McCleary City Council
Agenda

January 11th- 6:30 PM

Flag Salute					
Roll Call: ___Pos. 1- Orffer, ___ Pos. 2-Richey , ___ Pos. 3- Peterson, ___ Pos. 4- Blankenship, ___ Pos. 5- Ator					
Mayor Comments		Renee Jensen- Jan. 25th			
Public Comment					
Executive Session					
Minutes	**Tab A**		Introduction	**X** Action	**X**
Approval of Vouchers			Introduction	**X** Action	**X**
Purchase Orders					
Staff Reports	**Tab B**	Dan Glenn			
	Tab C	Todd Baun			
	Tab D	Staff Reports			
Old Business					
New Business	**Tan E**	Equipment Trailer Purchase			
	Tab F	Gutter Repair Bid			
	Tab G	Work Order/Asset Management software			
	Tab H	Wave Broadband			
Ordinances	**Tab I**	FEMA Ordinance update			
Resolutions	**Tab J**	Resolution honoring Chief George Crumb			
	Tab K	Light and Power Privacy Policy			

Mayor Council Comments
Public Comments
Executive Session
Adjournment or Recess Meeting

Please turn off Cell Phones- Thank you

CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, December 14, 2016

ROLL CALL AND FLAG SALUTE	Councilmembers Orffer, Richey, Peterson, Blankenship, and Ator were in attendance.
ABSENT	None.
STAFF PRESENT	Present at the meeting were Todd Baun, Wendy Collins, Chief Blumer, Officer Sample, Jon Hinton and Dan Glenn.
PUBLIC HEARING	None.
EXECUTIVE SESSION	At 6:30 pm Mayor Schiller called for an executive session to not exceed fifteen minutes to discuss the FOP Contract per RCW 42.30.140(4)(a). The executive session ended at 6:45 pm.
MINUTES APPROVED	**It was moved by Councilmember Ator, seconded by Councilmember Peterson to approve the minutes from the November 9, 2016 meeting. Motion Carried 5-0.**
VOUCHERS	Accounts Payable vouchers/checks approved were 41923 - 41991 including EFT's in the amount of $155,322.19 and 41992 - 42038 in the amount of $55,435.15. Payroll checks approved were 41896 - 41922 including EFT's in the amount of $149,581.27. Bank reconciliation for November 2016. **It was moved by Councilmember Orffer, seconded by Councilmember Ator to approve the vouchers. Motion Carried 5-0.**
MAYOR'S COMMENTS	None.
PUBLIC COMMENT	None.
CITY ATTORNEY REPORT	Dan Glenn provided a written report for the Council and is available to address any questions.
DIRECTOR OF PUBLIC WORKS REPORT	Todd Baun provided information to the Council regarding a new long plat subdivision proposal located north of the City of McCleary on the Elma Hicklin Road in the SE Quarter of the NW Quarter of the NE Quarter of the SW Quarter of Section 2, Range 5 West, Township 18 North Grays Harbor County. Any comments or concerns are due December 22, 2016.
PROJECT OVERRUN AUTHORIZATION	Pease and Sons has substantially completed the Wildcat lift station project. There were a couple overruns and a couple underruns, which will bring them right at the bid amount. They had to cut out the old ladder runs to get the base in, and put in new steel ladders, and there was an extremely bad leak allowing ground water to enter in at the lift station. Those two things cost $6,500. There was a bid item that was an underrun for $5,000, making the difference $1,500 for the total overrun. They need one more item to finish the job, which is a pump hoist, at a cost of $1,500. There is money in the budget for it. **It was moved by Councilmember Ator, seconded by Councilmember Orffer to authorize the $1,500 cost for the pump hoist. Motion Carried 5-0.**
POLICE CHIEF APPOINTMENT	Steven Blumer was hired on November 1, 2016 as the Interim Police Chief for the City of McCleary after Chief George Crumb retired. Mayor Schiller asked the Council to authorize the appointment of Mr. Blumer as the new Police Chief. **It was moved by Councilmember Blankenship, seconded by Councilmember Richey to appoint Steven Blumer as the Police Chief of McCleary. Motion Carried 5-0. Wendy Collins swore Chief Blumer in after the appointment.**

2017 ENGINEERING CONTRACT WITH GRAY & OSBORNE	The current contract between Gray & Osborne has expired. The City submitted a Request for Proposal for Engineering Services in October. The City received three responses and Todd Baun, along with four staff members, reviewed and scored each proposal and they all agreed Gray & Osborne was their top choice. The contract has a couple more changes and will be provided to the Council in January. **It was moved by Councilmember Ator, seconded by Councilmember Richey to authorize the Mayor to sign the contract after agreeing with the minor changes with Gray & Osborne for 2017 engineering services. Motion Carried 5-0.**
AMENDMENT NO.1 - GRAY & OSBORNE	Tabled until January 11, 2017 after the G & O contract has completed the minor changes and signed by the Mayor.
GREATER GRAYS HARBOR 2017 AGREEMENT	**It was moved by Councilmember Orffer, seconded by Councilmember Blankenship to authorize the Mayor to sign the 2017 annual Greater Grays Harbor Municipal Services Agreement at a cost of $1200.00. Motion Carried 5-0.**
DEFINITION ADDED TO ZONING CODE	Todd Baun was approached by Councilmember Blankenship requesting to add the definition of residential treatment facility to our zoning code and to also add the definition of hospital to the zoning code. If it's the Council's pleasure, it can be sent to the Hearing Examiner. **It was moved by Councilmember Ator, seconded by Councilmember Richey to refer the zoning definition change request to the Hearing Examiner on January 5, 2017. Motion Carried 5-0.**
POLICE VEHICLE PURCHASE AUTHORIZATION	Chief Blumer and Councilmember Blankenship found a police car that was fully-equipped for police operations at a reasonable cost. **It was moved by Councilmember Orffer, seconded by Councilmember Ator to approve the purchase of the 2012 Dodge Charger from the City of Lakewood in the amount of $9,171.50, including tax. Motion Carried 5-0.**
FRATERNAL ORDER OF POLICE CONTRACT	**It was moved by Councilmember Orffer, seconded by Councilmember Blankenship to approve the 2017 FOP contract. Motion Carried 5-0.**
RESOLUTION 692 LIGHT AND POWER RATES	**It was moved by Councilmember Ator, seconded by Councilmember Peterson to adopt Resolution 692 relating to rates to be charged for electrical service, establishing effective dates, and repealing Resolution 666. Resolution Adopted 5-0.**
RESOLUTION 693 SETTING FEES	**It was moved by Councilmember Orffer, seconded by Councilmember Richey to adopt Resolution 693 relating to public utilities, setting fees to be charged in the event of the rejection of a payment received by the City, setting forth conditions in relation to the termination of services thereof, and repealing Resolution 223. Resolution Adopted 5-0.**
RESOLUTION 694 DELEGATING AUTHORITY	**It was moved by Councilmember Blankenship, seconded by Councilmember Ator to adopt Resolution 694 in the matter of delegating to the Mayor and Director of Public Works authority to legally bind the City of McCleary for the sole purpose of requesting Federal reimbursement of certain expenditures. Resolution Adopted 5-0.**
PUBLIC COMMENT	Mayor Schiller took a moment to list all the projects and accomplishments each City department completed over the past year. The list was lengthy and Mayor Schiller wanted the public to know the impressive achievements by the City staff, which most residents are unaware of. He thanked all of the employees for their hard work and effort in keeping the City running. He stated that last week, the City had their exit meeting with the auditor and we received a clean and clear audit. Last year, we had a finding from the transfer of utility fund money and this year, we corrected the issue and received a clean bill of health. The Mayor gave special credit to Wendy Collins, Todd Baun, Lori Ann Hanson and Lindsay Blumberg for the great audit because, due to their effort, it was a major improvement from the past years. He said it felt good to sit with the auditor's and hear that we had such a completely clean audit. He closed by thanking the City Council for all of their hard work. He said they've had some heated debates but he believes that is what it's about. The Council worked together and accomplished a great deal this past year. Mayor Schiller wished everyone a Merry Christmas.
MEETING ADJOURNED	**It was moved by Councilmember Ator, seconded by Councilmembers Richey and Peterson to adjourn the meeting at 7:27 pm. The Council canceled the meeting scheduled for December 28, 2016. The next meeting will be Wednesday, January 11th, 2016 at 6:30 pm. Motion Carried 5-0.**

Approved by Mayor Brent Schiller and Clerk-Treasurer Wendy Collins.

MEMORANDUM

TO: MAYOR AND CITY COUNCIL, City of McCleary

FROM: DANIEL O. GLENN, City Attorney

DATE: January 6, 2017

RE: LEGAL ACTIVITIES as of JANUARY 11, 2017

THIS DOCUMENT is prepared by the City Attorney for utilization by the City of McCleary and its elected officials and is subject to the attorney-client privileges to the extent not inconsistent with laws relating to public disclosure.

1. **ASTOUND BROADBANK POLE RENTAL AGREEMENT**: The Council has previously approved the draft contract form. Astound is ready to move forward with the agreement. It is back before you this evening for formal approval. Also, for the question as to whether or not this type of matter can be treated as an administrative matter so long as the provisions are not changed. Thus, it would not come to you in the absence of a change but rather be treated like an application for water connection, etc.

Your direction would be appreciated.

2. **ELECTRICAL UTILITY PRIVACY POLICY**: The federal and state governments have mandated that electrical utilities, including municipal utilities such as McCleary, have in place a written policy setting for the terms and conditions under which customer utility records are protected and/or subject to provision upon request. I have prepared a draft resolution seeking to comply with that requirement. At this stage, it is under review by Mr. Baun, Mr. Nott, and Ms. Collins since all three will be involved in implementation. It is also being provided to you as part of the Packet so that you may commence

your review.

Upon confirmation of acceptance by the Wendy, Paul, and Todd, it will be back before you for formal consideration and action.

3. **ADMINISTRATIVE MATTERS**: Well, it is the first of the year as we all recognize. As a result, the historical pattern has been that during this first month or so you formally select the mayor pro tem and such committees as you desire are constituted.

A. SELECTION OF MAYOR PRO TEM: This is to be carried out pursuant to the provisions of RCW Chapter 35A.12. You have done it annually in the past unless a vacancy occurred during the year. The qualification is simple, the individual must be a member of the Council. The selection is made by a majority vote of the Council. The term the member would serve in the position is in your discretion. As noted, your pattern has been a one year term. However, if you so chose, it could be two years.

B. Council Committees: The number of committees you wish to have is within your discretion. At this stage, the primary committee has been the Finance Committee. To avoid "problems" with meetings triggering the Open Public Meetings Act notice requirements, membership should remain at no ore than two Council Members.

4. **FLOOD HAZARD MANAGEMENT ORDINANCE**; The federal and state governments have completed their mapping process which has concluded that limited areas within the City fit within the flood hazard zones. As a result, we have to have an updated compliant ordinance in place by February 3.

McCleary is one of the few cities in the County which is not a member of the Chehalis Valley Flood Authority. Thus, we have not had the direct assistance of their consultant, a benefit Oakville and Elma have had. Ms. Karen Wood-McGuiness, a staff member with FEMA, was assigned to work with the City. However, due to emergencies back east, she apparently has had restricted time. In any event when we did have contact with her she was very helpful in analyzing the current provisions which are contained in Chapter 15.12 of the

Code.

When the analysis came back, it basically would have required a total rewrite of the Chapter. My thought was that it would be simpler and likely less expensive to simply implement a modified version of one of the ordinances we have developed for the other cities, specifically Oakville's. While they have a far greater involvement percentage wise in terms of being subject to the mandates, by modifying the draft to fit us we will have in place a chapter which meets today's requirements and would continue to be applicable if the next modification of the mapping process broadens the area. I have suggested that approach to Todd and he concurs.

Thus, the following steps have been taken.

1. Environmental Review: As a result of a discussion during a work session of the Oakville Council which occurred with Mr. Wetmore, the consultant retained by the Authority, it was later determined that implementation requires an environmental review. With the assistance of material provided by Elma, Todd has completed that review, issued a DNS, and the comment time is basically up prior to the date of the next meeting.

2. Draft Ordinance: As indicated, I have taken the ordinance prepared for Oakville and modified so that it hopefully will be approved by Ms. Wood-McGuiness for use by us. As noted, its scope of possible application in terms of "zones" is greater than we have currently identified as being within the City. However, them available for possible use in the future is not a bad thing.

On area which has been of discussion is what I will characterize as the "three foot" issue. What that issue is basically relates to whether or not a variety of improvements must have construction which meets a standard of being at least at a "base flood elevation plus three feet." It is defined as follows:

"**Base Flood:** the flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the "100-year flood"). The area subject to the base flood is the Special Flood Hazard Area designated on Flood Insurance Rate Maps as Zones "A" or "AE."

As we all recognize from past events, the “100 year flood” occurs far more frequently than once every 100 years, likely as a result of increasing development in the flood plain.

At this stage I have not had the opportunity to review the Flood Insurance Rate Maps prepared for McCleary to determine if we have land within these specific zones. However, if we do now or later, facilities subject to the three foot requirement are subject of receiving flood insurance from the federal agency at a much lower rate than something constructed after adoption of this ordinance and not in compliance with that requirement. It has been made clear that enactment of this requirement is discretionary and is applicable only to actions of construction occurring after the adoption of this ordinance. For instance, I have been told that the County has chosen to not adopt the three foot rule as mandatory perhaps with the concept of letting the original permit applicant make the decision without a mandate since there will be an additional cost of construction in most situations.. However, once the decision is made to not do so, any successor in ownership will have to pay the increased insurance rate.

The ordinance draft is lengthy and will be review by Mr. Baun and Ms. Wood-McGuiness prior to the next meeting. It will be subject to initial introduction tonight and, as modified by the suggestions of the six of you, Todd and Ms. Wood-McGuiness on the agenda at the next meeting for adoption.

As always, this is not meant to be all inclusive. If you have any questions or comments, please direct them to me.

DG/le

Tab C

STAFF REPORT

To: Mayor Schiller
From: Todd Baun, Director of Public Works
Date: January 6, 2017
Re: Current Non-Agenda Activity

Public Hearings Coming up

January 24th at 1:30 PM will be the zoning amendment public hearing with our Hearings Examiner. This is to look at adding Residential Treatment Facilities definition, changing our current Hospital definition, and looking at the non-conforming language of 4 years.

January 25th, at 6:30 PM will be the public hearing to update our flood ordinance. The ordinance update is provided in this council packet.

Cold Weather Issues

We have had several minor water issues due to the cold weather. Luckily, they were quick fixes and did not cause any significant damage.

Building and Planning Staff Report

To: Mayor and City Council
From: Paul Morrison
Date: January 1st, 2017
Re: December, Building and Planning Department activities.

New Permit Activities for December 2016

140 South 3rd Street	Minor Repairs	Total Fee $ 172.80
423 West Simpson Ave.	Work on Gas Line	Total Fee $ 127.00
140 South 3rd Street	Install Hand Blower	Total Fee $ 80.25
140 South 3rd Street	Repairs & Maintenance	Total Fee $ 92.00
Building Department Related Revenues	Total fees charged for December $ 472.05	Total fees collected for December $ 829.58

Permit Activity Totals

New Homes Permitted for 2016 24	All Permits Issued for 2016 170	Total Fees Charged for 2016 $ 249,258.60
New Homes Permitted for 2015 2	All Permits Issued for 2015 52	Total Fees Charged for 2015 $ 52,499.28
New Homes Permitted for 2014 3	All Permits Issued for 2014 89	Total Fees Charged for 2014 $ 59,695.93
New Homes Permitted for 2013 3	All Permits Issued for 2013 79	Total Fees Charged for 2013 $ 69,743.57
New Homes Permitted for 2012 6	All Permits Issued for 2012 97	Total Fees Charged for 2012 $ 123,164.28
New Homes Permitted for 2011 1	All Permits Issued for 2011 37	Total Fees Charged for 2011 $ 24,803.65

Building and Planning Staff Report

Nuisances for the Month of December (MMC 8.16 & 8.20)

325 West Simpson Ave.
- Lumber stored in alley

609 West Simpson Ave.
- Public Nuisance

127 East Oak Street
- Unlicensed Vehicle

817 West Simpson Ave.
- Storing of unused, unlicensed vehicle

8th Street
- Unlicensed travel trailer being stored on ROW

Notice to Vacate for the Month of December

117 North 8th Street
- Living in a motorhome

302 East Beck Street
- Living in a van in the shop

108 North 10th Street
- No utilities in the home

423 West Pine Street
- Living in a travel trailer

Notice of Infractions Issued for the Month of December

203, 211, 302 East Beck Street
- Public Nuisance

221 East Pine Street
- Storing unused, unlicensed vehicles

423 West Pine Street
- Storing of unused, unlicensed trailer

Criminal Citations Issued for the Month of December

211 East Beck Street
- Public Nuisance

Resolved Municipal Code Violations for the Month of December

325 West Simpson Ave. (Lumber stored in alley)
628 South 2nd Street (Storing of unused, unlicensed vehicle)
8th Street (Unlicensed travel trailer being stored on ROW)
418 South 3rd Street (Storing of unused, unlicensed vehicle on City ROW)

There are several properties that have contacted me and I am currently working with them to comply. There are several that have yet to contact me or comply.

City Of McCleary Police Chief Report: Chief Steve Blumer
Reporting Officer: Chief Blumer
Month Of December
2016
City Mayor: Brent Schiller

City Council Members:
Position 1: Brenda Orffer
Position 2: Dustin Richey
Position 3: Larry Peterson
Position 4: Ben Blankenship
Position 5: Pam Ator

Violent & Property Crimes		**Traffic Stops and Violations**	
Murder	0	DUI	0
Rape	0	Accident	2
Aggravated Assault	0	Stolen Vehicle	3
Robbery	0	Abandon Vehicle	0
Harassment / Domestic	8	Parking Enforcement	0
Theft	2	Motorist Assist	2
Trespass	0	Fatal Accident	0
Stalking	0	Subject Stop	22
Found Property	0		
Warrant Arrest	14		
Burglary	0		
TOTAL	24		29

Other Emergent Calls		**Other Non Emergent Calls**	
FIRE	0	Noises Complaints	2
Suicide	0	Code Enforcement	4
Missing Person	0	Agency Assist	17
Disorderly Conduct	0	Police Referral	1
Drug Incidents	0	Public Work Assist	0
Man Down	0	Suspicious	5
		Juvenile	0
		Welfare Check	7
		Other	6
		Court Order	2
TOTAL	0		44
Total Calls For The Month	97	**Calls In City Limits**	80

Overtime Hours **6**

10 Felony Warrant Arrests for suspects hiding at known residences in McCleary, with assistance from DOC

, US Marshals, Grays Harbor Sheriff and WSP.

Tab E

STAFF REPORT

To: Mayor Schiller
From: Todd Baun- Director of Public Works
Date: January 6, 2017
Re: Equipment Trailer Purchase

The public works crew needs to purchase an equipment trailer for specifically hauling our equipment. Our trailer that we are currently using is made for hauling material like pipe, wire, and items to be easily loaded and unloaded. By using our current trailer, it is causing the trailer to not work correctly and we have had to get it fixed several times.

The equipment trailer was budgeted for in 2016 and will also come out of the 2016 budget.

Action Requested:

Please discuss and decide if you want to purchase the equipment trailer.

Tab F

STAFF REPORT

To: Mayor Schiller
From: Todd Baun- Director of Public Works
Date: January 6, 2017
Re: Gutter Repair Bid

The public works shop and fire hall building have gutters that have failed and are deteriorated severely. We have gotten several bids for replacement of these sections.

This repair will come out of the 2016 budget and was budgeted for in 2016.

Action Requested:

Please discuss and decide if accept the bid for the gutter repair. .

Tab G

STAFF REPORT

To: Mayor Schiller
From: Todd Baun- Director of Public Works
Date: January 6, 2017
Re: Maintenance work order/asset software

Since late 2014, I have been working on finding software to help for our Maintenance and Asset management needs. Our system that we used previously is no longer supported and has been discontinued. Since our system is no longer available, we have been using sticky notes a majority of the time when a maintenance request comes in. This system is not acceptable with our insurance and can no longer continue.

The purpose of the Maintenance and Asset management software is to create, update, track and complete all of the maintenance tasks that come through our departments. We have had demonstrations from the following companies, Cartegraph, Smart Utility Systems, Sprypoint, Netfacilities, Cityworks, Pubworks and Mobile311.

Out of all these systems, Mobile311 is the software that is preferred. We have received a quote of $3,340.20 and would like to purchase the software. This will be taken from the 2016 budget, which this type software was budgeted for.

Action Requested:

Please discuss and decide if you want to purchase the Mobile311 maintenance and asset software.

POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment License Agreement ("Agreement"), dated this ____ day of _____, ____ , is made by and between CITY OF McCLEARY ("City"), a municipal corporation organized under the laws of the State of Washington, and ASTOUND BROADBAND, LLC dba WAVE, a limited liability company organized under the laws of the State of Washington (hereinafter referred to as "Licensee").

R E C I T A L S:

A. Whereas, Licensee proposes to install and maintain Communications Facilities and associated communications equipment on Poles to provide Communications Services to the public; and

B. Whereas, City is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee's Attachments on Poles, provided that City may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, or the inability to meet generally applicable engineering standards and practices;

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

Table of Contents

AGREEMENT

Article 1—Definitions

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

1.1. Affiliate: when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.

1.2. Applicable Standards: means all applicable engineering and safety codes governing the installation, maintenance and operation of facilities and the performance of all work in or around electric City Facilities and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), Washington Administrative Code ("WAC"), Revised Codes of Washington ("RCW") and the regulations of the Occupational Safety and Health Administration ("OSHA"), the Washington Industrial Safety and Health Act ("WISHA"), as well as the engineering and safety standards established by the City, each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of the City or other federal, state or local authority with jurisdiction over City Facilities.

1.3. Attaching Entity: means any public or private entity, other than City, Licensee, who, pursuant to a license agreement with City, places an Attachment on City's Poles to provide Communications Service.

1.4. Attachment(s): means Licensee's Communications Facilities that are authorized for placement directly on Poles. A riser or a service drop attached to a single Pole where

Licensee has an existing Attachment on such Pole is not considered an additional Attachment. This definition of Attachment shall exclude Overlashing, which is addressed in Article 2, Section 11.

1.5. Capacity: means the ability of a Pole to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

1.6. Climbing Space: means that portion of a Pole's surface and surrounding space that is free from encumbrances to enable City employees and contractors to safely climb, access and work on City Facilities and equipment.

1.7. Common Space (see Pole Attachment Guidelines, Figure 4.3): means space on Poles that is not used for the placement of wires or cables, but which jointly benefits all users of the Poles by supporting the underlying structure and/or providing safety clearance between attaching entities and electric City Facilities.

1.8. Communication Space (see Pole Attachment Guidelines, Figure 4.2): means space defined by City on Poles that can be used, as defined by the Applicable Codes, for the attachment or placement of wires, cables, and associated equipment for the provision of Communications Service. The neutral zone or safety space is not considered Communication Space. The Common Space which includes the support and safety space is not considered Communication Space.

1.9. Communications Facilities: means wire or cable facilities including, but not limited to, fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Service including any and all associated equipment. Unless otherwise specified by the parties, the term "Communications Facilities" does not include pole-mounted wireless antennas, receivers, or transceivers. Strand-mounted wireless equipment that does not restrict climbing space shall be considered Communication Facilities.

1.10. Communications Service: means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Communications Facilities.

1.11. Licensee: means Astound Broadband LLC, its authorized successors, Affiliates, and assignees.

1.12. Make-Ready Work: means all work, as reasonably determined by City, required to accommodate Licensee's Communications Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, Pre-Construction Survey, rearrangement, relocation, or transfer of City Facilities or any existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), or pole replacement and construction.

1.13. Nonfunctional: means no longer able to be used or no longer useful for transmission of Communications Service.

1.14. Occupancy: means the use or specific reservation of Communication Space for Attachments on the same Pole.

1.15. Overlash: means to place an additional wire, cable or Communications Facility onto an existing Attachment owned by Licensee.

1.16. Pedestals/Vaults/Enclosures: means above- or below-ground housings that are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or provide a service connection point and that are not attached to Poles (see **Appendix D** -Specifications).

1.17. Permit: means written or electronic authorization (in the form of **Appendix C**) from City for Licensee to make or maintain Attachments on specific Poles pursuant to the requirements of this Agreement.

1.18. Pole: means a pole owned by City used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments for Communications Facilities.

1.19. Post-Construction Inspection: means the inspection that may be performed by City to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Permit.

1.20. Pre-Construction Survey: means all work or operations required by Applicable Standards and/or City to determine the potential Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole. Such work includes, but is not limited to, field inspection and administrative processing. The Pre-Construction Survey shall be coordinated with City and include Licensee.

1.21. Reserved Capacity: means capacity or space on a Pole that City has identified and reserved for its own electric City requirements, including the installation of communications circuits, pursuant to a reasonable projected need or business plan.

1.22. Riser: means metallic or plastic encasement materials placed vertically on the Pole to guide and protect communications wires and cables.

1.23. Tag: means to place distinct markers on wires and cables, coded by color or other means specified by City and/or applicable federal, state or local regulations that will readily identify from the ground, type of attachment (*e.g.*, cable TV, telephone, high-speed broadband data, public safety) and its owner.

1.24. **City Facilities:** means all personal property and real property owned or controlled by City, including Poles and anchors.

Article 2—Scope of Agreement

2.1. Grant of License. Subject to the provisions of this Agreement, City hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Attachments on Poles.

2.2. Parties Bound by Agreement. Licensee and City agree to be bound by all provisions of this Agreement and by any subsequent laws.

2.3. Permit Issuance Conditions. City will issue a Permit(s) to Licensee only when City determines, in its sole judgment, exercised reasonably, that

(i) It has sufficient Capacity to accommodate the requested Attachment(s),

(ii) Licensee meets all requirements set forth in this Agreement, and

(iii) Such Permit(s) comply with all Applicable Standards.

2.4. Access to Reserved Capacity. Access to Reserved Capacity on City Poles will be made available to Licensee with the understanding that such access is subject to being reclaimed by the City on giving Licensee at least sixty (60) calendar days prior notice. City may reclaim such Reserved Capacity anytime during the period following the installation of Licensee's Attachment in which this Agreement is effective if required for City's future electric service use. City shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 9.

2.5. No Interest in Property. No use, however lengthy, of any City Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such City Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of City's rights to City Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.

2.6. Licensee's Right to Attach. Unless otherwise specified in this Agreement, Licensee must have a Permit issued pursuant to Article 6, prior to attaching Licensee's Communications Facilities to any specific Pole.

2.7. City's Rights over Poles. The parties agree that this Agreement does not in any way limit City's right to

locate, operate, maintain or remove its Poles in the manner that will best enable it to fulfill its service requirements.

2.8. Other Agreements. Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit City from fulfilling any agreement or arrangement regarding Poles which City has previously entered into, or, may in the future enter into, with any third parties.

2.9. Expansion of Capacity. City will take reasonable steps to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require City to install, retain, extend or maintain any Pole for use when such Pole is not needed for City's service requirements.

2.10. Permitted Uses. This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without City's express written consent to such use. Nothing in this Agreement shall be construed to require City to allow Licensee to use Poles after the termination of this Agreement, subject to the provisions of Article 11 and Article 23 of this Agreement.

2.11. Overlashing. The following provisions will apply to Overlashing:

2.11.1. Licensee shall apply for and obtain a permit from City for each Overlashing pursuant to Article 6. Absent such authorization, Overlashing constitutes an unauthorized Attachment and is subject to the Unauthorized Attachment Penalty Fee specified in **Appendix A**, Item 3.

2.11.2. If Licensee demonstrates that the Overlashing of Licensee's Attachments is required to accommodate Licensee's Communication Facilities, City shall not withhold Permits for such Overlashing if it can be done consistent with Paragraph 2.3. Overlashing performed pursuant to this Paragraph 2.11.2 shall not increase the Annual Pole Attachment Fee paid by Licensee pursuant to **Appendix A**, Item 1. Licensee, however, shall be responsible for all Make-Ready Work and other charges associated with the Overlashing, but

shall not be required to pay a separate Annual Pole Attachment Fee for such overlashed Attachment.

2.11.3. If Overlashing is an option to accommodate facilities of a third party, such third party must enter into a license agreement with City, obtain a permit and pay a separate Annual Pole Attachment Fee (**Appendix A**, Item 1), as well as the costs of all necessary Make-Ready Work required to accommodate the Overlashing. No such permits to third parties may be granted by City allowing Overlashing of Licensee's Communications Facilities unless Licensee has consented in writing to such Overlashing. Overlashing performed under this Paragraph 2.11.3 shall not increase the fees and charges paid by Licensee pursuant to **Appendix A**, Item 1.

2.11.4. Make-Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlashing.

2.12. Enclosures. Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within ten (10) feet of any Pole or other City Facilities without City's prior written permission. If permission is granted, all such installations shall comply with the Specifications and Drawings in **Appendix D** of this Agreement and charges as provided in **Appendix A**. Such permission shall not be unreasonably withheld. Failure to obtain such permission prior to placement of such enclosures may result in the assessment of Unauthorized Attachment Penalty Fees. (per **Appendix A**).

Article 3—Fees and Charges

3.1. Payment of Fees and Charges. Licensee shall pay to City the fees and charges specified in **Appendix A** and shall comply with the terms and conditions specified herein.

3.2. Payment Period. Unless otherwise expressly provided, Licensee shall pay any invoice it receives from City pursuant to this Agreement within thirty (30) calendar days of the billing date of the invoice.

3.3. Billing of Annual Pole Attachment Fees. City shall invoice Licensee for the Annual Pole Attachment Fee on a calendar year basis. City will submit to Licensee an invoice

for the annual rental period on or about January 15 of each year. The initial annual rental period shall commence on _____, 2016, and conclude on December 31, 2016. Any billing period not paid under a previous pole attachment agreement shall be prorated for a partial initial period. Each subsequent annual rental period shall commence on the beginning of the calendar year and conclude on the end of the calendar year. The invoice shall set forth the total number of Poles on which Licensee is obligated to pay Annual Pole Attachment Fees and, if requested, the City will provide calculations and underlying data used to determine the Annual Pole Attachment Fee.

3.4. Refunds. No fees and charges specified in **Appendix A** shall be refunded on account of any surrender of a Permit granted under this Agreement. Nor shall any refund be owed if a Pole is abandoned by City.

3.5. Late Charge. If City does not receive payment for any fee or other amount owed within thirty (30) calendar days of the billing date, Licensee, upon receipt of fifteen (15) calendar days' written notice from City, shall pay interest on the amount due to City, at the rate of 12% per year/(1%) per month.

3.6. Determination of Billing Charges. Wherever this Agreement requires Licensee to pay for work done or contracted by City, the charge for such work shall include all reasonable material, labor, engineering, and applicable overhead costs associated with such work. City shall invoice its services based upon actual costs, and such costs will be determined in accordance with City's cost accounting systems used for recording capital and expense activities. If requested, City invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. If Licensee was required to perform work and fails to perform such work necessitating its completion by City, Licensee will reimburse City upon demand City's cost per above plus 10% (ten percent).

3.7. Payment for Work. Licensee will be responsible for payment to City for all reasonable work City or City's contractors perform pursuant to this Agreement to accommodate Licensee's Communications Facilities and ensure safety,

including but not limited to, Make-Ready Work and other work performed for the benefit of Licensee.

3.8. Advance Payment. At the discretion of City, Licensee may be required to pay in advance all reasonable costs or a part of the charges for work, including but not limited to construction, inspections, and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in Articles 6 and 7 below.

3.9. True Up. Whenever City, at its discretion, requires advance payment of estimated charges prior to undertaking an activity on behalf of Licensee and the actual cost of the activity exceeds the advance payment of estimated charges, Licensee agrees to pay City for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, City agrees to refund to Licensee the difference in cost.

3.10. Work Performed by City. Wherever this Agreement requires City to perform any work, Licensee acknowledges and agrees that City, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.

3.11. Default for Nonpayment. Nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute a material default of this Agreement.

Article 4—Specifications

4.1. Installation/Maintenance of Communications Facilities. When a Permit is issued pursuant to this Agreement, Licensee's Communications Facilities shall be installed and maintained in accordance with the requirements and specifications identified in **Appendix D**. All of Licensee's Communications Facilities must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards. Upon execution of this Agreement, Licensee is not required to update or upgrade its existing

Attachments in any way if not required to meet either the NESC or the NEC, unless otherwise required in this Agreement.

4.2. Tagging. Licensee shall Tag all Attachments installed after the execution of this Agreement as specified in **Appendix D** and/or applicable federal, state and local regulations upon installation of such Attachments. Prior authorized Attachments shall be Tagged within five (5) years of the execution of this Agreement. Failure to provide proper Tagging will be considered a violation of the Applicable Standards.

4.3. Interference. Based on the order in which the facilities were attached, Licensee shall not allow its Communications Facilities to impair the ability of City or any third party to use Poles, nor shall Licensee allow its Communications Facilities to interfere with the operation of any City Facilities.

4.4. Protective Equipment. Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall at its own expense install protective devices designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor. Except as provided in Paragraph 16.1, City shall not be liable for any actual or consequential damages to Licensee's Communications Facilities or Licensee's customers' facilities.

4.5. Violation of Specifications/Applicable Codes. If Licensee's Communications Facilities, or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from City, City at its option, may correct such conditions. City will attempt to notify Licensee in writing prior to performing such work whenever practicable. When City reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of City's service obligations or pose an immediate threat to the physical integrity of City Facilities, City may perform such work and/or take such action as it deems necessary, including termination of Permit, without first giving written

notice to Licensee. As soon as practicable thereafter, City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all reasonable costs incurred by City in taking action pursuant to this Paragraph.

4.6. Restoration of City Service. City's service restoration requirements shall take precedence over any and all work operations of Licensee on Poles.

4.7. Effect of Failure to Exercise Access Rights. If Licensee does not exercise any access right granted pursuant to any applicable Permit(s) within one hundred eighty (180) calendar days for major construction (Permits involving 15 poles or more) or ninety (90) calendar days for minor construction (Permits involving 14 poles or less) of the effective date of such right and any extension thereof, City may use the space scheduled for Licensee's Attachment(s) for its own needs or other Attaching Entities. In such instances, City shall endeavor to make other space available to Licensee, upon written application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.

4.8. Interference Test Equipment. To the extent Licensee furnishes Communication Services it shall maintain test equipment to identify signal interference to its customers, and shall not identify City as the source of such interference absent a test report verifying the source.

4.9. Removal of Nonfunctional Attachments. At its sole expense, Licensee shall remove any of its Attachments or any part thereof that become nonfunctional and/or no longer fit for service ("Nonfunctional Attachment") as provided in this Paragraph 4.9. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from City that earlier removal is necessary to accommodate City's or another Attaching Entity's use or removal of the affected Pole(s), in which case Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving

the notice. Where Licensee has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until City notifies Licensee that removal is necessary to accommodate City's or another Attaching Entity's use, or removal of the affected Pole(s). **UPON BECOMING NONFUNCTIONAL, LICENSEE SHALL GIVE CITY NOTICE OF ANY NONFUNCTIONAL ATTACHMENTS.** If Licensee does not remove the Nonfunctional Attachment according to this paragraph 4.9, then City shall have the right to remove the Nonfunctional Attachment and bill Licensee for all associated costs for the removal per paragraph 3.6.

Article 5—Private and Regulatory Compliance

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

5.2. Lawful Purpose and Use. Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.

5.3. Forfeiture of City's Rights. No Permit granted under this Agreement shall extend to any Pole on which the Attachment of Licensee's Communications Facilities would result in a forfeiture of City's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of City's rights, is invalid. Further, if any of

Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its facilities upon receipt of written notice from City. If Licensee fails to remove its facilities upon request, City will perform such removal at Licensee's expense not sooner than the expiration of thirty (30) calendar days from City's issuance of the written notice.

5.4. Effect of Consent to Construction/Maintenance. Consent by City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

Article 6—Pole Attachment Permit Application Procedures

6.1. Permit Required. Except for service drops, Licensee shall not install any new Attachments or Overlashings on any Pole without first applying for and obtaining a Permit pursuant to the applicable requirements of **Appendices B and C.** Unless otherwise notified, pre-existing authorized Attachment(s) of Licensee as of the effective date of this Agreement shall be grandfathered with respect to Permitting, but shall be subject to the Attachment Fees and Paragraph 13.1. Licensee shall provide City with a list, in the format shown in **Appendix E**, of all such pre-existing Attachments within six (6) months of the effective date of this Agreement. All pre-existing Attachments shall comply with the terms of this Agreement within twelve (12) months of the effective date of this Agreement. Attachments to or rights to occupy City Facilities not covered by this Agreement must be separately negotiated.

6.2. Service Drops. The Licensee will notify the City within thirty (30) days of the attachment of a service drop where an existing permitted Attachment exists.

In the event that a service drop constitutes the initial Attachment to a given pole, Licensee will be required to follow the permitting process set forth in paragraph 6.1. In this

case, the Licensee will be allowed 30 days after the Attachment is made to complete the permitting process.

6.3. Permits for Overlashing. As set out in Paragraph 2.11, Permits are required for any Overlashing allowed under this Agreement. Licensee, Licensee's Affiliate or other third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlashing.

6.4. Professional Certification. Excluding the placement of service drops, at Licensee's sole expense, a qualified and experienced professional engineer, or a qualified employee or contractor of Licensee who may be required to be approved by City at City's discretion, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Communications Facilities can be and were installed on the identified Poles in compliance with the codes in Paragraph 4.1 and in accordance with the Permit. The professional engineer's or Licensee's qualified employee's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems. The City, in its sole discretion, may waive the requirements of this Paragraph 6.4 with respect to service drops.

6.5. City Review of Pole Attachment Permit Application. Upon receipt of a properly executed and complete Pole Attachment Permit Application which shall include the certified Pre-Construction Survey and detailed plans for the proposed Attachments in the form specified in **Appendix C**, City will review the Permit Application as promptly as possible, but in no event longer than forty-five (45) days, and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. On or before the end of the 45-day review, City will notify Licensee in writing whether the application has been accepted or rejected, providing its reasons in the event of rejection. In extraordinary circumstances, and with the approval of Licensee, City may extend the forty-five (45) day time line. City acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.

6.6. Authorization to Proceed. After receipt of payment for any necessary Make-Ready Work, City will sign and return the Permit Application which shall serve as authorization for Licensee to make its Attachment(s).

Article 7—Make-Ready Work/Installation

7.1. Estimate for Make-Ready Work. In the event City determines that it can accommodate Licensee's request for Attachment(s), including Overlashing of an existing Attachment, it will advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachment.

7.2. Payment for Make-Ready Work. Upon completion of the Make-Ready Work, City shall invoice Licensee for City's actual cost of the Make-Ready Work. Alternatively, City may require payment in advance for Make-Ready Work based on the estimated cost of such work which payment shall be trued-up and paid by Licensee upon completion of the work.

7.3. Who May Perform Make-Ready Work. Make-Ready Work shall be performed only by City and/or a contractor authorized by City to perform such work. If City cannot perform the Make-Ready Work to accommodate Licensee's Communications Facilities within forty-five (45) calendar days of the execution of an Acceptance of Cost Estimate per **Appendix C**, Licensee may seek permission from City for Licensee to employ a qualified contractor to perform such work.

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

7.5. Licensee's Installation/Removal/Maintenance Work.

7.5.1. All of Licensee's installation, removal and maintenance work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not

adversely affect the structural integrity of Poles, City Facilities, or other Attaching Entity's facilities or equipment existing prior to Licensee's Attachment installation. All such work is subject to the insurance requirements of Article 18.

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

Article 8—Relocations

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

8.2. Billing for Relocations Performed by City. If City performs the relocation(s), City will bill Licensee for actual

costs per Paragraph 3.6. Licensee shall reimburse City within thirty (30) calendar days of the receipt of the invoice.

Article 9—Pole Modifications and/or Replacements

9.1. Licensee's Action Requiring Modification/Replacement. In the event that any Pole to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Standards or the City determines sufficient Communication Space is not available, City will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole and rearrangement or relocation of Licensor's or City's Facilities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities' existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to City, and any other existing licensees, the cost of the Make-Ready Work performed by City, per Paragraphs 3.6-3.9. City, at its discretion, may require advance payment.

9.2. Treatment of Multiple Requests for Same Pole. If City receives Permit Applications for the same Pole from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodating their respective requests would require modification or replacement of the Pole, City will allocate among such licensees the applicable costs associated with such modification or replacement. Such allocation applies only to those attachments involving cable/wire and not Risers and/or service drops. Notwithstanding the above, once a permit has been issued, and within the agreed upon timeframe to exercise any access right, the attaching licensee will be responsible for their own costs resulting from Make-Ready Work and any other attaching entity will be responsible for their own cost resulting from any associated Make-Ready Work.

9.3. Guying. The use of guying to accommodate Licensee's Attachments shall be provided by and at the expense of Licensee and to the satisfaction of City as specified in **Appendix D.** On a going-forward basis Licensee shall not attach its guy wires to City's anchors without prior written

permission of City. If permission is granted a Make Ready charge may apply.

9.4. Allocation of Costs. The costs for any rearrangement or relocation of Licensee's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of City's cables or wires) shall be allocated to City and/or Licensee and/or other Attaching Entity on the following basis:

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

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

9.4.3. If the Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities (*e.g.*, storm, accident, deterioration), City shall

pay the costs of such modification or replacement; provided, however, that Licensee shall be responsible for the costs of rearranging or relocating its Communications Facilities.

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

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

Article 10—Abandonment or Removal of City Facilities

10.1. Notice of Abandonment or Removal of City Facilities. If City desires at any time to abandon or remove any City Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such City Facilities. Notice may be limited to less than sixty (60) calendar days if City is required to remove or abandon its City Facilities as the result of the action of a third-party or authority and the greater notice period is not practical or permissible. Such notice shall indicate whether City is offering Licensee an option to purchase the Pole(s). If, following the expiration of the notice period, Licensee has not yet removed and/or relocated all of its Communications Facilities and has not entered into an agreement to purchase City Facilities pursuant to Paragraph 10.2, City shall have

the right, subject to any applicable laws and regulations, to have Licensee's Communications Facilities removed and/or relocated from the Pole at Licensee's expense. City shall give Licensee prior written notice of any such removal or relocation of Licensee's Facilities.

10.2. Option to Purchase Abandoned Poles. Should City desire to abandon any Pole, City, in its sole discretion, may grant Licensee the option of purchasing such Pole at a price negotiated with City. Licensee must notify City in writing within thirty (30) calendar days of the date of City's notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should City and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. City is under no obligation to sell to Licensee Poles that it intends to remove or abandon.

10.3. Underground Relocation. If City moves any portion of its aerial system underground, Licensee shall remove its Communications Facilities from any affected Poles within sixty (60) calendar days of receipt of notice from City and either relocate its affected Communication Facilities underground or find other means to accommodate its Communication Facilities. If Licensee was required to remove its Communication Facilities and fails to perform such work necessitating its completion by City, City will charge Licensee per Paragraph 3.6 through 3.9.

Article 11—Removal of Licensee's Facilities

Removal Upon Termination. At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its facilities from the affected Poles at its own expense. If Licensee fails to remove such facilities within ninety (90) calendar days of expiration or termination, or some greater period as allowed by City, City shall have the right to have such facilities removed at Licensee's expense.

Article 12—Termination of Permit

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

12.2. Surrender of Permit. Licensee may at any time surrender any Permit and remove its Communications Facilities from the affected Pole(s) provided, however, that before commencing any such removal, Licensee must obtain City's acceptance of Licensee's written notice of removal including the identity of the party performing such work and the dates and times when such worked will occur. All such work is subject to the insurance requirements of Article 18. No refund of any fees or costs will be made upon removal. Licensee shall be liable for Annual Pole Attachment Fees until it surrenders the relevant Permit, removes its Attachments from City Facilities, and submits a completed Notice of Removal of Attachments per **Appendix C**. If Licensee fails to remove its Attachments from the City's Facilities within the approved time frame, City shall have the right to remove Licensee's Attachments at Licensee's expense.

Article 13—Inspection of Licensee's Facilities

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

reimburse City for all costs associated with such inventory and inspection.

13.2. Notice. City will give Licensee reasonable notice of such inspections, except in those instances where safety considerations justify the need for such inspection without delay. When notified, Licensee will promptly notify City if it wishes to participate in the inspection.

13.3. No Liability. Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

13.4. Attachment Records. Notwithstanding the above inspection provisions, Licensee shall furnish on an annual basis, an up-to-date map depicting the locations of its Attachments on paper and in an electronic format specified by City.

Article 14—Unauthorized Occupancy or Access

14.1. Unauthorized Occupancy or Access Fee. If any of Licensee's Attachments are found occupying any Pole for which no Permit has been issued, City, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Fee as specified in **Appendix A**, Item 3. In the event Licensee fails to pay such Fee within forty-five (45) calendar days of the billing date of the invoice, City has the right to remove such Communications Facilities at Licensee's expense.

14.2. No Ratification of Unlicensed Use. No act or failure to act by City with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by City of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

Article 15—Reporting Requirements

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

Article 16—Liability and Indemnification

16.1. Liability. City reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its statutory service requirements. Licensee agrees to use Poles at Licensee's sole risk. Notwithstanding the foregoing, City shall exercise reasonable precaution to avoid damaging Licensee's Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 16.5, City agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by the negligence or willful misconduct of City provided, however, that the aggregate liability of City to Licensee in any fiscal year shall not exceed the amount of the total Annual Attachment Fees paid by Licensee to City for that year.

16.2. Indemnification. In addition to the indemnification obligations in Paragraphs 5.1, 16.4 and 18.3, Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless City and its officers, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorneys' fees of City and all other costs and expenses of litigation) ("Covered Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, presence, use, relocation, removal or operation by Licensee or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Communications Facilities, except to the extent of City's negligence or willful misconduct giving rise to such Covered Claims. Such Covered Claims include, but are not limited to, the following:

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

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

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

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

16.3. Procedure for Indemnification.

16.3.1. City shall give prompt notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against City, City shall give the notice to Licensee no later than fifteen (15) calendar days after City receives written notice of the action, suit or proceeding.

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

16.3.3. Licensee will have the right at any time, by notice to City, to participate in or assume control of the defense of the claim with counsel of its choice. The parties

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

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

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

Licensee's use of Poles, except to the extent of City's negligence or willful misconduct.

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

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

Article 17—Duties, Responsibilities, And Warranties

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

17.2. Knowledge of Work Conditions. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties and restrictions attending the execution of such work. Licensee shall be solely responsible for site conditions, but only to the extent necessary to perform Licensee's work.

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

17.4. Duty of Competent Supervision and Performance. The parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other City Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life, grave personal injury or property. Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of City and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of City's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

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

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

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

Article 18—Insurance

18.1. Policies Required. At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

18.1.1. Workers' Compensation and Employers' Liability Insurance. Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Washington law at the time of the application of this provision for each accident. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

18.1.2. Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than $2,000,000 general aggregate, $2,000,000 products/completed operations aggregate, $2,000,000 personal injury, $2,000,000 each occurrence.

18.1.3. Automobile Liability Insurance. Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles used in connection with work under this Agreement. Limits of liability not less than $1,000,000 each occurrence, $1,000,000 aggregate.

18.1.4. Umbrella Liability Insurance. Coverage is to be in excess of the sum of employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than $4,000,000 each occurrence, $4,000,000 aggregate.

18.1.5. Property Insurance. Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

18.2. Qualification; Priority; Contractors' Coverage. The insurer must be authorized to do business under the laws of the State of Washington and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 18 with the same limits.

18.3. Certificate of Insurance; Other Requirements. Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish City with a certificate of insurance ("Certificate") and, upon request, copies of the required insurance policies and endorsements. The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. City shall be given thirty (30) calendar days' advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. City, its agencies,

officers, officials, employees and representatives (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed $100,000, or such greater amount as expressly allowed in writing by City. Licensee shall defend, indemnify and hold harmless City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to City upon request.

18.4. Limits. The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee's exposure to risk.

18.5. Prohibited Exclusions. No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with City except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to City's employees or agents caused by the negligence of Licensee, or (4) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

18.6. Deductible/Self-insurance Retention Amounts. Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 19—Authorization Not Exclusive

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

Article 20—Assignment

20.1. Limitations on Assignment. Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of City, which consent shall not be unreasonably withheld or delayed. Licensee shall provide City with not less than thirty (30) days' written notice of the transfer or assignment, together with the name and address of the transferee or assignee. It shall be unreasonable for City to withhold consent without cause to an assignment of all of Licensee's interests in this Agreement to its Affiliate.

20.2. Obligations of Assignee/Transferee and Licensee. No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement.

20.3. Sub-licensing. Without City's prior written consent, Licensee shall not sub-license or sub-lease to any third party including, but not limited to, allowing third parties to place attachments on City's Facilities, including Overlashing, or to place attachments for the benefit of such third parties on Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Communications Facilities by third parties (including but not limited to the lease of dark fiber) that involves no additional Attachment or Overlashing is not subject to this Paragraph 20.3.

Article 21—Failure to Enforce

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

Article 22—Termination of Agreement

22.1. Notwithstanding Licensee's rights under Article 12, City shall have the right, pursuant to the procedure set out in Paragraph 22.2, to terminate this Agreement, or any Permit issued hereunder, whenever Licensee is in default of any term or condition of this Agreement, including but not limited to the following circumstances:

22.1.1. Construction, operation or maintenance of Licensee's Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or

22.1.2. Construction, operation or maintenance of Licensee's Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority, subject to Paragraph 12.1; or

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

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

22.1.5. Violation of any other agreement with City.

22.2. City will notify Licensee in writing of any condition(s) applicable to Paragraph 22.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to City that the cited condition(s) has (have) ceased or been corrected. If Licensee fails to discontinue or correct

such condition(s) and/or fails to give the required confirmation, City may terminate this Agreement or any Permit(s) thirty (30) days after issuance of the written notice. In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, City may seek removal of Licensee's Communications Facilities pursuant to the terms of Article 11, provided, that Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to City until Licensee's Communications Facilities are actually removed.

Article 23—Term of Agreement

23.1. This Agreement shall become effective upon its execution and, unless terminated in accordance with other provisions of this Agreement, shall continue in force and effect for an initial term of three (3) years. Either party may terminate this Agreement at the end of the initial three (3) year term by giving one hundred eighty (180) calendar days' written notice of its intention to do so prior to the end of any the term. If no such notice is given, this Agreement shall automatically be extended for successive one (1) year terms until terminated by either party by written notice at least one hundred eighty (180) days prior to the end of the term. Upon termination of this Agreement, Licensee shall remove its attachments from the poles of City within sixty (60) days after the effective date of such termination. Should the Licensee fail to comply, the City may elect to do such work and the Licensee shall pay the City the cost.

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

Article 24—Amending Agreement

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

Article 25—Notices

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

If to City, at:

City of McCleary
Attn: _____
100 South 3rd Street
McCleary, WA 98563

If to Licensee, at:

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

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

25.2. Licensee shall maintain a staffed 24-hour emergency telephone number where City can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to City's concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a fee of $100 per incident, and shall eliminate City's liability to Licensee for any actions that City deems reasonably necessary given the specific circumstances.

Article 26—Entire Agreement

This Agreement supersedes all previous agreements, whether written or oral, between City and Licensee for placement and maintenance of Licensee's Communications Facilities on City's Poles covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as

expressed herein. Except as provided for in Article 4.1, any Attachments existing under prior authorization shall continue in effect, provided they meet the terms of this Agreement.

Article 27—Severability

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

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

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

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

Article 29—Incorporation of Recitals and Appendices

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

Article 30—Performance Bond

On execution of this Agreement, Licensee shall provide to City a performance bond in an amount equal to two (2) times the annual Pole attachment fee set forth in Appendix A, Item 1, per Licensee Pole Attachment or Ten Thousand Dollars ($10,000.00), whichever is greater. The required bond amount may be adjusted periodically to account for additions or reductions in the total number of Licensee's Pole Attachments. The bond shall be with

an entity and in a form acceptable to the City. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties and fees due to City which arise by reason of the construction, operation, maintenance or removal of Licensee's Communications Facilities on or about Poles.

Notwithstanding the foregoing bond requirements, the City, in its sole discretion, agrees to waive the requirement of a Performance Bond if Licensee, can demonstrate to City financial responsibility.

Article 31—Force Majeure

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

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

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

ASTOUND BROADBAND, LLC	CITY OF McCLEARY:
By:	_____ _____ _____
Print Name: _____	Print Name: BRENT SCHILLER
Title: _____	Title: Mayor
Date: _____, 2016	Date: _____, 2016

ORDINANCE NO. _____

AN ORDINANCE RELATING TO THE GOVERNING OF DEVELOPMENTAL ACTIONS WITHIN THE AREAS DEFINED AS BEING WITHIN THE FLOOD HAZARD ZONES BY APPROPRIATE MAPPING, SETTING FORTH REGULATIONS, IMPOSING PENALTIES FOR VIOLATION THEREOF, REPEALING SECTIONS 14.08.010 THROUGH 14.08.260, PROVIDING FOR CODIFICATION, AN EFFECTIVE DATE, AND SEVERABILITY.

R E C I T A L S:

The City has been informed that due to actions of the federal and state governments, in order to protect the interests and property of certain owners, an update of its existing regulations is required in relation to certain activities within the flood hazard zones, as defined within the following ordinance.

2. Prior to enactment of this ordinance, the Council and Mayor have met with the involved City staff so to better understand the action being taken.

3. By taking this action, the goal is to protect the environmental areas involved, the property of the citizens constructing covered improvements therein, and assuring the availability of federal flood insurance to the property owners within the area.

CITY OF McCLEARY
100 South Third Street
McCleary, Washington 98557

4. It is recognized that the applicable maps do not currently reflect the location within the City of all of the zones set forth in this Ordinance. However, it is found appropriate, in recognition of the possibility of modifications resulting from further studies, mapping, definitional changes, or environmental changes, to adopt an ordinance which ~~deals~~ not only with that which is currently present but also may become present in the future.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY:

SECTION I: GENERAL PRINCIPALS:

1.1. Purpose:

The primary purpose and goal of the provisions of this Ordinance is to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by methods and provisions designed for:

A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

D. Controlling filling, grading, dredging, and other development which may increase flood damage; and

E. Preventing or regulating the construction of barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

1.2. Applicability:

No development shall be undertaken or placed in the areas regulated by this ordinance without full compliance with the terms of this ordinance and other applicable regulations of the City of McCleary. These areas are the following:

A. Special Flood Hazard Area (SFHA):

This ordinance applies to the Special Flood Hazard Area (SFHA) within the jurisdiction of the City of McCleary. The SFHA is defined as the largest of the following areas:

1. The Special Flood Hazard Area identified by the Federal Emergency Management Agency in the scientific and engineering report entitled "Flood Insurance Study for Grays Harbor County, Washington, and Incorporated Areas" which becomes effective February 3, 2017, and any revisions thereto, with an accompanying Flood Insurance Rate Map which becomes effective as of the same date, and any revisions thereto subsequent to that

date. The Flood Insurance Study and the FIRM are on file at the office of the Building Official.

2. Lands shown as subject to the 100-year flood on the *Chehalis River Basin Inundation Map Series - 100-Year Flood*, prepared by Watershed Science & Engineering, 11/25/2015.

3. Lands that are not included in (1) or (2), above, that are flooded by the Chehalis River or Harris Creek after the enactment of this ordinance.

4. The Building Official shall the authority to compare the elevation of a site for which a permit is sought to the base flood elevation and make interpretations where needed, as to the exact location of the boundaries of the SFHA. The applicant may appeal the Building Official's interpretation of the location of the boundary to the City Council.

B. Base Flood Elevation: To the extent that any of the following zones are currently or hereafter designated as being applicable to property within the City, the following provisions shall apply:

1. In "Zone AE" on the Flood Insurance Rate Map, the base flood elevation shall be the "1% Annual Chance Flood" elevation as shown in the Flood Profile for the stream in the Flood Insurance Study.

2. In "Zone A," where the Flood Insurance Rate Map and the Flood Insurance Study do not provide a base flood elevation, the base flood elevation shall be the "100-year Base Flood

Elevations" delineated on the *Chehalis River Basin Inundation Map Series - 100-Year Flood*, prepared by Watershed Science & Engineering, 11/25/2015.

3. Where a flood rises higher than the base flood elevation as determined above, the base flood elevation shall be the elevation of the highest recorded flood level for that site.

SECTION II: DEFINITIONS:

Unless specifically defined below, words, terms or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application: Provided that, if a word, term, or phrase not defined in this section is defined in another section of Titles 15, 16, 17 or 18 of the Municipal Code, that definition shall be applied to the extent reasonably appropriate.

Base Flood: the flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the "100-year flood"). The area subject to the base flood is the Special Flood Hazard Area designated on Flood Insurance Rate Maps as Zones "A" or "AE."

Base Flood Elevation: the elevation of the base flood in relation to the North American Vertical Datum of 1988.

Basement: any area of the structure having its floor sub-grade (below ground level) on all sides.

Critical Facility: a facility necessary to protect the public health, safety and welfare during a flood. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency operations installations, water and wastewater treatment plants, electric power stations, and installations which produce, use, or store hazardous materials or hazardous waste (other than consumer products containing hazardous substances intended for household use).

Development: any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated Building: a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. A building on a slab on grade foundation is not considered an elevated building.

Elevation Certificate: the official form (FEMA Form 81-31) used to provide elevation information necessary to ensure compliance with provisions of this ordinance and determine the proper flood insurance premium rate.

Flood or Flooding: a general and temporary condition of partial or complete inundation of normally dry land areas from:

The overflow of inland or tidal waters, and/or

The unusual and rapid accumulation of runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM): the official map on which the Federal Emergency Management Agency has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the community.

Flood Insurance Study: the official report provided by the Federal Emergency Management Agency that includes the Flood Insurance Rate Map, floodway data, and base flood elevations.

Floodway: the channel of a stream or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point.

Historic Structure: a structure that is listed on the National Register of Historic Places, the Washington Heritage Register, or the Washington Heritage Barn Register, or has been certified to contribute to the historical significance of a registered historic district.

Lowest Floor: the lowest floor of the lowest enclosed area (including basement or crawlspace). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a structure's lowest floor, provided that such enclosure is compliant with Sections 6.2.G and I.

Manufactured Home: a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

NAVD88: the North American Vertical Datum of 1988. Unless otherwise noted, all elevations referred to in this chapter are in relation to NAVD88.

New Construction: structures and substantial improvements for which the actual start of construction, repair, reconstruction, or other improvement to the structure commences on or after the effective date of this ordinance.

Recreational Vehicle: a vehicle,

(1) Built on a single chassis; and

(2) 400 square feet or less when measured at the largest horizontal projection; and

(3) Designed to be self-propelled or permanently towable by an automobile or light duty truck; and

(4) Designed primarily for use as temporary living quarters for recreational, camping, travel, or seasonal use, not as a permanent dwelling.

Special Flood Hazard Area (SFHA): the land subject to inundation by the base flood. Special Flood Hazard Areas are designated on the Flood Insurance Rate Map with the letters "A"

or "AE" and may include additional floodprone areas designated in this ordinance.

Structure: a walled and roofed building, including a gas or liquid storage tank that is principally above ground.

Substantial Damage: damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the value of the structure before the damage occurred. For purposes of determining this value, in the discretion of the City it shall be the greater of the assessed value or the value provided by a qualified expert.

Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the value of the structure, as determined as provided in the prior paragraph, before the damage occurred.

Substantial Improvement: any repair, reconstruction, rehabilitation, addition, replacement, or other improvement of a structure, taking place during a five year period, the cumulative cost of which equals or exceeds 50 percent of the value of the structure before the improvement or repair is started. For purposes of determining this value, in the discretion of the City it shall be the greater of the assessed value or the value provided by a qualified expert.

CITY OF McCLEARY
100 South Third Street
McCleary, Washington 98557

This term includes requested improvements to structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not include:

(1) any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by a code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) any alteration of an historic structure provided that the alteration will not preclude the structure's continued designation as an historic structure.

SECTION III: ADMINISTRATION:

3.1. Authority of the Building Official:

The building official or his or her designee is appointed and authorized to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

A. Duties of the Building Official shall include, but not be limited to:

(1) Review all floodplain development permits to determine that the permit requirements of this ordinance have been satisfied.

(2) Review all floodplain development permits to determine that all necessary permits have been obtained from

those Federal, State, or local governmental agencies from which prior approval is required.

(3) Review all floodplain development permits to determine if the proposed development is located in the SFHA.

(4) Ensure that all development activities within the SFHA meet the requirements of this ordinance.

(5) Inspect all development projects before, during and after construction to ensure compliance with all provisions of this ordinance, including proper elevation of all structures.

(6) Maintain for public inspection all records pertaining to the provisions of this ordinance.

3.2. Floodplain Development Permit

A. A floodplain development permit shall be obtained before construction or development begins within the SFHA. The permit shall be for all development as that term is defined in Section II.

B. Activities that do not meet the definition of "development" are allowed in the SFHA without the need for a floodplain development permit under this ordinance, provided all other Federal, State, and local requirements are met. The following are examples of activities not considered development or "man-made changes to improved or unimproved real estate."

(1) Routine maintenance of landscaping that does not involve grading, excavation, or filling;

(2) Removal of noxious weeds and hazard trees and replacement of non-native vegetation with native vegetation;

(3) Normal maintenance of structures, such as reroofing and replacing siding, provided such work does not qualify as a substantial improvement;

(4) Normal maintenance of above ground utilities and facilities, such as replacing downed power lines and utility poles;

(5) Normal street and road maintenance, including filling potholes, repaving, and installing signs and traffic signals, but not including expansion of paved areas.

(6) Plowing and other normal farm practices (other than structures or filling) on farms.

B. **Permit Extension**: If construction has not started, a floodplain development permit shall expire 180 days after the date of issuance. Where the applicant documents a need for an extension beyond this period due to conditions beyond the applicant's control, the Building Official may authorize one or more extensions.

C. **Certificate of Occupancy**:

A certification of use for the property or a certificate of occupancy for a new or substantially improved structure or an addition shall not be issued until:

1. The permit applicant provides a properly completed, signed and sealed Elevation and/or Floodproofing Certificate showing finished construction data.

2. The permit applicant provides copies of all required Federal, State, and local permits noted in the permit application.

3. All other provisions of this ordinance have been met.

The Building Official may accept a performance bond or other security that will ensure that unfinished portions of the project will be completed after the certification of use or certificate of occupancy has been issued.

D. **Variance Criteria**:

Upon written application of the applicant, the City Council shall have the discretionary authority to grant a variance in relation to the applicability of certain provisions of this ordinance.

(1) In reviewing applications for a variance, the City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following in relation to granting of the variance:

a. The danger to life and property due to flooding or erosion damage;

b. The danger that materials may be swept onto other lands to the injury of others;

c. The safety of access to the property in times of flood for ordinary and emergency vehicles;

d. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;

e. The susceptibility of the proposed facility and its contents to flood or erosion damage and the effect of such damage on the individual owner;

f. The availability of alternative locations for the proposed use which are not subject to flooding;

g. The relationship of the proposed use to the comprehensive plan, growth management regulations, critical area regulations, the shoreline management program, and floodplain management program for that area;

h. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges;

I. The potential of the proposed development project to adversely affect federal, state or locally protected species or habitat; and

j. the minimum necessary to grant relief.

E. No variance shall be granted to the requirements of this ordinance unless the applicant demonstrates that:

(1) The development project cannot be located outside the SFHA;

(2) An exceptional hardship would result if the variance were not granted;

(3) The relief requested is the minimum necessary;

(4) The applicant's circumstances are unique and do not represent a problem faced by other area properties;

(5) If the project is within a designated floodway, no increase in flood levels during the base flood discharge would result;

(6) The project will not adversely affect features or quality of habitat supporting local, state or federally protected fish or wildlife;

(7) There will be no additional threat to public health, safety, beneficial stream or water uses and functions, or creation of a nuisance;

(8) There will be no additional public expense for flood protection, lost environmental functions, rescue or relief operations, policing, or repairs to streambeds, shorelines, banks, roads, utilities, or other public facilities; and

(9) All requirements of other permitting agencies will still be met.

F. Variances requested in connection with restoration of an historic site, building, or structure may be granted using criteria more permissive than the above requirements, provided:

(1) The repair or rehabilitation is the minimum necessary to preserve the historic character and design of the site, building, or structure; and

(2) The repair or rehabilitation will not result in the site, building, or structure losing its historic designation.

(a) Variances to the provisions of Section 6 of this ordinance may be issued for a structure on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, providing the other variance criteria are met. The applicant for such a variance shall be notified, in writing, that the structure (I) will be subject to increased premium rates for flood insurance and (ii) such construction increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

(b) Variances pertain to a physical piece of property. They are not personal in nature and are not based on the inhabitants or their health, economic, or financial circumstances.

G. **Floodplain Development Permit Application**

Application for a floodplain development permit shall be made on forms furnished by the Building Official and shall include, but are not limited to,

(1) One or more site plans, drawn to scale, showing:

a. The nature, location, dimensions, and elevations of the property in question;

b. Names and location of all lakes, water bodies, waterways and drainage facilities within 300 feet of the site;

c. The elevations of the 10-, 50-, 100-, and 500-year floods, where such data are available;

d. The boundaries of the SFHA, floodway, wetlands, shoreline buffer, critical areas, and fish and wildlife habitat conservation areas, as defined in this and other ordinances of the City;

e. The proposed drainage system including, but not limited to storm sewers, overland flow paths, detention facilities and roads; and

f. Existing and proposed structures, fill, pavement and other impervious surfaces, and sites for storage of materials.

(2) If the proposed project involves grading, excavation, or filling, the site plan shall include proposed post-development terrain at one foot contour intervals.

(3) If the proposed project includes a new structure, substantial improvement, or repairs to a substantially damaged structure, the application shall include the base flood elevation for the building site and the proposed elevations of the following, in relation to NAVD:

a. The top of bottom floor (including basement, crawlspace, or enclosure floor);

b. The top of the next higher floor;

c. The top of the slab of an attached garage;

d. The lowest elevation of machinery or equipment servicing the structure;

e. The lowest adjacent (finished) grade next to structure;

f. The highest adjacent (finished) grade next to structure; and

g. The lowest adjacent grade at the lowest elevation of a deck or stairs, including structural support.

(4) If the proposed project includes a new structure, substantial improvement, or repairs to a substantially damaged nonresidential structure that will be dry floodproofed, the application shall include the base flood elevation for the building site, the elevation to which the structure will be dry floodproofed, and a certification by a registered professional engineer or licensed architect that the dry floodproofing methods meet the floodproofing criteria in Section 6.3.B.

(5) The application shall include a description of the extent to which a stream, lake, or other water body, including its shoreline, will be altered or relocated as a result of the proposed development.

(6) The application shall include documentation that the applicant will apply for all necessary permits required by Federal, State, or local law. The application shall include written acknowledgment that the applicant understands that the final certification of use or certificate of occupancy will be issued only if the applicant provides copies of the required Federal, State, and local permits or letters stating that a permit is not required. A floodplain development permit is not valid if those other permits and approvals are not obtained prior to any ground disturbing work or structural improvements.

(7) The application shall include acknowledgment by the applicant that representatives of any Federal, State or local unit of government with regulatory authority over the project are authorized to enter upon the property to inspect the development.

SECTION IV: RECORDS:

4.1. The Building Official shall maintain copies of all development permit applications, variances, permits, inspection records, and correspondence with applicants for a floodplain development permit. All records shall be made available for public inspection.

4.2. The Building Official shall obtain, record, and maintain the certification referenced in Section 3.2.G(4).

4.3. The Building Official shall obtain, record, and maintain the actual "finished construction" elevations for all new construction and substantial improvements in the SFHA. This

information shall be recorded on a current FEMA Elevation Certificate (FEMA Form 81-31), signed and sealed by a professional land surveyor, currently licensed in the State of Washington.

4.4. For all new or substantially improved dry floodproofed nonresidential structures, the Building Official shall obtain, record and maintain the elevation to which the structure was floodproofed. This information shall be recorded on a current FEMA Floodproofing Certificate (FEMA Form 81-65) by a professional engineer currently licensed in the State of Washington.

SECTION V: GENERAL DEVELOPMENT STANDARDS:

5.1. Floodplain Obstructions

A. Within the floodway designated on the Flood Insurance Rate Map:

(1) Encroachments, including fill, new construction, substantial improvements, and other development, are prohibited unless certification by a registered professional engineer is provided that the proposed development and all other past or future similar developments would not cumulatively result in any increase of flood levels during the occurrence of the base flood discharge. The certification must be based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice that incorporate the equal degree of

encroachment approach that accounts for similar development that could be anticipated in the future.

(2) Construction, reconstruction, and improvements of residential structures are prohibited, except for:

(a) Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and

(b) Repairs, reconstruction or improvements to a structure, the cost of which does not exceed fifty percent of the market value of the structure either

(I) Before the repair, reconstruction, or improvement is started; or

(ii) if the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct existing violations of a state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or to structures identified as historic places shall not be included in the fifty percent.

B. Within the Zone A, where no floodway has been designated, the permit applicant shall provide:

(1) A certification by a registered professional engineer that the proposed development and all other past or future similar developments would not cumulatively result in an increase of flood levels during the occurrence of the base flood

discharge by more than one foot. The certification must be based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice that incorporate the equal degree of encroachment approach that accounts for similar development that could be anticipated in the future.

(2) A map that shows the area impacted by any increase in the level of the base flood caused by the development.

(3) Notarized statements from the owners of the impacted properties (other than the permit applicant) that they have no objections to the increase in flood heights on their properties.

C. The provisions of Sections A and B do not apply to the following:

(1) Development projects in the designated flood fringe along Harris Creek;

(2) Projects that do not require a development permit as listed in Section 3.2.B; or

(3) Improvements or repairs to an existing structure that do not change the structure's external dimensions.

D. No filling or grading shall reduce the effective flood storage volume of the SFHA. A development proposal shall provide compensatory storage if filling or grading eliminates any effective flood storage volume. Compensatory storage shall:

(1) Provide equivalent volume at equivalent elevations to that being displaced. For this purpose, "equivalent elevation"

means having similar relationship to ordinary high water and to the best available 10-year, 50-year and 100-year water surface profiles;

(2) Be hydraulically connected to the source of flooding; and

(3) Provide compensatory storage in the same construction season as when the displacement of flood storage volume occurs and before the flood season begins.

E. All newly created compensatory storage areas shall be graded and vegetated to allow fish access during flood events without creating fish stranding sites.

5.2. Alteration of Watercourses

A. In addition to the other requirements in this Section 5.2, an applicant for a project that will alter or relocate a watercourse shall also submit a request for a Conditional Letter of Map Revision (CLOMR). The project will not be approved unless FEMA issues the CLOMR and the provisions of the letter are made part of the permit requirements.

B. The Building Official shall notify adjacent communities and the Washington Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.

C. Maintenance shall be provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished. If the maintenance program does not

call for cutting of vegetation, the system shall be oversized at the time of construction to compensate for said vegetation growth or any other natural factor that may need future maintenance.

5.3. Site Design

A. If a lot has a buildable site out of the SFHA, all new structures shall be located in that area, when possible.

B. If a lot does not have a buildable site out of the SFHA, all new structures, pavement, and other development must be sited as far from the water body as possible or on the highest land on the lot.

C. All new development shall be designed and located to minimize the impact on flood flows, flood storage, water quality, and habitat.

D. The site plan required in Section 3.2.G(1) shall account for surface drainage to ensure that existing and new buildings on the site will be protected from stormwater runoff and the project will not divert or increase surface water runoff onto neighboring properties.

5.4. Critical Facilities

A. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA.

B. Construction of new critical facilities in the SFHA shall be permissible if no feasible alternative site is available, provided:

(1) Critical facilities shall have the lowest floor elevated to or above the base flood elevation plus three feet or to the height of the 500-year flood, whichever is higher.

(2) Access to and from the critical facility shall be protected to the base flood elevation plus three feet or to the height of the 500-year flood.

5.5. Hazardous Materials

No new development shall create a threat to public health, public safety, or water quality. Chemicals, explosives, gasoline, propane, buoyant materials, animal wastes, fertilizers, flammable liquids, pollutants, or other materials that are hazardous, toxic, or a threat to water quality are prohibited from the SFHA. This prohibition does not apply to small quantities of these materials kept for normal household use. This prohibition does not apply to the continued operations of existing facilities and structures or reuse of existing facilities and structures.

5.6. Utilities

A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;

B. Water wells shall be located outside the floodway and shall be protected to the base flood elevation plus three feet;

C. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;

D. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

5.7. Subdivisions

A. This Section 5.7 applies to all subdivision proposals, short subdivisions, short plats, planned developments, and new and expansions to manufactured housing parks that are wholly or in part located in the SFHA.

B. All proposals shall be consistent with the need to minimize flood damage.

C. All new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the

lesser, shall include within such proposals base flood elevation data.

D. All subdivisions of land that is both in and outside the SFHA shall have all parcels platted with buildable sites on higher ground outside the SFHA. This provision does not apply to lots set aside from development and preserved as open space.

E. All proposals shall have utilities and facilities, such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.

F. All proposals shall ensure that all subdivisions have at least one access road connected to land outside the SFHA with the surface of the road at or above the base flood elevation wherever possible.

G. All proposals shall have adequate drainage provided to avoid exposure to water damage.

H. The final recorded subdivision plat shall include a notice that part of the property is in the SFHA.

SECTION VI: STANDARDS FOR PROTECTION OF STRUCTURES:

6.1. Applicability

A. The protection requirements of this Section 6 apply to all new structures and substantial improvements in the SFHA, which include:

(1) Construction or placement of a new structure;

(2) Reconstruction, rehabilitation, or other improvement that will result in a substantially improved building;

(3) Repairs to an existing building that has been substantially damaged;

(4) Placing a manufactured home on a site; and

(5) Placing a recreational vehicle or travel trailer on a site for more than 180 days.

B. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

C. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

6.2. Residential Structures

A. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated above the base flood elevation plus three feet.

B. The structure shall be aligned parallel with the direction of flood flows where practicable.

C. The structure shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

D. All materials below the base flood elevation plus three feet shall be resistant to flood damage and firmly anchored to prevent flotation.

E. Materials harmful to aquatic wildlife, such as creosote, are prohibited below the base flood elevation plus three feet.

F. Electrical, heating, ventilation, duct work, plumbing, and air conditioning equipment and other service facilities shall be elevated above the base flood elevation plus three feet. Water, sewage, electrical, and other utility lines below the base flood elevation plus three feet shall be constructed so as to prevent water from entering or accumulating within them during conditions of flooding.

G. Fully enclosed areas below the lowest floor that are subject to flooding shall be used only for parking, storage, or building access and shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a registered professional engineer or licensed architect and/or meet or exceed the following minimum criteria:

(1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(2) The bottom of all openings shall be no higher than one foot above grade.

(3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) The interior grade of a crawlspace below the base flood elevation must not be more than two feet below the lowest adjacent exterior grade.

(5) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four feet at any point.

(6) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles, or gravel or crushed stone drainage by gravity or mechanical means.

(7) The velocity of floodwaters at the site should not exceed five feet per second for any crawlspace. For velocities in excess of five feet per second, other foundation types should be used.

H. Upon completion of the construction and before issuance of the certificate of occupancy, the permit applicant shall provide a current "finished construction" FEMA Elevation Certificate (FEMA Form 81-31), signed and sealed by a professional land surveyor, currently licensed in the State of Washington.

I. Upon completion of the construction of an elevated building and before issuance of the certificate of occupancy, the applicant shall provide a signed agreement that acknowledges that the conversion of the area below the lowest floor to a use or dimension contrary to the building's originally approved design is prohibited.

(1) The nonconversion agreement shall authorize the Building Official to conduct inspections of the enclosed area of the building upon reasonable notice.

(2) The applicant shall provide a copy that documents the nonconversion agreement has been recorded in the appropriate County office in such a manner that it appears in the chain of title of the affected property.

(3) A copy of the recorded nonconversion agreement shall be presented as a condition of issuance of the final certificate of occupancy.

(4) The Building Official may waive this requirement where the enclosed area is less than four feet in height,

measured from the floor of the enclosure to the underside of the floor system above.

6.3. Nonresidential Construction

A. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall be elevated in accordance with Section 6.2 and meet all the other requirements in Section 6.2.

B. As an alternative to elevation, a new or substantial improvement to a nonresidential structure and its attendant utility and sanitary facilities, may be dry floodproofed to the base flood elevation plus three feet. A dry floodproofed building must meet the following:

(1) Below the base flood elevation plus three feet, the structure is watertight with walls substantially impermeable to the passage of water.

(2) The structural components are capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(3) The plans are certified by a registered professional engineer or licensed architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this Section 6.3.B based on their development and/or review of the structural design, specifications and plans.

(4) Upon completion of the construction and before issuance of the certificate of occupancy, the permit applicant

shall provide an "as-built" FEMA Floodproofing Certificate (FEMA Form 81-65) signed by a professional engineer currently licensed in the State of Washington.

6.4. Manufactured Homes

All manufactured homes to be placed or substantially improved on any site in the SFHA shall be:

A. Elevated on a permanent foundation in accordance with Section 6.2.

B. Securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to other applicable anchoring requirements for resisting wind forces.

C. No manufactured home shall be located in the floodway designated on the Flood Insurance Rate Map.

6.5. Recreational Vehicles

Recreational vehicles placed on sites shall:

A. Be on the site for fewer than 180 consecutive days, or

B. Be fully licensed and ready for highway use, on their wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

C. Meet the requirements of Section 6.4 above.

6.6. Appurtenant Structures

A. This Section 6.6 applies to accessory structures of 500 square feet or less that are used only for parking or storage in relation to the principle structure on the property.

B. An appurtenant structure may be exempt from the elevation requirement of Section 6.2.A, provided:

(1) It meets the requirements of Sections 6.2.B, C, D, and E;

(2) The walls of the structure meet the requirements of Section 6.2.F; and

(3) The project meets all the other requirements of this ordinance.

SECTION VII: PENALTY FOR VIOLATION BY NON-COMPLIANCE:

Violations of any provision of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with the provisions), shall constitute a misdemeanor. Upon conviction for a violation of a provision of this ordinance, the person or entity may be fined not more than $1,000 for each violation, be subject to a jail sentence of up to 90 days, shall pay all costs and expenses involved in the case, and be subject to such other sanction, including correction of the violation, as may be allowed by law and ordered by the Court.

Nothing herein contained shall prevent the City of McCleary from taking such other lawful action as is necessary to

prevent or remedy any violation. Each violation or each day of continued unlawful activity shall constitute a separate violation.

SECTION VIII: GENERAL PROVISIONS:

8.1. Interpretation

In the interpretation and application of this ordinance, all provisions shall be:

A. Considered as minimum requirements.

B. Liberally construed in favor of the City of McCleary.

C. Deemed neither to limit nor repeal any other powers granted under State statutes.

8.2. Abrogation and Greater Restrictions

Where this ordinance and another code, ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

8.3 Warning and Disclaimer of Liability

The degree of property protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on occasion. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the regulated areas, or development permitted within such areas, will be free from flood damage. This ordinance shall not create liability on the part of the City of McCleary or any

officer or employee thereof for any damage to property or habitat that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION IX: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional.

SECTION X: This Ordinance shall take effect upon the fifth day following date of publication.

SECTION XI: CODIFICATION AND REPEAL:

11.1 Codification: Sections I through VIII inclusive shall constitute new sections in Chapter 15.12 MMC.

11.2 Repeal: Sections 15.12.010 through 15.12.340 of the Municipal Code shall be repealed as of the effective date of this ordinance: PROVIDED THAT, such repeal shall not effect the completion of the processing of any complete permit application submitted prior to that date or any project for which a permit had been issued or is issued upon the completion of a permit vested under this section.

SECTION XII: CORRECTIONS BY THE CLERK-TREASURER OR CODE REVISER: Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

PASSED THIS _____ DAY OF _____, 2017, by the City Council of the City of McCleary and signed in approval therewith this _____ day of _____, 2017.

CITY OF McCLEARY:

_____
BRENT SCHILLER, Mayor

ATTEST:

_____
WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

_____
DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON)
: ss.
GRAYS HARBOR COUNTY)

I, Wendy Collins, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to

have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number _____ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number _____, as it was published, is on file in the appropriate records of the City of McCleary.

_____

SIGNED AND SWORN to before me this _____ day of _____, 2017, by Wendy Collins.

_____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, Residing at:
My appointment expires:

Tab K

STAFF REPORT

To: Mayor Schiller
From: Todd Baun- Director of Public Works
Date: January 6, 2017
Re: Light and Power Privacy Policy

In 2015, the Washington Legislature passed two laws regarding consumer privacy and customer data. The discussion centered around two concerns- the potential for selling of customer data and the privacy of customer information. HB 1896 prohibits consumer owned electric utilities from selling customer data and prohibits the disclosure of customer data for marketing purposes, either by the utility or its vendors and contractors. HB 2264 was passed in the special session in 2015 to amend HB 1896. This bill makes it clear that consumer owned utilities are not subject to the Consumer Protection Act, rather they are required to have a consumer complaint process for customers if they suspect a disclosure of their data by the utility or a contractor. In addition, consumer owned utility governing boards are required to adopt a Privacy Policy.

Action Requested:

Please discuss and accept the Light and Power privacy policy.

RESOLUTION NO. _____

A RESOLUTION SETTING FORTH POLICIES IN RELATION TO IMPLEMENTATION OF A PRIVACY PROTOCOL FOR RECORDS OF THE CITY'S ELECTRICAL UTILITY, PROVIDING FOR REVIEW OF COMPLAINTS AND AN EFFECTIVE DATE.

R E C I T A L S:

1. The Legislature has adopted certain legislation which requires municipal entities operating electrical utilities to have in place formal policies in relation to protection of the information contained within the records of the utility.

2. Since McCleary provides electrical utility service to the City's citizens and other local residents, it is appropriate to adopt a compliant policy.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY, THE MAYOR SIGNING IN AUTHENTICATION THEREOF:

Section I: **Purpose**:

The City is committed to the protection of "PII" or "Data", as those acronyms are defined herein, and to preventing its unauthorized use or disclosure. In carrying out this policy, the following provisions shall apply.

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

For purposes of this resolution, information considered "PII" covered by this Policy is limited to the following information in relation to a customer:

1. Names,
2. Street addresses,
3. Telephone numbers,
4. Email addresses,
5. Social Security or Unified Business Identifier (UBI) numbers,
6. Account numbers (Named Utility account numbers, credit card numbers, bank account numbers),
7. Account balances,
8. Any information received during the identity and customer credit worthiness process,
9. Identity information provided on a driver's license, passport, or other document,
10. Meter interval/electricity use data for less than a billing cycle.

Section II. Individual Customer Release Provisions:

When customer Data is released to a contractor/subcontractor or other third party, the purpose of the release of the Data may be for either a "Primary" or "Secondary" purpose, as follows:

A. Primary Purpose - When Data is released for the purpose of performing essential business functions, such as billing or bill presentment, maintenance, and management

functions including legal, audit, and collection services, energy efficiency program validation or administration (such as provision of energy efficiency information to BPA), customer surveys and other essential business functions, it is deemed to be for a "Primary Purpose."

When Data is released to a third party under contract to the utility to provide services that serve a Primary Purpose, the third party shall be bound to comply with all applicable state and federal laws and by this Policy, and shall be prohibited from further disclosing or selling any private or proprietary customer information obtained from the utility to a party that is not the utility and not a party to the contract with the utility.

B. Secondary Purpose - When Data is released for the purpose of marketing services or product offerings for which the customer does not already subscribe, it is deemed to be for a Secondary Purpose. Data released for a Secondary Purpose requires affirmative customer consent, as defined later in this resolution.

1. By way of example and not by way of limitation, requests for customer Data used for Secondary Purposes might come from a customer asking for their Data to be shared directly to a third party vendor, from a vendor asking for customer Data for marketing purposes.

2. Prior to releasing customer Data for a Secondary Purpose, the customer's prior permission ("Affirmative Consent") must be obtained for each instance of release of Data, unless the customer has previously provided Affirmative Consent to release Data to the same third party and has not provided written notice to the City of withdrawal of that consent. Customers who wish to authorize or direct the City to disclose their PII to a third party may do so by contacting the City and providing consent to do so as provided herein.

Section III. Consent Requirements:

A. For purposes of this resolution, the following is necessary to meet the requirements of Affirmative Consent, which can be provided electronically or via hard copy:

1. the date or time period for which the consent is granted;

2. the name of the party or parties to whom the customer has authorized the release of their Data to, including any affiliates and third parties.

B. The City shall make reasonable efforts to validate that the individual providing the consent matches the name, service address and account number of the customer of record in the City's customer information system or is authorized by the customer to provide such consent.

C. A record for each instance the customer has given written or electronic consent must be maintained, following applicable records retention guidelines.

D. The "Customer Authorization to Release Information" (CARI), attached hereto and incorporate by this reference, is provided as a template to use to obtain/provide consent from a customer for the release of Data. However, Affirmative Consent may be provided in writing or electronically if it reasonably identifies information covered by the template.

E. Customers who have given Affirmative Consent for release of information may cancel or retract said consent at any time, but only for release of Data from the time of the receipt of the retraction by the City forward. Such cancellation or retraction shall be provided to the City shall be provided in a writing or electronically.

F. The City considers security of PII a top priority. Before releasing PII to a third party at the request of a customer, the City will take reasonable measures to verify the identity of the third party.

Section IV: Release of Data for Secondary Purpose:

A. Aggregated Data: Aggregated data is data that is considered sufficiently consolidated so that any individual customer cannot reasonably be identified. The City will generally follow a 15/15 rule, which means that aggregated data must include the data of at least 15 customers, and that no

single customer included in the sample comprises more than 15% of the total load in the aggregated data set. Any PII must be removed from the aggregated data before release. Affirmative Consent is not required when releasing aggregated data that meets this definition.

B. Disclosure of PII to Contractors/Subcontractors:

1. As an electric utility, the City may engage contractors to provide services in support of primary and secondary business functions as noted above.

a. In accordance with RCW 19.29A.100(5) as now existing or hereafter amended or succeeded, the City shall require its contractors who or which will receive PII to sign a Confidentiality and Non-Disclosure Agreement (CNDA), including an agreement to be bound by this Policy.

b. Further, the City's contractors shall be responsible for assuring that any a subcontractor or other third party they engage to provide services in support of their contract with the City is in compliance with this Policy. Any breach of this agreement by any contractor may subject the contractor to potential remedies available to the utility or to the customer, including under the state's Consumer Protection Act.

2. Prior to release of PII for a Primary Purpose, the Public Works Director of the City (the Director) or his or her designee must review and approve any proposed or requested disclosure of PII to a third party contractor to determine if

disclosing the PII to the contractor/subcontractor is necessary to meet a business objective that is a Primary Purpose and complies with this Policy. An approval only needs to be obtained the first time the City contracts with that entity. Subsequent requests are only required if additional types of PII will be provided to the contractor.

3. Prior to release of PII for Secondary Purpose, the Director or his or her designee must obtain completed CARI forms from each customer whose Data will be shared for a Secondary Purpose. Copies of the forms shall be retained by the City in accordance with RCW 19.29A.100 and the applicable Record Retention Policy.

Section V: Disclosure of PII to Law Enforcement

A. The City will comply with RCW 42.56.235, as now existing or hereafter amended ir succeeded, or any other applicable law, rule or regulation, which gives law enforcement authorities a mechanism and authority to obtain records of customers which or who are suspected of committing a crime. The law enforcement officer or agency must complete a "Request for Inspection, Copying or Obtaining of Public Records by Law Enforcement Agencies" form before certain PII will be released to the requesting officer.

B. Customer information that is strictly protected from disclosure by law will not be released to law enforcement under the above process. In order for law enforcement to obtain this

type of exemptible data, a subpoena, warrant or other form of court order must be obtained by the requesting agency.

C. All requests for PII by law enforcement should be processed through the City's Public Records Officer.

SECTION VI: Notwithstanding the foregoing provisions, nothing in this Policy is intended to prohibit or prevent the City from inserting any marketing information into the retail electric customer's billing package.

SECTION VII: Notification & Investigation of Breach

A. In accordance with RCW 42.56.590, subject to the exclusions or limitations set forth in subsection B, the City shall notify the customer of any breach of personal information as promptly as reasonably possible after the breach is discovered, whether by the City or as a result of notification received by a third party, whether a vendor or otherwise. For purpose of this responsibility, a customer's personal information is defined above in the Personal Identifiable Information definition. This notice needs to be provided as soon as the utility discovers the breach or is notified of the breach; for example, notified by a third party vendor of a breach of their system. If provided, the notice may be given in any manner allowed by the referenced statute, including in a written or electronic manner: PROVIDED THAT, if electronically given, the requirements of the referenced statute shall be fulfilled completely.

B. Limitations:

1. Notice is not required if the breach is not likely to subject the customer to a risk of harm.

2. Notification required by this section may be delayed if a law enforcement agency will impede a criminal investigation.

Section VIII: Investigation and Resolution of Complaints:

A. Any request for or dispute relating to access, correction, or other matters involving a customer's PII or potential or suspected violation of this policy by the City or a vendor under contract to the City should be directed to the Office of the Clerk-treasurer. The notification shall be in writing and shall set forth in reasonable detail the factual basis of the request or the dispute. Upon receipt, the complaint or request shall be promptly forwarded to the Director.

B. Upon receipt of a request or complaint, the Director shall promptly review the request or investigate the complaint and, when the results are determined, work with the submitting party to communicate the findings and attempt to resolve the complaint or response to the request. If not satisfied with the resolution the complainant may appeal the response or, as to the complaint, the findings of the investigation to the City Council for further review and resolution. If the investigation or review of the complaint finds a possible breach of this policy by a third party, the City will work with the customer in an effort to resolve the complaint; provided, nothing in this Policy is

intended to require a customer to request that the City investigate an improper release or use of PII by a third party prior to exercising any applicable legal remedies against the third party.

PASSED THIS _____ DAY OF _____, 2017, by the City Council of the City of McCleary, and signed in authentication thereof this _____ day of _____, 2017.

CITY OF McCLEARY:

_____

BRENT SCHILLER, Mayor

ATTEST:

_____

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

_____

DANIEL O. GLENN, City Attorney

Addendum 1: Non-Disclosure Agreement Checklist

The Director of Public Works or the Director's designee r shall complete a review of this checklist prior to the release of customer PII as part of a vendor agreement under which the City will release PII to the vendor. The following customer/vendor/employee information will be shared with <Vendor Name> (check all that apply):

1. _____ Names
2. _____ Street addresses
3. _____ Telephone numbers
4. _____ Email addresses
5. _____ Social Security or Unified Business Identifier (UBI) numbers
6. _____ Account numbers (Named Utility account numbers, credit card numbers, bank account numbers)
7. _____ Account balances
8. _____ Any information received during the identity and customer credit worthiness process
9. _____ Identity information provided on a driver's license, passport, etc.
10. _____ Meter interval/electricity use data.

I have reviewed the information and data sharing request and believe that the PII identified above is that which is minimally necessary to accomplish the business objective, and that the data is being used for a primary purpose. A non-disclosure agreement is required with the contract.

By_____/_____

Title_____

Addendum 2: Confidentiality and Nondisclosure Agreement

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

Contract #_____

Date: _____

This Confidentiality Agreement ("Agreement") is by and between City of McCleary a municipal corporation governed under RCW 35A of the laws of the State of Washington, and _____ ("Contractor").

For purposes of this Agreement, "Confidential Information" shall include **City** customer, employee, or vendor information, all technical and business information or material that has or could have commercial value or other interest in the business or prospective business of **City**, and all information and material provided by the **City** which is not an open public record subject to disclosure under the Washington Public Records Act. Confidential Information also includes all information of which unauthorized disclosure could be detrimental to the interests of **City** or its customers, whether or not such information is identified as Confidential Information.

For purposes of this Agreement, "Contractor" shall include all employees, consultants, advisors and subcontractors of Contractor ("its Representatives").

Contractor hereby agrees as follows:

1. Contractor and its Representatives shall use the Confidential Information solely for the purposes directly related to the business set forth in Contractor's agreement with **City** and shall not in any way use the Confidential Information to the detriment of **City**. Nothing in this Agreement shall be construed as granting any rights to Contractor, by license or otherwise, to any **City** Confidential Information.

Contractor agrees to obtain and utilize such Confidential Information provided by **City** solely for the purposes described above, and to otherwise hold such information confidential pursuant to the terms of this Agreement.

2. In the event third parties attempt to obtain the Confidential Information by legal process, the Contractor agrees that it will not release or disclose any Confidential Information until **City** has notice of the legal process and has been given reasonable opportunity to contest such release of information and/or to assert the confidentiality privilege.

3. Upon demand by **City**, all information, including written notes, photographs, memoranda, or notes taken by Contractor that is Confidential Information shall be returned to **City**.

4. Confidential Information shall not be disclosed to any third party without prior written consent of **City**.

5. It is understood that Contractor shall have no obligation with respect to any information known by it or generally known within the industry prior to the date of this Agreement, or become common knowledge with the industry thereafter.

6. Contractor acknowledges that any disclosure of Confidential Information will cause irreparable harm to the **City**, and agrees to exercise the highest degree of care in safeguarding Confidential Information against loss, theft, or other inadvertent disclosure and agrees generally to take all steps necessary to ensure the maintenance of confidentiality including obligating any of its Representatives who receive Confidential Information to covenants of confidentiality.

7. The obligation set forth in this Agreement will continue for as long as Contractor possesses Confidential Information. If Contractor fails to abide by this Agreement, the **City** will be entitled to specific performance, including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for damages caused by the Contractor's breach, and to any other remedies provided by applicable law. Any breach of this Agreement shall constitute a default in performance by Contractor in any contract between the **City** and Contractor. If any suit or action is filed by **City** to enforce this Agreement, or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in the preparation or in prosecution or defense of such suit or action as affixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as affixed by the appellate court. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

City of McCleary

_____ Dated: _____

_____ Dated: _____

Consultant