



CITY COUNCIL REGULAR MEETING

Monday, March 25, 2024 at 7:00 PM

City Hall

AGENDA

1. Call to Order
2. Flag Salute
3. Roll Call
4. Presentation
5. Approval of Agenda
6. Consent Agenda

[A.](#) Minutes

B. Audit of Reports

1. Payroll = \$ 78,402.51

March 15, 2024

VOID #113351 & 113517

7. Reports
8. Audience Participation

The City Council encourages public participation during meetings of the City Council and welcomes your comments. This time is set-aside for you to speak to the City Council on any issue. The Council ordinarily takes non-agenda matters under advisement before taking action. You are also invited to comment on action items as they are considered during the meeting. Individual speakers will be limited to three (3) minutes each in addressing the City Council. When addressing the Council, please speak clearly and audibly and state your name and address for the record.

9. Discussion

[A.](#) Ordinance 1233-24, Ziply Fiber Franchise Agreement

[B.](#) Ordinance 1234-24, Street Racing

[C.](#) King County Parks, Capital Project Grant Agreement

[D.](#) Resolution 1273-24, Traffic School Fee

10. New Business

11. Old Business

12. Ordinances & Resolution

13. Next Workshop

A. Executive Session

For the purpose of discussing personnel issues with legal counsel pursuant to RCW 42.30.110(1)(g)

14. Adjournment



CITY COUNCIL WORKSHOP MEETING

Monday, March 11, 2024 at 6:00 PM

City Hall

MINUTES

1. Call to Order

Mayor Pro Tem, Tim Fairley called the meeting to order at 6:06 p.m.

2. Roll Call

PRESENT

Council Member Gordon Cook

Mayor Pro Tem Timothy Fairley

Council Member Lynda Osborn

Council Member William Thomas

Council Member David White

3. Approval of Agenda

Motion made by Council Member Cook, Seconded by Council Member Osborn.

Voting Yea: Council Member Cook, Mayor Pro Tem Fairley, Council Member Osborn, Council Member Thomas, Council Member White

4. Presentations

5. Discussion

A. Solid Waste Contract - Technical Assistance with Jeanette Jurgensen

Jeanette Jurgensen with Bin There Consulting gave a presentation to council on other solid waste collections options other than Waste Management.

B. Garbage Ordinance

City Attorney Zach Lell went over the city code with the council on garbage collection.

6. Audience Participation

The City Council encourages public participation during meetings of the City Council and welcomes your comments. This time is set-aside for you to speak to the City Council on any issue. The Council ordinarily takes non-agenda matters under advisement before taking action. You are also invited to comment on action items as they are considered during the meeting. Individual speakers will be limited to three (3) minutes each in addressing the City Council. When addressing the Council, please speak clearly and audibly and state your name and address for the record.

7. Adjournment

Mayor Pro Tem, Tim Fairley adjourned the meeting at 6:38 p.m.

ATTEST:

Dana Parker – City Clerk

Tim Fairley – Mayor Pro Tem



CITY COUNCIL REGULAR MEETING

Monday, March 11, 2024 at 7:00 PM

City Hall

MINUTES

1. Call to Order

Mayor Linnell called the meeting to order at 7:02 p.m.

2. Flag Salute

3. Roll Call

PRESENT

Mayor Troy Linnell

Council Member Gordon Cook

Council Member Timothy Fairley

Council Member Lynda Osborn

Council Member William Thomas

Council Member David White

4. Presentation

A. Storm Water Management Plan, Presented by Stacey Clear with Gray & Osborn

Stacey Clear with Gray and Osborn gave a presentation on the Storm Water Management Plan.

5. Approval of Agenda

Motion made by Council Member Fairley, Seconded by Council Member Osborn.

Voting Yea: Council Member Cook, Council Member Fairley, Council Member Osborn, Council Member Thomas, Council Member White

6. Consent Agenda

A. Minutes

Motion made by Council Member Thomas, Seconded by Council Member Osborn.

Voting Yea: Council Member Cook, Council Member Fairley, Council Member Osborn, Council Member Thomas, Council Member White

B. Audit of Reports

1. Claims #113532 - #113572 = \$238,322.67

February 27 - March 11, 2024

2. Payroll #61587 - #61590 = \$112,272.29

March 1, 2024

VOID #113517

7. Reports

Council Member White - I went with the Mayor to the SEA dinner and meet and greet. Very interesting and informative.

Council Member Cook - None

Council Member Fairley - I witnessed a semi going off the road. I thought there might be some utilities involved so I called Russ. Russ went out and checked on it and called me back saying all was good.

Council Member Osborn - None

Council Member Thomas - None

Public Works Director, Russ Avery - We have completed the Sound Gardens. Next week we will open up the bathrooms at Machett Park and start mowing. We will also be jetting the storm drains on 9th and Algona Blvd.

Chief Schrimpscher - We have PD training this week. Officer Dubois and Rosario are training today down in Shelton on Emergency Vehicle Operations Course. Each officer does a minimum of ten hours per year. I was cc'd on a e-mail from the head of the Washington Traffic Commission commending Officer Dubois for his high visibility when taking part in the distractive driving initiative on March 5th. We will be having defensive tactics training on Thursday.

City Administrator , Jessica Griess - Gary will be collecting candy for the East Egg hunt, Please have to him by March 26th. Thank you to the YMCA for volunteering to help with the Sound Gardens. Gary is putting in for a grant for the garden beds. Algona Days. We have two performers set up. Wally and the Beeves will be back along with a country band. Jack's will be there doing the beer gardens. We will be shutting the streets down from Machett Park to Waffle Park. We will be having a car viewing and vendors.

8. Audience Participation

The City Council encourages public participation during meetings of the City Council and welcomes your comments. This time is set-aside for you to speak to the City Council on any issue. The Council ordinarily takes non-agenda matters under advisement before taking action. You are also invited to comment on action items as they are considered during the meeting. Individual speakers will be limited to three (3) minutes each in addressing the City Council. When addressing the Council, please speak clearly and audibly and state your name and address for the record.

None

9. Discussion

A. Gray & Osborn Agreement for Ellingson Overlay Project

Stacy Clear with Gray & Osborn briefed the council on the Ellingson Overlay Project contract. Stacy requested that the council wave the three touch rule so that they could get the survey started as it is a month out. They cannot start the project until the survey is complete.

Motion made by Council Member Thomas to wave the three touch rule and move it to new business, Seconded by Council Member Fairley.

Voting Yea: Council Member Cook, Council Member Fairley, Council Member Osborn, Council Member Thomas, Council Member White

B. King County Parks, Capital Project Grant Agreement

City Administrator Jessica Griess discussed with the council that this is a \$1 million grant award to fund the David E. Hill Wetland Preserve.

C. Resolution 1273-24, Traffic School Fee

Chief Schrimpscher discussed the fee increase with the Council Members explaining that this was the first fee increase presented to the Council since the start of the program

D. Fee Schedule for Rentals

City Administrator Jessica Griess went over the rental fee schedule that the Community Center Advisory Board had recommended.

10. New Business

Gray & Osborn Agreement for Ellingson Overlay Project.

Motion made by Council Member Fairley to wave the three touch rule, Seconded by Council Member Osborn.

Voting Yea: Council Member Cook, Council Member Fairley, Council Member Osborn, Council Member Thomas, Council Member White

11. Old Business

A. 2024 Planning Commission Work Plan

Motion made by Council Member Fairley, Seconded by Council Member White.

Voting Yea: Council Member Cook, Council Member Fairley, Council Member Osborn, Council Member Thomas, Council Member White

12. Ordinances & Resolution

13. Next Workshop

State of the City
Solid Waste Contract

14. Next Workshop

- A. Executive Session
- For the purpose of discussing personnel issues with legal counsel pursuant to RCW 42.30.110(1)(g)
- The Council Members adjourned at 7:53 p.m. to discuss personnel issues with legal council and returned at 8:06 p.m.

15. Adjournment

Mayor Linnell adjourned the meeting at 8:06 p.m.

ATTEST:

Dana Parker – City Clerk

Troy Linnell – Mayor

**CITY COUNCIL****AGENDA BILL # AB24-0120**

City of Algona
200 Washington Blvd.
Algona, WA 98001

ITEM INFORMATION

SUBJECT: Ordinance 1233-24, Ziplly Fiber Franchise Agreement	Agenda Date: March 25th, 2024		
	Department/Committee/Individual	Created	Reviewed
	Mayor		
	City Administrator		X
	City Attorney	X	X
	City Clerk		X
	Finance Dept		
	PW/Utilities		
	Planning Dept		
		Community Services	
Cost Impact:	Police Dept		
Fund Source:	Finance Committee		
Timeline: 1 st review - 3/25/2024	Planning Commission		
2 nd review -	Civil Service Committee		
Staff Contact: Jessica Griess, City Administrator			
Attachments: Ordinance 1233-24; Ziplly Fiber Agreement			
SUMMARY STATEMENT: Ziplly Fiber submitted for a Franchise Agreement with the City in November 2023. This agreement presented has been put together by our attorney, given to the applicant for their input, and now it is for review by the Council.			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION:			
RECORD OF COUNCIL ACTION			
Meeting Date:		Action:	Vote:

ORDINANCE NO. 1233-24

AN ORDINANCE OF THE CITY OF ALGONA, WASHINGTON, GRANTING TO ZIPLY FIBER PACIFIC, LLC DBA ZIPLY FIBER AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF ALGONA, WASHINGTON.

WHEREAS, Ziply Fiber Pacific, LLC dba Ziply Fiber (the "Franchisee") has requested that the City Council grant a nonexclusive franchise (this "Franchise") for purposes of operating and maintaining a telecommunications network; and

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

WHEREAS, the Algona Municipal Code requires persons who are seeking to operate and maintain wireline telecommunications facilities in City rights-of-way to obtain a franchise to do so; and

WHEREAS, the City is willing to grant the rights requested by Franchisee for a wireline franchise subject to certain terms and conditions, which are acceptable to both parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALGONA, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. FRANCHISE GRANTED. Franchisee is granted a non-exclusive franchise for the transmission of wireline telecommunications in, through, over, and under the rights-of-way of the City of Algona, in accordance with the terms and conditions of the franchise language detailed in Section 3 of this Ordinance.

Section 2. EFFECTIVE DATE. In compliance with RCW 35A.47.040, this Ordinance shall take effect five (5) days after its passage, approval, and publication of an approved summary thereof consisting of the title, all as required by law ("Effective Date").

Section 3. TERMS AND CONDITIONS OF FRANCHISE. The following provisions establish the terms and conditions of the franchise granted herein:

Table of Contents

	<u>Page</u>
Section 1 . Franchise Granted.....	3
Section 2 . Authority Limited to Occupation of Public Rights-of-Way for Services.....	4
Section 3 . Non-Exclusive Franchise Grant.....	5
Section 4 . Location of Telecommunications Network Facilities.....	5
Section 5 . Relocation of Telecommunications Network Facilities.....	6
Section 6 . Undergrounding of Facilities.....	10
Section 7 . Maps and Records.....	12
Section 8 . Work in the Rights-of-Way	13
Section 9 . One Call Locator Service	16
Section 10 . Safety Requirements.	16
Section 11 . Work of Contractors and Subcontractors.....	18
Section 12 . Restoration after Construction	18
Section 13 . Emergency Work/Dangerous Conditions.	19
Section 14 . Recovery of Costs, Taxes, and Fees.....	21
Section 15 . Indemnification.	23
Section 16 . Insurance.....	26
Section 17 . Abandonment of Franchisee’s Telecommunications Network.....	29
Section 18 . Security - Bonding.	30
Section 19 . Remedies to Enforce Compliance.	31
Section 20 . Forfeiture and Revocation.....	32
Section 21 . Non-Waiver	33
Section 22 . City Ordinances and Regulations	33

Section 23 . Cost of Publication..... 33

Section 24 . Survival 33

Section 25 . Assignment. 34

Section 26 . Extension 35

Section 27 . Entire Agreement..... 36

Section 28 . Eminent Domain 36

Section 29 . Vacation 36

Section 30 . Notice..... 36

Section 31 . Severability. 37

Section 32 . Compliance with All Applicable Laws. 37

Section 33 . Amendment..... 37

Section 34 . Attorney Fees 38

Section 35 . Hazardous Substances 38

Section 36 . Licenses, Fees, and Taxes..... 38

Section 37 . Miscellaneous..... 39

Section 38 . Acceptance..... 40

This Franchise is entered into in Algona, Washington, by and between the City of Algona, a Washington municipal corporation (hereinafter “the City”), and Ziply Fiber Pacific, LLC dba Ziply Fiber (the “Franchisee”). The City and Franchisee are sometimes referred to hereinafter collectively as the “parties.”

Section 1. Franchise Granted.

Section 1.1 Pursuant to RCW 35A.47.040, the City hereby grants to the Franchisee, its affiliates, heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of five (5) years, beginning on the Effective Date of this ordinance. This franchise will automatically renew for an additional five (5) year period, unless either party provides at least ninety (90) days’ written notice of its intent not to renew.

Section 1.2 This Franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, repair, upgrade, remove, excavate, acquire, restore, and use the Facilities, as defined in Section 2.1 , for its telecommunications network, in, under, on, across, over, through, along, or below the public Rights-of-Ways located in the City of Algona, as approved pursuant to City codes and permits issued pursuant to this Franchise. Public “Rights-of-Way” means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways and horse trails, whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto. Rights-of-Way for the purpose of this Franchise do not include: buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City. Franchisee is required to obtain a lease or similar agreement for the usage of any City or third party owned poles, conduit, fixtures, or structures.

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

Section 2.1 The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City (the “Franchise Area”). The Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the Algona Comprehensive Plan, the Algona Public Works Standards, and the Algona Municipal Code (collectively, the “Codes”). Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services. The following “Services” are permitted under this Franchise: high speed data and fiber optic services, internet protocol-based services (including voice over internet protocol), internet access services, conduit and dark fiber leasing, telephone, and data transport services conveyed using wireline facilities. For the purposes of this Franchise the term Facilities excludes “microcell” facilities, “minor facilities,” “small cell facilities,” all as defined by RCW 80.36.375, and small wireless facilities as defined by 47 CFR 1.6002, including towers and new base stations and other similar facilities used for the provision of “personal wireless services” as defined by RCW 80.36.375 (collectively “Personal Wireless Services”).

Section 2.2 This Franchise does not grant the right to offer cable internet services or Cable Services as those terms are defined in 47 U.S.C. § 522(6) by wireline transmission.

Section 2.3 No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner’s consent, or upon any City, public, or privately-owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, or to subordinate the primary use of the Right-of-Way as a public thoroughfare. If Franchisee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Franchisee desires to use City-owned property, or to site new structures within the Rights-

of-Way, it shall enter into a separate lease, site specific agreement, or license agreement with the City.

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

- (a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;
- (b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise; and
- (c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise.

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

Section 4. Location of Telecommunications Network Facilities.

Section 4.1 Franchisee may locate its Facilities anywhere within the Franchise Area consistent with and subject to the City’s Algona Standards for Public Works Engineering and Construction Manual and applicable Code requirements in effect at the time of the specific Facility application is submitted as well as any requirements included in the facility permit. Franchisee shall not be required to amend this Franchise to

construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 2.

Section 4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system (“State Highways”), are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

- (a) any pavement trenching, and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;
- (b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and
- (c) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 5. Relocation of Telecommunications Network Facilities.

Section 5.1 Relocation Requirement. Consistent with the requirements of AMC 12.02.250, the City may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove, and/or temporarily disconnect or relocate its Facilities within the Right-of-Way when required by the City for projects covered by AMC 12.02.250(A), and consistent with the timeline contained in AMC 12.02.250(B). Costs and expenses associated with relocations or disconnections ordered pursuant to this Section 5.1 shall be apportioned as set forth in AMC 12.02.250(C) and RCW 35.99.060.

Section 5.2 Relocation – Third-Party Structures. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City and at no cost to the City, subject to the procedure in Section 5.5.

Section 5.3 Relocation – Franchisee-Owned Structures. The cost of relocation of any Franchisee-owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3)(b) for any aerial to underground relocations. For this Section 5.3, designation of the Right-of-Way for a Public Project shall be undertaken in the City’s Comprehensive Plan in accordance with the requirements of Ch. 36.70A RCW. The Comprehensive Plan includes, but is not limited to, the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080.

Section 5.4 Locate. Franchisee shall maintain accurate maps and improvement plans of its Facilities located within the City. Franchisee shall provide, upon demand of the Public Works Director, or designee, and deliver to the office of the Public Works Department free of charge, within thirty (30) days after such demand, such maps and plans as may be required to show in detail the exact location, size, depth, and description of all Franchisee Facilities installed within said Public Right-of-Way. If such maps and plans are not available for City requests, Franchisee shall, at Franchisee’s sole cost and expense, expose by potholing to a depth of one foot (1’) below the bottom of Franchisee’s subsurface Facilities, within thirty (30) days of receipt of a written request from the City to do so.

Section 5.5 Notice and Relocation Process. If the City determines that the project necessitates the relocation of Franchisee’s existing Facilities, the City shall provide Franchisee notice in writing as soon as practicable with a date by which the relocation shall be completed (the “Relocation Date”) consistent with RCW 35.99.060(2). In calculating the Relocation Date, the City shall consult with Franchisee and consider the extent of facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the City’s overall project construction sequence and constraints, to safely complete the relocation. Relocation schedules and the timeline for the work to be completed shall be in compliance with AMC 12.02.250(B). Franchisee shall complete the relocation by the Relocation Date, unless the City or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2) or by mutual agreement of the City and the Franchisee. To provide guidance on this notice process,

the City will make reasonable efforts to engage in the following recommended process, absent an emergency posing a threat to public safety or welfare or an emergency beyond the control of the City that will result in severe financial consequences to the City:

(a) The City will consult with the Franchisee in the predesign phase of any Public Project in order to coordinate the project's design with Franchisee's Facilities within such project's area.

(b) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Public Project or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (d) below.

(c) Franchisee shall, during the predesign phase, evaluate and provide comments to the City related to any alternatives to possible relocations. The City will give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

(d) In the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.5, the City will notify the Franchisee during the predesign meetings and the process mandated by the grant funding will control.

(e) Within 30 days following receipt of such written notice, Franchisee shall provide a schedule to the City indicating the estimated completion date for such required relocation. The relocation work shall be completed within 90 days following the original notice by the city unless a different duration is specifically authorized by the city engineer. Such relocation shall be provided at no charge or expense to the City unless otherwise permitted under state law. Such timeline may be extended by a mutual agreement.

Section 5.6 Alternative Arrangements. The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity

are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 5.7 Contractor Delay Claims. Franchisee shall be solely responsible for the actual costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties) or failure to properly locate existing facilities. Such costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorney fees incurred by the City to the extent directly attributable to such Franchisee's caused delay in the Public Project.

Section 5.8 Indemnification. Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 15, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities as provided in this Section 5; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any third party.

Section 5.9 Building Moving. Whenever any person shall have obtained permission from the City to use any Right-of-Way for the purpose of moving any building, Franchisee, upon seven (7) days' written notice from the City, shall raise, remove, or relocate to another part of the Right-of-Way, at the expense of the person desiring to move the building, any of Franchisee's Facilities that may obstruct the removal of such building.

Section 5.10 City's Costs. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.5, then upon at least ten (10) days' written notice to Franchisee,

the City may perform such work (including removal) or cause it to be done, and the City's costs shall be paid by Franchisee pursuant to Section 14.3 and Section 14.4, and the City shall not be responsible for any damage to the Facilities.

Section 5.11 *Survival*. The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6. Undergrounding of Facilities.

Section 6.1 Wireline Facilities.

(a) As it pertains to Franchisee's wireline Facilities, Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City, except as prohibited by applicable law or unless specifically allowed pursuant to a permit. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its wireline Facilities at the time of permit application, the City may, at any time in the future, require the conversion of Franchisee's aerial wireline Facilities to underground installation at Franchisee's expense, except as otherwise provided in RCW 35.99.060(4) or other applicable law. Unless otherwise permitted by the City, Franchisee shall underground its wireline Facilities in all new developments and subdivisions, and any development or subdivision where utilities, other than electrical utilities, are currently underground.

(b) Whenever the City may require the undergrounding of the aerial utilities in any area of the City, Franchisee shall underground its wireline Facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own wireline Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and

utility vaults. “Fair share” shall be determined for a project on the basis of the number and size of Franchisee’s wireline Facilities being undergrounded in comparison to the total number and size of all other utility facilities being undergrounded.

Section 6.2 To the extent Franchisee is providing wireline Facilities to Small Wireless Facilities owned by a third party, Franchisee shall adhere to the design standards for such Small Wireless Facilities, and shall underground its wireline Facilities and/or place its wireline Facilities within the pole as may be required by such design standards. For the purposes of clarity, this Section 6.1(b) does not require undergrounding or interior placement of wireline Facilities within the pole to the extent that the Small Wireless Facilities are located on utility poles that have pre-existing aerial telecommunications facilities and provided such construction of Franchisee's Facilities continue to comply with Section 6.1.

Section 6.3 Franchisee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this Section 6.1. Franchisee may remove any underground Facilities from the Right-of-Way that have been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5. When the City determines, in the City’s reasonable discretion, that Franchisee’s underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove such Facilities at Franchisee’s sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

Section 6.4 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee’s Facilities.

Section 7. Maps and Records.

Section 7.1 Franchisee shall provide the City with an accurate as-built map or maps certifying the location of all Facilities within the City annually. Upon request by the City, Franchisee shall, within 30 calendar days, at no cost to the City: (1) submit sufficient information to demonstrate that Franchisee has complied with all requirements of AMC Chapter 12.02; (2) verify that all fees due to the City in connection with the Facilities have been paid by Franchisee; and (3) make all books, records, maps and other documents maintained by Franchisee with respect to the Facilities within Rights-of-Way available for inspection by the City.

Section 7.2 Nothing in Section 7.1 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.2 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this Section 7.2 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information including but not limited to names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

Section 7.3 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.

Section 7.4 Nothing in Section 7.2 or Section 7.3 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

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

Section 8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 8 shall survive the expiration or termination of this Franchise and during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 8.2 Whenever Franchisee shall commence work in any Rights-of-Way it shall apply to the City for a permit consistent with the requirements of the Municipal Code. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted consistent with the Municipal Code requirements. In no case shall any work

commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise or by Code.

Section 8.3 The City reserves the right to limit or exclude Franchisee's access to a specific route, public Right-of-Way or other location when, in the judgment of the Public Works Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium, unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other lawful reason determined by the Public Works Director.

Section 8.4 New wireline Facilities shall not be installed on existing metal street light standards or traffic signal standards unless specifically approved by the Public Works Director.

Section 8.5 If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise, the Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

- (a) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;
- (b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties;
- (c) To the extent reasonably possible, Franchisee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the Right-of-Way, as well as to minimize traffic-related impacts; and
- (d) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.
- (e) If required by a permit, Franchisee shall give reasonable advance notice of intended construction to entities or persons adjacent to the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed.

(f) Following performance of the work, Franchisee shall restore the Right-of-Way to City standards in effect at the time of construction except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law (e.g., RCW [80.36.020](#)).

Section 8.6 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City consistent with AMC 8.26.090. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City permit approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth encroaching into the Public Rights-of-Way. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the Public Works Director or his/her designee.

Section 8.7 Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon reasonable advance written notice to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 8.8 Franchisee shall maintain all above ground improvements that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the Right-of-Way, Franchisee shall provide a clear zone of five (5) feet on all sides of such improvements. If Franchisee fails to comply with this provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.

Section 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by the City or a third party, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 10. Safety Requirements.

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

applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 10.2 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 14.3 and Section 14.4.

Section 10.3 Additional standards include:

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

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

Section 10.4 Stop Work Order. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous

manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

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

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

Section 12. Restoration after Construction.

Section 12.1 Franchisee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 17, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way as required by the City's Public Works Standards and applicable Algona Municipal Code provisions. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

Section 12.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area

at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted as required by Code.

Section 12.3 If conditions (e.g. weather) make the complete restoration required under this Section 12 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 12.4 In the event Franchisee does not repair or restore a Right-of-Way as required under this Section 12, the City shall provide Franchisee with written notice including a description of actions the City reasonably believes are necessary to restore the Right-of-Way. If Franchisee fails to take such action after notice is provided pursuant to this section, the City may take such action as reasonably necessary to repair or restore the Right-of-Way. Pursuant to Section 14.3 and Section 14.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies outlined in Code and including the imposition of damages consistent with Section 19.

Section 12.5 The provisions of this Section 12 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 13. Emergency Work/Dangerous Conditions.

Section 13.1 In the event of any emergency in which any of Franchisee's Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity, or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities in order to cure or remedy the dangerous conditions for the protection

of property, life, health, or safety of any person, entity, or the City without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which City Hall is open for business. The City retains the right and privilege to cut, move, or remove any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency.

Section 13.2 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 13 except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents.

Section 13.3 Whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street, electrical or telecommunications utilities, or City property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public or such property, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support

thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Section 14. Recovery of Costs, Taxes, and Fees.

Section 14.1 Franchisee shall pay a fee for the actual and reasonable administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860 and AMC 12.02.440, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City staff, and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 14.3.

Section 14.2 Franchisee shall promptly reimburse the City in accordance with the provisions of Section 14.3 and Section 14.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

Section 14.3 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses

shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

Section 14.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 14.5 Franchisee hereby warrants that its operations as authorized under this Franchise will be consistent with the services described in Section 2 above, including the provision of data transmission, internet access, voice over internet protocol and similar data services. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

Section 14.6 Franchisee acknowledges that certain of its business activities may be subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable services under Title 5 of the Algona Municipal Code, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Title 5 of the Algona Municipal Code shall control. In that event, the City may not enforce remedies under Section 19 or commence a forfeiture or revocation process pursuant to Section 20 until the dispute is finally resolved either consistent with Title 5 of the Algona Municipal Code or by judicial action

and then only if the Franchisee does not comply with such resolution. The parties agree, however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend the Algona Municipal Code as may be permitted by law.

Section 15. Indemnification.

Section 15.1 Franchisee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person or damage to property to the extent caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. This obligation to indemnify the City shall extend to claims, costs, judgements, awards, or liability arising under the circumstances listed in AMC 12.02.340(A). This indemnification obligation shall also extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee’s prior written consent, prior to the culmination of any litigation or the institution of any litigation. Franchisee shall have sole control over the defense and any settlement of any claims indemnified under this Section. Franchisee shall consult with the City throughout the defense and/or settlement of any matter covered by this section but is not obligated to follow any recommendations made by the City. The City may, at its cost and expense, participate in the defense of any such action using counsel of its choice. If the City chooses to participate, the parties will cooperatively work together in the defense of the matter, but Franchisee retains sole control over the defense and any settlement of claims indemnified under this section.

Section 15.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 15.

Section 15.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 15.3. City’s failure to so notify and request

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

Section 15.4 Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees, or agents, the obligations of Franchisee under the indemnification provisions of this Section 15 and any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or

contributed to by the concurrent negligence of the City, its officers, officials, employees, or agents and the Franchisee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by the City directly against the Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.

Section 15.5 Notwithstanding any other provisions of this Section 155, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, representatives, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, representatives, elected or appointed officials, or contractors. In no event shall either Party be liable to the other Party for any indirect, incidental, special, consequential, exemplary, or punitive damages, including, by way of example and not limitation, lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, representatives, elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless, and defend the City against any third-party claims for damages, including, but not limited to, business interruption damages, lost profits, and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors.

Section 15.6 The provisions of this Section 15 shall survive the expiration, revocation, or termination of this Franchise.

Section 16. Insurance.

Section 16.1 Franchisee shall maintain for so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the acts or omissions of Franchisee. The Franchisee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Franchise-provided insurance as set forth herein, except the Franchisee shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Franchisee shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations. Franchisee shall maintain insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement (except for workers compensation) to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

- (a) Automobile Liability insurance with limits of no less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage.
- (b) Commercial General Liability insurance, written on an occurrence basis with limits of no less than \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including personal and advertising injury, blanket contractual; premises; operations; independent contractors; products and completed operations; and broad form property damage; explosion, collapse and underground (XCU).
- (c) Pollution liability shall be in effect throughout the entire Franchise term, with a limit of one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate

- (d) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit. Evidence of qualified self-insurance is acceptable.
- (e) Excess Umbrella liability policy with limits of no less than \$5,000,000 per occurrence and in the aggregate. Franchisee may use any combination of primary and excess to meet required total limits.

Section 16.2 Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 16. Franchisee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies or be at least as broad as such underlying policies.

Section 16.3 The required insurance policies, with the exception of Workers' Compensation, and Employer's Liability, and Pollution Liability obtained by Franchisee shall include the City, its officers, officials, employees, agents, and representatives ("Additional Insureds"), as an additional insured, with coverage at least as broad as ISO endorsement form CG 20 26, with regard to any work or operations performed under this Franchise or by or on behalf of the Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City upon acceptance a certificate of insurance and additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's required commercial general and auto liability insurance shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Franchisee's required insurance and shall not contribute with it.

Section 16.4 Upon receipt of notice from its insurer(s) Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, except for non-payment, in which case a ten (10) day notice will be provided, required pursuant to this Section 16. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 16. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 16 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 19 below. Notwithstanding the cure period described in Section 19.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 16.5 Franchisee's maintenance of insurance as required by this Section 16 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee. If Franchisee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess Umbrella liability maintained by the Franchisee, irrespective of whether such limits maintained by the Franchisee 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 Franchisee.

Section 16.6 The City may review all insurance limits once every three years during the Term and may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to and review by Franchisee. Franchisee shall then issue or provide a certificate of insurance to the City showing compliance with these adjustments. Upon request by the City, Franchisee shall make available for review copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all contractors' coverage.

Section 16.7 As of the Effective Date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Franchisee or its parent company is responsible for all payments within the self-insurance program; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 17. Abandonment of Franchisee's Telecommunications Network.

Section 17.1 Where any Facilities or portions of Facilities are no longer needed, and their use is to be discontinued, Franchisee shall promptly report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. Deactivated Facilities, or portions thereof, shall be completely removed within ninety (90) days following written notice from the Public Works Director, or his/her designee, that such removal is required, and the site or infrastructure restored to its pre-existing condition.

Section 17.2 If Franchisee leases a structure from a landlord and such landlord later abandons the structure, Franchisee shall remove its Facilities from the abandoned structure within the timeline provided by the landlord, but no more than ninety (90) days of such notification from the landlord, at no cost to the City and shall remove the pole if so required by the landlord. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in Section 5 above shall apply. Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition (accounting for reasonable wear and tear) the Rights-of-

Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 17.3 Notwithstanding Section 17.1 above, the City may permit Franchisee's Facilities to be abandoned in place in such a manner as the City may prescribe consistent with PMC 11.05.190. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

Section 17.4 In the event that Franchisee fails to remove Facilities within ninety (90) days of either the date of termination or revocation of this Franchise or the date the City issued a permit authorizing removal, whichever is later, the City may cause the Facilities to be removed. Any costs incurred by the City in removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 17 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action.

Section 17.5 The provisions of this Section 17 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 18. Bonding.

Section 18.1 *Performance.* Franchisee shall furnish a performance financial guarantee for any work in the right-of-way as required by AMC 12.02.370 and the City's current Standards for Public Works Standards, as applicable.

Section 18.2 *Security Fund.* Prior to the issuance of the Franchise, Franchisee shall establish a permanent security fund with the City by depositing the amount of fifty thousand dollars (\$50,000), or such other amount as deemed necessary by the Director of Public Works, with the City in cash, bond, or an unconditional letter of credit, based upon both operating history in Rights-of-Way, other ways, and City property and the cost

of removal of Franchisee's Facilities ("Security Fund"), which shall be maintained at the sole expense of the Franchisee so long as any of the Franchisee's Facilities are located within the Rights-of-Way. The Security Fund shall serve as security for the full and complete performance of this Franchise including any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to the Franchisee to comply with the codes, ordinances, rules, regulations, or permits of the City applicable to the construction, maintenance, repair, or removal of Facilities in the Rights-of-Way or upon City property. Franchisee shall replenish the Security Fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the Security Fund.

Section 18.3 Franchisee specifically agrees that its failure to comply with the terms of this Section 18 shall constitute a material breach of this Franchise. The amount of any bond or security fund established pursuant to this Section 18 shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 19. Remedies to Enforce Compliance.

Section 19.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by

law equity, or otherwise, and nothing contained here shall be deemed or construed to affect any such waiver.

Section 19.2 If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, the City may, at its discretion, (1) commence revocation proceedings, pursuant to Section 21, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the Security Fund set forth in Section 18.2, or (3) suspend the issuance of additional permits, or (4) pursue other remedies as described in Section 19.1 above.

Section 20. Forfeiture and Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this Franchise beyond applicable notice and cure periods, then at the election of the Algona City Council after at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure and an opportunity to cure, the City may revoke all rights conferred and this Franchise may be revoked by the City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Algona City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Algona City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the

Algona City Council does not grant any additional period, the Algona City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Section 21. Non-Waiver. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such covenants, agreements, or option or of any other covenants, agreements, or option.

Section 22. City Ordinances and Regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction, and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 23. Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Section 24. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 12, Section 15, Section 17, Section 24, Section 26, and Section 37.2 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise Area and any

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

Section 25. Assignment.

Section 25.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation, or other act of Franchisee, by operation of law or otherwise, unless prompt written notice is provided to the City within sixty (60) days following the assignment. Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 25.2 below, or to an entity that acquires all or substantially all of Franchisee's assets located in the area defined by the Federal Communications Commission in which the Facilities are located, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 25, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

Section 25.2 Any transactions which singularly or collectively result in a change of 50% or more of the (i) ownership or working control (for example, management of Franchisee or its Telecommunications facilities) of the Franchisee; or (ii) ownership or working control of the Franchisee's Telecommunications facilities within the City; or (iii) control of the capacity or bandwidth of the Franchisee's Telecommunication facilities within the City, shall be considered an assignment or transfer requiring notice to the City

pursuant to this Franchise. Such transactions between affiliated entities are not exempt from notice requirements. A Franchisee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee within sixty (60) days following the closing of the transaction. In the event such a transfer, assignment, or disposal of franchisee's ownership is approved by the Washington Utilities and Transportation Commission ("WUTC"), the City will be deemed to have consented to such transfer. Grantee will provide City with a copy of any such approval.

Section 25.3 Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, proof of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 25.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Section 26. Extension. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

- (a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or
- (b) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 17.

Section 27. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 28. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee’s Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 29. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than ninety (90) days before vacating all or any portion of any such area. The City may, after ninety (90) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 30. Notice. Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

CITY OF ALGONA
Public Works Director

Franchisee:
Ziply Fiber Pacific, LLC

200 Washington Blvd
Algona, WA 98001
info@algonawa.gov

Attn: Legal Department
135 Lake Street South,
Suite 155
Kirkland, WA 98033
legal@ziply.com.

Section 31. Severability. If any section, sentence, clause, or phrase of this Franchise is or should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court ruling.

Section 32. Compliance with All Applicable Laws. Franchisee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities authorized by the City in accordance to the ordinance applicable at the time of the Facilities' construction.

Section 33. Amendment. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare; or relating to roadway regulation or relating to a City ordinance enacted pursuant to such federal or

state statute or regulation; provided that the City provide Franchisee with ninety (90) days prior written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within ninety (90) days of the call for negotiations, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

Section 34. Attorney Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs, expenses, and attorney fees as the court finds reasonable, including those upon appeal of any judgment or ruling.

Section 35. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and Franchisee shall not allow any of its agents, contractors, or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify, and hold the City and its officers, officials, employees, agents, and representatives harmless from and against any and all claims, costs, and liabilities, including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and/or with the use, storage or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional.

Section 36. Licenses, Fees, and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly, and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses,

and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City, and shall pay utility taxes and license fees imposed by the City.

Section 37. Miscellaneous.

Section 37.1 City and Franchisee respectively represent that its signatory is duly authorized and has full right, power, and authority to execute this Franchise.

Section 37.2 This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington or King County Superior Court.

Section 37.3 The section captions and headings herein are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 37.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 37.5 Franchisee shall be responsible for obtaining all other necessary approvals, authorizations, and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty, or covenant whether any of the foregoing approvals, authorizations, or agreements are required or have been obtained by Franchisee by any person or entity.

Section 37.6 This Franchise may be enforced at both law and equity.

Section 37.7 Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA

because the Facilities or the Franchisee’s equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee’s expense.

Section 37.8 Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and any other similar act of God event.

Section 38. Acceptance. The rights and privileges granted pursuant to this Franchise shall not become effective until its terms and conditions are accepted by Franchisee. Acceptance shall be accomplished by Franchisee’s submission of a written instrument in the form attached hereto as Exhibit A, executed and sworn to by a corporate officer of the Franchisee before a Notary Public. Acceptance must be filed with the City within thirty (30) days after the effective date of this Ordinance. At the time that acceptance is submitted, Franchisee shall also submit necessary insurance documentation pursuant to Section 16; any Performance Bond, if applicable, pursuant to Section 18; and the Franchise Bond required pursuant to Section 18.2. The administrative fees owing pursuant to Section 14.1 are due within thirty (30) days of receipt of invoice from the City.

APPROVED:

TROY LINNELL, MAYOR

ATTEST/AUTHENTICATED:

DANA PARKER, CITY CLERK

APPROVED AS TO FORM:

Zach Lell, CITY ATTORNEY

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

SUMMARY OF ORDINANCE NO. ____

City of Algona, Washington

On the ____ day of _____, 202__, the City Council of the City of Algona passed Ordinance No. _____. A summary of the content of said Ordinance, consisting of the title, is provided as follows:

AN ORDINANCE OF THE CITY OF ALGONA, WASHINGTON, GRANTING TO ZIPLY FIBER PACIFIC, LLC DBA ZIPLY FIBER AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF ALGONA, WASHINGTON.

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

DANA PARKER, CITY CLERK

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

EXHIBIT A

STATEMENT OF ACCEPTANCE

Ziply Fiber Pacific, LLC dba Ziply Fiber, for itself and its successors, affiliates and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions, and provisions of the Franchise attached hereto and incorporated herein by this reference.

Ziply Fiber Pacific, LLC

By: _____ Date: _____

Name: _____

Title: Associate General Counsel

STATE OF _____)
COUNTY OF _____)

On this ____ day of _____, 202__, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

Signature

NOTARY PUBLIC in and for the State of _____, residing at _____

MY COMMISSION EXPIRES: _____



CITY COUNCIL

AGENDA BILL # AB24-0121

City of Algona
200 Washington Blvd.
Algona, WA 98001

ITEM INFORMATION

SUBJECT: Ordinance 1234-24, Street Racing	Agenda Date: March 25th, 2024		
	Department/Committee/Individual	Created	Reviewed
	Mayor		
	City Administrator		X
	City Attorney	X	X
	City Clerk		X
	Finance Dept		
	PW/Utilities		
	Planning Dept		
	Community Services		
Cost Impact:	Police Dept		X
Fund Source:	Finance Committee		
Timeline: 1 st review - 3/25/2024	Planning Commission		
2 nd review -	Civil Service Committee		

Staff Contact: James Schrimpscher, Chief of Police**Attachments: Ordinance 1234-24**

SUMMARY STATEMENT:

This ordinance codifies street racing as an illegal activity in city limits.

COMMITTEE REVIEW AND RECOMMENDATION:

RECOMMENDED ACTION:

RECORD OF COUNCIL ACTION

Meeting Date:

Action:

Vote:

CITY OF ALGONA, WASHINGTON

ORDINANCE NO. 1234-24

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALGONA, WASHINGTON; AMENDING TITLE 10 AMC BY THE ADDITION OF A NEW CHAPTER 10.30 STREET RACING THERETO; PROHIBITING STREET RACING AND SPECTATING OF STREET RACING WITHIN THE CITY; DESIGNATING CERTAIN AREAS WITHIN THE CITY AS “NO RACING ZONES”; SETTING FORTH PENALTIES AND REMEDIES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City regulates vehicles and traffic through the provisions codified at Title 10 of the Algona Municipal Code (AMC); and

WHEREAS, in 2023 the Washington Legislature adopted Senate Bill (SB) 5606, updating and amending the state law provisions governing illegal street racing and providing penalties and remedies therefor, including without limitation criminal sanctions and vehicle impoundment; and

WHEREAS, consistent with SB 5606, the City Council desires to amend Title 10 AMC by adopting a new chapter specifically prohibiting street racing and spectating of street racing, and designating certain areas within the City as “no racing zones”; and

WHEREAS, the new regulations set forth in this ordinance will serve the public interest by protecting and enhancing the safety of vehicular, nonmotorized, and pedestrian traffic within the City;

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

Section 1. Amendment of Title 10 AMC—Addition of New Chapter 10.30. Title 10 of the Algona Municipal Code is hereby amended by the addition of a new Chapter 10.30 AMC Street Racing to provide in its entirety as contained in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF THIS ____ DAY OF APRIL 2024.

Troy Linnell, Mayor

ATTEST:

Dana Parker, City Clerk

APPROVED AS TO FORM:

J. Zachary Lell
City Attorney

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

Exhibit A

Chapter 10.30

STREET RACING

Sections:

- 10.30.010 Purpose and authority.
- 10.30.020 Definitions.
- 10.30.030 Street racing prohibited.
- 10.30.040 Spectating of street racing prohibited.
- 10.30.050 Designation of no racing zones.
- 10.30.060 Stay out of areas of racing orders.
- 10.30.070 Authority preserved.

10.30.010 Purpose and authority.

Street racing threatens the health and safety of the public, interferes with pedestrian and vehicular traffic, creates a public nuisance, interferes with the right of businesses and residents to enjoy the use of their property, and unnecessarily expends law enforcement resources.

This chapter is adopted to prohibit not only street racing itself but also to prohibit spectators at street races. In prohibiting spectators, the act of organizing and participating in illegal street races will be discouraged.

The city has the authority to regulate the use of its streets under its constitutional police powers and state law, including but not limited to RCW 35A.11.020.

Chapter 10.01 AMC sets forth the city’s traffic regulations, adopting the State’s Model Traffic Ordinance, which applies certain provisions of Chapter 46.61 RCW, Rules of the Road, throughout the city’s jurisdiction.

RCW 46.61.530 provides that no person may race any motor vehicle upon any public highway. Racing occurs when any person or persons willfully compare or contest relative speeds by operation of one or more motor vehicles, whether or not such speed is in excess of the maximum speed prescribed by law. Racing constitutes reckless driving under RCW 46.61.500. Reckless driving is a gross misdemeanor, with not less than 30 days’ license suspension.

10.30.020 Definitions.

"Drifting" means a driver intentionally oversteers a vehicle, causing loss of traction, while maneuvering a vehicle in a turning direction.

"Exhibition of speed" means the operation of a motor vehicle to present a display of speed, maneuverability, or power. Exhibition of speed or acceleration includes, but is not limited to, squealing the tires of a motor vehicle while it is stationary or in motion, rapid acceleration, rapid swerving or weaving, drifting, producing smoke from tire slippage, or leaving visible tire acceleration marks on the surface of a paved or unpaved area, that is done intentionally to draw the attention of persons in the vicinity.

“Illegal race event” means an event where street racing occurs using public highways, streets, or rights-of-way in violation of applicable motor vehicle and traffic laws, including RCW 46.61.500 and 46.61.530, or within an off-street parking facility.

“Off-street parking facility” means a public or private off-street parking area open for use by the general public for parking motor vehicles.

“Preparations” means acts done to facilitate the racing event including, but not limited to, arrival of motor vehicles at a predetermined location; impeding the use of a city street by action, word, or physical barrier; the revving of motor vehicle engines or spinning of motor vehicle tires; the gathering of individuals with intent to actively take part in the event or to spectate; or the presence of a person acting as a race starter.

“Spectator” means any person who has actual or constructive knowledge that they are present at an illegal race event with intent to view, observe, watch, record, support, encourage, or witness the event as it progresses, whether on public or private property.

“Street” means land acquired or dedicated for public and private roads and thoroughfares for vehicle use.

“Street racing” means an exhibition of speed; the action of a person(s) who willfully compare or contest of relative speeds by operation of one or more motor vehicles, or who willfully demonstrates, exhibits, or compares speed, maneuverability, or the power of one or more motor vehicles, including "drifting," whether or not such speed is in excess of the maximum speed prescribed by law, as provided in RCW 46.61.530, as amended, regardless of whether the comparison or contest is against another vehicle, clock, or other timing device. Street racing includes a contest or exhibition of speed whether in a parallel or circular direction and may occur both on streets and in off-street parking areas.

10.30.030 Street racing prohibited.

A. No person shall knowingly engage or participate in street racing on a street or within an off-street parking facility within the city.

B. Violations of this section shall be a gross misdemeanor punishable as provided in RCW 46.61.500, reckless driving, as amended. In addition to the penalties provided for in RCW 46.61.500, upon conviction, the court may impound the person's vehicle for up to 30 calendar days.

10.30.040 Spectating of street racing prohibited.

A. No person shall knowingly spectate at an illegal race event or where preparations are being made for an illegal race event with the intent to be present at the illegal race event.

B. For the purpose of this section, a person shall be considered present if within 200 feet of the location of the illegal race event or the location where preparations are being made for the illegal race event, whether on public or private property.

C. Nothing in this section prohibits law enforcement officers from being spectators in the course of their official duties.

D. Violations of this section shall be a misdemeanor punishable as provided in AMC 1.24.010.

10.30.050 Designation of no racing zones.

A. Certain areas of the city are designated and identified as “no racing zones.” These zones are or have been frequented by illegal racers and those who attend illegal race events because of their characteristics, such as straight, wide, long, and with low traffic volumes during nighttime hours.

B. The following described areas are identified and designated as no racing zones:

1. All of Boundary Blvd and South on Algona Blvd to 7th Ave N;
2. Milwaukee Blvd N from 5th Ave N to Boundary;
3. All of Pacific Ave N from 1st Ave N to the South City Limits; and
4. All of Ellingson Rd from the East City Limits to the West City Limits.

C. No racing zones shall include the full width of streets and adjoining property areas, including sidewalks, planting strips, and parking areas if those areas are being used for racing or race attendance, regardless of whether such property is a public place or is private property.

D. No racing zones shall be designated by the placement of clear and conspicuous signs at all street/highway entrances to the “no racing zone.” At a minimum, these signs shall advise that the area is a “no racing zone”; that race attendance is prohibited; and violators are subject to Chapter 10.30 AMC.

10.30.060 Stay out of areas of racing orders.

A. In addition to any other penalty imposed by this chapter, the city attorney or city prosecuting attorney, after consultation with the chief of police, may seek a stay out of areas of racing (SOAR) order from the district court as a condition of pre-trial release or a condition of sentence, deferral, or suspension for any person found to be in violation of this chapter when the illegal race event occurred within a designated no racing zone.

B. The district court may enter a SOAR order prohibiting a person from entering or remaining in a no racing zone for up to one year. The SOAR order shall be in writing, contain any conditional exceptions imposed by the court, and shall bear the following language:

Violation of this court order is a criminal offense under AMC 10.30.050 and shall constitute a separate criminal offense. Violators will be subject to arrest and their vehicle subject to impound.

C. The district court in its discretion may allow a person subject to a SOAR order to enter a no racing zone under certain conditional exceptions. Exceptions to the SOAR order may include travel to and from and/or remaining in the following locations so long as these locations apply to or are used by the person who is subject of the SOAR order:

1. Place of residence;
2. Court/government offices (while open to the public);
3. Social services provider or treatment center;
4. Place of employment;
5. School;
6. Attorney’s office;
7. Place of worship; or
8. Medical services.

D. If the court allows for exceptions in the SOAR order, the person subject to that order is required to have a copy of the order on their person whenever they are traveling through a no racing zone. Failure to present this order upon request by law enforcement is a violation of the SOAR order and subject to the penalties set forth in this chapter. For the purpose of this section, “travel” is defined as movement on foot or in a vehicle from one point to another without delay.

E. Upon entering a SOAR order, the clerk of the court shall forward a copy of the order to the police department on or before the next judicial day following issuance of the order. Upon receipt, the police department shall enter the order into the appropriate law enforcement information system, noting the expiration date of the SOAR order.

F. Notice of SOAR Order. A person is deemed to have notice of the SOAR order when:

1. The signature of either the person named in the order is affixed to the bottom of the order, acknowledging receipt of the order; or
2. The order otherwise indicates that the person appeared before the court at the time the order was entered.

G. Enforcement Procedure.

1. If a law enforcement officer has probable cause to believe that a person subject to a SOAR order, and in the officer's presence, is knowingly violating that order, such person may be arrested without the necessity for any warrant or additional court order and the officer may impound the person's vehicle pursuant to state law or court-imposed conditions of the SOAR order.
2. The chief of police, in consultation with the city attorney, shall have the authority to promulgate procedures for the administration of this chapter.

H. Penalties.

1. Any person who knowingly violates a SOAR order shall be guilty of a gross misdemeanor.

10.30.070 Authority preserved.

The penalties and remedies set forth in this chapter are nonexclusive, and are without prejudice to any and all other applicable penalties and remedies under state law and/or this code.

**CITY COUNCIL****AGENDA BILL # AB24-0015**

City of Algona
200 Washington Blvd.
Algona, WA 98001

ITEM INFORMATION

SUBJECT: King County Parks Grant Agreement	Agenda Date: March 25th, 2024		
	Department/Committee/Individual	Created	Reviewed
	Mayor		
	City Administrator		X
	City Attorney		
	City Clerk		X
	Finance Dept		
	PW/Utilities		
	Planning Dept		
	Community Services		
Cost Impact:	Police Dept		
Fund Source:	Finance Committee		
Timeline: 1 st review – 3/11/24	Planning Commission		
2 nd review – 3/25/24	Civil Service Committee		

Staff Contact: Dana Parker, City Clerk; Jessica Griess, City Administrator**Attachments: King County Parks Grant Agreement****SUMMARY STATEMENT:**

THIS AGREEMENT is a grant agreement entered into between City of Algona and King County for an active recreation, passive recreation, local trail, or other capital project in a park or recreational facility using a Parks Capital and Open Space Program grant.

The grant award is for \$1 million to fund the David E. Hill Wetland Preserve.

COMMITTEE REVIEW AND RECOMMENDATION:**RECOMMENDED ACTION:****RECORD OF COUNCIL ACTION**

Meeting Date: *Action:* *Vote:*



PARKS CAPITAL AND OPEN SPACE PROGRAM
CAPITAL PROJECT GRANT AGREEMENT

Department/Division: Natural Resources and Parks / Parks and Recreation

Grant Recipient: City of Algona

Project: Wetland Preserve Restoration & Interpretive Trail

Award Amount: \$1,000,000 Project#: 1144509 Contract#: 6416652

Term Period: To 11/30/2025

THIS AGREEMENT is a grant agreement entered into between City of Algona (the “Grant Recipient”) and King County (the “County”) (referred to individually as a “Party” and collectively the “Parties”) for an active recreation, passive recreation, local trail, or other capital project in a park or recreational facility using a Parks Capital and Open Space Program grant.

RECITALS

- A. [Ordinance 18890](#), which took effect May 13, 2019, called for a special election to authorize the King County parks, recreation trails, and open space levy. On August 6, 2019, King County voters approved the levy, which included funding for capital projects for active and passive recreation, local trails, or capital projects in parks and recreation facilities in order to construct new and improve existing recreation facilities to address the pressures of rapid growth in King County.
- B. [Motion 15378, Section A.1., and Attachment A](#), further delineated the use of levy funds for the Parks Capital and Open Space Grants Program and the guidelines governing that use.
- C. [Ordinance 19166, Attachment A](#) established the grant award criteria and the process for the distribution of Parks Capital and Open Space Grants as well as the proposed composition of an advisory committee to review and make recommendations on the grant awards.
- D. King County, a home rule charter county and political subdivision of the State of Washington, is authorized to administer the Parks Capital and Open Space Grant Program and enter into agreements for the use of the grant funds with King County towns, cities, or metropolitan parks districts for capital projects for active

and passive recreation, local trails, or capital projects in parks and recreation facilities.

- E. Grant Recipient is a(n) City or Town in King County.
- F. The Parks Capital and Open Space Grant Program Advisory Committee (“Advisory Committee”) has recommended an allocation of levy grant funds to specific projects, pursuant to [Ordinance 19666](#).
- G. King County has selected Grant Recipient to receive a Parks Capital and Open Space Grant award in the amount of \$1,000,000 (“Grant Award Funds”) in order to construct, improve, or repair the Project described below and in the attached exhibits.

NOW THEREFORE, in consideration of the promises, covenants, and other provisions set forth in this Agreement, the Parties agree as follows:

GRANT AWARD TERMS AND CONDITIONS

1. DEFINITIONS

1.1 Project.

The term “Project” means the design, development, and construction of the Facility described in **Exhibit A**. Grant Award Funds available pursuant to this Agreement may only be used for the Project. To complete the Project, Grant Recipient shall use the Grant Award Funds to design, develop, and construct the Facility, as set forth in **Exhibit B**, consistent with the requirements set forth in this Agreement and in the following attached exhibits, which are incorporated herein by reference:

Map of Facility and/or Schematic	Attached hereto as Exhibit A
Scope of Work	Attached hereto as Exhibit B
Project Budget	Attached hereto as Exhibit C
Insurance Requirements	Attached hereto as Exhibit D
Certificate of Insurance and Endorsements	Attached hereto as Exhibit E
Notice of Grant (<i>draft</i>)	Attached hereto as Exhibit F

Cultural Resource Preservation Requirements	Attached hereto as Exhibit G
---	------------------------------

- 1.2 Map of Facility and/or Schematic. This Agreement applies to the Project to improve the park and recreational facility ("Facility") which is located at:

Parcel Number(s): 3621049002

See **Exhibit A** for a visual depiction of the Facility via a map and/or schematic (including boundaries) for the physical address noted above.

- 1.3 Scope of Work. Grant Recipient shall provide a scope of work ("Scope of Work"), attached hereto as **Exhibit B**, which describes the Project in detail and includes a description of the various design, development, permitting, and construction milestones required for completion of the Project and intended use of the Grant Award Funds. Grant Recipient shall apply the funds received from the County for the Project under this Agreement in accordance with the Scope of Work, attached hereto as **Exhibit B**.
- 1.4 Project Budget. Grant Recipient shall work with King County to develop a Project Budget ("Project Budget"), attached hereto as **Exhibit C**. King County shall provide the Grant Award Funds to the Grant Recipient to pay for costs and expenditures related to the Project, as set forth in **Exhibits B and C**. Grant Award Funds provided to Grant Recipient may only be used to pay for costs and expenditures related to the Project, as set forth in **Exhibits B and C**.
- 1.5 Contractor. "Contractor" shall include any contractor or consultant hired by Grant Recipient, including any of the contractor's or consultant's subcontractors or subconsultants.

2. EFFECTIVE DATE

The Agreement shall be effective upon signature by both Parties ("Effective Date").

3. TERM

The term ("Term") of this Agreement shall begin on the Effective Date and end on 11/30/2025. This Agreement shall remain in effect until such time as it is amended in writing or terminated as provided herein.

4. AMENDMENTS

This Agreement together with the attached exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole Agreement between the Parties. This Agreement may be amended only by an instrument, in writing, duly executed by the Parties. Either party may request changes to this Agreement, however, changes that deviate substantially from the proposal submitted to and approved by the Advisory Committee and the King County Council will need to be approved by those entities.

5. NOTICES

Unless otherwise specified in the Agreement, all notices or documentation required or provided pursuant to this Agreement shall be in electronic form and shall be deemed duly given when received at the addresses first set forth below via electronic mail.

KING COUNTY	City of Algona
Parks Grant Manager	Jessica Griess
Community Investments Unit	City Clerk/Treasurer
King County Parks	City of Algona
201 S Jackson Street Suite #5702	200 Washington Blvd
Seattle, WA 98104	Algona, WA 98001
(206) 848-0984	253-833-2897
ehirschi@kingcounty.gov	jessicag@algonawa.gov
<u>*NOTE: Personal contact information for your assigned grant manager is available in the grant management system</u>	

Either Party hereto may, at any time, by giving ten (10) days written notice to the other Party, to designate any other address in substitution of the foregoing address to which such notice or communication shall be given.

6. DISBURSEMENT OF GRANT FUNDS

- 6.1 Notwithstanding the Effective Date of this Agreement, the County shall pay for eligible and authorized costs supported by adequate documentation, as determined by the County, for the work specified in the Scope of Work (**Exhibit B**) expended from 09/13/2023 through 11/30/2025.
- 6.2 The County may authorize, at County's sole discretion, release of a portion of the Grant Award Funds to Grant Recipient, upon execution of this Agreement, and receipt of Grant Recipient's County-approved completed Scope of Work and Project Budget (see Section 1 and **Exhibits B and C**).
- 6.3 The County shall initiate authorization for payment and disbursement of Grant Award Funds after approval of sufficiently detailed Project-related invoices submitted by Grant Recipient. The County shall make payment to Grant Recipient not more than thirty (30) days after a complete and accurate invoice and any other required documentation is received and approved.
- 6.4 Grant Recipient shall submit the final invoice, supporting documentation and any outstanding deliverables, as specified in the Scope of Work (**Exhibit B**) and Project Budget (**Exhibit C**), no later than thirty (30) days after the Contract End Date. If the Grant Recipient's final invoice, supporting documentation, and reports are not submitted by the day specified in this subsection, or if such final documents are not approved by the County then the County shall have no obligation to pay Grant

Recipient unless and until Grant Recipient submits, and the County approves, a properly completed invoice. Grant Recipient must submit a corrected invoice within 30 days after receiving notice of an improper or incomplete invoice.

7. GRANT REPORTING

All Grant Award Funds received pursuant to this Agreement and accrued interest therefrom must be accounted for separately from all other Grant Recipient accounts and moneys. Until the Project is completed, and all proceeds provided pursuant to this Agreement have been expended, the Grant Recipient shall provide reports to the King County Project Manager on a schedule determined by the County.

8. COMPLETION OF THE PROJECT

Grant Recipient shall complete the Project described in Section 1.1 and **Exhibits A, B and C** of this Agreement. If Grant Recipient cannot complete the Project, as specified by the Scope of Work and deliverables set forth in **Exhibit B**, the County shall be released from any obligation to fund the Project, and the County in its sole discretion may reallocate such funds for other projects in other jurisdictions in accordance with [Ordinance 19166](#) and [Motion 15378](#).

Pursuant to Section 19, Termination, this Agreement will be terminated if the Grant Recipient is unable or unwilling to expend the Grant Award Funds for the Project as provided in this Agreement. The Grant Recipient may not redirect Grant Award Funds for a purpose other than completion of the Project as approved by the Advisory Committee and King County Council.

9. COMMUNICATION AND KING COUNTY MILESTONE NOTIFICATION

Grant Recipient shall recognize County as a “grant sponsor” for the Project in the following manner:

- 9.1 Events: Grant Recipient shall invite and recognize “King County Parks” at all events promoting the Project, and at the final Project dedication.
- 9.2 Community Relations: Grant Recipient shall recognize “King County Parks” as a “grant sponsor” in all social media, websites, brochures, banners, posters, press releases, and other promotional material related to the Project.
- 9.3 King County Parks Notification: Grant Recipient shall notify the King County Parks Grant Manager thirty (30) days prior to any major milestone, such as a groundbreaking or opening dates.
- 9.4 King County Council Notification: If Grant Recipient is a city or town, notification to the King County Council thirty (30) days prior to any major milestone, such as a groundbreaking or opening dates is, required.
- 9.5 Signage: Grant Recipient shall recognize “King County Parks” on any signage as a funder/contributor of project/facility. Grant Recipient is required to use appropriate King County logo on any signage and

communications.

10. DISPOSITION OF REMAINING GRANT AWARD FUNDS

If Grant Recipient does not expend all proceeds obligated to be provided through this Agreement, such proceeds, if held by Grant Recipient, shall be refunded to the County. For purposes of this section, “proceeds” shall include all Grant Award Funds obligated to be provided by the County plus interest accrued by Grant Recipient on the grant funds. Any proceeds in excess of those required to be provided by the County for the actual costs of the Project shall remain with the County for use in its sole discretion.

11. PUBLIC ACCESS

The Grant Award is provided to Grant Recipient for the Project for the purpose of land protection and recreation for the citizens of King County. Therefore, Grant Recipient and any successor in interest agree to maintain the Facility for public use as required by Ordinances [18890](#) and [19166](#), and the Parks Capital and Open Space Grant program requirements specified in [Motion 15378](#). The Facility shall be open and accessible to the public at reasonable hours and times. Grant Recipient shall notify the public of the availability of use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information. Fees for use of the Facility shall be no greater than those generally charged by public operators of similar facilities in King County.

Notwithstanding temporary closure for required maintenance or repairs, the minimum period of time Grant Recipient must ensure the Project is available for public use is thirty (30) years. If the Facility is retired or otherwise removed from use before the end of the thirty-year period, then the Grant Recipient shall reimburse the Grant Award Funds to King County. **Grant Recipient’s duties under this Section 11 will survive the expiration or earlier termination of this Agreement.**

12. NOTICE OF GRANT

Upon completion of construction of the Facility, a completed Notice of Grant will be provided by King County for execution, a sample of which is attached hereto as **Exhibit F**. Upon final execution of the Notice of Grant, Grant Recipient and/or the legal property owner must record a copy with the appropriate county offices.

13. CONSTRUCTION OF THE FACILITY

13.1 Capital Improvements.

Grant Recipient shall design, develop, and construct mutually agreed upon Facility, features, and amenities in accordance with all applicable design(s), timelines, restrictions, environmental considerations, permitting determinations, neighborhood impact mitigations, and all other requirements. All contracted work by Grant Recipient, its agents, representatives, or subcontractors, shall be bonded and properly insured to ensure the complete and safe design and construction of all facilities, features, and amenities. As between Grant Recipient and King County,

Grant Recipient will be solely responsible to comply with all applicable authorities and to obtain all necessary permits, approvals, and endorsements for the Project.

13.2 Warranties.

With respect to all warranties, express or implied, for work performed or materials supplied in connection with the Project, Grant Recipient shall:

- Obtain all warranties, express or implied, that would be given in normal commercial practice from suppliers, manufacturers, contractors, or installers;
- Require all warranties be executed, in writing; and
- Be responsible to enforce any warranty of a contractor, subcontractor, manufacturer, or supplier.

If, within an applicable warranty period, any part of the Facility or work performed to construct the Facility is found not to conform to specifications, permit requirements, or industry standard, Grant Recipient shall correct it correct it within a reasonable timeframe at the determination of King County.

13.3 Right to Inspect- Construction.

King County personnel or agents may inspect the construction project at any time provided that such persons observe due regard for workplace safety and security. King County may require Grant Recipient or its contractors to stop work if King County deems work stoppage necessary to remedy construction defects or to address risks to health, safety, or welfare. Grant Recipient specifically understands, acknowledges, and agrees that at a minimum, King County will inspect the Facility construction project before final completion of the Project.

13.4 Design.

Grant Recipient has retained a licensed architect and/or licensed professional engineer, registered in the State of Washington, who will prepare a Project design for the Facility and exterior landscaping, which visually blends with the setting. King County shall review the design plans for the Project in concept and reserves the right to approve the final design of the Project, consistent with established zoning, design code, or both.

13.5 Construction Site/Work Fencing.

Grant Recipient will be solely responsible for the site work, required permits, and grading for the Project. Grant Recipient will ensure the work area is properly barricaded, and that signage is installed, directing unauthorized persons not to enter onto the construction site during any phase of development or construction. Unless otherwise agreed by the Parties in writing, fencing will be placed around work areas. In addition, construction areas will be kept clean and organized during development

periods. Grant Recipient will be responsible for site security, traffic, and pedestrian warnings at the site during the development and construction phases.

13.6 Alteration of Site or Facility after Construction.

For thirty (30) years after the Facility is completed and accepted by Grant Recipient and King County as defined herein, Grant Recipient will not make any material alteration outside of ordinary maintenance to the Facility without the express, written consent by King County.

13.7 Development and Construction Fees and Expenses.

Grant Recipient will be responsible to obtain and pay for all necessary permits, fees, and expenses associated with the Project.

13.8 Public Works Laws.

To the extent applicable, Grant Recipient will comply with all public works laws, regulations, and ordinances, including but not limited to those related to prevailing wages ([see RCW 39.12](#)), retainage ([see RCW 60.28](#)), bonding ([see RCW 39.08](#)), use of licensed contractors ([see RCW 39.06](#)), and competitive bidding ([see RCW 36.32](#) and [RCW 35.21.278](#)). Grant Recipient will indemnify and defend King County should it be sued or made the subject of an administrative investigation or hearing for a violation of such laws, regulations, and ordinances in connection with the improvements.

13.9 Contractor Indemnification and Hold Harmless.

Grant Recipient will require its construction contractors and subcontractors to defend, indemnify, and hold King County, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney's fees and costs, arising out of or in connection with the design, development, and construction of the Facility except for injuries and damages caused by the sole negligence of King County.

13.10 Minimum Scope and Limits of Insurance.

Grant Recipient shall maintain, and/or require its Contractor(s) to maintain the minimum scope and limits of insurance as required in **Exhibit D – Insurance Requirements** and as evidenced in **Exhibit E – Certificate of Insurance and Endorsements**.

14. INTERNAL CONTROL AND ACCOUNTING SYSTEM

Grant Recipient shall establish and maintain a system of accounting and internal controls which complies with applicable, generally accepted accounting principles, and governmental accounting and financial reporting standards in accordance with Revised Code of Washington ([RCW Chapter 40.14](#)).

15. MAINTENANCE OF RECORDS

- 15.1 Grant Recipient shall maintain accounts and records, including personnel, property, financial, Project records, including Agreement deliverables, and other such records as may be deemed necessary by the County to ensure proper accounting for all Grant Award Funds and compliance with this Agreement.
 - 15.2 These records shall be maintained for a period of six (6) years after the expiration or earlier termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with [\(RCW\) Chapter 40.14](#).
 - 15.3 Grant Recipient shall inform the County in writing of the location, if different from the Grant Recipient address listed in Section 5 of this Agreement of the aforesaid books, records, documents, and other evidence and shall notify the County in writing of any changes in location within ten (10) working days of any such relocation.
16. RIGHT TO INSPECT

King County reserves the right to review and approve the performance of Grant Recipient with regard to this Agreement, and, at its sole discretion, to inspect or audit the Grant Recipient's records regarding this Agreement and the Project upon seventy-two (72) hours' notice during normal business hours.
17. COMPLIANCE WITH ALL LAWS AND REGULATIONS

Grant Recipient shall comply with all applicable laws, ordinances and regulations in using funds provided by the County, including, without limitation, those relating to providing a safe working environment to employees and, specifically, the requirements of the [Washington Industrial Safety and Health Act \(WISHA\)](#); and, to the extent applicable, those related to "public works," payment of prevailing wages, and competitive bidding of contracts. The Grant Recipient specifically agrees to comply and pay all costs associated with achieving such compliance without notice from King County; and further agrees that King County, does not waive this Section by giving notice of demand for compliance in any instance. The Grant Recipient shall indemnify and defend the County should it be sued or made the subject of an administrative investigation or hearing for a violation of such laws related to this Agreement.
18. CORRECTIVE ACTION
 - 18.1 If the County determines that a breach of contract has occurred or does not approve of the Grant Recipient's performance, it will give the Grant Recipient written notification of unacceptable performance. Grant Recipient will then take corrective action within a reasonable period of time, as may be defined by King County in its sole discretion in its written notification to Grant Recipient.
 - 18.2 King County may withhold any payment owed Grant Recipient until the County is satisfied that corrective action has been taken or completed.

19. TERMINATION

- 19.1 King County may terminate this Agreement in whole or in part, with or without cause, at any time during the Term of this Agreement, by providing Grant Recipient ten (10) days advance written notice of the termination.
- 19.2 If the termination results from acts or omissions of Grant Recipient, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, Grant Recipient shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to Grant Recipient by the County.
- 19.3 Any King County obligations under this Agreement beyond the current appropriation biennium are conditioned upon the County Council's appropriation of sufficient funds to support such obligations. If the Council does not approve such appropriation, then this Agreement will terminate automatically at the close of the current appropriation biennium.
- 19.4 The Agreement will be terminated if the Grant Recipient is unable or unwilling to expend the Grant Award Funds as specified in Section 1 and **Exhibits B and C**, or upon reimbursement by the Grant Recipient to the County of all unexpended proceeds provided by the County pursuant to this Agreement and payment of all amounts due pursuant to Section 6.

20. FUTURE SUPPORT; UTILITIES AND SERVICE

The County makes no commitment to support the services contracted for herein and assumes no obligation for future support of the activity contracted for herein except as expressly set forth in this Agreement. Grant Recipient understands, acknowledges, and agrees that the County shall not be liable to pay for or to provide any utilities or services in connection with the Project contemplated herein.

21. HOLD HARMLESS AND INDEMNIFICATION

Grant Recipient shall protect, indemnify, and save harmless the County, its officers, officials, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) Grant Recipient's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) work, services, materials, or supplies performed or provided by Grant Recipient's employees or other suppliers in connection with or support of the performance of this Agreement.

Grant Recipient further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Agreement by the Grant Recipient, its officers, employees, agents, representatives, or subcontractors. This duty to repay the County shall not be diminished or extinguished by the expiration or prior termination of the Agreement.

Grant Recipient agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and employees

from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to any use of or occurrence on the Project that is the subject of this Agreement, or Grant Recipient's exercise of rights and privileges granted by this Agreement, except to the extent of the County's sole negligence. Grant Recipient's obligations under this Section shall include:

- A. The duty to promptly accept tender of defense and provide defense to the County at the Grant Recipient's own expense;
- B. Indemnification of claims made by Grant Recipient's employees or agents; and
- C. Waiver of Grant Recipient's immunity under the industrial insurance provisions of [Title 51 RCW](#), but only to the extent necessary to indemnify King County, which waiver has been mutually negotiated by the parties.

In the event it is necessary for the County to incur attorney's fees, legal expenses, or other costs to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the Grant Recipient.

In the event it is determined that [RCW 4.24.115](#) applies to this Agreement, the Grant Recipient agrees to protect, defend, indemnify and save the County, its officers, officials, employees, and agents from any and all claims, demands, suits, penalties, losses damages judgments, or costs of any kind whatsoever for bodily injury to persons or damage to property (hereinafter "claims"), arising out of or in any way resulting from the Grant Recipient's officers, employees, agents and/or subcontractors of all tiers, acts or omissions, performance of failure to perform the rights and privileges granted under this Agreement, to the maximum extent permitted by law or as defined by [RCW 4.24.115](#), as now enacted or hereafter amended.

A hold harmless provision to protect King County similar to this provision shall be included in all Agreements or subcontractor Agreements entered into by Grant Recipient in conjunction with this Agreement. **Grant Recipient's duties under this Section 21 will survive the expiration or earlier termination of this Agreement.**

22. NONDISCRIMINATION

[King County Code \("KCC"\) chapters 12.16 through 12.19](#) apply to this Agreement and are incorporated by this reference as if fully set forth herein. In all hiring or employment made possible or resulting from this Agreement, there shall be no discrimination against any employee or applicant for employment because of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, or age except minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

23. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further

the election or defeat of any candidate for public office.

24. PROJECT MAINTENANCE; EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP

- A. As between the County and Grant Recipient, Grant Recipient shall be responsible to operate and maintain the completed Project at its own sole expense and risk. Grant Recipient shall maintain the completed Project in good working condition consistent with applicable standards and guidelines. Grant Recipient understands, acknowledges, and agrees that the County is not responsible to operate or to maintain the Project in any way.
- B. Grant Recipient shall be responsible for all property purchased pursuant to this Agreement, including the proper care and maintenance of any equipment.
- C. Grant Recipient shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment and materials purchased with Grant Award Funds.

Grant Recipient's duties under this Section 24 shall survive the expiration of this Agreement.

25. CULTURAL RESOURCES

Grant Recipient agrees to coordinate cultural resource review of the Project with the King County Historic Preservation Program ("HPP") in order to determine potential effects to cultural resources and any necessary mitigation. Grant Recipient further agrees to perform the steps outlined by the HPP for any necessary cultural resource preservation as specified in **Exhibit G**.

26. ASSIGNMENT

Grant Recipient shall not assign any portion of rights and obligations under this Agreement or transfer or assign any claim arising pursuant to this Agreement without the written consent of the County. Grant Recipient must seek such consent in writing not less than thirty (30) days prior to the date of any proposed assignment.

27. WAIVER OF BREACH OR DEFAULT

Waiver of breach of any provision in this Agreement shall not be deemed to be a waiver of any subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent defaults.

28. TAXES

Grant Recipient agrees to pay on a current basis all taxes or assessments levied on its activities and property, including, without limitation, any leasehold excise tax due under [RCW Chapter 82.29A](#); PROVIDED, however, that nothing contained herein will modify the right of the Grant Recipient to contest any such tax, and Grant Recipient shall not be deemed to be in default as long as it will, in good faith, be contesting the validity or amount of any such taxes.

29. WASHINGTON LAW CONTROLLING; WHERE ACTIONS BROUGHT

This Agreement is made in and will be in accordance with the laws of the State of Washington, which will be controlling in any dispute that arises hereunder. Actions pertaining to this Agreement will be brought in King County Superior Court, King County, Washington.

30. PUBLIC DOCUMENT

This Agreement will be considered a public document and will be available for inspection and copying by the public.

31. LEGAL RELATIONS

Nothing contained herein will make, or be deemed to make, County and Grant Recipient a partner of one another, and this Agreement will not be construed as creating a partnership or joint venture. Nothing in this Agreement will create, or be deemed to create, any right, duty or obligation in any person or entity not a party to it.

32. PERMITS AND LICENSES

Grant Recipient shall develop and run the Project in accordance with all applicable laws and regulatory requirements including environmental considerations, permitting determinations, and other legal requirements. All activities and improvements shall be performed by Grant Recipient at its sole expense and liability. Grant Recipient shall, at its sole cost and expense, apply for, obtain and comply with all necessary permits, licenses and approvals required for the Project.

33. INTERPRETATION OF COUNTY RULES AND REGULATIONS

If there is any question regarding the interpretation of any County rule or regulation, the County decision will govern and will be binding upon the Grant Recipient.

34. ENTIRE AGREEMENT

This Agreement, including its attachments, constitutes the entire Agreement between the County and Grant Recipient and supersedes all other agreements and understandings between them, whether written, oral or otherwise.

35. COUNTERPARTS; ELECTRONIC SIGNATURES

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties acknowledge and agree that this document may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, each individual signing this Agreement warrants that they have the authority to enter into this Agreement on behalf of the Party for which that individual signs. The Parties hereto have executed this Agreement on the dates set

forth below.

City of Algona

King County

By _____

By _____

Title _____

Title _____

Date _____

Date _____

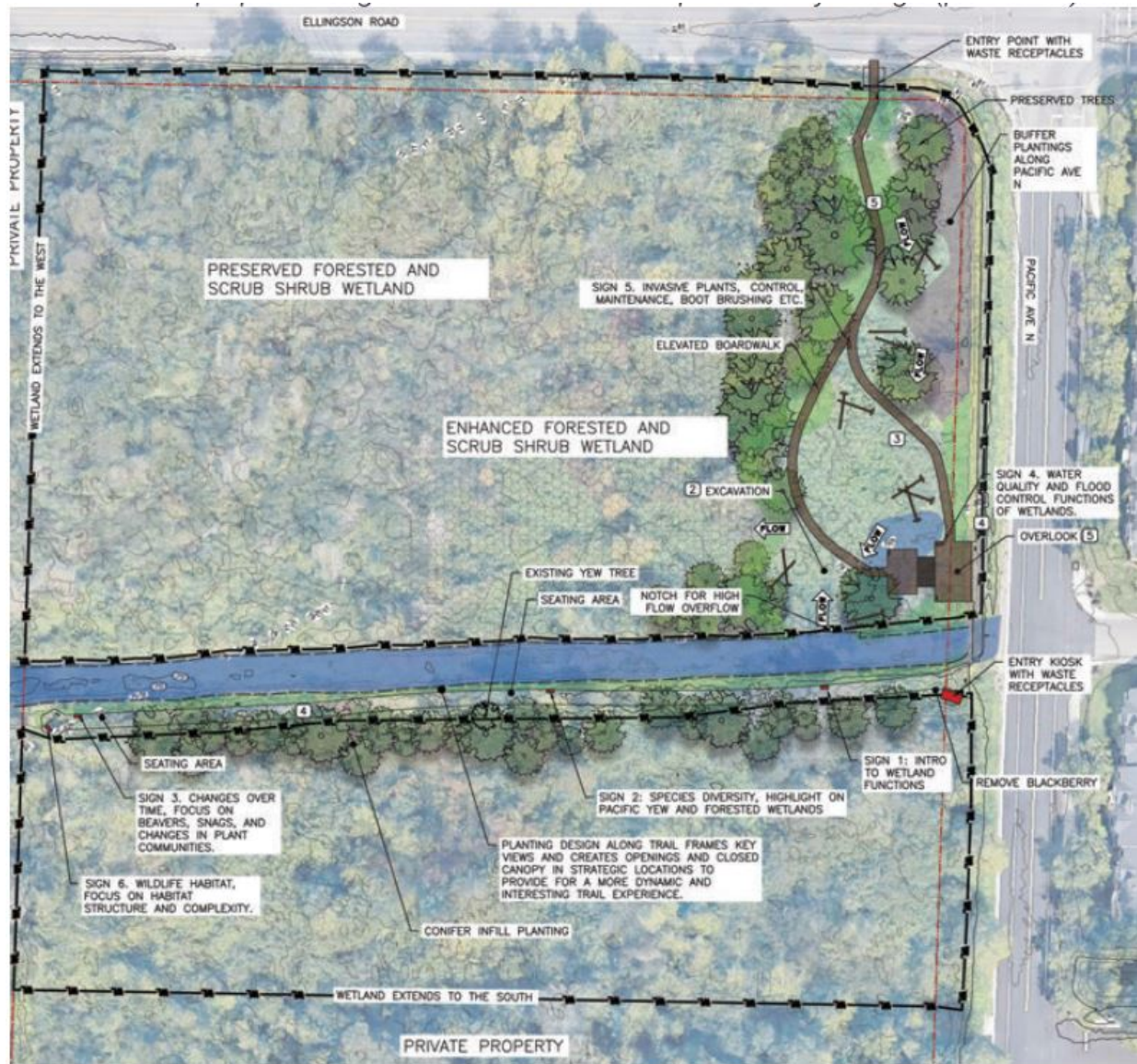
EXHIBIT A – MAP OF FACILITY AND LOCATION



EXHIBIT B – SCOPE OF WORK

Project Summary

The City of Algona will remove invasive plant species, restore native wetland habitat, and construct an accessible boardwalk with an interpretive trail and viewing platforms to provide outdoor education and increased access to parks and open spaces.

Deliverables

Progress Reports
Final Report
Completed Design/Plan
Notice of Grant
Cultural Resource Requirement

Timeline

Complete all permitting	January 2024
Complete final design	February 2024
Constuction contractor selected	April 2024
Groundbreaking - construction begins	June 2024
Complete construction	June 2025
Grand opening	June 2025

The Grantee shall not make any significant changes to an approved project without prior written consent of the County. Significant changes include, but are not limited to, a change to the timeline that falls outside the contract period or a shift of more than twenty percent of funds within the approved grant budget over the term of this Exhibit. If changes are necessary and approved by the County, such changes will be formalized in a written amendment signed by all parties.

EXHIBIT C – PROJECT BUDGET

Planning Costs	\$77,500
Construction Costs	\$915,000
Personnel Costs	\$7,500
Indirect Costs	\$0
Total	\$1,000,000

Grant Budget Changes

With written approval from the County, the Grantee may reallocate grant funds across budget line items within twenty percent of the total grant budget without requiring an official contract amendment. Indirect costs shall not exceed twenty percent of direct costs.

Budget Line Items Descriptions

Planning Costs include but are not limited to final design, specifications, and engineers cost estimate, tribal engagement, exhibit and sign design and translation, and tax.

Construction Costs include but are not limited to basic construction elements, restoration, trail and overlook, habitat elements, planting and site stabilization, and tax.

Personnel Costs include but are not limited to staff pay and benefits.

Indirect Costs include expenses of doing business that are not readily identified with a particular grant, contract, project, function, or activity, but are necessary for the general operation of the organization or the performance of the organization's activities.

EXHIBIT D – INSURANCE REQUIREMENTS

1. Insurance Requirements

1.1. Grant Recipient shall purchase and maintain for the entire term of this Agreement or as otherwise stated in this Exhibit, at its sole cost and expense, the minimum insurance set forth below. By requiring such minimum insurance, the County does not and shall not be deemed or construed to have assessed the risks that may be applicable to Grant Recipient, or any Contractor under this Agreement, or in any way limit the County's potential recovery to insurance limits required hereunder. To the contrary, this Agreement's insurance requirements may not in any way be construed as limiting any potential liability to the County or the County's potential recovery from Grant Recipient. Grant Recipient and any Contractor shall assess their own risks and if they deem appropriate and/or prudent, maintain greater limits and/or broader coverage.

1.2. Each insurance policy shall be written on an "occurrence" basis, except insurance for Pollution Liability, which may be written on a "claims made" basis.

If coverage is approved and purchased on a "claims made" basis, the coverage provided under that insurance shall be maintained through: (i) consecutive policy renewals for not less than three (3) years from the date of completion of the Project which is subject of this Agreement or, if such renewals are unavailable, (ii) the purchase of a tail/extended reporting period for not less than three (3) years from the date of completion of the Project which is the subject of this Agreement.

2. Evidence and Cancellation of Insurance

2.1. Prior to contract execution and upon request by the County, Grant Recipient shall furnish the County certificates of insurance and endorsements certifying the issuance of all insurance required by this Agreement which is to be maintained for the entire term of the Agreement or as otherwise stated in this Exhibit. All evidence of insurance shall be signed by a properly authorized officer, agent, general agent, or qualified representative to the insurer(s), shall certify the name of the insured(s), the type and amount of insurance, the location and operations to which the insurance applies, the inception and expiration dates, shall specify the form numbers of any endorsements issued to satisfy this Agreement's insurance requirements, and shall state that the County shall receive notice at least thirty (30) days prior to the effective date of any cancellation, lapse, or material change in the policy(s). Certificate Holder: King County Parks, 201 S. Jackson Street, Suite 5702, Seattle, WA 98104. Electronic evidence of insurance documents may be emailed to: ParksGrants@kingcounty.gov.

2.2. The County reserves the right to require complete, certified copies of all required insurance policies, including all endorsements and riders, which may be

redacted of any confidential or proprietary information. Grant Recipient shall deliver such policies to the County within five (5) business days of County's request.

3. Minimum Scope and Limits of Insurance

3.1. Grant Recipient shall maintain the following types of insurance and minimum insurance limits:

3.1.1. Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury, personal and advertising injury, and property damage. Coverage shall be at least as broad as that afforded under ISO form number CG 00 01. Such insurance shall include coverage for, but not limited to, premises liability, ongoing operations, products and completed operations, and contractual liability. Limits may be satisfied by a single primary policy or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy and satisfy all other requirements applicable to liability insurance including, but not limited to, additional insured status for the County.

3.1.2. Automobile Liability: Grant Recipient and/or its Contractor(s) will maintain Automobile Liability insurance with a minimum \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as that afforded under ISO form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. Limit may be satisfied by a single primary policy or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy.

3.1.3. Workers Compensation: If Grant Recipient or its Contractor(s) have employees, then Workers Compensation coverage shall be maintained as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Project by applicable Federal or "Other States" State Law.

3.1.4. Employers Liability or "Stop Gap" coverage: If Grant Recipient or its Contractor(s) have employees, then Employers Liability or "Stop Gap" coverage shall be maintained with a minimum limit of \$1,000,000 each occurrence and shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability), or, in monopolistic states including but not limited to Washington, the protection

provided by the “Stop Gap” endorsement to the commercial general liability policy.

3.1.5. Builder’s Risk / Installation Floater Insurance. If construction activities will be funded by the Grant, Grant Recipient or its Contractor(s) shall procure and maintain, prior to and for the duration of the construction phase of the Project, “All Risk” Builder’s Risk insurance or Installation Floater insurance at least as broad as ISO form number CP0020 (Builder’s Risk Coverage Form) with ISO form number CP0020 (Causes of Loss – Special Form). The coverage shall insure for direct physical loss to property of the Project for 100% of the replacement value. The policy shall be endorsed to cover the interests, as they may appear, of King County, Grant Recipient, and Contractor(s) of all tiers. In the event of a loss to any or all of the work and/or materials therein and/or to be provided at any time, Grant Recipient or its Contractor(s) shall promptly reconstruct, repair, replace, or restore all work and/or materials so destroyed. Policy shall include a waiver of subrogation in favor of King County.

3.1.6. Pollution Liability: If geotechnical work will take place, Grant Recipient or its Contractor(s) shall provide Pollution Liability coverage with minimum limits of \$1,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed.

3.1.7. Fidelity and Crime Insurance. If a Fiscal Sponsor is a party to this Agreement, Fiscal Sponsor(s) shall procure and maintain Fidelity and Crime insurance with a minimum limit equal to the grant amount. Coverage shall include ‘Join Loss Payable’ ISO form CR 20 15 10/10 or substantive equivalent and ‘Provide Required Notice of Cancellation to Another Entity’ ISO form CR 20 17 10/10.

4. Other Insurance Provisions and Requirements

4.1. All insurance policies purchased and maintained by Grant Recipient and any Contractor required in this Agreement shall contain, or be endorsed to contain the following provisions:

4.1.1. With respect to all liability policies except Professional Liability (Errors and Omissions) and Workers Compensation:

4.1.1.1. King County, its officials, employees, and agents shall be covered as additional insured for full coverage and policy limits as respects liability arising out of activities performed by or on behalf of the Grant Recipient, its agents, representatives, employees, or Contractor(s) in connection with this Agreement. Additional Insured status shall include products-completed operations CG 20 100 11/85 or its substantive equivalent. The County requires the endorsement(s) to complete the Agreement.

- 4.1.2. With respect to all liability policies (except Workers Compensation):
 - 4.1.2.1. Coverage shall be primary insurance as respects the County, its officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officials, employees, or agents shall not contribute with any of Grant Recipient's or Contractor(s)'s insurance or benefit the Grant Recipient, or any Contractor, or their respective insurers in any way.
 - 4.1.2.2. Insurance shall expressly state that it applies separately to each insured and additional insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of insurer's liability.
5. Waiver of Subrogation
 - 5.1. Grant Recipient, its Contractor(s), and their respective insurance carriers release and waive all rights of subrogation against King County, its officials, agents, and employees for damages caused by fire or other perils which can be insured by a property insurance policy. This provision shall be valid and enforceable only to the extent permissible by the applicable property insurance policies.
6. Deductibles/Self-Insured Retentions
 - 6.1. Any deductible and/or self-insured retention of the policies shall in all instances be the sole responsibility of Grant Recipient or its Contractor, even if no claim has been made or asserted against them.
7. Acceptability of Insurers
 - 7.1. Unless otherwise approved by the County, insurance is to be placed with insurers with an A.M. Best rating of no less than A:VIII.
8. Self-Insurance
 - 8.1. If the Grant Recipient is a governmental entity or municipal corporation, Grant Recipient may maintain a fully funded self-insurance program or participate in an insurance pool for the protection and handling of its liabilities including injuries to persons and damage to property. Further, if Grant Recipient maintains a self-insurance program or participates in an insurance pool, the additional insured requirement shall not apply to the coverage provided by the self-insured program or insurance pool.
9. Contractors
 - 9.1. Grant Recipient shall include all Contractors as insureds under its policies or, alternatively, Grant Recipient must require each of its Contractors to procure and maintain appropriate and reasonable insurance coverage and insurance limits to cover each of the Contractor's liabilities given the scope of work and services being provided herein. Contractor(s) must include the County, its officials, agents and employees as additional insured for full coverage and policy limits on

its Commercial General Liability insurance and, if applicable, its Automobile Liability insurance. Upon request by the County, and within five (5) business days, Grant Recipient must provide evidence of each Contractor(s) insurance coverage, including endorsements.

EXHIBIT E – CERTIFICATE OF INSURANCE AND ENDORSEMENTS



Certificate of Coverage

Certificate holder:
City of Algona
200 Washington Blvd
Algona, WA 98001

Policy number: None
Term of certificate: 1/1/2023 – 1/1/2024
Annual re-issue: Yes

RE: 2023 King County Parks Levy Grant Program

Please be advised that the **City of Algona** is a member of the Association of Washington Cities Risk Management Service Agency (AWC RMSA) and participates in the self-insured and loss-pooling programs checked below, which are administered by the AWC RMSA for its members.

Type of coverage	Limits	Deductible
<input checked="" type="checkbox"/> All risk property coverage	\$250 million per occurrence	\$0
<input checked="" type="checkbox"/> Liability coverage	\$15 million per occurrence	\$0
<input checked="" type="checkbox"/> Employee fidelity blanket coverage	\$1 million per occurrence	\$0
<input checked="" type="checkbox"/> Employer Liability ("Stop Gap")	\$15 million per occurrence	\$0
<input checked="" type="checkbox"/> Comprehensive auto liability	\$15 million per occurrence	\$0
<input checked="" type="checkbox"/> Cyber liability	\$3 million per occurrence	\$0
<input checked="" type="checkbox"/> Pollution liability	\$2 million per occurrence	\$0

Under the AWC RMSA Coverage Agreement issued to the member referenced above, and within the limits and provisions of the above program, AWC RMSA has agreed to provide, to the certificate holder named above, defense, payment, and loss or indemnification funding in accordance with the terms of the Coverage Agreement, with the exception that no defense or indemnity is available for claims arising from the sole negligence of the certificate holder with respect to the referenced operations or activities.

AWC RMSA is not an insurance company and therefore cannot name an additional insured or loss payee.

Cancellation: Should the above described coverage be cancelled before the expiration date thereof, the AWC RMSA will provide notice to its members in accordance with its Coverage Agreement. Failure to provide such notice to the certificate holder shall impose no obligation or liability of any kind upon the AWC RMSA.

This certificate is issued for information only and gives no rights to the certificate holder. This certificate does not amend, extend, or alter the coverage provided by the AWC RMSA.

Carol Wilmes
Director of Member Pooling Programs

cc: **City of Algona**



Certificate of Coverage

Certificate holder: King County Parks 201 Jackson Street Seattle, WA 98104	Policy number: None Term of certificate: 1/1/2024 – 1/1/2025 Annual re-issue: Yes
--	--

RE: 2023 King County Parks Levy Grant Program

Please be advised that the **City of Algona** is a member of the Association of Washington Cities Risk Management Service Agency (AWC RMSA) and participates in the self-insured and loss-pooling programs checked below, which are administered by the AWC RMSA for its members.

Type of coverage	Limits	Deductible
<input checked="" type="checkbox"/> All risk property coverage	\$250 million per occurrence	\$0
<input checked="" type="checkbox"/> Liability coverage	\$15 million per occurrence	\$0
<input checked="" type="checkbox"/> Employee fidelity blanket coverage	\$1 million per occurrence	\$0
<input checked="" type="checkbox"/> Employer Liability (“Stop Gap”)	\$15 million per occurrence	\$0
<input checked="" type="checkbox"/> Comprehensive auto liability	\$15 million per occurrence	\$0
<input checked="" type="checkbox"/> Cyber liability	\$3 million per occurrence	\$0
<input checked="" type="checkbox"/> Pollution liability	\$2 million per occurrence	\$0

Under the AWC RMSA Coverage Agreement issued to the member referenced above, and within the limits and provisions of the above program, AWC RMSA has agreed to provide, to the certificate holder named above, defense, payment, and loss or indemnification funding in accordance with the terms of the Coverage Agreement, with the exception that no defense or indemnity is available for claims arising from the sole negligence of the certificate holder with respect to the referenced operations or activities.

AWC RMSA is not an insurance company and therefore cannot name an additional insured or loss payee.

Cancellation: Should the above described coverage be cancelled before the expiration date thereof, the AWC RMSA will provide notice to its members in accordance with its Coverage Agreement. Failure to provide such notice to the certificate holder shall impose no obligation or liability of any kind upon the AWC RMSA.

This certificate is issued for information only and gives no rights to the certificate holder. This certificate does not amend, extend, or alter the coverage provided by the AWC RMSA.

Carol Wilmes

Carol Wilmes
Director of Member Pooling Programs

cc: **City of Algona**

EXHIBIT F – NOTICE OF GRANT

Upon Recording Return To:
 King County
 Department of Natural Resources and Parks
 Parks and Recreation Division
 201 S Jackson Street, KSC-NR-5702
 Seattle, WA 98104-3855

Document Title:
 Reference No. of Related Document:
 Legal Description:
 Assessor's Parcel No.:

NOTICE OF GRANT

This Notice of Grant is effective as of the ____ day of _____, 202_, and is made and executed by the **Parks Capital & Open Space Levy** grant recipient, City of Algona, and King County (the "County"), a political subdivision of the State of Washington.

_____ is/are the owner(s) (the "Property Owner") of the property(ies) in King County, State of Washington (the "Property"), legally described and attached hereto in **Exhibit F-1**.

Pursuant to a **Parks Capital & Open Space Levy** Grant Agreement, between the King County and City of Algona, dated _____ ("Grant Agreement"), attached hereto as **Exhibit F-2**, City of Algona constructed a Facility Improvement "Facility" on the Property for the purpose of providing recreation for the public. A map of the Property and Facility is attached hereto as **Exhibit F-3**.

The City of Algona hereby agrees to be bound by the terms of the Grant Agreement including the obligation to ensure public access to the Facility.

IN WITNESS WHEREOF, City of Algona and King County have executed this Notice of Grant on the date set forth above.

City of Algona

KING COUNTY

By: _____

By: _____

Name: _____

Name: _____

PROPERTY OWNER

By: _____

Name: _____

DRAFT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

Dated: _____

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

Dated: _____

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

Dated: _____

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

NOTICE OF GRANT EXHIBIT F-1 – LEGAL DESCRIPTION

DRAFT

NOTICE OF GRANT EXHIBIT F-2 – GRANT AGREEMENT

DRAFT

NOTICE OF GRANT EXHIBIT F-3 – PROPERTY AND FACILITY MAP

DRAFT

EXHIBIT G – CULTURAL RESOURCE PRESERVATION REQUIREMENTS

Based on the initial cultural resources review, the following recommendation(s) is/are conditions and/or requirements for this Project:

Grant Recipient will consult with the King County Historic Preservation Program's Archaeologist, Philippe LeTourneau, at 206-477-4529 or philippe.letourneau@kingcounty.gov, to determine the need for cultural resources investigations prior to ANY ground disturbing activity associated with the project. The Grant Recipient shall be required to comply with any recommendations made by the Archaeologist, which may include a cultural resource study and/or archaeological monitoring of construction conducted by a qualified, County-approved, professional archaeologist at the Grant Recipient's expense. The professional archaeologist selected to complete any needed fieldwork will notify the King County Archaeologist as soon as their fieldwork is scheduled. Any resulting survey or monitoring reports will meet the Washington Department of Archaeology and Historic Preservation's reporting standards. If a report is needed, the professional archaeologist will create a new project in WISAARD (as needed), upload the report, and add the King County Historic Preservation Program as an Organization with Editor access. Reports shall include 1) a USGS topographic map and an aerial photograph showing excavation locations and 2) detailed stratigraphic information for the reviewed area. The King County Archaeologist will also advise on tribal coordination, if required. The selected professional archaeologist shall notify the Affected Indian Tribes of their field schedule so that the Tribes can send staff to observe the field work. The professional archaeologist may contact the King County Historic Preservation Program's Archaeologist with any questions about the scope of work. The Grant Recipient shall make a copy of the provided King County Parks inadvertent discovery plan (IDP) available to the construction contractor prior to the start of ground disturbance. The IDP will be kept on site during all construction. Grant Recipient shall cc their King County Parks grant manager on all emails with Historic Preservation Program staff.

**CITY COUNCIL****AGENDA BILL # AB24-0015**

City of Algona
200 Washington Blvd.
Algona, WA 98001

ITEM INFORMATION

SUBJECT: King County Parks Grant Agreement	Agenda Date: March 25th, 2024		
	Department/Committee/Individual	Created	Reviewed
	Mayor		
	City Administrator		X
	City Attorney		
	City Clerk		X
	Finance Dept		
	PW/Utilities		
	Planning Dept		
	Community Services		
Cost Impact:	Police Dept		
Fund Source:	Finance Committee		
Timeline: 1 st review – 3/11/24	Planning Commission		
2 nd review – 3/25/24	Civil Service Committee		

Staff Contact: Dana Parker, City Clerk; Jessica Griess, City Administrator**Attachments: King County Parks Grant Agreement****SUMMARY STATEMENT:**

THIS AGREEMENT is a grant agreement entered into between City of Algona and King County for an active recreation, passive recreation, local trail, or other capital project in a park or recreational facility using a Parks Capital and Open Space Program grant.

The grant award is for \$1 million to fund the David E. Hill Wetland Preserve.

COMMITTEE REVIEW AND RECOMMENDATION:**RECOMMENDED ACTION:****RECORD OF COUNCIL ACTION***Meeting Date:**Action:**Vote:*

**CITY COUNCIL****AGENDA BILL # AB24-0117**

City of Algona
200 Washington Blvd.
Algona, WA 98001

ITEM INFORMATION

SUBJECT: Resolution 1273-24, Traffic School Fee	Agenda Date: March 25th, 2024		
	Department/Committee/Individual	Created	Reviewed
	Mayor		
	City Administrator		X
	City Attorney	X	X
	City Clerk		X
	Finance Dept		
	PW/Utilities		
	Planning Dept		
	Community Services		
Cost Impact:	Police Dept		
Fund Source:	Finance Committee		
Timeline: 1 st review - 3/11/2024	Planning Commission		
2 nd review - 3/25/2024	Civil Service Committee		
Staff Contact: James Schrimpsheer, Chief of Police; Jessica Griess, City Administrator			
Attachments: Resolution 1273-24			
SUMMARY STATEMENT: Resolution 1273-24 increases the traffic school fee to \$135.00, \$11.00 more than the current fee. This is the first fee increase presented to Council since the start of the program.			
COMMITTEE REVIEW AND RECOMMENDATION:			
RECOMMENDED ACTION:			
RECORD OF COUNCIL ACTION			
<i>Meeting Date:</i>		<i>Action:</i>	<i>Vote:</i>

**CITY OF ALGONA
RESOLUTION NO. 1273-24**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALGONA, WASHINGTON, INCREASING THE FEE FOR ATTENDING THE CITY'S TRAFFIC SAFETY SCHOOL PURSUANT TO CHAPTER 10.15 AMC.

WHEREAS, through the adoption of Ordinance No. 1157-18, the City Council created a traffic safety school, to be administered by the Algona Police Department, in order to educate participants in the proper, lawful, and safe operation of motor vehicles upon the roadway, the rules of the road, and the challenges of driving safely among bicyclists and pedestrians, and the consequences of unsafe driving practice; and

WHEREAS, the City's regulations governing the traffic safety school are codified at Chapter 10.15 of the Algona Municipal Code (AMC); and

WHEREAS, pursuant to AMC 10.15.030, the Police Department charges a fee to attend the traffic safety school, with revenues collected therefrom used to reimburse the City for applicable administrative costs, safe driver education efforts, and/or to provide for the training of law enforcement officers; and

WHEREAS, AMC 10.15.030 provides that the amount of said fee may be periodically amended by City Council resolution; and

WHEREAS, the City Council desires to increase the fee for attending the traffic safety school in order to reflect the City's increased costs of operating the school, including without limitation increased vendor prices;

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

Section 1. Traffic Safety School Fee Increased. In accordance with AMC 10.15.030, the fee to attend the City's traffic safety school is hereby increased to \$135.00.

Section 2. Effective Date. This resolution shall take effect immediately upon passage.

PASSED by the City Council of the City of Algona, at its regular meeting thereof this ____ day of _____, 2024.

CITY OF ALGONA, WASHINGTON

Troy Linnell, Mayor

(SEAL)

ATTEST:

Dana Parker, City Clerk