

CITY OF SILVERTON
ORDINANCE
16-03

AN ORDINANCE OF THE SILVERTON CITY COUNCIL GRANTING A NON-EXCLUSIVE TELEPHONE FRANCHISE TO FRONTIER COMMUNICATIONS NORTHWEST, INC. AND REPEALING ORDINANCE NO. 04-101 (VERIZON PRIVILEGE TAX)

WHEREAS, Frontier Communications Northwest, Inc., formerly Verizon Northwest, Inc., is currently operating within the City, its facilities are actually occupying City rights of way, and it is providing City residents with local exchange access and other telecommunications services; and

WHEREAS, Chapter 12.40 of the Silverton Municipal Code requires any telecommunications carrier who desires to occupy public rights-of-way of the City to obtain a franchise; and

WHEREAS, Frontier Communications Northwest, Inc. does not currently have a franchise allowing its use and occupancy of the City's rights of way, the last franchise agreement granted by Ordinance No. 93-121 having expired in August, 2003; and

WHEREAS, Frontier Communications Northwest, Inc. has been occupying the City's rights of way pursuant to Ordinance 04-101, establishing a privilege tax and other condition for use of the rights of way, and has now requested a franchise agreement from the City; and

WHEREAS, the City Council finds it is in the public interest to grant a franchise on the terms and conditions contained in this Ordinance and to repeal Ordinance 04-101.

NOW, THEREFORE, THE CITY OF SILVERTON ORDAINS AS FOLLOWS:

Section 1: **Purpose.** The purpose of this Ordinance is to set forth the terms and conditions upon which Frontier Communications Northwest, Inc. ("Grantee"), may be permitted to occupy the public rights-of-way within the City of Silverton pursuant to the powers of the City of Silverton, the Oregon Constitution and Oregon State Law, and except as to matters preemptively regulated by state or federal authorities. This Ordinance and the written acceptance by Grantee constitutes a contract between the City and Grantee (hereinafter referred to as the "Franchise") and is binding upon and inures to the benefit of Grantee and its permitted successors, legal representatives and assigns under the conditions imposed herein.

Section 2. Definitions and Explanation.

(1) As used in this Ordinance, the following words, except where the context clearly indicates otherwise, mean:

(a) City. Means the City of Silverton, an Oregon municipal corporation and individuals authorized to act on the City's behalf, and includes the area within its boundaries, and its boundaries as extended in the future.

(b) Council. Means the legislative body of the City or as defined by the Charter of the City of Silverton.

(c) Grantee. Means Frontier Communications Northwest, Inc.

(d) Person. Includes an individual, corporation, association, firm, sole proprietorship, company, partnership, co-partnership, joint stock company, trust, limited liability company, or other organization, including any natural person or any other legal entity.

(e) Telecommunications. Means the transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(f) Telecommunications service. Means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public but does not include:

1. Services provided solely for the purpose of providing internet service to the consumer.

(2) As used in this Ordinance, the singular number may include the plural and the plural number may include the singular.

Section 3. Rights Granted. Subject to the conditions and reservations contained in this Franchise and subject to any applicable ordinances and regulations of the City, including but not limited to ordinances and regulations regarding zoning, development, tree pruning or removal, erosion control and excavation in the public right-of-way, the City hereby grants to Grantee the right, privilege and non-exclusive Franchise to occupy the streets, highways, alleys, avenues, thoroughfares, public ways, public utility easements and sidewalks, to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such areas for telecommunications facilities (referred to herein as the "right-of-way"), for the purpose of constructing, using, maintaining and operating a system to provide telecommunication services within the City. This grant includes the authority to place, erect, lay and maintain poles, cables, wire and equipment customarily associated with telecommunications systems.

This Franchise does not authorize Grantee to provide cable services or other services not included in the definition of telecommunications services herein. Grantee agrees that prior to providing cable or additional services in the City, it must obtain all necessary and applicable authorizations from the City for use of the public right-of-way for such provision, including entering into a separate franchise with the City, and paying any applicable fees or taxes to the City.

In locations where aerial or above ground utility facilities (including aerial cable supports) exist as of the effective date of this Franchise, Grantee shall be allowed to overbuild, upgrade, maintain, replace or add to its existing aerial facilities and supporting structures, unless the City requires, in the course of permitting property development or redevelopment, or otherwise pursuant to applicable law or regulations, that all such facilities be located underground.

The City in its sole discretion may require that Grantee's facilities be placed or converted to underground, at Grantee's sole expense, when the City determines that such placement or conversion is in the public interest. The City in its sole discretion may require that Grantee's facilities be placed or converted to underground in the course of private property development or redevelopment. The City in its sole discretion may delay an otherwise required conversion to underground until a later time to allow for economies of scale. To the extent permitted by law, Grantee may require compensation for its cost to convert its facilities to underground for private property development or redevelopment from the third party, other than a public urban renewal agency, who carries on the development or redevelopment of property that requires the conversion to underground if that third party would otherwise be responsible for the costs of conversion.

In areas where no existing facilities are located on aerial or above ground utility facilities, such equipment must be laid underground unless the City specifically and expressly permits wires or cables to be strung upon poles or other fixtures above ground. Grantee shall be allowed to place above ground, in locations approved by the City, its cabinet-type facilities that are normally placed above ground.

Section 4. Pre-Construction Approval. Prior to the commencement of any construction, extension or relocation of any of Grantee's facilities upon, over, under or across any public right-of-way within the City, Grantee shall inform the City Manager in writing of the proposed location and shall obtain from the City Manager and any other public entity operating within the boundaries of the City, written approval prior to commencement of such work.

Grantee shall not be required to obtain prior approval for 1) customer service connections/drops, repairs or maintenance that do not require cutting, breaking or digging of or in the public right-of-way and 2) routine maintenance or repair of above ground Grantee-owned equipment, including the installation of new or replacement cables or wires on existing aerial facilities when the installation, maintenance or repair will not impact vehicular traffic by closing or blocking a lane of vehicular travel on any public roadway.

Section 5. Work within Rights-of-Way. Subject to the provisions of this Franchise and applicable regulations of the City and State of Oregon, it shall be lawful for Grantee to make all necessary excavations in the public right-of way. Any and all work within the public right of way shall be done in compliance with the applicable rules, regulations, ordinances and orders of the City then in effect. Except in an emergency causing prior notice and approval to be impractical, Grantee shall obtain from the City Manager written approval of any excavation within the traveled portion of any public right-of-way. Grantee shall furnish City with record drawings showing Grantee's facilities within the right-of-way in a mutually agreed electronic format no later than sixty (60) days after such work is complete. Information that is provided by Grantee to the City on a confidential or proprietary basis shall be maintained by the City as confidential or proprietary to the extent permitted under Oregon Public Records Law. Costs incurred by the City, including but not limited to attorney's fees, for determination of confidentiality or proprietary nature of such records are to be fully paid by Grantee. Grantee's failure to pay for such reasonable review shall act as Grantee's waiver of any such claim of confidentiality or proprietary nature.

Grantee shall perform all work within the right-of-way according to all federal, state and local requirements and in conformance with current industry practice for workplace and public safety. Grantee shall allow the City access to and the right to inspect any of Grantee's work within the public right-of-way and shall insure the City against the risk of personal injury that may be incurred by any City agent or employee in the course of that person's access to and inspection of such work that is not caused by the negligence or willful misconduct of such agent or employee.

Section 6. Restoration of Right-of-Way. Whenever Grantee, or anyone on Grantee's behalf, disturbs any right-of-way, Grantee shall properly and promptly restore the affected portion of the right-of-way to a condition equal to that which existed prior to the disturbance and in accordance with any right-of-way construction standards then in effect and on file at the City as soon as practicable, without unnecessary delay, and failing to do so, City shall have the right to fix a reasonable time within which such repairs and restorations shall be completed. If Grantee fails to perform such repairs and restoration as required in this Section, City may cause such repairs to be made at the expense of Grantee, after having provided Grantee, its successors or assigns, with thirty (30) days written notice and a reasonable opportunity to cure.

Section 7. Duration; Renewal.

(1) The rights and privileges set forth in this Franchise are hereby granted for a period of five (5) years from and after the effective date of this Ordinance. However, this Ordinance shall be inoperative unless it is accepted in writing by Grantee within thirty (30) days after the date of its passage.

(2) No less than one hundred and twenty (120) days prior to the expiration of this Franchise, written notice shall be filed by Grantee of its intent to request renewal of this Franchise. Should the Franchise expire prior to renegotiation and approval by Grantor of a new or renewed Franchise, and should Grantee continue to operate without an approved Franchise agreement, Grantee shall not be absolved of any obligations under the expired Franchise. In the event the Franchise agreement is not renewed, within one hundred and eighty (180) days after the expiration or termination of the Franchise, compensation shall be paid for the period elapsing since the close of the last calendar year for which compensation has been paid, and Grantee's operations within the Grantor's boundaries terminated.

(3) Extensions of this Franchise may be approved in monthly increments during the negotiation for renewal, based on good faith efforts and proper notice to the City, as found in subsection (2) above.

Section 8. Franchise Not Exclusive. This Franchise is not exclusive and shall not be construed as a limitation on the City in:

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this Ordinance; or
- (2) Constructing, installing, maintaining or operating any City-owned public utility.

Section 9. Public Works and Improvements Not Affected by Franchise. Nothing in this

Franchise shall be construed in any way to prevent the proper authorities of the City or other public entities operating within the City from sewerage, grading, paving, repairing, altering, maintaining constructing or improving any public right-of-way in or upon which facilities of Grantee may have been placed, but all such work or improvements shall be done, if possible, so as to prevent or minimize impairment of the free use of said facilities by Grantee. If avoidance of obstructions or impaired use of Grantee's facilities cannot be done without additional costs to the City or other public entity operating within the City, Grantee shall compensate the City or other public entity for any additional costs to undertake such work. The City shall attempt to provide Grantee sixty (60) days written notice and opportunity to discuss such costs and alternatives and at a minimum as much notice as is reasonable and practicable under the circumstances prior to undertaking any such work in which Grantee is responsible for compensating the City or other public entity for additional costs.

Section 10. Location of Facilities. All facilities of Grantee shall be placed so that they do not interfere unreasonably with the use by the City of the public right-of-way and according to any specifications approved by the City.

Section 11. Temporary Relocation of Facilities. Whenever in the sole discretion of the City, it becomes necessary to temporarily rearrange, remove, lower or raise the wires, cables or other facilities of Grantee's for the passage of buildings, machinery or other objects, Grantee shall:

(1) Temporarily rearrange, remove, lower or raise its wires, cables or other facilities, as the necessities of the case require; provided, that the person desiring to move any such building machinery or other objects:

- (a) pays the entire actual cost to Grantee of changing, altering, moving, removing or replacing its wires, cables or other appurtenances to permit such passage; and
- (b) deposits in advance with Grantee a sum equal to such cost as estimated by Grantee; and

(2) Grantee shall be given as much advance notice as possible, but no less than ninety-six (96) hours (calculation excludes holidays), written notice by the party desiring to move such building, machinery or other objects. Said notice shall:

- (a) detail the route movement of such building, machinery or other objects;
- (b) bear the approval of the City; and
- (c) move with as much haste as possible and shall not be unnecessarily delayed or cause Grantee unnecessary expense or waste of time.

Temporary rearrangement, removal lowering or raising of Grantee's facilities required by the City for a public purpose shall be accomplished by Grantee without charge in the same manner as permanent relocations described in Section 12 of this Franchise.

Notice requirements by the City to Grantee in this Section shall be waived in the event of an emergency as determined by the City.

Section 12. Relocation and Removal of Facilities. The City, by its properly constituted authorities, shall have the right to cause Grantee to move (aerial to aerial or underground to underground, unless the City requires undergrounding pursuant to applicable law or regulations), the location of any pole, wire, cable, appliance, conductor, conduit, or any other plant or facility

located in the public right-of-way whenever the relocation thereof shall be for public necessity, as determined in the reasonable discretion of the City, and the expense thereof shall be paid by Grantee. This Section shall not be construed; however, as removing any authority Grantee may otherwise have under applicable law or regulations to charge the expense of such relocation to a third party. The manner of removal or replacement shall be as directed solely by the City so that it shall not interfere with the public work of the City, but such direction shall be exercised in a manner so as to minimize the expense to Grantee and interference in Grantee's operations. Public necessity shall be deemed to be whenever any facility of Grantee materially interferes with construction of any public improvement located in a public right-of-way, public easement or any other similarly publicly-owned location as determined by the City.

Section 13. Continuous Service. Grantee shall maintain and operate an adequate system for telephone communication in the portions of the City Grantee serves, and use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall conform to the standards common to the business.

Section 14. Safety Standards and Work Specifications.

(1) The facilities of Grantee shall at all times be maintained in a safe, substantial and workmanlike manner.

(2) For the purpose of carrying out the provisions of this Section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

Section 15. Furnishing of Facilities to City. In consideration of the rights and privileges hereby granted, City shall have, and Grantee hereby grants to it:

(1) The right and privilege to suspend and maintain wires and necessary control bases on poles placed by Grantee in the streets, and other places aforesaid, subject to the capacity and spacing requirements for such poles.

(2) If such wires are placed underground, to place and maintain in the pipes or conduits of Grantee, if space therein is available, wires which City may require for fire and police purposes.

(3) All wires shall be placed upon the poles or in conduits so as not to interfere with telecommunication service and shall not carry currents or voltage dangerous to telephone appurtenances or telephone users.

(4) All wires placed shall be subject to the rules, regulations and supervision of Grantee.

Section 16. Compensation.

(1) As compensation for the Franchise granted by this Ordinance, Grantee shall pay to the City an annual Franchise fee of seven percent (7%) of the gross revenue, subject to applicable limitations imposed by federal and state law. "Gross revenues" means any and all revenue for the telecommunications services rendered within the City limits less net uncollectables, subject to applicable state and federal law. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or

stocks.

(2) Compensation required by this Section shall be due quarterly, based on a calendar year as determined by the City. Payments are due within thirty (30) days after the close of each quarter. Late franchise fee payments will be subject to a late fee calculated on the basis of ten percent (10%) per annum of the amount past due. Within ninety (90) days after the termination of this Franchise, compensation shall be paid for the period elapsing since the close of the last quarter for which compensation has been paid and operations terminated.

(3) Grantee shall furnish to the City with each payment of compensation required by this Section a written statement, under oath, executed by an officer of Grantee showing the amount of gross revenues of Grantee within the City for the period covered by the payment. The compensation for the period covered by the statement shall be computed on the basis of the gross revenues so reported. If Grantee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due the City shall be paid by Grantee within fifteen (15) days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise, shall be offset against the next payment due from Grantee.

(4) Grantee shall keep accurate books of account for the purpose of determining the amounts due to the City under the provisions of this Franchise. The City may inspect the books of account at any time during business hours upon thirty (30) days prior written notice and may audit the books from time to time but no more often than once per calendar year and may not re-audit periods already audited and may not audit any period more than three (3) years prior to the date of the audit. The books, or copies thereof, shall be made available within the City unless the City consents to another location. Should such an audit reveal that payments tendered by Grantee to the City are less than the amounts due under the terms of this Franchise, Grantee shall promptly remit the amounts due the City, together with interest at a rate of nine percent (9%) per annum from the date such payment was originally due. If an audit reveals that payments tendered by Grantee to City were less than the amounts due under the terms of this Franchise by a differential of five percent (5%) or greater, all costs incurred by the City, including but not limited to accountant's fees and attorney's fees, for such audit are to be fully paid by Grantee. The Council may require periodic reports from Grantee relating to its operations, revenues, and subscribers base within the City. Grantee shall maintain current maps showing the location of its facilities, fixtures, appliances and structures within the streets, highways or other public property of the City. The City shall be allowed to inspect said maps at any time during Grantee's normal business hours upon at least ten (10) days prior written notice. If requested by City, Grantee shall furnish, without charge and within a reasonable time, maps relating to specified areas of the City. The maps, or copies thereof, shall be made available within the City unless the City consents to another location. Information that is provided by Grantee to the City on a confidential or proprietary basis shall be maintained by the City as confidential or proprietary to the extent permitted under Oregon Public Records Law.

(5) Acceptance by the City of any payment due under this Franchise shall not be deemed to be a waiver by the City of any other obligation of Grantee under this Franchise, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City. Should Grantee fail or neglect to pay any of said quarterly payments provided for in this Section for thirty (30) days after any quarterly payment shall become due and payable and after thirty (30) days written notice from the City, the City, by its properly constituted authority, may at its option either continue this Franchise in force and/or proceed by suit or action to collect such payment or

declare a forfeiture of this Franchise because of the failure to make payment, but without waiving the right to collect earned Franchise payment.

(6) Upon no less than thirty (30) days prior written notice by either party to the other, the amount of such compensation shall be subject to renegotiation and redetermination before the expiration of each calendar year, of the terms of the Franchise hereby granted, for the ensuing period of said Franchise term.

Section 17. Indemnification. Grantee hereby agrees and covenants to indemnify and save harmless the City, its officers, or agents thereof against any claim for injury, damage, loss, liability, cost and expense, including court and appeal costs and attorney fees and/or expenses, arising from any casualty and/or accident to person or property by reason of any construction, excavation and/or any other act or failure to act under this Franchise, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its facilities in a safe condition. The City shall provide Grantee with prompt notice of any such claim which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done by the City without the prior written approval of Grantee. Grantee and its agents, contractors and others shall consult and cooperate with the City while conducting its defense of the City and the City and its agents, contractors and others shall consult and cooperate with Grantee in conducting such defense.

Grantee also hereby agrees to indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly, or indirectly, from Grantee's failure to remove, adjust or relocate all or any portion of its facilities in a timely manner pursuant to provisions of this Franchise, unless Grantee's failure arises: 1) directly from the City or its agents or contractor's negligence or willful misconduct; 2) as a result of other public utilities not timely removing, adjusting or relocating its facilities necessary to accommodate Grantee's removal, adjustment or relocation; or 3) from the negligent or willful misconduct of another user of the public right-of-way.

Section 18. Assignment of Franchise. No sale, assignment, transfer or lease of this Franchise shall be effective without the consent of the City, which consent shall not be unreasonably delayed, conditioned or denied.

Section 19. Reservation of Statutory Authority. The City reserves the right to exercise, with regard to this Franchise and Grantee, all authority now or hereafter granted to the City by state statutes. All rights of the City under the City Charter are reserved to the City.

Section 20. Insurance.

(1) Grantee shall maintain commercial general liability insurance that protects Grantee and the City, as well as the City's officers, agents, and employees, from any claims arising out of Grantee's operations in the City. The insurance shall provide limits of not less Three Million (\$3,000,000) combined single-limit covering all claims per occurrence, plus costs of defense. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a

separate policy had been issued to each, but nothing in this Section shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurer shall endeavor to provide thirty (30) days prior written notice of intention to non-renew, cancellation or material adverse change to City Manager, except that ten (10) days notice for non-payment of premium shall apply. If the insurance is canceled or materially altered within the term of this Franchise, Grantee shall provide a replacement policy with the same terms and notify City immediately. Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this Franchise.

(2) Grantee shall maintain on file with the City Manager an ACORD certificate of insurance or equivalent certifying the coverage required above.

Section 21. Termination or Abandonment of Franchise. Upon any termination of this Franchise, whether before or upon the expiration of the Franchise, or upon any abandonment of the Franchise by Grantee, all telecommunications equipment and systems installed or used by Grantee under this Franchise shall be removed by Grantee at Grantee's expense and the property upon which the telecommunications equipment and systems were used shall be restored by Grantee to the condition it was in before installation, or use by Grantee, except that City or its designee, after termination has the option but is not required to have the following options after termination:

Section 22. Remedies Not Exclusive, When Requirement Waived. All remedies and penalties provided under this Franchise, the common law, the statutes of this State, the statutes of the United States and the ordinances and regulations of the City, are cumulative and the enforcement or recovery of one is not a bar to the enforcement or recovery of any other remedy or penalty. The remedies and penalties contained in this Franchise are not exclusive, and the City and Grantee reserve the right to enforce and to avail itself of any and all remedies available at law or in equity. Failure to enforce any right accruing to or available to City or Grantee whether arising under this Franchise or otherwise, shall not be construed as a waiver of a breach of any term, condition or obligation of this Franchise or a violation of any requirement of law. A specific waiver of any particular breach of any term, condition or obligation pursuant to this Franchise shall not be a waiver of any other, subsequent or future breach of the same or of any other term, condition, or obligation or as a waiver of the term, condition or obligation itself.

Section 23. Additional Remedy. In addition to any rights available at law or in equity, including, without limitation, any rights set out elsewhere in this Franchise, as well as its rights under the City Code, if there is a material violation of this Franchise by Grantee the City reserves the right at its sole option to suspend issuance of any permits and/or approvals to Grantee until Grantee corrects or otherwise remedies the violation.

Section 24. Breach of Franchise. City may declare a breach of this Franchise for Grantee's default in any material term or condition if Grantee has not cured the alleged default as soon as practicable and, except for an event of default that constitutes an unreasonable risk of personal injury or property damage, no later than ninety (90) days after the date of City's written notice of

the default. In the event of Grantee's breach for a default that Grantee does not cure within the time allowed, City shall have every remedy available to it in law and equity for such default, including, without limitation, the additional remedies as provided in Section 23 of this Franchise; provided, that if the breach is not capable of cure within said ninety (90) days, and Grantee is diligently pursuing cure, the period for cure shall be extended for a period of time as determined by the City in its sole discretion in writing.

Section 25. Severability. The provisions of this Franchise are severable. If any portion of this Franchise is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Franchise.

Section 26. Acceptance of Franchise. Grantee shall, within thirty (30) days from the date this Ordinance is passed by the City Council, file with the City its written unconditional acceptance of this Franchise in the form attached hereto as Exhibit A, and if Grantee fails to do so, this Ordinance shall be void.

Section 27. Effective Date. This Ordinance will take effect thirty days after passage by the Council provided Grantee files with the City its written unconditional acceptance of this Franchise.


Section 28. Repeal of Prior Ordinance. Upon the effective date of this Ordinance, Ordinance No. 04-101 shall be repealed in its entirety and of no further force or effect.

Section 3: This ordinance shall be effective upon and from 30 days of adoption.

Ordinance adopted by the City Council of the City of Silverton, this 7th day of March, 2016.



Mayor, City of Silverton
Rick Lewis

ATTEST


City Manager/Recorder, City of Silverton
Bob Willoughby

EXHIBIT A
ACCEPTANCE

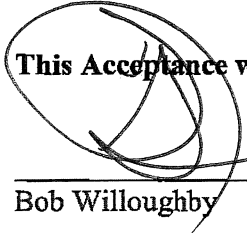
Bob Willoughby
City Manager
306 S Water St
Silverton, Oregon 97381

This is to advise the City of Silverton, Oregon that Frontier Communications Northwest, Inc. (the "Grantee") hereby unconditionally accepts the terms and provisions of Ordinance No. 16-03, passed by the City Council on March 7, 2016 (the "Franchise") granting a Franchise to Grantee. The Grantee agrees to abide by each and every term of the Franchise.

Frontier Communications Northwest, Inc.

BY Renee M. Willer
TITLE State Regulatory Manager
DATE 3-23-16

 This Acceptance was received by the City of Silverton on March 29, 2016.



Bob Willoughby