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

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

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

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

Next Ordinance No. 2017-818
Next Resolution No. 2017-566

June 13, 2017
City Council Meeting
6:00 PM

CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL
AUDIENCE COMMUNICATION
A. Public comment on items on or not on the agenda

PRESENTATIONS
B. Snohomish County Update
   (Dave Somers, County Executive)
C. Proclamation: Celebration of Diversity
D. Snohomish Health District
   (Jefferson Ketchel, Interim Administrator)
NEW BUSINESS
E. City of Mill Creek and the "Interagency Child Abduction Response Team" (ICART) Interagency Agreement
   (Rebecca C. Polizzotto, City Manager)

CONSENT AGENDA
F. Telecommunications Franchise Agreement with MCIMetro Access Transmission Services DBA Verizon Access Transmission Services
G. Telecommunications Franchise Agreement with Astound Broadband, LLC, DBA Wave
H. Telecommunications Franchise Agreement with Zayo Group, LLC
I. Approval of Checks #56998 through #57067 and ACH Wire Transfers in the Amount of $135,451.20
   (Audit Committee: Councilmember Bond and Councilmember Michelson)
J. Payroll and Benefit ACH Payments in the Amount of $441,500.02
   (Audit Committee: Councilmember Bond and Councilmember Michelson)
K. City Council Meeting Minutes of June 6, 2017

REPORTS
L. Mayor/Council
M. City Manager
   • Council Planning Schedule
   • 35th Ave Contract Update

AUDIENCE COMMUNICATION
N. Public comment on items on or not on the agenda

ADJOURNMENT
AGENDA ITEM #E.

CITY COUNCIL AGENDA SUMMARY
City of Mill Creek, Washington

AGENDA ITEM:  CITY OF MILL CREEK AND THE “INTERAGENCY CHILD ABDUCTION RESPONSE TEAM” (ICART) INTERAGENCY AGREEMENT

PROPOSED MOTION: Move to authorize the City Manager to sign the interagency agreement between the City of Mill Creek and the Interagency Child Abduction Response Team (ICART).

KEY FACTS AND INFORMATION SUMMARY: During 2016, the Snohomish County Sheriff and Police Chiefs Association (SCSPCA) worked collaboratively with the Everett Police Department and the Snohomish County Sheriff’s Office to form an Interagency Child Abduction Response Team, or ICART. ICART is based on a national model for pooling resources in instances of child abduction cases. These cases require immediate and significant response, as seconds, minutes and moments count. Statistically, children are killed or injured within a short time of their abduction, so time is of the utmost importance. In Snohomish County, no single law enforcement agency has the resources to appropriately respond to a child abduction case, so an interagency pool of investigators and support staff is vital to a successful response and investigation. The agreement provides for a Board of Directors for ICART; a seat on the board is available to the Mill Creek Police Chief based on a selection from “South County” law enforcement agencies (including Mill Creek, Mountlake Terrace, Lynnwood, Edmonds, Mukilteo, and Brier).

As mentioned, ICART is based on a national model. This model has been created by the Federal Bureau of Investigators (FBI). The FBI certifies Child Abduction Response Teams (CART) around the country after reviewing their agreements, policies and procedures. The FBI will also evaluate the ICART response through a mock exercise. ICART is some time away from being certified, but this interagency agreement acts as the first step towards that goal.

In addition to a national model for this type of response team, the ICART is based as well on the model set forth currently by the Snohomish Multi-Agency Response Team (SMART). SMART is activated when a law enforcement officer uses lethal force. Like SMART, ICART will pull experienced and specialized investigators and staff together in times of need. Many of these staff will be the same SMART team members; the difference with ICART is that the team can commit more resources when the need arises. Identified staff members will receive appropriate initial and ongoing training to ensure a professional response and investigation. Costs associated with training may be borne by the Mill Creek Police Department, but the intent of ICART is to mitigate this impact as often as possible by pooling training resources.

CITY MANAGER RECOMMENDATION: The City Manager recommends the City Council authorize her to sign the interagency agreement with the Interagency Child Abduction Response Team.
ATTACHMENTS:
ICART Interagency Agreement
ICART Protocol

Respectfully Submitted:

[Signature]
Rebecca C. Polizzotto
City Manager
Agreement Establishing the Snohomish County Interagency Child Abduction Response Team (ICART)

This Interagency Agreement establishing the Snohomish County Child Abduction Response Team (ICART) ("Agreement") is entered into by and between Snohomish County, a political subdivision of the State of Washington, the City of Arlington, a municipal corporation of the State of Washington, the City of Bothell, a municipal corporation of the State of Washington, the City of Brier, a municipal corporation of the State of Washington, the City of Edmonds, a municipal corporation of the State of Washington, the City of Everett, a municipal Corporation of the State of Washington, the City of Gold Bar, a municipal corporation of the State of Washington, the City of Granite Falls, a municipal corporation of the State of Washington, the City of Lake Stevens, a municipal corporation of the State of Washington, the City of Lynnwood, a municipal corporation of the State of Washington, the City of Marysville, a municipal corporation of the State of Washington, the City of Mukilteo, a municipal corporation of the State of Washington, the City of Monroe, a municipal corporation of the State of Washington, the City of Mill Creek, a municipal corporation of the State of Washington, the City of Snohomish, a municipal corporation of the State of Washington, the City of Stanwood, a municipal corporation of the State of Washington, the City of Sultan, a municipal corporation of the State of Washington, the Stillaguamish Tribe of Indians, a federally recognized Indian Tribe, the Washington State Department of Corrections, an agency of the State of Washington, the Washington State Patrol, an agency of the State of Washington, SNOPAC, an agency created by inter-local agreement, SNOCOM, an agency created by inter-local agreement, the Snohomish County Department of Emergency Management, the Child Advocacy Center of Snohomish County at Dawson Place, a Washington nonprofit corporation, Compass Health, a Washington nonprofit corporation, and Providence Health and Services, a Washington nonprofit corporation (collectively referred to as "ICART Participants").

Whereas, participants to this agreement believe it to be in the best interest of the community to join together in a multi-discipline team for the purpose of locating and rescuing missing or abducted children when the appropriate circumstances exist; and

Whereas, participants agree to allocate resources to this collective effort and agree to utilize any and all applicable federal laws, state laws, and/or local codes and ordinances to prosecute identified perpetrators as appropriate.

Now Therefore, in consideration of the covenants, conditions, performances, and promises hereinafter contained, ICART Participants agree as follows:
1. **ICART Goal.** A timely and effective response is critical to locating an abducted or missing child. The goal of the ICART is to coordinate human and physical resources in order to quickly locate and recover children who have been abducted or who are missing under suspicious circumstances.

2. **TERM.** The term of this Agreement shall be from June 1, 2017, through May 31, 2018. This agreement is automatically renewed on June 1 of each subsequent year unless terminated or modified by the ICART Participant as provided in this Agreement.

3. **GENERAL ADMINISTRATION.**
   a. There is hereby created an ICART Board consisting of five (5) voting members and one (1) non-voting member selected from the ICART Participants.
      i. The voting Board Members shall be:
         1. The Snohomish County Sheriff (or designee)
         2. The Everett Police Chief (or designee)
         3. The WSP District 7 Captain (or designee)
         4. A Chief of Police (or designee) from the municipalities in North and East Snohomish County. This Chief will be selected by a majority of the North and East County ICART Participants.
         5. A Chief of Police (or designee) from the municipalities in South Snohomish County. This Chief will be selected by a majority of the South County ICART Participants.
      ii. The non-voting Board Member shall be the Snohomish County Prosecuting Attorney (or designee).
   b. Three (3) voting Board Members shall constitute a quorum. Any action taken by the Board under this Agreement shall be based on a majority vote.
   c. The Board shall meet in January of each year this ICART Agreement is in effect. The purpose of the meeting will be to receive a report from the ICART Commander concerning activities of ICART over the past year, address issues pertaining to the operation and support of the Team, address changes to the ICART Protocol, appoint/replace ICART Commanders, conduct elections of the Chairman of the Board, and address any other ICART business as necessary.
   d. The Chairman of the Board may call a special meeting at any time during the year. Special meetings may also be requested by the ICART Commander to address situations where timely decisions by the Board are necessary.
   e. Each ICART participant shall adopt the ICART Protocol. The ICART Protocol may be amended by a majority vote of the ICART Board.
   f. The parties do not intend that this Agreement will create a separate legal entity subject to suit.
4. ICART ORGANIZATION.

a. ICART is a multi-jurisdictional team comprised of local, state, and tribal law enforcement agencies as well as private agencies. ICART will follow a management system for the shared coordination and direction of personnel as well as equipment, technical, and material resources as stated in this Agreement.

b. The ICART Board will annually appoint two individuals from ICART law enforcement Participants, with a rank of captain or lieutenant, to serve as the ICART Commander and Assistant Commander.

c. ICART Participants will contribute personnel or material resources to this team as they have the capacity and ability to do so. Nothing in this Agreement shall restrict the ability of ICART Participants to remove contributed personnel or material resources.

d. Law Enforcement personnel and/or material resources assigned to ICART shall be directed in their ICART duties by the ICART Commander. Non-law enforcement personnel contributed by an ICART Participant will be subject to supervision by the ICART Commander (or designee). All participants remain subject to their own agency's polices and chain of command.

e. Personnel assigned to this team by an ICART Participant remain employees of their agency. All rights, duties, and obligations of the employer and the employee shall remain with that individual jurisdiction. Each ICART Participant shall be responsible for ensuring compliance with all applicable laws, collective bargaining agreements, and/or civil service rules and regulations, with regard to its employees.

5. COSTS. Each ICART Participant shall be responsible for all costs associated with its participation as stated herein, including employee compensation.

6. EQUIPMENT.

a. For purposes of this Agreement, the term "Equipment" shall refer to all materials, tools, machinery, equipment, vehicles, supplies, and facilities used by ICART in performing its purpose and function.

b. Upon termination of this Agreement, any equipment provided to ICART by an ICART Participant will be returned to that participant as soon as practical.
7. **AMENDMENT.** ICART Participants reserve the right to amend this Agreement in the future from time to time as may be mutually agreed upon. No such amendment shall be effective unless written and signed by all ICART Participants with the same formality as this Agreement.

8. **TERMINATION.** Any ICART Participant may terminate its participation in this Agreement by providing thirty (30) days written notice to the other ICART Participants. In the event an ICART Participant terminates its participation, all equipment contributed by that participant will be returned as soon as practical.

9. **INSURANCE.** All ICART Participants are required, to the best of their ability, to coordinate their liability insurance coverage and/or self-insurance coverages to the extent possible to fully implement and follow the Agreement. However, the consent of any liability insurance carrier or self-insurance pool is not required to make this Agreement effective as between the participants.

10. **HOLD HARMLESS.**
   a. Each party to this Agreement shall indemnify, defend, and hold the other parties and its agents, employees, and contractors harmless from and against any and all costs, liabilities, suits, losses, damages, claims, expenses, penalties or charges, including, without limitation, reasonable attorneys’ fees and disbursements, that the other party may incur or pay out by reason of: any accidents, damages or injuries to persons or property occurring during the Term of this Agreement, but only to the extent the same are caused by any negligent or wrongful act of the indemnifying party.

   b. In the case of allegations, complaints, or claims against more than one party, any damages allowed shall be levied in proportion to the percentage of fault attributable to each party, and each party shall have the right to seek contribution from each of the other parties in proportion to the percentage of fault attributable to each of the other parties. Moreover, the parties agree to cooperate and jointly defend any such matter to the extent allowed by law. An ICART Participant that has terminated its participation in ICART assumes no responsibility for the actions of the remaining participants arising after the date of withdrawal, but shall remain liable for claims of loss or liability arising prior to the effective date of termination.

11. **LIMITED WAIVER OF TRIBAL SOVEREIGN IMMUNITY.**
a. The Stillaguamish Tribe expressly reserves all of its inherent sovereign rights as a sovereign Tribe, including its rights as a federally-recognized Tribe to sovereign immunity from suit in any state, federal or tribal court without the Tribe’s explicit consent. By entering into this Agreement, the Tribe hereby grants a limited waiver of sovereign immunity to the ICART Participants only, subject to and conditioned on the following:
   i. This limited waiver of sovereign immunity shall not extend to or be used for or to the benefit of any other person or entity of any kind or description whatsoever, including any successor of an ICART Participant.
   ii. Nothing contained in this Agreement shall be deemed as consent to levy of any judgment, lien or attachment upon any assets, property or interest of the Tribe except as specifically described herein.
   iii. Nothing in this Agreement nor any activity of the Tribe shall implicate or in any way involve the trust assets or credit of the Tribe or any of its members.

b. The Tribe hereby expressly waives sovereign immunity to suit only with respect to claims made relating to, or arising under, this Agreement by any ICART Participant, to interpret or enforce the terms of this Agreement, or upon a claim of indemnification by an ICART Participant pursuant to Section 11 of this Agreement. The limit for any claim of indemnification will be the insurance limit set forth in Section 9 of this Agreement. The parties agree that in discharging this indemnification obligation, where the required insurance is procured, the County shall look only to the proceeds of the insurance procured by the Tribe herein, and the policy of insurance obtained by the Tribe shall prohibit the insurer from asserting a defense of sovereign immunity to a claim made under the policy.

c. The Tribe agrees to assign over to the ICART Participant seeking indemnity, at its request, any and all of its rights against the insurer to effectuate a payment of its indemnification provision. Should the Tribe fail to procure and maintain the insurance required by this Agreement, the Tribe hereby waives any claim of immunity or exemption for any assets it holds that are not subject to a restriction against alienation up to the amount necessary to discharge the indemnity obligation and the costs of collection.

12. DISPUTE RESOLUTION. Any dispute arising under this Agreement will be forwarded to the ICART Board for resolution. The determination made by the ICART Board shall be final and conclusive as between the parties. This provision shall not apply to issues of indemnity and liability governed by the hold harmless provision in section 10 and the waiver of sovereign immunity in section 11 of this Agreement.
13. GOVERNING LAW AND VENUE. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Washington without reference to choice of law principles. The venue of any suit between the parties arising out of this agreement shall be in the Superior Court of Snohomish County, Washington.

14. INTEGRATION. This Agreement constitutes the entire agreement among the parties as to the ICART and no other understandings, oral, or otherwise, regarding the ICART shall be deemed to exist or bind the parties.

15. EXECUTION OF MULTIPLE ORIGINAL COUNTERPARTS. This Agreement may be reproduced in any number of original counterparts. Each party need sign only one counterpart and when the signature pages are all assembled with one original counterpart, that compilation constitutes a fully executed and effective agreement among all the ICART Participants.

16. SEVERABILITY. If any part of this Agreement is unenforceable for any reason the remainder of the agreement shall remain in full force and effect.
AGENDA ITEM #F.

City of Mill Creek, Washington

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

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

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

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

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

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

Respectfully Submitted:
Rebecca C. Polizzotto
City Manager
CITY OF MILL CREEK

ORDINANCE NO. ______

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

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

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

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

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

SECTION 1. DEFINITIONS

For purposes of this Franchise, the following words, terms and phrases shall have the meanings stated in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.
1.1 "Affiliate" means a Person who (directly or indirectly) owns or controls, is owned
or controlled by, or is under common ownership or control with another Person.

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

1.3 "Communications Service" means telecommunications services, provided by the
Franchisee using its Facilities, either directly or by its Affiliates: including, but not
limited to, the transmission of voice, data, or other electronic information, by wire,
optical cable, or other similar means. Communications Services also includes the
provision of a portion of the Facilities, including without limitation, dark fiber to third
parties under a leasing or indefeasible right of use arrangement pursuant to Sections 5.1.2
and .3 of this Franchise. For purposes of this subsection, “information” means
knowledge or intelligence represented by writing, signs, signals, pictures, sounds, or any
other symbols. For purposes of this Franchise, Communications Service excludes
personal wireless services, over-the-air transmission of broadcast television, and
broadcast radio signals, or the provision of cable services or open video services as
defined in the Communications Act of 1934, as amended. A separate franchise or an
amendment to this Franchise is required prior to offering such additional services.

1.4 "Facilities" means plant, equipment and property, including but not limited to
cables, wires, conduits, ducts, pedestals, antennas, electronics and other appurtenances,
vaults, manholes, handholes and equipment used or to be used to transmit, receive,
distribute, provide or offer Communications Services under this Franchise. For the
purposes of this franchise the term Facilities excludes “microcell” facilities, “minor
facilities,” “small cell facilities,” all as defined by RCW 80.36.375, and “macrocell”
facilities, including towers and new base stations and other similar facilities used for the
provision of “personal wireless services” as defined by RCW 80.36.375 (collectively
“Personal Wireless Facilities”).

1.5 "FCC" means the Federal Communications Commission, or any successor
governmental agency.

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

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

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

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

SECTION 2. GRANT.

2.1 Grant of a Non-Exclusive Franchise.

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

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

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

a. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City, including but not limited to a City business license;
b. Any permit, agreement, authorization, or condition that may be required by the City for using the Right-of-Way in connection with operations on or in the Right-of-Way or public property, such as Right-of-Way use permits and approved traffic control plans.

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

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

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

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

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

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

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

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

2.2 Term of Franchise.

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

2.3 Non-Exclusive.

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

2.4 Effect of Acceptance.

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

SECTION 3. GENERAL RIGHT OF WAY USE AND CONSTRUCTION.

3.1 Use of Rights-of-Way.
3.2 Construction or Alteration.

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

3.3 Non-Interference.

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

3.4 Consistency with Designated Use.

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

3.5 Undergrounding.

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

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

b. When all other existing utilities, except electrical facilities, have been placed underground.
e. When Franchisee is unable to get pole attachment permits from pole owners;

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

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

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

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

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

3.5.4 Franchisee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except that drops from pedestals to Franchisee’s customer’s homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry
standards for electronic performance and resistance to interference or damage from
environmental factors. Franchisee shall use and construct, in conjunction and
coordination with other utility companies or providers, common trenches for
underground construction wherever available and possible.

3.6 Joint Trenching

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

3.7 Maintenance and Restoration.

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

3.7.2 Maintenance. Franchisee shall maintain all above ground improvements
that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid
interference with the City's ability to maintain the Right-of-Way, Franchisee shall, if
practicable, provide a clear zone of five feet on all sides of such improvements. If
Franchisee fails to comply with this provision, and by its failure, property is damaged,
then Franchisee shall be responsible for all damages caused thereby, including
restoration.
3.7.3 Disputes. In any dispute over the adequacy of restoration or maintenance under this Section, the City shall have the authority, in the exercise of its reasonable discretion, to determine the adequacy of the restoration or maintenance.

3.8 Relocation and Movement of Franchisee’s Facilities.

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

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

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

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

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

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

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

3.9 Movement of Buildings.

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

3.10 City Right to Inspect and Cost Recovery.

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

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

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

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

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

3.11.5 After underground construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps stamped and signed by a professional land surveyor or professional engineer in a form and content acceptable to the Public Works Director or his/her designee. Following any aerial construction, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in...
Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Franchisee shall also provide such maps within ten (10) days following a request from the City. Further, if Franchisee's actual construction deviates materially from its submitted construction plans as reasonably determined by the City, Franchisee shall provide the City with these maps. Franchisee shall warrant the accuracy of maps and as-buils provided to the City.

3.12 Notice of Construction.

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

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

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

3.13 Safety Requirements.

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

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

3.14 Permits Required for Construction.

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

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

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

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

3.16 Temporary Disconnection.

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

3.17 Access to Open Trenches.

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

3.17.2 The City shall use reasonable efforts to include the Franchisee in any platting process within the City, to exercise reasonable efforts to include as a condition of issuing a permit for open trenching to any utility or developer that (a) the utility or developer give the Franchisee at least ten (10) business days’ advance written notice of the availability of the open trench and (b) that the utility or developer provide the
Franchisee with reasonable access to the open trench. The City’s non-compliance with 
this Section shall not be a breach or default by the City of this Franchise.

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

SECTION 4. PAYMENTS TO CITY.

4.1 Recovery of Costs.

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

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

4.2 Franchise Fees and Taxes.
4.2.1 Pursuant to RCW 35.21.860, the City is precluded from imposing a franchise fee on a "telephone business" as defined in RCW 82.16.010, or a "service provider" as defined in RCW 35.99.010, for use of the Right-of-Way, excepting actual administrative expenses directly related to the Franchise or any tax authorized by state law. Franchisee hereby represents that its operations as authorized under this Franchise are those of a "telephone business" as defined in RCW 82.16.010 or a "service provider" as defined in RCW 35.99.010. As a result, the City will not impose a franchise fee under the terms of this Franchise.

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

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

4.3 Acceptance of Payment.

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

4.4 Audits and Examinations.

4.4.1 No more than twice per calendar year, the City may arrange with Franchisee for an independent audit, on a non-contingent fee basis, of the Franchisee's books and records to verify the accuracy of any payments made to the City under this Franchise, including but not limited to any utility tax. Any additional identified amount due to the City shall be paid within fourteen (14) calendar days of the City submitting an
undisputed invoice for such sum, and if such sum shall exceed five percent (5%) of the total payment which the audit determines should have been paid for any calendar year, the Franchisee shall pay the City's reasonable out of pocket costs of the audit.

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

4.5 Interest and Penalties on Late Payments.

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

4.6 Taxes and Assessments.

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

SECTION 5. Franchise renewal, extension and transfer.

5.1 Transfer of Franchise.

5.1.1 This Franchise may not be assigned or transferred (including by operation of law) without the written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the: ultimate ownership or working control of Franchisee, ownership or working control of the Facilities, ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee's Facilities, shall be considered an assignment or transfer requiring City approval. Approval for a transfer or change of control of this Franchise shall comply with the requirements of MCMC Chapter 12.16 as now exists and is hereafter amended. The Franchisee shall reimburse the City for all actual costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Franchise.
Notwithstanding the above, Franchisee may, upon thirty (30) days' written notice to the City, freely assign this Franchise in whole or in part to an Affiliate, including without limitation a parent or subsidiary organization or as part of any corporate financing, reorganization, or refinancing; provided, that the assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate the Franchisee's Facilities for the purpose of providing Communications Services. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such approval shall not be required unless and until the secured party elects to realize upon the collateral. No assignment or transfer of this Franchise shall be deemed to occur based on the public trading of the Franchisee's stock.

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

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

5.2 Franchise Renewal.

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

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

a. Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or
b. The City may order the removal of any and all Facilities at Franchisee’s sole cost and expense consistent with Section 6.4.

SECTION 6. VIOLATIONS; ENFORCEMENT.

6.1 Enforcement.

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

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

6.2 Franchisee Contests Non-Compliance.

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

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

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

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

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

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

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

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

6.3 Failure to Timely Cure.

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

6.4 Removal.

6.4.1 If the Franchise has been terminated, revoked, canceled, or has expired,
and Franchisee has not exercised its rights, if any, to contest the termination, revocation,
cancellation or nonrenewal, the City may give Franchisee written notice to remove its
Facilities from the City's Rights-of-Way or it may, in the City's sole discretion, allow
6.4.2 If the Franchisee fails to remove any of its Facilities as provided herein, the City may elect to cause such removal and may recover its reasonable costs and expenses from Franchisee, including its reasonable attorney's fees and costs incurred in recovering such costs and expenses.

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

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

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

6.5 Unauthorized Facilities.

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

a. Upon termination of this Franchise;

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

c. If the Facility was constructed or installed without the prior issuance of a required Right-of-Way work permit.
d. If Facility was constructed or installed at a location not permitted by this Franchise or permit.

SECTION 7. Financial and Insurance Requirements.

7.1 Indemnity and Hold Harmless.

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

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

7.1.3 Procedures and Defense. In any case in which suit or action is instituted against the City by reason of damages or injury caused in whole or in part by an act or omission of Franchisee, the City shall cause written notice thereof to be given to the Franchisee and Franchisee thereupon shall have the duty to appear and defend in any such suit or action, without cost or expense to the City. The City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. The City may participate in the defense of a claim, at its sole expense, and in any event, Franchisee may not agree to any settlement of claims financially affecting the City without the City's prior written consent, which consent shall not be unreasonably withheld. The City shall not agree to any settlement of claims without the prior written consent of Franchisee.
7.1.4 In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

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

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

7.1.7 Notwithstanding any other provisions of this Section 7, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, except to the extent any such damage or destruction is caused by or arises from any grossly negligent, willful, or criminal actions on the part of the City. Franchisee releases and waives any and all such
claims against the City. Franchisee further agrees to indemnify, hold harmless and
defend the City against any claims for damages, including, but not limited to, business
interruption damages, lost profits and consequential damages, brought by or under users
of Franchisee’s Facilities as the result of any interruption of service due to damage or
destruction of Franchisee’s Facilities caused by or arising out of activities conducted by
the City, except to the extent any such damage or destruction is caused by or arises from
the gross negligence or any willful, or criminal actions on the part of the City, its
employees, agents, representatives or contractors and except as provided in Section 7.1.6.

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

7.2 Insurance.

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

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

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

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

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

d. Worker’s Compensation coverage as required by the Industrial
Insurance laws of the State of Washington and Employer’s Liability with a limit of
$1,000,000 each accident/disease/policy limit
7.2.3 Franchisee’s insurance coverage shall be primary insurance with respect to the City. Any insurance or self-insurance maintained by the City shall be in excess to the Franchisee’s insurance. The company shall be approved by the state insurance Commissioner pursuant to Title 48 RCW, and have at least an A- Best Rating. Payment of any deductibles or self-insured retentions are the sole responsibility of Franchisee.

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

7.2.5 Franchisee may utilize primary and umbrella liability insurance policies to satisfy insurance policy limits required herein. Franchisee’s umbrella liability insurance policy shall provide “follow form” coverage over its primary liability insurance policies.

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

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

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

{ERZ1563153.DOC;4/13137.080003/}
of its intent to self-insure. In order to self-insure, Franchisee shall comply with the following: (i) provide a written attestation that Franchisee possesses the necessary amount of unencumbered financial assets to support the financial exposure of self-insurance, as evidenced by an outside auditor’s review of Franchisee’s financial statements; (ii) the City, upon request, may review Franchisee’s financial statements; (iii) Franchisee is responsible for all payments within the self-insured retention; and (iv) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise. These requirements may be modified by written amendment executed by both parties.

7.3 Security Fund.

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

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

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

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

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

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

7.3.3 Within fourteen (14) days following receipt of such notice, Franchisee shall restore the performance bond to the amount required under this Franchise. Franchisee's maintenance of the bond shall not be construed to excuse performance of obligations under the Franchise, or to limit the liability of Franchisee or otherwise limit the City's recourse to any other remedy available at law or equity.
SECTION 8. Miscellaneous terms


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

8.2 Severability.

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

8.3 Notice.

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

CITY OF MILL CREEK: FRANCHISEE:
City of Mill Creek MCI Metro Access Transmission
City Clerk Services Corp. d/b/a/ Verizon Access
15728 Main Street 600 Hidden Ridge
Mill Creek, WA 98012 Mailcode: HQE02G295
Irving, TX 75038
Attn: Franchise Manager

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

Invoices:
Verizon
Attn: Contract Admin
6929 N. Lakewood Ave, MD.
5.3-4009
Notice shall be deemed given upon actual receipt or refusal of delivery and shall be sent by personal delivery, United States Certified Mail, return receipt requested, or by overnight delivery.

8.4 Entire Franchise.

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

8.5 Records.

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

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

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

8.6 Reserved Rights.

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

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

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

8.7 Jurisdiction

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

8.8 No Third Party Beneficiaries.
There are no third party beneficiaries to this Franchise.

8.9 Franchise Acceptance.

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

8.10 Effective Date.

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

PASSED BY THE CITY COUNCIL this ___ day of ____________, 2017.

APPROVED:

______________________

MAYOR PAM PRUITT

ATTEST/AUTHENTICATED:

______________________, CITY CLERK

APPROVED AS TO FORM:

______________________, CITY ATTORNEY SCOTT MISSALL

FILED WITH THE CITY CLERK: ______________

PASSED BY THE CITY COUNCIL: ______________

PUBLISHED: ______________

EFFECTIVE DATE: ______________

ORDINANCE NUMBER: ______________
FRANCHISEE ACCEPTANCE

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

ACCEPTED this ___ day of ______________, _____.

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

Name: Robert McGee
Title: Director Network Engineering and Operations
AGENDA ITEM #G.

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

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

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

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

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

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

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

Respectfully Submitted:
Rebecca C. Polizzotto
City Manager
CITY OF MILL CREEK

ORDINANCE NO. __________

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

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

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

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

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

SECTION 1. DEFINITIONS

For purposes of this Franchise, the following words, terms and phrases shall have the meanings stated in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

1.1 "Affiliate" means a Person who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.
1.2 "City" means the City of Mill Creek, Washington, and all the territory within its present and future boundaries and including any area over which the City exercises jurisdiction.

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

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

1.5 "FCC" means the Federal Communications Commission, or any successor governmental agency.

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

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

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

1.9 "Right-of-Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, public way, drive, circle, pathways, spaces, or other public right of way which, under City ordinances or applicable laws, the City has authority to grant franchises, licenses, or leases for use thereof, or has regulatory authority there over and only to the extent such Rights-of-Way are opened. Rights-of-Way for the purpose of this Franchise do not include buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City not reserved for transportation purposes, or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the Rights-of-Way such as utility poles, light poles and bridges.
1.10 "Service Area" means the present municipal boundaries of the City and shall include any future additions thereto by annexation or other legal means.

SECTION 2. GRANT.

2.1 Grant of a Non-Exclusive Franchise.

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

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

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

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

b. Any permit, agreement, authorization, or condition that may be required by the City for using the Right-of-Way in connection with operations on or in the Right-of-Way or public property, such as Right-of-Way use permits and approved traffic control plans.
This Franchise only conveys limited rights and interests as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest, nor does it provide the Franchisee with any representation as to any location of a City Right-of-Way or the nature of the City's interest in any Right-of-Way. No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner's consent, or upon any City, public or privately owned utility poles or conduits is granted herein.

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

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

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

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

a. Any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;
b. Any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

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

2.2 Term of Franchise.

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

2.3 Non-Exclusive.

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

2.4 Effect of Acceptance.

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

SECTION 3. GENERAL RIGHT OF WAY USE AND CONSTRUCTION.

3.1 Use of Rights-of-Way.

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

3.2 Construction or Alteration.

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

3.3 Non-Interference.

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

3.4 Consistency with Designated Use.

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

3.5 Undergrounding.

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

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

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

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

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

e. When required by ordinances, resolutions, regulations, or policy of the City or applicable state or federal law.

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

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

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

3.5.4 Franchisee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except that drops from pedestals to Franchisee’s customer’s homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from
environmental factors. Franchisee shall use and construct, in conjunction and
coordination with other utility companies or providers, common trenches for
underground construction wherever available and possible. Amplifiers and connectors in
Franchisee's transmission and distribution lines may be in appropriate enclosures upon or
above the surface of the ground in locations approved by the City.

3.6 Joint Trenching

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

3.7 Maintenance and Restoration.

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

3.7.2 Maintenance. Franchisee shall maintain all above ground improvements
that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid
interference with the City's ability to maintain the Right-of-Way, Franchisee shall
provide a clear zone of five (5) feet on all sides of such improvements. If Franchisee fails
to comply with this provision, and by its failure, property is damaged, then Franchisee
shall be responsible for all damages caused thereby, including restoration.
3.7.3 Disputes. In any dispute over the adequacy of restoration or maintenance under this Section, the City shall have the authority, in the exercise of its reasonable discretion, to determine the adequacy of the restoration or maintenance.

3.8 Relocation.

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

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

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

3.8.4 Failure by Franchisee to remove or relocate. If Franchisee fails, neglects or refuses to remove or relocate its Facilities as directed by the City, or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Franchisee. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by another franchisee or utility, that franchisee or utility may do such work or cause it to be done, and if Franchisee would have been required to pay for the cost of performing such work under the provisions of this Agreement, the cost thereof to the party performing the work or having the work performed shall be paid by Franchisee.
3.8.5 City's Immediate Repair. If in the sole but reasonable opinion of the City’s Public Works Director, damage to the public Right-of-Way resulting from damage or disturbance during the construction, operation, or maintenance of the Franchisee’s Facilities requires immediate repair, the City may perform such repairs, at the cost of the Franchisee. In such event, the City will endeavor to notify the Franchisee of the immediate repairs needed. The Franchisee shall pay to the City the City’s costs, including administrative costs related to such repairs within thirty (30) days of the date of written notice of the costs to the Franchisee.

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

3.9 Movement of Buildings.

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

3.10 City Right to Inspect and Cost Recovery.

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

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

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

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

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

3.11.5 After underground construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps stamped and signed by a professional land surveyor or Franchisee’s engineer in a form and content acceptable to the Public Works Director or his/her designee. Following any aerial construction, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee’s design and installation contractors. These plans and maps shall
be provided at no cost to the City, and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Franchisee shall also provide such maps within ten (10) days following a request from the City. Further, if Franchisee’s actual construction deviates materially from its submitted construction plans as reasonably determined by the City, Franchisee shall provide the City with these maps. Franchisee shall warrant the reasonable accuracy of maps and as-builts provided to the City.

3.12 Notice of Construction.

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

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

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

3.13 Safety Requirements.

3.13.1 The Franchisee shall, at all times, employ industry standards of care and shall install and maintain and use commonly accepted methods for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connection in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the Service Area, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, state, and city safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. By way of illustration and not limitation, Franchisee shall also comply with the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards.
3.13.2 If an unsafe condition is found to exist, the City agrees to give Franchisee notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified by the City, then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee. The Franchisee shall pay to the City all of the City's costs, including administrative costs, incurred as a result of circumstances herein within thirty (30) days of the date of the written notice of the costs that is delivered to the Franchisee. If the Franchisee fails to comply with the time frames herein, this Franchise shall terminate without further action required.

3.14 Permits Required for Construction.

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

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

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

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

3.16 Temporary Disconnection.

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

3.17 Access to Open Trenches.

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

3.17.2 The City shall use reasonable efforts to include the Franchisee in any platting process within the City, to exercise reasonable efforts to include as a condition of issuing a permit for open trenching to any utility or developer that (a) the utility or developer give the Franchisee at least ten (10) business days' advance written notice of
the availability of the open trench and (b) that the utility or developer provide the Franchisee with reasonable access to the open trench. The City’s non-compliance with this Section shall not be a breach or default by the City of this Franchise.

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

SECTION 4. PAYMENTS TO CITY.

4.1 Recovery of Costs.

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

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

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

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

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

4.3 Acceptance of Payment.

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

4.4 Audits and Examinations.

4.4.1 No more than twice per calendar year, the City may arrange with Franchisee for an independent audit, on a non-contingent fee basis, of the Franchisee's books and records to verify the accuracy of any payments made to the City under this
Franchise, including but not limited to any utility tax. Any additional identified amount
due to the City shall be paid within fourteen (14) calendar days of the City submitting an
undisputed invoice for such sum, and if such sum shall exceed three percent (3%) of the
total payment which the audit determines should have been paid for any calendar year,
the Franchisee shall pay the City's reasonable out of pocket costs of the audit.

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

4.5 Interest and Penalties on Late Payments.

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

4.6 Taxes and Assessments.

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

SECTION 5. Franchise renewal, extension and transfer.

5.1 Transfer of Franchise.

5.1.1 This Franchise may not be assigned or transferred (including by operation
of law) without the written approval of the City, which approval shall not be
unreasonably withheld, conditioned or delayed. Any transactions that singularly or
collectively result in a change of more than fifty percent (50%) of the ultimate ownership
or working control of Franchisee, ownership or working control of the Facilities,
ownership or working control of affiliated entities having ownership or working control
of Franchisee or of the Facilities, or of control of the capacity or bandwidth of
Franchisee's Facilities, shall be considered an assignment or transfer requiring City
approval. Approval for a transfer or change of control of this Franchise shall comply with the requirements of MCMC Chapter 12.16 as now exists and is hereafter amended. The Franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Franchise. Notwithstanding the above, Franchisee may, upon thirty (30) days’ written notice to the City, freely assign this Franchise in whole or in part to an Affiliate, including without limitation a parent or subsidiary organization or as part of any corporate financing, reorganization, or refinancing; provided, that the assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate the Franchisee’s Facilities for the purpose of providing Communications Services. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such approval shall not be required unless and until the secured party elects to realize upon the collateral. No assignment or transfer of this Franchise shall be deemed to occur based on the public trading of the Franchisee’s stock.

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

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

5.2 Franchise Renewal.

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

5.2.2 If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:
a. Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

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

SECTION 6. VIOLATIONS; ENFORCEMENT.

6.1 Enforcement.

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

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

6.2 Franchisee Contests Non-Compliance.

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

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

6.2.3 After receiving the City Manager’s written notice of decision, the Franchisee may request a public hearing before the City Council as to whether or not a violation, breach, or non-compliance with the Franchise has occurred. Said request must be made in writing, stating with specificity the reasons why the Franchisee believes that the alleged non-compliance has not occurred, and delivered to the City Clerk within fourteen (14) days of receipt of the City Manager’s decision.
6.2.4 If the Franchisee does not request a public hearing before the City Council under Section 6.2.3 above, at the next available meeting, the City Council shall pass an ordinance declaring the Franchise revoked and terminated, and any security or bonds shall be forfeited to the City. If the Franchisee does request a public hearing before the City Council under Section 6.2.3 above, the City Clerk shall cause the public hearing to be held at the next available City Council meeting, provided that the Franchisee shall be provided at least ten (10) business days' notice of such hearing.

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

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

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

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

6.3 Failure to Timely Cure.

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

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

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

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

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

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

6.5 Unauthorized Facilities.

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

a. Upon termination of this Franchise;
b. Upon abandonment of a Facility, unless such abandonment is allowed by the City pursuant to Section 6.4.3.

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

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

SECTION 7. Financial and Insurance Requirements.

7.1 Indemnity and Hold Harmless.

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

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

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

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

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

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

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

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

7.2 Insurance.

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

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

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

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

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

d. Workers’ Compensation coverage as required by the Industrial
Insurance laws of the State of Washington.
7.2.3 Franchisee’s insurance coverage shall be primary insurance with respect to the City. Any insurance or self-insurance maintained by the City shall be in excess of the Franchisee’s insurance. The company shall be approved by the state insurance Commissioner pursuant to Title 48 RCW, and have at least an A- Best Rating. Any deductibles or self-insured retentions must be declared to and approved by the City if greater than five percent of the coverage limit. Payment of any deductibles or self-insured retentions are the sole responsibility of Franchisee.

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

7.2.5 Franchisee may utilize primary and umbrella liability insurance policies to satisfy insurance policy limits required herein. Franchisee’s umbrella liability insurance policy shall provide “follow form” coverage over its primary liability insurance policies.

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

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

7.2.8 As of the effective date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee must provide the City with thirty (30) days advanced written notice
of its intent to self-insure. In order to self-insure, Franchisee shall comply with the following: (i) provide a written attestation that Franchisee possesses the necessary amount of unencumbered financial assets to support the financial exposure of self-insurance, as evidenced by an outside auditor's review of Franchisee's financial statements; (ii) the City, upon request, may review Franchisee's financial statements; (iii) Franchisee is responsible for all payments within the self-insured retention; and (iv) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise. These requirements may be modified by written amendment executed by both parties.

7.3 Security Fund.

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

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

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

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

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

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

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

SECTION 8. Miscellaneous terms

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

8.2 Severability.

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

8.3 Notice.

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

CITY OF MILL CREEK: Astound Broadband, LLC
City of Mill Creek d/b/a Wave
City Clerk Attn: CEO
15728 Main Street 401 Parkplace Center, Suite 500
Mill Creek, WA 98012 Kirkland, WA 98033

With a copy to:
Attn: General Counsel
At the same address

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

8.4 Entire Franchise.

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

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

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

8.5.3 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under state or federal law.

In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 8.5 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

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

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

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

8.7 Jurisdiction

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

8.8 No Third Party Beneficiaries.

There are no third party beneficiaries to this Franchise.

8.9 Franchise Acceptance.

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

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

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

APPROVED:

______________________________

MAYOR PAM PRUITT

ATTEST/AUTHENTICATED:

______________________________, CITY CLERK

APPROVED AS TO FORM:

______________________________

CITY ATTORNEY SCOTT MISSALL

FILED WITH THE CITY CLERK: ________________

PASSED BY THE CITY COUNCIL: ________________

PUBLISHED: ________________

EFFECTIVE DATE: ________________

ORDINANCE NUMBER: ________________
FRANCHISEE ACCEPTANCE

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

ACCEPTED this ___ day of ________________, ______.

Astound Broadband, LLC d/b/a Wave

Name: __________________________
Title: __________________________
AGENDA ITEM #H.

Telecommunications Franchise Agreement with Zayo Group, LLC

Respectfully Submitted:
Rebecca C. Polizzotto
City Manager
CITY OF MILL CREEK

ORDINANCE NO. ______

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

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

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

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

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

SECTION 1. DEFINITIONS

For purposes of this Franchise, the following words, terms and phrases shall have the meanings stated in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

1.1  "Affiliate" means a Person who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.
1.2 "City" means the City of Mill Creek, Washington, and all the territory within its present and future boundaries and including any area over which the City exercises jurisdiction.

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

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

1.5 "FCC" means the Federal Communications Commission, or any successor governmental agency.

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

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

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

1.9 "Right-of-Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, public way, drive, circle, pathways, spaces, or other public right of way which, under City ordinances or applicable laws, the City has authority to grant franchises, licenses, or leases for use thereof, or has regulatory authority thereover and only to the extent such Rights-of-Way are opened. Rights-of-Way for the purpose of this Franchise do not include buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City not reserved for transportation purposes, or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the Rights-of-Way such as utility poles, light poles and bridges.
1.10 "Service Area" means the present municipal boundaries of the City and shall include any future additions thereto by annexation or other legal means.

SECTION 2. GRANT.

2.1 Grant of a Non-Exclusive Franchise.

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

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

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

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

b. Any permit, agreement, authorization, or condition that may be required by the City for using the Right-of-Way in connection with operations on or in the Right-of-Way or public property, such as Right-of-Way use permits and approved traffic control plans.
2.1.4 This Franchise only conveys limited rights and interests as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest, nor does it provide the Franchisee with any representation as to any location of a City Right-of-Way or the nature of the City’s interest in any Right-of-Way. No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner’s consent, or upon any City, public or privately owned utility poles or conduits is granted herein.

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

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

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

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

a. Any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;
b. Any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

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

2.2 Term of Franchise.

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

2.3 Non-Exclusive.

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

2.4 Effect of Acceptance.

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

SECTION 3. GENERAL RIGHT OF WAY USE AND CONSTRUCTION.

3.1 Use of Rights-of-Way.

Franchisee shall not erect, install, construct, repair, replace, or maintain its Facilities in such a fashion as to unduly burden the present or future use of the City’s Rights-of-Way. If the City in its reasonable judgment determines that any portion of the Franchisee’s Facilities is an undue burden, City shall provide notice to Franchisee. Following reasonable advance written notice of not less than thirty (30) days, Franchisee at its expense shall modify its Facilities or take such other actions as the City may determine are in the public interest to remove or alleviate the burden, and Franchisee shall do so
within the time period established by the City. Franchisee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other appurtenances and equipment as are necessary to the provision of its Communications Services.

3.2 Construction or Alteration.

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

3.3 Non-Interference.

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

3.4 Consistency with Designated Use.

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

3.5 Undergrounding.

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

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

b. When all other existing utilities, except electrical facilities, have been placed underground.
c. When Franchisee is unable to get pole attachment permits from pole owners;

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

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

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

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

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

3.5.4 Franchisee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except that drops from pedestals to Franchisee’s customer’s homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from
environmental factors. Franchisee shall use and construct, in conjunction and
coordination with other utility companies or providers, common trenches for
underground construction wherever available and possible.

3.6 Joint Trenching

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

3.7 Maintenance and Restoration.

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

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

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

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

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

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

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

3.8.5 City's Immediate Repair. If in the sole but reasonable opinion of the City's Public Works Director, damage to the public Right-of-Way resulting from damage or disturbance during the construction, operation, or maintenance of the Franchisee's Facilities requires immediate repair, the City may perform such repairs, at the cost of the
3.8.6 Procedure for removal of Facilities. Franchisee shall not remove any underground Facilities which requires trenching or other opening of the streets along the Facilities to be removed, except as hereinafter provided. Franchisee may remove any underground Facilities from the streets which have been installed in such a manner that it can be removed without trenching or other opening of the streets. Subject to applicable law, Franchisee shall remove, at its sole cost and expense, any underground Facilities by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Usable underground cable and conduit in the streets that is not removed as required in this subsection shall be deemed abandoned and title thereto shall vest in the City at no cost to the City.

3.9 Movement of Buildings.

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

3.10 City Right to Inspect and Cost Recovery.

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

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

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

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

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

3.11.5 After underground construction is complete, Franchisee shall provide the
City with accurate copies of as-built plans and maps stamped and signed by a
professional land surveyor or professional engineer in a form and content acceptable to
the Public Works Director or his/her designee. Following any aerial construction,
Franchisee shall provide the City with accurate copies of as-built plans and maps
prepared by Franchisee’s design and installation contractors. These plans and maps shall
be provided at no cost to the City, and shall include hard copies and digital files in
Autocad or other industry standard readable formats that are acceptable to the City and
delivered electronically. Franchisee shall also provide such maps within ten (10) days
following a request from the City. Further, if Franchisee’s actual construction deviates
materially from its submitted construction plans as reasonably determined by the City,
Franchisee shall provide the City with these maps. Franchisee shall warrant the accuracy
of maps and as-builts provided to the City.

3.12 Notice of Construction.

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

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

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

3.13 Safety Requirements.

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

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

3.14 Permits Required for Construction.

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

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

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

3.15 Tree Trimming.

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

3.16 Temporary Disconnection.

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

3.17 Access to Open Trenches.

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

3.17.2 The City shall use reasonable efforts to include the Franchisee in any
planning process within the City, to exercise reasonable efforts to include as a condition of
issuing a permit for open trenching to any utility or developer that (a) the utility or
developer give the Franchisee at least ten- (10) business days' advance written notice of
the availability of the open trench and (b) that the utility or developer provide the
Franchisee with reasonable access to the open trench. The City's non-compliance with this Section shall not be a breach or default by the City of this Franchise.

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

SECTION 4. PAYMENTS TO CITY.

4.1 Recovery of Costs.

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

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

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

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

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

4.3 Acceptance of Payment.

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

4.4 Audits and Examinations.

4.4.1 No more than twice per calendar year, the City may arrange with Franchisee for an independent audit, on a non-contingent fee basis, of the Franchisee's books and records to verify the accuracy of any payments made to the City under this Franchise, including but not limited to any utility tax. Any additional identified amount due to the City shall be paid within fourteen (14) calendar days of the City submitting an...
undisputed invoice for such sum, and if such sum shall exceed five percent (5%) of the
total payment which the audit determines should have been paid for any calendar year,
the Franchisee shall pay the City's reasonable out of pocket costs of the audit.

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

4.5 Interest and Penalties on Late Payments.

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

4.6 Taxes and Assessments.

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

SECTION 5. Franchise renewal, extension and transfer.

5.1 Transfer of Franchise.

5.1.1 This Franchise may not be assigned or transferred (including by operation
of law) without the written approval of the City, which approval shall not be
unreasonably withheld, conditioned or delayed. Any transactions that singularly or
collectively result in a change of more than fifty percent (50%) of the: ultimate ownership
or working control of Franchisee, ownership or working control of the Facilities,
ownership or working control of affiliated entities having ownership or working control
of Franchisee or of the Facilities, or of control of the capacity or bandwidth of
Franchisee's Facilities, shall be considered an assignment or transfer requiring City
approval. Approval for a transfer or change of control of this Franchise shall comply
with the requirements of MCMC Chapter 12.16 as now exists and is hereafter amended.
The Franchisee shall reimburse the City for all direct and indirect costs and expenses
reasonably incurred by the City in considering a request to transfer or assign this
Franchise. Notwithstanding the above, Franchisee may, upon thirty (30) days' written notice to the City, freely assign this Franchise in whole or in part to an Affiliate, including without limitation a parent or subsidiary organization or as part of any corporate financing, reorganization, or refinancing; provided, that the assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate the Franchisee's Facilities for the purpose of providing Communications Services. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such approval shall not be required unless and until the secured party elects to realize upon the collateral. No assignment or transfer of this Franchise shall be deemed to occur based on the public trading of the Franchisee's stock.

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

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

5.2 Franchise Renewal.

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

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

a. Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or
b. The City may order the removal of any and all Facilities at Franchisee’s sole cost and expense consistent with Section 6.4.

SECTION 6. VIOLATIONS; ENFORCEMENT.

6.1 Enforcement.

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

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

6.2 Franchisee Contests Non-Compliance.

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

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

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

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

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

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

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

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

6.3 Failure to Timely Cure.

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

6.4 Removal.

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

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

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

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

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

6.5 Unauthorized Facilities.

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

a. Upon termination of this Franchise;

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

c. If the Facility was constructed or installed without the prior issuance of a required Right-of-Way work permit.
d. If Facility was constructed or installed at a location not permitted by this Franchise or permit.

SECTION 7. Financial and Insurance Requirements.

7.1 Indemnity and Hold Harmless.

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

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

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

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

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

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

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

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

7.2 Insurance.

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

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

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

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

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

d. Worker’s Compensation coverage as required by the Industrial
Insurance laws of the State of Washington.

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

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

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

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

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

7.2.8 As of the effective date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee must provide the City with thirty (30) days advanced written notice of its intent to self-insure. In order to self-insure, Franchisee shall comply with the following: (i) provide a written attestation that Franchisee possesses the necessary amount of unencumbered financial assets to support the financial exposure of self-insurance, as evidenced by an outside auditor's review of Franchisee's financial statements; (ii) the City, upon request, may review Franchisee's financial statements; (iii)
Franchisee is responsible for all payments within the self-insured retention; and (iv) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise. These requirements may be modified by written amendment executed by both parties.

7.3 Security Fund.

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

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

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

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

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

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

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

SECTION 8. Miscellaneous terms

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

8.2 Severability.

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

8.3 Notice.

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

CITY OF MILL CREEK: FRANCHISEE:
City of Mill Creek Zayo Group, LLC
City Clerk Attn: General Counsel
15728 Main Street 1805 29th Street
Mill Creek, WA 98012 Boulder, CO 80301

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

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

8.4 Entire Franchise.

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

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

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

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

8.6 Reserved Rights.

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

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

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

8.7 Jurisdiction

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

8.8 No Third Party Beneficiaries.

There are no third party beneficiaries to this Franchise.

8.9 Franchise Acceptance.

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

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

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

APPROVED:

________________________

MAYOR PAM PRUITT

ATTEST/AUTHENTICATED:

________________________

CITY CLERK

APPROVED AS TO FORM:

________________________

CITY ATTORNEY SCOTT MISSALL

FILED WITH THE CITY CLERK: ____________

PASSED BY THE CITY COUNCIL: ____________

PUBLISHED: ____________

EFFECTIVE DATE: ____________

ORDINANCE NUMBER: ____________
FRANCHISEE ACCEPTANCE

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

ACCEPTED this _____ day of ________________, ______.

Zayo Group, LLC

______________________________
Name:
Title:
Date: June 13, 2017

A/P Check Batches

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<td>56998</td>
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VOIDED CHECKS

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CLAIMS APPROVAL

We, the undersigned Finance/Audit Committee of the City of Mill Creek, recommend approval of check numbers 56998 through 57067, and EFT Debit in the amount of $135,451.20.

We recommend approval of the above stated amount with the following exceptions:

Councilmember

Finance Director

Councilmember

City Manager
Payment Details Report

Company: City of Mill Creek
Requester: Kottke, Sandy
Run Date: 05/18/2017 11:16:47 AM CDT

Domestic High Value (Wire)
Payment Category: Urgent/Wire

Status: Confirmed by Bank
Transaction Number: 175IC1325D6Y1917

Template Name: Fleet
Template Code: Fleet

Debit Account Information
Debit Bank: 125000024
Debit Account: 000000104700
Debit Account Name: Treas Checking
Debit Currency: USD

Beneficiary Details
Beneficiary Name: 76 Fleet WEX BANK
Beneficiary Address: 97 Darling Ave.
Beneficiary City: Portland
Beneficiary Postal Code: 000060104700
Beneficiary Country: US - United States of America
Beneficiary Account: 4530508
Beneficiary Bank ID: 071000288
Beneficiary Bank: BMO HARRIS BANK NA
Beneficiary Address: 111 W MONROE ST
Beneficiary City: CHICAGO
Beneficiary Country: US - United States of America
Beneficiary Phone: 000060104700
Beneficiary Email:

Payment Details
Credit Currency: USD
Credit Amount: 3,066.68

Optional Information
Sender’s Reference Number: 175IC1325D6Y1917

Beneficiary Information: 76 FLEET
Acct 0201 00 105915 3
City of Mill Creek

Additional Routing
Intermediary Bank ID:
Receiver Information:

Control Information
Input: sankotike
Approved: sankotike
Initial Confirmation: WTX:2017051800269342
Confirmation #: FEDR:20170518B687HU1R007678

Input Time: 05/18/2017 11:13:44 AM CDT
Time: 05/18/2017 11:16:10 AM CDT

Value Date: 05/18/2017
Your return and payment have been submitted. For easy reference, print this page and retain it with your tax records.

Confirmation

Confirmation Number 20780712
Tax Registration Number 600598011
Reporting Period 04/2017
Payment Type EFT Debit
Date and Time Submitted 5/24/2017 10:12:24 AM
Date of Transfer 05/26/2017
Payment Amount $1,856.81
Person Completing Return Sandy Kottke
Person Authorizing Payment Sandy Kottke

For Assistance Call:
1-877-345-3353
### Accounts Payable

**Checks by Date - Detail by Check Date**

**User:** Jodieg  
**Printed:** 6/7/2017 1:28 PM

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**AP Checks by Date - Detail by Check Date (6/7/2017 1:28 PM)**

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**AGENDA ITEM #1.**

Approval of Checks #56998 through #57067 and ACH Wire Transf...
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AP Checks by Date - Detail by Check Date (6/7/2017 1:28 PM)
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AP Checks by Date - Detail by Check Date (6/7/2017 1:28 PM)
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AP Checks by Date - Detail by Check Date (6/7/2017 1:28 PM)
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Total for 5/30/2017: 128,555.27
Date: June 13, 2017

### Payroll Check Batches

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### Voided Checks

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**CLAIMS APPROVAL**

We, the undersigned Finance/Audit Committee of the City of Mill Creek, recommend approval of the ACH Automatic Deposit checks and ACH Wire Transfers in the amount of $441,500.02.

We recommend approval of the above stated amount with the following exceptions:

---

Councilmember

Finance Director
Rebecca C. Polivoda

Councilmember

City Manager
| AGENDA ITEM # | Payroll and Benefit ACH Payments in the Amount of $441,500.00 | Page 121 of 134 |

### Payroll and Benefit ACH Payments in the Amount of $441,500.00

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**Statistical Summary**

- **Company:** A/DV - City of Mill Creek Service Center
- **Pay Date:** 05/25/2017
- **Week 1:** 5/22/2017 - 5/28/2017
- **Pay Date:** 05/25/2017
- **Week 2:** 6/5/2017 - 6/11/2017
- **Pay Date:** 05/22/2017
- **Week 3:** 6/12/2017 - 6/18/2017
- **Pay Date:** 05/22/2017
- **Week 4:** 6/19/2017 - 6/25/2017
- **Pay Date:** 05/15/2017
- **Week 5:** 6/26/2017 - 7/2/2017
- **Pay Date:** 05/15/2017
- **Week 6:** 7/3/2017 - 7/9/2017
- **Pay Date:** 05/15/2017
- **Week 7:** 7/10/2017 - 7/16/2017
- **Pay Date:** 05/15/2017
- **Week 8:** 7/17/2017 - 7/23/2017
- **Pay Date:** 05/15/2017
- **Week 9:** 7/24/2017 - 7/30/2017
- **Pay Date:** 05/15/2017
- **Week 10:** 7/31/2017 - 8/6/2017
- **Pay Date:** 05/15/2017
- **Week 11:** 8/7/2017 - 8/13/2017
- **Pay Date:** 05/15/2017
- **Week 12:** 8/14/2017 - 8/20/2017
- **Pay Date:** 05/15/2017
- **Week 13:** 8/21/2017 - 8/27/2017
- **Pay Date:** 05/15/2017
- **Week 14:** 8/28/2017 - 9/3/2017
- **Pay Date:** 05/15/2017
- **Week 15:** 9/4/2017 - 9/10/2017
- **Pay Date:** 05/15/2017
- **Week 16:** 9/11/2017 - 9/17/2017
- **Pay Date:** 05/15/2017
- **Week 17:** 9/18/2017 - 9/24/2017
- **Pay Date:** 05/15/2017
- **Week 18:** 9/25/2017 - 10/1/2017
- **Pay Date:** 05/15/2017
- **Week 19:** 10/2/2017 - 10/8/2017
- **Pay Date:** 05/15/2017
- **Week 20:** 10/9/2017 - 10/15/2017
- **Pay Date:** 05/15/2017
- **Week 21:** 10/16/2017 - 10/22/2017
- **Pay Date:** 05/15/2017
- **Week 22:** 10/23/2017 - 10/29/2017
- **Pay Date:** 05/15/2017
- **Week 23:** 10/30/2017 - 11/5/2017
- **Pay Date:** 05/15/2017
Payment Approval Confirmation

Company: City of Mill Creek
Requester: Kottke, Sandy
Run Date: 05/25/2017 10:25:08 AM CDT

Domestic High Value (Wire)
Payment Category: Urgent/Wire

Status: Confirmed by Bank
Transaction Number: 175PB2125ER890B60

Debit Account Information
Debit Bank: 
Debit Account: 
Debit Account Name: Treas Checking
Debit Currency: USD

Beneficiary Details
Beneficiary Name: MATRIX TRUST COMPANY
Beneficiary Address: NA
Beneficiary City: NA
Beneficiary Postal Code: NA
Beneficiary Country: US - United States of America

Beneficiary Account: 2659741695
Beneficiary Bank ID: 2659741695
Beneficiary Bank Name: MANUFACTURERS AND TRADERS TR C
Beneficiary Address: ONE M AND T PLAZA, 15TH FL
Beneficiary City: BUFFALO
Beneficiary Postal Code: NA
Beneficiary Country: US - United States of America

Beneficiary Email: 
Beneficiary Mobile Number:

Payment Details
Credit Currency: USD
Credit Amount: 29,328.19

Value Date: 05/25/2017

Optional Information
Sender's Reference Number: CITY MILL CREEK

Beneficiary Information: City of Mill Creek n3177e

Additional Routing
Intermediary Bank ID: 
Receiver Information:

Control Information
Input: sankottke
Approved: sankottke
Initial Confirmation: WTX.2017052500244457
Confirmation #: FEDR.201705259967HU1R006177

Input Time: 05/25/2017 10:21:36 AM CDT
Time: 05/25/2017 10:24:47 AM CDT

Bank of America
Merrill Lynch
### Batch Summary Report by ID Number

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<th>City of Mill 01</th>
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<th>Amount</th>
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**Total Amount in Batch**

- Debits: $0.00
- Credits: $766.16
- Prenotes: $0.00

**Total Count in Batch**

- 0
- 1
- 0

**Grand Total Amount**

- Debits: $0.00
- Credits: $766.16
- Prenotes: $0.00

**Grand Total Count**

- 0
- 1
- 0

Payment Approval Confirmation

Company: City of Mill Creek  
Requester: Kotlke, Sandy  
Run Date: 05/25/2017 10:25:08 AM CDT

**Domestic High Value (Wire)**  
**Payment Category:** Urgent/Wire

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**Debit Account Information**

- **Debit Bank:**  
- **Debit Account:**  
- **Debit Account Name:** Treas Checking  
- **Debit Currency:** USD

**Beneficiary Details**

- **Beneficiary Name:** ICMA RC  
- **Beneficiary Address:** P.O. Box 64553  
- **Beneficiary City:** Baltimore  
- **Beneficiary Postal Code:** 21264-4553  
- **Beneficiary Country:** US - United States of America

- **Beneficiary Account:**  
- **Beneficiary Bank ID:**  
- **Beneficiary Bank:** MANUFACTURERS AND TRADERS TR C  
- **Beneficiary Information:** City of Mill Creek 302029

**Payment Details**

- **Credit Currency:** USD  
- **Credit Amount:** 632.70  
- **Value Date:** 05/25/2017

**Optional Information**

- **Sender's Reference Number:** 302029

**Additional Routing**

- **Intermediary Bank ID:**

- **Receiver Information:**

**Control Information**

- **Input:** sankottke  
- **Approved:** sankottke  
- **Initial Confirmation:** WTX:2017052500244468  
- **Input Time:** 05/25/2017 10:20:28 AM CDT  
- **Time:** 05/25/2017 10:24:47 AM CDT
**ACCOUNT SUMMARY** - contains all changes to this account as of 06/05/2017 04:24:43 PM

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If you have questions concerning your billing, please contact the Association of Washington Cities Office at (800) 562-8981 or (360) 753-4137 or Northwest Administrators, Inc. at (206) 726-3345.

MAIL PAYMENT TO: If payment is made by check, please print a copy of this page and mail it with your payment to the following address.

ASSOCIATION OF WASHINGTON CITIES
PO BOX 84303
SEATTLE, WA 98124-5603
## Statistical Summary

**Company:** AOW - City Of Mill Creek Service Center: 0076 Pacific North West  
**Status:** Under Review  
**Week:** 23  
**Pay Date:** 06/09/2017  
**Run Time/Date:** 19:33:55 PM EDT 06/05/2017

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<td>Earned Income Credit Advances</td>
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**Total Liability:** 164,998.83

---

StatisticalSummary 06’017  
Page 1 of 1
CALL TO ORDER AND PLEDGE OF ALLEGIANCE

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

ROLL CALL

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

Councilmembers Absent: Mayor Pro Tem Holtzclaw was excused from the meeting for personal reasons at 6:46 p.m. and returned at 7:31 p.m.

AUDIENCE COMMUNICATION

A. Ms. Carmen Fisher, candidate for City Council, addressed the Council with a request for a proclamation declaring the month of June as Lesbian, Gay, Bi-sexual and Transgender (LGBT) Pride Month.

PRESENTATIONS

B. Girl Scouts Silver Award Recipient
(Rebecca C. Polizzotto, City Manager)
Silver Award recipient Katie Armstrong was unable to attend the meeting due to a scheduling conflict so a certificate acknowledging her achievement was mailed to her on behalf of the Council.

C. Mill Creek Youth Advisory Board Senior Recognition
(Rebecca C. Polizzotto, City Manager)
City Manager Polizzotto introduced Recreation Coordinator Kristen Rasmussen who recognized Youth Advisory Board seniors for their commitment and dedication this year. A presentation was provided which illustrated the many projects and events this Board contributed to this past year.
D. Employee Milestone Presentation
(Rebecca C. Polizzotto, City Manager)
City Manager Polizzotto recognized Administrative Assistant Sarah Steepy for 5 years, Executive Assistant Gina Pfister for 5 years and Police Officer Kyle Hughes for 10 years of excellent service to the City of Mill Creek.

E. Snohomish County Tourism Bureau Annual Report
(Amy Spain, Executive Director)
City Manager Polizzotto introduced Executive Director Amy Spain who presented information regarding the Snohomish County Tourism Bureau's Annual Report. Sports Development Director Tammy Dunn elaborated on major events coming up and those being considered for 2018.

OLD BUSINESS

F. Presentation and Discussion of Proposed Ordinance and Corresponding Policy/Procedure Governing the Adoption of Uniform City Policies and Procedures
(Rebecca C. Polizzotto, City Manager)
City Manager Polizzotto presented follow up information regarding the proposed ordinance to amend and restate Mill Creek Municipal Code Chapter 1.24. City Attorney Scott Missall reviewed the sections discussed at the May 2 Council meeting and provided an updated version with the requested clarification for Council review and discussion.

Councilmember Cavaleri made a motion to approve Ordinance #2017-815, AN ORDINANCE OF THE CITY OF MILL CREEK, WASHINGTON, AMENDING AND RESTATING MILL CREEK MUNICIPAL CODE CHAPTER 1.24, ADOPTION OF UNIFORM POLICIES AND ADMINISTRATIVE PROCEDURES, TO REVISE AND UPDATE THE PROCEDURES AND REQUIREMENTS FOR ADOPTION, MAINTENANCE AND PUBLICATION OF CITY POLICIES; AND ESTABLISHING AN EFFECTIVE DATE. Councilmember Kelly seconded the motion. The motion passed unanimously.

NEW BUSINESS

G. Selection of City of Mill Creek Voting Delegates for AWC 2017 Annual Business Meeting
(Rebecca C. Polizzotto, City Manager)
The City Manager presented information regarding the AWC 2017 Annual Business Meeting and advised that Mayor Pruitt, Councilmember Todd, herself and a couple of other staff members are currently scheduled to attend.

Councilmember Michelson made a motion to appoint Mayor Pruitt, Councilmember Todd and City Manager Polizzotto as the voting delegates for the AWC 2017 Annual Business Meeting. Councilmember Cavaleri seconded the motion. The motion passed unanimously with Mayor Pro Tem Holtzclaw temporarily absent.

STUDY SESSION

H. Telecommunications Franchise Agreement with Zayo Group, LLC
(Rebecca C. Polizzotto, City Manager)
I. Telecommunications Franchise Agreement with Astound Broadband, LLC, DBA Wave (Rebecca C. Polizzotto, City Manager)

J. Telecommunications Franchise Agreement with MCIMetro Access Transmission Services DBA Verizon Access Transmission Services (Rebecca C. Polizzotto, City Manager)

City Manager Polizzotto introduced Attorney Elana Zana from Ogden, Murphy and Wallace who presented information regarding three telecommunication franchise agreements for Council discussion. Ms. Zana confirmed for the Council that all three franchise agreements are substantially the same and require each company to follow all Mill Creek Municipal Codes. The Council requested this item be added to the Consent Agenda for the June 13 Council meeting with the caveat that if Mayor Pro Tem Holtzclaw had questions upon his return, staff would reschedule the item and invite Ms. Zana and the three franchise representatives back for further discussion.

Franchise Presentation
(Elana Zana, Attorney, Ogden Murphy Wallace, PLLC)

K. Ordinance Amending the Mill Creek Municipal Code to Revise and Update the Requirements and Functions of the Art & Beautification Board (Rebecca C. Polizzotto, City Manager)

City Manager Polizzotto presented information regarding the proposed amendments.

Councilmember Michelson made a motion to approve Ordinance #2017-816, AN ORDINANCE OF THE CITY OF MILL CREEK, WASHINGTON, AMENDING AND RESTATING CHAPTER 4.30 OF THE MILL CREEK MUNICIPAL CODE TO REVISE AND UPDATE THE REQUIREMENTS, FUNCTIONS AND ATTRIBUTES OF THE ART AND BEAUTIFICATION BOARD; AND ESTABLISHING AN EFFECTIVE DATE. Councilmember Todd seconded the motion. The motion passed unanimously with Mayor Pro Tem Holtzclaw temporarily absent.

L. Ordinance Amending the Mill Creek Municipal Code to Revise and Update the Requirements and Functions of the Park & Recreation Board (Rebecca C. Polizzotto, City Manager)

City Manager Polizzotto presented information regarding the proposed amendments for Council discussion.

Councilmember Todd made a motion to approve Ordinance #2017-817, AN ORDINANCE OF THE CITY OF MILL CREEK, WASHINGTON, AMENDING AND RESTATING CHAPTER 4.26 OF THE MILL CREEK MUNICIPAL CODE TO REVISE AND UPDATE THE REQUIREMENTS, FUNCTIONS AND ATTRIBUTES OF THE PARK AND RECREATION BOARD; AND ESTABLISHING AN EFFECTIVE DATE. Councilmember Michelson seconded the motion. The motion passed unanimously with Mayor Pro Tem Holtzclaw temporarily absent.

CONSENT AGENDA

M. City Council Meeting Minutes of May 23, 2017

Councilmember Cavalieri made a motion to approve the consent agenda. Councilmember Kelly seconded the motion. The motion passed unanimously with Mayor Pro Tem Holtzclaw temporarily absent.

June 6, 2017 REGULAR COUNCIL MEETING MINUTES
REPORTS

N. Mayor/Council
Mayor Pruitt reported planning to attend the Annual Master Builder’s Crab Feed in Mukilteo this Thursday and invited other council members to attend as well.

Councilmember Cavaleri reported that the Parks and Recreation board meeting is cancelled for this week.

Councilmember Todd shared that Community Transit is now accepting applications for their Van GO program where well-maintained vans are granted to qualifying non-profit organizations throughout Snohomish County. He offered to contact the Northshore and Mill Creek Senior Centers to make sure they were aware of the program.

Councilmember Todd reminded the Council that the City Manager’s second annual evaluation was due.

O. City Manager
- Council Planning Schedule
The City Manager asked Council to contact Gina with any upcoming vacations so she may be sure we have a quorum for Council meetings through the summer. She also asked and the Council verified that Council meetings would not be held in the month of August.

Councilmember Todd asked the City Manager to add a discussion on the CIP to the Council Planning Schedule. City Manager Polizzotto reported working with Finance and Administration Director Lauerman on CIP policies which she planned to bring to Council in an upcoming work session to get the framework established. She then intended to recommend starting the process with the Council with a review of the storm water process. In preparation she has authorized staff to work with a consultant to review the current process and determine a priority project list as well as guidelines for future work. Once the consultant’s report is received she will advise Council of a time frame for their first discussion.

AUDIENCE COMMUNICATION

P. Ms. Barb Heidel addressed the Council regarding her very positive experience volunteering in the Memorial Day Parade with the Mill Creek Police Department as a member of the Police Citizens Academy.

RECESS TO EXECUTIVE SESSION

(Confidential Session of the Council)

Q. The meeting recessed to executive session at 7:50 p.m. for up to 40 minutes, which was subsequently extended. No action was taken.
- Discuss potential litigation pursuant to RCW 42.30.110 (1)(i)

At 8:30 p.m., Councilmember Michelson made a motion to extend the meeting to 9:00 p.m. Councilmember Cavaleri seconded the motion. The motion passed unanimously.

June 6, 2017 REGULAR COUNCIL MEETING MINUTES
RECONVENE TO REGULAR SESSION

The meeting reconvened to regular session at 8:44 p.m.

ADJOURNMENT

With no objection, Mayor Pruitt adjourned the meeting at 8:44 p.m.

________________________________________
Pam Pruitt, Mayor

________________________________________
Peggy Lauerman, City Clerk

June 6, 2017 REGULAR COUNCIL MEETING MINUTES
Tentative Council Meeting Agendas
Subject to change without notice
Last updated: June 9, 2017

June 27, 2017
(Agenda Summary due June 13)
- Eagle Scout Recipient – Edan Ybarra
- Presentation: Pianos on Main
- North Pointe Park Construction Contract
- North Pointe Park name recommendation
- Public Safety Presentation
  o Body Camera Pilot Project
  o Internet Exchange Safe Location Program
  o Traffic Unit
- Reports:
  o Festival Update

July 11, 2017
(Agenda Summary due June 27)
- Presentation: Code Enforcement Updates
- Rucker Building Quit Claim Deed
- Work Session:
  o Code Revision – Repeal of Board of Appeals/Adjustment

July 25, 2017
(Agenda Summary due July 11)
- Presentation: Sno Isle Library Update
- Traffic Calming Manual
- Work Session: Draft City Code & Policy – Public Records Act Compliance
- Reports
  o Twitter/Facebook Update

Work in Progress - Upcoming Agenda Items
- City Hall North HVAC Control System Replacement Contract
- Fire Contract
- Public Works Shop Design
- Development code change to allow redevelopment along Mill Creek Blvd/North Creek
- SnoCOM Consolidation Updates
- SERS Radio Acquisition Updates
- Partnerships with Everett School District
- Council Chambers Configuration
35th Avenue SE Reconstruction Update
As of June 7, 2017

Overview
35th Avenue SE is a three-lane minor arterial in Mill Creek that carries approximately 15,000 vehicles per day. The road was widened by Snohomish County in 2003 by using lightweight fill on top of a large peat deposit. The road has been continually settling.

Reconstruction Project
The City is undertaking a reconstruction project to fix the road between 141st Street SE and 144th Street SE to eliminate flooding and associated road closures.

Work includes driving approximately 500 pin-piles through the peat into good bearing soil, constructing a concrete slab on top of the pilings, and then reconstructing and elevating the roadway on top of lightweight concrete fill. The project will raise the road elevation up to four feet above the existing roadway elevation.

The project also includes installing a 24-inch pipe above the existing Penny Creek culverts to increase water conveyance capacity under the road during large rainfall events.

In addition, the work includes treating stormwater from the roadway, which currently flows directly into the adjacent wetland without any treatment. Water quality and the method of distribution into the surrounding wetlands will be improved. Fish and wildlife will indirectly benefit from the improved water quality resulting from stormwater runoff treatment.

The width and alignment of the roadway will not change.

Design Phase
On February 6, 2014, the City approved a contract agreement for professional design services with KPFF Engineers in the amount of $423,223.00 to design and prepare construction documents related to the 35th Ave SE reconstruction project. The agreement expiration date was June 30, 2015.

The scope of work and services for the project include preparation of design bid documents, meetings, QA/QC review, public outreach, geotechnical analysis, survey, site reconnaissance, and flood review and analysis, structural and roadway design, hydraulics report, stormwater pollution prevention plan, coordination with utility companies.

On December 4, 2014, the City signed addendum no. 1 to the contract and extended the design agreement completion date to December 31, 2015, and increased the contract amount by $36,529 to a maximum of $459,752.00. Additional services included recommended
alternative for the culvert replacement design which included fish passage design memorandum, and structural design for the removal panels spanning the Penny Creek Culverts.

On April 13, 2015, the City signed addendum no. 2 to the contract and increased the contract amount by $10,944 to a maximum of $470,696.00. Additional services included tasks for environmental permitting and coordination for permits such as state environmental policy act (SEPA), hydraulic project approval (HPA), grading permit, biological evaluation, and other state permits.

On November 6, 2015, the City signed addendum no. 3 to the contract and extended the design agreement completion date to December 31, 2016. The contract amount did not change. The contract scope of services amended certain design tasks such as supplemental geotechnical analysis, civil and structural design, special provisions, construction estimate, and environmental permitting.

On November 14, 2016, the City signed addendum no. 4 to the contract and extended the design agreement completion date to December 31, 2017. The contract amount did not change.

As of May 2017, KPFF design costs are $423,928. Remaining design funds are $47,767.11. Project design is 95% complete. Project completion is pending a US Army Corp of Engineers permit approval and a final design review by staff.

Construction Cost
The total cost is estimated at approximately $5.5 million.

The State Department of Transportation office has included a $4 million funding package for this project. This funding will become available in 2017.

Staff will apply for a construction grant through the Washington State Transportation Improvement Board (TIB). Grant applications are due by August 2017, and grant awards will be announced after the November 17, 2017 board meeting.

The remaining funding will be provided through the City's Real Estate Excise Tax Fund.

Timing
The County Seattle Hill Road project between 35th Avenue SE and 132nd Street SE is expected to wind down and will serve as the detour route for our project.

Reconstruction is projected to begin in early spring 2018 in order to coordinate with the planned Snohomish County project to widen 35th Ave SE between Seattle Hill Road and 180th St SE since both projects will be under construction at the same time. Our 35th Ave construction project will take approximately eight months to complete.

Staff will advertise for and hire a consultant to perform inspection and construction management services by September 2017.

Construction may occur between 7 a.m. and 9 p.m. Monday through Friday, or between 8 a.m. and 9 p.m. on weekends. Equipment is anticipated to run during normal working hours of 7 a.m. to 5 p.m. Monday through Friday for the majority of the project.