

CITY COUNCIL AGENDA
City Hall, 833 South Spruce Street
7:00 p.m. November 21, 2017

CALL TO ORDER:

Mayor Sexton
Council Members: Aslett, Bieche, J. DeGloria, R. DeGloria, Edmundson, Loving and Montgomery
Staff: Berner, Blaine, Dempsey, Erickson, Harrison, Hawes, Brad Johnson, Brittany Johnson, L. Johnson, Jongsma, Luvera, Morrison, Moser, Peterson, Pulst, Rabenstein, Schwetz, Sinclair, Toth, Ward, Yengoyan

MINUTES:

City Council Meeting November 9, 2017

AUDIT OF BILLS:

PUBLIC COMMENTS:

COUNCIL COMMENTS:

MAYOR'S UPDATE:

PROCLAMATION:

SPECIAL PRESENTATION: Children's Museum of Skagit County – Winter Wonderland Festival

OFFICERS REPORTS:

TBD

UNFINISHED BUSINESS:

CONSENT AGENDA:

- 1) **Franchise Agreement and Settlement and Release between the City of Burlington and Astound Broadband**
- 2) **Interlocal Agreement with Skagit County for road maintenance.**

NEW BUSINESS:

- 1) **Public Hearing:** Ordinance regarding BMC Chapter 5.12.0470: 2% Water Utility Tax Levy on Water sales.
- 2) **Public Hearing:** 2017 Revenue sources and consideration of Property Tax Revenues.
- 3) **Public Hearing:** Proposed 2018 Budget
- 4) Phases II & III of the Comprehensive Municipal Code Update and Reorganization
- 5) Association of Washington Cities Master Agreement

FUTURE WORKSHOP:

EXECUTIVE SESSION:

- An Executive Session may be held to discuss Personnel, Litigation, and/or Land Acquisition.

ADJOURNMENT:

MEETINGS:

- 1) **BUDGET WORKSHOP** Tuesday **November 21, 2017** 5:30 p.m.
Council Chambers, 833 S Spruce Street
- 2) **PUBLIC WORKS COMMITTEE:** Tuesday **November 21, 2017** 4:00 p.m.
City Hall, 833 S Spruce St
- 3) **DOWNTOWN BURLINGTON ASSOCIATION:** Wednesday **November 22, 2017** 9:00 a.m.
Chamber of Commerce/VIC, 520 E Fairhaven Ave
- 4) **PLANNING COMMISSION:** Wednesday **November 22, 2017** 5:30 p.m.
Council Chambers, 833 S Spruce Street



Annual Tree Lighting – 6:00 p.m. Thursday, December 7th, 2017 at Alpha Park

City offices will be closed November 23rd & 24th and December 22nd & 25th, 2017 for the Holidays

November 2017

November 2017

December 2017

Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Su	Mo	Tu	We	Th	Fr	Sa
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31						

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Oct 29	30	31	Nov 1	2	3	4
5	6	7	8	9	10	11
	5:30pm Parks Board (Parks & Rec Dept) - Judy Sheahan	6:00pm Library Board (Library)	5:30pm 7:30pm Planning Commission (Council Chambers)	4:00pm Audit & Finance Committee (7:00pm Council Meeting 7:30pm 8:00pm Home Trust of Skagit - Spe		
12	13	14	15	16	17	18
		4:00pm Public Safety Committee (Public Safety Building) 5:30pm 7:30pm Budget Workshop (Council Chambers)	1:00pm SKAT Board (Burlington City Hall)	6:00pm 8:30pm Budget Workshop (Council Chambers)		
19	20	21	22	23	24	25
		4:00pm Public Works Committee (Engineer) 5:30pm 7:00pm Budget Workshop (Council) 7:00pm 7:30pm Special Presentation - Winte	9:00am 10:00am Downtown Burlington Associati Planning Commission (Council	4:00pm Audit & Finance (City Hall) 7:00pm Council Meeting		
26	27	28	29	30	Dec 1	2

Oct 29 - Nov 4

Nov 5 - 11

Nov 12 - 18

Nov 19 - 25

Nov 26 - Dec 2

December 2017

December 2017

January 2018

Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
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31							29	30	31				

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Nov 26		27	28	29	30	Dec 1	2
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17		18	19 4:00pm Public Works Committee (Engineering Conf Room)	20 1:00pm SKAT Board (Burlington City Hall)	21	22	23
24		25	26	27 9:00am 10:00am Downtown Burlington Associati 5:30pm 7:30pm Planning Commissio	28 4:00pm Audit & Finance (City Hall) 7:00pm Council Meeting	29	30
31		Jan 1, 18	2	3	4	5	6

11/26 - 12/1

12/3 - 8

12/10 - 15

12/17 - 22

12/24 - 29

12/31 - 1/5

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CALL TO ORDER:

Mayor Steve Sexton called the meeting to order at 7:01 p.m. with the Pledge of Allegiance. Council members present: Tonya Bieche, Joe DeGloria, Rick DeGloria, Edie Edmundson, and Ted Montgomery. Staff present: Jennifer Berner, Bryan Harrison, Brad Johnson, Leif Johnson, Michael Luvera, Kristen Morrison, Marv Pulst, Renee Sinclair, Sarah Ward, and Levon Yengoyan.

A motion was made to excuse **Councilor Chris Loving** from the meeting by **Councilors R. DeGloria/Bieche**. All in favor; motion carried.

A motion was made to excuse **Councilor Bill Aslett** from the meeting by **Councilors R. DeGloria/Bieche**. All in favor; motion carried.

MINUTES:

Councilor R. DeGloria stated a correction: he was present at the last council meeting; the October 26, 2017 council meeting minutes Call to Order did not reflect this. A motion was made to approve the minutes of the October 26, 2017 council meeting by **Councilors R. DeGloria/Bieche**, with the correction as stated by **Councilor R. DeGloria**. All in favor; motion carried.

AUDIT OF BILLS:

A motion was made by **Councilors J. DeGloria/R. DeGloria** to approve Accounts Payable invoices to be paid in the amount of \$124,296.17; and Payroll expensed for pay period ending October 25, 2017 in the amount of \$549,977.22. All in favor; motion carried.

PUBLIC COMMENTS:

Keith Palmer, a citizen who resides outside the city limits of Burlington, discussed issues including questions regarding the next regular council meeting date, as the next regular Thursday meeting date falls on the Thanksgiving holiday, and the reasoning behind Burlington having a part-time mayor. **Palmer** also questioned whether funds could be donated to the City of Burlington, and if so whether those funds could have stipulations, as dictated by **Palmer** and the unidentified organization which he stated he represents. **Councilor DeGloria** suggested to **Palmer** that he could make a donation to the Library Foundation. **Mayor Sexton** suggested a donation could be made to the Parks Foundation, and informed **Palmer** that the next City council meeting date is Tuesday, November 21st.

COUNCIL COMMENTS:

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Councilor Bieche discussed the Ending Homelessness in Skagit County community discussion, which is to be held on Wednesday November 15th, 2017 from 6-8:00 p.m. at Skagit Valley College in the Multipurpose Room.

MAYOR'S UPDATE:

Mayor Sexton discussed a meeting with **Skagit County Prosecuting Attorney Rich Weyrich**, in which there was a discussion regarding Skagit County pursuing a civil lawsuit against prescription drug manufacturers due to the crisis created by the overprescribing of opioids. **Mayor Sexton** stated that **Weyrich** discussed whether the City of Burlington would be interested in joining this venture, and the possibility of a meeting of Skagit County cities' councils, mayors, and attorneys, in which there would be a presentation given by attorneys retained by Skagit County on what would be expected of the cities who choose to become involved. **Mayor Sexton** stated that the City would be looking to Council for the direction to be taken on this matter. **City Attorney Leif Johnson** stated that many other municipalities—the City of Everett being the first—have begun, and are in the process of taking up similar actions against pharmaceutical companies.

PROCLAMATION:

Mayor Sexton read a proclamation declaring November 2017 as National Hospice Palliative Care Month in the City of Burlington.

Mayor Sexton introduced **Dana Brothers**, Outreach and Communications Program Manager for Hospice of the Northwest, who discussed the role and services of Hospice.

SPECIAL PRESENTATION:

Bill Craig, Home Trust of Skagit Community Outreach Coordinator presented to council the purpose of the organization, which is to provide a means of down-payment for the purchase of a home in Skagit County. **Craig** also explained various details of eligibility for those meeting the requirements for the organization's services.

OFFICER REPORTS:

Public Works Director Marv Pulst updated council on the issue of the rodent infestation in the alleyway between Regent and Skagit Streets, as described to council by a citizen during the public comments at the October 26th, 2017 council meeting. **Pulst** stated that the issue has been addressed and efforts are being made to remedy the situation, which was caused in part by the road work in the alleyway, as well as by the breaks in the sewer line.

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Pulst also updated council on the Raspberry Ridge expansion sewer service provision, and discussed the City of Burlington's agreement with Skagit County and the Skagit Housing Authority, which allows for access to the City's sewer system, and in which the County agreed to upgrade and reconstruct LaFayette Rd. **Pulst** stated that the sewer and road projects have become a larger challenge for the County than initially anticipated, and that the agreed upon project end date of December 31st is no longer feasible. **Pulst** discussed the County placing the project for bid in December, with the bid to be awarded in March, with a revised completion date of June, 2018, advising that the change is of no consequence to the City and that it is more reasonable to complete the project in the requested manner. **Councilor J. DeGloria** questioned whether the contract would be need to be amended; **Pulst** responded that the contract would not be amended, but that there would be written correspondence between **Pulst** and County representatives stating that if there are any additional changes, the contract would require review—**City Attorney Leif Johnson** confirmed that this is the appropriate course of action.

Mayor Sexton discussed a telephone conversation he had with a citizen who was very complimentary of the City of Burlington Streets crew in their efforts in rectifying storm-drain and street drainage issues, and of their courteousness and professionalism. **Mayor Sexton** thanked **Pulst** for this department's efforts.

Fire Chief Levon Yengoyan updated council on the department's new live-fire training prop, stating that his department was able to utilize the prop for the first time, for 2-3 revolutions. **Chief Yengoyan** expressed excitement over the success of the prop and the capability for training, and stated that the City of Mount Vernon fire department has expressed interest in utilizing the prop as a resource for local live-fire training.

Chief Yengoyan informed council of his and **Chief Luvera's** Question and Answer session at the Burlington Senior center, stating that the session lasted an hour and was very successful. **Chief Yengoyan** praised Burlington Senior Center Director **Jackie Cress** for her efforts in quality of service and programs provided at the center. **Chief Yengoyan** stated that he would be at the Senior Center again next Thursday for the lunch hour.

Councilor Bieche questioned whether the City of Sedro Woolley still has a fire prop for training purposes; **Chief Yengoyan** stated they do still have the prop, but that it is smaller and used for different training purposes.

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Councilor Edmundson discussed the positive local newspaper press coverage of the Burlington Fire and Police Departments, praising **Chief Yengoyan** and **Chief Luvera** for their positive efforts and the efforts of their staff for engaging with the community.

City Administrator Bryan Harrison informed council of AWC Elected Officials Essentials Workshop, which will take place on Saturday, December 2, 2017 from 8:30 am to 3:00 p.m. in Arlington, and is available to existing and new councilmembers.

UNFINISHED BUSINESS:

No Unfinished Business.

CONSENT AGENDA:

1. Veteran's Day Parade Street Closure – November 11, 2017

The parade will take place along E. Fairhaven Avenue on Saturday, November 11, 2017. The Veterans Parade will start at 11:00 a.m. and continue through until approximately 12:00 p.m. Street Closures: 1.) E. Fairhaven Avenue from Alder to Skagit Street; 2.) Walnut Avenue from E. Fairhaven Avenue to Greenleaf; 3.) Washington Street from Alder Street to S. Spruce Street

A motion was made to approve the Veteran's Day Parade Street Closure on Saturday, November 11th, 2017 by **Councilors J. DeGloria/R. DeGloria**. All in favor; motion carried.

NEW BUSINESS:

RESOLUTION AUTHORIZING THE EMPLOYEES OF THE CITY OF BURLINGTON TO PARTICIPATE IN THE WASHINGTON STATE DEFERRED COMPENSATION PLAN

City Administrator Bryan Harrison presented to council the proposed resolution, which would allow eligible City employees to participate in the Washington State Deferred Compensation Program that is administered by the Department of Retirement Systems. A motion was made by **Councilors Edmundson/J. DeGloria** to approve the resolution authorizing eligible City of Burlington employees to participate in the Washington State Deferred Compensation Program and authorize the Mayor's signature. All in favor; motion carried.

APPOINTMENT OF TANA WOOD TO THE CIVIL SERVICE COMMISSION

City Administrator Bryan Harrison stated this action would confirm the Mayor's appointment of Tana Wood to Burlington's Civil Service Commission, and discussed the

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positive aspects of adding **Wood** to the Commission. A motion was made by **Councilors Montgomery/J. DeGloria** to appoint Tana Wood to the Civil Service Commission, effective November 9, 2017, for a term of six years. All in favor; motion carried.

ANNUAL PROCESSION BY ST. CHARLES CATHOLIC CHURCH

Senior Planner Brad Johnson presented to council the Annual Our Lady of Guadalupe procession from Maiben Park to St. Charles Catholic Church at 935 Peterson Road on Sunday, December 10, 2017 beginning at 11:30 a.m. A motion was made by **Councilors R. DeGloria/Bieche** to approve the procession on December 10, 2017 subject to working out logistics with the Police Department. All in favor; motion carried.

FRANCHISE AGREEMENT WITH ASTOUND BROADBAND

City Attorney Leif Johnson summarized for council the documents contained in the agreement with Astound Broadband, stating that essentially the agreement allows Astound Broadband access to the City's right of way on streets, for installation of broadband cable and equipment for communications services to their subscribers. **Attorney Johnson** stated that the agreement requires Astound Broadband to comply with rules and regulations in regard to use of right of way, and subjects the installation to the City's permitting process. **Attorney Johnson** discussed the Settlement and Agreement terms, which resolves outstanding issues that may remain pursuant to the terms of the previous franchise. A motion was made by **Councilors Montgomery/R. DeGloria** to add the proposed franchise ordinance and proposed settlement and release onto the consent agenda of the next regular meeting of City Council. All in favor; motion carried.

UPDATE TO BURLINGTON MUNICIPAL CODE

Senior Planner Brad Johnson updated council on the progress of the updates to the Burlington Municipal code, stating that each council member and planning commission member has given a binder, which contains all proposed code updates. **Brad Johnson** stated that the planning commission has begun the process of working through the code updates, with the first two batches/ sections and the recommendations to be brought to council at the next regular council meeting. Discussion item only; no action required.

LETTER OF UNDERSTANDING – I WITH IAFF LOCAL 4111

Fire Chief Levon Yengoyan discussed the proposed update to the Collective Bargaining Agreement. A motion was made by Councilors Montgomery/Bieche to approve the proposed update to the collective bargaining agreement with IAFF Local 4111 and authorize the Mayor to sign the Letter of Understanding – I. All in favor; motion carried.

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FINAL PLAT APPROVAL – PHASES I & II OF THE MAIBEN GLEN SUBDIVISION

Senior Planner Brad Johnson discussed the request for Final Plat Approval for Phases I and II of the Maiben Glen Subdivision, which requires both preliminary approval which was granted by council in 2007, and final approval, which is contained in the request. A motion was made by Councilors J. DeGloria/R. DeGloria to approve the request for final plat approval by approving the attached ordinance and authorize the Mayor and staff to sign the final plat document. All in favor; motion carried.

EXECUTIVE SESSION:

No Executive Session was held.

ADJOURNMENT:

City Administrator Bryan Harrison reminded council of the upcoming workshops, and stated that there may be a conflict of scheduling, as Burlington Rotary is holding a public meeting at the Burlington Chamber of Commerce Visitor Information Center on November 16, 2017 at 5:00 p.m. **Administrator Harrison** stated that the public meeting is being held for the purpose of raising funds for a clock in the new 5 to 4-way intersection which will be built in spring of 2018; council members, mayor, and other city staff have been asked to attend this meeting, which conflicts with the scheduled 5:30 p.m. Budget Workshop. **Administrator Harrison** asked council to consider delaying the Budget Workshop until 6:00 p.m.; council members agreed to the change of meeting time, and the November 16, 2017 Budget Workshop has been moved to 6:00 p.m.

Mayor Steve Sexton adjourned the meeting at 7:59 p.m.

Renee Sinclair
Director of Budget & Accounting

Steve Sexton
Mayor



CONSENT AGENDA - November 21, 2017

- 1. Franchise Agreement and Settlement and Release between the City of Burlington and Astound Broadband.**
- 2. Interlocal Agreement with Skagit County for road maintenance.**

RECOMMENDATION

Motion to approve Consent Agenda items #1 - #2 and authorize the Mayor's signature on agreements.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BURLINGTON, WASHINGTON, GRANTING TO ASTOUND BROADBAND, LLC D/B/A WAVE AND ITS AFFILIATES, SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A TELECOMMUNICATIONS NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF BURLINGTON, WASHINGTON.

WHEREAS, Astound Broadband, LLC d/b/a Wave (“Franchisee”) has requested that the City Council grant it a nonexclusive franchise, and

WHEREAS, Franchisee is the successor in interest to Black Rock Cable, Inc. which was granted a franchise pursuant to Ordinance No. 1453 which became effective on June 4, 2001, 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.

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

Section 1 Franchise Granted.

Section 1.1 Pursuant to RCW 35A.47.040, the City of Burlington, a Washington municipal corporation (hereinafter the “City”), hereby grants to Franchisee, its affiliates, heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise (“Franchise”).

Section 1.2 This Franchise shall be for five (5) years, beginning on the effective date of this ordinance, set forth in Section 41 (the “Initial Term”). This Franchise shall automatically renew for one (1) additional five (5) year period (the “Renewal Term”), upon the same terms and conditions as set forth in this Franchise, unless either party provides one hundred twenty (120) days written notice to the other party to request an amendment to the Franchise.

Section 1.3 This Franchise ordinance 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 of Burlington, as approved pursuant to City permits issued pursuant to this Franchise. Public “Rights-of-Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, public way, drive, circle, pathways, spaces, or other public right of way which, under City ordinances or applicable laws, the City has authority to grant franchises, licenses, or leases for use thereof, or has regulatory authority there over and only to the extent such Rights-of-Way are opened. Rights-of-Way for the purpose of this Franchise do not include: (i) buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City not reserved for transportation purposes, or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the Rights-of-Way such as utility poles and light poles; and (ii) land dedicated for use which has not been approved and open for use by the public. “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 unless otherwise specifically approved by the City. 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. For the purposes of this Franchise the term Facilities excludes “microcell” facilities, “minor facilities,” “small cell facilities,” all as defined by RCW 80.36.375, and “macrocell” facilities, including towers and new base stations and other similar facilities used for the provision of “personal wireless services” as defined by RCW 80.36.375.

Section 1.4 The Franchise between the City and Black Rock Cable, Inc. as adopted by Ordinance Number 1453 (the “2001 Franchise”) is hereby superseded and replaced by this Franchise as of the Effective Date of this Franchise, and this Franchise, and all exhibits attached hereto shall constitute the entire Franchise between the parties. The grant of this Franchise shall have no effect to the requirements of the 2001 Franchise to indemnify or insure the City against acts and omissions occurring during the period that the 2001 Franchise was in effect and during any period in which Franchisee’s Facilities were in the Rights-of-Way.

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

Section 2.1 The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City (the “Franchise Area”). Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services. Franchisee hereby warrants that it expects to provide the following services within the City: high speed data and fiber optic services, internet protocol-based services, internet access services, dark fiber, telephone, data transport and other telecommunications and information services (the “Services”). No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner’s consent, or upon any City, public or privately owned utility poles or conduits is granted herein. 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, nor to subordinate the primary use of the Right-of-Way as a public thoroughfare. Franchisee may not offer Cable Services as defined in 47 U.S.C. § 522(6) or wireless communications facilities, including but not limited to small cell facilities and other personal wireless services, without obtaining a new franchise or an amendment to this Franchise approved by the City Council.

Section 2.2 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, provided that leases or other commercial arrangements for the use of the Facilities installed pursuant to this Franchise may extend beyond the term of the Franchise, provided that the Franchise or Franchisee’s right to occupy the Rights-of-Way are not revoked;

(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 said Rights-of-Way. In the event that a subsequent telecommunications franchise or similar permission is granted to another franchisee or permittee (including, for the purposes of this Section, any City owned or operated telecommunications service or entity) for the provision of similar Services and if Franchisee believes that this Franchise creates obligations on the Franchisee that are discriminatory and inconsistent with 47 U.S.C. §253, then Franchisee shall have the right, within sixty (60) days of the effective date of that franchise or permission, to request in writing an amendment to this Franchise and the City will, in good faith, negotiate an amendment to this Franchise in order to remove or amend any such discriminatory or inconsistent provisions. The parties agree that this provision shall not require a word-for-word identical franchise or permission so long as the regulatory and financial burdens on each entity are materially equivalent when the Franchise is viewed in its entirety. Such Franchise shall in no way prevent or prohibit the City from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same 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 Network Facilities.

Section 4.1 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 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 4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways") and are governed by the provisions of Chapter

47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

(a) any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

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

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

Section 5 Relocation of Telecommunications Network Facilities.

Section 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, relocated 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 5.6 If Franchisee breaches its obligations under Section 5.1 with respect to relocating its Facilities within the Franchise Area (and such breach is not caused by a Force Majeure Event, as defined in Section 40.10), and to the extent such breach causes a delay in the work being undertaken by the City's third party contractor(s) that results in a claim by the third party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option:

(a) tender the Contractor Delay Claim to Franchisee for defense and indemnification in accordance with (b) and Section 16; or

(b) require that Franchisee reimburse the City for its share of the costs, expenses, and/or damages that are legally required to be paid by the City and attributable to Franchisee's delays to its third party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by Franchisee under this Section 5.6(b), the City shall first give Franchisee written notice of the Contractor Delay Claim and give Franchisee the opportunity to work with the third party contractor(s) to resolve the Contractor Delay Claim for a period of not less than sixty (60) days prior to the City's payment of the Contractor Delay Claim.

Section 5.7 Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 16, 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.

Section 5.8 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.

Section 5.9 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 14.3 and Section 14.4.

Section 5.10 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.

Section 6.1 Except as specifically authorized by permit of the City, Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its Facilities at the time of 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; provided that the City requires all other wireline utilities, except electrical utilities but including the fiber network operated by the City, with aerial facilities in the area to convert such facilities to underground installation at the same time. Unless otherwise permitted by the City, Franchisee shall underground its Facilities in all new developments and subdivisions, and any development or subdivision where utilities, other than electrical utilities, are currently underground.

Section 6.2 Notwithstanding Section 6.1 above, Franchisee agrees that it will relocate its Facilities underground, regardless if other wireline telecommunications utilities relocate underground, if the City, or a third party, pays for the cost of the trenching and related excavation work, the installation of conduit acceptable to house telecommunications facilities, the back-fill of the trench, and the associated repavement and other restoration work. Franchisee agrees that in such situation, Franchisee will pay for its own costs related to the physical relocation of its aerial facilities underground and the incremental cost, if any, to the City of adding Franchisee's Facilities. This Section 6.2 shall not apply if all other wireline telecommunications utilities relocate underground.

Section 6.3 Whenever Franchisee places its Facilities underground it shall do so in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. The City may require Franchisee to install conduit and other underground Facilities in the same trench or location as another franchisee or permittee when such other franchisee or permittee is constructing or installing similar facilities at approximately the same time as Franchisee. In such case, Franchisee shall reimburse the other franchisee or permittee for its proportional share of the cost of construction and installation. Similarly, the City may require other franchisees or permittees to install conduit and other underground Facilities in the same trench or location as Franchisee when such Franchisee is constructing or installing similar facilities at approximately the same time as another permittee or franchisee. In such case, the other permittee or franchisee shall reimburse Franchisee for the other permittee's or franchisee's proportional share of the cost of construction and installation.

Section 6.4 To the extent Franchisee is providing Services to personal wireless services facilities, Franchisee shall adhere to the design standards for such personal wireless services facilities, and shall underground its Facilities and/or place its Facilities within the pole as may be required by such design standards. For the purposes of clarity, this Section 6.4 does not require undergrounding or interior placement of Facilities within the pole to the extent that the personal wireless services facilities are located on utility poles that have pre-existing aerial telecommunications facilities and provided such construction of Franchisee's Facilities continue to comply with Section 6.1 or Section 6.3.

Section 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 and other related facilities 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. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground cable, conduit and other related facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

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

Section 7 Maps and Records.

Section 7.1 After underground construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps stamped and signed by a professional land surveyor or engineer in a form and content acceptable to the Public Works Director or his/her designee. Following any aerial construction, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Franchisee shall provide such maps within ten (10) days following a request from the City. Franchisee shall warrant the accuracy of all as-builts provided to the City.

Section 7.2 Within thirty (30) days of a written request from the Public Works Director, the Franchisee shall furnish the City with information sufficient to demonstrate: 1) that the

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 the Franchisee's services and Facilities provided by the Franchisee have been properly collected and paid by the Franchisee.

Section 7.3 Books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way and which are reasonably necessary to demonstrate compliance with the terms of this Franchise, shall, after reasonable prior notice from the City, be made available for inspection by the City at reasonable times and intervals but no more than one time each calendar year or upon the City's reasonable belief that there has been a violation of this Franchise by Franchisee; 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 permitted or required 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.

Section 7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit, in the event the City is permitted to charge fees as further described in Section 15.1, or as otherwise required in this Franchise. The City will not disclose such proprietary or confidential information to the City's department operating its fiber network unless such disclosure is authorized by Franchisee or subject to disclosure under Chapter 42.56 RCW. 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 7.5 On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise and the collection of utility taxes, in accordance with GAAP. If the audit shows that tax payments have been underpaid by three percent (3%) or more, Grantee shall pay the total cost of the audit.

Section 8 Work in the Rights-of-Way.

Section 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 professional manner, so 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 ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 7.5 shall survive the expiration or termination of this Franchise ordinance.

Section 8.2 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, in addition, shall give the

City at least ten (10) working days prior notice (except in the case of an emergency) of its intent to commence work in the Rights-of-Way. The City shall only issue permits that are in compliance with Burlington Municipal Code and the City's Design and Construction Standards. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise ordinance.

Section 8.3 If 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 Franchisee shall afford the City, 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 Franchisee causing the excavation to be made;
- (b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
- (c) Franchisee may deny such request for safety reasons.

Section 8.4 Franchisee shall inform the City with at least sixty (60) 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. Upon such request, the parties shall enter into a contract pursuant to RCW 35.99.070 and RCW 80.36.150. The contract rates to be charged should recover the incremental costs to the Franchisee, unless the City desires to make the additional duct or conduit and related access structures available to any other person or entity for the purposes of providing telecommunications or cable television service for hire, sale, or resale to the general public; in which case, the rates to be charged, shall recover at least the fully allocated costs of the Franchisee. The contract shall state both rates and the City shall, prior to construction, inform the Franchisee of the use, and any change in use, of

the requested duct or conduit and related access structures to determine the applicable rate to be paid by the City under the contract.

Section 8.5 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 as nearly as possible to its 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.

Section 8.6 Upon receipt of a permit (except in emergency situations), 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 and consistent with the requirements of Burlington Municipal Code Chapter 12.20. 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 shall be at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City approval prior to commencing such trimming. 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 except to the extent it is necessary that Franchisee trims trees or vegetation upon, overhanging, or encroaching on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent such vegetation from coming in contact with Franchisee's Facilities. 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, its employees or agents and elected or appointed officials 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.

Section 8.7 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.

Section 8.8 Franchisee shall maintain all above ground improvements that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the Right-of-Way, Franchisee shall provide a clear zone to meet City's Design and Construction Standards. If Franchisee fails to comply with this provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration provided that Franchisee shall not be responsible for damages caused by circumstances beyond the control of Franchisee or the gross negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

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 shall comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request from a third party or

the City, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or 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.

Section 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, 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.

Section 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 14.3 and Section 14.4.

Section 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.

Section 10.4 Stop Work Order. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

- (a) Be in writing;
- (b) Be given to the person doing the work or posted on the work site;
- (c) Be sent to Franchisee by overnight delivery;
- (d) Indicate the nature of the alleged violation or unsafe condition; and
- (e) Establish conditions under which work may be resumed.

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 are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12 Restoration after Construction.

Section 12.1 Franchisee shall, after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 18, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to at least the same 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. 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 (such as Chapter 332-120 WAC), and local standards and specifications.

Section 12.2 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 construction permit issued by the City. 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.

Section 12.3 If conditions (e.g. weather) make the complete restoration required under Section 12 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.

Section 12.4 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 invoice to Franchisee in accordance with the provisions of Section 14.3 and Section 14.4. In addition, and pursuant to Section 14.3 and Section 14.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with Section 22.2.

Section 12.5 The provisions of this Section 12 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 13 Emergency Work/Dangerous Conditions.

Section 13.1 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 or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this Franchise. 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 the next succeeding day during which the Burlington City Hall is open for business. 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.

Section 13.2 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 13 except to the extent caused by the gross negligence or willful acts of the City, its employees, contractors, or agents.

Section 13.3 Whenever the construction, installation or excavation of Facilities conducted by Franchisee as authorized by this Franchise has caused or materially contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property,

the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, 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 emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the property and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Section 14 Recovery of Costs.

Section 14.1 Franchisee shall pay a one-time fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise, not to exceed Five Thousand Five Hundred Dollars (\$5,500.00). No construction permits shall be issued for the installation of Facilities authorized until such time as the City has received payment of this fee; further, this Franchise will not be deemed accepted without the payment of this 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 14.3.

Section 14.2 In addition to Section 14, Franchisee shall promptly reimburse the City in accordance with the provisions of Section 14.3 and Section 14.4 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.

Section 14.3 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 Public Ways. 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 Public Ways as the result of the presence of Franchisee's Facilities in the Public Ways. 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.

Section 14.4 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 15 City's Reservation of Rights.

Section 15.1 Franchisee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a Franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a Franchise fee on Franchisee if Franchisee's operations 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 removed. In either instance, the City also

reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

Section 15.2 Franchisee acknowledges that its operation with the City constitutes a telecommunication business subject to the utility tax imposed pursuant to the Burlington Municipal Code Chapter 5.12. 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 Burlington Municipal Code Chapter 5.12, 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 Burlington Municipal Code Chapter 5.12 as may be permitted by law.

Section 16 Indemnification.

Section 16.1 Franchisee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, elected or appointed officials 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.

Section 16.2 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 16. 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.

Section 16.3 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 16.3. 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.

Section 16.4 The parties acknowledge that this Franchise may be 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.

Section 16.5 Notwithstanding any other provisions of this Section 16, Franchisee assumes the risk of damage to its Facilities located in the Public Ways 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, lost profits and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, elected or appointed officials or contractors, except to the extent any such damage or destruction is caused by or arises from the gross negligence or any willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

Section 16.6 The provisions of this Section 16 shall survive the expiration, revocation, or termination of this Franchise.

Section 17 Insurance.

Section 17.1 Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Public Ways, 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 contractor and subcontractor maintain insurance coverage and policy limits consistent with this Section 17. 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.

Section 17.2 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 shall provide "follow form" coverage over its primary liability insurance policies.

Section 17.3 The insurance policies, with the exception of Workers' Compensation obtained by Franchisee shall name the City, its officers, elected or appointed 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 17 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.

Section 17.4 Franchisee is obligated to notify the City of any cancellation or intent not to renew any insurance policy, required pursuant to this Section 17, thirty (30) days prior to any such cancellation. Within fifteen (15) 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 17. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 17 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 22 below. Notwithstanding the cure period described in Section 22.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 17.5 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 17.6 As of the effective date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee must provide the City with thirty (30) days advanced written notice of its intent to self-insure. In order to self-insure, Franchisee shall comply with the following: (i) provide a written attestation that Franchisee possesses the necessary amount of unencumbered financial assets to support the financial exposure of self-insurance, as evidenced by an outside auditor's

review of Franchisee's financial statements; (ii) the City, upon request, may review Franchisee's financial statements; (iii) Franchisee is responsible for all payments within the self-insured retention; and (iv) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise. These requirements may be modified by written amendment executed by both parties.

Section 18 Abandonment of Franchisee's Telecommunications Fiber Optic Cable Network.

Section 18.1 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Public Ways within thirty (30) 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. Franchisee shall restore the Public Ways to at least the same condition the Public Ways were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Public Ways not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 18.2 Notwithstanding Section 18.1 above, the City may permit Franchisee's improvements to be abandoned in place 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.

Section 18.3 Any Facilities which are not removed within one hundred (120) days of either the date of termination or revocation or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 18 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 18 shall survive the expiration, revocation, or termination of this Franchise.

Section 18.4 If Franchisee leases a structure in the Right-of-Way from a landlord and such landlord later replaces, removes or relocates the structure, for example by building a replacement structure, Franchisee shall remove or relocate its Facilities within the Public Ways within ninety (90) days of such notification from the landlord at no cost to the City.

Section 18.5 The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 19 Bonds.

Section 19.1 Construction Performance Bond. Upon an application for a permit involving excavation, installation, construction, restoration or relocation of the Facilities and if required by the City, Franchisee shall furnish a performance bond (“Performance Bond”) written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee’s Facilities within the Rights-of-Way of the City prior to commencement of any such work or such other amount as deemed appropriate 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 Maintenance Bond as described in Section 19.2.

Section 19.2 Maintenance Bond. Following excavation, installation, construction, restoration or relocation of the Facilities and if required by the City, Franchisee shall furnish a two (2) year maintenance bond (“Maintenance Bond”), or other surety acceptable to the City, at

the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of the construction work. The Maintenance Bond in this Section 19.2 must be in place prior to City's release of the bond required by Section 19.1.

Section 19.3 Franchise Bond. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars (\$50,000.00) ("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 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 hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 19 shall constitute a material breach of this Franchise. The amount of the 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 20 Modification. The City and Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 21 Forfeiture and Revocation. If Franchisee willfully violates or fails to comply with any of the provisions of this Franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given Franchisee by the City under the provisions of this Franchise, then Franchisee shall, at the election of the Burlington City Council, forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Council after a hearing held upon notice to Franchisee.

Section 22 Remedies to Enforce Compliance.

Section 22.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling

Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. 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 otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to effect any such waiver. 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.

Section 22.2 If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee'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 Franchisee does not comply with the specified conditions, City may, at its discretion, (1) revoke this Franchise with no further notification, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day

against the Franchise Bond set forth in Section 19.3, or (3) pursue other remedies as described in Section 22.1 above.

Section 22.3 If the City shall violate, or fail to comply with any of the provisions of this Franchise, Franchisee shall provide the City with written notice specifying with reasonable particularity the nature of any such breach and the City shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the parties may agree to a longer cure period. If the breach is not cured within the specified time, or the City does not comply with the specified conditions, the Franchisee may, at its discretion, (1) terminate this Franchise, or (2) pursue other remedies as described in Section 22.1 above.

Section 23 Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this Franchise, then at the election of the City 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 Burlington City 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. This hearing does not give the right to either the City or Franchisee to conduct discovery, subpoena witnesses, or take depositions. Within thirty (30) days after the hearing, the Burlington 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 Burlington 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 Burlington City Council does not grant any additional period, the Burlington 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 24 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 herein 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 25 City Ordinances and Regulations. Nothing herein 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, 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. Section 253, the location, elevation, manner of construction and maintenance of Facilities by Franchisee and facilities of other similarly-situated franchisees, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise ordinance and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 26 Cost of Publication. The cost of publication of this Franchise ordinance shall be borne by Franchisee.

Section 27 Acceptance. Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as Exhibit A. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 17, any applicable construction Performance Bond pursuant to Section 19.1 and the Franchise Bond required pursuant to Section 19.3. The administrative fee pursuant to Section 14.2 is due within thirty days of receipt of the invoice from the City.

Section 28 Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 7.5, Section 12, Section 16, Section 18, Section 288, Section 299, and Section 40.2 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 the City's Franchise to Franchisee for the use of the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise ordinance shall further be binding upon the heirs, 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 heirs, successors and assigns equally as if they were specifically mentioned where Franchisee is named herein.

Section 29 Assignment.

Section 29.1 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 29.2 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 29, 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.

Section 29.2 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 21 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 14.3 and Section 14.4, and shall pay the applicable application fee.

Section 29.3 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 29 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 29.4 The parties acknowledge that as of the Effective Date of this Franchise, Franchisee is currently being acquired by Radiate Holdings, L.P. This transaction will ultimately lead to a change of control of Franchisee, with the ultimate parent company becoming Radiate Holdings, L.P. The Franchise and associated Services will continue to be held by Astound Broadband, LLC. The City hereby consents to this change of control. This consent shall not apply to any further change of control as described in Section 29.1 or Section 29.2 above.

Section 30 Extension. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

(b) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 18.

Section 31 Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 32 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 the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 33 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 notify the Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. If Franchisee has Facilities in the vacated portion of the Right-of-Way, the City shall use reasonable efforts to reserve an appurtenant easement for Franchisee within the vacated portion of the Right-of-Way within which Franchisee may continue to operate existing Facilities under the terms of this Franchise for the remaining period of the Initial Term or the Renewal Term set forth in Section 1.2. Notwithstanding the preceding sentence, the City shall incur no liability for failing to reserve such easement. The City may, after sixty (60) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 34 Notice. Any Notice or information required or permitted to be given to the parties under this Franchise agreement may be sent to the following addresses unless otherwise specified:

CITY OF BURLINGTON
833 S. Spruce Street
Burlington, WA 98233
Attn: City Clerk

FRANCHISEE:

Astound Broadband, LLC
401 Parkplace Center, Suite 500
Kirkland, WA 98033
Attn: General Counsel

After the closing of the transaction referenced
in Section 29.4 above, copies of notices shall
also be sent to:

Astound Broadband, LLC
650 College Road East, Ste, 3100
Princeton, NJ 08540
Attn: Regulatory Department

Astound Broadband, LLC
105 West First Street
South Boston, MA 02127
Attn: Regulatory Department

Section 35 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 unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

Section 36 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. Franchisee further agrees to remove all liens and encumbrances arising as a result of said use or work. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner reasonably 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. City reserves the right at any time to amend this Franchise to

conform to any hereafter 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 over 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 37 Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

Section 38 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, elected or appointed officials and volunteers harmless from and against any and all claims, costs and liabilities including reasonable attorneys' 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 39 Licenses, Fees and Taxes. Prior to constructing any Facilities, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses and zoning approvals, shall pay any other applicable

tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.

Section 40 Miscellaneous.

Section 40.1 City and Franchisee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this Franchise.

Section 40.2 This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or Skagit County Superior Court.

Section 40.3 Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 40.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 40.5 Franchisee shall be responsible for obtaining all other necessary 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 by any person or entity.

Section 40.6 This Franchise may be enforced at both law and equity.

Section 40.7 Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. 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 the 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 either terminate

this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Section 40.8 This Franchise is subject to all current and future 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.

Section 40.9 There are no third party beneficiaries to this Franchise.

Section 40.10 Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and any other similar act of God event.

Section 41 Ordinance Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

STEVE SEXTON
MAYOR

ATTEST/AUTHENTICATED:

RENEE SINCLAIR
CITY CLERK

APPROVED AS TO FORM:

LEIF JOHNSON
CITY ATTORNEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.:

SUMMARY OF ORDINANCE NO. (201)

City of Burlington, Washington

On the ___ day of _____, 201___, the City Council of the City of Burlington passed Ordinance No. _____ (201___). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

AN ORDINANCE OF THE CITY OF BURLINGTON, WASHINGTON, GRANTING TO _____ AND ITS AFFILIATES, SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A TELECOMMUNICATIONS NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF BURLINGTON, WASHINGTON.

The full text of this Ordinance will be mailed upon request.

CITY CLERK

FILED WITH THE CITY CLERK: _____, 201__
PASSED BY THE CITY COUNCIL: _____, 201__
PUBLISHED: _____, 201__
EFFECTIVE DATE: _____, 201__
ORDINANCE NO.: (201)

SETTLEMENT AND RELEASE

This Settlement and Release is entered into between the City of Burlington, a Washington municipal corporation ("the City"), and Astound Broadband, LLC, d.b.a. Wave ("Wave") for the purposes stated below.

1. **Intent.** Black Rock Cable, Inc. ("Black Rock") entered into a franchise ("Franchise") for the provision of open video system ("OVS") services with the City as outlined in Burlington Ordinance No. 1453, which permitted it to establish an OVS in the City rights-of-way. Wave's parent merged with Black Rock pursuant to a merger agreement dated September 20, 2012 and, in connection with that transaction, Wave assumed all obligations, rights, and claims under the Franchise. For the duration of the Franchise, Black Rock and then later Wave paid to the City a franchise fee on gross revenues. However, Black Rock and then Wave claim to have at some point have discontinued the provision of OVS services and only provided telecommunications services within the City, though they continued to pay the franchise fee. The parties agree that telecommunications services are not subject to a franchise fee authorized by federal and state law on cable services. The parties desire to bring closure and fully resolve all claims involving previous franchise fee payments to the City by Wave and its predecessor in interest Black Rock. This Settlement and Release does not apply to any taxes collected from Wave or Black Rock pursuant to Burlington Municipal Code Chapter 5.12, if such taxes are applicable.

2. **Claim.** Wave may have a claim for overpayment of franchise fees following the discontinuance of OVS services. The City denies this claim. While each party reserves its position, the parties wish to reasonably resolve the dispute in accordance with the terms of this Settlement and Release.

3. **Settlement and Release.** In full release, compromise and settlement of any and all claims arising from the facts set forth above, the parties have agreed to an extension of the term of the negotiated new franchise ("2017 Franchise") from a five year term. The 2017 Franchise shall provide for an initial five-year term plus an auto renewal for another five-year period, subject to a party's right to request an amendment upon the end of the initial five year term. Accordingly, Wave hereby waives, relinquishes and releases all claims of any kind or nature arising from or out of the payment of the franchise fees in consideration of the extension described herein.

4. **Approval of Settlement and Release.** This Settlement and Release shall be fully executed and in effect upon each party's signature below. This Settlement and Release may be signed in counterparts, all of which together shall constitute a single agreement. The term requirements described in Section 3 above shall be incorporated into the renewal of the 2017 Franchise which will be executed by Wave and the City.

5. **Indemnity.** Each party agrees to indemnify, hold harmless and defend the other party, from and against any and all claims, actions, suits, liability, loss, cost, expenses and damages, including costs and attorneys' fees, for any claim that party brings against the other party related to this Settlement and Release or the facts giving rise to this Settlement and Release. Wave further represents that it has full authority to settle claims arising from the Franchise from its predecessor in interest Black Rock and agrees to indemnify, hold harmless and defend the City from any such claims brought against the City.

6. **Entire Agreement; Amendments.** This Settlement and Release contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements or

understandings among the parties with respect thereto. This Settlement and Release may be amended only by an agreement in writing signed by the both parties.

7. **Authority.** The individual signing below on behalf of Wave acknowledges, warrants, and represents that said individual has the authority and proper authorization to execute this Settlement and Release on behalf of Wave and does so freely with the intent to fully bind Wave to the provisions of this Settlement and Release.

IN WITNESS WHEREOF, the parties hereto have agreed to and executed this Settlement and Release effective as of the date of the last signature set forth below.

Astound Broadband, LLC d.b.a. Wave

By:

Date: _____

City of Burlington

By:

Date: _____

INTERLOCAL COOPERATIVE AGREEMENT

BETWEEN

CITY OF BURLINGTON
AND
SKAGIT COUNTY

THIS AGREEMENT (herein "Agreement") is made and entered into by and between CITY OF BURLINGTON, (herein "City of Burlington") and SKAGIT COUNTY, a political subdivision of the State of Washington (herein "County") pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT. City of Burlington and the County may be individually referred to herein as a "party", and may be collectively referred to herein as the "parties." In consideration of the following, the parties mutually agree as follows:

1. **PURPOSE:** The purpose of this Agreement is to allow each party to provide mutual assistance on minor projects and work and services for the other party (herein the "Project[s]"), pursuant to and subject to the terms of this Agreement. Such Project work and/or services shall be limited and infrequent in nature and may include, but is not necessarily limited to: the use of equipment owned by the parties; small chip-sealing, striping, and road maintenance and repair matters; culvert clearing; mowing, spraying and vegetation management; and plowing, salting, sanding, etc. The parties recognize and agree that this Agreement is not intended for use (and shall not be used) for larger, more significant projects, and/or complex projects, and/or projects involving unique or noteworthy factual, technical, and/or legal circumstances (which shall otherwise require [an]other separate project-specific agreement[s] between the parties). Neither party is obligated to pay, provide, or expend any funds, and/or provide and/or perform any other services or other duties, unless otherwise specified herein.

2. **RESPONSIBILITIES:** In accordance with and subject to the Purpose of this Agreement (as provided above per Section 1), either party may, but shall not be required to perform Project work and/or services, provide Project materials, and allow for the use of each party's equipment for Project work as may be requested by the other party, to be reimbursed to the party providing said Project work, materials, equipment, etc., as further provided and described per Section 4. of this Agreement, below. In the event that either party uses any equipment owned by the other party pursuant to this Agreement, the parties agree that any user and/or operator of such equipment shall be an operator properly trained and/or certified in accordance with applicable law and industry standards, as further provided and described per Section 4. of this Agreement, below.

2.2 In any particular instance or in all instances, either party may choose not to perform requested Project work and/or services for the other party, in the event that such party determines that it would be undesirable, unsafe, impracticable, or otherwise not feasible for any reason.

3. **TERM OF AGREEMENT:** The term of this Agreement shall be from date at which both parties have completed execution through December 31, 2022, unless sooner terminated pursuant to the terms herein.

4. **MANNER OF FINANCING:** The parties agree that reimbursement for Project work as may be performed by either party shall be made as follows:

4.1 County may perform work, provide materials, and/or provide the use of County's equipment (to be operated by a County operator), for work on City of Burlington's facilities upon their request and acceptance by County, to be reimbursed by City of Burlington to County at the actual cost incurred by County for said work, materials, use of County's equipment, and wages for County's operator[s] provided by County to operate the equipment; and, in addition thereto, nine percent (9%) of the total cost shall be added for overhead costs for accounting, billing, and administrative services, provided that County shall submit to City of Burlington a certified statement of the costs, and within thirty (30) days thereafter, City of Burlington shall pay to County the amount of said statement. Upon the request of City of Burlington, County shall provide adequate supporting documentation for any and all amounts billed to City of Burlington by County pursuant to the terms of this Agreement.

4.2 Contractor may perform work, provide materials, and/or provide the use of City of Burlington's equipment (to be operated by the City of Burlington's operator), for work on County's facilities upon County's request and acceptance by City of Burlington, to be reimbursed by County to the City of Burlington at the actual cost incurred by City of Burlington for said work, materials, use of City of Burlington's equipment, and wages for City of Burlington operator[s] provided by City of Burlington to operate the equipment; and, in addition thereto, nine percent (9%) of the total cost shall be added for overhead costs for accounting, billing, and administrative services, provided that City of Burlington shall submit to County a certified statement of the costs, and within thirty (30) days thereafter, County shall pay to City of Burlington the amount of said statement. Upon the request of County, City of Burlington shall provide adequate supporting documentation for any and all amounts billed to County by City of Burlington pursuant to the terms of this Agreement.

5. **ADMINISTRATION:** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

5.1 County's representative shall be the Operations Division Manager, or their designee.

5.2 City of Burlington's representative shall be the Mayor of Burlington, or their designee.

6. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.

7. NO PARTNERSHIP OR JOINT VENTURE: No partnership and/or joint venture exists between the parties, and no partnership and/or joint venture is created by and between the parties by virtue of this Agreement. No agent, employee, contractor, subcontractor, consultant, volunteer, and/or other representative of the parties shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer, or other representative of the other party.

8. NO THIRD PARTY BENEFICIARIES: This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, the general public, property owners and residents at or in the vicinity of the Project(s), or any other organization or entity, or any agent, contractor, subcontractor, consultant, employee, volunteer, or other representative of any party.

9. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions and those of its officials, officers, agents, employees, volunteers, assigns, contractors, subcontractors, and/or consultants to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability, loss, and/or expense, including but not limited to, judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the other party, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, except to the extent such injury to persons or damage to property is due to the negligence of the other party, its subcontractors, its elected officers, employees, volunteers, and/or their agents. It is further provided that no liability shall attach to either party by reason of entering into this contract except as expressly provided herein.

10. TERMINATION: Any party hereto may terminate this Agreement upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of

termination, except that the duty to indemnify pursuant to paragraph 9 shall survive such termination.

11. **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS:** The Agreement may be changed, modified, amended or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

12. **SEVERABILITY:** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

13. **ENTIRE AGREEMENT:** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. The parties hereby mutually agree to terminate and rescind a previous interlocal agreement by and between the parties dated January 14, 2013 (Skagit County Contract # C20130008), and the parties hereby recognize and agree that this Agreement shall specifically replace and supersede said previous interlocal (Skagit County Contract # C20130008).

14. **STATUS OF AGREEMENT:** This Agreement is in addition to, and is not intended to replace, substitute, modify, or otherwise amend any other agreements by and between the parties. Any other agreements by and between the parties shall continue in full force and effect, unless specified to the contrary herein (see Section 13, above).

15. **USE OF DOCUMENTS AND MATERIALS PRODUCED:** Both parties shall have the right to use and distribute any and all documents, writings, programs, data, public records or other materials prepared by any party (and/or any party's contractors, consultants, and/or subcontractors), in connection with performance of this Agreement. The parties recognize and agree that any documents and/or materials arising from and/or related to this Agreement may be subject to public disclosure pursuant to applicable law.

16. **COMPLIANCE WITH LAWS AND TERMS OF GRANTS:** The parties to this Agreement shall comply with all applicable federal, state, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement. If applicable, compliance with laws shall specifically include, but not be limited to, compliance with laws pertaining to the payment of prevailing wage on public works, including, but not necessarily limited to RCW 39.12. If applicable, compliance with laws shall also specifically include, but not be limited to, compliance with laws for the procurement of contracts for architectural and engineering services, including,

but not necessarily limited to RCW 39.80. If necessary, the parties shall obtain and comply with all necessary permits and approvals from all applicable jurisdictions prior to commencing any work related to this Agreement. Each party individually recognizes and agrees that it shall be solely and separately responsible and liable for compliance with all terms and conditions of any applicable grant(s) obtained or procured in such party's name.

17. **ASSIGNMENT AND SUBCONTRACTING:** No portion of this Agreement may be assigned, contracted, and/or subcontracted to any other individual, firm, company, and/or other entity by either party.

18. **DEFAULT:** Failure of the parties to comply with the terms of this Agreement shall constitute default. The parties shall have all remedies for the enforcement of this Agreement as provided by law.

19. **VENUE AND CHOICE OF LAW:** In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the laws of the State of Washington.

20. **CAPTIONS & COUNTERPARTS:** The captions in this Agreement are for convenience and reference only and do not define, limit, or describe the scope or intent of this Agreement. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

21. **NEUTRAL AUTHORSHIP:** Each of the terms and provisions of this Agreement have been reviewed and negotiated, and represents the combined work product of the parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement. The parties represent that they have had a full and fair opportunity to seek legal advice with respect to the terms of this Agreement and have either done so, or have voluntarily chosen not to do so. The parties represent and warrant that they have fully read this Agreement, that they understand its meaning and effect, and that they enter into this Agreement with full knowledge of its terms. The parties have entered into this Agreement without duress or undue influence.

CITY OF BURLINGTON:

Title of Signatory
(Date _____)

Print Name of Signatory

Mailing Address:
(Street address required
in addition to P.O. Box)

DATED this _____ day of _____, 2017.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Ron Wesen, Chair

Kenneth A. Dahlstedt, Commissioner

Attest:

Lisa Janicki, Commissioner

Clerk of the Board

For contracts under \$5,000:
Authorization per Resolution R20030146

Recommended:

County Administrator

Department Head

Approved as to form:

Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Risk Manager

Approved as to budget:

Budget & Finance Director

ORDINANCE NO. 1834**AN ORDINANCE OF THE CITY OF BURLINGTON AMENDING CHAPTER 5.12.070 OF THE BURLINGTON MUNICIPAL CODE SUSPENDING THE 2% UTILITY TAX LEVY ON WATER SALES UNTIL DECEMBER 31, 2017.**

WHEREAS, the Burlington Municipal Code currently allows the city to levy a 2% occupation tax against persons engaged in or carrying on the business of selling or furnishing water for industrial, business, residential, or other use; and

WHEREAS, the state court of appeals has decided that a code city has the legal authority to impose its utility tax on the revenues of a public utility district's provision of water service to customers within the city limits; and

WHEREAS, the City of Burlington does not currently want to exercise its authority to levy a utility tax on water service within city limits;

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

SECTION I. BMC Chapter 5.12.070 Utility Occupation Licenses - Fee Schedule is hereby amended to read as follows:

5.12.070 Fee schedule.

There is hereby levied and shall be collected by the city of Burlington, annual license fees or occupation taxes from the person on account of the business activities and in the amounts to be determined by the rates against gross income, as follows:

A. Upon every person engaged in or carrying on a telephone business, a fee or tax equal to six percent per annum of the total gross income from local service revenues in the city of Burlington. Such gross income shall include the revenue from intrastate toll services. Gross income shall, for the purpose of taxation under this section, not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter.

B. Upon every person engaged in or carrying on the business of selling or furnishing electric light and power, or either, a fee or tax equal to three percent per annum of the total gross income from such business in the city of Burlington; provided, however, that in determining gross income such person may exclude from gross income any and all income received from the sale of electric light and power, or either, to manufacturers at industrial rates, and any and all income derived from the sale of merchandise in the retail trade.

C. This tax is suspended until December 31, 2017. Upon every person engaged in or carrying on the business of selling or furnishing water for industrial, business, residential, or other use, a fee or tax equal to two percent of the total gross income from such business in the city of Burlington.

D. Upon every person engaged in or carrying on the business of selling or furnishing heat to consumers, furnished in a central heating plant or elsewhere, a fee or tax equal to three percent of the total gross income from such business in the city of Burlington.

E. Upon every person engaged in or carrying on the business of selling or furnishing natural or bottled gas or either, a fee or tax equal to three percent per annum of the total gross income from such business in the city of Burlington.

F. Upon every person engaged in or carrying on a telecommunication business, a fee or tax equal to six percent per annum of the total gross income from local service revenues in the city of Burlington. Gross income shall, for the purpose of taxation under this section, not include charges which are passed on to the subscribers by a telecommunication company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter. See BMC 5.12.020(G) for definition of "telecommunication business" for the sole purpose of this chapter.

SECTION II. If any section, subsection, sentence, clause, phrase or word 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, subsection, sentence, clause, phrase or word of this ordinance.

SECTION III. This ordinance shall be in full force and effect five (5) days from and after its passage, approval and publication as required by law.

INTRODUCED AND PASSED by the City Council of Burlington and approved by the Mayor this 22nd day of November, 2016.

THE CITY OF BURLINGTON



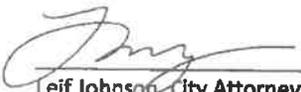
Steve Sexton, Mayor

ATTEST:



Renee Sinclair, Director of Budget & Accounting

APPROVED AS TO FORM:



Leif Johnson, City Attorney

FILED WITH CITY CLERK: 11/15/2016
PASSED BY CITY COUNCIL: 11/22/2016
SIGNED BY THE MAYOR: 11/28/2016
PUBLISHED: 11/28/2016

ORDINANCE NO. XXXX

**AN ORDINANCE OF THE CITY OF BURLINGTON AMENDING
CHAPTER 5.12.070 OF THE BURLINGTON MUNICIPAL CODE
SUSPENDING THE 2% UTILITY TAX LEVY ON WATER SALES UNTIL
DECEMBER 31, 2018.**

WHEREAS, the Burlington Municipal Code currently allows the city to levy a 2% occupation tax against persons engaged in or carrying on the business of selling or furnishing water for industrial, business, residential, or other use; and

WHEREAS, the state court of appeals has decided that a code city has the legal authority to impose its utility tax on the revenues of a public utility district's provision of water service to customers within the city limits; and

WHEREAS, the City of Burlington does not currently want to exercise its authority to levy a utility tax on water service within city limits;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURLINGTON DO ORDAIN AS
FOLLOWS:**

SECTION I. BMC Chapter 5.12.070 Utility Occupation Licenses - Fee Schedule is hereby amended to read as follows:

5.12.070 Fee schedule.

There is hereby levied and shall be collected by the city of Burlington, annual license fees or occupation taxes from the person on account of the business activities and in the amounts to be determined by the rates against gross income, as follows:

A. Upon every person engaged in or carrying on a telephone business, a fee or tax equal to six percent per annum of the total gross income from local service revenues in the city of Burlington. Such gross income shall include the revenue from intrastate toll services. Gross income shall, for the purpose of taxation under this section, not include charges which are passed on to the subscribers by a telephone company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter.

B. Upon every person engaged in or carrying on the business of selling or furnishing electric light and power, or either, a fee or tax equal to three percent per annum of the total gross income from such business in the city of Burlington; provided, however, that in determining gross income such person may exclude from gross income any and all income received from

the sale of electric light and power, or either, to manufacturers at industrial rates, and any and all income derived from the sale of merchandise in the retail trade.

C. This tax is suspended until December 31, 2018. Upon every person engaged in or carrying on the business of selling or furnishing water for industrial, business, residential, or other use, a fee or tax equal to two percent of the total gross income from such business in the city of Burlington.

D. Upon every person engaged in or carrying on the business of selling or furnishing heat to consumers, furnished in a central heating plant or elsewhere, a fee or tax equal to three percent of the total gross income from such business in the city of Burlington.

E. Upon every person engaged in or carrying on the business of selling or furnishing natural or bottled gas or either, a fee or tax equal to three percent per annum of the total gross income from such business in the city of Burlington.

F. Upon every person engaged in or carrying on a telecommunication business, a fee or tax equal to six percent per annum of the total gross income from local service revenues in the city of Burlington. Gross income shall, for the purpose of taxation under this section, not include charges which are passed on to the subscribers by a telecommunication company pursuant to tariffs required by regulatory order to compensate for the cost to the company of the tax imposed by this chapter. See BMC [5.12.020\(G\)](#) for definition of “telecommunication business” for the sole purpose of this chapter.

SECTION II. If any section, subsection, sentence, clause, phrase or word 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, subsection, sentence, clause, phrase or word of this ordinance.

SECTION III. This ordinance shall be in full force and effect five (5) days from and after its passage, approval and publication as required by law.

INTRODUCED AND PASSED by the City Council of Burlington and approved by the Mayor this 21st day of November, 2017.

THE CITY OF BURLINGTON

Steve Sexton, Mayor

ATTEST:

Renee Sinclair, Director of Budget & Accounting

APPROVED AS TO FORM:

Leif Johnson, City Attorney

FILED WITH CITY CLERK: 11/21/2017
PASSED BY CITY COUNCIL: XX/XX/2017
SIGNED BY THE MAYOR: XX/XX/2017
PUBLISHED: XX/XX/2017



ITEM #: 2

CHECK ONE:

NEW BUS. X

OLD BUS. _____

AGENDA ITEM

Council Date: November 21, 2017
Renee Sinclair, Director of Budget &
Accounting

Subject: Public Hearing: 2017 Revenue Sources and
Consideration of Property Tax Revenues

Attachments: Proposed Levy Ordinance

Public Hearing Required: YES (X) NO ()

SUMMARY

The Washington State Constitution and statutory levy limits set by the state legislature determine the allowed property tax levy levels for all local taxing districts in the state, including municipalities. The tax rate levied on properties within a particular taxing district is the figure resulting from dividing the dollar levy amount adopted for the taxing district by the total assessed value of the property within the district. For cities and towns, the legislative body (i.e. City Council) is directed by statute to establish the total amount to be derived from property taxes to help fund City operations. Although the state legislature has limited cities to collecting no more than 101% of the amount established for collection in the previous year plus that amount derived from new construction within the district, for many years cities have been allowed to establish a levy amount less than the maximum percentage allowed by statute and "bank" the percentage not taken for potential future use. For approximately ten years, the City of Burlington has levied less than the maximum amount and "banked" the cumulative annual one percentage rate increases. The city must take action on its 2018 property tax levy and notify the Skagit County Assessor of that action prior to November 30, 2017.

RECOMMENDATION

1. Motion to adopt the proposed property tax ordinance raising the property levy rate by an amount between 0% and the maximum percentage banked in previous years based upon the assessed value determined in 2017, for collection in 2018.

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY OF BURLINGTON FIXING THE AMOUNT OF PROPERTY TAXES TO BE LEVIED IN 2017 FOR COLLECTION IN 2018

WHEREAS, the City Council has properly given notice of the public hearing held at 7:00 p.m., Tuesday, November 21, 2017 to consider the City of Burlington tax revenues for the 2018 calendar year, and increases in property tax revenues, all pursuant to RCW 84.55.120; and

WHEREAS, the City Council after the hearing, and after duly considering all relevant evidence and testimony presented, has determined that City of Burlington does not require an increase in property tax revenue from the previous year as established below, and will also receive an increase resulting from the addition of new construction and improvements to property and any increase in the value of state assessed property, in order to discharge the expected expenses and obligations of the City of Burlington and in its best interest.

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

Section 1. That an increase in the regular property tax levy, in addition to the increase resulting from the addition of new construction and improvements to the property, any increase in the value of state assessed property, any annexations that have occurred and refunds made, is hereby authorized for the 2017 levy in the amount of \$2,585,845.00 which is a percentage increase of 0% from the previous year.

Section 2. The Finance Director is hereby authorized and directed to transmit to the County Assessor copies of this ordinance which levies for collection for the year 2018.

Section 3. This ordinance shall be in full force and effect five (5) days from and after its passage, approval, and publication as required by law.

INTRODUCED AND PASSED and approved at a regular meeting of the City Council this 21st day of November, 2017.

THE CITY OF BURLINGTON

Steve Sexton, Mayor

ATTEST:

Renee Sinclair, Director of Budget & Accounting

APPROVED AS TO FORM:

Leif Johnson, City Attorney

Filed with the City Clerk:

Passed by the City Council:

Signed by the Mayor:

Published:



ITEM #: 3

CHECK ONE:

NEW BUS. X

OLD BUS. _____

AGENDA ITEM

Council Date: November 21, 2017 Subject: Public Hearing: Proposed 2018 Budget

Renee Sinclair, Director of Budget &
Accounting

Attachments: Proposed Budget Ordinance Public Hearing Required: YES (X) NO ()

SUMMARY

This is the first reading and Public Hearing to consider the 2018 Budget.

RECOMMENDATION

1. Motion to approve the proposed 2018 budget ordinance and adopt the 2018 budget and authorize the Mayor's signature on the budget ordinance; – or –
2. Take no action on the proposed 2018 budget ordinance and request a continuation of the public hearing to the next regular City Council meeting on Thursday, December 14th, 2017.



ITEM #: 4

CHECK ONE:

NEW BUS.

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AGENDA ITEM

Council Date: November 21, 2017
Brad Johnson, Senior Planner

Subject: Phases II & III of the Comprehensive Municipal Code Update and Reorganization

- Attachments: (1) Staff Report
(2) Planning Commission Recommendation on Phase II Revisions
(3) Planning Commission Recommendation on Phase III Revisions

Public Hearing Required: YES () NO (X)

SUMMARY

The City's comprehensive municipal code update has been divided into five phases. Phase one was completed when the City Council adopted a schedule for the proposed update and accepted the Planning Commission's recommendations on updated zoning and comprehensive plan maps. Phase two includes titles 1, 8, and 14A. Phase three includes titles 14, 15, and 16. The Planning Commission has completed their work on phases one and two and, as outlined in the attached documents, recommends the City Council adopt the proposed code revisions.

RECOMMENDATION

The City Council should accept the Planning Commission's recommendations.



Planning Department Staff Report

To: Burlington City Council

From: Brad Johnson, Senior Planner 

Date: November 13, 2017

Subject: Comprehensive Municipal Code Update – Planning Commission Recommendations on Phases II and III - Amendments to Titles 1, 8, 14, 14A, 15, and 16

Summary

For the past several years the City has been working to revise and reorganize the Burlington Municipal Code. As directed by the City Council, this work is being reviewed by the Planning Commission in an incremental fashion and has been divided into five distinct phases. The first phase involved the adoption of a work schedule and the preliminary adoption of revised zoning and comprehensive plan maps. The first phase was completed and accepted by the City Council on September 28, 2017. The Planning Commission has now completed their work on phases two and three and has provided their recommendations to the City Council.

Phase II Code Revisions

The Planning Commission met on October 18, 2017 to consider the first batch of proposed code changes drafted by staff and the City's consultant. These changes included amendments to titles 1 and 8 of the Burlington Municipal Code and the establishment of a new title 14A. While the proposed changes to titles 1 and 8 are largely organizational, the changes embodied in title 14A are significant. Specifically, title 14A would largely eliminate the permit review and approval authority currently vested in the Planning Commission, Board of Adjustment, and City Council. Title 14A would establish a Hearing Examiner system to perform the permit and appeal procedures currently performed by these bodies.

At the conclusion of their hearing, the Planning Commission identified a number of concerns. Notably, the Planning Commission asked the Planning Department to revise the draft of title 14A to allow type III decisions to be appealed administratively. As originally drafted, type III decisions made by the hearing examiner would only have been appealable to Superior Court.

The Planning Commission felt it was important to ensure that a local appeal process was available for all decisions.

In response to the Planning Commission's input, the Planning Department developed two options. These options were presented to the Planning Commission at their November 8, 2017 meeting. The first option, which was presented to the Planning Commission as option "A", allowed all permit decisions made by the Hearing Examiner to be appealed to the City Council, but did not allow a second appeal step for appeal decisions made by the Hearing Examiner on type I and II permits. The second option, which was presented to the Planning Commission as option "B", would have allowed all type III decisions made by the Hearing Examiner to be appealed to the City Council, including decisions on appeals of type I and II permits.

After some deliberation the Planning Commission voted unanimously to recommend the City Council adopt the proposed phase II code amendments with the revisions presented in option "A". For purposes of clarity the effect of the proposed code amendments is summarized below.

Titles 1 and 8 (tabs 1 and 2):

These titles contain the City's code enforcement, penalty, and nuisance regulations. Currently these provisions are scattered throughout the City's code and many inconsistencies and conflicts exist. The proposed changes are intended to consolidate all of these provisions in a single location and provide the City Attorney and code enforcement staff with a variety of options for addressing code violations.

Title 14A (tab 4):

Title 14A has been created to consolidate the City's permit processing and appeal procedures. These procedures are currently located in several different codes sections and clear instructions on permit processing procedures, application requirements, and timelines are not articulated for permit applicants and staff. In addition, title 14A will largely eliminate the permit processing and appeal functions of the Board of Adjustment, Planning Commission, and City Council by creating a Hearing Examiner system. The City's insurance provider highly recommends the use of a Hearing Examiner system which reduces the City's liability and allows permit applicants and citizens to have their grievances reviewed by an independent, impartial official.

Phase III Code Revisions

At the Planning Commission's meeting on November 8, 2017, the Planning Department presented the proposed revisions to titles 14, 15, and 16. These titles address environmental regulations, uniform codes, and platting regulations. The Planning Commission voted unanimously to recommend the City Council adopt the proposed revisions. The effect of the proposed revisions has been summarized below.

Title 14 (tab 3):

Title 14 has been revised to consolidate all of the City's environmental regulations in a single place. Currently, title 14 contains only the City's surface water management regulations. Critical area regulations and the City's SEPA procedures are located in title 15. This is confusing from an organizational perspective because title 15 is labeled as "Buildings and Construction" and is principally focused on building, fire, and property maintenance codes.

Most of the changes made to these code sections are organizational and were made solely for the purpose of consolidating these sections into title 14. Several small changes have been made to the City's SEPA procedures to clarify that the City uses the "optional DNS process", which reduces permit processing times, when issuing SEPA threshold determinations. Other minor changes have also been made to ensure consistency with the updated permit processing procedures in title 14A.

Title 15 (tab 5):

No substantive changes have been made to this section. As noted above, the City's SEPA procedures (chapter 15.12 BMC) and the City's critical area regulations (chapter 15.15 BMC) have been moved to title 14 BMC. In addition, the hotel inspection and licensing requirements adopted by the City Council last year have been codified in chapter 15.14 BMC.

Title 16 (tab 6):

The platting regulations currently located in title 16 have been completely rewritten. The effect of the new regulations is the same; however, the review and permitting procedures have been clarified and explicitly stated. The current regulations are convoluted and often fail to identify key decision making authorities, timelines, and review responsibilities. Also, the City's current platting regulations do not include a final review process for short plats and binding site plans making it difficult for staff to verify that required improvements have been completed.

Recommended Action

The Planning Department recommends the City Council accept the Planning Commission's recommendations on titles 1, 8, 14, 14A, 15, and 16.



PLANNING COMMISSION RECOMMENDATION

DATE: November 8, 2017

PROJECT: Comprehensive Municipal Code Update and Reorganization – Phase 2
Titles 1, 8, and 14A – Option “A”

LOCATION: N/A – Citywide Municipal Code Update

NUMBER: DRA/CPA 1-2017

APPLICANT: City of Burlington

SUMMARY:

The Planning Commission has reviewed the proposed amendments to titles 1, 8, and 14A of the Burlington Municipal Code. The proposed amendments to titles 1 and 8 would consolidate the City’s penalty and enforcement provisions into a single chapter and expand the enforcement options available to the City Attorney. Title 14A would consolidate the City’s permit processing procedures and public notification requirements in a single location. In addition, the adoption of Title 14A would recognize the establishment of a Hearing Examiner system. The Hearing Examiner would be charged with reviewing administrative appeals, variances, and complex permit applications.

FINDINGS:

Code Enforcement Provisions

1. Over time new code chapters and sections have been added to the Burlington Municipal Code to address emerging issues. Often, additional code enforcement provisions were added at the same time. As a result, the Burlington Municipal Code currently contains a patchwork of code enforcement penalties and enforcement provisions.
2. The existing patchwork of penalties and code enforcement provisions has made it difficult for City staff to address code violations effectively.

3. The proposed amendments to titles 1 and 8 of the Burlington Municipal Code will consolidate the numerous code enforcement provisions and penalties in a single code title and allow the City to address code violations as criminal violations, civil infractions, or as nuisances.
4. The Planning Commission finds that the proposed amendments will make the City's code enforcement process more transparent, efficient, and effective.
5. The Planning Commission has concerns that some of the penalty provision identified in titles 1 and 8 may conflict with one another. In order to ensure there are no conflicting penalty provisions, the Planning Commission finds that staff should review these code titles for consistency and make any necessary corrections before final action by the City Council.
6. The proposed code changes include provisions in BMC 1.24.080 and 1.44.120 that allow the City to revoke or suspend "permits granted in error". The Planning Commission has concerns that this provision may be unconstitutional or contrary to established legal precedent. The Planning Commission finds that it would be prudent for staff to review these code provisions with the City's legal counsel and make any necessary changes before final action by the City Council.

Permit Processing Procedures

7. Currently many of the City's permit processing procedures, timelines, and public notice requirements are located in chapter 17.68 BMC. However, permit processing procedures are also located in a number of other code sections. In some instances these various permit processing procedures are conflicting, redundant, or out of compliance with Washington State law.
8. The Planning Commission finds that proposed code title 14A will create a single location in the municipal code which clearly identifies decision authorities, permit processing timelines, and public notice requirements.
9. Currently the Burlington Municipal Code grants the Board of Adjustment authority to decide variance requests and certain administrative appeals. The Planning Commission has authority to approve, or make recommendations to the City Council, on certain permit types, and the City Council has final authority over administrative appeals, subdivisions, and conditional use permits.
10. The Planning Commission finds that the current permit processing and appeal system may unnecessarily expose the City to liability, fails to produce a comprehensive decision record, and needlessly delays permit decisions.

11. The Planning Commission finds that establishing a Hearing Examiner system would allow an independent, semi-autonomous official to review City land use decisions and decide appeals. The Planning Commission further finds that this system would provide permit applicants, city residents, and property owners with timely, consistent, fact-based, permit decisions.

12. The draft of title 14A provided to the Planning Commission would vest final decision making authority for all type III decisions in the Hearing Examiner. Hearing Examiner decisions would then only be appealable to Superior Court by filing a petition under the Washington State Land Use Petition Act (LUPA). The Planning Commission finds that in the interest of preserving legislative oversight, and in interest of preserving a low cost accessible appeal process, title 14A should be amended as shown on attached exhibit "A" to provide at least one administrative appeal opportunity for type I, II, and III land use decisions.

RECOMENDATION:

Based on the findings presented above the Planning Commission respectfully makes the following recommendations to the City Council:

1. The City Council should adopt the proposed changes to titles 1 and 8 of the Burlington Municipal Code. These changes are identified under tabs 1-B and 2-B of the binders provided to the City Council.

2. Staff should transmit a list to the City Council of any changes necessary to ensure consistency between the penalty provisions identified in titles 1 and 8. These changes should be incorporated into the final code drafts adopted by the City Council.

3. Staff should review the permit suspension and revocation provisions set forth in BMC 1.24.080 and 1.44.120 to ensure these provisions are constitutional and consistent with established legal precedent. Any resulting changes should be incorporated into the final drafts adopted by the City Council.

4. The City Council should adopt the proposed consolidated permit processing procedures and codify these changes under Burlington Municipal Code Title 14A. The proposed consolidated permit processing code language is identified under tab 4-B in the binders provided to the City Council. The final draft adopted by the City Council should be revised to include the revised administrative appeal procedures identified on attached exhibit "A".

5. If the Hearing Examiner system referenced in proposed Title 14A BMC is adopted, the City Council should disband the Board of Adjustment.

City of Burlington - Planning Department Staff Report
Comprehensive Municipal Code Update and Reorganization
Phase 2 – Titles 1, 8, and 14A

DATED this 8th day of November 2017

Maria Manick-Abel

Chair, City of Burlington Planning Commission

OPTION "A"

EXHIBIT "A"

8. Conditional use permits. (BMC 14.05.140)
9. Shoreline substantial development permits, variances and conditional use permits. (BMC 18.09.020)
10. Any other land use action or project permit approval identified by Burlington Municipal Code as a type III review.

D. **Type IV** decisions are legislative decisions made by the city council and limited quasi-judicial final decisions pursuant to the criteria identified in this chapter, in its capacity to establish policy and manage public lands, pursuant to existing legislative standards and based on the hearings examiner or planning commission's record, public meeting and recommendation, and an open and/or closed record public hearing by the city council, the staff report provided by the Planning Department and evidence presented at time of hearing before the city council. Notice of such hearing shall be as provided by BMC 14A.05.130.

Type IV decisions include the following:

1. Final decisions on subdivisions approval and site specific zoning map amendments. (Chapter 16.05 BMC, BMC 14A.05.180 respectively)
2. Essential public facility conditional use permits. (Chapter 17.105 BMC)
3. Zoning text amendments. (BMC 14A.05.180, 17.125.090).
4. Area wide zoning map amendments. (BMC Sections 14A.05.180, 17.125.070)
5. Comprehensive plan adoption and amendment. (BMC 17.125.050)
6. Final decision as to appeals or adjustments of impact fees as per title 15.12. (BMC Section 15.12.100)
7. All decisions on site specific zoning amendments and text amendments which are not consistent with or require a corresponding change to the comprehensive plan.
- 7.8. Appeals of decisions on Type III project permit applications. (BMC 14A.05.060.D)
- 8-9. Any other land use action or project permit approval identified by Burlington Municipal Code as a type IV review.

14A.05.070 Applications – Generally.

- A. Applications for project permits and other land use actions shall be made by the property owner, lessee, contract purchaser, or a city agency, or by an authorized agent thereof.
- B. All applications for project permits or other land use actions shall be made to the director on a form provided by the community development department.
- C. Applications shall be accompanied by payment of the applicable filing fees, if any, as adopted by city council resolution in the current city fee schedule.

3. SEPA. An appeal of a SEPA threshold determination associated with a type II land use action shall be considered together with the appeal of the associated land use action.

4. Appeal Decision. The hearing examiner shall hear appeals of type II land use actions in a closed record hearing. Appeals of type II land use actions shall be processed as a type III decision. Notice of the appeal hearing and appeal decision shall be provided to all parties of record.

C. Type III decisions.

1. ~~Appeal Decisions. Hearing Examiner decisions on appeals of Type I and II decisions Type III land use actions shall be appealed to Superior Court in accordance with the provisions of chapter 36.70C RCW, except that appeals of shoreline substantial development, shoreline variance, and shoreline conditional-use permits shall be filed with the Shoreline Hearings Board as provided for by chapter 90.58 RCW.~~

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2. ~~Permit Decisions. Hearing Examiner decisions on Type III project permit applications may be appealed to the City Council by any party of record. Hearing Examiner decisions may be appealed only if, within 14 calendar days after written notice of the decision is mailed, a written appeal is filed with the Director.~~

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3. ~~SEPA Decisions. An appeal of a SEPA threshold determination associated with a type III land use action shall be considered together with the appeal of the associated land use action by whichever authority is charged with considering the appeal of the associated land use action.~~

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4. ~~Submittal Requirements. Appeals filed with the City Council shall contain the following information:~~

~~a. The specific permit number or decision being appealed.~~

~~b. The name of the applicant and property owner;~~

~~c. If multiple parties file an appeal, the appeal shall designate a single representative or contact person.~~

~~d. The specific aspects of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and~~

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~~e. Any applicable appeal fee identified in the fee schedule adopted by the City Council.~~

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5. ~~City Council Action. Within 30 days of receiving an appeal the City Council shall hold a closed record hearing. At the conclusion of the hearing the City Council shall either;~~

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~~a. Decline to consider the appeal; or~~

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- b. Consider the appeal and uphold the Hearing Examiner's decision; or
- c. If, based solely on the record created by the Hearing Examiner, the City Council finds that the Examiner's decision is in error as a matter of fact or law the City Council may reverse the Examiner's decision. If the City Council reverses the Hearing Examiner's decision it shall make specific findings identifying the aspects of the Hearing Examiner's decision which are in error.

D. Type IV decisions. Type IV decision shall be appealed to Superior Court pursuant to Chapter 36.70C RCW, the Growth Management Hearings Board pursuant to RCW 36.70A.280, the Shoreline Hearings Board pursuant to chapter 90.58 RCW or other applicable statutory authority in accordance with Washington State law. An appeal of a SEPA threshold determination associated with a type IV land use action shall be considered together with the appeal of the associated land use action.

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PLANNING COMMISSION RECOMMENDATION

DATE: November 8, 2017

PROJECT: Comprehensive Municipal Code Update and Reorganization – Phase 3
Titles 14, 15, and 16

LOCATION: N/A – Citywide Municipal Code Update

NUMBER: DRA/CPA 1-2017

APPLICANT: City of Burlington

SUMMARY:

The Planning Commission has reviewed the proposed amendments to titles 14, 15, and 16 of the Burlington Municipal Code. Titles 14 and 15 have been amended to consolidate all of the City's environmental regulations in a single place. Title 16, which concerns land divisions, has been rewritten to provide clear and explicit procedures for reviewing and approving land division requests. The overall effect of the code remains largely unchanged but significant organizational and procedural changes have been made.

FINDINGS:

Titles 14 and 15:

1. Currently the City's critical area regulations and State Environmental Policy Act (SEPA) procedures are located in title 15 BMC which is labeled "Buildings and Construction". When possible code provisions dealing with similar topics should be grouped together or consolidated under a single code title in order to reduce confusion and to make the code easier to navigate. The Planning Commission finds that the City's SEPA provisions and critical area regulations should be relocated to title 14 in order to accomplish this objective.

Title 16:

2. The City's current Platting regulations lack clarity and do not, in all cases, articulate permit procedures and decision making authorities for land division applications. The Planning Commission finds that the proposed changes will address these issues.

RECOMENDATION:

Based on the findings presented above the Planning Commission respectfully makes the following recommendations to the City Council:

1. The City Council should adopt the proposed changes to titles 14 and 15 of the Burlington Municipal Code. These changes are identified under tabs 3-B and 5-B of the binders provided to the City Council.
2. The City Council should adopt the proposed land division regulations and procedures identified in title 16 BMC. These changes are located under tab 6-B in the binders provided to the City Council.

3. STAFF SHOULD MAKE CHANGES REQUIRED TO
ADDRESS REFERENCES, CITATIONS AND OTHER
CLARIFICATION.
DATED this 8th day of November 2017

Matthew A. Lee

Chair, City of Burlington Planning Commission



ITEM #: 5

CHECK ONE:

NEW BUS. X

OLD BUS. _____

AGENDA ITEM

Council Date: November 21, 2017
Bryan Harrison, City Administrator

Subject: Amended AWC Employee Benefit Trust Employer
Master Participation Agreement

Attachments: Proposed Agreement

Public Hearing Required: YES () NO (X)

SUMMARY

Effective January 1, 2018 the current health plan of the City of Burlington employees, AWC Healthfirst, will no longer be offered by the Association of Washington Cities. AWC requires thirty (30) day notice of any change in health plans and an amended Employer Master Participation Agreement. This agreement has been amended to add the AWC Healthfirst 250 Plan as the health insurance plan for the employees of the City.

RECOMMENDATION

Move to approve the AWC Employer Master Participation Agreement adding the AWC Healthfirst 250 Plan and authorize the Mayor's signature.



AWC Employee Benefit Trust Employer Master Participation Agreement

awcnet.org

The AWC Employee Benefit Trust is a plan sponsor for health coverage through the following insurance carriers:

Medical	Dental	Vision	EAP	Life & LTD			
Regence 1800 Ninth Ave Seattle, WA 98101	ASURIS 528 E Spokane Falls Blvd, Suite 301 Spokane, WA 99202	KAISER PERMANENTE Kaiser Permanente 601 Union Street, Suite 3100 Seattle, WA 98101	DELTA DENTAL Delta Dental of Washington 9706 Fourth Ave NE Seattle, WA 98115	Willamette Dental Group Willamette Dental of Washington, Inc. 6950 NE Campus Way Hillsboro, OR 97124	VSP 3333 Quality Drive Rancho Cordova, CA 95670	COMPSYCH NBC Tower 455 N. Cityfront Plaza Drive Chicago, IL 60611-5322	The Standard Standard Insurance Company 1100 SW 6th Ave Portland, OR 97204

Employer: City of Burlington Date form completed: 11/16/2017

Initial Employer Master Participation Agreement Effective date: _____

Change to existing Employer Master Participation Agreement The effective date of the change is: 01/01/2018

The change to the existing Employer Master Participation Agreement is: Addition of AWC Healthfirst 250 Plan and

Form completed by: (name, title) Brittany Johnson, Human Resources Manager

Total number of full-time employees eligible for ANY employer sponsored health coverage: 100

Total number of full-time employees:	Eligible	Enrolled
AWC sponsored medical plans	<u>100</u>	<u>100</u>
AWC sponsored dental plans	<u>100</u>	<u>100</u>
AWC sponsored vision plans	<u>100</u>	<u>100</u>

Total number of LEOFF I actives: Fire dept: 0 Police dept: 0

Total number of LEOFF I retirees: Fire dept: 0 Police dept: 4

Do you provide health coverage for your elected officials? Yes No

Total number of elected officials:	Eligible	Enrolled
AWC sponsored medical plans	<u>8</u>	<u>1</u>
AWC sponsored dental plans	<u>8</u>	<u>1</u>
AWC sponsored vision plans	<u>8</u>	<u>1</u>

Do you provide health coverage for your part-time employees? Yes No

If yes, provide your definition of minimum hours worked per week in order for part-time employees to be eligible for benefits. (Cannot be less than 20 hours/week.) 30

Total number of part-time employees:	Eligible	Enrolled
AWC sponsored medical plans	<u>0</u>	<u>0</u>
AWC sponsored dental plans	<u>0</u>	<u>0</u>
AWC sponsored vision plans	<u>0</u>	<u>0</u>

EMPA-2 (8/17)

Plan offerings

Complete **one sheet for each work group or bargaining unit** (i.e. public works, police guild, finance, etc.) If all employees are on the same plans - write "all employees."

Name of work/bargaining unit All Employees # employees eligible 100

AWC plan offerings

Medical # enrolled _____

 **Regence**
1800 Ninth Ave
Seattle, WA 98101

- Regence BlueShield**
 - AWC HealthFirst® 250
 - AWC HealthFirst® 500
 - High Deductible Health Plan
 - Plan A - LEOFF I only
 - Medicare Advantage - LEOFF I retiree only

 **ASURIS**
NORTHWEST HEALTH
528 E Spokane Falls Blvd, Suite 301
Spokane, WA 99202

- Asuris Northwest Health**
 - AWC HealthFirst® 250
 - AWC HealthFirst® 500
 - High Deductible Health Plan
 - Plan A - LEOFF I only
 - Medicare Advantage - LEOFF I retiree only

 **KAISER PERMANENTE.**
601 Union Street, Suite 3100
Seattle, WA 98101

- Kaiser Permanente**
 - \$200 deductible plan
 - \$500 deductible plan
 - High Deductible Health Plan
 - No copay - LEOFF I only
- Kaiser Foundation Health Plan of Washington Options, Inc.**
 - Access PPO

Dental # enrolled _____

 **DELTA DENTAL**

Delta Dental of Washington
9706 Fourth Ave NE
Seattle, WA 98115
Delta Dental of Washington Basic (0177)

- Plan A
- Plan B
- Plan C
- Plan D
- Plan E
- Plan F
- Plan G
- Plan J

- Orthodontia**
- Option I
 - Option II
 - Option III
 - Option IV
 - Option V

 **Willamette**
Dental Group
6950 NE Campus Way
Hillsboro, OR 97124

- Willamette Dental of Washington, Inc.**
- \$ 10 copay
 - \$ 15 copay

Vision # enrolled _____

 **VSP**
3333 Quality Drive
Rancho Cordova, CA 95670
Vision Service Plan

- No deductible (0001)
- \$10 deductible (0002)
- \$25 deductible (0005)
- Low option plan
- Second pair rider

Employee Assistance Program
enrolled _____

 **COMPSYCH**
—The GuidanceResources Company—
NBC Tower
455 N. Cityfront Plaza Drive
Chicago, IL 60611-5322

- ComPysch**
- 1-3 sessions - Included when enrolled on any AWC Trust plan.
 - 1-5 sessions
 - 1-8 sessions

Include coverage for:
 Not covered by AWC Trust plan, describe:

Life # enrolled _____

 **The Standard**
1100 SW 6th Ave
Portland, OR 97204
Standard Insurance Company

- Basic life
- Accidental Death & Dismemberment
- Dependent life
 - Plan option 1
 - Plan option 2
 - Plan option 3
 - Plan option 4
- Employee additional life
- Spouse additional life

Long-term Disability

- # enrolled _____
-  **The Standard**
1100 SW 6th Ave
Portland, OR 97204
Standard Insurance Company
- 90-day: 60% benefit
 - 90-day: 67% benefit
 - 180-day: 60% benefit
 - 180-day: 67% benefit

Other (non-AWC) plan offerings

	Name of plan/sponsor	# employees eligible	# employees enrolled
Medical			
Dental			
Vision			
EAP			
Life			
LTD			