

# CITY COUNCIL AGENDA

15728 Main Street, Mill Creek, WA 98012 (425) 745-1891



Pam Pruitt, Mayor • Brian Holtzclaw, Mayor Pro Tem • Mark Bond  
Mike Todd • Vince Cavaleri • John Steckler • Stephanie Vignal

**DUE TO COVID- 19 pandemic, the City of Mill Creek City Council will hold their Regular meetings virtually and via audio meeting format until further notice. The call-in number will be posted on the City of Mill Creek's Website on the Monday before the City Council Meeting.**

Regular meetings of the Mill Creek City Council shall be held on the first, second and fourth Tuesdays of each month commencing at 6:00 p.m. in the Mill Creek Council Chambers located at 15728 Main Street, Mill Creek, Washington. Your participation and interest in these meetings are encouraged and very much appreciated. We are trying to make our public meetings accessible to all members of the public. If you require special accommodations, please call the office of the City Clerk at (425) 921-5725 three days prior to the meeting.

The City Council may consider and act on any matter called to its attention at such meetings, whether or not specified on the agenda for said meeting. Participation by members of the audience will be allowed as set forth on the meeting agenda or as determined by the Mayor or the City Council.

To comment on subjects listed on or not on the agenda, ask to be recognized during the Audience Communication portion of the agenda. Please stand at the podium and state your name and residency for the official record. Please limit your comments to the specific item under discussion. Time limitations shall be at the discretion of the Mayor or City Council.

Study sessions of the Mill Creek City Council may be held as part of any regular or special meeting. Study sessions are informal, and are typically used by the City Council to receive reports and presentations, review and evaluate complex matters, and/or engage in preliminary analysis of City issues or City Council business.

**Next Ordinance No. 2020 - 863**

**Next Resolution No. 2020 - 588**

**July 14, 2020  
City Council Meeting  
6:00 PM**

**Virtual City Council Regular Meeting**

**Call-in Information:**

**United States (Toll Free): [1 877 309 2073](tel:18773092073): Access Code: 946-079-933**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

## **AUDIENCE COMMUNICATION**

- A. Public comment on items on or not on the agenda

## **PRESENTATIONS**

### **OLD BUSINESS**

- B. 7C's Easement  
*(Tom Rogers, Planning Supervisor & Sherrie Ringstad, Associate Planner)*
- C. Comcast Franchise Discussion  
*(Tom Rogers, Planning Supervisor)*

### **NEW BUSINESS**

- D. City Manager Annual Evaluation  
*(Mayor Pro Tem Holtzclaw)*

### **STUDY SESSION**

- E. CARES ACT Presentation  
*(Jeffrey Balentine, Finance Director)*

### **CONSENT AGENDA**

- F. Approval of Checks #62134 through #62181 and ACH Wire Transfers in the Amount of \$488,543.72.  
*(Audit Committee: Mayor Pro Tem Holtzclaw and Mayor Pruitt)*
- G. Payroll and Benefit ACH Payments in the Amount of \$206,064.90  
*(Audit Committee: Mayor Pro Tem Holtzclaw and Mayor Pruitt)*
- H. City Council Meeting Minutes of June 2, 2020, June 23, 2020 & July 7, 2020

### **REPORTS**

- I. Mayor/Council
- J. City Manager
  - Preschool Program
- K. Jeff Balentine, Finance Director
  - Finance Department Update

## **AUDIENCE COMMUNICATION**

- L. Public comment on items on or not on the agenda

### **RECESS TO EXECUTIVE SESSION**

*(Confidential Session of the Council)*

- M.
  - Discuss litigation and potential litigation pursuant to RCW 42.30.110(1)(i)

Action may or may not be taken.

### **REGULAR SESSION**

## ADJOURNMENT



Agenda Item # \_\_\_\_\_

Meeting Date: July 14, 2020

## **CITY COUNCIL AGENDA SUMMARY**

City of Mill Creek, Washington

**AGENDA ITEM: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PERPETUAL SIGHT LINE EASEMENT OVER A PORTION OF CITY PROPERTY (REMILLARD PROPERTY)**

**PROPOSED MOTION:**

Motion to adopt the attached Resolution authorizing the City Manager to execute a Perpetual Vehicular Sight Line Easement on the City-owned property located at 13615 North Creek Drive Southeast (Remillard Property).

**KEY FACTS AND INFORMATION SUMMARY:**

Daniel Carr with 7C's Swim School, has proposed the construction of a swim school on property at the corner of North Creek Drive and Dumas Road. Mr. Carr has requested that the City grant a Perpetual Vehicular Sight Line Easement on City-owned property known as the Remillard property. The purpose of the Easement is to address a sight distance issue.

The City Council reviewed the request in a Study Session on July 7, 2020, and provided direction to staff on terms for the easement. It was the consensus of Council that some compensation is appropriate; however, the exact amount is yet to be determined. The compensation amount will be based on an appraisal conducted in conjunction with the City's recent purchase of the Diocese property (adjacent to the Remillard Property), which established the value of a similar easement at \$5.50 per square foot. The question that remains is whether the amount should be based on the entire 1,337 square feet of the easement or the 661 square feet of the easement area that is outside the future right-of-way, or something else.

Additional terms include (1) requiring the easement area to be cleared of vegetation, to be graded and to be finished with river rock/cobble to minimize maintenance requirements; (2) replacement of the fence being removed within the easement area with a new wooden fence along the eastern edge of the easement area, connecting to the new fence being constructed on the southern edge of the 7Cs property; and (3) insuring and indemnifying the City for claims arising out of the construction. The applicant shall be responsible for recording the Easement with the Snohomish County Auditor and providing the City with a recorded copy prior to starting work on the site. In the event that the swim school is not constructed before the Binding Site Plan expires, the City shall have the right to revoke the Easement.

**CITY MANAGER RECOMMENDATION:**

Adopt the attached Resolution authorizing the City Manager to execute the attached Easement granting a Perpetual Vehicular Sight Line Easement across a portion of the Remillard Property fronting North Creek Drive and require compensation in the amount deemed appropriate by the City Council.

**ATTACHMENTS:**

- Attachment A - Draft Resolution
- Attachment B - Easement
- Attachment C - Packet materials from July 7, 2020 meeting

Respectfully Submitted:

*Michael Ciaravino*

City Manager

**RESOLUTION NO. \_\_\_\_\_**  
**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILL CREEK,**  
**WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE**  
**A VEHICULAR SITE LINE EASEMENT AFFECTING A PORTION**  
**OF THE REMILLARD PROPERTY**

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WHEREAS, on September 19, 2019, Carr Holdings LLC (“Carr”) submitted a development application including a binding site plan to construct a swim school at the corner of North Creek Drive and Dumas Road in Mill Creek; and

WHEREAS, the only feasible access to and egress from the Carr property for this project is along N. Creek Dr.; and;

WHEREAS, The City’s development standards require adequate site distance to be provided at the location where vehicles will access and egress the Carr site; and

WHEREAS the City-owned Remillard property is located at 13615 North Creek Dr. SE and is adjacent to the Carr site;

WHEREAS, Carr has requested that the City grant a vehicular site line easement across an approximately 1,337 square foot triangle of the Remillard property in order to comply with the City’s site distance requirements; and

WHEREAS, the City Council has determined that granting a site line easement would not materially impact the future use of the Remillard property; and

WHEREAS, the use proposed on the Carr site will be consistent with the planned use of the Remillard property and benefit the community;

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILL CREEK, WASHINGTON, as follows:

Section 1. The City Manager is authorized to execute a sight line easement covering approximately 1,337 square feet of the Remillard property, depicted on the attached exhibit subject to the following conditions:

- a. Carr shall remove all the existing vegetation and the fence in the easement area at its expense;
- b. Carr shall replace the existing fence with a new wooden fence along the eastern boundary of the easement area and connect it to the new fence constructed along the southern edge of the Carr property;
- c. Carr shall grade and finish the easement area with river rock to minimize maintenance;
- d. Carr and/or its contractor shall name the City as an additional insured on its commercial general liability policy.

132583.0005/8106429.1

e. Carr shall defend, indemnify and hold the city harmless from all claims arising out of work performed in the easement area;

f. In the event that the improvements set forth in the binding site plan are not completed before the expiration of the binding site plan, then the City shall be entitled to extinguish the easement; and

g. Carr shall compensate the City in the amount of \$\_\_\_\_\_ representing the value of the easement.

This Resolution shall be effective immediately upon passage, approval and signatures hereon as required by law.

PASSED IN OPEN MEETING this \_\_\_\_\_ day of July, 2020 by a vote of \_\_\_\_\_ for, \_\_\_\_\_ against, and \_\_\_\_\_ abstaining.

APPROVED:

\_\_\_\_\_  
PAM PRUITT, MAYOR

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
NAOMI FAY, INTERIM CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
GRANT DEGGINGER, INTERIM CITY ATTORNEY

FILED WITH THE CITY CLERK: \_\_\_\_\_

PASSED BY THE CITY COUNCIL: \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**After recording return to:**

Randy M. Boyer  
Attorney at Law  
7017 196th St. S.W.  
Lynnwood, WA 98036

<b>Document Title(s) (or transactions contained therein):</b>	<b>Sight Line Easement</b>
<b>Reference Number(s) of Document assigned or released:</b> Additional Reference Numbers on page ___ of document(s)	<b>Not Applicable</b>
<b>Grantor(s) (Last name first, then first name and initials):</b> Additional names on page ___ of document(s)	<b>City of Mill Creek, a Washington Municipal Corporation</b>
<b>Grantee(s) (Last name first, then first name and initials):</b> Additional names on page ___ of document(s)	<b>Carr Holdings, LLC, a Washington Limited Liability Company</b>
<b>Legal Description</b> <b>(abbreviated: i.e., lot, block, plat or section, township, range):</b> Additional legal on page __ of document(s)	
<p style="text-align: center;">Portion of Section 31 Township 28 Range 05 Quarter NW - N 330FT OF E 660FT SE1/4 NW1/4 SD SEC 31, Snohomish County, Washington</p>	
<b>Assessor’s Property Tax Parcel/Account Number(s):</b>	2805310021700

**SIGHT LINE EASEMENT**

This Sight Line Easement is entered into between City of Mill Creek, a Washington Municipal Corporation (“Grantor”) and Carr Holdings, LLC, a Washington Limited Liability Company (“Grantee”).

**RECITALS**

A. Grantor is the owner of real property legally described as follows (“Grantor Property”):

132583.0004/8106418.2



The North 330 Feet of the East 660 Feet of the Southeast Quarter of the Northwest Quarter of Section 31, Township 28 North, Range 5 East, W.M., records of Snohomish County.

B. Grantee is the owner of real property legally described as follows (“Grantee Property”):

Lot 3 of Heatherwood Apartments recorded on December 9, 2002 under recording Auditor’s File Number 200201095001, records of Snohomish County, Washington.

C. Grantee wishes to place improvements on the Grantee Property and the City of Mill Creek requires improved sight line and maintenance of views regarding the access to and egress from the Grantee Property.

D. The parties hereto wish to provide for a sight line easement as described herein in favor of Grantee subject to the terms and conditions stated below.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises between the parties and other valuable consideration, the parties agree as follows:

1. Grantor hereby grants and conveys to Grantee a perpetual easement for improved sight lines and maintenance of views (“Sight Line Easement”) over a portion of the Grantor Property as particularly described on Exhibit A attached hereto and demarcated in the drawing attached as Exhibit B hereto (collectively, the “Sight Line Easement Area”). The Sight Line Easement shall be solely for the purpose of improved sight lines and maintenance of views related to access to and egress from the Grantee Property.

2. Grantee shall:

a. remove the existing fence in the Sight Line Easement Area, install a replacement wooden fence along the eastern boundary of the Sight Line Easement Area and connect it to the fence to be constructed along the southern edge of the Grantee Property at Grantee’s expense and to the reasonable satisfaction of Grantor;

b. remove the existing vegetation, grass and shrubbery lying within the Sight Line Easement Area, level the Sight Line Easement Area, and install river rock within the Sight Line Easement Area at Grantee’s expense and to the reasonable satisfaction of Grantor; and

c. Pay Grantor the consideration specified in Mill Creek City Council Resolution No. 20-\_\_\_\_.

In the event that the work and consideration set forth in this Paragraph 2 is not completed and satisfied on or before the before the expiration of the Grantee's binding site plan on file with the City of Mill Creek (the "site plan expiration date"), Grantor shall be entitled to unilaterally terminate this Sight Line Easement by recording a termination of easement, notwithstanding any opposition by Grantee to the contrary, provided such termination is recorded in the Snohomish County official records on or before the 90th day after the site plan expiration date.

3. Grantee shall include Grantor as an additional insured on its commercial general liability insurance policy, and shall defend, indemnify and hold Grantor and all of its employees or agents harmless from any and all claims, demands, or liability arising during its construction on Grantor's property and in the Easement Area from alleged acts or omissions by Grantee or its employees or agents. Grantee's obligations set forth herein shall continue for a period of six years following completion of the work.

4. Once Grantor approves the Grantee work required to be completed pursuant to Paragraph 2 above, then Grantee shall have no further obligation to maintain the Sight Line Easement Area.

5. Grantor shall not place any improvements, including but not limited to fences, in the Sight Line Easement Area that will materially impede the sight line view over and through the Sight Line Easement Area and shall not allow any vegetation, shrubbery or trees to be placed on the Sight Line Easement Area that materially impede the sight line view over and through the Sight Line Easement Area.

6. Grantor shall be entitled to use that portion of the Grantor Property which is encumbered by this Sight Line Easement for any purpose not inconsistent with the above granted restrictions.

7. The easements, covenants and restrictions herein contained shall inure to the benefit of and bind the heirs, legal representatives, successors and assigns of the respective parties hereto and shall run with the land. This Sight Line Easement shall be effective upon recording.

8. The parties, their heirs, successors and assigns shall have the right to enforce all restrictions, conditions, reservation imposed by the provisions of this Sight Line Easement by a proceeding at law or equity. Failure by an owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right of a subsequent owner to do so thereafter. The prevailing party in any such action shall be awarded its, his or her reasonable costs and attorney fees as determined by the court or arbitrator at trial or arbitration and on appeal.

9. Invalidation of any one or these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

IN WITNESS WHEREOF, Grantor and Grantee have executed and delivered this Sight Line Easement as of the date of recording.

GRANTOR:  
City of Mill Creek

GRANTEE:  
Carr Holdings LLC

By \_\_\_\_\_  
\_\_\_\_\_, City Manager

By: \_\_\_\_\_  
Daniel I. Carr, Managing Member

Attest:

By \_\_\_\_\_  
\_\_\_\_\_, City Clerk

By: \_\_\_\_\_  
Courtney L. Carr, Managing Member

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
signed this instrument as \_\_\_\_\_ of the City of Mill Creek and on oath  
stated that they were authorized to execute the instrument and acknowledged it as the free and  
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
In \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Daniel I. Carr and Courtney L. Carr  
signed this instrument as the managing members the Carr Holdings, LLC and on oath stated that  
they were authorized to execute the instrument and acknowledged it as the free and voluntary act  
of such party for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
In \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**EXHIBIT A**  
**SITE LINE EASEMENT**

(LEGAL DESCRIPTION)

AN EASEMENT FOR SITE DISTANCE ACROSS THAT PORTION OF THE NORTH 330 FEET OF THE EAST 660 FEET OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 28 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 3 OF HEATHERWOOD APARTMENTS RECORDED DECEMBER 09, 2002 UNDER RECORDING NO, 200212095001, IN SNOHOMISH COUNTY, WASHINGTON;

THENCE NORTH 88°02'09" WEST PARALLEL TO THE SOUTH LINE OF SAID LOT 3 A DISTANCE OF 8.50 FEET TO THE EAST MARGIN OF NORTH CREEK DRIVE;

THENCE SOUTH 01°30'19" WEST ALONG THE EASTERLY MARGIN OF ROAD NORTH CREEK DRIVE A DISTANCE OF 101.91 FEET;

THENCE NORTH 15°58'28" EAST A DISTANCE OF 105.04 FEET TO THE SOUTH LINE OF SAID PARCEL A;

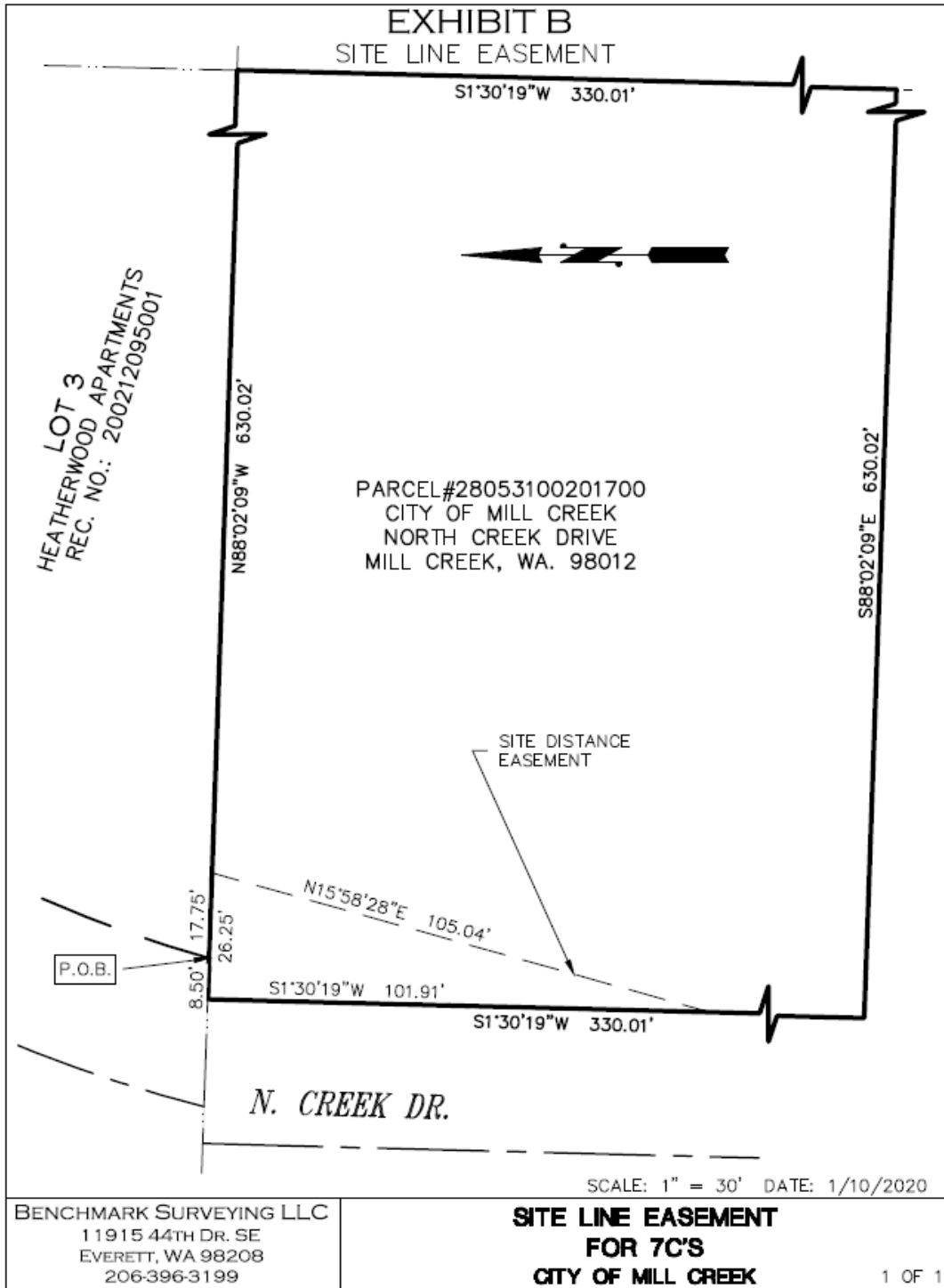
THENCE NORTH 88°02'09" WEST ALONG SOUTH LINE OF SAID LOT 3 A DISTANCE OF 17.75 FEET TO THE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

BENCHMARK SURVEYING LLC  
7c'S 59TH AVE NE  
1/10/2020



132583.0004/8106418.2



132583.0004/8106418.2



Agenda Item # \_\_\_\_\_  
Meeting Date: July 7, 2020

**CITY COUNCIL AGENDA SUMMARY**

City of Mill Creek, Washington

**AGENDA ITEM:**    **REQUEST FOR THE CITY TO GRANT A PERPETUAL SIGHT LINE EASEMENT ON THE REMILLARD PROPERTY**

**PROPOSED MOTION:**  
None at this time. Discussion only.

**KEY FACTS AND INFORMATION SUMMARY:**

A Binding Site Plan (**BSP**) has been submitted to develop the property located on the southeast corner of the North Creek Drive and Dumas Road intersection (colloquially known as the Kelly Property; referred to below as **7C's Property**). See Attachment 1 (*Vicinity Map*). The applicant, Daniel Carr with 7C's Swim School, is proposing an approximately 10,000 square foot recreational building that will be used as a swim school (**Project**). See Attachment 2 (*Proposed Site Plan*). Access to the Project is proposed to be to/from North Creek Drive. The access point will be directly aligned with the existing Heatherwood Apartments entrance across North Creek Drive as required by the City's transportation, traffic alignment and spacing requirements. See Attachment 3 – (*Aerial Photo Showing Access*).

Because North Creek Drive curves at that location, there is a "sight distance" issue that needs to be resolved to ensure safe ingress/egress. The sight distance is currently obstructed by an existing fence and vegetation located along the western boundary of the City's property to the south of the Project site (colloquially known as the Remillard Property; referred to below as **City Property**). See Attachment 4 (*Site Photos*).

To address the visibility and safety issue, Mr. Carr is requesting that the City grant to 7C's a perpetual vehicular sight line easement covering 1,337 sq. ft. across a portion of the Remillard Property fronting North Creek Drive (**Easement**). See Attachment 5 (*Proposed Sight Distance Triangle*). Because the Easement will effectively deprive the City of some utility and value to the City Property, the City Attorney has advised that the City should require appropriate terms and conditions in the easement.

The Council must approve actions related to City real property (RCW 35A.11.020). If approved, the Easement would have minor, but permanent short-term and long-term impacts on the City Property.

**Short-Term Impacts to City Property**

The short-term impacts to the property would be the removal of the existing fence along the City Property frontage on North Creek Drive, potentially leaving the City Property more vulnerable to unauthorized access. This can be mitigated by requiring 7C's to replace the removed portion of the fence with a new fence along the eastern boundary of the proposed sight distance triangle. The replacement fence would be a 6-foot wooden fence (to City specifications) and would

**AGENDA ITEM #C.**

connect to the proposed new fence on the 7C's Property and to the remaining portion of the existing City fence along North Creek Drive. A second short-term impact would be the removal of vegetation within the sight triangle area. This can be remedied by requiring 7C's to finish the cleared area with river rock/cobble (to City specifications) to prevent vegetation from growing in the easement area.

Long-Term Impacts to City Property

The long-term impacts include permanently limiting City development on and use within the Easement area. If the easement is granted, structures and taller vegetation would be permanently prohibited from being placed within the Easement area. It is important to note that it is not likely that a structure would ever be proposed in that area. Unless the use was ground floor commercial, any structure would be required to be setback from the ROW. In addition, whenever the City Property is developed, 8.5 feet of the entire frontage of the Remillard property, including a portion of the sight distance triangle, will be dedicated to right-of-way use (ROW) as part of North Creek Drive. Future anticipated improvements in that ROW area could include a parking strip with lawn, sidewalk, and either lawn or low growing vegetation, none of which would impede sight distance.

Compensation/Mitigation

Because of the long-term impacts of the requested Easement and requirements of state law, it is appropriate for the Council to require reasonable compensation for the lost value to the City Property. Staff recommends monetary compensation to the City for the loss of Easement area, as well as removal and replacement of the existing fence and vegetation as described above. To determine the value of the Easement, one method could be to reference the recent appraisal performed for the Dioceses property acquisition. That appraisal determined the value of a potential sewer line easement (which is somewhat similar to the sight triangle use in terms of zoning and use of the property) to be \$5.50 per square foot. The total area of the proposed sight triangle area is 1,337 square feet, equating to a value of \$7,353.50.

Approval Process

If the Council is agreeable to granting the proposed Easement, Council will need to give direction on its terms. Once prepared, the Easement would be brought back for final approval at a meeting in the near future. Time is of the essence, since Mr. Carr is in the process of development review. This issue needs to be settled prior to any site work.

**CITY MANAGER RECOMMENDATION:**

Consider a request from 7Cs Swim School that the City grant a perpetual vehicular sight line easement across a portion of the Remillard Property fronting North Creek Drive and give direction to staff on the Easement terms.



**ATTACHMENTS:**

- Attachment 1 - Vicinity Map
- Attachment 2 - Proposed Site Plan
- Attachment 3 - Aerial Photo Showing Access
- Attachments 4 - Site Photos
- Attachment 5 - Proposed Sight Distance Triangle

Respectfully Submitted:

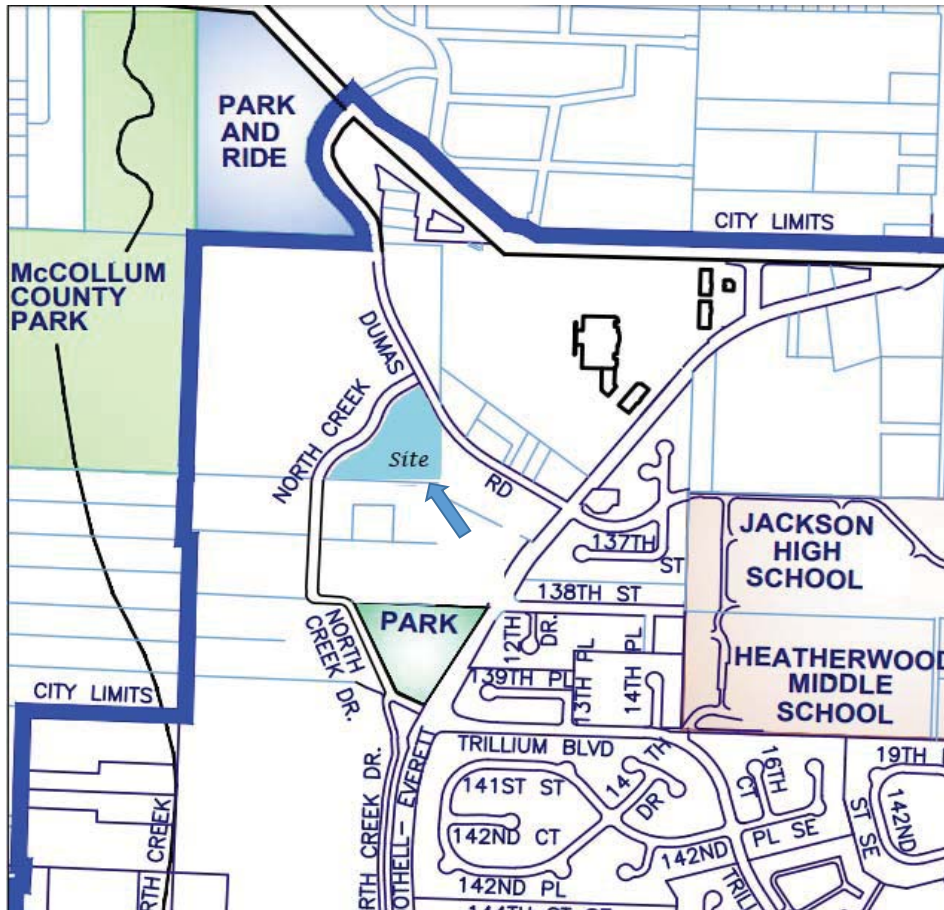
*Michael Ciaravino*

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Michael Ciaravino  
City Manager

**AGENDA ITEM #C.**

Attachment 1  
Vicinity Map



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**Attachment 2  
Proposed Site Plan Including Sight Distance Triangle**



{SXM2102857.DOCX;2/05739.000002/ }

**AGENDA ITEM #C.**

Attachment 3  
Aerial Photo



**Attachment 4  
Site Photos**



**View from North Creek Drive headed northwest**

{SXM2102857.DOCX;2/05739.000002/ }

**Attachment 4 Continued  
Site Photos**



**View from the proposed access drive looking to the south.**

{SXM2102857.DOCX;2/05739.000002/ }

**Attachment 4 Continued  
Site Photos**



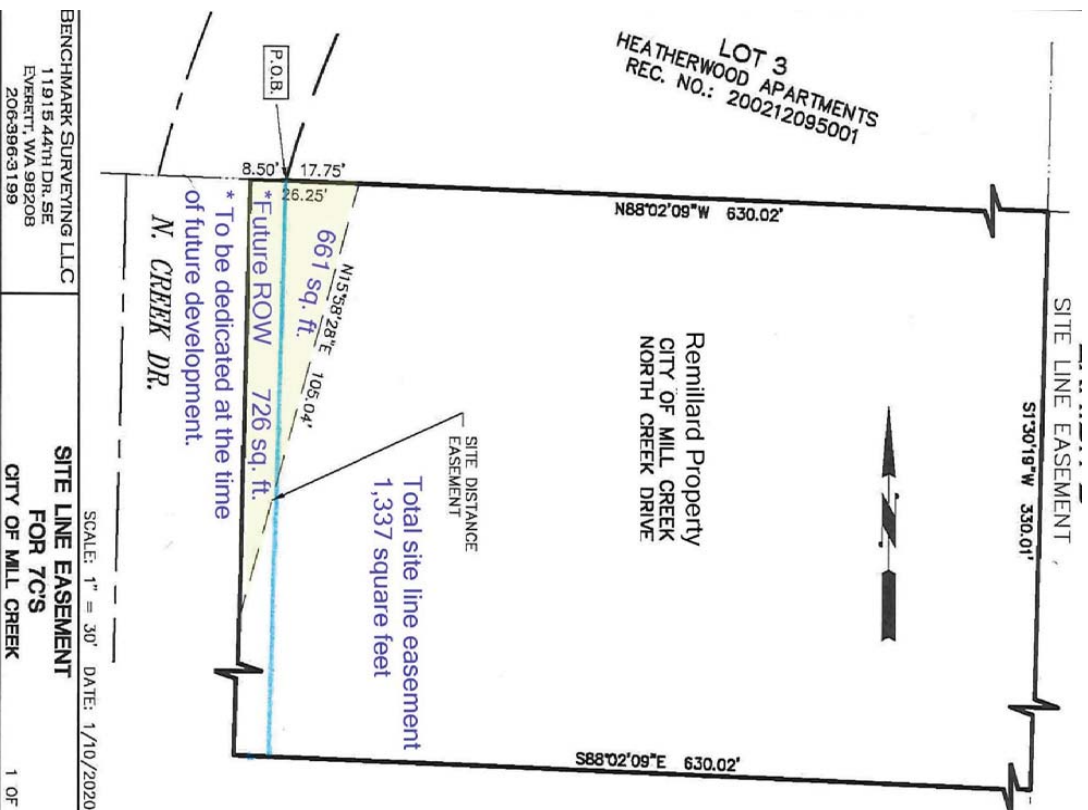
**Existing fence along North Creek Drive.**

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AGENDA ITEM #C.

Attachment 5

Proposed Sight Distance Triangle



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Request for a Perpetual Sight Line Easement on the Remillard Property (S...

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# 7Cs Swim School Perpetual Vehicular Sight Line Easement

July 7, 2020

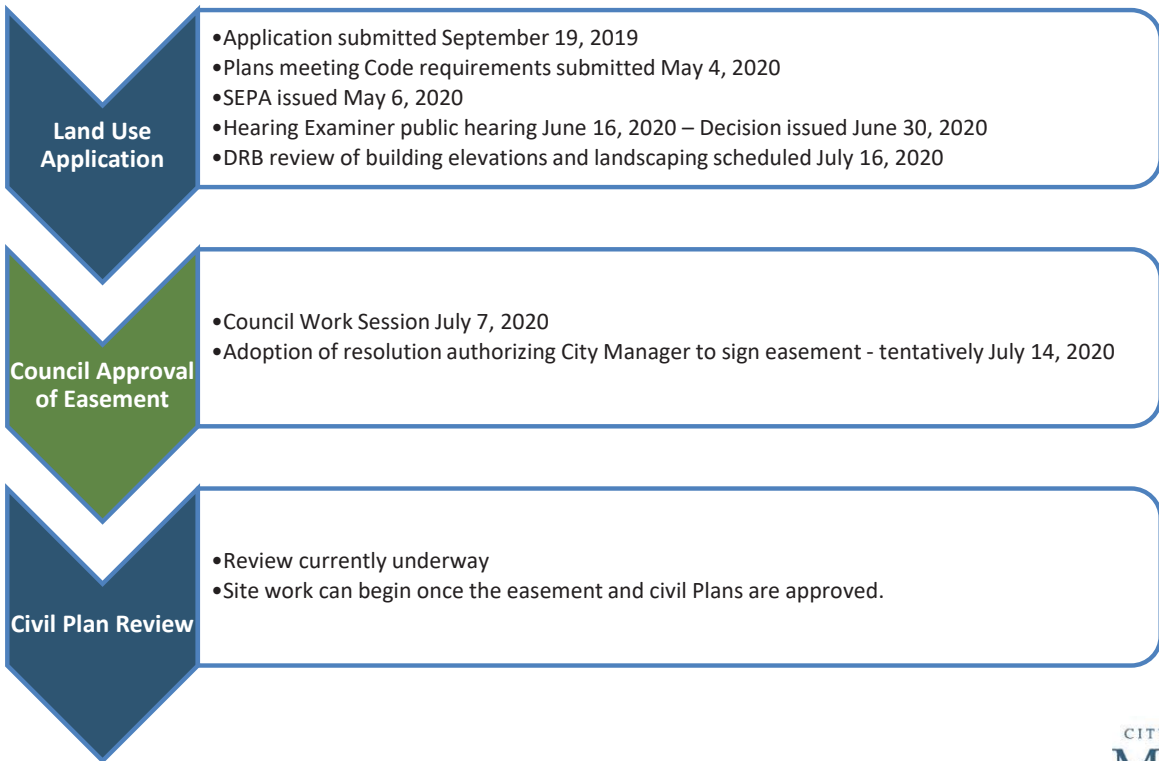
Request for a Perpetual Sight Line Easement on the Remillard Property (S..Page 41 of 66

# Background

- 7Cs Swim School development proposed adjacent to City owned property
- Access needs to be across from the Heatherwood southern entrance
- Sight distance issue to south - fence and vegetation on the City's property
- Request City to grant a vehicular sight line easement
- Council approval required (RCW 35A.11.020)



# 7Cs Swim School – Review Process To-Date

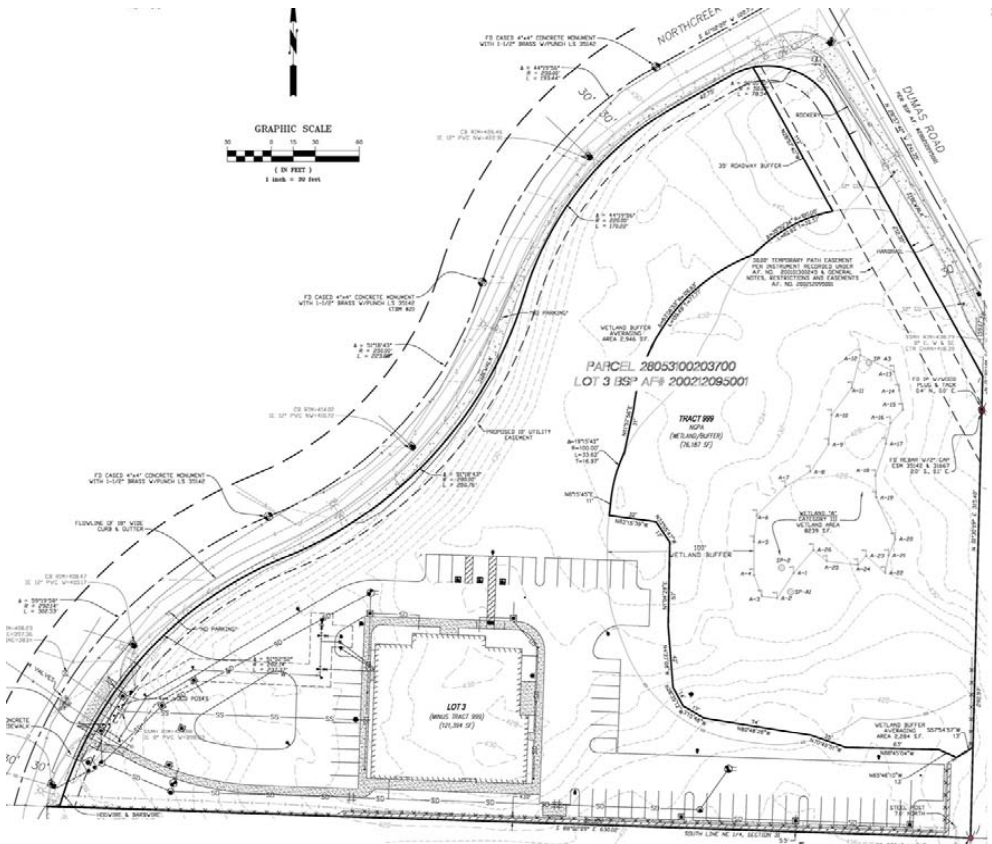


# Aerial / Vicinity Map





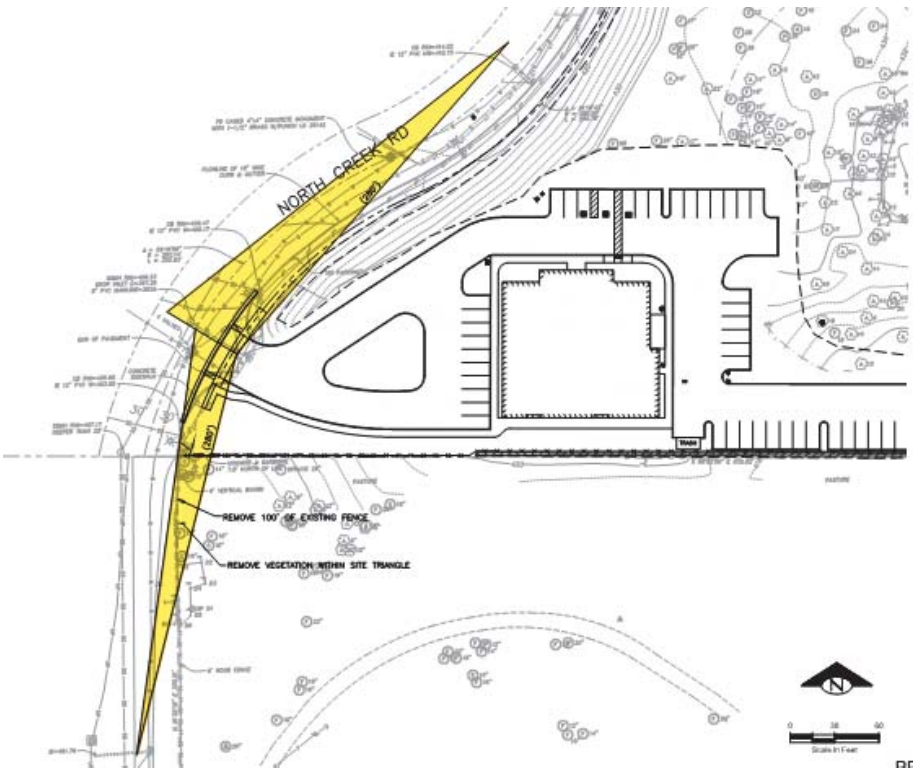
# Proposed Site Plan



7Cs Swim School – Vehicular Sight Line Easement

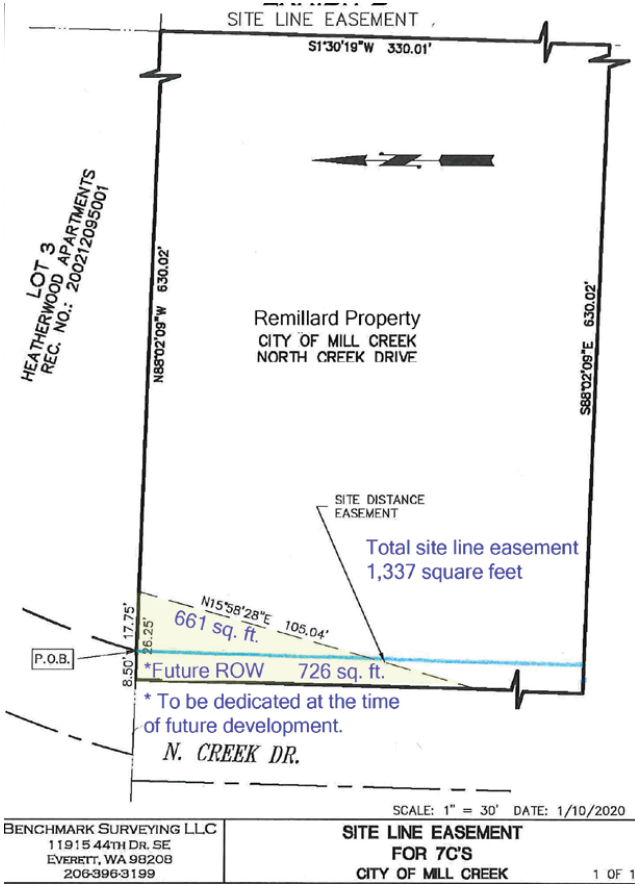


# Sight Distance Easement





# Sight Distance Easement



# Existing Conditions Photos



View from North Creek Drive adjacent to City property looking north



View from the access drive looking south toward the City property

Request for a Perpetual Sight Line Easement on the Remillard Property (S..Page 48 of 66



# Impacts to the City Property

- Short-Term.
  - Removal of the existing fence
    - If not replaced, property more vulnerable
    - Removal/prevention of vegetation
- Long-Term.
  - Limits land uses that would block view in the easement area

# Potential Easement Terms

- Compensation
  - Utilize appraisal from recent church property purchase – at \$5.50 per sq. ft. (1,337 sq. ft. = \$7,353.50)
- Mitigation of Impacts
  - Replace portion of the existing fence that is removed
  - Grade and finish easement area with river rock/cobble to minimize maintenance
  - City likelihood of using easement area minimal



## Next Steps

- Council direction on easement terms
- City Attorney to prepare easement document and resolution authorizing City Manager to sign the easement.
- Council consideration of easement and resolution at future meeting – tentative date July 14, 2020.



**After recording return to:**

Randy M. Boyer  
Attorney at Law  
7017 196th St. S.W.  
Lynnwood, WA 98036

<b>Document Title(s) (or transactions contained therein):</b>	<b>Sight Line Easement</b>
<b>Reference Number(s) of Document assigned or released:</b> Additional Reference Numbers on page ___ of document(s)	<b>Not Applicable</b>
<b>Grantor(s) (Last name first, then first name and initials):</b> Additional names on page ___ of document(s)	<b>City of Mill Creek, a Washington Municipal Corporation</b>
<b>Grantee(s) (Last name first, then first name and initials):</b> Additional names on page ___ of document(s)	<b>Carr Holdings, LLC, a Washington Limited Liability Company</b>
<b>Legal Description</b> <b>(abbreviated: i.e., lot, block, plat or section, township, range):</b> Additional legal on page ___ of document(s)	
Portion of Section 31 Township 28 Range 05 Quarter NW - N 330FT OF E 660FT SE1/4 NW1/4 SD SEC 31, Snohomish County, Washington	
<b>Assessor’s Property Tax Parcel/Account Number(s):</b>	2805310021700

**SIGHT LINE EASEMENT**

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**RECITALS**

A. Grantor is the owner of real property legally described as follows (“Grantor Property”):

132583.0004/8106418.2

The North 330 Feet of the East 660 Feet of the Southeast Quarter of the Northwest Quarter of Section 31, Township 28 North, Range 5 East, W.M., records of Snohomish County.

B. Grantee is the owner of real property legally described as follows (“Grantee Property”):

Lot 3 of Heatherwood Apartments recorded on December 9, 2002 under recording Auditor’s File Number 200201095001, records of Snohomish County, Washington.

C. Grantee wishes to place improvements on the Grantee Property and the City of Mill Creek requires improved sight line and maintenance of views regarding the access to and egress from the Grantee Property.

D. The parties hereto wish to provide for a sight line easement as described herein in favor of Grantee subject to the terms and conditions stated below.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises between the parties and other valuable consideration, the parties agree as follows:

1. Grantor hereby grants and conveys to Grantee a perpetual easement for improved sight lines and maintenance of views (“Sight Line Easement”) over a portion of the Grantor Property as particularly described on Exhibit A attached hereto and demarcated in the drawing attached as Exhibit B hereto (collectively, the “Sight Line Easement Area”). The Sight Line Easement shall be solely for the purpose of improved sight lines and maintenance of views related to access to and egress from the Grantee Property.

2. Grantee shall:

a. remove the existing fence in the Sight Line Easement Area, install a replacement wooden fence along the eastern boundary of the Sight Line Easement Area and connect it to the fence to be constructed along the southern edge of the Grantee Property at Grantee’s expense and to the reasonable satisfaction of Grantor;

b. remove the existing vegetation, grass and shrubbery lying within the Sight Line Easement Area, level the Sight Line Easement Area, and install river rock within the Sight Line Easement Area at Grantee’s expense and to the reasonable satisfaction of Grantor; and

c. Pay Grantor the consideration specified in Mill Creek City Council Resolution No. 20-\_\_\_\_ .

In the event that the work and consideration set forth in this Paragraph 2 is not completed and satisfied on or before the before the expiration of the Grantee's binding site plan on file with the City of Mill Creek (the "site plan expiration date"), Grantor shall be entitled to unilaterally terminate this Sight Line Easement by recording a termination of easement, notwithstanding any opposition by Grantee to the contrary, provided such termination is recorded in the Snohomish County official records on or before the 90th day after the site plan expiration date.

3. Grantee shall include Grantor as an additional insured on its commercial general liability insurance policy, and shall defend, indemnify and hold Grantor and all of its employees or agents harmless from any and all claims, demands, or liability arising during its construction on Grantor's property and in the Easement Area from alleged acts or omissions by Grantee or its employees or agents. Grantee's obligations set forth herein shall continue for a period of six years following completion of the work.

4. Once Grantor approves the Grantee work required to be completed pursuant to Paragraph 2 above, then Grantee shall have no further obligation to maintain the Sight Line Easement Area.

5. Grantor shall not place any improvements, including but not limited to fences, in the Sight Line Easement Area that will materially impede the sight line view over and through the Sight Line Easement Area and shall not allow any vegetation, shrubbery or trees to be placed on the Sight Line Easement Area that materially impede the sight line view over and through the Sight Line Easement Area.

6. Grantor shall be entitled to use that portion of the Grantor Property which is encumbered by this Sight Line Easement for any purpose not inconsistent with the above granted restrictions.

7. The easements, covenants and restrictions herein contained shall inure to the benefit of and bind the heirs, legal representatives, successors and assigns of the respective parties hereto and shall run with the land. This Sight Line Easement shall be effective upon recording.

8. The parties, their heirs, successors and assigns shall have the right to enforce all restrictions, conditions, reservation imposed by the provisions of this Sight Line Easement by a proceeding at law or equity. Failure by an owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right of a subsequent owner to do so thereafter. The prevailing party in any such action shall be awarded its, his or her reasonable costs and attorney fees as determined by the court or arbitrator at trial or arbitration and on appeal.

9. Invalidation of any one or these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

IN WITNESS WHEREOF, Grantor and Grantee have executed and delivered this Sight Line Easement as of the date of recording.

GRANTOR:  
City of Mill Creek

GRANTEE:  
Carr Holdings LLC

By \_\_\_\_\_  
\_\_\_\_\_, City Manager

By: \_\_\_\_\_  
Daniel I. Carr, Managing Member

Attest:

By \_\_\_\_\_  
\_\_\_\_\_, City Clerk

By: \_\_\_\_\_  
Courtney L. Carr, Managing Member





**EXHIBIT A**  
**SITE LINE EASEMENT**

(LEGAL DESCRIPTION)

AN EASEMENT FOR SITE DISTANCE ACROSS THAT PORTION OF THE NORTH 330 FEET OF THE EAST 660 FEET OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 28 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 3 OF HEATHERWOOD APARTMENTS RECORDED DECEMBER 09, 2002 UNDER RECORDING NO. 200212095001, IN SNOHOMISH COUNTY, WASHINGTON;

THENCE NORTH 88°02'09" WEST PARALLEL TO THE SOUTH LINE OF SAID LOT 3 A DISTANCE OF 8.50 FEET TO THE EAST MARGIN OF NORTH CREEK DRIVE;

THENCE SOUTH 01°30'19" WEST ALONG THE EASTERLY MARGIN OF ROAD NORTH CREEK DRIVE A DISTANCE OF 101.91 FEET;

THENCE NORTH 15°58'28" EAST A DISTANCE OF 105.04 FEET TO THE SOUTH LINE OF SAID PARCEL A;

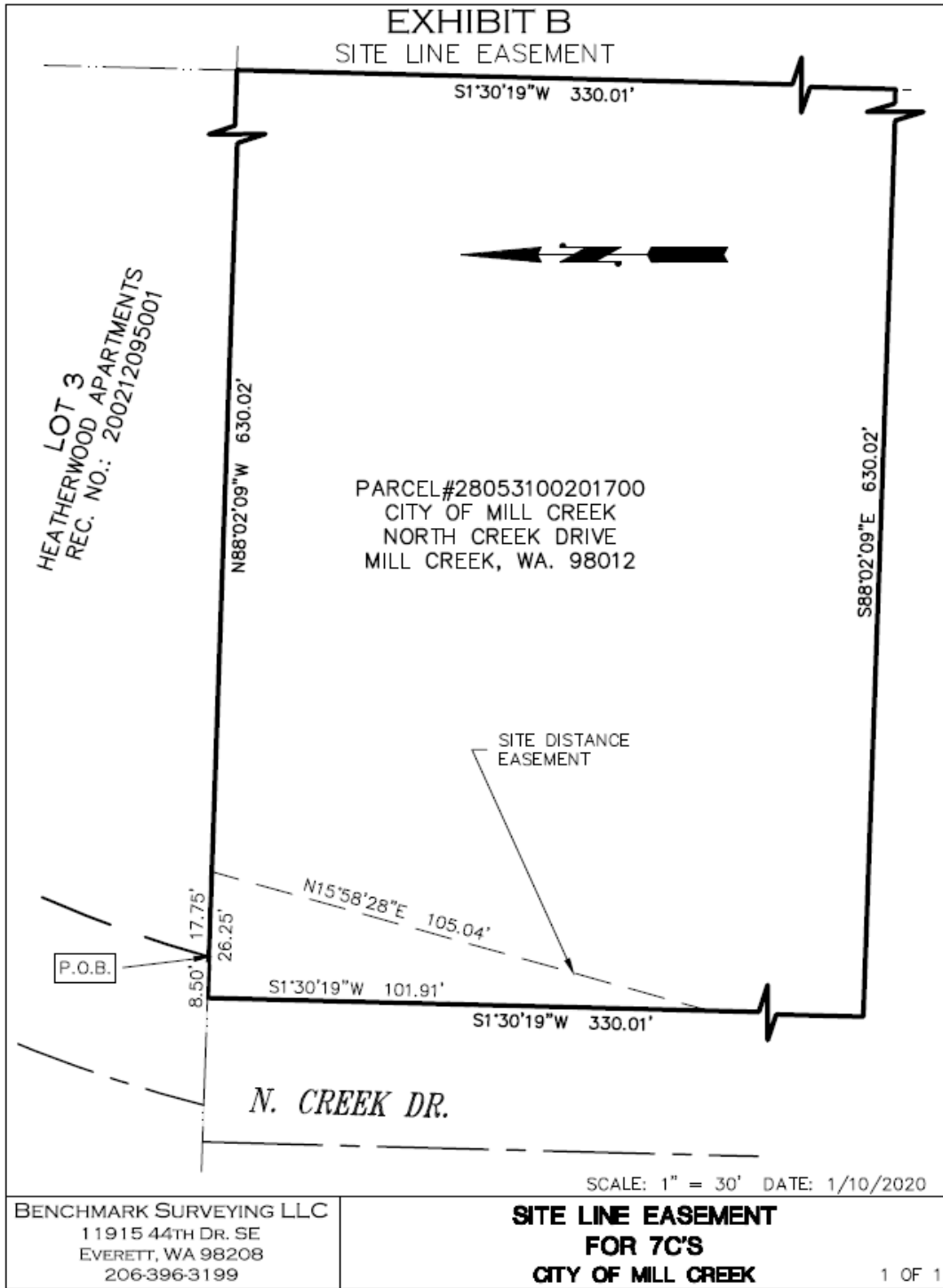
THENCE NORTH 88°02'09" WEST ALONG SOUTH LINE OF SAID LOT 3 A DISTANCE OF 17.75 FEET TO THE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

BENCHMARK SURVEYING LLC  
7c'S 59TH AVE NE  
1/10/2020



132583.0004/8106418.2



132583.0004/8106418.2

**RESOLUTION NO. \_\_\_\_\_**  
**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILL CREEK,**  
**WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE**  
**A VEHICULAR SITE LINE EASEMENT AFFECTING A PORTION**  
**OF THE REMILLARD PROPERTY**

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WHEREAS, on September 19, 2019, Carr Holdings LLC (“Carr”) submitted a development application including a binding site plan to construct a swim school at the corner of North Creek Drive and Dumas Road in Mill Creek; and

WHEREAS, the only feasible access to and egress from the Carr property for this project is along N. Creek Dr.; and;

WHEREAS, The City’s development standards require adequate site distance to be provided at the location where vehicles will access and egress the Carr site; and

WHEREAS the City-owned Remillard property is located at 13615 North Creek Dr. SE and is adjacent to the Carr site;

WHEREAS, Carr has requested that the City grant a vehicular site line easement across an approximately 1,337 square foot triangle of the Remillard property in order to comply with the City’s site distance requirements; and

WHEREAS, the City Council has determined that granting a site line easement would not materially impact the future use of the Remillard property; and

WHEREAS, the use proposed on the Carr site will be consistent with the planned use of the Remillard property and benefit the community;

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILL CREEK, WASHINGTON, as follows:

Section 1. The City Manager is authorized to execute a sight line easement covering approximately 1,337 square feet of the Remillard property, depicted on the attached exhibit subject to the following conditions:

- a. Carr shall remove all the existing vegetation and the fence in the easement area at its expense;
- b. Carr shall replace the existing fence with a new wooden fence along the eastern boundary of the easement area and connect it to the new fence constructed along the southern edge of the Carr property;
- c. Carr shall grade and finish the easement area with river rock to minimize maintenance;
- d. Carr and/or its contractor shall name the City as an additional insured on its commercial general liability policy.

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e. Carr shall defend, indemnify and hold the city harmless from all claims arising out of work performed in the easement area;

f. In the event that the improvements set forth in the binding site plan are not completed before the expiration of the binding site plan, then the City shall be entitled to extinguish the easement; and

g. Carr shall compensate the City in the amount of \$\_\_\_\_\_representing the value of the easement.

This Resolution shall be effective immediately upon passage, approval and signatures hereon as required by law.

PASSED IN OPEN MEETING this \_\_\_\_\_ day of July, 2020 by a vote of \_\_\_\_\_ for, \_\_\_\_\_ against, and \_\_\_\_\_ abstaining.

APPROVED:

\_\_\_\_\_  
PAM PRUITT, MAYOR

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
NAOMI FAY, INTERIM CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
GRANT DEGGINGER, INTERIM CITY ATTORNEY

FILED WITH THE CITY CLERK: \_\_\_\_\_

PASSED BY THE CITY COUNCIL: \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_



Agenda Item # \_\_\_\_\_

Meeting Date: July 14, 2020

## **CITY COUNCIL AGENDA SUMMARY**

City of Mill Creek, Washington

**AGENDA ITEM: Comcast Franchise Discussion**

**PROPOSED MOTION:**

None. Discussion only at this time. This item will be brought to the City Council for potential action at the July 28, 2020 City Council meeting.

**KEY FACTS AND INFORMATION SUMMARY:**

Comcast currently holds an expired cable franchise from the City by virtue of a cable franchise agreement effective on December 8, 2006. Comcast has asked that the City renew Comcast's franchise to maintain its cable system in the City's rights-of-way in order to continue serving the City's residents. Subsequently, the City's outside legal consultant, through the Cohen Law Group, and Comcast entered into negotiations which resulted in the attached franchise agreement.

This franchise grants Comcast a new 10-year, nonexclusive right to use the City's rights-of-ways to maintain its cable system. The franchise also continues the 5% franchise fee revenue for the City. In addition, the franchise also ensures that Comcast will continue providing the City an access channel for regional PEG programming. Finally, the franchise outlines requirements related to bonding, insurance, and indemnification to ensure that appropriate protections are in place for any work that occurs under this franchise.

**CITY MANAGER RECOMMENDATION:**

At the July 28<sup>th</sup> City Council meeting, approve an ordinance granting a 10-year, nonexclusive cable franchise to Comcast.

**ATTACHMENTS:**

- Attachment A: Cohen Law Group Executive Summary
- Attachment B: Cohen Law Group FCC Section 621 Order Summary
- Attachment C: Comcast Cable Franchise Agreement

Respectfully Submitted:

*Michael G. Ciaravino*

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Michael G. Ciaravino  
City Manager

{EFM2199826.DOCX;2/05739.000020/ }



July 8, 2020

***RE: Executive Summary of Cable Franchise Agreement with Comcast***

Dear Tom:

I am pleased to inform you that we have reached tentative agreement with Comcast regarding cable franchise renewal for the City of Mill Creek. The following is an executive summary of the major provisions of the Cable Franchise Agreement (the "Agreement") negotiated with Terry Davis and Vincent Buys of Comcast. While there are many other important provisions contained in the Agreement, I have limited this summary to the major items outlined herein. The Agreement is, of course, subject to the approval of the City Council.

**1. Franchise Fees (Sections 1(p) and 6)**

Municipalities are entitled under federal law to assess a franchise fee of up to five percent (5%) of the cable operator's "gross revenues" for cable services provided within the municipality. The City currently assesses a five percent (5%) fee and this remains the same in the Agreement. The definition of "gross revenues" in the Agreement includes an itemized list of revenue sources that will maximize the City's franchise fee revenue through all current revenue sources as well as all foreseeable future sources.

While several relevant variables such as rate changes, subscriber activity, subscriber penetration, and related issues can and will impact the City's franchise fees, the Agreement is intended to maximize the City's franchise fee revenue. Please note that all franchise fees are passed through to Comcast cable subscribers as a separate line item on their bills. Franchise fees will be paid to the City on a quarterly basis.

In addition to franchise fee revenue, the Agreement ensures franchise fee accountability. It permits the City to conduct a franchise fee review of Comcast's records to determine whether Comcast has paid franchise fees accurately. Should the franchise fee review reveal that franchise fees have been underpaid, then Comcast must pay the

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underpaid amount plus twelve percent (12%) interest per annum on the underpayment. Furthermore, should the franchise fee review reveal that franchise fees have been underpaid by five percent (5%) or more, then Comcast also must contribute up to \$5,000 toward the cost of the franchise fee review.

Finally, the Agreement includes “bundled services” protection. If a subscriber purchases more than one of Comcast’s three services (i.e. cable, internet and phone) and receives a bundled services discount, this provision ensures that the discount does not apply only to cable services because if this were to occur then franchise fee revenue to the City would be reduced. Section 6.5 of the Agreement states that “Comcast shall equitably allocate charges for Cable/Non Cable Services so as not to unfairly diminish Franchise Fees to the City.”

**2. Subscriber Service Standards (Section 4)**

The Agreement establishes a set of comprehensive, quantifiable, and enforceable subscriber service standards. These standards adopt the relevant recommendations of the Federal Communications Commission (“FCC”), which are not enforceable unless they are included in a franchise agreement, and also add certain additional requirements. The customer service standards include, but are not limited to, the following:

- Telephone answering time limits for subscriber service representatives, including the requirement that Comcast to perform surveys to measure compliance with the standards upon receipt of subscriber complaints;
- Time limits for commencing installation, service interruption, and repair work, including limits on technicians cancelling appointments with subscribers;
- A four-hour “appointment window” for service calls;
- Requirements for notices to subscribers;
- Requirements that bills be clear, concise, and fully itemized;
- Subscriber complaint procedures, including that Comcast may not impose late fees on a subscriber who disputes a bill in good faith until the investigation is completed;
- Requirements to be met prior to disconnecting service; and
- Standards of subscriber privacy.

**3. Right-of-Way Protections (Section 3)**

The Agreement provides many legal protections of the City's public rights-of-way. For example, Comcast agreed to repair any damage to public property by Comcast or any of its contractors or subcontractors within 20 business days after the damage occurs. The Agreement also requires that all lines and equipment be maintained in a safe and suitable condition and in good order and repair consistent with industry standards.

In addition, the Agreement includes basic safety standards, the right to obtain service area maps of the Comcast system in the City upon request, requirements for disconnection and relocation of Comcast's wires and equipment if the City makes changes to the public right-of-way, removal of equipment in the event of a public safety emergency, and the need for City approval for cutting down any trees in the public rights-of-way.

**4. Reporting Requirements (Sections 5.9, 5.10 and 6.3)**

The Agreement includes several reporting requirements to the City to be met by Comcast. The first is a detailed franchise fee report to accompany each quarterly franchise fee payment. The report must contain line items for sources of revenue received by Comcast and the amount of revenue received from each source.

Second, Comcast must, upon written request, provide to the City copies of reports or other communications to any federal or state regulatory agencies relating to Comcast's cable system within the City.

Third, Comcast must, upon written request, provide to the City various items including the most recently completed annual corporate report; a gross revenue statement for the preceding fiscal year; a list of services, rates and channel line-ups; a list of all FCC filings related to operation of the cable system in the City and a compilation of subscriber complaints, actions taken and resolution along with a log of service calls.

**5. Cable System Requirements and Service Area (Section 3)**

The Agreement provides technical requirements for the cable system serving the City. It requires the system to be built for digital television standards and meet or exceed all technical performance standards of the FCC, the National Electric Code and the National Electrical Safety Code. It also requires that Comcast perform tests on the cable system upon request, report to the City regarding the results of the tests, and take corrective measures if the results show non-compliance with applicable standards.

Furthermore, the Agreement requires that Comcast make cable service available to every area in which there is a minimum of 30 residential dwelling units per linear aerial plant mile (60 units per mile underground) subject to certain conditions. Any unit within



125 feet of the main distribution line is entitled to a standard installation rate. For any unit beyond 125 feet, Comcast must connect it if the unit owner pays the incremental cost beyond the installation costs for the initial 125 feet.

**6. City Access Channel (Section 8)**

Federal law grants municipalities the right to dedicated public, educational and governmental (“PEG”) channels often referred to as access channels. Comcast currently provides a single access channel - Channel 21 - which receives a feed from the City of Lynnwood Government Access Channel which Comcast will continue to provide until such time as the City notifies Comcast of the City’s intent to control and operate the City’s own access channel. Should the City so notify Comcast, the Agreement contains many operationally-oriented provisions regarding the operation of the new access channel which will supersede the current arrangement by which the City simply sees the City of Lynnwood Government Access Channel.

**7. Future Access Channel Funding (Section 8.3)**

The Agreement sets forth a mechanism by which Comcast will collect \$.25 per month per subscriber should the City notify Comcast of the City’s intent to control and operate the access channel rather than continue to receive the feed from the City of Lynnwood government access channel. The Agreement further provides that if at the time of such notice the remaining term of the Agreement does not accommodate the full capital needs of the City, then the City and Comcast may review the possibility of extending the term of the Agreement to increase the PEG fees collected by Comcast and paid to the City.

**8. Services to Community Facilities (Section 7.1)**

The Agreement requires Comcast to provide Basic level television service to various schools, libraries and municipal buildings without charge. Notwithstanding the foregoing, the FCC Section 621 Report and Order of September 2019 (“Order”) has injected a major new restriction that previously did not exist. The Order states that “costs attributable to franchise terms that require a cable operator to provide free or discounted cable services to public buildings” may be offset against franchise fees. The FCC found that these services are in-kind contributions and fall within the 5% franchise fee cap.<sup>1</sup>

The Order outlines the new options for local governments: (1) continue to receive the existing cable services and reduce franchise fee revenue by the “rate card” value of those services; (2) discontinue all the services and continue receiving franchise fees at their

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<sup>1</sup> For those municipalities that assess a franchise fee percentage that is lower than 5%, they may receive free cable services for public facilities, provided the services have a fair market value that, combined with franchise fee revenue, is less than 5% of gross revenues.

current level; or (3) terminate the service to certain buildings and reduce franchise fees by the value of the reduced service. These options are reflected in Section 7.1 of the Agreement. Comcast must notify the City regarding the amount of the monthly fee for each facility. The City will then have 120 days to notify Comcast of its decision to opt for either (1), (2), or (3) above with respect to each facility.

Please note that the FCC Order is being challenged in court by many municipalities and local government associations around the country. These appeals have been consolidated in the Sixth Circuit Court of Appeals and are currently being briefed. The Agreement states that, if the Order is reversed on final appeal, then the City and Comcast will meet promptly to discuss what impact such action has on the provision of in-kind cable-related contributions.

**9. Liquidated Damages for Violations (Section 9.2)**

Once Comcast has agreed to the obligations described in this executive summary and the other obligations contained in the Agreement, it is critical for the City to be able to enforce these obligations. Section 8.2 of the Agreement allows for monetary fines, also known as “liquidated damages,” in the amount of \$100 per day for each violation of the Agreement. The City may assess such monetary fines after providing Comcast with written notice and allowing Comcast thirty (30) days to correct the violation, unless the nature of the violation is such that it cannot be cured within thirty (30) days, in which case the cure period may be extended. Liquidated damages may be assessed for 120 days, after which the City may commence revocation proceedings or initiate a lawsuit.

**10. Performance Bond (Section 9.4)**

Comcast also agreed to obtain and maintain a performance bond running to the City in the amount of \$25,000 during the franchise term. The performance bond will help to ensure Comcast’s faithful performance of its obligations under the Agreement, including any recovery of liquidated or compensatory damages.

**11. Length of Franchise Term (Section 2.2)**

Due to the fact that cable technology is constantly changing and we cannot predict the state of this technology in the future, we recommend the shortest possible length of term for the Agreement. For Comcast, this is 10 years. We know from our extensive dealings with Comcast over the past 22 years that this is a policy position from which Comcast will not deviate.

**12. Competitive Equity Provision (Section 2.6)**

Pursuant to the 1992 Cable Television Consumer Protection and Competition Act, cable franchise agreements may not be exclusive. The City may award more than one franchise to different cable operators. In large part due to the emergence of Verizon as a competitor in the cable industry, Comcast insisted upon including a competitive equity provision, also known as “level playing field” provision, in the Agreement. These provisions relate to the prospect of another cable operator providing cable services in the City in the future.

The competitive equity provision negotiated with Comcast effectively states that, if the City grants another cable franchise and the material terms of the new franchise agreement are more favorable or less burdensome to the competitor than the terms in this Agreement are to Comcast, then the Agreement shall be amended accordingly. In our experience, an issue-by-issue analysis can be misleading by focusing on singular issues in a vacuum without taking into account the totality of the negotiations. As such, the Agreement contains language indicating that the City and Comcast agree that the intention of this provision does not require a word for word comparison as the litmus test is simply materially equivalence from a regulatory and financial burden perspective and thus is not prejudicial to the City.

This concludes the executive summary of the major items contained in the Agreement. There are many other provisions in the Agreement, but we have highlighted the major items. Thank you for your cooperation in this effort. Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely yours,

*Phillip M. Fraga*

Phillip M. Fraga



**Summary of the FCC's Recent Third Report and Order  
Regarding Cable Franchise In-Kind Benefits  
August 8, 2019**

On August 1, 2019, the Federal Communications Commission ("FCC" or "Commission"), in a 3-2 vote, approved its Third Report and Order, formally titled "In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act" ("Order"). This Order will have a significant impact on our clients with respect to their cable franchise benefits and obligations. The Order is the result of a notice and comment proceeding in which numerous local governments, national municipal organizations, cable operators, and cable industry associations participated. Our law firm submitted comments on behalf of several clients. The following is a brief summary of the salient issues in the 85-page Order.

The underlying premise of the Order is that all in-kind, non-capital cable company contributions to local governments fall within the five percent (5%) franchise fee and therefore must be offset against franchise fee payments. The Order defines "in-kind cable-related contributions" as "...any non-monetary contributions related to the provision of cable services provided by cable operators as a condition or requirement of a local franchise, including but not limited to, free or discounted cable service to public buildings, non-capital costs in support of PEG access, and costs attributable to the construction, maintenance, and service of I-Nets. It does not include the costs of complying with build-out and customer service requirements." (Fn. 42) The key practical effects of ruling are as follows:

**PEG Channels and PEG Financial Support**

The Order finds that the "costs associated with PEG channel capacity" are in-kind costs that fall within the definition of franchise fees. (¶42) In other words, the cost of the PEG channels themselves, separate from financial support for PEG channels, may be offset against franchise fee payments. In contrast to the Commission's Notice of Proposed Rulemaking ("NPRM") that commenced this proceeding, however, the FCC declined to decide whether PEG channel capacity is a capital cost and, if so, what valuation method to use to determine the cost. The Order states: "While we find that the costs associated with the provision of PEG channel capacity are cable-related, in-kind costs that fall within the definition of 'franchise fee', **we find that the record is insufficiently developed** to determine whether such costs should be excluded from the franchise fee as a capital cost under the exemption in Section 621(g)(2)(C)." (emphasis added) This is good news, at least in the short term, for municipalities that have active PEG channels.

With respect to PEG financial support, the Commission maintains its longstanding rule, derived from Section 611 of the Cable Act, that contributions for PEG capital costs are exempt

from franchise fees and may not be offset against franchise fee payments. The definition of “capital costs” in the Order is actually a slight improvement over the FCC’s old definition, in that it describes such costs as “costs incurred in acquiring or improving capital assets for PEG access facilities.” (§33) This appears to include all equipment used to support PEG channels and the production of local programming: “[W]e believe at the present time that the definition of ‘capital costs’... includes equipment purchased in connection with PEG access facilities, even if it is not purchased in conjunction with the construction of such facilities.” Id. Cable operator financial support used for PEG operations, on the other hand, may be offset against franchise fees.

Finally, there was some question as to whether the costs of transport facilities for PEG channel signals may be offset against franchise fees. The Commission found that they may not: “[T]he installation of transport facilities dedicated for long-term use by a PEG provider for the transmittal of recurring programming to a cable headend or other point in the cable system—PEG transport—does not count toward the five percent franchise fee cap... Although we agree that the costs associated with the use of transport lines for ‘episodic’ or ‘short-term’ PEG programming is an operating cost that is subject to the franchise fee cap, we decline to establish a fixed quantity of PEG transport return lines that is ‘adequate’ under section 621(a)(4)(B).” (§49)

**Institutional Networks or I-Nets**

Unlike PEG channel capacity and PEG capital costs, the Order finds that the value of I-Nets may be offset against franchise fee revenue at this time. The Order states: “We find that the costs associated with the construction, maintenance, and service of an I-Net fall within the five percent cap on franchise fees. Such costs are cable-related, in-kind contributions...” (§55) The Commission acknowledges that I-Nets are a benefit to their communities, but it concludes that “such benefits cannot override the statutory framework, which carves out only limited exclusions from franchise fees.” Id. With respect to the method for determining the value of the offset, the FCC lands squarely on the side of fair market value. It states the following:

We must address the value of other in-kind contributions, however, including free service to public buildings and I-Net contributions. We believe that fair market value, where there is a product in the market, is the most reasonable valuation for in-kind contributions because it is easy to ascertain—cable operators have rate cards to set the rates they charge customers for services they offer. Moreover, a fair market valuation reflects the fact that, if a franchising authority did not require an in-kind assessment as part of its franchise, it would have no choice but to pay the market rate for services it needs from the cable operator or another provider. (§61)

How fair market value is actually determined remains to be seen and will certainly be a source of contention between local governments and cable operators. For local governments that currently have I-Nets provided by their cable operator(s), however, the Order is bad news indeed.

**Courtesy Cable Services**

The Order confirms and restates that so-called “free cable services” to municipal facilities, schools, and public libraries may be offset against franchise fees. It states: “We find that costs attributable to franchise terms that require a cable operator to provide free or discounted cable

service to public buildings, including buildings leased by or under control of the franchise authority, are cable-related in-kind contributions that fall within the five percent cap on franchise fees.” (¶26) As with its discussion of I-Nets, the Order concludes that any such services must be offset against franchise fees based on their fair market value. (¶61)

The FCC outlines the options available to local governments when it comes to these services: “The local franchising authority may wish to either (1) continue to receive the existing free cable service and a monetary payment of five percent minus the fair market value of that service, or (2) discontinue service and receive a monetary payment of five percent, or (3) reduce the free cable service to select municipal buildings and receive a monetary payment of five percent minus the fair market value of the reduced service.” (Fn. 251) The FCC is clearly driving home its position that local governments cannot receive free cable service in addition to franchise fees.

### **Implementation and Conclusion**

The Order is prospective and may not be applied retroactively. (¶62) For those current franchise agreements that conflict with the Order, the Commission “encourages the parties to negotiate franchise modifications within a reasonable period of time.” Id. In footnote 247 to the Order, it concludes that 120 days “should be, in most cases” a reasonable period of time. What happens if the parties cannot agree on changes to the franchise agreement? Here the FCC assumes that any failure to reach agreement will be the fault of the local government: “If a franchise authority refuses to modify any provision of a franchise agreement that is inconsistent with this Order, that provision is subject to preemption under Section 636(c).” (¶62) Section 636(c) states simply that any franchise term that is inconsistent with the Cable Act will be deemed to be preempted. 47 U.S.C. 556(c) While the FCC may believe that this provides clear guidance as to how the Order will be implemented in practice, many questions remain.

Finally, in comments to the Commission prior to the Order, the National Association of Telecommunications Officers and Advisors (NATOA) asked the FCC to clarify that cable operators are not *required* to modify franchise agreements to comply with the Order, but rather may voluntarily choose to keep intact current franchise provisions. In response to this request, the Commission states: “We reject the request of NATOA that we clarify that this Order is ‘permissive not mandatory.’ Complying with the terms of the statute is not optional.” (Fn. 251)

The Order will take effect 30 days after its publication in the Federal Register. There is no specific timeline for Federal Register publication, but it could occur as early as mid-August. There is no doubt that the Order will be legally challenged by many local governments and municipal associations. In our judgment, most of the conclusions of the Order are not sustainable under federal law. We will be sure to address the legal issues on appeal in future client correspondence. This concludes our summary of the Order. Please feel free to contact me directly if you have any questions or concerns.

Dan Cohen  
Cohen Law Group  
dcohen@cohenlawgroup.org  
(412) 447-0130 x11

**ORDINANCE NO. 2020 - \_\_**

**AN ORDINANCE OF THE CITY OF MILL CREEK, WASHINGTON GRANTING A CABLE TELEVISION FRANCHISE TO COMCAST CABLE COMMUNICATIONS, LLC FOR A TEN (10) YEAR TERM; AND ESTABLISHING AN EFFECTIVE DATE.**

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**WHEREAS**, the City of Mill Creek (“City”) is authorized to grant and renew franchises for the installation, operation, and maintenance of cable television systems within the City; and

**WHEREAS**, the City previously granted a franchise to provide cable television services to Comcast of California/Colorado/ Washington I, Inc., a Washington corporation, also known as Comcast, Inc. under Ordinance No. 2006-652; and

**WHEREAS**, Comcast, Inc., subsequently reorganized to Comcast Cable Communications, LLC (“Comcast”); and

**WHEREAS**, Comcast desires to accept this franchise subject to the terms and conditions stated herein, and agrees to abide by these terms and conditions; and

**WHEREAS**, the City Council finds that it will serve the public interest of the citizens of the City to grant a new cable television franchise to Comcast on the terms and conditions hereinafter set forth.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MILL CREEK, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:**

Section 1. Franchise Adopted. A cable television franchise is hereby granted to Comcast on the terms and conditions hereinafter set forth. Said franchise shall become effective on the terms as set forth herein.

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**CABLE FRANCHISE AGREEMENT**

**BETWEEN**

**MILL CREEK CITY**

**AND**

**COMCAST CABLE COMMUNICATIONS, LLC**

{ERZ2176901.DOCX;2/05739.000020/ }



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**CABLE FRANCHISE AGREEMENT**

This Cable Franchise Agreement (hereinafter referred to as the “Agreement”) is executed as of the \_\_\_\_ day of \_\_\_\_\_, 2020 (hereinafter referred to as the “Effective Date”) by and between the City of Mill Creek, a City located in Snohomish County, Washington (hereinafter referred to as the “City”) and Comcast Cable Communications, LLC (hereinafter referred to as “Comcast”).

**WHEREAS**, pursuant to Title VI of the Telecommunications Act of 1934, *as amended*, the regulations of the Federal Communications Commission (hereinafter referred to as the “FCC”) and Washington law, the City is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing Public Rights-of-Way and properties within the City’s jurisdiction; and

**WHEREAS**, Comcast currently holds an expired cable franchise from the City by virtue of a cable franchise agreement executed on May 1, 2006;

**WHEREAS**, Comcast has requested that the City renew Comcast’s franchise to maintain, construct, operate, and maintain its Cable System over, under and along the aforesaid rights-of-ways for use by the City’s residents; and

**WHEREAS**, the aforesaid Public Rights-of-Way used by Comcast are public properties acquired and maintained by the City on behalf of the citizens of the City, and the right to use said rights-of-way is a valuable property right; and

**WHEREAS**, the City desires to protect and manage the aforesaid rights-of-way, establish standards of Subscriber service, maintain a technologically advanced Cable System, receive Franchise Fees for Comcast’s use of the City’s public rights-of-ways as provided by federal law, obtain the use of an educational and governmental channel, establish certain reporting requirements, obtain certain complimentary services, provide legal protections for the City, and meet the current and future cable-related needs of its residents; and

**WHEREAS**, the City has held a public hearing on the subject of cable franchise renewal, including reviewing the cable operator’s past performance and identifying the City’s future cable-related community needs; and

**WHEREAS**, the City has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

**WHEREAS**, the City, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing Comcast’s franchise according to the terms and conditions contained herein; and

**WHEREAS**, the City has determined that Comcast has the financial, legal and technical ability to provide Cable Services to Subscribers located in the City;

**NOW THEREFORE**, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and Comcast agree as follows:

**SECTION 1 DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

(a) Affiliated Entity - Any person(s) or entity(ies) who control, are owned or controlled by or are under common ownership or control; with Comcast Cable Communications, LLC, but does not include affiliates that are not involved with the use management, operation, construction, repair and/or maintenance of Comcast Corporation’s cable systems.

(b) Basic Service - The service tier that includes at least the retransmission of local broadcast television signals.

(c) Cable Act - Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competitive Act of 1992 and the Telecommunications Act of 1996, as it may, from time to time, be further amended.

(d) Cable Service - The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) Cable System - A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621 of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; or (5) any facilities of any electric utility used solely for operating its electric utility systems.

(f) Channel - A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by FCC regulation.

(g) Complaint - Any written (including electronic) or oral communication by a Subscriber expressing dissatisfaction with any aspect of Comcast’s Cable Service operation of its Cable System.

(h) Communications Act - The federal Communications Act of 1934, as amended, and as it may, from time to time, be further amended.

(j) Drop - The coaxial or fiber optic or other cable that connects a home or building to the Cable System.

(k) Educational and Governmental (EG) Channel - An access channel that consists of local educational and/or governmental programming.

(l) Emergency - A condition that either (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public; or (2) has caused or is likely to cause the Cable system in the Public Rights-of-Way to be unusable and result in loss of the services provided.

(m) FCC - Federal Communications Commission.

(n) Franchise - The authorization granted by the City to construct, operate and maintain a Cable System within the corporate limits of the City as embodied in the terms and conditions of this Agreement.

(o) Franchise Fee - The fee that Comcast remits to the City pursuant to Section 622 of the Cable Act, 47 U.S.C. §542, and Section 6.1 of this Agreement.

(p) Gross Revenues - Shall be defined as all revenues derived by Comcast and/or an Affiliated Entity that is the cable operator of the Cable System from the operation of Comcast's Cable System to provide Cable Services within the City. Gross revenues include:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees for service calls;
- fees for additional outlets;
- fees paid to Comcast for channels designated for commercial leased access use and shall be allocated on a *pro rata* basis using total Cable Service subscribers within the City;
- converter, remote control and other Cable Service equipment rentals, leases, or sales;

- Advertising Revenues as defined herein;
- late fees, convenience fees, administrative fees, maintenance fees, termination fees, and other multiservice fees, which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- revenues from program guides;
- commissions from home shopping channels and which shall be allocated on a *pro rata* basis using total Cable Service subscribers within the City.
- payments or other consideration received from programmers for carriage of programming on the Cable System and recognized as revenue under GAAP.

a. “Advertising Revenues” shall mean revenues derived from sales of advertising that run on Comcast’s Cable System and delivered to Comcast’s subscribers within the City and shall be allocated on a *pro rata* basis using total Cable Service subscribers reached by the advertising. Additionally, Comcast agrees that Gross Revenues subject to franchise fees shall include all commissions paid to National Cable Communications (“NCC”) and Comcast Spotlight (“Spotlight”) or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

b. “Gross Revenues” shall not include:

- actual bad debt write-offs, except that which is subsequently collected;
- any taxes and/or fees on Cable Services furnished by Comcast imposed by any municipality, state or other governmental unit;
- fees imposed by any municipality, state or other governmental unit on Comcast including but not limited to FCC Regulatory Fees and Public, Educational and Governmental (PEG) Fees;
- contra-expenses including but not limited to launch fees and marketing co-op fees; and
- unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

c. To the extent revenues are received by Comcast for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Comcast shall calculate revenues to be included in Gross Revenues using a reasonable allocation methodology in accordance with GAAP.

d. Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree

that reference shall be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

(q) HD - High definition format.

(r) Leased Access or Commercial Access Channel - Any channel on Comcast’s Cable System designated for use by any entity that is unaffiliated with Comcast pursuant to Section 612 of the Cable Act, 47 U.S.C. §532.

(s) Multiple Dwelling Units or MDUs - Any building, buildings or area occupied by dwelling units, appurtenances thereto, grounds and facilities, which dwelling units are intended or designed to be owned, occupied or leased for occupation, or actually occupied, as individual homes or residences for three (3) or more households.

(t) Normal Business Hours - Those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

(u) Normal Operating Conditions - Business conditions within Comcast’s service department which are within the control of Comcast. Those conditions that are not within the control of Comcast include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions or other conditions of Force Majeure.

(v) Outlet - An interior receptacle that connects a television set to the Cable System.

(w) Programming - Any video or audio signal carried over the Cable System that is generally considered comparable to programming provided by a television broadcast station.

(x) Public Rights-of-Way - The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other rights-of-way open for public motor vehicle use, as the same now or may thereafter exist, which are under the jurisdiction or control of the City.

(y) Service Interruption - The loss of picture or sound on one or more channels.

(z) Subscriber - A person or entity who contracts with Comcast for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.



**SECTION 2 GRANT OF FRANCHISE**

**2.1 GRANT OF AUTHORITY**

(a) City hereby grants to Comcast a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct, operate, maintain, reconstruct, repair and upgrade the Cable System for the purpose of providing Cable Services, subject to the terms and conditions set forth in this Franchise and applicable law. This Franchise shall constitute both a right and an obligation to fulfill the obligations set forth in, the provisions of this Franchise.

(b) Comcast, through this Franchise, is granted the right to operate its Cable System using the public Rights-of-Way within the Franchise Area in compliance with the City of Mill Creek Municipal Code, as may be amended periodically and all lawfully enacted applicable construction codes and regulations. Comcast specifically agrees to comply with the provisions of City ordinances provided that in the event of a conflict between the provisions of ordinances and the Franchise, the express provisions of the Franchise shall govern. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to any ordinance, rule, regulation, resolution, or other enactment of City, except in the lawful exercise of City's police power. Comcast acknowledges that the City may modify its generally applicable regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Comcast agrees to comply with such lawful modifications unless there is a conflict with Comcast's negotiated rights hereunder. Comcast reserves all rights it may have to challenge such lawful modifications whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

(c) This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions for use of the Rights-of-Way as allowed by applicable law, should Comcast provide service other than Cable Service, nor shall this Franchise be interpreted to either prevent or authorize Comcast from making any other lawful uses of the Cable System as permitted by applicable law.

**2.2 TERM OF FRANCHISE**

The term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date and expiring on \_\_\_\_\_, unless the Franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

**2.3 REPRESENTATIONS AND WARRANTIES**

Comcast represents, warrants and acknowledges that, as of the Effective Date:

(a) Comcast is duly organized, validly existing and in good standing under the laws of the State of Washington;

(b) Comcast has the requisite approval from the applicable federal and state agencies;

(c) There is no action or proceeding pending or threatened against Comcast which would interfere with its performance or its ability to perform the requirements of this Agreement;

(d) Pursuant to Section 625(f) of the Cable Act, as of the Effective Date, the performance of all terms and conditions in this Agreement is commercially practicable.

## **2.4 NON-EXCLUSIVITY**

This Franchise granted to Comcast shall be non-exclusive. Nothing in this Agreement shall affect the right of the City to grant other Franchises to construct, operate or maintain a Cable System.

## **2.5 FRANCHISE SUBJECT TO FEDERAL, STATE AND LOCAL LAWS**

This Franchise is subject to and shall be governed by all lawful and applicable provisions of federal, state and generally applicable local laws and regulations. This Franchise is further subject to all generally applicable ordinances and resolutions of the City, including but not limited to MCMC Chapter 12.16 Articles V-VII. Without waiving any of its rights, the City agrees that, to the extent any term of this Agreement is inconsistent with the terms of any City cable franchise ordinance existing as of the Effective Date, this Agreement shall control.

## **2.6 COMPETITIVE EQUITY**

(a) Comcast acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to utilize the Rights-of-Way in order to provide Cable Services or similar video programming service within the City. If the City grants such an additional franchise or other similar lawful authorization that permits a new entrant to utilize the Rights-of-Way for Cable Services containing material terms and conditions that differ from Comcast's material obligations under this Franchise, or declines to require such franchise or other similar lawful authorization where it has the legal authority to do so, then the parties agree that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" for the purposes of this Section only include, but are not limited to: Franchise Fees and Gross Revenues; complementary services; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; competitive equity (or its equivalent); audits; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section so long as the City does not have lawful authority to regulate such wireless broadband networks within the Franchise Area.

(b) The modification process of this Franchise as provided for in Section 2.6(a) shall only be initiated by written notice by Comcast to the City regarding specified franchise obligations. Comcast's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Comcast's obligations under this Franchise; (2) identifying the Franchise terms and conditions for which Comcast is seeking amendments; (3) providing text for any proposed Franchise amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent.

(c) Upon receipt of Comcast's written notice as provided in Section 2.6(b), the City and Comcast agree that they will use best efforts in good faith to negotiate Comcast's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the City and Comcast reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include the modifications.

(d) In the alternative to Franchise modification negotiations as provided for in Section 2.6(c), or if the City and Comcast fail to reach agreement in such negotiations, Comcast may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another multi-channel video programming provider (with the understanding that Comcast may use its current system design and technology infrastructure to meet any requirements of the new franchise), so as to insure that the regulatory and financial burdens on each entity are equivalent. If Comcast so elects, the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other multi-channel video programming provider.

**SECTION 3 SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE**

**3.1 TECHNICAL REQUIREMENT**

(a) Comcast shall operate, maintain, construct, and extend the Cable System so as to offer Cable Services throughout all parts of the City where the density requirements of Section 3.2 are met. The Cable Service provided by the Cable System shall be delivered in accordance with applicable FCC standards and the Cable Act. The Cable System shall meet or exceed any and all applicable technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the State of Washington and the generally applicable laws, ordinances and construction standards of the City.

(b) Stand-by power at the headend(s) shall be provided in the event of a service interruption. Stand-by power must activate automatically upon the failure of commercial utility power.

**3.2 AREA TO BE SERVED**

(a) Comcast shall make Cable Service available to every dwelling occupied by a person requesting Cable Service provided that Comcast is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act. Comcast shall extend the Cable System into all areas within the City where there is a minimum of thirty (30) dwelling units per linear plant mile of aerial cable and sixty (60) dwelling units per underground mile of cable, calculated from the end of the main distribution line. Comcast shall complete said extensions with a reasonable timeframe of written notification to Comcast by the City and verification by Comcast that an area has met the minimum density standard set forth herein (weather permitting). Comcast's obligation hereunder shall be subject to the timely performance of walk-out, make ready and location of all underground utilities.

(b) Any dwelling unit within one hundred twenty-five (125) feet aerial distance from the main distribution line shall be entitled to a standard installation rate. For any dwelling unit in excess of one hundred twenty-five (125) feet or that requires an underground installation, Comcast shall extend the Cable Service and the Subscriber shall pay Comcast's actual cost of installation from its main distribution system with such cost being only the incremental portion beyond one hundred twenty-five (125) feet for aerial installations.

(c) The City has the authority to require Comcast to place wires and/or equipment underground, provided that the City imposes such requirement on all similarly situated entities. All installations of wires and/or equipment by Comcast shall be underground in those areas of the City where the distribution wires and/or equipment of similarly situated entities (i.e. telephone, electric, and telecommunications utilities) are underground. Comcast shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals.

(d) In the event that public or private funds are made available to pay for such projects, Comcast may apply or request that the City apply for such funds. In the event that Comcast is required to place existing aerial plant underground, Comcast reserves its right to pass those costs through to Subscribers if and to the extent allowed by applicable law.

**3.3 TECHNICAL PERFORMANCE**

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

Where there exists other evidence which in the judgment of the City casts doubt upon the reliability or technical quality of Cable Service, the City shall have the right and authority to require Comcast to test, analyze and report on the performance of the Cable System. Comcast shall fully cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (a) the nature of the complaint or problem which precipitated the special tests;
- (b) the Cable System component tested;
- (c) the equipment used and procedures employed in testing;
- (d) the method, if any, in which such complaint or problem was resolved; and
- (e) any other information pertinent to said tests and analysis which may be required.

**3.4 EMERGENCY ALERT SYSTEM**

Comcast shall comply with the Emergency Alert System requirements of the FCC.

**3.5 SERVICES FOR SUBSCRIBERS WITH DISABILITIES**

Comcast shall comply with all applicable federal regulations, including the Communications Act of 1934, as amended, that ensure the provision of Cable Services and related equipment are accessible to and usable by persons with disabilities, if readily achievable.

**3.6 SERVICE TO MULTIPLE DWELLING UNITS (“MDUs”)**

Comcast and the City hereto acknowledge and agree that installation and provision of Cable Service to MDUs are subject to a separate negotiation between the landlord, owner or governing body of any such MDU and Comcast, which negotiations shall be conducted in

accordance with the procedures set forth in the Cable Act, as amended, applicable FCC regulations, and applicable law.

**3.7 REPAIRS AND RESTORATION**

(a) Whenever Comcast or any of its agents, including any contractor or subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public property, the same shall be replaced and the surface restored in as reasonably good condition as before the disturbance within twenty (20) business days of the completion of the disturbance, weather permitting. Upon failure of Comcast to comply within the time specified and the City having notified Comcast in writing of the restoration and repairs required, the City may cause proper restoration and repairs to be made and the expense of such work shall be paid by Comcast upon demand by the City.

(b) Whenever Comcast or any agent, including any contractor or subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the City if required for the proper installation, operation and maintenance of such equipment, cable, or wires. Comcast shall promptly repair and restore any public or private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within twenty (20) business days, weather permitting.

(c) Comcast's operation, construction, repair and maintenance personnel, including all contractors and subcontractors, shall be trained in the use of all equipment and the safe operation of vehicles. Such personnel shall follow all safety procedures required by all applicable federal, state and local laws and regulations. All areas of the Cable System shall be inspected in accordance with such applicable federal, state and local laws and regulations so as to prevent hazardous conditions or risks to safety for the public and/or operating and maintenance personnel. Comcast shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the City or any public utility serving the City.

(d) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by Comcast personnel, including all contractors and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1).

(e) Whenever Comcast or any agent, including any contractor or subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the One Call Locator Service pursuant to RCW 19.122 prior to any such disturbance. Comcast shall adhere to any additional undergrounding requirements which the State may establish in the future.

(f) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the City, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair, including the removal of bundles of unused cables and fixing disconnected or

hanging lines.

### **3.8 CITY FACILITIES**

Comcast and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by Comcast. Therefore, if Comcast constructs, relocates or places ducts or conduits in the Public Rights-of-Way it shall submit these plans to the City in accordance with the City's permitting process so as to provide the City with an opportunity to request that Comcast place additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070. Other than submission of plans in accordance with the City's permitting requirements, nothing set forth herein shall obligate Comcast to slow the progress of any future construction of the Cable System to accommodate the City. In addition, Comcast agrees to cooperate with the City in any other construction by Comcast that involves trenching or boring. The City shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in Comcast's trenches and bores under this paragraph.

### **3.9 DISCONNECTION AND RELOCATION**

(a) Comcast shall, at no cost to the City and within a timely manner, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the City or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure, construction, alteration, repair, or improvement of the Public Rights-of-Way, or any other reason related to public health, safety and welfare.

(b) In requiring Comcast to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City and Comcast shall comply with the requirements of RCW 35.99.060.

### **3.10 EMERGENCY REMOVAL OF EQUIPMENT**

If, at any time, in case of fire or other disaster in the City, it shall be necessary, in the reasonable judgment of the City or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the City shall have the right to do so without cost or liability, provided that, wherever possible, the City shall give Comcast notice and the ability to relocate wires, cable or other equipment.

### **3.11 TREE TRIMMING**

(a) Comcast, or its agents, including contractors and subcontractors, shall have the authority to trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of Comcast. Any such tree trimming shall only be performed in accordance with applicable laws and regulations.

(b) If Comcast or its agents, including contractors and subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and/or maintenance of its equipment, it shall apply to the City for permission, with the exception of Emergency situations as defined in Section 1(l), and if permission is granted, shall perform such cutting and removal in accordance with the regulations of the City. Upon any tree removal, the City may require Comcast to replace the tree at the City's discretion.

**3.12 CABLE SYSTEM FUNCTIONALITY**

As of the Effective Date, Comcast provides its Cable Service utilizing a two-way hybrid fiber-coaxial Cable System architecture that deploys from Comcast's Headend to nodes throughout the City where the signal is converted to radio frequency and runs along the coaxial portion of the Cable System to Subscribers. Over the term of this Franchise, Comcast shall maintain the Cable System in a manner consistent with, or in excess of, a typical 750 MHz Cable System meeting or exceed FCC technical quality standards regardless of any particular manner in which the signal is transmitted.

**3.13 BROAD PROGRAMMING CATEGORIES**

To the extent they are reasonably available, Comcast shall carry the following programming categories:

- (a) Education, Science, Foreign language
- (b) News and Information and Government
- (c) Children, Family
- (d) Movies/Sports
- (e) General Entertainment, Music and the Arts

**3.14 SERVICE FOR THE HEARING IMPAIRED**

Comcast shall comply with any FCC requirements regarding altering or adapting programming for the hearing impaired. Comcast shall not take action to remove or alter closed captioning provided for the hearing impaired as a part of any programming. Comcast shall deliver intact such closed captioning in the manner in which it arrives at the headend or from another origination source to the Cable System.

**3.15 SIGNAL SCRAMBLING**

Comcast shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

**3.16 CONTINUITY OF SERVICE**

Subscribers shall continue to receive Cable Service from Comcast provided their financial and other obligations to Comcast are honored. Subject to Force Majeure provisions in



Section 9.1, Comcast shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, Comcast shall use its best efforts to interrupt service only during periods of minimum use. When necessary service interruptions of more than twenty-four (24) hours can be anticipated, Comcast shall notify Subscribers in advance of such service interruption along with providing Subscribers with a pro-rata credit for the time of such service interruption.

**3.17 PARENTAL CONTROL CAPABILITY**

Comcast shall comply with Section 641 of the Cable Act.

**SECTION 4 SUBSCRIBER SERVICE STANDARDS**

**4.1 OFFICE HOURS AND TELEPHONE AVAILABILITY**

(a) Comcast service center shall be conveniently located to the City and shall be open during Normal Business Hours.

(b) Comcast shall provide and maintain a toll-free telephone access line that will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall respond to Subscriber telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service or an automated response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(c) Under Normal Operating Conditions and during Normal Business Hours, telephone answering time by a Subscriber representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis. Under Normal Operating Conditions, the Subscriber shall receive a busy signal less than three percent (3%) of the time.

(d) If the City determines, after receiving Complaints itself and/or receiving a record of Complaints made to Comcast in accordance with Sections 4.5 and/or 5.7(a), that there is a clear failure to comply with the telephone answering requirements above, the City shall notify Comcast in writing requesting a telephone answering compliance report for the past ninety (90) days.

**4.2 INSTALLATIONS AND SERVICE CALLS**

(a) Comcast shall maintain a staff of employees sufficient to provide adequate and prompt service to its Subscribers. Comcast shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling, shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any Comcast employee or agent, including any subcontractor, shall prominently display the Comcast logo.

(b) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those aerial installations that are located up to one hundred twenty-five (125) feet from the existing main distribution line.

(c) Upon scheduling of appointments with the Subscriber for installations, service calls and other activities, Comcast shall provide the Subscriber with either a specific time or an "appointment window" of a maximum of four (4) hours during Normal Business Hours. Comcast may schedule service calls and installation activities outside of Normal Business Hours at a time that is convenient for the Subscriber.

(d) Comcast may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the Subscriber must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the Subscriber.

#### **4.3 NOTICES**

(a) Comcast shall provide written notice to each Subscriber upon initial subscription, at intervals not less than one (1) per year thereafter to each Subscriber and at any time upon request, regarding each of the following areas:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Channel positions of programming carried on the Cable System;
- (4) Installation and service maintenance policies;
- (5) Instructions on how to use the Cable Service;
- (6) Billing and Subscriber complaint procedures;
- (7) Comcast's address, telephone number and office hours; and
- (8) A notice of Subscriber privacy rights as required by federal law.

(b) In accordance with applicable law, Comcast shall notify Subscribers and the City in writing of any changes in rates, programming services or channel positions a minimum of thirty (30) days in advance of such changes provided that such change is within the control of Comcast. Comcast shall not be required to provide prior notice to Subscribers of any rate change that is the result of a regulatory fee, Franchise Fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the State of Washington or the City on the transaction between Comcast and the Subscriber.

(c) Comcast shall maintain a file available to the public containing information as required by federal law.

#### **4.4 BILLING**

(a) Bills shall be clear, concise and understandable. Bills must be fully itemized, and shall include, all applicable service tiers, equipment charges and any installation or repair charges. Bills shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.

(b) Comcast shall not assess late fees for non-payment of a current bill until at least thirty (30) days have elapsed since the mailing of the bill by Comcast.

(c) The City hereby requests that Comcast omit the City's name, address, and telephone number from Subscriber bills as permitted by 47 C.F.R. § 76.952.

#### **4.5 SUBSCRIBER COMPLAINT PROCEDURES**

Comcast shall establish clear written procedures for resolving all Subscriber Complaints, which shall include at least the following:

(a) Comcast shall provide the Subscriber with a written response to a written Complaint within thirty (30) days of its receipt at the local business office. Such response shall include the results of its inquiry into the subject matter of the Complaint, its conclusions based on the inquiry, and its decision in response to the Complaint.

(b) If the City is contacted directly about a Subscriber Complaint, it shall notify Comcast. When Comcast receives such notification, the time period for Comcast to respond as required by Section 4.5(a) shall commence.

(c) Any Subscriber who, in good faith, disputes all or part of any bill sent by Comcast has the option of withholding the disputed amount, without a late fee or disconnection, until Comcast has investigated the dispute in good faith and has made a determination that the amount is owed provided that:

(1) The Subscriber provides a written Complaint to Comcast in a timely fashion and includes identifying information;

(2) The Subscriber pays all undisputed charges; and

(3) The Subscriber cooperates in determining the appropriateness of the charges in dispute.

(4) It is the sole responsibility of Comcast and the Subscriber to resolve any Complaints.

(d) Comcast shall maintain Subscriber Complaint records for inspection by the affected Subscriber, which shall contain the date each Complaint is received, the name and address of the affected Subscriber, a description of the Complaint, the date of resolution of the Complaint, and a description of the resolution.

#### **4.6 DISCONNECTION**

Comcast may disconnect or terminate a Subscriber's service for cause using non-discriminatory practices and in accordance with federal and state consumer protection laws.

#### **4.7 SERVICE INTERRUPTIONS**

Excluding conditions beyond its control, Comcast shall begin working on a Service Interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known and shall pursue to completion. Comcast shall begin actions to correct other service problems in the next business day after notification of the service problem. Comcast shall make reasonable effort to notify affected Subscribers of any planned service interruptions and upon an emergency service interruption.

#### **4.8 PRIVACY**

(a) Comcast shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and state privacy laws and regulations.

(b) Comcast shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personally-identifiable Subscriber information is handled and protected strictly in accordance with all applicable laws and regulations.

(c) Except as permitted by Section 631 of the Cable Act as amended, neither Comcast nor its designee nor its employees shall make available to any third party, including the City, information concerning the viewing habits or subscription package decisions of any individual Subscriber. If a court authorizes or orders such disclosure, Comcast shall notify the Subscriber prior to disclosure, unless such notification is otherwise prohibited by applicable law or the court.

(d) In compliance with federal and state privacy laws and regulations and upon a request by a Subscriber, Comcast shall make available for inspection at a reasonable time and place all personal Subscriber information that Comcast maintains regarding said Subscriber. Comcast shall ensure that all information related to billing and service requests is accurate and up to date and shall promptly correct its records upon reasonable Subscriber verification.

(e) Comcast shall not make its Subscriber list or lists, or any portion thereof, available to any other person or entity, with or without remuneration in conformance with Section 631 of the Cable Act.

**SECTION 5 REGULATION BY THE CITY**

**5.1 RIGHT TO INSPECT**

(a) Books and Records. Throughout the term of this Franchise, Comcast agrees that the City, upon reasonable prior written notice to Comcast, may review such of Comcast's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Comcast's compliance with the provisions of this Franchise at Comcast's business office, during normal business hours, and without unreasonably interfering with Comcast's business operations. Such books and records shall include any records required to be kept in a public file by Comcast pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by Comcast for a minimum period of six (6) years.

(b) In addition, Comcast shall maintain for inspection by the public and the City all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

(c) Notwithstanding anything to the contrary set forth in this Section, Comcast shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. That said, Comcast does agree to provide all information reasonably required to verify compliance with the material terms of the Franchise. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Comcast shall be responsible for clearly and conspicuously identifying the work confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. If the City receives a demand from any Person for disclosure of any information designated by Comcast as confidential, the City shall promptly advise Comcast and provide Comcast with a copy of any written request by the party demanding access to such information so that Comcast can take appropriate steps to protect its interests within ten (10) days of receiving notification of the City's intended disclosure. Nothing in the Section 5.1(c) prohibits the City from complying with RCW 42.56, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Comcast for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order requested by Comcast which prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order, Comcast shall reimburse the City for any fines or penalties imposed for failure to disclose such records.

**5.2 PERFORMANCE REVIEW**

Upon thirty (30) days written notification, the City may hold a performance evaluation session, no more than once every thirty-six (36) months, to ensure proper performance of the provisions of this Franchise.

(a) All evaluation sessions shall be open to the public.

(b) Topics which may be discussed at any evaluation session include, but are not limited to, construction issues, Franchise Fee payments, liquidated damages, free or discounted Cable Service, application of new technologies, Cable System performance, Cable Services currently provided and programming offered, future plans of Comcast for new services or programs, Subscriber Complaints, privacy, judicial and FCC rulings, line extension policies and the City's or Comcast's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(c) During evaluations under this subsection, Comcast shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation.

### **5.3 RESERVED AUTHORITY**

The City reserves the regulatory authority arising from the Cable Act and any other applicable federal or state laws or regulations. Nothing in this Agreement shall remove, restrict or reduce the City's authority, rights and privileges it now holds, or which hereafter may be conferred upon it, including any right to exercise its police powers in the regulation and control of the use of the Public Rights-of-Way.

### **5.4 POLICE POWERS**

Comcast's rights under this Agreement are subject to the police powers of the City to adopt and enforce general laws and regulations necessary for the safety and welfare of the public. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power. Comcast reserves any rights it may have to challenge such policies whether arising in contract or at law. The City reserves all defenses to such challenge, whether arising in contract or law.

### **5.5 NO LIMITATION ON TAXING OR FEE AUTHORITY**

Nothing in this section or in this Agreement shall be construed to limit the authority of the City to impose any tax, fee or assessment of general applicability. Such taxes, fees or assessments shall be in addition to Franchise Fees.

### **5.6 PERMITS**

Comcast shall apply to the City for all generally-applicable required permits (e.g. blanket right of way permits, right of way use permits and tree removal permits, as applicable) and shall not undertake any activities in the Public Rights-of-Way subject to a permit without receipt of such permit. Comcast shall pay any and all required permit fees.

**5.7 RECORDS AND REPORTS**

(a) Subject to Section 5.1, the City shall have access to, and the right to inspect, any books and records of Comcast and its Affiliates which are reasonably necessary to monitor and enforce Comcast's compliance with the provisions of this Franchise at Comcast's regional business office, during normal business hours, and without unreasonably interfering with Comcast's business operations.

(b) The City may, in writing, request copies of any such records or books that are not identified as proprietary or confidential, and Comcast shall provide such copies within thirty (30) days of the transmittal of such request.

(1) One copy of all reports and records required under this or any other Section shall be furnished to the City at the sole expense of Comcast.

(2) If the requested books and records are too voluminous, or identified as proprietary and confidential, or for security reasons cannot be copied or removed, then the City shall inspect them at Comcast's regional office.

**5.8 MAPS AND RECORDS REQUIRED**

Comcast shall make available to the City upon request:

(a) A route map that depicts the general location of the Cable System facilities placed in the Right-of-Ways. The route map shall identify Cable System facilities as aerial or underground and is not required to depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers. Comcast shall also provide, if requested, an electronic format of the aerial/underground facilities in relation to a Right-of-Way centerline reference to allow the City to add this information to City's geographic information system program;

(b) A copy of all FCC filings that relate to the operation of the Cable System in the Franchise area; and

(c) A list of Comcast's Cable Services, rates, and Channel line-up.

**5.9 SUBMITTAL OF DOCUMENTS**

(a) Upon written request, Comcast shall submit to the City a copy of any application, notification, communication or document of any kind, submitted by Comcast or its Affiliates to any federal, State or local courts, regulatory agencies and other governmental bodies if such document directly relates to the operations of Comcast's Cable System within the Franchise Area.

(b) Comcast shall submit such documents to the City no later than thirty (30) days after receipt of the City's request. Comcast shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been treated as



confidential or determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

**5.10 ANNUAL REPORTS**

Within ninety (90) days of the City's written request, and subject to subsection 8.2, Comcast shall submit to the City a written report containing the following information:

- (a) The most recently completed annual corporate report, or link to website where information is located;
- (b) A Gross Revenue statement for the preceding fiscal year and all deductions and computations for the period, reviewed by a certified public accountant, who may also be the chief financial officer or controller of Comcast.
- (c) A list of Comcast's Cable Services, rates and Channel line-ups;
- (d) A copy of all FCC filings on behalf of Comcast, its parent corporations or Affiliates that relate to the operation of the Cable System in the Franchise Area; and
- (e) A compilation of Subscriber complaints, actions taken and resolution, and a log of service calls.

**SECTION 6 COMPENSATION TO THE CITY**

**6.1 FRANCHISE FEES**

(a) Comcast shall pay to the City a franchise fee in an amount equal to five percent (5%) of the annual Gross Revenues received from the operation of its Cable System to provide Cable Service in the City; provided, however, that Comcast shall not be compelled to pay any higher percentage of franchise fees than any other Cable Service provider providing services in the Franchise Area. The City may amend the Franchise Fee upon written notice to Comcast provided that the Franchise Fee may not exceed the maximum percentage permitted by law. A copy of the Resolution or Ordinance authorizing the Franchise Fee rate adjustment by the City shall accompany such written notice. Any change in Comcast's Franchise Fee obligation contained herein shall commence within ninety (90) days from such written notice.

(b) No term or condition in this Franchise shall in any way modify or affect Comcast's obligation to pay in full the Franchise Fees as provided by the terms of this Franchise. Although the total sum of the Franchise Fees payments and additional Access Fee (herein also referred to as a "PEG Fee") commitments (defined as capital costs which are required by this Franchise to be incurred for Access facilities) may total more than five percent (5%) of Comcast's Gross Revenues in any 12-month period, Comcast agrees that such additional commitments regarding PEG Fees are excluded from the definition of Franchise Fees herein and are not Franchise Fees, nor are they to be offset or credited against any Franchise Fees payments due to the City. Additionally, any security fund, performance bond or letter of credit required shall not be offset against Franchise Fees. Furthermore, the City and Comcast agree that any utility tax, business and occupation tax or similar local tax of general applicability shall be in addition to any Franchise Fees required herein and there shall be no offset against Franchise Fees subject to applicable law. Should Comcast elect to offset certain non-cash commitments or initiatives against the Franchise Fee in accordance with applicable law, Comcast shall provide the City ninety (90) days advance written notice.

**6.2 QUARTERLY PAYMENTS**

Franchise Fee payments to the City under this provision shall be computed at the end of each calendar quarter. Such payments shall be made within forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 (for the fourth quarter). In the event that any Franchise Fee payment is not made on or before the date by which it is due, then interest calculated at the maximum allowed rate as provided under State law calculated from the date the underpayment was originally due until the date the City receives the payment. No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. The period of limitation for recovery of franchise fees payable hereunder shall be six (6) years from the date on which payment by Comcast was due. Upon request and if mutually agreeable, Comcast shall deposit the Franchise Fee payments electronically into an account as designated by the City.

### **6.3 QUARTERLY REPORTS**

For each Franchise Fee payment described in Section 6.2 above, Comcast shall provide a written report containing an accurate statement of Comcast's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of Comcast's Cable System and showing the basis for the computation of fees. Specifically, the report shall contain line items for sources of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of Comcast.

### **6.4 FRANCHISE FEE REVIEW**

Not more than once every three (3) years, the City shall have the right to conduct a Franchise Fee review or audit of Comcast's records reasonably related to the sources, amounts and computation of Gross Revenues. Any such review or audit shall occur within seventy-two (72) months from the date the City receives such payment, after which period any such payment shall be considered final. Within thirty (30) days of a written request, Comcast shall provide the City with copies of financial records related to the Franchise Fee review or audit. The statute of limitations for contracts shall apply to any identification of underpayments.

In the event of an alleged underpayment, the City shall provide Comcast with a written statement indicating the basis for the alleged underpayment. If the Franchise Fee review reveals that there have been no underpayments, the City shall provide written notice to Comcast indicating that no underpayments were found and that the Franchise Fee review is closed. Comcast shall have thirty (30) days from the receipt of the statement regarding any alleged underpayment to provide the City with any written objection to the results of the Franchise Fee review, including any substantiating documentation. Based on this exchange of information, the City shall make a final determination of the underpayment(s), if any, within thirty (30) days of Comcast's objection and shall provide Comcast with written notice of the determination of underpayment(s), if any, within thirty (30) days of Comcast's objection and shall provide Comcast with written notice of the determination. If Comcast disputes all or part of the audit findings, then the parties shall meet in an attempt to resolve the matter. If the parties are unable to resolve the matter, then either of the parties may refer that matter to non-binding arbitration. Each party shall bear one-half of the costs and expenses of the arbitration proceedings. The decision of the arbitrator(s) shall be subject to judicial review at the request of either party.

Any Franchise Fee payment due to the City as a result of the Franchise Fee review shall be paid to the City by Comcast within sixty (60) days from the date the City notifies Comcast of its final determination, or if matter is submitted to non-binding arbitration, within sixty (60) days from the final disposition of such action. Comcast shall pay, in addition to the amount due, interest at the rate of twelve percent (12%) per annum calculated from the date the underpayment was originally due until the date the City receives the payment.

If Franchise Fees have been underpaid by five percent (5%) or more, then Comcast shall also pay for the cost of the audit up to five thousand dollars (\$5,000) per year being audited for a maximum of 3 years.

**6.5 BUNDLED SERVICES**

If Cable Services subject to the Franchise Fee required under this Section 6 are provided to Subscribers in conjunction with Non Cable Services, the Franchise Fee shall be applied only to the Gross Revenues of the Cable Services, as reflected on the books and records of Comcast in accordance with GAAP. Comcast shall equitably allocate charges for Cable/Non Cable Services so as not to unfairly diminish Franchise Fees to the City.

**SECTION 7 COMPLIMENTARY CABLE SERVICE**

**7.1 COMPLIMENTARY CABLE SERVICE**

The City acknowledges that Comcast currently provides certain complimentary video services to schools, libraries, and municipal buildings, without charge. Comcast will voluntarily continue to provide this complimentary service, provided that the facilities are already served or are within 125 aerial service feet or 60 underground trench feet (a Standard Installation) of Comcast's Cable System, excluding those buildings or portions of buildings that house or occupy prison/jail populations. Comcast agrees to voluntarily continue, until it elects to discontinue, the provision of complimentary services. At such time as Comcast elects to discontinue the provision of complimentary services, Comcast agrees that it will do so only after providing City with at least one hundred twenty (120) days' prior written notice. Such notice shall document the proposed offset or service charges so that the City can make an informed decision as to whether to keep the services. Upon written notice from Comcast, the City shall be given the full one hundred twenty (120) days to review the list of outlets receiving complimentary service and shall have the right to discontinue receipt of all or a portion of the outlets receiving complimentary service provided by Comcast in the event Comcast elects to discontinue the provision of complimentary service as set forth herein. In the event applicable law is overturned in whole or in part by action of the FCC or through judicial review, the City and Comcast will meet promptly to discuss what impact such action has on the provision of the in-kind cable-related contributions to which this section applies.

**SECTION 8 CITY ACCESS CHANNEL**

**8.1 ACCESS CHANNEL**

As of the effective date of this Franchise, Comcast is providing and maintaining one (1) Access Channel (currently on channel 21) to Subscribers within the Franchise Area. Both parties acknowledge the Access Channel has been provided by Comcast with programming from a regional PEG programmer from outside of the City. Channel 21 is the Access Channel, receiving a feed from the City of Lynnwood Government Access Channel. Comcast agrees that it will continue making this Access Channel available to Subscribers within the Franchise Area throughout the term of this Franchise.

**8.2 FUTURE ACCESS PROGRAMMING**

At any time during the term of this Franchise, the City may elect to undertake responsibility to control and operate the Access Channel provided under this Franchise. To do so, the City shall provide Comcast written notice of its intent to control and operate the Access Channel. Upon receipt of the written notice, the City and Comcast shall meet to discuss and mutually agree upon an implementation plan to activate said Channel controlled and operated by the City. Upon activation of the City's controlled Access Channel, it shall replace the existing City of Lynnwood's Government Access Channel.

**8.3 FUTURE ACCESS CHANNEL FUNDING**

Within 30 days following the City's notice to Comcast of its intent to control and operate the Access Channel as per Section 8.2, Comcast shall place an amount of \$.25 per month on Subscriber billing statements as a PEG Access fee (the "PEG Fee"). At the time of notice, if the remaining term of this Franchise does not accommodate the full capital needs of the City, both parties may review the possibilities of extending the term of the Franchise to increase the PEG Fees collected and paid to the City. Comcast shall recoup and remit the monthly total to the City on the same quarterly schedule as franchise fee payments. PEG contributions shall be used by the City in lawful capital support of Access programming. Comcast shall not be responsible for paying the PEG contribution with respect to gratis or Bad Debt accounts. To the extent allowed by federal law, the PEG contribution may be treated as an external cost by Comcast and itemized on subscribers' bills. The City shall have discretion to allocate the PEG contribution in accordance with applicable law. To the extent the City makes Access PEG investments using City funds prior to receiving the PEG Fee contribution funds, the City is entitled to apply the subsequent PEG contribution payments from Comcast toward such City PEG investments. Upon Comcast's written request, the City shall submit a report annually on the use of the City specific PEG Fee. The City shall submit a report to Comcast within one hundred twenty (120) days of a written request. Comcast may review the records of the City regarding the use of the PEG Fee. The City and Comcast agree that any PEG contribution shall be referred to on subscribers' bills as a "PEG fee" or language substantially similar thereto.

In the event the PEG Fee payment required above is not made on or before the required date, Comcast shall pay, during the period such unpaid amount is owed, additional compensation

and interest charges computed from such due date, at an annual rate of the maximum rate permitted by law. Comcast waives any right to claim that any interest or penalties imposed hereunder constitute franchise fees within the meaning of 47 U.S.C. § 542. Failure to pay required the PEG Fee in a timely manner shall also be a material violation of this Franchise, subject to all sanctions and remedies herein, and the City may, at its discretion, declare this Franchise void and of no further force and effect.

**8.4 MANAGEMENT AND CONTROL OF THE FUTURE ACCESS CHANNEL**

In the event the City elects to control and operate the Access Channel, the City may authorize a designated Access provider to control, operate, and manage the use of any and all City specific Access facilities, including without limitation, the operation of the Channel. The City or its designee may formulate rules for the operation of the City's Access Channel, consistent with Section 611(d) of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 531(d) and the Franchise. Nothing herein shall prohibit the City from authorizing itself to be a designated Access provider. Comcast shall cooperate with the City and designated Access provider in the use of the Cable System and City's specific Access facilities for the provision of the Access Channel.

**8.5 LOCATION OF ACCESS CHANNEL**

In the event the City elects to control and operate the Access Channel, Comcast shall provide one hundred twenty (120) days written notice to the City prior to any relocation of the Access Channel. The Access Channel reassignment must be to a Channel that meets or exceeds the service and technical standards required by this Franchise. In connection with the movement of the City's Access Channel to another Channel number, Comcast shall provide a bill message on subscribers' bills along with a message on subscribers' converter boxes.

**8.6 ACCESS CHANNEL ON LOWEST TIER**

Comcast must make the Access Channel available on the lowest service tier to Subscribers within the City.

**8.7 ACCESS CHANNEL QUALITY**

(a) All PEG Access Channels required shall comply with the FCC Technical Standards. Comcast shall provide Headend and hub equipment and routine maintenance and repair and replace, if necessary, any of Comcast's equipment required to carry the Access signal.

(b) If Comcast makes a change in its Cable System and related equipment and facilities, or in its signal delivery technology, which directly or indirectly affects the signal quality or method or type of transmission of Access programming or services, Comcast shall take all necessary technical steps and provide necessary technical assistance, including the acquisition of all necessary equipment, up to the point of demarcation to ensure that the capabilities of the Access Channel and delivery of Access programming are not diminished or adversely affected by such change.

(c) Comcast shall not exercise editorial control over the programming of any Access Channel. Comcast will not interrupt the signal provided on any Access Channel except during circumstances beyond Comcast's control or if necessary for testing or planned System maintenance purposes.

**8.8 INFORMATION ON ACCESS PROGRAMMING**

Comcast will facilitate the listing of City's Access programming on an interactive programming guide (such as TV GUIDE) on Tiers of service in which it is available. This requirement will only be enforceable so long as the service is available on Comcast's Cable System and City agrees to pay for all costs associated with the service.

**8.9 RETURN LINES**

When the City provides notice to Comcast concerning its election to control and operate the Access Channel, the City shall designate its proposed Access facility location. Within sixty (60) days of receiving notice, Comcast shall review its facilities and records and provide an estimate of costs associated with the construction and activation of a fiber optic return line capable of transmitting Video Programming to enable the distribution of the City's Access programming to Subscribers on the provided Access Channel. The return line shall run from a location to be determined by the City to Comcast's facilities. Within a reasonable time-period of receiving the City's directive, Comcast shall construct and activate a return line in accordance with the cost estimate previously provided. The City agrees to pay the actual costs of the return line within ninety (90) days of construction / activation and receipt of an invoice from Comcast.



**SECTION 9 ENFORCEMENT, INDEMINIFICATION AND INSURANCE**

**9.1 VIOLATIONS AND OPPORTUNITY TO CURE**

(a) If the City has reason to believe that Comcast violated any provision of this Agreement, it shall notify Comcast in writing of the nature of such violation and the section(s) of this Agreement that it believes has been violated and the details relating thereto.

(b) Comcast shall have thirty (30) days to cure such violation after written notice is received by taking reasonable steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within thirty (30) days, the period of time in which Comcast must cure the violation shall be extended by the City in writing for such additional time necessary to complete the cure, provided that Comcast shall have promptly commenced to cure and is taking reasonable steps to cure in the reasonable judgment of the City.

(c) If the violation has not been cured within the time allowed under Section 9.1(b) and, in the City's judgment, Comcast has not taken reasonable steps to cure the violation, then the City may deem that Comcast is liable for liquidated damages and/or any other right or remedy in accordance with Section 9.2-9.4.

**9.2 LIQUIDATED DAMAGES**

(a) Because Comcast's failure to comply with material terms of this Agreement may result in harm to the City and because it will be difficult to measure the extent of such injury, the City may assess liquidated damages against Comcast in the following amounts:

(1) For failure to provide data, documents, reports or information or to cooperate with the City during an application process or Cable System review or as otherwise provided herein, the liquidated damages shall be \$100.00 per day for each day, or part thereof, such failure occurs or continues.

(2) For a material breach of the customer service standards, the liquidated damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.

(3) For failure to comply with any of the material provisions of this Franchise, or other City ordinance for which liquidated damages is not otherwise specifically provided pursuant to this paragraph (a), the liquidated damages shall be \$250.00 per day for each day, or part thereof, such failure occurs or continues.

(b) Comcast shall first have an opportunity to cure in accordance with Section 9.1(b). Such damages shall not be a substitute for specific performance by Comcast or legal action by the City, but shall be in addition to such specific performance or legal action.

(c) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City. Liquidated damages may

not be assessed for a time period exceeding one hundred and twenty (120) days per violation. The City may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction after the assessment of liquidated damages or in lieu of liquidated damages.

**9.3 REVOCATION**

(a) In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke this Franchise if:

(1) It is demonstrated that Comcast practiced any fraud or deceit upon the City in the operation of its Cable System or any other activities pursuant to this Agreement;

(2) Comcast repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 3.1;

(3) Comcast repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement;

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Comcast or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 9.1. Comcast shall not be excused from the performance of any of its obligations under this Franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of City Council after an appropriate public hearing that shall afford Comcast due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the State of Washington. All notice requirements shall be met by providing Comcast at least thirty (30) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The City, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Comcast of mitigating circumstances or good cause for the existence of such grounds. The City shall issue such declaration and finding within thirty (30) days in a written decision which shall be sent via certified or overnight mail to Comcast.

(d) Comcast may appeal such determination to an appropriate court of choosing within thirty (30) days of receipt of the City's written decision.

**9.4 PERFORMANCE BOND**

(a) Comcast shall obtain and maintain, throughout the term of this Agreement, at its sole cost and expense, a performance bond with a surety company licensed to do business in the State of Washington to ensure Comcast's faithful performance of its obligations. The performance

bond shall provide that the City may recover from the principal and surety any and all liquidated damages and/or compensatory damages incurred by the City for Comcast's violations of this Agreement, after notice and opportunity to cure, in accordance with Sections 8.1 and 8.2.

(b) The performance bond shall be in the amount of Twenty-Five Thousand Dollars (\$25,000). Comcast shall not reduce, cancel or materially change said bond from the requirement contained herein without the express prior written permission of the City.

(c) This performance bond shall not relieve Comcast of providing at its expense, all of the applicable surety, construction and warranty bonding requirements provided for in the City Code or development standards officially adopted by the City.

## **9.5 INDEMNIFICATION**

(a) General Indemnification. Comcast shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Comcast's acts, errors or omissions, or from the conduct of Comcast's business, or from any activity, work or thing done, permitted, or suffered by Comcast arising from or in connection with this Franchise. Comcast shall consult and cooperate with the City while conducting its defense of the City. Said indemnification obligations shall extend to any settlement made by Comcast.

(b) Indemnification for Relocation. Comcast shall indemnify, defend and hold the City, its elected officials, officers, authorized agents, boards, and employees, harmless for any damages, claims, additional costs, or expenses payable by, the City related to, arising out of, or resulting from Comcast's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any lawful relocation required by the City. The provisions of this Section 9.5(b) shall specifically include, but are not limited to, claims for delay, damages, costs, and/or time asserted by any contractor performing public work for or on behalf of the City.

(c) Additional Circumstances. Comcast shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost and expense, including court and appeal costs and attorneys' fees and expenses in any way arising out of any failure by Comcast to secure consents from the owners, authorized distributors or franchisees/licensors of programs to be delivered by the Cable System, provided however, that Comcast will not be required to indemnify the City for any claims arising out of the use of Access Channels by the City and/or its Designated Access Providers or use by the City of the Emergency Alert Cable System.

(d) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall tender the defense of the claim or action to Comcast, which defense shall be at Comcast's expense. The City may participate in the defense of a claim and, in any event, Comcast may not agree to any settlement of claims financially affecting the City without the City's written approval that shall not be unreasonably withheld.

(e) Duty of Defense. The fact that Comcast carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Comcast's duty of defense and indemnification under this Section 9.5.

(f) Duty to Give Notice. The City shall give Comcast timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. The City's failure to so notify and request indemnification shall not relieve Comcast of any liability that Comcast might have, except to the extent that such failure prejudices Comcast's ability to defend such claim or suit. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to Comcast and Comcast shall have the obligation and duty to defend any claims arising thereunder, and the City shall cooperate fully therein.

(g) Separate Representation. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Comcast to represent the City, Comcast shall select other counsel without conflict of interest with the City.

(h) Prior Franchises. The grant of this Franchise shall have no effect on Comcast's duty under the prior franchises to indemnify or insure the City against acts and omissions occurring during the period that the prior franchises were in effect, nor shall it have any effect upon Comcast's liability to pay all Franchise Fees which were due and owed under prior franchises.

(i) Waiver of Title 51 RCW Immunity. Comcast's indemnification obligations shall include indemnifying the City for actions brought by Comcast's own employees and the employees of Comcast's agents, representatives, contractors, and subcontractors even though Comcast might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this indemnification for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of Comcast's exercise of the rights set forth in this Franchise. To the extent required to provide this indemnification and this indemnification only, Comcast waives its immunity under Title 51 RCW as provided in RCW 4.24.115; provided however, the forgoing waiver shall not in any way preclude Comcast from raising such immunity as a defense against any claim brought against Comcast by any of its employees or other third party. The obligations of Comcast under this Section 9.5(i) have been mutually negotiated by the parties hereto

(j) Concurrent Negligence. In the event that a particular activity conducted under this Franchise is subject to RCW 4.24.115, this Section 9.5(j) shall apply. Liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Comcast and the City, its officers, officials, employees, and volunteers, Comcast's liability shall be only to the extent of Comcast's negligence.

(k) Inspection. Inspection or acceptance by the City of any work performed by Comcast at the time of completion of construction or maintenance projects shall not be grounds for avoidance of any of these covenants of indemnification.

(l) **Cost Recovery.** In the event the City incurs attorneys' fees, legal expenses, or other costs to enforce the provisions of this Section 9.5 against Comcast, all such fees, expenses, and costs shall be recoverable from Comcast to the extent the City prevails in such enforcement action.

(m) **Limitation of City Liability.** The City's lawful administration of this Franchise shall not be construed to create the basis for any liability on the part of the City.

(n) **Damage to Comcast Facilities.** Notwithstanding any other provisions of this Section 9.5, Comcast assumes the risk of damage to its Cable System facilities located in or upon the Rights-of-Way from activities conducted by the City, and agrees to release and waive any and all such claims against the City except to the extent any such damage or destruction is caused by or arises from the gross negligence, intentional misconduct or criminal actions of the City. In no event shall the City be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with the City's acts or omissions.

(o) **Survival.** The indemnification, defense and hold harmless obligations contained in this Section 9.5 shall survive the expiration, abandonment or termination of this Franchise.

## **9.6 Insurance Requirements**

(a) **General Requirement.** Comcast shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability coverage for bodily injury, personal injury, and property damage with limits of no less than five million dollars (\$5,000,000) per occurrence, the general aggregate limit shall be no less than five million dollars (\$5,000,000).

(2) Commercial Automobile Liability Insurance with minimum combined single limits of at least two million dollars (\$2,000,000) each occurrence and five million dollars (\$5,000,000) aggregate with respect to each of Comcast's owned, hired and non-owned, or any other vehicles assigned or used in any activities authorized under or used in conjunction with this Franchise.

(3) Employer's Liability with limits of at least one million dollars (\$1,000,000).

(4) Umbrella or excess liability insurance in the amount of three million dollars (\$3,000,000).

(5) Workers' Compensation insurance shall be maintained during the life of this Franchise to comply with State law for all employees.

(b) Each policy shall provide that the insurance shall not be canceled or terminated so as to be out of compliance with these requirements without forty-five (45) days' written notice first provided to the City via mail, and ten (10) days' notice for nonpayment of any premium. If the insurance is canceled or terminated so as to be out of compliance with the requirements of this

Franchise, Comcast shall provide a replacement policy. Comcast agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required under the terms of this Section 9.6 for so long as Comcast utilizes the Rights-of-Way or upon renewal of this Franchise. This obligation is separate and apart from any construction related insurance obligation as required under a construction permit. Any failure of Comcast to comply with the claim reporting provisions of the policy(ies) or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect the City. However, if coverage is not afforded under these circumstances, Comcast will indemnify the City for losses the City otherwise would have been covered for as an additional insured. All insurance policies, except Workers Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its officers, officials, agents, and employees for any claims arising out of Comcast's work or service. Comcast solely shall be responsible for deductibles and/or self-insured retention, and the City, at its option, may require Comcast to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable letter of credit.

(c) Endorsements.

All policies shall contain, or shall be endorsed so that:

(1) The City, and the City's employees, officers, officials, boards, and commissions included as additional insureds under Comcast's policies policy with respect to losses for which Comcast is responsible as granted under this Franchise. Additional Insured status may be conferred by blanket endorsement or policy provisions with coverage at least as broad as CG 20 26 or CG 20 11, or their equivalent;

(2) Comcast's insurance coverage shall be primary insurance with respect to the City, the City Council and the City's employees, officers, officials, boards, and commissions. Any insurance or self-insurance maintained by the City, the City Council and the City's officers, officials, boards, commissions, or employees shall be in excess of Comcast's insurance and shall not contribute to it, provided the occurrence arises out of Comcast's negligence; and

(3) Comcast's insurance shall provide for severability of interest with respect to each additional insured.

(d) Verification of Coverage. Comcast shall furnish the City with certificates of insurance and an endorsement reflecting additional insured status upon the acceptance of this Franchise pursuant to Section 10.14. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received by the City at the time of acceptance of this Franchise by Comcast with existing insurance coverage to be maintained by Comcast until that date. Comcast hereby warrants that its insurance policies satisfy the requirements of this Franchise. Receipt by the City of any certificate showing less coverage than required is not a waiver of Comcast's obligations to fulfill the requirements.

(e) No Limitation of Liability. Comcast's maintenance of insurance as required by this Franchise shall not be construed to limit or otherwise alter the liability of Comcast to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. Further, Comcast's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Comcast.

(f) Acceptability of Insurers. Unless otherwise approved by the City insurance is to be placed with insurers with a Bests' rating of no less than A- VII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VII. Any exception must be approved by the City. If, at any time, the foregoing policies shall fail to meet the above requirements, Comcast shall, upon notice to that effect from the City, promptly obtain a new policy, and shall submit the same to the City, with appropriate certificates and evidence of an additional insured endorsement or blanket endorsement, for approval.

**SECTION 10 MISCELLANEOUS**

**10.1 FORCE MAJEURE**

Comcast shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or imposition of damages relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of Comcast to anticipate and control, including war or riots, civil disturbances, floods or other natural catastrophes, labor stoppages, slow downs, availability of materials, labor or equipment, power outages exceeding back-up power supplies or work delays caused by waiting for utility providers to service or monitor their utility poles to which Comcast's Cable System is attached.

**10.2 REMOVAL OF SYSTEM**

(a) Upon lawful termination or revocation of this Agreement, Comcast shall remove its supporting structures, transmissions and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such lawful termination or revocation, the City or property owner may deem any property not removed as having been abandoned and the City may remove it at Comcast's cost.

(b) During the term of the Agreement, if Comcast decides to abandon or no longer use all or part of its Cable System, it shall give the City written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. The City shall have the right to either require Comcast to remove the property, or remove the property itself and charge Comcast with the costs related thereto.

(c) Notwithstanding the above, Comcast shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Comcast from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

**10.3 NOTICES**

Every notice or payment to be served upon or made to the City shall be sent to:

City of Mill Creek  
15728 Main St.  
Mill Creek, WA 98012  
Attention: City Manager

The City may specify any change of address in writing to Comcast. Every notice to be served upon Comcast shall be sent to:



Comcast Cable Communications, LLC  
400 Sequoia Dr, STE 100  
Bellingham, WA 98226  
Attention: Government Affairs Department

With copies to:

Comcast Cable Communications, LLC  
15815 25<sup>th</sup> Ave W  
Lynnwood, WA 98087  
Attention: Government Affairs Department

Comcast may specify any changes of address in writing to the City. Each delivery to Comcast or the City shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

#### **10.4 EQUAL EMPLOYMENT OPPORTUNITY**

Comcast is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment.

#### **10.5 CAPTIONS**

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

#### **10.6 GOVERNING LAW; VENUE**

This Agreement shall be governed and construed by and in accordance with the laws of the State of Washington. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Washington, County of Snohomish, or in the United States District Court for the Western District of Washington.

#### **10.7 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL**

(a) Neither Comcast nor its parent nor any Affiliated Entity shall transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(b) Neither Comcast nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the City, provided that such consent shall not be unreasonably withheld.

(c) Comcast shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of Comcast. The word “control” as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of Comcast shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

(d) No such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Comcast in the Franchise or in the Cable System in order to secure indebtedness; or (ii) a transfer to an entity owned and/or controlled by Comcast.

(e) Comcast shall make written application to the City of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The City shall have thirty (30) days from the receipt of FCC Form 394 to notify Comcast of any additional information it needs to make an informed decision on the transfer or assignment. The City shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment.

(f) Any consent by the City for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement.

**10.8 ENTIRE AGREEMENT**

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and Comcast. This Agreement supersedes all prior cable franchise agreements or cable ordinances, or parts of cable franchise agreements or cable ordinances, that are in conflict with the provisions herein.

**10.9 SEVERABILITY**

If any section, subsection, paragraph, term, provision or clause of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, or is preempted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

**10.10 NO WAIVER OF RIGHTS**

No course of dealing between the City and Comcast, nor any delay on the part of the City in exercising any rights hereunder, shall operate as a waiver of any such rights of the City or acquiescence in the actions of Comcast in contravention of such rights, except to the extent expressly waived by the City.

**10.11 CHANGE OF LAW**

If any federal or State law or regulation shall require or permit the City or Comcast to perform any service or act or shall prohibit the City or Comcast from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Comcast and the City shall conform to State laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated, and to conform to federal laws and regulations regarding cable as they become effective.

**10.12 COMPLIANCE WITH LAWS**

Comcast shall comply with all federal, state and local laws and regulations.

**10.13 THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

**10.14 ACCEPTANCE**

Within sixty (60) days of receipt of an executed Franchise from the City, this Franchise shall be accepted by Comcast by filing with the City Clerk an unconditional, written acceptance of all the terms, provisions and conditions of this Franchise. In addition to the written acceptance, Comcast shall furnish the additional insured endorsements and certificates of insurance required pursuant to Section 9.6 and the Performance Bond pursuant to Section 9.4. The failure of Comcast to file such an acceptance shall be deemed a rejection by Comcast and this Franchise shall then be voidable at the discretion of the City.

**10.15 APPLICABILITY OF AGREEMENT**

All of the provisions in this Agreement, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect and shall bind Comcast, the City and their respective successors and assigns five (5) days after the passage and publication of an approved summary thereof consisting of the title. This Agreement is authorized by Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, 2020 of City Council.

Adopted this 28<sup>th</sup> day of July, 2020, by a vote of \_\_\_\_ for, \_\_\_\_ against, and \_\_\_\_ abstaining.

\_\_\_\_\_  
Pam Pruitt, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Naomi Fay, Interim City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

\_\_\_\_\_

Filed with the City Clerk: \_\_\_\_\_  
Passed by the city Council: \_\_\_\_\_  
Published: \_\_\_\_\_  
Effective Date: \_\_\_\_\_  
Ordinance No.: \_\_\_\_\_

**ACCEPTANCE**

Comcast Cable Communications, LLC, for itself and for its successors and assigns, hereby accepts and agrees to be bound by all terms, conditions and provisions of the Franchise attached hereto and incorporated by this reference. Comcast Cable Communications, LLC expressly acknowledges that in accepting this Franchise it did so relying on its own investigation and understanding of the power and authority to grant this Franchise.

ACCEPTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Comcast Cable Communications, LLC

\_\_\_\_\_  
Name:  
Title:



# City of Mill Creek

Coronavirus Relief Fund  
\$617,700

7-14-2020



# General Guidance

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The CARES Act provides that payments from the Fund may only be used to cover costs that are:

- Necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19)
- Not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act)





## General Guidance (cont.)

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The CARES Act provides that payments from the Fund may only be used to cover costs that are:

- Incurred during the period that begins on March 1, 2020, and through October 31, 2020 (final reimbursement request NLT November 15, 2020)
- The cost is for a substantially different use from any expected use of funds in such line item, allotment, or allocation



Washington State  
Department of  
**Commerce**





# Primary Budget Categories

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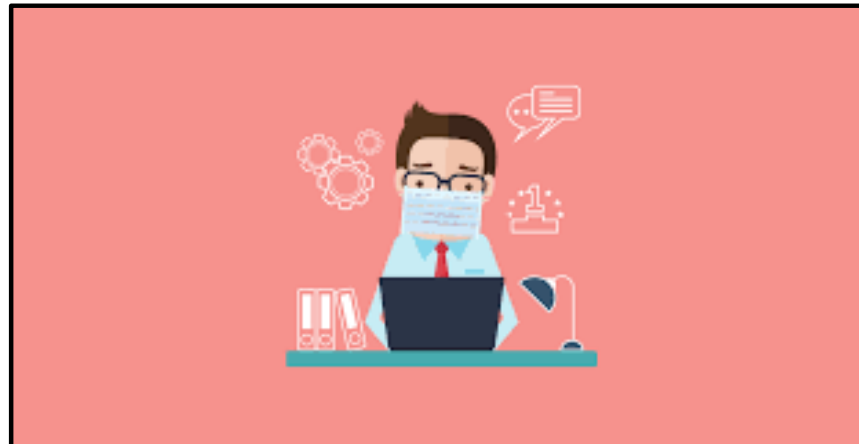
- **Medical Expenses**
  - COVID-19 testing
- **Public Health Expenses**
  - Communication and enforcement of public health measures
  - Medical and protective supplies, including sanitation and PPE
  - Disinfecting public areas and other facilities
  - Technical assistance on COVID-19 threat mitigation
  - Public safety measures undertaken
  - Quarantining individuals





## Primary Budget Categories (cont.)

- **Payroll expenses for public employees dedicated to COVID-19**
  - Public safety
  - Public health
  - Economic development
- **Expenses to facilitate compliance with COVID-19 measures**
  - Food access and delivery to residents
  - Telework capabilities of public employees
  - Paid sick and paid family and medical leave
  - Care and mitigation services for the homeless population





## Primary Budget Categories (cont.)

- **Economic Support**
  - Small business grants for business interruptions
  - Payroll support programs
- **Other COVID-19 Expenses**
  - Medical Expenses
  - Public Health Expenses
  - Payroll expenses for public employees dedicated to COVID-19
  - Expenses to facilitate compliance with COVID-19 measures
  - Economic Support
  - Other COVID-19 Expenses





## Coronavirus Relief Fund (cont.)

City Support Recommendations – Total Cost to date: ~\$60K

- Personal Protective Equipment
- Disinfectants for use against SARS-CoV-2 (COVID-19)





# Coronavirus Relief Fund

**City Support Recommendations – Total Cost to date: ~\$60K**

- Information Technology - Continuity of Operations
  - Hardware and Accessories – Remote Operations
  - Remote Application – Secure Access Virtual Private Network (VPN)
  - Virtual Meeting – Applications and Support





# Coronavirus Relief Fund

## City Support Recommendations – Total Cost to date: ~\$60K

- HVAC – City Hall North and South
  - I WAVE-R Air Purifier - Self-cleaning, no maintenance - As the air flows past the iWave-R, positive and negative ions actively purify the supply air, killing mold, bacteria, and viruses in the coil and the workspace





# Coronavirus Relief Fund

## City Support Recommendations – Total Cost to date: ~\$60K

- HVAC – City Hall North and South
  - MERV-13 Air Filters - “bacteria, some spores, a significant fraction of cat and dog allergens, and a small portion of dust mite allergens.”<sup>5</sup> The EPA suggests that filters with a higher MERV rating between 7 and 13 can be as nearly as effective as genuine HEPA filters.





# Coronavirus Relief Fund

## City Support Recommendations – Total Cost to date: ~\$60K

- Plexiglass Protection
  - Plexiglass sneeze guards for the Police Department Administrative Entry and Passport Operations counter
  - Mobile plexiglass sneeze guards for desks and Council Chamber



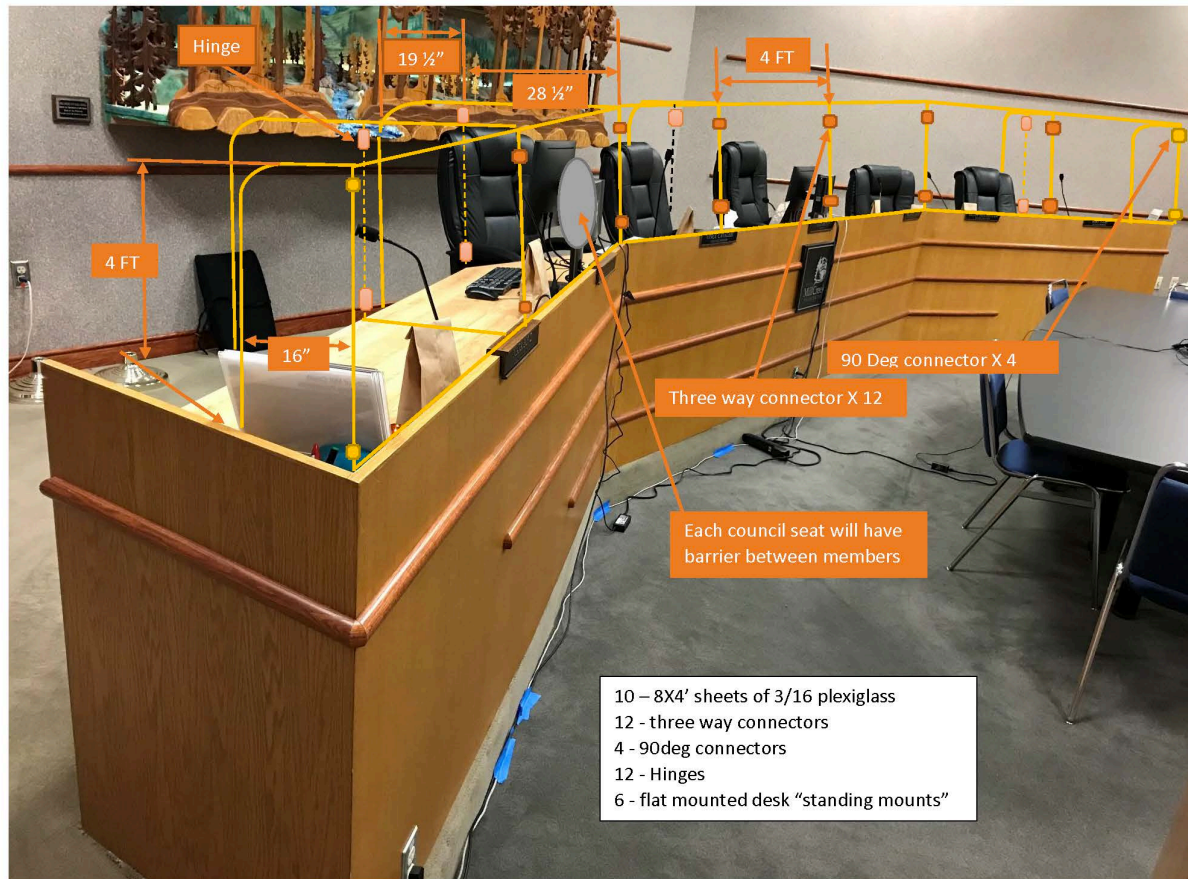




# Coronavirus Relief Fund

## City Support Recommendations Total Cost to date: ~\$60K

- Plexiglass Protection
  - Adjustable plexiglass dividers for Dias



\* Rendering by Matthew Combs



# Coronavirus Relief Fund

## City Support Recommendations Total Cost to date: ~\$60K

- Plexiglass Protection
  - Adjustable plexiglass dividers for Dias



\* Rendering by Matthew Combs



# Coronavirus Relief Fund

## City Support Recommendations

- Passport Office Redesign
- Appointment office(s)
- Counter Space
- Customer notifications system
- Outdoor vetting station
- Estimate \$15K





# Coronavirus Relief Fund

## City Support Recommendations

- Touchless fixtures
- Automatic doors
- Additional filters, disinfectants, and PPE
- Estimate \$15K



## — Coronavirus Relief Fund

### City Support Recommendations

- Police Department  
Flooring (*~2,000 square feet*)
  - Replace carpet tiles in  
Patrol Room
  - Estimate ~\$30K



# Coronavirus Relief Fund

## City Support Recommendations

- Website
  - Emergency Communication Upgrades (options for direct messaging)
  - Tie into Economic Development Strategy
  - Prorated Estimate ~ \$10K (total ~50K)



# Coronavirus Relief Fund

## Community Support Recommendations

- Hand Sanitizer Floor Stand with Sanitizer Dispenser and Cartridge for Businesses (three sanitizer packets)
- ~400 Brick and Mortar Businesses
- Estimate ~\$118K



# Coronavirus Relief Fund



## Economic Development

- Establish City-wide marketing plan to stimulate the local economy
- Creative Agency
  - Creative and “fresh” look
  - Tie into web design & development
  - City brand identity
  - Marketing Campaign development
  - Campaign management
- Estimated Agency cost ~\$25K



# Coronavirus Relief Fund



## Economic Development – Marketing Possibilities

- **Goal:** Establish City-wide marketing plan to stimulate the local economy
- **Objective:** Work with a Marketing Creative Agency to provide a comprehensive destination-based campaign that will benefit all of our City businesses

## Coronavirus Relief Fund

### Economic Development Marketing Possibilities

Ideas may include:

- Destination shopping
- Long-term City branding – *Experience Mill Creek!*
- Direct Mill Creek coupons to potential customers redeemed at any qualifying Mill Creek business
- Social media push



# Coronavirus Relief Fund

## Economic Development Marketing Possibilities

- Ideas may include:
  - Branded lumpy packages
  - Focused Ads
  - Marketing incentives
  - Out of state and country tour packages
  - Estimate ~\$200K+ (assumes average \$500 per business)





# Coronavirus Relief Fund

## Other COVID-19 Expenses - Nonprofits

- Possible support COVID-19 related efforts by nonprofit support to the community such as:



Club of Mill Creek

Mill Creek



Lions Club





# Coronavirus Relief Fund

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## Summary of Suggestions:

### ***Total: \$543K***

- Current costs to date: \$60K
- Additional facility and PPE: \$15K
- Flooring: \$30K
- Website: \$10K (prorated)
- Hand Sanitizer Floor Stand with Sanitizer Dispenser: \$118K
- Marketing Agency: \$25K
- Passport Office: \$15K
- Economic Development: \$200K
- Nonprofits: \$70K
- Reserves: \$75K (possible needs based on progression of COVID-19)



Date: July 14, 2020

A/P Check Batches		
Dated	Check Numbers	Amount
06/11/2020	ACH Debit-76 Fleet-May	\$2,687.01
06/15/2020	ACH Debit-DOR-Sales Tax-May	\$10,499.07
06/30/2020	62134-62181	\$475,357.64
<b>Total</b>		<b>\$488,543.72</b>

Voided Checks	
Numbers	Explanation


CLAIMS APPROVAL

We, the undersigned Finance/Audit Committee of the City of Mill Creek, recommend approval of check numbers 62134 through 62181, and ACH in the amount of \$488,543.72.

We recommend approval of the above stated amount with the following exceptions:

\_\_\_\_\_

\_\_\_\_\_  
Councilmember

  
\_\_\_\_\_  
Director of Finance

\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
City Manager

F:\DATA\EXECUTIVE\WP\FORMS\FIN\Voucher Approval 1.doc

RptBatchSumViewForm

Page 1 of 1

ACH Cash Pro Online  
City of Mill Creek

Report Date: 06/12/2020  
Report Time: 11:25:08 AM

Batch Summary Report by ID Number

Company Name: City of Mill 01      Effective Date: 06/11/2020  
 ACH ID: 2911225895      Batch Sequence: 2  
 Application Name: CCD Payments and Collections      Database Name: 76  
 Batch Status: Submitted      Created By: LOTLEO  
 Released By: MCIARAVINO

Name	ID	Amount	D/C	Bank ID	Account #	Acct Type	Trace #
76 FLEET WEX BANK	0201-00-1059153	\$2,687.01	C	071000288	4539508	C	0184604

	Total Amount in Batch	Total Count in Batch
Debits	\$0.00	0
Credits	\$2,687.01	1
Prenotes	\$0.00	0

	Grand Total Amount	Grand Total Count
Debits	\$0.00	0
Credits	\$2,687.01	1
Prenotes	\$0.00	0



**RECEIVED Invoice Statement**

JUN 08 2020

INVOICE NUMBER: 65776154  
ACCOUNT NAME: City of Mill Creek

PAGE 1

ACCOUNT NUMBER	CREDIT LIMIT	CITY OF MILL CREEK	BILL CLOSING DATE	PAYMENT DUE DATE	AMOUNT DUE
0201-00-105915-3	14,800.00	31	MAY-31-2020	JUN-22-2020	2,687.01

DATE	ACTIVITY DESCRIPTION	CHARGES / DEBITS	PAYMENTS / CREDITS
MAY-13-2020	Payment - Thank You		2,601.16
MAY-29-2020	Fuel Purchases	2,698.08	
MAY-29-2020	Service Purchases	16.00	
MAY-29-2020	Other Purchases		16.00
MAY-29-2020	Other Adjustments this Period	10.00	
MAY-29-2020	Rebates and Rebate Reversals		21.07

REMINDER  
PLEASE BE SURE TO INCLUDE REMITTANCE STUB WITH PAYMENT. MAIL TO THE ADDRESS SHOWN IN THE RIGHT PORTION OF THE REMITTANCE STUB.

APPROVED FOR PAYMENT

Project # Fuel - City Vehicles - May  
 Bars Code # 001-008-521-70-3200 \$1,971.18  
001-018-576-80-3200 \$ 253.37  
 Signature 103-103-543-30-3200 \$60.92  
401-401-543-30-3200 \$297.59

The Finance Charge is determined by applying a periodic rate of 6.99%

PURCHASES, RETURNS AND PAYMENTS MADE JUST PRIOR TO BILLING DATE MAY NOT APPEAR UNTIL THE NEXT INVOICE/STATEMENT.

Date 6/8/20

PREVIOUS BALANCE	(-)PAYMENTS	(+)ACTIVITY THIS PERIOD	(-)SAVINGS THIS PERIOD	(=)NEW BALANCE
2,601.16	2,601.16	2,708.08	21.07	2,687.01

CALL CUSTOMER SERVICE TO PAY BY PHONE  
FEDERAL TAX ID: 841425616

SEE REVERSE SIDE FOR IMPORTANT INFORMATION AND TERMS.

TO ENSURE PROPER CREDIT, TEAR AT PERFORATION AND INCLUDE BOTTOM PORTION WITH YOUR PAYMENT



**76 Fleet**

P.O. Box 639  
Portland, ME 04104-0639

Fleet Manager  
City of Mill Creek  
15728 Main Street  
Mill Creek, WA 98012

ACCOUNT NAME	City Of Mill Creek
ACCOUNT NUMBER	0201-00-105915-3
INVOICE NUMBER	65776154
BILL CLOSING DATE	MAY-31-2020
AMOUNT DUE	2,687.01
AMOUNT ENCLOSED	
PAYMENT DUE DATE	JUN-22-2020

PAYMENTS RECEIVED AFTER THIS DATE SUBJECT TO A FINANCE CHARGE.

Make check payable to: WEX BANK  
To avoid processing delays, remit all payments to:

WEX BANK  
P.O. BOX 6293  
CAROL STREAM IL 60197-6293

02010010591534000000268701 200622



6/15/2020

Export

**Washington State Department of Revenue**

Your Return has been submitted and your confirmation number is **0-014-663-137**

Below is information from your Monthly Return for the period ending May 31, 2020

Filing Date	June 15, 2020
Account Id	600-598-011
Primary Name	CITY OF MILL CREEK
Payment Method	ACH Debit/E-Check
Payment Effective	June 15, 2020
Total Tax	10,499.07
Total Due	10,499.07

The email address on this return is different from the one in your profile  
The Department is using email more frequently to communicate with taxpayers. Please verify that the email address in your profile is correct.  
To update your email address click "Settings" link above, then click the "Update user profile" link in the "I Want To" menu.

Check the status of your return from the **Submissions** tab.

Print a copy of your return below. You can always "Print" your return by navigating to the "Submissions" tab and finding this request.

Give us your feedback



**Combined Excise Tax Return**

600-598-011  
CITY OF MILL CREEK

**Filing Period:** May 31, 2020

**Due Date:** June 25, 2020

**Filing Frequency:** Monthly

**Business & Occupation**

Tax Classification	Gross Amount	Deductions	Taxable Amount	Tax Rate	Tax Due
Service and Other Activities (\$1 million or greater in prior year)	587,267.08	0.00	587,267.08	0.017500	10,277.17
<b>Total Business &amp; Occupation</b>					<b>10,277.17</b>

**State Sales and Use**

Tax Classification	Gross Amount	Deductions	Taxable Amount	Tax Rate	Tax Due
Use Tax	2,113.33	0.00	2,113.33	0.065000	137.37
<b>Total State Sales and Use</b>					<b>137.37</b>

**Deductions**

Tax Classification	Deduction	Amount
<b>Business &amp; Occupation</b>		
Retailing	Other:	0.00

**Local City and/or County Use Tax/Deferred Sales Tax**

Location	Taxable Amount	Tax Rate	Tax Due
3119 - MILL CREEK	2,113.33	0.040000	84.53
<b>Total Local City and/or County Use Tax/Deferred Sales Tax</b>			<b>84.53</b>

**Total Tax** 10,499.07

**Subtotal** 10,499.07

**Total Amount Owed** 10,499.07

Prepared By: Andrea Dowell  
E-Mail Address: andrea@dowellconsulting.com

Washington State Combined Excise Tax Return							TTD	GL
City of Mill Creek: 600-598-011								
05.2020								
<b>TOTAL B&amp;O DEDUCTIONS FOR RETAIL SALES:</b>							\$ -	\$ -
<b>USE TAX IDENTIFIED</b>							001-000-229-00-04-00	221.90
							\$ 2,113.33	0.10500
							221.90	221.90
Line Code	Tax Classification	Gross Amount	Total Deductions	Taxable Amount	Rate	Tax Due		
<b>State Business and Occupation Section</b>								
0002	Retailing	-	-	-	0.004710	-	Exclusively Governed	
0004	Service & Other Activit	587,267.08	-	587,267.08	0.017500	10,277.17		
						<b>10,277.17</b>		
<b>State Sales and Use Section</b>								
0001	Retail Sales	-	-	-	0.065000	-		
0045	State Use Tax	2,113.33	-	2,113.33	0.065000	137.37		
						<b>137.37</b>		
<b>Local Sales Section</b>								
0001	3119 Mill Creek	-	-	-	0.040000	-		
<b>Local Use Tax Section</b>								
0045	3119 Mill Creek	-	-	2,113.33	0.040000	84.53		
<b>TOTAL Sales Tax</b>						-		
<b>TOTAL Use Tax</b>						221.90		
<b>Summary Section</b>								
State Business & Occupation Tax Total						10,277.17		
State Sales and Use Tax Total						137.37		
Local and Regional Tax Total						84.53		
<b>TOTAL AMOUNT OWED:</b>						<b>10,499.07</b>		

Accounts Payable

Checks by Date - Detail by Check Date

User: Jodieg  
 Printed: 7/10/2020 10:05 AM



Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
62134	911SUPPL	911 Supply Inc	06/30/2020		
	INV-2-2257	1 - Polo Shirt - J Hoaglan - New Citizen's Patrol			66.28
	INV-2-2471	1 Pr 5.11 WM Tac Lite Pro Pant - J Hoaglan			69.29
	INV-2-3037	3 Patrol Hats w/Embroidery Charges			98.18
	INV-2-3105	11 Patrol Hats w/Embroidery Charges			317.63
Total for Check Number 62134:				0.00	551.38
62135	AMAZON	Amazon Capital Services	06/30/2020		
	1JCQ-L41D-TCMR	Pouches - Firearms Instructor Vests - T Kidwell			78.86
	1VMN-3DYM-37NW	2 - Pkg of 50-KN95 Face Masks-PW COVID-19			249.00
	iCYG-PWQQ-P34H	100 - Protective Face Shields - COVID-19			181.76
Total for Check Number 62135:				0.00	509.62
62136	APPLCONC 368247	Applied Concepts, Inc. 2 - Dash Mounted Radar	06/30/2020		
Total for Check Number 62136:				0.00	4,032.91
62137	BANKCARE	Bank of America	06/30/2020		
	1	Refund - Duplicate Charge - Shutterstock			-32.05
	10	Glock 17 Firearm Simulator			71.75
	10A	Use Tax Payable - Glock 17 Firearm Simulator			-6.82
	11	Maintenance Cloth - Fire Bowl			9.87
	12	15PK - Bankers Box			26.51
	13	Hot Rolled Flat Bar/Pipe - Memorial Day Monu			206.14
	14	Memorial Day Supplies			38.14
	15	1 - 35lb Kinetic Performance Active Formula Dr			54.49
	16	Shipment WSP Crime Lab - Case No. 2018-7935			13.90
	17	10 Cases - (36 Per Case) 30-Minute Flares			1,129.53
	18	My BuildingPermit.com Monthly Fee			59.95
	19	Washable Face Mask - 25 Grey, 25 Black, 150 N			994.50
	19A	Use Tax Payable-Washable Face Mask-25 Grey,			-94.50
	2	Return - Stagreen Landscape Fabric - Memorial			-29.26
	20	20 Cases - Nitrile Gloves			301.11
	3	Return - Bowls - Memorial Day Flame			-32.93
	4	Wiper Arm Cover Cap - Car #43			7.68
	5	Kinetic Performance Active Formula Dry Dog F			39.72
	6	Save As PDF Pro - N Fay			119.95
	7	Fire Bowl Parts - Memorial Day Flame			62.41
	8	Bowls for Fire Bowl - Memorial Day Flame			32.93
	9	100 Heather Grey/100 Black Face Masks			998.91
	9A	Use Tax Payable - 100 Heather Grey/100 Black 1			-94.92
Total for Check Number 62137:				0.00	3,877.01
62138	BENEAD 2006510	Benefit Administration Co, LLC Section 125 Flexible Benefits Plan - June	06/30/2020		
Total for Check Number 62138:				0.00	128.00

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 62138:	0.00	128.00
62139	BENSCLNR 314587	Bens Cleaner Sales Inc. Water Pump - PW 10	06/30/2020		522.34
			Total for Check Number 62139:	0.00	522.34
62140	BIOCLEAN 11165 11179	Bio Clean Inc COVID-19 Cleaning - Police Vehicles (9) - COVID-19 Cleaning - Police Vehicles (1) - Car #	06/30/2020		3,232.13 359.13
			Total for Check Number 62140:	0.00	3,591.26
62141	BCS 2020-MC4	Bridge Coordination Services DV Services - April	06/30/2020		2,475.61
			Total for Check Number 62141:	0.00	2,475.61
62142	BANKCR20 1 2 3 4 5	Business Card Annual Flowers - City Signs & City Hall Spray Bottle - PW Shop Supplies Annual Flowers - Veteran's Monument & City H Sanitizer - City Hall Steel - Material for Memorial Day Ceremony	06/30/2020		109.68 21.75 160.94 57.90 56.83
			Total for Check Number 62142:	0.00	407.10
62143	BANKCR27 1 2 3	Business Card Sanidate - All Purpose Disinfectant Logitech USB Webcam Refreshments for Officers Involved w/Protests	06/30/2020		93.91 141.96 36.94
			Total for Check Number 62143:	0.00	272.81
62144	COMCAST 0457011 0724345	Comcast High Speed Internet Fee 06/18-07/17 Internet for ITS 06/14-07/13	06/30/2020		191.42 89.17
			Total for Check Number 62144:	0.00	280.59
62145	DVACHEAT 896	Dvac Heating & Air LLC Air Filters - HVAC System - CHS	06/30/2020		4,748.05
			Total for Check Number 62145:	0.00	4,748.05
62146	Faro 20343534	Faro Technologies, Inc FARO Zone 3D 1 Year Software Renewal	06/30/2020		1,121.95
			Total for Check Number 62146:	0.00	1,121.95
62147	FELDMAJ 0002	Feldman & Lee, P.S. Public Defender Contract - May	06/30/2020		2,070.00
			Total for Check Number 62147:	0.00	2,070.00
62148	GRYOSBRN 1	Gray & Osborne Inc Prof Serv - SHR Pavement Preservation Const V	06/30/2020		3,336.99
			Total for Check Number 62148:	0.00	3,336.99
62149	ISO CW240680	ISOOutsource IT Consultant/Tech Support 06/01 - 06/15	06/30/2020		3,763.26

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 62149:	0.00	3,763.26
62150	KCDA 300489238	KCDA Purchasing Cooperative 6-2 LiterPurell,24-4 oz Hand Antiseptic-COVID-	06/30/2020		196.73
			Total for Check Number 62150:	0.00	196.73
62151	LANEP 3825048 3825049 3825050 3825051 3825052	Lanepowell Prof Legal Svcs - General Employment - March Prof Legal Svcs - Public Records Act Lawsuit - P Prof Legal Svcs - General Business - March Prof Legal Svcs - City Attorney - March Prof Legal Svcs - General Construction - March	06/30/2020		109,206.05 21,575.40 120.80 4,237.50 19,621.75
			Total for Check Number 62151:	0.00	154,761.50
62152	LOHRB 302293362	Brian Lohr Refund Overpayment - BL Application- Activity	06/30/2020		75.00
			Total for Check Number 62152:	0.00	75.00
62153	NEPMARIN Pay Est #1	Neptune Marine Heron Park Play area Upgrades - Pay Est #1	06/30/2020		63,753.53
			Total for Check Number 62153:	0.00	63,753.53
62154	OMWATT 840282 840283	Ogden Murphy Wallace Attorneys Prof Legal Services - Comcast Franchise - May Prof Legal Services - Exec - May	06/30/2020		207.00 2,641.50
			Total for Check Number 62154:	0.00	2,848.50
62155	PACRIMC 01-2020 11-2019 12-2019	Pacific Rim Code Services, Inc Prof Svcs - Building Permit Plan Review Prof Svcs - Building Permit Plan Review Prof Svcs - Building Permit Plan Review	06/30/2020		44,557.28 64,423.22 10,022.12
			Total for Check Number 62155:	0.00	119,002.62
62156	PAWS May 2020	PAWS Animals Brought to Shelter - May	06/30/2020		561.00
			Total for Check Number 62156:	0.00	561.00
62157	PHILPUB 31736 31736A 481L	Philips Publishing Mill Creek City Connection - Summer 2020 Ad Revenue - Mill Creek City Connection - Sum Passport Ad - Lynnwood Parks & Rec - Summer	06/30/2020		13,308.44 -6,092.00 340.00
			Total for Check Number 62157:	0.00	7,556.44
62158	PILCHVT 74827	Pilchuck Vet Hospital Wellness Exam/Dental Procedure-Hondo	06/30/2020		1,868.40
			Total for Check Number 62158:	0.00	1,868.40
62159	SNOCPUD 100431028 108663159 115246928 118574416	PUD No. 1 of Snohomish County 3401 148th St SE 04/22-05/20 Street Lights - 189 Lights - 200W 05/01-05/31 13901 North Pointe Cir Irrig 04/08-05/06 14600 16th Ave SE 05/05-06/02	06/30/2020		51.41 1,736.91 15.66 23.02

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
	121891222	2720 Seattle Hill Rd 05/09-06/11			18.36
	128483821	Street Lights - 8 Lights - 200W 05/01-05/31			47.68
	128483822	Street Lights - 38 Lights - 250W 05/01-05/31			285.38
	128483823	Street Lights - 39 Lights - 400W 05/01-05/31			441.48
	128483824	Street Lights - 17 Lights - 100W 05/01-05/31			52.87
	128489898	1900 164th St SE 05/09 - 06/10			28.57
	131786914	1900 164th St SE 04/10-05/08			26.37
	131808090	928 Dumas Rd 05/16 - 06/16			95.64
	135113690	2501 147th Pl SE 05/21-06/19			36.14
	138298313	15803 32nd Ave SE 04/10-05/08			21.04
	138309974	15510 Village Green Dr 04/28 - 05/27			16.20
	141610493	2024 Seattle Hill Rd 04/10-05/08			33.69
	144957017	Street Lights - 21 Lights - 400W 05/01-05/31			312.90
	144958304	Street Lights - 386 Lights - 100W 05/01-05/31			1,389.60
	144966379	15720 Main St 05/19-06/16			1,355.88
	144966380	15720 Main St Unit B 05/19-06/16			310.32
	148236342	14810 35th Ave SE 04/10-05/08			50.33
	148247739	Street Lights - 49 Lights - 20W 05/01-05/31			17.15
	151542735	1700 Mill Creek Rd 04/24-05/22			64.43
	151545956	Street Lights - 1 Light - 160W 05/01-05/31			5.18
	151546640	13332 44th Ave SE 05/02-06/01			54.95
	151550569	13901 North Pointe Cir Irrig 05/07-06/05			16.20
	157991703	Street Lights - 91 Lights - 250W 05/01-05/31			985.53
	157991704	Street Lights - 841 Lights - 100W 05/01-05/31			5,121.69
	157992487	4560 SAC 05/02 - 06/02			40.32
	161168166	Street Lights - 1 Light - 240W 05/01-05/31			7.94
	161177376	13628 N Creek Dr 05/16-06/16			33.95
	161177677	13510 N Creek Dr 05/16 - 06/16			47.10
	164391103	13903 N Creek Dr 05/16 - 06/16			514.46
	167600916	2725 Seattle Hill Rd 04/10-05/08			15.66
	167612030	Street Lights - 6 Lights - 150W 05/01-05/31			28.98
	167612031	14729 12th Ave SE 04/29 - 05/28			16.20
			Total for Check Number 62159:	0.00	13,319.19
62160	PUGETSO 200004765331 200004765463	Puget Sound Energy 15720 Main St 05/19 - 06/18 15728 Main St 05/18 - 06/18	06/30/2020		90.48 560.36
			Total for Check Number 62160:	0.00	650.84
62161	RAMERJ 2020-4	Jon Ramer Consulting Services - Memorial Day Parade (Jur	06/30/2020		2,222.00
			Total for Check Number 62161:	0.00	2,222.00
62162	RH2 75167 75444	RH2 Engineering, Inc. Prof Svcs - RRFB Upgrade Project Through 11/2 Prof Svcs - RRFB Upgrade Project Through 12/2	06/30/2020		14,338.18 10,665.89
			Total for Check Number 62162:	0.00	25,004.07
62163	ROGERST Reimb. Rogers	Tom Rogers Jetpacks/Extra Bandwidth - Telecommuting- T R	06/30/2020		152.12
			Total for Check Number 62163:	0.00	152.12
62164	XSANCHA 2002519.002	Ann Sanchez Refund Move Over Mozart Piano Class-Alex	06/30/2020		121.00

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 62164:	0.00	121.00
62165	SEAFINST 18527	Security & Traffic Control Seattle's Finest Traffic Control - 2020 JHS Graduation Parade - (	06/30/2020		1,696.00
			Total for Check Number 62165:	0.00	1,696.00
62166	SHREDIT 8129912539	Shred-It USA Inc Shredding Service Fee	06/30/2020		157.06
			Total for Check Number 62166:	0.00	157.06
62167	SILVERL 14969-21263	Silverlake Water District 13716 Bothell Everett Hwy (Church Property) 0:	06/30/2020		7.60
			Total for Check Number 62167:	0.00	7.60
62168	SNOCOPW I000529653	Snohomish County Public Works Surface Water Management - 2020 ILA	06/30/2020		16,891.00
			Total for Check Number 62168:	0.00	16,891.00
62169	SNOCOTRS 28053100102200	Snohomish County Treasurer 2020 Surface Water Mgmt Fee - Church	06/30/2020		1,215.22
			Total for Check Number 62169:	0.00	1,215.22
62170	SNOHSDIS 5991900037	Snohomish School District #201 Glacier Peak HS Band-Veteran's Day Parade 201	06/30/2020		834.09
			Total for Check Number 62170:	0.00	834.09
62171	SNDPUBIN EDH897757 EDH900333	Sound Publishing Inc Advertisement for Bids - Church/Cook House D: Publication of Ordinance No. 2020-860	06/30/2020		114.03 68.78
			Total for Check Number 62171:	0.00	182.81
62172	SDISTCRT I000530337 I000530337A	South District Court Filing Fees - SD Court - May Interpreter Costs - May	06/30/2020		2,716.16 34.40
			Total for Check Number 62172:	0.00	2,750.56
62173	STARDMSV 0124196-IN 0124196-INA 0124229-IN 0124229-INA 0124229-INB 0124229-INC 0124229-IND 0124229-INE 0124229-INF 0124229-ING 0124263-IN 0124263-INA 0124263-INB 0124263-INC 012602-IN 012602-INA	Stardom Services Inc L & I Mimimum Wage - Janitorial - Mar L & I Mimimum Wage - Janitorial - Mar April Services - Janitorial - CHS April Services - Janitorial - CHN April Services - Janitorial - CHN-COVID-19-Fri April Services - Janitorial - CHS-COVID-19-Fri April Services - Janitorial - CHS-Floor Waxing April Services - Janitorial - CHN-Carpet Cleanin April Services - Janitorial - CHS-Carpet Cleanin April Services - Janitorial - CHN-Window Clean May Services - Janitorial - CHS May Services - Janitorial - CHN May Services - Janitorial - CHN-COVID-19 - Fr May Services - Janitorial - CHS-COVID-19 - Fri L & I Mimimum Wage - Janitorial - Jan L & I Mimimum Wage - Janitorial - Jan	06/30/2020		110.40 165.60 1,105.40 1,349.60 175.00 125.00 240.00 1,225.00 990.00 575.00 1,105.40 1,349.60 175.00 125.00 110.40 165.60



# AGENDA ITEM #F.

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
	012645-IN	L & I Mimimum Wage - Janitorial - Feb			110.40
	012645-INA	L & I Mimimum Wage - Janitorial - Feb			165.60
Total for Check Number 62173:				0.00	9,368.00
62174	TERMINIX 397460629	Terminix Processing Center Pest Control - WO# 17034606070 - MC Library	06/30/2020		95.03
Total for Check Number 62174:				0.00	95.03
62175	TPQGLOVE L649058	Top Quality Mfg. 50 Boxes Nitrile Gloves - Admin/Passports	06/30/2020		383.99
Total for Check Number 62175:				0.00	383.99
62176	USIC 383834 383834A	USIC Locating Services, LLC 75 Utility Locates/16 QH 05/01 - 05/31 74 Utility Locates/15 QH 05/01 - 05/31	06/30/2020		1,835.68 1,835.68
Total for Check Number 62176:				0.00	3,671.36
62177	VERIZON 9856800177 9857182620	Verizon Wireless Access & Usage Chgs - City Cell Phones 05/17 - Access & Usage Chgs - Public Safety - 05/23-06	06/30/2020		1,521.30 1,856.86
Total for Check Number 62177:				0.00	3,378.16
62178	WWGRAIN 9528981302 9558425287	W.W. Grainger, Inc. 12 Rolls - Yellow/Black Barricade Tape - COVII 4 - Pleated Air Filters - CHS Council Chambers	06/30/2020		36.73 32.73
Total for Check Number 62178:				0.00	69.46
62179	WALTNELS 763692 764173	Walter E. Nelson Co. 5 Cases Nitrile Gloves - PW 12 Cases - Trash Can Liners	06/30/2020		444.04 474.44
Total for Check Number 62179:				0.00	918.48
62180	WINSUPP 037723 01	Winsupply Company Half Circle Nozzles - Irrigation Supplies	06/30/2020		77.00
Total for Check Number 62180:				0.00	77.00
62181	ZAC&THOM 20-MCR006	Zachor & Thomas, Inc., P.S. Monthly Prosection Legal Retainer - June	06/30/2020		9,880.00
Total for Check Number 62181:				0.00	9,880.00
Total for 6/30/2020:				0.00	475,357.64
Report Total (48 checks):				0.00	475,357.64





Date: July 14, 2020

Payroll Check Batches		
Dated	Check Numbers	Amount
06/25/2020	ACH Automatic Deposit Checks	\$148,827.17
06/25/2020	ACH Wire- FWT & Medicare Taxes	\$26,571.37
06/25/2020	ACH Wire MEBT – Wilmington Trust	\$27,466.29
06/25/2020	ACH Wire – BAC – Flex Savings Acct	\$1,305.53
06/25/2020	ACH Wire – ICMA RC – Def. Comp	\$1,894.54
<b>Total</b>		<b>\$206,064.90</b>

Voided Checks	
Numbers	Explanation

CLAIMS APPROVAL

We, the undersigned Finance/Audit Committee of the City of Mill Creek, recommend approval of the ACH Automatic Deposit checks and ACH Wire Transfers in the amount of \$206,064.90.

We recommend approval of the above stated amount with the following exceptions:

\_\_\_\_\_

\_\_\_\_\_  
Councilmember

  
\_\_\_\_\_  
Finance Director

\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
City Manager

Statistical Summary

**Statistical Summary**

Company:A0W - City Of Mill Creek Service Center:0076 Pacific North West Status:Cycle Complete  
 Week#:26 Pay Date:06/25/2020 P/E Date:06/15/2020  
 Qtr/Year:2/2020 Run Time/Date:12:14:48 PM EDT 06/23/2020

<b>Taxes Debited</b>	Federal Income Tax	19,909.46		
	Earned Income Credit Advances	0.00		
	Social Security - EE	0.00		
	Social Security - ER	0.00		
	Social Security Adj - EE	0.00		
	Medicare - EE	3,048.25		
	Medicare - ER	3,048.23		
	Medicare Adj - EE	0.00		
	Medicare Surtax - EE	0.00		
	Medicare Surtax Adj - EE	0.00		
	COBRA Premium Assistance Payments	0.00		
	Federal Unemployment Tax	0.00		
	Families First FMLA-PSL Payments Credit	0.00		
	Families First ER Medicare Credit	0.00		
	Families First FMLA-PSL Health Care Premium Credit	0.00		
	CARES Retention Qualified Payments Credit	0.00		
	CARES Retention Qualified Health Care Credit	0.00		
	State Income Tax	0.00		
	Non Resident State Income Tax	0.00		
	State Unemployment Insurance - EE	0.00		
	State Unemployment Insurance Adj - EE	0.00		
	State Disability Insurance - EE	0.00		
	State Disability Insurance Adj - EE	0.00		
	State Unemployment/Disability Ins - ER	0.00		
	State Family Leave Insurance - EE	188.40		
	State Family Leave Insurance - ER	0.00		
	State Medical Leave Insurance - EE	169.65		
	State Medical Leave Insurance - ER	207.38		
	Transit Tax - EE	0.00		
	Workers' Benefit Fund Assessment - EE	0.00		
	Workers' Benefit Fund Assessment - ER	0.00		
	Local Income Tax	0.00		
	School District Tax	0.00		
	<b>Total Taxes Debited</b>	<b>26,571.37</b>		
<b>Other Transfers</b>	Full Service Direct Deposit Acr	148,827.17		
	<b>Total Amount Debited From Your Account</b>		<b>175,398.54</b>	
<b>Bank Debits &amp; Other Liability</b>	Checks	0.00		<b>175,398.54</b>
	Adjustments/Prepay/Voids	0.00		<b>175,398.54</b>
<b>Taxes- Your Responsibility</b>	None this payroll			<b>175,398.54</b>
				<b>175,398.54</b>



**Funds Transfer Request Authorization (FTRA)**

**Customer Information**

Name: MILL CREEK, WA CITY OF Address: 15728 MAIN ST  
 Phone: (425)921-5723 MILL CREEK  
 WA 980121518 US

**Account Information**

Account: BUS\_4700  
 Account Title: CITY OF MILL CREEK TREASURER  
 CHECKING  
 Requestor Name: JEFFREY BALENTINE

**Wire Information**

Wire Type: DOMESTIC Wire Date: 06/26/2020  
 Country: US Wire Amount (USD): 27,466.29  
 Currency of Recipient Account: USD Wire Fee: 30.00  
 Source: IN PERSON  
 ID Verification/Type: U.S. DRIVER'S LICENSE (WITH OR WITH  
 ID Verification/Type: DEBIT CARD WITH VISA OR MASTERCARD

**Recipient Information**

Recipient Name: MATRIX TRUST COMPANY Bank Name: JPMORGAN CHASE BANK NATIONAL  
 ASSOCIATION  
 Account Number Type: ACCOUNT NUMBER Bank ID:  
 Account Number: Address: 1111 POLARIS PKWY  
 Address: COLUMBUS  
 OH 43240 US

**Information about payment:**

Purpose of Payment: OTHER Additional Phone Advice:

**Additional Reference Information:**

REF: CITY MILL CREEK N3177E

**Additional Bank Instructions:**

**Customer Approval**

I authorize Bank of America to transfer my funds as set forth in the instructions herein (including debiting my account if applicable), and agree that such transfer of funds is subject to this Funds Transfer Agreement (see disclosure pages of this form) and applicable fees. If this is a foreign currency wire transfer, I accept the conversion rate provided by Bank of America at the time the wire is sent. Exchange rates are determined by Bank of America, N.A. in our sole discretion. You may be able to get a better exchange rate if you handle this transaction online instead of in the financial center. Please see the Funds Transfer Agreement for further information regarding our exchange rates. For a Consumer International wire: We rely on you, the customer, to inform us of the currency of the receiving account (denoted under 'Currency of Recipient Account') so that we may disclose the exchange rate for conversion in the wire process. If you chose to send USD rather than the foreign currency of the receiving account, we will honor your choice, however, we will not be able to provide exchange rate information. Additionally, so that we may provide required disclosures, you must remain in the financial center until we provide you the Remittance Transfer Receipt (RTR). If you leave prior to receiving the RTR, we will cancel the international remittance transfer.

Customer Signature

Date of Request 6/26/2020

**IMPORTANT: FOR EACH WIRE Indicate Method of Signature Verification: (must complete one of the below)**

<p><b>Not Applicable</b> (check box if no signature verification is required)</p> <input type="checkbox"/>	<p><b>Signature Card</b> (check box if signature card was reviewed)</p> <input checked="" type="checkbox"/>	<p><b>Business Resolution</b> (check box if business resolution was reviewed)</p> <input type="checkbox"/>	<p><b>Posed Check#</b> (reference PRO for date guidelines)  (complete field below)  Check #</p>	<p><b>Leader Exception Granted</b> (leader must place their initials or signature in box below)</p> <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <p>Exception Reason:</p>
--	---	--	---	--

**FOR BANK USE ONLY: Financial Center Information**

Financial Center Name	MILL CREEK BANKING CENTER	Date:	June 26, 2020
Company #/Cost Center #:	00353 0037019	Phone #:	425-481-5499
Initiating Associate Name:	SHARMA, MANINDERJEET	Remittance ID #:	KRDFYAMFY

WIRE

Payroll 06/25/2020

MEBT ER	13,141.40
MEBT EE	14,324.89
Sub-Total	27,466.29
Less Standard Insurance	0.00
Wire Total	27,466.29

8866.57 LEO	Total
704.60 MBX	Total
13099.91 MEB	Total
478.89 MEBZ	Total
41.49 MME	Total
41.49 MMR	Total
7153.04 P2E	Total
1154.70 P3E	Total
13099.91 TER	Total
44640.60	Grand Total

MEBT



**Funds Transfer Request Authorization (FTRA)**

Customer Information	
Name: MILL CREEK, WA CITY OF	Address: 16728 MAIN ST MILL CREEK WA 980121518 US
Phone: (425)921-5723	

Account Information	
Account: BUS_4700	
Account Title: CITY OF MILL CREEK TREASURER CHECKING	
Requestor Name: JEFFREY A BALENTINE	

Wire Information			
Wire Type: DOMESTIC	Wire Date: 06/26/2020		
Country: US	Wire Amount (USD): 1,305.53		
Currency of Recipient Account: USD	Wire Fee: 30.00		
Source: IN PERSON			
ID Verification/Type: U.S. DRIVER'S LICENSE (WITH OR WITH			
ID Verification/Type:			

Recipient Information	
Recipient Name: BAC	Bank Name: SOUND CU
Account Number Type: ACCOUNT NUMBER	Bank ID:
Account Number:	Address: 1331 BROADWAY TACOMA WA 98402 US
Address: TACOMA WASHINGTON 98402 US	


Information about payment:

Purpose of Payment: OTHER Additional Phone Advice:

Additional Reference Information: FOR FSA FUNDS Additional Bank Instructions:

**Customer Approval**

I authorize Bank of America to transfer my funds as set forth in the instructions herein (including debiting my account if applicable), and agree that such transfer of funds is subject to this Funds Transfer Agreement (see disclosure pages of this form) and applicable fees. If this is a foreign currency wire transfer, I accept the conversion rate provided by Bank of America at the time the wire is sent. Exchange rates are determined by Bank of America, N.A. in our sole discretion. You may be able to get a better exchange rate if you handle this transaction online instead of in the financial center. Please see the Funds Transfer Agreement for further information regarding our exchange rates. For a Consumer International wire: We rely on you, the customer, to inform us of the currency of the receiving account (denoted under 'Currency of Recipient Account') so that we may disclose the exchange rate for conversion in the wire process. If you chose to send USD rather than the foreign currency of the receiving account, we will honor your choice, however, we will not be able to provide exchange rate information. Additionally, so that we may provide required disclosures, you must remain in the financial center until we provide you the Remittance Transfer Receipt (RTR). If you leave prior to receiving the RTR, we will cancel the international remittance transfer.

Customer Signature  Date of Request 6/26/2020

IMPORTANT: FOR EACH WIRE Indicate Method of Signature Verification: (must complete one of the below)				
Not Applicable (check box if no signature verification is required)	Signature Card (check box if signature card was reviewed)	Business Resolution (check box if business resolution was reviewed)	Posted Check# (reference PRO for date guidelines)  (complete field below)  Check #	Leader Exception Granted (leader must place their initials of signature in box below)  <div style="border: 1px solid black; width: 100px; height: 20px;"></div>  Exception Reason:
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
FOR BANK USE ONLY: Financial Center Information				
Financial Center Name	MILL CREEK BANKING CENTER	Date:	June 28, 2020	
Company #/Cost Center #:	00353 0037019	Phone #:	425-481-5498	
Initiating Associate Name:	SHARMA, MANINDERJEET	Remittance ID #:	UD2Y78VFW	

ACH

Payroll Date 06/25/2020	Deferred	
	Healthcare	Daycare
Beagle, Nathan I	\$ 114.58	\$ 0.00
Celustka, Larry A	\$ 5.00	\$ 0.00
Eastman, Scott Michael	\$ 114.58	\$ 0.00
Fleming, Rodney J	\$ 81.94	\$ 0.00
Foutch, Bart A	\$ 114.58	\$ 0.00
Freeburg-Gunderson, Jodie A	\$ 25.00	\$ 0.00
Heath, Illia C	\$ 105.00	\$ 0.00
Hughes, Tyrone A	\$ 110.00	\$ 0.00
Lee, Joanna M	\$ 45.00	\$ 0.00
Lockett, Grace M	\$ 27.27	\$ 0.00
Pigott, Larissa V	\$ 114.58	\$ 0.00
Rasmussen, Kristen A	\$ 35.00	\$ 208.00
Ringstad, Sherrie M	\$ 30.00	\$ 0.00
Rogers, Thomas B	\$ 62.50	\$ 0.00
Schmidt, Christi A.M.	\$ 50.00	\$ 0.00
Wright, Jere A	\$ 62.50	\$ 0.00
Grand Totals		
Total	\$ 1,097.53	\$ 208.00
Total Due to BAC	\$ 1,306.53	

BAC



Funds Transfer Request Authorization (FTRA)

**Customer Information**

Name: MILL CREEK, WA CITY OF Address: 16728 MAIN ST  
 Phone: (425)921-5723 MILL CREEK  
 WA 980121618 US

**Account Information**

Account: BUS\_4700  
 Account Title: CITY OF MILL CREEK TREASURER  
 CHECKING  
 Requestor Name: JEFFREY BALENTINE

**Wire Information**

Wire Type: DOMESTIC Wire Date: 06/28/2020  
 Country: US Wire Amount (USD): 1,894.54  
 Currency of Recipient Account: USD Wire Fee: 30.00  
 Source: IN PERSON  
 ID Verification/Type: U.S. DRIVER'S LICENSE (WITH OR WITH)

**Recipient Information**

Recipient Name: ICMA RC Bank Name: MANUFACTURERS AND TRADERS TRUST  
 COMPANY  
 Account Number Type: ACCOUNT NUMBER Bank ID:  
 Account Number: Address: ONE M AND T PLAZA, 15TH FL  
 Address: BALTIMORE BUFFALO  
 MARYLAND US NY 14203 US

Information about payment:  
 Purpose of Payment: OTHER Additional Phone Advice:

Additional Reference Information: SENDER'S REF: 302029 Additional Bank Instructions:

**Customer Approval**

I authorize Bank of America to transfer my funds as set forth in the instructions herein (including debiting my account if applicable), and agree that such transfer of funds is subject to this Funds Transfer Agreement (see disclosure pages of this form) and applicable fees. If this is a foreign currency wire transfer, I accept the conversion rate provided by Bank of America at the time the wire is sent. Exchange rates are determined by Bank of America, N.A. in our sole discretion. You may be able to get a better exchange rate if you handle this transaction online instead of in the financial center. Please see the Funds Transfer Agreement for further information regarding our exchange rates. For a Consumer International wire: We rely on you, the customer, to inform us of the currency of the receiving account (denoted under 'Currency of Recipient Account') so that we may disclose the exchange rate for conversion in the wire process. If you chose to send USD rather than the foreign currency of the receiving account, we will honor your choice, however, we will not be able to provide exchange rate information. Additionally, so that we may provide required disclosures, you must remain in the financial center until we provide you the Remittance Transfer Receipt (RTR). If you leave prior to receiving the RTR, we will cancel the international remittance transfer.

Customer Signature

Date of Request 6/26/2020

**IMPORTANT: FOR EACH WIRE Indicate Method of Signature Verification: (must complete one of the below)**

<p><b>Not Applicable</b> (check box if no signature verification is required)</p> <input type="checkbox"/>	<p><b>Signature Card</b> (check box if signature card was reviewed)</p> <input type="checkbox"/>	<p><b>Business Resolution</b> (check box if business resolution was reviewed)</p> <input type="checkbox"/>	<p><b>Postal Check#</b> (reference PRO for date guidelines)  (complete field below)  Check #</p>	<p><b>Leader Exception Granted</b> (leader must place their initials or signature in box below)</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <p>Exception Reason:</p>
--	--	--	--	--

FOR BANK USE ONLY: Financial Center Information			
Financial Center Name	MILL CREEK BANKING CENTER	Date:	June 28, 2020
Company #/Cost Center #:	00353 0037019	Phone #:	425-481-5498
Initiating Associate Name:	SHARMA, MANINDERJEET	Remittance ID #:	UVL4JVP73



WIRE

<b>Payroll Date 06/25/2020</b>	<b>ICMA</b>
Fleming, Rodney J	\$ 450.00
Hookland, Rebecca J	\$ 137.60
Kidwell, Tyler A	\$ 531.94
LaRose, Scot P	\$ 700.00
Ringstad, Sherrie M	\$ 25.00
White, Stanley R	\$ 50.00
Grand Totals	
<b>Total Due to ICMA</b>	<b>\$ 1,894.54</b>

ICMA



**MINUTES**

**City Council Regular Meeting**

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**6:00 PM - Tuesday, June 9, 2020**

Council Chambers, 15728 Main Street, Mill Creek, WA 98012

Minutes are the official record of Mill Creek City Council meetings. Minutes document action taken at the council meeting, not what was said at the council meeting.

A recording of this City Council meeting can be found [here](#).

The agenda packet for this City Council meeting can be found [here](#).

**Virtual City Council Meeting**

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Due to the COVID-19 pandemic, the City of Mill Creek has established a virtual and audio meeting for the Council meetings.

United States (Toll Free): 1 866 899 4679

United States: +1 (669) 224-3319

Access Code: 927-117-773

**CALL TO ORDER**

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Mayor Pruitt called the meeting of the Mill Creek City Council to order at 6:00 p.m.

**PLEDGE OF ALLEGIANCE**

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Councilmember Todd led the Pledge of Allegiance.

**ROLL CALL**

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Councilmembers Present:

*Pam Pruitt, Mayor*

*Brian Holtzclaw, Mayor Pro Tem*

*Vince Cavaleri, Councilmember*

*Mike Todd, Councilmember*

*John Steckler, Councilmember*

*Stephanie Vignal, Councilmember*

Councilmembers Absent:

*Mark Bond, Councilmember*

***Councilmember Cavaleri motioned to excuse Councilmember Bond due to his planned vacation. Councilmember Vignal seconded the motion. The motion passed unanimously.***

**AUDIENCE COMMUNICATION**

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June 9, 2020 REGULAR COUNCIL MEETING MINUTES

**A.**

Sid Siegal, Rotary Club of Mill Creek Treasurer and Mill Creek resident, commented on the Heron Park Acceptance of Donations and Ordinance Adoption agenda item from May 12, 2020 that was withdrawn from the agenda due to an error. Mr. Siegal requested an update on its inclusion on a future Council Meeting agenda.

City Manager Ciaravino responded that City staff and Interim City Attorney Grant Degginger conducted additional research regarding past practices in regards to prior donations and the City's legal ability to accept them. He explained that he wanted to ensure that the path forward would address any outstanding issues before legislation was presented. Manager Ciaravino thanked Mr. Siegal for his patience and informed him that the City hopes to put this on the City Council Meeting agenda in the near future.

**NEW BUSINESS**

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**B.** Memorandum of Understanding Regarding Mill Creek PD Temporary Vehicle Storage; SnoCo Cathcart Facility

Acting Chief Scott Eastman provided information to Members of Council regarding a Memorandum of Understanding (MOU) with the Snohomish County Sheriff's Office for vehicle evidence storage

The MOU would allow the Mill Creek Police Department to temporarily use the Sheriff's Office Cathcart facility to store short-term and long-term vehicle evidence at no cost to the City while the City seeks a permanent solution to store vehicles that are suspected of containing evidence and are being held pending a search warrant and vehicles that are the evidence of a crime (e.g. evidence from vehicular homicides, felony hit and run, etc.).

Council engaged in discussion and Q & A.

[AIS - MOU with SCSO for Vehicle Evidence Storage Cathcart Mill Creek Vehicle storage MOU](#)  
[Proposed Resolution - MOU with Snohomish County SO for Vehicle Evidence Storage \(004\)](#)

**Mayor Pro Tem Holtzclaw made a motion to adopt Resolution 2020-587 to authorize the City Manager to sign a Memorandum of Understanding (MOU) with the Snohomish County Sheriff's Office for vehicle evidence storage with a modification to the MOU to include the signature of the City Manager. Councilmember Cavaleri seconded the motion. The motion passed unanimously.**

**STUDY SESSION**

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**C.** Financial Update

June 9, 2020 REGULAR COUNCIL MEETING MINUTES

As an introduction to the financial update for the City of Mill Creek, City Manager Michael Ciaravino addressed the effects of operating during this unprecedented time of the COVID-19 pandemic. The result of the pandemic has created a projected \$3.1M decrease in revenues versus 2019 and the City is taking steps to mitigate the circumstances.

Finance Director Jeff Balentine presented to Members of City Council a financial analysis on the current COVID-19 Recovery Plan for the City of Mill Creek. The following items were discussed:

- Projected COVID-19 Revenue Impact on 2020 versus 2019
- 2020 Projected Fund Balance
- Staff Mitigation Recommendations to include the reorganization or core operations in all departments as well as to curtail non-essential contracts.

Council engaged in discussion and Q & A.

[6-9-20 Finance Agenda Summary](#)  
[FINALR1 June 9 2020 Study Session COMC](#)

#### **CONSENT AGENDA**

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- D. Approval of Checks #62009 through #62077 and ACH Wire Transfers in the Amount of \$163,120.92.

[Check Vouchers](#)

- E. Payroll and Benefit ACH Payments in the Amount of \$218,535.92

[Payroll Vouchers](#)

**Councilmember Cavaleri motioned to pass the consent agenda excluding the June 2, 2020 meeting minutes. Mayor Pro Tem Holtzclaw seconded the motion. The motion passed unanimously.**

- F. [City Council Meeting Minutes of June 2, 2020](#)

Councilmember Todd requested an amendment to the meeting minutes to reflect that the City Council took a ten minutes recess due to outside disturbances. The meeting minutes of June 2, 2020 will be put on the June 23, 2020 City Council Meeting agenda for approval.

#### **REPORTS**

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- G. Mayor/Council

June 9, 2020 REGULAR COUNCIL MEETING MINUTES

- This year's voting delegates for the Association of Washington Cities AWC are Councilmember Todd, Councilmember Vignal and Councilmember Steckler.

**Mayor Pruitt** reported that she participated in the County's conference call regarding the coronavirus.

The following are updates:

- The County is preparing Phase 3 paperwork to ensure they can submit as soon as possible;
- The County will continue disseminate additional updates as they become available;
- The County started a pilot food distribution project in Marysville called Nourishing Neighborhoods to areas where the need is the greatest and for those who have limited transportation. The program is likely to expand once funds are in place.
- Personal Protective Equipment (PPE) orders have been filled
- Quarantine and isolation sites at Angel of the Winds is currently empty
- A new quarantine site is being created at the Evergreen Fairgrounds
- For June 2020, drive-thru testing will be available 2-3 days a week at McCollum Park and 1-2 days a week at a Sno-Isle Libraries location. [Click here](#) to find out more.
- There were no new deaths of COVID-19 as of yesterday, June 1, 2020
- Twenty new cases of COVID-19 were reported in Snohomish County.

**Councilmember Cavaleri** thanked Mayor Pruitt for the updates as reminded all to support the food bank's efforts and local businesses as we enter into Phase 2 of the pandemic.

**Councilmember Vignal** reported the following:

- Congresswoman DeBene participated in a question and answer format at the Snohomish County Economic Alliance meeting she attended last week
- Snohomish County's budgetary constraints due to the COVID-19 pandemic. Councilmember Vignal stated that it is important to stay up to date with information on programs and or grants that Mill Creek relies upon from the County. [Click here](#) to view the County's release on Economic impacts of COVID-19 are expected to force significant cuts to county budget.
- Snohomish County Health Department meeting update that there is a three (3) week waiting period from the time the Governor announced the entry into Phase 2 of the pandemic to submit the County's application to go into Phase 3 as long as requirements are met. The date of the three week wait period is June 26, 2020.
- Councilmember Vignal requested a list of the new businesses that will be opening in light of moving into Phase 2 to be posted on our website and on our Facebook page.

**Mayor Pro Tem Holtzclaw** commented on the following:

- Remember to support our local businesses due to the hardships caused by the pandemic

June 9, 2020 REGULAR COUNCIL MEETING MINUTES

- Reminded all to still be cautious and aware of the social distancing regulations in order for the County to meet the requirements to enter into Phase 3. He also noted that there are areas where COVID-19 cases are continuing to spike.

**Councilmember Todd** reported on the following:

- Update on the Community Transit Meeting and the issue of low ridership and difficulty of social distancing requirements on the bus as well as the financial impacts related to COVID-19. [Click here](#) for more information.

**H.** City Manager Michael Ciaravino updated Council on the 2020 Graduating Class Car Parade with the following:

- Safety Protocols
- Final the route and map of the parade as approved by the County and WSDOT
- Plan is in place with allocation of staff resources including: Community Outreach; Public Works
- Next Steps

Council engaged in discussion.

**I.** Gina Hortillosa, Director of Public Works and Development Services updated City Council on the Temporary Expansion of Space for Restaurants (COVID 19).

The following were items that were discussed:

- City Manager authority to waive special event fees as per MCMC 12.08.030
- Washington State Liquor and Cannabis Board (WSLCB) requirements:  
In order to add or extend outside liquor service, liquor licensees must request floor plan approvals from the WSLCB's Licensing Division. An alteration request application for a spirits/beer/wine or beer/wine restaurant can be submitted through the WSLCB's website <https://lcb.wa.gov/> or completed forms can be emailed to [liquoralterations@lcb.wa.gov](mailto:liquoralterations@lcb.wa.gov).
- Openings into and out of the outside service area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet.  
*The WSLCB's Enforcement and Licensing Divisions will be working together to approve alteration requests for outside service areas on a case-by-case basis. The process from submittal to a decision typically takes 14-21 days, but are being prioritized to assist with shorter turnaround times.*
- Scenarios for existing vendors:
- Description of City review process for regular outdoor seating permit  
The permit would be applied for through the City's normal process on [www.MyBuildingPermit.com](http://www.MyBuildingPermit.com).
- Description of City review process for Special Events Permits. This applies in cases for Temporary use of sidewalk for outside dining (where min. 8 foot clearance for pedestrians cannot be provided) or in parking lots.

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- Administrative steps staff can take to expedite the review process (regular permit and special event permit)

**AUDIENCE COMMUNICATION**

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**J. Public comment on items on or not on the agenda**

Kim Mason-Hatt, employee of the City of Mill Creek and president of the City's AFSCME union-represented employees, commented on the reduction of full time employees and the budgetary constraints due to the COVID-19 Pandemic.

**RECESS TO EXECUTIVE SESSION**

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- K.** City Council went into executive session to discuss potential litigation with legal counsel per RCW 42.30.110 (1) (I) at approximately 8:00 p.m. for 20 minutes. At approximately 8:20 p.m. Council extended executive session for 20 minutes.

At approximately 8:30 p.m. the Mayor extended the Regular Meeting without objection until 9:30 p.m.

At 8:41 p.m. Councilmember Steckler made a motion to extend executive session for another 20 minutes. Councilmember Cavaleri seconded the motion. The motion passed unanimously. Council returned to Regular Session at approximately 8:59 p.m.

No action was taken.

**ADJOURNMENT**

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With no objection, Mayor Pruitt adjourned the meeting at approximately 9:00 p.m

\_\_\_\_\_  
Pam Pruitt, Mayor

\_\_\_\_\_  
Naomi Fay, Interim City Clerk

June 9, 2020 REGULAR COUNCIL MEETING MINUTES



**MINUTES**

**City Council Regular Meeting**

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**6:00 PM - Tuesday, June 23, 2020**

Council Chambers, 15728 Main Street, Mill Creek, WA 98012

Minutes are the official record of Mill Creek City Council meetings. Minutes summarize the council meeting and documents any actions taken by City Council.

A recording of this City Council meeting can be found [here](#).

The agenda packet for this City Council meeting can be found [here](#).

**Virtual City Council Meeting**

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Due to the COVID-19 pandemic, the City of Mill Creek has established a virtual and audio meeting for the Council meetings.

You can also dial in using your phone.  
United States (Toll Free): 1 866 899 4679  
United States: +1 (312) 757-3117

Access Code: 733-537-109

New to GoToMeeting? Get the app now and be ready when your first meeting starts:  
<https://global.gotomeeting.com/install/733537109>

**CALL TO ORDER**

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Mayor Pruitt called the meeting of the Mill Creek City Council to order at 6:00 p.m.

**PLEDGE OF ALLEGIANCE**

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The Pledge of Allegiance was led by Councilmember Mark Bond.

**ROLL CALL**

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Councilmembers Present:

*Pam Pruitt, Mayor*  
*Brian Holtzclaw, Mayor Pro Tem*  
*Vince Cavaleri, Councilmember*  
*Mike Todd, Councilmember*  
*Mark Bond, Councilmember*  
*John Steckler, Councilmember*  
*Stephanie Vignal, Councilmember*

Councilmembers Absent:

June 23, 2020 REGULAR COUNCIL MEETING MINUTES



**AUDIENCE COMMUNICATION**

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**A. Public comment on items on or not on the agenda**

Barbara Heidel, City of Mill Creek resident commented that the 2020 Graduating Senior Car Parade was wonderful and that graduating seniors were very enthusiastic.

Jon Ramer, City of Mill Creek resident shared his feedback and disappointment regarding the City of Mill Creek's Memorial Day event.

Ruth Griffith requested the formation of a racial equity board at the City of Mill Creek, or some equivalent, to serve in an advisory capacity to the City administration.

Carmen Fischer, City of Mill Creek resident commented on the following: that she supports the idea of a racial equality board; that she appreciated Council proclaiming June as Pride Month; and that she is disappointed with the announcement of City of Mill Creek employee layoffs.

**PRESENTATIONS**

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**B. [Pride Month Proclamation](#)**

Mayor Pruitt and Members of Council issued a Proclamation to proclaim June 2020 as Lesbian, Gay, Bisexual, Transgender and Queer Pride Month.

**OLD BUSINESS**

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**C. Heron Park Acceptance of Donation Ordinance Adoption**

City Manager Michael Ciaravino and Planning Supervisor Tom Rogers informed Members of Council that in order for the City of Mill Creek to accept a donation of labor and materials for the replacement of a pedestrian bridge deck in Heron Park Ordinance No. 2020-861 would need to be adopted.

RCW 35.21.100 (Donations—Authority to accept and Use) allows Cities and Towns to, by ordinance, accept money or property donated and Ordinance 2018-834 authorizes the monetary material donations. However, the definition of “donation” does not address donations of labor. Section 2.B. of Ordinance 2018-834 provides that the City Council may approve non-monetary donations.

Council engaged in discussion.

[R2 Agenda Summary\\_Heron Park Donation Acceptance Ordinance and Agreement \(002\)](#)

[R2 Attachment 1 Ordinance\\_Heron Park Donation](#)

[Attachment 1.1 Agreement for the Construction of Pedestrian Bridge\\_Heron Park](#)

[Attachment 1.1.1 Attachment Exhibit 1 Agreement for the Construction of Pedestrian Bridge](#)

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**Councilmember Cavaleri motioned to adopt Ordinance No. 2020-861 accepting the donation of labor and materials for the replacement of a pedestrian bridge deck in Heron Park and authorizing the City Manager to execute an agreement with the Mill Creek Rotary Foundation for the construction of a pedestrian bridge deck in Heron Park. Councilmember Bond seconded the motion. The motion passed 5-1-1 with Councilmember Todd voting against and Councilmember Steckler abstaining for reasons of conflict with the administrative process and the need to repair the bridge.**

**NEW BUSINESS**

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- D.** Addendum No. 1 To Contract 2018-1461 For Building Plan Review Consultant Services

Tom Rogers, Planning Supervisor recommended Members of Council authorize the City Manager to execute Addendum No. 1 to Contract 2018-1461 for building plan review consultant services with Pacific Rim. The addendum is to increase the maximum amount of the contract to a not to exceed amount of \$138,822.95 and reduce the contract Fixed Rate fee from 70% to 60% for City plan review services. .

Council engaged in discussion.

[Agenda Summary - Pacific Rim Addendum No. 1](#)  
[Attachment A 2018-1461 Signed Contract](#)  
[Attachment B Outstanding Invoices](#)  
[Attachment C Consultant Contract Addendum](#)

**Mayor Pro Tem Holtzclaw made a motion to authorize the City Manager to execute Addendum No. 1 to Contract 2018-1461 for building plan review consultant services with Pacific Rim to:**

- 1) increase the maximum amount of the contract not to exceed amount of \$138,822.95; and**
- 2) reduce the contract Fixed Rate fee from 70% to 60% for City plan review services.**

**Councilmember Todd seconded the motion. The motion passed 6-1-0 with Councilmember Steckler voting against.**

- E.** An Ordinance Of The City Of Mill Creek, Washington To Amend The Mill Creek Municipal Code Section 6.08.10 Providing The Ability To Appeal The Declaration Of A Potentially Dangerous Animal

City Manager Michael Ciaravino introduced the topic requesting adoption of the Ordinance because the current Ordinance does not allow for a right to appeal.

Acting Chief Scott Eastman further briefed Members of Council on the Mill Creek Municipal Code Section 6.08.10, which authorizes the City's animal control authority to declare an animal potentially dangerous if the animal control authority has probable cause to believe that the animal falls within the definition of "potentially dangerous animal" as set forth in MCMC 6.02.060. Since the current Ordinance does not have an appeal process in place, the adoption of this ordinance would provide an opportunity.

[R2 AIS - Ordinance to Amend Chapter 6.08 MCMC](#)  
[R2 Attachment A Proposed Ordinance to amend MCMC 6.08](#)  
[Attachment B MCMC 6.08 - Redline changes version](#)  
[R1 Attachment C MCMC 6.08 - Changes accepted version](#)  
[Attachment D MCMC 6.20 Non-judicial Appeals](#)

**Councilmember Cavaleri made a motion to adopt Ordinance 2020-862 amending the Mill Creek Municipal Code Section 6.08.10 related to the appeal of a proclamation of a Potentially Dangerous Animal. Councilmember Steckler seconded the motion. The motion passed unanimously.**

#### **STUDY SESSION**

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**F. COVID-19 Revenue Projections**

City Manager Michael Ciaravino introduced the study session to Members of Council with a brief overview of the intention to keep Council informed with frequent presentations and updates regarding the financial picture as a result of the COVID-19 pandemic. Director of Finance Jeff Balentine presented members of Council with a PowerPoint [presentation](#).

[6-23-20 Finance Agenda Summary](#)  
[June 23 2020 COVID-19 Projected Impacts COMC](#)  
[Economic and Revenue Attachment A - Forecast Council Economic Revenue Update June15 2020](#)

#### **CONSENT AGENDA**

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- G.** Approval of Checks #62078 through #62133 and ACH Wire Transfers in the Amount of \$1,092,303.41  
[Check Vouchers](#)
- H.** Payroll and Benefit ACH Payments in the Amount of \$281,709.22  
[Payroll Vouchers](#)
- I.** [City Council Meeting Minutes of June 2, 2020](#)  
**June 2, 2020 meeting minutes were pulled from the agenda**

**Councilmember Cavaleri motioned to pass the consent agenda. Mayor Pro Tem Holtzclaw seconded the motion. The motion passed unanimously.**

#### **REPORTS**

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June 23, 2020 REGULAR COUNCIL MEETING MINUTES

**J. Mayor/Council**

**Mayor Pruitt** provided update on a conference call she participated in with Snohomish County and the Health District. The following are items she reported: Governor Inslee statewide mandated the wearing masks in public; the personal protective equipment (PPE) warehouse and the Angel of the Winds facility had been moved to the Evergreen Fairgrounds; the County continues to fulfill bulk orders for PPE as they provide to those in need such as healthcare workers and first responders; and the County is preparing the Phase 3 application to be submitted as long as the requirements of Phase 3 are met. Mayor Pruitt continued her report with an update on COVID 19 statistics.

**Councilmember Steckler** reported that he will be participating in the virtual Association of Washington Cities (AWC) Conference along with Councilmember Todd and Councilmember Vignal. Secondly Councilmember Steckler thanked those members of City Staff whose efforts contributed to the coordination of the 2020 Graduating Senior Car Parade and said it was executed flawlessly. He also thanked all citizens and participants that took part in the event.

**Councilmember Cavaleri** commented on an issue that is being discussed throughout the country regarding de-funding the police. He said that public safety is a top priority and that he does not intend on de-funding the City of Mill Creek Police Department.

**Councilmember Vignal** wanted to thank the City Manager, Acting Chief Eastman and all of staff who put forth their efforts towards the Graduating Seniors Car Parade. She said that it was heartwarming experience for all who joined. Councilmember Vignal requested an update regarding the preschool program and more information on what it would require to form an equity board. She also reported that she will be participating in the AWC Conference.

**Councilmember Todd** reported on the following meetings:

- County Councilmember Jared Mead was a speaker at the Mill Creek Chamber of Commerce and shared information on the County's programs to support local businesses. Councilmember Todd encouraged other Councilmembers to attend the Chamber of Commerce meetings in the future;
- Participation in the AWC Conference and noted that he began his participation that day and attended workshop sessions and found the information valuable and mentioned that he will share notes with Council after the conclusion of the conference;
- Snohomish County Committee for Improved Transportation (SCCIT) meeting update;
- Sound Transit meeting update.

**Councilmember Todd** requested information from staff on an issue with a homeowner regarding whether or not property is considered a wetland.

**Councilmember Todd** requested an update on the 7C's Swim Project. The binding site plan has gone to the Hearing Examiner and will be coming before Council for the

June 23, 2020 REGULAR COUNCIL MEETING MINUTES

approval of an easement in July. Councilmember Todd stated his concern that the project not be delayed due to inaction by the City and would like information sooner than later.

**Councilmember Todd** also requested to schedule City Manager review process in July to discuss and collect information on future goals for the City.

**K. City Manager**

City Manager Michael Ciaravino reported on the following:

- Washington Cities Insurance Authority (WCIA)'s new risk management Covid-19 Tool Kit that is available on the WCIA website. To find out more click on: [WCIA Covid-19 Tool Kit](#).
- Mill Creek playgrounds and equipment are open as well as the bathrooms, and signage has been installed encouraging people to take appropriate precautions with regards to sanitation and social distancing; and
- the City is exploring new technology systems to enhance the City's website to enhance emergency communications.

**AUDIENCE COMMUNICATION**

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**L. Public comment on items on or not on the agenda**

Mill Creek resident Barbara Heidel requested information regarding the opening of City Hall. City Manager Ciaravino gave an update of the re-entry plan for City Hall.

Mill Creek resident Jon Ramer commented on the announcement of City Hall employee layoffs and hiring freeze at the City of Mill Creek. Mr. Ramer requested information on the budget.

Kim Mason-Hatt, City of Mill Creek employee and AFSCME Union President, made comments regarding the layoffs at the City of Mill Creek.

**ADJOURNMENT**

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With no objection, Mayor Pruitt adjourned the meeting at 8:07 p.m.

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Pam Pruitt, Mayor

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Naomi Fay, Interim City Clerk

June 23, 2020 REGULAR COUNCIL MEETING MINUTES