



CASTLE ROCK CITY COUNCIL AGENDA

Regular Meeting: Monday, February 12, 2024
7:30 PM

Location

Castle Rock Senior Center
222 Second Ave SW
Castle Rock, WA 98611

AGENDA

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1. CALL TO ORDER

- a. Pledge of Allegiance
- b. Roll Call
- c. Changes to Agenda

2. PROCLAMATIONS & PRESENTATIONS

3. CITIZEN COMMENTS - maximum 3 minutes

4. DEPARTMENT REPORTS

- City Attorney Frank Randolph
- Police Chief Charlie Worley
- 1. 2023 Statistics
- Public Works Director Dave Vorse
- City Engineer Tom Gower
- Clerk-Treasurer Carie Cuttonaro

5. COUNCIL AND AD HOC COMMITTEE REPORTS

- Mayor / Mayor Pro-Tempore / Councilmembers
- CRCDA Representative

6. PUBLIC HEARINGS

7. CONSENT AGENDA

- a. Approve the minutes of the December 11, 2023 Regular Council Meeting. (page 3-6)
- b. Approve the minutes of the January 8, 2024 Regular Council Meeting. (page 7-9)
- c. Approve the minutes of the January 22, 2024 Regular Council Meeting. (page 10-12)
- d. Approve the January 2024 invoices as described in the Fund Transaction Summary Report in the amount of \$546,761.06. (page 13-14)

8. OLD BUSINESS

9. NEW BUSINESS

- a. Approve update to signers for City and Transportation Benefit District bank accounts. Current approved positions include Mayor, Mayor Pro Tem, and Clerk-Treasurer. They are currently held by Paul Helenberg, Lee Kessler, and Carie Cuttonaro. Previous Mayor Pro Tem, Earl Queen, to be removed as a signer.
- b. Ordinance No. 2024-01, an ordinance of the City of Castle Rock granting Astound Broadband, LLC, a non-exclusive franchise for the transmission of telecommunications in, through, over and under the rights-of-way of the City of Castle Rock, on first reading. (page 15-30)
- c. Request to add a 'signing bonus' for advanced entry level Police Officers hired for employment with the City of Castle Rock. Signing bonus would be in the amount of \$2,500; \$1,250 payable upon hire and \$1,250 payable upon 90 days completed employment. This is 50% of the signing bonus for lateral Police Officers.
- d. Resolution No. 2024-04 - a resolution of the City Council of the City of Castle Rock, Washington, approving a Local Agency Federal Aid Project Prospectus and Local Agency Agreement between the City of Castle Rock and the Washington State Department of Transportation for Transportation Alternative Program grant funds for the Six Rivers Regional Trail System Phase 2 - SR 411 Improvements Project. (page 31)

10. OTHER BUSINESS

11. ADJOURNMENT

NEXT REGULAR COUNCIL MEETINGS:

Non-Discrimination Statement: This institution is an equal opportunity provider and employer. If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at https://www.ascr.usda.gov/sites/default/files/Complain_combined_6_8_12_508_0.pdf or at any USDA office, or call 866.632.9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Ave, SW, Stop 9410, Washington, DC 20250-9410 or email to program.intake@usda.gov or by fax (202) 690-7442.

Title VI: The City of Castle Rock ensures compliance with Title VI of the Civil Rights Act of 1964 and American Disabilities Act of 1990 by prohibiting discrimination against any person on the basis of race, color, national origin, sex or disabilities in the provision of benefits and services from its federal assisted programs and activities. If you need special accommodations to participate in this meeting, please contact Carie Cuttonaro at 360.274.8181 by 9:00 a.m. three days prior to the meeting.

City Council may add and take action on other items not listed on this Agenda.

1. CALL TO ORDER

Mayor Paul Helenberg called the regular meeting of the Castle Rock City Council to order at 7:30 PM.

a. Pledge of Allegiance

Mayor Helenberg led the Pledge of Allegiance.

b. Roll Call

Councilmembers present: Art Lee, Lee Kessler, Earl Queen, Paul Simonsen, and Ellen Rose.

Staff present: Police Chief Charlie Worley, City Attorney Frank Randolph, Public Works Senior Operator Tyler Stone, City Engineer Tom Gower, and Clerk-Treasurer Carie Cuttonaro.

c. Changes to Agenda

2. PROCLAMATIONS & PRESENTATIONS

a. Presentation to Councilmember Earl Queen (page 4-6)

Mayor Paul Helenberg stopped the regular meeting at 7:32 pm to present a recap of Councilmember Earl Queen's time with the Castle Rock City Council. Mayor Helenberg then presented Councilmember Earl Queen with a plaque commemorating his time with the Castle Rock City Council. Councilmember Earl Queen provided comment. Clerk-Treasurer Carie Cuttonaro invited those present to partake in cupcakes in honor of Councilmember Earl Queen. Those in attendance took a few moments to partake in cupcakes and general conversation. Mayor Paul Helenberg reopened the regular meeting at 7:40 pm.

3. CITIZEN COMMENTS - maximum 3 minutes

Jason Will, city unstated, provided comment. Mayor Paul Helenberg provided comment. Councilmember Ellen Rose provided comment.

4. DEPARTMENT REPORTS

- City Attorney Frank Randolph
- Police Chief Charlie Worley
Police Chief Charlie Worley gave a verbal report.
- Public Works Director Dave Vorse
- City Engineer Tom Gower
- Clerk-Treasurer Carie Cuttonaro
 - State Auditor's Office 2021-2022 Audit Results

Clerk-Treasurer Carie Cuttonaro gave a verbal report.

5. COUNCIL AND AD HOC COMMITTEE REPORTS

- Mayor / Mayor Pro-Tempore / Councilmembers

Mayor Paul Helenberg gave a verbal report.

- CRCDA Representative

6. PUBLIC HEARINGS

a. Purpose: To take testimony on the proposed budget for fiscal year ending December 31, 2024, including a proposed 5% increase in all water rates, 5% increase in all sewer rates, and 10% increase in all stormwater rates. First Public Hearing was held on November 27, 2023 during the Regular Council Meeting. (page 7)

Mayor Paul Helenberg closed the regular meeting at 7:45 PM and opened the Public Hearing at 7:45 PM. Mayor Paul Helenberg asked if there were any comments from the public or council. A member of the public, name and city unstated, provided comment. Mayor Helenberg provided comment. A member of the public, name and city unstated, provided comment. Jason Will, city unstated, provided comment. Mayor Helenberg provided comment. Mayor Paul Helenberg closed the Public Hearing at 7:51 PM and opened the regular meeting at 7:51 PM.

7. CONSENT AGENDA

Councilmember Queen made a motion, seconded by Lee, to approve the Consent Agenda as presented. Motion carried by roll call vote. Councilmembers Lee, Queen, Simonsen, and Rose voted 'Aye'. Councilmember Lee Kessler abstained.

- a. Approve the minutes of the November 13, 2023 Regular Council Meeting. (page 8-9)
- b. Approve the minutes of the November 27, 2023 Regular Council Meeting. (page 10-13)
- c. Approve the November 2023 invoices as described in the Fund Transaction Summary Report in the amount of \$497,659.85. (page 14-15)

8. OLD BUSINESS

a. Ordinance No. 2023-12, an ordinance amending the budgetary appropriations for fiscal year ending December 31, 2023 for the City of Castle Rock, Washington to include the following funds: General (Parks, Planning, Non-Department), Street, Local Criminal Justice, Water, Stormwater Management, Stormwater Capital, on second reading. (page 16-17)

Councilmember Lee made a motion, seconded by Queen, to approve Ordinance No. 2023-12. Motion carried by roll call vote. Councilmembers Lee, Kessler, Queen, Simonsen, and Rose voted 'Aye'.

b. Resolution No. 2023-06, a resolution relating to setting rates and minimum charge for water and sewer services to City of Castle Rock customers, and amending Resolution No. 2022-09, on second reading. (page 18-20)

Councilmember Queen made a motion, seconded by Rose, to approve Resolution No. 2023-06. Motion carried by roll call vote. Councilmembers Lee, Kessler, Queen, Simonsen, and Rose voted 'Aye'.

c. Resolution No. 2023-07, a resolution providing for reduced base rates to be charged to low-income senior citizens for water and sanitary sewer services and limiting the annual aggregate of such reductions to approximately \$10,000 per calendar year, and amending Resolution No. 2022-07, on second reading. (page 21-23)

Councilmember Lee made a motion, seconded by Queen, to approve Resolution No. 2023-07. Motion carried by roll call vote. Councilmembers Lee, Kessler, Queen, Simonsen, and Rose voted 'Aye'.

d. Ordinance No. 2023-13, an ordinance amending, City of Castle Rock, Municipal Code Chapter 13.16 Retail Water Sales, on second reading. (page 24)

Councilmember Lee made a motion, seconded by Queen, to approve Ordinance No. 2023-13. Motion carried by roll call vote. Councilmembers Lee, Kessler, Queen, Simonsen, and Rose voted 'Aye'.

e. Ordinance No. 2023-14, an ordinance amending, in part, City of Castle Rock, Washington, Municipal Ordinance No. 2022-14, stormwater management services by amending charges for all classifications, on second reading. (page 25-26)

Councilmember Queen made a motion, seconded by Rose, to approve Ordinance No. 2023-14. Motion carried by roll call vote. Councilmembers Lee, Kessler, Queen, Simonsen, and Rose voted 'Aye'.

f. Ordinance No. 2023-15, an ordinance adopting the budget of the City of Castle Rock, Washington for the fiscal year ending December 31, 2024, on second reading. (page 27-29)

Councilmember Queen made a motion, seconded by Rose, to approve Ordinance No. 2023-15. Motion carried by roll call vote. Councilmembers Lee, Kessler, Queen, Simonsen, and Rose voted 'Aye'.

g. Ordinance No. TBD-2023-01, an ordinance adopting the budget of the Castle Rock City Transportation Benefit District, Castle Rock, Washington for the fiscal year ending December 31, 2024, on second reading. (page 30-31)

Councilmember Queen made a motion, seconded by Rose, to approve Ordinance No. TBD-2023-01. Motion carried by roll call vote. Councilmembers Lee, Kessler, Queen, Simonsen, and Rose voted 'Aye'.

9. NEW BUSINESS

a. Ordinance No. 2023-16, an ordinance amending the budgetary appropriations and authorizing an interfund loan for fiscal year ending December 31, 2023 for the City of Castle Rock, Washington for the Public Works Vehicle Replacement and Swimming Pool Construction Funds. (page 32-33)

Mayor Helenberg presented. Councilmember Ellen Rose provided comment. Clerk-Treasurer Carie Cuttonaro provided comment.

Councilmember Queen made a motion, seconded by Rose, to approve Ordinance No. 2023-16. Motion carried by roll call vote. Councilmembers Lee, Kessler, Queen, Simonsen, and Rose voted 'Aye'.

b. Memorandum of Agreement with Cowlitz County for use of the Cowlitz County Public Shooting Range for law enforcement firearms training activities for the period of September 5, 2023, through

December 31, 2024. (page 34-107)

Police Chief Charlie Worley presented. Mayor Paul Helenberg provided comment.

Councilmember Lee made a motion, seconded by Rose, to approve the Memorandum of Agreement with Cowlitz County for use of the Cowlitz County Public Shooting Range. Motion carried by roll call vote. Councilmembers Lee, Kessler, Queen, Simonsen, and Rose voted 'Aye'

c. Contract Agreement with Humane Society of Cowlitz County for Animal Shelter Services for the period of January 1, 2024, through December 31, 2024. (page 108-119)

Police Chief Charlie Worley presented. Mayor Paul Helenberg provided comment.

Councilmember Kessler made a motion, seconded by Lee, to approve the Contract Agreement with the Humane Society of Cowlitz County. Motion carried by roll call vote. Councilmembers Lee, Kessler, Queen, Simonsen, and Rose voted 'Aye'.

d. Amendment No. 1 to Interlocal Agreement with Cowlitz County for Law Enforcement Records Services, extending the term of the agreement to June 30, 2024. (page 120-128)

Police Chief Charlie Worley provided comment.

Councilmember Kessler made a motion, seconded by Lee, to approve Amendment No.1 to the Interlocal Agreement with Cowlitz County Law Enforcement Records Services. Motion carried by roll call vote. Councilmembers Lee, Kessler, Queen, Simonsen, and Rose voted 'Aye'.

10. OTHER BUSINESS

Larry Crosby, Cowlitz County resident, provided comment. A member of the public, name and city unstated, provided comment. Mayor Helenberg provided comment.

11. ADJOURNMENT

There being no further business, Mayor Helenberg adjourned the meeting at 8:12 PM.

Mayor Paul Helenberg

Clerk-Treasurer Carie Cuttonaro

1. CALL TO ORDER

Mayor Paul Helenberg called the regular meeting of the Castle Rock City Council to order at 7:33 PM.

a. Pledge of Allegiance

Mayor Helenberg led the Pledge of Allegiance.

b. Oath of Office

1. Clerk-Treasurer Carie Cuttonaro will administer the oath to the following newly elected officials:

Mayor & Council

Paul Helenberg, Mayor

John Whalen, Council Position No. 3

Paul Simonsen, Council Position No. 4

Ellen Rose, Council Position No. 5

All terms are four years, expiring December 2027.

Clerk-Treasurer Carie Cuttonaro administered the Oath of Office to Paul Helenberg, John Whalen, and Ellen Rose. The Oath of Office will be administered to Paul Simonsen at the next meeting he is in attendance.

c. Roll Call

Councilmembers present: Lee Kessler, John Whalen, and Ellen Rose. Councilmembers Art Lee and Paul Simonsen were excused.

Staff present: City Attorney Frank Randolph, Public Works Director Dave Vorse, City Engineer Tom Gower, and Clerk-Treasurer Carie Cuttonaro.

d. Changes to Agenda

2. PROCLAMATIONS & PRESENTATIONS

3. CITIZEN COMMENTS - maximum 3 minutes

A citizen, name and city unstated, provided comment.

4. DEPARTMENT REPORTS

- City Attorney Frank Randolph
- Police Chief Charlie Worley
- Public Works Director Dave Vorse
- City Engineer Tom Gower

- Clerk-Treasurer Carie Cuttonaro

5. COUNCIL AND AD HOC COMMITTEE REPORTS

- Mayor / Mayor Pro-Tempore / Councilmembers

Mayor Helenberg gave a verbal report.

1. 2024 Committee and Departmental Appointments (page 3)

Mayor Helenberg presented the 2024 Committee and Department Appointments. Mayor Helenberg moved John Whalen from Court to Parks/Public Works and moved Paul Simonsen from Parks/Public Works to Courts. Mayor Helenberg appointed Councilmember Lee Kessler as Mayor Pro-Tem.

- CRCDA Representative

6. PUBLIC HEARINGS

7. CONSENT AGENDA

a. Approve the minutes of the December 11, 2023 Regular Council Meeting. (page 4-7)

Councilmember Rose made a motion, seconded by Kessler, to approve the minutes of the December 11, 2023 Regular Council Meeting as presented. Councilmembers Kessler and Rose voted 'Aye'. Councilmember Whalen abstained. Motion Failed.

b. Approve the December 2023 invoices as described in the Fund Transaction Summary Report in the amount of \$627,390.43. (page 8-9)

Councilmember Kessler made a motion, seconded by Rose, to approve the December 2023 Invoices as presented. Motion carried by roll call vote. Councilmembers Kessler, Whalen, and Rose voted 'Aye'.

8. OLD BUSINESS

9. NEW BUSINESS

a. Resolution No. 2024-01, a resolution of the City of Castle Rock amending Resolution No. 2013-03 and the Personnel Policies and Procedures Sick Leave Transfer Program increasing the number of hours eligible for transfer. (page 10-12)

Councilmember Kessler made a motion, seconded by Rose, to approve Resolution No. 2024-01. Motion carried by roll call vote. Councilmembers Kessler, Whalen, and Rose voted 'Aye'.

b. Resolution No. 2024-02, a resolution approving the application form to purchase dredge spoils on the westside site and setting rates for the sale of dredge spoils for the City of Castle Rock, Washington. (page 13-20)

Public Works Director Dave Vorse presented.

Councilmember Rose made a motion, seconded by Kessler, to approve Resolution No. 2024-02. Motion carried by roll call vote. Councilmembers Kessler, Whalen, and Rose voted 'Aye'.

10. OTHER BUSINESS

Mayor Helenberg, Councilmember Ellen Rose, City Attorney Frank Randolph, Councilmember Lee Kessler, and a citizen, name and city unstated, provided comment.

11. ADJOURNMENT

There being no further business, Mayor Helenberg adjourned the meeting at 7:53 PM.

Mayor Paul Helenberg

Clerk-Treasurer Carie Cuttonaro

1. CALL TO ORDER

Due to technical difficulties, this entire meeting was not available online and was not recorded.

Mayor Paul Helenberg called the regular meeting of the Castle Rock City Council to order at 7:41 PM.

a. Pledge of Allegiance

Mayor Helenberg led the Pledge of Allegiance.

b. Clerk-Treasurer Carie Cuttonaro will administer the oath to the following newly elected official:

Council

Paul Simonsen, Council Position No. 4

Term is four years, expiring December 2027.

Clerk-Treasurer Carie Cuttonaro administered the Oath of Office to Paul Simonsen.

c. Council approval of Councilmember Lee Kessler's appointment to Mayor Pro-Tem.

Councilmember Ellen Rose made a motion, seconded by Art Lee to approve Councilmember Lee Kessler's appointment to Mayor Pro-Tem. Motion carried by roll call vote. Councilmembers Lee, Whalen, Simonsen, and Rose voted 'Aye'. Councilmember Lee Kessler abstained.

d. Roll Call

Councilmembers present: Art Lee, Lee Kessler, John Whalen, Paul Simonsen, and Ellen Rose.

Staff present: Police Chief Charlie Worley, City Attorney Frank Randolph, Public Works Director Dave Vorse, City Engineer Tom Gower, and Clerk-Treasurer Carie Cuttonaro.

e. Changes to Agenda

Letter to WSDOT added to the agenda.

2. PROCLAMATIONS & PRESENTATIONS

3. CITIZEN COMMENTS - maximum 3 minutes

A citizen, name and city unstated, reported that she had a picture of all elected officials for all other cities in Cowlitz County. She inquired if she would be able to get a picture of the Council. Council agreed.

4. DEPARTMENT REPORTS

- City Attorney Frank Randolph
- Police Chief Charlie Worley
- Public Works Director Dave Vorse

1. PW Projects - 2023 Completed
PW Projects - 2024 Proposed

Public Works Director Dave Vorse gave a verbal report.

Public Works Director Dave Vorse expressed his continuing concern that WSDOT has not been receptive to the concerns that were made known to WSDOT regarding pedestrian safety for those crossing the SR 411 bridge. Dave Vorse proposed sending another letter to WSDOT, outlining the need for greater care, in hopes of getting them to reconsider their previous position.

- City Engineer Tom Gower
- Clerk-Treasurer Carie Cuttonaro

5. COUNCIL AND AD HOC COMMITTEE REPORTS

- Mayor / Mayor Pro-Tempore / Councilmembers

1. Humane Society report of animal activity for 4th quarter 2023.

Mayor Helenberg gave a verbal report.

- CRCDA Representative

6. PUBLIC HEARINGS

7. CONSENT AGENDA

Councilmember Lee made a motion, seconded by Rose, to approve the Consent Agenda as presented. Motion carried by roll call vote. Councilmembers Lee, Kessler, Whalen, Simonsen, and Rose voted 'Aye'.

- a. Approve the December 2023 Open Period invoices as described in the Fund Transaction Summary Report in the amount of \$27,113.58.

8. OLD BUSINESS

9. NEW BUSINESS

- a. Request to declare Public Works' 2016 Snorkel AB50JK, Serial Number 50909080217, as surplus.

Councilmember Kessler made a motion, seconded by Lee, to approve the request to declare Public Works' 2016 Snorkel AB50JK as surplus. Motion carried by roll call vote. Councilmembers Lee, Kessler, Whalen, Simonsen, and Rose voted 'Aye'.

- b. Naming of Al Helenberg Memorial Boat Launch access road.

Mayor Helenberg and Public Works Director Dave Vorse presented.

An ad hoc committee was formed; the committee members are Councilmembers Lee Kessler and Ellen Rose. They expect to report back on the subject during the last meeting of February.

- c. Request consensus to send a letter to WSDOT regarding SR 411 Bridge Lighting.

Public Works Director Dave Vorse presented.

Councilmember Lee made a motion. The consensus to send the requested letter was carried by roll call vote. Councilmembers Lee, Kessler, Whalen, Simonsen, and Rose voted 'Aye'.

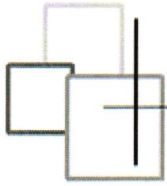
10. OTHER BUSINESS

Commissioner Rick Dahl provided comment.

11. ADJOURNMENT

Mayor Paul Helenberg

Clerk-Treasurer Carie Cuttonaro



Fund Transaction Summary

Transaction Type: Invoice

Fiscal: 2024 - Jan - Feb - City Council

System Types: Cash Management, Financials, Payroll, Resources, UB2, Utility Billing

Fund Number	Description	Amount
010	General Fund	\$146,017.76
100	Street Fund	\$12,363.44
115	Building Code Account Fund	\$1,094.33
120	Visitor Center Fund	\$527.18
130	Library Fund	\$726.83
140	Criminal Justice Fund	\$142.50
145	Local Criminal Justice Fund	\$155.63
170	DOT Spoil Site Fund	\$13,693.67
180	Public Works Vehicle Replacement	\$30,000.00
400	Water/Sewer Operating Fund	\$133,746.28
410	Regional Water System Fund	\$30,957.78
420	Stormwater Management Fund	\$12,112.71
430	Regional Water Capital Improvement	\$18.38
435	Muni Water Capital Improvement	\$117,906.70
470	Muni Sewer Capital Imprv Reserve	\$39,838.87
475	Boat Launch Facility Fund	\$1,981.49
631	Utility Deposit Fund	\$80.00
632	Transportation Benefit District Fund	\$4,580.00
634	State Custodial Pass-Thru Fund	\$817.51
	Count: 19	\$546,761.06

As of this date, 2/12/2024, the Council by a majority vote, does approve payment of the vouchers included in the Fund Transaction Summary Report, and further described as:

General Expenditures

<u>Transaction Type</u>	<u>Description</u>	<u>Amount</u>	<u>Payment Date</u>
Adjustment/EFT	EFT#1046-1/2024	6,283.36	1/25/2024
Adjustment/EFT	EFT#1052-1/2024	259.23	1/5/2024
Claims	Check 54971 - 54972	1,786.22	1/23/2024
Claims	Check 54971-54972 Voided	(1,786.22)	1/23/2024
Claims	Check 54973 - 54974	1,786.22	1/23/2024
Claims	Check 54975 - 54976	408.76	1/30/2024
Claims	Check 54977	937.76	1/31/2024
Claims	Check 54978 - 55046	339,515.25	1/31/2024
		<u>349,190.58</u>	

Payroll Expenditures

<u>Transaction Type</u>	<u>Description</u>	<u>Amount</u>	<u>Payment Date</u>
Mid-Month Draw	Nacha # 1198785	20,850.00	1/16/2024
Mid-Month Draw	Taxes	4,570.00	1/16/2024
EOM Payroll	Nacha # 1212988	69,024.90	1/31/2024
EOM Payroll	Check 26590 - 26604	57,319.24	1/31/2024
EOM Payroll	Taxes	23,633.65	1/31/2024
EOM Payroll Benefit	EFT	-	
Uniform Allowance	Check 26578 - 26589	8,306.63	1/18/2024
Uniform Allowance	Taxes	1,470.06	1/18/2024
Accrued - Quarterly Payroll Tax - L&I		6,414.57	
Accrued - Quarterly Payroll Tax - ESD		260.60	
Accrued - Quarterly Payroll Tax - PFML		750.65	
Accrued - Quarterly Payroll Tax - WA CARES		390.18	
		<u>192,990.48</u>	

TBD Expenditures

<u>Transaction Type</u>	<u>Description</u>	<u>Amount</u>	<u>Payment Date</u>
Adjustment/EFT	EFT# 1050-1/2024	300.00	1/1/2024
Adjustment/EFT	EFT# 1051-1/2024	4,280.00	1/1/2024
Claims	Check -	-	
Claims	Check	-	
		<u>4,580.00</u>	

	<u>Amount</u>	<u>Payment Date</u>
Grand Total Expenditures	546,761.06	1/1/2024 - 1/31/2024
Fund Transaction Summary Report	<u>546,761.06</u>	
Balance Check (s/b -0-)	0.00	

Lee Kessler, Audit Committee Member

Art Lee, Audit Committee Member

Ellen Rose, Audit Committee Member

ORDINANCE NO. 2024-01

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

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

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

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

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

NOW, THEREFORE, the City Council of the City of Castle Rock does ordain as follows:

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

- A. “Affiliate” means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.
- B. “City” means the City of Castle Rock, a municipal corporation of the State of Washington.
- C. “Emergency Situation” means an emergency involving likely loss of life or substantial property damage as determined by City in good faith.
- D. “Facilities” means Grantee’s fiber optic cable system constructed and operated within the City’s Rights-of-Way, and shall include all cables, wires, conduits, ducts, pedestals and any associated converter, equipment or other facilities within the City’s Rights-of-Way, designed and constructed for the purpose of providing Telecommunications Service and other lawful services not prohibited by this Ordinance.
- E. “Franchise” shall mean the initial authorization or renewal thereof, granted by the City, through this Ordinance, or a subsequently adopted Ordinance, which authorizes construction and operation of the Grantee’s Facilities for the purpose of offering Telecommunications Service and other lawful services not prohibited by this Ordinance.
- F. “Franchise Area” means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.

- G. "Grantee" or "Franchisee" means Astound Broadband LLC, a Washington Limited Liability Corporation, and the lawful successors, transferees, or assignees thereof.
- H. "Grantor" means the City of Castle Rock, a municipal corporation of the State of Washington.
- I. "Gross Revenues" means all amounts earned by the Grantee, less bad debts, derived from the operation of Grantee's System to provide services within the Franchise Area. "Gross Revenues" shall include amounts for all services, including without limitation, and all other revenues derived from the operation of Grantee's System to provide communication services, regardless of whether initially recorded to another entity and however characterized. However, any sales, excise or other taxes or fees levied directly upon subscribers by a local, state, or federal government and collected by the Grantee for direct pass through to such government shall not be included in "Gross Revenues". Subject to the limits and restrictions of federal and state law, the amounts of franchise fees paid by the Grantee shall not be excluded from gross revenues. "Gross Revenues", however, shall not be double counted. Revenues of both Grantee and an affiliate that represent a transfer of funds between the Grantee and the affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues.
- J. "Person" means an individual, partnership, association, joint stock company, trust, corporation, limited liability company or governmental entity as defined by Washington state law.
- K. "Record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, magnetic and laser disk files, and photographs, to the extent related to the enforcement or administration of this Franchise.
- L. "Resident" means any natural person residing within the franchise area.
- M. "Rights-of-Way" means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, rights of way and similar public areas within the City.
- N. "Section" means any section, subsection or provision of this Franchise Agreement.
- O. "Telecommunications Service" means any telecommunications service, telecommunications capacity, or dark fiber, provided by the Grantee using its Facilities, either directly or as a carrier for its Affiliates, or any other Person engaged in Telecommunications Services, including, but not limited to, the transmission of voice, data or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading and home shopping, or other subsequently developed technology that carries a signal over Grantee's fiber optic cable. Telecommunications Service shall also include

non-switched, dedicated and private line, high capacity fiber optic transmission services to firms, businesses or institutions within the City and other lawful services not prohibited by this Ordinance. However, Telecommunications Service shall not include the provision of “cable services”, as defined by 47 U.S.C. §522, as amended, for which a separate franchise would be required.

- P. “Year” means a full twelve-month calendar year, unless designated otherwise, such as a “fiscal year”.

Section 2. Franchise Area and Authority Granted.

- A. Facilities within Franchise Area. The City does hereby grant to Grantee the right, privilege, authority and franchise to construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along and across Rights-of-Way in the Franchise Area for purposes of telecommunications service defined in RCW 82.04.065.
- B. Permission Required to Enter Onto Other City Property. Nothing contained in this Ordinance is to be construed as granting permission to Grantee to go upon any other public place other than said Rights-of-Way within the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be obtained on a case by case basis from the City.
- C. Compliance with WUTC Regulations. At all times during the term of the Franchise, Grantee shall fully comply with all applicable regulations of the Washington Utilities and Transportation Commission.

Section 3. Construction and Maintenance.

- A. Grantee’s Facilities shall be located, relocated and maintained within the Rights-of-Way in accordance with RCW 35A.47.040 Franchises and permits – Streets and public ways , so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Whenever it is necessary for Grantee, in the exercise of its rights under the Franchise, to make any excavation in the Rights-of-Way, Grantee shall obtain prior written approval from the City of Castle Rock Public Works Department, pay any applicable permit fees, and obtain any necessary permits for the excavation work pursuant to CRMC. Upon completion of such excavation, Grantee shall restore the surface of the Rights-of-Way to the specifications established within the City of Castle Rock Development Policies and Public Works Standards. If Grantee should fail to leave any portion of the excavation in a condition that meets the City’s specifications per the City of Castle Rock Development Policies and Public Works Standards, the City may, on five (5) days’ notice to Grantee, which notice shall not be required in case of an Emergency Situation, cause all work necessary to restore the excavation to a safe condition. Grantee shall pay to the City the reasonable cost of such work; which shall include, among other things,

the City's overhead in obtaining completion of said work (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).

- B. Any surface or subsurface failure occurring during the term of this Agreement caused by any excavation by Grantee shall be repaired to the City's Specifications, within thirty (30) days, or, upon five (5) days' written notice to Grantee, which notice shall not be required in case of an Emergency Situation, City may cause all work necessary to restore the failure to a safe condition. Grantee shall pay to the City the reasonable cost of such work; which shall include, among other things, the City's overhead in obtaining completion of said work (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).
- C. In the event of an Emergency Situation, Grantee may commence such emergency and repair work as required under the circumstances, provided that Grantee shall notify the City Public Works Director in writing as promptly as possible before such repair or emergency work commences, or as soon thereafter as possible, if advanced notice is not reasonably possible. The City may act, at any time, without prior written notice in the case of an Emergency Situation, but shall notify Grantee in writing as promptly as possible under the circumstances.
- D. Grantee agrees that if any of its actions under the Franchise materially impair or damage any City property, survey monument, or property owned by a third-party, Grantee will restore in a timely manner, at its own cost and expense, the impaired or damaged property to the same condition as existed prior to such action. Such repair work shall be performed and completed to the reasonable satisfaction of the Public Works Director.

Section 4. Location and Relocation of Facilities.

- A. Grantee shall place any new Facilities underground where existing telecommunications and cable facilities are located underground. Any new facilities to be located above-ground shall be placed on existing utility poles. No new utility poles shall be installed in connection with placement of new above-ground Facilities.
- B. Grantee recognizes the need for the City to maintain adequate width for installation and maintenance of sanitary sewer, water and storm drainage utilities owned by the City and other public utility providers. Thus, the City reserves the right to maintain clear zones within the public right-of-way for installation and maintenance of said utilities. The clear zones for each Right-of-Way segment shall be noted and conditioned with the issuance of each Right-of-Way permit. If adequate clear zones are unable to be achieved on a particular Right-of-Way, Grantee shall locate in an alternate Right-of-Way, obtain easements from private property owners, or propose alternate construction methods which maintain and/or enhance the existing clear zones.
- C. Except as otherwise required by law, Grantee agrees to relocate, remove or reroute its Facilities as ordered by the City, at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Pursuant to the provisions of Section 5, Grantee

agrees to protect and save harmless the City from any third-party claims for service interruption or other losses in connection with any such change or relocation other than City's negligence or willful misconduct.

- D. If the City determines that a project necessitates the relocation of the Grantee's existing Facilities, then:
1. Within a reasonable time, which shall be not less than sixty (60) calendar days prior to the commencement of the project, the City shall provide the Grantee with written notice requiring relocation; provided that in the event of an Emergency Situation beyond the control of the City and which will result in severe financial consequences to the City or its citizens or businesses, the City shall give the Grantee written notice as soon as practicable;
 2. The city shall provide the Grantee with copies of information for such improvement project so that Grantee may relocate its Facilities in other Rights-of-Way in order to accommodate the project; and
 3. The Grantee shall complete relocation of its Facilities at no charge or expense to the City so as to accommodate the project. In the event of an Emergency Situation as described in this Section, the Grantee shall relocate its Facilities within the reasonable time period specified by the City.
- E. The Grantee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, the Grantee shall relocate its Facilities as otherwise provided in this Section.
- F. The provisions of this Section shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any Person or entity other than the City, where the Facilities to be constructed by said Person or entity are not or will not become City-owned, operated or maintained Facilities; provided, that such arrangements shall not unduly delay a City construction project.
- G. The Grantee shall indemnify, hold harmless and pay the costs of defending the City against any and all third party claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Grantee to relocate its Facilities in a timely manner; provided, that the Grantee shall not be responsible for damages due to delays caused by the City.

- H. In the event that the City orders the Grantee to relocate its Facilities for a project which is primarily for private benefit, the private party or parties causing the need for such project shall reimburse the Grantee for the cost of relocation in the same proportion as their contribution to the total cost of the project.
- I. In the conduct of its business, it may be necessary for Grantee to trim trees or other vegetation in order to provide space for its facilities. Except in an emergency, tree or vegetation trimming shall be done only in accordance with the ordinances and other rules and regulations of Grantor. And if the tree or vegetation is located on private property, with the written permission of the owner of the property on which the tree or vegetation stands.
- J. In accordance with standard construction practices, the Grantee agrees to maintain a membership with the local underground utility council and other similar organization for the life of this agreement.
- K. In the event of an unforeseen Emergency Situation that creates a threat to public safety, health or welfare, the City may require the Grantee to relocate the Grantee's Facilities at Grantee's own expense, any other portion of this Section notwithstanding.

Section 5. Indemnification.

- A. Grantee shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all third party claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and reasonable attorney's fees, made on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, operation or maintenance of its Facilities or in exercising the rights granted Grantee in the Franchise; provided, however, such indemnification shall not extend to injury or damage caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.
- B. In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify Grantee thereof (and in any event prior to the date that Grantee's rights to defend such claim or demand would be prejudiced), and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action be begun against the City based upon any such claim or demand, the it shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

Section 6. Default.

- A. If Grantee shall fail to comply with any of the provisions of the Franchise, unless otherwise provided in the Franchise, the City will serve upon Grantee a written order to comply within thirty (30) days from the date such order is received by Grantee. If Grantee is not in compliance with the Franchise after expiration of the thirty (30) day

period, the City may act to remedy the violation and may then charge the reasonable costs and expenses of such action to Grantee. The City may act without the thirty (30) day notice in case of an Emergency Situation. If any failure to comply with the Franchise by Grantee cannot be corrected with due diligence within said thirty (30) day period, then the time within which Grantee may so comply shall be extended for such time as may be reasonably necessary and so long as Grantee works promptly and diligently to effect such compliance. During such a period, if Grantee is not in compliance with the Franchise, and is not proceeding with due diligence in accordance with this section to correct such failure to comply, then the City may in addition, by ordinance and following written notice to Grantee, declare an immediate forfeiture of the Franchise and all of Grantee's rights and obligations thereunder.

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

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

Section 8. Franchise Term.

- A. The Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of this ordinance, provided that the term may be extended for an additional five (5) years upon the agreement of Grantee and the City ; and provided further, however, Grantee shall have no rights under the Franchise nor shall Grantee be bound by the terms and conditions of the Franchise unless Grantee shall, within thirty (30) days after the effective date of this Ordinance, file with the City its written acceptance of the Franchise, in a form acceptable to the City attorney.
- B. If the City and Grantee fail to formally renew the Franchise prior to the expiration of its term or any extension thereof, the Franchise shall automatically continue in full force and effect until renewed or until either party gives written notice at least one hundred twenty (120) calendar days in advance of intent not to renew the Franchise.

Section 9. Compliance with Codes and Regulations.

- A. The rights, privileges and authority herein granted are subject to and governed by this Ordinance, the applicable laws of the State of Washington and the applicable laws of the United States, and all other applicable ordinances and codes of the City of Castle Rock, as they now exist or may hereafter be amended. Nothing in this ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of

the general public. Any location, relocation, erection or excavation by Grantee shall be performed by Grantee in accordance with applicable federal, state and city rules and regulations, including the City's Public Works policies and standard plans, and any required permits, licenses or posted fees, and applicable safety standards then in effect.

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

Section 10. Compensation.

- A. The City acknowledges that Washington law currently limits the tax the City may impose on Grantee's activities hereunder to 6% of revenue derived from the provision of network telephone service (i.e., "telephone business" as defined in RCW 82.16.010) and that the federal Internet Tax Freedom Act prohibits the imposition of a tax or other fee on revenue derived by Grantee from Grantee's provision of Internet access services. Grantee agrees that if federal or Washington law is changed, Grantee, following not less than ninety (90) days written notice from the City, will negotiate in good faith with the City to amend the Franchise to expand the revenue base on which such tax is applied. In lieu of all or part or none of the above tax, Grantee may provide telecommunications or other services to the City.

- B. Utility Tax in lieu of Franchise Fee: As compensation for the franchise to be granted and in consideration of permission to use the streets and public ways of the Grantor for the construction, operation, and maintenance of a communication system within the franchise area, the Grantee shall pay to Grantor an amount equal to six percent (6%) of the gross receipts as defined herein, which is a utility tax on the Grantee's Gross Revenues. Grantee agrees that if federal or Washington law is changed, Grantee, following not less than ninety (90) days written notice from the City, will negotiate in good faith with the City to amend the Franchise to expand the revenue base on which such tax is applied. In-lieu of all or part or none of the above tax, Grantee may provide telecommunications or other services to the City. Any agreement for the provision of such services will be as mutually agreed by the parties in separate documentation and the offset value of any such services provided to the City will be determined based on the standard rates Grantee charges to third-party customers for substantially equivalent services. Such document, Supplemental Agreement, Exhibit "A" is attached that would act as "in-lieu of the" 6% of revenue derived from the provision of network telephone service (i.e., "telephone business" as defined in RCW 82.16.010) and that the federal Internet Tax Freedom Act prohibits the imposition of a tax or other fee on revenue derived by Grantee from Grantee's provision of Internet access services.

C. Payment of Utility Taxes:

1. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30 and December 31. Each quarterly payment shall be due and payable sixty (60) days after the end of the quarter. A quarterly report shall be made and shall contain

the relevant facts necessary for the Grantor to verify the amounts of the payments. The Grantor shall have the right to specify the initial form of reports accompanying utility tax payments. Payment for any utility tax, or portion thereof, due under the Grantee's previous franchise, or any extensions of the same, or the time between the last effective date of such prior franchise or extensions thereof to the effective date of this franchise, shall be made in one lump sum no later than sixty (60) days following the effective date of this franchise.

2. No acceptance of any payment shall be construed as Grantor's accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this franchise. All amounts paid shall be subject to audit and re-computation by Grantor.

Section 11. Undergrounding. New Facilities shall be installed underground pursuant to Section 4 of the Franchise. Grantee acknowledges the City's policy of undergrounding of Facilities within the Franchise Area. Grantee will cooperate with the City in the undergrounding of Grantee's existing Facilities within the Franchise Area. If the during the term of the Franchise, the City shall direct Grantee to underground Facilities within any Franchise Area, such undergrounding shall be at no cost to the City except as may be provided in RCW Chapter 35.99. Grantee shall comply with all federal, state, and City regulations on undergrounding. If the City undertakes any street improvement which would otherwise require relocation of Grantee's above-ground Facilities, the City may, by written notice to Grantee, direct that Grantee convert any such Facilities to underground Facilities. All underground cable or wire must be a minimum of 30 inches below grade and a 2 feet horizontal and vertical separation from any existing utility.

Section 12. Record of Installations and Service.

- A. With respect to excavations by Grantee and the City within the Franchise Area, Grantee and the City shall each comply with its respective obligations pursuant to Chapter 19.122 RCW and any other applicable state or federal law.
- B. Upon written request of the City, Grantee shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.
- C. As-built drawings and maps of the precise location of any Facilities placed by Grantee in any Rights-of-Way shall be made available by Grantee to the City within ten (10) working days of the City's written request. These plans and maps shall be provided at no cost to the City and shall include hard copies and/or digital copies in a format commonly used in the telecommunications industry, Cowlitz County and City of Castle Rock G.I. S. systems.

- D. In addition to all rights granted under Section 11 €, the Grantor shall have the right to perform, or cause to have performed, a formal audit or review of the Grantee's books and records, and for the specific purposes of a bona fide enforcement effort being conducted by the Grantor, the books and records of Grantee for the purpose of determining the gross receipts of the Grantee generated in any manner through the operation of the cable system to provide Cable Services under this franchise and the accuracy of amounts paid as franchise fees to the Grantor by the Grantee, provided that any audit or review must be commenced not later than three (3) years after the date on which franchise fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the Grantor, except that if through the audit or review it is established that the Grantee has made underpayment of three percent (3%) or more in franchise fees than required by this franchise, then the Grantee shall, within thirty (30) calendar days of being requested to do so by the Grantor, reimburse the Grantor for the actual cost of the audit or review. In any case of underpayment of franchise fees, the Grantee shall pay 12 percent interest on all amounts underpaid.
- E. The Grantor or its representatives shall have the right to inspect all construction or installation work performed pursuant to the provision of this and any previous franchise agreement and to make such tests as it shall find necessary to ensure compliance with the terms of this franchise and other pertinent provisions of law.
- F. The Grantee shall not hinder the Grantor's lawful intervention in any suit or proceeding to which the Grantee is party which may have an effect upon the construction, upgrade, maintenance or operation of the system.

Section 13. Shared Use of Excavations and Trenches.

- A. Pursuant to RCW 35.99.070, the City may request that Grantee install additional conduit, ducts and related access structures for the City pursuant to contract, under which Grantee shall recover its incremental costs of providing such facilities to the City.
- B. The City reserves the right not to allow open trenching.
- C. The City reserves the right to require Grantee to joint trench with other franchisees, if both entities are anticipating trenching within the same franchise area and provided that the terms of this Section are met.

Section 14. Insurance.

- A. Grantee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work under the Franchise by Grantee, its agents, representatives or employees in the amounts and types set forth below:
 - 1. Commercial General Liability insurance with limits no less than \$1,000,000 per occurrence, \$2,000,000 aggregate, combined single limit for bodily injury (including death) and property damage, including premises

operation, products and completed operations and explosion, collapse and underground coverage extensions;

2. Automobile liability for owned, non-owned and hired vehicles with a combined single limit of \$3,000,000 for each accident for bodily injury and property damage; and
 3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000 for each accident/disease/policy limit or as required by law.
- B. Grantee's insurance coverage shall be primary insurance as respects the City's policy. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of Grantee's insurance and shall not be required to contribute with it.
- C. Grantee shall furnish the City with certificates of the foregoing insurance coverage or a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement.
- D. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to prior approval by the City.
- E. Grantee's maintenance of insurance as required by the Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 15. Assignment.

- A. All of the provisions, conditions, and requirements herein contained shall be binding upon Grantee, and no right, privilege, license or authorization granted to Grantee hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold. Notwithstanding the foregoing, Grantee, without the consent of, but upon notice to the City, may assign this agreement in whole or in part to: (a) an Affiliate (as defined in this Ordinance); or (b) a lender for security purposes only.
- B. Grantee may lease the Facilities or any portion thereof to another or provide capacity or bandwidth in its Facilities to another, *provided that*: Grantee at all times retains exclusive control over such Facilities and remains responsible for locating, servicing, repairing, relocating or removing its Facilities pursuant to the terms and conditions of the Franchise.
- C. The Grantee shall promptly notify the Grantor of any proposed change in, transfer of, or acquisition by any other party of control of the Grantee. If beneficial ownership of fifty percent (50%) or more of the stock of the Grantee, or of the majority of the stock of any parent company of the Grantee immediate or otherwise, or of any entity now owning or later acquiring such beneficial interest is acquired by or agent of common

control is other than an organization with majority of its beneficial ownership held by the Grantee or a parent of the Grantee, then a change in control will be deemed to have taken place unless the Grantor, upon request of the Grantee, finds otherwise. Such change in control shall make this Franchise subject to revocation unless and until the Grantor shall have given written consent thereto.

If the Grantee desires to operate the franchise under a change of control, the Grantee shall give the Grantor prior written notice of the proposed change, and shall request approval of the change by the Grantor. The Grantor shall have 120 days to act upon the request, following the receipt of the request, as well as all information required in writing by the Grantor prior to or subsequent to the request for approval. If the Grantor fails to render a final decision on the request within 120 days after receiving the request for approval and all such information, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

For the purpose of determining whether it will consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective controlling party to perform the obligations of the Grantee under this Franchise Agreement. The Grantee shall assist Grantor in any such inquiry. Consent to the change of control shall not be unreasonably withheld.

Section 16. Abandonment and Removal of Facilities. Upon the expiration, termination, or revocation of the rights granted under the Franchise, the Grantee shall remove all of its Facilities from the Rights-of-Way of the City within ninety (90) calendar days of receiving notice from the City's Public Works Director; *provided however*, that the City may permit the Grantee's improvements to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Grantee's agreement to transfer ownership of the Facilities to the City, the Grantee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place which are not removed within ninety (90) calendar days of receipt of said notice shall automatically become the property of the City; *provided however*, that nothing contained within this Section shall prevent the City from compelling the Grantee to remove any such Facilities through judicial action when the City has not permitted the Grantee to abandon said Facilities in place. The City may remove any abandoned facility, such as, but not limited to; cables, wires, conduits, ducts, pedestals and any associated converter, equipment or other facilities within the City's Rights-of-Way within and charge the Grantee for such service plus overhead, not to exceed 5% if the Grantee is unwilling or cannot remove the abandoned facility for any reason with the allocated ninety (90) calendar days of written notice by the City.

Section 17. Miscellaneous.

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

affect, or be of any weight in the interpretation or construction of the provisions of such sections of paragraphs.

- B. Grantee shall pay for the City's reasonable administrative costs in drafting and processing this Ordinance and all work related thereto, which payment shall not exceed \$5,000. Grantee shall further be subject to all published permit fees associated with activities and the provisions of any such permit, approval, license, agreement of other document, the provisions of the Franchise shall control.
- C. Failure of the City to declare any breach or default under this Franchise or any delay in taking action shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.
- D. Notwithstanding anything to the contrary herein, any determination by the City with respect to matters contained in this Ordinance and matters related to the Franchise shall be made in accordance with applicable federal law, including without limitation any applicable rules and regulations promulgated by the Federal Communications Commission, applicable state law and in a reasonable and non-discriminatory manner.
- E. In the event that Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason(s) beyond the reasonable control of Grantee, then Grantee's performance shall be excused during the force majeure occurrence. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers or employees. Events beyond Grantee's reasonable control include, but are not limited to, Acts of God, war, acts of domestic terrorism or violence, civil commotion, labor disputes, strikes, earthquakes, fire, flood or other casualty, shortages of labor or materials, government regulations or restrictions and extreme weather conditions. Franchisee shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a force majeure event.

Section 18. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City:

City of Castle Rock
Public Works Director
PO Box 370
Castle Rock, WA 98611

Grantee:

Astound Broadband, LLC
650 College Road East
Suite 3100
Princeton, NJ 08540
Attn: Joseph Kahl, VP Regulatory and
Public Affairs

Notice shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

Section 19. Effective Date. This Ordinance, being in compliance with RCW 35A.47.040, shall be in force and effect five (5) days from and after its passage by the Castle Rock City Council and publication pursuant to RCW 35A.12.160 Publication of ordinances or summary – Public notice of hearings and meeting agendas in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Castle Rock City Council in open meeting this ____ day of _____, 2024.

Signed in authentication thereof this ____ day of _____, 2024.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

Astound franchise supplemental agreement, Exhibit "A"

City of Castle Rock agrees not to charge Astound a franchise fee for the term of the franchise and any extensions thereof, in-lieu of the following considerations:

1. Astound shall increase the DIA circuit at City Hall, 141 A Street SW, from 25Mbps to 1Gig. The rate shall stay the same, i.e. \$99.00 a month, for the term of the franchise and any extensions thereof.
2. Astound shall increase the point-to-point connection from the Library, 137 Cowlitz Street West, to City Hall from 1.5Mbps to 200Mbps. This would require the Port to be increased to 1Gig. There will be no charge for this circuit, or the increased Port and the \$99/month rate will stay the same for the term of the franchise and any extensions thereof.
3. The DIA at the Visitor Center, 890 Huntington Ave. North, will stay at 75Mbps, the rate will remain at \$149.00 a month for the term of the franchise and any extensions thereof.
4. Provide a new point of connection to the 1200 block of Mt. St. Helens Way N.E. at 200Mbps for the Uptown WI-FI. There will be no monthly charge for this circuit for the term of the franchise. City shall pay \$3,000 (including taxes and/or any other fees) and provide the excavation, work force, conduit cost and installation to connect this circuit to the City's WI-FI system.
5. The point-to-point connection from the Longview Justice Center to City Hall will increase to 50 Mbps, the rate shall stay at \$99.00 a month for the term of the franchise and any extensions thereof.
6. Astound shall upgrade all the fiber equipment, including phones, at each of the following 9 locations, at no charge to the City:
 - a. 2 - City Hall / Police Department, 141 A Street SW
 - b. Library, 137 Cowlitz Street West
 - c. Visitor Center, 890 Huntington Ave. North
 - d. Public Works facility, 360 A Street SW
 - e. Public Works, 302 Cowlitz Street West
 - f. Waste Water Treatment Facility, 215 Michner Street SW
 - g. Water Treatment Plant, 302 Cowlitz Street SW
 - h. Longview Justice Center, 312 1st Ave, Kelso, WA

7. Astound agrees to provide up to 5 additional phones and service for the City at no additional cost for the term of the franchise and any extensions thereof.
8. Upgrade of 100Mbps at each of the sites at 5 years with no additional cost. This would not apply to the 1 Gig connection to City Hall.
9. All other circuits would remain as is, both for bandwidth and at no charge.
10. The City shall have the option to "upgrade" any existing circuits at a 50% discount from standard rates, (which will be provided).
11. No change will occur to the phone service or cost for the term of the franchise or any extension thereof.

RESOLUTION NO. 2024-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE ROCK, WASHINGTON, APPROVING A LOCAL AGENCY FEDERAL AID PROJECT PROSPECTUS AND LOCAL AGENCY AGREEMENT BETWEEN THE CITY OF CASTLE ROCK AND THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION FOR TRANSPORTATION ALTERNATIVE PROGRAM GRANT FUNDS FOR THE SIX RIVERS REGIONAL TRAIL SYSTEM PHASE 2 – SR 411 IMPROVEMENTS PROJECT

WHEREAS, the City of Castle Rock applied for and received State Transportation Improvement Program federal grant funds (the Grant Funds) in October 2021 for the City’s Six Rivers Regional Trail Improvements Phase 2 Project (the Project); and

WHEREAS, the current total estimated project cost is \$432,200. The cost estimate may change as the project has not entered the design phase; and

WHEREAS, the City must sign and submit to the Washington State Department of Transportation a Local Agency Federal Aid Project Prospectus and Local Agency Agreement for the Grant Funds.

NOW THEREFORE, be it resolved by the City Council of the City of Castle Rock as follows:

1. The Castle Rock City Council hereby approves the Local Agency Federal Aid Project Prospectus and Local Agency Agreement between the City of Castle Rock and the Washington State Department of Transportation for Transportation Alternative Program grant funds for the Project and the terms and conditions contained therein.
2. The Mayor is directed and authorized to execute on behalf of the City of Castle Rock the Local Agency Federal Aid Project Prospectus, Local Agency Agreement, and any other documents necessary to obligate funds and complete the work for the Project, and to make any modifications as may be required and are consistent with the intent of the Prospectus and Local Agency Agreement, or to correct any scrivener’s errors.

PASSED by the City Council and signed by the Mayor on this ____ day of _____, 2024.

Mayor

Attest:

Approved as to form:

City Clerk

City Attorney