



**CITY OF WASHOUGAL
CITY COUNCIL WORKSHOP AGENDA
Monday, September 27, 2021
5:00 PM**

MEETING INFORMATION

Please click the link below to join the webinar:
<https://us02web.zoom.us/j/85425434038>

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC COMMENTS

IV. NEW BUSINESS

- A. Human Resources: MOU with AFSCME 307 re: Adjustment to Planner Salary Range**
- B. Public Works: Supplemental Professional Services Agreement with Covalent Architecture for Design Services for the East County Family Resource Center Remodel Project**
- C. Community Development: Professional Services Agreement with WSP for the Update to the Critical Areas Ordinance**
- D. Finance: 2022 Revenue and Expenditure Estimates and 2022 Budget Update**
- E. Finance: 2021 Budget Amendment #3**
- F. Finance: Noctel Fiber Franchise Agreement**

V. PUBLIC COMMENTS

VI. REPORTS AND COMMUNICATIONS

- A. CITY MANAGER**
- B. MAYOR**
- C. CITY COUNCIL**

VII. ADJOURNMENT

UPCOMING MEETINGS: Monday, October 11, 2021 - Workshop at 5:00 pm and Council at 7:00 pm

BUSINESS OF THE CITY COUNCIL
City of Washougal, Washington

FOR AGENDA OF:

9/27/2021

SUBJECT:

MEETING INFORMATION

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/85425434038>

DEPT. OF ORIGIN:

Administration

REVIEWED AT:

TO BE RETURNED TO COUNCIL:

EXPENDITURE REQUIRED:

BUDGETED:

APPROPRIATION REQUIRED:

SUMMARY STATEMENT

RECOMMENDED ACTION

Workshop Coversheet
BUSINESS OF THE CITY COUNCIL
City of Washougal, Washington

FOR AGENDA OF:

9/27/2021

SUBJECT:

Compensation Analysis and Proposed Salary for Planner

DEPT. OF ORIGIN:

Administration

REVIEWED AT:

Workshop September 27, 2021

TO BE RETURNED TO COUNCIL:

Yes

ATTACHMENTS:

- 📎 **307W MOU AFSCME Planner Increase to pay Range 9.21.docx**
- 📎 **307W Salary Schedule 9.21.docx**

EXPENDITURE REQUIRED:

Yes

BUDGETED:

Yes

APPROPRIATION REQUIRED:

No

SUMMARY STATEMENT

MOU with Local 307W to reflect proposed change to the Planner salary range based on external market data analysis. This change is proposed prior to full implementation of the full classification and compensation study results due to a pending vacancy.

RECOMMENDED ACTION

Authorize the City Manager to sign the MOU with Local 307W.

MEMORANDUM OF UNDERSTANDING

BETWEEN

**LOCAL 307-W OF THE WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES AND
THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES AFL-CIO**

AND

THE CITY OF WASHOUGAL, WA

The union and city agree to the following MOU as it pertains to the Planner Position.

Based on the external market data as part of the Classification and Compensation analysis that has been conducted, effective September 28th, 2021, the Planner position will move from Range 16 to Range 19.

David Scott, City Manager

Vaughn Barber, Local 307W President

2021 307-W SALARY SCHEDULE (2% COLA)

Updated September, 2021

	STEPS	1	2	3	4	5	6	7	8	9	STEPS
		(3.5% between Steps)									
CLASSIFICATIONS	RANGES										RANGES
Receptionist	1	\$3,005.49	\$3,110.67	\$3,219.55	\$3,332.25	\$3,448.87	\$3,569.56	\$3,694.49	\$3,823.80	\$3,957.66	1
	2	\$3,110.67	\$3,219.55	\$3,332.25	\$3,448.87	\$3,569.56	\$3,694.49	\$3,823.80	\$3,957.66	\$4,096.18	2
	3	\$3,219.55	\$3,332.25	\$3,448.87	\$3,569.56	\$3,694.49	\$3,823.80	\$3,957.66	\$4,096.18	\$4,239.55	3
	4	\$3,332.25	\$3,448.87	\$3,569.56	\$3,694.49	\$3,823.80	\$3,957.66	\$4,096.18	\$4,239.55	\$4,387.92	4
Office Assistant	5	\$3,448.87	\$3,569.56	\$3,694.49	\$3,823.80	\$3,957.66	\$4,096.18	\$4,239.55	\$4,387.92	\$4,541.50	5
Custodian											
Deputy City Clerk	6	\$3,569.56	\$3,694.49	\$3,823.80	\$3,957.66	\$4,096.18	\$4,239.55	\$4,387.92	\$4,541.50	\$4,700.46	6
Accounting Clerk	7	\$3,694.49	\$3,823.80	\$3,957.66	\$4,096.18	\$4,239.55	\$4,387.92	\$4,541.50	\$4,700.46	\$4,864.97	7
	8	\$3,823.80	\$3,957.66	\$4,096.18	\$4,239.55	\$4,387.92	\$4,541.50	\$4,700.46	\$4,864.97	\$5,035.24	8
	9	\$3,957.66	\$4,096.18	\$4,239.55	\$4,387.92	\$4,541.50	\$4,700.46	\$4,864.97	\$5,035.24	\$5,211.47	9
Administrative Assistant	10	\$4,096.18	\$4,239.55	\$4,387.92	\$4,541.50	\$4,700.46	\$4,864.97	\$5,035.24	\$5,211.47	\$5,393.88	10
Permit Technician											
Accounting Specialist											
Animal Control Officer											
Maintenance Worker I											
Sr. Admin. Asst.	11	\$4,239.55	\$4,387.92	\$4,541.50	\$4,700.46	\$4,864.97	\$5,035.24	\$5,211.47	\$5,393.88	\$5,582.66	11
	12	\$4,387.92	\$4,541.50	\$4,700.46	\$4,864.97	\$5,035.24	\$5,211.47	\$5,393.88	\$5,582.66	\$5,778.06	12
Maintenance Worker II	13	\$4,541.50	\$4,700.46	\$4,864.97	\$5,035.24	\$5,211.47	\$5,393.88	\$5,582.66	\$5,778.06	\$5,980.29	13
Executive Assistant											
Engineering Technician I											
PC/Network Specialist											
Program/Procurement Spec.											
Communications Specialist											
Code Enforcement Officer	14	\$4,700.46	\$4,864.97	\$5,035.24	\$5,211.47	\$5,393.88	\$5,582.66	\$5,778.06	\$5,980.29	\$6,189.59	14
Utility Maintenance Worker II											
Stormwater Program Coordinator											
Mechanic											
	15	\$4,864.97	\$5,035.24	\$5,211.47	\$5,393.88	\$5,582.66	\$5,778.06	\$5,980.29	\$6,189.59	\$6,406.24	15
Building Inspector	16	\$5,035.24	\$5,211.47	\$5,393.88	\$5,582.66	\$5,778.06	\$5,980.29	\$6,189.59	\$6,406.24	\$6,630.45	16
Planner											
Lead Maintenance Worker											
Management Analyst											
Lead Utility Maintenance Worker	17	\$5,211.47	\$5,393.88	\$5,582.66	\$5,778.06	\$5,980.29	\$6,189.59	\$6,406.24	\$6,630.45	\$6,862.52	17
Lead Mechanic											
Lead Wastewater Collections Spec.											
Lead Water Quality Spec.											
Building Inspector Specialist	18	\$5,393.88	\$5,582.66	\$5,778.06	\$5,980.29	\$6,189.59	\$6,406.24	\$6,630.45	\$6,862.52	\$7,102.71	18
Construction Development Inspector											
Accountant	19	\$5,582.66	\$5,778.06	\$5,980.29	\$6,189.59	\$6,406.24	\$6,630.45	\$6,862.52	\$7,102.71	\$7,351.31	19
Planner											
	20	\$5,778.06	\$5,980.29	\$6,189.59	\$6,406.24	\$6,630.45	\$6,862.52	\$7,102.71	\$7,351.31	\$7,608.60	20

Workshop Coversheet
BUSINESS OF THE CITY COUNCIL
City of Washougal, Washington

FOR AGENDA OF:

9/27/2021

SUBJECT:

Supplemental Professional Services Agreement with Covalent Architecture for East County Family Resource Design

DEPT. OF ORIGIN:

Public Works

REVIEWED AT:

TO BE RETURNED TO COUNCIL:

Yes

ATTACHMENTS:

- ▢ **Supplemental Professional Services Agreement #1 Covalent Architecture Phase 2 Social Services Building**

EXPENDITURE REQUIRED:

\$47,500.00

BUDGETED:

APPROPRIATION REQUIRED:

SUMMARY STATEMENT

RECOMMENDED ACTION



City of Washougal
PUBLIC WORKS PURCHASING

Contract Information Form *(THIS FORM MUST ACCOMPANY EVERY CONTRACT)*

Contract Title: _____ Vault Filing Number: _____

Vendor Name: _____ Vendor Number: _____

Contract Overview: _____ Contract Total: _____

Project Manager: _____ Ext: _____ Department: Public Works

Project Number: _____

Budget Code(s): _____

Engineer's Project Estimate: \$ _____

Contract Price: \$ _____

Type of Procurement Method: _____

Project specifically identified in approved budget: N/A ☐ YES ☐ NO ☐ * if NO see below if project cost is greater than **\$50,000** for public works, professional services, and personal services.

Does project change exceed administrative discretion threshold? N/A ☐ YES ☐ NO ☐

If project exceeds administrative threshold, was it approved by Council? YES ☐ NO ☐ [Click here to enter a date.](#)

City of Washougal, Washington
Supplemental Professional Service Agreement No. _____
Project Name _____

This Supplemental Agreement modifies the Professional Services Agreement (AGREEMENT) between _____ (Contractor) and City of Washougal (OWNER) signed _____ for a PROJECT known as: _____.

The following modifications are made to the PROFESSIONAL SERVICES AGREEMENT and all other terms and conditions remain unchanged:

The Agreement shall be amended per this Supplemental Agreement. The fixed fee for this additional work shall not exceed \$_____, as outlined in the attached Supplemental Scope of Work _____.

The Contractor shall be registered with the Department of Homeland Security E-verify program. The Contractor shall provide a fully executed Declaration of Participation in E-Verify Form to the City. If the Contractor described herein uses a subcontractor in connection with the performance of the Contract, the subcontractor shall, as a condition of the Contract, certify their participation in the E-Verify program by submitting a Declaration of Participation Form. The Contractor and any subcontractors will not knowingly employ or contract with an unauthorized alien.

IN WITNESS WHEREOF this Supplemental Agreement is made and executed this _____ day of _____, _____.

BY:

City Manager

Consultant:

BY:

Title:

ATTEST:

City Clerk

Approved as to Form:

City Attorney



19215 SE 34th Street #106-420
Camas, Washington 98607
phone | 708.280.2530

September 17, 2021

Rob Charles

City of Washougal
Deputy Director & City Engineer
phone | 360.835.2662 x230
email | Rob.Charles@cityofwashougal.us

RE: Social Services Building Rehabilitation Project Additional Services

Dear Rob,

It is our pleasure to have the opportunity to work with you and the City of Washougal. The City and community must be excited to see the Social Services Building rehabilitated.

Our goal is to work together as a team with you to solve problems efficiently and effectively. Covalent is the strongest bond in chemistry, and as Covalent Architecture, we believe great projects come from great clients and the strong relationships we develop with them.

Architectural design is a service, not a product. We enjoy customizing the services we provide per project and per client. Our level of design involvement varies on your needs and goals. We take great joy in working with others to bring their goals to reality!

I look forward to continuing to work with you!

Antoinette Lettiere
Principal Architect/Manager/Owner

mailing: 19215 SE 34th Street • #106-420 • Camas, Washington 98607
office: 311 West Evergreen, Vancouver, Washington 98660
email: antoinette@covalentarchitecture.com
phone: 708.280.2530

project background

Located at 1702 C St. Washougal, WA, is the Social Services Building. The building has begun to fall into disrepair and the exterior needs to be rehabilitated to prevent further damage and degradation to the structure.

The City of Washougal has indicated the following needs for this project: locating and replacing decaying fascia; siding and building sheathing as necessary; replacement of wooden members where persistent leaking has caused dry rot; replace flashing and sagging gutters; tuckpoint needed areas of the brick; all minor penetrations in the building will be sealed to protect the interior from weather, water and pest; other repairs as necessary to prevent further deterioration of the building. Additional services include re-roofing the structure, new siding, new exterior windows and doors, repainting the exterior/interior, energy efficient interior lighting, new interior flooring, new HVAC systems, and ADA restroom for the houseless which has been proposed to take up a parking spot in the existing parking lot. The parking will need to be evaluated to ensure there is an additional space that can be eliminated.

scope of work

The scope of work is understood as follows:

Design Services – Phase 1 – ALREADY CONTRACTED

1. As-built drawings/evaluation of structure

- a. Measure and draw the existing building with its current conditions to extent needed to show scope of work.
- b. Evaluate the existing exterior and identify the required scope of work as indicated above. Window/door evaluation, and roofing, or foundation issues are not included in this as it was not an indicated need.

2. Permit Drawings and Specifications

- a. Prepare plans, specifications and cost estimates for the project. This will incorporate the identified scope of work from the as-built/evaluation phase.
- b. Provide a 50% set, 90% set and a final set for review by the City.

3. Meetings

- a. We will attend meetings as required to provide ample review of scope, progress, and final bid documents.

Design Services – Phase 2

1. As-built drawings/evaluation of structure

- a. Measure and draw the existing interior of the building with its current conditions to extent needed to show scope of work.
- b. Evaluate the existing interior and identify the required scope of work as indicated above.

2. Permit Drawings and Specifications

- a. Prepare plans, specifications and cost estimates for the project. This will incorporate the identified scope of work from the as-built/evaluation phase.
- b. Provide a 50% set, 90% set and a final set for review by the City.
- c. This phase includes the additional scope of re-roofing the structure, new siding, new exterior windows and doors, repainting the exterior/interior, energy efficient interior lighting, new interior flooring, new HVAC systems, and ADA restroom for the houseless which has been proposed to take up a parking spot in the existing parking lot. The parking will need to be evaluated to ensure there is an additional space that can be eliminated.

3. Meetings

- a. We will attend meetings as required to provide ample review of scope, progress, and final bid documents.

Construction Administration – Phase 1 & 2

1. Project Management and Construction Administration

- a. Provide bid period assistance, including preparation of addendums when required.
- b. Provide preparation of proposal requests as needed.
- c. Review RFIs, submittals and shop drawings from the contractor.
- d. Provide and review material samples as needed.
- e. Review pay apps.
- f. Weekly review of construction in person from the beginning through final completion which includes assumed weekly construction meetings with the Owner and Contractor.

Consultants – Included in Phase 2 as needed

1. Structural as-needed

- a. We have included a cost estimate for structural services for any of the rot repairs as indicated in the scope of work.

professional design services fee estimate

Fee is based on an estimate of hours required to complete each task.

Phase 1 Services – ALREADY CONTRACTED

Design Services

as-built drawings/evaluation of structure – lump sum NTE \$4,000
(40 hours estimated @ \$100/hr)

permit drawings and specifications – lump sum NTE \$11,000
(110 hours estimated @ \$100/hr)

Meetings – hourly \$5,000
(50 hours estimated @ \$100/hr)

office administration included

Phase 1 architectural TOTAL estimate \$20,000

Phase 2 Services – Add Services

Design Services

as-built drawings of interior – lump sum NTE \$5,000

permit drawings and specifications – lump sum NTE \$12,000

Additional Meetings – hourly \$2,500

Construction Administration

construction administration & project management - hourly \$23,000

Structural as-needed (Waypoint Engineering) \$5,000

Phase 2 TOTAL estimate \$47,500

2021 Standard Hourly Rates - Architect – \$100*

* Rates are subject to change on a yearly basis. If additional services are needed in 2022, a different hourly rate structure may apply.

covalent architecture team

- Antoinette Lettiere
Principal Architect, Washington License
- James Schmidt
Project Architect, Oregon License
- Austin Rosenfeld
Project Architect, Oregon License
- Matt Thomas
Design Associate

services not included

- Landscape Design
- Civil Engineering
- Fire Sprinkler Design & Permitting
- Civil Survey
- Traffic Study
- Geotechnical Study
- Detailed Cost Estimating
- Acoustical Engineering
- LEED design or Sustainable design features
- Special foundation designs
- Permit Fees
- Printing Fees
- Any Inspections required by the City
- Mechanical Engineering/Design
- Electrical Engineering/Design
- Plumbing Engineering/Design
- Land-use planning
- Land-Use permits
- Interior design
- Structural Engineering
- Window and Door replacement
- Any scope not explicitly stated in the scope of work of this proposal.

2021-2022 Reimbursables

- Reimbursable Rate – 1.10: Reimbursables include oversized prints from J2, reprographics, and/or consultant fees contracted through covalent architecture, LLC. Prints of 8.5x11 and 11x17 sized documents are included in the basic fee. One full size color printed permit set will be required for the job site upon permit approval.
- Mileage – Any Mileage is included as part of fee.

Invoicing

- Invoices will be billed monthly based on work progress.
- Payment is due on a Net30 basis.

COW – Social Services Building Rehabilitation Project Additional Services

I look forward to working with you on this project. Please contact me at **708.280.2530** or at **antoINETTE@covalentarchitecture.com** if you have any questions regarding our proposal. Once you have reviewed our proposal and wish to engage our services, please sign below and return. **Thank you!**

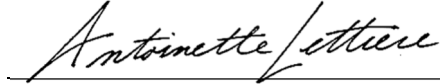
Accepted by:

Client Signature

Date

Rob Charles or Authorized Signature

For Covalent Architecture LLC:



9/17/2021

Signature

Date

Antoinette Lettiere - Owner/Manager

Payments can be made to:
COVALENT ARCHITECTURE, LLC
19215 SE 34th Street
#106-420
Camas, Washington 98607

Workshop Coversheet
BUSINESS OF THE CITY COUNCIL
City of Washougal, Washington

FOR AGENDA OF:

9/27/2021

SUBJECT:

Authorize the City Manager to Sign the PSA with WSP for the update to the Critical Areas Ordinance

DEPT. OF ORIGIN:

Community Development

REVIEWED AT:

City Council Workshop: September 27, 2021

TO BE RETURNED TO COUNCIL:

No

ATTACHMENTS:

- ▢ **WSP - PSA (CAO Update)**
- ▢ **Washougal_CAO_Update_Final**

EXPENDITURE REQUIRED:

\$60,800

BUDGETED:

Yes

APPROPRIATION REQUIRED:

0

SUMMARY STATEMENT

The City of Washougal is required to update it's Critical Areas Ordinance (CAO) in compliance with State law. Portions of this update have occurred under previous reviews, as well as most recently with the City's efforts to update it's Shoreline Master Program (SMP). However, the entire chapter update must be completed prior to February 22, 2022 in order to keep the City eligible for grants.

The attached Professional Services Agreement would authorize WSP, who has completed portions of this update under the SMP update, to complete the overall update to the CAO chapter.

RECOMMENDED ACTION

Authorize the City Manager to sign the Professional Services Agreement with WSP for the Critical Areas Ordinance update, through approval of the consent agenda.

PROFESSIONAL SERVICES AGREEMENT

This Agreement made and entered into this 27th day of September 2021, by and between the City of Washougal, a municipal corporation, under the laws of the State of Washington, hereinafter referred to as “City,” and WSP USA Inc., hereinafter referred to as “Contractor,” whose address is: : 210 East 13th Street, Suite 300, Vancouver, WA 98660.

WHEREAS, the City desires to engage the Contractor to provide Consulting Services and other related professional services for Professional Planning and Natural Resource Science Services for the City of Washougal's Critical Areas Ordinance (CAO) Update, and Contractor has agreed to offer its professional services to perform said work, and

WHEREAS, the Contractor has represented by entering into this Agreement that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, to the standards required by City,

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

The City hereby agrees to engage the Contractor and the Contractor hereby agrees to perform, in a satisfactory and proper manner, as determined by City, the services hereafter set forth in connection with this Agreement.

1. Scope of Services:

Contractor agrees to:

- a. See attached Scope and Compensation in Exhibit A
- b. Notwithstanding the provisions of Section 14, “Amendments,” the City may add other related professional services at its discretion.

This Agreement is a purchase of professional services for the compensation set forth in Exhibit A. Payment for these services are for time and materials not to exceed \$60,800 unless authorized in writing by the City. If additional time is needed, please refer to Section 4 of this agreement. A written amendment must be attached.

2. **Relation of Parties:**

The Contractor, its sub-consultants, agents and employees are independent contractors performing professional services for City and are not employees of the City. The Contractor, its sub-consultants, agents and employees, shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other benefits afforded to City employees. The Contractor, sub-consultants, agents and employees shall not have the authority to bind City in any way except as may be specifically provided herein.

3. **Time of Performance:**

The service of the Contractor is to commence as soon as practicable after the execution of this Agreement. It is agreed, services hereunder shall begin as of: Begin date: September 28, 2021 and be completed as of: End Date February 22, 2022.

4. **Delays and Extensions of Time:**

If the Contractor is delayed at any time in the progress of providing service covered by the Agreement, by any causes beyond Contractor's control, the time for performance may be extended by such time as shall be mutually agreed upon by Contractor and City and shall be incorporated in a written amendment to this Agreement. Any request for an extension of time shall be made in writing to City.

5. **Compensation and Schedule of Payments:**

City shall pay the Contractor the compensation indicated in Section 1 for work performed under the terms of this Agreement. This is the maximum amount to be paid under this Agreement and it shall not be exceeded without City's prior written

authorization in the form of a negotiated and executed supplemental agreement. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the project as set forth herein. The Contractor shall submit monthly invoices to City covering both professional fees and project expenses, if any. Payments will be submitted by mail or courier to City Hall located at 1701 C Street, Washougal, WA 98671. No faxed copies or electronic requests for payment will be accepted. Payments to Contractor shall be made within thirty (30) days from submission of each invoice.

The City reserves the right to correct any invoices paid in error according to the rates set forth in this Agreement. City and Contractor agree that any amount paid in error by City does not constitute a rate change in the amount of the contract. The City's contract number given on the notice to proceed and annotated on the executed copy of the contract **must** be referenced on any invoice submitted for payment.

6. **Ownership of Records and Documents:**

All materials, writings and products produced by Contractor in the course of performing this Contract shall immediately become the joint property of the City and Contractor. In consideration of the compensation provided for by this Agreement, the Contractor hereby further assigns all copyright interests in such materials, writing and products to the City. A copy may be retained by the Contractor.

7. **Termination:**

This Agreement may be terminated by either party upon not less than fifteen (15) days written notice. Additionally, this Agreement may be suspended in accordance with Section I of City of Washougal Resolution 1051.

8. **Evaluation and Compliance with the Law:**

The Contractor shall have the authority to control and direct the performance and details of the work described herein. The Contractor agrees to comply with all relevant, federal, state and municipal laws, rules and regulations.

9. **City Business and Occupation License & E-Verify Program:**

Prior to performing work under this Agreement, Contractor shall secure a City of Washougal Business and Occupation License under W.M.C. 5.04.020.

The Contractor shall be registered with the Department of Homeland Security E-Verify Program. The Contractor shall provide a fully executed Declaration of Participation in E-Verify Program Form to the City. If the Contractor described herein uses a subcontractor in connection with the performance of the Contract, the subcontractor shall, as a condition of the Contract, certify their participation in the E-Verify program by submitting a Declaration of Participation Form. The Contractor and any subcontractors will not knowingly employ or contract with an unauthorized alien.

10. **Liability and Hold Harmless:**

Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the work hereunder. All work shall be done at Contractor's risk.

The Contractor shall defend, indemnify and hold harmless the City of Washougal, its officers, officials, employees and volunteers from any and all claims, injuries, damages, losses or suits, including attorney fees, to the extent caused by the negligent acts or the omissions of the Consultant, in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

11. **Debarment, Suspension Or Ineligibility**

The Contractor, defined as the primary participant and its principals, certifies that to the best of its knowledge and belief that they:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions with the City;
- b. Have not within a three (3) year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated above;
- d. Have not, within a three (3) year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause of default;
- e. Where the Contractor is unable to certify to any of the statements in this document, Contractor shall attach an explanation.

The Contractor agrees by submitting this contract that it shall not knowingly enter into any lower tier covered transaction with a person or business that is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this contract.

12. **Insurance:**

The Contractor shall obtain and keep in force during the entire term of this Agreement, liability insurance policies against any and all claims for damages to persons or property which may arise out of the performance of this Contract, whether such work

shall be by the Contractor or its subcontractors, or by any employee, agent, or representative of the Contractor or its subcontractors. Such policies of insurance shall cover liabilities arising from premises, operations, automobiles, independent contractors, personal injury, advertising injury, and professional liability. Such policies of insurance shall also be primary insurance with respect to the City. Any separate insurance maintained by the City shall be in excess of the Contractor's insurance herein.

The Contractor agrees to the following requirements relating to insurance coverage, which combination of policies shall cover all of the liabilities identified in the preceding paragraph:

a) Liability Insurance: The liability insurance required herein shall, at a minimum, be in the form of: (a) commercial general liability insurance with a One Million Dollar (\$1,000,000) or greater combined single policy limit for bodily injury and property damage for each occurrence; (b) automobile liability insurance with a One Million Dollar (\$1,000,000) or greater combined single policy limit for bodily injury and property damage for each occurrence; and (c) professional liability insurance to include coverage for professional errors and/or omissions with a One Million Dollar (\$1,000,000) or greater policy limit for each occurrence. The City shall be named as an additional insured with respect to all such policies except professional liability, and copies (except for professional liability) of all such policies shall be furnished to the City upon request.

b) Worker's Compensation: The Contractor shall take out and maintain during the life of the Agreement, Worker's Compensation insurance for all its employees engaged in work under or pursuant to this Agreement who are required to be so covered by the laws of the State of Washington and in any case any work is subcontracted, the Contractor shall require the subcontractor to provide worker's compensation insurance for all of its employees, unless or to the extent that such employees are covered by the protection provided by the Contractor.

c) Employment Security: The Contractor shall comply with all employment security laws of the state in which services are provided, and shall timely make all required payments in connection therewith. Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "Accord" or comparable form with all applicable endorsements attached thereto.

13. Notices:

All notices which are given or required to be given pursuant to this Agreement shall be hand delivered or mailed, postage paid, as follows:

City:

City of Washougal
1701 "C" Street
Washougal, WA 98671

Contractor:

WSP USA Inc.
210 East 13th Street, Suite 300
Vancouver, WA 98660

14. Amendments:

This Agreement shall not be altered, changed, or amended, except by an instrument in writing executed by the parties hereto. Any changes in the scope of work or compensation shall be mutually agreed upon between City and the Contractor and shall be incorporated in written amendments to this Agreement.

15. Scope of Agreement:

This Agreement incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written Agreement. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents, shall be valid or enforceable unless set forth in this Agreement.

16. **Ratification:**

Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and confirmed.

17. **Governing Law/Venue:**

This Agreement shall be deemed to have been executed and delivered within the State of Washington and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. The Contractor shall have legal authority to enter into this Agreement and be at least 18 years of age. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

DATED this 27th day of September 2021.

CITY OF WASHOUGAL, a Municipal Corporation

BY:

David Scott, City Manager

ATTEST:

Approved as to Form:

Jennifer Forsberg, Finance Director

Kenneth B. Woodrich, City Attorney

CONTRACTOR:

Helen Devery
WSP USA Inc.
Northwest Pacific Business Line Leader
Planning Vice President



September 22, 2021

Mr. Mitch Kneipp
Community Development Director
City of Washougal
1701 C Street
Washougal, WA 98671

Subject: Proposal for Professional Planning and Natural Resource Science Services for the City of Washougal Critical Areas Ordinance (CAO) Update

Dear Mitch:

Thank you for the opportunity to assist the City of Washougal (City) with the critical areas ordinance (CAO) update in compliance with the Growth Management Act (RCW 36.70A) and the CAO update guidelines in Washington Administrative Code (WAC) 365-190 and WAC 365-196. The CAO update will occur as Amendment No. 3 to WSP's existing contract with the City dated March 10, 2021 to update its Shoreline Master Program (SMP).

PROJECT UNDERSTANDING

The City of Washougal is required to update and adopt revisions to its CAO by February 22, 2022, to comply with the Growth Management Act periodic review requirements and maintain eligibility for state grants. The City has asked WSP USA Inc. (WSP) to assist with the update. Our understanding of the project is as follows:

- WAC 365-195-915 requires that Washington cities base their CAO on best available science (BAS) and to document how BAS was used to support critical areas policies and regulations.
- The City last updated its CAO in 2014. Evolving BAS for critical areas means the City's CAO will need to be evaluated to determine the need for update and updated, if necessary, for consistency with the latest scientific findings.
- The City recently submitted its draft SMP to the Washington Department of Ecology (Ecology) including critical areas provisions for review. The Shoreline Management Act and SMP Update guidelines require that critical areas provisions that are part of SMPs achieve no net loss, a different but closely related standard to BAS.
- As part of the SMP update project, WSP completed draft critical areas maps, which would be further updated as part of the CAO update to address City and stakeholder comments.
- Due to the condensed timeline to complete this project prior to February 22, 2022, public involvement for the CAO update will be integrated with Planning Commission meetings with notification to stakeholders.
- The City Council has the authority to adopt an updated CAO. State approval of the CAO is not required, but input from state agencies will be important.

OVERALL PROJECT ASSUMPTIONS

WSP used the following overall assumptions to develop this scope of work and cost estimate. In addition, task specific assumptions are included below.

- The Planning Commission and City Council have ultimate authority for the approval of the CAO update and WSP cannot guarantee the City will update the CAO by the deadline.
- WSP will use the CAO provisions provided to Ecology in the City's comprehensive SMP update as a starting point for the CAO update.
- WSP will provide all draft work products in electronic format: Microsoft Word or PDF.
- City staff is responsible for public meeting logistics, including scheduling, venue, noticing, material distribution, meeting minutes, recording, and sign-in sheets.
- If deemed necessary, City staff will be responsible for creating and updating a project informational website.
- The City is responsible for any printing or reproduction of documents.
- Planning Commission and City Council meets will be conducted in-person at Washougal City Hall.
- Tsunami, mine, and volcanic hazards are not present within the City, and maps or other work products to address these hazards are excluded.
- One round of review by City staff and state agencies and revision by WSP on all work products is included.

SCOPE OF WORK

This proposal outlines the scope of work required to audit the existing CAO, revise previously prepared critical areas maps, conduct a BAS review, revise the City's ordinance, and assist the City with the adoption process.

Task 1.0: Project Management and Communication

WSP will communicate with the City throughout the project and manage the project to remain within schedule, scope, and budget. Our project management and communication activities will include:

- Monthly invoicing with progress reports on status, next steps, and strategy.
- Monthly virtual meetings or phone calls of up to 30 minutes attended by two WSP staff (project manager and senior natural resource scientist) with short e-mail summaries.
- Two in-person or virtual meetings with the City and/or Ecology staff to discuss the draft CAO with brief summary notes.

Assumptions

- In-person or virtual meetings with the City and Ecology will be up to one hour long and attended by two WSP staff (project manager and senior natural resource scientist).

- Summary meeting notes will be up to two pages in length.

Deliverables

- Monthly invoicing and progress reports
- Up to six project management meeting summaries
- Two Ecology-City summary meeting notes

Task 2.0: Critical Areas Map Updates

WSP prepared draft critical areas maps for: (1) flood hazards, (2) geologically hazardous areas, (3) wetlands, (4) riparian habitat, (5) non-riparian habitat, and (6) critical aquifer recharge areas as part of the SMP update project. Using the same data and maps for each critical area, WSP will update the map frames to include land within the City, rather than focusing on shoreline jurisdiction by the following tasks:

- Update the map frames for each of the six map types to include all land within the city
- Send the critical areas maps to the City, Ecology, and WDFW for comment and revise the maps once based on their comment.

Assumptions

- The following bullets outline the data and GIS compilation that WSP will obtain and use to create the critical areas maps:
 - Wetlands: publicly available National Wetland Inventory and Clark County's wetlands presence layer downloaded for Washougal and its urban area.
 - Fish and Wildlife Habitat Conservation Areas (FWHCAs): Washington Department of Fish and Wildlife's (WDFW's) data for priority habitats and species, Salmonscape data, Streamnet's fish species data, Endangered Species Act critical habitat information, and DNR's data for streams, natural area preserves, and natural resource conservation areas.
 - Flood Hazard Areas: Flood hazard data based on the most recently available information for the 100-year floodplain as defined by the FEMA for Washougal.
 - Geologically Hazardous Areas (erosion, landslide, and seismic): DNR landslide hazard compilation and seismogenic features data, National Earthquake Hazard Reduction Program site class data, and Natural Resources Conservation Service erosion hazards.
 - Critical aquifer recharge areas: Clark County Maps Online critical aquifer recharge category 1 and 2 shapefile and Washington Department of Health wellhead locations.
- WDFW will provide priority habitat and species data to WSP as the City's consultant.
- WSP will not edit the topology (line work) of GIS data obtained from online sources.
- CAO maps will be high-resolution PDF files for upload to the City's website for convenient download by applicants and the public.

Deliverables

- Up to six high-resolution draft and final critical areas maps (PDF format)

Task 3.0: Best Available Science (BAS) Research and Code Audit

In this task, WSP will compile a reference list for BAS literature, data, and reports for each of the five types of critical areas present within the City (wetlands, flood hazards, geologic hazards, critical aquifer recharge areas, and FWHCAs) and perform an audit of the City's critical areas regulations. The following subtasks describe WSP's scope of work.

Task 3.1: BAS Research

A foundational element of all CAO updates is documenting the BAS supporting the new and/or revised regulations as required by WAC 365-195-915. The BAS is also intended for future City use. The City will be able to use the list if there are future appeals of the CAO (not addressed in this scope of work) and can provide the BAS memorandum to stakeholders for their input on whether the list includes BAS sources they are aware of. For this task, WSP will:

- Research BAS guidance available through Ecology, DNR, WDFW, and the Washington Department of Commerce (Commerce).
- Review up to three BAS reference lists prepared for recent CAO updates in other Washington jurisdictions.
- Provide a draft memorandum to the City documenting compiled BAS information sources by type of critical area.
- Provide the draft BAS report to the Ecology, WDFW, Commerce, and DNR.

Task 3.2: Code Audit and Checklist

WSP will review the City's SMP current critical areas provisions against BAS, state critical areas guidance, state statutes, and implementing rules in the WACs. Specifically, WSP will:

- Complete an audit of the City's draft SMP critical area provisions provided to Ecology as part of the SMP update.
- Review the following information sources regarding critical areas science and updates: the BAS report prepared as part of Task 3.1, guidance from state and federal agencies (Ecology, WDFW, Commerce, DNR, FEMA, and USFWS), state statutes, and implementing rules in the WACs.
- Provide a draft of Commerce's Critical Areas Checklist to identify necessary updates in light of the BAS, guidance from state and federal agencies, state statutes, and implementing rules.
- Finalize the Critical Areas Checklist based on one round of review by City staff.

Assumptions

- The City will use the SMP critical area provisions as the foundation for an updated CAO outside shorelines.
- WSP will use the expanded version of Commerce's Critical Areas Checklist.
- This scope includes one round of review by City staff and a revision by WSP of the draft Critical Areas Checklist.
- State agencies will comment on the BAS report during the 60-day Commerce comment period (Task 5.0).

Deliverables

- Draft BAS report
- Draft and final Critical Areas Checklist

Task 4.0: Ordinance Drafting

Based on code changes identified in the draft Critical Areas Checklist and BAS report, WSP will make draft changes to the City's CAO per the requirements of WAC chapters 365-190, 365-905, 365-196, and Revised Code of Washington 36.70A. To produce the draft CAO, WSP will complete the following tasks:

- First draft: Prepare a redline edit of the City's existing CAO and provide it to City staff for review and comment.
- Second draft: Edit the draft CAO based on staff comments.
- Third draft: Edit the draft CAO based on comments from state agencies (Commerce, Ecology, WDFW, and DNR).
- Fourth draft: Revise the draft CAO based on comments provided by the Planning Commission during its workshops.
- Final draft: If necessary, prepare a final redline CAO based on comments provided by the City Council during its workshop for final adoption.

Assumptions

- The draft CAO will incorporate changes identified during the City's shoreline master program update as a starting point for the CAO.
- Only required changes identified during Task 3.0 and identified during Task 5.0 by the public, Planning Commission, and City Council will be made to the CAO. These changes will be minor. If optional changes are identified by staff or more significant reworking of the CAO is necessary based on stakeholder input, additional draft versions of the CAO will be required, and a contract amendment will be necessary.

Deliverables

- Five redline CAO drafts (first, second, third, fourth, and final)

Task 5.0: Planning Commission and City Council Meetings and Adoption Process

WSP will assist the City in the CAO adoption process, including drafting the non-project State Environmental Policy Act (SEPA) checklist to support the CAO update and attending Planning Commission and City Council adoption hearings as follows:

- SEPA Checklist: The adoption of code amendments is an action subject to SEPA and a threshold determination is required prior to CAO adoption. WSP will prepare the draft non-project SEPA checklist for the City's review and issuance of a threshold determination.
- Planning Commission Meetings: WSP will participate in two Planning Commission workshops and a public hearing. WSP will prepare brief memorandums, deliver staff presentations and answering questions at each meeting.
- City Council Meetings: WSP will participate in one City Council workshop and one City Council public hearing to consider the CAO update. WSP will prepare brief memorandums, deliver staff presentations, and answering questions at each meeting.
- For the Planning Commission and City Council meetings, WSP will prepare a PowerPoint slide deck and provide up to five minor updates specific to the purposes of each meeting.

Assumptions

- The City will be the SEPA lead agency and issue the SEPA threshold determination including required notice.
- The City will issue either a determination of nonsignificance (DNS) or mitigated determination of nonsignificance (MDNS) after its SEPA review.
- Planning Commission and City Council meetings will be up to two hours long each and conducted in person.
- City staff will complete the 60-day notice of intent to adopt development regulation amendments to Commerce.

Deliverables

- PowerPoint slide deck with up to five minor updates
- Up to three Planning Commission memorandums
- Up to two City Council memorandums

COMPENSATION

The following additional professional fees, including \$62 in expenses, will be billed as incurred and will not exceed \$60,800 without written authorization.

Task 1.0: Project Management and Communication	\$ 4,370
Task 2.0: Critical Areas Map Updates	\$ 3,816
Task 3.0: BAS Research and Code Audit	\$14,832
Task 4.0: Ordinance Drafting	\$21,237
Task 5.0 PC and CC Meetings and Adoption Process	\$16,483
Expenses:	\$ 62
Total	<u>\$60,800</u>

CLOSING

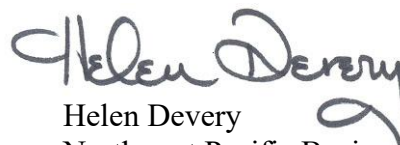
If you wish to accept this proposal for, please provide us with a contract amendment for signature. This proposal is valid for 30 days.

We thank you for the opportunity to offer this proposal, and we look forward to working with you. Should you have questions, please call Ethan Spoo at 360-823-6100.

Sincerely,



Ethan Spoo, AICP
Senior Lead Consultant, Land/Urban Planner



Helen Devery
Northwest Pacific Business Line Leader
Vice President

Workshop Coversheet
BUSINESS OF THE CITY COUNCIL
City of Washougal, Washington

FOR AGENDA OF:

9/27/2021

SUBJECT:

Noctel Fiber Franchise Agreement

DEPT. OF ORIGIN:

Finance

REVIEWED AT:

TO BE RETURNED TO COUNCIL:

ATTACHMENTS:

📎 **Ordinance Noctel Fiber Franchise Agreement.docx**

EXPENDITURE REQUIRED:

BUDGETED:

APPROPRIATION REQUIRED:

SUMMARY STATEMENT

RECOMMENDED ACTION

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WASHOUGAL, WASHINGTON, GRANTING NOCTEL COMMUNICATIONS, INC., A NON- EXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A FIBER OPTIC TELECOMMUNICATIONS SYSTEM, IN, ALONG, UNDER, THROUGH AND BELOW PUBLIC RIGHTS-OF-WAY OF THE CITY OF WASHOUGAL, WASHINGTON

WHEREAS, NocTel Communications, Inc. (“NocTel”) has requested a non-exclusive franchise with the City of Washougal (“City”) for a period of ten years for the operation of a fiber optic telecommunications system within the City Right-of- Way; and

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public Right-of-Way; and

WHEREAS, RCW 35A.47.040 grants the City broad authority to grant non-exclusive franchises; and

WHEREAS, NocTel wishes to construct, operate and maintain a fiber optic telecommunications system within the City Right-of-Way; and

WHEREAS, the City Council finds that it is in the best interests of the health, safety and welfare of residents of the Washougal community to enter into a non-exclusive franchise to NocTel for the operation of a fiber optic telecommunications system within the City Right- of-Way.

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

Section I

Grant of Franchise

The Franchise as set forth in the Franchise Agreement attached hereto as Exhibit “A” is hereby granted according to its terms.

Section II

This ordinance shall take effect five (5) days after its publication according to law.

PASSED by the Council for the City of Washougal at a regular meeting this _____ day of _____, **2021.**

Molly Coston, Mayor of Washougal

ATTEST:

Finance Director / City Clerk

APPROVED AS TO FORM:

City Attorney

DRAFT

EXHIBIT “A”

FRANCHISE AGREEMENT FOR THE INSTALLATION AND MAINTENANCE OF FIBER OPTIC FACILITIES IN THE CITY OF WASHOUGAL, WASHINGTON

Parties:

City of Washougal, a Washington Municipal Corporation (“City”)

And

NocTel Communications, Inc. a Washington Corporation (“NocTel”).

In consideration of the mutual promises set forth herein, the parties agree as follows:

Section 1. Definitions

The following terms contained herein, unless otherwise indicated, shall be defined as follows:

1.1 NocTel: NocTel Communications, Inc. a Washington Corporation and its successors and assigns.

1.2 City: The City of Washougal, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.

1.3 Days: Calendar days.

1.4 Facilities: All of the plant, equipment, fixtures, appurtenances, and other facilities necessary to furnish and deliver Telecommunications Services, including but not limited to wires, lines, conduits, cables, communication and signal lines and equipment, fiber optic cable, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to distribution and use of Telecommunications Services and all other facilities associated with the Telecommunications System located in the Right-of-Way, utilized by NocTel in the operation of activities authorized by this Ordinance. The abandonment by NocTel of any Facilities as defined herein shall not act to remove the same from this definition.

1.5 Franchise: This document and any amendments or modifications hereto.

1.6 Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's Right-of-Way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

1.7 Person: An entity or natural person.

1.8 Public Works Director or Director: The head of the Public Works department of the City, or in the absence thereof, the acting director, or the designee of either of these individuals.

1.9 Right-of-Way: As used herein shall refer to the surface of and the space along and below any street, road, highway, freeway, bridge, lane, sidewalk, alley, court, boulevard, sidewalk, parkway, drive, utility easement, and/or road Right-of-Way now or hereafter held or administered by the City of Washougal.

1.10 Telecommunications Service: The transmission of information by wire, optical cable, or other similar means. For the purpose of this subsection, "information" means knowledge or intelligence represented by and form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this ordinance, Telecommunications Service excludes wireless communications, over-the-air transmission of broadcast television or broadcast radio signals.

1.11 Telecommunications System: The system of conduit, fiber optic cable, and supporting Facilities in the Rights-of-Way associated with NocTel's provision of Telecommunications Services.

Section 2. Franchise Granted.

2.1 Pursuant to RCW 35A.47.040 , the City hereby grants to NocTel, its heirs, successors, and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of ten (10) years, beginning on the effective date of this Ordinance.

2.2 This Franchise shall grant NocTel the right, privilege and authority to locate, construct, operate, maintain, replace, acquire, sell, lease, and use a Telecommunications System in the Right-of-Way as approved under City permits issued by the Permitting Authority pursuant to this Franchise and City ordinances.

Section 3. Nonexclusive Franchise Grant.

This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in any Right-of-Way. This Franchise shall in no way prevent or prohibit the City from using any Right-of-Way or other public property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement or dedication of the same as the City may deem appropriate.

Section 4. Franchise Subject to Federal, State and Local Law.

Notwithstanding any provision contrary herein, this Franchise is subject to and shall be governed by all applicable provisions now existing or hereafter amended of federal, State and local laws and regulations.

Section 5. No Rights by Implication.

No rights shall pass to NocTel by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

5.1 Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

5.2 Any permit, agreement or authorization required by the City for Rights-of-Way users in connection with operations on or in Rights-of- Way or public property; or

5.3 Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise.

Section 6. Conveyance of Rights.

This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Rights-of- Way; it does not provide NocTel with any interest in any particular location within the Rights- of- Way; and it does not confer rights other than as expressly provided in the grant hereof.

Section 7. No Waiver.

The failure of City on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any other applicable State or federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City nor to excuse NocTel from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

Section 8. Other Ordinances.

NocTel agrees to comply with the terms of any lawful, generally applicable local ordinance, in effect upon adoption of this Franchise or as enacted or modified thereafter. In the event of a conflict between any ordinance and a specific provision of this Franchise, the Franchise shall control, provided however that NocTel agrees that it is subject to the lawful exercise of the police power of the City.

Section 9. Right-of-Way Vacation.

If any Right-of-Way or portion thereof used by NocTel is vacated by the City during the term of this Franchise, the City shall endeavor to specifically reserve the continued use of the Right -of- Way by NocTel. Unless the City specifically reserves to NocTel the right to continue the use of vacated Rights-of-Way, NocTel shall, without delay or expense to the City, remove its facilities from such Right-of-Way and restore, repair or reconstruct the Right-of-Way where such removal has occurred. In the event of failure, neglect or refusal of NocTel to restore, repair or reconstruct such Right-of-Way after thirty (30) days written notice from the City, the City may do such work or cause it to be done, and the reasonable cost thereof shall be paid by NocTel within thirty (30) days of receipt of an invoice and documentation.

Section 10. Relocation of Facilities.

10.1 NocTel agrees and covenants at no cost to the City, to relocate its Facilities when requested to do so by the City for a public project, provided that, NocTel shall in all such cases have the privilege, upon approval by the City, to temporarily bypass, in the authorized portion of the same Right-of-Way any Facilities required to be relocated.

10.2 If the City determines that a public project necessitates the relocation of NocTel's existing Facilities, the City shall:

10.2.1 At least sixty (60) days prior to the commencement of such project, provide NocTel with written notice of known Facilities requiring such relocation; and

10.2.2 Provide NocTel with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for NocTel's Facilities.

10.2.3 After receipt of such notice and such plans and specifications, NocTel shall complete relocation of its Facilities at no charge or expense to the City at least ten (10) days prior to commencement of the project.

10.3 NocTel may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise NocTel in writing as soon as practicable if any of the alternatives is suitable to accommodate the work that otherwise necessitates the relocation of the Facilities. If so requested by the City, NocTel shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by NocTel as full and fair a consideration as the project schedule will allow. In the event the City ultimately determines that there is no other reasonable alternative, NocTel shall relocate its Facilities as directed by the City and in accordance with Section 10.2.3 of this Franchise.

10.4 The City will notify NocTel as soon as practical of any facilities that are not identified during the design of the public project, but are discovered during the course of construction and need to be relocated. NocTel will work with the City to design and complete a relocation to facilitate the completion of the public project with minimum delay.

10.5 Failure to complete a relocation requested by the City in accordance with Section 10.2 of this Franchise by the date included in the notice provided for thereby may subject NocTel to liquidated damages as provided in Section 28 of this Franchise.

10.6 The provisions of this Section of this Franchise shall in no manner preclude or restrict NocTel from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person other than the City, where the improvements to be constructed by said person are not or will not become City-owned, operated or maintained, provided that such arrangements do not unduly delay a City construction project. The provisions of this Franchise are subject to RCW 35.99.060. In the event of a conflict between the provisions of this Franchise and the RCW, the RCW shall control.

Section 11. NocTel's Maps and Records.

As a condition of this Franchise, and at its sole expense, NocTel shall provide the City with typicals and as-built plans, maps, and records that show the vertical and horizontal location of its Facilities within the Right-of-Way using a minimum scale of one inch equals one hundred feet (1"=100'), measured from the center line of the Right-of-Way, which maps shall be in hard copy format acceptable to the City and in Geographical Information System (GIS) or other digital electronic format acceptable to the City. If digital route maps are provided, the format of the data for overlaying on the City's GIS mapping system shall utilize NAD 83 as the horizontal datum, and shall be compatible with or can be imported into Arc GIS Version 9.2 or later. This information shall be provided no later than one hundred eighty (180) days after the effective date of this Ordinance and shall be updated within ten (10) business days of a reasonable request of the City.

Section 12. Undergrounding.

This Franchise is subject to the undergrounding requirements as may be required or later adopted by the Washougal Municipal Code and consistent with applicable federal and Washington State law. NocTel shall install all of its Facilities underground where no suitable utility poles are present or where practicable in accordance with relevant road and construction standards. NocTel will also share information necessary to facilitate joint-trenching and other undergrounding projects, and will otherwise cooperate with the City and other utility providers to serve the objective to maximize utility undergrounding where possible or as required.

Section 13. Service to Public Buildings (intentionally blank)**Section 14. Excavation and Notice of Entry.**

14.1 During any period of relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the Right-of-Way so as to minimize interference with the passage of traffic and the use of adjoining property. NocTel shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or State law, including RCW 39.04.180, for the construction of trench safety systems.

14.2 Whenever NocTel excavates in any Right-of-Way for the purpose of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in the Right-of-Way. In no case shall any work commence within any Right-of-Way without a permit. During the progress of the work, NocTel shall not unnecessarily obstruct the passage or use of the Right-of-Way, and shall provide the City with plans, maps, and information showing the proposed and final location of any Facilities in accordance with Section 11 of this Franchise.

14.3 At least five (5) days prior to construction of Facilities consisting of digging, trenching, cutting, or other activities that may impact the utilization of the Right-of-Way for more than a four (4) hour period, NocTel shall take reasonable steps to inform all apparent owners or occupiers of property within fifty (50) feet of said activities, that a construction project will commence. The notice shall include, at a minimum, the dates and nature of the project and a toll-free or local telephone number that the resident may call for further information. A pre-printed door hanger may be used to satisfy NocTel's obligations under this Section of this Franchise.

14.4 At least twenty-four (24) hours prior to entering Right-of-Way within ten (10) feet of private property to construct Facilities consisting of digging, trenching, cutting, or other activities that may impact the utilization of the Right-of-Way, NocTel shall post a written notice describing the nature and location of the work to be performed adjacent to the affected private property as well as the information listed in Section 13.3 of this Franchise. NocTel shall make a good faith effort to comply with the property owner/resident's preferences, if any, regarding the location or placement of Facilities that protrude above the prior ground surface level, if any, consistent with sound engineering practices.

Section 15. Stop Work.

On notice from the City that any work is being conducted contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, consistent with applicable law, 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:

- 15.1 Be in writing;
- 15.2 Be given to the Person doing the work and be posted on the work site;
- 15.3 Be sent to NocTel by overnight delivery at the address given herein;
- 15.4 Indicate the nature of the alleged violation or unsafe condition; and
- 15.5 Establish conditions under which work may be resumed.

Section 16. Emergency Work, Permit Waiver.

In the event of any emergency where any Facilities located in the Right-of-Way are broken or damaged, or if NocTel's construction area for their Facilities is in such a condition as to place the health or safety of any person or property in imminent danger, NocTel shall immediately take any necessary emergency measures to repair or remove its Facilities without first applying for and obtaining a permit as required by this Franchise. However, this emergency provision shall not relieve NocTel from later obtaining any necessary permits for the emergency work. NocTel shall apply for the required permits not later than the next business day following the emergency work.

Section 17. Recovery of Costs.

NocTel shall be subject to all permit fees associated with activities undertaken pursuant to this Franchise or other ordinances of the City. If the City incurs any costs and/or expenses for review, inspection or supervision of activities undertaken pursuant to this Franchise or any ordinances relating to a subject for which a permit fee is not established, NocTel shall pay the City's reasonable costs and reasonable expenses. In addition, NocTel shall promptly reimburse the City for any costs the City reasonably incurs in responding to any emergency involving NocTel's Facilities. If the emergency involves the facilities of other utilities operating in the Right-of-Way, then the City will allocate costs among parties involved in good faith. Said costs and expenses shall be paid by NocTel after submittal by the City of an itemized billing by project of such costs.

Section 18. Dangerous Conditions, Authority for City to Abate.

18.1 Whenever installation, maintenance or excavation of Facilities authorized by this Franchise causes or contributes to a condition that appears to substantially impair the lateral support of the adjoining Right-of-Way, public or private property, or endangers any person, the City may direct NocTel, at NocTel's expense, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.

18.2 In the event NocTel fails or refuses to promptly take the directed action, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent injury or damages to persons or property, the City may take such actions as it believes are necessary to protect persons or property and NocTel shall reimburse the City for all costs incurred.

Section 19. Safety.

19.1 NocTel, in accordance with applicable federal, State, and local safety rules and regulations shall, at all times, employ ordinary care in the installation, maintenance, and repair of its Facilities utilizing methods and devices commonly accepted in their industry of operation to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property.

19.2 All of NocTel's Facilities in the Right-of-Way shall be constructed and maintained in a safe and operational condition, in accordance with applicable federal, State, and local safety rules and regulations.

19.3 The City reserves the right to ensure that NocTel's Facilities are constructed and maintained in a safe condition. If a violation of any applicable safety regulation is found to exist, the City will notify NocTel in writing of said violation and establish a reasonable time for NocTel to take the necessary action to correct the violation. If the correction is not made within the established time frame, the City, or its authorized agent, may make the correction. NocTel shall reimburse the City for all reasonable costs incurred by the City in correcting the violation.

Section 20. Authorized Activities.

This Franchise is solely for the location, construction, installation, ownership, operation, replacement, repair, maintenance, acquisition, sale, lease, and use of the Telecommunications System and associated Facilities for providing Wholesale and Retail Telecommunications Services. NocTel shall obtain a separate franchise for any operations or services other than these authorized activities.

Section 21. Administrative Fee and Utility Tax.

21.1 Pursuant to RCW 35.21.860, the City is precluded from imposing franchise fees upon a telephone business, as defined in RCW 82.16.010, or a Service Provider for use of the Right-of-Way, as defined in RCW 35.99.010, except a utility tax or actual administrative expenses related to the franchise incurred by the City. NocTel does hereby warrant that its operations, as authorized under this Franchise, are those of a Service Provider as defined in RCW 35.99.010.

21.2 NocTel shall be subject to a \$5,000 administrative fee for reimbursement of costs associated with the preparation, processing and approval of this Franchise Agreement, including wages, benefits, overhead expenses, meetings, negotiations and other functions related to the approval. The administrative fee excludes normal permit fees required for work in the Right-of-Way. Payment of the one-time administrative fee is due 30 days after Franchise approval.

21.3 If NocTel provides services to customers within the City, NocTel shall become subject to the City's utility occupation tax set forth in Chapter 5.08 of the Washougal Municipal Code.

21.4 If RCW 35.21.860 is amended to allow collection of a franchise fee, this Franchise Agreement shall be amended to require franchise fee payments.

Section 22. Indefeasible Rights of Use.

22.1 An Indefeasible Right of Use ("IRU") is an interest in NocTel's Facilities which gives NocTel's customer the right to use certain Facilities for the purpose of providing Telecommunication Services; an IRU does not provide the customer with any right of physical access to the Facilities to locate, construct, replace, repair or maintain the Facilities, or any right to perform work within the Right-of-Way.

22.2 A lease or grant of an IRU regarding NocTel's Facilities shall not require that the holder of the lease or IRU to obtain its own franchise or pay any fee to the City, PROVIDED THAT, under such lease or grant of an IRU, NocTel: (i) retains exclusive ownership of such Facilities, (ii) remains responsible for the location, relocation, construction, replacement, repair and maintenance of the Facilities pursuant to the terms and conditions of this Franchise, and (iii) remains responsible for all other obligations imposed by this Franchise.

Section 23. Indemnification.

23.1 NocTel agrees to indemnify, save and hold harmless, and defend the City, its elected officials, officers, authorized agents, boards and employees, acting in official capacity, from and against any liability, damages or claims, costs, expenses, settlements or judgments arising out of, or resulting from the granting of this Franchise or NocTel's activities, or any casualty or accident to Person or property that occurs as a result of any construction, excavation, operation, maintenance, reconstruction or any other act done pursuant to the terms of this Franchise, provided that the City shall give NocTel timely written notice of its obligation to indemnify the City. NocTel shall not indemnify the City for any damages, liability or claims resulting from the City's sole negligence, willful misconduct, or breach of obligation of the City, its officers, authorized agents, employees, attorneys, consultants, or independent contractors for which the City is legally responsible, or for any activity or function conducted by any Person other than NocTel.

23.2 In the event NocTel refuses to undertake the defense of any suit or any claim, after the City's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and NocTel's 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 NocTel, then NocTel shall pay all of the City's reasonable costs and reasonable expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause, as well as any judgment against the City.

Should a court of competent jurisdiction or such other tribunal as the parties agree shall decide the matter, determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of NocTel and the City, its officers, employees and agents, NocTel's liability hereunder shall be only to the extent of NocTel's negligence. It is further specifically and expressly understood that the indemnification provided in Section 22 of this Franchise constitutes NocTel's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 24. Insurance.

24.1 Insurance Term. NocTel shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities performed by or on NocTel's behalf with the issuance of this franchise.

24.2 No Limitation. NocTel's maintenance of insurance as required by the agreement shall not be construed to limit the liability of NocTel to the coverage provided by such insurance, or otherwise limit the Public Entity's recourse to any remedy available at law or in equity.

24.3 Minimum Scope of Insurance. NocTel shall obtain insurance of the types and coverage described below:

24.3.1 Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Public Entity shall be named as an additional insured under NocTel's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.

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

24.4 Minimum Amounts of Insurance. NocTel shall maintain the following insurance limits:

24.4.1 Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

24.4.2 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

24.5 Other Insurance Provision. NocTel's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the Public Entity. Any Insurance, self-insurance, or self-insured pool coverage maintained by the Public Entity shall be excess of the Applicant's insurance and shall not contribute with it.

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

24.7 Verification of Coverage. NocTel shall furnish the Public Entity with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of NocTel before issuance of the Permit.

24.8 Notice of Cancellation. NocTel shall provide the Public Entity with written notice of any policy cancellation, within two business days of their receipt of such notice.

24.9 Failure to Maintain Insurance. Failure on the part of NocTel to maintain the insurance as required shall constitute a material breach of the Franchise Agreement entitling the City to Liquidated Damages under Section 28, below, or such other and further relief provided for herein or by law. Alternatively, the Public Entity may, after giving five business days' notice to NocTel to correct the breach, immediately terminate the Franchise.

24.10 Public Entity Full Availability of Applicant Limits. If NocTel maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by NocTel, irrespective

of whether such limits maintained by NocTel are greater than those required by this Permit or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by NocTel.

Section 25. Abandonment of NocTel's Facilities.

No portion of the Facilities laid, installed, or constructed in the Right-of-Way by NocTel may be abandoned by NocTel without the express written consent of the City. Any plan for abandonment or removal of NocTel's Facilities must be first approved by the Public Works Director, which shall not be unreasonably withheld or delayed, and all necessary permits must be obtained prior to such work.

Section 26. Restoration After Construction.

26.1 NocTel shall, after any abandonment approved under Section 24 of this Franchise, or any installation, construction, relocation, maintenance, or repair of Facilities within the Franchise area, restore the Right-of-Way to at least the condition the same was in immediately prior to any such abandonment, installation, construction, relocation, maintenance or repair pursuant to City standards. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. NocTel agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.

26.2 If it is determined that NocTel has failed to restore the Right-of-Way in accordance with this Section of this Franchise, the City shall provide NocTel with written notice including a description of actions the City believes necessary to restore the Right-of-Way. If the Right-of-Way is not restored in accordance with the City's notice within fifteen (15) Days of that notice, the City, or its authorized agent, may restore the Right-of-Way. NocTel is responsible for all reasonable costs and expenses incurred by the City in restoring the Right-of-Way in accordance with this Section of this Franchise. The rights granted to the City under this paragraph shall be in addition to those otherwise provided herein.

26.3 In the event the work includes cutting and patching existing road surfaces resulting in the degradation of the projected lifespan of the roadway, NocTel shall compensate the City for the reasonable projected costs resulting from the work, as estimated by the City Engineer or designee.

Section 27. Bond or Letter of Credit.

Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, NocTel shall cause to be furnished a bond or Letter of Credit executed by a corporate surety or financial institution authorized to do business in the State of Washington, in a sum to be set and approved by the Director of Public Works as sufficient to ensure performance of NocTel's obligations under this Franchise. The bond shall be conditioned so that NocTel shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise, and to erect or replace any defective work or materials discovered in the replacement of the City's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the City.

NocTel may meet the obligations of this Section of this Franchise with one or more bonds acceptable to the City. In the event that a bond issued pursuant to this Section of this Franchise is canceled by the surety, after proper notice and pursuant to the terms of said bond, NocTel shall,

prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section of this Franchise.

Section 28. Recourse Against Bonds and Other Security.

So long as the bond is in place, it may be utilized by the City as provided herein for reimbursement of the City by reason of NocTel's failure to pay the City for actual costs and expenses incurred by the City to make emergency corrections under Section 17 of this Franchise, to correct Franchise violations not corrected by NocTel after notice, and to compensate the City for monetary remedies or damages reasonably assessed against NocTel due to material default or violations of the requirements of City ordinances.

28.1 In the event NocTel has been declared to be in default of a material provision of this Franchise by the City and if NocTel fails, within thirty (30) days of mailing of the City's default notice, to pay the City any penalties, or monetary amounts, or fails to perform any of the conditions of this Franchise, or fails to begin to perform any condition that may take more than 30 days to complete, the City may thereafter obtain from the bond, after a proper claim is made to the surety, an amount sufficient to compensate the City for its damages. Upon such withdrawal from the bond, the City shall notify NocTel in writing, by First Class Mail, postage prepaid, of the amount withdrawn and date thereof.

28.2 Thirty (30) days after the City's mailing of notice of the bond forfeiture or withdrawal authorized herein, NocTel shall deposit such further bond, or other security, as the City may require, which is sufficient to meet the requirements of this franchise.

28.3 The rights reserved to the City with respect to any bond are in addition to all other rights of the City whether reserved by this Ordinance or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond shall constitute an election or waiver of any rights or other remedies the City may have.

Section 29. Liquidated Damages.

29.1 The City and NocTel recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of NocTel's breach of certain provisions of this Franchise. Accordingly, instead of requiring such proof, the City and NocTel agree that NocTel shall pay to the City, the sum set forth below for each day or part thereof that NocTel shall be in breach of specific provisions of this Franchise. Such amount is agreed to by both parties as a reasonable estimate of the actual damages the City would suffer in the event of NocTel's breach of such provisions of this Franchise.

29.1.1 Subject to the provision of written notice to NocTel and a thirty (30) day right to cure period, the City may assess against NocTel liquidated damages as follows: two hundred dollars (\$200.00) per day for any material breach of the Franchise.

29.1.2 The City shall provide NocTel a reasonable extension of the thirty (30) day right to cure period described in Section 28.1.1 of this Franchise if NocTel has commenced work to cure the violation, is diligently and continuously pursuing the cure to completion and requested such an extension, provided that any such cure is completed within one hundred and twenty (120) days from the written notice of default.

29.1.3 If liquidated damages are assessed by the City, NocTel shall pay any liquidated damages within forty-five (45) days after they are assessed and billed.

29.1.4 In the event NocTel fails to cure within the specified cure period, or any agreed upon extensions thereof, liquidated damages accrue from the date the City notifies NocTel that there has been a violation.

29.2 The recovery of amounts under Section 28.1.1 of this Franchise shall not be construed to limit the liability of NocTel under the Franchise or an excuse for unfaithful performance of any obligation of NocTel. Similarly, the parties agree imposition of liquidated damages are not intended to be punitive, but rather, for City cost recovery purposes.

Section 30. Remedies to Enforce Compliance.

In addition to any other remedy provided herein, the City and NocTel each reserve the right to pursue any remedy to compel the other to comply with the terms of this Franchise, and the pursuit of any right or remedy by a party shall not prevent such party from thereafter declaring a breach or revocation of the Franchise.

Section 31. Modification.

The City and NocTel hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such amendment. City agreement shall be binding only upon City Council approval of any substantive alteration, amendment or modification of this Agreement.

Section 32. Force Majeure.

This Franchise shall not be revoked, nor shall NocTel be liable for damages, due to any act or omission that would otherwise constitute a violation or breach that occurs without fault of NocTel or occurs as a result of circumstances beyond NocTel's reasonable control. Provided, however, NocTel acts diligently to correct any such act or omission.

Section 33. City Ordinances and Regulations.

Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate lawful ordinances regulating the performance of the conditions of this Franchise, including any reasonable lawful 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 control, by appropriate lawful regulations, the location, elevation, and manner of construction and maintenance of any fiber optic cable or of other Facilities by NocTel. NocTel shall promptly conform to all such regulations, unless compliance would cause NocTel to violate other requirements of law.

Section 34. Acceptance/Liaison.

NocTel's written acceptance shall include the identification of an official liaison who will act as the City's contact for all issues regarding this Franchise. NocTel shall notify the City of any change in the identity of its liaison. NocTel shall accept this Franchise in the manner hereinafter provided in Section 43 of this Franchise.

Section 35. Survival.

All of the provisions, conditions and requirements of Sections 10, Relocation of Facilities; 14, Excavation And Notice Of Entry; 18, Dangerous Conditions; 23, Indemnification; 25, Abandonment of NocTel's Facilities; and 26, Restoration After Construction, of this Franchise shall be in addition to any and all other obligations and liabilities NocTel may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to NocTel and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the parties and all privileges, as well as all obligations and liabilities of each party shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever such party is named herein.

Section 36. Severability.

If any section, sentence, clause or phrase of this Franchise Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise Ordinance. In the event that any of the provisions of this Franchise Ordinance or of this Franchise are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this Franchise and may amend, repeal, add, replace or modify any other provision of this Franchise Ordinance or of the Franchise granted herein, or may terminate this Franchise.

Section 37. WUTC Tariff Filings, Notice Thereof.

If NocTel intends to file, pursuant to RCW Chapter 80.28, with the Washington Utilities and Transportation Commission (WUTC), or its successor, any tariff affecting the City's rights arising under this Franchise, NocTel shall provide the City with fourteen (14) days prior written notice.

Section 38. Binding Acceptance.

This Franchise shall bind and benefit the parties hereto and their respective successors and assigns.

Section 39. Assignment.

This Franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale or otherwise, without the written approval of the City. The City's approval shall not be unreasonably withheld or delayed. Any reasonable costs associated with the City's review of any transfer proposed by NocTel shall be reimbursed to the City by the new prospective Franchisee, if the City approves the transfer, or by NocTel if said transfer is not approved by the City.

39.1 The City shall receive notice and approve any proposed change in control of NocTel or assignment of this Franchise to a subsidiary or affiliate of NocTel, which causes a change in control of the Franchisee. The City shall be notified but need not approve changes or assignments that do not result in a change in control of the Franchisee. Neither approval nor notification shall be required for mortgaging purposes.

39.2 A change in control shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised or changes in

business form that act to materially reduce the resources available to NocTel to perform its obligations under the Franchise granted herein.

39.3 A lease or grant of an Indefeasible Right of Use ("IRU") in the Telecommunications System, the associated Facilities, or any portion thereof, to another Person, or an offer or provision of capacity or bandwidth from the Telecommunications System or associated Facilities shall not be considered an assignment for purposes of this Section of this Franchise, PROVIDED THAT, under such lease, IRU, or offer, NocTel: (i) retains ownership over the Tele-communications System, (ii) remains responsible for the location, construction, replacement, repair and maintenance of the Telecommunications System pursuant to the terms and conditions of this Franchise, and (iii) remains responsible for all other obligations imposed hereunder.

Section 40. Alternate Dispute Resolution.

If the City and NocTel are unable to resolve disputes arising from the terms of the Franchise granted herein, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to an alternate dispute resolution process in Clark County agreed to by the parties. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

Section 41. Venue.

If alternate dispute resolution is not successful, the venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or Clark County Superior Court.

Section 42. 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 and acceptance hereof.

Section 43. Notice.

Any notice or information required or permitted to be given to the City or to NocTel under this Franchise may be sent to the following addresses unless otherwise specified:

If to the City, the notice shall be sent to:

City of Washougal
Dave Scott, City Administrator
1701 C Street
Washougal, WA 98671

If to NocTel, the notice shall be sent to:

NOCTEL COMMUNICATIONS, INC.
3242 NE 3rd Ave # 230
Camas, WA, 98607-2408

Either party can alter their official address for notifications provided in this Section of this Franchise by providing the other party written notice thereof.

Section 44. Directions to City Clerk.

The City Clerk is hereby directed to publish this Ordinance in full and forward certified copies of this ordinance to NocTel. NocTel shall have thirty (30) days from receipt of the certified copy of this ordinance to execute this Franchise Agreement. If NocTel fails to execute this Franchise in accordance with the above provisions, this Franchise shall be null and void.

Section 45. Publication Costs.

NocTel shall reimburse the City for the cost of publishing this Franchise ordinance within thirty (30) Days of receipt of the City's invoice.

Section 46. Effective Date.

This ordinance shall take effect and be in full force five (5) Days after the date of publication.

Signed by the duly authorized representative of the parties as set forth below:

NocTel

NocTel Communications, Inc.
a Washington Corporation

City

City of Washougal
a Washington Municipal Corporation

By: _____
Name: _____
Title: _____

by Molly Coston, Mayor

PASSED BY THE CITY COUNCIL ON _____, 2021.

ATTEST:

Finance Director / City Clerk

APPROVED AS TO FORM:

City Attorney