



# CITY COUNCIL REGULAR MEETING

Monday, April 22, 2024 at 7:00 PM

City Hall

## AGENDA

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

[A.](#) Minutes

B. Audit of Reports

1. Claims        #1058 - #1088 =    \$153,593.60

April 15 - April 22, 2024

2. Payroll       # - #                =    \$ 80,294.41

April 12, 2024

VOID

7. Reports
8. Audience Participation

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

9. Discussion

[A.](#) Resolution 1276-24, Rental Packet Update

[B.](#) Resolution 1275-24, Public Works Equipment Surplus List

[C.](#) Ordinance 1235-24, 2024 Budget Amendment

[D.](#) IAM&AW Collective Bargaining Agreement 2024-2026

**10. New Business**

**11. Old Business**

**12. Ordinances & Resolution**

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

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

**13. Next Workshop**

**14. Executive Session**

A. Executive Session

For the purpose of discussing possible property acquisition pursuant to RCW 42.30.110(1)(b).

**15. Adjournment**



# CITY COUNCIL WORKSHOP MEETING

Monday, April 08, 2024 at 6:00 PM

City Hall

## MINUTES

### 1. Call to Order

Mayor Pro Tem Fairley called the meeting to order at 6:01 PM

### 2. Roll Call

PRESENT

- Council Member Gordon Cook
- Mayor Pro Tem Timothy Fairley
- Council Member Lynda Osborn
- Council Member William Thomas
- Council Member David White

### 3. Approval of Agenda

Motion made by Council Member Cook, Seconded by Council Member Osborn.  
Voting Yea: Council Member Cook, Mayor Pro Tem Fairley, Council Member Osborn, Council Member Thomas, Council Member White

### 4. Presentations

### 5. Discussion

#### A. Waste Management Contract

Laura Moser with Waste Management went over the current contract with the council members.

### 6. Audience Participation

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### 7. Adjournment

Mayor Pro Tem Fairley adjourned the meeting at 6:37 PM

**ATTEST:**

\_\_\_\_\_  
Dana Parker – City Clerk

\_\_\_\_\_  
Tim Fairley – Mayor Pro Tem



# CITY COUNCIL REGULAR MEETING

Monday, April 08, 2024 at 7:00 PM  
City Hall

## MINUTES

### 1. Call to Order

Mayor Linnell called the meeting to order at 7:00 PM

### 2. Flag Salute

### 3. Roll Call

#### PRESENT

- Mayor Troy Linnell
- Council Member Gordon Cook
- Council Member Timothy Fairley
- Council Member Lynda Osborn
- Council Member William Thomas
- Council Member David White

### 4. Presentation

### 5. Approval of Agenda

Motion made by Council Member Fairley, Seconded by Council Member White. Voting Yea: Council Member Cook, Council Member Fairley, Council Member Osborn, Council Member Thomas, Council Member White

### 6. Consent Agenda

#### A. Minutes

Motion made by Council Member Cook, Seconded by Council Member White.  
Voting Yea: Council Member Cook, Council Member Fairley, Council Member Osborn, Council Member Thomas, Council Member White

#### B. Audit of Reports

1. Claims        #113573, 1000 - 1057        =        \$278,812.21

March 26 - April 8, 2024

2. Payroll        #1051 - 1054                        =        \$115,328.28

March 29, 2024

VOID

**7. Reports**

Council Member White - None

Council Member Cook - None

Council Member Fairley - None

Council Member Thomas - Attended Good Eggs. Very interesting and enlightening.

Chief Schrimpscher - The department is conducting traffic emphasis paid for by the Washington State Traffic Safety Commissions. Congratulations to Officer Phan and Officer Gerrard for completing their probationary period. We have begun the hiring process to replace Officer Fajardo and expect to have the position filled by June 1st. Two of our officers have successfully completed FTO certification through Norther Florida University. Officer Gary Hardnet will graduate from the Police Academy on April 23, 2024. You will all receive an invitation to attend. The bike rodeo will be on June 8th.

City Administrator - Jessica Griess- Easter Egg hunt was a huge success. Gary is currently serving 20 senior meals and delivering 12 of those. Pat Goodwin has been helping him. Our recycling event will be on Saturday April 20th from 9-3. Auburn early childhood development program will be holding their graduation here on May 20th. They held it here last year. Caitlin is no longer with Atwell. Cyrus will be taking over and finish our comprehensive plan.

Mayor Linnell - A big thank you to our public works department. In the last four weeks we have seen more work completed on our storm water system than I have seen in the last two terms that I served on City Council and the one year and four months that I have been mayor.

**8. Audience Participation**

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

Rick Connell - 340 Milwaukee Blvd S. Does the Safety Traffic Commission provide funding for signs or speed bumps. Chief Schrimpscher responded that it is for traffic only however, there are different programs that the City can apply for such as Safe Paths for Schools which we have never been approved for.

Chris Gomes 527 Main Street - What exactly is Ziplly Fibre. Mayor Linnell replied that it is a fiber optic company that will compete against Comcast. I hear that we are getting one of those smart signs that can detect whether you are on your cell phone or don't have your

seat belt on.

**9. Discussion**

A. Ordinance 1233-24, Ziply Fiber Franchise Agreement

City Administrator Jessica Griess went over the franchise agreement and asked if there were any questions.

B. Ordinance 1234-24, Street Racing

Chief Schrimpscher discussed the street racing ordinance with council.

C. Fee Schedule Update for Rentals

City Administrator Jessica Griess updated the council on the fee schedule for renting community center and renting the shelters in the parks.

D. Resolution 1275-24, Public Works Equipment Surplus List

City Administrator Jessica Griess went over the surplus list which included the dump truck, red F250 truck and the Ferris Mower.

E. Ordinance 1235-24, 2024 Budget Amendment

City Administrator Griess went over the budget amendment which included an increase in non-union salaries, a non union clothing allowance per the approved union contract, an increase in the Police uniforms budget and adding a Seasonal Park employee.

F. IAM&AW Collective Bargaining Agreement 2024-2026

**10. New Business**

**11. Old Business**

**12. Ordinances & Resolution**

A. Resolution 1274-24, King County Parks Capital Project Grant Agreement

Motion made by Council Member Fairley, Seconded by Council Member Thomas.  
Voting Yea: Council Member Cook, Council Member Fairley, Council Member Osborn, Council Member Thomas, Council Member White

B. Resolution 1273-24, Traffic School Fee

Motion made by Council Member Cook, Seconded by Council Member Thomas.  
Voting Yea: Council Member Cook, Council Member Fairley, Council Member Osborn, Council Member Thomas, Council Member White

**13. Next Workshop**

Bin There Consulting

Traffic Impact Analysis - FCS

**14. Adjournment**

Mayor Linnell adjourned the meeting at 7:41 PM

**ATTEST:**

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Dana Parker – City Clerk

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Troy Linnell – Mayor





**CITY COUNCIL**

**AGENDA BILL # AB24-0118**

**City of Algona  
200 Washington Blvd.  
Algona, WA 98001**

**ITEM INFORMATION**

<b>SUBJECT:</b>  <b>Resolution 1276-24, Rental Packet Update</b>	<b>Agenda Date: April 22<sup>nd</sup>, 2024</b>		
	<b>Department/Committee/Individual</b>	<b>Created</b>	<b>Reviewed</b>
	Mayor		
	City Administrator		X
	City Attorney	X	X
	City Clerk		X
	Finance Dept		
	PW/Utilities		
	Planning Dept		
	Community Services		
	Police Dept		
	Finance Committee		
Planning Commission			
Civil Service Committee			

**Staff Contact: Jessica Griess, City Administrator**

**Attachments: Memo from Community Center Advisory Board; draft rental packet; Resolution 1276-24**

**SUMMARY STATEMENT:**  
 The Community Center Advisory Board has discussed renting the shelters in the parks and reviewed the current fees for the community center. Their recommendation is in front of you for your review and discussion. Also included is an updated rental packet that includes the recommendations and Zach's additions.

**COMMITTEE REVIEW AND RECOMMENDATION:**

**RECOMMENDED ACTION:**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date:</i>	<i>Action:</i>	<i>Vote:</i>

**CITY OF ALGONA  
RESOLUTION NO. 1276-24**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALGONA, WASHINGTON, UPDATING AND EXPANDING THE CITY’S FACILITY USE POLICY TO PROVIDE FOR PERIODIC RENTALS OF THE BASEBALL FIELD, BASKETBALL COURT, TENNIS/PICKLEBALL COURT, AND GAZEBOS IN MATCHETT PARK AND INTERURBAN PARK, RESPECTIVELY, IN ADDITION TO THE CITY OF ALGONA COMMUNITY CENTER; AUTHORIZING THE MAYOR TO EXECUTE FACILITY USE AGREEMENTS IN ACCORDANCE WITH SAID POLICY; AND APPROVING A TEMPLATE FACILITY USE AGREEMENT FORM FOR SHORT-TERM RENTAL USE OF SUCH FACILITES; AND REPEALING RESOLUTION NO. 1208-19.

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WHEREAS, by adoption of Resolution 1208-19, the City Council established a policy governing the short-term rental use of the City of Algona Community Center, including without limitation standards for eligible renters, rental fees, and contractual requirements; and

WHEREAS, the City Council desires to update such policy by providing for the short-term rental of other City facilities, including the baseball field, basketball court, tennis/pickleball court, and gazebos located in Matchett Park and Interurban Park, respectively, together with appropriate standards, fees, and procedures therefor;

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

Section 1. Repealer. Resolution No. 1208-19 is hereby repealed in its entirety.

Section 2. Facility Use Policy Adopted. The City Council hereby adopts as the Facility Use Policy for the City of Algona Community Center; the Matchett Park baseball field, basketball court, and tennis/pickleball court; and the Matchett Park and Interurban Park gazebos, respectively, (each a “City Facility” and collectively “City Facilities”) the terms, conditions and standards set forth in the *Algona City Facilities Rental Packet* contained in Exhibit A, attached hereto and incorporated herein by reference as if set forth in full.

The City Council further adopts the following additional standards and criteria for short-term rental use of City Facilities:

- A. No short-term rental period of a City Facility shall exceed twelve (12) consecutive hours.

- B. No user may utilize a City Facility for the purpose of political and/or partisan advocacy, including without limitation the support of or opposition to any ballot proposition, political candidate or political party.
- C. No user shall utilize a City Facility for any unlawful purpose, or for the promotion of any unlawful activity.
- D. No user shall utilize a City Facility for the display of any pornographic or obscene content or activity, or for the promotion, conduct or performance of “adult entertainment” as defined by Chapter 5.30 AMC.
- E. Any user that violates any provision of the above standards and/or the *Algona City Facility Rental Packet* shall be prohibited from renting any City Facility for a period of three (3) years.

Section 3. Mayoral Authorization. The Mayor or his designee is hereby authorized to execute on behalf of the City the Agreement for Use of City Facilities set forth in the *Algona City Facilities Rental Packet*, inclusive of any minor revisions deemed reasonably necessary or desirable by the Mayor, with users that meet the eligibility criteria contained therein and in this resolution. Without limitation of the foregoing, the Mayor or his designee may supplement the above-referenced form of Agreement with such terms and conditions as deemed reasonably necessary to protect the City and its property.

Section 4. Effective Date. This resolution shall take effect immediately upon passage.

PASSED by the City Council of the City of Algona, at its regular meeting thereof this \_\_\_\_ day of May, 2024.

CITY OF ALGONA, WASHINGTON

\_\_\_\_\_  
Troy Linnell, Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Dana Parker, City Clerk

EXHIBIT A

# ALGONA CITY FACILITIES RENTAL PACKET

## APPLICATION AND AGREEMENT FOR USE OF CITY FACILITIES

Date \_\_\_\_\_

Applicant \_\_\_\_\_ Driver's Lic # \_\_\_\_\_

NAME OF PERSON IN CHARGE (MUST BE 21) \_\_\_\_\_

PHONE # (w) \_\_\_\_\_ (h) \_\_\_\_\_ (c) \_\_\_\_\_

ADDRESS OF APPLICANT:

STREET \_\_\_\_\_ CITY \_\_\_\_\_ ZIP \_\_\_\_\_

\*IF APPLYING AS A NON PROFIT, YOU ARE REQUIRED TO SHOW PROOF OF NON PROFIT DESIGNATION

FACILITY REQUESTED: ("City Facility")

Community room \_\_\_Kitchen\_\_\_

Meeting Room 114 \_\_\_

Matchett Park Baseball Field \_\_\_

Meeting Room 116 \_\_\_

Matchett Park Basketball Court \_\_\_

Meeting Room 117 \_\_\_

Matchet Park Tennis/Pickleball Court \_\_\_

Matchett Park Gazebo \_\_\_

Waffle Park Gazebo \_\_\_

Interurban Park Gazebo \_\_\_

DATE(S) REQUESTED: \_\_\_\_\_ TIME REQUESTED: From \_\_\_\_\_ TO \_\_\_\_\_

**PROPOSED USE OF CITY FACILITY**

The Applicant proposes to use the City Facility for the following purposes (the "Permitted Use"):

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The Applicant shall not use, or allow the use of, the City Facility for any purpose other than the Permitted Use, and shall not enter upon, use, or allow to be used, the City Facility at any time except during the Rental Period.

**REMEMBER TO INCLUDE YOUR SET UP TIME AS WELL AS CLEAN UP TIME.**

TYPE OF ACTIVITY/MEETING \_\_\_\_\_ NUMBER OF PEOPLE EXPECTED \_\_\_\_\_  
ADMISSION COLLECTED? YES \_\_\_ NO \_\_\_ EXPLAIN \_\_\_\_\_

**AGREEMENT:** The above application and the following Terms and Conditions (collectively "the Agreement") set forth the binding contractual relationship between the Applicant and the City with respect to the Applicant's use of the City Facility. The undersigned hereby makes application to the City for use of the City Facility described above and certifies that the information provided in the application is correct. The undersigned further represents and warrants that he/she has the authority to make this application, and to execute this Agreement, on behalf of the Applicant, and further agrees that the Applicant will strictly observe and comply with the requirements of this Agreement and all applicable laws, rules, regulations and policies governing the Permitted Use and the use of City Facility. The Applicant agrees to exercise the utmost care in the use of the City Facility and to indemnify and hold the City harmless from all losses, liabilities, claims, demands or causes of action resulting from Applicant's use thereof as set forth in this Agreement. The Applicant further agrees to reimburse the City for any damage arising from the Applicant's use of the City Facility as set forth in this Agreement.

I have read and do understand the terms and conditions for use of the City Facility and agree to the provisions set forth in this Agreement.

Signature: \_\_\_\_\_ Today's Date: \_\_\_\_\_

Applicant: \_\_\_\_\_

**For City use only**

Approved: \_\_\_ Denied \_\_\_ Reason for denial \_\_\_\_\_

Rental Fee \_\_\_ PAID \_\_\_ DAMAGE DEPOSIT \_\_\_\_\_ PAID \_\_\_\_\_

ADDITIONAL COMMENTS \_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

# ALGONA CITY FACILITY RENTAL AGREEMENT TERMS AND CONDITIONS

## Reservations

To make reservations, please visit Algona City Hall Monday through Friday between the hours of 9:00 am – 12:00 pm and 1:00 pm – 5:00 pm. You may also reach us at 253.833.2897.

Rental reservations are taken on a first-come, first-serve basis. Reservations cannot be finalized until payment is made in full.

**Payment reflects the total hours the Applicant will use the City Facility as well as the Damage Deposit, together with additional fees as applicable.**

All applications must be verified and approved by the Community Connector.

## DAMAGE DEPOSIT RULES, CANCELLATION RATES

In addition to rental fees, the Applicant will be charged a Damage Deposit in an amount specified by the City. Damage Deposits are completely refundable as long as the following terms are met:

1. The City Facility (including outside grounds) is left in a clean and orderly manner per the rental Clean Up Checklist.
2. The Applicant’s use of the City Facility does not exceed or otherwise extend beyond the Rental Period.
3. All City equipment located within or otherwise associated with the City Facility is accounted for and undamaged.
4. Additional City staff time is not required as part of the Applicant’s use of the City Facility.
5. Damage to the City Facility, or other City property, resulting from or otherwise arising out of the Applicant’s use has not occurred.
6. The Applicant has complied with the prohibition against consumption of any alcoholic beverage and smoking in the City Facility or grounds of City Hall.
7. All rules/guidelines/policies governing the Permitted Use, and the rental usage of the City Facility, are met.

If these conditions are not met to the reasonable satisfaction of the City, an appropriate amount will be deducted from the Damage Deposit. If deemed reasonably necessary by the City, the Applicant will also be charged for any additional costs and/or expenses incurred by the City. Please allow 14 days for the Damage Deposit to be returned.

### Cancellations

- Cancellations made at least 14 days prior to the event will result in no cancellation charge.
- Cancellations made with less than a two-week notice will result in a cancellation fee of \$100.00. Unless due to an emergent situation decided by the City.

**NOTE:** The City reserves the right to cancel the Applicant’s scheduled use of the City Facility with a full refund to Applicant if, in the City’s sole discretion, the City Facility is needed for a public purpose, specifically including without limitation any emergency purpose, during the Rental Period.

### Fees

Community Center	Resident \$45 Non-Resident \$55 Non-Profit \$45
Meeting Rooms 114-116-117	Resident \$15 Non-Resident \$20 Non-Profit \$15
Kitchen	\$30 flat fee
Park Gazebo (half day)	Resident \$50 Non-Resident \$75
Park Gazebo (full day)	Resident \$75 Non-Resident \$125
Baseball Field (half day)	Resident \$60 Non-Resident \$85
Baseball Field (full day)	Resident \$100 Non-Resident \$125
Basketball Court (half day)	Resident \$50 Non-Resident \$75
Basketball Court (full day)	Resident \$75 Non-Resident \$125
Tennis/Pickleball Court (half day)	Resident \$50 Non-Resident \$75
Tennis/Pickleball Court (full day)	Resident \$75 Non-Resident \$125

Half day is either 9:00 am to 3:00 pm or 3:00 pm to dusk.  
Full day is from 9:00 am to dusk.

**Additional Fees**

Damage Deposit \$250.00

Overrun fees

15-30minutes-1/2 hour

30-60 minutes- 1 hour

**Cooking and Food Preparation**

It is the exclusive responsibility of the Applicant to provide its own food serving, and eating dishes, paper products, utensils, and all other kitchen-related items, as applicable.

**Facility Setup**

Set up of the City Facility as necessary to accommodate the Permitted Use is the sole responsibility of the Applicant. The Applicant will not be allowed inside the City Facility prior to the start of the Rental Period. Please be sure to allow enough time to complete any desired City Facility set up and/or decorating when booking the rental. The Applicant will be charged for any and all time used for set up. The Applicant is responsible for returning any furniture and other items inside the City Facility to their original configuration at the conclusion of the Applicant's use.

**Loading, Deliveries and Storage**

All deliveries to the City Facility provided or otherwise arranged by the Applicant must occur during the Rental Period only. Deliveries that arrive early will not be accepted. City Staff will not sign for any deliveries. All items must be removed from the City Facility at the end of the Rental Period.

**Cleaning the Facility**

Applicant is solely responsible for cleaning the City Facility in accordance with the Rental Clean-up Check List. All garbage generated from the Applicant's use is to be removed from the City Facility at the conclusion of the Rental Period and placed in the dumpster. (Please use the dumpster located in back parking lot.)

Any cleaning and or repairs that require staff time and materials will be deducted from the Damage Deposit and/or charged to the Applicant. If the Applicant's use of the City Facility exceeds the Rental Period, the Applicant will be charged for the additional time and/or it will be deducted from the Damage Deposit.



## Decorations

Decorations may be attached to the walls, windows, or ceilings of the City Facility with **blue tape only**. **The use of tacks, staples, glue or other marring materials on walls, tables, or floors of the City Facility is strictly prohibited.**

The use of candles or flammable materials is strictly prohibited.

The use of smoke machines is strictly prohibited.

## Alcohol Consumption

The consumption of alcohol is strictly prohibited on all City property.

## Smoking

All City Facilities are smoke free and tobacco free facilities. Therefore, smoking, chewing, etc. of tobacco is prohibited inside the City Facility. Please smoke outside of the City Facility in designated smoking areas only.

## Selling Items

Applicants wishing to sell items while renting the City Facility may be required to obtain a City of Algona Business License. A copy of the business license must be on file with the rental application 7 days prior to the scheduled event. Business Licenses may be obtained by contacting the City Clerk Office at City Hall (253-833-2897). **See attached business license application.**

## Indemnification, Insurance and Risk of Loss

### **Indemnification / Hold Harmless**

Applicant shall defend, indemnify and hold harmless the City, its officer, 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 Applicant's use of the City Facility or from any activity, work or thing done, permitted, or suffered by Applicant in or about the City Facility, except only such injury or damage as shall have been occasioned by the sole negligence of the City. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

### **Insurance**

Unless waived in writing by the City (see below), Applicant shall procure and maintain for the duration of the use or rental period insurance against claims for injuries to persons or damage to property which may arise from or in connection with the use of the City Facility and the activities of the Applicant and his or her guests, invites, representatives, volunteers and employees.

No Limitation. Applicant’s maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Applicant to the coverage provided by such insurance or otherwise limit the City’s recourse to any remedy available at law or in equity.

Applicant’s required insurance shall be as follows: General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence from CG 00 01 covering premises, operations, products-completed operations and contractual liability. The City shall be named as an additional insured on Applicant’s General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or an endorsement providing at least as broad coverage. The General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$1,000,000 general aggregate.

\*\*For athletic participant events (e.g., rental of the Matchett Park baseball field, basketball court, and tennis/pickleball courts), the Applicant shall also obtain General Liability insurance that includes coverage for participant liability with limits of not less than \$1,000,000 per occurrence.

The insurance policy shall contain, or be endorsed to contain that Applicant’s insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of Applicant’s insurance and shall not contribute with it.

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

Applicant shall provide a certificate of insurance evidencing the required insurance before using the Premises.

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

To be completed by the City (check one):

\_\_\_ Applicant IS REQUIRED to procure and maintain insurance

\_\_\_ Applicant IS NOT REQUIRED to procure and maintain insurance

**Risk of Loss.**

Applicant exclusively assumes all risk of loss in storing, using or operating any equipment, materials or other personal property within the City Facility, and the City shall have no responsibility whatsoever for the safety, protection, integrity or preservation thereof.

**Damage and Injury Pre-check space and report it**

Damage to the City Facility and/or any City equipment must be reported to the City by Applicant within twenty-four hours. Applicant shall be financially responsible for all damages incurred during or resulting from Applicant’s use of the City Facility. The City shall not be responsible for accident, injury or loss of property.

**Misuse of Facility**

The misuse of the City Facility or the failure to conform to these rules and regulations will be sufficient reason for denying any future applications for use of City facilities and retention of the full amount of the security deposit.

**Miscellaneous**

Governing Law; Venue; Attorneys’ Fees. This Agreement shall be governed by the Laws of the State of Washington. The venue for any litigation arising out of this Agreement shall be the Superior Court for King County, Washington. The substantially prevailing party in any such litigation shall be entitled to an award of its reasonable attorneys’ fees.

Entire Agreement. The provisions of this Agreement constitute the entire agreement of the parties regarding the Designated Premises. Any amendment or modification of this Agreement must be in writing and signed by both parties.

No Third-Party Beneficiary. This Agreement is executed for the exclusive benefit of the signatory parties and their respective successors and assigns. Nothing herein shall be construed as creating any enforceable right, claim or cause of action in or for any third-party.

## RENTAL CLEAN UP CHECK LIST

- 1. Floors and rugs clean and free of debris. \_\_\_\_\_
- 2. Tables and chairs clean and free of debris/  
All tables used must be wiped down. \_\_\_\_\_
- 3. Kitchen counters and outdoor park grills,  
if any, clean. \_\_\_\_\_
- 4. Garbage cans need to be emptied. Please  
use dumpster located in back parking lot. \_\_\_\_\_
- 5. All decorations and supplies from event  
removed. \_\_\_\_\_
- 6. Facility put back to original configuration. \_\_\_\_\_
- 7. All windows and doors, if any, must be  
closed and locked. \_\_\_\_\_

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Signature of Renter \_\_\_\_\_ Date \_\_\_\_\_

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Staff Signature \_\_\_\_\_ Date \_\_\_\_\_

**RENTAL CLEAN UP CHECK LIST**  
**(copy for renter to take)**

- 1. Floors and rugs clean and free of debris. \_\_\_\_\_
- 2. Tables and chairs clean and free of debris/  
All tables used must be wiped down. \_\_\_\_\_
- 3. Kitchen counters and outdoor park grills,  
if any, clean. \_\_\_\_\_
- 4. Garbage cans need to be emptied. Please  
use dumpster located in back parking lot. \_\_\_\_\_
- 5. All decorations and supplies from event  
removed. \_\_\_\_\_
- 6. Facility put back to original configuration. \_\_\_\_\_
- 7. All windows and doors, if any, must be  
closed and locked. \_\_\_\_\_

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Signature of Renter \_\_\_\_\_ Date \_\_\_\_\_

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Staff signature \_\_\_\_\_ Date \_\_\_\_\_



**CITY COUNCIL**

**AGENDA BILL # AB24-0122**

**City of Algona  
200 Washington Blvd.  
Algona, WA 98001**

**ITEM INFORMATION**

<b>SUBJECT:</b>  <b>Resolution 1275-24, Surplus of Public Works Equipment</b>	<b>Agenda Date: April 22<sup>nd</sup>, 2024</b>		
	<b>Department/Committee/Individual</b>	<b>Created</b>	<b>Reviewed</b>
	Mayor		X
	City Administrator		X
	City Attorney		
	City Clerk		X
	Finance Dept		
	PW/Utilities		
	Planning Dept		
	Community Services		
<b>Cost Impact:</b>	Police Dept		
<b>Fund Source:</b>	Finance Committee		
<b>Timeline: 1<sup>st</sup> review – 4/8/24</b>	Planning Commission		
<b>2<sup>nd</sup> review – 4/22/24</b>	Civil Service Committee		

**Staff Contact: Jessica Griess, City Administrator**

**Attachments: Resolution 1275-24**

**SUMMARY STATEMENT:**

This resolution authorizes the dump truck, the red F250 truck, and the Ferris Mower to be considered surplus and sold. The mower has been replaced as per the asset replacement plan. The two trucks will be replaced with a smaller dump truck that can also be used as a crew truck.

**COMMITTEE REVIEW AND RECOMMENDATION:**

**RECOMMENDED ACTION:**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date:</i>	<i>Action:</i>	<i>Vote:</i>

**CITY OF ALGONA  
WASHINGTON  
RESOLUTION NO. 1275-24**

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**A RESOLUTION OF THE CITY OF ALGONA,  
WASHINGTON, AUTHORIZING THE DISPOSAL OF  
SURPLUS PROPERTY**

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WHEREAS, the City has determined the items listed on Exhibit A are no longer necessary for City operations and are therefore surplus; and

WHEREAS, the City Council has authority to dispose of surplus property pursuant to RCW 35A.11.010; and

WHEREAS, the City Council desires to authorize the City Administrator or designee to dispose of surplus City property;

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

Section 1. Surplus Property. The City Council hereby declares the property listed on Exhibit "A" attached hereto as surplus to the needs of the City.

Section 2. Disposal Method. The surplus equipment identified in Exhibit A may be disposed of to the general public by means of direct sales, sealed bid, trade-in, auction, or other reasonable method of disposal as determined by the City Administrator or designee to be in the best interests of the City.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2024.

CITY OF ALGONA

\_\_\_\_\_  
Troy Linnell, Mayor

ATTEST/AUTHENTICATED:

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Dana Parker  
City Clerk

Filed with the City Clerk:  
Passed by the City Council:  
Resolution No.:  
Date Posted:



Exhibit "A"

## Surplus List

Item Description	Serial # / VIN	Estimated Value
2000 Freightliner FL70 Dump Truck	1FTSX21538EA02821	\$15,000
2008 Ford F250	1FV6HJBA0XHF6929	\$10,000
Ferris 48" Mower		\$1,000

**To:** Mayor Troy Linnell and City Council Members

**From:** Tara Dunford, CPA

**Date:** April 8, 2024

**Re:** Ordinance No. 1235-24 2024 Budget Amendment #1

**ATTACHMENTS:** Ordinance No. 1235-24; Exhibit A – Proposed Budget Amendment; Exhibit B – Authorized Positions; Exhibit C – Wage Scale

**TYPE OF ACTION:** Action. Recommended motion: “I move to adopt the attached ordinance 1235-24 amending the 2024 budget as outlined in Exhibits A, B, and C.”

**Discussion:**

This proposed budget amendment includes the following:

Salaries and Benefits

- Increase non-uniform union salaries by 4.5% as per approved union contract. The total cost of \$29,335 is allocated across funds as follows:
  - General Fund - \$16,565
  - Street Fund - \$4,655
  - Storm Fund - \$5,075
  - Water Fund - \$2,110
  - Sewer Fund - \$930
  
- Increase non-uniform union clothing allowances as per approved union contract. The total cost of \$10,200 is allocated across funds as follows:
  - General Fund - \$1,925
  - Street Fund - \$2,920
  - Storm Fund - \$2,793
  - Water Fund \$1,677
  - Sewer Fund - \$886
  
- Increase the Police uniform budget by \$7,000.
  
- Add a Parks Seasonal at \$25.00/hour for up to 720 hours. Total cost = \$19,500 for salaries + benefits.

Equipment Replacement Fund

- Increase Capital Outlay expenditures by \$85,000 to fund replacement of asset PW9 (Dump Truck). This asset was originally on the list for replacement in 2028 at a cost of \$140,000. Through 2023, \$121,000 has been set aside for replacement of this asset. The difference between the amount saved and the \$85,000 purchase cost will be applied to asset replacement plan in 2025 in accordance with

established allocation percentages and will reduce the amount which will need to be saved for replacement of the new (2024) asset.

Summary of Net Increase (Decrease) in Expenditures by Fund:

<b>Fund</b>	<b>Non-Uniform Salaries</b>	<b>Non-Uniform Clothing Allowances</b>	<b>Park Seasonal</b>	<b>Police Uniform Increase</b>	<b>Asset Replacement</b>	<b>Total</b>
General	16,565	1,925	19,500	7,000	-	44,990
Street	4,655	2,920	-	-	-	7,575
Storm	5,075	2,793	-	-	-	7,868
Water	2,110	1,677	-	-	-	3,787
Sewer	930	886	-	-	-	1,816
Equipment Replacement	-	-	-	-	85,000	85,000
<b>Total</b>	<b>29,335</b>	<b>10,200</b>	<b>19,500</b>	<b>7,000</b>	<b>85,000</b>	<b>151,035</b>

*General Fund Line Item Adjustments:*

Increase Community Events	5,000
Decrease Finance Professional Services	(2,000)
Decrease Finance Communications	(2,000)
Decrease Central Services/Utilities	(1,000)
<b>Net</b>	<b>-</b>

CITY OF ALGONA, WASHINGTON

**ORDINANCE NO. 1235-24**

AN ORDINANCE OF THE CITY OF ALGONA, WASHINGTON, MAKING CERTAIN FINDINGS OF FACT AND AMENDING THE 2024 BUDGET ADOPTED WITH ORDINANCE NO. 1231-23 ON DECEMBER 11, 2023, AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE, AND FOR SUMMARY PUBLICATION BY ORDINANCE TITLE ONLY.

---

WHEREAS, the Algona City Council adopted the 2024 Budget with Ordinance No. 1231-23 on December 11, 2023; and

WHEREAS, unplanned and unbudgeted expenditures have been identified; and

WHEREAS, the non-uniform union contract was pending settlement at the time the 2023 budget was adopted, therefore salary increases for those positions were excluded from the adopted budget; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Algona to authorize a part-time Parks seasonal employee; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Algona to increase the General Fund budget by \$44,990; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Algona to increase the Street Fund budget by \$7,575; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Algona to increase the Stormwater Management Fund budget by \$7,868; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Algona to increase the Water Maintenance Fund budget by \$3,787; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Algona to increase the Sewer Maintenance Fund budget by \$1,816; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Algona to increase the Equipment Replacement Fund budget by \$85,000; and

WHEREAS, the increase in the General Fund expenditure budget will decrease ending fund balance by \$44,990; and

WHEREAS, the increase in the Street Fund expenditure budget will decrease ending fund balance by \$7,575; and

WHEREAS, the increase in the Stormwater Management Fund expenditure budget will decrease ending fund balance by \$7,868; and

WHEREAS, the increase in the Water Maintenance Fund expenditure budget will decrease ending fund balance by \$3,787; and

WHEREAS, the increase in the Sewer Maintenance Fund expenditure budget will decrease ending fund balance by \$1,816; and

WHEREAS, the increase in the Equipment Replacement Fund expenditure budget will decrease ending fund balance by \$85,000; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Algona to adopt by ordinance non-uniform union salaries as per the 2024 collective bargaining agreement; and

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF ALGONA, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The above stated recitals are hereby adopted as the council’s findings and reasons for the adoption of this ordinance.

Section 2. The 2024 budget, as adopted with ordinance 1231-23 is hereby amended with an increase of zero dollars to revenues and \$151,035 to expenditures as detailed in the attached exhibit (Exhibit A – Proposed Budget Amendment) and positions are officially authorized as detailed in the attached exhibit (Exhibit B – Authorized Positions) and the wage scale is modified as detailed in the attached exhibit (Exhibit C – Wage Scale).

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This ordinance, being an exercise of power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Passed by the Algona City Council the \_\_\_\_ day of April 2024, and approved by the Mayor, the \_\_\_\_ day of April 2024.

\_\_\_\_\_  
Troy Linnell, Mayor

**ATTEST:**

\_\_\_\_\_  
Dana Parker, City Clerk

**APPROVED AS TO FORM:**

---

J. Zachary Lell  
City Attorney

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



**EXHIBIT A**

**2024 Budget Amendment #1**

*Amending Section 2 of Ordinance 1231-23 and Page 11 of the City of Algona 2024 Budget*

<b>Fund</b>	<b>Expenditures</b>		
	<u>Original</u>	<u>Amended</u>	<u>Increase (Decrease)</u>
General	3,332,589	3,377,579	44,990
Drug	-	-	-
Street	1,065,700	1,073,275	7,575
Rainy Day Fund	-	-	-
Capital Improvement	315,000	315,000	-
Park Impact	-	-	-
General Obligation Bond	318,300	318,300	-
Stormwater Management	393,800	401,668	7,868
Water Maintenance	830,200	833,987	3,787
Sewer Maintenance	1,142,900	1,144,716	1,816
Water Capital Improvement	-	-	-
Sewer Capital Improvement	-	-	-
Stormwater Capital Improvement	-	-	-
Equipment Replacement Fund	100,000	185,000	85,000
Unemployment Trust	-	-	-
Explorers Program	-	-	-
<b>Total</b>	<b>7,498,489</b>	<b>7,649,524</b>	<b>151,035</b>

<b>Fund</b>	<b>Ending Fund Balance</b>		
	<u>Original</u>	<u>Amended</u>	<u>Increase (Decrease)</u>
General	860,734	815,744	(44,990)
Drug	7,677	7,677	-
Street	134,636	127,061	(7,575)
Rainy Day Fund	365,174	365,174	-
Capital Improvement	4,826	4,826	-
Park Impact	244,500	244,500	-
General Obligation Bond	464	464	-
Stormwater Management	919,146	911,278	(7,868)
Water Maintenance	1,307,054	1,303,267	(3,787)
Sewer Maintenance	1,006,218	1,004,402	(1,816)
Water Capital Improvement	773,165	773,165	-
Sewer Capital Improvement	424,266	424,266	-
Stormwater Capital Improvement	269,877	269,877	-
Equipment Replacement Fund	772,209	687,209	(85,000)
Unemployment Trust	3,587	3,587	-
Explorers Program	27,417	27,417	-
<b>Total</b>	<b>7,120,950</b>	<b>6,969,915</b>	<b>(151,035)</b>



**EXHIBIT B**  
**2024 Budget Amendment #1**  
*Amending Page 12 of the City of Algona 2024 Budget*

Authorized Positions					
	<u>2020 Final</u>	<u>2021 Final</u>	<u>2022 Final</u>	<u>2023</u> <u>(Amended)</u>	<u>2024</u> <u>(Amended)</u>
<b><u>Administration:</u></b>					
City Administrator	1	--	--	1	1
City Clerk	1	1	1	--	1
Deputy City Clerk	1	1	1	1	--
Clerical Assistant	1	1	1	1	1
Community Connector	1	1	1	1	1
Code Enforcement Officer/Permit Tech	--	--	--	1	1
Permit Technician	1	--	--	--	--
<b>Total Administration</b>	<b>6</b>	<b>4</b>	<b>4</b>	<b>5</b>	<b>5</b>
<b><u>Police:</u></b>					
Police Chief	1	1	1	1	1
Police Clerk	2	1	1	1	1
Police Sergeant	1	1	1	--	--
Police Corporal	--	--	1	1	1
Police Officer	6	6	5	7	7
Police Office Manager	--	--	--	1	1
Reserve Officer	<i>part time</i>	<i>part time</i>	<i>part time</i>	<i>part time</i>	<i>part time</i>
<b>Total Police</b>	<b>10</b>	<b>9</b>	<b>9</b>	<b>11</b>	<b>11</b>
<b><u>Public Works:</u></b>					
Public Works Director	1	1	1	1	1
Utility Superintendent	1	1	1	--	--
Utility Worker 2	1	1	1	1	--
Utility Worker 1	2	3	3	3	4
Park Seasonal					<i>part time</i>
<b>Total Public Works</b>	<b>5</b>	<b>6</b>	<b>6</b>	<b>5</b>	<b>5</b>
<b>City-Wide Total</b>	<b>21</b>	<b>19</b>	<b>19</b>	<b>21</b>	<b>21</b>

**EXHIBIT C**  
**2024 Budget Amendment #1**  
*Amending Page 13 of the City of Algona 2024 Budget*

## Wage Scale

<b><i>Elected Officials</i></b>	<b><u>Annual</u></b>
Mayor	35,000
Councilmembers	3,600

<b><i>Non-Represented Full Time Positions</i></b>	<b><u>Annual Rates</u></b>				
	<b><u>Step A</u></b>	<b><u>Step B</u></b>	<b><u>Step C</u></b>	<b><u>Step D</u></b>	<b><u>Step E</u></b>
Police Chief	138,248				
City Administrator	110,250				
Public Works Director	111,387				
City Clerk/Treasurer	90,350				

<b><i>Non-Represented Part Time/Temp</i></b>	<b><u>Hourly</u></b>
Police Reserve Officers	32.59
Temp EHM/Court Security	29.11
Park Seasonal	25.00

<b><i>Represented - Non-Uniform</i></b>	<b><u>Annual Rates Per Collective Bargaining Agreement</u></b>				
	<b><u>Step A</u></b>	<b><u>Step B</u></b>	<b><u>Step C</u></b>	<b><u>Step D</u></b>	<b><u>Step E</u></b>
Police Clerk	57,709	60,600	63,477	66,657	69,996
Clerical Assistant	55,049	57,795	60,687	63,722	66,599
Community Connector	71,211	74,767	78,511	82,197	86,303
Utility Superintendent	70,878	74,420	78,135	82,038	86,144
Utility Worker 1	59,068	61,944	65,038	68,291	71,702
Code Enforcement Officer/Permit Tech	70,878	74,420	78,135	82,038	86,144

<b><i>Represented - Uniform</i></b>	<b><u>Annual Rates Per Collective Bargaining Agreement</u></b>				
	<b><u>Step A</u></b>	<b><u>Step B</u></b>	<b><u>Step C</u></b>	<b><u>Step D</u></b>	<b><u>Step E</u></b>
Police Corporal	80,196	84,204	88,419	92,840	97,482
Police Officer	75,657	79,438	83,414	87,585	91,964
Police Officer Manager	80,196	84,204	88,418	92,840	97,482



**CITY COUNCIL**

**AGENDA BILL # AB24-0123**

**City of Algona  
200 Washington Blvd.  
Algona, WA 98001**

**ITEM INFORMATION**

<b>SUBJECT:</b>  <b>IAM&amp;AW Collective Bargaining Agreement 2024-2026</b>	<b>Agenda Date: April 22<sup>nd</sup>, 2024</b>		
	<b>Department/Committee/Individual</b>	<b>Created</b>	<b>Reviewed</b>
	Mayor		X
	City Administrator		X
	City Attorney	X	X
	City Clerk		X
	Finance Dept		
	PW/Utilities		
	Planning Dept		
	Community Services		
	Police Dept		
	Finance Committee		
Planning Commission			
Civil Service Committee			

**Staff Contact: Jessica Griess, City Administrator**

**Attachments: Draft Collective Bargaining Agreement**

**SUMMARY STATEMENT:**

This presented IAM&AW Collective Bargaining Agreement has not been voted on by the members and is still subject to potential changes.

Here are some of the bigger changes you will see:

- 4.5% Cost of Living (COLA) increase for 2024
- 2.5%-4.5% COLA range for 2025 and 2026
- Callback minimum hours changed from 4 to 3 hours at 1.5 times base rate of pay; callback hours beyond 3 hour minimum paid at double base rate of pay
- Added language regarding CDL requirement
- Updated longevity percentages
- Included an education incentive
- Change from a uniform company to an allowance
- Increase in Deferred Compensation match

**COMMITTEE REVIEW AND RECOMMENDATION:**

**RECOMMENDED ACTION:**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date:</i>	<i>Action:</i>	<i>Vote:</i>

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# **A G R E E M E N T**

**BY AND BETWEEN**

**CITY OF ALGONA**

**AND**

**INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE  
WORKERS DISTRICT LODGE 160, LOCAL LODGE 297**

**REPRESENTING THE PUBLIC WORKS AND CLERICAL EMPLOYEES**

**JANUARY 1, 2024 THROUGH DECEMBER 31, 2026**

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BY AND BETWEEN  
CITY OF ALGONA  
AND  
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS  
DISTRICT LODGE 160, LOCAL LODGE 297  
REPRESENTING THE PUBLIC WORKS AND CLERICAL EMPLOYEES

**PREAMBLE**

This Agreement is between the CITY OF ALGONA, WASHINGTON (the "Employer") and the INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE NO. 160, LOCAL LODGE 297 (the "Union") for the purposes of setting forth the mutual understanding of the parties as to conditions of employment for those employees for whom the City recognizes the Union as the collective bargaining representative.

**ARTICLE 1 RECOGNITION AND BARGAINING UNIT**

1.1 The Employer recognizes the Union as the exclusive bargaining representative for all employees designated by the classifications set forth below excluding elected officials, officials appointed for a fixed term, confidential employees, supervisors and all other employees.

- Job Title/Classification
- PoliceSpecialist
- Utility Supervisor
- Utility Worker I
- Utility Worker II
- Grounds/Maintenance Worker
- Code Enforcement/Permit Technician
- Clerical Assistant
- Community Coordinator

**ARTICLE 2 MANAGEMENT RIGHTS**

2.1 DIRECTION OF WORKFORCE — The Union recognizes the prerogative of the Employer to operate and manage its affairs in all respects in accordance with its lawful mandate, and the powers of authority which the Employer has not specifically abridged, delegated, or modified by this Agreement are retained by the Employer, including but not limited to the right to contract services of any and all types, in accordance with this Agreement. The direction of its work force is vested exclusively in the Employer. This shall include, but is not limited to, the rights to (a) direct employees, (b) hire, promote, transfer, assign and retain employees; (c) suspend, demote, discharge, or take legitimate disciplinary action against employees for just cause; (d) right to determine hours of work, work schedules; (e) relieve employees from duty because of lack of work or other legitimate reasons; (f) maintain the efficiency of the operation entrusted to the City; (g) determine methods, means and personnel by which such operations are to be conducted; and (h) take any actions necessary in conditions of emergency regardless of prior commitments, to carry out the mission of the agency; provided, however, that items (a) through (h) shall not conflict with City ordinances, personnel rules and the terms of this Agreement.

- 2.2 EMPLOYER RULES AND REGULATIONS — The Employer shall have the right to make such reasonable direction, rules and regulations as may be deemed necessary by the Employer for the conduct and the management of the affairs of the Employer, and the Union agrees that the employees shall be bound by and obey such directions, rules, and the regulations insofar as the same do not conflict with the terms of the contract.
- 2.3 APPLICATION OF RULES — Rules shall be applied in a fair and equitable manner to all employees. Rules and regulations shall be made available by the Employer in writing to all employees.

**ARTICLE 3 UNION SECURITY**

- 3.1 PAYROLL DEDUCTION FOR UNION DUES/FAIR SHARE PAYMENTS – The Employer shall deduct monthly dues and fair share payments clearly and affirmatively authorized by employees in the Bargaining Unit who freely and voluntarily execute a wage assignment authorization form acknowledging the indemnity/hold harmless provision of this paragraph.<sup>1</sup> The Employer will deposit such dues and shop Agency Fee with Aerospace Industrial District Lodge 160, 9135 – 15<sup>th</sup> Place South, Seattle, Washington, 98108-5190. Upon issuance and transmission of such dues and initiation fees to the Union, the Employer’s responsibility shall cease with respect to such deductions. The Union and each employee authorizing the assignment of wages for payment of Union dues hereby undertakes to indemnify and hold the Employer harmless from all claims, demands, suits or other forms of liability that may arise against the Employer for or on account of any deduction made in good faith from the wages of such employee. In the event an employee gives the Employer written notice of their withdrawal of authorization for a wage assignment and instruction to cease making monthly dues or fair share payment deductions from their wages, Employer shall give the Union Business Agent written notice (email is sufficient) within five (5) working days of receipt of the employee’s notice/instruction and comply with the employee’s instruction no later than the payroll period next following the Employer’s receipt of the notice/instruction.
- 3.2 NEW EMPLOYEES – The Employer will notify the Union of all new hires involving Bargaining Unit positions within fourteen (14) calendar days of hire. All newly hired employees shall be introduced to the Shop Steward or designee who will be allowed thirty (30) minutes to brief the new hire on the collective bargaining agreement, Union membership and related matters as part of the new hire orientation. No employee, however, may be mandated to remain with the Shop Steward or designee for the briefing after the introduction.

<sup>1</sup> The Union’s wage assignment authorization form shall include the supplement attached as Appendix B to this Agreement.

**ARTICLE 4 GRIEVANCE PROCEDURE**

- 4.1 The purpose of this procedure is to provide an orderly method for resolving grievances. A determined and good faith effort shall be made by Union and City representatives to settle any differences at the lowest possible level of the grievance procedure.

- 4.2 A grievance shall be defined as an alleged violation of the explicit terms and conditions of this Collective Bargaining Agreement. Grievances shall be processed in strict accordance with the following procedures and stated time limits.
- 4.3 In the grievance procedure, the aggrieved employee shall have the right to represent him or herself or to be represented by a Union representative. The Union has the right, in its own capacity, to act as an aggrieved party in the grievance procedure.
- 4.4 In the event the aggrieved party is an individual employee, the grievance procedure shall begin with Step 1 – 4.7.
- 4.5 A grievance may be initiated by the Union. In the event the Union is the aggrieved party, the procedure shall begin with Step 2 – 4.8.
- 4.6 A grievance may be advanced to any step in the grievance process by mutual written agreement of the parties.

**STEPS IN GRIEVANCE PROCEDURE**

- 4.7 STEP 1: ORAL DISCUSSION — The aggrieved employee and/or the employee's Union representative shall meet with the Department Director within fifteen (15) calendar days of the occurrence of the alleged grievance to attempt to resolve the difference at that level.
- 4.8 STEP 2: In the event the grievance is not settled in Step 1, or in the event the Union is the aggrieved party, the grievant or the Union representative of the grievant shall, within twenty (20) calendar days of the occurrence of the alleged grievance, prepare a written grievance document which shall include the following:
  - 4.8.1 Statement of the grievance and relevant facts, including:
    - (1) Full name of grievant;
    - (2) Description of the event giving rise to the grievance;
    - (3) Date and time (if appropriate) of event giving rise to the grievance;
    - (4) Names of employees involved in the event;
    - (5) Names of any and all witnesses, if known at time of filing;
    - (6) Specific provisions(s) of the Agreement violated; and
    - (7) Remedy sought.
  - 4.8.2 The written grievance shall be filed with the City Administrator or his/her designee. The Administrator or his/her designee shall conduct an investigation and shall notify the grievant and the Union, in writing, of the decision and the reasons therefore within twenty-one (21) calendar days after receipt of the written grievance. The period during which the Director or designee shall have to investigate and notify the aggrieved party of the decision shall begin on the first working day after such individual receives the grievance. If the grievance is against the Director, then the grievance shall be filed directly with the City Administrator or his/her designee in accordance with Subsection 4.8.3.
  - 4.8.3 If the grievant is dissatisfied with the decision of the Administrator, the grievant may file the written grievance with and request review by the Mayor or his/her designee. Such request shall be filed with the Mayor or his/her designee within twenty-one (21) calendar days of the grievant's receipt of the Administrator's decision. The Mayor or his/her designee shall conduct an investigation and shall notify the grievant and the Union, in writing, of the decision and the reasons therefore within twenty-one (21) calendar days after receipt of the written grievance. In the event the Mayor is not available to receive a written grievance, and the Mayor's designee has not been



appointed, then such grievance shall be filed upon the Mayor's earliest availability. The period during which the Mayor or his/her designee shall have to investigate and notify the aggrieved party of the decision shall begin on the first working day after such individual receives the grievance.

- 4.8.4 If the grievance is against the City Administrator, it shall be filed with the Mayor. The Mayor or his/her designee shall conduct an investigation and shall notify the grievant and the Union, in writing, of the decision and the reasons therefore within twenty-one (21) calendar days after receipt of the written grievance. In the event the Mayor is not available to receive a written grievance, and the Mayor's designee has not been appointed, then such grievance shall be filed upon the Mayor's earliest availability. The period during which the Mayor or his/her designee shall have to investigate and notify the aggrieved party of the decision shall begin on the first working day after such individual receives the grievance.
- 4.8.5 If the grievance is against the Union by the Employer, the Employer shall file the grievance with the Shop Steward and/or the Union Business Representative within twenty-one (21) calendar days of becoming aware of the violation(s) of the provisions of the Agreement. In the event the Shop Steward or the Union Business Representative is not available to receive a written grievance, then such grievance shall be filed upon the earliest availability of either one. The Shop Steward or his/her designee shall conduct an investigation and shall notify the City Administrator, in writing, of the decision and the reasons therefore within twenty-eight (28) calendar days after receipt of the written grievance.

4.9 STEP 3 – ARBITRATION:

- 4.9.1 If the grievant is dissatisfied with the decision of the City Administrator, the Mayor, or their respective designee, the grievant may submit the matter to arbitration within thirty (30) calendar days of receipt of such decision. The grievant shall initiate the arbitration process by delivering to the City Administrator, the Mayor or their respective designee written notice of the party's intent to submit the grievance to arbitration. The written notice shall identify the basis for grievance (including reported violations of the collective bargaining agreement) and the remedy sought.
- 4.9.2 If the Employer is dissatisfied with the decision of the Union, the Employer may submit the matter to arbitration within thirty (30) calendar days of receipt of such decision. The Employer shall initiate the arbitration process by delivering to the Shop Steward and/or the Union Business Representative written notice of the Employer's intent to submit the grievance to arbitration. The written notice shall identify the basis for grievance (including reported violations of the collective bargaining agreement) and the remedy sought.
- 4.10 SELECTION OF AN ARBITRATOR: Within fourteen (14) calendar days from the date of receipt of the arbitration request, the parties shall meet for the purpose of selecting an arbitrator.
- 4.11 If agreement cannot be reached on the selection of the arbitrator, either party may request the Federal Mediation & Conciliation Service to submit a list of seven (7) impartial persons qualified to act as arbitrators. Each person on the list must be a current member of the National Academy of Arbitrators and reside in the State of Washington or Oregon. The parties shall meet within fourteen (14) calendar days after the receipt of such list. If the parties cannot mutually agree on one of the listed arbitrators, the parties will each strike one arbitrator's name from the list of seven and shall then repeat this procedure until there is only one name remaining. That person





- 8.3 SAFETY EQUIPMENT — The Employer shall furnish proper safety devices for all employees as prescribed by WISHA standards. It shall be mandatory that all employees use such devices, and an employee’s violation of this requirement may be just cause for disciplinary action.
- 8.4 TRAINING – All member employees will receive required safety training and certification, provided and paid for by the Employer. Recommendations from the Safety Committee will be taken into advisement, and offered if the Department Director gives authorization. All training will be provided on paid City time.

**ARTICLE 9 LABOR MANAGEMENT COMMITTEE**

- 9.1 LABOR MANAGEMENT — The Employer and the Union agree that a need exists for close cooperation between labor and management, and further, from time to time suggestions and complaints of a general nature affecting the Union and the Employer require consideration. To accomplish this objective, the Employer and the Union agree that no more than three (3) duly authorized representatives of the Union, excluding the business representative, shall function as one-half (½) of a Labor-Management Committee, the other half being no more than three (3) certain representatives of the Employer named for that purpose. The committee shall meet as mutually agreed for the purpose of discussing and facilitating the resolution of all problems which may arise between the parties. Should the Union and Employer mutually agree to change, add, or delete any provision of this Agreement, such change shall be set forth in a Letter of Understanding.

**ARTICLE 10 EMPLOYEE PROBATION**

- 10.1 PROBATION — Regular full time employees shall serve a probation period of (6) six months and shall have no seniority rights during that period. After six (6) months an employee's seniority date shall become the date on which the employee started the probation period. The Union may not question the dismissal of any employee during the probation period nor shall the dismissal be the subject of a grievance.
- 10.2 PROBATION - Regular part time employees shall serve a probation period of twelve (12) months, or shall be given credit for time worked based on pro rata hours worked (based on a 2,080-hour year), and shall have no seniority rights during that period. After twelve (12) months, or within the pro rata period set forth above, an employee's seniority date shall become the date on which the employee started the probation period. The Union may not question the dismissal of any employee during the probation period nor shall the dismissal be or become the subject of a grievance.
- 10.3 PROMOTION PROBATION — The probation period for an employee who has been promoted to a new classification shall be four (4) months. If an employee's performance in the new classification is found to be unacceptable, as determined by the Employer, and if the employee is qualified to return to the position from which the employee was promoted, the employee shall have the right to return to the position from which the employee was promoted. The Union may not question the Employer's decision to return the employee to his/her previous position. Nor shall the Union question or grieve the Employer's decision to return the employee to his/her previous position.

**ARTICLE 11 SENIORITY**

- 11.1 DEFINITIONS — Seniority shall be defined as the length of continuous service with the Employer, including the employee's satisfactorily completed probationary period. Seniority shall not be affected by an approved leave of absence of not more than ninety (90) calendar days.
- 11.2 SENIORITY LIST — The Employer shall at least once per calendar year and when a new employee is hired establish and mail to the Union a seniority list which shall be brought up to date when changes occur in the Bargaining Unit. The order of seniority shall be based on the hire or rehire date of employment or acceptance, whichever is later.
- 11.3 VACANCIES AND PROMOTIONS — The Employer's intent is to encourage employees to apply for promotional opportunities. As job openings occur, notices shall be placed on bulletin boards throughout the City and through the use of internal e-mail for not fewer than five (5) working days prior to outside posting. The final decision shall be posted immediately following selection. Seniority shall be given consideration along with the requirements of the Employer in filling job vacancies and promotions. Seniority within classification shall apply when bona fide occupational qualifications are equal.
- 11.4 LAYOFFS AND RECLASSIFICATION — Layoffs or Reclassifications due to work force reductions shall be determined strictly by the order of seniority with the employee with the least seniority within classification affected first. Employees who have previously held other classifications shall have the right to return to such classifications if the employee is still qualified for the position and their overall seniority is greater than other employees who are currently in said classification. Employees shall not accrue seniority while on layoff.
- 11.5 RECALL — Laid off or reclassified employees shall be recalled strictly on the basis of seniority to any previously held classification if a vacancy occurs.
  - 11.5.1 A laid off or reclassified employee with one (1) year of service but less than three (3) years of service, who is not recalled within one (1) year shall lose recall rights.
  - 11.5.2 A laid off or reclassified employee with three (3) or more years of service, who is not recalled within three (3) years shall lose recall rights.
  - 11.5.3 When an employee is on layoff and a job opening occurs within the City, the laid off employee, if qualified for minimum job requirements, shall have the opportunity to compete for such job.
- 11.6 LOSS OF SENIORITY — An employee shall lose seniority for any of the following reasons:
  - (a) voluntary resignation;
  - (b) discharge for just cause;
  - (c) failure to report for work within two (2) weeks after receipt of notice of recall from layoff unless mutually extended by the Employer and the employee;
  - (d) exceeding a leave of absence (unless excused in writing or due to extenuating circumstances)
  - (e) giving a false reason for obtaining a leave of absence;
  - (f) accepting employment while on leave of absence unless agreed to in writing by the Employer, with a copy of such writing to be sent to the Union;
  - (g) Expiration of employee's recall rights.

**ARTICLE 12 EMPLOYEE CLASSIFICATIONS**

- 12.1 FULL-TIME REGULAR EMPLOYEES — “Full-time employee” means any position in which the employee regularly works forty (40) hours per week.
- 12.2 PART-TIME REGULAR EMPLOYEES — “Part-time regular employee” means a position in which the employee regularly works an average of twenty (20) to forty (40) hours per week. Part-time regular employees shall accrue vacation, sick leave, seniority, and holiday benefits in direct ratio to hours worked. Part-time regular employees shall receive health and welfare benefits in direct ratio to hours worked. Part-time regular employees shall not receive life insurance.
- 12.3 PART-TIME NON-REGULAR EMPLOYEES (TEMPORARY) — “Part-time non-regular employee” means a position in which the employee typically works less than twenty (20) hours per week, occasionally may work more than twenty (20) hours per week, or up to forty (40) hours per week on a seasonal basis. Part-time non-regular employees shall not receive benefits nor shall they accrue seniority. No full-time employee or regular part-time employee shall be displaced by the use of part-time non-regular employees.
- 12.4 INTERNS — Interns must be actively pursuing a course of study related to the job classification for which they are employed. Employment shall be limited to seven hundred and four (704) hours per intern, per year. Interns shall not receive benefits or accrue seniority. Interns applying for regular City employment shall not be considered as City employees.
- 12.5 DEPARTMENT DIRECTORS — The Public Works Director, Chief of Police and City Clerk/Administrator shall be allowed to perform departmental Bargaining Unit work on an as-needed basis. This Section shall not be used to displace bargaining unit employees.
- 12.6 NEW CLASSIFICATIONS — Should the Employer establish a new Bargaining Unit classification during the term of this Agreement, the Employer will discuss them with the Union and attempt to arrive at mutual agreement on wage rates for the new Bargaining Unit classification. If no agreement is reached, the Employer shall implement its proposed wage rate.

**ARTICLE 13 WAGES AND CLASSIFICATIONS**

- 13.1 WAGES AND CLASSIFICATIONS FOR 2024
  - 13.1.1 The wages (base rates of pay) in effect January 1, 2024 shall be in accordance with Appendix ‘A’ attached and incorporated herein. The 2024 wages shown in Appendix “A” incorporate an adjustment of 4.5%.
  - 13.1.2 For purposes of step advancement, employees shall be placed at the appropriate step on the matrix (Appendix ‘A’) as of January 1, 2024. New employees will be placed at Step A. Step advancement shall be automatic, based on satisfactory performance. Any early advancement shall create a new anniversary date for establishing further step increases.
- 13.2 RATES OF PAY FOR 2025, 2026.
  - 13.2.1 Effective January 1, 2025, the base rate of pay as set forth in Section 13.1 shall be increased by one hundred percent (100%) of the Seattle-Tacoma-Bellevue Metro Area, All Items, CPI-U from June 2023 to June 2024 as is supplied by the United States Department of Labor, Bureau of Labor Statistics; provided, however, said increase shall

be not less than two and one half percent (2.5%) nor more than four and one half percent (4.5%). Appendix A will be adjusted consistent with the CPI wage adjustments.

13.2.2 Effective January 1, 2026, the base rate of pay as set forth in Section 13.1 and adjusted pursuant to Section 13.2.1 shall be increased by one hundred percent (100%) of the Seattle-Tacoma-Bellevue Metro Area, All Items, CPI-U, from June 2021 to June 2022 as is supplied by the United States Department of Labor, Bureau of Labor Statistics; provided, however, said increase shall be not less than two and one half percent (2.5%) nor more than four and one half percent (4.5%). Appendix A will be adjusted consistent with the CPI wage adjustments.

13.3 HOURS OF WORK — The Employer reserves the right to set work schedules. However, the normal work week for full-time employees, shall consist of forty (40) hours, five days per week (Monday-Friday).

13.3.1 Any change in normal work schedules shall be posted on the Union bulletin board and sent by memo to affected employees at least ten (10) calendar days prior to the effective date of the change. These notice requirements shall not apply to work schedule changes that are implemented due to an emergency.

13.3.1.2 A "change in normal work schedules" shall mean a change in an employee's starting and stopping work time for a period of not less than two (2) consecutive weeks.

13.4 MEAL & REST PERIOD —

Clerical employees shall receive an unpaid one hour meal period, and two paid fifteen (15) minute rest periods. Subject to management approval, all job classifications at the Public Works facility may schedule a combined rest period/lunch period to equal one (1) hour. This schedule would consist of their two (2) fifteen (15) minute rest periods with their one-half (1/2) hour unpaid lunch period for a one (1) hour lunch period each day. The first one-half (1/2) hour will be designated as their unpaid lunch period, and the second one-half (1/2) hour as their two (2) paid rest periods. The shop Steward will notify the employer fifteen (15) days prior to any deviation from this schedule.

13.5 EARLY RELEASE — If early release is imposed by the employer, the employee will be paid for the balance of the shift. When employees are not sent home by the employer, but are allowed to leave early, or not report to work, the employee may use vacation, compensatory time, or leave without pay.

13.6 EMERGENCY SITUATION — Should the Employer elect to not have an employee report to work due to an emergency condition, the Employer shall pay lost wages to the employees not allowed to work at home or at the job site, to a maximum of two (2) days per year, not compounding. Employees required to report to work during such emergency conditions, when due to an inclement weather situation, shall be paid two (2) times their base rate of pay. An inclement weather situation for purposes of this section means a situation in which snow, ice, or other weather-related conditions present a hazard to employees and customers in getting to, and from, city facilities, as determined by the City Administrator or designee.

13.7 PROMOTIONS — Any employee who is promoted into a higher classification shall be placed into a step in the higher classification that represents a rate of pay which is not less than a full step above the previous rate of pay that the employee received in the classification from which the employee was promoted. The effective date of the

promotion shall become the employee's anniversary date for subsequent step increases.

- 13.8 OVERTIME — All authorized time worked in excess of an employee's regular shift in a day or forty (40) hours in any work period shall be paid at one-and-one-half (1½) times the employee's regular straight time hourly rate of pay. In so far as practical, overtime assignments will be distributed equitably to those employees who are qualified. Paid leave shall apply as time worked for the purposes of this section.
- 13.9 COMPENSATORY TIME — All full-time employees may receive compensatory time at one-and one-half (1½) times all overtime hours worked, subject to the approval of the Employer, and 29 CFR Part 553 of the Fair Labor Standards Act. The maximum compensatory time that an employee may accrue is eighty (80) hours.
- 13.10 CALLBACK – Any employee called back to work outside of their normally scheduled shift shall receive a minimum of three (3) hours at 1.5 (one and one half) times, the employee's regular hourly wage rate. If callback hours worked exceeds three (3) hours, the employee shall be paid 2x (double-time) the employees regular hourly wage rate for the additional hours worked.
  - 13.10.1 Subject to the triggering mechanism of the callback provisions of Section 13.10, whenever additional duties are scheduled after normal work hours, all hours worked between the end of shift and the beginning of the next shift shall be paid at the rate of one-and-one-half (1½) times the employee's straight time hourly rate of pay.
- 13.11 STAND-BY — Any employee who is required to be on stand-by outside of their normal shift shall receive (Three) \$3.00 per hour, regardless of weekday, weekends, or holidays. The appropriate callback provision (13.10) will apply if the employee is called to report to work.
- 13.12 OUT OF CLASS COMPENSATION – Employees appointed to perform projects or additional duties from the list below shall receive an additional 5% premium pay, per month for the responsibility. The employee assigned to the below list, will only receive such compensation after providing proof of training or certification.

Permit Tech

Evidence Custodian

- 13.13 SET-UP PAY – An employee shall be entitled to additional 10% premium pay for each hour worked when serving as acting Department Director or Working Supervisor in the absence of said Director or Supervisor, or an additional \$2.00 per hour when serving as a lead worker on a utility crew if the following qualifications are met:
  - 1. Service as acting Department Director or Working Supervisor for five (5) or more consecutive working days upon written request and approval by the Mayor or City Administrator, to perform the duties of the Department Director or Working Supervisor.
  - 2. Service as a utility crew lead worker by discretionary assignment of the Public Works Director or designee. The Public Works Director has the sole discretion to assign a lead worker to a utility worker crew.

On occasions where the acting Director or Supervisor performs five (5) or more days of work; a workday will be defined as a day that the Director or Supervisor normally reports to work for a full shift. For the purpose of set-up pay, "work days" do not include bargaining unit employee's vacation days, sick days, holidays or weekends. The set up pay will be equal to 10 percent (10%) of the bargaining unit employee's wage in effect at the time the employee serves as acting Director or Supervisor.



**ARTICLE 14 CDL CERTIFICATION**

14.1 Commercial Driver License (CDL) – New hires will be required to have a class A CDL or enroll and achieve the certification at their own expense during their probationary period. PROVIDED, the Employer is willing to pay for the employee’s CDL training/schooling costs, but with the understanding and agreement that the employee commits to three years of continuous employment with the employer following the end of their completed probationary period. The agreement of the employee shall further provide that in the event an employee decides to terminate their employment with the employer before the three years are up, the employee shall reimburse the employer the prorated cost of the CDL training/schooling paid for by the employer, prorated against the time remaining on the three-year commitment. For example, if an employee resigns after two years from the date of the end of their probationary period, 1/3<sup>rd</sup> of the CDL costs will be reimbursed by the employee for the remaining year. The employee shall consent to any monies due to the employer due to the early termination of employment be deducted from their last paycheck. Any additional monies due shall be due and paid immediately by the employee.

14.2 All current Utility Worker 1 employees without a CDL shall achieve certification within nine months of the effective date of this agreement at their own expense. PROVIDED, (a) a CDL training program is available within the Seattle-Tacoma metropolitan area; (b) the training will occur during the regular working hours, or the Employer will adjust the Employee schedule to encompass the training during working hours; and (c) the Employer is willing to pay for the employee’s CDL training/schooling costs, but with the understanding and agreement that the employee commits to three years of continuous employment with the employer following the end of their completed probationary period. The agreement of the employee shall further provide that in the event an employee decides to terminate their employment with the employer before the three years are up, the employee shall reimburse the employer the prorated cost of the CDL training/schooling paid for by the employer, prorated against the time remaining on the three-year commitment, provided, the employee will be given seniority time against the 3-year commitment of employment. Meaning if the employee has been employed for three years, then they would not owe the City any money to cover the cost of the CDL schooling upon their leaving the City. CDL class will be scheduled by the public works director, in consultation with the employee.

**ARTICLE 15 LONGEVITY**

15.1 LONGEVITY – In addition to their base monthly pay, eligible employees shall receive longevity pay as follows:

Upon completion of 5 years of service	2.0% of base pay
Upon completion of 10 years of service	3% of base pay
Upon completion of 15 years of service	4.0% of base pay
Upon completion of 20 years of service	5.0% of base pay

**ARTICLE 16 HOLIDAYS**

16.1 NUMBER OF PAID HOLIDAYS — All full-time regular employees shall be entitled to compensation at their regular rate of pay for twelve (12) holidays per year as listed below. The holidays herein referred to shall be as follows:

- |                                    |                                |
|------------------------------------|--------------------------------|
| New Year's Day                     | Veteran's Day                  |
| Martin Luther King, Jr.'s Birthday | Thanksgiving Day               |
| President's Day                    | The day following Thanksgiving |
| Memorial Day                       |                                |
| Juneteenth                         | Christmas Eve Day              |
| Fourth of July                     | Christmas Day                  |
| Labor Day                          |                                |
| Columbus Day                       | Three Floating Holidays*       |
| Wellness Day per Article 21.7      |                                |

\*Two of the floaters must be pre-planned and submitted to management for approval by February 1 of each year.

16.2 DATES OF HOLIDAYS — Dates of the above legal holidays will be so designated as celebrated and proclaimed by the State of Washington. The "floating holidays" shall be chosen by mutual agreement by the employee and the Employer.

16.3 ELIGIBILITY — New employees shall be eligible for all holidays except the "floating holidays." New employees shall become eligible for the "floating holidays" after completion of their probationary period.

16.4 WORKED HOLIDAY — If a full-time or part-time regular employee is required to work on an actual holiday listed in Article 15.1, the employee shall then be given an additional "floating holiday" which may be converted to compensatory time. In addition, all time worked on the actual holiday shall be paid at one-and-one-half (1½) times the employee's regular straight time hourly rate of pay.

**ARTICLE 17 VACATION**

17.1 VACATION — All full-time regular employees shall be entitled to the following vacation leave with pay after the indicated period of continuous service and said vacation leave is accrued "as earned" based on hours worked rather than in a lump sum.

Years of Service	Hours Per Year
0-1	48
2	96
3	104
4	112
5	120
6	128
7	136
8	144
9	152
10	160
11	164
12	168
13	172
14	176
15	180

- 17.2 Each full-time regular employee shall be entitled to accrue unused vacation leave not to exceed a maximum of two hundred and forty (240) hours. Should the two hundred forty (240) hour maximum be exceeded through no fault of the employee, the Employer shall pay the employee for all vacation hours in excess of two hundred and forty (240) hours. Otherwise, such vacation hours shall be forfeited.
- 17.3 PAYMENT FOR UNUSED VACATION LEAVE — Upon meeting all of the proper severance requirements, employees who leave the employment of the Employer shall be paid for all accrued vacation leave not used.
- 17.4 VACATION SCHEDULING
  - 17.4.1 All vacation leave shall be taken at a time mutually agreeable between the employee and the Employer, and the Employer reserves the right to deny requested vacation leave when such leave would interfere with the operations of the City or create an undue negative impact on accomplishment of work.
  - 17.4.2 On February 1st of each year the Department Director shall post a twelve (12) month vacation roster. Employees within the Department shall bid for vacation on or before March 1st. Vacation choices may include compensatory time and projected accrued vacation to the beginning of the vacation period requested. Selection of vacation dates shall be made by order of seniority within each department. Where an employee chooses to split vacation into two (2) or more periods, no second or third choice may be made until all other employees have made their first or second selection respectively. Vacation scheduling requested after March 1st of each year shall be on a first come first serve basis, subject to the approval of the Department Director. The Employer reserves the right to make reasonable modifications to the vacation schedule depending on bona fide operational requirements. Employees shall take at least one vacation period of no less than five (5) consecutive workdays per year. Except in an emergency the Employer shall not change the scheduled vacation within thirty (30) days of the scheduled date. For the purposes of this section “emergency” shall mean an unforeseen circumstance which could not be predicted by a reasonable person. The Employer may not blackout any month for vacation scheduling.



- (3) Terms used in this section shall be defined as provided in WAC 296-128-600.
- (4) Consistent with WAC 296-128-750, the employer may withhold payment of paid sick leave for hours the employer can demonstrate that an employee's use of paid sick leave was for purposes not authorized by this section.

**ARTICLE 19 EMPLOYEE RIGHTS**

- 19.1 EMPLOYEE PROTECTION — All employees within the Bargaining Unit shall be entitled to the following protection:
- 19.2 APPLICATION OF DISCIPLINE — Any formal discipline of employees shall be applied by the Employer. Formal discipline shall include documented oral warnings, written warnings, suspension or discharge for just cause. No employee covered by this Agreement shall formally discipline another employee, provided however, nothing in this Article shall prevent such employee from directing the workforce, recommending discipline, conducting an investigation which may result in disciplinary action, or advising the employee of any disciplinary action when so assigned by the Employer.
- 19.3 An employee shall have the right, upon request, to have the Union Steward and/or Union Representative present at any meeting during which an employee reasonably believes discipline may be implemented against the employee; provided, that nothing herein shall be construed as prohibiting, limiting or restricting the Employer's right to discuss with any employee performance and/or other work-related issues which will not result in any formal disciplinary action.
- 19.4 An employee shall be provided with a copy of any document to be placed in the employee's personnel file that relates to disciplinary action and shall be given an opportunity to acknowledge, by signature, such document. Should the employee refuse to sign such a document, a notation to that effect shall be made and witnessed prior to filing.
- 19.5 INVESTIGATIONS — An employee who is the subject of an investigation which may result in disciplinary action shall be provided written notice of the investigation prior to being interviewed or questioned in conjunction with such investigation, which notice shall advise the employee of the nature of the investigation and the fact that the employee is a subject of the investigation.
- 19.6 Any interview of an employee shall be at a reasonable hour, when the employee is on duty unless the exigencies of the investigation dictate otherwise. Where practicable, interviews shall be scheduled for the daytime.
- 19.7 All employee interviews shall take place at an Employer's facility, except when impractical. Where an employee is the subject of an investigation, the employee shall be afforded opportunities and facilities to contact and consult privately with the Union Steward or Union Representative before being interviewed. Upon the employee's request, the Union Steward or a Union Representative shall be present during the interview, if requested, and may provide the employee with full representation.
- 19.8 The interview shall not be overly long, and the employee shall be entitled to such reasonable intermissions as the employee shall request for personal necessities, telephone calls, and conference with Union officials.
- 19.9 The employee shall not be subjected to any offensive language, nor shall the employee be threatened with dismissal, transfer or other disciplinary punishment as a guise to attempt to obtain the employee's resignation, nor shall the employee be intimidated

in any other manner; provided, however, that nothing herein shall be construed as prohibiting the Employer from advising the employee as to contemplated or potential disciplinary action as set forth in a written notice of pre-disciplinary hearing and anticipated disciplinary action. No promises or rewards shall be made as an inducement to answer questions.

- 19.10 Any employee who is the subject of an investigation may request an attorney of their choosing to be present during such investigation; provided that such request shall not unreasonably delay or hinder the Employer's investigation. The cost of such an attorney shall be paid by the employee requesting such attorney.
- 19.11 POLYGRAPH TESTS — No employee shall be required to take or be subjected to any polygraph as a condition of continued employment.
- 19.12 SUBSTANCE ABUSE TESTS — Employees shall be subject to random alcohol and/or drug testing, as required by federal, state and/or local law. The Employer may also require that an employee submit to post-accident and reasonable suspicion alcohol and/or drug testing. Except as specifically set forth herein and in return-to-work agreements, no employee shall be required to take or be subject to any random alcohol and/or drug testing as a condition of continued employment.

**ARTICLE 20 DISCIPLINE & DISCHARGE PROCEDURES**

- 20.1 The following procedure of progressive discipline shall be applied by the Employer; provided, that the Employer need not follow progressive discipline before suspension or discharge if the suspension or discharge is for: theft; deliberate damage or sabotage to City property; gross insubordination; physical violence and/or threats of physical violence; violation of conflicts of interest laws; unlawful harassment and/or discrimination; or similar offenses. It is recognized that this list is not exhaustive and does not include all offense/violations for which the Employer need not follow progressive discipline.
- 20.2 For those offenses not warranting an immediate suspension and/or discharge, the Employer may implement disciplinary action for just cause according to the following progression:
  - 20.2.1 Verbal warning. At the Employer's discretion, the Employer shall verbally warn the employee and shall counsel the employee as to areas of needed improvement. The employee will be provided with written documentation of the areas of improvement discussed in the verbal warning.
  - 20.2.2 Written warning/reprimand. At the Employer's discretion, the Employer may issue a written warning to the Employee.
  - 20.2.3 Suspension. At the Employer's discretion, the employee shall be suspended without pay for up to three (3) days, depending upon the nature of the offense, to be reasonably determined by the Employer.
  - 20.2.4 Further suspension or discharge. At the Employer's discretion, the Employer may impose a further suspension without pay, or may alternatively discharge the employee for just cause.
- 20.3 The Employer shall document the disciplinary action implemented by placing a written summary of such disciplinary action in the employee's personnel file, which summary shall include the date, nature and details of the offense for which the disciplinary action is issued, and the name of the supervisor implementing the disciplinary action. The

employee shall be given the opportunity to acknowledge the written summary pursuant to provisions set forth above.

- 20.4 Notwithstanding the progressive disciplinary procedure set forth herein, the Employer may elect to impose a lesser form of discipline than that allowed pursuant to this Agreement; provided, that such election shall not be construed as compromising the Employer's rights to subsequently implement discipline in accordance with this schedule.
- 20.5 Except for the imposition of a documented verbal or written warning, the procedures set forth herein shall be subject to the terms of the grievance procedure.

**ARTICLE 21 LEAVE OF ABSENCE**

- 21.1 **MEDICAL LEAVE** — An employee who becomes disabled (as defined by applicable federal, state, and/or local law) due to illness, injury or pregnancy, or an employee who suffers an industrial injury or illness shall be granted a medical leave of absence without pay effective the first day of absence from work; provided, that the employee shall submit to the Employer as soon as reasonably practical a written claim of such illness or injury along with supporting medical documentation as required by law. The Employer may, at its sole cost and expense, require a second opinion of a doctor of its own choosing to verify illness or injury, and a doctor's statement of fitness to return to work. Medical leave shall run concurrently with FMLA Leave. This does not preclude an employee from receiving sick leave or vacation pay during such medical leave.
- 21.2 **FAMILY AND MEDICAL LEAVE** — Leave taken pursuant to the Family and Medical Leave Act is without pay, except that FMLA leave shall run concurrently with use of accrued leave, and the City shall require the employee to use accrued, unused sick leave, vacation time, comp time and/or other paid time for the 12-week FMLA allowance. In the event the employee's accrued leave(s) do not extend for the 12-week FMLA allowance, the balance of the FMLA leave shall be unpaid.
  - 21.2.1 An employee on FMLA leave who is receiving continuous compensation through the use of accrued, unused sick leave, vacation time, comp time and/or other paid time shall continue to accrue leave and seniority benefits.
  - 21.2.2 An employee on FMLA leave who has exhausted all paid leave time and who is not receiving compensation shall not accrue leave and seniority benefits while on unpaid leave.
- 21.3 **PROLONGED DISABILITY** — An employee shall not be terminated by the Employer because of a non-job-related injury or prolonged continuous illness or injury, provided; that the period of disability is no longer than twelve (12) months, and provided, further that on or before the expiration of said twelve (12) month period, the employee will be able to perform the essential functions of the employee's job. Upon being certified as physically or mentally fit to return to work by the employee's doctor and, if deemed necessary, the Employer's doctor(s), the employee shall be reinstated to the same or substantially equivalent classification if such classification exists. Such employees on prolonged disability shall continue to accumulate seniority during such disability, except that seniority shall not apply towards advancement through the wage step program.
  - 21.3.1 An employee on prolonged absence because of occupational illness or injury incurred in the service of the City, shall not be terminated by the Employer because of such absence for a period of twenty-four (24) months; provided, that on or before the

expiration of such twenty-four (24) month period the employee will be able to perform the essential functions of the employee's job. Such employees on prolonged disability shall continue to accumulate seniority during such disability, except that seniority shall not apply towards advancement through the wage step program.

- 21.4 MILITARY LEAVE — Every full-time regular employee who is a member of the Washington National Guard or of the Army, Navy, Air Force, Coast Guard or Marine Corps reserve of the United States, or of any organized reserve of the United States shall be entitled to and shall be granted military leave of absence from such employment, in accordance with applicable law. Such leave shall be granted in order that the person may take part in active training duty in such manner and at such time as he may be ordered to active training duty. Such military leave of absence shall be in addition to any vacation or sick leave to which the employee might otherwise be entitled, and shall not involve any loss of efficiency rating, privileges, or pay. During the period of military leave, the employee shall receive from the Employer his normal pay for a period not exceeding fifteen (15) working days during each twelve (12) month period from October 1 through September 30.
- 21.5 JURY DUTY — Employees who are required by due process of law to render jury service shall receive their regular pay during such period. If any payment, excluding travel pay, is received for jury duty, such pay will be reimbursed to the Employer or deducted from the employee's paycheck.
- 21.6 BEREAVEMENT LEAVE — All employees who suffer a death in their immediate family shall be compensated for and given up to three (3) days off with full pay per incident. If additional leave is necessary, it may be granted, subject to the approval of the Employer, and such additional bereavement leave shall be deducted from accrued vacation, sick leave, compensatory time, or leave without pay.
  - 21.6.1 Immediate family shall be defined as spouse, domestic partner, son, daughter, mother, father, brother, son-in-law, daughter-in-law, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, stepson, stepdaughter, stepparents, grandchildren and grandparents on both sides, aunts, uncles, nieces, nephews.
  - 21.6.2 When an employee participates in a funeral or memorial ceremony for a person other than those in the immediate family the employee may, subject to the approval of the Employer, be granted reasonable vacation, or compensatory time off.
- 21.7 LEAVE OF ABSENCE WITHOUT PAY – An employee may apply to the City Administrator or his/her designee for a leave of absence without pay. The Administrator or his/her designee shall have sole discretion whether to grant the request, including but not limited to the duration of the leave of absence. A leave of absence without pay may be used only after all other accrued leave has been used except for Union business leave of two (2) weeks or less in duration. Unless otherwise required by law or the terms of this Agreement, an employee shall not receive any benefits and/or wages/pay/compensation nor accrue seniority during such leave of absence. The Employer reserves the right to recall any employee from a previously authorized leave of absence.

**ARTICLE 22 HEALTH AND BENEFITS**

- 22.1 MEDICAL — The Employer shall make available the Association of Washington Cities Health First 250 Plan medical insurance for all full-time regular employees, employee's spouse/domestic partner, and dependents, and shall pay one hundred percent (100%)



of the medical insurance premiums for coverage of each employee, but the Employer and employee shall share the costs of the medical insurance premiums for the employee's spouse/domestic partner and dependents in accordance with the following:

Each employee shall pay twenty five percent (25%) of the medical insurance premiums for the employee's spouse/domestic partner, and dependents.

- 22.1.1 The Employer will agree to negotiate with the Union if the Employer chooses to change medical plans or providers.
- 22.2 DENTAL — The Employer shall make available the following dental insurance plans for all full-time regular employees and shall pay one hundred percent (100%) of the premiums for employee, employee's spouse and qualified dependents.  
Plan: Washington Dental Service Plan F plus orthodontia rider plan I
- 22.3 VISION — The employer shall make available the AWC VSP Vision Plan for all full-time regular employees, as well as the Second Pair Rider benefit, and shall pay one hundred percent (100%) of the premium.
- 22.4 LIFE — The employer shall make available Basic Life Insurance with Accidental Death & Dismemberment in the amount of sixty thousand dollars (\$60,000) for all full time regular employees and shall continue to pay one hundred percent (100%) of the premium.
- 22.5 EMPLOYEE ASSISTANCE PROGRAM — The Employer shall make available the AWC Employee Assistance Plan (EAP) for all full time employees and shall continue to pay one hundred percent (100%) of the premium.
- 22.6 LONG-TERM DISABILITY – The Employer shall make available, for all full-time regular employees the Long-term Disability Plan offered by the Association of Washington Cities, with a benefit provision of sixty seven percent (67%), and a ninety (90) day elimination period. The Employer shall pay one hundred percent (100%) of the premium.
- 22.7 CITY OF ALGONA WELLNESS PROGRAM – Each bargaining unit member will receive an additional personal holiday if the bargaining unit has 100% participation in the City's wellness program. One-hundred percent (100%) participation shall constitute participation by all employees in any one (1) activity in each quarter of the calendar year in which a wellness program activity is offered. This personal holiday will be referred to as a wellness day and must be used before December 31st of the year. The wellness day will only be given upon written verification from the City's wellness coordinator that the goal has been met. The City's wellness coordinator will verify 100% participation in December each year. In addition, starting in year 2025, each employee will be eligible to receive at the beginning of each year following a year in which the bargaining unit has 100% participation, a one percent increase over base pay to be paid each pay period during the calendar year. Provided, if an employee has a safety related violation or accident involving damage or destruction of city equipment or vehicles, the employee will be ineligible for the 1% premium the following year.

**ARTICLE 23 INDEMNIFICATION OF CITY EMPLOYEES**

- 23.1 The Employer indemnifies and holds personally harmless all of its employees for any action, claim or proceeding instituted against said individual arising out of acts or omissions, except in cases of intentional acts or omissions and willful and wanton negligence, in the scope of employment. The Employer holds said individuals harmless

from any expenses connected with the defense, settlement, or monetary judgment from such actions, claims or proceedings. If insurance becomes unavailable, then employees shall, at the Employer's request, obtain substitute individual insurance protecting themselves against liability for their acts or omissions in the scope of their employment. The Employer shall pay the premiums for such insurance and shall have the right to approve the policies. If substitute individual insurance is unavailable, or if no policy is in effect at the time of a liability-creating event, the Employer shall act as self-insurer for the indemnity under this Article.

**ARTICLE 24 SUBCONTRACTING**

24.1 The Employer shall not subcontract the Bargaining Unit work of an employee who is on layoff.

**ARTICLE 25 EDUCATION INCENTIVE**

25.1 In the sole discretion of the Mayor or designee, the Mayor or designee may authorize an employee to take college classes and upon receiving a passing grade ("C" or better) the Employer shall reimburse the employee for tuition and book expenses associated with the authorized class. The authorization must be in writing and received prior to enrollment in order to be eligible for tuition and book reimbursement.

25.2 Any employee in a position classification not requiring an AA degree or its equivalent in skills and experience, who has earned an AA degree, shall receive an additional one percent (1%) in the employee's base hourly rate of pay.

25.3 Any employee in a position classification not requiring a BA degree or its equivalent in skills and experience, who has earned a BA degree, shall receive an additional two percent (2%) in the employee's base hourly rate of pay.

**ARTICLE 26 CLOTHING ALLOWANCE (PUBLIC WORKS)**

26.1 The Employer will provide an annual clothing allowance of \$850.00 to each employee for Navy Carhart Dungarees, Enhanced Vis Comfort Shirts, and Carhart Jacket; and \$300.00 for a pair of Safety Boots. Employees will their employer issued credit card for the purchases authorized by this section. For the purchase of safety boots only, an employee may elect to carry over up to maximum of Two Hundred Dollars (\$200.00) to the following year. To carry over any unused portion of the safety boot allowance, the employee must notify the City Administrator in writing by December 1 of the current year prior to the carry over year.

The Employer will further provide each employee:

- |                        |                               |
|------------------------|-------------------------------|
| 1 Reflective Vest      | 1 Set Rain Gear               |
| Earplugs               | Eye Protection                |
| 1 pair Chemical Gloves | 1 pair Regular Leather Gloves |
| 1 Hard Hat             | 1 Ball Cap                    |

All of the above items, purchased by the City, will be replaced, by approval of the Department Director, on an "as needed" basis.

- 26.1.1 Items provided by the Employer and purchased by the employee shall be maintained on a department inventory and shall remain the property of the Employer. Employees shall be responsible for the care and cleaning of all clothing and safety equipment paid for and provided by the Employer. The Employer, however, shall provide an annual payment of \$100.00 to each public works employee as reimbursement for cleaning the clothing items provided under this Article.
- 26.1.2 The replacement of clothing and equipment items lost or damaged because of Employee negligence shall be the responsibility of the Employee.
- 26.1.3 Should an Employee purchase any items other than those listed above, such items shall be paid for and maintained at the Employee's expense. The use of such additional items shall be subject to the approval of the City Administrator or his/her designee and shall remain the property of the Employee.
- 26.1.4 Upon termination for any reason, all uniform items, equipment, and property provided by the Employer to the employee shall be returned to the Employer.

**ARTICLE 27 CLOTHING ALLOWANCE (CLERICAL STAFF)**

26.1 Each regular fulltime Clerical Personnel shall be allowed up to three hundred (\$300.00) dollars per calendar year for the purchase of uniforms and equipment authorized by the Chief of Police or City Clerk. The purchase of all items shall be approved by the Chief of Police or City Clerk.

**ARTICLE 28 DEFERRED COMPENSATION**

28.1 The Employer shall provide matching contributions to a Deferred Compensation Plan for full-time regular employees who have completed their initial probation period, not to exceed one hundred and twenty-five (\$125.00) per month. The bargaining unit shall participate in the plan that is currently being offered by the City.

**ARTICLE 29 SAVINGS CLAUSE**

29.1 Should any term or provision of this Agreement be in conflict with any State or Federal statute or other applicable law or regulation binding upon the Employer, such law or regulation shall prevail. In such event, however, the remaining terms and provisions of this Agreement will continue in full force and effect. No City ordinance or resolution shall modify or change any Article of this Agreement during the life of this Agreement, unless mutually agreed by the Employer and the Union.

29.2 If any Article or Section of this Agreement shall be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section shall be restrained by such tribunal, the remainder of this Agreement shall not be affected thereby, and the parties shall enter into immediate collective negotiations for the purpose of arriving at a mutually satisfactory replacement for such Article or Section.

**ARTICLE 30 COMPLETE AGREEMENT**

29.1 The Agreement expressed herein in writing constitutes the entire Agreement between the parties. All matters not specifically covered in the Agreement shall be deemed to have been raised and disposed of as if specifically covered herein. It is agreed that this document contains a full and complete Agreement on all bargainable issues between the parties hereto and for all whose benefit this Agreement is made, and no party shall be required during the term of this Agreement to negotiate or bargain upon any issue except as otherwise specified herein. While those Letters of Intent executed concurrent with this Agreement are not specifically part of this Agreement, they represent a continuing intent of the Employer to abide with their terms during this Agreement. The parties agree that no changes in wages, hours, or working conditions shall be made without negotiating such changes as required by law. Past practices shall not prevail.

**ARTICLE 30 TERM OF AGREEMENT**

30.1 Except as provided in this section, the terms of this Agreement shall become effective only upon its full execution and remain in full force and effect through December 31, 2026; provided, however, that this Agreement shall be subject to change or modification as may be mutually agreed upon by the parties hereto. The effective date for the 2024 wage adjustments provide in Section 13.1 and the new Longevity schedule in Section 15.1 shall, however, have retroactive effect to January 1, 2024. The Employer shall use due diligence in computing and making payment of the retroactive pay due each employee following full execution of this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

CITY OF ALGONA

INTERNATIONAL ASSOCIATIONS OF  
MACHINISTS AND AEROSPACE WORKERS  
DISTRICT LODGE 160

By \_\_\_\_\_  
Troy Linnell, Mayor

By \_\_\_\_\_  
Beth Bergeon, Business Representative

By \_\_\_\_\_  
Jessica Griess, City Administrator

By \_\_\_\_\_  
\_\_\_\_\_, Shop Steward

Appendix A  
TO THE  
AGREEMENT  
BY AND BETWEEN  
THE CITY OF ALGONA, WASHINGTON  
AND  
INTERNATIONAL ASSOCIATION OF MACHINIST AND AEROSPACE WORKERS  
DISTRICT LODGE NO. 160  
(REPRESENTING THE PUBLIC WORK & CLERICAL WORKERS)

THIS APPENDIX is supplemental to the Agreement by and between the City of Algona, hereafter referred as the "employer" and the IAMAW District Lodge NO. 160 on behalf of the employees of the Public Works Department, and Clerical workers, hereinafter referred to as the "employees".

A.1 Effective January 1, 2024, the monthly rates of pay for the hourly wage employees covered by this Agreement (a 4.5% increase over 2023 rates) shall be as follows:

Position	A 0-6 mo.	B 7-18 mo.	C 19-30 mo.	D 31-42 Mo.	E 42-60 mo.
Police Specialist	4,809	5,050	5,290	5,555	5,833
Utility Supervisor	5,907	6,202	6,511	6,837	7,179
Utility Worker I	4,922	5,162	5,420	5,691	5,975
Utility Worker II	5,670	5,957	6,255	6,568	6,897
Grounds/Maintenance Worker	3,871	4,065	4,268	4,481	4,708
Code Enforcement/Permit Technician	5,907	6,202	6,511	6,837	7,179
Clerical Assistant	4,587	4,816	5,057	5,310	5,550
Community Connector	5,934	6,231	6,543	6,850	7,192

A.2 Progression through each step plan shall be in accordance with the number of months in each step, and step advancement shall be automatic based on satisfactory performance.

A.3 The hourly rate of pay for full-time employees shall be determined by dividing the monthly rate of pay by 173.3 hours.

DATED this \_\_\_ day of \_\_\_\_\_, 2024.

CITY OF ALGONA

IAMAW, DISTRICT LODGE 160

TROY LINNELL, MAYOR

BETH BERGERON, BUSINESS REPRESENTATIVE



**CITY COUNCIL**

**AGENDA BILL # AB24-0120**

**City of Algona  
200 Washington Blvd.  
Algona, WA 98001**

**ITEM INFORMATION**

<b>SUBJECT:</b>  <b>Ordinance 1233-24, Ziplly Fiber Franchise Agreement</b>	<b>Agenda Date: April 22<sup>nd</sup>, 2024</b>		
	<b>Department/Committee/Individual</b>	<b>Created</b>	<b>Reviewed</b>
	Mayor		
	City Administrator		X
	City Attorney	X	X
	City Clerk		X
	Finance Dept		
	PW/Utilities		
	Planning Dept		
	Community Services		
<b>Cost Impact:</b>	Police Dept		
<b>Fund Source:</b>	Finance Committee		
<b>Timeline: 1<sup>st</sup> review - 3/25/2024</b>	Planning Commission		
2 <sup>nd</sup> review – 4/8/24	Civil Service Committee		
2 <sup>nd</sup> review – 4/22/24			

**Staff Contact: Jessica Griess, City Administrator**  
**Attachments: Ordinance 1233-24; Ziplly Fiber Agreement**

**SUMMARY STATEMENT:**  
 Ziplly Fiber submitted for a Franchise Agreement with the City in November 2023. This agreement presented has been put together by our attorney, given to the applicant for their input, and now it is for review by the Council.

**COMMITTEE REVIEW AND RECOMMENDATION:**

**RECOMMENDED ACTION:**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date:</i>	<i>Action:</i>	<i>Vote:</i>

ORDINANCE NO. 1233-24

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

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

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

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

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

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

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

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

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



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

**Section 1. Franchise Granted.**

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

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

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

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

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

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

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

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

(a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise; and

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise.

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

**Section 4. Location of Telecommunications Network Facilities.**

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

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

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

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

**Section 5. Relocation of Telecommunications Network Facilities.**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

**Section 6. Undergrounding of Facilities.**

Section 6.1 Wireline Facilities.

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

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

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

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

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

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

**Section 7. Maps and Records.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 10. Safety Requirements.**

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



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

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

Section 10.3 Additional standards include:

- (a) All installations and maintenance of equipment, lines, and ancillary facilities shall be installed and maintained in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.
- (b) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

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

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

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

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

**Section 12. Restoration after Construction.**

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

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

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

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

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

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

**Section 13. Emergency Work/Dangerous Conditions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 15. Indemnification.**

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

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

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

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

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



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

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

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

**Section 16. Insurance.**

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

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

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

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

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

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

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

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

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

**Section 17. Abandonment of Franchisee's Telecommunications Network.**

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

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

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

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

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

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

**Section 18. Bonding.**

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

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

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

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

**Section 19. Remedies to Enforce Compliance.**

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

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

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

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



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

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

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

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

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

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

**Section 25. Assignment.**

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

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

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

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

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

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

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

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

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

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

CITY OF ALGONA  
Public Works Director

Franchisee:  
Zipty Fiber Pacific, LLC

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

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

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

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

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

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

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

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

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

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

**Section 37. Miscellaneous.**

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

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

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

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

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

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

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

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

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

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

APPROVED:

\_\_\_\_\_  
TROY LINNELL, MAYOR



ATTEST/AUTHENTICATED:

\_\_\_\_\_  
DANA PARKER, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
Zach Lell, CITY ATTORNEY

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

**SUMMARY OF ORDINANCE NO. \_\_\_\_**

City of Algona, Washington

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

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

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

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DANA PARKER, CITY CLERK

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

EXHIBIT A

STATEMENT OF ACCEPTANCE

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

Ziply Fiber Pacific, LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_

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

Title: Associate General Counsel

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of \_\_\_\_\_, residing at \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_



**CITY COUNCIL**

**AGENDA BILL # AB24-0121**

**City of Algona  
200 Washington Blvd.  
Algona, WA 98001**

**ITEM INFORMATION**

<b>SUBJECT:</b>  <b>Ordinance 1234-24, Street Racing</b>	<b>Agenda Date: April 22<sup>nd</sup>, 2024</b>		
	<b>Department/Committee/Individual</b>	<b>Created</b>	<b>Reviewed</b>
	Mayor		
	City Administrator		X
	City Attorney	x	x
	City Clerk		x
	Finance Dept		
	PW/Utilities		
	Planning Dept		
	Community Services		
<b>Cost Impact:</b>	Police Dept		x
<b>Fund Source:</b>	Finance Committee		
<b>Timeline: 1<sup>st</sup> review - 3/25/24</b>	Planning Commission		
2 <sup>nd</sup> review – 4/8/24	Civil Service Committee		
3 <sup>rd</sup> review – 4/22/24			

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

**SUMMARY STATEMENT:**  
 This ordinance codifies street racing as an illegal activity in city limits.

**COMMITTEE REVIEW AND RECOMMENDATION:**

**RECOMMENDED ACTION:**

**RECORD OF COUNCIL ACTION**

<i>Meeting Date:</i>	<i>Action:</i>	<i>Vote:</i>

**CITY OF ALGONA, WASHINGTON**

**ORDINANCE NO. 1234-24**

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Troy Linnell, Mayor

**ATTEST:**

\_\_\_\_\_  
Dana Parker, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
J. Zachary Lell  
City Attorney

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

Exhibit A

Chapter 10.30  
STREET RACING

Sections:

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

**10.30.010 Purpose and authority.**

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

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

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

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

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

**10.30.020 Definitions.**

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

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

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

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

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

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

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

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

**10.30.030 Street racing prohibited.**

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

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

**10.30.040 Spectating of street racing prohibited.**

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

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

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

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

**10.30.050 Designation of no racing zones.**



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

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

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

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

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

**10.30.060 Stay out of areas of racing orders.**

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

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

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

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

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

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

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

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

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

G. Enforcement Procedure.

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

H. Penalties.

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

**10.30.070 Authority preserved.**

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