



Anacortes City Council
Municipal Building Council Chambers
904 Sixth Street

August 21, 2017
6:00 p.m.

PRELIMINARY AGENDA

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Announcements and Committee Reports**
 - a. Biggest Loser Energy Conservation Awards Presentation
 - b. Public Works Committee
4. **Public Comment**
5. **Consent Agenda (Action)**
 - a. Minutes of August 14, 2017
 - b. Approval of Claims in the amount of: \$367,436.91
 - c. Contract Modification: WWTP Emissions Testing and CEMS Diagnostics (15-032-SEW-003)
 - d. Contract Modification: WWTP Outfall Repair Manhole Installation (13-020-SEW-007)
 - e. Contract Award: Replace Existing WWTP Serial Radio Telemetry System – Phase B (14-009-IDS-004)
 - f. Street Fair Application: Oyster Run 2017
6. **Public Hearings**
7. **Other Business**
 - a. * Municipal Fiber Update and NOANET Network Coordinated Services Support Contract for COS Service Zones Software Implementation and Maintenance (Presentation/Discussion/Possible Action)
 - b. * Ordinance 3005: Wave Franchise Agreement (Discussion/Possible Action)
8. **Adjournment**

Per Resolution 1949, citizens wishing to comment on items not on the agenda may do so under the Public Comment portion of the agenda. Citizens wishing to comment on agenda items indicated with an asterisk () may do so as those items are considered by Council during the course of the meeting. Citizens wishing to speak will please sign in at the back of the Council Chambers prior to the start of the meeting. The Mayor may limit comments to those who have signed in, and may limit the time allotted to each speaker to facilitate the orderly progress of the meeting.*

The City of Anacortes encourages people with disabilities to participate in public meetings.
For assistance with special needs, please contact Cherri Kahns at 360-299-1950 at least 48 hours prior to this meeting.



Anacortes City Council

Proposed Agenda Items for the Next Eight Weeks Beginning August 28, 2017

Subjects listed below have been tentatively suggested for consideration by the Anacortes City Council on the dates indicated. Items may be added to, removed from or rearranged on this list. Routine business such as approval of minutes, vouchers and consent agenda items is not included. The complete Preliminary Agenda for each meeting is published at 3:00 on the Wednesday prior to the meeting. Published Agendas are subject to change and may be updated following the posting period. For additional information on agenda topics, please contact the City Clerk's office at 360-299-1960 to be directed to the sponsoring staff member.

August 28, 2017

- Contract Awards: Treatment Plant Chemicals
- Contract Modification: M Ave Waterline Replacement Project (17-001-WTR-002)
- Finance Department Strategic Report and Budget Update (Discussion)
- Administrative Services Budget Update (Discussion)

September 5, 2017

September 11, 2017

- Library Budget and General Update (Discussion)
- Fire/EMS Budget and General Update (Discussion)

September 18, 2017

- Water Rate Study Presentation

September 25, 2017

- Anacortes Americorp in Anacortes School District Presentation

October 2, 2017

October 9, 2017

- Conditional Use Permit CUP-2017-0002: Dog Kennel/Boarding and Grooming Associated with an Existing Doggy Daycare at Molly Lane (Discussion/Possible Action)
- SDP-2017-0001; WSDOT Shoreline Permit(s) SSDP, SCUP & Shoreline Variance; SR-20 /Sharpe's Corner Vicinity Improvements (Discussion/Possible Action)

October 16, 2017

Upcoming City Council Committee Meetings

The public is welcome to attend City Council Committee Meetings.

- Public Works, Monday, Aug 21, 2017, 5:00 PM, Public Works Director's Office, City Hall
- Finance, Wednesday, Aug 23, 2017, 5:00 PM, Main Conference Room, City Hall
- Parks & Recreation, Thursday, Aug 24, 2017, 6:00 PM, Main Conference Room, City Hall
- Planning, Monday, Aug 28, 2017, 5:00 PM, Main Conference Room, City Hall
- Public Works, Tuesday, Sep 5, 2017, 5:00 PM, Public Works Director's Office, City Hall
- Housing Affordability & Community Services, Thursday, Sep 7, 2017, 1:30 PM, City Hall
- Planning, Monday, Sep 11, 2017, 5:00 PM, Main Conference Room, City Hall

City Council Minutes – August 14, 2017

Mayor Laurie Gere called to order the regular Anacortes City Council meeting of August 14, 2017 at 6:00 p.m. Councilmembers Eric Johnson, Erica Pickett, Liz Lovelett, Bruce McDougall and Matt Miller were present. Councilmembers Ryan Walters and Brad Adams were absent. The assembly joined in the Pledge of Allegiance.

Announcements and Committee Reports

Mr. McDougall said that he would miss the August 21, 2017 City Council meeting due to business travel.

Ms. Lovelett commented on “what unfolded in Virginia this last week” and asked the community to come together to condemn “these acts by violent white supremacists”. She said racism continues to happen as long as people don’t call it out and that it is incumbent to talk about it and “be the change we want to see in the world.” She asked those present to observe a moment of silence “for what’s transpiring in these places that have much deeper systemic inequality” than Anacortes suffers.

Planning Committee: [The regularly scheduled committee meeting had been cancelled earlier in the day.]

Public Comment

Rosemary Stevens, 2410 32nd Street, asked Council to address traffic safety on 32nd Street west of D Avenue. Ms. Stevens said that the 32nd Street speed limit is 30 mph on both sides of D Avenue but that west of D Avenue is a quiet residential neighborhood with children at play and no sidewalks. She reported that cars often travel that segment at 30 mph, expecting the street to continue through to Skyline, then turn around and exit at speed when they discover that it terminates. Ms. Stevens asked Council to lower the speed limit on 32nd Street west of D Avenue and add signage at 32nd Street and B Avenue to advise that the street does not go through and that children are at play. She also asked for intersection improvements at 32nd Street and D Avenue to help those trying to get across D Avenue. Mr. Miller reported that those topics were on the agenda for the Traffic Safety Committee meeting the following day and that he would relay her concerns. Mayor Gere invited Ms. Stevens to attend the committee meeting.

Anthony Young, 2020 27th Place, echoed Ms. Lovelett’s earlier comments. Mr. Young praised Anacortes but observed that at this time society can pivot left or right, towards or away from one another. He asked Council and the community to remain hyper vigilant to be ever inclusive and always consider opposing viewpoints. He challenged Council as leaders in the society to speak forward and challenge the norms that would sometimes be so exclusive to others.

Consent Agenda

Mr. Johnson moved, seconded by Ms. Lovelett, to approve the following Consent Agenda items. The motion carried unanimously by voice vote.

- a. Minutes of August 7, 2017
- b. Approval of Claims in the amount of: \$404,646.38
- c. Resolution 1994: Declaring Sole Source Purchase of TranStar Pipeline Inspection Camera & Tractor

The following vouchers/checks were approved for payment:
EFT numbers: 86005 through 86046, total \$210,544.61
Check numbers: 86047 through 86086, total \$183,869.37
Wire transfer numbers: 219455 through 220107, total \$18,551.36

There being no further business, at approximately 6:12 p.m. the Anacortes City Council meeting of August 14, 2017 was adjourned.

The following claims against the City of Anacortes have been preaudited and certified by the Clerk-Treasurer as ready for City Council approval at the August 21, 2017 City Council meeting:
[Download this file in OpenDocument spreadsheet format.](#)

Invoice Doc #	Transaction Date	Invoice #	Vendor #	Vendor Full Name	Description	Total Amount
220201	4/1/2017	2483	02469	SKAGIT COUNTY SHERIFF'S OFFICE	INMATE MEDICAL PERIOD ENDING 6/25/2017	\$13,535.49
220174	5/24/2017	I-13929	08758	SIGNS BY TOMORROW	CAUSLAND MEMORIAL PARK SIGNAGE	\$305.91
220276	6/5/2017	S010736223.001	01446	KELLER SUPPLY COMPANY	SINK - WASHINGTON PARK PROJECT	\$447.13
220365	6/26/2017	1-553336	00789	DIAMOND RENTALS INC.	PORTABLE TOILET RENTAL - TENNIS COURTS	\$85.00
220241	7/3/2017	0791007540	04925	PROFORMA	COMMUNITY TASK FORCE HANDOUTS	\$409.73
220367	7/10/2017	1-553343	00789	DIAMOND RENTALS INC.	TWO HAND WASH STATIONS - KIDS R BEST	\$150.00
218912	7/11/2017	ORDERS8003115	01886	NORTH COAST ELECTRIC	TECH CONNECT SOFTWARE SUPPORTS	\$8,224.81
220235	7/18/2017	992452675	01129	GRAYBAR ELECTRIC COMPANY, INC	FIBER MATERIALS - FIBER	\$1,953.38
220382	7/18/2017	APD Port Sec2016	02505	SKAGIT- 911	RADIO GRANT; PROGRAMMING RADIOS	\$10,000.00
220378	7/20/2017	0113259	06543	PACIFIC TIRE COMPANY, INC	TIRE ROTATION FOR VEH #403	\$41.54
220370	7/21/2017	0119023-IN	02202	PUMPTECH, INC	REPLACEMENT PUMP FOR CEMETERY IRRIGATION	\$2,782.20
218752	7/23/2017	1420061	10296	THATCHER COMPANY OF MONTANA	CALCIUM NITRATE	\$8,122.66
220239	7/24/2017	4	04441	GRAY & OSBORNE INC	WATER TRANSMISSION MAIN REHABILITATION - PHASE 1 - 6/25/17-7/22/17	\$2,891.84
220430	7/24/2017	170724-1	10161	SOUND WATER SERVICES INC	CALIBRATION OF PC2400 PARTICLE COUNTERS	\$1,544.58
220376	7/25/2017	0113418	06543	PACIFIC TIRE COMPANY, INC	TIRES FOR SHOP STOCK	\$1,102.28
220362	7/26/2017	1-553331	00789	DIAMOND RENTALS INC.	PORTABLE TOILET RENTAL	\$320.00
220366	7/26/2017	1-553342	00789	DIAMOND RENTALS INC.	PORTABLE TOILET RENTAL - ROTARY FIELD	\$85.00
220211	7/26/2017	001-376474	02109	PISTON SERVICE OF ANACORTES	FITTINGS FOR ANTIQUE ENGINE	\$39.91
220346	7/26/2017	0041141-IN	02753	TMG SERVICES, INC	SERVICE LABOR/TRAVEL/MILES	\$728.25
220274	7/27/2017	8483	08981	PACIFIC NORTHWEST FIREWOOD	300 BUNDLES FIREWOOD-RESALE ITEM	\$1,050.00
220345	7/31/2017	41	00424	BUBBA SUDZ CAR WASH, INC.	JULY CAR WASHES- 17	\$153.00
220227	7/31/2017	IN924419	10389	NOANET	FIBER NETWORK OPS, GIS, AND ENGINEERING SUPPORT - JULY 2017	\$7,915.00
220228	7/31/2017	IN924421	10389	NOANET	FIBER NETWORK OPS, GIS, AND ENGINEERING SUPPORT - TRAVEL DAYS JULY 2017	\$492.00
220229	7/31/2017	IN924423	10389	NOANET	TRAVEL EXPENSES JULY 2017 - FIBER NETWORK OPS, GIS, AND ENGINEERING SUPPORT	\$1,246.62
220175	7/31/2017	819108	08101	PUBLIC SURPLUS	PUBLIC SURPLUS AUCTIONS JULY	\$712.46
220279	7/31/2017	I-14634	08758	SIGNS BY TOMORROW	HEART LAKE SIGNS	\$152.74

Invoice Doc #	Transaction Date	Invoice #	Vendor #	Vendor Full Name	Description	Total Amount
220234	7/31/2017	901	02470	SKAGIT CONSERVATION DISTRICT	NPDES II OUTREACH & EDUCATION - JULY 2017	\$932.86
220434	7/31/2017	23028	07880	SKAGIT POWDER COATING INC	ITEM FOR USE ON CHARGING STATION	\$162.75
220090	7/31/2017	INV00251215	10661	SMARSH	ARCHIVING PLATFORM	\$466.00
220308	7/31/2017	114-5620656	04834	UNITED SITE SERVICES, INC	2100 PENNSYLVANIA AVE - JULY	\$119.11
220172	7/31/2017	7070097	02855	UTILITIES UNDERGROUND LOCATION	JULY LOCATE TICKETS	\$243.32
220242	7/31/2017	205478	07524	WIDENER & ASSOCIATES	WWTP OUTFALL REPAIR PERMITTING - JULY 2017	\$4,785.20
220185	8/1/2017	190-1840-00	00147	ANACORTES, CITY OF	WWTP - JULY	\$4,259.35
214663	8/1/2017	001-65746	00697	CUMMINS, INC.	AUTOMATIC TRANSFER SWITCH FIRE DEPT.	\$4,969.74
214664	8/1/2017	001-65771	00697	CUMMINS, INC.	40 KW GENERATOR FOR FIRE STATION 2	\$25,824.87
220421	8/1/2017	17-17728	00850	EDGE ANALYTICAL, INC	FINAL EFFLUENT TESTING	\$166.00
220198	8/1/2017	008001870	00368	GALLS LLC - DBA BLUMENTHAL UNI	APD UNIFORM ITEMS	\$622.19
220199	8/1/2017	008001845	00368	GALLS LLC - DBA BLUMENTHAL UNI	APD UNIFORM ITEMS	\$27.31
220200	8/1/2017	008001871	00368	GALLS LLC - DBA BLUMENTHAL UNI	APD UNIFORM ITEMS	\$192.66
220092	8/1/2017	52162	01564	LEFEBER TURF FARM	TURF - STORVIK	\$310.78
220218	8/1/2017	860	10520	MIN-NS	AUGUST SUBSCRIPTION	\$130.20
220192	8/1/2017	00085070	09304	OWEN EQUIPMENT COMPANY	PART FOR VEH #610	\$3,326.15
220096	8/1/2017	530	02141	PORT OF ANACORTES	DOCK RENTAL QD-13 QD-23 & QD-27	\$98.88
220097	8/1/2017	983	02141	PORT OF ANACORTES	Dock Rental - QD-19	\$32.96
220098	8/1/2017	984	02141	PORT OF ANACORTES	DOCK RENTAL - QD24	\$32.96
220099	8/1/2017	985	02141	PORT OF ANACORTES	DOCK RENTAL - QD-21	\$32.96
220100	8/1/2017	986	02141	PORT OF ANACORTES	DOCK RENTAL - QD-22	\$32.96
220101	8/1/2017	987	02141	PORT OF ANACORTES	DOCK RENTAL	\$32.96
220102	8/1/2017	989	02141	PORT OF ANACORTES	DOCK RENTAL- QD-25	\$32.96
220103	8/1/2017	8292	02141	PORT OF ANACORTES	MOORAGE - QUARTERLY - SPACE QD-01A	\$66.60
220278	8/1/2017	188701	08818	REECE, STORMIE	CLEANING OF DEPOT - JULY	\$572.00
220193	8/1/2017	1178891	02681	SURETY PEST CONTROL	MONTHLY PEST CONTROL - OPS	\$48.83
220281	8/1/2017	107088	08325	VENTEK INTERNATIONAL	MONTHLY SERVER HOSTING/CELLULAR CARRIER	\$135.00
220167	8/1/2017	1388216-0043-8	02997	WASTE MANAGEMENT	JULY 2017 CONTRACTED SERVICES	\$100,761.00
220437	8/2/2017	DNR 117739/2018	00778	DEPARTMENT OF NATURAL	DNR LEASE FIDALGO BAY 76615	\$3,284.39
220359	8/2/2017	10570692	01165	HACH COMPANY	FLUORIDE REAGENT (12) EA	\$509.54
220104	8/2/2017	I18000156	02930	WASHINGTON STATE PATROL	P&R BACKGROUND CHECKS	\$24.00
220356	8/3/2017	10572751	01165	HACH COMPANY	FLUORIDE REAGENT	\$98.45

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220240	8/3/2017	10642	10273	SKILLINGS CONNOLLY, INC	WASTEWATER TREATMENT PLANT OUTFALL REPAIR DESIGN 6/26/17-7/25/17	\$22,903.38
220357	8/3/2017	331145	02839	USA BLUE BOOK	BEAKERS/CYLINDERS	\$170.42
220417	8/3/2017	27355	10710	VM POSITIONING INC	CASE OF SUPINE HEAD POSITIONERS	\$101.56
220273	8/4/2017	735227	00306	BAYSHORE OFFICE PRODUCTS INC	P&R OFFICE SUPPLIES	\$3.54
220433	8/4/2017	008024944	00368	GALLS LLC - DBA BLUMENTHAL UNI	APD UNIFORM ITEMS	\$158.77
220237	8/4/2017	0147368	06077	GEOENGINEERS, INC.	CRITICAL AREAS REGULATIONS UPDATE - 6/3/17-7/28/17	\$775.80
220164	8/4/2017	1177074	02681	SURETY PEST CONTROL	PEST CONTROL @ CITY HALL	\$43.40
220277	8/6/2017	201	10695	NORTHWEST ENDURANCE EVENTS	AID STATION/FINISH LINE/RACE TIMING -	\$500.00
220350	8/7/2017	S3580316.001	03896	BUILDERS' HARDWARE & SUPPLY	WA PARK NEW LOCKS	\$348.45
220432	8/7/2017	008034723	00368	GALLS LLC - DBA BLUMENTHAL UNI	APD UNIFORM ITEMS	\$685.56
220435	8/7/2017	008034774	00368	GALLS LLC - DBA BLUMENTHAL UNI	APD UNIFORM ITEMS	\$162.72
220436	8/7/2017	008034762	00368	GALLS LLC - DBA BLUMENTHAL UNI	APD UNIFORM ITEMS	\$63.90
220243	8/7/2017	SO1119070	07823	MUNICIPAL EMERGENCY SERVICES	GRANT - SCBA CYLINDERS	\$5,841.21
220349	8/8/2017	922696/1	00021	ACE HARDWARE	WTP MAINTENANCE SUPPLIES	\$46.64
220223	8/8/2017	214665A	10626	BAY CITY SUPPLY	FACILITY SUPPLIES	\$39.06
220284	8/8/2017	refund-crockford	10700	CROCKFORD, TOM	CAMPING REFUND	\$52.00
220238	8/8/2017	442321	00742	DAY WIRELESS SYSTEMS INC	FIRECOM SYSTEMS IN 2917 & 2922	\$1,668.19
220388	8/8/2017	WAANA93588	00939	FASTENAL CO	WWTP MAINTENANCE ITEMS	\$3.37
220230	8/8/2017	992829620	01129	GRAYBAR ELECTRIC COMPANY, INC	FIBER MATERIALS - CONDUIT	\$43,492.01
220231	8/8/2017	992829622	01129	GRAYBAR ELECTRIC COMPANY, INC	FIBER MATERIALS - DROPS	\$4,184.96
220233	8/8/2017	992829621	01129	GRAYBAR ELECTRIC COMPANY, INC	FREIGHT CHARGE FOR FIBER DROPS	\$81.38
220190	8/8/2017	MV171715	01801	MOTOR TRUCKS, INC	PART FOR VEH #605	\$86.76
220203	8/8/2017	2017H027	01709	MPI-MCNEILL POLYGRAPH & INVEST	PRE EMPLOYMENT POLYGRAPH	\$200.00
220285	8/8/2017	refund-Nelson	10701	NELSON, MARY	CAMPING REFUND	\$37.00
220377	8/8/2017	0113923	06543	PACIFIC TIRE COMPANY, INC	TIRE ROTATION FOR VEH #514	\$87.34
220343	8/8/2017	001-377660	02109	PISTON SERVICE OF ANACORTES	PART FOR VEH #832	\$29.71
219922	8/8/2017	Z177384	02123	PLATT ELECTRIC SUPPLY INC	LED BULBS AND CONDUIT DIE	\$49.11
220186	8/8/2017	10302	02405	SEBO'S DO-IT CENTER	PART FOR #11948	\$70.04
220341	8/8/2017	10308	02405	SEBO'S DO-IT CENTER	PROPANE FOR VEH #424	\$20.80

Invoice Doc #	Transaction Date	Invoice #	Vendor #	Vendor Full Name	Description	Total Amount
220195	8/8/2017	1177091	02681	SURETY PEST CONTROL	FACILITY PEST CONTROL FIDALGO CENTER	\$92.23
220196	8/8/2017	170738	04831	T-SHIRTS BY DESIGN	BALL BAGS	\$71.61
220163	8/9/2017	735693	00306	BAYSHORE OFFICE PRODUCTS INC	WWTP OFFICE SUPPLIES	\$8.16
220162	8/9/2017	cpls	00765	DEPARTMENT OF LICENSING	CPLS TO D.O.L.; JULY 2017	\$483.00
220389	8/9/2017	WAANa93614	00939	FASTENAL CO	WWTP MAINTENANCE ITEMS	\$21.10
220348	8/9/2017	283663	01023	FRONTIER BUILDING SUPPLY	WTP MAINTENANCE ITEMS	\$38.82
220270	8/9/2017	refund-Glaeser	10704	GLAESER, WILLIAM	CAMPING REFUND	\$21.00
220161	8/9/2017	BLD-2017-0358	10702	MT BAKER ROOFING	PERMIT REFUND FOR CANCELLED JOB	\$143.75
220168	8/9/2017	8450	08981	PACIFIC NORTHWEST FIREWOOD	520 BUNDLES OF FIREWOOD/RESALE ITEM	\$1,770.00
220158	8/9/2017	Petty Cash Keri	02088	PETTY CASH FUND	REIMBURSE PETTY CASH FUND KERI	\$189.79
220188	8/9/2017	001-377746	02109	PISTON SERVICE OF ANACORTES	PARTS FOR VEH #704	\$30.21
220189	8/9/2017	001-377778	02109	PISTON SERVICE OF ANACORTES	PARTS FOR VEH #512	\$44.13
220272	8/9/2017	refund - Powers	10705	POWERS, SUZANNE	CAMPING REFUND	\$21.00
220169	8/9/2017	10433	02405	SEBO'S DO-IT CENTER	SHOP MAINTENANCE ITEMS	\$15.17
220173	8/9/2017	10431	02405	SEBO'S DO-IT CENTER	PARTS FOR STREET DEPT	\$1.28
220187	8/9/2017	10388	02405	SEBO'S DO-IT CENTER	PARTS FOR VEH #704	\$38.95
220347	8/9/2017	0435-5	02434	SHERWIN WILLIAMS	WTP PAINT	\$239.13
220368	8/9/2017	170738	04831	T-SHIRTS BY DESIGN	BALL BAGS	\$71.61
220191	8/9/2017	1369812	09237	WASHINGTON TRACTOR, INC	PART FOR VEH #704	\$18.99
220176	8/10/2017	78395662	02154	150-PRAXAIR DISRIBUTION INC	CYLINDER RENTAL, COMPRESSED	\$417.90
220335	8/10/2017	1990297857	06718	ARAMARK	APD NYLON MATS CLEANED	\$16.28
220271	8/10/2017	refund-Ceausu	10706	CEAUSU, KRISTEN	CAMPING REFUND	\$288.00
220331	8/10/2017	8493 30 017 0490698	04412	COMCAST	CITY HALL INTERNET CONNECTION 8/20-9/19/17	\$186.12
220332	8/10/2017	8498 30 030 0111230	04412	COMCAST	WTP INTERNET 14489 RIVER BEND RD. - 8/19-9/18/17	\$231.57
220213	8/10/2017	188857	00950	FIDALGO COFFEE ROASTERS	AFD BREAKROOM SUPPLIES	\$93.00
219784	8/10/2017	525408	10295	HASA, INC	SODIUM HYPOCHLORITE 12.5% SOLUTION	\$4,485.05
220166	8/10/2017	123944	10177	INFOSEND, INC.	UB STATEMENT PROCESSING JULY	\$3,568.68
220165	8/10/2017	BLD-2017-0322	10703	ISLAND HOSPITAL	PLAN REVIEW DEPOSIT REFUND	\$504.97
220194	8/10/2017	port of anacortes	02141	PORT OF ANACORTES	STORAGE FEES FOR SAILING PROGRAM.	\$712.50
220207	8/10/2017	30000006290	02192	PUGET SOUND ENERGY	MUSEUM 7/7-8/4/17	\$178.23
220208	8/10/2017	300000008114	02192	PUGET SOUND ENERGY	METERS, VAULTS & STREET LIGHTS 7/1-8/1/17	\$354.44
220216	8/10/2017	300000004923	02192	PUGET SOUND ENERGY	AFD ALL STATIONS: 7/6 - 8/4	\$692.05
220361	8/10/2017	140-795-727-1	02192	PUGET SOUND ENERGY	PARKS/CEM/WASH. PARK/FAC/DEPOT	\$1,874.88
220220	8/10/2017	10477	02405	SEBO'S DO-IT CENTER	SHOP MAINTENANCE ITEMS	\$24.50
220342	8/10/2017	10482	02405	SEBO'S DO-IT CENTER	PART FOR #11960	\$57.07

Invoice Doc #	Transaction Date	Invoice #	Vendor #	Vendor Full Name	Description	Total Amount
220364	8/10/2017	599512	02468	SKAGIT COUNTY SOLID WASTE FUND	WASTE DISPOSAL FEES	\$582.73
220219	8/10/2017	LTAC 1707	05726	STOUGHTON, MARY	LTAC HEART OF A RESTROOM CLEANING	\$256.00
220225	8/10/2017	S20179506	02677	SUPERIOR SYSTEMS, INC	GRANT: FABRICATION OF 2 SCBA RACKS	\$1,350.83
220197	8/11/2017	12683SEA	08639	BLACKPOINT IT SERVICES, INC	SR CENTER-SECURITY SOFTWARE	\$1,642.57
220333	8/11/2017	8498 30 017 0464628	04412	COMCAST	WA PARK INTERNET 8/21-9/20/17	\$96.12
220222	8/11/2017	J86463	01023	FRONTIER BUILDING SUPPLY	SHOP MAINTENANCE ITEMS	\$77.32
220224	8/11/2017	982515	01023	FRONTIER BUILDING SUPPLY	FASTENER PANELS FOR FLEET- ADDITION	\$1,478.37
220351	8/11/2017	17-048-WTR-001	08195	IMCO GENERAL CONSTRUCTION	RETAINAGE RELEASE	\$13,594.47
220429	8/11/2017	0478191-IN	02199	NATIONAL SAFETY, INC	METAL FIRST AID CONTAINER	\$16.40
220307	8/11/2017	107543	01939	NORTHSTAR CHEMICAL INC.	SODIUM HYDROXIDE - 25% - BULK	\$4,781.78
220340	8/11/2017	3000000005235	02192	PUGET SOUND ENERGY	2102 PENNSYLVANIA AVE. 7/7-8/4/17	\$4,509.63
220338	8/11/2017	99252929	01351	RICOH USA, INC	S/N C32029555 CITY HALL COPIER 3RD 8/1-8/31/17	\$377.31
220384	8/11/2017	10555	02405	SEBO'S DO-IT CENTER	PART FOR OPS REMODEL	\$8.24
220385	8/11/2017	10630	02405	SEBO'S DO-IT CENTER	PARTS FOR OPS REMODEL	\$18.07
220387	8/11/2017	10584	02405	SEBO'S DO-IT CENTER	PARTS FOR OPS REMODEL	\$53.08
220438	8/11/2017	1500	10714	SOUND MICROBIOLOGY	AEROBIC ENDOSPORE ANALYSIS	\$375.00
220275	8/12/2017	REIMBURSEMENT	09010	JAMES, RITA	REIMBURSEMENT FOR ART DASH EXPENSES	\$266.23
220334	8/12/2017	00005W5A83327	02817	UNITED PARCEL SERVICE	APD UPS SHIPPING	\$15.92
219300	8/13/2017	1421920	10296	THATCHER COMPANY OF MONTANA	CALCIUM NITRATE	\$10,504.62
220360	8/14/2017	1990301904	06718	ARAMARK	WWTP LAUNDRY SERVICE FOR	\$77.22
220380	8/14/2017	736234	00306	BAYSHORE OFFICE PRODUCTS INC	AFD OFFICE SUPPLIES	\$3.49
220339	8/14/2017	refunddepot	09722	CONNOR, BETTY	DEPOT RENTAL REFUND	\$120.00
220424	8/14/2017	17-17727	00850	EDGE ANALYTICAL, INC	THICKENED SLUDGE TESTING	\$178.00
220336	8/14/2017	081714	00955	FIDALGO CLEANING	APD CLEANING & SUPPLIES	\$700.00
220381	8/14/2017	284108	01023	FRONTIER BUILDING SUPPLY	LUMBER FOR OPS INTERIOR REMODEL	\$4,304.63
220416	8/14/2017	284232	01023	FRONTIER BUILDING SUPPLY	PARTS FOR OPS REMODEL	\$89.33
220418	8/14/2017	284250	01023	FRONTIER BUILDING SUPPLY	PARTS FOR OPS REMODEL	\$30.84
220383	8/14/2017	10802	02405	SEBO'S DO-IT CENTER	PARTS FOR OPS REMODEL	\$15.81
220386	8/14/2017	10756	02405	SEBO'S DO-IT CENTER	PARTS FOR OPS REMODEL	\$63.07
220428	8/15/2017	1990305007	06718	ARAMARK	WTP WEEKLY LAUNDRY SERVICE	\$66.68
220422	8/15/2017	17-17664	00850	EDGE ANALYTICAL, INC	FINAL EFFLUENT TESTING	\$140.00
220439	8/15/2017	COA0817	09183	SYSTEMS DESIGN WEST, LLC	AMBULANCE SERVICE BILLING JULY	\$3,275.34
220283	8/27/2017	11161278	03072	WILBUR-ELLIS COMPANY, LLC	P&R FERTILIZER	\$89.51

Invoice Doc #	Transaction Date	Invoice #	Vendor #	Vendor Full Name	Description	Total Amount
220171	8/31/2017	052-0010-00	00147	ANACORTES, CITY OF	OPERATIONS - JULY	\$922.78
220355	9/3/2017	17-071-SEW-001	09242	US CRANE & HOIST INC	RETAINAGE RELEASE	\$59.75
220206	9/10/2017	Retainage Release	07737	STEVENS ELECTRIC INC	RETAINAGE RELEASE	\$525.00
220352	9/11/2017	17-054-FAC-001	02454	ISLAND SASH & DOOR	RETAINAGE RELEASE	\$1,032.05

Total **\$367,436.91**



City Council Agenda Bill

Meeting Date: 8/21/2017

Agenda Item: 5c

Subject: WWTP Emissions Testing and CEMS Diagnostic and Cleaning Services

Staff Contact: Fred Buckenmeyer

Approved for Submittal to Council by	
	Laurie Gere, Mayor
	Steve Hoglund, Finance Director
X	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
X	Contract Modification 1
	Public Hearing
	Staff Report

Summary Statement: In accordance with the Article 17 – Changes/Additional Work, provision under Contract 15-032-SEW-003, the City seeks City Council consent to issue a change order to Elemental Air in the amount of \$7,737.50, increasing the total contract price to \$48,639.50. During the initial testing at the WWTP the gas instrument was found to read too low and it has been necessary to send it for repairs in order for the completion of the contract work. It is necessary for the Consultant to conduct a RATA retest with SO₂ and HCl in order to comply with EPA regulations. This additional work is within the boundaries of the originally contracted work.

Background: On November 30, 2016, the City requested proposals for emissions testing and Elemental Air was the chosen consultant.

Amount Budgeted	1,350,000
Budget Account (BARS)	440.000.594.35.64
Proposed Expenditure	\$7,737.50
Budget Amendment Required?	No
Revenue Source	City Funds

Proposed Contract	
Contractor	Elemental Air
Amount	\$7,737.50
Start Date	1/1/17
End Date	9/30/17

Previous Council/Committee Action: The original contract was awarded by City Council on 12/19/16.

Competing Viewpoints Considered: N/A

Recommended Motion: I move that City Council provide consent to issue a modification to Elemental Air under Contract 15-032-SEW-003 in the amount of \$7,737.50 for a total contract amount of \$48,639.50.

Alternative Actions: The City is required to meet new emissions requirements.

Attachments (listed in order presented): Modification 01 to Contract 15-032-SEW-003.



Contract Number 15-032-SEW-003
MODIFICATION 01

Date August 22, 2017

Page 1 of 1 Pages

Contract No. 15-032-SEW-003

Project Title Emissions Testing and CEMS Diagnostic and Cleaning Services

Prime Contractor Elemental Air

BACKGROUND

In accordance with **Article 17 – Changes/Additional Work**, the Owner is directing changes to the work. During the initial testing the gas instrument was found to read too low and it has been necessary to send it for repairs in order for the completion of the contract work. It is necessary for the Consultant to conduct a RATA retest with SO₂ and HCl in order to comply with EPA regulations. Accordingly, the contract price is increased from \$40,902.00 by \$7,737.50 to \$48,639.50. This modification also extends the period of performance from April 17, 2017 to September 30, 2017.

Accordingly, the following change is incorporated under this contract:

Article 1. Scope of Work, insert the following:

"(3) conduct a RATA retest with SO₂ and HCl as outlined in Exhibit C, which is hereby incorporated by reference and made a part hereof."

Article 2. Price, is hereby deleted and replaced with the following:

"The price under this Contract is based upon a Lump Sum payments for completion of the Work described in Exhibits A, B, C under Article 1. The Lump Sum payments equal Forty-Three Thousand Six Hundred Thirty-Nine Dollars and Fifty Cents (\$43,639.50).

Should an event occur at the plant to delay the Consultant's Work or cause additional effort not priced in the Lump Sum effort, labor and other direct costs that may occur shall be reimbursed under Line Item 3 on a time-and-materials (T&M) basis not-to-exceed Five Thousand Dollars (\$5,000.00).

Per the changes in Work incorporated per Modification 01, Exhibit C incorporated into the Contract, the total contract price as stated hereunder is revised to read **Forty-Eight Thousand Six Hundred Thirty-Nine Dollars and Fifty Cents (\$48,639.50).**"

Article 3. Period Performance, first sentence, is revised to read:

"The period of performance is from January 1, 2017 through September 30, 2017."

All other terms of the contract remain unchanged.

CITY OF ANACORTES

By _____
Laurie Gere, Mayor

Date _____

ELEMENTAL AIR

By _____
Signature

Printed Name _____

Title _____

Date _____

Original Agreement Amount	\$40,902.00	Original Contract Completion Date	04/17/2017
Current Agreement Amount	\$40,902.00	Current Contract Completion Date	04/17/2017
Change Per this Modification	\$7,737.50	Net Change	166 Days
Total After Modification	\$48,639.50	Contract Completion Date After Change	09/30/2017

CONTRACT 15-032-SEW-003

EXHIBIT C

RATA Retest and Addition Costs

Bid Basis and Assumptions

1. Each bid provided is based on a proposed test schedule outlined in the following section. There may be on-site facility caused factors that require longer test schedules, changes to the test schedule, or delays and additional mobilizations which may incur additional charges upon approval of the client.
2. The RATA retest cost accounts for preparation and reporting already included in Item No. 1 Emission Testing Lump Sum of Contract #15-032-SEW-003 and only includes remobilization, labor, and materials.
3. An itemized cost list for all additions is provided in Appendix A.

RATA Retest with SO₂ and HCl

Total Cost \$7,737.50

RATA Retest:

Test Parameters:

O₂

CO

Reporting Parameters:

%

ppm

Length of Runs:

CO

O₂

21 minutes

21 minutes

Number of Runs:

CO

O₂

9-12

9-12

Compliance Testing:

Test Parameters:

SO₂

HCl

Reporting Parameters:

ppm

ppm

Length of Runs:

SO₂

HCl

60-120 minutes

60-120 minutes

Number of Runs:

SO₂

HCl

3

3

Schedule:

Number of Mobilizations:

1

Number of Personnel:

2

Number of Test Days:

2

Proposal Schedule:

Day 1 TBD

Day 2 TBD

RATA Retest

Compliance Testing

Appendix A - Itemized Cost List

RATA Retest with SO₂ and HCl

TASK	Category	Cost	Total
Preparation	Labor	\$560.00	
	Supplies	\$100.00	
			\$660.00
Travel	Labor	\$645.00	
	Mileage	\$127.50	
	Per Diem & Lodging	\$800.00	
			\$1572.50
On-site	Labor	\$2,320.00	
	Gases & Equipment	\$1,650.00	
			\$3,970.00
Reporting	Labor	\$600.00	
	Reports	\$200.00	
			\$800.00
Lab Analysis			
	HCl Analysis	\$700.00	
	Chemicals	\$35.00	
			\$735.00
TOTAL			\$7,737.50



City Council Agenda Bill

Meeting Date: 8/21/2017

Agenda Item: 5d

Subject: Contract Modification – Wastewater Treatment Plant Outfall Repair Manhole Installation

Staff Contact: Fred Buckenmeyer

Approved for Submittal to Council by	
	Laurie Gere, Mayor
	Steve Hoglund, Finance Director
X	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision
	Resolution No.
X	Contract Modification 01
	Public Hearing
	Staff Report

Summary Statement: In accordance with Article 15, Changes/Additional Work provision under Contract 13-020-SEW-007, the City seeks City Council consent to issue a modification to Welch Brothers Construction, Inc. in the amount of \$106,458.14, increasing the total contract price to \$151,458.14, in consideration of differing site conditions. The Contractor was required to dig through a large amount of wood that was not anticipated. In addition to the buried wood, they ran into several piling within the excavation. Second, there was groundwater entering the excavation site and it was necessary to inject polyurethane grout into the ground to attempt to stop the water intrusion. This added work requires additional time and material. This additional work is within the boundaries of the originally contracted work

Background: On June 22, 2017 the City contracted with Welch Brothers Construction to install a manhole over the existing wastewater treatment plant (WWTP) outfall in the vicinity of the Port of Anacortes stormwater pond, to be used in the near future by others as a connection point for a temporary bypass line for treated effluent from the WWTP during the WWTP Outfall Repair Project.

Budget Impact	
Amount Budgeted	\$2,918,000.00
Budget Account (BARS)	440.000.594.35.63
Proposed Expenditure	\$106,458.14
Budget Amendment Required?	No
Revenue Source	City Funds

Proposed Contract	
Contractor	Welch Brothers Construction, Inc
Amount	\$106,458.14
Start Date	Inception
End Date	7/31/17

Previous Council/Committee Action: N/A

Competing Viewpoints Considered: N/A

Recommended Motion: I move City Council provide consent to issue a modification to Welch Brothers Construction, Inc. under Contract 13-020-SEW-007 in the amount of \$106,458.14 for a total contract amount of \$151,458.14.

Alternative Actions: N/A

Attachments Modification 1 to Contract 13-020-SEW-007



Date	August 15, 2017			
Modification No.	01			
Page	1	of	1	Pages

Contract Number 13-020-SEW-007
Contract Title Wastewater Treatment Plant Outfall Repair – Manhole Installation
Prime Contractor Welch Brothers Construction, Inc.

PREAMBLE

This modification is issued under the Contract General Conditions, Article 15 – Changes/Additional Work. An equitable price adjustment is provided in consideration of differing site conditions described below. The total Contract price is revised from \$45,000.00 by \$106,458.14 to \$151,458.14.

The Contract is amended as follows:

ARTICLE 1. Scope of Work

Insert the following *second paragraph* under Article 1:

"The work as described above is hereby amended per Modification 01. The Contractor was required to dig though a large amount of wood that was not anticipated. In addition to the buried wood, they ran into several piling within the excavation. Second, there was groundwater entering the excavation site and it was necessary to inject polyurethane grout into the ground to attempt to stop the water intrusion. This added work requires additional time and material."

ARTICLE 2. Contract Price

To incorporate changes in the total price consistent with the changes in Work as described herein, the first sentence is revised to read:

"Welch Brothers Construction, Inc. will do the scope of work above for total of **One Hundred Fifty-One Thousand Four Hundred Fifty-Eight Dollars and Fourteen Cents (\$151,458.14)** which includes \$11,865.38 in tax.

All other terms and conditions remain unchanged.

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Modification and agree to be bound accordingly.

CITY OF ANACORTES

By _____
Laurie Gere, Mayor

Date _____

WELCH BROTHERS CONSTRUCTION, INC.

By _____
Signature

Printed Name _____

Title _____

Date _____

Original Agreement Amount	\$45,000.00	Original Contract Completion Date	7/31/2017
Current Agreement Amount	\$45,000.00	Current Contract Completion Date	7/31/2017
Change Per this Modification	\$106,458.14	Net Change	0 days
Total After Amendment	\$151,458.14	Contract Completion Date After Change	7/31/2017



City Council Agenda Bill

Meeting Date: 8/21/2017

Agenda Item: 5e

Subject: Consent to Award Contract to Quality Controls Corporation to Replace Existing Wastewater Treatment Plant Serial Radio Telemetry System – Phase B

Staff Contact: Fred Buckenmeyer

Approved for Submittal to Council by	
	Laurie Gere, Mayor
	Steve Hoglund, Finance Director
	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
X	Contract 14-009-IDS-004
	Public Hearing
	Staff Report

Summary Statement: The City seeks City Council consent to issue a contract to Quality Controls Corporation in the amount of \$169,909.12 to implement the second phase to replace an aging off-site telemetry radios at WWTP. This project upgrades the system to narrow bandwidth as required by the FCC using cellular technology, as well as puts the equipment in place for future fiber hookup.

Background: Historically, the City's WWTP has had difficulty with telemetric communications to and from pump stations. The City's Fire and Police departments have also had inadequate radio communications. In addition, the FCC has promulgated new rules and changed specifications for band widths. In 2014, the City conducted a study resulting in recommendations for tower size, location, radio equipment and network topology.

Budget Impact	
Amount Budgeted	\$1,350,000
Budget Account (BARS)	440.000.594.35.64
Proposed Expenditure	\$169,909.12
Budget Amendment Required?	No
Revenue Source	Sewer

Proposed Contract	
Contractor	Quality Controls Corp
Amount	\$169,909.12
Start Date	Inception
End Date	4/4/2018

Previous Council/Committee Action: On November 4, 2013 City Council adopted Resolution 1876 waiving competitive bidding requirements and designating QCC as the single source for instrumentation and controls system integration work at the wastewater treatment plant. City Council awarded QCC the contract to implement Phase A of this project on 10/5/15.

Competing Viewpoints Considered: City's radio telemetry continues to miss signals and remain non-compliant with FCC regulations.

Recommended Motion: I move the City Council provide its consent to award contract to Quality Controls Corporation for Replacing the City's WWTP Serial Radio Telemetry System-Phase B in the amount of \$169,909.12.

Alternative Actions: N/A

Attachments (listed in order presented): QCC Contract 14-009-IDS-004



CONTRACT 14-009-IDS-004
Between
THE CITY OF ANACORTES
AND
QUALITY CONTROLS CORPORATION

This Agreement, hereinafter referred to as "Agreement", made and entered into between the City of Anacortes, hereinafter referred to as the "City", and Quality Controls Corporation hereinafter referred to as the "Consultant";

WHEREAS, the City requires professional services of the Consultant;

NOW, THEREFORE, in consideration of mutual benefits accruing, it is agreed by and between the parties hereto as follows:

1. **Scope of Work.** Under this Agreement, the Consultant shall provide the City professional services in accordance with the attached **EXHIBIT A** entitled "Replace Existing Wastewater Treatment Plant Serial Radio Telemetry System Phase B", hereinafter called "Work".

The Work under this Contract will be directed by Wastewater Treatment Plant Manager (WWTP), Rebecca Fox, or designee, who may be reached at (360) 299-0953 or email at beckyf@cityofanacortes.org.

2. **Price.** The work performed under this Agreement shall be performed on a fixed price basis for a total price of **One Hundred Sixty-Nine Thousand Nine Hundred Nine Dollars and Twelve Cents (\$169,909.12)**. Payment terms are set forth in Clause 4 Payment Terms.

3. **Period of Performance.** Work shall begin upon inception and complete by April 1, 2018. Inception is defined as the date the contract is fully-executed.

4. **Payment Terms.** Payment shall be made in accordance with **EXHIBIT B**, SCHEDULE OF VALUES – PHASE B.

5. **Invoicing.** All invoices shall include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, Invoice Period, Project Title, Agreement Number and Price, or Amended Price.

The Consultant must invoice **MONTHLY** for quantities delivered during the invoice period, and no more frequently than monthly, and allow 30 calendar days from receipt of the invoice for payment.

Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to accountspayable@cityofanacortes.org. Consultants may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution.

The City shall notify the Consultant within fifteen (15) calendar days from receipt of invoice if there are any objections or disputes with the invoice. The Consultant shall then resubmit a new invoice less the disputed amount and payment shall be made within 30 calendar days. Any disputed amounts may be submitted under the Disputes clause contained herein.

6. **Withholding Payment.** In the event the City determines that the Consultant has failed to perform any obligation under this Contract within the times set forth in this Contract, then the City may withhold from amounts otherwise due and payable to Consultant the amount determined by the City as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Consultant to terminate or damages, provided that the City promptly gives notice in writing to the Consultant of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the Public Works Director set forth in such notice to the Consultant of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Consultant acts within the times and in strict accord with the provisions of the Disputes clause of this Contract. The City may act in accordance with any determination of the Public Works Director which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Consultant, (3) to set off any amount so paid or incurred from amounts due to become due the Consultant. In the event the

Consultant obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Consultant by reason of good faith withholding by the City under this clause.

7. **Final Payment: Waiver of Claim.** The Consultant's acceptance of final payment (excluding withheld retainage) shall constitute a waiver of claims, except those previously and properly made and identified by the Consultant as unsettled at the time request for final payment is made.

8. **Subcontracts.** The Consultant shall give notice reasonably in advance of placing any subcontract; preferably the Consultant shall identify subcontracts before subcontracted work begins. "Subcontract" means any contract entered into by a subConsultant to furnish supplies or services for performance of the prime Consultant or a subConsultant. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

The following information shall be included (i) a description of the supplies or services to be subcontracted, (ii) identification of the type of subcontract to be used (iii) identification of the proposed subConsultant, (iv) proposed subcontract price.

Unless consent or approval specifically provides otherwise, consent by the City shall not constitute a determination –

- (1) of the acceptability of any subcontract terms or conditions;
- (2) Of the allowability of any cost under this contract;; or
- (3) To relieve the Consultant of any responsibility for performing this Contract.

The Consultant shall give immediate written notice, reference Clause Notices, of any action or suit filed and prompt notice of any claim made against the Consultant by any subConsultant or vendor that, in the opinion of the Consultant, may result in litigation related in any way to this contract, with respect to which the Consultant may be entitled to reimbursement from the City.

9. **Ownership and Use of Documents.** All finished and unfinished documents and material prepared by the Consultant with funds paid by the City pursuant to the terms of this Agreement shall become the property of the City and shall be forwarded to the City upon its request. Documents and materials shall include but not be limited to plans, specifications, reports, electronic and non-electronic data, and other design documents prepared by the Consultant ("Instruments of Services"). Pursuant to RCW 42.56.70, all information and documents produced under this Agreement may be subject to public disclosure. Any subsequent reuse or modification of Consultant's Instruments of Service by the City or any party obtaining it through the City will be at City's sole risk and without liability to Consultant.

10. **Defense and Indemnity Agreement.** Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Agreement.

11. **Insurance.**

A. Insurance Term

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

B. No Limitation

Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

Consultant shall obtain insurance of the types and coverages described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be as least as broad as Insurance Services Office (ISO) form CA 00 01..
2. Commercial General Liability insurance shall be at least as broad as ISO occurrences form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent Consultants and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
3. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

D. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence and \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

E. Other Insurance Provision

The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

H. Notice of Cancellation

The Consultant shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract, or at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

J. City Full Availability of Consultant Limits

If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

12. **Registered or Licensed Consultant.** The City is prohibited by RCW 39.06.010 from executing an Agreement with a Consultant who is not registered or licensed as required by the laws of the state. In addition, the City will require persons doing business with the City to possess a business license.

13. **Acceptance.** Consultant acknowledges and agrees that these General Provisions are incorporated in, and are a part of, each purchase order or other agreement relating to the provision of goods and/or related services by Consultant. These General Provisions supersede all conflicting or additional terms pre-printed on any purchase order, quote, or otherwise set forth on any release, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and similar document or communication.

14. **Inspection.** The Project Manager shall have power to reject instruments of services which fail to comply with the requirements of this Agreement, but in case of dispute the Consultant may appeal to the City's Public Works Director, whose decision shall be final. The Consultant shall comply with any and all orders and instructions given by the representative of the particular Department administering the Agreement in accordance with the terms of the Agreement. Nothing herein contained shall be taken to relieve the Consultant of his/her obligations or responsibilities under the Agreement. However, the Consultant shall be responsible for its own methods and conduct during the period of performance.

15. **Standard of Care.** The Consultant represents that Consultant has the necessary knowledge, skill, and experience to perform the Services required by this Agreement. Consultant and any persons employed by Consultant shall use their best efforts to perform the Work in a professional manner consistent with sound engineering practices, in accordance with the usually and customary professional care required for services of the type described in the Scope of Work herein. The City's remedy shall be the re-performance of the Service or an equitable adjustment in the monies paid for the Professional Services, at the City's discretion.

16. **Discrimination Prohibited.** Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin or physical handicap.

17. **Consultant is an Independent Consultant.** The parties intend that an independent Consultant relationship will be created by this Agreement. No agent, employee or representative of the Consultant shall be deemed to be an agent, employee or representative of the City for any purpose. Consultant shall be solely responsible for all acts of its agents, employees, representatives and subConsultants during the performance of this Agreement.

18. The City's Right to Terminate Agreement.

A. Termination for Default

If the Consultant defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Consultant in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the Work elsewhere. If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all Work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the Work, including all increased costs for completing the Work, and all damage sustained, or which may be sustained by the City by reason of such default. If a notice of termination for default has been issued and it is later determined for any reason that the Consultant was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

B. Termination for Public Convenience

The City may terminate the Agreement in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the Agreement is terminated in accordance with this paragraph, the Consultant shall be entitled to payment for actual work performed at unit Agreement prices for completed items of work. An equitable adjustment in the Agreement price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Agreement by the City.

19. **Changes/Additional Work**. The City may engage Consultant to perform services in addition to those listed in this Agreement, and Consultant will be entitled to additional compensation for authorized additional services or materials. The City shall not be liable for additional compensation until and unless any and all additional work and compensation is approved in advance in writing and signed by both parties to this Agreement. If conditions are encountered which are not anticipated in the Scope of Services, the City understands that a revision to the Scope of Services and fees may be required. Provided, however, that nothing in this paragraph shall be interpreted to obligate the Consultant to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this Agreement is approved in writing by both parties.

20. **Non-waiver**. Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

21. **Non-assignable**. The services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

22. **Covenant Against Contingent Fees**. The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

23. Disputes

A. General

Differences between the Consultant and the City, arising under and by virtue of this Agreement shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The provisions of this Clause shall survive the expiration or termination of this Agreement.

B. Notice of Potential Claims

The Consultant shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Contracting Agent or the City, or (2) the happening of any event or occurrence, unless the Consultant has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Consultant believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Consultant shall keep full and complete daily records of the Work performed, labor and all costs and additional time claimed to be additional.

C. Detailed Claim

The Consultant shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the Work from which the claim arose, and before final payment by the City, the Consultant has given the City a detailed written statement of each

element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

D. Dispute Resolution

In the event of a dispute between the City and the Consultant arising of this Agreement, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Consultant to have oversight over the administration of this Agreement. Said representatives shall meet within thirty (30) calendar days of receipt of detailed claim, and the parties shall make a good faith effort to achieve a resolution of the dispute.

In the event the parties are unable to resolve the dispute under the procedure set forth above, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties.

If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

24. **Force Majeure.** Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Consultant shall have no recourse against the City.

25. **Compliance with Laws.** The Consultant in the performance of this Agreement shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the Agreement to assure quality of services.

The Consultant specifically agrees to pay any applicable business and occupation (B&O) taxes, which may be due on account of this Agreement.

26. **Venue and Choice of Law.** In the event that any litigation should arise concerning the services under this Agreement, interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Courts of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the law of the State of Washington.

27. **Severability.** If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

28. **Survival of Contract Termination.** The articles relating to Governing Law; Venue and Choice of Law; The City's Right to Terminate Contract; Defense & Indemnity Agreement, shall survive completion of the services, payment in full of the compensation and termination of this Agreement.

29. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Washington. Any action brought under the Agreement or relating to the Project shall be brought in the Superior Court of the State of Washington in Skagit County Washington.

30. **Notices.** Notices to the City of Anacortes shall be sent to the following address:

City of Anacortes
Attention: Tiffany Matson
matsont@cityofanacortes.org
904 6th Street
PO BOX 547
Anacortes, WA 98221

Notices to the Consultant shall be sent to the following address:

Quality Controls Corporation
Mr. James Cross
5015 208th Street, SW, Suite 1-B
Lynnwood, WA 98036
(425) 778-8280

Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mails, with proper postage and properly addressed.

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to be bound accordingly;

CITY OF ANACORTES

QUALITY CONTROL CORPORATION

By _____
Laurie Gere, Mayor

By _____

Title _____

Date _____

Date _____

CONTRACT 14-009-IDS-004

EXHIBIT A

SCOPE OF WORK

Replace Existing Wastewater Treatment Plant (WWTP) Serial Radio Telemetry

PHASE B

Upgraded Lift Station RTUs: 3, 8, 9, 12, 17

Upgraded Lift Station Pump Controls Panels: 10, 11

This Scope of Work is based on the results of a comprehensive SCADA System Radio Survey performed by Accu-Comm, Inc., a sub-Consultant to the Consultant performing under Contract 14-009-IDS-001. The results were documented in a comprehensive report dated May, 2014 and entitled "City of Anacortes, WA. Water, Wastewater & Public Safety – SCADA System Radio Survey", (hereinafter named "Report"). The objective for the work performed under this Scope of Work called "Phase B" is to improve the reliability of communications as well as update the systems so that they are compliant with current FCC regulations and thus improve the performance and reliability of the WWTP's aging off-site telemetry system.

Scope of Work

1. **Pump Station 3 RTU Upgrade:** QCC upgrades the existing telemetry system. The upgraded control panel includes all required telemetry system hardware, including the following major components:
 - A. **New cellular telemetry backpanel** - QCC provide a new UL listed, panel to be mounted in the existing telemetry enclosure. Includes, but is not limited to the following major components:
 - a. Programmable Controller- Allen Bradley CompactLogix PLC.
 - b. Touch Screen OIT- Allen Bradley Panelview Plus 6 600, color
 - c. Industrial Ethernet Switch.
 - d. Telemetry Hardware for Ethernet Cellular connectivity, including:
 - i. Sierra Wireless cellular 4G/LTE Ethernet Modem
 - ii. Cellular antennas and cabling.
 - e. DC Power Supply and UPS.
 - f. Heater & thermostat.
 - g. Power distribution breaker and fuses as required.
 - Hardware Upgrades to Pump Control Panel** - QCC provides the following hardware to upgrade the existing hardware in the pump control panel:
 - a. Press to Test Pilot lights- QCC replaces the non-press to test pilot lights with LED press to test pilot lights.
 - B. **Engineering and Programming Services** - QCC provides all required control system engineering and programming services to provide a fully functional control and telemetry system. Includes all required PLC, FTVIEW SCADA, and telemetry programming.
 - C. **Onsite Startup and Commissioning** - QCC provides all required onsite testing and startup services to commissioning the upgraded system. Includes onsite installation assistance.
2. **Pump Station 8 RTU Upgrade:** QCC upgrades the existing telemetry system. The upgrades include all required hardware, including following major components:
 - A. **New cellular telemetry hardware-** QCC provides the following major components:
 - a. Telemetry Hardware for Ethernet Cellular connectivity, including:
 - i. Sierra Wireless cellular 4G/LTE Ethernet Modem
 - ii. Cellular antennas and cabling.
 - b. Touch Screen OIT- Allen Bradley Panelview Plus 6 600, color
 - c. Power distribution breaker and fuses as required.

Hardware Upgrades to Pump Control Panel - QCC provides the following hardware to upgrade the existing hardware in the pump control panel:

- a. Press to Test Pilot lights- QCC replaces the non-press to test pilot lights with LED press to test pilot lights.
 - B. **Engineering and Programming Services** - QCC provides all required control system engineering and programming services to provide a fully functional control and telemetry system. Includes all required PLC, FTVIEW SCADA, and telemetry programming.
 - C. **Onsite Startup and Commissioning** - QCC provides all required onsite testing and startup services to commissioning the upgraded system. Includes onsite installation assistance.
3. **Pump Station 9 RTU Upgrade:** QCC upgrades the existing telemetry system. The upgrades include all required hardware, including following major components:

- A. **New cellular telemetry hardware** - QCC provides the following major components:
 - a. Telemetry Hardware for Ethernet Cellular connectivity, including:
 - i. Sierra Wireless cellular 4G/LTE Ethernet Modem
 - ii. Cellular antennas and cabling.
 - b. Power distribution breaker and fuses as required.

Hardware Upgrades to Pump Control Panel - QCC provides the following hardware to upgrade the existing hardware in the pump control panel:

- a. Press to Test Pilot lights- QCC replaces the non-press to test pilot lights with LED press to test pilot lights.
 - B. **Engineering and Programming Services** - QCC provides all required control system engineering and programming services to provide a fully functional control and telemetry system. Includes all required PLC, FTVIEW SCADA, and telemetry programming.
 - C. **Onsite Startup and Commissioning** - QCC provides all required onsite testing and startup services to commissioning the upgraded system. Includes onsite installation assistance.
4. **Pump Station 10 Control Panel Upgrade:** QCC upgrades the existing control panel. The upgraded control panel includes the required motor control and telemetry system hardware, including the following major components:

- A. **New Pump Station Control Panel** - QCC provide a new UL listed, station control panel, complete and ready for installation by others. Includes, but is not limited to the following major components:
 - a. NEMA 4x stainless steel control panel, with interior swing panel.
 - b. Main disconnect breaker with rotary disconnect.
 - c. Qty two (2) Allen Bradley Powerflex VFDs- 5hp, 240VAC 1ph.
 - d. VFD protection fuses.
 - e. Programmable Controller- Allen Bradley CompactLogix PLC.
 - f. Touch Screen OIT- Allen Bradley Panelview Plus 6 600, color
 - g. Industrial Ethernet Switch.
 - h. Telemetry Hardware for Ethernet Cellular connectivity, including:
 - i. Sierra Wireless cellular 4G/LTE Ethernet Modem
 - ii. Cellular antennas and cabling.
 - i. DC Power Supply and UPS.
 - j. Heater & thermostat.
 - k. Fan kits with NEMA 4x shrouds.
 - l. Intrinsically safe protection for wet well instrumentation.
 - m. Power distribution breaker and fuses as required.

New Wet Well Instrumentation - QCC provides new wet well level instrumentation including the following:

- a. Submersible level transmitter, Intrinsically safe 4-20mA output.

- b. Qty one (1) float type level switches, non-mercury, high and low level switches.
 - c. Wet well instrument weight kit, includes stainless steel chain and stainless wet well mounting adapter.
 - B. **Engineering and Programming Services** - QCC provides all required control system engineering and programming services to provide a fully functional control and telemetry system. Includes all required PLC, FTVIEW SCADA, and telemetry programming.
 - C. **Onsite Startup and Commissioning** - QCC provides all required onsite testing and startup services to commissioning the upgraded system. Includes onsite installation assistance.
5. **Pump Station 11 Control Panel Upgrade:** QCC upgrades the existing control panel. The upgraded control panel includes the required motor control and telemetry system hardware, including the following major components:
- A. **New Pump Station Control Panel** - QCC provide a new UL listed, station control panel, complete and ready for installation by others. Includes, but is not limited to the following major components:
 - a. NEMA 4x stainless steel control panel, with interior swing panel.
 - b. Main disconnect breaker.
 - c. Programmable Controller- Allen Bradley CompactLogix PLC.
 - d. Touch Screen OIT- Allen Bradley Panelview Plus 6 600, color
 - e. Industrial Ethernet Switch.
 - f. Telemetry Hardware for Ethernet Cellular connectivity, including:
 - i. Sierra Wireless cellular 4G/LTE Ethernet Modem
 - ii. Cellular antennas and cabling.
 - g. DC Power Supply and UPS.
 - h. Heater & thermostat.
 - i. Fan kits with NEMA 4x shrouds.
 - j. Intrinsically safe protection for wet well instrumentation.
 - k. Power distribution breaker and fuses as required.

Note: QCC receives one Eone pump controller from the city for installation in the PS11 control panel.

- New Wet Well Instrumentation** - QCC provides new wet well level instrumentation including the following:
- a. Submersible level transmitter, Intrinsically safe 4-20mA output.
 - b. Qty one (1) float type level switches, non-mercury, high and low level switches.
 - c. Wet well instrument weight kit, includes stainless steel chain and stainless wet well mounting adapter.
 - B. **Engineering and Programming Services** - QCC provides all required control system engineering and programming services to provide a fully functional control and telemetry system. Includes all required PLC, FTVIEW SCADA, and telemetry programming
 - C. **Onsite Startup and Commissioning** - QCC provides all required onsite testing and startup services to commissioning the upgraded system. Includes onsite installation assistance.
6. **Pump Station 12 RTU Upgrade:** QCC upgrades the existing telemetry system. The upgrades include all required hardware, including following major components:
- A. **New cellular telemetry hardware** - QCC provides the following major components:
 - a. Telemetry Hardware for Ethernet Cellular connectivity, including:
 - i. Sierra Wireless cellular 4G/LTE Ethernet Modem
 - ii. Cellular antennas and cabling.
 - b. Power distribution breaker and fuses as required.
 - B. **Engineering and Programming Services** - QCC provides all required control system engineering and programming services to provide a fully functional control and telemetry system. Includes all required

PLC, FTVIEW SCADA, and telemetry programming.

- C. **Onsite Startup and Commissioning** - QCC provides all required onsite testing and startup services to commissioning the upgraded system. Includes onsite installation assistance.
7. **Pump Station 17 RTU Upgrade:** QCC upgrades the existing telemetry system. The upgrades include all required hardware, including following major components:
- A. **New cellular telemetry hardware** - QCC provides the following major components:
 - a. Telemetry Hardware for Ethernet Cellular connectivity, including:
 - i. Sierra Wireless cellular 4G/LTE Ethernet Modem
 - ii. Cellular antennas and cabling.
 - b. Power distribution breaker and fuses as required.
 - B. **Engineering and Programming Services** - QCC provides all required control system engineering and programming services to provide a fully functional control and telemetry system. Includes all required PLC, FTVIEW SCADA, and telemetry programming.
 - C. **Onsite Startup and Commissioning** - QCC provides all required onsite testing and startup services to commissioning the upgraded system. Includes onsite installation assistance.

Notes regarding all sites:

- 1. QCC removes all existing obsolete telemetry hardware and radios from upgrade existing panels. Includes cleanup and removal of existing unused wiring. All removed equipment to be turned over to owner.
- 2. If fiber optic network cable is available at the site at the time up upgrade, QCC will provide the necessary fiber optic media converters instead of the quoted cellular equipment and will provide credit for the difference in hardware costs between the quoted cellular hardware and the fiber optic media converter hardware.
- 3. QCC provides as-built redline or new CAD based drawings for all sites upgraded under this quotation.

CONTRACT 14-009-IDS-004
EXHIBIT B, SCHEDULE OF VALUES – PHASE B

Item #	Description	Price	
1A	Lift Station 3 Hardware Supply	\$9,559.00	T
1B	Lift Station 3 Design and Programming	\$9,368.00	
1C	Lift Station 3 Startup & Commissioning	\$1,992.00	
2A	Lift Station 8 Hardware Supply	\$6,318.00	T
2B	Lift Station 8 Design and Programming	\$8,968.00	
2C	Lift Station 8 Startup & Commissioning	\$1,632.00	
3A	Lift Station 9 Hardware Supply	\$4,028.00	T
3B	Lift Station 9 Design and Programming	\$8,968.00	
3C	Lift Station 9 Startup & Commissioning	\$1,452.00	
4A	Lift Station 10 Hardware Supply	\$28,214.00	T
4B	Lift Station 10 Design and Programming	\$18,652.00	
4C	Lift Station 10 Startup & Commissioning	\$2,448.00	
5A	Lift Station 11 Hardware Supply	\$20,224.00	T
5B	Lift Station 11 Design and Programming	\$16,168.00	
5C	Lift Station 11 Startup & Commissioning	\$2,172.00	
6A	Lift Station 12 Hardware Supply	\$3,613.00	T
6B	Lift Station 12 Design and Programming	\$6,368.00	
6C	Lift Station 12 Startup & Commissioning	\$1,272.00	
7A	Lift Station 17 Hardware Supply	\$6,163.00	T
7B	Lift Station 17 Design and Programming	\$4,533.00	
7C	Lift Station 17 Startup & Commissioning	\$1,157.00	

Subtotal: \$163,269.00

Sales Tax @ 8.5% is included in Line Items 1A, 2A, 3A, 4A, 5A, 6A, 7A: \$6,640.12

Total Price: \$169,909.12



City Council Agenda Bill

Meeting Date: 8/21/2017 **Agenda Item:** 5f

Subject: Street Fair Applications: Oyster Run 2017

Staff Contact: Fred Buckenmeyer, Don Measamer

Approved for Submittal to Council by	
	Laurie Gere, Mayor
	Steve Hoglund, Finance Director
	Darcy Swetnam, City Attorney
X	Fred Buckenmeyer

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
	Contract
	Public Hearing
	Staff Report

Summary Statement: Street Fair Application for Oyster Run 2017, Sunday, September 24, 2017.

Background: The Oyster Run is a motorcycle rally and includes vendors, music and entertainment. The location is Commercial Avenue & side streets for one block on either side of Commercial between 3rd St. and 10th Street. The closure time will be 6 a.m. to 6 p.m. The Oyster Run Organization has agreed to pay all overtime costs for Anacortes Police and Fire Department staffing beginning Saturday evening and during the entire event.

Budget Impact	
Amount Budgeted	
Budget Account (BARS)	
Proposed Expenditure	
Budget Amendment Required?	
Revenue Source	

Proposed Contract	
Contractor	
Amount	
Start Date	
End Date	

Previous Council/Committee Action: NA

Competing Viewpoints Considered: NA

Recommended Motion: I move to approve the street fair application as submitted

Alternative Actions: Deny the request(s)

Attachments (listed in order presented): Public Works Director memo supporting the event, map of street closure.



TO: City Council Members, Mayor Gere
FROM: Fred Buckenmeyer, Director of Public Works
DATE: August 11, 2017
SUBJECT: Oyster Run 2017

Sponsor/Organizer: Oyster Run, Angie Haynes, 425-508-8524

Location:

Commercial Avenue & side streets for one block on either side of Commercial between 3rd Street and 10th Street.

Dates & Times:

Sunday, September 24, 2017
6 a.m. - 6 p.m.

Background:

Motorcycle rally with vendors, music and drill team

Parking Restrictions:

Parking restricted in closed areas.

Public Works Services:

Signage and street barriers

Police Services:

Additional Police & Fire Department Presence – Costs of services will be paid by Sponsor

Recommendations:

Staff recommends approval with conditions subject to applicant's submitted request

Proposed Motion: Recommend approval with additional conditions as outlined in attached Memorandum

Emergency Contact Numbers:

Angie Haynes, 425-508-8524

cc: Marcia Hunt

**EVENT PERMIT CONDITIONS OF APPROVAL
THE OYSTER RUN**

1. All Anacortes Police Department and Fire Department overtime costs will be paid by the Oyster Run organization. This will include additional staffing on Saturday night prior to the event. The City will submit an invoice to the Oyster Run organization after the event and the full balance of the invoice must be paid within 30 days of the date of the event.
2. The drill team, the Cossacks, will be the only motorcycle performance allowed at the Oyster Run. No other stunt riders will be allowed.
3. Portable Toilets will not be placed in front of City Hall on 6th Street. They may be placed across the street on the south side of 6th Street.
4. The Oyster Run Organization must complete the Special Event Indemnification Agreement and submit it to the Planning Director prior to the event.
5. The Oyster Run (Permittee) must obtain and provide insurance for the event as follows. All certificates, endorsements, and other documentation must be received by the Planning Director no later than one calendar week prior to the event. Failure to provide the required insurance documentation in a timely manner may result in immediate revocation of this permit. Insurance requirements subject to approval by WCIA.

6. Insurance Term

The Permittee shall procure and maintain for the duration of the Permit, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities associated with the Oyster Run with the issuance of this Permit.

7. No Limitation

The Permittee's maintenance of insurance as required by the Permit shall not be construed to limit the liability of the Permittee to the coverage provided by such insurance, or otherwise limit the City of Anacortes's recourse to any remedy available at law or in equity.

8. Minimum Scope of Insurance

The Permittee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City of Anacortes shall be named as an additional insured under the Permittee's Commercial

cc: Marcia Hunt

General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

9. Minimum Amounts of Insurance

The Permittee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$4,000,000 general aggregate and a \$4,000,000 products-completed operations aggregate limit.
2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

10. Other Insurance Provision

The Permittee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City of Anacortes. Any insurance, self-insurance, or self-insured pool coverage maintained by the City of Anacortes shall be excess of the Permittee's insurance and shall not contribute with it.

11. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

12. Verification of Coverage

The Permittee shall furnish the City of Anacortes with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Permittee before issuance of the Permit.

13. Notice of Cancellation

The Permittee shall provide the City of Anacortes with written notice of any policy cancellation, within two business days of their receipt of such notice.

14. Failure to Maintain Insurance

cc: Marcia Hunt

Failure on the part of the Permittee to maintain the insurance as required shall constitute a material breach of the Permit, upon which the City of Anacortes may, after giving two business days' notice to the Permittee to correct the breach, immediately terminate the Permit or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City of Anacortes on demand.

15. Public Entity Full Availability of Permittee Limits

If the Permittee maintains higher insurance limits than the minimums shown above, the City of Anacortes shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Permittee, irrespective of whether such limits maintained by the Permittee are greater than those required by this Permit or whether any certificate of insurance furnished to the City of Anacortes evidences limits of liability lower than those maintained by the Permittee.

STREET FAIR APPLICATION

NAME OF EVENT Oyster Run
 DATES of Event Sunday September 24th 2017
 TIME of Day 6 AM - 6 PM
 NATURE/PURPOSE of Event Motorcycle Rally w/ vendors, band + drill team
 PARTICIPANTS/Attendees (estimated number) 10,000
 LOCATION of Event (include locations and dimensions of any structure to be erected, dimensions of street/right-of-way to be used and dimensions of same to remain unobstructed) Commercial + Side Streets 1 blk East + 1 blk West from 3rd to 10th
 DESCRIPTION of Event Motorcycle Rally w/ vendors, band + drill team
~~1 blk east + 1 blk west~~
 FACILITIES requested (street, sidewalk, park, etc.) Commercial + Side Streets
1 blk east + 1 blk West from 3rd to 10th
 Dates/hours requested 6 AM to 6 PM 9/24/17
 EQUIPMENT requested N/A
 Dates/hours requested N/A
 SERVICES requested (eg. Custodial, traffic control) traffic control
 Dates/hours requested 9/24/17 6 AM to 6 PM
 PARKING (include locations and dimensions of parking space to be available/provided) North Sides of R from 9th to 4th + East/West Sides of O from 4th to 5th
 INSURANCE (Certificate of Insurance must be submitted with Application)
 Required ☐ Not Required ☒ - Will be submitted closer to event date as usual.
 FEES (itemize any Admission fees/space rental fees/sale of items/solicitation of funds) usual.

APPLICANT/ORGANIZATION (Name) Oyster Run
 Name of responsible person Angie Haynes Phone # 425-508-8524
 Address 3012 135 PL SE
Mill Creek WA Date of Birth 8/27/69
 The undersigned agrees to assume responsibility for the above described event, and to abide by all conditions stipulated upon acceptance of permit.
 Signature Angie Haynes Date 1/21/18

* FOR OFFICE USE ONLY *

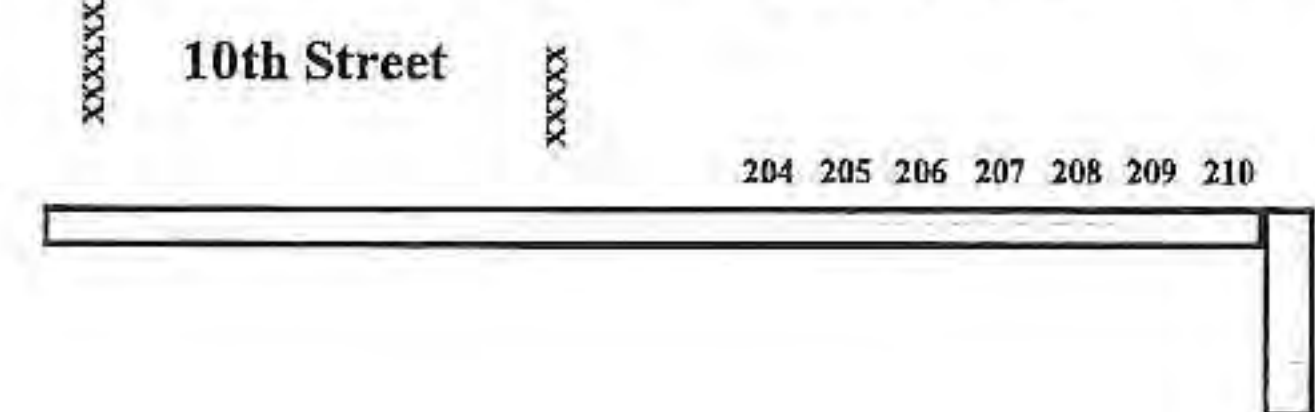
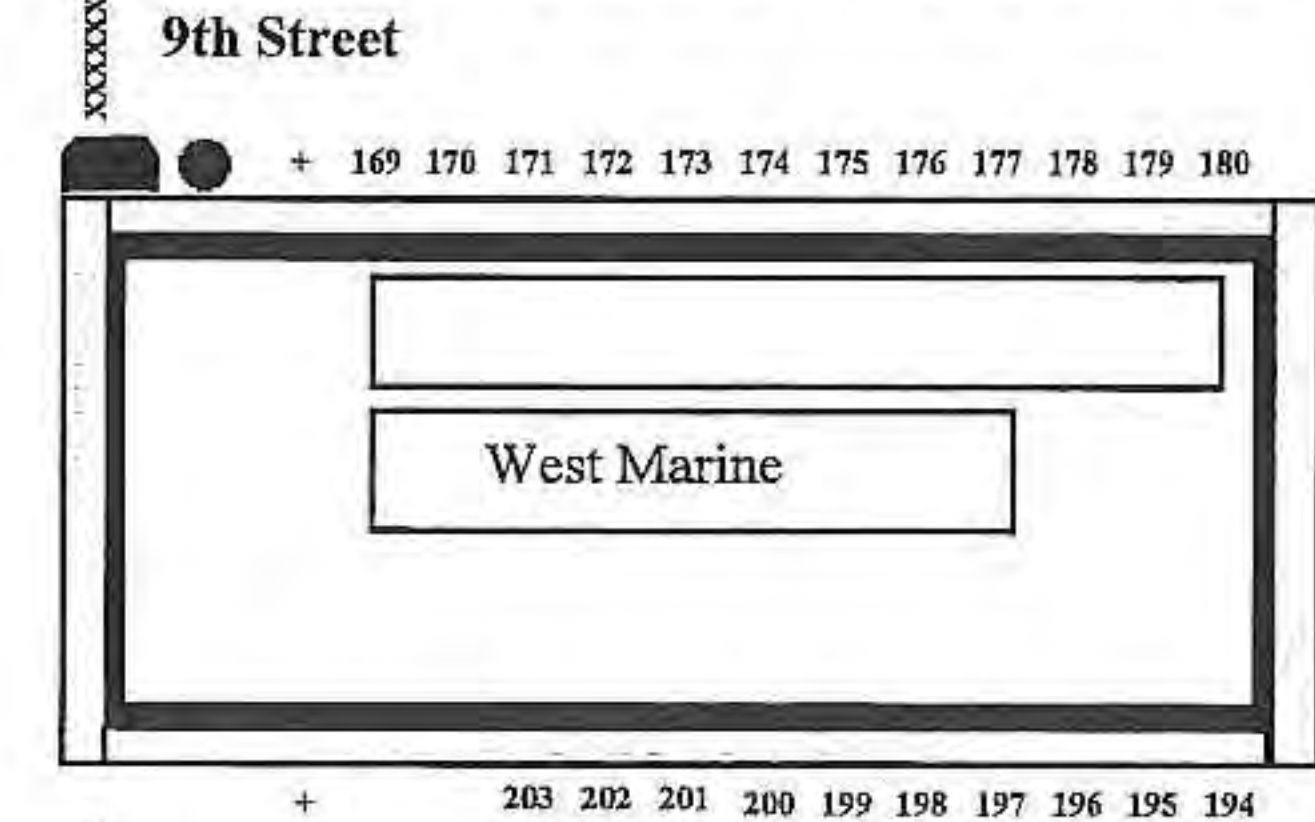
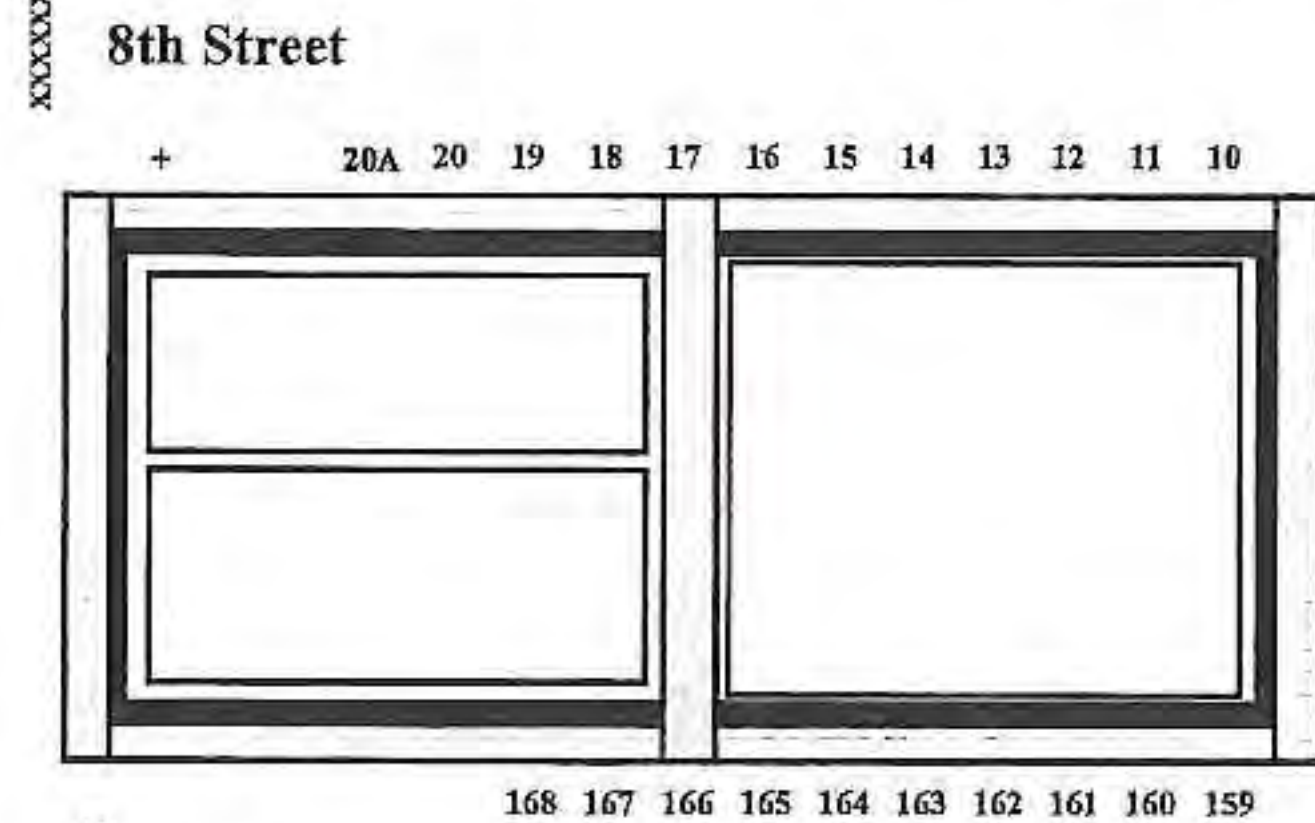
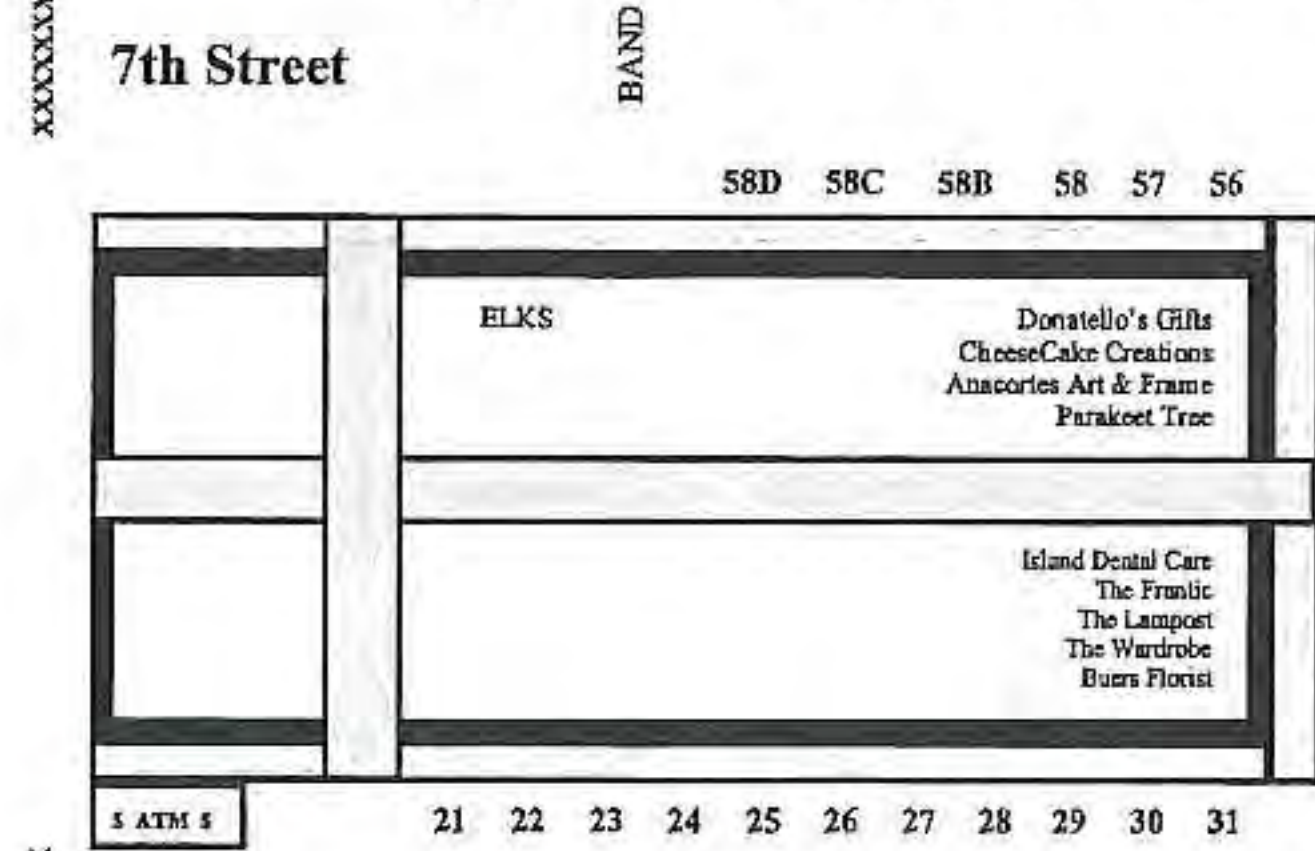
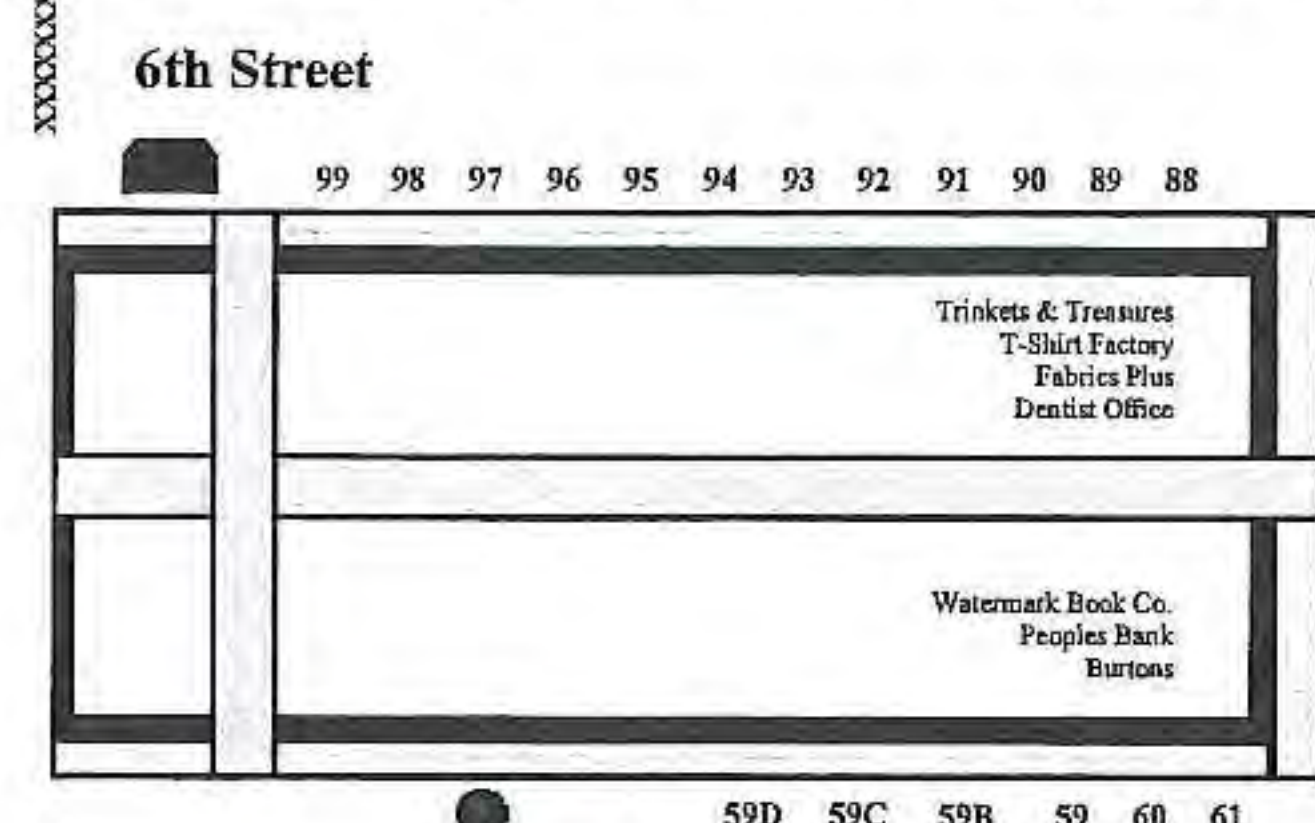
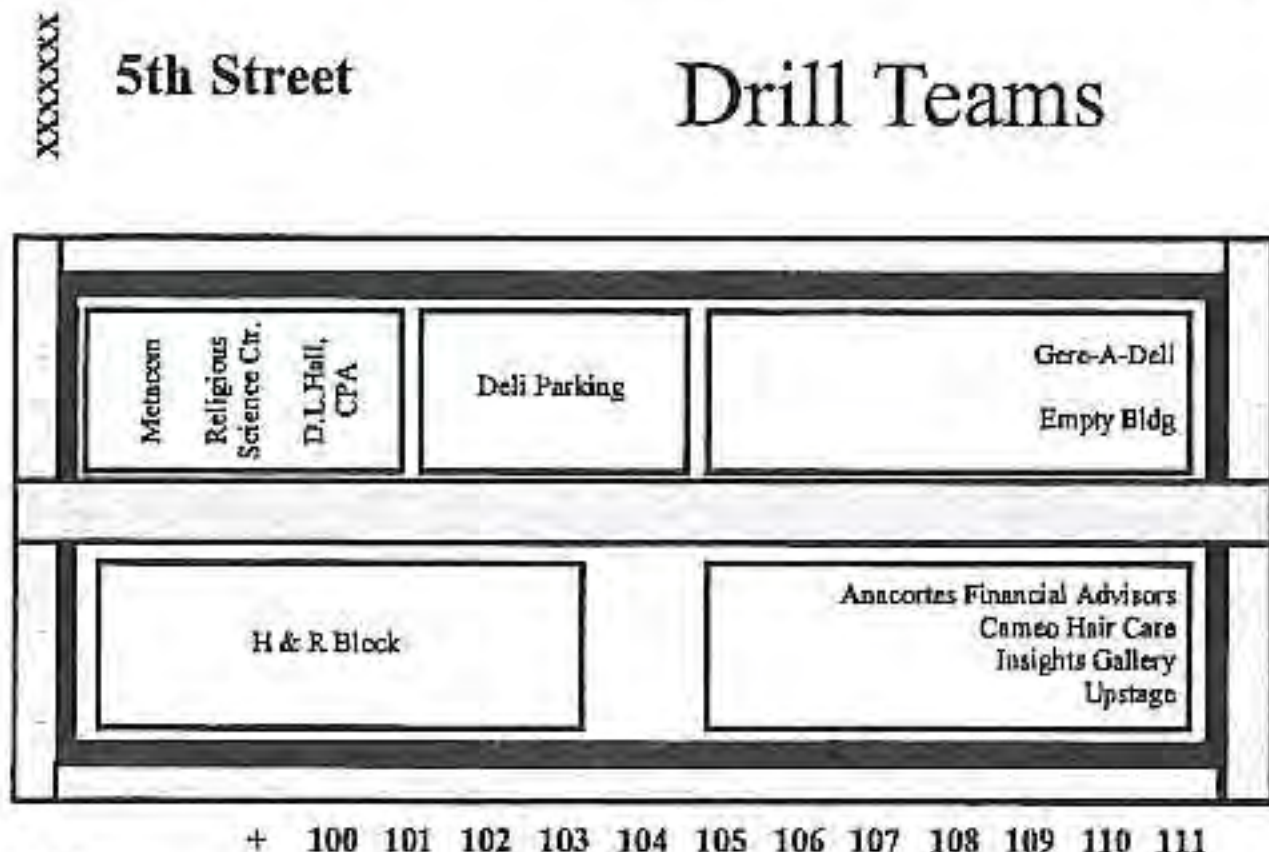
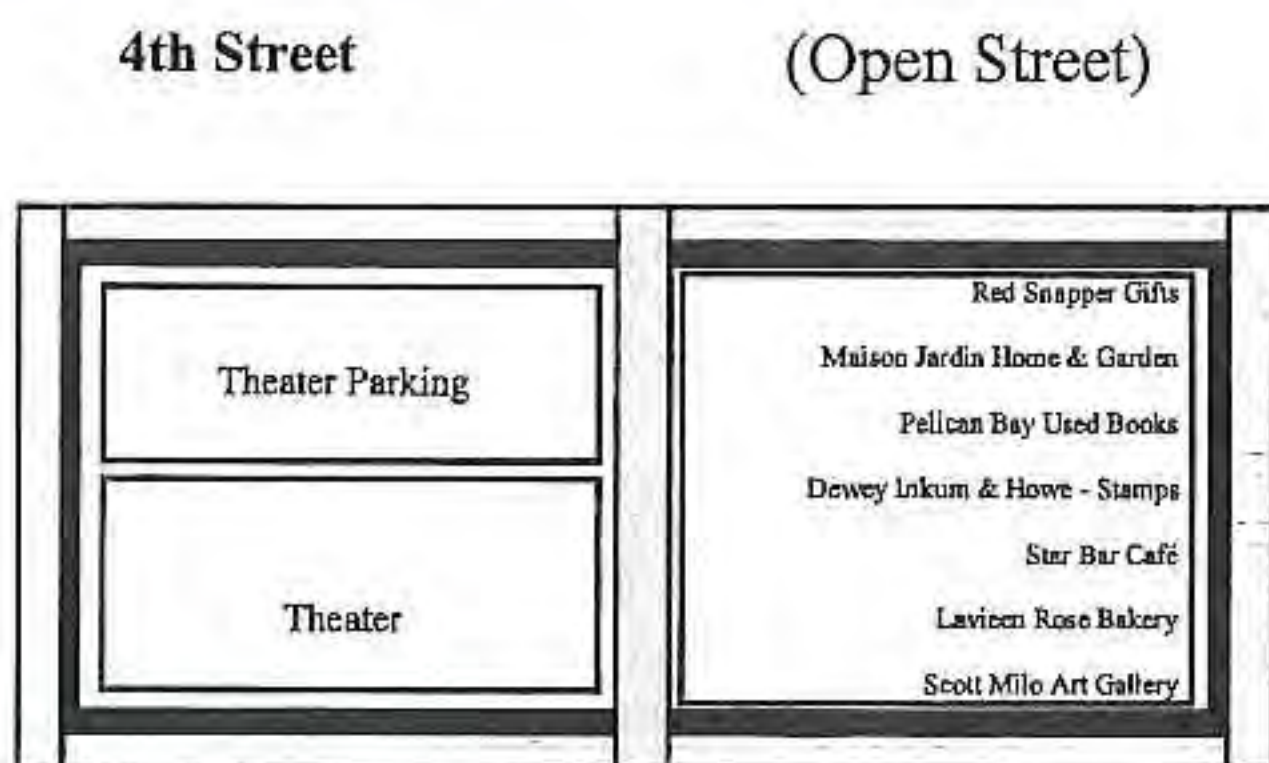
Initials Comments (Stipulate Conditions of Approval on Reverse)

Mayor _____
 Building [Signature] _____
 Fire [Signature] _____
 Parks [Signature] _____
 Police _____
 Public Works _____

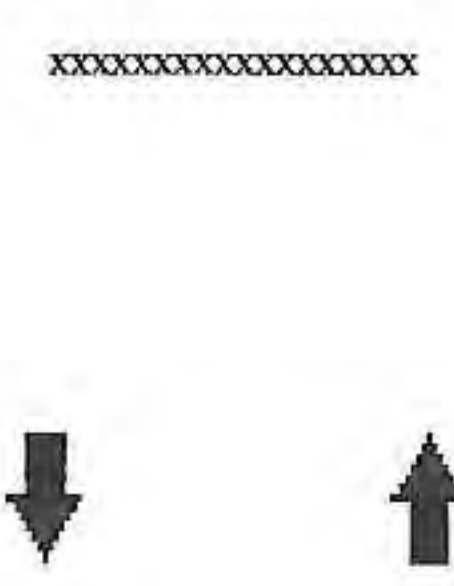
* PERMIT *

Permit will be issued after review by above Department Heads subject to the following conditions:

- Compliance with all City Ordinances
- Compliance with Department with Public Works regulations
- Submittal of Certificate of Insurance saving the City harmless from any and all damages which may accrue to any person or property as a result of this event.
- Compliance with special stipulations stated on Permit issued, signed by Mayor.

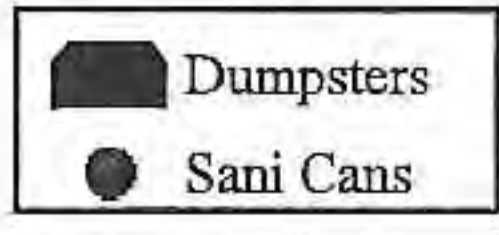
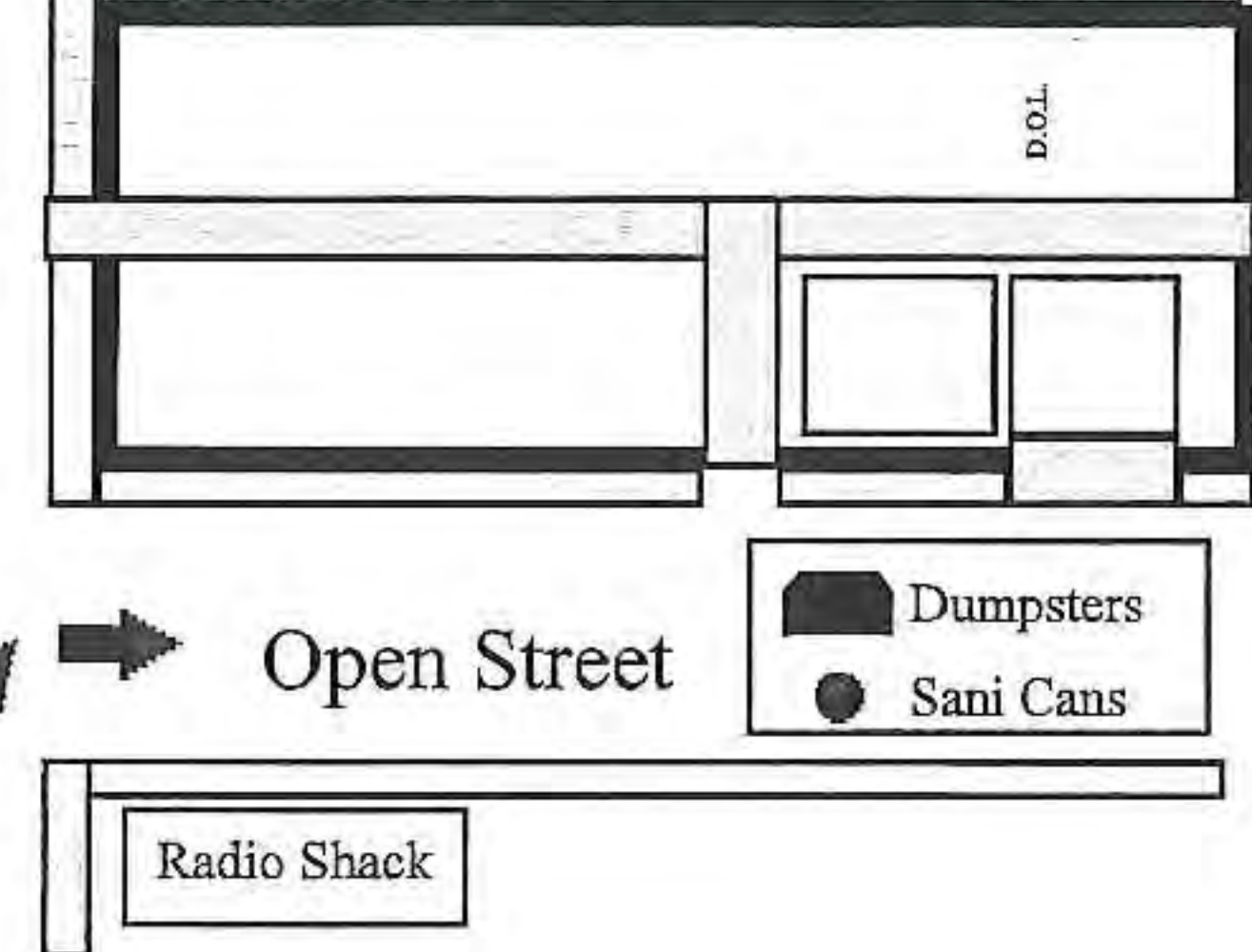
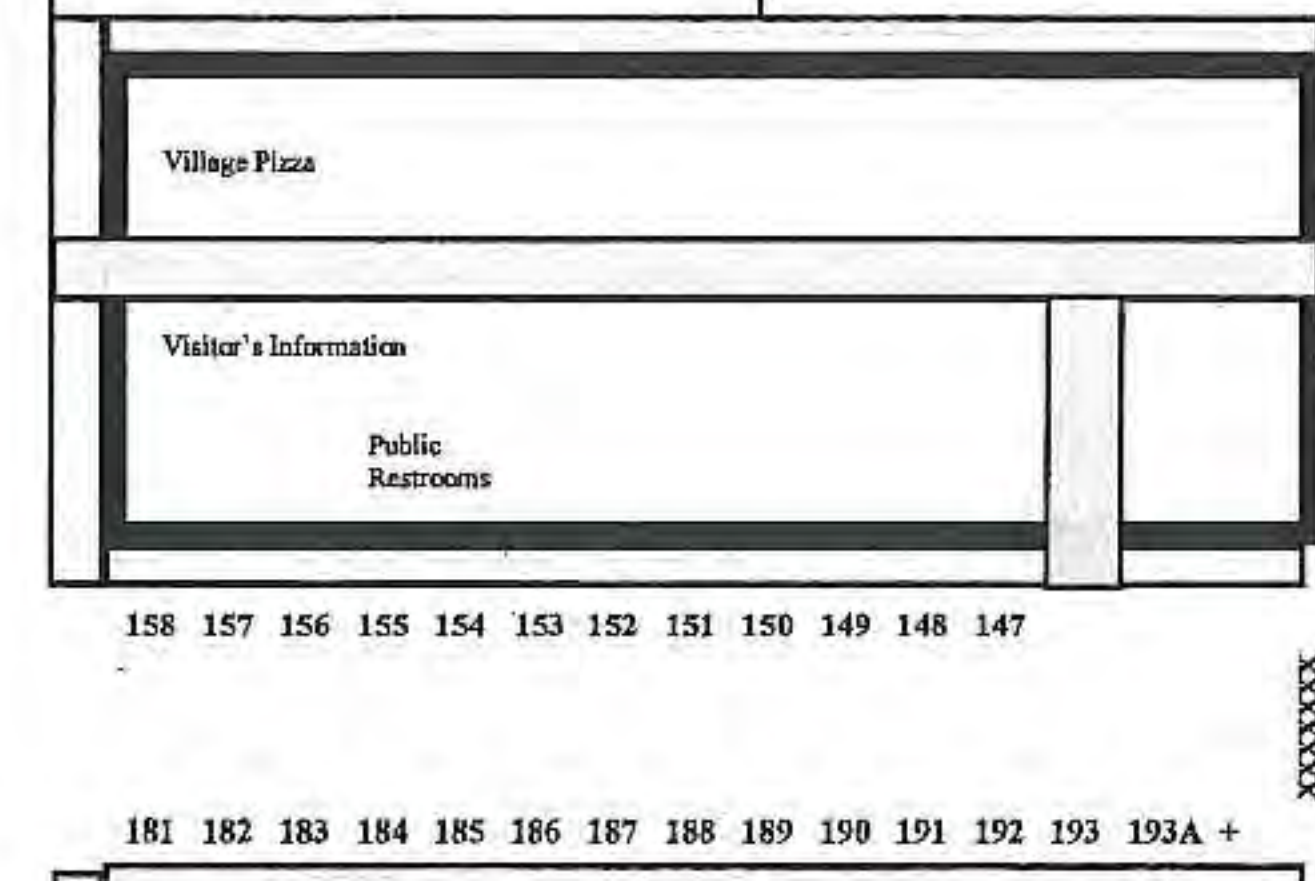
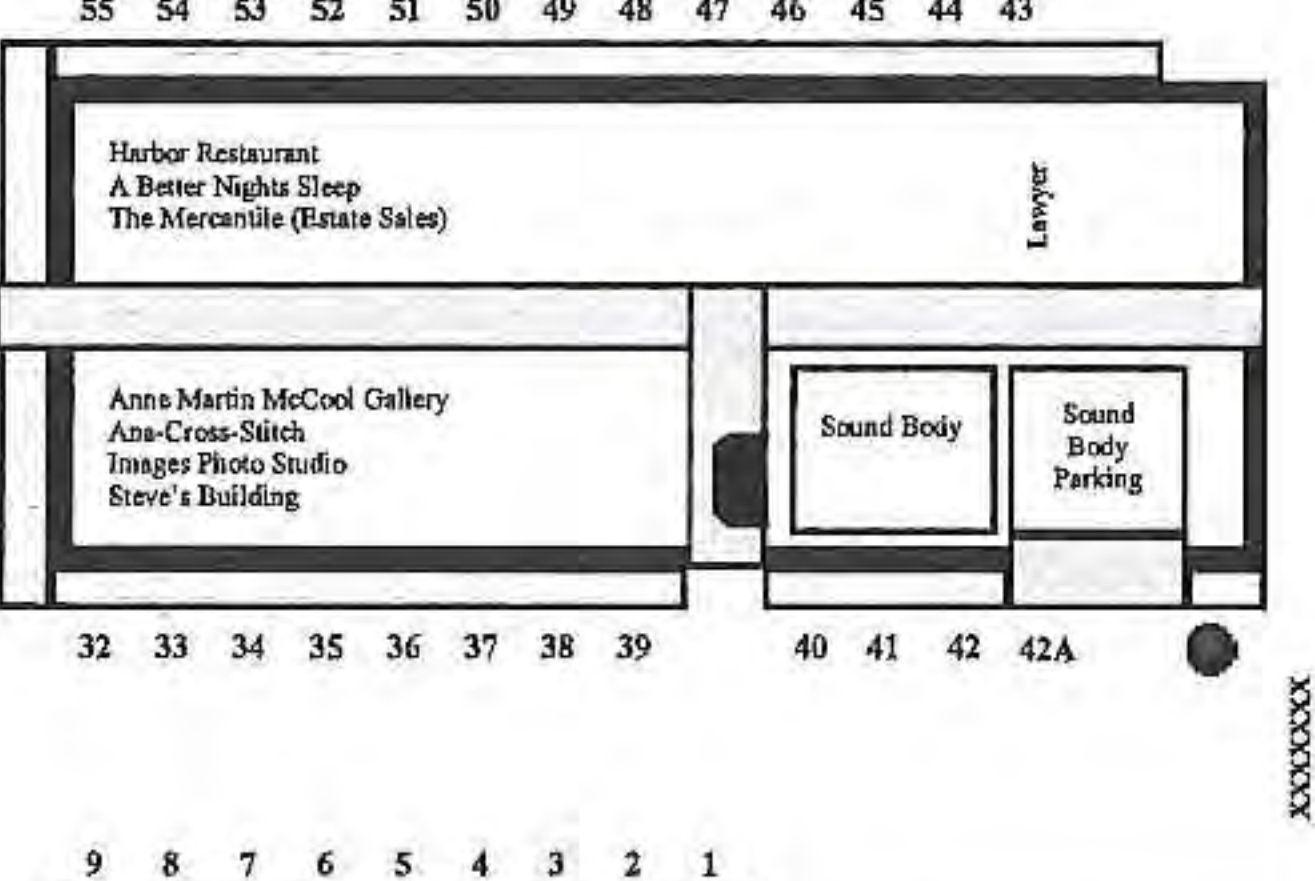
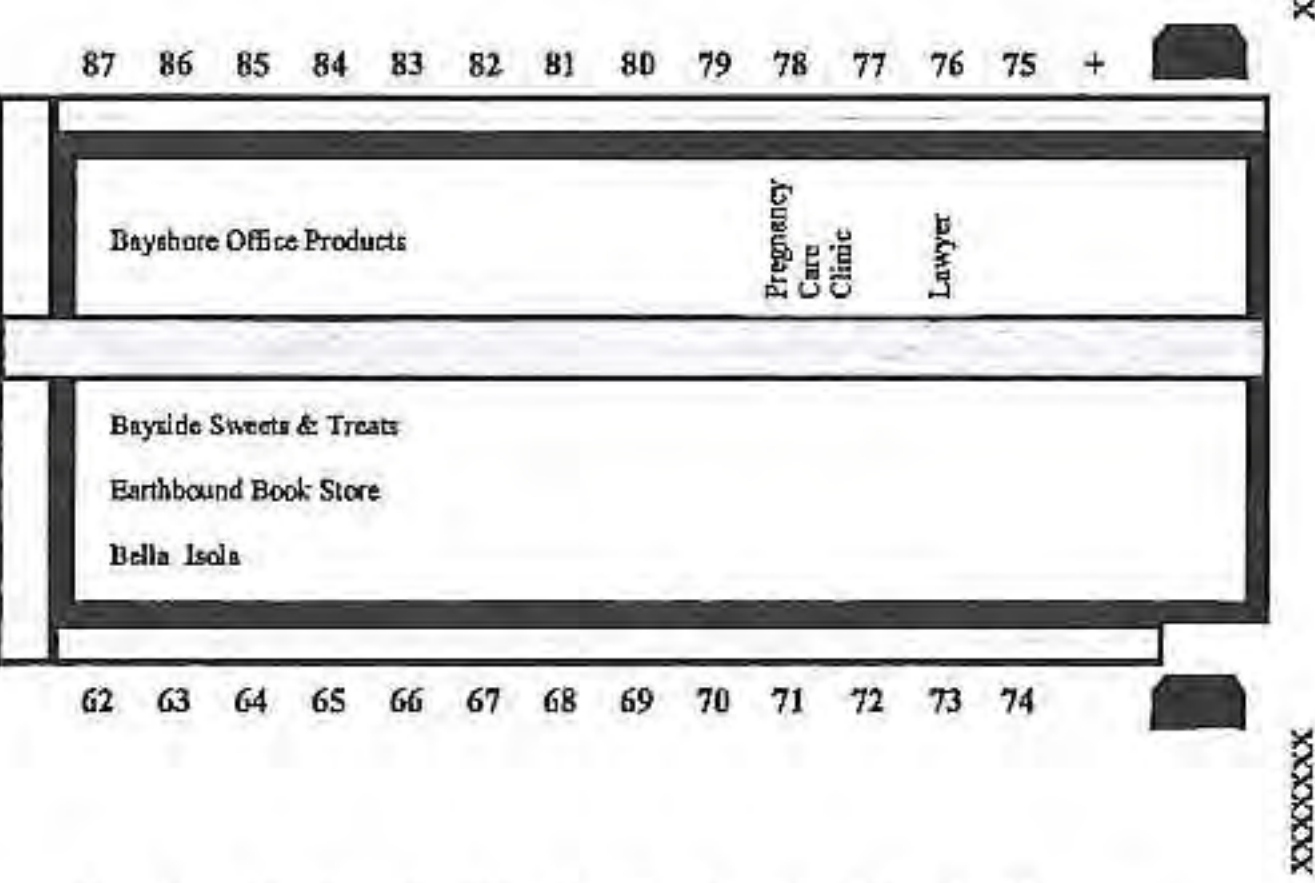
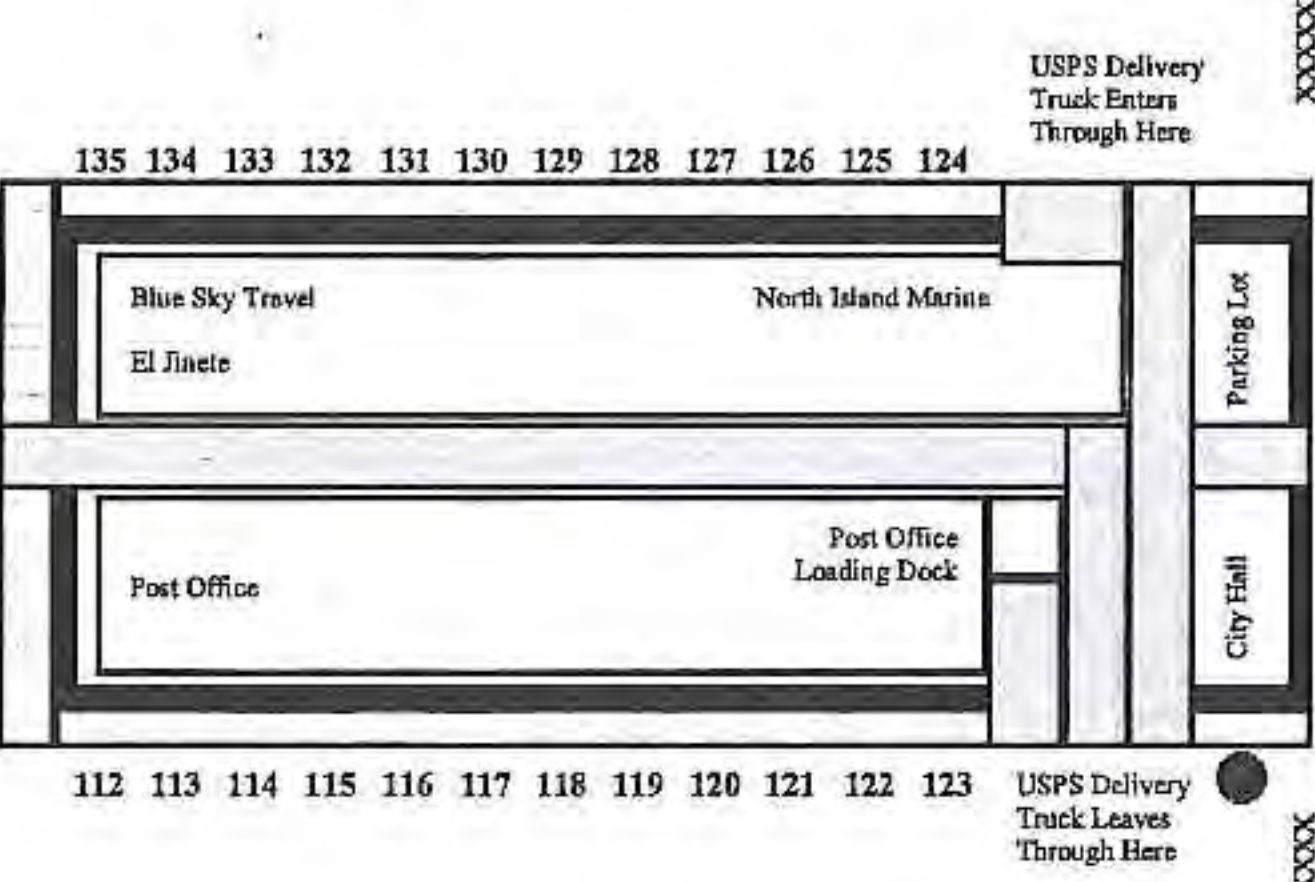
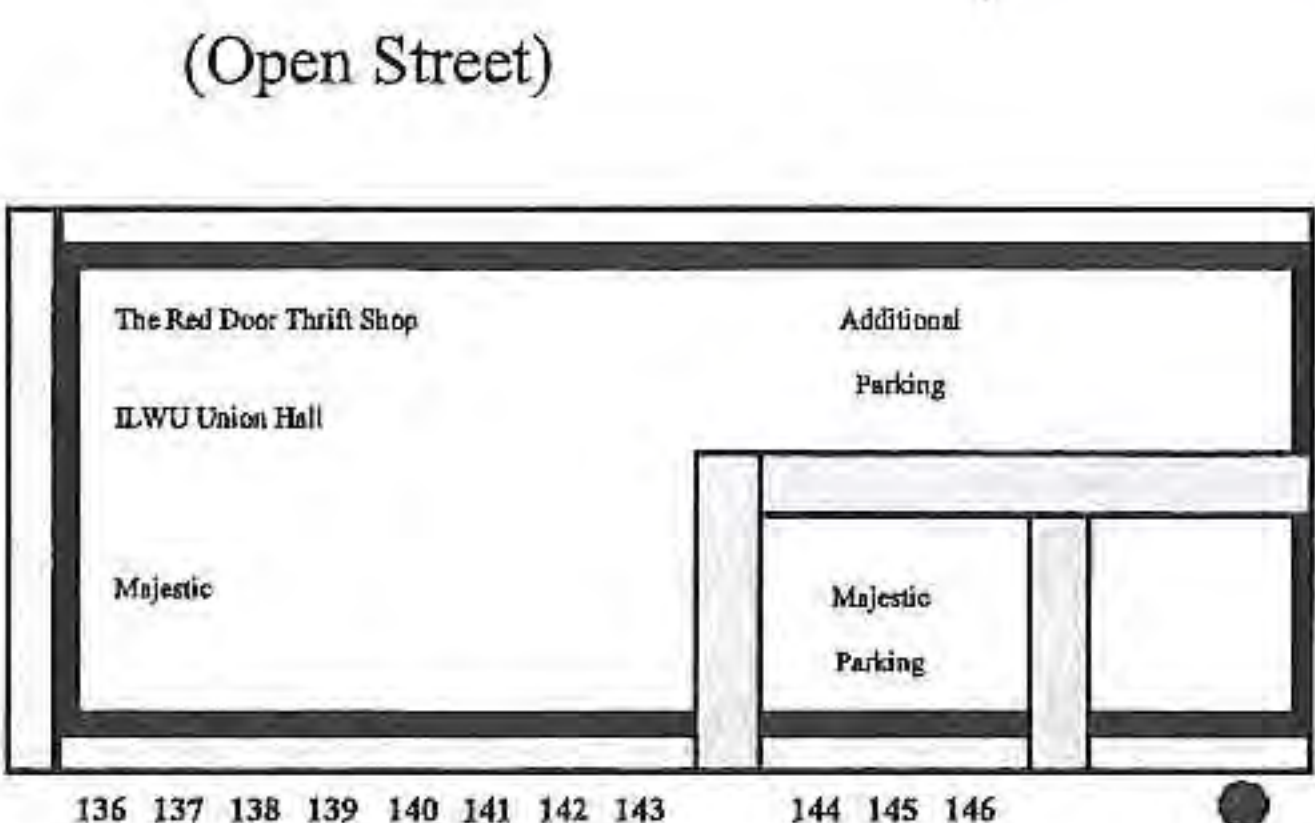


NORTH



COMMERCIAL AVE

MOTORCYCLE TRAFFIC ONLY



Open Street

Anacortes Municipal Fiber Update

AUGUST 21, 2017

Phase I- Construct Fiber Optic Lines connecting Telemetry Systems

- ❑ Technology ensures better reliability and communication with our telemetry systems
- ❑ Fiber optic lines will provide monitoring equipment to City's 30+ pump stations and reservoirs
- ❑ Contractors are onsite and installing dark fiber to support the water and wastewater utility systems
 - ❑ Inside the pipe from WTP in Mt. Vernon to Whistle Lake Reservoir
 - ❑ Along other utility lines and in some places underground

Phase II- Evaluate broadband demand for business and residential customers

- ☐ Additional capacity in the fiber optic lines could be harnessed to develop a municipal broadband service
- ☐ City is working with Northwest Open Access Network (NoaNet) a non-profit corporation providing wholesale communications and technology services in WA
- ☐ Proposed service zones following community input and surveying
- ☐ Trial system

Phase III- Install Fiber and high speed intranet to business and residential customers

- ☐ If trial phase generates enough demand future expansion of service with a phased approach
- ☐ Costs can be passed through to subscribers for the individual line extensions
- ☐ City Council needs to consider if any budget will be expended for the cost of construction
 - ☐ Interfund Loan?
 - ☐ Grants?

Municipal Fiber Model

- ❑ Open Access: City builds and operates the fiber network making it available to multiple independent internet service providers that compete for subscribers.
 - ❑ City may be one of the internet service providers.
- ❑ Contract will allow staff and NoaNet to determine areas of greatest interest for initial beta testing phase

Anacortes Business Model Ideas

- ❑ City system will be both a Wholesale and Retail Model
 - ❑ Open Access: City will build and operate the fiber network making it available to multiple independent internet service providers that compete for subscribers.
 - ❑ City may be one of the internet service providers.
 - ❑ Markets
 - ❑ Residential
 - ❑ Small/Medium businesses
 - ❑ Enterprise business (requiring dedicated line)
- ❑ Demand modeling

Anacortes Business Model



City Council Action Requested

- ☐ Authorize City to enter into contract with NoaNet
- ☐ **Contract will help City to**
 - Gauge interest of the community and businesses through surveys
 - Create implementation zones based on modeling of interest
 - Establish cost estimates for implementation

City of Anacortes Council Meeting

August 21, 2017



NoaNet and COS Systems

Angela Bennink

- Outreach and Communications Director
- NoaNet
- abennink@noanet.net 360-271-3425

Anders Lindehall

- COS Systems
- Anders.Lindehall@cossystems.com

Jonas Hakansson

- COS Systems
- Jonas.hakasson@cossystems.com



Timeline

August
2016

NoaNet proposal for City of Anacortes
Fiber Telemetry project

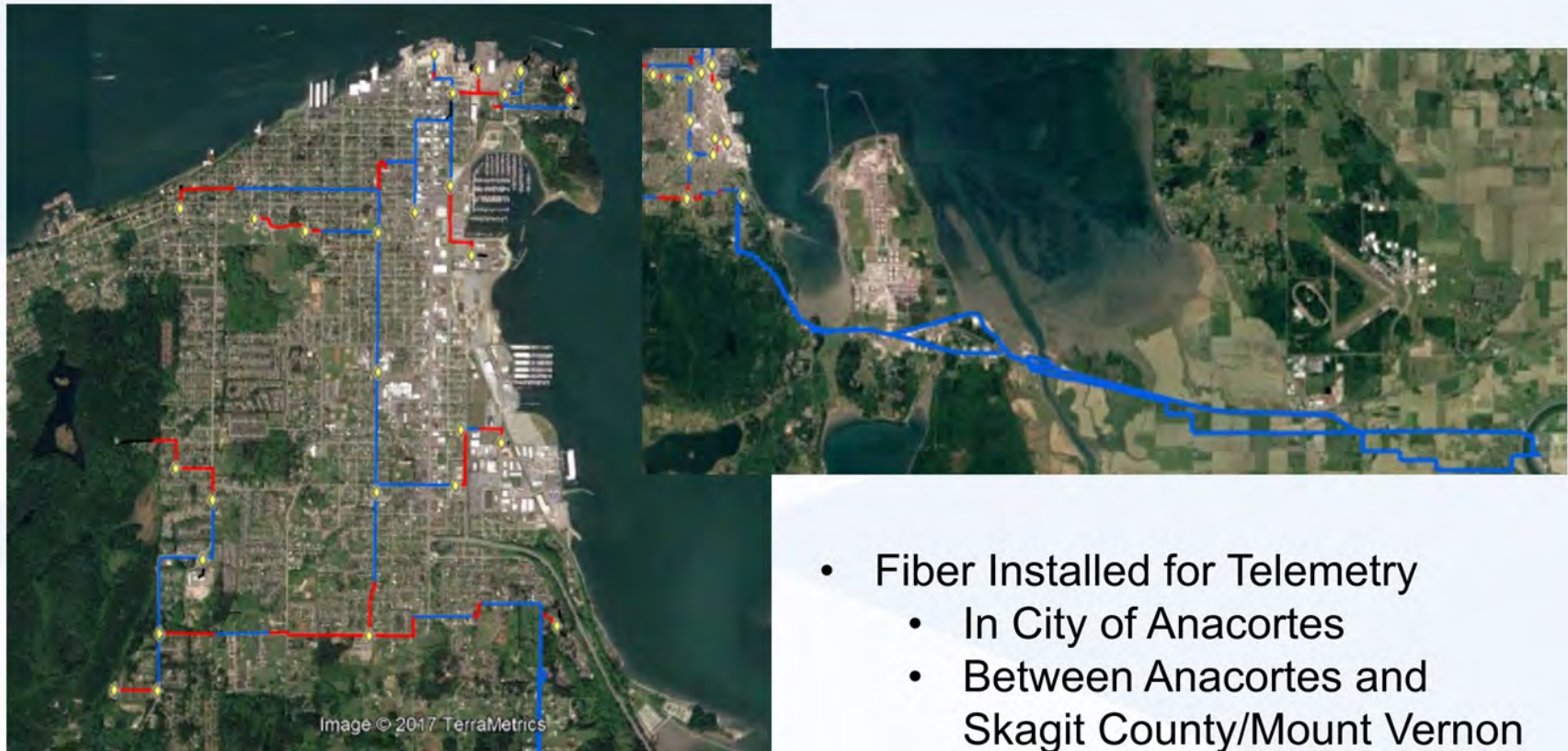
March
2017

City Council approves contract for fiber
construction in water pipes

August
2017

Engineering design for excess capacity use

Fiber Backbone



- Fiber Installed for Telemetry
 - In City of Anacortes
 - Between Anacortes and Skagit County/Mount Vernon

Excess Fiber Capacity Utilization

- Today broadband is a basic infrastructure required for a community to thrive.
- Fiber lines constructed for telemetry have excess capacity– Unused fibers in the cable.
- Should the City of Anacortes provide high-speed open-access broadband services to residents and businesses?
- Survey residents to understand desire and need of broadband services.

COS Service Zones



[Contact](#) [About](#) [Why Fiber?](#) [Service Plans](#) [Be a Champion](#) [FAQ](#)

Now you can get super fast Internet

We're rolling out our high speed network based on demand, which means you and your neighbors have to prove you want it first! Want to see which area you're in and who you should team up?

Enter your address to get started

Address (Street #, Street, ZIP Code)

Apartment #

[Find Address](#)

Select Zone from List

STEP 1
SHOW YOUR INTEREST

STEP 2
SIGN UP

STEP 3
CONSTRUCTION

STEP 4
CONNECTED

1st Cap Sante

1st Storvik Park

Currently no Zones in this Step

Currently no Zones in this Step

2nd Skyline Marina

2nd Anacortes High School

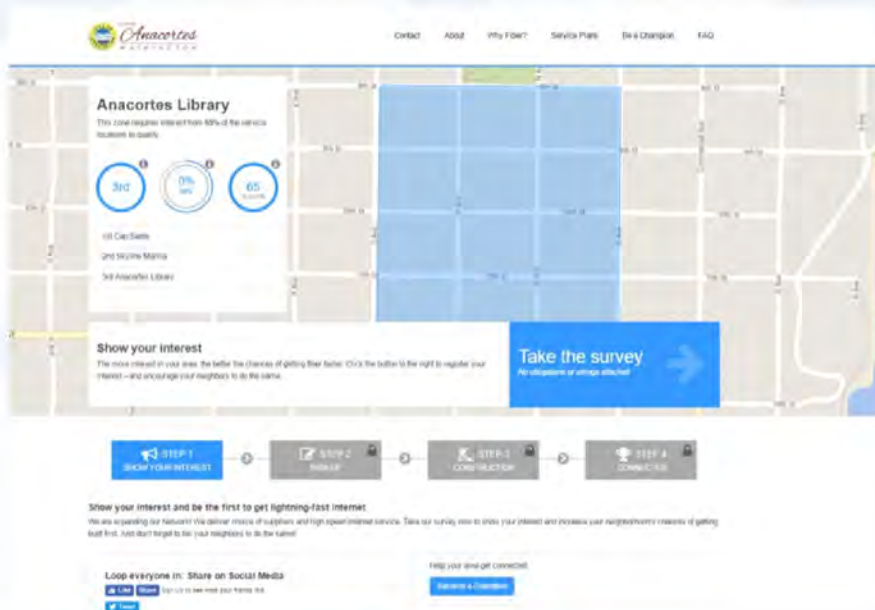
3rd Anacortes Library



Demand Aggregation

Intelligent surveying to determine if residents are interested in City providing Broadband services

- Location of Demand
- Current Providers/Speeds
- Percentage of Residents For/Against



Survey responses on a map

This map of the zone with the survey responses so far being made plotted out clearly shows where extra sales and marketing efforts could be done to increase the number of survey answers.



Prioritization of Builds

- Split City into small competing service zones – Fiberhoods
- Zones compete to be first to reach target Take-Rates
- Build in the order of largest take rate or best ROI



Deploy in the Optimal Order

NoaNet COS Implementation

- Personalize Service Zones to reflect City of Anacortes project
- Create content for Service Zone pages
 - What is City of Anacortes broadband project?
 - What is broadband and what can you do with it?
 - Frequently Asked Questions
- Create survey and launch materials
 - Define questions for survey
 - Build Launch Kit
- Training, finalizing and printing launch materials
- Final review and launch
- Ongoing Maintenance and Support

Timeline

August
2016

NoaNet proposal for City of Anacortes
Fiber Telemetry project

March
2017

City Council approves contract for fiber
construction in water pipes

August
2017

Engineering design for excess capacity use

Aug/Sept
2017

Begin business modeling and education
on broadband services

October
2017

Launch Service Zones

January
2018

Launch Online Marketplace-
COS Business Engine with NoaNet



Next Steps

- Survey Community
- Understand demand and need for broadband in City of Anacortes
- Develop business models based on demand and resources
- If choose to move forward
 - Identify Pilot Project Zones
 - Support Champions
 - Signup Residents
 - Create Marketplace
 - Wholesale and Retail
 - Launch Education Program
 - Broadband Benefits
 - Business
 - Residents
 - Government



Questions?

Tom Villani

Account Manager

NoaNet

tvillani@noanet.net

509-662-1244

Claire Ward

Marketing Manager

NoaNet

cward@noanet.net

816-519-2370

www.noanet.net



City Council Agenda Bill

Meeting Date: 8/21/2017

Agenda Item: 7a

Subject: Municipal Fiber Update

Staff Contact: Emily Schuh, Administrative Services Director

Approved for Submittal to Council by	
	Laurie Gere, Mayor
	Steve Hoglund, Finance Director
	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
X	Contract
	Public Hearing
X	Staff Report

Summary Statement: The City seeks City Council consent to enter into a contract with NoaNet in the amount of approximately \$10,000. This contract will provide us access to the COS system which will allow the City to gauge interest in the community for development of a municipal broadband system; create implementation zones based on modeling interest; and establish cost estimates for implementation.

Background: City's telemetry systems are in the process of being connected to a dark fiber system. Additional capacity remains in the fiber lines for development of a municipal fiber system.

Budget Impact	
Amount Budgeted	
Budget Account (BARS)	001.712.543.30.41
Proposed Expenditure	\$7000 Installation; \$2000 Monthly fee
Budget Amendment Required?	
Revenue Source	

Proposed Contract	
Contractor	NoaNet
Amount	
Start Date	
End Date	

Previous Council/Committee Action:

Competing Viewpoints Considered:

Recommended Motion: I move the City Council provide its consent to enter into a contract with NoaNet.

Alternative Actions:

Attachments (listed in order presented): NoaNet NCS Support Service Zones Contract

THIS AGREEMENT made and entered into by and between the **City of Anacortes, Skagit County, Washington**, a Washington municipal corporation, and **Northwest Open Access Network**, a Washington non-profit mutual corporation, hereinafter called “**NoaNet**”. This agreement becomes legally binding and effective upon signature by both parties.

1. Scope of Work:

City of Anacortes is contracting with Northwest Open Access Network (NoaNet) Network Coordinated Services for COS Services to implement and maintain an online broadband demand management system, COS Service Zones.

NoaNet will coordinate with COS staff to create a City of Anacortes website for evaluation of broadband demand and tracking future residential and business customers. This website will designate Zones for service area surveying initially. If surveying indicates a positive response, this site may also be utilized to track qualified ‘zones’ through construction. The website will remain unviewable to the general populations for setup and testing, becoming public when the City of Anacortes is ready to begin surveying. The Parties anticipate that, once work under this Agreement is complete, a new Agreement for the provision of business management services will be negotiated.

A detailed description of the scope of work and proposed timelines is provided in Attachment A, which is hereby incorporated by reference.

2. Price:

The price for work performed under this Agreement shall be as follows:

- a. Installation of COS Service system: \$7,000.00
- b. Monthly charges for ongoing support and services: \$2,000.00
- c. Additional support not described in the Scope of Work shall be performed at a rate of \$100.00 per hour.
- d. Costs for printing, mailing, and other media costs will be paid by the City of Anacortes.

3. Invoicing:

All invoices shall include a cover page that states: Company Name, Invoice Date, Due Date (30 days), Invoice Number, Invoice Period, AGREEMENT Number, Agreement Price, amount requested per invoice and cumulative invoiced amount. Invoices shall include actual hours worked by Period.

The Contractor must invoice **MONTHLY** for quantities delivered during the invoice period, and no more frequently than monthly, and allow 30 calendar days from receipt of the invoice for payment.

Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to accountspayable@cityofanacortes.org

4. Ownership of Materials:

All finished and unfinished documents and materials prepared by NoaNet with funds paid by the City pursuant to the terms of this Agreement shall become the property of the City and shall be forwarded to the City upon its request. Documents and materials shall include but not be limited to surveys, website designs, reports, electronic and non-electronic data, and other design documents prepared by NoaNet. Pursuant to RCW 42.56.70, all documents produced with funds paid by the City under this Agreement may be subject to public disclosure.

5. NoaNet is an Independent Contractor:

The parties intend that an independent Contractor relationship will be created by this Agreement. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose.

6. The City's Right to Terminate Agreement:

- a. Termination for Default:** If NoaNet defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to NoaNet in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the NoaNet shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to NoaNet. NoaNet shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default. If a notice of termination for default has been issued and it is later determined for any reason that NoaNet was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.
- b. Termination for Public Convenience:** The City may terminate the Agreement in whole or in part whenever the City determines, in its sole discretion that such

termination is in the best interests of the City. Whenever the Agreement is terminated in accordance with this paragraph, NoaNet shall be entitled to payment for actual work performed at unit Agreement prices for completed items of work. An equitable adjustment in the Agreement price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Agreement by the City.

7. Limitation of Liability:

The total liability of NoaNet and its underlying service and equipment providers to City of Anacortes in connection with this Master Agreement and any Service Order, for any and all causes of actions and claims, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts, shall be limited to the lesser of: (a) direct damages proven by City of Anacortes; or (b) the amount paid by City of Anacortes to NoaNet under the applicable Service Order for the one (1) month period prior to accrual of the most recent cause of action. In no event shall NoaNet be liable for special, punitive, consequential or incidental damages, including without limitation, lost revenue, profits or other benefit whether by tort, contract, or otherwise.

8. Publicity:

NoaNet may include City of Anacortes's name or its trademarks in a list of NoaNet customers, online or in promotional materials. NoaNet may also verbally reference City of Anacortes as a customer of the Services. City of Anacortes may revoke this right to use its trademarks under this Section with written notice to NoaNet and a reasonable period to stop the use.

9. Governing Law:

This Master Agreement, and the Service Orders are governed by and subject to the laws of the State of Washington, excluding its principles of conflicts of law.

10. Litigation:

If either party commences litigation under this Agreement, or a Service Order, the prevailing party is entitled to reimbursement of its costs and attorneys' fees from the other party.

11. Remedies not Exclusive:

The remedies provided in this Agreement, or a Service Order, shall be in addition to all other remedies to which either party may be entitled at law or in equity, including without limitation the right to recover unpaid amounts with

interest at the applicable statutory judgment rate, but accruing from the date initially due.

12. Jurisdiction; Venue:

The parties consent to the personal jurisdiction of the courts of the State of Washington so that any litigation concerning or arising out of this Master Agreement, a Service Order shall be brought in Washington. The parties agree not to claim that Washington is an inconvenient place for trial. The venue of any such legal action shall be Skagit County Superior Court of the State of Washington.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in two (2) counterparts.

Northwest Open Access Network

City of Anacortes

By:

By:

Name:

Print/Type

Name:

Print/Type

Title:

Title:

Date:

Date:

Attachment A

Proposed Scope of Work and Schedule

Week 1: Personalize Service Zones to reflect City of Anacortes project

- City of Anacortes to provide use of current City of Anacortes logo and color themes
 - If City would like to define a new brand for network services, and would like to contract with NoaNet for that, it would necessitate additional resources and time
- Obtain and select local images on website
 - NoaNet may take images for the City
 - City of Anacortes may provide images
- NoaNet + City of Anacortes to define area for inclusion in Service Zones
 - Create Zones within this area
 - Define Zone for pilot project
 - Populate local data

Week 2: Create content for Service Zone pages

- NoaNet to create specific informational pages on Service Zones platform
 - City to assist with local knowledge about neighborhoods to personalize pages
 - NoaNet to populate website with this information
 - What is City of Anacortes broadband project?
 - What is broadband and what can you do with it?
 - Frequently Asked Questions

Week 3: Create survey and launch materials

- Create survey
 - NoaNet + City of Anacortes will work together to:
 - Define questions for survey
 - Build sample retail services that use city of Anacortes' proposed business model
- Launch kit
 - NoaNet will design:
 - Flyers
 - Brochures

- Champion toolkit
 - Informational materials, stickers, hats, etc.
- Billing insert
- Community presentations

Week 4: Training, finalizing and printing launch materials

- City of Anacortes staff will review all materials and sign off prior to production and release into community
 - It will be City of Anacortes' responsibility print/order these items at their discretion
- NoaNet will train City of Anacortes staff on use of administration portal feature of Service Zones software
- City of Anacortes will schedule community meetings – Library, Community Center, Rotary, Chamber of Commerce
- City of Anacortes will send mailer for pilot project to homes and businesses
- NoaNet + City of Anacortes will invite media to City Council meeting for launch

Week 5: Final review and launch

- Anacortes will conduct final review of Service Zone site and associated materials
- Launch at City Council meeting
 - presentation
 - sharing of materials
- NoaNet will support City of Anacortes Champions that will continue to engage by attending community meetings to spread the word about the survey

Maintenance

Ongoing support, content management and support for Service Zones is outlined below and included in a monthly fee. This will be a collaborative effort with NoaNet responding to Anacortes' need for expanded Zones, new information, and ongoing reports and community engagement. This fee will also cover the fee for hosting and maintaining the Survey Zones web portal.

- Ongoing software support from NoaNet and COS systems
 - Monthly maintenance from COS for hosting and maintaining system
- 15 hours of marketing content support per week

- Creating new Service Zones
- Editing content
- Communications to survey respondents
- Creating monthly reports for City of Anacortes staff
- NoaNet will attend quarterly council meetings to present on usage and statics



WAVE FRANCHISE QUESTIONS

August 21, 2017





SECTION ONE: CHARGES FOR FRANCHISE

POTENTIAL CHARGES FOR FRANCHISE

- The City has two basic options for charging a franchisee:
 - Utility tax: An excise tax on businesses doing business within City boundaries.
 - Franchise fees: Fees paid for the use and occupation of City rights-of-way.
- Neither is allowable for fiber

UTILITY TAXES



Utility Tax: Basic Authority

- Cities must be granted taxing authority
 - The Washington State Constitution permits the legislature to grant municipal authorities the power to levy and collect taxes for local purposes. CONST. art. VII, § 9; art. XI, § 12;
 - Municipalities must have express authority, either constitutional or legislative, to levy taxes. King County v. City of Algona, 101 Wn.2d 789, 791, 681 P.2d 1281 (1984). Citizens for Financially Responsible Gov't v. City of Spokane, 99 Wn.2d 339, 342, 662 P.2d 845 (1983)
- Legislature has not granted Cities taxing authority on internet utilities
 - The legislature finds that the newly emerging business of providing internet service is providing widespread benefits to all levels of society. The legislature further finds that this business is important to our state's continued growth in the high-technology sector of the economy and that, as this industry emerges, it should not be burdened by new taxes that might not be appropriate for the type of service being provided. The legislature further finds that there is no clear statutory guidance as to how internet services should be classified for tax purposes and intends to ratify the state's current treatment of such services." RCW §35.21.717, legislative findings.

Utility Tax: Types of Utilities that can be taxed with limits

- **Utilities with a 6% Tax Limit (without voter approval)**

- Electricity
- Gas
- Steam
- Telephone
- RCW 35.21.870(1). Cities may impose a higher rate with voter approval. Id.

- **Utilities with No Tax Limit**

- Sewer/Stormwater
- Solid waste
- Water
- Cable TV - may not be "unduly discriminatory"

- **Utilities that may not be Taxed**

- Broadcast Satellite TV
- Internet Services

Utility Tax: Anacortes Municipal Code provisions

▪ Telephone Business:	6% tax	5.36.050 AMC
▪ Electricity:	6% tax	5.36.070 AMC
▪ Natural Gas:	6% tax	5.36.080 AMC
▪ Water:	7% tax	5.36.090 AMC
▪ Solid Waste Collection:	12% tax*	5.36.100 AMC
▪ Cable TV:	7% tax	5.36.110 AMC
▪ Sewer:	7% tax	5.36.120 AMC
▪ Storm Drainage:	7% tax	5.36.130 AMC

*Solid waste is 12% because 5% is allocated to road fund to support overlay program

Utility Tax: Express Authority for Telephone Business

- **RCW 35.21.714(1). License fees or taxes on telephone business**
- Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax

Utility Tax: What is a telephone business?

- Telephone Business: means the business of providing network telephone service. RCW 82.16.010(6)(b)(iii)
- Network Telephone Service: means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone service, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. “Network telephone service” includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. “***Network telephone service***” ***does not include the providing of competitive telephone service***, the providing of cable television service, the providing of broadcast services by radio or television stations, ***nor the provision of internet access*** as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.” RCW 82.16.010(6)(b)(ii)

Utility Tax: What is excluded from Network Telephone Services?

- Competitive Telephone Service: means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made. RCW 82.04.065(5). 5.36.060(A) AMC.
- Internet Access Service: means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services a part of a package of services offered to consumers. The term 'Internet Access Service' does not include telecommunications services, except to the extent that such services are purchased, used, or sold by a provider of Internet access to provide Internet access. RCW 82.04297(2)(citing 47 U.S.C.151).

Utility Tax: Is there authority to tax fiber franchise?

- Closest utility to Internet that cities are authorized to assess utility taxes on are **telephone businesses**
- Telephone businesses are those providing **network telephone services**
- **Network telephone services** DOES NOT INCLUDE:
 - **Competitive telephone service**: telecommunications equipment or apparatus (arguably dark fiber)
 - **Internet access service**, as defined by federal Internet Tax Freedom Act
- Dark fiber fits definition of **competitive telephone service** and **internet access service**
- Wave is not providing **network telephone services**, is not a **telephone business**, and the City doesn't have express authority to impose utility tax on franchise

FRANCHISE FEES



Franchise Fees in the AMC

- Chapter 5.44: Cable Communications Systems: Refers to “cable services”, “cable communications systems”, or “CATV system”.
- AMC 5.44.140: “The city may impose a franchise fee in accordance with Section 622 of the Cable Act.”
- Cable Act allows up to 5% of gross revenues annually for a franchise fees
- Only mention of franchise fees in the AMC

Franchise Fees in State Law

- **RCW 35.21.860**
- **Electricity, telephone, or natural gas business, service provider—Franchise fees prohibited—Exceptions.**
- **(1) *No city or town may impose a franchise fee*** or any other fee or charge of whatever nature or description upon the light and power, or gas distribution businesses, as defined in RCW 82.16.010, or telephone business, as defined in RCW 82.16.010, ***or service provider for use of the right-of-way***, except:
 - **(a)** A tax authorized by RCW 35.21.865 may be imposed;
 - **(b)** A fee may be charged to such businesses or service providers that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW;
 - **(c)** Taxes permitted by state law on service providers;
 - **(d) *Franchise requirements and fees for cable television services as allowed by federal law***; and
 - **(e)** A site-specific charge pursuant to an agreement between the city or town and a service provider of personal wireless services...

Franchise Fees: Who pays in Anacortes?

- **Franchise Fees:**

- Comcast is only company City charges franchise fee
- Comcast is only cable TV provider in town
- DirecTV and Dish are Satellite TV providers, franchise fee not authorized
- Franchise is non-exclusive; any new cable providers would also pay franchise fee

- **Right-of-way costs:**

- All private utilities pay a right-of-way permit fee to cover administration costs
- Authorized per **RCW 35.21.860(1)(b)**

Utility Tax/Franchise Fee Summary

Type of Utility	Utility Tax?	Franchise Fee?*
Telephone	Yes – 6%	No
Cable TV	Yes – Not unduly discriminatory rate	Yes
Internet Services	No	No
Electricity	Yes – 6%	No
Gas	Yes – 6%	No
Steam	Yes – 6%	No
Sewer/Stormwater	Yes – no limit	No
Water	Yes – no limit	No
Solid Waste	Yes – no limit	No
Satellite TV	No	No
* We can charge an admin fee		



SECTION TWO: WAVE'S CONTRIBUTIONS TO THE CITY

Value of Wave's In-Kind Contributions Since 2006

	2006 - 2012	2013-2015	2016-2017
Monthly Recurring Charge	\$ 560	\$ 1,178	\$ 1,500
Months	84	36	24
Total for MRCs	\$ 47,040	\$ 42,408	\$ 36,000
6 pairs	6	6	6
	\$ 282,240	\$ 254,448	\$ 216,000
TOTAL			\$752,688



NET NEUTRALITY

Net Neutrality

- Definition: A principle that Internet service providers and governments regulating the Internet should treat all Internet traffic equally.
- RCW
 - (1) A city or town shall not adopt or enforce regulations or ordinances specifically relating to use of the right-of-way by a service provider that:
 - (a) ***Impose requirements that regulate the services or business operations of the service provider, except where otherwise authorized in state or federal law;***
 - (b) Conflict with federal or state laws, rules, or regulations that specifically apply to the design, construction, and operation of facilities or with federal or state worker safety or public safety laws, rules, or regulations;
 - (c) ***Regulate the services provided based upon the content or kind of signals that are carried or are capable of being carried over the facilities, except where otherwise authorized in state or federal law;*** or
 - (d) Unreasonably deny the use of the right-of-way by a service provider for installing, maintaining, repairing, or removing facilities for telecommunications services or cable television services.
 - 35.99.040(1): Local regulations, ordinances-Limitations.
- Don't appear to be state or federal laws that authorize local governments to regulate the type of services provided based on content or kinds of signals, or allowing regulations on the services or business operations of ISPs.



QUESTIONS?

Thank You!



City Council Agenda Bill

Meeting Date: 8/7/2017

Agenda Item: 7a

Subject: Wave Franchise Agreement

Staff Contact: Fred Buckenmeyer, Darcy Swetnam

Approved for Submittal to Council by	
	Laurie Gere, Mayor
	Steve Hoglund, Finance Director
x	Darcy Swetnam, City Attorney

Action Type	
x	Ordinance No. 3005
	Code Revision?
	Resolution No.
x	Contract
	Public Hearing
	Staff Report

Summary Statement: The enclosed is a franchise agreement to Wave Cable to operate telecommunication services in City right-of-way.

Background: The proposed Ordinance is a non-exclusive franchise agreement with Astound Broadband (Wave), giving them license to operate telecommunication facilities in City right-of-way. Wave currently has a franchise agreement to operate in the City. This Agreement will not interfere with the City's new telemetry or municipal broadband system.

Budget Impact	
Amount Budgeted	
Budget Account (BARS)	
Proposed Expenditure	
Budget Amendment Required?	
Revenue Source	

Proposed Contract	
Contractor	
Amount	
Start Date	
End Date	

Previous Council/Committee Action: N/A

Competing Viewpoints Considered: N/A

Recommended Motion: I move we adopt Ordinance Number 3005, an ordinance of the City of Anacortes granting Astound Broadband a non-exclusive franchise for the transmission of telecommunications in, through, over and under the rights-of-way of the City of Anacortes.

Alternative Actions:

Attachments (listed in order presented): Proposed Ordinance 3005

ORDINANCE 3005

AN ORDINANCE OF THE CITY OF ANACORTES GRANTING ASTOUND BROADBAND, LLC DBA WAVE A NON-EXCLUSIVE FRANCHISE FOR THE TRANSMISSION OF TELECOMMUNICATIONS IN, THROUGH, OVER AND UNDER THE RIGHTS-OF-WAY OF THE CITY OF ANACORTES.

WHEREAS, Astound Broadband, LLC, a Washington limited liability company ("Grantee") has requested that the City grant it the right to install, operate and maintain a fiber optic-based telecommunications system within the public Rights-of-Way of the City; and

WHEREAS, the City Council finds it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to Grantee; and

WHEREAS, the City Council has the authority under state law to grant franchises for the use of its Rights-of-Way; and

WHEREAS, the City is willing to grant the rights requested by Grantee subject to certain terms and conditions.

NOW, THEREFORE, The City Council of the City of Anacortes does ordain as follows:

Section 1. Definitions. Where used in this Ordinance and the franchise granted hereby (the "Franchise") these terms have the following meanings:

A. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.

B. "City" means the City of Anacortes, a municipal corporation of the State of Washington.

C. "Emergency Situation" means an emergency involving likely loss of life or substantial property damage as determined by City in good faith.

D. "Facilities" means Grantee's fiber optic cable system constructed and operated within the City's Rights-of-Way, and shall include all cables, wires, conduits, ducts, pedestals and any associated converter, equipment or other facilities within the City's Rights-of-Way, designed and constructed for the purpose of providing Telecommunications Service and other lawful services not prohibited by this Ordinance.

E. "Franchise" shall mean the initial authorization or renewal thereof, granted by the City, through this Ordinance, or a subsequently adopted Ordinance, which authorizes construction and operation of the Grantee's Facilities for the purpose of offering Telecommunications Service and other lawful services not prohibited by this Ordinance.

F. "Franchise Area" means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.

G. "Person" means an individual, partnership, association, joint stock company, trust, corporation, limited liability company or governmental entity.

H. "Rights-of-Way" means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, rights of way and similar public areas within the City.

I. "Telecommunications Service" means telecommunications service as defined in RCW 35.99.010(7). However, Telecommunications Service shall not include the provision of "cable services", as defined by 47 U.S.C. §522, as amended, for which a separate franchise would be required.

Section 2. Franchise Area and Authority Granted.

A. Facilities within Franchise Area. The City does hereby grant to Grantee the right, privilege, authority and franchise to construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along and across Rights-of-Way in the Franchise Area for purposes of Telecommunications Service.

B. Permission Required to Enter Onto Other City Property. Nothing contained in this Ordinance is to be construed as granting permission to Grantee to go upon any other public place other than Rights-of-Way within the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case by case basis from the City.

C. Compliance with WUTC Regulations. At all times during the term of the Franchise, Grantee shall fully comply with all applicable regulations of the Washington Utilities and Transportation Commission and the City of Anacortes.

D. This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any Public Ways so long as the terms and conditions regulating any other Telecommunications Service are no more favorable than the terms and conditions of this Franchise.

Section 3. Construction and Maintenance.

A. Grantee's Facilities shall be located, relocated and maintained within the Rights-of-Way in accordance with Anacortes Municipal Code ("AMC") Chapter 12.08, Chapter 15.32, and so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Whenever it is necessary for Grantee, in the exercise of its rights under the Franchise, to make any excavation in the Rights-of-Way, Grantee shall obtain prior approval from

the City of Anacortes Public Works Department, pay the applicable permit fees, and obtain any necessary permits for the excavation work. Upon completion of such excavation, Grantee shall restore the surface of the Rights-of-Way to the specifications established within the Anacortes Municipal Code and/or the City's published applicable development standards (collectively referred to herein as "Specifications"). For the purposes of this Franchise, and as referred to in this section, "published" refers to and included all provisions of the City code, and any other City standards, requirements, policies or similar adopted by the City Council or any city department that are publicly available upon request. If Grantee should fail to leave any portion of the excavation in a condition that meets the City's specifications per the AMC, the City may, on five (5) days' notice to Grantee, which notice shall not be required in case of an Emergency Situation, cause all work necessary to restore the excavation to a safe condition consistent with the Specifications. Grantee shall pay to the City the reasonable cost of such work; which shall include, among other things, the City's overhead in obtaining completion of said work, and any engineering, planning, consulting, and/or legal fees incurred.

B. Any surface or subsurface failure occurring during the term of this Agreement caused by any excavation by Grantee shall be repaired to the City's specifications, within thirty (30) days, or, upon five (5) days written notice to Grantee, the City may order all work necessary to restore the damaged area to a safe and acceptable condition and Grantee shall pay the reasonable costs of such work to the City, including City overhead.

C. In the event of an Emergency Situation, Grantee may commence such emergency and repair work as required under the circumstances, provided that Grantee shall notify the City Public Works Director in writing as promptly as possible before such repair or emergency work commences, or as soon thereafter as possible, if advanced notice is not reasonably possible. The City may act, at any time, without prior written notice in the case of an Emergency Situation, but shall notify Grantee in writing as promptly as possible under the circumstances.

D. Grantee agrees that if any of its actions under the Franchise materially impair or damage any City property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, the impaired or damaged property to the same condition as existed prior to such action. Such repair work shall be performed and completed to the reasonable satisfaction of the Public Works Director.

Section 4. Location and Relocation of Facilities.

A. Grantee shall place any new Facilities underground where all existing telecommunications and cable facilities, including municipally owned facilities are located underground. Consistent with AMC 15.32, any new Facilities whose routes coincide with existing utility poles may be located above-ground and placed on existing utility poles,. No new utility poles shall be installed in connection with placement of new above-ground Facilities.

B. Grantee recognizes the need for the City to maintain adequate width for installation and maintenance of publicly or privately owned sanitary sewer, water, and storm, flood and drainage utilities and other public utility providers. Thus, the City reserves the right to maintain clear zones

within the public right-of-way for installation and maintenance of said utilities. The clear zones for each Right-of-Way segment shall be noted and conditioned with the issuance of each Right-of-Way permit. If adequate clear zones are unable to be achieved on a particular Right-of-Way, Grantee shall locate in an alternate Right-of-Way, obtain easements from private property owners, or propose alternate construction methods which maintain and/or enhance the existing clear zones.

C. Except as otherwise required by law, Grantee agrees to relocate, remove or reroute its Facilities as ordered by the City, at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Pursuant to the provisions of Section 5, Grantee agrees to protect and save harmless the City from any third-party claims for service interruption or other losses in connection with any such change or relocation other than City's negligence or willful misconduct.

D. If the City determines that a project necessitates the relocation of the Grantee's existing Facilities, then:

1. Within a reasonable time, which shall be no less than ninety (90) days prior to the commencement of the project, the City shall provide the Grantee with written notice requiring relocation; provided that in the event of an Emergency Situation beyond the control of the City and which will result in severe financial consequences to the City or its citizens or businesses, the City shall give the Grantee written notice as soon as practicable;

2. The City shall provide the Grantee with copies of information for such improvement project and a proposed location for the Grantee's Facilities so that Grantee may relocate its Facilities in other Rights-of-Way in order to accommodate the project; and

3. The Grantee shall complete relocation of its Facilities at no charge or expense to the City so as to accommodate the project at least ten (10) days prior to commencement of the project. In the event of an Emergency Situation as described in this Section, the Grantee shall relocate its Facilities within the reasonable time period specified by the City.

E. The Grantee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, the Grantee shall relocate its Facilities as otherwise provided in this Section.

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

G. The Grantee shall indemnify, hold harmless and pay the costs of defending the City against any and all third party claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Grantee to relocate its Facilities in a timely manner; provided, that the Grantee shall not be responsible for damages due to unreasonable delays caused by the City or circumstances beyond the reasonable control of the Grantee.

H. In the event that the City orders the Grantee to relocate its Facilities for a project which is primarily for private benefit, the private party or parties causing the need for such project shall reimburse the Grantee for the cost of relocation in the same proportion as their contribution to the total cost of the project.

I. In the event of an unforeseen Emergency Situation that creates a threat to public safety, health or welfare, the City may require the Grantee to relocate its Facilities at its own expense, any other portion of this Section notwithstanding.

Section 5. Indemnification.

Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City and its officers, boards, commissions, agents, and employees against any and all third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, operation or repair of its Facilities regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Franchise excepting only those claims to the extent caused by the negligence or willful misconduct of the City. Without limiting in any way Grantee's obligation to indemnify the City and its officers, boards, commissions, agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

1. To Persons or property, in any way arising out of or through the acts or omissions of the Grantee, its contractors, subcontractors and their officers, employees, or agents, to the extent the Grantee's negligence or willful misconduct contributed; and
2. Arising out of Grantee's failure to comply with the provisions of any federal, state, or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Franchise applies.
- 3.

Section 6. Default.

A. If Grantee shall fail to comply with any of the provisions of the Franchise, unless otherwise provided in the Franchise, the City will serve upon Grantee a written order to comply within thirty (30) days from the date such order is received by Grantee. If Grantee is not in compliance with the Franchise after expiration of the thirty (30) day period, the City may act to remedy the violation and may charge the reasonable costs and expenses of such action to Grantee. The City may act without the thirty (30) day notice in case of an Emergency Situation. If Grantee is not in compliance with the Franchise after expiration of 60 days following receipt of the written

order, the City may in addition, by ordinance and following written notice to Grantee, declare an immediate forfeiture of the Franchise and all of Grantee's rights and obligations thereunder.

B. In addition to other remedies provided in this Franchise or otherwise available at law, if Grantee is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending Grantee Right-of-Way use permits until compliance is achieved.

Section 7. Nonexclusive Franchise. The Franchise granted by this Ordinance is not and shall not be deemed to be an exclusive franchise. The Franchise granted by this Ordinance shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area. The Franchise granted by this Ordinance shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 8. Franchise Term.

A. Unless earlier terminated by Grantee upon notice to the City, the Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of this Ordinance, provided that the term may be extended for an additional five (5) years upon the agreement of Grantee and the City; and provided further, however, Grantee shall have no rights under the Franchise nor shall Grantee be bound by the terms and conditions of the Franchise unless Grantee shall, within thirty (30) days after the effective date of this Ordinance, file with the City its written acceptance of the Franchise, in a form acceptable to the City Attorney.

B. If the City and Grantee fail to formally renew the Franchise prior to the expiration of its term or any extension thereof, the Franchise shall automatically continue in full force and effect until renewed or until either party gives written notice at least one hundred eighty (180) days in advance of intent not to renew the Franchise.

Section 9. Compliance with Codes and Regulations.

A. The rights, privileges and authority herein granted are subject to and governed by this Ordinance, the applicable laws of the State of Washington and the applicable laws of the United States, and all other applicable ordinances and codes of the City of Anacortes, as they now exist or may hereafter be amended, including but not limited to the provisions of Anacortes Municipal Code Title 12 and Title 15. Nothing in this ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by Grantee shall be performed by Grantee in accordance with applicable federal, state and city rules and regulations, including the City's Public Works Policies and Standard Plans, and any required permits, licenses or posted fees, and applicable safety standards then in effect.

B. In the event that any territory served by Grantee is annexed to the City after the effective date of the Franchise, such territory shall be governed by the terms and conditions contained herein upon the effective date of such annexation.

C. The City acknowledges that Washington law currently limits the tax the City may impose on Grantee's activities hereunder to 6% of revenue derived from the provision of network telephone service (i.e., "telephone business" as defined in RCW 82.16.010) and that the federal Internet Tax Freedom Act prohibits the imposition of a tax or other fee on revenue derived by Grantee from Grantee's provision of Internet access services. Grantee agrees that if federal or Washington law is changed, Grantee, following not less than ninety (90) days written notice from the City, will meet with the City to discuss in good faith accounting for the changes regarding the tax, fee or charge authorized by the change in the law.

Section 10. Undergrounding. New Facilities unable to be added to existing utilities poles shall be installed underground pursuant to Section 4 of the Franchise. Grantee acknowledges the City's policy of undergrounding of Facilities within the Franchise Area. Grantee will cooperate with the City in the undergrounding of Grantee's existing Facilities within the Franchise Area. If during the term of the Franchise, the City shall direct Grantee to underground Facilities within any Franchise Area, such undergrounding shall be at no cost to the City except as may be provided in RCW Chapter 35.99. Grantee shall comply with all federal, state, and City regulations on undergrounding. If the City undertakes any street improvement which would otherwise require relocation of Grantee's above-ground Facilities, the City may, by written notice to Grantee, direct that Grantee convert any such Facilities to underground Facilities.

Section 11. Record of Installations and Service.

A. With respect to excavations by Grantee and the City within the Franchise Area, Grantee and the City shall each comply with its respective obligations pursuant to Chapter 19.122 RCW and any other applicable state or federal law.

B. Upon written request of the City, Grantee shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

C. As-built drawings and maps of the precise location of any Facilities placed by Grantee in any Rights-of-Way shall be made available by Grantee to the City within ten (10) working days of the City's written request. These plans and maps shall be provided at no cost to the City and shall include hard copies and/or digital copies in a format commonly used in the telecommunications industry.

D. All information disclosed pursuant to this Section shall be used solely for non-competitive purposes and shall be confidential to the fullest extent permitted by law. Grantee acknowledges the City is a public agency subject to the Public Records Act, Chapter 42.56 RCW. Grantee will mark all documents it considers confidential prominently with the word "confidential."

Section 12. Shared Use of Excavations and Trenches.

A. If either the City or Grantee shall at any time after installation of the Facilities plan to make excavations in the area covered by the Franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of written request to do so, an opportunity to share such an excavation, *provided that*: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. In addition, pursuant to RCW 35.99.070, the City may request that Grantee install additional conduit, ducts and related access structures for the City pursuant to contract, under which Grantee shall recover its incremental costs of providing such facilities to the City. In accordance with RCW 35.99.070(2) such additional duct or conduit space and related access structures shall not be used by the City or its affiliates to provide telecommunications for hire, sale, or resale to the general public.

B. The City reserves the right to not allow open trenching for five years following a street overlay or improvement project. Grantee shall be given written notice at least ninety (90) days prior to the commencement of the project. Required trenching due to an emergency will not be subject to five (5) year street trenching moratoriums.

C. The City reserves the right to require Grantee to joint trench with other franchisees if both entities are anticipating trenching within the same franchise area and provided that the terms of this Section are met.

Section 13. Insurance.

A. Grantee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work under the Franchise by Grantee, its agents, representatives or employees in the amounts and types set forth below.

1. Commercial General Liability insurance shall be as least at broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect to the work performed under the Franchise agreement using ISO Additional Insured endorsement CG 20 26 07 04 or substitute endorsement providing at least as broad coverage;

2. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence and \$5,000,000 general aggregate and \$5,000,000 products-completed operations aggregate limit;

3. Automobile liability insurance for owned, non-owned and hired vehicles with a minimum combined single limit of \$3,000,000 for each accident for bodily injury and property damage; and

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Grantee's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of Grantee's insurance and shall not contribute with it.

C. Grantee shall furnish the City with certificates of the foregoing insurance coverage or a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement.

D. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City.

E. Grantee's maintenance of insurance as required by the Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

F. If the Grantee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Grantee, irrespective of whether such limits maintained by the Grantee are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Grantee.

G. The Grantee shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within five business days of their receipt of such notice.

Section 14. Assignment.

A. All of the provisions, conditions, and requirements herein contained shall be binding upon Grantee, and no right, privilege, license or authorization granted to Grantee hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold. Notwithstanding the foregoing, Grantee, without the consent of, but upon notice to the City, may assign this agreement in whole or in part to: (a) an Affiliate (as defined in this Ordinance); or (b) a lender for security purposes only.

B. Grantee may lease the Facilities or any portion thereof to another or provide capacity or bandwidth in its Facilities to another, *provided that*: Grantee at all times retains exclusive control over such Facilities and remains responsible for locating, servicing, repairing, relocating or removing its Facilities pursuant to the terms and conditions of the Franchise.

Section 15. Abandonment and Removal of Facilities. Upon the expiration, termination, or revocation of the rights granted under the Franchise, the Grantee shall remove all of its Facilities from the Rights-of-Way of the City within ninety (90) days of receiving notice from the City's Public Works Director; *provided however*, that the City may permit the Grantee's improvements to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Grantee's agreement to transfer ownership of the Facilities to the City, the Grantee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place which are not removed within ninety (90) days of receipt of said notice shall automatically become the property of the City; *provided however*, that nothing contained within this Section shall prevent the City from compelling the Grantee to remove any such Facilities through judicial action when the City has not permitted the Grantee to abandon said Facilities in place.

Section 16. Miscellaneous.

A. If any term, provision, condition or portion of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance which shall continue in full force and effect. The headings of sections and paragraphs of this Ordinance are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

B. Grantee shall pay a one-time fee for the City's reasonable administrative costs in drafting and processing this Ordinance and all work related thereto, which payment shall not exceed \$4,000. Grantee shall further be subject to all published permit fees associated with activities. In the event any conflict between the provisions of any such permit, approval, license, agreement or other document and the Franchise, the provisions of the Franchise shall control.

C. Failure of the City to declare any breach or default under this Franchise or any delay in taking action shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

D. Notwithstanding anything to the contrary herein, any determination by the City with respect to matters contained in this Ordinance and matters related to the Franchise shall be made in accordance with applicable federal law, including without limitation any applicable rules and regulations promulgated by the Federal Communications Commission, applicable state law and in a reasonable and non-discriminatory manner.

E. Dispute Resolution; Venue and Applicable Law. In the event of a dispute arising hereunder, venue for such disputes shall solely be the Snohomish County Superior Court. The applicable governing law shall be the Laws of the State of Washington.

Section 17. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City: Public Works Director City of Anacortes City Hall 904 6th Street Anacortes, WA 98221	Grantee: Astound Broadband, LLC 401 Kirkland Parkplace, Suite 500 Kirkland, WA 98033 Attn: Steve Weed, CEO and Byron Springer, EVP
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Notice shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

Section 18. Effective date. This Ordinance, being in compliance with RCW 35A.47.040, shall be in force and effect five (5) days from and after its passage, approval and publication, but only if the Grantee has endorsed this ordinance and accepted the terms and conditions thereof.

Passed by majority vote of the Anacortes City Council in open meeting this ____ day of _____, 2017.

Signed in authentication thereof this ____ day of _____, 2017.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

Acceptance:

Astound Broadband, LLC dba Wave for itself, its successors and assigns, accepts and agrees to the bound by all lawful terms, conditions, and provisions of the Franchise.

By: _____

Date: _____

Name: Byron Springer

Title: Executive Vice President Business and Legal Affairs

ORDINANCE _____

AN ORDINANCE OF THE CITY OF ANACORTES GRANTING ASTOUND BROADBAND, LLC DBA WAVE A NON-EXCLUSIVE FRANCHISE FOR THE TRANSMISSION OF TELECOMMUNICATIONS IN, THROUGH, OVER AND UNDER THE RIGHTS-OF-WAY OF THE CITY OF ANACORTES.

WHEREAS, Astound Broadband, LLC, a Washington limited liability company ("Grantee") has requested that the City grant it the right to install, operate and maintain a fiber optic-based telecommunications system within the public Rights-of-Way of the City; and

WHEREAS, the City Council finds it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to Grantee; and

WHEREAS, the City Council has the authority under state law to grant franchises for the use of its Rights-of-Way; and

WHEREAS, the City is willing to grant the rights requested by Grantee subject to certain terms and conditions.

NOW, THEREFORE, The City Council of the City of Anacortes does ordain as follows:

Section 1. Definitions. Where used in this Ordinance and the franchise granted hereby (the "Franchise") these terms have the following meanings:

A. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.

B. "City" means the City of Anacortes, a municipal corporation of the State of Washington.

C. "Emergency Situation" means an emergency involving likely loss of life or substantial property damage as determined by City in good faith.

D. "Facilities" means Grantee's fiber optic cable system constructed and operated within the City's Rights-of-Way, and shall include all cables, wires, conduits, ducts, pedestals and any associated converter, equipment or other facilities within the City's Rights-of-Way, designed and constructed for the purpose of providing Telecommunications Service and other lawful services not prohibited by this Ordinance.

E. "Franchise" shall mean the initial authorization or renewal thereof, granted by the City, through this Ordinance, or a subsequently adopted Ordinance, which authorizes construction and operation of the Grantee's Facilities for the purpose of offering Telecommunications Service and other lawful services not prohibited by this Ordinance.

F. "Franchise Area" means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.

G. "Person" means an individual, partnership, association, joint stock company, trust, corporation, limited liability company or governmental entity.

H. "Rights-of-Way" means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, rights of way and similar public areas within the City.

I. "Telecommunications Service" means telecommunications service as defined in RCW 35.99.010(7). However, Telecommunications Service shall not include the provision of "cable services", as defined by 47 U.S.C. §522, as amended, for which a separate franchise would be required.

Section 2. Franchise Area and Authority Granted.

A. Facilities within Franchise Area. The City does hereby grant to Grantee the right, privilege, authority and franchise to construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along and across Rights-of-Way in the Franchise Area for purposes of Telecommunications Service.

B. Permission Required to Enter Onto Other City Property. Nothing contained in this Ordinance is to be construed as granting permission to Grantee to go upon any other public place other than Rights-of-Way within the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case by case basis from the City.

C. Compliance with WUTC Regulations. At all times during the term of the Franchise, Grantee shall fully comply with all applicable regulations of the Washington Utilities and Transportation Commission and the City of Anacortes.

D. This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any Public Ways so long as the terms and conditions regulating any other Telecommunications Service are no more favorable than the terms and conditions of this Franchise.

Section 3. Construction and Maintenance.

A. Grantee's Facilities shall be located, relocated and maintained within the Rights-of-Way in accordance with Anacortes Municipal Code ("AMC") Chapter 12.08, Chapter 15.32, and so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Whenever it is necessary for Grantee, in the exercise of its rights under the Franchise, to make any excavation in the Rights-of-Way, Grantee shall obtain prior approval

from the City of Anacortes Public Works Department, pay the applicable permit fees, and obtain any necessary permits for the excavation work. Upon completion of such excavation, Grantee shall restore the surface of the Rights-of-Way to the specifications established within the Anacortes Municipal Code and/or the City's published applicable development standards (collectively referred to herein as "Specifications"). For the purposes of this Franchise, and as referred to in this section, "published" refers to and included all provisions of the City code, and any other City standards, requirements, policies or similar adopted by the City Council or any city department that are publicly available upon request. If Grantee should fail to leave any portion of the excavation in a condition that meets the City's specifications per the AMC, the City may, on five (5) days' notice to Grantee, which notice shall not be required in case of an Emergency Situation, cause all work necessary to restore the excavation to a safe condition consistent with the Specifications. Grantee shall pay to the City the reasonable cost of such work; which shall include, among other things, the City's overhead in obtaining completion of said work, and any engineering, planning, consulting, and/or legal fees incurred.

B. Any surface or subsurface failure occurring during the term of this Agreement caused by any excavation by Grantee shall be repaired to the City's specifications, within thirty (30) days, or, upon five (5) days written notice to Grantee, the City may order all work necessary to restore the damaged area to a safe and acceptable condition and Grantee shall pay the reasonable costs of such work to the City, including City overhead.

C. In the event of an Emergency Situation, Grantee may commence such emergency and repair work as required under the circumstances, provided that Grantee shall notify the City Public Works Director in writing as promptly as possible before such repair or emergency work commences, or as soon thereafter as possible, if advanced notice is not reasonably possible. The City may act, at any time, without prior written notice in the case of an Emergency Situation, but shall notify Grantee in writing as promptly as possible under the circumstances.

D. Grantee agrees that if any of its actions under the Franchise materially impair or damage any City property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, the impaired or damaged property to the same condition as existed prior to such action. Such repair work shall be performed and completed to the reasonable satisfaction of the Public Works Director.

Section 4. Location and Relocation of Facilities.

A. Grantee shall place any new Facilities underground where all existing telecommunications and cable facilities, including municipally owned facilities are located underground. ~~Consistent with AMC 15.32, Any new Facilities whose routes coincide with existing utility poles shall may be located above-ground and placed on existing utility poles, notwithstanding shall comply with AMC 15.32.~~ No new utility poles shall be installed in connection with placement of new above-ground Facilities.

B. Grantee recognizes the need for the City to maintain adequate width for installation and maintenance of publicly or privately owned sanitary sewer, water, and storm, flood and

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•15.32.070 - Affected areas.

Subject to the exempted facilities previously set forth in [Section 15.32.040](#), the requirements of this chapter apply to the following generally described areas within the city:

- A. All new construction;
- B. All new extensions;
- C. Airports;
- D.

Other areas as may be developed in a comprehensive plan for underground wiring developed through coordination between the city engineer and serving utilities.

drainage utilities and other public utility providers. Thus, the City reserves the right to maintain clear zones within the public right-of-way for installation and maintenance of said utilities. The clear zones for each Right-of-Way segment shall be noted and conditioned with the issuance of each Right-of-Way permit. If adequate clear zones are unable to be achieved on a particular Right-of-Way, Grantee shall locate in an alternate Right-of-Way, obtain easements from private property owners, or propose alternate construction methods which maintain and/or enhance the existing clear zones.

C. Except as otherwise required by law, Grantee agrees to relocate, remove or reroute its Facilities as ordered by the City, at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Pursuant to the provisions of Section 5, Grantee agrees to protect and save harmless the City from any third-party claims for service interruption or other losses in connection with any such change or relocation other than City's negligence or willful misconduct.

D. If the City determines that a project necessitates the relocation of the Grantee's existing Facilities, then:

1. Within a reasonable time, which shall be no less than ninety (90) days prior to the commencement of the project, the City shall provide the Grantee with written notice requiring relocation; provided that in the event of an Emergency Situation beyond the control of the City and which will result in severe financial consequences to the City or its citizens or businesses, the City shall give the Grantee written notice as soon as practicable;

2. The City shall provide the Grantee with copies of information for such improvement project and a proposed location for the Grantee's Facilities so that Grantee may relocate its Facilities in other Rights-of-Way in order to accommodate the project; and

3. The Grantee shall complete relocation of its Facilities at no charge or expense to the City so as to accommodate the project at least ten (10) days prior to commencement of the project. In the event of an Emergency Situation as described in this Section, the Grantee shall relocate its Facilities within the reasonable time period specified by the City.

E. The Grantee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, the Grantee shall relocate its Facilities as otherwise provided in this Section.

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

G. The Grantee shall indemnify, hold harmless and pay the costs of defending the City against any and all third party claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Grantee to relocate its Facilities in a timely manner; provided, that the Grantee shall not be responsible for damages due to unreasonable delays caused by the City or circumstances beyond the reasonable control of the Grantee.

H. In the event that the City orders the Grantee to relocate its Facilities for a project which is primarily for private benefit, the private party or parties causing the need for such project shall reimburse the Grantee for the cost of relocation in the same proportion as their contribution to the total cost of the project.

I. In the event of an unforeseen Emergency Situation that creates a threat to public safety, health or welfare, the City may require the Grantee to relocate its Facilities at its own expense, any other portion of this Section notwithstanding.

Section 5. Indemnification.

~~A. Scope of Indemnity.~~ Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City and its officers, boards, commissions, agents, and employees against any and all ~~claims, including, but not limited to,~~ third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, operation or repair of its Facilities ~~or Telecommunications Services~~ regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Franchise excepting only those claims ~~to the extent,~~ caused by the negligence ~~or willful misconduct~~ of the City. Without limiting in any way Grantee's obligation to indemnify the City and its officers, boards, commissions, agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

1. To Persons or property, in any way arising out of or through the acts or omissions of the Grantee, its contractors, subcontractors and their officers, employees, or agents, ~~or to which the extent~~ the Grantee's negligence ~~or willful misconduct shall in any way contributed; and~~
- ~~Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm, or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners or authorized distributors of programs delivered by Grantee's Facilities; or for violation of any other right of any person;~~

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2. Arising out of Grantee's failure to comply with the provisions of any federal, state, or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Franchise applies; ~~and~~
3. ~~Arising from any third party suit, action, or litigation, whether brought by a competitor to Grantee or by any other person or entity, whether such Person or entity does or does not have standing to bring such suit, action, or litigation if such action (1) challenges the authority of the City to issue this Franchise to Grantee; or (2) alleges that in issuing this Franchise to Grantee, the City has acted in a disparate or discriminatory manner.~~

Section 6. Default.

A. If Grantee shall fail to comply with any of the provisions of the Franchise, unless otherwise provided in the Franchise, the City will serve upon Grantee a written order to comply within thirty (30) days from the date such order is received by Grantee. If Grantee is not in compliance with the Franchise after expiration of the thirty (30) day period ~~or has begun and is diligently pursuing compliance within such 30-day period~~, the City may act to remedy the violation and may charge the reasonable costs and expenses of such action to Grantee. The City may act without the thirty (30) day notice in case of an Emergency Situation. ~~If Grantee is not in compliance with the Franchise after expiration of or has not begun and pursued compliance by the end of the 360 -days following receipt of the written order period as set forth in this paragraph, T~~he City may in addition, by ordinance and following written notice to Grantee, declare an immediate forfeiture of the Franchise and all of Grantee's rights and obligations thereunder.

B. In addition to other remedies provided in this Franchise or otherwise available at law, if Grantee is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending Grantee Right-of-Way use permits until compliance is achieved.

Section 7. Nonexclusive Franchise. The Franchise granted by this Ordinance is not and shall not be deemed to be an exclusive franchise. The Franchise granted by this Ordinance shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area. The Franchise granted by this Ordinance shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 8. Franchise Term.

A. Unless earlier terminated by Grantee upon notice to the City, the Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of this Ordinance, provided that the term may be extended for an additional five (5) years upon the agreement of Grantee and the City; and provided further, however, Grantee shall have no rights under the Franchise nor shall Grantee be bound by the terms and conditions of the Franchise unless Grantee shall, within thirty (30) days after the effective date of this Ordinance,

file with the City its written acceptance of the Franchise, in a form acceptable to the City Attorney.

B. If the City and Grantee fail to formally renew the Franchise prior to the expiration of its term or any extension thereof, the Franchise shall automatically continue in full force and effect until renewed or until either party gives written notice at least one hundred eighty (180) days in advance of intent not to renew the Franchise.

Section 9. Compliance with Codes and Regulations.

A. The rights, privileges and authority herein granted are subject to and governed by this Ordinance, the applicable laws of the State of Washington and the applicable laws of the United States, and all other applicable ordinances and codes of the City of Anacortes, as they now exist or may hereafter be amended, including but not limited to the provisions of Anacortes Municipal Code Title 12 and Title 15. Nothing in this ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by Grantee shall be performed by Grantee in accordance with applicable federal, state and city rules and regulations, including the City's Public Works Policies and Standard Plans, and any required permits, licenses or posted fees, and applicable safety standards then in effect.

B. In the event that any territory served by Grantee is annexed to the City after the effective date of the Franchise, such territory shall be governed by the terms and conditions contained herein upon the effective date of such annexation.

C. The City acknowledges that Washington law currently limits the tax the City may impose on Grantee's activities hereunder to 6% of revenue derived from the provision of network telephone service (i.e., "telephone business" as defined in RCW 82.16.010) and that the federal Internet Tax Freedom Act prohibits the imposition of a tax or other fee on revenue derived by Grantee from Grantee's provision of Internet access services. Grantee agrees that if federal or Washington law is changed, Grantee, following not less than ninety (90) days written notice from the City, will ~~negotiate in good faith~~ meet with the City to discuss in good faith ~~amend the Franchise to expand the revenue base on which such tax is applied~~ accounting for the changes regarding the tax, fee or charge authorized by the change in the law.

Section 10. Undergrounding. New Facilities unable to be added to existing utilities poles shall be installed underground pursuant to Section 4 of the Franchise. Grantee acknowledges the City's policy of undergrounding of Facilities within the Franchise Area. Grantee will cooperate with the City in the undergrounding of Grantee's existing Facilities within the Franchise Area. If during the term of the Franchise, the City shall direct Grantee to underground Facilities within any Franchise Area, such undergrounding shall be at no cost to the City except as may be provided in RCW Chapter 35.99. Grantee shall comply with all federal, state, and City regulations on undergrounding. If the City undertakes any street improvement which would otherwise require relocation of Grantee's above-ground Facilities, the City may, by written notice to Grantee, direct that Grantee convert any such Facilities to underground Facilities.

Section 11. Record of Installations and Service.

A. With respect to excavations by Grantee and the City within the Franchise Area, Grantee and the City shall each comply with its respective obligations pursuant to Chapter 19.122 RCW and any other applicable state or federal law.

B. Upon written request of the City, Grantee shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

C. As-built drawings and maps of the precise location of any Facilities placed by Grantee in any Rights-of-Way shall be made available by Grantee to the City within ten (10) working days of the City's written request. These plans and maps shall be provided at no cost to the City and shall include hard copies and/or digital copies in a format commonly used in the telecommunications industry.

D. All information disclosed pursuant to this Section shall be used solely for non-competitive purposes and shall be confidential to the fullest extent permitted by law. Grantee acknowledges the City is a public agency subject to the Public Records Act, Chapter 42.56 RCW. Grantee will mark all documents submitted pursuant to this section it considers confidential prominently with the word "confidential." ~~Grantee acknowledges the City is a public agency subject to the Public Records Act, Chapter 42.56 RCW.~~

Section 12. Shared Use of Excavations and Trenches.

A. If either the City or Grantee shall at any time after installation of the Facilities plan to make excavations in the area covered by the Franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of written request to do so, an opportunity to share such an excavation, *provided that*: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. In addition, pursuant to RCW 35.99.070, the City may request that Grantee install additional conduit, ducts and related access structures for the City pursuant to contract, under which Grantee shall recover its incremental costs of providing such facilities to the City. In accordance with RCW 35.99.070(2) such additional duct or conduit space and related access structures shall not be used by the City or its affiliates to provide telecommunications for hire, sale, or resale to the general public.

B. The City reserves the right to not allow open trenching for five years following a street overlay or improvement project. Grantee shall be given written notice at least ninety (90) days prior to the commencement of the project. Required trenching due to an emergency will not be subject to five (5) year street trenching moratoriums.

C. The City reserves the right to require Grantee to joint trench with other franchisees if both entities are anticipating trenching within the same franchise area and provided that the terms of this Section are met.

Section 13. Insurance.

A. Grantee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work under the Franchise by Grantee, its agents, representatives or employees in the amounts and types set forth below.

1. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect to the work performed under the Franchise agreement using ISO Additional Insured endorsement CG 20 26 07 04 or substitute endorsement providing at least as broad coverage;

2. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence and \$5,000,000 general aggregate and \$5,000,000 products-completed operations aggregate limit;

3. Automobile liability insurance for owned, non-owned and hired vehicles with a minimum combined single limit of \$3,000,000 for each accident for bodily injury and property damage; and

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Grantee's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of Grantee's insurance and shall not contribute with it.

C. Grantee shall furnish the City with certificates of the foregoing insurance coverage or a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement.

D. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City.

E. Grantee's maintenance of insurance as required by the Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or

otherwise limit City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

F. If the Grantee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Grantee, irrespective of whether such limits maintained by the Grantee are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Grantee.

G. The Grantee shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within five business days of their receipt of such notice.

Section 14. Assignment.

A. All of the provisions, conditions, and requirements herein contained shall be binding upon Grantee, and no right, privilege, license or authorization granted to Grantee hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold. Notwithstanding the foregoing, Grantee, without the consent of, but upon notice to the City, may assign this agreement in whole or in part to: (a) an Affiliate (as defined in this Ordinance); or (b) a lender for security purposes only.

B. Grantee may lease the Facilities or any portion thereof to another or provide capacity or bandwidth in its Facilities to another, *provided that*: Grantee at all times retains exclusive control over such Facilities and remains responsible for locating, servicing, repairing, relocating or removing its Facilities pursuant to the terms and conditions of the Franchise.

Section 15. Abandonment and Removal of Facilities. Upon the expiration, termination, or revocation of the rights granted under the Franchise, the Grantee shall remove all of its Facilities from the Rights-of-Way of the City within ninety (90) days of receiving notice from the City's Public Works Director; *provided however*, that the City may permit the Grantee's improvements to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Grantee's agreement to transfer ownership of the Facilities to the City, the Grantee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place which are not removed within ninety (90) days of receipt of said notice shall automatically become the property of the City; *provided however*, that nothing contained within this Section shall prevent the City from compelling the Grantee to remove any such Facilities through judicial action when the City has not permitted the Grantee to abandon said Facilities in place.

Section 16. Miscellaneous.

A. If any term, provision, condition or portion of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance which shall continue in full force and effect. The headings of sections and paragraphs of this

Ordinance are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections of paragraphs.

B. Grantee shall pay a one-time fee for the City's reasonable administrative costs in drafting and processing this Ordinance and all work related thereto, which payment shall not exceed \$4,000. Grantee shall further be subject to all published permit fees associated with activities. In the event any conflict between ~~and~~ the provisions of any such permit, approval, license, agreement or other document and the Franchise, the provisions of the Franchise shall control.

C. Failure of the City to declare any breach or default under this Franchise or any delay in taking action shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

D. Notwithstanding anything to the contrary herein, any determination by the City with respect to matters contained in this Ordinance and matters related to the Franchise shall be made in accordance with applicable federal law, including without limitation any applicable rules and regulations promulgated by the Federal Communications Commission, applicable state law and in a reasonable and non-discriminatory manner.

E. Dispute Resolution; Venue and Applicable Law. In the event of a dispute arising hereunder, venue for such disputes shall solely be the Snohomish County Superior Court. The applicable governing law shall be the Laws of the State of Washington.

Section 17. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City: Public Works Director City of Anacortes City Hall 904 6th Street Anacortes, WA 98221	Grantee: Astound Broadband, LLC 401 Kirkland Parkplace, Suite 500 Kirkland, WA 98033 Attn: Steve Weed, CEO and Byron Springer, EVP
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Notice shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

Section 18. Effective date. This Ordinance, being in compliance with RCW 35A.47.040, shall be in force and effect five (5) days from and after its passage, approval and publication, but only if the Grantee has endorsed this ordinance and accepted the terms and conditions thereof.

Passed by majority vote of the Anacortes City Council in open meeting this ____ day of _____, 2017.

Signed in authentication thereof this ____ day of _____, 2017.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

Acceptance:

Astound Broadband, LLC dba Wave for itself, its successors and assigns, accepts and agrees to the bound by all lawful terms, conditions, and provisions of the Franchise.

By: _____ Date: _____
Name: Byron Springer
Title: Executive Vice President Business and Legal Affairs



Anacortes City Council

Proposed Agenda Items for the Next Eight Weeks Beginning August 28, 2017

Subjects listed below have been tentatively suggested for consideration by the Anacortes City Council on the dates indicated. Items may be added to, removed from or rearranged on this list. Routine business such as approval of minutes, vouchers and consent agenda items is not included. The complete Preliminary Agenda for each meeting is published at 3:00 on the Wednesday prior to the meeting. Published Agendas are subject to change and may be updated following the posting period. For additional information on agenda topics, please contact the City Clerk's office at 360-299-1960 to be directed to the sponsoring staff member.

August 28, 2017

- Contract Awards: Treatment Plant Chemicals
- Contract Modification: M Ave Waterline Replacement Project (17-001-WTR-002)
- Finance Department Strategic Report and Budget Update (Discussion)
- Administrative Services Budget Update (Discussion)

September 5, 2017

September 11, 2017

- Library Budget and General Update (Discussion)
- Fire/EMS Budget and General Update (Discussion)

September 18, 2017

- Water Rate Study Presentation

September 25, 2017

- Anacortes Americorp in Anacortes School District Presentation

October 2, 2017

October 9, 2017

- Conditional Use Permit CUP-2017-0002: Dog Kennel/Boarding and Grooming Associated with an Existing Doggy Daycare at Molly Lane (Discussion/Possible Action)
- SDP-2017-0001; WSDOT Shoreline Permit(s) SSDP, SCUP & Shoreline Variance; SR-20 /Sharpe's Corner Vicinity Improvements (Discussion/Possible Action)

October 16, 2017

Upcoming City Council Committee Meetings

The public is welcome to attend City Council Committee Meetings.

- Public Works, Monday, Aug 21, 2017, 5:00 PM, Public Works Director's Office, City Hall
- Finance, Wednesday, Aug 23, 2017, 5:00 PM, Main Conference Room, City Hall
- Parks & Recreation, Thursday, Aug 24, 2017, 6:00 PM, Main Conference Room, City Hall
- Planning, Monday, Aug 28, 2017, 5:00 PM, Main Conference Room, City Hall
- Public Works, Tuesday, Sep 5, 2017, 5:00 PM, Public Works Director's Office, City Hall
- Housing Affordability & Community Services, Thursday, Sep 7, 2017, 1:30 PM, City Hall
- Planning, Monday, Sep 11, 2017, 5:00 PM, Main Conference Room, City Hall
