAL STATION USING STANDARD FIELD TRAVERSE METHODS FOR CONTROL AND STAKING.

VERTICAL DATUM

HELD VERTICAL DATUM FROM VILLAGE GREEN DIVISION IV, SHOWN TO BE 0.48' BELOW NVD 29 DATUM. BRASS MONUMENT AT INTERSECTION OF COLORADO STREET AND SPANGLER STREET E.L. = 183.40



DWN. BY	DATE
TD	3/7/16
CHKD. BY	JOB NO.
DF	2140302

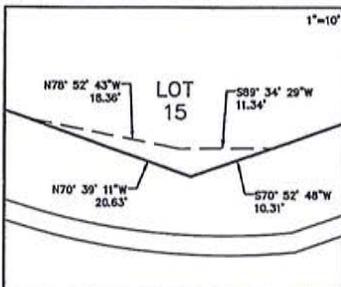
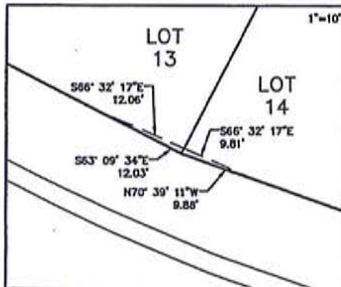
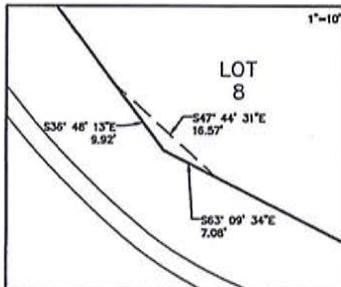


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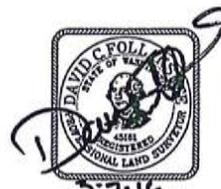
LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	98.02	S87° 59' 43"E
L2	100.00	S89° 33' 56"E
L3	58.71	N2° 16' 59"E
L4	99.91	N88° 50' 43"E
L5	68.76	S2° 48' 41"E
L6	103.86	N87° 23' 28"E
L7	68.41	S2° 46' 34"E
L8	114.35	S85° 35' 57"W
L9	58.39	S2° 51' 06"E
L10	49.55	S87° 59' 43"E
L11	68.76	S2° 48' 41"E
L12	15.01	S2° 46' 34"E
L13	75.88	N88° 50' 43"E
L14	96.69	N0° 05' 35"W
L15	54.80	S26° 50' 26"W
L16	53.41	S2° 46' 34"E
L17	58.39	S2° 51' 06"E
L18	68.58	N62° 58' 50"E
L19	33.52	N36° 48' 13"W
L20	114.45	S0° 05' 35"E
L21	91.29	N36° 48' 13"W
L22	48.46	S50° 54' 33"W
L23	87.27	S26° 50' 26"W
L24	69.17	N63° 09' 34"W
L25	32.43	N38° 48' 13"W
L26	82.27	N53° 11' 47"E
L27	76.21	N61° 42' 04"E
L28	113.80	S26° 50' 26"W
L29	70.00	N63° 09' 34"W
L30	110.00	S26° 50' 26"W
L31	65.00	N63° 09' 34"W
L33	23.68	S63° 09' 34"E
L34	110.00	S26° 50' 26"W
L35	65.00	N63° 09' 34"W
L36	65.00	S63° 09' 34"E
L37	118.73	S26° 50' 26"W
L38	65.00	N63° 09' 34"W
L39	23.82	S63° 09' 34"E
L40	158.63	S27° 19' 04"W
L41	66.16	N63° 09' 34"W
L42	22.17	N70° 52' 48"E
L43	114.21	S6° 33' 16"W
L44	99.29	N70° 39' 11"W

LINE TABLE		
LINE #	LENGTH	DIRECTION
L45	26.50	S58° 20' 11"W
L46	147.18	S36° 46' 52"E
L47	80.30	S70° 52' 48"W
L48	50.71	S70° 39' 11"E
L49	26.50	S76° 04' 27"W
L50	102.97	N89° 48' 38"E
L51	50.33	S36° 46' 52"E
L52	49.99	S36° 46' 52"E
L54	78.34	N9° 12' 07"W
L55	103.56	N86° 35' 23"E
L56	64.24	N87° 59' 43"W
L57	95.00	S83° 54' 08"W
L58	83.31	S12° 34' 36"E
L59	42.76	S26° 50' 26"W
L60	15.67	N63° 09' 34"W
L61	133.85	S70° 52' 48"W
L62	118.60	S53° 13' 08"W
L63	77.17	S2° 34' 29"E
L64	14.68	S70° 52' 48"W
L65	26.50	S82° 31' 22"W
L66	96.82	N63° 09' 34"W
L67	103.89	N81° 36' 43"E
L68	87.26	S87° 59' 43"E
L69	103.56	N66° 35' 23"E
L71	104.97	N69° 48' 38"E
L72	89.16	S87° 59' 43"E
L73	26.50	N82° 31' 22"E
L76	95.00	S79° 49' 48"W
L77	26.50	N76° 04' 27"E
L79	95.00	S75° 45' 28"W
L82	95.00	S71° 41' 08"W
L84	95.00	S67° 36' 48"W
L85	95.00	S63° 32' 28"W
L86	95.00	S59° 28' 08"W
L87	118.72	S53° 13' 08"W
L88	46.85	S36° 46' 52"E
L89	26.50	S58° 20' 11"W

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD DIRECTION	CHORD LENGTH
C1	56.00	1111.50	2 53 11	S0° 18' 29"W	55.99
C2	65.99	1111.50	3 24 06	S2° 50' 10"E	65.99
C3	66.02	1111.50	3 24 11	S6° 14' 19"E	66.01
C4	7.35	1111.50	0 22 45	S8° 07' 46"E	7.35
C5	48.62	226.50	12 18 00	S14° 28' 08"E	48.53
C6	48.94	825.00	3 23 55	S1° 17' 17"E	48.93
C7	44.68	1085.00	2 21 30	S0° 23' 10"E	44.65
C8	22.32	15.50	82 29 29	N46° 44' 59"W	20.44
C9	30.36	226.50	7 40 46	S24° 27' 32"E	30.34
C10	18.59	481.50	1 58 27	S6° 29' 28"E	18.59
C12	52.35	455.00	6 35 33	S4° 10' 55"E	52.32
C13	3.25	428.50	0 26 06	S7° 15' 39"E	3.25
C14	26.80	15.50	89 02 53	S42° 28' 51"W	23.58
C16	42.66	226.50	10 47 31	S33° 41' 42"E	42.60
C18	53.59	226.50	13 33 25	S45° 52' 09"E	53.47
C19	41.55	226.50	10 30 42	S57° 54' 13"E	41.50
C20	279.97	178.50	89 51 58	S58° 51' 32"E	252.14
C21	527.30	703.50	42 56 43	S24° 39' 01"E	515.04
C23	42.41	101.50	23 56 20	S75° 07' 44"E	42.10
C26	39.01	101.50	22 01 19	N81° 53' 27"E	38.77
C28	22.21	15.50	82 07 00	S66° 03' 42"E	20.36
C30	20.22	15.50	74 45 20	N50° 37' 03"W	18.82
C31	89.26	851.50	4 39 37	S29° 20' 01"E	89.24
C33	2.77	231.99	0 41 04	S13° 34' 58"E	2.77
C34	24.05	173.50	7 56 32	S12° 17' 24"E	24.03
C35	60.08	1058.50	3 15 08	N6° 41' 34"W	60.08
C36	142.01	173.50	46 53 54	N39° 42' 37"W	138.08
C37	78.61	851.50	5 17 22	S18° 46' 59"E	78.58
C38	24.97	15.50	92 18 29	S24° 43' 34"W	22.36
C39	38.90	48.50	45 57 38	N86° 08' 23"W	37.87
C40	74.49	851.50	5 00 45	S13° 37' 56"E	74.47
C41	72.37	851.50	4 52 10	S8° 41' 28"E	72.35
C42	35.85	703.50	2 55 13	S4° 38' 16"E	35.85
C43	58.93	851.50	3 57 55	S4° 16' 26"E	58.92
C44	46.61	798.50	3 20 41	S4° 25' 32"E	46.61
C45	23.19	15.50	85 42 14	S45° 08' 36"E	21.08
C46	34.01	205.00	9 30 17	S9° 10' 25"E	33.97
C48	25.63	15.50	94 45 28	N44° 37' 33"E	22.81
C50	22.95	15.50	84 49 03	S45° 35' 11"E	20.91
C53	50.00	703.50	4 04 20	S8° 08' 02"E	49.99
C54	56.75	798.50	4 04 20	N8° 06' 02"W	56.74
C55	50.00	703.50	4 04 20	S12° 12' 22"E	49.99
C56	56.75	798.50	4 04 20	N12° 12' 22"W	56.74
C57	50.00	703.50	4 04 20	S16° 16' 42"E	49.99
C58	56.75	798.50	4 04 20	N16° 16' 42"W	56.74
C59	64.69	1058.50	3 30 05	N3° 18' 58"W	64.68
C60	56.75	798.50	4 04 20	N20° 21' 02"W	56.74
C61	50.00	703.50	4 04 20	S20° 21' 02"E	49.99
C62	25.31	15.50	93 34 12	N45° 13' 11"E	22.59
C63	56.75	798.50	4 04 20	N24° 25' 22"W	56.74
C64	50.00	703.50	4 04 20	S24° 25' 22"E	49.99
C66	56.75	798.50	4 04 20	N28° 29' 42"W	56.74
C67	50.00	703.50	4 04 20	S28° 29' 42"E	49.99
C68	50.00	703.50	4 04 20	S32° 34' 02"E	49.99
C69	15.78	798.50	1 07 57	S31° 05' 50"E	15.78
C70	50.00	703.50	4 04 20	S36° 30' 22"E	49.99
C71	91.44	703.50	7 26 51	S42° 23' 57"E	91.38



DWN. BY TD DATE 3/7/16
 CHKD. BY OF JOB NO. 2140302



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**City Of Orting
Council Agenda Summary Sheet**

AB16-34 SUBJECT: PUBLIC HEARING – Resolution No. 2016-19, Animal License Fee Changes	Agenda Item #:	AB16-34
	For Agenda of:	4/27/16
	Department:	Finance
	Date Submitted:	4/22/16

Orting Staff & Professional Representatives			
Mayor, Joachim Pestinger		Cost of Item:	<u>\$0</u>
City Administrator, Mark Bethune		Amount Budgeted:	<u>\$0</u>
City Attorney, Jay Long		Unexpended Balance:	<u>\$0</u>
City Clerk, Rachel Pitzel		Timeline: <i>enter a timeline if applicable</i>	
City Treasurer, Scott Larson		BARS:	
Police Chief, Bill Drake		Fiscal Note: <i>enter Finance information here if you want to embellish on fiscal impact and fund source.</i>	
Public Works, Dean Kaelin			
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 checked="" type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator			

Attachments: Resolution No. 2016-19; comparable
SUMMARY STATEMENT: <i>An analysis of time sheets indicates the city's labor/benefits/supplies expense is about \$15,000 annually. The revenue from license fees is estimated at \$6,500 for 2016 and there were \$2,300 in fines for 2015. Currently the city charges approximately 40% of the license fees of comparable cities. Raising license fees to regional rates would better cover expense for animal control. Staff and the Finance Committee are recommending a reduced rate for seniors.</i>
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: <i>This was brought to the Finance Committee and recommended for approval.</i>
RECOMMENDED ACTION: MOTION to adopt Resolution No. 2016-19, adopting the new annual pet license fees that are set forth pursuant to OMC 6-3A-3(E).

**CITY OF ORTING
WASHINGTON
RESOLUTION NO. 2016 - 19**

**A RESOLUTION OF THE CITY OF ORTING,
WASHINGTON, ADOPTING THE NEW ANNUAL PET
LICENSE FEES THAT ARE SET FORTH PURSUANT TO
ORTING MUNICIPAL CODE 6-3A-3(E)**

WHEREAS, the City has adopted annual licensing requirements for dogs and cats over six months of age which requirements have been codified at Chapter 6-3A of the Orting Municipal Code; and

WHEREAS, the City Council is required pursuant to OMC 6-3A-3(E) to establish by resolution, the annual license fees for cats and dogs; and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety and welfare to adopt the annual license fees as set forth herein;

**NOW THEREFORE, THE COUNCIL OF THE CITY OF ORTING,
WASHINGTON DOES RESOLVE AS FOLLOWS:**

Section 1. Adoption of Annual Pet License Fees. Pursuant to OMC 6-3A-3(E) the annual pet license fees for dogs and cats shall be:

			<u>Senior Rate</u>
A.	Dog, neutered or spayed	\$10.00 <u>\$15.00</u>	<u>\$10.00</u>
B.	Cat, neutered or spayed	\$10.00 <u>\$15.00</u>	<u>\$10.00</u>
C.	Dog, intact	\$20.00 <u>\$60.00</u>	<u>\$35.00</u>
D.	Cat, intact	\$20.00 <u>\$60.00</u>	<u>\$35.00</u>

Section 2. Effective Date. The pet license fees as set forth herein shall be effective upon passage of this resolution.

**PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON
THE 27TH DAY OF APRIL, 2016.**

CITY OF ORTING

Joachim Pestinger, Mayor

ATTEST/AUTHENTICATED:

Rachel Pitzel, City Clerk

PET LICENSE FEES COMPARABLES - 2015

Cities	Dogs					Cats			
	Rate		Senior Rate			Rate		Senior Rate	
	Altered	Unaltered	Altered	Unaltered		Altered	Unaltered	Altered	Unaltered
Algona**	\$16.00	\$60.00	\$8.00	\$30.00		\$16.00	\$60.00	\$6.00	\$30.00
Bonney Lake**	\$16.00	\$60.00	\$8.00	\$30.00		\$12.00	\$60.00	\$6.00	\$30.00
Buckley	\$15.00	\$30.00	\$10.00	\$20.00		\$15.00	\$30.00	\$10.00	\$20.00
Dupont	\$20.00	\$60.00	\$20.00	\$60.00		\$20.00	\$60.00	\$20.00	\$60.00
Edgewood	\$16.00	\$60.00	\$8.00	\$30.00		\$10.00	\$65.00	\$4.00	\$35.00
Milton**	\$16.00	\$60.00	\$8.00	\$30.00		\$12.00	\$60.00	\$6.00	\$30.00
Pacific**	\$30.00	\$90.00	\$20.00	\$90.00		\$30.00	\$90.00	\$12.00	\$90.00
Pierce County Unicorporated	\$20.00	\$55.00	\$10.00	\$30.00		\$12.00	\$55.00	\$5.00	\$30.00
Puyallup**	\$14.00	\$60.00	\$7.00	\$30.00		\$10.00	\$60.00	\$5.00	\$30.00
Sumner**	\$16.00	\$60.00	\$8.00	\$30.00		\$12.00	\$60.00	\$6.00	\$30.00
Average	\$17.90	\$59.50	\$10.70	\$38.00		\$14.90	\$60.00	\$8.00	\$38.50
Orting	\$10.00	\$20.00	\$10.00	\$20.00		\$10.00	\$20.00	\$10.00	\$20.00
Recommendation	\$15.00	\$60.00	\$10.00	\$35.00		\$15.00	\$60.00	\$10.00	\$35.00

**Serviced by Metro Animal Control



**City Of Orting
Council Agenda Summary Sheet**

AB16-35 SUBJECT: PUBLIC HEARING ONLY – Resolution No. 2016-20, adoption of the 2017-2022 Six Year Transportation Improvement Program	Agenda Item #:	AB16-35
	For Agenda of:	April 27, 2016
	Department:	Public Works
	Date Submitted:	April 22, 2016

Orting Staff & Professional Representatives			
Mayor, Joachim Pestinger		Cost of Item:	<u>\$0</u>
City Administrator, Mark Bethune		Amount Budgeted:	<u>\$0</u>
City Attorney, Jay Long		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	x		
Recreation and Parks, Beckie Meek			
Municipal Court, Kaaren Woods			
Parametrix, JC Hungerford	x		
BHC Consultants, Roger Wagoner			
Agenda Placement: <input type="checkbox"/> Mayor <input type="checkbox"/> Councilmember <input checked="" type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator			

Attachments: Resolution No. 2016-20; 2017-2022 TIP
SUMMARY STATEMENT: <i>This is an annual action that must be done by July 1. The updated TIP includes the upcoming projects for the Transportation Benefit District.</i>
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:
RECOMMENDED ACTION: PUBLIC HEARING ONLY- this item will come back for adoption at the May 11, 2016 Council meeting.

CITY OF ORTING
WASHINGTON
RESOLUTION NO. 2016-20

**A RESOLUTION OF THE CITY OF ORTING,
WASHINGTON, ADOPTING THE 2017-2022 SIX-YEAR
TRANSPORTATION IMPROVEMENT PROGRAM**

WHEREAS, state law provides at RCW 35.77.010 that, pursuant to one or more hearings, the City Council shall by July 1st of each year prepare and adopt a comprehensive transportation program (Transportation Improvement Program) for the ensuing six calendar years; and

WHEREAS, the Growth Management Act requires (RCW 36.70A.070) that the City of Orting Comprehensive Plan include a transportation element that is consistent with the City's six-year Transportation Improvement Program; and

WHEREAS, the City's adopted comprehensive plan at the Transportation Appendix, page TA-13, incorporates by reference the updated Transportation Improvement Program as part of the Transportation Element of the Comprehensive Plan; and

WHEREAS, the Six-Year Transportation Improvement Program is reviewed annually by the City Council, including conducting a public hearing to obtain citizen input on the Program; and

WHEREAS, the City duly noted and conducted a public hearing regarding amendments and updates to the Transportation Improvement Program on April 27, 2016; and

WHEREAS, the City Council desires to adopt the City's 2017 – 2022 Six-Year Transportation Improvement Program following such annual review;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORTING, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. 2017–2022 Six-Year Transportation Improvement Program Adopted. The City of Orting hereby adopts the 2017–2022 Six-Year Transportation Improvement Program, attached hereto as Exhibit “A” and by this reference fully incorporated herein. Said Transportation Improvement Program is adopted with an effective date of July 1, 2016 and the appendix to the Transportation element of the City of Orting Comprehensive Plan is amended, as provided therein, to include the updated 2017-2022 Transportation Improvement Program.

Section 2. Submittal to Secretary of Transportation. The Mayor is requested to direct the City Administrator to forward the adopted Transportation Improvement Program to the Secretary of Transportation as required by RCW 35.77.010(3).

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE
11th DAY OF MAY, 2016.

CITY OF ORTING

Joachim Pestinger, Mayor

ATTEST/AUTHENTICATED:

Rachel Pitzel, City Clerk

Approved as to form:

John P. Long, Jr.,
Kenyon Disend, PLLC
City Attorney

Filed with the City Clerk: 5/11/16
Passed by the City Council: 5/11/16
Resolution No.: 2016-20

EXHIBIT "A"

(Six-Year Transportation Improvement Program; 2017 – 2022)

Agency: Orting

 Co. No.: 27

 City No.: 940

 Co. Name: Pierce County

 MPO/RPTO: PSRC

 Hearing Date: 27-Apr-16

 Amend Date: 11-May-16

 Adoption Date: 11-May-16

Resolution No.: _____

Functional Class	Priority Number	Project Identification A. PIN/Federal Aid No. B. Bridge No. C. Project Title D. Street/Road Name or Number E. Beginning MP or Road – Ending MP or Road F. Describe Work to Be Done	Improvement Type(s)	Status	Total Length	Utility Codes	Project Costs in Thousands of Dollars								Expenditure Schedule (Local Agency)				Federal Funded Project Only	
							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information						1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (mm/yy)
									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds						
									Federal Fund Code	Federal Cost by Phase										
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
6	1	SR 162 TWLTL SR 162 (Washington Avenue) from: Cardinal Lane to: Leber Rechannelization, minor widening.	6 12	P	0.14		ALL	9/1/2015					466	466	466					No
							Totals							466	466	466				
6	2	Kansas Street Regrade from: Harman to: Calistoga Regrade, sidewalks, storm, sewer.	3	P	0.5	GS	ALL	1/1/2017					2,544	2,544	2,544					No
							Totals							2,544	2,544	2,544				
7	3	Calistoga Street W. from: Corrin Avenue to: Puyallup River Bridge Regrade, sidewalks, curb and gutter, planter strips, parking, sewer, storm, water. Asphalt Overlay-2013 Block Number: 200,300,400, 500, 600, 700, 800	3	P	0.7 mi.	GP SWO	ALL	1/1/2018					4,028	4,028	4,028					No
							Totals							4,028	4,028	4,028				
7	4	Eldredge Avenue NW Regrade Eldredge Avenue NW from: Whitesell St. NW to: Calistoga St. W Regrade, paving, parking, sidewalks, sewer, storm. Block Number: 100, 200 (Also scheduled for chipseal - Priority # 8)	3	P	0.2	GOS	ALL	1/1/2019					1,219	1,219	1,219					
							Totals							1,219	1,219	1,219				
6	5	Whitehawk Blvd/SR 162 Intersection Improvement Whitehawk Boulevard from: to: Signalize intersection with existing lane configurations.	3 12	P	N/A		ALL	1/1/2017					636	636	636					Yes
							Totals							636	636	636				
7	6	Whitehawk Blvd NW. from: Washington Ave NE to: Orting Ave NW Chip/Seal Block Number: 100, 200, 300	7	P	0.37		ALL	1/1/2016					38.13	38.13	38.13					No
							Totals							38.13	38.13	38.13				
7	7	Orting Ave NW from: Orting Ave NW to: Callendar St. NW Chip/Seal	7	P	0.13		ALL	1/1/2016					14.74	14.74	14.74					No

Agency: Orting

Co. No.: 27

City No.: 940

Co. Name: Pierce County

MPO/RPTO: PSRC

Hearing Date: 27-Apr-16

Amend Date: 11-May-16

Adoption Date: 11-May-16

Resolution No. _____

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							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information						1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (mm/yy)
									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds						
									Federal Fund Code	Federal Cost by Phase										
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
		Block Number: 400, 500					Totals						14.74	14.74	14.74					
7	8	Skinner Way SW from: Calistoga St. W to: Grinnel Ave SW Chip/Seal Block Number: 500, 600	7	P	0.27		ALL	1/1/2016					35.101	35.101	35.101					No
							Totals						35.101	35.101	35.101					
7	9	McMahon Lane SW from: Beckett Ln SW to: Cul-de-sac Chip/Seal Block Number: 100, 200	7	P	0.09		ALL	1/1/2016					8.674	8.674	8.674					No
							Totals						8.674	8.674	8.674					
7	10	Beckett Lane SW from: Harman Way S to: Maple Ln SW Chip/Seal Block Number: 100	7	P	0.14		ALL	1/1/2016					17.128	17.128	17.128					No
							Totals						17.128	17.128	17.128					
7	11	Whitehawk Ct NW from: Whitehawk Blvd to: Dead End Chip/Seal Block Number: 500	7	P	0.03		ALL	1/1/2016					8.311	8.311	8.311					No
							Totals						8.311	8.311	8.311					
7	12	Belfair St SW from: Skinner Way SW to: Belfair Court SW Chip/Seal Block Number: 800	7	P	0.04		ALL	1/1/2016					2.75	2.75	2.75					No
							Totals						2.75	2.75	2.75					
7	13	Belfair Ct SW from: Belfair Ave NW to: Dead End Chip/Seal Block Number: 500	7	P	0.05		ALL	1/1/2016					4.4	4.4	4.4					No
							Totals						4.4	4.4	4.4					
7	14	Corrin Ave. SW from: Calistoga St W to: Bridge St. SW	7	P	0.18		ALL	1/1/2016					1.65	1.65	1.65					No

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							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information						1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (mm/yy)	
									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds							
									Federal Fund Code	Federal Cost by Phase											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
		Chip/Seal Block Number: 100, 200																			
		Totals											1.65	1.65	1.65						
7	15	<i>Coplan St SW</i> from: Grinell Ave SW to: Cul-de-sac Chip/Seal Block Number: 300, 400	7	P	0.08		ALL	1/1/2016						14.757	14.757	14.757					No
		Totals												14.757	14.757	14.757					
7	16	<i>Leber ST NE</i> from: Washington Avenue N. to: Varner AV NE Sidewalk Replacement Block Number: 100	7	P	0.06		ALL	1/1/2016						13.96	13.96	13.96					No
		Totals												13.96	13.96	13.96					
7	17	<i>Calistoga Street W.</i> from: Corrin Ave NW to: Skinner Way SW Sidewalk Replacement Block Number: 100, 200, 300, 400, 500, 600, 700	7	P	0.53		ALL	1/1/2016						117.7	117.7	117.7					No
		Totals												117.7	117.7	117.7					
7	18	<i>Bridge St. SW</i> from: Eldredge to: Corrin Chip/Seal Block Number: 200	7	P	0.073		ALL	1/1/2016													No
		Totals																			

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							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information						1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (mm/yy)
									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds						
									Federal Fund Code	Federal Cost by Phase										
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
7	18	Coplan CT SW from: Coplan St to: Cul-de-sac Chip/Seal Block Number: 800	7	P	0.02		ALL	1/1/2016					3.971	3.971	3.971					No
							Totals													
7	18	Icey ST SW from: Grinnell AVE SW to: Cul-de-sac Chip/Seal Block Number: 200, 300	7	P	0.16		ALL	1/1/2016					19.78	19.78	19.78					No
							Totals													
7	18	Brown St SE from: Washington Ave S to: Cul-de-sac Chip/Seal Block Number: 300, 500	7	P	0.17		ALL	1/1/2016					19.08	19.08	19.08					No
							Totals													
7	19	Brown Way SE from: Cul-de-sac to: Washington Ave S Chip/Seal Block Number: 400	7	P	0.12		ALL	1/1/2016					14	14	14					No
							Totals													
7	20	Washington Ave SE from: Brown Way SE to: Brown St. SE Chip/Seal Block Number: 600, 700	7	P	0.16		ALL	1/1/2016					18.55	18.55	18.55					No
							Totals													
7	21	Leber Ct. NW from: Eldredge to: Dead End Chip/Seal Block Number: 300	7	P	0.03		ALL	1/1/2016												No
							Totals													
7	22	Taylor St. SW from: Eldredge to: Deeded Chip/Seal Block Number:	7	P	0.08		ALL	1/1/2016												No
							Totals													

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							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information						1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (mm/yy)		
									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds								
									Federal Fund Code	Federal Cost by Phase												
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21		
		300					Totals															
7	21	Train Ave SW from: Eldredge to: Corrin Chip/Seal Block Number: 200	7	P			ALL	1/1/2016													No	
							Totals															

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									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds						
									Federal Fund Code	Federal Cost by Phase										
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
7	23	Whitesell Court NW from: Eldredge to: Dead End Chip/Seal Block Number: 300	7	P	0.3		ALL	1/1/2016												No
							Totals													
7	24	Belfair St. SW from: Skinner Way. to: Belfair Ct Chip/Seal Block Number: 800	7	P	0.03		ALL	1/1/2016												No
							Totals													
7	25	River Ave NE from: Calistoga to: Dead End Chip/Seal Block Number: 100	7	P	0.13		ALL	1/1/2016												No
							Totals													
7	26	Leber ST NW from: Van Scoyoc to: Corrin Chip/Seal Block Number: 100	7	P	0.04		ALL	1/1/2016												No
							Totals													
7	27	Corrin Ave SW. from: Train to: Bridge Chip/Seal Block Number: 200	7	P	0.1		ALL	1/1/2016												No
							Totals													

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							Project Phase	Phase Start (mm/dd/yyyy)	Fund Source Information						1st	2nd	3rd	4th Thru 6th	Envir. Type	R/W Required Date (mm/yy)	
									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds							
									Federal Fund Code	Federal Cost by Phase											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
7	28	Corrin Ave SW. from: Calistoga to: Train Chip/Seal Block Number: 100	7	P	0.1		ALL	1/1/2016													No
							Totals														
7	29	Bridge ST SE from: River to: Mill Chip/Seal Block Number: 200, 300	7	P	0.18		ALL	1/1/2016													No
							Totals														
7	30	River Ave SE from: Ammons to: Factory Chip/Seal Block Number: 300	7	P	0.05		ALL	1/1/2016													No
							Totals														
7	31	River Ave SE from: Factory to: Train Chip/Seal Block Number: 100	7	P	0.07		ALL	1/1/2016													No
							Totals														

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									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds						
									Federal Fund Code	Federal Cost by Phase										
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
7	32	River Ave SE from: Train to: Calistoga Chip/Seal Block Number: 100	7	P	0.07		ALL	1/1/2016												No
							Totals													
7	33	Calistoga Ct. SW from: Calistoga to: Dead End Chip/Seal Block Number: 700	7	P	0.02		ALL	1/1/2016												No
							Totals													
7	34	Skinner Way SW from: Calistoga St W to: Belfair Ave Chip/Seal Block Number: 600	7	P	0.15		ALL	1/1/2016												No
							Totals													
7	35	Skinner Way SW from: Belair Ave to: Grinnell Ave Chip/Seal Block Number: 500	7	P	0.13		ALL	1/1/2016												No
							Totals													
7	36	Tacoma Ave SW from: Calistoga to: Dead End Chip/Seal Block Number: 100	7	P	0.15		ALL	1/1/2016												No
							Totals													

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									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds						
									Federal Fund Code	Federal Cost by Phase										
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
7	37	Tacoma Ave. NW from: Calistoga to: NW End Chip/Seal Block Number: 100	7	P	0.05		ALL	1/12016												No
							Totals													
7	38	Van Scoyoc Ave SW from: Calistoga to: Train Chip/Seal Block Number: 100	7	P	0.1		ALL	1/1/2016												No
							Totals													
7	39	Van Scoyoc Ave SW from: Train to: Bridge Chip/Seal Block Number: 200	7	P	0.09		ALL	1/1/2016												No
							Totals													
7	39	Varner Ave SE from: Bridge to: Hardefelt Chip/Seal Block Number: 300	7	P	0.09		ALL	1/1/2016												No
							Totals													
7	40	Bridge Street SE Regrade Bridge St. SE from: Washington Ave. S. to: River Ave. SE Curve Regrade, paving, parking, curb/gutter, sidewalks, replace water main. Block Number 100-300	3	P	0.13	GOW	ALL	1/1/2016					795	795	795				CE	No
							Totals													
9	41	River Avenue SE Regrade River Avenue SE from: Calistoga St. E. to: River Ave. SE Curve Block Number: 100-300 Regrade, paving, parking, sidewalks, replace water main, sewer, storm.	3	P	0.16	GW	ALL	1/1/2017					981	981	981					
							Totals													

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									Federal Funding		State Fund Code	State Funds	Local Funds	Total Funds							
									Federal Fund Code	Federal Cost by Phase											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
14	42	Orting Emergency Evacuation Bridge System at Gratzer Avenue NW Pedestrian Bridge over SR 162	14	P	0.02	GOSW	ALL	1/1/2017	STP(s)	742	PSMP	1,590	0	2,332	2,332						
							Totals		742			1,590	0	2,332	2,332						
6	43	Southwest Connector Orting Ave. NW to Groff Avenue NW Whitehawk Boulevard from: Orting Ave. NW to: Groff Avenue NW Southwest Connector	1	P	0.21	WSOG	ALL	1/1/2017					2,332	2,332	2,332					Yes	
							Totals						2,332	2,332	2,332						
6	44	Whitehawk Extension – Groff to Calistoga Whitehawk Boulevard from: Groff Ave. NW to: Calistoga Street Construct 2/3 lane arterial from Groff Ave. to Calistoga St. at Skinner Way SW, water, sewer, storm, curb, sidewalk. (Cost is road only.)	1	P	0.42	GOWS	ALL	1/1/2017					3,710	3,710	3,710					Yes	
							Totals						3,710	3,710	3,710						
6	45	Whitehawk Extension – Calistoga St. Intersection Whitehawk Extension from: to: Construct intersection improvements as part of Whitehawk Extension at Skinner Way SW/Calistoga Street West intersection.	3 12	P	N/A		ALL	1/1/2017					1,166	1,166	1,166					Yes	
							Totals						1,166	1,166	1,166						
GRAND TOTALS FOR ORTING:										742			1,590	18,231	20,563	20,563					



**City Of Orting
Council Agenda Summary Sheet**

AB16-36 SUBJECT: Ordinance No. 2016-983, Astound Broadband, LLC franchise agreement	Agenda Item #:	AB16-36
	For Agenda of:	4/27/16
	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: MOTION to adopt Ordinance No. 2016-983, granting to Astound Broadband, LLC, a Limited Liability Company, a Non-exclusive Telecommunications Franchise to install, construct, maintain, repair, and operate a telecommunications system within the public rights of way.

**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:

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- 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
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- 3.2 Compliance with Laws
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- 4.3 Effective Date; Term
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- 7.4 Conditions Precedent to Work

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- 7.6 Alterations
- 7.7 General Conditions
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- 8.17 Venue/Choice of Law
- 8.18 Publication

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- B. Form of Transfer Agreement
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- 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 27TH DAY OF APRIL, 2016, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 27TH DAY OF APRIL, 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: 4/27/16
Passed by the City Council: 4/27/16
Ordinance No. 2016-983
Date of Publication: 04/29/16

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.

**
**

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**

AB16-37 SUBJECT: Bridgewater Plat Alternative Analysis	Agenda Item #:	AB16-37
	For Agenda of:	4/27/16
	Department:	Transportation
	Date Submitted:	4/22/16

Orting Staff & Professional Representatives			
Mayor, Joachim Pestinger	X	Cost of Item:	<u>\$0</u>
City Administrator, Mark Bethune	X	Amount Budgeted:	<u>\$10,000 (up to, of Transportation Impact Fees)</u>
City Attorney, Jay Long		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			
BHC Consultants, Roger Wagoner			
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Councilmember <input type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator			

Attachments: SUMMARY STATEMENT: <i>The City is in conflict with the Bridgewater plat application. The applicant's plan does not allow for the City's planned SW Connector. The City has been financially unable at present to purchase or establish ROW over the property necessary for the connector. The Mayor met with the applicant 4/21/16 to discuss possible solutions. The applicant plans to continue to pursue the plat without making allowances for the SW Connector. The Mayor proposed to the applicant that the City, given Council approval, would be willing to give up to \$10,000 worth of future Transportation Impact Fees to allow the applicant to examine alternative designs for the plat. The applicant was open to this option.</i>
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: RECOMMENDED ACTION: MOTION to authorize the use of up to \$10,000 of Transportation Impact Fees to reimburse the owner of the Bridgewater Plat for alternative plat layout analysis that would mitigate the impact of the City's planned SW Connector roadway.



**City Of Orting
Council Agenda Summary Sheet**

AB16-40 SUBJECT: Ordinance No. 2016-981, relating to nuisance regulations relating to dogs and cats; amending Orting Municipal Code section 6-3A-6A7.	Agenda Item #:	AB16-40
	For Agenda of:	4/27/16
	Department:	Public Safety
	Date Submitted:	4/22/16

Orting Staff & Professional Representatives			
Mayor, Joachim Pestinger	X	Cost of Item:	<u>\$0</u>
City Administrator, Mark Bethune	X	Amount Budgeted:	<u>\$0</u>
City Attorney, Jay Long		Unexpended Balance:	<u>\$0</u>
City Clerk, Rachel Pitzel		Timeline:	
City Treasurer, Scott Larson			
Police Chief, Bill Drake		BARS:	
Public Works, Dean Kaelin		Fiscal Note:	
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 checked="" type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator			

Attachments: Ordinance No. 2016-981
SUMMARY STATEMENT: <i>Currently a police officer can only fine a party when there have been two formal complaints about an animal nuisance – typically barking dogs – this amendment allows the intervening officer to fine the offending party if they see evidence of non-cooperation and are a witness to the nuisance.</i>
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: <i>Recommended approval by the Public Safety Committee.</i>
RECOMMENDED ACTION: MOTION to adopt Ordinance No. 2016-981, relating to nuisance regulations relating to dogs and cats; amending Orting Municipal Code section 6-3A-6A7.

CITY OF ORTING
WASHINGTON
ORDINANCE NO. 2016-981

**AN ORDINANCE OF THE CITY OF ORTING,
WASHINGTON, RELATING TO NUISANCE
REGULATIONS RELATING TO DOGS AND CATS;
AMENDING ORTING MUNICIPAL CODE
SECTION 6-3A-6A7; PROVIDING FOR
SEVERABILITY; AND ESTABLISHING AN
EFFECTIVE DATE**

WHEREAS, cities are authorized to protect the public health, safety and welfare of their communities; and

WHEREAS, cities are authorized under state law to make and enforce by appropriate ordinances all such police and human health regulations that are not in conflict with state law; and

WHEREAS, the City of Orting desires to make a change to Nuisance Regulations Relating to Dogs and Cats of the Orting Municipal Code; and

WHEREAS, the City wishes to add an additional provision to a section of the Code which addresses frequent or habitual barking and/or other noises from dogs that disturb the peace and quiet of Orting citizens; and

WHEREAS, the City wishes to adopt additional enforcement authority and update the Code; and

WHEREAS, it is necessary to take steps now to protect the public health, safety and welfare of our community against this threat:

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

Section 1. OMC Section 6-3A-6A7 Amended. Orting Municipal Code Section 6-3A-6(A)(7), “Nuisance Regulations Relating to Dogs and Cats; Violation; Penalty,” is hereby amended to read as follows:

**6-3A-6A7: NUISANCE REGULATIONS RELATING TO DOGS AND CATS;
VIOLATION; PENALTY:**

7. Any dog(s) frequently or habitually barking, howling, yelping, whining, or making other oral noises which unreasonably annoys or disturbs the peace and quiet of an occupant or occupants of at least two (2) separate residences within the city; or when a Police Department, Animal Control or Code enforcement officer hears firsthand any dog(s) barking, howling, yelping, whining or making other oral noises which unreasonably annoys or disturbs the peace and quiet the officer may issue a notice of infraction with penalties pursuant to OMC 6-3A-6B;

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF
ON THE 24TH DAY OF FEBRUARY, 2016.**

CITY OF ORTING

Joachim Pestinger, Mayor

ATTEST/AUTHENTICATED:

Rachel Pitzel, City Clerk

Approved as to form:

John P. Long, Jr.
Kenyon Disend PLLC
City Attorney

Filed with the City Clerk: 4/27/16
Passed by the City Council: 4/27/16
Ordinance No. 2016-981
Date of Publication: 04/29/16
Effective Date: 05/04/16



**City Of Orting
Council Agenda Summary Sheet**

AB16-41 SUBJECT: Interlocal Agreement for Jail Services with Nisqually Indian Tribe	Agenda Item #:	AB16-41
	For Agenda of:	04/27/16
	Department:	Police
	Date Submitted:	4/22/16

Orting Staff & Professional Representatives			
Mayor, Joachim Pestinger		Cost of Item:	<u>\$65 / per night</u>
City Administrator, Mark Bethune		Amount Budgeted:	<u>\$130,000</u>
City Attorney, Jay Long		Unexpended Balance:	<u>\$101,229.56</u>
City Clerk, Rachel Pitzel		Timeline: Immediate Implementation	
City Treasurer, Scott Larson			
Police Chief, Bill Drake	X	BARS: 001-523-60-41-00	
Public Works, Dean Kaelin		Fiscal Note: <i>This contract will provide greater latitude & save money by allowing individuals to be booked at a lower cost facility. (Currently cost can be as high as \$157 per night at SCORE jail). The Nisqually Jail Facility is \$65 per night.</i>	
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 checked="" type="checkbox"/> City Administrator			

Attachments: Interlocal Agreement SUMMARY STATEMENT: <i>Allows greater latitude for booking individuals at lower cost facility (\$65/per night). Contract approved by Nisqually Council and it has been reviewed (and was written) by our City Attorney. Additionally, this contracts provides another option for jail booking, when other facilities are full and unable to book individuals.</i>
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: <i>Discussed over the last several months. It has only been awaiting approval by the Nisqually Tribe for us to implement.</i>
RECOMMENDED ACTION: MOTION to approve the Interlocal Agreement with Nisqually Indian Tribe for jail services.



Nisqually Police Department
4820 SHE-NAH-NUM DR. S.E.
Olympia, WA 98513
Phone: (360) 459-9603
Fax: (360) 412-1813

NISQUALLY POLICE DEPARTMENT

April 14, 2016

William E. Drake
Chief of Police
Orting Police Department
P.O. Box 489
401 Washington Ave. SE
Orting, WA 98360

Dear Chief Drake:

Enclosed please find 5 originals of the Interlocal Agreement between the City of Orting and the Nisqually Indian Tribe for Jail Services.

After they are signed by the Mayor, please send three of the originals back to our Office at the address listed above.

Thank you and we look forward to working with your Agency.

Sincerely,

A handwritten signature in black ink, appearing to read "Julius D. Kautz III".

Julius D. Kautz III
Chief of Police

INTERLOCAL AGREEMENT
BETWEEN THE CITY OF ORTING, WASHINGTON
AND NISQUALLY INDIAN TRIBE
FOR JAIL SERVICES

THIS INTERLOCAL AGREEMENT is made and entered into on this 10 day of March, 2016, by and between the Nisqually Indian Tribe, a Federally Recognized Indian Tribe, hereinafter referred to as “Nisqually” and the City of Orting hereinafter referred to as “City.” This agreement is for the housing of inmates of City of Orting Police Department & Orting Municipal Court in the Nisqually Detention and Corrections Center hereinafter referred to as “Nisqually Jail” pursuant to Chapters 39.34 and 70.48 RCW.

WHEREAS, RCW 39.34.020 defines “public agency” as any municipality; or any Indian Tribe recognized as such by the federal government; and

WHEREAS, RCW 39.34.080 and other Washington law, as amended, authorizes any public agency to enter into an interlocal agreement to permit another public agency to perform any governmental service, activity or undertaking which either is authorized by law to perform; and

WHEREAS, RCW 35A11.020 provides broad power to the legislative code cities that they shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into the Agreement as authorized and provided by RCW 39.34.080 and other Washington law, as amended; and

WHEREAS, the City wishes to use the Nisqually Jail as a place of confinement for the incarceration of one or more inmates lawfully committed to its custody; and

NOW, THEREFORE, in consideration of the above and foregoing recitals, the payments to be made, the mutual promises and covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. **SERVICE**. Nisqually shall care for prisoners placed in the custody of officers of the Nisqually Jail. The term “prisoner” shall include any person arrested, sentenced by the court or held under authority of any law or ordinance of the City provided, that the Nisqually Police Chief or the Nisqually Corrections Director shall have the right to refuse to accept custody if in his opinion that would result in overcrowding of the Jail; or health, safety or security risks.
2. **CARE**. “Care” shall mean room and board. In addition, prisoners housed pursuant to this agreement shall be subject to the same rules and regulations required of other prisoners housed in the Nisqually Jail.
3. **DURATION OF CONTRACT**. The term of this agreement shall be for five (5) years. The agreement may be terminated without cause by either party by providing

the other party with thirty (30) days written notice. Notice shall be deemed proper when provided to:

City of Orting: City Administrator
 City of Orting
 POB 489 / 110 Train St SE
 Orting, WA 98327

Nisqually: Chief Executive Officer
 Nisqually Indian Tribe
 4820 She-Nah-Num Dr. S.E.
 Olympia, WA 98513

4. **AMENDMENTS.** All provisions of this agreement may be amended in writing at any time by mutual consent of the parties hereto and such amendments shall take effect immediately. In the event of any conflict, inconsistency, or incongruity between the provisions of this agreement and the provisions of the amendment, the provisions of the amendment shall in all respects govern and control.
5. **RELEASE.** Prisoners will only be released when they have served their full time unless release is authorized by any other provision of this agreement or is ordered by a court of competent jurisdiction.
6. **PAYMENT.** City shall pay to Nisqually the amount of Twenty Dollars (\$20.00) for a booking fee and Sixty Five Dollars (\$65.00) per day per prisoner for care. The “booking fee” will include taking fingerprints and photographs of the prisoner, initial screening, inventorying and safekeeping prisoner’s personal property and associated processing fees. A “day” is the twenty-four hour period beginning at 12:00 a.m. and ending at 11:59 p.m. in the Pacific Time Zone. City shall be charged the booking fee only for anything less than two (2) hours of custody time. A “day” cost for purposes of this agreement will include all costs associated with the maintenance, care, custody of the inmate, including but not limited to: meals, housing, clothing, insurance, health, administration, and other related costs. A “day” cost does not include inmate medical care costs which are addressed in Section 7 below. Nisqually will submit a monthly invoice to City for prisoners housed pursuant to this agreement. City shall pay such invoices within 30 days of receipt. Interest at the rate of 12% per annum shall be charged on all past due accounts.

The rate shall increase by \$2.50 per day per bed each calendar year beginning January 1, 2017. The maximum per day per prisoner rate shall be \$75.00. The daily rate per prisoner will therefore be as follows:

2016	Sixty Five Dollars	(\$65.00)
2017	Sixty Seven Dollars & Fifty Cents	(\$67.50)
2018	Seventy Dollars	(\$70.00)
2019	Seventy Two Dollars and Fifty Cents	(\$72.50)
2020	Seventy Five Dollars	(\$75.00)

Without prejudice to any other contract rights available to it, if City does not pay the invoice within Sixty (60) days of receipt of invoice, Nisqually acting through its Police Chief, will not accept prisoners until the delinquent amount is paid in full.

7. **MEDICAL CARE.** City shall be solely responsible for the medical care and medical expenses of prisoners housed pursuant to this agreement, provided that if the prisoner has his or her own medical coverage, Nisqually will coordinate with City so that such insurance may be utilized. In the event that a prisoner requests non-urgent medical care, Nisqually shall contact City of Orting Police Department for approval. The Orting Police Department shall provide Nisqually with the names and telephone numbers of designated contact people who shall be available on a twenty-four hour basis which will include the Police Chief and the Chief's designee. Failure of the Orting Police Department to approve medical care shall relieve Nisqually of liability to City for any injury resulting therefrom. In the event that Nisqually deems a prisoner to be in need of urgent or emergency care, Nisqually shall make its best effort to contact the Orting Police Department, but may take any action it deems necessary to provide the prisoner with the needed care without obtaining prior approval.

To the extent permitted by state law, City shall protect, defend, hold harmless and indemnify Nisqually from and against all claims, suits and actions relating to the medical care of prisoners housed under this agreement which result from the failure of City to approve such care or for any reason other than injuries and harm resulting from the negligent or intentional acts or omissions of Nisqually or its officers. Nisqually shall protect, defend, hold harmless and indemnify City from and against all claims, suits and actions relating to the medical care of prisoners housed under this agreement which result from the failure of Nisqually to notify City in writing that a prisoner is in need of medical treatment or for any negligent or intentional acts or omissions of Nisqually or its officers in failing to provide medical care to prisoners after providing notice to City.

8. **TRANSPORTATION.** Orting Police Department shall be responsible for furnishing transportation for prisoners housed pursuant to this agreement. Orting Police Department may request that Nisqually provide necessary transportation and Nisqually shall make best efforts to provide such transportation, subject to staff availability. City shall reimburse Nisqually for costs incurred for transportation. Such costs shall include mileage at the IRS standard mileage rate (currently \$.575 per mile), labor (fifty dollars (\$50.00) per hour) and overhead. Nisqually shall not transport any prisoner without the express agreement of the Orting Police Department unless such transportation is required by a court order or because of a medical emergency.
9. **CUSTODY TRANSFER.** Officers of the Orting Police Department placing a prisoner in custody of Nisqually will be required to remain in the immediate presence of the prisoner at all times until relieved of custody by Nisqually Corrections Staff.

10. **CITY ACCESS TO PRISONERS.** All Orting police officers and investigators shall have the right to interview the prisoner inside the confines of the Nisqually Jail subject only to necessary security rules. Interview rooms will be made available to Orting police officers in equal priority with those of any other department, including the Nisqually law enforcement personnel.
11. **RIGHT TO INSPECTION.** City shall have the right to inspect, at all reasonable times, all of Nisqually Jail in which its inmates are confined in order to determine if such Jail maintains standards of confinement acceptable to City and that such inmates therein are treated equally regardless of race, religion, color, creed or national origin; provided, however, that Nisqually shall be obligated to manage, maintain and operate its facilities consistent and in compliance with all applicable federal, state and local laws and regulations.
12. **RELEASE OF PRISONERS FROM NISQUALLY.** No City prisoner confined in Nisqually Jail shall be removed therefrom except:
 - a. When requested by the Orting Police Chief in writing;
 - b. By Order of the Court in those matters in which it has jurisdiction;
 - c. For appearance in the court in which a City prisoner is charged;
 - d. In compliance with a writ of habeas corpus;
 - e. For interviews by the Orting Police Department;
 - f. If the prisoner has served his or her sentence or the charge pending against said prisoner has been dismissed or bail or other recognizance has been posted as required by the courts.
13. **INMATE ACCOUNTS AND VALUABLES.** Nisqually shall maintain inmate accounts and valuables pursuant to its Jail Policy.
14. **DISCIPLINE.** Nisqually shall have physical control over and power to execute disciplinary authority over all City inmates. However, nothing contained herein shall be construed to authorize or permit the imposition of a type of discipline prohibited by the Laws of the Nisqually Indian Tribe, State of Washington or federal law.
15. **RECORDS AND REPORTS.** Nisqually shall keep all necessary and pertinent records concerning City inmates to the same standards as required by the State of Washington Records Retention Schedule and other Washington state and federal laws relevant to such record retention. During an inmate's confinement in Nisqually Jail, City shall be entitled, upon request, to receive and be furnished with copies of any report or record associated with said inmate's (s') incarceration.
16. **PREA COMPLIANCE.** Nisqually complies with or exceeds the standards set forth in the Prison Rape Elimination Act and, in accordance with 28 C.F.R Part 115.12, shall allow City staff to monitor its facility with reasonable notice to ensure compliance thereto.
17. **INDEMNIFICATION.** City shall protect, indemnify, and save Nisqually harmless from and against any damage, cost, or liability including reasonable

attorney fees, for injuries to persons or property arising from acts or omissions of City employees, agents or sub-contractors, howsoever caused. City will be responsible for any damages caused by its employees to Nisqually equipment and/or fixtures and shall provide all repairs/replacements, as appropriate, at no cost to Nisqually.

Nisqually shall protect, indemnify, and save City harmless from and against any damages, cost, or liability including reasonable attorney fees, for injuries to persons or property arising from acts or omissions of Nisqually, its employees, agents or sub-contractors, howsoever caused. Nisqually will be responsible for any damages caused by its employees to City equipment and/or fixtures and shall provide all repairs/replacements, as appropriate, at no cost to City.

18. **INDEPENDENT STATUS OF NISQUALLY.** The parties to this contract, in the performance of it, will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be considered or construed to be the employees or agents of the other party for any purpose whatsoever.
19. **INSURANCE REQUIREMENTS OF CITY.** City shall obtain and maintain occurrence-based insurance that provides liability coverage in the minimum liability limits of three Million Dollars (\$3,000,000.00) per occurrence and three Million Dollars (\$3,000,000.00) in the aggregate for its conduct in creating liability exposure related to the confinement of inmates, including general liability, errors and omissions, auto liability and police professional liability.

Nisqually shall obtain and maintain occurrence-based insurance that provides liability coverage in the minimum liability limits of three Million Dollars (\$3,000,000.00) per occurrence and three Million Dollars (\$3,000,000.00) in the aggregate for its conduct in creating liability exposure related to the confinement of inmates, including general liability, errors and omissions, auto liability and police professional liability.

19.1 **CERTIFICATE OF INSURANCE.** City agrees to provide Nisqually with evidence of insurance coverage in the form of a certificate from a solvent insurance provider confirming coverage from a solvent insurance pool which is sufficient to address the insurance obligations set forth above. A copy of the certificate shall be provided annually and for the duration of this agreement. Nisqually agrees to provide City acceptable evidence of insurance coverage in the form of a certificate of insurance or other information identifying insurance coverage.

20. **CONSENT TO JURISDICTION AND TRIBE'S EXPRESS LIMITED WAIVER OF SOVEREIGN IMMUNITY.** The Nisqually Indian Tribe does hereby expressly consent to a limited waiver of sovereign immunity and consents to jurisdiction in the courts of the State of Washington as having exclusive jurisdiction to hear, resolve and enter final judgment on any legal dispute by and between the parties to this agreement and/or their affected officers, officials, and employees,

concerning the interpretation of this agreement, enforcement of any of its provisions, and any complaints or counterclaims for monetary damages and/or for equitable relief for any alleged or actual breach of any provision of this agreement and/or for the enforcement of any such final judgment entered by any court of the State of Washington regarding such matters.

21. **APPROVAL BY CITY & TRIBAL COUNCILS AND RECORDING.** Each party to this Agreement warrants that its City Council or Tribal Council has approved and authorized the signatories below to execute this Agreement. Consistent with RCW 39.34.040, this Agreement shall be filed for recording with the Pierce County Auditor upon full execution, or in lieu of recording with the auditor, published electronically on the websites of both parties.
22. **REMEDIES.** No waiver of any right under this agreement shall be effective unless made in writing by the authorized representative of the parties to be bound thereby. Failure to assist upon full performance on any one or several occasions does not constitute consent to or waiver of any later non-performance, nor does payment of a billing or continued performance after notice of a deficiency in performance constitute an acquiescence thereto.
23. **ENTIRE AGREEMENT.** This agreement constitutes the entire agreement between the parties and represents the entire understanding of the parties hereto. It supersedes any oral representations that are inconsistent with or modify its terms and conditions.
24. **INVALID PROVISIONS.** Should any provisions of this agreement be held invalid, the remainder of the agreement shall remain in effect.
25. **FILING AGREEMENT.** A copy of this Agreement, once executed, will be filed pursuant to the requirements under RCW 39.34.040.
26. **AUTHORITY TO EXECUTE.** City and Nisqually represent and warrant that they have the respective power and authority, and are duly authorized to execute, deliver, and perform all of the obligations under this Agreement.
27. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Agreement on this date, the 10
day of March, 2016.

CITY OF ORTING

Mayor

NISQUALLY TRIBE:



Chief Executive Officer

Attest:



**City Of Orting
Council Agenda Summary Sheet**

AB16-42 SUBJECT: Approval of Low Bidder, Frost Landscape, to provide landscape maintenance to city parks and right of way, and approval of contract	Agenda Item #:	AB16-42
	For Agenda of:	4/27/16
	Department:	Public Works
	Date Submitted:	4/22/16

Orting Staff & Professional Representatives			
Mayor, Joachim Pestinger	X	Cost of Item:	<u> \$32,561.66 </u>
City Administrator, Mark Bethune	X	Amount Budgeted:	<u> \$31,140 </u>
City Attorney, Jay Long		Unexpended Balance:	<u> \$0 </u>
City Clerk, Rachel Pitzel		Timeline: <i>enter a timeline if applicable</i>	
City Treasurer, Scott Larson		BARS: Fiscal Note: <i>enter Finance information here if you want to embellish on fiscal impact and fund source.</i>	
Police Chief, Bill Drake			
Public Works, Dean Kaelin	X		
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 checked="" type="checkbox"/> Committee Chair <input checked="" type="checkbox"/> City Administrator			

Attachments: Bids, Contract
Summary Statement: <i>For the second year in a row the city has been unable to attract seasonal labor for the parks, even though the wages were increased and well-advertised. As an alternative the city has gone out for bid for parks maintenance. The low bidder was a local Orting landscape company, Frost Landscape who has performed other landscaping maintenance for the city in the past. The cost of the contract from May through August is \$32,140. The budgeted price for 3 full time seasonal laborers is \$31,140. The City can expect additional savings by not using its mowers and equipment.</i>
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: <i>This went through the Parks, Cemetery, Lodging Tax Committee and recommend approval.</i>
RECOMMENDED ACTION: MOTION to approve Frost Landscape as the low bidder for maintenance of city parks and right of way for the amount of \$32,561.66, and for the Mayor to enter into contract with the vendor.

SMALL PUBLIC WORKS CONTRACT

Between: City of Orting
Project: Park Landscape maintenance contract
Commencing: May 1, 2016
Terminating: August 31, 2016
Amount: \$32,561.66

THIS CONTRACT, is made and entered, by and between the CITY OF ORTING, a Washington municipal corporation (the "City"), and Frost Landscape, (the "Contractor").

RECITALS

WHEREAS, the City desires to contract with the Contractor for the landscape maintenance for City Parks and Right of Way and

WHEREAS, the City has determined that the contractor's offer was the lowest responsive and responsible quote submitted;

NOW THEREFORE, in consideration of the terms and conditions contained in this Contract, the parties covenant and agree as follows:

1. Scope of Work to be Accomplished. The Contractor shall perform the work described in Exhibit "A" of this contract ("Work"). The Contractor shall provide and bear the expense of all equipment, materials, work and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the Work provided for in this Contract, unless otherwise specified in the attached plans and specifications.

2. Contract Documents. The Contract between the parties includes this contract, along with any Special and General Conditions, the project quote, L&I form Statement of Intent to Pay Prevailing Wages - Public Works Contract, Certificate of Insurance naming City as additional insured, copy of Contractor's state contractor license and UBI number, copy of Contractor's city business license, which are all hereby incorporated by reference and made a part of this contract as if fully set forth herein, and shall be referred to collectively as the "Contract."

3. Payment. The Contractor shall submit properly certified invoices for the Work performed. The City agrees to pay the Contractor for the actual work completed to the satisfaction of the City and in conformance with this Contract. Upon acceptance of payment, Contractor waives any claims against the City related to the Work covered by the invoice.

The Contractor shall complete and return to the City Exhibit "B" or a W-9 Request for Taxpayer Identification Number and Certification, prior to or along with the first invoice submittal. The City

shall pay the Contractor for services satisfactorily rendered within ten days after City Council approval of such payment.

4. Warranties/Guaranty.

4.1 Contractor warrants that all Work conforms to the requirements of the Contract and is free from any defect in equipment, material, design, or workmanship performed by Contractor or its Subcontractors and Suppliers and must receive City's final acceptance of the work.

4.2 If, within an applicable warranty period, any part of the Work is found not to conform to the Contract, the Contractor shall correct it promptly after receipt of written notice from the City to do so. In the event the City determines that Contractor corrective action is not satisfactory and/or timely performed, then the City has the right to either correct the problem itself or procure the necessary services, recommendations, or guidance from a third party. All damages incurred by the City and all costs for the City's remedy shall be reimbursed by the Contractor.

5. Change Orders. Changes to the scope of work to be performed, of the amount of the contract sum, or in the time for completion of the work, may be accomplished only by a written document, signed by the Contractor and the City. Once effective, the Contractor shall proceed promptly with the Work as modified, unless otherwise provided in the change order.

6. Insurance. The Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The Contractor shall provide a Certificate of Insurance evidencing:

6.1 Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage;

6.2 Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$1,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability; and

6.3 Worker's Compensation insurance at the limits established by the State of Washington.

Any payment of deductible or self-insured retention shall be the sole responsibility of the Contractor.

The City shall be named as an additional insured on the insurance policy, as respects work performed by or on behalf of the Contractor, and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance. The Contractor's insurance shall be primary insurance as respects the City and the City shall be given thirty (30) days prior written notice of any cancellation, suspension or material change in coverage.

7. Prevailing Wages/Prevailing Wages

7.1 Prevailing Wages. The work under the Contract may be subject to the prevailing wage requirements of Chapter 39.12 RCW, as amended or supplemented. If this Contract is subject to prevailing wage requirements, the Contractor, each of its subcontractor(s) and other person(s) doing any work under the Contract shall pay all laborers, workers or mechanics not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the State of Washington where such labor is performed as required by law. The prevailing rate of wage to be paid to all workman, laborers or mechanics employed in the performance of any part of this Contract shall be in accordance with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries. The rules and regulations of the Department of Labor and Industries and the schedule of the prevailing wage rates for the Industrial Statistician of the Department of Labor and Industries, are by reference made a part of this contract as though fully set forth herein. These rates may be accessed on the internet at <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>

Pursuant to RCW 39.12, prior to payment by the City, the Contractor must submit -- on behalf of itself and each and every subcontractor at every tier -- a "Statement of Intent to Pay Prevailing Wages," which must be approved by the Department of Labor and Industries prior to its submission. Within fifteen (15) days of the final acceptance of the Contractor's work under this Contract, the Contractor must submit -- on behalf of itself and every subcontractor -- an "Affidavit of Wages Paid".

OR

At the option of the City, the Contractor may use the combined Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid form. Contractor must meet the Washington State Department of Labor and Industries criteria for use of the form. Combined forms may be requested from the City.

8. Assignment/Delegation. The Contractor shall not assign this contract nor delegate any duties hereunder without prior written consent of the City, which consent may be withheld by the City in its sole subjective discretion for any cause whatsoever.

9. Applicable Law; Venue. This Contract shall be subject to, and the Contractor shall at all times comply with, all applicable federal, state and local laws, regulations, and rules, including the provisions of the City of Orting Municipal Code and ordinances of the City of Orting. Venue for any action arising from or related to this Contract shall be exclusively in Pierce County Superior Court.

The Contractor will be required to obtain a City of Orting business license prior to performing any services and maintain the business license in good standing throughout the term of its agreement with the City.

10. Termination.

10.1 The City reserves the right to terminate or suspend this Contract at any time, with or without cause, upon seven days prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports or other materials prepared by the Contractor pursuant to this Contract shall promptly be submitted to the City

10.2 In the event this Contract is terminated or suspended, the Contractor shall be entitled to payment for all services satisfactorily performed and reimbursable expenses incurred to the date of termination.

10.3 This Contract may be terminated immediately if the Contractor's insurance coverage is canceled for any reason, or if the Contractor fails to timely perform the services or defaults on any other material obligations under this Contract.

10.4 Any termination of this Contract shall not prevent the City from seeking any legal or equitable remedies it may otherwise have against the Contractor for the violation or nonperformance of any provisions of this Contract.

11. Indemnification/Hold Harmless. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

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

It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Furthermore, the Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as the Insurance Services Office Additional Insured endorsement CG 20 38 04 13.

12. Independent Contractor. For all purposes, the Contractor shall be deemed an independent contractor and shall not be deemed an employee or agent of the City for any purpose.

13. Wages and Other Costs. The City assumes no responsibility for the payment of any compensation, wages, benefits, or taxes owed by the Contractor by reason of this Contract. The Contractor shall indemnify and hold the City, its officers, agents, and employees, harmless against all liability and costs resulting from the Contractor's failure to pay any compensation, wages, benefits or taxes.

14. Waiver. Waiver by the City of any breach of any term or condition of this Contract shall not be construed as a waiver of any other breach.

15. Attorneys Fees. In the event any action is brought by either party to enforce the terms of this Contract or for breach of this contract by the other party, the parties agree that the non-prevailing party shall pay to the prevailing party reasonable attorney fees and expert witness fees, costs and disbursements incurred by such party.

16. Entire Contract/Binding Effect. This Contract constitutes the entire agreement between the parties hereto.

17. Modification. No amendment or modification of this Contract shall be of any force or effect unless it is in writing and signed by the parties.

18. Severability. If any provision of this Contract is held invalid, the remainder shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law, and shall continue in force and effect.

19. Notices. Any notice required by this Contract may be delivered personally or mailed, certified with return receipt requested. If mailed, notice shall be deemed given upon the first business day after the date of the postmark. Notices shall be delivered or mailed to the following:

TO CITY:

City of Orting, and

Contact Name: Dean Kaelin

Street Address: 110 Train St. SE

City, State, Zip: Orting, WA 98360

Phone: (360) 893-2219

TO CONTRACTOR:

Contractor: Eric Frost

Contact Name: Eric Frost

Street Address: P.O. Box 335

City, State, Zip: Orting, WA 98360

Phone: (253) 226-8635

EXHIBIT A
City of Orting

SCOPE OF SERVICES

The purpose of this Bid is to secure a contractor for providing general maintenance activities at designated parks and the Foothills trail system located within the Orting City Limits.

This Bid will begin with the general maintenance activities of the 10 parks and the foothills trail. Locations and name of the parks are on the map included with this bid sheet.

General maintenance activity of all neighborhood parks will be maintained at the standard as identified in this Bid and as set forth by the City of Orting Public Works Director. The Quality Control manager as identified by the City of Orting will monitor the standard and approve or disapprove payment.

Park and Trail Locations:

Williams Park-- SR 162 E - 0.23 ACRES
IN VILLAGE GREEN. ACCESS OFF OF LANE BLVD NW
Williams Park - 0.23 Acres

Foothills Trail-- STARTS AT WILLIAMS BLVD NW ALONG SR 162 E ENDS
AT MEADOW LANE SE - SEE ADDITIONAL TRAIL AREAS FOR MORE
ACREAGE
Foothills Bike Trail - 10 Acres

Whitehawk Park-- ACCESS FROM SR 162 E, TO WHITEHAWK BLVE NW AT
ORTING AVE NW
Whitehawk Park - 4 Acres

Memorial Park-- WHITESELL ST SW (BETWEEN CORRIN AVE & SR 162 E
SMALL SITTING AREA, REQUIRES WEEDING ONLY
Memorial Park 0.017 Acre

North Park-- SR 162 E AND CALISTOGA ST W
North Park - 1.3 Acres

MAIN PARK--INCLUDES 2 SECTIONS FROM CALISTOGA ST W TO BRIDGE ST SW

Main City Park - 7.17 Acres

TRIANGLE PARK--CORNER OF VARNER AVE SE & BRIDGE S

Triangle Park - 0.19 Acres

THREE CORNER PARK--HARMAN WAY S (SR 162 E) AND CORRIN AVE SE

Three Corners Park - 0.06 Acres

CHARTER PARK--WASHINGTON AVE S NEXT TO FIRE/POLICE DEPT

Charter Park (skate park) - 11.88 Acres

RAINIER MEADOWS PARK--BROWN WAY SE--ACCESS FROM WASHINGTON AVE S TO BROWN ST SE

Rainer Meadows - 3.2 Acres

CALISTOGA PARK & DOG PARK--CALISTOGA ST W & SKINNER WAY SW

Calistoga Park - 6.29 Acres

Work Requirements/ Required Services

General Maintenance Activity Requirements

1. Mowing

- a. **Typical Duties:** Inspect area for debris and pick up as necessary. Mow turf to appropriate height, approximately two and a half (2.5) to three (3) inches. Identify work for other crews to perform.
- b. **Frequency:** This equates to mowing each park, in the list above and the Foothills Trail, within the city limits, one (1) time per week for five (5) months (April-August).
- c. **Quality & Performance Requirement:** When the work is done, turf is well manicured and aesthetically pleasing. Turf is maintained at height of two and a half (2.5) to three (3) inches at all times.

2. Rough Area Mowing and Weed Eating –

- a. **Description of Work:** All work associated with mowing of undeveloped areas. Weed eating areas missed or un-reachable by regular mowing. Weed eating or trimming around tree bases, signs etc.. Work is done to reduce fire hazard, control noxious weeds, reduce rodent populations and enhance appearance.
- b. **Typical Duties:** Inspect area for debris & litter, pick up as necessary. Mow or weed eat upon completion of inspection.
- c. **Frequency :** **Quality & Performance Requirement:** When work is done, field shall be evenly mowed with no skipping and is aesthetically pleasing. Mowing is typically performed with a tractor and flail type pull behind mower attachment or hand held weed eater. The finished cut height will not exceed (3) inches.

3. Turf Edging –

- a. **Description of Work:** All work associated with edging of walkways, curbs, cement pads, shrub beds, and other areas requiring a well defined and manicured edge. Work is performed to promote aesthetics and define edges in the areas specified.
- b. **Typical Duties:** Inspect work areas for hazards and other work needs. Edge sidewalks and flower beds, clean up edgings and haul off site. Blow off hard surface areas. Avoid damaging irrigation heads. Do not engage power blower or edger if public is nearby.
- c. **Frequency & Time of Year:** Work is generally completed once (1) every month during the turf growing season.
- d. **Quality & Performance Requirement:** Turf edges shall be sharply defined, straight and free of debris. Turf will be maintained to within two (2) inches of asphalt edge and to within (1/4) one quarter inch of concrete edge.

4. Turf Debris Removal –

- a. **Description of Work:** All work associated with cleaning turf and grounds with backpack or tractor mounted blowers, mechanical sweepers and manual raking. Remove leaves, storm debris and excess grass clippings.
- b. **Typical Duties:** Remove debris from turf and load into container, haul debris from site for disposal.
- c. **Frequency & Time of Year—**As needed
- d. **Quality & Performance Requirement:** Turf and grounds will be free of debris, well-manicured and aesthetically pleasing.

5. Raking and Weeding Shrub Beds

- a. **Description of Work:** All work associated with the raking and weeding of shrub beds using mainly manual methods. Work is performed to promote health of the plant materials and the aesthetics of the area.

- b. **Typical Duties:** Remove weeds and debris from shrub beds. Remove all weed roots to prevent weed to reestablish. Haul debris from site.
- c. **Quality & Performance Requirement:** Shrub beds are free of weeds and debris.

6. Pavement Maintenance –

- a. **Description of Work:** All work associated with cleaning of hard surface areas. Work is typically performed on walkways, parking lots, street fronts and concrete surfaces using backpack and tractor mounted blowers and mechanical sweepers.
- b. **Typical Duties:** Clear surfaces of debris.
- c. **Frequency :** Hard surfaces will be blown off or swept after each mowing
- d. **Quality & Performance Requirement:** Hard surfaces will be clean and free of debris.

EXHIBIT B
CITY OF ORTING
Phone: (253) 226-8635
Fax: None

TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Orting, the must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Orting prior to or along with the submittal of the first billing invoice.

Please check the appropriate category:

- | | | |
|--|--|-------------------------------------|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Partnership | <input type="checkbox"/> Government |
| <input type="checkbox"/> Individual/Proprietor | <input type="checkbox"/> Other (explain) | <input type="checkbox"/> Consultant |

TIN No.: _____

Social Security No.: _____

Print Name: _____

Title: _____

Business Name: _____

Business Address: _____

Business Phone: _____

Date

Authorized Signature (Required)

2016 Park Maintenance & Flower Baskets

Contractor	Parks Maintenance	Water Flower Baskets	Total
Frost Landscape & Design	\$32,561.66	\$0.00	\$32,561.66
Sound Landscape Prof.	\$38,080.00	\$16,156.00	\$54,236.00

Park 38,080 -
Base 16,156 -

CITY OF ORTING

110 Train St SE
Orting, WA 98360

lhinds@cityoforting.org
(360) 893-2219 x139

**REQUEST FOR BIDS
SMALL PUBLIC WORKS PROJECT
REF # PW2016 Parks Mowing & Maintenance Bid
March 2, 2016**

The City of Orting invites your firm to bid on the following project referenced below. Please examine the enclosed contract documents and contract specifications carefully so that you will be familiar with the requirements of the Small Public Works Contract.

The following project will be accomplished as a **SMALL WORKS PROJECT** and will be subject to prevailing wage laws. The City of Orting is an equal rights employer. **All quotations must be submitted on this form. This is not an order.** Please read all information given before preparing quotation. All bidders must meet the requirements of the Small Works Roster prior to quotation due date. To obtain Small Works information, please visit the MRSC Website at www.mrscrosters.org or contact MRSC Rosters at (206) 625-1300.

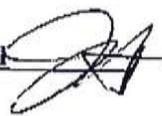
PROJECT TITLE: City of Orting Parks and Foothills Trail Maintenance

Bid Submittal

Bids may be submitted via email to: lhinds@cityoforting.org, USPS, or hand deliver to City Hall. Completed bids shall include sales tax of 8.8%.

Bids must be received no later than 11 a.m., **Friday March 18, 2016**. Hand-deliver or mail to:
City Hall
110 Train St. SE (mailing: PO Box 489)
Orting, WA 98360
Fax: 360.893.6809

A formal bid opening will not be held. Upon selection of a contractor, a summary of all bids received for this project will be available for review and can be obtained by email: lhinds@cityoforting.org

Contractor Initial 

By signing this document, the contractor is aware and acknowledges the terms, conditions of all state laws and specifications as requested by the contract and the terms and conditions to the Small Works Roster.

CITY OF ORTING

110 Train St SE
Orting, WA 98360

lhinds@cityoforting.org
(360) 893-2219 x139

Prevailing Wages

This project is subject to all provisions of RCW 39.12. A copy of the applicable prevailing wage schedule can be obtained at Labor and Industries website at:

www.lni.wa.gov/TradesLicensing/PrevailingWage/RateDatabase/RatesTrade/default.asp.

No payment shall be issued until the City receives a "Statement of Intent to Pay Prevailing Wages" form, approved by the State Department of Labor and Industries from the Contractor and each and every Subcontractor. No final payment or release of any retainage will be made until the City receives an "Affidavit of Wages Paid" form, approved by the State Department of Labor and Industries from the Contractor and each and every Subcontractor.

Industrial Insurance (Workers Comp)

All Contractors and Subcontractors are required to pay industrial insurance for all employees involved in the performance of the work described herein. Failure to pay will be a breach and justify a demand on the contract bond. This obligation survives final acceptance. Industrial Insurance rates may be found on the web at www.lni.wa.gov/ClaimsInsurance/RatePremium/About/Rates/default.asp.

Insurance

Contractor shall procure and keep in force during the term of this contract Commercial General Liability insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to premises/operations (including off-site operations), blanket contractual liability and broad form property damage. Prior to the Contractor performing any work under this contract, Contractor shall provide the City with a Certificate of Insurance evidencing the insurance required and, by endorsement to Contractor's liability policy(ies), naming the City of Orting, its officers, employees and agents as Additional Insureds.

The Contractor agrees to repair and replace all property of the City and all property of others damaged by itself, its employees, and subcontractors, and agents.

It is understood that the whole of the work under this contract is to be done at the Contractor's risk and that he has familiarized himself with the conditions of the work site, and other contingencies likely to affect the work and has made its bid accordingly; and that he is to assume the responsibility and risk of all loss or damage to materials or work which may arise from any cause whatsoever prior to completion.

City of Orting Business License

A current City of Orting Business License is required prior to performing work in the City of Orting. You may obtain an application by visiting our website at: <http://www.cityoforting.org>.

Contractor Initial 

By signing this document, the contractor is aware and acknowledges the terms, conditions of all state laws and specifications as requested by the contract and the terms and conditions to the Small Works Roster.

CITY OF ORTING

110 Train St SE
Orting, WA 98360

lhinds@cityoforting.org
(360) 893-2219 x139

Work Requirements/ Required Services

General Maintenance Activity Requirements

1. Mowing

- a. **Typical Duties:** Inspect area for debris and pick up as necessary. Mow turf to appropriate height, approximately two and a half (2.5) to three (3) inches. Identify work for other crews to perform.
- b. **Frequency:** This equates to mowing each park, in the list above and the Foothills Trail, within the city limits, one (1) time per week for five (5) months (April-August).
- c. **Quality & Performance Requirement:** When the work is done, turf is well manicured and aesthetically pleasing. Turf is maintained at height of two and a half (2.5) to three (3) inches at all times.

2. Rough Area Mowing and Weed Eating –

- a. **Description of Work:** All work associated with mowing of undeveloped areas. Weed eating areas missed or un-reachable by regular mowing. Weed eating or trimming around tree bases, signs, etc. Work is done to reduce fire hazard, control noxious weeds, reduce rodent populations and enhance appearance.
- b. **Typical Duties:** Inspect area for debris & litter, pick up as necessary. Mow or weed eat upon completion of inspection.
- c. **Frequency: Quality & Performance Requirement:** When work is done, field shall be evenly mowed with no skipping and is aesthetically pleasing. Mowing is typically performed with a tractor and flail type pull behind mower attachment or hand held weed eater. The finished cut height will not exceed (3) inches.

3. Turf Edging –

- a. **Description of Work:** All work associated with edging of walkways, curbs, cement pads, shrub beds, and other areas requiring a well-defined and manicured edge. Work is performed to promote aesthetics and define edges in the areas specified.
- b. **Typical Duties:** Inspect work areas for hazards and other work needs. Edge sidewalks and flower beds, clean up edgings and haul off site. Blow off hard surface areas. Avoid damaging irrigation heads. Do not engage power blower or edger if public is nearby.
- c. **Frequency & Time of Year:** Work is generally completed once (1) every month during the turf growing season.

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- d. **Quality & Performance Requirement:** Turf edges shall be sharply defined, straight and free of debris. Turf will be maintained to within two (2) inches of asphalt edge and to within (1/4) one quarter inch of concrete edge.

4. Turf Debris Removal –

- a. **Description of Work:** All work associated with cleaning turf and grounds with backpack or tractor mounted blowers, mechanical sweepers and manual raking. Remove leaves, storm debris and excess grass clippings.
- b. **Typical Duties:** Remove debris from turf and load into container, haul debris from site for disposal.
- c. **Frequency & Time of Year—**As needed
- d. **Quality & Performance Requirement:** Turf and grounds will be free of debris, well-manicured and aesthetically pleasing.

5. Raking and Weeding Shrub Beds

- a. **Description of Work:** All work associated with the raking and weeding of shrub beds using mainly manual methods. Work is performed to promote health of the plant materials and the aesthetics of the area.
- b. **Typical Duties:** Remove weeds and debris from shrub beds. Remove all weed roots to prevent weed to reestablish. Haul debris from site.
- c. **Quality & Performance Requirement:** Shrub beds are free of weeds and debris.

7. Pavement Maintenance –

- a. **Description of Work:** All work associated with cleaning of hard surface areas. Work is typically performed on walkways, parking lots, street fronts and concrete surfaces using backpack and tractor mounted blowers and mechanical sweepers.
- b. **Typical Duties:** Clear surfaces of debris.
- c. **Frequency :** Hard surfaces will be blown off or swept after each mowing
- d. **Quality & Performance Requirement:** Hard surfaces will be clean and free of debris.

All-encompassing issues pertaining to this Bid:

1. **Washington State Patrol Criminal Background Check Requirement (RCW 35.61.130):** All employees, volunteers, or independent contractors, who may, in the course of their work or volunteer activity with the City of Orting, have unsupervised access to children or vulnerable adults, shall go through a records check through the Washington State Patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation, including a finger print check using a complete Washington state criminal identification fingerprint card. The City of Orting shall provide a copy

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of the record report to the employee, volunteer, or independent contractor. When necessary as determined by the City of Orting, prospective employees, volunteer, or independent contractors may be employed on a conditional basis pending completion of the investigation. If the prospective employee, volunteer, or independent contractor has had a record check within the previous twelve months, the City of Orting may waive the requirement upon receiving a copy of the record. The City of Orting at its discretion requires that the prospective employee, volunteer or independent contractor pay the costs associated with the background and records check.

2. **Contractor Identification Requirement:** The contractor is required to have the company name and/or logo with a contact phone number clearly marked on any vehicle or vehicles that is used in the course of doing any work at each park site.
3. **Methods and procedures for completing General Maintenance Activities:** The contractor is responsible for determining the required labor, materials, equipment and supervision necessary to accomplish the tasks outlined in this solicitation. Contractor is responsible for adherence to all local codes, ordinances, rules, regulations and application requirements.
4. **Work Hours & Scheduling:** Scheduling of any contract inspection and contract work hours must be approved by the City of Orting City Administrator in advance of before commencing any work. The contractor shall submit for approval, a schedule showing anticipated work hours and work days prior to commencing any work. Work hours are between 7:30 am and 5:00 pm Monday through Sunday. With the exception of emergencies, only minimal work duties such as litter collection, garbage collection, and blowing walks will be allowed on weekends and legal holidays.
5. **Equipment:** Equipment to be used in performance of this contract shall be subject to inspection by the City at any time, prior to use in performance of any work. Inspection will ascertain the type and condition of the equipment, the state of repair, the ability of the equipment to perform the required work, compliance with all licensing laws (i.e. Washington State Dept. of Licensing, and safety laws as per OSHA and WISHA). Vehicles found to be lacking in licenses or in poor condition or repair (i.e. leaking, unclean, unpainted, lights, gauges etc.) or incapable of performing the required work may be rejected for use on this contract. This inspection may take place at any time at the election of the City maintenance manager and/or the Quality Control & Quality Assurance manager. Each contractor may undergo this inspection prior to the awarding of the contract. The contractor that is awarded the contract will not undergo this inspection more often than once a month, unless there is evidence that the equipment is not properly functioning or in good repair. If after inspection, equipment is not fixed or in good repair, City of Orting reserves the right to conduct this inspection as often as desired. The equipment shall be kept clean and in good repair at all times. Rejection of any equipment by City of Orting does not relieve the contractor of responsibility to perform required work. Failure to provide acceptable equipment is cause for City of Orting to cancel contract, nonpayment for general maintenance activities or seek monetary penalty for relief of damages rendered, or any combination thereof, as provided in this contract.

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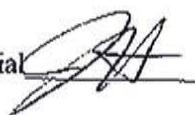
lhinds@cityoforting.org
(360) 893-2219 x139

6. **Materials:** All materials, parts, repairs, and support services required to properly perform and complete the functions of this contract will be the sole responsibility of the contractor. No overhead costs will be added to any invoices.

7. **Material Spills & Environmental:** All material spills (fertilizers, herbicides, vehicle fluids, etc.) must be contained and cleaned up immediately to reduce or eliminate public, employee, and environmental hazards.
Any spills that cannot be immediately contained must be quarantined to prevent public or worker exposure.
The contractor will be responsible for any cleanup costs and landscape repairs associated with material spills. City of Orting Maintenance manager will be informed of any spills immediately via cellular phone.

8. **Request for Work:** All work must be authorized by the City of Orting maintenance manager prior to performance. Contractor is required to develop a weekly work execution plan and submit to the City of Orting Public Works Director or designee for approval, the week preceding the planned performance date

11. **Non Performance of Work:** A general maintenance activity deemed "non-performing" will not be authorized for payment. Through Quality Assurance Random Sampling, Non-performance may be determined by the Quality Control Manager. Each determination of non-performance will be allowed one (1) opportunity for correction and re-inspection. Subsequent re-inspections will be charged for City of Orting staff time and those charges withheld from monthly payments to the contractor.

Initial 

By signing this document, the contractor is aware and acknowledges the terms, conditions of all state laws and specifications as requested by the contract and the terms and conditions to the Small Works Roster.

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PROPOSALS SUBMITTED WITHOUT A SIGNATURE BELOW WILL BE REJECTED.

Name of Individual Business Owner,
Partnership or Corporation:

Jason Hurley

Address:

12830 Tilley RdS
Olympia WA 98512

Telephone 360-570-4830

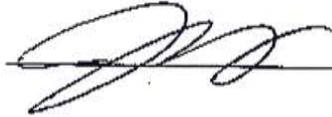
Fax Number 360-570-4830

UBI# 602-660-725

SOUNDLP945P4

Contractor Business License Number

Signature of Owner, Partner, or
Corporate Official:



Jason Hurley
Print Name

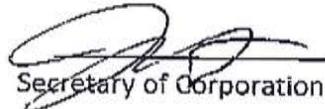
03/17/2016

DATE

Official or Title of Official signing for
Corporation:

President

If Corporation, Attest:


Secretary of Corporation

Washington

State in which Incorporated

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PROPOSAL FORM:

City of Orting Parks DEPT.
110 Train St. SE,
Orting, WA

Attention:

Having carefully examined the Invitation to Bid, Instructions to Bidders, General Conditions of the Contract, Supplementary General Conditions, Drawings, and the Specifications as well as the premises and conditions affecting the work, the undersigned proposes to furnish all plant, labor and material called for by the documents for The City of Orting – Parks and Trail Grounds Maintenance.

Base Bid	\$ <u>35,000.00</u>
Washington State Sales Tax – 8.8%	\$ <u>3,080.00</u>
NET TOTAL BID	\$ <u>38,080.00</u>

STARTING TIME AND TIME OF COMPLETION:

The undersigned agrees that if awarded the contract he will start maintenance activities within five (5) calendar days after receiving written notice to proceed, and will complete the work within 7 calendar days after receiving such notice.

PROPOSAL FORM (continued)

OWNER'S RIGHT RESERVED:

To reject any or all bids, to waive informalities, and to accept only such bids as may appear in the best interest of the owner.

CERTIFICATION:

The undersigned certifies that this bid has been arrived by the bidder independently and has been submitted without any collusion designed to limit independent bidding or competition.

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Separate Bid Item (optional)

Manual Watering of 32 Flower Baskets located in parks and along streets

- a. **Description of Work:** All work associated with manually watering trees, shrubs and ground covers. Work is performed in order to maintain plant health in locations where automatic irrigations is not available. Involves hand or mechanical broadcasting. To manually water 32 baskets generally requires 3-4 hours of work / day.
- b. **Typical Duties:** Load water tanks at designated locations and deliver water to flower baskets using water tank with delivery system
- c. **Frequency & Time of Year:** Flower baskets will be watered, beginning in May when baskets are delivered to the City, six days / week (Monday-Saturday), including weekends and holidays and ending in September.
- d. **Quality & Performance Requirement:** Plant material will be uniformly watered to achieve a soil saturation depth of at least six (6) inches. Fertilizer, provided by the City will be added to water.
- e. **Special Considerations and Requirements:** If fertilizer was involved in the manual watering application, the fertilizer application will be documented appropriately.

Base Bid	\$	<u>14,850</u>
Washington State Sales Tax – 8.8%	\$	<u>1,306.⁸⁰</u>
NET TOTAL BID	\$	<u>16,156.⁸⁰</u>

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Bid Award

In addition to the quoted price, the contract for this project will be awarded to the lowest responsible bidder based on the bidder's ability, capacity and skill to perform the required work within the specified time, the quality of the bidder's performance of previous contracts or services and the bidder's compliance with laws relating to the contracts or services.

The City of Orting shall issue a contract to the successful bidder. **Work may proceed when the following conditions have been met:**

- The contract has been fully executed by both parties
- A Statement of Intent to Pay Prevailing Wages, approved by the State Department of Labor and Industries has been received from the Contractor and each and every Subcontractor
- A copy of Commercial General Liability insurance

The City of Orting reserves the right to reject any or all bids, waive technicalities or irregularities and to accept any bid if such action is believed to be in the best interest of the City.

Payment Schedule

Payment shall be made net 30-days after city receives invoice for work completed and approved by Public Works Director.

Time of Completion

Work shall start twenty (20) calendar days after execution of the contract and the issuance of a notice to proceed; or as directed by Public Works Director.

Contact Person

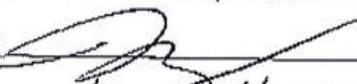
Public Works Assistant Laura Hinds: Office (360) 893-2219, ext. 139 or by email at lhinds@cityoforting.org.

Contractor Information

Email: info@soundlandscapeprofessionals.com

Contractor Name: Jason Hurley for Sound Landscape Professionals, Inc. Contact: _____

Contractor Address 12830 Tilley Rd S Olympia, WA, Zip 98512

Authorized Signature:  Date: 3/18/16

Print Name of Signature: Jason Hurley

By signing this document, the contractor is aware and acknowledges the terms, conditions of all state laws and specifications as requested by the contract and the terms and conditions to the Small Works Roster.

Park 32,361,66
BASK

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RECEIVED BY
CITY CLERK

MAR 18 2016

CITY OF ORTING

@ 10:30 am mp

REQUEST FOR BIDS
SMALL PUBLIC WORKS PROJECT
REF # PW2016 Parks Mowing & Maintenance Bid
March 2, 2016

RECEIVED

MAR 18 2016

CITY OF ORTING

The City of Orting invites your firm to bid on the following project referenced below. Please examine the enclosed contract documents and contract specifications carefully so that you will be familiar with the requirements of the Small Public Works Contract.

The following project will be accomplished as a **SMALL WORKS PROJECT** and will be subject to prevailing wage laws. The City of Orting is an equal rights employer. **All quotations must be submitted on this form. This is not an order.** Please read all information given before preparing quotation. All bidders must meet the requirements of the Small Works Roster prior to quotation due date. To obtain Small Works information, please visit the MRSC Website at www.mrscrosters.org or contact MRSC Rosters at (206) 625-1300.

PROJECT TITLE: City of Orting Parks and Foothills Trail Maintenance

Bid Submittal

Bids may be submitted via email to: lhinds@cityoforting.org, USPS, or hand deliver to City Hall. Completed bids shall include sales tax of 8.8%.

Bids must be received no later than 11 a.m., **Friday March 18, 2016**. Hand-deliver or mail to:

City Hall
110 Train St. SE (mailing: PO Box 489)
Orting, WA 98360
Fax: 360.893.6809

A formal bid opening will not be held. Upon selection of a contractor, a summary of all bids received for this project will be available for review and can be obtained by email: lhinds@cityoforting.org

Contractor Initial 

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Prevailing Wages

This project is subject to all provisions of RCW 39.12. A copy of the applicable prevailing wage schedule can be obtained at Labor and Industries website at:

www.lni.wa.gov/TradesLicensing/PrevailingWage/RateDatabase/RatesTrade/default.asp.

No payment shall be issued until the City receives a "Statement of Intent to Pay Prevailing Wages" form, approved by the State Department of Labor and Industries from the Contractor and each and every Subcontractor. No final payment or release of any retainage will be made until the City receives an "Affidavit of Wages Paid" form, approved by the State Department of Labor and Industries from the Contractor and each and every Subcontractor.

Industrial Insurance (Workers Comp)

All Contractors and Subcontractors are required to pay industrial insurance for all employees involved in the performance of the work described herein. Failure to pay will be a breach and justify a demand on the contract bond. This obligation survives final acceptance. Industrial Insurance rates may be found on the web at www.lni.wa.gov/ClaimsInsurance/RatePremium/About/Rates/default.asp.

Insurance

Contractor shall procure and keep in force during the term of this contract Commercial General Liability insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to premises/operations (including off-site operations), blanket contractual liability and broad form property damage. Prior to the Contractor performing any work under this contract, Contractor shall provide the City with a Certificate of Insurance evidencing the insurance required and, by endorsement to Contractor's liability policy(ies), naming the City of Orting, its officers, employees and agents as Additional Insureds.

The Contractor agrees to repair and replace all property of the City and all property of others damaged by itself, its employees, and subcontractors, and agents.

It is understood that the whole of the work under this contract is to be done at the Contractor's risk and that he has familiarized himself with the conditions of the work site, and other contingencies likely to affect the work and has made its bid accordingly; and that he is to assume the responsibility and risk of all loss or damage to materials or work which may arise from any cause whatsoever prior to completion.

City of Orting Business License

A current City of Orting Business License is required prior to performing work in the City of Orting. You may obtain an application by visiting our website at: <http://www.cityoforting.org>.

Contractor Initial 

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Bid Award

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Payment Schedule

Payment shall be made net 30-days after city receives invoice for work completed and approved by Public Works Director.

Time of Completion

Work shall start twenty (20) calendar days after execution of the contract and **the issuance of a notice to proceed;** or as directed by Public Works Director.

Contact Person

Public Works Assistant Laura Hinds: Office (360) 893-2219, ext. 139 or by email at lhinds@cityoforting.org.

Contractor Information

Email: FrostLandscape@comcast.net
Contractor Name: Frost Landscape Contact: Erick Frost 253-226-8635
Contractor Address 506 Factory St SE (PO box 535) WA, Zip 98360
Authorized Signature:  Date: 3-17-16
Print Name of Signature: Erick Frost

By signing this document, the contractor is aware and acknowledges the terms, conditions of all state laws and specifications as requested by

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BID SPECIFICATIONS

City of Orting Parks and Foothills Trail Maintenance

Scope:

The purpose of this Bid is to secure a contractor for providing general maintenance activities at designated parks and the Foothills trail system located within the Orting City Limits.

This Bid will begin with the general maintenance activities of the 10 parks and the foothills trail. Locations and name of the parks are on the map included with this bid sheet.

General maintenance activity of all neighborhood parks will be maintained at the standard as identified in this Bid and as set forth by the City of Orting Public Works Director. The Quality Control manager as identified by the City of Orting will monitor the standard and approve or disapprove payment.

Park and Trail Locations:

Williams Park-- SR 162 E - 0.23 ACRES

IN VILLAGE GREEN. ACCESS OFF OF LANE BLVD NW

Williams Park - 0.23 Acres

Foothills Trail-- STARTS AT WILLIAMS BLVD NW ALONG SR 162 E ENDS AT MEADOW LANE SE - SEE ADDITIONAL TRAIL AREAS FOR MORE ACREAGE

Foothills Bike Trail - 10 Acres

Whitehawk Park-- ACCESS FROM SR 162 E, TO WHITEHAWK BLVE NW AT ORTING AVE NW

Whitehawk Park - 4 Acres

Memorial Park-- WHITESELL ST SW (BETWEEN CORRIN AVE & SR 162 E SMALL SITTING AREA, REQUIRES WEEDING ONLY

Memorial Park 0.017 Acre

North Park-- SR 162 E AND CALISTOGA ST W

North Park - 1.3 Acres

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MAIN PARK--INCLUDES 2 SECTIONS FROM CALISTOGA ST W TO BRIDGE ST SW
Main City Park - 7.17 Acres

TRIANGLE PARK--CORNER OF VARNER AVE SE & BRIDGE S
Triangle Park - 0.19 Acres

THREE CORNER PARK--HARMAN WAY S (SR 162 E) AND CORRIN AVE SE
Three Corners Park - 0.06 Acres

CHARTER PARK--WASHINGTON AVE S NEXT TO FIRE/POLICE DEPT
Charter Park (skate park) - 11.88 Acres

RAINIER MEADOWS PARK--BROWN WAY SE--ACCESS FROM WASHINGTON AVE S TO BROWN ST SE
Rainer Meadows - 3.2 Acres

CALISTOGA PARK & DOG PARK--CALISTOGA ST W & SKINNER WAY SW
Calistoga Park - 6.29 Acres

Public Safety:

The successful Contractor's employees and agents shall carry sufficient identification to show by whom they are employed and display it upon request to security personnel. Contractor will contact City of Orting maintenance manager if conducting general maintenance activities will cause possible public safety issues within said City of Orting parks.

Term of Contract:

A contract awarded as a result of this Bid will be for a period of one (5) months and is intended to begin on April 18, 2016 and end on August 19, 2016.

City of Orting reserves the right to extend the contract resulting from this bid for a period of three (3) five (5) month periods, by service of a written notice of its' intention to do so prior to the contract termination date.

It is the intent of this bid that unit prices will be adjusted annually, using the Consumer Price Index average for the previous year. For example, 2016 prices will be based upon the initial bid price and inflated by the 2016 CPI. The CPI will be adjusted at the anniversary date [at year one (1), and at the time of each contract execution.

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Work Requirements/ Required Services

General Maintenance Activity Requirements

1. Mowing

- a. **Typical Duties:** Inspect area for debris and pick up as necessary. Mow turf to appropriate height, approximately two and a half (2.5) to three (3) inches. Identify work for other crews to perform.
- b. **Frequency:** This equates to mowing each park, in the list above and the Foothills Trail, within the city limits, one (1) time per week for five (5) months (April-August).
- c. **Quality & Performance Requirement:** When the work is done, turf is well manicured and aesthetically pleasing. Turf is maintained at height of two and a half (2.5) to three (3) inches at all times.

2. Rough Area Mowing and Weed Eating –

- a. **Description of Work:** All work associated with mowing of undeveloped areas. Weed eating areas missed or un-reachable by regular mowing. Weed eating or trimming around tree bases, signs, etc. Work is done to reduce fire hazard, control noxious weeds, reduce rodent populations and enhance appearance.
- b. **Typical Duties:** Inspect area for debris & litter, pick up as necessary. Mow or weed eat upon completion of inspection.
- c. **Frequency: Quality & Performance Requirement:** When work is done, field shall be evenly mowed with no skipping and is aesthetically pleasing. Mowing is typically performed with a tractor and flail type pull behind mower attachment or hand held weed eater. The finished cut height will not exceed (3) inches.

3. Turf Edging –

- a. **Description of Work:** All work associated with edging of walkways, curbs, cement pads, shrub beds, and other areas requiring a well-defined and manicured edge. Work is performed to promote aesthetics and define edges in the areas specified.
- b. **Typical Duties:** Inspect work areas for hazards and other work needs. Edge sidewalks and flower beds, clean up edgings and haul off site. Blow off hard surface areas. Avoid damaging irrigation heads. Do not engage power blower or edger if public is nearby.
- c. **Frequency & Time of Year:** Work is generally completed once (1) every month during the turf growing season.

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- d. **Quality & Performance Requirement:** Turf edges shall be sharply defined, straight and free of debris. Turf will be maintained to within two (2) inches of asphalt edge and to within (1/4) one quarter inch of concrete edge.

4. Turf Debris Removal –

- a. **Description of Work:** All work associated with cleaning turf and grounds with backpack or tractor mounted blowers, mechanical sweepers and manual raking. Remove leaves, storm debris and excess grass clippings.
- b. **Typical Duties:** Remove debris from turf and load into container, haul debris from site for disposal.
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5. Raking and Weeding Shrub Beds

- a. **Description of Work:** All work associated with the raking and weeding of shrub beds using mainly manual methods. Work is performed to promote health of the plant materials and the aesthetics of the area.
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7. Pavement Maintenance –

- a. **Description of Work:** All work associated with cleaning of hard surface areas. Work is typically performed on walkways, parking lots, street fronts and concrete surfaces using backpack and tractor mounted blowers and mechanical sweepers.
- b. **Typical Duties:** Clear surfaces of debris.
- c. **Frequency :** Hard surfaces will be blown off or swept after each mowing
- d. **Quality & Performance Requirement:** Hard surfaces will be clean and free of debris.

All-encompassing issues pertaining to this Bid:

1. **Washington State Patrol Criminal Background Check Requirement (RCW 35.61.130):** All employees, volunteers, or independent contractors, who may, in the course of their work or volunteer activity with the City of Orting, have unsupervised access to children or vulnerable adults, shall go through a records check through the Washington State Patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation, including a finger print check using a complete Washington state criminal identification fingerprint card. The City of Orting shall provide a copy

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of the record report to the employee, volunteer, or independent contractor. When necessary as determined by the City of Orting, prospective employees, volunteer, or independent contractors may be employed on a conditional basis pending completion of the investigation. If the prospective employee, volunteer, or independent contractor has had a record check within the previous twelve months, the City of Orting may waive the requirement upon receiving a copy of the record. The City of Orting at its discretion requires that the prospective employee, volunteer or independent contractor pay the costs associated with the background and records check.

2. **Contractor Identification Requirement:** The contractor is required to have the company name and/or logo with a contact phone number clearly marked on any vehicle or vehicles that is used in the course of doing any work at each park site.
3. **Methods and procedures for completing General Maintenance Activities:** The contractor is responsible for determining the required labor, materials, equipment and supervision necessary to accomplish the tasks outlined in this solicitation. Contractor is responsible for adherence to all local codes, ordinances, rules, regulations and application requirements.
4. **Work Hours & Scheduling:** Scheduling of any contract inspection and contract work hours must be approved by the City of Orting City Administrator in advance of before commencing any work. The contractor shall submit for approval, a schedule showing anticipated work hours and work days prior to commencing any work. Work hours are between 7:30 am and 5:00 pm Monday through Sunday. With the exception of emergencies, only minimal work duties such as litter collection, garbage collection, and blowing walks will be allowed on weekends and legal holidays.
5. **Equipment:** Equipment to be used in performance of this contract shall be subject to inspection by the City at any time, prior to use in performance of any work. Inspection will ascertain the type and condition of the equipment, the state of repair, the ability of the equipment to perform the required work, compliance with all licensing laws (i.e. Washington State Dept. of Licensing, and safety laws as per OSHA and WISHA). Vehicles found to be lacking in licenses or in poor condition or repair (i.e. leaking, unclean, unpainted, lights, gauges etc.) or incapable of performing the required work may be rejected for use on this contract. This inspection may take place at any time at the election of the City maintenance manager and/or the Quality Control & Quality Assurance manager. Each contractor may undergo this inspection prior to the awarding of the contract. The contractor that is awarded the contract will not undergo this inspection more often than once a month, unless there is evidence that the equipment is not properly functioning or in good repair. If after inspection, equipment is not fixed or in good repair, City of Orting reserves the right to conduct this inspection as often as desired. The equipment shall be kept clean and in good repair at all times. Rejection of any equipment by City of Orting does not relieve the contractor of responsibility to perform required work. Failure to provide acceptable equipment is cause for City of Orting to cancel contract, nonpayment for general maintenance activities or seek monetary penalty for relief of damages rendered, or any combination thereof, as provided in this contract.

CITY OF ORTING

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Orting, WA 98360

lhinds@cityoforting.org
(360) 893-2219 x139

6. **Materials:** All materials, parts, repairs, and support services required to properly perform and complete the functions of this contract will be the sole responsibility of the contractor. No overhead costs will be added to any invoices.

7. **Material Spills & Environmental:** All material spills (fertilizers, herbicides, vehicle fluids, etc.) must be contained and cleaned up immediately to reduce or eliminate public, employee, and environmental hazards.
Any spills that cannot be immediately contained must be quarantined to prevent public or worker exposure.
The contractor will be responsible for any cleanup costs and landscape repairs associated with material spills. City of Orting Maintenance manager will be informed of any spills immediately via cellular phone.

8. **Request for Work:** All work must be authorized by the City of Orting maintenance manager prior to performance. Contractor is required to develop a weekly work execution plan and submit to the City of Orting Public Works Director or designee for approval, the week preceding the planned performance date

11. **Non Performance of Work:** A general maintenance activity deemed “non-performing” will not be authorized for payment. Through Quality Assurance Random Sampling, Non-performance may be determined by the Quality Control Manager. Each determination of non-performance will be allowed one (1) opportunity for correction and re-inspection. Subsequent re-inspections will be charged for City of Orting staff time and those charges withheld from monthly payments to the contractor.

Initial _____



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PROPOSAL FORM:

City of Orting Parks DEPT.
110 Train St. SE,
Orting, WA

Attention:

Having carefully examined the Invitation to Bid, Instructions to Bidders, General Conditions of the Contract, Supplementary General Conditions, Drawings, and the Specifications as well as the premises and conditions affecting the work, the undersigned proposes to furnish all plant, labor and material called for by the documents for The City of Orting – Parks and Trail Grounds Maintenance.

Base Bid	\$	<u>29,928</u>
Washington State Sales Tax – 8.8%	\$	<u>2,633.66</u>
NET TOTAL BID	\$	<u>32,561.66</u>

STARTING TIME AND TIME OF COMPLETION:

The undersigned agrees that if awarded the contract he will start maintenance activities within five (5) calendar days after receiving written notice to proceed, and will complete the work within 5 calendar days after receiving such notice.

PROPOSAL FORM (continued)

OWNER'S RIGHT RESERVED:

To reject any or all bids, to waive informalities, and to accept only such bids as may appear in the best interest of the owner.

CERTIFICATION:

The undersigned certifies that this bid has been arrived by the bidder independently and has been submitted without any collusion designed to limit independent bidding or competition.

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PROPOSALS SUBMITTED WITHOUT A SIGNATURE BELOW WILL BE REJECTED.

Name of Individual Business Owner,
Partnership or Corporation:

Frost Landscape & Design LLC

Signature of Owner, Partner, or
Corporate Official:

Address:

506 Factory St SE Orting 98360

Print Name

Telephone 253-226-8635

DATE

Fax Number _____

Official or Title of Official signing for
Corporation:

UBI# 602-901-197

FrostLD911KD
Contractor Business License Number

If Corporation, Attest:

Secretary of Corporation

State in which Incorporated