



BUCKLEY CITY COUNCIL MEETING AGENDA
March 22, 2016
Multi-Purpose Center, 811 Main Street
City Council Meeting
Opening 7:00 P.M.

Call to Order
Pledge of Allegiance
Roll Call of Council Members

Next Ordinance #09-16
Next Resolution #16-05
Next Agenda Bill #AB16-040

A. Citizen Participation

Brett Stevens: Elk Heights Emergency Access BLA

Pg 6

Time Limit of Three Minutes (Must sign up at City Hall by Wednesday prior to the Council Meeting)

B. Staff Reports

C. Main Agenda

1. WSDOT Presentation – SR410 Bridge Closure Pg 21
2. Presentation - White River School District FFA Debate Team Pg 22
3. ORD No. __-16: Astound Broadband, LLC Franchise Agreement – 2nd Reading/Adoption Pg 23
4. ORD No. __-16: Adopting New 2016 Stormwater Management Program Pg 64
5. RES No. 16-__: City's Intent to Conduct a Public Hearing Re Assumption of TBD Pg 83
6. Lease Agreement - Addendum #4 to Doxa ("SoZo") CrossFit LLC Lease Pg 86
7. Agreement - PD Building Expansion and Remodeling Feasibility – Addendum #1 Pg 91
8. Selection of Financial Institution for Banking Services Pg 93

D. Consent Agenda

9. A. Approve Minutes of March 8, 2016 City Council Study Session Pg 95
B. Claims

E. Committee Reports

10. Mayor's Report Johnson
11. Administration, Finance & Public Safety Boyle Barrett
12. Transportation & Utilities Tremblay
13. Community Services Rose
15. Council Member Comments & Good of the Order



CITY OF BUCKLEY ♦ PO BOX 1960 ♦ BUCKLEY, WA 98321
360-829-1921 ♦ Fax 360-829-2659 ♦ <http://www.cityofbuckley.com>

CITY OF BUCKLEY MEETING LIST

Mar 21	7:00 PM	Planning Commission
Mar 22	7:00 PM	City Council
Apr 4	7:00 PM	Planning Commission
Apr 5	9:30 AM	Admin, Finance & Public Safety (City Hall)
Apr 5	7:00 PM	City Council Study Session
Apr 12	7:00 PM	City Council
Apr 18	7:00 PM	Planning Commission
Apr 19	9:30 AM	Admin, Finance & Public Safety (City Hall)
Apr 19	7:00 PM	Transportation & Utilities (City Hall)
Apr 21	4:00 PM	Community Services (MPC)
Apr 26	7:00 PM	City Council

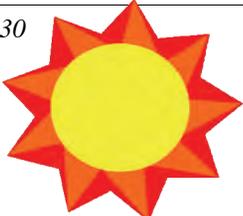
MARCH



Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1 9:30 AM Admin, Finance & PS 7 City Council Study Session	2	3 4 Community Ser- vices	4	5
6	7 7 Planning Commis- sion	8 7 City Council	9	10	11	12
13	14	15 9:30 AM Admin, Finance & PS 7 Transportation & Utilities	16	17 	18	19
20	21 7 Planning Commis- sion	22 7 City Council	23	24	25	26
27 	28	29	30	31		

April 2016



Sun	Mon	Tue	Wed	Thu	Fri	Sat
					 2	
3	4 7 PC	5 9:30 AM Admin, Finance & PS 7 City Council Study Session	6	7	8	9
10	11	12 7 City Council	13	14	15	16
17	18 7 PC	19 9:30 AM Admin, Finance & PS 7 Transportation & Utilities	20	21 4 Community Ser- vices	22	23
24	25	26 7 City Council	27	28	29	30 

A. CITIZEN PARTICIPATION



City of Buckley
Office of Administration -- Mayor Patricia Johnson

Citizen Participation Form

City Council Meeting Date: 3/22/16

Name: Brett Stevens Organization: _____

Phone: 206-465-8875 Email: tterbo@comcast.net

Address: 1607 Spaulding Circle, City: Buckley, WA 98321

I WISH TO SPEAK ON THE FOLLOWING SUBJECT(S):

I want to talk about the lot next to my home that the city owns. I want to purchase as a benefit to the city but the valuation placed on the property is not reasonable in my opinion. The lot is not usable for any purpose and the annual maintenance on the property over a 2 year period will exceed its true value. Further there is a parking strip in front of the property and therefore is the responsibility of the city that has no irrigation and does not meet standard expectations for upkeep as it is not watered during the summer months. I am not asking it to be "gifted" I am asking for a more reasonable purchase price as a way to save the city money on future maintenance costs. The city has all of the surveys of the land and should be able to provide them to all parties for the meeting.

PLEASE NOTE:

This form must be submitted to City Hall (933 Main Street), Attn: City Clerk, by 5:00 PM on the Wednesday prior to the Council meeting you wish to attend.

Please include with your form **16 copies** of any written information you wish to have distributed at the Council meeting. You may wish to have additional copies available for the public audience.

As Council agendas are very full, you are asked to limit your talk/presentation to three (3) minutes.

Last Update: September 9, 2014

From: [Dave Schmidt](#)
To: "Brett Stevens"
Cc: [Joanne \(jstarr@cityofbuckley.com\)](mailto:jstarr@cityofbuckley.com)
Subject: RE: Elk Heights Emergency Access BLA
Date: Tuesday, March 15, 2016 10:57:00 AM

Brett,

The next Council meeting is Tuesday the 22nd at 7 PM at the City's Multi-purpose Center at 811 Main Street. If you want to address the Council you'll need to notify the City Clerk, Joanne Starr at jstarr@cityofbuckley.com to get signed up under citizen participation.

As for the purchase price guidance from the State is as follows;

- Prior to sale, always determine the **fair market value** of the item to be sold. **If you sell it for less, you may be violating Article VIII, Sec. 7 of the State Constitution, the "gift clause."** ***No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.***

But see [RCW 39.33.010](#), listed in the Statutes section (under "Reference Sources" below).

- Hold a **public hearing**, if required by [RCW 39.33.020](#) or [RCW 35.94.040](#). [AGO 1997 No. 5](#) concludes that the public hearing requirement in [RCW 39.33.020](#) only applies to intergovernmental transfers of property.
 - Pass a **resolution declaring the property to be surplus**, and specifying how the property is to be sold, or delegating that task to a particular administrative official.
 - Proceed with sale as required by the town or city council, or in any commercially reasonable way. Sale can be by auction, private sale, sealed bid, through a broker or agent, etc.
 - Keep in mind that city officials and certain administrative officers may be restricted from purchasing surplus property due to **conflict of interest** concerns. The general rule is that those who are involved in the decision to surplus property (the council) and those in charge of administering the sale (mayor, city manager, or other city officer responsible for the sale) should not purchase the property. General city employees can purchase surplus city property.
 - Consider **adopting policies** concerning sale of city property. See the [Policies](#) section, below.
- RCW 39.33.010 referenced above allows cities to transfer property to **other governmental entities** "on such terms and conditions as may be mutually agreed upon." This allows transfers for less than value. However, there otherwise is no statutory exemption related to property sales from the constitutional prohibition against gifting of public funds. The fact that a statute specifically calls out transfers to other governmental entities and not other types of sales is further evidence that the constitutional prohibition applies.

David Schmidt

City Administrator
Buckley, WA 98321
(360) 761-7802

"It's not what you look at that matters, it's what you see."

From: Brett Stevens [mailto:bstevens@ffres.com]
Sent: Monday, March 14, 2016 6:02 PM
To: Dave Schmidt
Subject: RE: Elk Heights Emergency Access BLA

Dave,

I guess I don't understand what possible purpose the city could have for wanting to spend money on an annual basis to maintain land that there is no possible use for?

Can you tell me when the next city council meeting is, I would like to bring it up to the council.

Thanks again Dave

Brett A. Stevens CPM® CAPS®
SENIOR REGIONAL SUPERVISOR of FF PROPERTIES L.P
tel 858.457.2123 Ext. 5558 | fax 858-623-7793 | e-mail bstevens@ffres.com
5510 Morehouse Drive, Suite 200 | San Diego, CA 92121
www.FairfieldResidential.com

FAIRFIELD
RESIDENTIAL

From: Dave Schmidt [mailto:dschmidt@cityofbuckley.com]
Sent: Monday, March 14, 2016 5:17 PM
To: Brett Stevens
Subject: RE: Elk Heights Emergency Access BLA

Thanks Brett but I don't think that we'll be able to work it out then. I spoke with our attorney today and he mentioned that we could probably agree to go to the lower value of \$1.50/sq ft, but that would still leave the value at \$5,044.50 + ½ the costs. Currently the City has spent approximately \$2K on this issue and I had the engineer delay continuing to process until I heard back from you. Sorry to hear that it won't work out.

David Schmidt

City Administrator
Buckley, WA 98321
(360) 761-7802

"It's not what you look at that matters, it's what you see."

From: Brett Stevens [<mailto:bstevens@ffres.com>]
Sent: Monday, March 14, 2016 5:16 PM
To: Dave Schmidt
Subject: RE: Elk Heights Emergency Access BLA

Dave,

Lori and I would be willing to pay \$500 and half of the costs for the survey.

There is an annual savings to the city with regards to upkeep, the land serves no real purpose and the land could not really be used for anything in the future.

There is an added expense to us as I am sure we will pay higher property taxes as a result of the increased lot size and we will be responsible for upkeep.

This will be our offer.

Thanks Dave

Brett A. Stevens CPM® CAPS®
SENIOR REGIONAL SUPERVISOR of FF PROPERTIES L.P
tel 858.457.2123 Ext. 5558 | fax 858-623-7793 | e-mail bstevens@ffres.com
5510 Morehouse Drive, Suite 200 | San Diego, CA 92121
www.FairfieldResidential.com

FAIRFIELD
RESIDENTIAL

From: Dave Schmidt [<mailto:dschmidt@cityofbuckley.com>]
Sent: Thursday, March 10, 2016 11:42 AM
To: Brett Stevens
Subject: RE: Elk Heights Emergency Access BLA

Understood Brett! However, since we're dealing with "public property" versus vacated right-of-way we have constitutional concerns about the "gifting of public funds" to worry about.

David Schmidt

City Administrator
Buckley, WA 98321
(360) 761-7802

"It's not what you look at that matters, it's what you see."

From: Brett Stevens [<mailto:bstevens@ffres.com>]
Sent: Thursday, March 10, 2016 11:24 AM
To: Dave Schmidt
Subject: RE: Elk Heights Emergency Access BLA

Dave,

Thanks for the update.

I will talk with my wife tonight about it as this is a lot more than we thought it was going to be. I fully understand the benefit to us with regard the increased size in our lot and therefore theoretically a higher re-sale value, but honestly I viewed it as more of a benefit to the city as there will be substantially less upkeep required. I hope that the council will consider what the city would spend on an annual basis to maintain the property to a standard that would be requested by myself and my neighbors.

I will circle back with you tomorrow. Thanks Dave

Brett A. Stevens CPM® CAPS®
SENIOR REGIONAL SUPERVISOR of FF PROPERTIES L.P
tel 858.457.2123 Ext. 5558 | fax 858-623-7793 | e-mail bstevens@ffres.com
5510 Morehouse Drive, Suite 200 | San Diego, CA 92121
www.FairfieldResidential.com

FAIRFIELD
RESIDENTIAL

From: Dave Schmidt [<mailto:dschmidt@cityofbuckley.com>]
Sent: Thursday, March 10, 2016 11:02 AM
To: Brett Stevens
Subject: RE: Elk Heights Emergency Access BLA

Hi Brett,

The attorney indicated that he will have a draft purchase and sale ready to review sometime next week. I reviewed the current appraisal that we recently had done on another piece of public property and thought that I would include the conclusion from

this report. The appraisal concluded that “the comparables suggest that it has a value of about \$2.00 per square foot or less, likely in the \$1.50 to \$2.00 per square foot range.” Based on this I would suggest that we agree to a mid-range value of \$1.75/sq ft? If so then the survey indicates that the total area of the adjustment to your lot line would be 3,363 sq ft, which would translate to a fair market value of \$5,885.25. In addition the Council will probably ask for you to half of our costs associated with the transaction, which would be surveying, engineering, legal, admin processing, recording and any miscellaneous. I don't have a firm grasp on what these may be but I'm guessing that they will be \$2K-\$3. The survey costs will probably be the most costly.

Any thoughts?

David Schmidt

City Administrator
Buckley, WA 98321
(360) 761-7802

"It's not what you look at that matters, it's what you see."

From: Brett Stevens [<mailto:bstevens@ffres.com>]
Sent: Monday, March 07, 2016 9:59 AM
To: dschmidt@cityofbuckley.com
Subject: RE: Elk Heights Emergency Access BLA

Dave,

I am not sure we what the FMV would be for that property is and to me this would be mutually beneficial for the city and I.

Let's see what they say. Thanks Much

Sent from my Android phone using Symantec TouchDown (www.symantec.com)

-----Original Message-----

From: Dave Schmidt [dschmidt@cityofbuckley.com]
Received: Monday, 07 Mar 2016, 12:25
To: Brett Stevens [bstevens@ffres.com]
Subject: RE: Elk Heights Emergency Access BLA

I've asked the attorney to draft up a simple purchase and sale to review. Also based on recent appraisal information that we've had on other properties for right-of-way I'm guessing that we're talking about an amount around \$2.00/sq ft.

David Schmidt

City Administrator
Buckley, WA 98321
(360) 761-7802

"It's not what you look at that matters, it's what you see."

From: Brett Stevens [<mailto:bstevens@ffres.com>]
Sent: Monday, March 07, 2016 9:16 AM
To: dschmidt@cityofbuckley.com
Subject: RE: Elk Heights Emergency Access BLA

Sounds like a plan . I will be price sensitive, but we will see what they come up with. What do you think the timing will be?

Thanks Dave

Sent from my Android phone using Symantec TouchDown (www.symantec.com)

-----Original Message-----

From: Dave Schmidt [dschmidt@cityofbuckley.com]
Received: Monday, 07 Mar 2016, 12:08
To: Brett Stevens [bstevens@ffres.com]
Subject: FW: Elk Heights Emergency Access BLA

Hi Brett,

Attached is the BLA that the Planning Department is currently processing. I have asked the engineer to include the square foot area that we'll sell to you so that we know how much we're talking about. This will split the tract and incorporate the portion to be sold into your lot. We'll need to enter into a purchase and sale agreement for the area that you've indicated an interest in purchasing before we finalize the BLA that makes this part of your lot. Once have the actual square footage of the area, I'll email a copy of the value and draft purchase and sale agreement. Will this work?

David Schmidt

City Administrator
Buckley, WA 98321
(360) 761-7802

"It's not what you look at that matters, it's what you see."

From: Dom Miller [<mailto:dmiller@g-o.com>]
Sent: Saturday, February 27, 2016 8:25 AM
To: Buckley City Planner
Cc: Dave Schmidt; Joe Cosare

Subject: Elk Heights Emergency Access BLA

See attached BLA application and drawings for the Emergency Access Tract at Elk Heights. The City is the Applicant.

Thanks,

Dom

Dominic J. Miller, P.E. | Project Manager | (p) 360.292.7481, Ext. 1504 | (f) 360.292.7517
dmiller@g-o.com | www.g-o.com

Gray & Osborne, Inc | 2102 Carriage Drive SW, Building I, Olympia, WA 98502

**RECORD OF SURVEY FOR
BOUNDARY LINE ADJUSTMENT**

CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON.

APPLICATION NO. **LBA-2016-??**

FREE CONSENT STATEMENT

THE UNDERSIGNED AGREE THAT THE BOUNDARY LINE ADJUSTMENT SET FORTH HEREIN IS MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE OWNERS.

OWNER: CITY OF BUCKLEY, A MUNICIPAL CORPORATION

OWNER: BRETT A. AND LORI STEVENS, HUSBAND AND WIFE

ACKNOWLEDGMENT

STATE OF WASHINGTON)
) SS
COUNTY OF _____)

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT _____ IS THE PERSON WHO APPEARED BEFORE ME, AND SAID PERSON ACKNOWLEDGED THAT HE/SHE SIGNED THIS INSTRUMENT, ON OATH STATED THAT HE/SHE WAS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS THE _____ OF _____, TO BE THE FREE AND VOLUNTARY ACT OF SUCH COMPANY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.
GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS _____, DAY OF _____, 2016.

NOTARY PUBLIC
MY APPOINTMENT EXPIRES: _____

PRINT NAME OF NOTARY PUBLIC

ACKNOWLEDGMENT

STATE OF WASHINGTON)
) SS
COUNTY OF _____)

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT _____ AND _____ ARE THE INDIVIDUALS WHO APPEARED BEFORE ME, AND ACKNOWLEDGED THAT SAID INDIVIDUALS SIGNED THIS INSTRUMENT AS THEIR FREE AND VOLUNTARY ACT FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.
GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS _____, DAY OF _____, 2016.

NOTARY PUBLIC
MY APPOINTMENT EXPIRES: _____

PRINT NAME OF NOTARY PUBLIC

CITY OF BUCKLEY APPROVALS

CITY PLANNER _____ DATE _____

CITY ENGINEER _____ DATE _____

MAYOR _____ DATE _____

PORTION OF SW 1/4 NW 1/4, SEC. 11, T 19 N, R 6 E, W.M., PIERCE COUNTY, WASHINGTON

EXISTING LEGAL DESCRIPTION TRACT 'A' (TAX LOT 8000300790)

TRACT 'D', ELK HEIGHTS, ACCORDING TO THE PLAT THEREOF RECORDED JULY 30, 2007 UNDER RECORDING NO. 200707305003, RECORDS OF PIERCE COUNTY, STATE OF WASHINGTON.

EXISTING LEGAL DESCRIPTION TRACT 'B' (TAX LOT 8000300280)

LOT 28, ELK HEIGHTS, ACCORDING TO THE PLAT THEREOF RECORDED JULY 30, 2007 UNDER RECORDING NO. 200707305003, RECORDS OF PIERCE COUNTY, STATE OF WASHINGTON.

NEW LEGAL DESCRIPTION TRACT 'A'

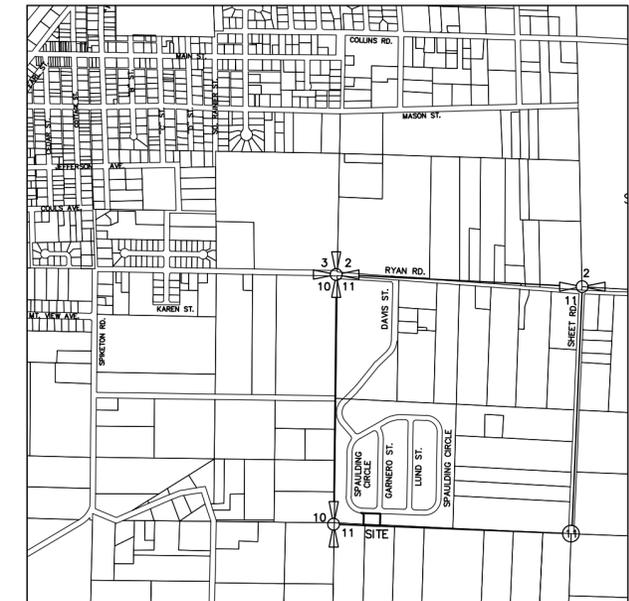
TRACT 'D', ELK HEIGHTS, ACCORDING TO THE PLAT THEREOF RECORDED JULY 30, 2007 UNDER RECORDING NO. 200707305003, RECORDS OF PIERCE COUNTY, STATE OF WASHINGTON.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:
BEGINNING AT THE SOUTHEAST CORNER OF TRACT 'D' SAID PLAT OF ELK HEIGHTS;
THENCE NORTH 88°06'29" WEST ALONG THE SOUTH LINE OF SAID TRACT 'D' A DISTANCE OF 25.00 FEET TO A LINE PARALLEL WITH AND 25.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM THE EAST LINE OF SAID TRACT 'D';
THENCE NORTH 01°53'31" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 104.50 FEET TO THE BEGINNING OF A 30.00 FOOT RADIUS CURVE TO THE RIGHT;
THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 47.12 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00" TO A POINT ON THE NORTHERLY LINE OF SAID TRACT 'D';
THENCE SOUTH 88°06'29" EAST ALONG SAID NORTHERLY LINE A DISTANCE OF 25.00 FEET THE NORTHEAST CORNER OF SAID TRACT 'D', SAID POINT ALSO BEING THE BEGINNING OF A 30.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, THE CENTER OF WHICH BEARS SOUTH 01°53'31" WEST;
THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND WESTERLY LINE OF SAID TRACT 'D' A DISTANCE OF 47.12 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00";
THENCE SOUTH 01°53'31" WEST ALONG SAID WESTERLY LINE A DISTANCE OF 104.50 FEET TO THE POINT OF BEGINNING.
CONTAINS: 0.101 ACRES, MORE OR LESS.

NEW LEGAL DESCRIPTION TRACT 'B'

TRACT 28, ELK HEIGHTS, ACCORDING TO THE PLAT THEREOF RECORDED JULY 30, 2007 UNDER RECORDING NO. 200707305003, RECORDS OF PIERCE COUNTY, STATE OF WASHINGTON.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:
BEGINNING AT THE SOUTHEAST CORNER OF TRACT 'D' SAID PLAT OF ELK HEIGHTS;
THENCE NORTH 88°06'29" WEST ALONG THE SOUTH LINE OF SAID TRACT 'D' A DISTANCE OF 25.00 FEET TO A LINE PARALLEL WITH AND 25.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM THE EAST LINE OF SAID TRACT 'D';
THENCE NORTH 01°53'31" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 104.50 FEET TO THE BEGINNING OF A 30.00 FOOT RADIUS CURVE TO THE RIGHT;
THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 47.12 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00" TO A POINT ON THE NORTHERLY LINE OF SAID TRACT 'D';
THENCE SOUTH 88°06'29" EAST ALONG SAID NORTHERLY LINE A DISTANCE OF 25.00 FEET THE NORTHEAST CORNER OF SAID TRACT 'D', SAID POINT ALSO BEING THE BEGINNING OF A 30.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, THE CENTER OF WHICH BEARS SOUTH 01°53'31" WEST;
THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND WESTERLY LINE OF SAID TRACT 'D' A DISTANCE OF 47.12 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00";
THENCE SOUTH 01°53'31" WEST ALONG SAID WESTERLY LINE A DISTANCE OF 104.50 FEET TO THE POINT OF BEGINNING.
CONTAINS: 0.464 ACRES, MORE OR LESS.



VICINITY MAP
SCALE: 1"=1/4 MILE

NOTES

1. THE APPROVAL OF THIS BOUNDARY LINE ADJUSTMENT IS NOT A GUARANTEE THAT FUTURE PERMITS WILL BE GRANTED FOR ANY STRUCTURE OR DEVELOPMENT WITHIN A LOT AFFECTED BY A BOUNDARY LINE ADJUSTMENT.
2. THIS BOUNDARY LINE ADJUSTMENT IS NOT A PLAT, REPLAT OR SUBDIVISION.
3. EXISTING TRACT ASSESSOR'S PARCEL NO.:
TRACT 'A': 8000300780, TRACT 'B': 8000300280.

SURVEY NOTES

1. BASIS OF BEARING IS NAD 83/91, WASHINGTON SOUTH ZONE, ALONG THE SOUTH LINE OF THE NW 1/4, SEC. 11, T19N, R6E, W.M., PER THE PLAT OF ELK HEIGHTS, UNDER RECORDING NO. 200707305003, RECORDS OF PIERCE COUNTY WA.
2. SURVEY PERFORMED USING LEICA 1203 TCPR 3 SECOND TOTAL STATION, USING TRAVERSE AND RADIAL SURVEY METHODS. ALL DISTANCES ARE GROUND DISTANCES. SURVEY MEETS OR EXCEEDS ACCURACY REQUIREMENTS CONTAINED IN WAC 332-130-090.
3. THIS SURVEY DOES NOT PURPORT TO SHOW ALL EASEMENTS OF RECORD OR OTHERWISE. BOUNDARY LINES, AS ESTABLISHED HEREON FOR THIS SURVEY, ARE FROM INTERPRETATION OF DEED DESCRIPTION AND MAY NOT CONFORM TO EXISTING LINES OF OCCUPATION AND/OR FENCE LINES AND COULD RESULT IN POSSIBLE BOUNDARY DISPUTES.

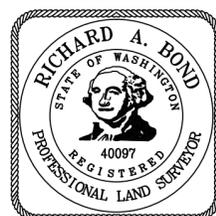
REFERENCES

1. PLAT OF ELK HEIGHTS, UNDER RECORDING NO. 200707305003, RECORDS OF PIERCE COUNTY WA.
2. PLAT OF ELK MEADOWS, UNDER RECORDING NO. 9302241003, RECORDS OF PIERCE COUNTY WA.

Gray & Osborne, Inc.



CONSULTING ENGINEERS
701 Dexter Avenue North,
Suite 200 Seattle, WA 98109
Phone 206-284-0860



SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF THE CITY OF BUCKLEY IN 12/15 - 2/16.

CERTIFICATE NO. 40097

PIERCE COUNTY ASSESSOR

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

PIERCE COUNTY ASSESSOR _____ DATE _____

DEPUTY ASSESSOR _____ DATE _____

AUDITOR'S CERTIFICATE

FILED FOR RECORD THIS _____ DAY OF _____, 2016
AT THE REQUEST OF RICHARD A. BOND

DEPUTY _____ COUNTY AUDITOR _____

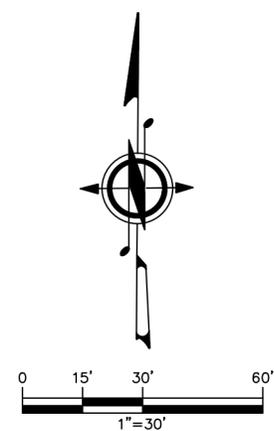
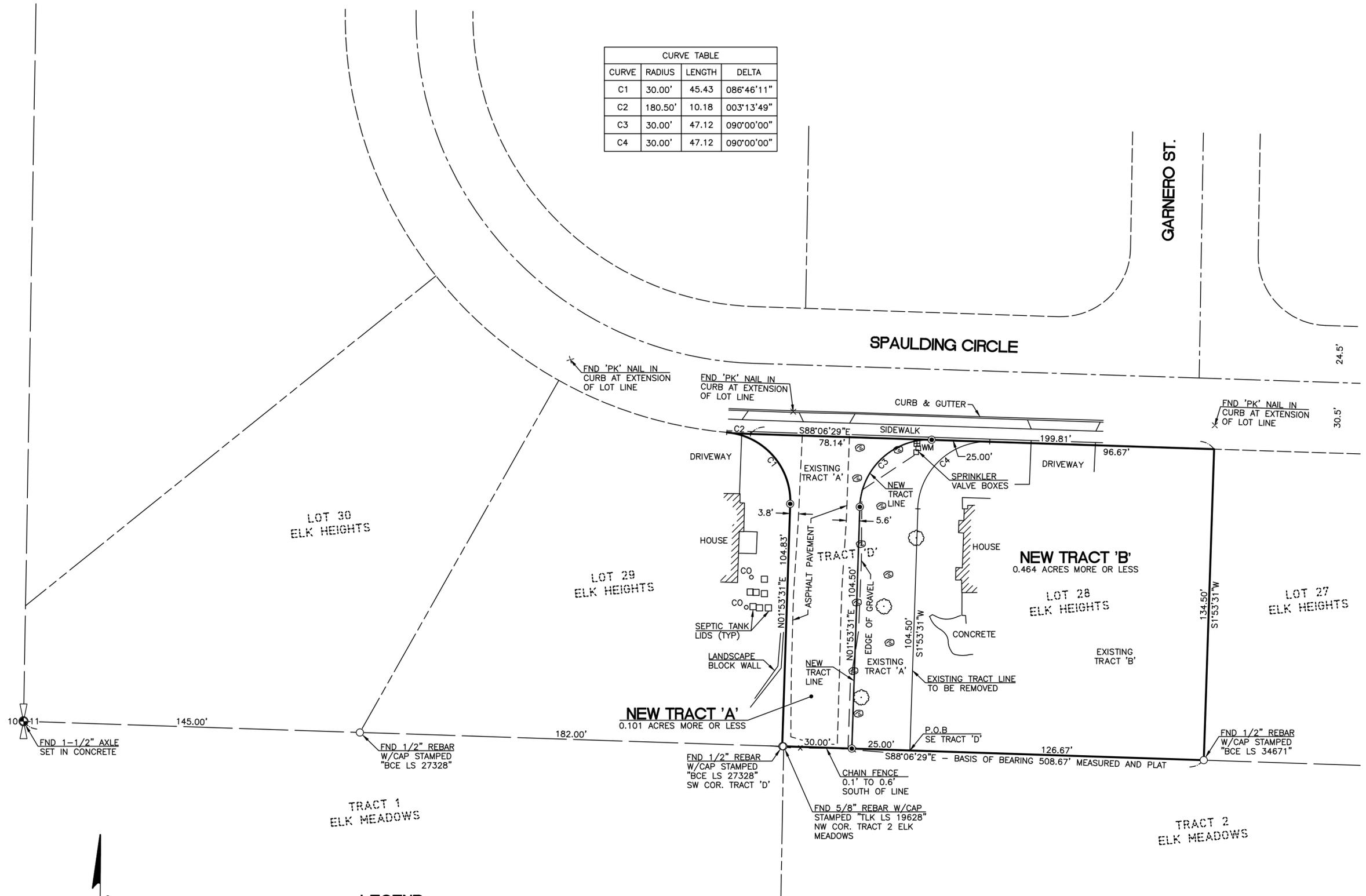
AUDITOR'S FEE NO. _____

DWN BY: R.B. SCALE: N/A SHEET 1 OF 2

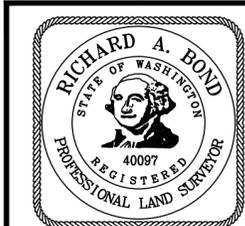
CHK'D BY: R.B. DATE: 2/2/2016 JOB # 15204

RECORD OF SURVEY FOR BOUNDARY LINE ADJUSTMENT
 PORTION OF SW 1/4 NW 1/4, SEC. 11, T 19 N, R 6 E, W.M., PIERCE COUNTY, WASHINGTON

CURVE TABLE			
CURVE	RADIUS	LENGTH	DELTA
C1	30.00'	45.43	086°46'11"
C2	180.50'	10.18	003°13'49"
C3	30.00'	47.12	090°00'00"
C4	30.00'	47.12	090°00'00"



- LEGEND**
- FOUND MONUMENT (AS NOTED)
 - FOUND CORNER (AS NOTED)
 - × FOUND 'PK' NAIL (AS NOTED)
 - SET 5/8" REBAR W/CAP STAMPED "G&O LS40097 LS45790"
 - WM WATER METER
 - CO SEWER CLEANOUT
 - LANDSCAPE ROCK
 - DECIDUOUS TREE
 - x — CHAINLINK FENCE



Gray & Osborne, Inc.
 CONSULTING ENGINEERS
 701 Dexter Avenue North,
 Suite 200 Seattle, WA 98109
 Phone 206-284-0860

DWN BY: R.B.	SCALE: N/A	SHEET 2 OF 2
CHK'D BY: R.B.	DATE: 2/2/16	JOB # 15204







B. STAFF REPORTS

C. MAIN AGENDA

**CITY COUNCIL
AGENDA BILL**

**City of Buckley
PO Box 1960
Buckley, WA 98321**

ITEM INFORMATION			
SUBJECT: WSDOT Presentation – SR410 Bridge Closure Cost Impact: N/A Fund Source: N/A Timeline: N/A	Agenda Date: March 22, 2016		AB16-040
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt		X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy James		
	Police Depart – Chief Arsanto		
	Muni Court – Jessica Cash		
City Clerk – Joanne Starr		X	
Attachments: N/A			
SUMMARY STATEMENT: WSDOT has requested that they be allowed to give the City Council and any public in attendance a short presentation on the scheduled closure of the White River Bridge for construction and repair in April, 2016.			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: None			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

**CITY COUNCIL
AGENDA BILL**

**City of Buckley
PO Box 1960
Buckley, WA 98321**

ITEM INFORMATION			
SUBJECT: Presentation - White River School District FFA Debate Team	Agenda Date: March 22, 2016		AB16-041
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt		X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy James		
	Police Depart – Chief Arsanto		
	Muni Court – Jessica Cash		
City Clerk – Joanne Starr		X	
Attachments: N/A			
<p>SUMMARY STATEMENT: Annual debate before the City Council by the White River School FFA Debate Team.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: None			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

**CITY COUNCIL
AGENDA BILL**

**City of Buckley
PO Box 1960
Buckley, WA 98321**

ITEM INFORMATION			
SUBJECT: ORD No. __-16: Granting non-exclusive telecommunications franchise to Astound Broadband, LLC. – 2nd Reading	Agenda Date: March 22, 2016		AB16-042
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – W. Scott Snyder	X	X
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
Fund Source: N/A	Police Depart – Chief Arsanto		
Timeline: N/A	Other –		
Attachments: Ordinance with Franchise Agreement			
<p>SUMMARY STATEMENT: For City Council approval of a grant of a non-exclusive telecommunications franchise to Astound Broadband, LLC, for the installation, operation, and maintenance of a telecommunication system within the City’s rights-of-way. Astound Broadband, LLC, is a telecommunications company that provides private line, internet access services, dark fiber services and lit fiber services. If this franchise is approved Astound will still be required to obtain all appropriate permits and approvals prior to commencing construction and/or installing their facilities in the right-of-way.</p> <p>While State law prohibits the City from imposing a franchise fee for telecommunications systems, the franchise does require Franchisee to pay the City for its administrative costs incurred in preparing and administering the franchise agreement. The Franchisee will reimburse the City for its legal and out-of-pocket costs (i.e. publication, mailing and copying).</p> <p>Pursuant to RCW 35A.47.040 Franchise ordinances must go through two readings for adoption. This presentation is the 2nd reading and therefore can be considered for adoption.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Trans/Utilities 2/16/2016 & 3/15/16			
RECOMMENDED ACTION: Motion to Approve the ORD No. __-16 establishing a new Franchise Agreement between Astound Broadband, LLC, and the City of Buckley and establishing an effective date.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

CITY OF BUCKLEY
ORDINANCE NO. _____

An ORDINANCE of the City Council of the City of Buckley, Pierce County, Washington, establishing a new Franchise Agreement between Astound Broadband, LLC and the City of Buckley.

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

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

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

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

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

Section 1. Franchise Granted.

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

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

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

2.1 The authority granted by this Franchise is a limited, non-exclusive authorization to occupy and use the City’s Rights-of-Way. Such use must be in compliance with the Buckley Municipal Code provisions, including and not limited to Chapter 13.35. Franchisee represents that it expects to provide the following services within the City: telecommunications services, private line, internet access services, dark fiber services and lit fiber services (the “Services”). Nothing contained within this Franchise shall be construed to grant or convey any

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

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

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

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

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

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

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

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

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

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

Section 5. Relocation of Facilities.

5.1 Franchisee agrees and covenants to protect, support, temporarily disconnect, relocate, or remove from any Rights-of-Way any of its Facilities when reasonably required by the City by reason of traffic conditions or public safety, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way,

street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Franchisee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. Except as otherwise provided by law, the costs and expenses associated with relocations ordered pursuant to this Section 5.1 shall be borne by Franchisee. Nothing contained within this Franchise shall limit Franchisee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

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

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

(a) At least forty five (45) days prior to commencing the project, provide Franchisee with written notice requiring such relocation; provided, however, that in the event of an emergency situation, defined for purposes of this Franchise as a condition posing an imminent threat to property, life, health, or safety of any person or entity, the City shall give Franchisee written notice as soon as practicable; and

(b) At least forty five (45) days prior to commencing the project, provide Franchisee with copies of pertinent portions of the plans and specifications for the improvement project and a proposed location for Franchisee's Facilities so that Franchisee may

relocate its Facilities in other City Rights-of-Way in order to accommodate such improvement project; and

(c) After receipt of such notice and such plans and specifications, Franchisee shall complete relocation of its Facilities at least ten (10) days prior to commencement of the City's project at no charge or expense to the City, except as otherwise provided by law. Relocation shall be accomplished in such a manner as to accommodate the City's project.

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

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

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

control of Franchisee or the negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

5.7 Whenever any person shall have obtained permission from the City to use any Right-of-Way for the purpose of moving any building, Franchisee, upon thirty (30) days' written notice from the City, shall raise, remove, or relocate to another part of the Right-of-Way, at the expense of the person desiring to move the building, any of Franchisee's Facilities that may obstruct the removal of such building.

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

5.9 The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6. Undergrounding of Facilities.

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

6.2 Whenever the City may require the undergrounding of the aerial utilities in any area of the City, Franchisee shall underground its aerial facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number of conduits of Franchisee's Facilities being undergrounded in comparison to the total number of conduits of all other utility facilities being undergrounded. This Section 6.2 shall only apply to the extent Franchisee has existing aerial utilities in the City or is specifically authorized to build aerial utilities by the City.

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

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

6.5 Franchisee shall not remove any underground cable or conduit that requires trenching or other opening of the Rights-of-Way along the extension of cable to be removed, except as provided in this Section 6.5. Franchisee may remove any underground cable from the Right-of-Way that has been installed in such a manner that it can be removed without trenching or

other opening of the Right-of-Way along the extension of cable to be removed, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5. When the City determines, in the City's sole discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove the cable or conduit at Franchisee's sole cost and expense. If Franchisee ceases to use all or a portion of the underground cable and conduit in the Right-of-Way for a period of twelve consecutive months or more, and such cable or conduit is not removed, then it shall be deemed abandoned and title thereto shall vest in the City at no cost to the City. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground cable or conduit from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

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

Section 7. Maps and Records.

7.1 After construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps in compliance with the Buckley Municipal Code Section 13.35.160. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in AutoCAD or other industry standard readable formats that are acceptable to the City and delivered electronically. Franchisee shall provide such maps within ten (10) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps and as-builts provided to the City.

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

7.3 All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise prohibited by State or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 7.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

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

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

8.2 Unless not required by the Buckley Municipal Code, whenever Franchisee shall commence work in any public Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its cable or equipment, it shall apply to the City for a permit to do so and shall comply with the requirements of the Buckley Municipal Code Chapter 13.35. In addition, Franchisee shall give the City at least one working day prior written notice of its intent to commence work in the Rights-of-Way. During the progress of the work, Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise or in the Buckley Municipal Code.

8.3 If either the City or Franchisee shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section 8.3, the party planning such

excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

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

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

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

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

8.4 Except for emergency situations, Franchisee shall give at least seven (7) days' prior notice of intended construction to residents in the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. At least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property, Franchisee shall physically post a notice on the property indicating the nature and location of the work to be performed. Door hangers are permissible methods of notifications to residents. Franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Following performance of the work, Franchisee shall restore the private property in "as good as" or "better" than the condition prior to construction, except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter

onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

8.5 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 8.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification of the City and at the expense of Franchisee. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth not owned by the City. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Public Works Director or his/her designee.

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

8.7 Franchisee acknowledges that it, and not the City, shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the Federal Communications Commission ("FCC") with respect to Franchisee's Facilities, if applicable. Franchisee shall indemnify and hold the City harmless from any fines or

other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may, upon at least forty-eight (48) hours' prior written notice to Franchisee, either terminate this Franchise immediately if the equipment is not brought into compliance by the expiration of such notice period or may proceed to cure the conditions of noncompliance at Franchisee's expense, and collect all reasonable costs from Franchisee in accordance with the provisions of Section 15.3 and Section 15.4.

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

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

Section 10. Safety Requirements.

10.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, which shall include Buckley Municipal Code Section 13.35.090 and employ all necessary devices as required by applicable law

during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

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

10.3 Additional safety standards include:

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

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

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

(d) Franchisee shall permit material tests by the Public Works Director as further described in the Buckley Municipal Code Section 13.35.210.

10.4 Unsafe Conditions and Nuisances in the Rights-of-Way. Franchisee shall comply with any order issued by the Public Works Director or his/her designee regarding the correction or discontinuance of an unsafe, nonconforming or unauthorized condition within the Rights-of-Way as further described by the Buckley Municipal Code Section 13.35.250 and any stop work orders as described in the Buckley Municipal Code Section 13.35.290. Further, Franchisee shall comply with any determinations by the Public Works Director or his/her designee regarding “Nuisance Utility Facilities” as that term is defined in the Buckley Municipal Code Section 13.35.270.

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

Section 12. City Conduit. Except in emergency situations, Franchisee shall inform the Public Works Director with at least thirty (30) days’ advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit, and related structures necessary to access the conduit pursuant to and subject to RCW 35.99.070. Such notification shall be in addition to the requirement to apply for and obtain permits pursuant to Section 8.2.

Section 13. Restoration after Construction.

13.1 Franchisee shall, after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 19, at Franchisee’s own cost and expense, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to a condition “as good as” or “better” than the condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance

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

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

13.3 If conditions (e.g. weather) make the complete restoration required under Section 13 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

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

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

Section 14. Emergencies.

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

14.2 Whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, an adjoining public place, street utilities, City property, Rights-of-Way, or private property (collectively "Endangered Property") or endangers the public, the Public Works Director or his/her designee, may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the Endangered Property or the public, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully

comply with such directions, or if an emergency situation exists that requires immediate action before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the Endangered Property and take such reasonable actions as are necessary to protect the Endangered Property or the public. Franchisee shall be liable to the City for the costs of any such repairs in accordance with the provisions of Sections 15.3 and 15.4.

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

Section 15. Recovery of Costs.

15.1 Franchisee shall pay a grant fee in an amount not to exceed Four Thousand Dollars (\$4,000) for the City's legal costs incurred in drafting and processing this Franchise and all work related thereto. No construction permits shall be issued for the installation of Facilities authorized until such time as the City has received payment of the grant fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 15.3.

15.2 In addition to Section 15.1, Franchisee shall promptly reimburse the City in accordance with the provisions of Section 15.3 and Section 15.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the

extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

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

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

Section 16. Franchise Fees and Utility Taxes.

16.1 Franchisee represents that its Services, as authorized under this Franchise, are a telephone business as defined in RCW 82.16.010, or that it is a service provider as used in RCW 35.21.860 and defined in RCW 35.99.010. As a result, the City will not impose franchise fees under the terms of this Franchise. The City reserves its right to impose a franchise fee on Franchisee if Franchisee's Services as authorized by this Franchise change such that the statutory

prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are otherwise removed. The City also reserves its right to require that Franchisee obtain a separate franchise for a change in use, which franchise may include provisions intended to regulate Franchisee's operations as allowed under applicable law. Nothing contained within this Franchise shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

16.2 Franchisee acknowledges that its operation with the City constitutes a telecommunication business subject to the utility tax imposed pursuant to the Buckley City Code Chapter 3.96. Franchisee stipulates and agrees that certain of its business activities are subject to taxation as a telecommunication business and that Franchisee shall pay to the City the rate applicable to such taxable services under Buckley City Code Chapter 3.96, and consistent with state and federal law. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Buckley City Code Chapter 3.96 as may be permitted by law.

Section 17. Indemnification.

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

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

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

17.4 The parties acknowledge that this Franchise is subject to RCW 4.24.115. Accordingly, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Franchisee and the City, its officers, officials, employees, and volunteers, Franchisee's liability shall be only to the

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

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

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

Section 18. Insurance.

18.1 Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to Franchisee, its agents, representatives or employees. Franchisee shall require that every subcontractor maintain insurance coverage and policy limits consistent with this Section 18. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and additional insured

endorsement to the City for its inspection at the time of or prior to acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

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

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

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

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

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

18.3 The insurance policies, with the exception of Workers' Compensation obtained by Franchisee shall name the City, its officers, officials, employees, agents, and volunteers ("Additional Insureds"), as an additional insured with regard to activities performed by

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

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

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

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

Section 20. Bonds.

20.1 Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety acceptable to the City equal to at least 150% of the estimated value of the work and the estimated cost to restore existing improvements as determined by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work,

recording of all easements, provision of as-built drawings, and the posting of a Warranty Bond as described in Section 20.2. Compliance with the performance deposit requirements described in the Buckley Municipal Code Section 13.35.220 shall satisfy the provisions of this Section 20.1.

20.2 Franchisee shall furnish a two-year warranty bond (“Warranty Bond”), or other surety acceptable to the City, at the time of final acceptance of construction work on the Facilities within the Rights-of-Way. The Warranty Bond amount will be equal to twenty-five percent (25%) of the actual construction costs. The Warranty Bond in this Section 20.2 must be in place prior to City’s release of the Performance Bond required by Section 20.1. Compliance with the warranty deposit requirements described in the Buckley Municipal Code Section 13.35.220 shall satisfy the provisions of this Section 20.2.

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

Section 21. Remedies to Enforce Compliance.

21.1 In addition to any other remedy provided in this Franchise, the City reserves the right to pursue any remedy available at law or in equity to compel or require Franchisee and/or its successors and assigns to comply with the terms of this Franchise and the pursuit of any right or

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

21.2 If either party violates or fails to comply with any of the provisions of this Franchise, or a permit issued as required by Section 8.2, or should it fail to heed or comply with any notice given to such party under the provisions of this Franchise (the “Defaulting Party”), the other Party (the “Non-defaulting Party”) shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of any such breach and the Defaulting Party shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the Non-defaulting Party reasonably determines the breach cannot be cured within thirty (30) days, the Non-defaulting Party may specify a longer cure period, and condition the extension of time on the Defaulting Party’s submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Defaulting Party does not comply with the specified conditions, the Non-defaulting Party may pursue any available remedy at law or in equity as provided in Section 21.1 above, or in

the event Franchisee has failed to timely cure the breach, the City, at its sole discretion, may elect to (1) revoke this Franchise pursuant to Section 22, (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against Franchisee (and collect from the Franchise Bond if necessary), or (3) extend the time to cure the breach if under the circumstances additional time is reasonably required. Liquidated damages described in this Section 21.2 shall not be offset against any sums due to the City as a tax or reimbursement pursuant to Section 15. Nothing in this Franchise shall be construed as limiting any remedies that the City may have, at law or in equity, from enforcement of this Franchise.

Section 22. Revocation.

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

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

Section 24. Police Powers and City Regulations. Nothing within this Franchise shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise and the franchises of similarly-situated entities, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations, consistent with 47 U.S.C. § 253, the location, elevation, manner of construction, and maintenance of any Facilities by Franchisee and other similarly-situated franchisees, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. The City reserves the right to promulgate any additional regulations of general applicability as it may find necessary in the exercise of its lawful police powers consistent with 47 U.S.C. § 253. In the event of a conflict between the provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over this Franchise.

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

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

Section 27. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 7, Section 8, Section 13, Section 14, Section 16, Section 17, Section 18, Section 19, Section 20, and Section 28 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall

survive this Franchise, and any renewals or extensions, to the extent provided for in those sections. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the successors, executors, administrators, legal representatives, and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its successors and assigns equally as if they were specifically mentioned where Franchisee is named.

Section 28. Changes of Ownership or Control.

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

28.2 Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the: ultimate ownership or working control of Franchisee, ownership or working control of the Facilities, ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee's Facilities, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval if there is a change in control as described in the preceding sentence. Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of

Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. The City shall approve or deny such request for an assignment or transfer requiring City's consent within one-hundred twenty (120) days of a completed application from Franchisee, unless a longer period of time is mutually agreed to by the parties or when a delay in the action taken by the City is due to the schedule of the City Council and action cannot reasonably be obtained within the one hundred twenty (120) day period. In the event that the City adopts a resolution denying its consent and such change, transfer, or acquisition of control has been affected, the City may revoke this Franchise, following the revocation procedure described in Section 22 above. The assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate Franchisee's Services. Franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Franchise, in accordance with the provisions of Section 15.3 and Section 15.4, and shall pay the applicable application fee.

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

Section 29. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter within this Franchise and no other

agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

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

Section 31. Vacation. If at any time the City, by ordinance and in accordance with applicable laws, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall use reasonable efforts to reserve an appurtenant easement for public utilities within the vacated portion of the Rights-of-Way within which Franchisee may continue to operate existing Facilities under the terms of this Franchise for the remaining period of the term set forth in Section 1.1. Notwithstanding the preceding sentence, the City shall incur no liability for failing to reserve such easement. The City shall notify Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City may, after sixty (60) days' written notice to Franchisee, terminate this Franchise with respect to such vacated area.

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

CITY OF BUCKLEY
Attn: City Clerk
PO Box 1960
Buckley WA 98321
Telephone: 360-829-1921

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

Section 33. Severability. If any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

Section 34. Compliance with all Applicable Laws. Each party agrees to comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. The City reserves the right at any time to amend this Franchise to conform to any enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation, when such statute, regulation, or ordinance necessitates this Franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days' written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations regarding the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, either party may pursue any available remedies at law or in equity.

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

Section 36. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors, or any person under its control to do the same.

Franchisee will be solely responsible for and will defend, indemnify, and hold the City, its officers, officials, employees, agents, and volunteers harmless from and against any and all claims, costs, and liabilities including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property to the extent caused by Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage, or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional.

Section 37. Licenses, Fees and Taxes. Prior to constructing any Facilities or providing Services within the City, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay all applicable taxes on personal property and Facilities owned or placed by Franchisee in the Rights-of-Way and shall pay all applicable license fees, permit fees, and any applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees properly imposed by the City under this Franchise.

Section 38. Miscellaneous.

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

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

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

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

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

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

38.7 There are no third party beneficiaries to this Franchise.

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

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

Section 40. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF BUCKLEY THIS ____ DAY OF _____, 2016; AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS ____ DAY OF _____, 2016.

Mayor Patricia Johnson

Attest: _____
Joanne Starr, City Clerk

APPROVED AS TO FORM:

James E. Haney, City Attorney

<u>Vote</u>	Lyn Rose	Cristi Boyle Barrett	Marvin Sundstrom	Beau Burkett	John Leggett	Milt Tremblay	Jenney Kyllonen
Ayes:							
Nays:							
Abstentions:							
Absent:							

PUBLISHED:

EFFECTIVE:

EXHIBIT A
Page 1 of 2

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

Red Line = Aerial Construction
Yellow Line = Underground Construction

City-wide view.

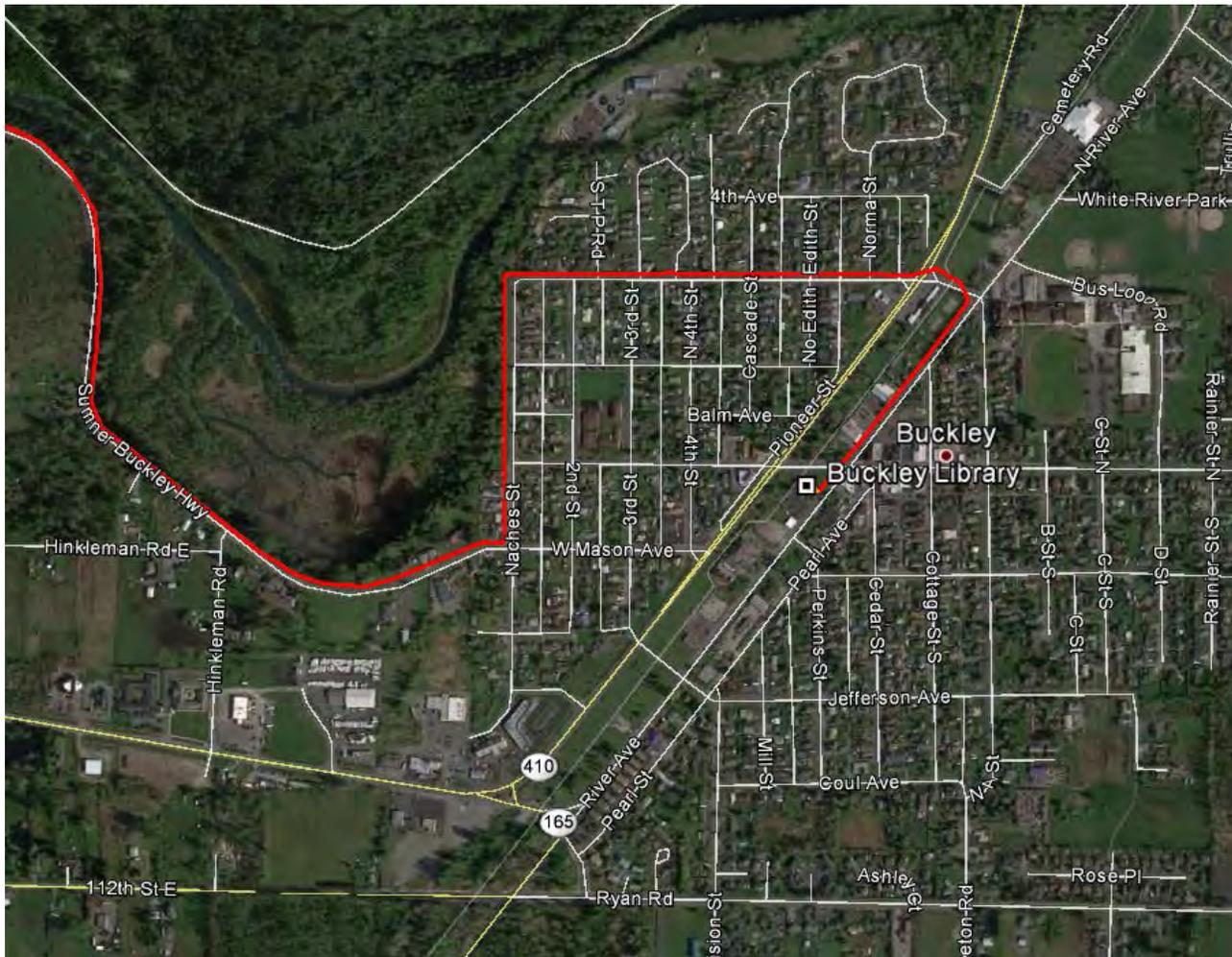


EXHIBIT A
Page 2 of 2

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

Red Line = Aerial Construction
Yellow Line = Underground Construction

Enhanced view of Buckley Library location.

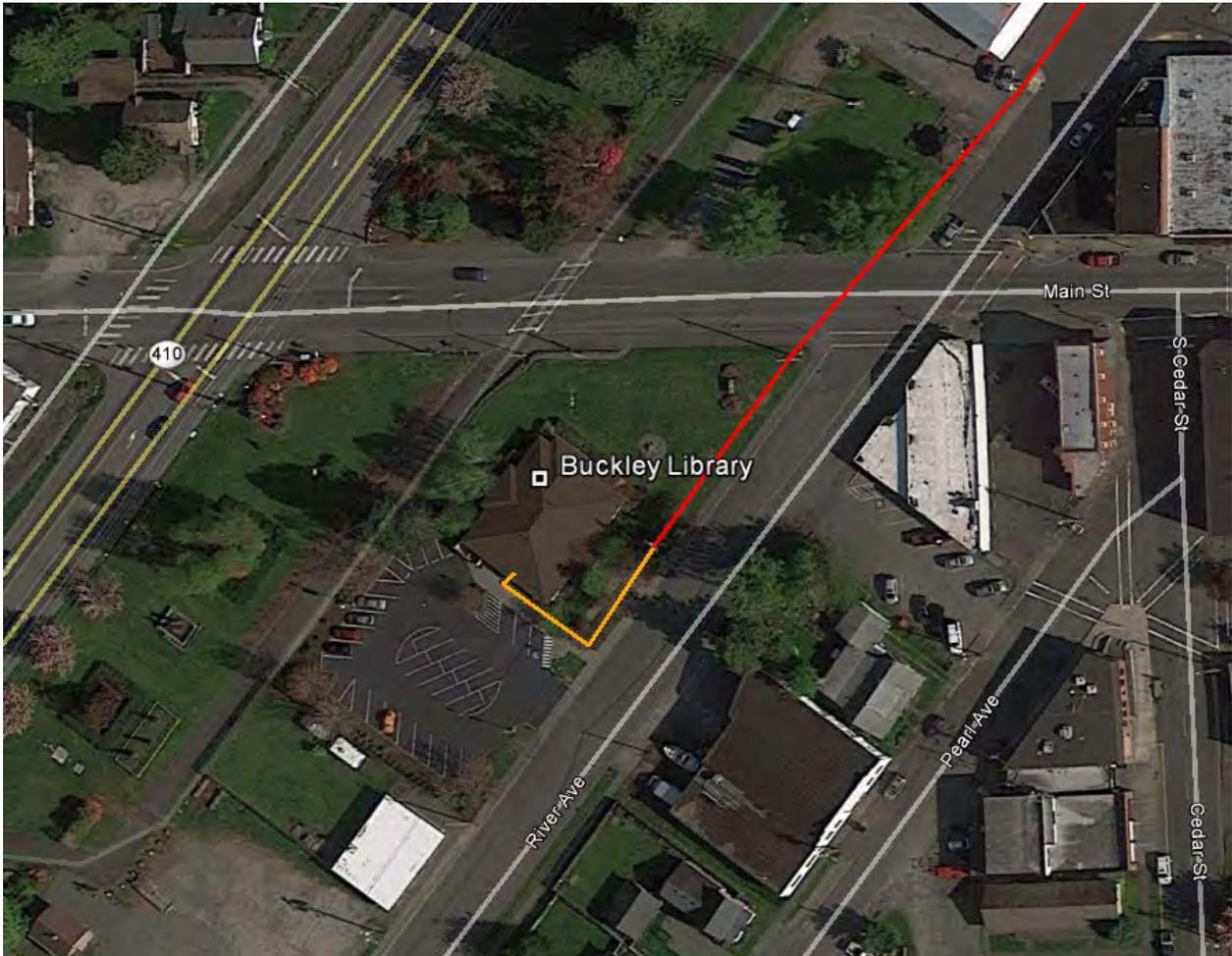


EXHIBIT B

STATEMENT OF ACCEPTANCE

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

Astound Broadband, LLC

By: _____
Name: _____
Title: _____

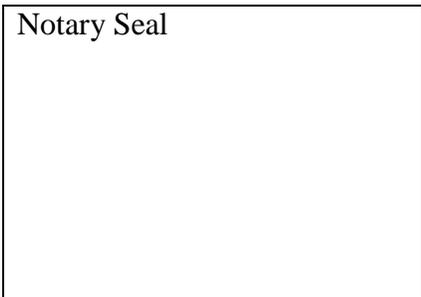
Date: _____

ACKNOWLEDGEMENT

STATE OF WASHINGTON)
)SS.
COUNTY OF _____)

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

DATED: _____.



(Signature of Notary)

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

**CITY COUNCIL
AGENDA BILL**

**City of Buckley
PO Box 1960
Buckley, WA 98321**

ITEM INFORMATION			
SUBJECT: ORD No. __-16 - Adopting New 2016 Stormwater Management Program	Agenda Date: March 22, 2016		AB16-043
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller	X	X
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
	Police Depart – Chief Arsanto		
	City Clerk – Joanne Starr		
	Court Administrator – Jessica Cash		
Attachments: Ordinance & SWMP			
<p>SUMMARY STATEMENT: In 2013 staff and the engineer’s simplified the SWMP to identify #1) what the permit requirements are and #2) provide a table with the activities the City will do to meet the requirements. This was done so that when we have to annually update the SWMP, all we have to do is delete the rows in the table that don’t apply anymore. This has been done for this new 2016 version being presented for consideration. The updated SWMP has to be attached to the annual report due on March 31st.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: MOTION to Approve ORD No. __-16 Adopting an updated 2016 Stormwater Management Program.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

ORDINANCE NO. ___ - 16

AN ORDINANCE OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON, ADOPTING A NEW 2016 CITY OF BUCKLEY PHASE II NPDES STORMWATER MANAGEMENT PROGRAM.

WHEREAS, the Federal Environmental Protection Agencies phase II regulations went into effect in early 2003 and apply to all regulated small municipal separate storm sewer systems; and

WHEREAS, on January 17, 2007 Washington State Department of Ecology (DOE) issued two phase II municipal stormwater permits, one for western Washington and one for eastern Washington. The Phase II permit for western Washington covers at least 80 cities and five counties; and

WHEREAS, DOE determined that the City of Buckley was to be included under this Stormwater Phase II NPDES Permit coverage; and

WHEREAS, DOE modified the Phase II Permit in 2009. Ecology reissued it unmodified on August 1, 2012 at legislative direction to be effective through July 31, 2013. After an extensive public process, Ecology also reissued the updated 2013 to 2018 permit on August 1, 2012.

WHEREAS, the newly reissued Phase II permit requires that each municipality meet the requirements of their NPDES permit. Each municipality's permit for discharging stormwater is designed to reduce the discharge of pollutants, protect water quality, and meet the requirements of the Clean Water Act.

WHEREAS, the newly reissued Phase II permits requires stormwater managers to develop a new “revised” *Stormwater Management Plan (SWMP)* that is a “forward only” looking document that describes what the City will do (not what was done in the past) during the next permit phase.

WHEREAS, the Phase II municipal permits require that permittees develop—and annually update—a Stormwater Management Program (SWMP) document to submit with the annual report; and

WHEREAS, City staff with assistance from engineer’s from Gray & Osborne have

modified the City's previously adopted SWMP to meet the criteria established by DOE and ensure compliance with the Phase II NPDES; and

WHEREAS, the City Council desires to adopt the newly revised 2016 Stormwater Management Program to comply with the DOE Phase II NPDES Stormwater Permit requirements;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The City of Buckley 2015 Stormwater Management Program is hereby repealed and replaced with the Phase II NPDES 2016 Stormwater Management Program, attached as Exhibit A and incorporated by this reference as if set forth in full. .

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

Passed by the City Council on the ____day of _____, 2016.

Mayor Pat Johnson

Attest:

Joanne Starr, City Clerk

APPROVED AS TO FORM:

Phil Olbrechts, City Attorney

PUBLISHED: _____, 2016

EFFECTIVE: _____, 2016

City of Buckley



Stormwater Management Program



February 2016

1.0 INTRODUCTION

This document has been prepared to meet the Western Washington Phase II Municipal Stormwater Permit (Permit) requirement for the continued development and updating of a Stormwater Management Program (SWMP). The purpose of the SWMP is to reduce the discharge of pollutants from the municipal stormwater system to the maximum extent practicable and to protect water quality.

The National Pollutant Discharge Elimination System (NPDES) Permit is a federal permit that regulates stormwater and wastewater discharges to waters of the State. While it is a federal permit, the regulatory authority was passed on to the Washington State Department of Ecology (Ecology). In response, Ecology developed and issued the Western Washington Phase II Municipal Stormwater Permit. The Permit was issued by Ecology on January 17, 2007 and was modified on June 17, 2009. A new permit was issued August 1, 2013 and will extend until July 31, 2018. It is the intent of this SWMP to recognize and to plan for these requirements where appropriate.

All municipalities affected by the permit must create and implement a SWMP which addresses the following required program elements:

- Public Education and Outreach
- Public Involvement and Participation
- Illicit Discharge Detection and Elimination
- Controlling Run-Off from New Development, Redevelopment and Construction Sites
- Municipal Operations and Maintenance
- Total Maximum Daily Loads (TMDLs), if applicable to the jurisdiction

The City of Buckley SWMP will be updated annually and submitted with the City's Annual Report to Ecology. The City of Buckley is posting this document on the City web site, <http://www.cityofbuckley.com/>, so it can be viewed by the public. Comments on the City's SWMP can be made by submitting comments in writing to City of Buckley. Comments can be delivered or mailed to City of Buckley, PO Box 1960, 933 Main Street, Buckley, WA 98321 ATTN: Dave Schmidt, City Administrator. Email comments may be sent to: dschmidt@cityofbuckley.com.

2.0 PUBLIC EDUCATION AND OUTREACH PROGRAM

The following section describes the Permit requirements related to Public Education and Outreach and the planned activities the City intends to conduct to meet these requirements.

2.1 Permit Requirements

The 2013 Permit (Section S5.C.1) requires the City to:

- Include an education and outreach program designed to reduce or eliminate behaviors and practices that cause or contribute to adverse stormwater impacts

and encourages public participation. The target audiences include the general public, engineers/contractors/developers/land use planners/, residents, landscapers and property managers/owners.

- Create stewardship opportunities to participate in such activities as stream teams, storm drain marking, volunteer monitoring, education, and riparian plantings.
- Measure the understanding and adoption of the targeted behaviors for at least one target audience no later than February 2, 2016.

2.2 Planned Activities

Future activities planned to meet the Public Education and Outreach requirement of the permit are listed in Table 2-1.

Table 2-1

Planned Activities for Public Education and Outreach Program

Task ID	Task Description	Schedule
EDUC-1	Engineers/Contractors/Developers/Land Use Planners – Stormwater treatment and flow control BMPs/facilities: Pamphlet passed out with permits	Ongoing
EDUC-2	General public – general impacts of stormwater: Utility bill insert on stormwater topics	Annually
EDUC-10	Measure and evaluate understanding of targeted behavior for at least one targeted audience in at least one subject.	February 2016
EDUC-11	Redirect education if necessary based upon measured results in EDUC-1	March 2016 <i>(required by Feb. 2, 2016)</i>

3.0 PUBLIC INVOLVEMENT AND PARTICIPATION PROGRAM

The following section describes the Permit requirements related to Public Involvement and Participation and the planned activities the City intends to conduct to meet these requirements.

3.1 Permit Requirements

The 2013 Permit (Section S5.C.2) requires the City to:

- Provide ongoing opportunities for public involvement through advisory councils, public hearings, watershed committees, participation in developing rate structures or other similar activities.
- Provide the opportunity for the public to participate in the decision making processes involving the SWMP.
- The SWMP and Annual Report shall be posted to the City’s website no later than May 31st of each year.

3.2 Planned Activities

Future activities planned to meet the Public Involvement and Participation requirement of the permit are listed in Table 3-1.

Table 3-1

Planned Activities for Public Involvement and Participation

Task ID	Task Description	Schedule
PI-1	Hold public meeting on the current Stormwater Management Program via the City Council	Early March (each year)
PI-2	Post final SWMP and Annual Report to City Website	By April 30th (each year)
PI-3	Post final SWMP in local library	By April 30 th (each year)
PI-4	Post public opportunities to get involved on City website (i.e. storm drain stenciling, Adopt-a-Street and volunteer monitoring)	Ongoing

4.0 ILLICIT DISCHARGE DETECTION AND ELIMINATION

The following section describes the Permit requirements related to Illicit Discharge Detection and Elimination (IDDE) and the planned activities the City intends to conduct to meet these requirements.

4.1 Permit Requirements

The 2013 Permit (Section S5.C.3) requires the City to:

- Provide ongoing program designed to prevent, detect, characterize, trace and eliminate illicit connections and illicit discharges.
- Field assess at least one high priority waterbody in 2013 for IDDE purposes.
- Update City stormwater basemap which shall include all known outfalls, receiving waters, stormwater treatment and flow control facilities, conveyances where the outfall is 24-inches in diameter (or larger), and land use.
- Maintain an ordinance that effectively prohibits non-stormwater, illicit discharges into the storm system to the maximum extent allowable under state and federal law. The ordinance shall describe the allowable discharges and shall have an escalating enforcement procedure. This ordinance shall be reviewed and revised (if necessary) by February 2, 2018. The City shall have a compliance strategy to enforce the ordinance such as public education, technical assistance, source control and/or maintenance of stormwater facilities.
- Implement IDDE program that includes field screening of the system for illicit discharges/connections (40% of the system to be inspected no later than December 31, 2017 and then an average of 12% each year thereafter), procedures for detecting illicit discharges/connection and related enforcement, training for City staff, and informing businesses of hazards with illicit discharges,
- Publicize hotline for public reporting of spills and illicit discharges.

4.2 Planned Activities

Future activities planned to meet the Illicit Discharge and Detection and Elimination requirement of the permit are listed in Table 4-1.

Table 4-1

Planned Activities for Illicit Discharge Detection and Elimination

Task ID	Task Description	Schedule
IDDE-1 / EDUC-4	Provide general public with information related to IDDE on City website	Ongoing
IDDE-2	Maintain stormwater basemap	Ongoing
IDDE-3	Review IDDE ordinance for compliance with the Permit and effectiveness	<ul style="list-style-type: none"> ▪ November 2017 (<i>needs to be adopted by Feb. 2, 2018</i>)
IDDE-5	Field Screen 10% of system for IDDE each year through 2017 and then 12% of the system each year thereafter (Maintain records of which areas have been field screened and date inspected). Prioritize discharges to Spiketon Creek higher (see Task TMDL-1, Section 7.0 of this Plan).	<ul style="list-style-type: none"> ▪ August 2016 (<i>Completed 46% as of 1/1/2016</i>) ▪ August 2017 (Next 10%) [<i>40% of total system required to be inspected by Dec. 31, 2017</i>] ▪ August 2018 (<i>Next 12%</i>)
IDDE-6	Renew IDDE training for field staff and public employees (Track each training session with names of employees and date)	<ul style="list-style-type: none"> ▪ June 2016 ▪ June 2018
IDDE-7 / EDUC- 7	Provide businesses with brochures related to IDDE (track number of brochures and date delivered).	<ul style="list-style-type: none"> ▪ Light Industrial ▪ Construction: Ongoing with permit handouts

5.0 CONTROLLING RUNOFF FROM NEW DEVELOPMENT, REDEVELOPMENT, AND CONSTRUCTION SITES

The following section describes the Permit requirements related to controlling runoff from new development, redevelopment and construction sites. It also describes the planned activities the City intends to conduct to meet these requirements.

5.1 Permit Requirements

The 2013 Permit (Section S5.C.4) requires the City to:

- Implement and enforce a program to reduce pollutants in stormwater runoff from new development, redevelopment and construction site activities.
- Implement an ordinance to address runoff from these activities to be effective no later than December 31, 2016.
 - The ordinance addressing specific requirements in S5.C5.a(i) through (iii) shall apply to all applications submitted on or after January 1, 2017 and shall apply to projects approved prior to January 1, 2017 which have not started construction by January 1, 2022.
 - Include legal authority to inspect and enforce maintenance standards for private facilities for new development or redevelopment.
 - Include provision to verify adequate long-term operation and maintenance of stormwater treatment and flow control BMPs/facilities. The ordinance must:
 - Clearly identify the party responsible for maintenance
 - Establish maintenance standards as protective as Chapter 4, Volume V of the *Stormwater Management Manual for Western Washington*.
 - Address annual inspections of all permitted stormwater treatment and flow control BMPs/Facilities unless there are maintenance records to justify a different frequency.
 - Address inspections of all permitted stormwater treatment and flow control BMPs/Facilities and catch basins in new residential developments every six months until 90% of the lots are constructed (or when construction is stopped and the site is fully stabilized).
- At least 80% of scheduled inspections need to be completed to be in compliance with the permit.
- Adopt Minimum Requirements, thresholds and definitions in Appendix 1 of the Permit.
- Implement a site plan review process, inspection and enforcement to meet development standards for both private and public projects.
 - Review all stormwater site plans.

- Inspect all permitted sites that have a high potential for sediment transport.
 - Prior to clearing and construction
 - During construction (for erosion control)
 - After construction (permanent stormwater facilities; maintenance plan in place for treatment/flow control BMPS/facilities). If an inspection identifies an exceedence of the maintenance standard, then the following maintenance should be performed:
 - Inspections to be held within 1 year for typical maintenance, except catch basins
 - Within 6 months for catch basins
 - Within 2 years for maintenance that requires capital construction of less than \$25,000.
 - Maintain records of all inspections, warning letters, notices of violations, and other enforcement records.
- Make available the “Notice of Intent for Construction Activity” and “Notice of Intent for Industrial Activity” to developers.
- Train staff in the site plan review process, inspections, and enforcement. Maintain records of this training and names of staff trained.
- Implement low impact development (LID) code no later than December 31, 2016.
 - Conduct review of LID codes using Integrating LID into *Local Codes: A Guidebook for Local Governments* (Puget Sound Partnership).
 - Submit summary of the review with annual report by March 31, 2017. The summary is to include existing LID requirements, a list of participants (job title, brief job description, department represented), the codes, rules, standards, and revisions made which incorporate LID principles and LID BMPs. It shall be organized into a) measures to minimize impervious surfaces, (b) measures to minimize loss of native vegetation and c) other measures to minimize stormwater runoff.
- Watershed-scale stormwater planning (i.e. provide support to Pierce County if the County chooses a watershed that includes the City of Buckley).

5.2 Planned Activities

Future activities planned to meet the Control Runoff from New Development, Redevelopment and Construction Sites requirement of the permit are listed in Table 5-1.

Table 5-1

Planned Activities for Controlling Runoff from New Development, Redevelopment and Construction Sites

Task ID	Task Description	Schedule
CTRL-1	Review site plans for compliance with BCC 14.30 and 14.40 (Keep track of number of site plans reviewed)	Ongoing
CTRL-2	Provide post construction inspections prior	Ongoing

Task ID	Task Description	Schedule
	to approval for compliance with BCC 14.30 and 14.40 (Maintain inspection records; see CTRL-4).	
CTRL-3	Inspect constructions sites prior to and during construction for erosion control (Maintain inspection records; see CTRL-4).	Ongoing
CTRL-4	Maintain records of inspections (Include name of inspector, date, findings, warning letters, notices of violations, enforcement actions).	Ongoing <i>(Need to complete 80% of scheduled inspections)</i>
CTRL-5	Provide annual inspections of all stormwater treatment and flow control BMPs/facilities. <ul style="list-style-type: none"> ▪ Maintain inspection records; see CTRL-4. ▪ Document if a reduced inspection frequency is used. ▪ If inspection reveals that a maintenance standard is not being maintained, need to perform maintenance: <ul style="list-style-type: none"> ○ within 1 year (all facilities except catch basins) ○ within 6 months (catch basins) or ○ within 2 years (maintnenace that requires capital construction of less than \$25,000). 	Ongoing <i>(Need to complete 80% of scheduled inspections)</i>
CTRL-6	Train staff in the site plan review process, inspections, and enforcement. Maintain records of this training and names of staff trained.	Ongoing/New Hires <ul style="list-style-type: none"> ▪ June 2016 ▪ June 2018
CTRL-7	Make available the “Notice of Intent for Construction Activity” and “Notice of Intent for Industrial Activity” to developers.	Ongoing
CTRL-8	Review and revise ordinance for maintenance standard compliance	August 2016 <i>(Due Dec. 31, 2016)</i>
CTRL-9	Implement new LID codes (per LID Guidebook): Step 1 (assemble team), Step 2 (understand general topics to address), and Step 3 (review existing codes and standards)	March 2016
CTRL-10	Implement new LID codes (per LID Guidebook): Step 4 (amend existing code and develop	April 2016 – June 2016

Task ID	Task Description	Schedule
	new code)	
CTRL-11	Implement new LID codes (per LID Guidebook): Step 5 (public review and adoption process)	August 2016 – October 2016
CTRL-12	Implement new LID codes: Step 6 (implementation per LID Guidebook) and Summary Report (per Permit requirement). existing LID requirements, a list of participants (job title, brief job description, department represented), the codes, rules, standards, and revisions made which incorporate LID principles and LID BMPs. It shall be organized into a) measures to minimize impervious surfaces, (b) measures to minimize loss of native vegetation and c) other measures to minimize stormwater runoff.	November 2016 through December 2016 <i>[Implementation due by Dec. 31, 2016]</i>
CTRL-13	Summary Report (per Permit requirement). Report to include: <ul style="list-style-type: none"> ▪ Existing LID requirements ▪ A list of participants (job title, brief job description, department represented), ▪ The codes, rules, standards, and revisions made which incorporate LID principles and LID BMPs. ▪ Organized into a) measures to minimize impervious surfaces, (b) measures to minimize loss of native vegetation and c) other measures to minimize stormwater runoff 	December 2016 <i>[Due with March 31, 2017 annual report]</i>

6.0 MUNICIPAL OPERATIONS AND MAINTENANCE

The following section describes the Permit requirements related to the City's stormwater operation and maintenance practices. It also describes the planned activities the City intends to conduct to meet these requirements.

6.1 Permit Requirements

The 2013 Permit (Section S5.C.5) requires the City to:

- Implement an operations and maintenance (O&M) program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.
- Establish maintenance standards as protective as Chapter 4, Volume V of the *Stormwater Management Manual for Western Washington*.
- If an inspection identifies an exceedence of the maintenance standard, then the following maintenance should be performed:
 - Inspections to be held within 1 year for typical maintenance, except catch basins
 - Within 6 months for catch basins
 - Within 2 years for maintenance that requires capital construction of less than \$25,000.
- Perform annual inspections and take appropriate maintenance actions of all permitted stormwater treatment and flow control BMPs/Facilities unless there are maintenance records to justify a different frequency.
- Spot check and if necessary, repair potentially damaged permanent stormwater treatment and flow control BMPs/facilities after major storm events (24 hour storm event with a 10 year or greater recurrence interval).
- Inspect (and clean if necessary) all catch basins and inlets owned by the City at least once no later than August 1, 2017 and every two years thereafter.

Alternatives to this schedule include:

- Revised inspection frequency allowed if maintenance records for double the length of the proposed inspection frequency warrant a reduced inspection frequency. If these records are not available, certified (per G19), written statements to document a specific, less frequent inspection schedule may be submitted and shall be based on actual inspection and maintenance experiences.
- Conduct inspections by "circuit basis" whereby 25% of catch basins and inlets within each circuit are inspected. Include an inspection of the catch basin immediately upstream of any system outfall if applicable. Clean all catch basins within a given circuit for which the inspection indicates cleaning is needed.
- Clean all pipes, ditches, catch basins and inlets within a circuit once during the permit term. Circuits selected for this alternative must drain to a single point.

- Implement practices, policies and procedures to reduce stormwater impacts associated with runoff from all lands owned by the City including streets, parking lots, roads highways, buildings, parks, open space, road right-of-ways, maintenance yards, and stormwater treatment and flow control BMPs/facilities.
 - The following activities are to be addressed: pipe cleaning, cleaning of culverts that convey stormwater in ditch systems, ditch maintenance, street cleaning, road repair and resurfacing (including pavement grinding), snow and ice control, utility installation, pavement striping maintenance, maintaining roadside areas, including vegetation management, dust control, applications of fertilizers/pesticides/herbicides (including reducing nutrients and pesticides using alternatives that minimize environmental impacts), sediment and erosion control, landscape maintenance and vegetation disposal, trash and pest waste management, and building exterior cleaning and maintenance.
- Implement training program for employees on O&M practices. Follow up training and documentation of training shall be conducted. A list of trained staff shall be maintained.
- Implement a Stormwater Pollution Prevention Plan (SWPPP) for all heavy equipment maintenance or storage yards and material storage facilities owned by the City. A schedule for implementation of structural BMPs and periodic visual observation of discharges from the facility to evaluate the effectiveness of the BMP shall be included in the SWPPP. Generic SWPPPs applicable to multiple sites may be used.
- Maintain records of inspection and maintenance or repair activities.

6.2 Planned Activities

Future activities planned to meet the Municipal Operations and Maintenance requirement of the permit are listed in Table 6-1.

Table 6-1

Planned Activities for Municipal Operations and Maintenance

Task ID	Task Description	Schedule
O&M-1	Maintain records of inspections and maintenance activities.	Ongoing
O&M-2	Provide annual inspections of all stormwater treatment and flow control BMPs/facilities. <ul style="list-style-type: none"> ▪ Maintain inspection records; see O&M-1. ▪ Document if a reduced inspection frequency is used. ▪ If inspection reveals that a maintenance standard is not being maintained, need to perform maintenance: <ul style="list-style-type: none"> ○ within 1 year (all facilities except catch basins) ○ within 6 months (catch basins) or ○ within 2 years (maintenance that requires capital construction of less than \$25,000). 	Ongoing
O&M-3	Spot check treatment and flow control facilities/BMPs and repair if necessary.	After 24-hour/10-year storms (Ongoing)
O&M-4	Train staff in O&M operations, inspection procedures, reporting water quality concerns, and on efforts to reduce pollutants to runoff. Maintain records of this training and names of staff trained.	Ongoing/New Hires <ul style="list-style-type: none"> ▪ June 2016 ▪ June 2018
O&M-9	Inspect all catch basins and inlets	All inspected by Aug 1, 2017

7.0 COMPLIANCE WITH TOTAL MAXIMUM DAILY LOAD (TMDL) REQUIREMENTS

The following section describes the Permit requirements related to the City's participation in the South Prairie Creek Action Plan and the Total Maximum Daily Load associated with it. It also describes the planned activities the City intends to conduct to meet these requirements.

7.1 Permit Requirements

The 2013 Permit (Appendix 2) requires the City to:

- Designate areas discharging via the MS4 to Spiketon Creek as the highest priority areas for illicit discharge detection and elimination routine field screening and implement the schedule and activities identified in S5.C.3.

7.2 Planned Activities

Future activities planned to meet the TMDL requirement of the permit are listed in Table 7-1.

Table 7-1

Planned Activities for TMDL Requirements

Task ID	Task Description	Schedule
TMDL-1	Prioritize IDDE inspections (Task IDDE-2) for discharges to Spiketon Creek higher than other locations throughout the City.	Ongoing <i>(Volunteer monitoring annually)</i>

8.0 MONITORING

The following section describes the Permit requirements related to monitoring. It also describes the planned activities the City intends to conduct to meet these requirements.

8.1 Permit Requirements

The 2013 Permit (Section S8) requires the City to:

- Describe any monitoring related studies conducted throughout the year in the Annual Report.
- Reporting involved with the Regional Stormwater Management Program is not necessary as part of the Annual Report. The regional program includes status and trends monitoring, stormwater management program effectiveness studies, and source identification/diagnostic monitoring.

8.2 Planned Activities

Future activities planned to meet the monitoring requirement of the permit are listed in Table 8-1.

Table 8-1

Planned Activities for TMDL Requirements

Task ID	Task Description	Schedule
MON-1	Opt into Regional Stormwater Management Program by paying the following fees: <ul style="list-style-type: none"> ▪ Status and Trends Monitoring: \$1,129 ▪ Stormwater Program Effectiveness: \$1,882 ▪ Source Identification and Diagnostic Monitoring: \$175 	Aug. 15 th , each year
MON-2	Describe any stormwater monitoring conducted for the year in the Annual Report	By March 31 st , each year

9.0 REPORTING REQUIREMENTS

The following section describes the Permit requirements related to reporting. It also describes the planned activities the City intends to conduct to meet these requirements.

9.1 Permit Requirements

The 2013 Permit (Section S9) requires the City to:

- Submit an Annual Report by March 31st of each year with the first reporting period being from January 1, 2014 to December 31, 2014. The report will include:
 - Copy of the current SWMP
 - Annual Report Form (per DOE)
 - Attachments (summaries, descriptions, reports, etc.)
 - Certification and signature
 - Notification of any annexations, incorporations or jurisdictional boundary changes
- Keep all records related to the permit and the SWMP for at least five years.
- All records related to the permit shall be available to the public at reasonable times during business hours.

9.2 Planned Activities

Future activities planned to meet the monitoring requirement of the permit are listed in Table 9-1.

Table 9-1

Planned Activities for Reporting Requirements

Task ID	Task Description	Schedule
REP-1	Submit Annual Report	March 31 st , each year

**CITY COUNCIL
AGENDA BILL**

**City of Buckley
PO Box 1960
Buckley, WA 98321**

ITEM INFORMATION			
SUBJECT: RES No. 16 -__ City’s Intent to Conduct a Public Hearing Re Assumption of TBD	Agenda Date: March 22, 2016		AB16-044
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Kristin Eick	X	X
	City Engineer – Dominic Miller		
	City Clerk – Joanne Starr		X
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
	Police Depart – Chief Arsanto		
	Building Depart – Mike Deadmond		
	Muni Court – Jessica Cash		
Attachments: Resolution			
<p>SUMMARY STATEMENT: Per the Council’s desires and as authorized by the 2015 State Legislature adopted Second Engrossed Substitute Senate Bill (“2ESSB”) 5987 this Resolution communicates the City’s intent to assume the rights, powers, functions, and obligations of the TBD and setting a public hearing for such.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: Motion to Approve RES No. 16-__ Regarding the City’s Intent to Conduct a Public Hearing for the Assumption of TBD.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

RESOLUTION NO. 16 -__

BUCKLEY, WASHINGTON

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON INDICATING ITS INTENT TO CONDUCT A PUBLIC HEARING CONCERNING THE ASSUMPTION OF THE BUCKLEY TRANSPORTATION BENEFIT DISTRICT.

WHEREAS, pursuant to Ordinance No. 13-12, the City of Buckley City Council established a transportation benefit district to be known as the Buckley Transportation District (“District” or “TBD”), with geographical boundaries comprise of the corporate limits of the city as they currently exist or as they may exist following future annexations; and

WHEREAS, the 2015 State Legislature adopted Second Engrossed Substitute Senate Bill (“2ESSB”) 5987, the majority of which became effective on July 15, 2015; and

WHEREAS, Section 301 of 2ESSB 5987 authorizes any city in which a transportation benefit district has been established pursuant to chapter 36.73 RCW with boundaries conterminous with the boundaries of the city to assume the rights, powers, functions, and obligations of the TBD, by adoption of an ordinance or resolution of the city legislative authority; and

WHEREAS, the City Council proposes to assume the rights, powers, functions, and obligations of the Buckley Transportation Benefit District; and

WHEREAS, the City Council will consider this proposal at a public hearing on April 12, 2016, at which all interested parties may appear and be heard; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BUCKLEY, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Declaration of Intent to Conduct Public Hearing. Pursuant to Section 302 of 2ESSB 5987, the Buckley City Council hereby indicates its intent to conduct a public hearing concerning the City Council's proposed assumption of the of the rights, powers, functions, and obligations of the Buckley Transportation Benefit District. The City Council shall consider the proposed assumption at said hearing and shall hear those appearing and all protests and objections to it.

Section 2. Public Hearing Scheduled. The public hearing on the City Council's proposed assumption of the rights, powers, functions, and obligations of the Buckley Transportation Benefit District is hereby scheduled for 7:00 p.m. on April 12, 2016, at the Buckley Multi-Purpose Center, 811 Main Street, Buckley, Washington. All persons interested may appear and be heard at said hearing.

Section 3. Publication. The City Clerk is hereby directed to publish notice of the public hearing in newspapers of daily general circulation printed or published in the City of Buckley at least two times during the two weeks preceding the scheduled hearing.

Section 4. Effective Date. This resolution shall take effect immediately upon passage.

Introduced, passed and approved this 22nd day of March, 2016.

Pat Johnson, Mayor

ATTEST:

Joanne Starr, City Clerk

APPROVED AS TO FORM:

Office of the City Attorney

**CITY COUNCIL
AGENDA BILL**

**City of Buckley
PO Box 1960
Buckley, WA 98321**

ITEM INFORMATION			
SUBJECT: Agreement: Addendum #4 to Doxa (“SoZo”) CrossFit LLC Lease of the Old Fire Station Building	Agenda Date: March 22, 2016		AB16-045
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		
	City Administrator – Dave Schmidt	X	X
	City Attorney – Kristin Eick		X
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy James		
	Police Depart – Chief Arsanto		
	Muni Court – Jessica Cash		
City Clerk – Joanne Starr		X	
Attachments: Lease Addendum			
<p>SUMMARY STATEMENT: In December, 2015 the Council extended the lease agreement with Doxa (“SoZo”) Crossfit to allow for additional time within which to complete negotiations for their purchase of the building because the lease was set to expire on December 31, 2015. In the interim obstacles have come up concerning financing due to the age and uniqueness of the building and the City attorney has been exploring creative ways in which to overcome the obstacles. In order to give them more time to identify options and complete negotiations staff is requesting that we extend this lease for another 90 days which should provide sufficient time.</p> <p>Staff is requesting and recommending that the City Council approve the addendum to the lease.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: MOTION to Approve Addendum #4 to the Agreement Between the City and Doxa (SoZo) Crossfit LLC for Lease of the Old Fire Station Building.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

**FOURTH ADDENDUM TO THE LEASE AGREEMENT BETWEEN THE
CITY OF BUCKLEY AND SOZO CROSSFIT, LLC**

THIS THIRD ADDENDUM is made this _____ day of March 2016, by and between the City of Buckley (“Landlord”), and SoZo Crossfit, LLC (“Tenant”).

WHEREAS, Landlord and Tenant (collectively, “the parties”) are currently in negotiation of purchase and sale of the premises; and

WHEREAS, the current Lease Agreement is scheduled to terminate on March 31, 2016; and

WHEREAS, negotiation and agreement of purchase and sale terms are expected to extend past the termination period; and

WHEREAS, Landlord and Tenant desire to extend the termination date for a period of 90 days to complete negotiations;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the Landlord and Tenant as follows:

I. Amendment of Paragraph 3 – Term.

3. Term. This Lease shall be for a term of 3 years and 6 months, commencing on the 1st day of January, 2013. This Lease shall be subject to earlier termination as provided in Section 20 herein.

II. Effect of Addendum. This Third Addendum modifies the Lease Agreement, but does not supersede it except as and to the extent provided by this Third Addendum. All provisions of the Lease Agreement shall remain in full force and effect except to the extent indicated hereunder.

City of Buckley

SoZo "Doxa" CrossFit

By: Pat Johnson, Mayor

By: Kevin Schneider

By: David Schmidt, City Administrator

APPROVED AS TO FORM:

By: Kristin Eick, City Attorney

STATE OF WASHINGTON)

)ss.

COUNTY OF PIERCE)

On this day personally appeared before me David Schmidt to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this ____ day of _____, 2016.

NOTARY PUBLIC in and for the
State of Washington

Residing at: _____

My Commission Expires_____

**CITY COUNCIL
AGENDA BILL**

**City of Buckley
PO Box 1960
Buckley, WA 98321**

ITEM INFORMATION			
SUBJECT: Agreement - Public Safety Building Expansion and Remodeling Feasibility – Addendum #1	Agenda Date: March 22, 2016		AB16-046
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		
	City Administrator – Dave Schmidt		
	City Attorney (Land) – Phil Olbrechts		
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar		
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Jennifer Bacon		
Planning Depart – Kathy James			
Police Depart – Chief Arsanto	X	X	
Attachments: Contract Addendum			
<p>SUMMARY STATEMENT: On October 13, 2015 the City Council approved the scope of work to have Helix Design Group complete Phase 1 of Buckley Public Safety Building Expansion and Remodeling Feasibility Study for a cost of \$19,875. This study was completed in December, 2015 and included an analysis of two (2) options for development of the facility. Option 1 at a cost of \$1,468,448 included a building addition, as well as upgrades to the existing building necessary for functionality, as well as building performance and overall life of the facility. Option 2 at a cost of \$836,437 included the building addition only and assumed that the existing building would be improved in a later phase of construction.</p> <p>Both options were estimated to be far above what was thought and so Chief has asked that Helix add an option that scales the project down to a minimum need level. In order to complete this additional work Helix has proposed an addendum to the original agreement for a cost of \$3,660 plus mileage and reimbursable costs.</p> <p>Staff is requesting and recommending that Council approve this addendum.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Admin/Fin/Public Safety 3/15/16			
RECOMMENDED ACTION: MOVE to Approve Addendum #1 to the Agreement for Public Safety Building Expansion and Remodeling Feasibility Study.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	



February 25, 2016

Chief Jim Arsanto
Buckley Police Department
P.O. Box 640
Buckley, WA 98321

Re: Public Safety Building Expansion and Remodeling Feasibility Study. Additional Study Option

Dear Chief Arsanto:

Thank you again for using Helix Design Group (Helix) as your consultant for this interesting and important project. We look forward to continuing our work with you and your staff.

Per your request, we have estimated the level of effort required to add an Option 3 to the Feasibility Study:

Add approximately 800 sq. ft. (20'x40') to the East end of the building, housing:

- Expanded utility/server room
- Evidence Preparation and Evidence Storage
- If possible, Evidence Custodian office.

In order to update the report and re-draft, cost estimating and coordination, we propose the following fee:

Architecture:		\$3,000
Cost Est.:	\$600	
Mark-up @10%:	<u>60</u>	<u>660</u>
Total:		\$3,660

Reimbursable expenses are not included in our proposed fee, and will be invoiced at cost + 10%; auto mileage at \$0.56/mile.

We hope this proposal meets with your approval. If so, please complete and sign the "Acceptance" block below, and return a copy to us by e-mail.

Thank you!

Sincerely yours,
HELIX DESIGN GROUP, INC.

Erik Prestegaard
Principal

Approval to proceed with services as outlined above:

(Signature) (Title)

(Company)

(Date)

**CITY COUNCIL
AGENDA BILL**

**City of Buckley
PO Box 1960
Buckley, WA 98321**

ITEM INFORMATION			
SUBJECT: Changing Financial Institutions for the City of Buckley.	Agenda Date: March 22, 2016		AB16-047
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt		X
	City Attorney – Phil Olbrechts		
	City Engineer – Dominic Miller		
	Building Depart – Mike Deadmond		
	Finance Depart – Sheila Bazzar	X	X
	Fire Depart – Chief Predmore		
	Parks & Rec Depart – Ellen Boyd		
	Planning Depart – Kathy Thompson		
	Police Depart – Chief Arsanto		
	City Clerk – Joanne Starr		
	Court Administrator – Jessica Cash		X
Attachments:			
<p>SUMMARY STATEMENT: In late December 2015 and RFP was sent to 8 Financial Institutions in the local area. We received proposals from 3 institutions. One from Columbia Bank – who we currently utilize (we had a meeting with them on October 27, 2015 to go over the City’s accounts). The Finance/Admin Committee, Jessica Cash (Municipal Court Clerk), Mayor Patricia Johnson and I met with Heritage Bank of Sumner, and US Bank on Tuesday, March 15. After presentations from the two banks, it was decided to go with the US Bank proposal.</p>			
<p>COMMITTEE REVIEW AND RECOMMENDATION: March 15, 2016 Admin/Finance meeting committee recommended moving the City’s accounts to US Bank, in Enumclaw.</p>			
<p>RECOMMENDED ACTION: MOTION to Approve the Selection of U.S. Bank to provide Banking Services to the City.</p>			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

D. CONSENT AGENDA

**City Council
March 8, 2016**

Mayor Pro Tem Tremblay called the regularly scheduled meeting to order at 7:00 PM.

Upon roll call the following members were present: Sundstrom, Rose, Leggett, Kyllonen, Burkett and Boyle Barrett. Also in attendance were City Administrator Schmidt, Police Chief Arsanto, Fire Chief Predmore, Assistant Fire Chief Skogen, City Planner Thompson, and Court Administrator Cash.

Mayor Pro Tem Tremblay asked if there were any changes, additions or deletions to the agenda.

There were none.

Council member Boyle Barrett moved to approve the agenda. Council member Rose seconded the motion. Motion carried.

CITIZEN PARTICIPATION

Dan Sivils – 580 Park Avenue Buckley, WA 98321 -

Dan Sivils stated that he has been made aware that there will not be a Public Hearing on the Franchise Agreement that is on the agenda this evening. Sivils has a few concerns as well as recommendations that he will share with the Transportation and Utilities Committee on Tuesday night.

STAFF REPORTS

Fire Chief Predmore stated that the first meeting with the County Chiefs was this afternoon and they met with Combined Communications Network Enterprise over the opposed agreement, and the agreement is going to be taken back with a memorandum of understanding.

Police Chief Arsanto discussed the reports he gave each Council member and went over the reports for the Police Department's productivity for 2015.

City Administrator Schmidt stated that Grindline is going to be starting construction on the Skate Park on Monday. Also, we received approval today that we can go out for bid on the Realignment Project, so we will be advertising and having a bid opening on April 5th. We hope to bring a bid award to the Council on April 12th. The North Parking Lot Project contracts are all signed and we're waiting to meet with the contractors. The Public Works crew is still working on the water issue throughout the City. We are in

constant contact with the Health Department and making sure we are keeping updates on the website.

MAIN AGENDA

ORD No. -16: Astound Broadband, LLC Franchise Agreement – 1st Reading:
No Action.

ORD No. 06-16: Repealing & Amending Misc Code Sections – HE & BOA Conversions:

Council member Boyle Barrett moved to approve ORD No. 06-16 Repealing ORD #03-16 and Adopting Misc. Code Section Amendments related to the Hearing Examiner and Board of Adjustment Conversions. Council member Kyllonen seconded the motion. Upon roll call vote motion carried 7/0.

ORD No. 07-16: Amending BMC 13.35.110:

Council member Boyle Barrett moved to Approve ORD No. 07-16 Amending BMC 13.35.110 “Permit Exceptions.” Council member Leggett seconded the motion. Upon roll call vote motion carried 7/0.

ORD No. 08-16: Vacating Portions of 112th St E ROW:

Council member Boyle Barrett moved to Approve ORD No. 08-16 Vacating Portions of 112th St E ROW. Council member Leggett seconded the motion. Upon roll call vote motion carried 7/0.

MOU – Mt Rainier Expansion Area Funding Request:

Council member Boyle Barrett moved to Authorize the Mayor to sign the MOU Funding Request for the Mt. Rainier Expansion Area. Council member Leggett seconded the motion. Motion carried.

Agreement – Municipal Court Judicial Services:

Council member Boyle Barrett moved to Approve the Agreement Between the City and Judge Tedrick for Municipal Court Judicial Services for the term of January 1, 2014 to December 31, 2017. Council member Kyllonen seconded the motion. Motion carried.

Agreement – Joint EMS Operations Between AMR & Buckley:

Council member Boyle Barrett moved to Approve the Agreement between the City of Buckley and American Medical Response related to Emergency Medical Services. Council member Rose seconded the motion. Council member Boyle Barrett Amended the Motion to include the new information the Chief provided. Council member Rose seconded the motion. Amendment carried. Motion carried.

Lease Agreement – ILA between City of Buckley & Multiple Agencies for EMS:

Council member Boyle Barrett Moved to Approve the Interlocal Agreement between the City of Buckley, Town of Carbonado, Pierce County Fire District 25,

and Pierce County Fire District 26 related to Emergency Medical Services. Council member Rose seconded the motion. Council member Boyle Barrett Amended the motion to include the Legal Review changes of the ILA. Council member Rose seconded the motion. Amendment carried. Motion carried.

Agreement – City & DSHS for Use of Training Facilities:

Council member Boyle Barrett Moved to Authorize the Mayor to sign the Facility Use Agreement between the City of Buckley and DSHS / Rainier School. Council member Kyllonen seconded the motion. Motion carried.

CONSENT AGENDA

Council Member Boyle Barrett moved to approve the Consent Agenda. Council member Rose seconded to motion. Motion carried.

Approve Minutes of February 23, 2016 City Council Meeting
Approve Minutes of March 1, 2016 City Council Study Session

Claim numbers 54193 through 54294, in the amount of \$300,569.64, for the period of February 10, 2016 through March 8, 2016; Payroll check numbers 32405 through 35447 in the amount of \$121,224.04 and ACH payments in the amount of \$212,906.01 for a total payroll of \$334,130.05; and Treasurer check numbers 11842 through 11860 in the amount of \$5,140.43 and ACH payments in the amount of \$11,680.55, for the month of February 2016 are hereby approved and ordered paid this 8th day of March 2016.

COMMITTEE REPORTS

Mayor's Report: Mayor Pro Tem Tremblay stated that the WRSD employees are putting together a Soup Supper on March 14th at 5:30 PM to thank all the voters.

Administration, Finance & Public Safety: Council member Boyle Barrett stated they discussed three banking reviews, and all other topics were on the agenda.

Transportation & Utilities: Council member Burkett stated they haven't met since their last meeting, but they will be discussing the Franchise Agreement that was presented this evening and focusing on the ongoing water issues within the City.

Community Services: Council member Rose stated they approved a design review, and the March 17th meeting will be cancelled.

Council Member Comments & Good of the Order:

Council member Sundstrom stated he was hoping the Council was paying attention to the Black Diamond Council situation in the Courier Herald, and the he believes that Council member Boyle Barrett, after the last meeting, felt that the Council Committees keep

information from one another. Council member Boyle Barrett stated that was not how she felt.

Council member Boyle Barrett moved to adjourn. Council member Leggett seconded the motion. Motion carried.

With nothing further the meeting was adjourned at 7:56 PM.

Mayor

City Administrator

E. COMMITTEE REPORTS

Transportation and Utilities Committee meeting opened at 1904 hrs on 3/15/16

In Attendance:

Milt Tremblay

Marvin Sundstrom

Dave Schmidt

Beau Burkette

Pat Johnson

Dominic Miller (G&O)

Russ Porter (G&O)

Chuck Helmer

Albert Fogerson and wife

Agenda Items

1. Detailed discussion about water quality and the Cities' approach to identifying the problem and the measures taken to ensure the continued safety of this vital resource. General consensus is that appropriate measures have been taken (and continue to be taken) and that communication requirements between the City of Buckley and Rainier School not to be reinforced.
2. Discussed Franchise agreement with Astound Broadband and specific comments received from Mr. Sivils' and Daniel Kenny responses to those comment.
3. Discussed Meadow Mountain Circles' Homeowners' revised Landscaping policy.
4. Received and discussed Tom Dantzler comments regarding impact fees and their impact on potential commercial developments along Highway 410. This is a topic of enough import that the committee felt it should be included in a future work study session. April 28th.
5. Discussed potential disposal of Property near Elk Heights.

Meeting adjourned at 2020 hrs

At the T & U meeting Tuesday night we were given an e-mail from the developer of the corner where the meat market now sits. I'd like to pass on some comments to all before we get into the discussion.

After reading Mr Danzler's e-mail: We are all busy! Obviously Mr. Danzler is not a novice when it's time to work the system for the best deal he can get for his investors. Conversely, it is our responsibility as Council Members to ensure the citizens of the city don't hold the short straw.

What Mr Danzler needs to do:

Let us know what he wants. He's the one negotiating, which is something he should have done earlier. He's not in the catbird seat for several reasons. Further discussion is inappropriate in public.

What the administration needs to do:

Provide the committee with the specific info regarding commercial impact fees, their impact on this project & recommendations regarding a policy to address the issues. This issue needs to be addressed to serve all stake holders, present & future.

What the T & U Committee needs to do:

Build a Commercial Impact Fee policy that serves the communities needs long term. There are areas ripe for an upgrade that would address the needs of business community growth which would serve the residents needs throughout the Buckley community. I think the T & U committee can do that in a timely manner.

Marvin Sundstrom 

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MAR 17 2016