



CITY OF BLACK DIAMOND
September 20, 2018 Regular Business Meeting Agenda
25510 Lawson St., Black Diamond, Washington

7:00 P.M. – CALL TO ORDER, FLAG SALUTE, ROLL CALL

AGENDA REVIEW AND APPROVAL:

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS:

CONSENT AGENDA:

- 1) **Claim Checks** – September 20, 2018 – Check No. 46679 through 46728 and EFTs in the amount of \$417,785.63
- 2) **Payroll** – August 31, 2018 – No. 19614 through 19633 (voids 19492, 19511) and ACHs in the amount of \$330,402.43
- 3) **Minutes** – Council Meeting of September 6, 2018

PUBLIC COMMENTS: Persons wishing to address the City Council regarding items of new business are encouraged to do so at this time. When recognized by the Mayor, please come to the podium and clearly state your name. Please limit your comments to 3 minutes. If you desire a formal agenda placement, please contact the City Clerk at 360-886-5700. Thank you for attending.

PUBLIC HEARINGS:

- 4) **AB18-080** – Ordinance Granting a Nonexclusive Telecommunications Franchise to MCImetro Access Transmission Services Corporation., D/B/A Verizon Access

Mr. Boettcher

UNFINISHED BUSINESS: None

NEW BUSINESS: None

DEPARTMENT REPORTS:

MAYOR'S REPORT:

COUNCIL REPORTS:

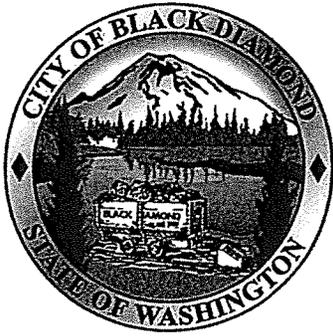
- Councilmember Deady
- Councilmember Oglesbee
- Councilmember Edelman
- Councilmember Stout
- Councilmember Wisnoski

ATTORNEY REPORT:

PUBLIC COMMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:



CERTIFICATION

Date: September 20th, 2018 Council Meeting

Check No.'s/EFT Batch Name Check/EFT Date Amount

EFT	Batch Name	Check/EFT Date	Amount
	August – August EFT Batch for 09/20 Council	08/01/2018 – 08/31/2018	\$ 11,505.38
46679 – 46681	September – Early 2 nd September Batch	09/10/2018 & 09/12/2018	\$ 33,474.50
46682 – 46728	September – 2 nd September Batch for 09/20 Council	09/21/2018	\$372,805.75
		TOTAL	\$417,785.63

I, THE UNDERSIGNED DO HEREBY CERTIFY UNDER THE PENALTY OF PERJURY, THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED AND OR THE LABOR PERFORMED AS DESCRIBED HEREIN AND THAT THE CLAIM IS A JUST, DUE AND UNPAID OBLIGATION AGAINST THE CITY OF BLACK DIAMOND, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND CERTIFY TO SAID CLAIM.

May Miller

 MAY MILLER, FINANCE DIRECTOR

 CAROL BENSON, MAYOR

9-13-2018

 DATE

 DATE

COUNCILMEMBERS

DATE

Register

Fiscal: 2018

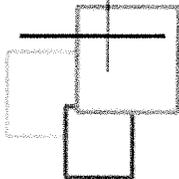
Deposit Period: 2018 - September, 2018 - August

Check Period: 2018 - September - Early 2nd September Batch, 2018 - September - 2nd Sep Batch for 09/20 Council, 2018 - August - August EFT Batch for 09/20 Council

Number	Name	Print Date	Amount
Check			
46679	Varius Inc.	9/10/2018	\$25,173.00
46680	Kara Murphy Richards	9/10/2018	\$3,400.00
46681	Secure Pacific Corporation	9/12/2018	\$4,901.50
46682	ADT Security Services (PA)	9/21/2018	\$48.64
46683	Albro Construction	9/21/2018	\$1,100.00
46684	Alison Whitman	9/21/2018	\$12.73
46685	Amy and/or Joel Whitaker	9/21/2018	\$46.22
46686	Black Diamond Royal Towing	9/21/2018	\$135.75
46687	CHS/Cenex	9/21/2018	\$4,260.12
46688	City of Black Diamond	9/21/2018	\$1,979.54
46689	City of Black Diamond/Retained Funds	9/21/2018	\$14,684.48
46690	Comcast (PA)	9/21/2018	\$394.91
46691	Conner Homes at Ten Trails LLC	9/21/2018	\$596.96
46692	DeAnn Wright	9/21/2018	\$24.25
46693	Doolittle Construction LLC	9/21/2018	\$83,212.08
46694	Enumclaw Chrysler Jeep Dodge Ram	9/21/2018	\$612.56
46695	Enumclaw School District	9/21/2018	\$101,179.00
46696	Fugate Ford	9/21/2018	\$116.96
46697	Grainger	9/21/2018	\$18.87
46698	Granite Telecommunications	9/21/2018	\$49.47
46699	Home Depot Credit Service	9/21/2018	\$145.73
46700	Honey Bucket/Northwest Cascade Inc.	9/21/2018	\$178.00
46701	Kenyon Disend, PLLC	9/21/2018	\$22,113.24
46702	King County Finance - Wastewater Treat Div.	9/21/2018	\$47,757.60
46703	King County Fire District #44	9/21/2018	\$30,978.15
46704	King County Prosecuting Attorney	9/21/2018	\$184.19
46705	King County Radio Comm Services	9/21/2018	\$1,609.45
46706	Lennar NW LLC	9/21/2018	\$8,897.00
46707	Michael and/or Paula Mengual	9/21/2018	\$76.65
46708	Modular Space Corporation	9/21/2018	\$5,412.63
46709	Northstar Chemical Inc.	9/21/2018	\$2,783.93
46710	O'Brien, Barton, & Hopkins, PLLP	9/21/2018	\$2,750.00
46711	Office Products Nationwide	9/21/2018	\$360.99
46712	Puget Sound Energy	9/21/2018	\$8,046.73
46713	Republic Services #176	9/21/2018	\$796.80
46714	Severson's Building Maint	9/21/2018	\$2,050.00
46715	Shred-It USA	9/21/2018	\$61.81
46716	South Correctional Entity	9/21/2018	\$1,050.00
46717	TRM Wood Products Co. Inc.	9/21/2018	\$297.13
46718	U.S. Postal Service (Black Diamond)	9/21/2018	\$286.00

46719	Uline	9/21/2018	\$71.59
46720	Utilities Underground	9/21/2018	\$115.50
46721	Valley Communications Center	9/21/2018	\$12,522.10
46722	VenTek International	9/21/2018	\$90.00
46723	Voice of The Valley	9/21/2018	\$280.00
46724	Washington State Department of Ecology	9/21/2018	\$3,158.45
46725	Washington State Patrol	9/21/2018	\$84.00
46726	Washington State Treasurer	9/21/2018	\$12,104.54
46727	Water Management Laboratories, Inc.	9/21/2018	\$21.00
46728	Wave Broadband	9/21/2018	\$50.00
EFT Payment 08/01/2018 2:43:10 PM - 1	U.S. Postal Service (Black Diamond)	8/1/2018	\$508.38
EFT Payment 08/02/2018 2:42:04 PM - 1	Dept of Licensing-Firearms Online	8/2/2018	\$72.00
EFT Payment 08/07/2018 2:43:24 PM - 1	Invoice Cloud	8/7/2018	\$116.10
EFT Payment 08/09/2018 2:47:01 PM - 1	Dept of Licensing-Firearms Online	8/9/2018	\$75.00
EFT Payment 08/10/2018 2:47:19 PM - 1	Merchant Card Services / Vantive Holding, LLC	8/10/2018	\$167.98
EFT Payment 08/13/2018 11:17:40 AM - 1	First Bankcard	8/8/2013	\$4,138.47
EFT Payment 08/20/2018 2:49:00 PM - 1	US Bank Equipment Finance	8/20/2018	\$1,471.37
EFT Payment 08/21/2018 2:49:18 PM - 1	Dept of Licensing-Firearms Online	8/21/2018	\$75.00
EFT Payment 08/22/2018 2:55:47 PM - 1	Dept of Licensing-Firearms Online	8/22/2018	\$18.00
EFT Payment 08/22/2018 2:56:15 PM - 1	Washington State Department of Revenue	8/22/2018	\$4,863.08
		Total	\$417,785.63

Voucher Directory with Transaction Date



Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description Name	Title	Void Amount
Dept of Licensing-Firearms Online	EFT Payment 08/02/2018 2:42:04 PM - 1	080218 DLFO	8/2/2018	2018 - August - August EFT Batch for 09/20 Council		
		07/30 CPL's				
		633-000-000-589-90-00-11		Concealed Pistol License	DOL- Firearms EFT Payments	\$72.00
	Total 080218 DLFO					\$72.00
	EFT Payment 08/09/2018 2:47:01 PM - 1	080918 DLFO	8/9/2018	2018 - August - August EFT Batch for 09/20 Council		
		08/06 CPL's				
		633-000-000-589-90-00-11		Concealed Pistol License	DOL- Firearms EFT Payments	\$75.00
	Total 080918 DLFO					\$75.00
	EFT Payment 08/21/2018 2:49:18 PM - 1	082118 DLFO	8/21/2018	2018 - August - August EFT Batch for 09/20 Council		
		08/16 CPL's				
		633-000-000-589-90-00-11		Concealed Pistol License	DOL- Firearms EFT Payments	\$75.00
	Total 082118 DLFO					\$75.00
	EFT Payment 08/22/2018 2:55:47 PM - 1	082218 DLFO	8/22/2018	2018 - August - August EFT Batch for 09/20 Council		
		08/17 CPL's				
		633-000-000-589-90-00-11		Concealed Pistol License	DOL- Firearms EFT Payments	\$18.00
Total 082218 DLFO					\$18.00	
Total Dept of Licensing-Firearms Online					\$240.00	

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void
	Account Number	Name	Title	Amount	

First Bankcard

EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council			
Bain 7703 081318					
MDRT					
001-000-246-558-70-32-00		Fuel			\$81.53
Total Bain 7703 081318					\$81.53
EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council			
Benson 5176 081318					
Mayor					
001-000-110-511-60-43-00		Lodging, Meals and Mileage			\$259.03
Council Deady Lodging: AWC Elected Officials Conference					
001-000-110-511-60-43-00		Lodging, Meals and Mileage			\$14.49
Council Deady Meals: AWC Elected Officials Conference					
001-000-130-513-10-43-00		Lodging, Meals & Mileage			\$14.48
Mayor Benson Meal: AWC Elected Officials Conference					
001-000-130-513-10-43-00		Lodging, Meals & Mileage			\$259.04
Mayor Benson Lodging: AWC Elected Officials Conference					\$547.04
Total Benson 5176 081318					
EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council			
Chatterson 4096 081318					
PD					
001-000-210-521-10-31-00		PD-Operating Supplies			\$160.60
001-000-210-521-10-31-00		PD-Operating Supplies			\$266.91
001-000-210-521-10-31-00		PD-Operating Supplies			\$234.16
001-000-210-521-10-31-00		PD-Operating Supplies			\$9.31
001-000-210-521-10-31-00		PD-Operating Supplies			\$175.61
Total Chatterson 4096 081318					\$846.59
EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council			
Colagiovanni 8699 081318					
PD					
001-000-214-521-20-48-04		NetMotion Maintenance Mobile Units			\$60.00
Monthly 2 Factor Authentication					
Total Colagiovanni 8699 081318					\$60.00
EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council			
Esping 1117 081318					
PW					
001-000-180-518-50-31-00		Office Supplies City Hall			\$37.65
Falgs for City Hall					

Vendor

Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
Account Number	Account Number	Name	Title	

EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council		
Kiblinger 7383 081318				
PD				
001-000-215-521-10-49-01		Training VRF		\$490.00
State parks marine fall conference: Kiblinger & Henrich				
Total Kiblinger 7383 081318				\$490.00

EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council		
Lynch 4138 081318				
PD				
001-000-210-521-10-32-00		PD-Fuel		\$56.35
Fuel				
001-000-210-521-10-32-00		PD-Fuel		\$56.00
Fuel				
001-000-216-521-30-31-00		DARE Supplies		\$36.90
D.A.R.E Graduation Supplies				
001-000-216-521-30-31-00		DARE Supplies		\$105.95
D.A.R.E Graduation Supplies				
Total Lynch 4138 081318				\$255.20

EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council		
McGraw 9074 081318				
PD				
001-000-214-521-20-42-03		Police Postage		\$23.45
Certified Mail Stamps				
001-000-214-521-20-42-03		Police Postage		\$10.40
Return Evidence Gloves				
001-000-214-521-20-42-03		Police Postage		\$20.15
Certified Mail & 2 Evidence				
Total McGraw 9074 081318				\$54.00

EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council		
Metcalf 4013 081318				
Crt				
001-000-120-512-50-42-00		Telephone/DSL		\$48.50
Conference Calls				
Total Metcalf 4013 081318				\$48.50

Vendor

Transaction Number Invoice Date Fiscal Description Void
 Transaction Reference Account Number Name Title Amount

Transaction Number	Invoice Date	Fiscal Description	Void	
Transaction Reference	Account Number	Name	Title	Amount
EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council		
Redd 5176 081318				
MDRT				
001-000-246-558-70-42-00		Postage		\$250.00
001-000-246-558-70-43-00		Lodging, Meals & Mileage		\$41.21
001-000-246-558-70-49-00		Miscellaneous		\$108.60
Attach Patches to Caps				\$399.81
Total Redd 5176 081318				
EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council		
Reed 3197 081318				
IT				
310-000-011-594-18-64-00		General Government Technology		\$17.59
310-000-011-594-18-64-00		General Government Technology		\$49.00
310-000-011-594-18-64-00		General Government Technology		\$90.38
310-000-011-594-18-64-00		General Government Technology		(\$49.00)
310-000-011-594-18-64-00		General Government Technology		\$355.00
Total Reed 3197 081318				\$462.97
EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council		
Williamson 7508 081318				
MDRT				
001-000-246-558-70-32-00		Fuel		\$55.01
Total Williamson 7508 081318				\$55.01
EFT Payment 08/13/2018 11:17:40 AM - 1	8/13/2018	2018 - August EFT Batch for 09/20 Council		
Wright 3149 081318				
CD				
001-000-240-558-51-49-05		Bank Analysis Fees/Merch CC Fees		(\$13.95)
Fraudulent Charge: Refund				
001-000-240-558-51-49-05		Bank Analysis Fees/Merch CC Fees		\$13.95
Fraudulent Charge				
001-000-240-558-51-49-05		Bank Analysis Fees/Merch CC Fees		\$13.95
Fraudulent Charge				
001-000-240-558-51-49-05		Bank Analysis Fees/Merch CC Fees		(\$13.95)
Fraudulent Charge: Refund				
001-000-240-558-51-49-05		Bank Analysis Fees/Merch CC Fees		(\$13.95)
Fraudulent Charge: Refund				
001-000-240-558-51-49-05		Bank Analysis Fees/Merch CC Fees		(\$13.95)
Fraudulent Charge: Refund				

Vendor
 Transaction Number
 Transaction Reference
 Invoice Date
 Fiscal Description
 Name
 Title
 Void
 Amount

001-000-240-558-51-49-05	Bank Analysis Fees/Merch CC Fees				(\$13.95)
001-000-240-558-51-49-05	Fraudulent Charge: Refund				
001-000-240-558-51-49-05	Bank Analysis Fees/Merch CC Fees				\$13.95
001-000-240-558-60-31-00	Fraudulent Charge				
	Plan Office & Operating Supplies				\$117.79
	Plan Tags				
Total Wright 3149 081318					
Total EFT Payment 08/13/2018 11:17:40 AM - 1					
Total First Bankcard					
Invoice Cloud					
EFT Payment 08/07/2018 2:43:24 PM - 1	2018 - August - August EFT Batch for 09/20 Council	8/7/2018			
080718 IC					
July Charges					
401-000-000-534-80-49-50	Bank Analysis Fees/Merch CC/ Lien Fees				\$53.41
Water					
407-000-000-535-80-49-50	Bank Analysis Fees/Merch CC/ Lien Fees				\$53.41
Sewer					
410-000-000-531-10-49-50	Bank Analysis Fees/Merch CC/ Lien Fees				\$9.28
Storm					
Total 080718 IC					
Total EFT Payment 08/07/2018 2:43:24 PM - 1					
Total Invoice Cloud					
Merchant Card Services / Vantive Holding, LLC					
EFT Payment 08/10/2018 2:47:19 PM - 1	2018 - August - August EFT Batch for 09/20 Council	8/10/2018			
081018 MCS					
Jul 2018 Charges					
001-000-270-576-80-49-01	Bank Analysis Fees/Merch CC Fees				\$167.98
Lake Sawyer Paystation					
Total 081018 MCS					
Total EFT Payment 08/10/2018 2:47:19 PM - 1					
Total Merchant Card Services / Vantive Holding, LLC					
U.S. Postal Service (Black Diamond)					
EFT Payment 08/01/2018 2:43:10 PM - 1	2018 - August - August EFT Batch for 09/20 Council	8/1/2018			
080118 USPS BD					
Jul Utility Bill Postage					
401-000-000-534-80-42-01	Postage				\$154.01
407-000-000-535-80-42-01	Postage				\$154.01

Vendor

Transaction Number Transaction Reference	Invoice Date Account Number	Fiscal Description Name Title	Void Amount
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Total 080118 USPS BD	410-000-000-531-10-42-01	Postage	\$26.78
EFT Payment 08/01/2018 2:43:10 PM - 1	8/1/2018	2018 - August - August EFT Batch for 09/20 Council	\$334.80

080118 USPS BD 2			
Court Mailing			
	001-000-120-512-50-42-03	Postage	\$173.58
Total 080118 USPS BD 2			\$173.58

Total EFT Payment 08/01/2018 2:43:10 PM - 1			\$508.38
Total U.S. Postal Service (Black Diamond)			\$508.38

US Bank Equipment Finance			
EFT Payment 08/20/2018 2:49:00 PM - 1	8/20/2018	2018 - August - August EFT Batch for 09/20 Council	\$193.03

082018 USB			
07/20-08/20 Copier Rental			
	001-000-210-521-10-45-00	PD-Lease Payments - US Bank/Copier	\$193.03
	Pool 2 - PD		
	001-000-248-518-20-45-03	MDRT-Copier Costs	\$193.03
	Pool 2 - MDRT		
	001-000-254-518-20-45-04	Facilities Copier Maint Lease	\$115.80
	Sales & Use Tax		
	001-000-254-518-20-45-04	Facilities Copier Maint Lease	\$8.00
	Supply Freight		
	001-000-254-518-20-45-04	Facilities Copier Maint Lease	\$0.69
	Sales & Use Tax		
	001-000-254-518-20-45-04	Facilities Copier Maint Lease	\$960.82
	Pool 1 - CH		

Total 082018 USB			\$1,471.37
Total EFT Payment 08/20/2018 2:49:00 PM - 1			\$1,471.37
Total US Bank Equipment Finance			\$1,471.37

Washington State Department of Revenue			
EFT Payment 08/22/2018 2:56:15 PM - 1	8/21/2018	2018 - August - August EFT Batch for 09/20 Council	\$6.00

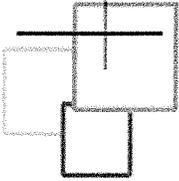
082218 DOR			
July 2018 Excise Tax Return			
	001-000-280-536-20-54-00	Cemetery Sales Excise Tax	\$6.00
	401-000-000-534-80-44-01	State of WA Utility Excise Tax	\$3,725.16
	Water Utility Tax		

Total EFT Payment 08/22/2018 2:56:15 PM - 1			\$3,725.16
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Vendor

Transaction Number Transaction Reference	Invoice Date	Fiscal Description Name	Title	Void Amount
401-000-000-534-80-44-01		State of WA Utility Excise Tax		\$83.45
407-000-000-535-80-44-01		Water B&O Tax		
407-000-000-535-80-44-01		State of WA Excise Tax		\$2,762.05
407-000-000-535-80-44-01		Sewer Utility Tax		
410-000-000-531-10-44-01		State of WA Excise Tax		(\$1,839.62)
		Sewer Utility Tax		
		State of Wa Excise Tax		\$126.04
		Storm B&O Tax		
Total 082218 DOR				
Total EFT Payment 08/22/2018 2:56:15 PM - 1				
Total Washington State Department of Revenue				
Vendor Count 7			Grand Total	\$11,505.38

Voucher Directory with Transaction Date



Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number		Name Title	
Kara Murphy Richards	46680	083118 KMR	9/11/2018	2018 - September - Early 2nd September Batch	
		August 2018 Services			
		001-000-151-515-30-41-04		Court Legal-Pros Attorney	\$3,400.00
		Total 083118 KMR			\$3,400.00
Total Kara Murphy Richards	Total 46680				\$3,400.00
Secure Pacific Corporation	46681	27167-1-0	8/22/2018	2018 - September - Early 2nd September Batch	
		Down Payment			
		310-000-011-594-21-64-03		Police Technology & Other	\$4,901.50
		PD Security System Installation			\$4,901.50
		Total 27167-1-0			\$4,901.50
Total Secure Pacific Corporation	Total 46681				\$4,901.50
Varius Inc.	46679	1021 V	7/15/2018	2018 - September - Early 2nd September Batch	
		Jun 2018 Services			
		001-000-257-558-70-41-02		MDRT Civil Engineering-	\$24,253.00
		TA7-Final Plat 1A Div 2			\$24,253.00
		Total 1021 V			\$24,253.00
		1022 V	7/15/2018	2018 - September - Early 2nd September Batch	
		Jun 2018 Services			
		001-000-257-558-70-41-02		MDRT Civil Engineering-	\$920.00

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description Name	Title	Void Amount
				TA8-PrePlat 1A Sched C		

Total 1022 V
 Total 46679
 Total Varius Inc.

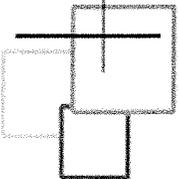
Vendor Count 3

Grand Total

\$33,474.50

\$920.00
 \$25,173.00
 \$25,173.00

Voucher Directory with Transaction Date



Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description Name	Title	Void Amount
ADT Security Services (PA)	46682	671006392	8/25/2018	2018 - September - 2nd Sep Batch for 09/20 Council		
		09/12-10/11 Security Services				
		001-000-248-518-20-49-02		MDRT Bldg Security Costs		\$19.46
		001-000-254-518-20-49-00		Facilities Security		\$29.18
		Total 671006392				\$48.64
Total ADT Security Services (PA)						\$48.64
Albro Construction	46683	ALBROC*901RL	9/10/2018	2018 - September - 2nd Sep Batch for 09/20 Council		
		PD Server Room Rebuild				
		310-000-011-594-21-64-03		Police Technology & Other		\$1,100.00
		Total ALBROC*901RL				\$1,100.00
Total Albro Construction						\$1,100.00
Alison Whitman	46684	090118 AW	9/1/2018	2018 - September - 2nd Sep Batch for 09/20 Council		
		Water Refund: Acct # 2802.0				
		401-000-000-343-40-00-01		Water Charges		\$12.73
		New Owner Effective 09/01/2018				
		Total 090118 AW				\$12.73
Total Alison Whitman						\$12.73

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description Name	Title	Void Amount
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Amy and/or Joel Whitaker						
46685	090118 AJW		9/1/2018	2018 - September - 2nd Sep Batch for 09/20 Council		
		Water Refund: Acct # 1730.0				\$46.22
		401-000-000-343-40-00-01		Water Charges		\$46.22
		New Owner Effective 09/01/18				\$46.22
	Total 090118 AJW					
	Total 46685					
	Total Amy and/or Joel Whitaker					
Black Diamond Royal Towing						
46686	28385		8/27/2018	2018 - September - 2nd Sep Batch for 09/20 Council		
		Tow to Investigation Lot				\$135.75
		001-000-210-521-10-49-06		PD-Towing Services		\$135.75
	Total 28385					\$135.75
	Total 46686					
	Total Black Diamond Royal Towing					
CHS/Cenex						
46687	124244 083118 CH		8/31/2018	2018 - September - 2nd Sep Batch for 09/20 Council		
		Aug 2018 City Fuel				\$290.12
		001-000-181-518-30-32-00		Fuel		\$97.22
		001-000-215-521-10-32-00		Marine Fuel VRF		\$387.16
		001-000-246-558-70-32-00		Fuel		\$26.55
		001-000-270-576-80-32-00		Fuel		\$13.26
		001-000-280-536-20-32-00		Fuel		\$146.00
		101-000-000-543-50-32-00		Fuel		\$159.28
		401-000-000-534-80-32-00		Fuel		\$159.28
		407-000-000-535-80-32-00		Fuel		\$159.28
		410-000-000-531-10-32-00		Fuel		\$1,438.15
	Total 124244 083118 CH					

Vendor	Transaction Number	Invoice Date	Fiscal Description	Void Amount
	Transaction Reference	Account Number	Name Title	

46687 128275 083118 PD 8/31/2018 2018 - September - 2nd Sep Batch for 09/20 Council

Aug 2018 PD Fuel
 001-000-210-521-10-32-00 PD-Fuel

Total 46687
 Total CHS/Cenex \$2,821.97
 City of Black Diamond \$4,260.12
\$4,260.12

46688 082518 COBD 8/25/2018 2018 - September - 2nd Sep Batch for 09/20 Council

Aug 2018 Utility Billing

001-000-212-521-50-47-01	2470.0 Police Water	Water	\$188.71
001-000-212-521-50-47-02	2470.0 Police Sewer	Sewer	\$315.95
001-000-212-521-50-47-03	2470.0 Police Storm	Stormwater	\$80.00
001-000-248-518-20-47-01	2498.0 City Hall-MDRT (40%)	MDRT BD Wtr, Swr, Storm	\$51.50
001-000-254-518-20-47-00	2498.0 City Hall (60%)	Facilities-Utilities	\$77.24
001-000-270-575-30-47-01	1399.5 Museum-Storm	Museum Water/Sewer/Storm	\$32.00
001-000-270-575-30-47-01	2070.0 Museum-Water/Sewer	Museum Water/Sewer/Storm	\$231.60
001-000-270-575-51-47-01	1399.1 Gym-Stormwater	Gym-Stormwater	\$32.00
001-000-270-575-51-47-02	1399.0 Gym-Sewer	Gym-Sewer	\$65.24
001-000-270-575-51-47-03	1399.0 Gym-Water	Gym-Water	\$67.71
001-000-270-576-80-47-01	1045.0 PW Shops-Water	Water	\$3.24
001-000-270-576-80-47-01	1582.0 Eagle Creek-Water	Water	\$97.13
001-000-270-576-80-47-01	2306.0 Coal Car-Water	Water	\$35.63
001-000-270-576-80-47-02	1045.0 PW Shops-Sewer	Sewer	\$5.22

Vendor

Transaction Number Transaction Reference	Invoice Date	Fiscal Description Name	Title	Void Amount
001-000-270-576-80-47-03	1399.2 Boat Launch-Storm	Stormwater		\$96.00
001-000-270-576-80-47-03	1045.0 PW Shops-Storm	Stormwater		\$11.52
001-000-280-536-20-47-01	1045.0 PW Shops-Water	Water		\$0.82
001-000-280-536-20-47-01	1457.0 Cemetery-Water	Water		\$36.98
001-000-280-536-20-47-02	1045.0 PW Shops-Sewer	Sewer		\$1.30
001-000-280-536-20-47-03	1045.0 PW Shops-Storm	Stormwater		\$2.88
001-000-530-522-10-47-01	2200.0 Fire Dept-Water	Water		\$37.37
001-000-530-522-10-47-02	2200.0 Fire Dept-Sewer	Sewer		\$65.24
001-000-530-522-10-47-03	1399.4 Fire Dept.-Storm	Stormwater		\$40.00
101-000-000-543-31-47-01	1045.0 PW Shops-Water	Water		\$6.07
101-000-000-543-31-47-01	2983.0 Railroad Ave Irrig.	Water		\$83.51
101-000-000-543-31-47-02	1045.0 PW Shops-Sewer	Sewer		\$9.79
101-000-000-543-31-47-03	1045.0 PW Shops-Storm	Stormwater		\$21.60
401-000-000-534-80-47-01	1045.0 PW Shops-Water	Water		\$10.12
401-000-000-534-80-47-02	1045.0 PW Shops-Sewer	Sewer		\$16.31
401-000-000-534-80-47-03	1045.0 PW Shops-Storm	Stormwater		\$36.00
407-000-000-535-80-47-01	1045.0 PW Shops-Water	Water		\$10.12
407-000-000-535-80-47-02	1045.0 PW Shops-Sewer	Sewer		\$16.31
407-000-000-535-80-47-03	1045.0 PW Shops-Storm	Stormwater		\$36.00
407-000-000-535-80-47-03	1399.3 Sewer Lagoon-Storm	Stormwater		\$96.00
410-000-000-531-10-47-01	1045.0 PW Shops-Water	Water		\$10.12

Vendor Transaction Number Invoice Date Fiscal Description Void Amount
 Transaction Reference Account Number Name Title

410-000-000-531-10-47-02 Sewer \$16.31
 1045.0 PW Shops-Sewer
 410-000-000-531-10-47-03 Stormwater \$36.00
 1045.0 PW Shops-Storm

Total 082518 COBD

Total 46688
 Total City of Black Diamond
 \$1,979.54
 \$1,979.54
 \$1,979.54

City of Black Diamond/Retained Funds

46689 091018 DCLLC R 9/10/2018 2018 - September - 2nd Sep Batch for 09/20 Council

15% Retainage
 320-000-027-595-30-63-02 Doolittle Construction LLC
 224th Chip Seal-Retainage

Total 091018 DCLLC R

Total 46689
 Total City of Black Diamond/Retained Funds
 \$14,684.48
 \$14,684.48
 \$14,684.48

Comcast (PA)

46690 69336624 9/1/2018 2018 - September - 2nd Sep Batch for 09/20 Council

Aug 2018 Services
 001-000-248-518-20-42-00 MDRT Telephone, Fax, Internet costs \$55.29
 001-000-254-518-20-42-00 Facilities-Telephones \$236.95
 101-000-000-542-90-42-01 Telephone/DSL/Radios \$25.67
 401-000-000-534-80-42-00 Telephone/DSL/Radios \$25.67
 407-000-000-535-80-42-00 Telephone/DSL/Radios \$25.67
 410-000-000-531-10-42-00 Telephone/DSL/Radios \$25.66

Total 69336624

Total 46690
 Total Comcast (PA)
 \$394.91
 \$394.91
 \$394.91

Conner Homes at Ten Trails LLC

46691 090118 CHTLLC 4635.13 9/1/2018 2018 - September - 2nd Sep Batch for 09/20 Council

Water Refund Acct # 4635.13
 401-000-000-343-40-00-01 Water Charges
 New Owner Effective 09/01/2018

Total 090118 CHTLLC 4635.13

\$328.40
 \$328.40

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
	Account Number	Name	Title		

46691 090118 CHTTLLC 4635.3 9/1/2018 2018 - September - 2nd Sep Batch for 09/20 Council
 Water Refund Acct # 4635.3
 401-000-000-343-40-00-01 Water Charges \$268.56
 New Owner Effective 09/01/2018
 Total 090118 CHTTLLC 4635.3 \$596.96
 Total 46691 \$596.96
 Total Conner Homes at Ten Trails LLC \$268.56
 DeAnn Wright

46692 090518 DW 9/5/2018 2018 - September - 2nd Sep Batch for 09/20 Council
 Employee Mileage Reimbursement
 001-000-240-558-51-43-01 Lodging, Meals & Mileage \$24.25
 Mileage for PermitTrax Conference \$24.25
 Total 090518 DW \$24.25
 Total 46692 \$24.25
 Total DeAnn Wright \$24.25
 Doolittle Construction LLC

46693 091018 DCLLC 9/10/2018 2018 - September - 2nd Sep Batch for 09/20 Council
 2018 Chip Seal Project
 320-000-027-595-30-63-00 224th Chip Seal \$83,212.08
 Total 091018 DCLLC \$83,212.08
 Total 46693 \$83,212.08
 Total Doolittle Construction LLC \$83,212.08
 Enumclaw Chrysler Jeep Dodge Ram

46694 6074557 8/20/2018 2018 - September - 2nd Sep Batch for 09/20 Council
 2005 Dodge Ram
 101-000-000-544-90-48-02 PW Clearing- Shared Veh/Equip Maint \$612.56
 Total 6074557 \$612.56
 Total 46694 \$612.56
 Total Enumclaw Chrysler Jeep Dodge Ram \$612.56

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
	Account Number	Name	Title		

Enumclaw School District					
46695	083118 ESD	2018 - September - 2nd Sep Batch for 09/20 Council	8/31/2018		
		Aug 2018 School Mitigation Fees			
		637-000-000-589-30-00-00		School Mitigation Fee disbursement	\$101,179.00
		13 Fees Collected			
	Total 083118 ESD				\$101,179.00
	Total 46695				\$101,179.00
Total Enumclaw School District					\$101,179.00
Fugate Ford					
46696	422837	2018 - September - 2nd Sep Batch for 09/20 Council	7/12/2018		
		2017 Ford Police Interceptor			
		001-000-210-521-10-48-01		PD-Vehicle Maintenance & Repair	\$116.96
	Total 422837				\$116.96
Total Fugate Ford					\$116.96
Grainger					
46697	984618480	2018 - September - 2nd Sep Batch for 09/20 Council	8/23/2018		
				PW- Truck & Equip	\$18.87
	Total 984618480				\$18.87
Total Grainger					\$18.87
Granite Telecommunications					
46698	431610360	2018 - September - 2nd Sep Batch for 09/20 Council	9/1/2018		
		Sep 2018 Services			
		001-000-248-518-20-42-00		MDRT Telephone, Fax, Internet costs	\$12.37
		001-000-254-518-20-42-00		Facilities-Telephones	\$37.10
	Total 431610360				\$49.47
Total Granite Telecommunications					\$49.47

Vendor Transaction Number Invoice Date Fiscal Description Void Amount
 Transaction Reference Account Number Name Title

46701	187541	8/31/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		Aug 2018 PDR Requests		
	Total 187541	001-000-150-515-30-41-17	Legal Costs-Public Disc/Oth	\$666.50
46701	187542	8/31/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		Aug 2018 General		
		001-000-150-515-30-41-01	Legal Services-General Govt	\$1,723.48
		15.3 hrs: Split		
		101-000-000-543-30-41-05	Legal Costs	\$382.99
		401-000-000-534-80-41-04	Legal Svcs	\$574.49
		407-000-000-535-80-41-09	Legal Costs	\$574.49
		410-000-000-531-10-41-01	Legal Costs	\$574.49
	Total 187542			\$3,829.94
46701	187543	8/31/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		Aug 2018 MDRT		
		001-000-257-558-70-41-00	MDRT Legal Services	\$16,282.80
	Total 187543			\$16,282.80
Total 46701				\$22,113.24
Total Kenyon Disend, PLLC				\$22,113.24
King County Finance - Wastewater Treat Div.				
46702	30024591	9/1/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		Sep 2018 Services		
		407-000-000-535-80-41-04	Metro Sewer Charges	\$47,757.60
	Total 30024591			\$47,757.60
Total 46702				\$47,757.60
Total King County Finance - Wastewater Treat Div.				\$47,757.60

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number		Name Title	

King County Fire District #44

46703 18-186 9/6/2018 2018 - September - 2nd Sep Batch for 09/20 Council \$30,978.15
 Holmatro Tools 510-000-100-594-22-64-02 Future Fire Bldg/Equip \$30,978.15
 Total 18-186 \$30,978.15
 Total 46703 \$30,978.15
Total King County Fire District #44

King County Prosecuting Attorney
 46704 083118 KCPA 8/31/2018 2018 - September - 2nd Sep Batch for 09/20 Council \$184.19
 Aug 2018 Court Remittance 633-000-000-589-90-00-05 Due to Agency-Treasurers Trust Court \$184.19
 Crime Victims \$184.19
 Total 083118 KCPA \$184.19
 Total 46704 \$184.19
Total King County Prosecuting Attorney

King County Radio Comm Services
 46705 13761 8/30/2018 2018 - September - 2nd Sep Batch for 09/20 Council \$1,609.45
 Aug 2018 Services 001-000-214-521-20-41-03 K/C 800 Mhz Radio Costs \$1,609.45
 Total 13761 \$1,609.45
 Total 46705 \$1,609.45
Total King County Radio Comm Services

Lennar NW LLC
 46706 BLD18-0190 9/10/2018 2018 - September - 2nd Sep Batch for 09/20 Council \$5,392.00
 Refund: Permit Withdrawn 001-000-240-322-10-00-00 Building Permits \$3,505.00
 001-000-240-345-83-00-00 Plan Check Review Fees \$8,897.00
 Total BLD18-0190 \$8,897.00
 Total 46706 \$8,897.00
Total Lennar NW LLC

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number		Name Title	

Michael and/or Paula Mengual	46707	090118 MPM	9/1/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		Water Refund: Acct # 3012.0			
		401-000-000-343-40-00-01		Water Charges	\$76.65
		New Owner Effective 09/01/2018			
Total 090118 MPM					\$76.65
Total 46707					\$76.65
Total Michael and/or Paula Mengual					\$76.65
Modular Space Corporation	46708	502564880	8/29/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		Sep 2018 MDRT Modular Lease			
		001-000-248-518-20-45-01		MDRT-Bldg Rental-Modspace	\$1,958.06
Total 502564880					\$1,958.06
46708		502564888	8/29/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		Sep 2018 CD/PW Modular Lease			
		001-000-254-518-20-45-01		Facilities-Bldg Rental/Modspace	\$3,454.57
Total 502564888					\$3,454.57
Total 46708					\$5,412.63
Total Modular Space Corporation					\$5,412.63
Northstar Chemical Inc.	46709	130951	9/7/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		401-000-000-534-80-31-03		Caustic	\$2,783.93
Total 130951					\$2,783.93
Total 46709					\$2,783.93
Total Northstar Chemical Inc.					\$2,783.93

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
	Account Number	Name	Title		

46711 **995750-0** **9/10/2018** **2018 - September - 2nd Sep Batch for 09/20 Council**
 001-000-180-518-50-31-00 CH Office Supplies Office Supplies City Hall \$28.79
 Total 995750-0 \$28.79
Total Office Products Nationwide \$360.99
Puget Sound Energy \$360.99

46712 **090618 PSE** **9/6/2018** **2018 - September - 2nd Sep Batch for 09/20 Council**
Aug 2018 Services
 001-000-212-521-50-47-00 Electric/gas \$485.36
 20009377470: PD/CT Elec
 001-000-212-521-50-47-00 Electric/gas \$44.94
 220013379882: Police Storage
 001-000-248-518-20-47-00 MDRT Electricity \$194.58
 220013379841: MDRT Mod Bldgs Elec
 001-000-254-518-20-47-00 Facilities-Utilities \$291.86
 220013379841: CD/PW Mod Bldgs Elec
 001-000-254-518-20-47-00 Facilities-Utilities \$175.40
 20008061844: City Hall Elec
 001-000-254-518-20-47-00 Facilities-Utilities \$34.30
 20008062016: City Hall Elec
 001-000-270-575-30-47-00 Museum Electric/Gas \$178.39
 220013378793: Museum
 001-000-270-575-51-47-00 Gym- Electricity and Gas \$113.30
 220013379652: Gym
 001-000-270-576-80-47-00 Electric/Gas \$2.66
 220013379635: PW Shop-Parks 4%
 001-000-270-576-80-47-00 Electric/Gas \$10.45
 220013379221: Lake Sawyer Boat Launch
 001-000-280-536-20-47-00 Electric/Gas \$1.33
 220013379635: PW Shop-Cemetery 2%
 101-000-000-542-63-47-01 Street Lighting \$13.58
 220013379601: Baker St Crosswalk
 101-000-000-542-63-47-01 Street Lighting \$44.41
 220013379197: Cov Sawyer & 216th
 101-000-000-542-63-47-01 Street Lighting \$10.45
 220013379247: 216th Signal & Street Lights

Vendor

Transaction Number Transaction Reference	Invoice Date	Fiscal Description Name	Title	Void Amount
101-000-000-542-63-47-01			Street Lighting	\$1,881.02
	220013379635:	PSE Streetlights		
101-000-000-542-63-47-01			Street Lighting	\$54.82
	220013379817:	Ped Lighting Roberts		
101-000-000-542-63-47-01			Street Lighting	\$174.82
	220014704229:	Intersection Light 219th & SE 296th St		
101-000-000-543-31-47-00			Electric/Gas	\$14.65
	220013379635:	PW Shop-Street 22%		
401-000-000-534-80-47-00			Electric/Gas	\$3,787.87
	220013378835:	Booster Station		
401-000-000-534-80-47-00			Electric/Gas	\$15.99
	220013379635:	PW Shop-Water 24%		
401-000-000-534-80-47-00			Electric/Gas	\$356.29
	220013378868:	4.3 Mil Gal Resv		
401-000-000-534-80-47-00			Electric/Gas	\$18.01
	220013378850:	.5 Mil Gal Resv		
407-000-000-535-80-47-00			Electric/Gas	\$15.99
	220013379635:	PW Shop-Sewer 24%		
407-000-000-535-80-47-00			Electric/Gas	\$67.09
	220013378819:	Morganville Lift Station		
407-000-000-535-80-47-00			Electric/Gas	\$11.57
	220013379619:	Sewer Pump		
407-000-000-535-80-47-00			Electric/Gas	\$31.61
	220013379643:	Diamond Glen Sewer		
410-000-000-531-10-47-00			Electric/Gas	\$15.99
	220013379635:	PW Shop-Drainage 24%		
Total 090618 PSE				
Total 46712				
Total Puget Sound Energy				
Republic Services #176				
46713	8/31/2018	2018 - September - 2nd Sep Batch for 09/20 Council		
5474152				
001-000-248-518-20-47-03			MDRT-Waste Disposal Costs	\$102.00
			MDRT	
001-000-254-518-20-47-01			Facilities-Waste Disposal	\$153.00
			City Hall	
Total 5474152				

Voucher Directory with Transaction Date

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
	Account Number	Name	Title		

46713	5474463	2018 - September - 2nd Sep Batch for 09/20 Council	8/31/2018		
	001-000-270-576-80-47-04	Waste Disposal	PW-Parks		\$11.47
	001-000-280-536-20-47-04	Waste Disposal	PW-Cemetery		\$5.74
	101-000-000-543-31-47-04	Waste Disposal	PW-Street		\$63.10
	401-000-000-534-80-47-04	Waste Disposal	PW-Water		\$68.83
	407-000-000-535-80-47-04	Waste Disposal	PW-Sewer		\$68.83
	410-000-000-531-10-47-04	Waste Disposal	PW-Drainage		\$68.83
	Total 5474463				\$286.80

46713	5474616	2018 - September - 2nd Sep Batch for 09/20 Council	8/31/2018		
	001-000-212-521-50-47-04	Waste Disposal	Police		\$255.00
	Total 5474616				\$255.00
	Total 46713				\$796.80
	Total Republic Services #176				\$796.80

46714	732092	2018 - September - 2nd Sep Batch for 09/20 Council	8/31/2018		
	Aug 2018 Services				
	001-000-248-518-20-49-01	MDRT Bldg Custodial Costs	MDRT Janitorial Services		\$225.00
	001-000-254-518-20-49-01	Facilities Bldg.Custodial & Maint.	City Hall/Com Dev Janitorial Services		\$900.00
	Total 732092				\$1,125.00

46714	732093	2018 - September - 2nd Sep Batch for 09/20 Council	8/31/2018		
	Aug 2018 Services				
	001-000-212-521-50-41-03	Police Custodial Cost	Police/Court Janitorial Services		\$625.00
	Total 732093				\$625.00

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number	Name	Title	

46714 732094 8/31/2018 2018 - September - 2nd Sep Batch for 09/20 Council

Aug 2018 Services
 001-000-270-575-51-48-00 Gym Facility Repair & Maintenance \$150.00
 Total 732094 Gym Janitorial Services \$150.00

46714 732095 8/31/2018 2018 - September - 2nd Sep Batch for 09/20 Council

Aug 2018 Services
 101-000-000-544-90-48-01 PW Clearing-shared Shop Cost \$150.00
 PW Shop Janitorial Services
 Total 732095 \$150.00
 Total 46714 \$2,050.00
 Total Severson's Building Maint \$2,050.00
 Shred-It USA

46715 8125409245 8/22/2018 2018 - September - 2nd Sep Batch for 09/20 Council

Aug 2018 Shredding
 001-000-120-512-50-49-04 Shredding Services \$20.61
 001-000-180-518-50-49-04 Shredding Services \$20.60
 001-000-210-521-10-49-05 PD-Shredding Services \$61.81
 Total 8125409245 \$61.81
 Total 46715 \$61.81
 Total Shred-It USA \$61.81
 South Correctional Entity

46716 3279 8/10/2018 2018 - September - 2nd Sep Batch for 09/20 Council

July 2018 Inmate Days
 001-000-211-523-60-49-00 Jail Costs \$1,050.00
 6 days
 Total 3279 \$1,050.00
 Total 46716 \$1,050.00
 Total South Correctional Entity \$1,050.00

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
	Account Number	Name	Title		

TRM Wood Products Co. Inc.

46717 365684 9/10/2018 2018 - September - 2nd Sep Batch for 09/20 Council
 101-000-000-542-64-31-01 Street Signs
 Total 365684 \$297.13
 Total 46717 \$297.13
 Total TRM Wood Products Co. Inc. \$297.13

U.S. Postal Service (Black Diamond)

46718 090118 USPS BD 9/12/2018 2018 - September - 2nd Sep Batch for 09/20 Council
 Box # 599 Annual Rental Postage Meter Rental & Maint.
 001-000-180-518-50-45-01
 Total 090118 USPS BD \$286.00
 Total 46718 \$286.00
 Total U.S. Postal Service (Black Diamond) \$286.00

Uline

46719 99085025 7/5/2018 2018 - September - 2nd Sep Batch for 09/20 Council
 First time receiving invoices PD-Operating Supplies
 001-000-210-521-10-31-00 \$120.46
 Total 99085025 \$120.46

46719 99269664 7/11/2018 2018 - September - 2nd Sep Batch for 09/20 Council
 First time receiving invoices PD-Operating Supplies
 001-000-210-521-10-31-00 (\$48.87)
 Total 99269664 (\$48.87)
 Total Uline \$71.59

Utilities Underground

46720 8080131 8/31/2018 2018 - September - 2nd Sep Batch for 09/20 Council
 Aug 2018 Services Locating Service
 401-000-000-534-80-41-08 \$115.50

Vendor Transaction Number Invoice Date Fiscal Description Void Amount
 Transaction Reference Account Number Title

Vendor	Transaction Number	Invoice Date	Fiscal Description	Void Amount
	Total 8080131			
Total Utilities Underground	Total 46720			\$115.50
Valley Communications Center	46721	9/10/2018	2018 - September - 2nd Sep Batch for 09/20 Council	\$115.50
	0022892			\$115.50
		911 Calls Aug 2018		
		001-000-214-521-20-41-00	Valley Comm - Dispatch Service	\$12,522.10
		299.5 Calls		
	Total 0022892			
Total Valley Communications Center	Total 46721			\$12,522.10
VenTek International	46722	9/1/2018	2018 - September - 2nd Sep Batch for 09/20 Council	\$12,522.10
	112772			\$12,522.10
		Aug 2018 Services		
		001-000-270-576-80-41-02	Venue Pay Station	\$90.00
	Total 112772			\$90.00
Total VenTek International	Total 46722			\$90.00
Voice of The Valley	46723	8/27/2018	2018 - September - 2nd Sep Batch for 09/20 Council	\$90.00
	20784			\$90.00
		MDRT		
		001-000-246-558-70-44-00	Advertising	\$280.00
	Total 20784			\$280.00
Total Voice of The Valley	Total 46723			\$280.00

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number		Name Title	

Washington State Department of Ecology	46724	2019-WAR045505	8/27/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		FY 2019 Fee			
		410-000-000-531-10-41-04		Dept of Ecology - Stormwater Permit	\$3,158.45
		For discharge permit			
Total 2019-WAR045505					\$3,158.45
Total 46724					\$3,158.45
Total Washington State Department of Ecology					\$3,158.45
Washington State Patrol	46725	119001386	9/6/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		Aug 2018 Services			
		633-000-000-589-90-00-06		Due to WSP-FBI Fingerprinting-Background	\$84.00
Total 119001386					\$84.00
Total 46725					\$84.00
Total Washington State Patrol					\$84.00
Washington State Treasurer	46726	083118 WST	8/31/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		Aug 2018 Court Remittance			
		633-000-000-589-90-00-05		Due to Agency-Treasurers Trust Court	\$12,104.54
Total 083118 WST					\$12,104.54
Total 46726					\$12,104.54
Total Washington State Treasurer					\$12,104.54
Water Management Laboratories, Inc.	46727	169751	8/29/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		401-000-000-534-80-41-02		Water Testing and Sampling	\$21.00
Total 169751					\$21.00
Total 46727					\$21.00
Total Water Management Laboratories, Inc.					\$21.00

Vendor	Transaction Number	Transaction Reference	Invoice Date	Fiscal Description	Void Amount
		Account Number		Name Title	

Wave Broadband

46728	PUB18-0093		9/10/2018	2018 - September - 2nd Sep Batch for 09/20 Council	
		Refund: 180 Day Permit Extension			
		001-000-240-322-10-00-00		Building Permits	\$50.00
		Total PUB18-0093			\$50.00
		Total 46728			\$50.00
		Total Wave Broadband			\$50.00
		Vendor Count	47	Grand Total	\$372,805.75

City of Black Diamond August 2018 Payroll Register

Void 19492, 19511

Number	Name	Fiscal Description	Amount
<u>19614</u>	Paper Paycheck	2018 - August - Month End	\$692.00
<u>19615</u>	Paper Paycheck	2018 - August - Month End	\$1,500.00
<u>19616</u>	Paper Paycheck	2018 - August - Month End	\$3,640.00
<u>19617</u>	Paper Paycheck	2018 - August - Month End	\$5,328.62
<u>19618</u>	Paper Paycheck	2018 - August - Month End	\$1,717.81
<u>19619</u>	Paper Paycheck	2018 - August - Month End	\$4,075.17
<u>19620</u>	Paper Paycheck	2018 - August - Month End	\$5,231.97
<u>19621</u>	Paper Paycheck	2018 - August - Month End	\$1,297.63
<u>19622</u>	Paper Paycheck	2018 - August - Month End	\$79.64
<u>19623</u>	Paper Paycheck	2018 - August - Month End	\$5,845.13
<u>19624</u>	AWC Sup Life	2018 - August - Month End	\$21.40
<u>19625</u>	BD Police Officers Association	2018 - August - Month End	\$840.00
<u>19626</u>	City of Black Diamond Flex	2018 - August - Month End	\$260.00
<u>19627</u>	Dept of Labor and Industries	2018 - August - Month End	\$3,213.92
<u>19628</u>	Employment Security Dept	2018 - August - Month End	\$482.17
<u>19629</u>	Joseph Kaufman Leoff 1	2018 - August - Month End	\$115.40
<u>19630</u>	Minnesota Child Support Payment Ctr	2018 - August - Month End	\$560.40
<u>19631</u>	Pierce County Superior Court Clerk	2018 - August - Month End	\$2,198.00
<u>19632</u>	Teamsters Local 117	2018 - August - Month End	\$1,836.27
<u>19633</u>	Trusteed Plans Service CP LTD	2018 - August - Month End	\$1,035.63
<u>August 2018 Aflac</u>	Aflac	2018 - August - Month End	\$214.64
<u>August 2018 AWC</u>	AWC Employee Benefit Trust	2018 - August - Month End	\$49,272.66
<u>August 2018 Def Comp</u>	DOR - Deferred Comp	2018 - August - Month End	\$3,725.00
<u>August 2018 Draw</u>	Payroll Vendor	2018 - August - Month End	\$33,575.00
<u>August 2018 Payroll</u>	Payroll Vendor	2018 - August - Month End	\$104,183.90
<u>August 2018 Retirement</u>	Dept of Retirement Systems	2018 - August - Month End	\$40,089.01
<u>August 2018 Taxes</u>	City of Black Diamond Taxes	2018 - August - Month End	\$60,822.75
19492	Employment Security Dept	Void from January	-777.30
19511	Employment Security Dept	Void from February	-674.39
			\$330,402.43

I hereby certify that payroll and benefits have been processed and delivered as required under contract or legal obligation.

Finance Director Maryann Miller
 Date 9-5-2018

BLACK DIAMOND CITY COUNCIL MINUTES
Council Meeting of September 6, 2018
Council Chamber, 25510 Lawson Street, Black Diamond, Washington

CALL TO ORDER, FLAG SALUTE:

Mayor Benson called the regular meeting to order at 7:00 p.m. and led us all in the Flag Salute.

ROLL CALL:

PRESENT: Councilmembers Deady, Oglesbee, Edelman, Stout, and Wisnoski.

ABSENT: None

Staff present: Seth Boettcher, Public Works Director; Rob Reed, IS Manager; Chief Smith; Kevin Esping, Facilities Manager; Andrew Williamson, MDRT/Ec Dev Director; Barbara Kincaid, Community Development Director; David Linehan, City Attorney, Jamey Kiblinger, Police Chief and Brenda L. Martinez, City Clerk.

AGENDA REVIEW AND APPROVAL:

Councilmember Edelman **moved** to adopt the agenda; **second** Councilmember Wisnoski. Motion **passed** with all voting in favor (5-0).

APPOINTMENTS, ANNOUNCEMENTS, PROCLAMATIONS AND PRESENTATIONS: None

CONSENT AGENDA:

Councilmember Edelman **moved** to adopt the Consent Agenda; **second** Councilmember Stout. Motion **passed** with all voting in favor (5-0). The Consent Agenda was approved as follows:

- 1) **Claim Checks** – September 6, 2018 – Check No. 46615 through 46678 (void 44738) in the amount of \$227,277.92
- 2) **Minutes** – Council Meeting of August 16, 2018
- 3) **AB18-072** – Resolution No. 18-1260 Declaring Certain City Property Surplus
- 4) **AB18-073** – Resolution No. 18-1261 Authorizing Agreement with Secure Pacific Corp.
- 5) **AB18-074** – Resolution No. 18-1262 Authorizing Purchase of Two New Police Vehicles

- 6) **AB18-075** – Resolution No. 18-1263 Accepting the Chip Seal Project
- 7) **AB18-076** – Resolution No. 18-1264 Granting Final Plat Approval for Ten Trails (F/K/A “The Villages) Parcel V13 Subdivision
- 8) **AB18-077** – Resolution No. 18-1265 Accepting Grants Funds from the Department of Ecology for Shoreline Master Program Update and Authorizing Mayor to Execute Agreement

PUBLIC COMMENTS:

Kristen Bryant, Bellevue spoke to Council.

PUBLIC HEARINGS: None

NEW BUSINESS:

- 9) **AB18-078** – Resolution No. 18-1266 Authorizing Agreement with RH2 Engineering, Inc. for the SCADA/Telemetry Design and Installation for the City’s Water & Sewer Infrastructure

Public Works Director Boettcher brief Council on this item and there was Council discussion.

Councilmember Deady **moved** to adopt Resolution No. 18-1266 authorizing the Mayor to execute a Professional Services Agreement with RH2 Engineering, Inc. for the SCADA/Telemetry design and installation for the City’s water and sewer infrastructure and to appropriate the funds for this project; **second** Councilmember Wisnoski. Motion **passed** with all voting in favor (5-0).

- 10) **AB18-079** – Resolution No. 18-1267 Approving Tough Mudder Special Event Permit SEP18-0010

Community Director Kincaid reported on this item and there was Council discussion.

Councilmember Edelman **moved** to adopt Resolution No. 18-1267 authorizing the Mayor to execute the approval of SEP18-0010 for Tough Mudder, LLC; **second** Councilmember Oglesbee. Motion **passed** with all voting in favor (5-0).

DEPARTMENT REPORTS:

Fire Department – Chief Smith reported there were 61 911 Fire Department related incidents and that is approximately 1.9 per day in Black Diamond. He also shared the types of calls with Council. He noted the Labor Day event went well and updated Council on the brush fire that occurred on the outskirts of the city. He announced the new rescue tool was delivered and is scheduling a demonstration at an upcoming Council meeting. He noted the volunteer recruit academy will be starting soon and mentioned there will be 20

in the class. The new career firefighter starts the recruit academy soon with graduation scheduled for the end of January. Last month volunteers put in 2100 hours to staff the stations which is a great savings. In closing, he asked if the work session on the Fire Department analysis is still scheduled for next Thursday and the Mayor responded yes.

MAYOR'S REPORT:

Mayor Benson reported attending the SCATBd meeting on 8/21 where WSDOT made a presentation; Kiwanis luncheon and the featured speaker was the Washington State Treasurer; Homeless Committee meeting and discussed doing a homeless count with the surrounding jurisdictions; SCA Networking Dinner; Hometown Hoedown at Ten Trails; Eagles fundraiser for the Maple Valley Veteran's Memorial; Labor Days and announced Kevin Esping won the Civil Servant award and former Councilmember Craig Goodwin received the Citizen of the Year award.

COUNCIL REPORTS:

Councilmember Edelman made a statement about the approval of the final plat and Council doing their homework so they can come to the meetings prepared; she reported attending the Hometown Hoedown; Public Works Committee meeting where items on the agenda were discussed; SCA Networking Dinner; Labor Day parade and shared she was able to be a spectator this year; thanked the Public Works Director Seth Boettcher for his email regarding 288th opening.

Councilmember Stout reported attending the Public Works Committee meeting and appreciating the department's forward thinking even with their large workload and shared an example of code that needs updating; Finance Committee meeting where the SMP grant, business license code changes, and the public works telemetry were discussed; she shared that during these meetings there is thoughtful discussions and they are able to ask questions and even take things off the table that aren't ripe for consideration – they do their homework and come prepared to Council meetings. She noted attending the Labor Day parade and commented the work that goes into that event is amazing. She also added that Mason Street was well represented at the event and suggested an idea to have neighborhoods participate in the parade. She noted meeting with Mr. Williamson on the V13 final plat and shared that all her questions were asked and answered.

Councilmember Wisnoski echoed the previous Councilmembers comments regarding doing their homework prior to Council meetings. He stated if they need to walk the plat they walk the plat if they need more information they meet with staff who he has full confidence in. He stressed that Councilmembers do their due diligence and hopefully over time people will realize that. He reported attending the Hometown Hoedown where his family always has a great time and noted it being people from all over who come to these events and it is a great opportunity to show off Ten Trails and for the community to get together. He attended the Labor Day parade and noted all the hard work that goes into this event – everyone was having a good time and it draws people from all over and he likes the idea of having neighborhood floats in the parade. He shared meeting three new

neighbors and Mayor Benson thanked Councilmember Wisnoski for manning the City's booth.

Councilmember Deady reported attending the SCATBd meeting; Kiwanis luncheon; homeless meeting and the Labor Day event where the organizer's hit it out of the park this year; car show at the Eagles where they had 260 cars this year; Hometown Hoedown; Finance Committee meeting; met with Mr. Williamson on Parcel V13 and invited him to talk about the park that is planned in that plat; Mr. Williamson spoke to Council on the park that is being built in V13; Councilmember Deady continued with her report and congratulated Kevin Esping and all the citizens that received awards; met with the Mayor to discuss adding code enforcement dollars to the 2019 budget.

Councilmember Oglesbee reported attending the Hometown Hoedown and had her picture taken with Aaron Crawford; Ice Cream Social at the school; three full days at the Labor Day event. She noted this is a huge event and takes many, many months to plan. She thanked all the sponsors for their financial support to put this event on. She shared the names of the award recipients for this year and noted there will be a wrap up meeting on the 16th at the Bakery. She is stepping down this year and they will be looking for volunteers. In closing she shared attending the Children's Therapy Center grand opening and welcomed them to Black Diamond.

ATTORNEY REPORT: None

PUBLIC COMMENTS:

Kevin Esping, Black Diamond spoke to Council.

Kristen Bryant, Bellevue spoke to Council.

EXECUTIVE SESSION: None

ADJOURNMENT:

Councilmember Deady **moved** to adjourn the meeting; **second** Councilmember Oglesbee. Motion **passed** with all voting in favor (5-0).

The meeting ended at 7:59 p.m.

ATTEST:

Carol Benson, Mayor

Brenda L. Martinez, City Clerk

CITY COUNCIL AGENDA BILL

City of Black Diamond
Post Office Box 599
Black Diamond, WA 98010

ITEM INFORMATION		
SUBJECT:	Agenda Date: September 20, 2018	AB18-080
Public Hearing on Ordinance establishing a non-exclusive, ten-year telecommunications franchise with MCIMetro Access Transmission Services Corp., D/B/A Verizon Access	Mayor Carol Benson	
	City Administrator	
	City Attorney David Linehan	
	City Clerk – Brenda L. Martinez	
	Com Dev/Nat Res –	
	Finance – May Miller	
	MDRT/Ec Dev – Andy Williamson	
	Police – Chief Kiblinger	
Cost Impact (see also Fiscal Note): N/A	Public Works – Seth Boettcher	X
Fund Source: --	Court – Stephanie Metcalf	
Timeline: 10 year agreement		
Agenda Placement: <input checked="" type="checkbox"/> Mayor <input type="checkbox"/> Two Councilmembers <input type="checkbox"/> Committee Chair <input type="checkbox"/> City Administrator		
Attachments: Proposed Ordinance		
<p>SUMMARY STATEMENT:</p> <p>Granting MCIMetro Access Transmission Services Corp., D/B/A Verizon Access Transmission Services, a non-exclusive telecommunications franchise to install, construct, maintain, repair, and operate a telecommunications system within the City.</p> <p>A public hearing is set for September 20, 2018 with adoption set for October 4, 2018.</p> <p>MCIMetro/Verizon will be required to obtain any and all regulatory permits required by the City prior to beginning work in the City’s Right-of-Way. Following any work within the Right-of-Way, MCIMetro/Verizon will be required to restore the area to the reasonable satisfaction of the City.</p> <p>FISCAL NOTE (Finance Department): N/A</p>		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION:		
RECOMMENDED ACTION: Public hearing only.		
RECORD OF COUNCIL ACTION		
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>
September 20, 2018		

CITY OF BLACK DIAMOND, WASHINGTON

ORDINANCE NO. 18-xxx

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, GRANTING TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP., A DELAWARE CORPORATION, D/B/A VERIZON ACCESS TRANSMISSION SERVICES, A NONEXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO INSTALL, CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE A TELECOMMUNICATIONS SYSTEM WITHIN THE PUBLIC RIGHTS OF WAY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, MCImetro Access Transmission Services Corp., a Delaware corporation, d/b/a Verizon Access Transmission Services (hereinafter “Franchisee”) has made application to the City to construct, install, maintain, repair and operate a fiber optic-based telecommunications system with the public rights-of-way of the City; and

WHEREAS, Franchisee represents that it has the legal, technical and financial qualifications to operate in the rights-of-way of the City as a wireline telephone business and a telecommunications company within the meaning of Title 80 RCW; and

WHEREAS, based on representations and information provided by Franchisee, and in response to its request for the grant of a franchise, the City Council has determined that the grant of a nonexclusive franchise, on the terms and conditions herein and subject to applicable law, are consistent with the public interest; and

WHEREAS, the City is authorized by applicable law to grant such a nonexclusive franchises within the boundaries of the City;

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

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- 3.1 Alteration of Material Terms and Conditions
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EXHIBITS:

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- B. Form of Transfer Agreement
- C. Description of Franchise Area
- D. Insurance Requirements
- E. Financial Security
- F. Contractor/Subcontractor Insurance Requirements

ARTICLE 1. DEFINITIONS.

For the purposes of this Franchise and the Exhibits attached hereto, the following terms, phrases, words and their derivations where capitalized shall have the meanings given herein. Words not defined herein shall have the meaning given pursuant to such federal statutes, rules, or regulations that apply to and regulate the services provided by the Franchisee. Words not otherwise defined, shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word “shall” is always mandatory and not merely directory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision.

“Affiliate” when used in connection with Franchisee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Franchisee.

“City” shall mean the City of Black Diamond, a municipal corporation organized as a non-charter code city, operating under the laws of the state of Washington.

“Construct” (and other forms of the word) shall mean to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, remove, or support.

“Default” shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise.

“Design Document(s)” shall mean the plans and specifications for the Construction of the Facilities meeting the minimum applicable general plan submittal requirements for engineering services plan review as set forth in the City’s Engineering Design and Construction Standards manual, illustrating and describing the refinement of the design of the Telecommunications System Facilities to be Constructed, establishing the scope, relationship, forms, size and appearance of the Facilities by means of plans, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

“Direct Costs” shall mean and include all costs and expenses incurred by the City and directly related to a particular activity or activities, including by way of example:

i. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of such activity or activities and any taxes, insurance, and interest expenses related thereto, including costs for crews and equipment;

ii. All costs and expenses of labor inclusive of payroll benefits, non-productive time and overhead for each of the labor classifications of the employees

performing work for the activity and determined in accordance with the City's ordinary governmental accounting procedures; and,

iii. All costs and expenses to the City for any work by consultants or contractors to the extent performing work for a particular activity or activities, including by way of example and not limitation, engineering and legal services.

"Dispute" shall mean a question or controversy that arises between the Parties concerning the observance, performance, interpretation or implementation of any of the terms, provisions, or conditions contained in this Franchise or the rights or obligations of either Party under this Franchise.

"Effective Date" shall mean and refer to that term as it is defined at Section 4.3 herein.

"Emergency" shall mean and refer to a sudden condition or set of circumstances that, (a) significantly disrupts or interrupts the operation of Facilities in the Public Rights-of-Way and Franchisee's ability to continue to provide services if immediate action is not taken, or (b) presents an imminent threat of harm to persons or property if immediate action is not taken.

"Environmental Law(s)" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

"Facility" or "Facilities" means any part or all of the facilities, equipment and appurtenances of Franchisee whether underground or overhead and located within the Public Rights-of-Way as part of the Franchisee's Telecommunications System, including but not limited to, conduit, case, pipe, line, fiber, cabling, equipment, equipment cabinets and shelters, vaults, generators, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, anchors, transmitters, receivers, antennas, and signage.

"Franchise" shall mean the grant, once accepted, giving general permission to the Franchisee to enter into and upon the Public Rights-of-Way to use and occupy the same for the purposes authorized herein, all pursuant and subject to the terms and conditions as set forth herein.

"Franchisee" shall mean MCImetro Access Transmission Services Corp., a Delaware corporation, d/b/a Verizon Access Transmission Services and any of its Affiliates.

"Franchise Area" shall mean collectively or individually the Public Rights-of-Way located within the area described in Exhibit "C".

“Franchise Ordinance” shall mean the Ordinance authorizing the Franchise.

“Hazardous Substance” means those substances which have been recognized as dangerous or potentially dangerous to health, welfare, or to the environment by any federal, municipal, state, City, or other governmental or quasi-governmental authority, and/or any department or agency thereof; those substances which use, or have as its component thereof or therein, asbestos or lead-based paint; and petroleum oil and any of its fractions; and as such has been defined, listed or regulated under any Environmental Law.

“Law(s)” shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, environmental standards, orders, decrees and requirements of all federal, state, and local governments, the departments, bureaus or commissions thereof, or other governmental authorities, including the City acting in its governmental capacity. References to Laws shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

“Noticed Party” shall mean the Party in receipt of notice that it is in Default.

“Person” means and includes any individual, corporation, partnership, association, joint-stock-company, limited liability company, political subdivision, public corporation, taxing districts, trust, or any other legal entity, but not the City or any Person under contract with the City to perform work in the Public Rights-of-Way.

“Party(ies)” shall mean either the City or the Franchisee or both.

“Private telecommunications system” means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. “Private telecommunications system” does not include a system offered for hire, sale, or resale to the general public.

“Public Rights-of-Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, any easement now or hereafter held by the City within the corporate boundaries of the City as now or hereafter constituted for the purpose of public travel, and over which the City has authority to grant permits, licenses or franchises for use thereof, or has regulatory authority thereover, excluding railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, and excluding such similar facilities or property owned, maintained or leased by the City in its proprietary capacity or as an operator of a utility.

“Public Works Director” means and refers to the Public Works Director for the City or his or her designee or such officer or person who has been assigned the duties of public works director or his or her designee.

“Regulatory Permit” means a permit issued under the regulatory authority of the City that provides specific requirements and conditions for Work to Construct Facilities within the Public Rights-of-Way and includes by way of example and not limitation, a construction permit, building permit, street excavation permit, barricade permit, and clearing and grading permit.

“Remedy”, “Remediate” and “Remedial Action” shall have the same meaning as these are given under the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing regulations at Chapter 173-340 WAC.

“Service” shall mean the service or services authorized to be provided by the Franchisee under the terms and conditions of this Franchise.

“Telecommunications Service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications Service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications Service excludes radio and television audio and video programming services (as defined below). Radio and television audio and video programming services include cable service as defined in 47 U.S.C. Sec. 522(6), audio and video programming services delivered by commercial mobile radio service providers, as defined in section 20.3, Title 47 C.F.R., and over the air broadcast radio and television services.

“Transfer” shall mean any transaction in which all or a portion of the Telecommunications System is sold, leased or assigned (except a sale or transfer that results in removal of a particular portion of the Telecommunications System from the Public Rights-of-Way); or the rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another Person. A transfer of control of an operator shall not constitute a transfer as long as the same person continues to hold the Franchise both before and after the transfer of control.

“Telecommunications System” shall mean collectively the Facilities that together with other facilities, appurtenances and equipment of Franchisee or other Persons are used to provide Telecommunications Services.

“Work” shall mean any and all activities of the Franchisee, or its officers, directors, employees, agents, contractors, subcontractors, volunteers, invitees, or licensees, within the Public Rights-of-Way to Construct the Facilities.

ARTICLE 2. FRANCHISE GRANT.

2.1 Public Right-of-Way Use Authorized. Subject to the terms and conditions of this Franchise, the City hereby grants to Franchisee a nonexclusive Franchise authorizing the

Franchisee to Construct, maintain, repair and operate Facilities in, along, among, upon, across, above, over, and under the Public Rights-of-Ways located within the Franchise Area.

2.2 Authorized Services. The grant given herein expressly authorizes Franchisee to use the Public Rights-of-Way to Construct, maintain, repair and operate its Facilities as part of its Telecommunications System to provide Telecommunications Services. This authorization is limited and is not intended nor shall it be construed as granting Franchisee or any other Person the right, duty or privilege to use its Facilities or the Public Rights-of-Way to provide Services not specifically authorized herein. This Franchise shall not be interpreted to prevent the City from lawfully imposing additional conditions, including additional compensation conditions, if authorized by applicable law for use of the Public Rights-of-Way, should Franchisee provide Service other than Service specifically authorized herein. However, this Franchise shall not be read as a concession by the Franchisee that it needs authorization to provide any services not otherwise authorized herein.

2.3 No Rights Shall Pass to Franchisee by Implication. No rights shall pass to the Franchisee by implication. Without limiting the foregoing and by way of example, this Franchise shall not include or be a substitute for:

2.3.1 Any other authorization required for the privilege of transacting and carrying on a business within the City that may be lawfully required by the Laws of the City;

2.3.2 Any Regulatory Permit required by the City for Public Rights-of-Way users in connection with operations on or in Public Rights-of-Way or public property; or

2.3.3 Any licenses, leases, easements or other agreements for occupying any other property or infrastructure of the City or other Persons to which access is not specifically granted by this Franchise including, without limitation, agreements for placing devices on poles, light standards, in conduits, in vaults, in or on pipelines, or in or on other structures or public buildings.

2.3.4 Any permits or other authorizations that may be required under the land use code and development regulations of the City for the construction of Facilities within a particular zoning district in the City, including by way of example and not limitation, a conditional use permit or a variance.

2.4 Interest in the Public Right-of-Way/Release/Indemnity. This Franchise shall not operate or be construed to convey title, equitable or legal, in the Public Rights-of-Way. This Franchise shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give. The grant given herein does not confer rights other than as expressly provided in the grant hereof and is subject to the limitations in applicable Law. Such right may not be subdivided or subleased to a person other than the Franchisee except as set forth in Section 2.8 below.

CITY DOES NOT WARRANT ITS TITLE OR PROPERTY INTEREST IN OR TO ANY FRANCHISE AREA NOR UNDERTAKE TO DEFEND FRANCHISEE IN

THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

Franchisee hereby releases City from any and all liability, cost, loss, damage or expense in connection with any claims that City lacked sufficient legal title or other authority to convey the rights described herein. In case of eviction of Franchisee or Franchisee's contractors by anyone owning or claiming title to, or any interest in the Franchise Area, City shall not be liable to Franchisee or Franchisee's contractors for any costs, losses or damages of any Party.

2.5 Rights Subordinate. Franchisee further acknowledges that Franchisee's rights under this Franchise to Construct Facilities in the Franchise Area, are subject and subordinate to all outstanding rights and encumbrances on the City's Public Rights-of-Way.

2.6 Condition of Franchise Area. Franchisee has inspected or will inspect the Franchise Area described on the attached Exhibit C, and enters upon each such Franchise Area with knowledge of its physical condition and the danger inherent in operations conducted in, on or near any Franchise Area. Franchisee acknowledges that Hazardous Substances or other adverse matters may affect the Franchise Area that were not revealed by Franchisee's inspection.

CITY HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE FRANCHISE AREA, INCLUDING THE ENVIRONMENTAL CONDITION OF THE FRANCHISE AREA, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE PUBLIC RIGHT-OF-WAY, OR THE CONFORMITY OF ANY PART OF THE PUBLIC RIGHT-OF-WAY TO ITS INTENDED USES. CITY SHALL NOT BE RESPONSIBLE TO FRANCHISEE OR ANY OF FRANCHISEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PART OF THE PUBLIC RIGHT-OF-WAY PRESENT ON OR CONSTITUTING ANY FRANCHISE AREA, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES, EXCEPT TO THE EXTENT ANY DAMAGES RELATING TO THE CONDITION, QUALITY, OR SAFETY OF ANY PART OF THE PUBLIC RIGHT-OF-WAY ARISE FROM THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

2.7 Franchise Nonexclusive. This Franchise shall be nonexclusive. Subject to the terms and conditions herein, the City may at any time grant authorization to others to use the Public Rights-of-Way for any lawful purpose on terms and conditions that are competitively neutral and nondiscriminatory among similarly situated franchisees; provided that, no other Person holding a valid franchise shall have superior rights to Franchisee to use and occupy the space within the Public Right-of-Way lawfully occupied by Franchisee Facilities, except as provided pursuant to Section 7.8 (Facility Relocation) hereof.

2.8 Transfer. Franchisee may Transfer this Franchise after prior written notice to the City and Transferee's written commitment, in substantially the form of the agreement attached hereto as Exhibit "B", delivered to the City, that transferee(s) shall thereafter be responsible for all obligations of Franchisee with respect to the Franchise and guaranteeing performance under the terms and conditions of the Franchise and that transferees will be bound by all the conditions of the Franchise and will assume all the obligations of its predecessor. Such a Transfer shall relieve the Franchisee of any further obligations under the Franchise, including any obligations not fulfilled by Franchisee's Transferee; provided that, the Transfer shall not in any respect relieve the Franchisee, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, which acts or omissions occur prior to the time of the Transfer. This Franchise may not be transferred without filing or establishing with the City the insurance certificates, security fund and performance bond as required pursuant to this Franchise and paying all Direct Costs to the City related to the Transfer.

Notwithstanding the foregoing, notice to the City shall not be required for a mortgage, hypothecation or an assignment of Franchisee's interest in the Franchise in order to secure indebtedness.

Franchisee may, without the prior written notice to or consent of the City: (i) lease the Telecommunications System, or any portion thereof, to another Person; (ii) grant an Indefeasible Right of User Interest in the Telecommunications System, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Telecommunications System to another Person; provided that, Franchisee at all times retains exclusive ownership over its Telecommunications System and remains responsible for Constructing its Facilities pursuant to the terms and conditions of this Franchise, and provided further that, Franchisee may grant no rights to any such Person that are greater than any rights Franchisee has pursuant to this Franchise; such Persons shall not be construed to be a third-party beneficiary hereunder; and, no such Person may use the Telecommunications System for any purpose not authorized herein, except pursuant to rights such third party may have not included in this Franchise but otherwise provided in such third party's agreement with the City.

2.9 Street Vacation. If any Public Right-of-Way or portion thereof used by Franchisee is to be vacated during the term of this Franchise, unless as a condition of such vacation the Franchisee is granted the right to continue to occupy the vacated Public Right-of-Way, Franchisee shall, without delay or expense to City, remove its Facilities from such Public Right-of-Way, and restore, repair or reconstruct the Public Right-of-Way where such removal has occurred, and place the Public Right-of-Way in such condition as may be required by the City. Nothing herein is intended to operate as a waiver of Franchisee's right or entitlement under state law or City ordinance to receive notice of or to object to vacation of the Public Right-of-Way occupied by Franchisee Facilities.

2.10 Reservation of City Use of Public Right-of-Way. Nothing in this Franchise shall prevent the City from constructing sanitary or storm sewers; grading, changing grade, paving, repairing, widening or otherwise altering any Public Right-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable.

ARTICLE 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE.

3.1 Alteration of Material Terms and Conditions. Subject to federal and State preemption, the material rights, benefits, obligations or duties as specified in this Franchise may not be unilaterally altered or impaired by the City through subsequent amendments to, or enactment of, any ordinance, regulation, resolution or other enactment of the City. Notwithstanding the foregoing, the City specifically reserves its right to make and enforce those laws that are within the lawful exercise of the City's police power.

3.2 Compliance with Laws. Except as provided herein pursuant to Section 3.1, the Franchisee agrees to comply with all applicable Laws as now or hereafter in effect, and any lawful orders from regulatory agencies or courts with jurisdiction over Franchisee and its Facilities, or over the City and the Public Rights-of-Way.

3.3 Reservation of Rights/Wavier. The City expressly reserves all of its rights, authority and control arising from any relevant provisions of federal, State or local Laws granting the City rights, authority or control over the Public Rights-of-way or the activities of the Franchisee.

3.4 Change in Form of Government. Any change in the form of government of the City shall not affect the validity of this Franchise. Any governmental unit succeeding the City shall, without the consent of Franchisee, succeed to all of the rights and obligations of the City provided in this Franchise.

ARTICLE 4. ACCEPTANCE.

4.1 Acceptance. Within thirty (30) days after the passage and approval of this Franchise by the City Council, this Franchise shall be accepted by Franchisee by filing with the City Clerk during regular business hours, or to the City Attorney, three originals of this Franchise with its original signed and notarized written acceptance of all of the terms, provisions and conditions of this Franchise in conformance with Exhibit "A", together with the following, if required herein:

4.1.1 Payment in readily available funds of the administrative costs for issuance of the Franchise in conformance with the requirements of Section 5.6 herein.

4.1.2 Submission of proof of financial security in accordance with Section 5.3 herein.

4.1.3 Submission of an insurance certificate in accordance with Section 5.2 herein.

4.1.4 Payment of the costs of publication of this Franchise Ordinance in conformance with the requirements of Section 8.18 herein.

In the event that the thirtieth day falls on a Saturday, Sunday or legal holiday during which the City is closed for business, the filing date shall fall on the last business day before such Saturday, Sunday or legal holiday.

4.2 Failure to Timely File Acceptance. The failure of Franchisee to timely file its written acceptance shall be deemed a rejection by Franchisee of this Franchise, and this Franchise shall then be void.

4.3 Effective Date; Term.

4.3.1 Effective Date. Except as provided pursuant to Section 4.2 of this Franchise, the Effective Date of this Ordinance and Franchise shall be 12:01 a.m. on the day following Franchisee's acceptance under Section 4.1 and not later than the 31st day following passage and approval of this Franchise by the City Council. This Franchise and the rights, privileges, and authority granted hereunder and the relationship established hereby shall take effect and be in force from and after the Effective Date of this Ordinance for the term hereof.

4.3.2 Term. The term of this Franchise shall commence on the Effective Date and shall continue in full force and effect for a period of ten (10) years, unless sooner terminated, revoked or rendered void. No more than one hundred eighty (180) days prior to expiration, the Parties may mutually agree in writing to extend the term of this Franchise for an additional five (5) year term upon the same terms and conditions as provided herein. The Mayor is authorized to execute such an extension on behalf of the City without further action or approval by the City Council.

4.4 Effect of Acceptance. By accepting the Franchise the Franchisee:

4.4.1 Accepts and agrees to comply with and abide by all of the lawful terms and conditions of this Franchise;

4.4.2 Acknowledges and agrees that it has carefully read the terms and conditions of this Franchise; it unconditionally accepts all of the terms and conditions of this Franchise; it unconditionally agrees to abide by the same; it has relied upon its own investigation of all relevant facts; it has had the assistance of counsel; it was not induced to accept a Franchise; and, that this Franchise represents the entire agreement between the Franchisee and the City;

4.4.3 Warrants that Franchisee has full right and authority to enter into and accept this Franchise in accordance with the terms hereof, and by entering into or performing this Franchise, Franchisee is not in violation of its charter or by-laws, or any law, regulation, or agreement by which it is bound or to which it is subject; and

4.4.4 Warrants that Franchisee has full right and authority to enter into and accept this Franchise in accordance with the terms hereof, that the signatories for Franchisee hereto are authorized to sign the Franchise acceptance, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Franchise.

4.5 Effect of Expiration/Termination. Upon expiration, revocation or termination of the Franchise without renewal or other authorization, Franchisee shall no longer be authorized to operate the Facilities within the Franchise Area and shall, to the extent it may lawfully do so, cease operation of the Facilities. Forthwith thereafter, except as provided in this Section, or as otherwise provided by ordinance, Franchisee shall: (1) remove its Facilities from the Public Rights-of-Ways and restore the Public Right-of-Way in accordance with Section 7.12.1 (Restoration of Public Rights-of-Way) hereof; (2) sell its Facilities to another entity authorized to operate Facilities within the Franchise Area (which may include the City) in accordance with the transfer provisions under Section 2.8; or (3) abandon any Facilities in place in the Public Rights-of-Way in accordance with Section 7.14 (Abandonment of Facilities) hereof.

ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC.

5.1 Limitation of Liability.

5.1.1 INDEMNITY/RELEASE/DEFENSE. TO THE FULLEST EXTENT PERMITTED BY LAW, FRANCHISEE SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS (ELECTED OR APPOINTED), EMPLOYEES, AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM, AND AGAINST CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, REASONABLE ATTORNEYS' FEES, AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

5.1.1.1 FRANCHISEE'S OCCUPATION AND USE OF THE PUBLIC RIGHT-OF-WAY;

5.1.1.2 FRANCHISEE'S OPERATION OF THE TELECOMMUNICATIONS SYSTEM;

5.1.1.3 ENVIRONMENTAL CONTAMINATION OF THE PUBLIC RIGHTS-OF-WAY CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY FRANCHISEE OR ITS CONTRACTORS, SUBCONTRACTORS, OR AGENTS (BUT ONLY TO THE EXTENT OF SUCH AGGRAVATION OR CONTRIBUTION); OR

5.1.1.4 ANY ACT OR OMISSION OF FRANCHISEE OR FRANCHISEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS AND

SERVANTS, OFFICERS OR EMPLOYEES IN CONNECTION WITH WORK IN THE PUBLIC RIGHTS-OF-WAY.

THE ONLY LIABILITIES WITH RESPECT TO WHICH FRANCHISEE'S OBLIGATION TO RELEASE AND INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF AN INDEMNITEE OR FOR LIABILITIES THAT BY LAW THE INDEMNITEES CANNOT BE INDEMNIFIED FOR.

This covenant of indemnification shall include, but not be limited by this reference, to Liabilities arising, (1) as a result of the negligent acts or omissions of Franchisee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public Rights-of-Way or other public place in performance of work or services Permitted under this Franchise; and (2) solely by virtue of the City's ownership or control of the Public Rights-of-Way or other public properties occupied or used by Franchisee.

The fact that Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Franchisee's duties of defense and indemnification under this Section 5.1.

5.1.2 Tender of Defense. Upon written notice from the City, Franchisee agrees to assume the defense of any lawsuit, claim or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Franchise for which Franchisee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Franchisee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Further, said indemnification obligations shall extend to claims that are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend and may participate in the defense of a claim and, in any event, Franchisee may not agree to any settlement of claims financially affecting the City without the City's prior written approval which shall not be unreasonably withheld. If separate representation to fully protect the interests of both Parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, Franchisee shall select additional counsel with no conflict with the City. Franchisee's indemnification obligations do not apply to any lawsuit, claim, or proceeding, including any settlement or compromise of a claim that is not reduced to a suit, if the City fails to provide timely notice to Franchisee, or if City enters into a settlement or compromise, or consents to entry of judgment, without Franchisee's prior written consent.

5.1.3 Refusal to Accept Tender. In the event Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the Parties shall agree to decide the

matter), to have been a wrongful refusal on the part of Franchisee, then Franchisee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

5.1.4 Title 51 Waiver. THE FRANCHISEE WAIVES IMMUNITY UNDER RCW TITLE 51 AND AFFIRMS THAT THE CITY AND THE FRANCHISEE HAVE SPECIFICALLY NEGOTIATED THIS PROVISION, AS REQUIRED BY RCW 4.24.115, TO THE EXTENT IT MAY APPLY.

5.1.5 Inspection. Inspection or acceptance by the City of any Work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification.

5.2 Insurance Requirements. See Attached Exhibit "D".

5.3 Financial Security. See Attached Exhibit "E".

5.4 Contractors/Subcontractors. Franchisee contractors and subcontractors performing Work in the Public Rights-of-Way shall comply with such bond, indemnity and insurance requirements as may be required by City code or regulations, or other applicable Law. If no such requirements are set forth in the City code or regulations, the Franchisee contractors and subcontractors shall comply with the requirements set forth in attached Exhibit "F".

5.5 Liens. In the event that any City property becomes subject to any claims for mechanics', artisans', or materialmen's liens, or other encumbrances chargeable to or through Franchisee which Franchisee does not contest in good faith, Franchisee shall promptly, and in any event within 30 days from receipt of written notice of such lien, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit, or other means), without cost to the City, and shall indemnify the City against all costs and expenses (including attorneys' fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Franchisee after first giving Franchisee five business days' advance notice of its intention to do so. Nothing herein shall preclude Franchisee's or the City's contest of a claim for lien or other encumbrance chargeable to or through Franchisee or the City, or of a contract or action upon which the same arose.

5.6 Financial Conditions.

5.6.1 Franchise Fees. During the term of this Franchise, should federal and/or state Law change or the statutory prohibition or limitation upon assessment of Franchise fees be invalidated, amended, or modified allowing revenues derived by Franchisee from any Services provided by Franchisee using the Franchise Area to be subject to a Franchise fee or other fee in lieu of a Franchise fee that was otherwise prohibited or limited on the Effective Date, the City and Franchisee shall in good faith

endeavor to negotiate a reasonable Franchise fee or other fee or other consideration in lieu of a Franchise fee, consistent with federal and/or state Law. The fee or other consideration shall be comparable to Franchise or similar fees received by the City, or other cities of comparable population or assessed property value, for other similar uses of the Public Rights-of-Way by similar users.

5.6.2 Reimbursement of Direct Costs of Application, Administration, and Amendment. Franchisee agrees to pay an application fee of \$5,000 to cover the City's legal and administrative costs for negotiation, review, and approval of this Franchise. Thereafter, Franchisee shall reimburse the City for the City's Direct Costs (as defined in Section 5.6.3, below) and the cost of negotiation, review, and approval of any amendments to this Franchise requested by or for the benefit of the Franchisee.

5.6.3 Reimbursement of Direct Costs of Design Review and Inspection. City approvals and inspections, as provided for in this Franchise, are for the sole purpose of protecting the City's rights as the owner or manager of the road Public Rights-of-Way and are separate and distinct from the approvals and inspections and fees that may be required pursuant to a Regulatory Permit. Therefore, Franchisee shall reimburse to the City, its Direct Costs of approvals and inspections, to the extent that such Direct Costs are not included in the costs for issuance of and compliance with a Regulatory Permit. Approvals and inspection, by way of example and not limitation, include review of design documents and inspection for compliance with the City's Engineering Design and Construction Standards and Design Document submittal.

5.6.4 Franchisee Responsibility for Costs. Except as expressly provided otherwise in this Franchise, any act that Franchisee, its contractors or subcontractors are required to perform under this Franchise shall be performed at their sole cost and expense.

5.6.5 Franchisee Work Performed by the City. Any work performed by the City that Franchisee has failed to perform as required pursuant to this Franchise and which is performed by the City in accordance with the terms of this Franchise, shall be performed at the cost and expense of the Franchisee. Franchisee shall be obligated to pay the Direct Costs to the City for performing such work.

5.6.6 Costs to be Borne by Franchisee. In addition to the Direct Costs referenced in section 5.6.2, above, Franchisee shall reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, contemporaneous with its acceptance of this Franchise.

5.6.7 Taxes and Fees. Nothing contained in this Franchise Agreement shall exempt Franchisee from Franchisee's obligation to pay any utility tax, business tax, or ad valorem property tax, now or hereafter levied, consistent with applicable law, against real or personal property within the City, or against any local improvement assessment imposed on Franchisee. Any fees, charges and/or fines provided for in the City Municipal Code or any other City ordinance, whether pecuniary or in-kind, are separate from, and

additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from Franchisee.

5.6.8 Itemized Invoice. Upon request and as a condition of payment by the Franchisee of Direct Costs payable by Franchisee under this Franchise, City shall submit an itemized billing so as to specifically identify the Direct Costs incurred by the City for each project for which the City claims reimbursement.

5.6.9 Time for Payment. All non-contested amounts owing shall be due and paid within sixty (60) days of receipt of invoice, or itemized invoice if requested; provided that, in the event that an itemized invoice is not provided at the time of receipt of invoice and the City receives a request from Franchisee for an itemized invoice within 30 days of receipt of invoice, such amounts shall be due and paid within sixty (60) days of receipt of the itemized invoice.

5.6.10 Overdue Payments. Any amounts payable under this Franchise by Franchisee which shall not be paid upon the due date thereof, shall bear interest at the lower of (x) the maximum interest rate allowed by law, and (y) a rate of twelve (12%) percent per annum.

5.6.11 Contesting charges. Franchisee may contest all or parts of amounts owed within sixty (60) days of receipt of any invoice. The City will investigate Franchisee's contest and will make appropriate adjustments to the invoice, if necessary, and resubmit the invoice to Franchisee. Franchisee shall pay any amounts owing as itemized in the resubmitted invoice which amounts shall be due within thirty (30) days of receipt of the resubmitted invoice. However, Franchisee does not waive its rights to further dispute resolution processes pursuant to Section 6.1 of this Franchise. Submittal of a dispute over amounts owing pursuant to Section 6.1 does not relieve the Franchisee of its obligation to pay amounts due under the resubmitted invoice.

5.6.12 Receivables. Either Party hereto may assign any monetary receivables due them under this Franchise upon notice to the other; provided, however, (i) such transfer shall not relieve the assignor of any of its rights or obligations under this Franchise, and (ii) Franchisee shall have no such notice obligation with respect to any receivables other than those owed by the City.

ARTICLE 6. ENFORCEMENT AND REMEDIES.

6.1 Communication and Discussion. The Parties are fully committed to working with each other throughout the term of this Franchise and agree to communicate regularly with each other at all times so as to avoid or minimize Disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a Dispute. The Parties each commit to resolving a Dispute in an amicable, professional and expeditious manner.

The Parties further agree that in the event a Dispute arises, they will attempt to resolve any such Disputes through discussions between representatives of each Party.

Each Party will exchange relevant information that will assist the Parties in resolving the Dispute.

6.2 Remedies. The Parties have the right to seek any and all remedies, in equity, at law or in contract. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Franchise shall be deemed to bar either Party from seeking appropriate judicial relief.

Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either Party to recover monetary damages, as allowed under applicable Law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or to commence an action for equitable or other relief, and/or proceed against the other Party and any guarantor for all direct monetary damages, costs and expenses arising from the Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law.

6.3 Right to Cure Default.

6.3.1 Notice. If a Party believes that the other Party is in default, such Party shall give written notice to the Noticed Party stating with reasonable specificity the nature of the alleged default. The Noticed Party shall have thirty (30) days, or such greater time as specified in the notice or such lesser time as specified in the event that there is an imminent threat of harm to the public health, safety or welfare resulting from the default, from the receipt of such notice to:

6.3.1.1 Respond to the other Party, contesting that Party's assertion that a Default has occurred; or

6.3.1.2 Cure the default; or

6.3.1.3 Notify the other Party that the Noticed Party cannot cure the default within the time provided in the notice, because of the nature of the Default. In the event the Default cannot be cured within the time provided in the notice, the Noticed Party shall promptly take all reasonable steps to begin to cure the Default and notify the other Party in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the other Party may set a meeting to determine whether additional time beyond the time provided in the notice is indeed needed, and whether the Noticed Party's proposed completion schedule and steps are reasonable.

6.3.2 Time to Cure. When specifying the time period for cure, the Party giving notice shall take into account, the nature and scope of the alleged Default, the nature and scope of the work required to cure the Default, whether the Default has created or will

allow to continue an unsafe condition, the extent to which delay in implementing a cure will result in adverse financial consequences or other harm to the Party giving notice, and whether delay in implementing a cure will result in a violation of Law or Default of contract.

6.3.3 Failure to Cure. If the Noticed Party fails to promptly commence and diligently pursue cure of a Default to completion to the reasonable satisfaction of the Party giving notice and in accordance with the agreed upon time line or the time provided for in the Notice of Default, then the parties may pursue any remedies available to them.

6.4 Termination/Revocation. In addition to the remedies available to the City as provided at Law, in equity or in this Franchise, upon a Default without cure, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in accordance with the following:

6.4.1 Notice. Prior to termination of the Franchise, the City shall give written notice to the Franchisee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the Default. If Franchisee objects to such termination, Franchisee shall object in writing and state its reasons for such objection and provide any explanation.

6.4.2 Hearing. The City may then seek a termination/revocation of the Franchise in accordance with this Subsection.

6.4.2.1 The City Council, or its designee, shall conduct a public hearing to determine if termination/revocation of the Franchise is warranted.

6.4.2.2 At least fourteen (14) days prior to the public hearing, the City shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the Hearing Body/Officer shall hear any Persons interested therein; and provide that the Franchisee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses. The public hearing notice shall be provided to Franchisee in accordance with Section 8.13 hereof and public notice of the hearing shall be provided in the same manner as notice is provided for regular meetings of the City Council.

6.4.2.3 Within sixty (60) days after the close of the hearing, the City Council shall issue a written decision regarding the termination/revocation of the Franchise. If the City Council has designated another hearing body/officer to conduct the public hearing, such hearing body/officer shall make a recommendation to the City Council within thirty (30) days following the close of the public hearing, and the City Council shall make a decision upon the recommendation of the Hearing Body/Officer after a closed record hearing and within sixty (60) days following receipt of the recommendation of the Hearing Body/Officer. The decision of the City Council shall be final. The Parties recognize that a decision to terminate/revoke a Franchise is not a land use decision that is subject to appeal pursuant to the Land Use Petition Act (Chapter 36.70C RCW). Failure to render a decision within the

required time period shall not be a basis for invalidation of the decision that is made. Any appeal to which the Franchisee may be entitled (e.g., constitutional or statutory writ of review) shall be filed within 30 calendar days of issuance of the final decision of the City Council.

6.4.3 Decision to Terminate. The City Council may consider one or more of the following when determining whether or not to terminate/revoke the Franchise based upon the material Default:

6.4.3.1 The history of repeated non-compliance by Franchisee with material terms and conditions of this Franchise;

6.4.3.2 Whether other remedies will achieve compliance with this Franchise;

6.4.3.3 Whether the Franchisee has acted in good faith;

6.4.3.4 Whether the acts or omissions that gave rise to the Default were willful or indifferent to the requirements that gave rise to the Default;

6.4.3.5 Whether the type of services provided by the Franchisee will be available to the general public through other providers;

6.4.3.6 Whether services provided by the Franchisee are essential public services or regulated utilities;

6.4.3.7 The impact or potential impact of the Default upon the public health, safety and welfare;

6.4.3.8 The economic risk the City is exposed to as a result of the Default;

6.4.3.9 Whether consent, permission, adjudication, an order or other authorization of a governmental agency or body, is required as a condition precedent to the City ordering the Franchisee to abandon or remove Facilities from the Public Rights-of-Way or to cease operations (temporarily or otherwise) of the Facilities.

6.4.3.10 Such other facts and circumstances that are relevant to the controversy that gave rise to the Default and/or to whether or not the continued presence and operation of the Franchisee Facilities with the Franchise Area will be harmful to the public health, safety or welfare.

6.5 Receivership. At the option of the City, subject to applicable law and lawful orders of courts of competent jurisdiction, this Franchise may be revoked after the appointment of a receiver or trustee to take over and conduct the business of Franchisee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

6.5.1 The receivership or trusteeship is timely vacated; or

6.5.2 The receiver or trustee has timely and fully complied with all the terms and provisions of this Franchise, and has remedied all defaults under the Franchise. Additionally, the receiver or trustee shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver or trustee assumes and agrees to be bound by each and every term, provision and limitation of this Franchise.

ARTICLE 7. CONDITIONS UPON USE OF PUBLIC RIGHTS-OF-WAY.

7.1 Regulatory Permit. If Franchisee has submitted an application for a Regulatory Permit to perform work in the Public Rights-of-Way, the City shall, to the extent practicable, consider such application contemporaneously with the design review requirements hereunder.

7.2 Submission/Approval of Design Documents.

7.2.1 Submission. At the time of application for a Regulatory Permit, or in the event that Franchisee seeks to alter or change the location of Facilities in a Franchise Area, Franchisee shall submit its Design Documents to the City for review and approval in accordance with the City's plan review process.

7.2.2 Use of Public Rights-of-Way. Within parameters reasonably related to the City's role in protecting the public health, safety and welfare and except as may be otherwise preempted by Law, the City may require that Facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to the proposed Franchise Area and may deny access if Franchisee is not willing to comply with such requirements; and, may require removal of any Facility that is not installed in compliance with the Standards (defined in Section 7.3 below) or which is installed without prior City approval of the time, place, or manner of installation.

7.2.3 Approval of Plans. Work may not commence without prior approval by the City of the Design Documents submitted by the Franchisee, which approval will not be unreasonably withheld, conditioned or delayed. The City may review and approve the Franchisee's Design Documents with respect to:

7.2.3.1 Location/Alignment/Depth;

7.2.3.2 The manner in which the Facility is to be installed;

7.2.3.3 Measures to be taken to preserve safe and free flow of traffic;

7.2.3.4 Structural integrity, functionality, appearance, compatibility with and impact upon roadways, bridges, sidewalks, planting strips, signals,

traffic control signs, intersections, or other facilities and structures in the Public Rights-of-Way;

7.2.3.5 Ease of future road maintenance, and appearance of the roadway;

7.2.3.6 Compliance with applicable Standards (as defined below) and codes; and

7.2.3.7 Compliance and compatibility with the City's comprehensive plan, six-year transportation plan, capital improvements plan, and regional transportation improvement plans.

7.3 Compliance with Standards/Codes. Except as may be preempted by federal or state Laws, all Facilities shall conform to and all Work shall be performed in compliance with the following "Standards" as now or may be hereafter revised, updated, amended or re-adopted:

7.3.1 Standards for Public Works Engineering and Construction. The most current edition of the City Standards for Public Works Engineering and Construction as adopted from time to time by the City. This document includes the City's Engineering Design and Construction Standards Manual, Design Standards Detail, and appendixes, and the most recently City adopted edition of the Standard Specifications for Road, Bridge and Municipal Construction as prepared by the Washington State Department of Transportation ("WSDOT") and the Washington State Chapter of American Public Works Association ("APWA");

7.3.2 MUTCD. The Washington State Department of Transportation Manual of Uniform Traffic Control Devices ("MUTCD");

7.3.3 Special Conditions. Generally applicable requirements and standards set forth as additional conditions in a Regulatory Permit.

7.3.4 City Regulations. City ordinances, codes, and regulations establishing standards for placement of Facilities in Public Rights-of-Way, including by way of example and not limitation, the specific location of Facilities in the Public Rights-of-Way.

7.3.5 Other Regulatory Requirements. Applicable requirements of federal or state governmental authorities that have regulatory authority over the placement, construction, or design of Franchisee Facilities;

7.3.6 Industry Standards. All Facilities shall be durable and Constructed in accordance with good engineering practices and standards promulgated by the government and industry for placement, Construction, design, type of materials and operation of Franchisee Facilities;

7.3.7 Safety Codes and Regulations. Franchisee Facilities and Work shall comply with all applicable federal, State and City safety requirements, rules, regulations, Laws and practices. By way of illustration and not limitation, Franchisee shall comply with the National Electrical Safety Code and the Occupational Safety and Health Administration (OSHA) Standards; and

7.3.8 Building Codes. Franchisee Facilities and Work shall comply with all applicable City Building Codes.

7.4 Conditions Precedent to Work. Except as may be otherwise required by applicable City code, rule, regulation or Standard, Franchisee shall comply with the following as a condition precedent to Work:

7.4.1 Regulatory Permits Required. Except in the event of an Emergency, prior to performing any Work in the Public Right-of-Way requiring a Regulatory Permit, Franchisee shall apply for, and obtain, in advance, such appropriate Regulatory Permits from the City as are required by ordinance or rule. Franchisee shall pay all generally applicable and lawful fees for the requisite City Regulatory Permits.

7.4.2 Compliance with Franchise. Franchisee shall be in material compliance with the Franchise.

7.5 Work in the Public Rights-of-Way.

7.5.1 Permit required. If the Franchisee needs to dig more than 6 inches or cut and remove concrete or asphalt, or if the work will interfere with traffic, a Road Right of Way permit will be required.

7.5.2 Least Interference. Work in the Public Rights-of-Way shall be done in a manner that does not unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property and which causes the least interference with the rights and reasonable convenience of property owners, businesses and residents along the Public Rights-of-Way. Franchisee Facilities shall be designed, located, aligned and Constructed so as not to disturb or impair the use or operation of any street improvements, utilities, and related facilities of City or City's existing lessees, licensees, permittees, franchisees, easement beneficiaries or lien holders, without prior written consent of City or the Parties whose improvements are interfered with and whose consent is required pursuant to agreements with the City existing prior to the Effective Date.

7.5.3 Work Subject to Inspection. The City may observe or inspect the Construction Work, or any portion thereof, at any time to ensure compliance with applicable Regulatory Permits, this Franchise, applicable Law, the applicable approved Design Documents, the Standards, and to ensure the Work is not being performed in an unsafe or dangerous manner.

7.5.4 Notice to the Public. Except in the case of an Emergency, City retains the right to require the Franchisee to notify the public prior to commencing any significant planned Construction that Franchisee reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

7.5.5 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors performing Work in the Franchise Area shall be licensed and bonded in accordance with the City's and State's applicable regulations and requirements. Any contractors or subcontractors performing Work within the Public Rights-of-Way on behalf of the Franchisee shall be deemed servants and agents of the Franchisee for the purposes of this Franchise and are subject to the same restrictions, limitations and conditions as if the Work were performed by Franchisee. Franchisee shall be responsible for all Work performed by its contractors and subcontractors and others performing Work on its behalf as if the Work were performed by it, and such Work shall be performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to verify that contractors, subcontractors or other Persons performing Work on Franchisee's behalf are familiar with the requirements of this Franchise and other applicable Laws governing the Work performed by them.

7.5.6 Emergency Permits. In the event that Emergency repairs are necessary, Franchisee shall perform such Work, provide such notices, and obtain Regulatory Permits in conformance with applicable Standards.

7.5.7 Stop Work. On notice from the City that any Work does not comply with the Franchise, the approved Design Documents for the Work, the Standards, or other applicable Law, or is being performed in an unsafe or dangerous manner as reasonably determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be in writing, given to the Person doing the Work and be posted on the Work site, indicate the nature of the alleged violation or unsafe condition; and establish conditions under which Work may be resumed. If so ordered, Franchisee shall cease and shall cause its contractors and subcontractors to cease such activity until the City is reasonably satisfied that Franchisee is in compliance. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable Law, may order Franchisee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes in its reasonable discretion. The City has the right to inspect, repair and correct the unsafe condition if Franchisee fails to do so, and to reasonably charge Franchisee for the costs incurred to perform such inspection, repair or correction. Payment by Franchisee will be made in accordance with Section 5.6.9. The authority and remedy set forth herein in this section is in addition to, and not a substitute for, any authority the City may otherwise have to take enforcement action for violation of City Codes or Standards.

7.5.8 Discovery of Hazardous Substances/Indemnity. In the event that the Work of the Franchisee in, on, and upon the Franchise Area results in the discovery of the

presence of Hazardous Substances (“**Discovered Matters**”) in, on or upon the areas excavated or otherwise opened or exposed by Franchisee within the Franchise Area (the “**Excavated Areas**”), the Franchisee shall immediately notify the City and, take whatever other reporting action is required by applicable Environmental Law as it relates to the Discovered Matters in the Excavated Areas.

In the event the Franchisee’s Work, in, on or upon the Franchise Area within the Excavated Areas results in a release (as determined under applicable Environmental Laws) of Hazardous Substances which were, before such activities, confined to areas within the Excavated Areas, but which after such activities by Franchisee are released beyond the Excavated Areas, and if the release is caused in whole or in part by the Franchisee, then the Franchisee shall indemnify, defend and hold the City harmless from the costs of all necessary Remedial Actions which are required under the applicable Environmental Laws, to the extent of Franchisee’s share of the liability for the release. Franchisee’s liability for the release may, inter alia, be determined by a final non-appealable decision by a court of competent jurisdiction, or as provided in a final non-appealable administrative order issued by the Environmental Authority, or by a consent decree entered by Franchisee and the Environmental Authority.

7.6 Alterations. Except as may be shown in the Design Documents or Regulatory Permits approved by the City or the record drawings, or as may be necessary to respond to an Emergency, Franchisee, and Franchisee’s contractors and subcontractors, may not make any material alterations to the Franchise Area, or permanently affix anything to the Franchise Area, without the City’s prior written consent. Material alteration shall include by way of example and not limitation, a change in the dimension or height of the above ground Facilities. If Franchisee desires to change either the location of any Facilities or otherwise materially deviates from the approved design of any of the Facilities, Franchisee shall submit such change to the City in writing for its approval pursuant to Section 7.2 of this Franchise. Franchisee shall have no right to commence any such alteration change until after Franchisee has received the City’s approval of such change in writing.

7.7 General Conditions.

7.7.1 Right-of-Way Meetings. Subject to receiving advance notice, Franchisee will make reasonable efforts to attend and participate in meetings of the City regarding Right-of-Way issues that may impact the Telecommunications System.

7.7.2 Compliance Inspection. Franchisee’s Facilities shall be subject to the City’s right of periodic inspection upon at least seventy-two (72) hours’ notice, or, in case of an emergency, upon demand without prior notice, to determine compliance with the provisions of this Franchise or other applicable Law over which the City has jurisdiction. Franchisee shall respond to reasonable requests for information regarding its Telecommunications System as the City may from time to time issue in writing to determine compliance with this Franchise, including requests for information regarding the

Franchisee's plans for Construction and the purposes for which the Facility is being constructed.

7.7.3 One Call. If Franchisee places Facilities underground, Franchisee shall, at its own expense, continuously be a member of the State of Washington one number locator service under Chapter 19.122 RCW, or an approved equivalent, and shall comply with all such applicable rules and regulations. The Franchisee shall locate and field mark its Facilities for the City at no charge.

7.7.4 Graffiti Removal. Within 5 business days after notice from the City, Franchisee shall remove any graffiti on any part of its Telecommunications System, including, by way of example and not limitation, equipment cabinets. If either the Franchisee fails to do so within 5 business days or in the City's discretion and subject to advance communication with the Franchisee, the City may remove the graffiti and bill the Franchisee for the reasonable cost thereof.

7.7.5 Dangerous Conditions, Authority for City to Abate. Whenever Construction of Facilities has caused or contributed to a condition that in the reasonable opinion of the City Engineer, substantially impairs the lateral support of the adjoining Public Right-of-Way, street, or public place, or endangers the public, any utilities, or City-owned property, the City may reasonably require the Franchisee to take action to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities. Such action may include compliance within a prescribed time. In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if Emergency conditions exist which require immediate action, the City may, to the extent it may lawfully do so, take such actions as are necessary to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the reasonable costs thereof to the extent Franchisee is determined to be the proximate cause of such condition.

7.7.6 No Duty. Notwithstanding the right of the City to inspect the Work, issue a stop work order, and order or make repairs or alterations, the City has no duty or obligation to observe or inspect, or to halt Work on, the applicable Facilities, it being solely Franchisee's responsibility to ensure that the Facilities are Constructed and operated in strict accordance with this Franchise, the approved Design Documents, the Standards, and applicable Law. Neither the exercise nor the failure by the City to exercise any right set forth in this Article 7 shall alter the liability allocation set forth in this Franchise.

7.7.7 Roadside Hazard. All of Franchisee's Facilities shall be kept by Franchisee at all times in a safe and hazard-free condition. Franchisee shall ensure that Facilities within the Public Rights-of-Way do not become or constitute an unacceptable roadside obstacle and do not interfere with or create a hazard to maintenance of and along the Public Rights-of-Way. In such event, the Franchisee shall take corrective action. In the event that the City determines that a Facility within the Public Rights-of-Way has

become or constitutes an unacceptable roadside obstacle or may interfere with or create a hazard to maintenance of and along the Public Rights-of-Way, following written notice explaining with reasonable specificity the nature of any such matter and a reasonable opportunity to cure of not less than thirty (30) days, the Franchisee shall take corrective action; provided that, nothing herein shall relieve the Franchisee from keeping its Facilities at all times in safe and hazard-free condition.

Franchisee, at all times, shall employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to Franchisee's agents or employees. Franchisee, at its own expense, shall repair, renew, change, and improve its Facilities from time to time as may be necessary to accomplish this purpose. Franchisee shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such Work in or affecting such Public Rights-of-Way or property. All excavations made by Franchisee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents.

7.7.8 Verification of Alignment/Depth. Upon the reasonable request and prior written notice, in non-Emergency situations at least thirty (30) days' notice by the City and in order to facilitate the location, alignment and design of Public Improvements (defined below), Franchisee agrees to locate, and if reasonably determined necessary by the City, excavate and expose portions of its Facilities for inspection so that the location of same may be taken into account in the Public Improvement design; PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless the Franchisee's record drawings and maps of its Facilities submitted pursuant to Section 7.11 of this Franchise are reasonably determined by the City to be inadequate for purposes of this paragraph.

7.8 Facility Relocation at Request of the City.

7.8.1 Public Improvement. The City may require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way when reasonably necessary for construction, alteration, repair, or improvement of any portion of the Public Rights-of-Way for purposes of public welfare, health, or safety ("Public Improvements"). Such Public Improvements include, by way of example but not limitation, Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, communication lines, or any other type of government-owned communications, utility or public transportation systems, public work, public facility, or improvement of any government-owned utility; Public Rights-of-Way vacation, and the Construction of any public improvement or structure by any governmental agency acting in a governmental capacity for the public benefit.

7.8.2 Alternatives. If the City requires Franchisee to relocate its Facilities, the City shall make a reasonable effort to provide Franchisee with an alternate location within the Public Right-of-Way. The Franchisee may, after receipt of written notice requesting a relocation of its Facilities, propose design alternatives that would mitigate or lessen the impact upon Franchisee's Facilities. The City shall provide a full and fair evaluation of such proposed design alternatives that, in the reasonable judgment of the City, would not impair, interfere with, or materially alter the scope, purpose or functioning of the Public Improvement and would not increase the anticipated public costs of the Public Improvement. If so requested by the City, Franchisee shall submit additional information to assist the City in making such evaluation. In the event that the City reasonably determines that it does not have available resources within the existing Public Improvement budget to fully and fairly evaluate Franchisee's proposal, the City shall not be obligated to further consider such proposal unless and until the Franchisee funds the additional costs to the City to complete its evaluation.

7.8.3 Notice. The City shall notify Franchisee in writing as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of Emergency such notice shall be no less than one hundred and eighty (180) days. In calculating the date that relocation must be completed, City shall consult with Franchisee and consider the extent of Facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the date specified, unless the City, or a reviewing court, establishes a later date for completion, after a showing by the Franchisee that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

7.8.4 Coordination of Work. Franchisee acknowledges and understands that any delay by Franchisee in performing the Work to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way may delay, hinder, or interfere with the work performed by the City and its contractors and subcontractors in furtherance of construction, alteration, repair, or improvement of the Public Improvement, and result in damage to the City and/or its contractors, including but not limited to, delay and disruption claims. Franchisee shall cooperate with the City and its contractors and subcontractors to coordinate such Franchisee Work to accommodate the Public Improvement project and project schedules to avoid delay, hindrance, or disruption of such project.

7.8.5 Assignment of Rights. In addition to any other rights of assignment the City may have, the City may from time to time assign or transfer to its contractors or subcontractors its rights under Section 7.10 of this Franchise.

7.8.6 Reimbursement for Costs. Notwithstanding the cost allocation provisions set forth in this Franchise, Franchisee does not waive its right(s) to and shall be entitled to seek reimbursement of its relocation costs as may be otherwise specifically set forth and authorized by Law, including in statute. Further, if the City reimburses or pays

the relocation costs of a similarly situated franchisee for a given Public Improvement project, the City shall reimburse or pay Franchisee's relocation costs on the same basis

7.9 Movement of Facilities for Others.

7.9.1 Private Benefit. If any alteration, adjustment, temporary relocation, or protection in place of the Telecommunications System is required solely to accommodate the Construction of facilities or equipment that are not part of a Public Improvement project, Franchisee shall, after at least one hundred eighty (180) days advance written notice, take action to effect the necessary changes requested by the responsible Person; provided that, (a) the Person requesting the same pays for the Franchisee's time, design, engineering and material costs associated with the requested work; (b) the alteration, adjustment, relocation or protection in place is reasonably necessary to accommodate such work; (c) Franchisee's services are not interrupted; and (d) such alteration, adjustment, or relocation is not requested for the purpose of obtaining a competitive advantage over the Franchisee.

7.9.2 Temporary Changes for Other Franchisees. At the request of any Person holding a valid permit and upon reasonable advance notice, Franchisee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder. Franchisee shall be given not less than thirty (30) days' advance notice to arrange for such temporary wire changes.

7.10 Movement of Facilities During Emergencies.

7.10.1 Immediate Threat. In the event of an unforeseen event, condition or circumstance that creates an immediate threat to the public safety, health, or welfare, the City shall have the right to require Franchisee to relocate, remove, replace, modify, or temporarily disconnect Franchisee's Facilities located in the Public Rights-of-Way at the expense of the Franchisee without regard to the cause or causes of the immediate threat.

7.10.2 Emergency. In the event of an Emergency, or where a Facility creates or is contributing to an imminent danger to health, safety, or property, the City retains the right and privilege to protect, support, temporarily disconnect, remove, or relocate any or all parts of the Telecommunications System located within the Public Rights-of-Way, as the City may determine to be reasonably necessary, appropriate or useful in response to any public health or safety Emergency and charge the Franchisee for costs incurred.

7.10.3 Notice. During Emergencies the City shall endeavor to, as soon as practicable, provide notice to Franchisee of such Emergency at a designated Emergency response contact number, to allow Franchisee the opportunity to respond and rectify the problem without disrupting Telecommunications Service. If after providing notice, there is no immediate response, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Telecommunications System located within the Public Rights-of-Way in accordance with this Section 7.10.

7.10.4 Limitation on Liability. The City shall not be liable for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

7.11 Record of Installations.

7.11.1 Map/Record Drawing of Telecommunications System. Upon request by the City, Franchisee shall search for and provide the City with the most accurate and available maps and record drawings in a form and content reasonably prescribed by the City reflecting the horizontal and vertical location and configuration of its Telecommunications System within the Public Rights-of-Way and upon City property in a format reasonably acceptable to the City. Franchisee shall provide the City with updated record drawings and maps within a reasonable period of time following receipt of written request. As to any such record drawings and maps so provided, Franchisee does not warrant the accuracy thereof and to the extent the location of the Telecommunications System is shown, such Telecommunications System is shown in its approximate location.

7.11.2 Maps/Record Drawings of Improvements. After Construction involving the locating or relocating of Facilities, the Franchisee shall provide the City with accurate copies of all record drawings and maps showing the horizontal and vertical location and configuration of all located or relocated Facilities within the Public Rights-of-Way. These record-drawings and maps shall be provided at no cost to the City, and shall include hard copies and digital copies in a format reasonably specified by the City. As to any such record drawings and maps so provided, Franchisee does not warrant the accuracy thereof and to the extent the location of the Telecommunications System is shown, such Telecommunications System is shown in its approximate location.

7.12 Restoration of Public Rights-of-Way, Public and Private Property.

7.12.1 Restoration after Construction. Franchisee shall, after completion of Construction of any part of its Telecommunications System, leave the Public Rights-of-Way and other property disturbed thereby, in as good or better condition in all respects as it was in before the commencement of such Construction. Franchisee agrees to promptly complete restoration work to the reasonable satisfaction of the City and in conformance with City Standards, including by way of example and not limitation, backfilling and restoration requirements as set forth in City Standards.

7.12.2 Notice. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-of-Way or other public or private property, the Franchisee shall promptly notify the property owner within twenty-four (24) hours.

7.12.3 Duty to Restore. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-of-Way or other public property, it shall promptly remove any obstructions therefrom and restore

such Public Rights-of-Way and public property to the reasonable satisfaction of the City and in accordance with City Standards.

7.12.4 Temporary Restoration. If weather or other conditions do not allow the complete restoration required by this Section, Franchisee shall temporarily restore the affected Public Right-of-Way or public property. Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

7.12.5 Survey Monuments. All survey monuments which are disturbed or displaced by any Work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications.

7.12.6 Approval. The City Engineer, or designee, shall be responsible for observation and final approval of the condition of the Public Rights-of-Way and City property following any restoration activities therein. Franchisee is responsible for all testing and monitoring of restoration activities.

7.12.7 Warranty. Franchisee shall warrant any restoration work performed by Franchisee in the Public Rights-of-Way or on other public property for two (2) years, normal wear and tear excepted, unless a longer period is required by applicable City Standards. If restoration is not satisfactorily and timely performed by the Franchisee, the City may, after prior notice to the Franchisee, or without notice where the disturbance or damage may create an imminent risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from the Franchisee. Franchisee shall pay the City for such costs in accordance with Section 5.6.9.

7.12.8 Restoration of Private Property. When Franchisee does any Work in the Public Rights-of-Way that affects, disturbs, alters, or damages any adjacent private property, it shall, at its own expense, be responsible for restoring such private property to the reasonable satisfaction of the private property owner.

7.13 Approvals. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Franchisee's Design Documents or to ascertain whether Franchisee's proposed or actual Construction is adequate or sufficient or in conformance with the Design Documents reviewed and approved by the City. No approval given, inspection made, review or supervision performed by the City pursuant to or under authority of this Franchise shall constitute or be construed as a representation or warranty express or implied by the City that such item reviewed, approved, inspected, or supervised, complies with applicable Laws or this Franchise or meets any particular Standard, code or requirement, or is in conformance with the approved Design Documents, and no liability shall attach with respect thereto. City approvals and inspections as provided herein, are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the

design or Construction of the Facilities or Telecommunications System, suitability of the Franchise Area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a governmental entity. The City is under no obligation or duty to supervise the design, Construction, or operation of the Telecommunications System.

7.14 Abandonment of Facilities. Except as may be otherwise provided by Law, Franchisee may abandon in place any Facilities in the Public Rights-of-Way upon written notice to the City, which notice shall include a description of the Facilities it intends to abandon, the specific location in the Public Rights-of-Way of such Facilities, and the condition of such Facilities. However, if the City determines within 180 days of the receipt of notice of abandonment from the Franchisee, that the safety, appearance, functioning, or use of the Public Rights-of-Way and other facilities in the Public Rights-of-Way, including without limitation, utilities and related facilities, will be adversely affected, the operator must remove its abandoned Facilities by a date specified by the City and restore the Public Rights-of-Way in accordance with City Standards. Franchisee shall be and remain responsible in perpetuity for any Facilities abandoned in the Public Rights-of-Way.

ARTICLE 8. MISCELLANEOUS.

8.1 Headings. Titles to articles and sections of this Franchise are not a part of this Franchise and shall have no effect upon the construction or interpretation of any part hereof.

8.2 Entire Agreement. This Franchise contains all covenants and agreements between the City and the Franchisee relating in any manner to the Franchise, use, and occupancy of the Public Rights-of-Way and other matters set forth in this Franchise. No prior agreements or understanding pertaining to the same, written or oral, shall be valid or of any force or effect and the covenants and agreement of this Franchise shall not be altered, modified, or added to except in writing signed by the City and Franchisee and approved by the City in the same manner as the original Franchise was approved.

8.3 Incorporation of Exhibits. All exhibits annexed hereto at the time of execution of this Franchise or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

8.4 Calculation of Time. Except where a period of time refers to “business days,” all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington; provided that, the Effective Date shall be determined as provided at Section 4.3 of this Franchise.

8.5 Time Limits Strictly Construed. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and

any failure of Franchisee to perform within the allotted time may be considered a Default of this Franchise.

8.6 No Joint Venture. It is not intended by this Franchise to, and nothing contained in this Franchise shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between Franchisee and the City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other. The Parties intend that the rights, obligations, and covenants in this Franchise and the collateral instruments shall be exclusively enforceable by the City and Franchisee, their successors, and assigns. No term or provision of this Franchise is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, the Franchisee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. Nothing in this Section 8.6 shall be construed to prevent an assignment as provided for at Sections 2.8 or 7.8.5 of this Franchise.

8.7 Approval Authority. Except as may be otherwise provided by Law or herein, any approval or authorization required to be given by the City, shall be given by the Public Works Director (or its successor), or by the Public Works Director's designee.

8.8 Binding Effect upon Successors and Assigns. All of the provisions, conditions, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, receivers, trustees, legal representatives, transferees and assigns of the Franchisee; and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

8.9 Waiver. No failure by either Party to insist upon the performance of any of the terms of this Franchise or to exercise any right or remedy consequent upon a Default thereof, shall constitute a waiver of any such Default or of any of the terms of this Franchise. None of the terms of this Franchise to be kept, observed or performed by either Party, and no Default thereof, shall be waived, altered or modified except by a written instrument executed by the injured Party. No waiver of any Default shall affect or alter this Franchise, but each of the terms of this Franchise shall continue in full force and effect with respect to any other then existing or subsequent Default thereof. No waiver of any default of the defaulting Party hereunder shall be implied from any omission by the injured Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the injured Party shall not be construed as a waiver of a subsequent Default of the same covenant, term or conditions.

8.10 Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence set forth herein, or its application to any person or circumstance (collectively referred to as "Term"), shall be held to be illegal, invalid, or unconstitutional

for any reason by any court or agency of competent jurisdiction, such Term declared illegal, invalid or unconstitutional shall be severable and the remaining Terms of the Franchise shall remain in full force and effect unless to do so would be inequitable or would result in a material change in the rights and obligations of the Parties hereunder.

8.11 Signs. No signs or advertising shall be permitted in the Franchise Area except as may be required by Law or as may be required by the City for the protection of the public health, safety and welfare, to the extent it has authority to do so.

8.12 Discriminatory Practices Prohibited. Throughout the term of this Franchise, Franchisee shall fully comply with all equal employment and nondiscrimination provisions of applicable Law.

8.13 Notice. Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective either, (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) or when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, properly sealed and addressed as follows:

Franchisee's address:

Verizon Access Transmission Services
600 Hidden Ridge, Mailcode: HQE02E102
Irving, TX 75038
Attn: Franchise Manager

With copies to: Verizon Business Services
1320 N. Courthouse Road, Suite 900
Arlington, VA 22201
Attn: General Counsel, Network & Technology

The City's Address:

City of Black Diamond
24301 Roberts Drive
Black Diamond, WA 98010
Attention: City Administrator

The City and Franchisee may designate such other address from time to time by giving written notice to the other, but notice cannot be required to more than two addresses, except by mutual agreement.

8.14 Survival of Terms. Upon the expiration, termination, revocation or forfeiture of the Franchise, the Franchisee shall no longer have the right to occupy the Franchise Area for the purpose of providing services authorized herein. However, the Franchisee's obligations under this Franchise to the City shall survive the expiration,

termination, revocation or forfeiture of these rights according to its terms for so long as the Franchisee's Telecommunications System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, or until such time as the Franchisee transfers ownership of all Facilities in the Franchise Area to the City or a third-Party, or until such time as the Franchisee abandons said Facilities in place, all as provided herein. Said obligations include, by way of illustration and not limitation, Franchisee's obligations to indemnify, defend, and protect the City, to provide insurance, to relocate its Facilities, and to reimburse the City for its costs to perform Franchisee's Work.

8.15 Force Majeure. In the event Franchisee is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, severe weather conditions, employee strikes and unforeseen labor conditions not attributable to Franchisee's employees, Franchisee shall not be deemed in Default of provisions of this Franchise.

If Franchisee believes that circumstances beyond its control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Franchise, Franchisee shall provide documentation as reasonably required by the City to substantiate the Franchisee's claim. Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is reasonably satisfactory to the City; provided that, the Franchisee shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible, provided that the Franchisee takes prompt and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

8.16 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, whether in contract or in tort or both, is instituted to enforce any word, article, section, subsection, paragraph, provision, condition, clause or sentence of this Franchise or its application to any person or circumstance, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys, paralegals, accountants, and other experts fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as allowed by Washington law and as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by Law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law. This provision shall not apply to the extent that the suit, action, arbitration or other proceeding is brought to interpret any term, condition, provision, section, article or clause of this Franchise.

8.17 Venue/Choice of Law. This Franchise shall be governed by, and construed in accordance with, the laws of the State of Washington. Any action brought relative to enforcement of this Franchise, or seeking a declaration of rights, duties or obligations herein, shall be initiated in the Superior Court of the county in which the City is located or the federal courts serving the county. Removal to federal court shall be to the Federal Court of the Western District of Washington.

8.18 Publication. This ordinance, or a summary thereof, shall be published in the official newspaper of the City, the expense of which shall be borne by Franchisee, and shall take effect and be in full force in accordance with Section 4.3 herein.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND
AT A REGULAR MEETING THEREOF ON THE ____ DAY OF _____, 2018.**

CITY OF BLACK DIAMOND

Carol Benson, Mayor

ATTEST/AUTHENTICATED:

Brenda L. Martinez, City Clerk

Approved as to form:

David Linehan, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:

EXHIBIT "A"

(Acceptance of Franchise)

Franchise issued pursuant to Ordinance No. _____.

I, _____, am the _____, and am the authorized representative to accept the above-referenced Franchise on behalf of _____. In my capacity as _____, and not individually, I certify that this Franchise and all terms and conditions thereof are accepted by _____, without qualification or reservation and that _____ unconditionally guarantee(s) performance of all such terms and conditions.

DATED this ____ day of _____, 20__.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____ |
CITY OF _____ | ss.

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

Dated this ____ day of _____, _____.

(Signature of Notary)

Print Name
Notary public in and for the state of _____, residing at _____
My appointment expires _____

EXHIBIT “B”

(Form of Transfer Agreement)

THIS TRANSFER AGREEMENT (“Agreement”) is made this ___ day of _____, 20___, by and between:

1. PARTIES.

1.1 City of Black Diamond, a legal subdivision of the state of Washington (“City”).

1.2 _____ (“Franchisee”).

1.3 _____ (“Transferee”).

RECITALS

WHEREAS the City has issued a single Franchise (the “Franchise”) to Franchisee, which was authorized on the ___ day of _____, 2016, pursuant to Ordinance No. _____, and

WHEREAS Franchisee has reached an agreement with Transferee on a *(describe transaction, example: conveyance of benefited property)*

_____ with Transferee, to *(example: acquire from Franchisee its facilities and equipment located in the Public Rights-of-Way)* _____, and

WHEREAS Franchisee and Transferee have requested that the City approve a transfer of the Franchise from Franchisee to Transferee, and

WHEREAS, as a result of the transfer of the Franchise, Transferee will assume all rights, duties, and obligations that Franchisee has under the Franchise, will be responsible for full compliance with the Franchise, and will meet or exceed all applicable and lawful federal, state, and local requirements, and

WHEREAS, relying on the representations made by the Transferee and Franchisee, the City, on the ___ day of _____, 20___, has, pursuant to Resolution No. _____ and the Franchise, approved the transfer upon the terms and conditions as stated herein;

NOW, THEREFORE, in consideration of the City's approval of the transfer, subject to the terms and conditions of this Agreement, THE PARTIES DO HEREBY AGREE as follows:

2. TRANSFER. Transfer of the Franchise shall be effective upon the following conditions precedent:

2.1 Receipt by the City of the fully executed acceptance of Franchise attached hereto as Exhibit B-1 together with all required certificates of insurance, security fund and performance bond;

2.2 Payment to the City of the Transfer fees; and

2.3 The date of closing of the sale/conveyance of the property benefited by this Franchise and/or the Facilities located in the Franchise Area or upon a date as mutually agreed to by the City, Franchisee and Transferee as follows:_____

3. ACCEPTANCE OF FRANCHISE OBLIGATIONS.

3.1 The Franchisee and Transferee hereby accept, acknowledge, and agree that neither the proposed transaction between Franchisee and Transferee nor the City's approval of this Agreement shall diminish or affect the existing and continuing commitments, duties, or obligations, present, continuing, and future, of the Franchisee and Transferee embodied in the Franchise.

3.2 Transferee and Franchisee agree that neither the transfer nor the City's approval of this Agreement and the resulting transfer shall in any respect relieve Franchisee, or any of its successors in interest, of any obligation or liability arising from acts or omissions occurring prior to the transfer of the Franchise, whether known or unknown, or the consequences thereof.

3.3 The transfer is not intended and shall not be construed to authorize the Franchisee to take any position or exercise any right that could not have been exercised prior to the Transfer.

3.4 Notwithstanding anything to the contrary herein, Transferee shall not be responsible for any of Franchisee's financial liabilities and obligations under the Franchise or pursuant to the City code, rules, and regulations that accrued before the Transfer of the Franchise, and Franchisee shall not be responsible for any financial liabilities and obligations under the Franchise or pursuant to the City code, rules, and regulations that accrue on or after the Transfer of the Franchise.

3.5 The City waives none of its rights with respect to the Franchisee's or Transferee's compliance with the terms, conditions, requirements, and obligations set forth in the Franchise. The City's approval of this Agreement shall in no way be deemed a

representation by the City that Franchisee is in compliance with all of Franchisee's obligations under the Franchise.

3.6 Franchisee and Transferee acknowledge and agree that the City's approval and acceptance of this Agreement and the resulting transfer is made in reliance upon the representations, documents, and information provided by the Franchisee and Transferee in connection with the request for Transfer.

4. MISCELLANEOUS PROVISIONS.

4.1 Conditions Precedent. The Agreement shall be effective and binding upon the signatories once it has been signed by all signatories; provided that, within 30 days of execution of the Agreement by all of the signatories, Transferee has provided to the City the following: (1) all fees required for this Transfer, (2) its acceptance of the Franchise in substantially the form of the document attached hereto as Exhibit B-1; (3) its insurance certificate in conformance with the requirements of the Franchise; (4) a performance bond or cash deposit in conformance with the requirements of the Franchise.

4.2 Entire Agreement. The Agreement constitutes the entire agreement of the Parties with respect to the matters addressed herein. No statements, promises, or inducements inconsistent with the Agreement made by any Party shall be valid or binding, unless in writing and executed by all Parties.

4.3 Binding Acceptance. The Agreement shall bind and benefit the Parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors, and assigns, and the promises and obligations herein shall survive the expiration date hereof. Any purported transfer of the Agreement is void without the express written consent of the signatories.

4.4 Severability. In the event that any provision of the Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

4.5 Defined Terms. Terms not defined in this Agreement shall have the same meaning as given in the Franchise.

4.6 Governing Law. The Agreement shall be governed in all respects by the laws of the state of Washington.

4.7 Notice. Pursuant to Section 8.13 of the Franchise, Notices to Transferee shall be delivered to:

Transferee's address: **
 **
 **
 **

And to:

**
**
**
**

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first written above.

CITY:

FRANCHISEE:

By: _____, City Administrator

By: _____
Title: _____

TRANSFeree:

By: _____
Title: _____

Tax Id. No. _____

TRANSFER EXHIBIT B-1

Acceptance of Franchise

Franchise issued pursuant to Ordinance No. _____ and accepted _____, 20____; Transfer authorized pursuant to Resolution No. _____, effective _____, 20____.

I, _____, am the _____, and am the authorized representative to accept the above-referenced Franchise on behalf of _____. In my capacity as _____, and not individually, I certify that this Franchise and all terms and conditions thereof are accepted by _____, without qualification or reservation and that _____ unconditionally guarantee(s) performance of all such terms and conditions.

DATED this _____ day of _____, 20____.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____ |
CITY OF _____ | ss.

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

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name
Notary public in and for the state of _____, residing at _____
My appointment expires: _____

EXHIBIT “C”

(Description of Franchise Area)

The area within the jurisdictional boundaries of the City of Black Diamond, Washington, and such additional areas as may be included in the jurisdictional boundaries of the City of Black Diamond, Washington, during the term of this Franchise.

EXHIBIT "D"

(Insurance Requirements)

1. General Requirement. Franchisee shall have adequate insurance at all times while Franchisee owns or operates Facilities in the Public Rights-of-Way, to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with the Work, the Facilities, or the activities of Franchisee, its employees, agents, representatives, contractors, subcontractors and their employees, within the Franchise Area.

2. Minimum Insurance Limits. The Franchisee shall maintain the following minimum insurance coverages and limits:

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, and shall provide coverage for any and all costs, including reasonable defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Such insurance shall include broad form and blanket contractual coverage, including coverage for the Franchise as now or hereafter amended. Coverage must be written with the following limits of liability:

\$2,000,000 per occurrence,
\$4,000,000 general aggregate and
\$1,000,000 products/completed operations aggregate.

2.2 Automobile Liability: shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$2,000,000 per occurrence.

2.3 Workers Compensation Insurance: shall be maintained during the life of this Franchise to comply with statutory limits for all employees, and in the case any work is sublet, the Franchisee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all the employees. The Franchisee shall also maintain, during the life of this policy, employer's liability insurance with limits of \$1,000,000 each occurrence.

2.4 Excess or Umbrella Liability: \$5,000,000 each occurrence and \$5,000,000 policy limit.

3. Endorsements. Franchisee Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

3.1 The Franchisee's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Franchisee's insurance and shall not contribute to it.

3.2 Franchisee, through policy endorsement, shall waive its rights of subrogation against the City for all claims and suits.

3.3 That the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.4 The Franchisee's insurance shall name the City as an additional insured, to protect or insure as an additional insured, from and against Liabilities arising out of work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Franchisee's insurance shall include a requirement that the "railroad exclusion" be deleted or may include, in the alternative, ISO endorsement CG 24 17 or the equivalent.

3.6 The insurance coverages and limits provided herein shall not be canceled without thirty (30) days' prior written notice first being given to the City, with the exception that ten (10) days' notice shall be required for cancellation resulting from non-payment of premium. If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4. Acceptability of Insurers. Each insurance policy obtained pursuant to this Franchise shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "VII", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Franchisee shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

5. Verification of Coverage. The Franchisee shall furnish the City with signed certificates of insurance and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Automobile Liability, Commercial General Liability and Umbrella or Excess insurance of the Franchisee upon acceptance of this Franchise. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

6. Deductible. Commercial General Liability Insurance policies and coverage required herein may include a deductible; provided, however, that if Franchisee elects to include any deductible, Franchisee shall itself directly cover, in lieu of insurance, any and all City Liabilities that would otherwise in accordance with the provisions of this Franchise be covered by Franchisee insurance if Franchisee elected not to include a deductible. Such

direct coverage by Franchisee shall be in an amount equal to the amount of Franchisee's actual deductible.

7. No Limitation. Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at law or in equity.

EXHIBIT "E"

(Financial Security)

1. Performance Bond.

1.1 Franchisee shall provide to the City a faithful performance and payment bond in the initial amount of **\$50,000** to ensure the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example and not limitation, its obligations to relocate and remove its Facilities, to restore the Public Rights-of-Way and other property when damaged or disturbed, to reimburse the City for its Direct Costs and keeping Franchisee's insurance in full force.

1.2 The performance bond shall be in a form with terms and conditions reasonably acceptable to the City and reviewed and approved by the City Attorney.

1.3 The performance bond shall be with a surety with a rating no less than "A- VII" in the latest edition of "Bests Rating Guide," published by A.M. Best Company.

1.4 The Franchisee shall pay all premiums or costs associated with maintaining the performance and payment bond, and shall keep the same in full force and effect at all times. If Franchisee fails to provide or maintain the bond, then the City, in its sole discretion, may require Franchisee to substitute an equivalent cash deposit as described below in lieu of the bond.

1.5 Franchisee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by Franchisee, or limit the liability of Franchisee to the amount of the bond(s), or otherwise limit the City's recourse to any other remedy available at law or in equity.

1.6 The amount of the bond may, in the reasonable discretion of the City, be adjusted by the City to take into account (1) cumulative inflation, (2) increased risk to the City, (3) the experiences of the Parties regarding Franchisee compliance with its obligations under the Franchise, and (4) issuance of Site Specific Permits for installation of new Facilities. Prior to adjusting the amount of the bond, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.

2. Cash Deposit/Irrevocable Letter of Credit in Lieu of Bond.

Franchisee may, at its election substitute an equivalent cash deposit with an escrow agent approved by the City or an irrevocable letter of credit in form and content reasonably approved by the City Attorney, instead of a performance and payment bond. This cash deposit or irrevocable letter of credit shall ensure the full and faithful performance of all of Franchisee's responsibilities hereto under this Franchise and all applicable Laws. This

includes but, is not limited to, its obligations to relocate or remove its facilities, restore the Public Rights-of-Way and other property to their original condition, reimbursing the City for its costs, and keeping Franchisee's insurance in full force.

In the event that the Franchisee fails to cure a Default as provided in Section 6 of the Franchise, the City may, at its option, draw upon the cash deposit or letter of credit up to the amount of the City's costs incurred to cure Franchisee's default. Upon the City's cure of Franchisee's default, the City shall notify Franchisee in writing of such cure.

In the event that the City draws upon the cash deposit or letter of credit, Franchisee shall thereupon replenish the cash deposit or letter of credit to the full amount as specified herein or provide a replacement performance and payment bond.

EXHIBIT “F”

(Contractor/Subcontractor Insurance Requirements)

1. General Requirement. Prior to commencing and during the period of Work performed within the Franchise Area, Franchisee contractors and subcontractors (hereafter the “Contractors”) must have in place adequate insurance to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with this such Work.

2. Minimum Insurance Limits. The Contractors shall maintain the following minimum insurance coverages and limits:

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, , and shall provide coverage for any and all costs, including reasonable defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Coverage must be written with the following limits of liability:

\$1,000,000 per occurrence,
\$2,000,000 general aggregate and
\$1,000,000 products/completed operations aggregate.

2.2 Automobile Liability: shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$1,000,000 per occurrence.

2.3 Workers Compensation Insurance: shall be maintained during the period of such Work to comply with statutory limits for all employees.

3. Endorsements. Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following:

3.1 The Contractor’s insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor’s insurance and shall not contribute to it.

3.2 Contractor, through policy endorsement, shall waive its rights of subrogation against the City for all claims and suits.

3.3 That the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

3.4 The Contractor's insurance shall name the City as an additional insured, to protect or insure as an additional insured, from and against Liabilities arising out of Work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Contractor's insurance shall include a requirement that the "railroad exclusion" be deleted or may include, in the alternative, ISO endorsement CG 24 17 or equivalent.

3.6 The insurance coverages and limits provided herein shall not be canceled without thirty (30) days written notice first being given to the City, with the exception that ten (10) days' notice shall be required for cancellation resulting from non-payment of premium. If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4. Acceptability of Insurers. Each insurance policy required herein shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "VII", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Contractor shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

5. Verification of Coverage. The Franchisee shall furnish the City with Contractors' signed certificates of insurance and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the Automobile Liability, and Commercial General Liability policies of the Contractors. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices.

6. No Limitation. Contractor's maintenance of insurance policies required herein shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee or contractor to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at law or in equity.