



City Council Study Session Agenda
Virtual Platform
September 15, 2020 at 5:00 p.m.

A. Call to Order

- Pledge of Allegiance

B. Study Agenda

1. 2021 Budget Status – Presented by Finance Director Aaron BeMiller

C. Adjourn

Shelton City Council
Meeting Agenda
September 15, 2020 at 6:00 p.m.
Virtual Platform

A. Call to Order

- Pledge of Allegiance
- Roll Call
- Late Changes to the Agenda

B. Consent Agenda (Action)

1. Vouchers numbered 102923 through 102963 in the total amount of \$236,240.92
2. Vouchers numbered 102987 through 103022 in the total amount of \$102,573.01
3. Minutes of Regular Business Meeting – July 7, 2020

C. General Public Comment (3-minute time limit)

D. Presentations

1. Public Works Capital Improvement Program – Presented by Public Works Director Jay Harris

E. Business Agenda (Study/No Action/Public Comment Taken)

1. Public Hearing – Ordinance No. 1955-0820 Refunding Debt – Presented by Finance Director Aaron BeMiller
2. Public Hearing – Ordinance No. 1956-0920 Cable Television Franchise Agreement – Presented by City Manager Jeff Niten

F. Action Agenda (Action/Public Comment Taken)

1. Resolution No. 1169-0820 FCS Group Rate Study Amendment No. 3 – Presented by PW Administrative Manager Brooke Kilts
2. Resolution No. 1170-0820 Signing Authority for Contracts – Presented by City Manager Jeff Niten
3. Resolution No. 1171-0820 Roller Purchase – Presented by Public Works Director Jay Harris
4. Resolution No. 1172-0820 Mower Purchase – Presented by Public Works Director Jay Harris

G. Administration Reports

1. City Manager Report

H. Announcement of Next Meeting – October 6, 2020 at 6:00 p.m.

I. Adjourn

Special Note for Public Participation

The meeting can be viewed at: masonwebtv.com

The public can provide comments by:

Email: jeff.niten@sheltonwa.gov

Telephone: (360) 432-5105

Joining the Zoom meeting by clicking on the link posted on the City Council's webpage

Your comments will be relayed directly to the Council.



2020 Looking Ahead

(Items and dates are subject to change)

Tues. 10/6 5:30 p.m.	Special Meeting	Executive Session To discuss with legal counsel litigation or potential litigation.	N/A
Tues. 10/6 6:00 p.m.	Regular Meeting	Consent Agenda <ul style="list-style-type: none"> • Vouchers/Payroll Warrants/Meeting Minutes Presentations <ul style="list-style-type: none"> • Business Agenda <ul style="list-style-type: none"> • LTAC Grant Recommendations Action Agenda <ul style="list-style-type: none"> • Ordinance No. 1955-0820 2020 Refunding Debt • Ordinance No. 1952-0720 Master Franchise Agreement – Hood Canal Communications • Ordinance No. 1956-0920 Cable Franchise Agreement Administration Report <ul style="list-style-type: none"> • 	Packet Items Due: Fri. 9/25 – 5:00 p.m.
Tues. 10/20 5:50 p.m.	Special SMPD Meeting	Consent Agenda <ul style="list-style-type: none"> • Vouchers/Meeting Minutes Business Agenda <ul style="list-style-type: none"> • Public Hearing – Consideration of the 2021 Ad Valorem (Property) Tax Levy • Public Hearing – 2021 Preliminary Budget Action Agenda <ul style="list-style-type: none"> • Administration Report <ul style="list-style-type: none"> • 	Packet Items Due: Fri. 10/9 – 5:00 p.m.
Tues. 10/20 6:00 p.m.	Regular Meeting	Consent Agenda <ul style="list-style-type: none"> • Vouchers/Payroll Warrants/Meeting Minutes Presentations <ul style="list-style-type: none"> • Business Agenda <ul style="list-style-type: none"> • Public Hearing – Consideration of the 2021 Ad Valorem (Property) Tax Levy • Public Hearing – 2021 Preliminary Budget Action Agenda <ul style="list-style-type: none"> • LTAC Grant Recommendations Administration Report <ul style="list-style-type: none"> • 	Packet Items Due: Fri. 10/9 – 5:00 p.m.
Tues. 11/3 6:00 p.m.	Regular Meeting	Consent Agenda <ul style="list-style-type: none"> • Vouchers/Payroll Warrants/Meeting Minutes Presentations	Packet Items Due: Fri. 10/23 – 5:00 p.m.

		<ul style="list-style-type: none"> • Business Agenda <ul style="list-style-type: none"> • Ordinance No. 1950-0320 Budget Amendment for 2020 • Franchise Agreement – PUD #3 • Franchise Agreement - Mason County Action Agenda • Administration Report • 	
Tues. 11/17 6:00 p.m.	Regular Meeting	<ul style="list-style-type: none"> • Consent Agenda <ul style="list-style-type: none"> • Vouchers/Payroll Warrants/Meeting Minutes • Presentations • Business Agenda • Action Agenda <ul style="list-style-type: none"> • Ordinance No. 1950-0320 Budget Amendment for 2020 • Public Hearing – Consideration of the 2021 Ad Valorem (Property) Tax Levy • Public Hearing – 2021 Preliminary Budget • Franchise Agreement – PUD #3 • Franchise Agreement - Mason County • Administration Report • 	Packet Items Due: Fri. 11/6 – 5:00 p.m.
Tues. 12/1 5:50 p.m.	Special SMPD Meeting	<ul style="list-style-type: none"> • Consent Agenda <ul style="list-style-type: none"> • Vouchers/Meeting Minutes • Business Agenda <ul style="list-style-type: none"> • Public Hearing – 2021 Final Budget • Action Agenda • Administration Report • 	Packet Items Due: Fri. 11/20 – 5:00 p.m.
Tues. 12/1 6:00 p.m.	Regular Meeting	<ul style="list-style-type: none"> • Consent Agenda <ul style="list-style-type: none"> • Vouchers/Payroll Warrants/Meeting Minutes • Presentations • Business Agenda • Action Agenda <ul style="list-style-type: none"> • 2021 Final Budget • City Policies • Administration Report • 	Packet Items Due: Fri. 11/20 – 5:00 p.m.
Tues. 12/15 5:50 p.m.	Regular SMPD Meeting	<ul style="list-style-type: none"> • Consent Agenda <ul style="list-style-type: none"> • Vouchers/Meeting Minutes • Business Agenda • Action Agenda • 	Packet Items Due: Fri. 12/4 – 5:00 p.m.

		Administration Report •	
Tues. 12/15 6:00 p.m.	Regular Meeting	Consent Agenda • Vouchers/Payroll Warrants/Meeting Minutes Presentations • Business Agenda • Action Agenda • Business Plan Administration Report •	Packet Items Due: Fri. 12/4 – 5:00 p.m.

Other – TBD

- UGA/Annexation Policy (Water/Sewer Extensions)
- Outside City Water/Sewer Extensions
- More Standing Committees by the Council

DRAFT

VOUCHER APPROVAL

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein vouchers number 102923 through number 102963 in the total amount of \$236,240.92 that the claims are just, due and unpaid obligations against the City of Shelton, and that I am authorized to authenticate and certify said claims.

Signed this 27th of August, 2020.

Glen Schneider
For Accounting Manager
Director of Financial Services

We, the undersigned members of the City Council of Shelton, Washington, do hereby certify that the vouchers contained herein are approved for payment.

Signed this _____ of _____, 2020.

Mayor Kevin Dorcy

Deputy Mayor Deidre Peterson

Councilmember James Boad

Councilmember Megan Fiess

Councilmember Kathy McDowell

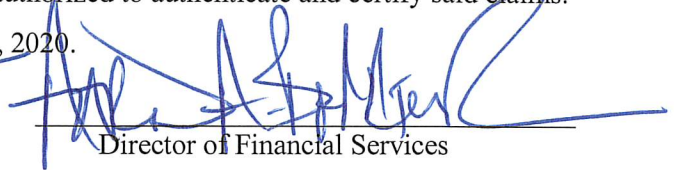
Councilmember Eric Onisko

Councilmember Joe Schmit

VOUCHER APPROVAL

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein vouchers number 102987 through number 103022 in the total amount of \$102,573.01 that the claims are just, due and unpaid obligations against the City of Shelton, and that I am authorized to authenticate and certify said claims.

Signed this 4th of SEPTEMBER, 2020.



Director of Financial Services

We, the undersigned members of the City Council of Shelton, Washington, do hereby certify that the vouchers contained herein are approved for payment.

Signed this _____ of _____, 2020.

Mayor Kevin Dorcy

Deputy Mayor Deidre Peterson

Councilmember James Boad

Councilmember Megan Fiess

Councilmember Kathy McDowell

Councilmember Eric Onisko

Councilmember Joe Schmit



CITY OF SHELTON, WASHINGTON - CITY COUNCIL

City Council Meeting Minutes

July 7, 2020 – 6:00 p.m.

Virtual Platform

COUNCILMEMBERS AND PERSONNEL PRESENT

Councilmembers:

Mayor Kevin Dorcy
Deputy Mayor Deidre Peterson
James Boad
Megan Fiess
Eric Onisko
Joe Schmit

Personnel:

City Manager Jeff Niten
City Clerk Donna Nault
Public Works Director Jay Harris
Community Development Director Mark Ziegler
Finance Director Aaron BeMiller
Police Chief Darrin Moody
City Engineer Ken Gill

CALL TO ORDER

Call to order – 6:00 p.m.

Pledge of Allegiance – Councilmember Fiess

Roll Call: City Clerk Nault – Absent: Councilmember McDowell

LATE CHANGES TO THE AGENDA

No changes to the agenda

CONSENT AGENDA

1. Voucher number 102393 in the amount of \$3,454.95
2. Vouchers numbered 102394 through 102421 in the amount of \$124,224.20
3. Vouchers numbered 102429 through 102480 in the amount of \$97,047.93
4. Payroll warrants numbered 3877 and 3880 through 5171 through 5217 and 5218 through 5328. Warrants 101925 through 101946 in the amount of \$753,233.75
5. Payroll warrants numbered 3881 and 5329 through 5371 and 5372 through 5478. Warrants 102147 through 102163 and 102164 through 102166 in the amount of \$759,536.00
6. Payroll warrants numbered 3882 and 5479 through 5523 and 5524 through 5629. Warrants 102317 through 102336 in the amount of \$763,050.83
7. Minutes of Regular Business Meeting – January 21, 2020
8. Minutes of Regular Business Meeting – March 3, 2020

A motion was made by Deputy Mayor Peterson and seconded by Councilmember Schmit to approve the Consent Agenda. Passed.

PRESENTATIONS

1. ~~Residential Owned Communities – Presented by Housing Co-op Development Specialist Miles Nowlin (Because of the virtual platform used for this meeting, this presentation is scheduled for the next regular business meeting on July 21, 2020)~~
2. Bullet List of Potential Code Changes – Presented by Community Development Director Mark Ziegler

Community Development Director Ziegler reported the Shelton Municipal Code (SMC) contains the rules, regulations or codes enacted into law by City Council. As time and conditions change, the SMC is updated to account for state and/or federal requirements,

public safety and health. Staff is undertaking a wholesale review and is requesting the City Council review the codes that have been identified for changes and provide direction. Council commented or asked the following questions:

The cleanup should assist in navigating the SMC and not be an arduous process for the layperson.

Changes to the SMC that have financial implications should involve city residents in the discussion process.

City Manager Niten reported financial impacts would be assessed as part of each SMC update. Work sessions and community meetings will be a part of the process.

Mayor Dorcy recessed the regular meeting to open a public hearing on Ordinance No. 1949-0220 – Single Room Occupancy.

BUSINESS AGENDA

1. Public Hearing – Ordinance No.1949-0220 Single Room Occupancy (SRO) – presented by Community Development Director Mark Ziegler

The City entered into a lease agreement with Panza (Quixote Communities) for approximately 3.233 acres located on the North side of town near Shelton Springs Road and North 13th Street intersection for the development of a housing program and ancillary services for homeless veterans. The lease agreement stipulates SMC compliance with development standards and the necessary amendments to allow SRO as defined.

City Manager Niten stated the intent is to apply Ordinance No. 1949-0220 to “only” the Tiny Homes Village.

Due to the virtual platform, there was a 30-second delay before any decision, to allow for public comment. No public comment.

City Clerk Nault provided the first reading of Ordinance No. 1949-0220.

Council concurred to move this item to the July 21, 2020 Action Agenda. Mayor Dorcy closed the public hearing and resumed the regular business meeting.

2. Resolution No. 1160-0620 Master Fee Schedule Update – presented by City Manager Jeff Niten

Resolution No. 1160-0620 is a companion to Ordinance No. 1949-0220. The Master Fee Schedule will be updated once a year to coincide with budget preparations. The update allows developments conforming to the Single Room Occupancy (SRO) Code to connect to water and waste water systems at a 25 percent rate compared to a typical single family home.

Council commented or asked the following questions:

Is the rate based on square footage and if there is a one-bedroom, would that qualify?

City Manager Niten reported the rate is based on square footage and a one-bedroom house would not qualify.

Due to the virtual platform, there was a 30-second delay before any decision, to allow for public comment. No public comment.

Council concurred to move this item to the July 21, 2020 Action Agenda.

3. Resolution No. 1161-0620 Surplus Vehicles – presented by Police Chief Darrin Moody

The Police Department has three patrol vehicles that have exceeded their lifespan. The vehicles have become costly to maintain and are not safe to continue using. The estimated value of the three patrol vehicles is approximately \$6,000.

Central Mason Fire and Emergency Medical Services has two fire engines and one pickup truck that are surplus. The estimated value is approximately \$11,500. The vehicles will be returned to the City for auction.

Council commented or asked the following questions:

What is the process for the sale of the fire trucks?

City Manager Niten reported the Finance Department would process the sale through <https://www.govdeals.com>.

Will the funds from the sale go to the General fund or the Emergency Management Services (EMS) fund?

City Manager Niten reported the fire assets would go to the EMS fund and the police vehicles would go to the General Fund.

Due to the virtual platform, there was a 30-second delay before any decision, to allow for public comment. No public comment.

Council concurred to move this item to the July 21, 2020 Action Agenda.

4. Resolution No. 1162-0620 Basin 3 Sewer Rehabilitation Project Final Acceptance – presented by City Engineer Ken Gill

A contract was awarded to Pivetta Brothers Construction. The project was determined to have achieved physical completion on April 16, 2020. All documentation required by the contract and law have been furnished by the contractor.

Council commented or asked the following questions:

Were there any liquidated damages from the project?

City Engineer Gill reported he was unaware of any damages.

Due to the virtual platform, there was a 30-second delay before any decision to allow for public comment. No public comment.

Council concurred to move this item to the July 21, 2020 Action Agenda.

5. Resolution No. 1163-0620 Satellite Waste Water Treatment Plant – Reclaimed Tank Design Contract Amendment No. 1 – presented by City Engineer Ken Gill

On March 17, 2020, City Council adopted Resolution No. 1156-0320 approving the Interlocal Agreement (ILA) with Squaxin Island Tribe. The contract with Gray & Osborne, Inc., (G&O) needs to be amended to provide additional scope, budget and time to better align the project with the tasks identified in the ILA. G&O has submitted Amendment No. 1 to the contract for a cost not to exceed \$96,000.

Due to the virtual platform, there was a 30-second delay before any decision, to allow for public comment. No public comment.

Council concurred to move this item to the July 21, 2020 Action Agenda.

6. Resolution No. 1164-0620 Sewer Comp Plan Contract Amendment No. 1 – presented by City Engineer Ken Gill

City Council adopted Resolution No. 1156-0320 approving an Interlocal Agreement (ILA) with the Squaxin Island Tribe for planning and design of reclaimed water and wastewater conveyance facilities. Due to the ILA and funding assistance from the Tribe, it was determined the contract needed to be amended, which provides additional scope to better align the project with Task 2 in the ILA.

Due to the virtual platform, there was a 30-second delay before any decision, to allow for public comment. No public comment.

Council concurred to move this item to the July 21, 2020 Action Agenda.

ACTION AGENDA

1. Resolution No. 1159-0620 Washington State Department of Transportation (WSDOT) Six-Year Transportation Improvement Program (TIP) – presented by City Engineer Ken Gill

Washington State law requires the annual adoption of the Six-Year TIP take place after a public hearing and after adoption, it be submitted to the WSDOT within 30 days of its passage.

Due to the virtual platform, there was a 30-second delay before any decision, to allow for public comment. No public comment.

City Clerk Nault provided the first reading of Ordinance No. 1159-0620.

A motion was made by Councilmember Schmit and seconded by Councilmember Onisko authorizing Mayor Dorcy to sign Resolution No. 1159-0620. Passed.

2. Mason Transit Authority (MTA) Parking Lot Retrofit Project Change Order No. 1 – presented by City Engineer Ken Gill

Mason Conservation District (MCD) commenced design of the project and initiated soil testing. It was determined the project area contained contaminated soils. The Department of Ecology worked with MCD to develop an approach to clean-up the contaminated soils. Change Order No. 1 is the cost for removal and disposal of contaminated soils from the project site.

Council commented or asked the following questions:

Was the funding received by grant for removal of contaminated soils?

Ken Gill reported the grant did not cover removal, but the cost of the removal was covered by MTA.

Due to the virtual platform, there was a 30-second delay before any decision, to allow for public comment. No public comment.

City Clerk Donna Nault provided the first reading of Resolution No. 1165-0620.

A motion was made by Councilmember Megan Fiess and seconded by Councilmember Onisko authorizing Mayor Dorcy to sign Resolution No. 1165-0620. Passed.

3. Coronavirus Relief Funds for Local Government – presented by City Manager Jeff Niten

There is a contract between the City and the Washington State Department of Commerce (DOC) that allows the city to request reimbursement funds provided by the Federal Government. Through the state, the DOC is releasing funding from the CARES Act to municipalities. The city is eligible for \$306,600. Signing the contract would give the City authority to request reimbursement from the DOC as long as the reimbursement is completed by October 31, 2020.

Due to the virtual platform, there was a 30-second delay before any decision to allow for public comment. No public comment.

A motion was made by Councilmember Schmit and seconded by Deputy Mayor Peterson. Passed.

ADMINISTRATIVE REPORTS

City Manager Report – presented by City Manager Jeff Niten

- Notification was received from the Department of Ecology the grant request for the C Street Landfill project has been approved. City Council and City Manager Niten

congratulated Public Works department staff members Ken Gill and Brooke Kilts for their work on this project.

- The Open Public Meetings Act Proclamation issued by Governor Inslee was scheduled to expire on July 1, 2020, but has been extended for another week. Because the City is at Phase III, City Council is able to meet in person if an extensive list of requirements are met. The requirements will be further researched and communicated with City Council during their briefings next week.

ANNOUNCEMENT OF NEXT MEETING

Next Meeting – July 21, 2020 at 6:00 p.m.

ADJOURN

As there was no further business, Mayor Dorcy adjourned the meeting at 7:04 p.m.

Mayor Kevin Dorcy

City Clerk Donna Nault



FY 2021 CAPITAL IMPROVEMENT PLAN



1917 Dirt Road



1926 First Roadway Paving



Cota Street, 1940's

September 15, 2020

Civic Center Parking Lot

FY 2021 Budget: \$400,000

- The Civic Center Parking Lot is west of City Hall. The project is to install pervious pavement, detain and treat the stormwater, install landscaping and irrigation, and construct a basketball court and two pickleball courts.
- Funding for the project is from a State Direct Appropriation Grant through the Department of Commerce for \$277,344 in combination with other City funds.
- The project has been modified to eliminate the infiltration basin in the southwest corner of the parking lot and retain the site for future expansion of parking for the Police Department.
- In 2021, Transpo Group will complete the design for bidding.
- The project may also install two electric vehicle charging stations if the City is selected for a grant applied for by staff in June 2020.



Residential Paving

FY 2021 Budget: \$380,000

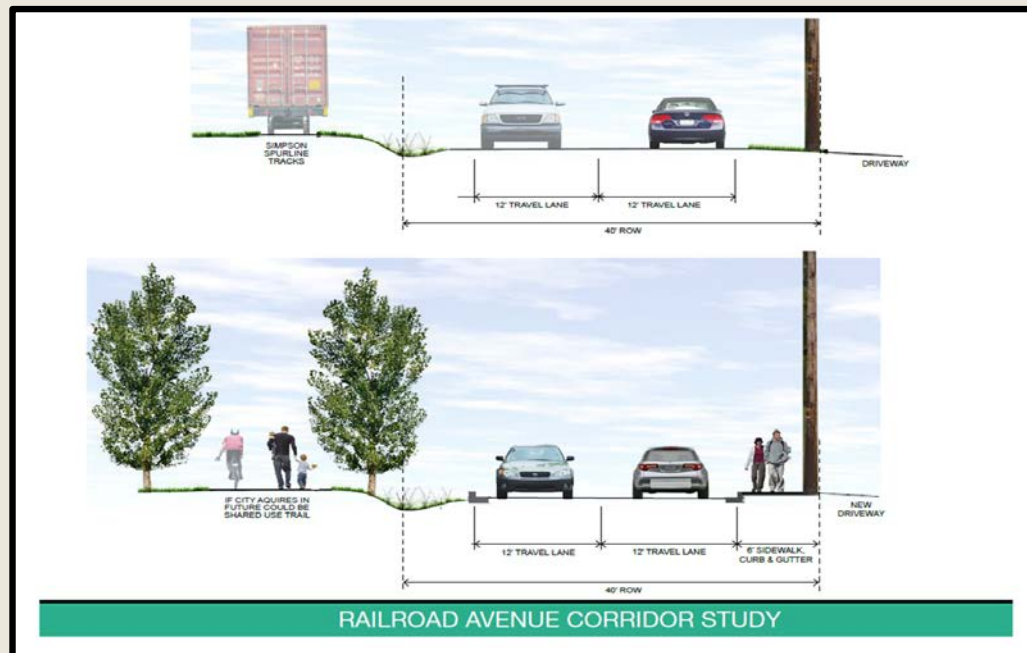
- To continue to provide a safe a high quality road network, in 2018 public works used a program called “Street Saver” to compile the maintenance needs of all roadways in the City.
- The majority of the streets that need repair will not qualify for any type of grant or funding outside of normal city funds. The City’s goal is to resurface multiple residential blocks each year.
- In 2020, streets in the East Mountain View neighborhood were identified as roadways having a high need of pavement maintenance.
- Staff is currently identifying the locations for the 2021 residential paving project, with a goal to bid the project early spring of 2021.
- Funding for the project comes from the Transportation Benefit District. Any utilities being replaced during the project (water valves, sewer manholes, stormwater catch basins, etc.) will be paid for out of their respective funds.



Western Gateway (RR Ave.)

FY 2021 Budget:
\$172,284

- West Railroad Ave is the #1 project on Shelton's Six Year Transportation Improvement Plan. The project will replace an existing water main, install ADA compliant curb ramps and sidewalks, and repave the roadway.
- Gray & Osborne, Inc. has prepared 60% design for the project, with the goal to complete the design and bid package in FY 2021 for future construction, once additional funds are secured.
- The City received \$760,400 in Transportation Improvement Board grant funds in 2019 towards the project. The construction cost is currently estimated at \$3.5 million dollars.



Maintenance Division Laydown Yard

FY 2021 Budget:
\$600,000

- The City Maintenance Division has outgrown the existing 2-acre Parks and Public Works Maintenance yard on W. Pine Street, and expansion of the existing site is not possible.
- The 10-year project is to relocate the Public Works Maintenance Division to a larger site that can be expanded over time to meet the needs of the City for the next 75+ years.
- The City owns approximately 21.0 acres on the southwest corner of Shelton Springs Road and Wallace Kneeland Boulevard intersection, some under the power lines.
- Gray & Osborne is working on design plans for the site, with the proposed project to clear/grade the site, install fencing, surfacing, and lighting, so the City can begin storing construction materials onsite.



Street Sweeper

FY 2021 Budget:
\$315,000

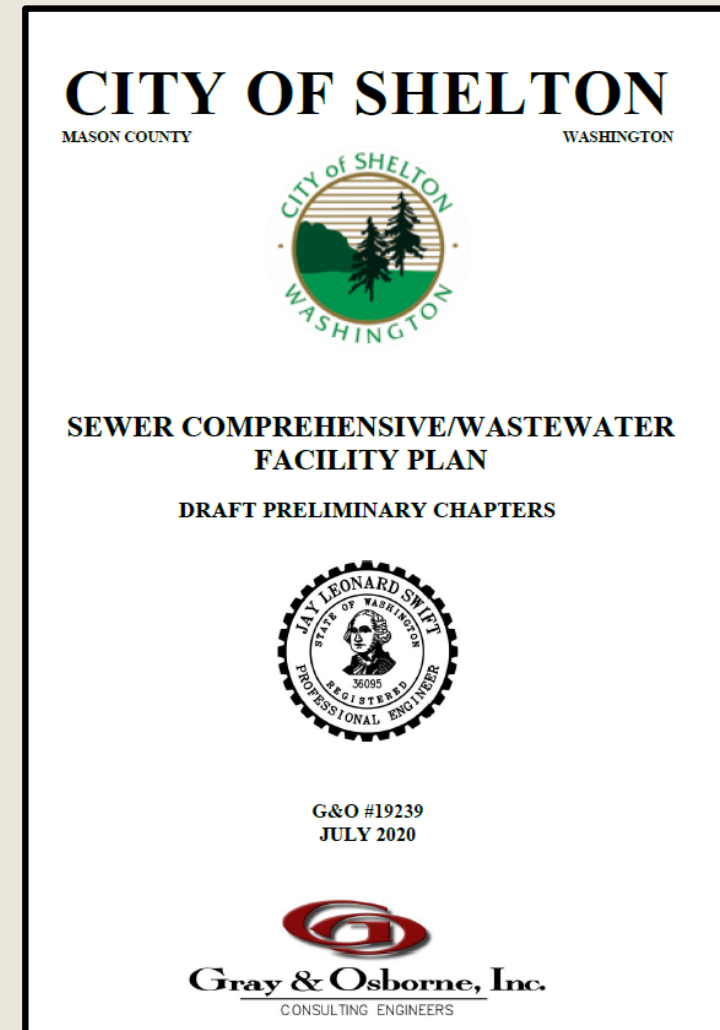
- The current street sweeper is over eleven years old and maintenance costs are steadily increasing.
- The City has over 118 lane miles of paved streets needing to be maintained.
- A regular street sweeping program is required by the new State NPDES stormwater permit, and is vital for maintaining safety, stormwater quality, and aesthetics throughout the City.
- The proposed vacuum style street sweeper will provide for more reliable operation, as well as decrease repair and maintenance costs.
- Funding for the street sweeper replacement will be from the City Equipment Maintenance and Repair Fund (EM&R).



Sewer Comprehensive Plan

FY 2021 Budget:
\$296,000

- Consultant work on the Sewer Comprehensive Plan began in 2019. The plan will replace the 2013 study and provides a 20-year plan for the City to follow.
- Over the last year, Council approved an Interlocal Agreement with the Squaxin Island Tribe to reimburse the City for costs for additional studies to infiltrate effluent near Goldsborough Creek and to divert flows from the Main Wastewater Treatment Plant to the Satellite Plant.
- The sewer comprehensive plan study will be completed in 2021.



Satellite WWTP Reclaimed Tank Design

FY 2021 Budget:
\$93,169

- Consultant work on the Satellite WWTP Reclaimed Water Tank Design began in 2018. The tank is needed to store reclaimed water that can then be pumped to customers, sent to the City spray field, and ultimately to infiltration basins near Goldsborough Creek to increase flows in the creek.
- In March of 2020, Council approved an Interlocal Agreement with the Squaxin Island Tribe, allowing expenditures for the design of the project to be reimbursed by the Tribe.



WWTP Slack Tide Tank

FY 2021 Budget:
\$300,000

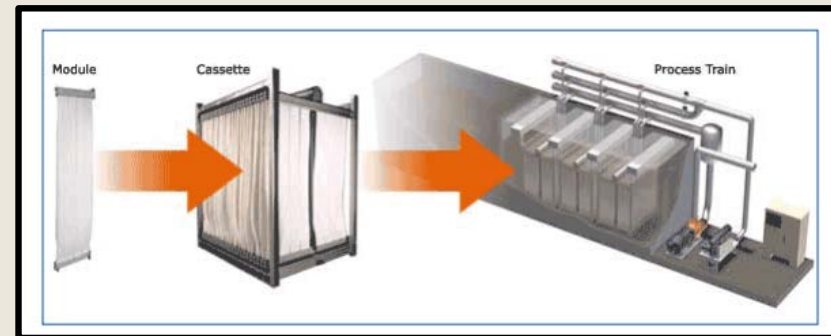
- This project is part of the City response to the Notice of Violation by the Department of Ecology for an overflow into Oakland Bay that occurred last fall.
- This project will allow the City to return inadequately treated wastewater effluent back to the treatment plant for additional treatment. This redundancy will allow shellfish harvest areas to open more often during times of high plant flows, and provides plant operators more time to make repairs should equipment fail.
- The project will also enhance the water quality at the proposed City paddle launch area near the plant outfall into the bay.



Membrane Plant Filters

FY 2021 Budget:
\$425,000

- The MBR (Membrane Bio Reactor) at the Satellite Treatment Plant is approaching ten years old and requires updating.
- The City has 3 tanks, each with 10 filter cassettes, with 200 membrane modules in each cassette.
- The filters in MBR tank #1 were upgraded in 2019. Tanks #2 and #3 need to be upgraded due to filter modules being torn/clogged and not running at full capacity.
- Permit violations can occur if the filters fail.



Front Street Pipe Overflow

FY 2021 Budget:
\$30,000

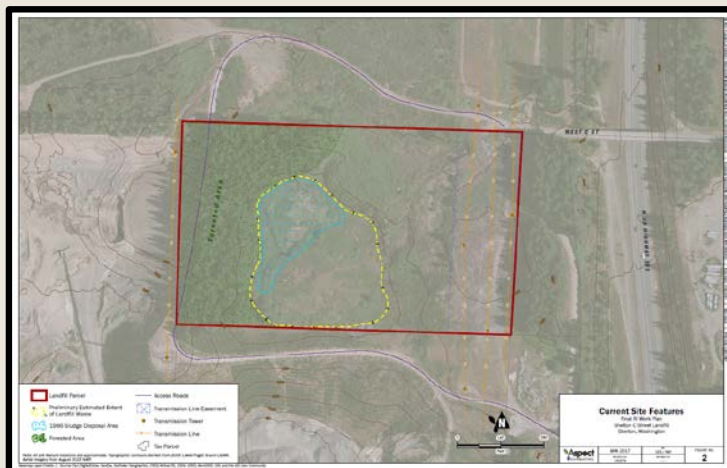
- The City needs to hire a consultant to complete a pre-design report to study the removal of the aging gravity sewer main that extends from the Front Street lift station, through Goldsborough Creek, to the Kneeland Park station.
- At this time the gravity line acts as an emergency overflow from the Front Street lift station. The removal of the pipe was required by the funding agreement of the Goldsborough pipe bridge project.
- Prior to the removal of the gravity line, a new secondary overflow system will need to be designed and constructed.



C Street Landfill Remediation

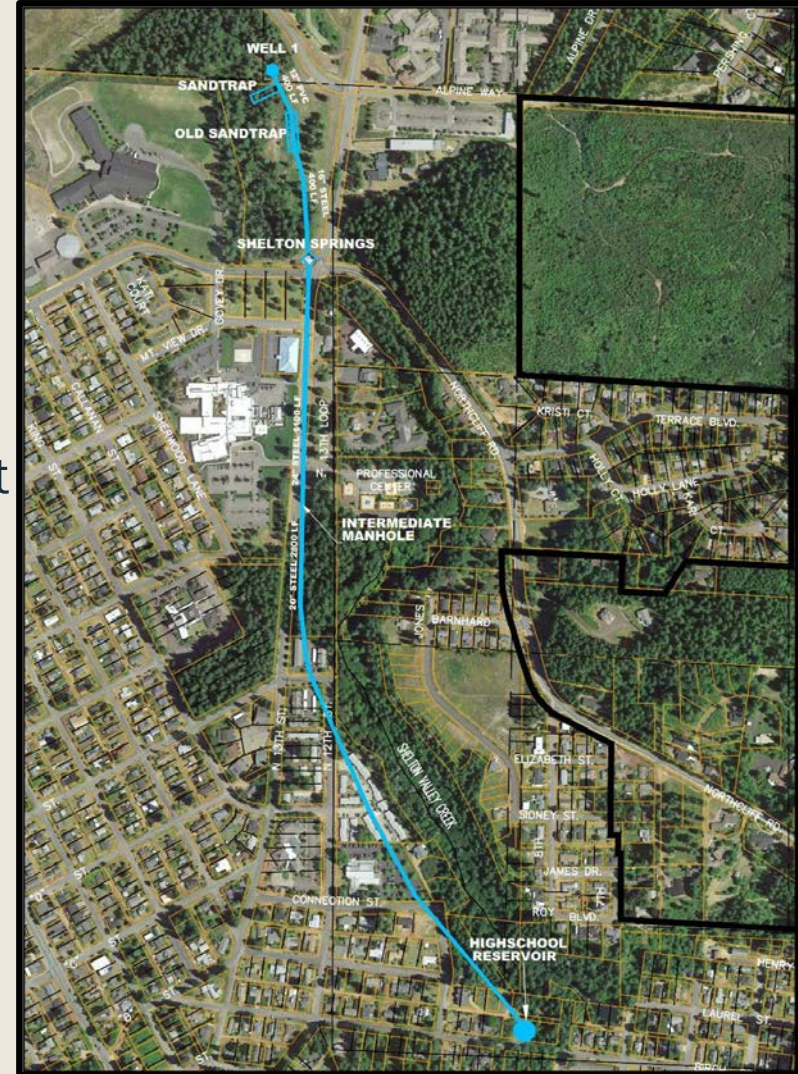
FY 2021 Budget:
\$450,000

- Acquired property in 1928, used the site as a solid waste landfill until 1980's.
- Agreed Order with State Department of Ecology for Cleanup was executed September 30, 2016.
- In 2017, Aspect Consulting, LLC was hired to complete the remedial investigation and Feasibility Study Report.
- The draft report was submitted to the State and the Department of Ecology is preparing to orchestrate the public comment period.
- Once the public comment period closes, Aspect consulting will assist the City with negotiations with the Dept. of Ecology for a Consent Decree for the cleanup action.



Well 1 to HS Tank Pipe Replacement

- The existing 16-inch to 24-inch steel pipe from Well 1 to the High School Tank is at end of life and needs to be replaced in the near future.
- The pipe is not pressurized and the proposed project is to replace the existing pipe from Well 1 to the High School tank, eliminate connections that are no longer used, and pressurize the new system.
- The existing pipe will be used as casing for the new 12-inch HPPE pipe, which will eliminate most of the surface excavation/disturbance.



Water Meter AMI Upgrade

FY 2021 Budget:
\$1,700,000

- City has 3,867 Sensus brass water meters with an average age in excess of 12-years.
- Meter accuracy declines significantly due to wear of the moving parts.
- Meters are currently read manually every month using aging equipment.
- The proposed project is to replace all of the smaller brass meters with new Sensus Ipearl water meters. Larger meters will get new registers installed.
- All meters will have a radio sending unit (MXU) and a disk antenna installed on the top of the water meter lids.
- A fixed base radio read antennae is proposed to be installed at one of the City well sites and transmit the data to the City Finance Department.
- The proposed funding for the project would utilize water and sewer funds.




AWIA Water Risk & Resiliency Assessment

FY 2021 Budget:
\$120,000

In October of 2018 the Federal Government signed into the Environmental Protection Agency (EPA) American's Water Infrastructure Act (AWIA). AWIA Section 2013 requires community drinking water systems serving more than 3,300 people to develop or update risk assessments and emergency response plans (ERPs).

The law specifies components the risk assessments and ERPs must address, and establishes deadlines by which water systems must certify to EPA completion of the risk assessment and ERP. For populations served between 3,301 and 49,999 people, the Risk and Resilience Assessment is due June 30, 2021 and the associated Emergency Response Plan is due on December 31, 2021.



FREQUENTLY ASKED QUESTIONS

I need more information about risk and resilience assessments and emergency response plans:

Risk and resilience assessments evaluate the vulnerabilities, threats and consequences from potential hazards.

What does a risk and resilience assessment include?

- Natural hazards and malevolent acts (i.e., all hazards).
- Resilience of water facility infrastructure (including pipes, physical barriers, water sources and collection, treatment, storage and distribution, and electronic, computer and other automated systems).
- Monitoring practices.
- Financial systems (e.g., billing systems).
- Chemical storage and handling.
- Operation and maintenance.

What does an emergency response plan include?

- Strategies and resources to improve resilience, including physical security and cybersecurity.
- Plans and procedures for responding to a natural hazard or malevolent act that threatens safe drinking water.
- Actions and equipment to lessen the impact of a malevolent act or natural hazard, including alternative water sources, relocating intakes and flood protection barriers.
- Strategies to detect malevolent acts or natural hazards that threaten the system.

Who should I work with when creating my emergency response plan?

- Utilities must coordinate the risk and resilience assessments, as well as the emergency response plans with local emergency planning committees.

For more information, see www.congress.gov/bill/115th-congress/senate-bill.

I need more information on the certification process:

What do I need to submit to the U.S. EPA?

- Each utility must submit a certification of your risk and resilience assessment and emergency response plan. Each submission must include: utility name, date and a statement that the utility has completed, reviewed or revised the assessment. The U.S. EPA has developed an optional certification template that can be used for email or mail certification. The optional certification form will be available in August 2019.

Who can certify my risk and resilience assessment and emergency response plan?

- Risk and resilience assessments and emergency response plans can be self-certified by the utility.

How do I submit my certification?

- Three options will be provided for submittal: regular mail, email and a user-friendly secure online portal. The online submission portal will provide drinking water systems with a receipt of submittal. The U.S. EPA recommends using this method. The certification system will be available in August 2019.

When can I submit the initial certification?

- Utilities should wait to submit the initial certification to the U.S. EPA until the U.S. EPA publishes *Baseline Information on Malevolent Acts Relevant to Community Water Systems*, which is required under AWIA by August 2019.

Do I need to submit my certification to my state or local government?

- No. Section 2013 of AWIA does not require utilities to submit the certification to state or local governments.

How long do I need to keep a copy of my risk and resilience assessment and emergency response plan?

- Utilities need to keep a copy of both documents for five years after certification.

What if I do not have a copy of my most recent risk and resilience assessment?

- The U.S. EPA intends to destroy vulnerability assessments (VAs) submitted in response to the Bioterrorism Act of 2002, but if utilities would like to have their VA and certification documents mailed to them, contact WSD-Outreach@epa.gov, and on utility letterhead, include the utility name, PWSID, address and point of contact as an attachment to the email.

RESOURCES & TOOLS

Conducting a Risk and Resilience Assessment

- The U.S. EPA's Risk and Resilience Baseline Threat Document (available August 2019).
- The U.S. EPA's Vulnerability Self-Assessment.

The U.S. EPA Website

- <https://www.epa.gov/waterresilience/americas-water-infrastructure-act-2018-risk-assessments-and-emergency-response-plans>.

Developing an Emergency Response Plan

- [Emergency Response Plan Guidance](#).
- The U.S. EPA's [Emergency Response Webpage](#).
- [Local Emergency Planning Committees](#).

Still have questions about the new AWIA requirements?
Contact the U.S. Environmental Protection Agency (U.S. EPA) at dwrresilience@epa.gov.

Office of Water (40081)
EPA-817-F-19-004
May 2019



**CITY OF SHELTON
COUNCIL BRIEFING REQUEST
(Agenda Item E1)**

Touch Date: 18 Aug 2020
Brief Date: 15 Sept 2020
Action Date: 6 Oct 2020

Department: Finance
Presented By: Aaron BeMiller

APPROVED FOR COUNCIL PACKET:

Action Requested:

ROUTE TO:

REVIEWED:

- Dept. Head _____
- Finance Director _____
- Attorney _____
- City Clerk _____
- City Manager _____

PROGRAM/PROJECT TITLE:
Bond Refunding

ATTACHMENTS:
Ordinance No. 1955-0820

- Ordinance
- Resolution
- Motion
- Other

DESCRIPTION OF THE PROGRAM/PROJECT AND BACKGROUND INFORMATION:

The City is working on refunding seven (7) separate debt instruments into a single refunding that will result in debt service savings due to lower interest rates and will shorten the duration of several of the bonds by 5 to 7 years. The City has collaborated with highly respected firms to help ensure maximum savings, Pacifica Law Group as Bond Counsel, Piper Sandler as the City's Financial Advisor, and KeyBanc Capital Markets as Underwriter. In order to achieve the best interest rates possible, the refunding bond will be General Obligation Bond, which is backed by the City's full faith and credit. State law allows the Council to issue debt up to 1.5% of the City's Assessed Valuation without a public vote.

This Ordinance will state the City Council's desire to move forward with the refunding and names the City's Finance Director as the designated representative to approve and finalize the bond sale. The Ordinance also does the following:

- It states that the aggregate principal amount of the refunded bonds cannot exceed \$10 million;
- The final maturity of the bonds cannot be extended beyond 2052;
- The aggregate purchase price of the bonds cannot be less than 95% or greater than 135% of the aggregate stated principal of the bonds;
- The true interest costs for the bonds cannot exceed 4%; and
- The bonds are sold for a price that results in a net present value savings of at least 3%.
- The Finance Director is required, at the next reasonable opportunity, to report to Council on the final outcome of the bond sale to ensure compliance with these stated parameters.

The refunding Ordinance is scheduled to be heard on the Council's Action Agenda on October 6, 2020.

The bonds are scheduled to be sold on October 14, 2020 and close on October 28, 2020.

ANALYSIS/OPTIONS/ALTERNATIVES:

N/A

BUDGET/FISCAL INFORMATION:

Overall savings will depend on the bond market rates at the time of the sale. Since hitting historic lows in early August, rates have crept up slowly but are still excellent for the refunding. In early August, total savings was estimated to be \$2.7 million or a net present value savings of \$1.7 million or 18%.

PUBLIC INFORMATION REQUIREMENTS:

Information can be obtained through the City Clerk.

STAFF RECOMMENDATION/MOTION:

Staff requests the Council concur to place Ordinance No. 1955-0820 on the October 6, 2020 Action Agenda.

CITY OF SHELTON, WASHINGTON

LIMITED TAX GENERAL OBLIGATION REFUNDING BONDS, 2020

ORDINANCE NO. 1955-0820

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHELTON, WASHINGTON, AUTHORIZING THE ISSUANCE OF ONE OR MORE SERIES OF LIMITED TAX GENERAL OBLIGATION REFUNDING BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000 FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING OBLIGATIONS OF THE CITY; APPROVING THE SALE OF THE BONDS; AND DELEGATING THE AUTHORITY TO APPROVE THE FINAL TERMS OF THE BONDS.

Passed _____, 2020

PREPARED BY:
PACIFICA LAW GROUP LLP
Seattle, Washington

CITY OF SHELTON
ORDINANCE NO. 1955-0820
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* This Table of Contents is provided for convenience only and is not a part of this ordinance.

CITY OF SHELTON, WASHINGTON

ORDINANCE NO. 1955-0820

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHELTON, WASHINGTON, AUTHORIZING THE ISSUANCE OF ONE OR MORE SERIES OF LIMITED TAX GENERAL OBLIGATION REFUNDING BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000 FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING OBLIGATIONS OF THE CITY; APPROVING THE SALE OF THE BONDS; AND DELEGATING THE AUTHORITY TO APPROVE THE FINAL TERMS OF THE BONDS.

WHEREAS, the City of Shelton, Washington (the “City”) has outstanding certain obligations listed in Exhibit A attached hereto and incorporated by this reference; and

WHEREAS, the outstanding obligations listed in Exhibit A may be refunded (the “Refunding Candidates”) prior to maturity as provided in ordinances, resolutions and loan documents authorizing their issuance; and

WHEREAS, the City Council (the “Council”) finds that the Refunding Candidates may be refunded with proceeds of limited tax general obligation bonds and other available funds of the City at an overall debt service savings; and

WHEREAS, the Council deems it in the best interest of the City to issue limited tax general obligation refunding bonds (as further defined herein, the “Bonds”) to be used, with available funds of the City, to redeem all or a portion of the Refunding Candidates (as described herein, the “Refunded Bonds”) and to pay costs of issuing the Bonds; and

WHEREAS, the City wishes to delegate authority to the designated representative specified herein, for a limited time, to select the Refunded Bonds and to approve the interest rates, maturity dates, redemption terms and principal maturities for the Bonds within the parameters set by this ordinance; and

WHEREAS, the City expects to receive a purchase contract from KeyBanc Capital Markets, Inc. (the “Underwriter”) to underwrite the Bonds, and now desires to issue and sell the Bonds to the Underwriter as set forth herein;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHELTON, WASHINGTON, DOES ORDAIN as follows:

Section 1. Definitions and Interpretation of Terms.

(a) *Definitions.* As used in this ordinance, the following words shall have the following meanings:

Beneficial Owner means any person that has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

Bond Counsel means Pacifica Law Group LLP or an attorney at law or a firm of attorneys, selected by the City, of nationally recognized standing in matters pertaining to the tax exempt nature of interest on bonds issued by states and their political subdivisions.

Bond Fund means the “Bond Redemption Fund” authorized to be created pursuant to this ordinance.

Bond Purchase Contract means the contract for the purchase of the Bonds between the Underwriter and City, executed pursuant to this ordinance.

Bond Register means the registration books showing the name, address and tax identification number of each Registered Owner of the Bonds, maintained for the Bonds in the manner required pursuant to Section 149(a) of the Code.

Bond Registrar means, initially, the fiscal agent of the State, for the purposes of registering and authenticating the Bonds, maintaining the Bond Register, effecting transfer of ownership of the Bonds and paying interest on and principal of the Bonds.

Bonds means the Limited Tax General Obligation Refunding Bonds, 2020 authorized to be issued by the City in one or more series pursuant to this ordinance.

Call Date means the call date each series of Refunded Bonds selected by the Designated Representative.

City means the City of Shelton, Washington, a municipal corporation duly organized and existing under the laws of the State.

City Clerk* or *Clerk means the duly appointed and acting City Clerk or the successor to the duties of that office.

City Council* or *Council means the City Council of the City as the general legislative authority of the City, as duly and regularly constituted from time to time.

City Manager means the City Manager or the successor to such officer.

Closing means the date of delivery of the Bonds to the Underwriter.

Code means the Internal Revenue Code of 1986, as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bonds, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance, published, under the Code.

Commission means the United States Securities and Exchange Commission.

Continuing Disclosure Certificate means the written undertaking for the benefit of the owners and beneficial owners of the Bonds as required by Section (b)(5) of the Rule.

Designated Representative means the Finance Director of the City and any successor to the functions of such office, and his or her designee.

DTC means The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York.

Fair Market Value means the price at which a willing buyer would purchase an investment from a willing seller in a bona fide, arm's length transaction, except for specified investments as described in Treasury Regulations § 1.148-5(d)(6), including United States Treasury obligations, certificates of deposit, guaranteed investment contracts, and investments for yield restricted defeasance escrows. Fair Market Value is generally determined on the date on which a contract to purchase or sell an investment becomes binding, and, to the extent required by the applicable regulations under the Code, the term "investment" will include a hedge.

Federal Tax Certificate means the certificate executed by the Finance Director setting forth the requirements of the Code for maintaining the tax exemption of interest on the Bonds, and attachments thereto.

Finance Director means the Finance Director or the successor to such officer.

Government Obligations mean those obligations now or hereafter defined as such in chapter 39.53 RCW constituting direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, as such chapter may be hereafter amended or restated.

Letter of Representations mean the Blanket Issuer Letter of Representations given by the City to DTC, as amended from time to time.

Mayor means the duly elected Mayor of the City or the successor to such officer.

MSRB means the Municipal Securities Rulemaking Board or any successors to its functions.

Official Statement means the disclosure documents prepared and delivered in connection with the issuance of the Bonds.

Projects mean the capital projects financed with proceeds of the Refunded Bonds.

Record Date means the close of business for the Bond Registrar that is 15 days preceding any interest and/or principal payment or redemption date.

Refunded Bonds mean the Refunding Candidates selected by the Designated Representative for refunding pursuant to this ordinance.

Refunding Account means the account by that name established pursuant to this ordinance.

Refunding Candidates mean the obligations listed in Exhibit A attached hereto.

Registered Owner means the person named as the registered owner of a Bond in the Bond Register. For so long as the Bonds are held in book-entry only form, DTC shall be deemed to be the sole Registered Owner.

Rule means the Commission's Rule 15c2-12 under the Securities Exchange Act of 1934, as the same may be amended from time to time.

State means the State of Washington.

Underwriter means KeyBanc Capital Markets, Inc., and its successors.

(b) *Interpretation.* In this ordinance, unless the context otherwise requires:

(1) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this ordinance, refer to this ordinance as a whole and not to any particular article, section, subdivision or clause hereof, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this ordinance;

(2) Words of a gender shall mean and include correlative words of any genders and words importing the singular number shall mean and include the plural number and vice versa;

(3) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(4) Any headings preceding the text of the several articles and sections of this ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect; and

(5) All references herein to "articles," "sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof.

Section 2. Findings; Purpose and Authorization of the Bonds.

(a) *Purpose and Authorization of Bonds.* For the purpose of refunding the Refunded Bonds and paying related costs of issuance, the City is hereby authorized to issue and sell one or more series of limited tax general obligation refunding bonds in an aggregate principal amount not to exceed \$10,000,000 (the “Bonds”).

The Bonds shall be general obligations of the City, shall be designated “City of Shelton, Washington, Limited Tax General Obligation Refunding Bonds, 2020,” with any series or other designation as determined by a Designed Representative. The Bonds of each series shall be dated as of the date of Closing; shall be fully registered as to both principal and interest; shall be in the denomination of \$5,000 each, or any integral multiple thereof, within a series and maturity; shall be numbered separately in such manner and with any additional designation as the Bond Registrar deems necessary for purposes of identification; shall bear interest from their date payable on the dates and commencing as provided in the Bond Purchase Contract; and shall be subject to optional and/or mandatory redemption and mature on the dates and in the principal amounts set forth in the Bond Purchase Contract.

Section 3. Registration, Exchange and Payments.

(a) *Bond Registrar/Bond Register.* The City hereby specifies and adopts the system of registration approved by the Washington State Finance Committee from time to time through the appointment of a State fiscal agent. The City shall cause a Bond Register to be maintained by the Bond Registrar. So long as any Bonds remain outstanding, the Bond Registrar shall make all necessary provisions to permit the exchange or registration or transfer of Bonds at its designated office. The Bond Registrar may be removed at any time at the option of the Finance Director upon prior notice to the Bond Registrar and a successor Bond Registrar appointed by the Finance Director. No resignation or removal of the Bond Registrar shall be effective until a successor shall have been appointed and until the successor Bond Registrar shall have accepted the duties of the Bond Registrar hereunder. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of such Bonds and this ordinance and to carry out all of the Bond Registrar’s powers and duties under this ordinance. The Bond Registrar shall be responsible for its representations contained in the Certificate of Authentication of the Bonds.

(b) *Registered Ownership.* The City and the Bond Registrar, each in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes (except as provided in the Continuing Disclosure Certificate), and neither the City nor the Bond Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 3(g), but such Bond may be transferred as herein provided. All such payments made as described in Section 3(g) shall be valid and shall satisfy and discharge the liability of the City upon such Bond to the extent of the amount or amounts so paid.

(c) *DTC Acceptance/Letters of Representations.* The Bonds initially shall be held by DTC acting as depository. The City has executed and delivered to DTC a Blanket Issuer Letter of Representations. Neither the City nor the Bond Registrar shall have any responsibility or

obligation to DTC participants or the persons for whom they act as nominees (or any successor depository) with respect to the Bonds in respect of the accuracy of any records maintained by DTC (or any successor depository) or any DTC participant, the payment by DTC (or any successor depository) or any DTC participant of any amount in respect of the principal of or interest on Bonds, any notice which is permitted or required to be given to Registered Owners under this ordinance (except such notices as shall be required to be given by the City to the Bond Registrar or to DTC (or any successor depository)), or any consent given or other action taken by DTC (or any successor depository) as the Registered Owner. For so long as any Bonds are held by a depository, DTC or its successor depository or its nominee shall be deemed to be the Registered Owner for all purposes hereunder, and all references herein to the Registered Owners shall mean DTC (or any successor depository) or its nominee and shall not mean the owners of any beneficial interest in such Bonds.

(d) *Use of Depository.*

(1) The Bonds shall be registered initially in the name of “Cede & Co.”, as nominee of DTC, with one Bond of a series maturing on each of the maturity dates for the Bonds in a denomination corresponding to the total principal therein designated to mature on such date. Registered ownership of such Bonds, or any portions thereof, may not thereafter be transferred except (A) to any successor of DTC or its nominee, provided that any such successor shall be qualified under any applicable laws to provide the service proposed to be provided by it; (B) to any substitute depository appointed by the Finance Director pursuant to subsection (2) below or such substitute depository’s successor; or (C) to any person as provided in subsection (4) below.

(2) Upon the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or a determination by the Finance Director to discontinue the system of book-entry transfers through DTC or its successor (or any substitute depository or its successor), the Finance Director may hereafter appoint a substitute depository. Any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it.

(3) In the case of any transfer pursuant to clause (A) or (B) of subsection (1) above, the Bond Registrar shall, upon receipt of all outstanding Bonds together with a written request on behalf of the Finance Director, issue a single new Bond for such series for each maturity then outstanding, registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such written request of the Finance Director.

(4) In the event that (A) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (B) the Finance Director determines that it is in the best interest of the beneficial owners of the Bonds that such owners be able to obtain physical Bond certificates, the ownership of such Bonds may then be transferred to any person or entity as herein provided, and shall no longer be held by a depository. The Finance Director shall deliver a written request to the Bond Registrar, together with a supply of physical Bonds, to issue Bonds as herein provided in any authorized denomination. Upon receipt by the Bond Registrar of all then outstanding Bonds together with a written request on behalf of the Finance Director to the Bond Registrar, new Bonds of such

series shall be issued in the appropriate denominations and registered in the names of such persons as are requested in such written request.

(e) *Registration of Transfer of Ownership or Exchange; Change in Denominations.* The transfer of any Bond may be registered and Bonds may be exchanged, but no transfer of any such Bond shall be valid unless it is surrendered to the Bond Registrar with the assignment form appearing on such Bond duly executed by the Registered Owner or such Registered Owner's duly authorized agent in a manner satisfactory to the Bond Registrar. Upon such surrender, the Bond Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Registered Owner or transferee therefor, a new Bond (or Bonds at the option of the new Registered Owner) of the same series, date, maturity, and interest rate and for the same aggregate principal amount in any authorized denomination, naming as Registered Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond. Any Bond may be surrendered to the Bond Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds of the same series, date, maturity, and interest rate, in any authorized denomination. The Bond Registrar shall not be obligated to register the transfer of or to exchange any Bond during the period from the Record Date to the redemption or payment date.

(f) *Bond Registrar's Ownership of Bonds.* The Bond Registrar may become the Registered Owner of any Bond with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the right of the Registered Owners or beneficial owners of Bonds.

(g) *Place and Medium of Payment.* Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be calculated on the basis of a year of 360 days and twelve 30-day months. For so long as all Bonds are held by DTC, payments of principal thereof and interest thereon shall be made to Registered Owners as of the Record Date as provided in accordance with the operational arrangements of DTC referred to in the Letter of Representations. In the event that the Bonds are no longer held by DTC or other depository, interest on the Bonds shall be paid by check or draft mailed to the Registered Owners at the addresses for such Registered Owners appearing on the Bond Register on the Record Date, or upon the written request of a Registered Owner of more than \$1,000,000 of Bonds (received by the Bond Registrar at least by the Record Date), such payment shall be made by the Bond Registrar by wire transfer to the account within the United States designated by the Registered Owner. Principal of the Bonds shall be payable upon presentation and surrender of such Bonds by the Registered Owners at the designated office of the Bond Registrar.

If any Bond is duly presented for payment and funds have not been provided by the City on the applicable payment date, then interest will continue to accrue thereafter on the unpaid principal thereof at the rate stated on the Bond until the Bond is paid.

Section 4. Redemption Prior to Maturity and Purchase of Bonds.

(a) *Mandatory Redemption of Term Bonds and Optional Redemption, if any.* The Bonds of each series shall be subject to optional redemption on the dates, at the prices and under the terms set forth in the Bond Purchase Contract. The Bonds of each series shall be subject to mandatory redemption to the extent, if any, set forth in the Bond Purchase Contract.

(b) *Purchase of Bonds.* The City further reserves the right and option to purchase any or all of the Bonds offered to it at any time at any price acceptable to the City plus accrued interest to the date of purchase.

(c) *Selection of Bonds for Redemption.* For as long as the Bonds are held in book-entry only form, the selection of particular Bonds within a series and maturity to be redeemed shall be made in accordance with the operational arrangements then in effect at DTC. If the Bonds are no longer held in book-entry form, the selection of such Bonds to be redeemed and the surrender and reissuance thereof, as applicable, shall be made as provided in the following provisions of this subsection (c). If the City redeems at any one time fewer than all of the Bonds of a series having the same maturity date, the particular Bonds or portions of Bonds of such maturity to be redeemed shall be selected by lot (or in such manner determined by the Bond Registrar) in increments of \$5,000. In the case of a Bond of a denomination greater than \$5,000, the City and the Bond Registrar shall treat each Bond as representing such number of separate Bonds each of the denomination of \$5,000 as is obtained by dividing the actual principal amount of such Bond by \$5,000. In the event that only a portion of the principal sum of a Bond is redeemed, upon surrender of such Bond at the designated office of the Bond Registrar there shall be issued to the Registered Owner, without charge therefor, for the then-unredeemed balance of the principal sum thereof, at the option of the Registered Owner, a Bond or Bonds of like maturity and interest rate in any of the denominations herein authorized.

(d) *Notice of Redemption.*

(1) Official Notice. For so long as the Bonds are held in book-entry form, notice of redemption (which notice may be conditional) shall be given in accordance with the operational arrangements of DTC as then in effect, and neither the City nor the Bond Registrar will provide any notice of redemption to any Beneficial Owners. Thereafter (if the Bonds are no longer held in book-entry form), notice of redemption shall be given in the manner hereinafter provided. Unless waived by any owner of Bonds to be redeemed, official notice of any such redemption (which redemption may be conditioned by the Bond Registrar on the receipt of sufficient funds for redemption or otherwise) shall be given by the Bond Registrar on behalf of the City by mailing a copy of an official redemption notice by first class mail at least 20 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Bond Registrar.

All official notices of redemption shall be dated and shall state: (A) the redemption date, (B) the redemption price, (C) if fewer than all outstanding Bonds are to be redeemed, the identification by maturity (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed, (D) any conditions to redemption, (E) that (unless such

notice is conditional) on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and (F) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the designated office of the Bond Registrar.

On or prior to any redemption date, unless any condition to such redemption has not been satisfied or waived or notice of such redemption has been rescinded, the City shall deposit with the Bond Registrar an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.

The City retains the right to rescind any redemption notice and the related optional redemption of Bonds by giving notice of rescission to the affected registered owners at any time on or prior to the scheduled redemption date. Any notice of optional redemption that is so rescinded shall be of no effect, and the Bonds for which the notice of optional redemption has been rescinded shall remain outstanding.

(2) Effect of Notice; Bonds Due. If an unconditional notice of redemption has been given and not rescinded, or if the conditions set forth in a conditional notice of redemption have been satisfied or waived, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and, if the Bond Registrar then holds sufficient funds to pay such Bonds at the redemption price, then from and after such date such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Bond Registrar at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. All Bonds which have been redeemed shall be canceled by the Bond Registrar and shall not be reissued.

(3) Additional Notice. In addition to the foregoing notice, further notice shall be given by the City as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed. Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (A) the CUSIP numbers of all Bonds being redeemed; (B) the date of issue of the Bonds as originally issued; (C) the rate of interest borne by each Bond being redeemed; (D) the series and maturity date of each Bond being redeemed; and (E) any other descriptive information needed to identify accurately the Bonds being redeemed. Each further notice of redemption may be sent at least 20 days before the redemption date to each party entitled to receive notice pursuant to the Continuing Disclosure Certificate and with such additional information as the City shall deem appropriate, but such mailings shall not be a condition precedent to the redemption of such Bonds.

(4) Amendment of Notice Provisions. The foregoing notice provisions of this Section 4, including but not limited to the information to be included in redemption notices and the persons designated to receive notices, may be amended by additions, deletions and changes in order to maintain compliance with duly promulgated regulations and recommendations regarding notices of redemption of municipal securities.

Section 5. Form of Bonds. The Bonds shall be in substantially the form set forth in Exhibit B, which is incorporated herein by this reference, with such changes thereto as may be approved by the Designated Representative, consistent with the provisions of Section 10 hereof.

Section 6. Execution of Bonds. The Bonds shall be executed on behalf of the City with the manual or facsimile signature of the Mayor, and shall be attested by the manual or facsimile signature of the Clerk, and shall have the seal of the City impressed or a facsimile thereof imprinted, or otherwise reproduced thereon.

In the event any officer who shall have signed or whose facsimile signatures appear on any of the Bonds shall cease to be such officer of the City before said Bonds shall have been authenticated or delivered by the Bond Registrar or issued by the City, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issuance, shall be as binding upon the City as though said person had not ceased to be such officer. Any Bond may be signed and attested on behalf of the City by such persons who, at the actual date of execution of such Bond shall be the proper officer of the City, although at the original date of such Bond such persons were not such officers of the City.

Only such Bonds as shall bear thereon a Certificate of Authentication manually executed by an authorized representative of the Bond Registrar shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this ordinance.

Section 7. Application of Bond Proceeds; Plan of Refunding. For the purpose of realizing an overall debt service savings, the City proposes to refund the Refunded Bonds as set forth herein. If the Designated Representative determines that it is in the best interest of the City to proceed with the refunding authorized herein, the Designated Representative shall designate all or a portion of the Refunding Candidates as Refunded Bonds and such designation shall be set forth in the Bond Purchase Contract.

On the date of issuance of the Bonds, the City shall deposit the proceeds of the Bonds, net of the Underwriter's discount, into the refunding account which is hereby authorized to be created (the "Refunding Account") and use the proceeds of the Bonds, together with other available funds of the City, if any, to refund the Refunded Bonds in accordance with the terms of the ordinance, resolution or loan agreement authorizing the Refunded Bonds and to pay costs of issuance for the Bonds. The Designated Representative is authorized to pay, out of proceeds of the Bonds and/or available funds of the City, all costs of issuance of the Bonds and the administrative costs of the refunding of the Refunded Bonds.

Any amounts remaining in the Refunding Account 60 days after Closing shall be transferred to the Bond Fund. After the Refunded Bonds are redeemed in full, the Refunded Bonds shall be surrendered for cancellation and returned to the City.

The Designated Representative is hereby authorized to select the Refunded Bonds from the Refunding Candidates, to establish the Call Date(s) for the Refunded Bonds, to provide or cause to be provided the notices of redemption of the Refunded Bonds in accordance with the

applicable provisions of the ordinance, resolution or loan agreement authorizing the Refunded Bonds, and to take any action as determined to be necessary and in the best interest of the City to refund the Refunded Bonds. The City hereby calls the Refunded Bonds for redemption on the Call Date(s) in accordance with the provisions of the ordinance, resolution or loan agreement authorizing the Refunded Bonds.

Section 8. Tax Covenants. The City will take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Bonds, including but not limited to the following:

(a) *Private Activity Bond Limitation.* The City will assure that the proceeds of the Bonds are not so used as to cause the Bonds to satisfy the private business tests of Section 141(b) of the Code or the private loan financing test of Section 141(c) of the Code.

(b) *Limitations on Disposition of Project.* The City will not sell or otherwise transfer or dispose of (i) any personal property components of the Projects other than in the ordinary course of an established government program under Treasury Regulation 1.141-2(d)(4) or (ii) any real property components of the Projects, unless it has received an opinion of Bond Counsel to the effect that such disposition will not adversely affect the treatment of interest on the Bonds as excludable from gross income for federal income tax purposes.

(c) *Federal Guarantee Prohibition.* The City will not take any action or permit or suffer any action to be taken if the result of such action would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

(d) *Rebate Requirement.* The City will take any and all actions necessary to assure compliance with Section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Bonds.

(e) *No Arbitrage.* The City will not take, or permit or suffer to be taken any action with respect to the proceeds of the Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Bonds would have caused the Bonds to be an “arbitrage bonds” within the meaning of Section 148 of the Code.

(f) *Registration Covenant.* The City will maintain a system for recording the ownership of the Bonds that complies with the provisions of Section 149 of the Code until the Bonds have been surrendered and canceled.

(g) *Record Retention.* The City will retain its records of all accounting and monitoring it carries out with respect to the Bonds for at least three years after the Bonds mature or are redeemed (whichever is earlier); however, if the Bonds are redeemed and refunded, the City will retain its records of accounting and monitoring at least three years after the earlier of the maturity or redemption of the obligations that refunded the Bonds.

(h) *Compliance with Federal Tax Certificate.* The City will comply with the provisions of the Federal Tax Certificate with respect to the Bonds, which are incorporated herein as if fully set forth herein.

(i) *Bank Qualification.* In the Federal Tax Certificate executed in connection with the issuance of the Bonds, the City may designate such Bonds as “qualified tax-exempt obligations” under Section 265(b)(3) of the Code for investment by financial institutions.

The covenants of this section will survive payment in full or defeasance of the Bonds.

Section 9. Pledge of Funds; General Obligation.

(a) *General.* The City hereby authorizes the creation of a fund to be used for the payment of debt service on the Bonds, designated as the “Bond Redemption Fund” (the “Bond Fund”). No later than the date each payment of principal of or interest on the Bonds becomes due, the City shall transmit sufficient funds, from the Bond Fund or from other legally available sources, to the Bond Registrar for the payment of such principal or interest. Money in the Bond Fund may be invested in legal investments for City funds.

(b) *Pledge of Full Faith and Credit.* The City hereby irrevocably covenants and agrees for as long as the Bonds are outstanding and unpaid that each year it will include in its budget and levy an *ad valorem* tax upon all the property within the City subject to taxation in an amount that will be sufficient, together with other revenues and money of the City legally available for such purposes, to pay the principal of and interest on the Bonds when due.

The City hereby irrevocably pledges that the annual tax provided for herein to be levied for the payment of such principal and interest shall be within and as a part of the tax levy permitted to cities without a vote of the people, and that a sufficient portion of each annual levy to be levied and collected by the City prior to the full payment of the principal of and interest on the Bonds will be and is hereby irrevocably set aside, pledged and appropriated for the payment of the principal of and interest on the Bonds. The full faith, credit and resources of the City are hereby irrevocably pledged for the annual levy and collection of said taxes and for the prompt payment of the principal of and interest on the Bonds when due.

Section 10. Sale of Bonds.

(a) *Bond Sale.* The Bonds shall be sold by negotiated public sale to the Underwriter pursuant to the terms of a Bond Purchase Contract. The Council has determined that it would be in the best interest of the City to delegate to the Designated Representative, for a limited time, the authority to select the Refunded Bonds from the Refunding Candidates, to authorize the Bonds to be issued in one or more series, and to approve the final interest rates, maturity dates, redemption terms and principal maturities for each series of Bonds.

(b) *Sale Parameters.* Subject to the terms and conditions set forth in this Section 10, the Designated Representative is hereby authorized to select the Refunded Bonds from the Refunding Candidates, to authorize the Bonds to be issued in one or more series, and to approve the final interest rates, aggregate principal amount, principal maturities, and redemption rights for the Bonds in the manner provided hereafter so long as:

- (1) the aggregate principal amount of all Bonds issued under this ordinance does not exceed \$10,000,000,
- (2) the final maturity date for the Bonds is no later than December 1, 2052,
- (3) the aggregate purchase price for the Bonds shall not be less than 95% or more than 135% of the aggregate stated principal amount of the Bonds,
- (4) the true interest cost for the Bonds (in the aggregate) does not exceed 4.00%,
- (5) the Bonds are sold for a price that results in net present value debt service savings over the Refunded Bonds (in the aggregate) of at least 3.00%, and
- (6) the Bonds conform to all other terms of this ordinance.

Subject to the terms and conditions set forth in this section, the Designated Representative is hereby authorized to execute the Bond Purchase Contract. Following the execution of the Bond Purchase Contract, the Designated Representative shall provide a report to the Council describing the final terms of the Bonds approved pursuant to the authority delegated in this section. The authority granted to the Designated Representative by this Section 10 shall expire 180 days after the effective date of this ordinance. If a Bond Purchase Contract for the Bonds has not been executed within 180 days after the effective date of this ordinance, the authorization for the issuance of the Bonds shall be rescinded, and the Bonds shall not be issued nor their sale approved unless such Bonds are re-authorized by ordinance of the Council. The ordinance re-authorizing the issuance and sale of such Bonds may be in the form of a new ordinance repealing this ordinance in whole or in part or may be in the form of an amendatory ordinance approving a Bond Purchase Contract or establishing terms and conditions for the authority delegated under this Section 10.

(c) *Delivery of Bonds; Documentation.* Upon the passage and approval of this ordinance, the proper officials of the City, including the City Manager, Finance Director, Mayor and City Clerk, are authorized and directed to undertake all action necessary for the prompt execution and delivery of the Bonds to the Underwriter and further to execute all closing certificates and documents required to effect the closing and delivery of the Bonds in accordance with the terms of the Bond Purchase Contract. Such documents may include, but are not limited to, documents related to a municipal bond insurance policy delivered by an insurer to insure the payment when due of the principal of and interest on all or a portion of the Bonds as provided therein, if such insurance is determined by the Designated Representative to be in the best interest of the City.

(d) *Preliminary and Final Official Statements.* The Finance Director is hereby authorized to ratify and to deem final the preliminary Official Statement relating to the Bonds for the purposes of the Rule. The Finance Director is further authorized to ratify and to approve for purposes of the Rule, on behalf of the City, the final Official Statement relating to the issuance and sale of the Bonds and the distribution of the final Official Statement pursuant thereto with such changes, if any, as may be deemed to be appropriate.

Section 11. Undertaking to Provide Ongoing Disclosure. The City covenants to execute and deliver at the time of Closing a Continuing Disclosure Certificate consistent with the Rule. The Designated Representative is hereby authorized to execute and deliver a Continuing Disclosure Certificate upon the issuance, delivery and sale of the Bonds with such terms and provisions as such officer shall deem appropriate and in the best interest of the City.

Section 12. Defeasance. In the event that money and/or noncallable Government Obligations, maturing at such time or times and bearing interest to be earned thereon in amounts (together with such money, if necessary) sufficient to redeem and retire part or all of the Bonds in accordance with their terms, are set aside in a special account of the City to effect such redemption and retirement, and such money and the principal of and interest on such Government Obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Bond Fund for the payment of the principal of and interest on the Bonds so provided for, and such Bonds shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive the money so set aside and pledged, and such Bonds shall be deemed not to be outstanding hereunder. The City shall give or cause to be given written notice of defeasance in accordance with the Continuing Disclosure Certificate.

Section 13. Lost, Stolen or Destroyed Bonds. In case any Bond or Bonds shall be lost, stolen or destroyed the Bond Registrar may execute and deliver a new Bond or Bonds of like series, date, number and tenor to the Registered Owner thereof upon the Registered Owner's paying the expenses and charges of the City and the Bond Registrar in connection therewith and upon his/her filing and the City evidence satisfactory to the City that such Bond was actually lost, stolen or destroyed and of his/her ownership thereof, upon furnishing the City and/or the Bond Registrar with indemnity satisfactory to the City and the Bond Registrar.

Section 14. Severability; Ratification. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bonds. All acts taken pursuant to the authority granted in this ordinance but prior to its effective date are hereby ratified and confirmed.

Section 15. Corrections by Clerk. Upon approval of the City Attorney and Bond Counsel, the City Clerk is hereby authorized to make necessary corrections to this ordinance, including but not limited to the correction of clerical errors; references to other local, state or federal laws, codes, rules or regulations; ordinance numbering and section/subsection numbering; and other similar necessary corrections.

Section 16. Effective Date of Ordinance. This ordinance will become effective five days from and after its passage, approval and publication.

ADOPTED by the City Council of the City of Shelton, Washington, at a regular meeting of the City Council held on _____, 2020.

CITY OF SHELTON, WASHINGTON

Kevin Dorcy, Mayor

ATTEST:

Donna Nault, City Clerk

APPROVED AS TO FORM:

Pacifica Law Group LLP, Bond Counsel

EXHIBIT A
REFUNDING CANDIDATES

Loan or Bond	Principal Outstanding*	Interest Rate
2008 Department of Ecology Loan (Loan No. L0800004) WWTP Improvements Design "A"	\$769,380.59	3.10%
2010 Department of Ecology Loan (Loan No. L1000002) Goldsborough Creek Sewer Improvements "B"	\$387,711.06	2.90%
2011 Department of Ecology Loan (Loan No. L0800005) Basin 5 Sewer Rehab Design	\$579,147.67	3.10%
2012 Department of Ecology Loan (Loan No. L1200003) Basin 3 Rehab Design	\$352,524.36	2.60%
Limited Tax General Obligation Bond, 2011A (USDA Fire Station Bond; Ordinance No. 1789-0811)	\$2,474,468.70	3.75%
Limited Tax General Obligation Bond, 2011B (USDA Fire Station Bond; Ordinance No. 1789-0811)	\$888,140.59	3.75%
Water and Sewer Revenue Bond, 2012A (USDA Wastewater Treatment Plant Bond; Ordinance No. 1800-0112)	\$4,049,210.78	3.75%

* As of the expected date of delivery of the Bonds.

EXHIBIT B

FORM OF BOND

[DTC LANGUAGE]

UNITED STATES OF AMERICA

NO. _____

\$ _____

STATE OF WASHINGTON

CITY OF SHELTON

LIMITED TAX GENERAL OBLIGATION REFUNDING BOND, 2020[___]

INTEREST RATE: % MATURITY DATE: CUSIP NO.:
REGISTERED OWNER: CEDE & Co.
PRINCIPAL AMOUNT: _____ NO/100 DOLLARS

The City of Shelton, Washington (the “City”), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, the Principal Amount indicated above and to pay interest thereon from _____, 20__, or the most recent date to which interest has been paid or duly provided for until payment of this bond at the Interest Rate set forth above, payable on _____ 1, 20__, and semiannually thereafter on the first days of each succeeding _____ and _____. Both principal of and interest on this bond are payable in lawful money of the United States of America. The fiscal agent of the State of Washington has been appointed by the City as the authenticating agent, paying agent and registrar for the bonds of this issue (the “Bond Registrar”). For so long as the bonds of this issue are held in fully immobilized form, payments of principal thereof and interest thereon shall be made as provided in accordance with the operational arrangements of The Depository Trust Company (“DTC”) referred to in the Blanket Issuer Letter of Representations (the “Letter of Representations”) from the City to DTC.

The bonds of this issue are issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Washington and Ordinance No. _____ duly passed by the City Council on _____, 2020 (the “Bond Ordinance”). Capitalized terms used in this bond have the meanings given such terms in the Bond Ordinance.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by or on behalf of the Bond Registrar or its duly designated agent.

This bond is one of an authorized issue of bonds of like series, date, tenor, rate of interest and date of maturity, except as to number and amount in the aggregate principal amount of \$ _____ and is issued pursuant to the Bond Ordinance to provide a portion of the funds necessary (a) to refund certain obligations of the City, and (b) to pay costs of issuance and costs related to the administration of the refunding.

The City hereby irrevocably covenants and agrees with the owner of this bond that it will include in its annual budget and levy taxes annually, within and as a part of the tax levy permitted to the City without a vote of the electorate, upon all the property subject to taxation in amounts sufficient, together with other money legally available therefor, to pay the principal of and interest on this bond as the same shall become due on and after such date. The full faith, credit and resources of the City are hereby irrevocably pledged for the annual levy and collection of such taxes and the prompt payment of such principal and interest.

The pledge of tax levies for payment of principal of and interest on the bonds may be discharged prior to maturity of the bonds by making provision for the payment thereof on the terms and conditions set forth in the Bond Ordinance.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington to exist and to have happened, been done and performed precedent to and in the issuance of this bond exist and have happened, been done and performed and that the issuance of this bond and the bonds of this issue does not violate any constitutional, statutory or other limitation upon the amount of bonded indebtedness that the City may incur.

IN WITNESS WHEREOF, the City of Shelton, Washington, has caused this bond to be executed by the manual or facsimile signatures of the Mayor and the City Clerk and the seal of the City imprinted, impressed or otherwise reproduced hereon as of this ____ day of _____, 2020.

[SEAL]

CITY OF SHELTON, WASHINGTON

By _____ /s/ _____
Mayor

ATTEST:

_____/s/_____
City Clerk

The Bond Registrar's Certificate of Authentication on the Bonds shall be in substantially the following form:

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Bond Ordinance and is of the Limited Tax General Obligation Refunding Bonds, 2020[___], of the City of Shelton, Washington, dated _____, 2020.

WASHINGTON STATE FISCAL AGENT, as
Bond Registrar

By _____

CERTIFICATE

I, the undersigned, City Clerk of the City of Shelton, Washington, DO HEREBY CERTIFY:

1. That the attached is a true and correct copy of Ordinance No. 1955-0820 (the “Ordinance”) of the City, duly passed at a regular meeting of the City Council (the “Council”) of the City held on _____, 2020.

2. That said meeting was duly convened and held in all respects in accordance with law, including but not limited to Washington State Governor Inslee’s emergency proclamation No. 20-28 issued on March 24, 2020, as amended and supplemented, temporarily suspending portions of the Open Public Meetings Act (chapter 42.30 RCW), and due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of said Ordinance; that all other requirements and proceedings incident to the proper passage of said Ordinance have been fully fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2020.

City Clerk



**CITY OF SHELTON
COUNCIL BRIEFING REQUEST
(Agenda Item E2)**

Touch Date: 09/08/2020
Brief Date: 09/15/2020
Action Date: 10/06/2020

Department: Executive
Presented By: Jeff Niten

APPROVED FOR COUNCIL PACKET:

Action Requested:

ROUTE TO:

REVIEWED:

PROGRAM/PROJECT TITLE:

Cable Television Franchise Agreements

Ordinance

Dept. Head

Resolution

Finance Director

ATTACHMENTS:

Motion

Attorney

- Ordinance 1956-0920

- Comcast Cable Communications Franchise Agreement

- Hood Canal Communications Franchise Agreement

Other

City Clerk

City Manager

JN

DESCRIPTION OF THE PROGRAM/PROJECT AND BACKGROUND INFORMATION:

City staff and representatives of Comcast Cable Communications and Hood Canal Communications have been working toward new Franchise Agreements to benefit the citizens of Shelton, protect the City's interests as well as the individual utilities' needs.

While the City has latitude over some aspects of the franchise agreements, other aspects such as franchise fees are regulated by State and Federal regulations. The City has worked to ensure that provisions of each agreement provide adequate protection of the public Right-of-Way and the City's ability to require movement of utilities consistent with City needs.

The Franchise Agreements attached comply with Shelton Municipal Code (SMC) Chapter 5.44 and all applicable state and Federal regulations.

ANALYSIS/OPTIONS/ALTERNATIVES:

City staff propose the following as alternatives:

- Adopt the agreements as presented
- Request Staff reenter negotiations over modifications to terms
- Take no action at this time

BUDGET/FISCAL INFORMATION:

As compensation for the use of City's Rights-of-Way, Cable providers shall pay as a Franchise Fee equal to five percent (5%) of gross revenues to the City. In 2019, the City received \$87,010.64 from Comcast and \$14,975.88 in franchise fees.

PUBLIC INFORMATION REQUIREMENTS:

Information can be obtained through the City Clerk.

STAFF RECOMMENDATION/MOTION:

Staff requests the Council concur to place Ordinance No. 1956-0920 on the October 6, 2020 Action Agenda.

ORDINANCE NO. 1956-0920

**AN ORDINANCE OF THE CITY OF SHELTON, WASHINGTON, GRANTING
CABLE TELEVISION FRANCHISES AND ADOPTING FRANCHISE
AGREEMENTS TO GOVERN COMCAST CABLE COMMUNICATIONS AND
HOOD CANAL COMMUNICATIONS WITHIN THE CITY LIMITS**

WHEREAS, the City Council has authority under RCW 35A.47.040 to grant utility franchises; and

WHEREAS, three providers of cable television service, Comcast Cable Communications (“Comcast”), Hood Canal Communications (“HCC”), and iFiber Communications (“iFiber”), currently serve within the Shelton City limits; and

WHEREAS, the Council has previously granted cable television franchises to Comcast and HCC and entered into franchise agreements with each; and

WHEREAS, iFiber has not previously entered into a franchise agreement with the City; however, the Council believes it is legally appropriate for iFiber to enter into a franchise agreement; and

WHEREAS, the City has reviewed Comcast’s performance under the prior Franchise and the quality of service during the prior Franchise term, has identified the future cable-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Comcast, and has determined that Comcast’s plans for constructing, operating and maintaining its Cable System are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, the City has reviewed HCC’s performance under the prior Franchise and the quality of service during the prior Franchise term, has identified the future cable-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of HCC, and has determined that HCC’s plans for constructing, operating and maintaining its Cable System are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, the public has had adequate notice and opportunity to comment on Comcast’s and HCC’s proposals to provide cable television service within the City; and

WHEREAS, Comcast and HCC have both agreed to enter into franchise agreements with substantially identical terms; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of cable communications service, and reliability of cable systems in its jurisdiction, the availability of local programming and quality Customer service; and

WHEREAS, diversity in Cable Service programming is an important policy goal and cable providers should offer a wide range of programming services; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive Franchises to construct, operate and maintain cable systems within the boundaries of the City.

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration as provided herein, the receipt and adequacy of which are hereby acknowledged, the City Council ordains as follows:

Section 1. Grant of Franchise - Comcast. A cable television franchise is hereby granted to Comcast Cable Communications Management, LLC under the terms and conditions set forth in Exhibit A attached hereto and incorporated herein by reference.

Section 2. Acceptance. The rights and privileges granted to Comcast pursuant to this Ordinance shall not become effective until its terms and Comcast Cable Communications Management, LLC, accepts conditions. Acceptance shall be accomplished by the submission of a written instrument, executed and sworn to by a corporate officer of the Grantee before a Notary Public, and filed with the City within forty-five (45) days after the effective date of this Ordinance. Such instrument shall evidence the unconditional acceptance of the terms hereof and a promise to comply with and abide by the terms and conditions hereof.

Section 3. Grant of Franchise - HCC. A cable television franchise is hereby granted to Hood Canal Communications under the terms and conditions set forth in Exhibit B attached hereto and incorporated herein by reference.

Section 4. Acceptance. The rights and privileges granted to HCC pursuant to this Ordinance shall not become effective until its terms and Hood Canal Communications accepts conditions. Acceptance shall be accomplished by the submission of a written instrument, executed and sworn to by a corporate officer of the Grantee before a Notary Public, and filed with the City within forty-five (45) days after the effective date of this Ordinance. Such instrument shall evidence the unconditional acceptance of the terms hereof and a promise to comply with and abide by the terms and conditions hereof.

Section 5. iFiber Franchise. City staff shall continue to pursue the drafting and negotiation of a cable television franchise agreement with iFiber Communications.

Section 6. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 7. This Ordinance shall take effect and be in force five (5) days after passage and publication, as required by law.

Passed this _____ day of _____, 2020.

Kevin Dorcy, Mayor

AUTHENTICATED:

Donna Nault, City Clerk

ATTACHMENT A

FRANCHISE AGREEMENT BETWEEN THE CITY OF SHELTON, WASHINGTON AND COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC

This Cable Television Franchise is entered into in Shelton, Washington, this ____ day of 2020, by and between the City of Shelton, Washington, a municipal corporation, hereinafter (“City”) and Comcast Cable Communications Management, LLC. (“Comcast”). The City and Comcast are sometimes referred to hereinafter collectively as the “parties.”

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SECTION 1. DEFINITIONS

For the purposes of this Franchise and all Exhibits attached hereto the following terms, phrases, words, and their derivations shall have the meanings given herein when indicated with the text of the Franchise by being capitalized. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined, or those defined, but not capitalized within the text shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory.

1.1 “Affiliated Entity” or “Affiliate” when used in connection with Comcast means any Person who owns or controls, is owned or controlled by, or is under common ownership or control of Comcast.

1.2 “Bad Debt” means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Comcast, but not collected after reasonable efforts by Comcast.

1.3 “Basic Service” means any Cable Service Tier that includes, at a minimum, the retransmission of local television Broadcast Signals.

1.4 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System off-the-air by antenna, microwave, satellite dishes, or any other means.

1.5 “Cable Act” means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and as amended by the Telecommunications Act of 1996, and any amendments thereto.

1.6 “Cable Operator” means any Person or group of Persons, including Comcast, who provide(s) Cable Service over the Cable System and directly or through one or more Affiliates own(s) a

significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of the Cable System.

1.7 “Cable Service” means the one-way transmission to Subscribers of Video Programming, or other programming service and Subscriber interaction, if any, that is required for the selection or use of such Video Programming or other programming service.

1.8 “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. Section 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. Section 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; or (5) any facilities of any electric utility used solely for operating its electric utility systems. When used herein, the term “Cable System” shall mean Comcast’s Cable System in the Franchise Area, unless the context indicates otherwise.

1.9 “Channel” means a portion of the frequency band capable of carrying a Video Programming Service or combination of Video Programming Services, whether by analog or digital signal, on a twenty-four (24) hour per day basis or a portion thereof.

1.10 “City” means City of Shelton, Washington, a municipal corporation, of the State of Washington.

1.11 “Dwelling Unit” means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy.

1.12 “FCC” means the Federal Communications Commission or its lawful successor.

1.13 “Franchise” means the document in which this definition appears, that is executed between City and Comcast, containing the specific provisions of the authorization granted and the contractual and regulatory agreement created hereby.

1.14 “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by City during the term of this Franchise.

1.15 “Franchise Fee” includes fees and assessments up to 5% of Gross Revenues imposed by the City on Comcast or Subscribers, or both, solely because of their status as such. The term Franchise Fee does not include:

Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment on both utilities and Cable Operators or their services;

Requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

Any fee imposed under Title 17, United States Code.

1.16 “Comcast” means Comcast Cable Communications Management, LLC., its lawful successors, transferees, or assignees.

1.17 “Gross Revenues” means, and shall be construed broadly to include, all revenues derived directly or indirectly by Comcast and/or an Affiliated Entity that is the Cable Operator of the Cable System from the operation of Comcast’s Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade, or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Comcast for channels designated for commercial/leased access use, which shall be allocated on a pro rata basis using total Cable Service subscribers within the City;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees, and administrative fees, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees;

- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Comcast’s Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Comcast agrees that Gross Revenues subject to Franchise Fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications and Comcast Effectv or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual Bad Debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- any taxes on services furnished by Comcast which are imposed directly on any Subscriber or user by the State, City, or other governmental unit, and which are collected by Comcast on behalf of said governmental unit; and
- unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Comcast for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Comcast shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state, or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Comcast derives revenues in the City. The City reserves its right to review and to challenge Comcast’s calculations.

(D) Comcast reserves the right to change the allocation methodologies set forth in this Section in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Comcast will explain and document the required changes to the City as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to subsection (E) below. If new Cable Service revenue streams develop from Comcast’s operation of its Cable System within the City, those new revenue streams shall be included within Gross Revenues, unless the parties agree otherwise.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the parties, but should no resolution be reached, the parties agree that reference shall be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the FASB, EITF and/or the SEC. Notwithstanding the forgoing, the City reserves its right to challenge Comcast’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.18 “Headend” or “Hub” means any facility for signal reception and dissemination on a Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, and all other related equipment and Facilities.

1.19 “Leased Access Channel” means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.

1.20 “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve Customers. In all cases, “Normal Business Hours” must include some evening hours at least onenight per week and/or some hours on Saturday.

1.21 “Normal Operating Conditions” means those service conditions that are within the control of Comcast. Those conditions that are not within the control of Comcast include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, severe or unusual weather conditions, and availability of materials, equipment or labor. Those conditions that are ordinarily within the control of Comcast include, but are not limited to, regular peak or seasonal demand periods and routine maintenance or upgrade of the Cable System.

1.22 “Person” means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.

1.23 “Rights-of-Way” means land acquired for or dedicated to the public or hereafter acquired or dedicated to the public and maintained under public authority, including but not limited to public streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks, and areas behind sidewalks, easements, and similar public property, located within the Franchise Area.

1.24 “State” means the State of Washington.

1.25 “Subscriber” or “Customer” means any Person who lawfully receives Cable Services provided by Comcast by means of the Cable System with Comcast’s express permission. Said permission may be withdrawn and customer disconnected by Comcast at Comcast’s discretion.

1.26 “Tier” means a category of Cable Services provided by Comcast for which a separate rate is charged.

1.27 “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, or cable programming provider.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

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

Comcast, through this Franchise, is granted the right to operate its Cable System using the Rights-of-Way within the Franchise Area in compliance with the City Right of Way Standards, as amended and all lawfully enacted applicable construction codes and regulations. Comcast specifically agrees to comply with the provisions of City ordinances provided that in the event of a conflict between the provisions of ordinances and this Franchise, the express provisions of the Franchise shall govern. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to any ordinance, rule, regulation, resolution, or other enactment of City, except in the lawful exercise of City's police powers.

This Franchise shall not be interpreted to prevent the City from imposing other conditions, to the extent permitted by law.

Comcast agrees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of Comcast that is a Cable Operator of the Cable System in the Franchise Area, as defined herein, or directly involved in the management or operation of the Cable System in the Franchise Area, will comply with the terms and conditions of this Franchise.

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

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

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

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

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

2.2 Use of Rights-of-Way

Comcast may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, through, below, and along the Rights-of-Way within the Franchise Area, such wires, cables, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment, as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Comcast shall comply with all lawfully enacted and applicable construction codes, laws, ordinances, regulations, and procedures regarding placement and installation of Cable System facilities in the Rights-of-Way.

Comcast must follow City-established requirements, including all City codes, ordinances, and other regulations regarding placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way. Comcast must in any event install Cable System facilities in a manner that reasonably minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. To protect public health, safety, and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to particular Rights-of-Way; may deny access if Comcast is not willing to comply with City's reasonable requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by City, or that is installed without prior City approval of the time, place, or manner of installation and charge Comcast for all costs associated with removal; and City may ask Comcast to cooperate with others to reasonably minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. Comcast shall assume its private costs (in accordance with applicable law) associated with any requirement of City in the exercise of its police powers, to relocate its Cable System facilities located in the Rights-of-Way.

2.3 Term

This Franchise shall have a term of ten (10) years, from the effective date specified in Section 2.4.

2.4 Effective Date

This Franchise and the rights, privileges, and authority granted hereunder, and the contractual relationship established hereby shall take effect and be in force from and after the effective date of this Franchise as specified in this Section and for the duration of the term as specified in Section 2.3.

The effective date of this Franchise shall be five business days after its adoption by the City Council and publication of the ordinance.

The grant of this Franchise shall have no effect on any ordinance in effect prior to the effective date of this Franchise to indemnify or insure the City against acts and omissions occurring during the period that the prior Franchise was in effect, nor shall it have any effect upon liability to pay all

Franchise Fees (for any prior years) that were due and owed under a prior franchise and the franchise ordinance.

2.5 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or franchises granted by City or its predecessors to any Person, to use any property, Right-of-Way, and easement, including the right of City to use same for any purpose it lawfully deems but not incompatible with Comcast's rights granted under this Franchise, including the same or similar purposes allowed Comcast hereunder. City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Comcast's authority under this Franchise and for such additional franchises for cable systems, as City deems appropriate.

2.6 Grant of Other Franchises

Comcast acknowledges and agrees that the City reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, the City agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of Comcast's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include but are not limited to: Franchise Fees; insurance; system build-out requirements; security instruments; education and government Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word-for-word identical franchise or authorization so long as the regulatory and financial burden on each franchisee is materially equivalent. If any such additional or competitive franchise is granted by City which, in the reasonable opinion of Comcast, contains more favorable or less burdensome terms or conditions than this Franchise, City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by City and Comcast.

In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall provide notice of such application.

In the event that a wireline multichannel Video Programming distributor provides video service to the residents of the City under the authority granted by federal or State legislation or other regulatory entity, Comcast shall have a right to request Franchise amendments that relieve Comcast of regulatory burdens that create a competitive disadvantage to Comcast. In requesting amendments, Comcast shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the basis for Comcast's belief that certain provisions of the Franchise place Comcast at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. City shall not unreasonably withhold consent to Comcast's petition.

2.7 Familiarity with Franchise

Comcast acknowledges and warrants by acceptance of the rights, privileges, and agreement

granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions, terms and conditions herein. Comcast further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time and consistent with all local, State, and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, Comcast: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the City's intervening to the extent it is legally entitled to do so in any legal or regulatory proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.9 Police Powers

Comcast's rights hereunder are subject to the police powers of City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Comcast agrees to comply with all generally applicable laws, ordinances, and regulations lawfully enacted pursuant to the police powers of City, or hereafter, enacted in accordance therewith, by City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary.

2.10 Franchise Area

Comcast shall provide Cable Services, as authorized under this Franchise, within the Franchise Area in accordance with line extension and density provisions as provided herein.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the use of City's Rights-of-Way, Comcast shall pay as a Franchise Fee to City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Comcast's Gross Revenues. Accrual of such Franchise Fee shall commence as of the effective date of this Franchise.

3.2 Payments

Comcast's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

3.3 Acceptance of Payment

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Comcast. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by Comcast was due or such shorter period of, if so provided by law.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to City on a form commonly used by Comcast, verified by an officer of Comcast, containing an accurate statement in summarized form, of Comcast's Gross Revenues and the computation of the payment amount. Such reports shall include all Gross Revenues of the Cable System.

3.5 Audits

On an annual basis, upon thirty (30) days' prior written notice, City shall have the right to conduct an independent audit on a non-contingent fee basis of Comcast's financial records necessary to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. Provided Comcast cooperates in making all relevant records available upon request (subject to the execution and delivery of an appropriate confidentiality agreement), City will in good faith attempt to complete each audit within six (6) months, and the review period shall not be any greater than the previous three (3) years or such shorter period of time if so provided by law unless the City has information relating to previous years beyond the three (3) years which, in its reasonable judgment, raises doubt as to the accuracy of payments made under this or previous franchises, in which case an additional three (3) years may be audited . Any additional amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to Comcast, and Comcast's agreement that the audit findings are correct, which written notice shall include a copy of the audit findings. If a Franchise Fee underpayment is discovered as the result of an audit, Comcast shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law calculated from the date the underpayment was originally due until the date the City receives the payment. If the audit shows that Franchise Fees have been underpaid by five percent (5%) or more during the period of time audited, Comcast shall pay the cost of the audit in an amount up to \$7,500 per reviewed year.

3.6 Financial Records

Comcast agrees to meet with a representative of the City upon request to review Comcast's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records that are relevant to the enforcement of this Franchise.

3.7 Interest on Late Payments

In the event any payment is not received within forty-five (45) days from the end of the scheduled payment period, Comcast shall pay, in addition to the payment or sum due, interest from the due date at the prime rate as listed in the Wall Street Journal on the date the payment was due, until the date the City receives the payment.

3.8 Maximum Franchise Fee

The parties acknowledge that, at present, applicable federal law limits the City to collection of a Franchise Fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that at any time throughout the term of this Franchise, City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues in any twelve (12) month period, the parties hereby agree to amend the Franchise after written notice to Comcast, and a public meeting to discuss the same, provided that all wireline cable systems in the Franchise Area over which the City has jurisdiction are treated in an equivalent manner. In the event that at any time throughout the term of this Franchise, City is limited by federal law to collecting an amount which is less than five percent (5%) of Gross Revenues in any twelve (12) month period, Comcast may reduce the Franchise Fee payments to the City in accordance with federal law, and the parties hereby agree to amend the Franchise unless the City would be covered under grandfathered provisions under federal law to keep the Franchise Fee at 5% of Gross Revenues.

3.9 Payment on Termination

If this Franchise terminates for any reason, Comcast shall file with the City within one hundred twenty (120) calendar days of the date of the termination a financial statement, certified by an Officer of Comcast, showing the Gross Revenues received by Comcast since the end of the previous fiscal year. Within forty-five (45) days of the filing of the certified statement with the City, Comcast shall pay any unpaid amounts as indicated. If Comcast fails to satisfy its remaining financial obligations as required in this Franchise, the City may do so by utilizing the funds available in a Letter of Credit or other security provided by Comcast.

3.10 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State, or the United States, including, without limitation, sales, use, utility and other taxes, or business license fees.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Rates and Charges

Before any new or modified rate, fee, or charge is imposed, Comcast shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

4.2 No Rate Discrimination

All Comcast rates and charges shall be published (in the form of a publicly available rate card), made available to the public, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances and conditions, subject to applicable law. Comcast shall apply its rates in accordance with governing law. Nothing herein shall be construed to require or prohibit:

The temporary reduction or waiving of rates or charges in conjunction with promotional campaigns;

The offering of reasonable discounts to similarly situated Persons;

The offering of rate discounts for either Cable Service generally; or

The offering of bulk discounts for Multiple Dwelling Units.

4.3 Filing of Rates and Charges

Throughout the term of this Franchise, Comcast shall maintain on file with the City (which may be accomplished by providing the City with a current website address or URL) a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Comcast to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

On written request of the City, Comcast shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Comcast. The schedule shall include a description of the price, terms and conditions established by Comcast for Leased Access Channels.

4.4 Performance Evaluation

Special evaluation sessions may be held at any time upon written request by City during the term of this Franchise following Comcast's repeated failure to comply with the terms of this Franchise.

All evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.

Topics that may be discussed at any evaluation session may include those issues surrounding Comcast's alleged failure to comply with the terms of the Franchise, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision therein and further provided that this subsection need not be followed before other legal or equitable remedies within this Franchise.

4.5 Leased Access Channel Rates

Upon bona fide written request pursuant to FCC regulations, CFR 76.970, Comcast shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Comcast.

4.6 Late Fees

For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that Comcast imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with applicable local, state and federal laws.

Comcast's late fee and disconnection policies and practices shall be nondiscriminatory, and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the neighborhood or income level of the Subscribers.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

General Indemnification. Comcast, at its sole cost and expense, shall indemnify, defend, and hold the City, its officers, officials, boards, commissions, authorized agents, representatives, and employees, harmless from any action or claim for injury, damage, loss, liability, settlement, proceeding, judgment, or cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, erection, operation, maintenance, repair, or reconstruction, or any other act done under this Franchise, by or for Comcast, its authorized agents or subcontractors, or by reason of any neglect or omission of Comcast, its authorized agents, or its employees.

Indemnification for Relocation. Subject to applicable law, Comcast shall indemnify the City for any damages, payable by the City related to, arising solely out of or resulting solely from Comcast's failure to properly install, remove, adjust, or relocate any of its facilities in the Rights-of-Way, in accordance with any lawful relocation required by City under this Franchise. It is further specifically and expressly understood that the indemnification provided in this section constitutes Comcast's waiver of immunity under industrial insurance and Title 51 RCW solely for the purposes of this indemnification solely as to any City claim against Comcast, and this waiver was mutually negotiated by the parties.

Concurrent Negligence. In the event that a particular activity conducted under this Franchise is subject to RCW 4.24.115, liability for damages arising out of bodily injury to persons, death, or damages to property caused by or resulting from the concurrent negligence of Comcast and the City, Comcast's liability shall be only to the extent of Comcast's negligence.

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

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

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

Duty to Give Notice. The City shall give Comcast timely written notice of any claim or of the commencement of any action, suit, or other proceeding covered by the indemnity in this Section. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to Comcast and Comcast shall have the obligation and duty to defend any claims arising there under, and the City shall cooperate fully therein.

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

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

5.2 Insurance Requirements

Comcast shall procure and maintain for the duration of the Agreement and as long as Comcast has Facilities in the rights-of-way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Agreement and use of the rights-of-way.

A. No Limitation

Comcast's maintenance of insurance as required by the Agreement shall not be construed to limit or otherwise alter the liability of Comcast to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

B. Minimum Scope of Insurance

Comcast shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and

liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be included as an additional insured under Comcast's Commercial General Liability insurance policy with respect this Franchise Agreement using ISO endorsement CG 20 12 if the franchise agreement is considered a master permit, or CG 20 26 if it is not, or substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Excess or Umbrella Liability insurance shall be excess Comcast's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on Comcast's Excess or Umbrella Liability insurance policy.

C. Minimum Amounts of Insurance

Comcast shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.
2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.
3. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Comcast's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

D. Other Insurance Provisions

Comcast's Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City with respect to losses for which Comcast is responsible hereunder. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of Comcast's insurance and shall not contribute with it with respect to such losses.

E. Acceptability of Insurers

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

F. Verification of Coverage

Comcast shall furnish the City with certificates evidencing the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, and evidencing the insurance requirements of the Agreement.

G. Subcontractors

Comcast shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of Comcast-provided insurance as set forth herein, except Comcast shall have sole responsibility for determining the limits of coverage required to be

obtained by Subcontractors. Comcast shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 2026.

H. Notice of Cancellation

Comcast shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance

Failure on the part of Comcast to maintain the insurance as required shall constitute a material breach of Agreement, upon which the City may, after giving five business days notice to the Comcast to correct the breach, terminate the Agreement.

5.3 Security

Comcast shall provide a performance bond in the amount of twenty-five thousand dollars (\$25,000) to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its facilities and to restore City Rights-of-Way and other property. Comcast may be required to obtain additional bonds, such as generally applicable construction bonds, in accordance with the City's ordinary practices. The construction bond and performance bond shall be in a standard industry form. Comcast shall pay all premiums or costs associated with maintaining the bond(s), and shall keep the same in full force and effect at all times. Except as expressly provided herein, Comcast shall not be required to obtain or maintain other bonds as a condition of being awarded the Franchise or continuing its existence.

If there is uncured breach (following written notice and a reasonable opportunity to cure, and in accordance with Section 14.3) by Comcast of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may request and Comcast shall establish and provide within thirty (30) days from receiving written notice from the City, to the City as security for the faithful performance by Comcast of all of the provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the City in the amount of twenty-five thousand dollars (\$25,000).

After the giving of written notice by the City to Comcast, and expiration of any applicable cure period (which shall be no less than 30 days), the letter of credit may be drawn upon by the City for purposes that include, but are not limited to the following:

Failure of Comcast to pay the City sums due under the terms of this Franchise;

Reimbursement of costs borne by the City to correct Franchise violations not corrected by Comcast; and

Liquidated damages assessed against Comcast as provided in this Franchise.

The City shall give Comcast written notice of any withdrawal under this subsection upon such withdrawal. Within ten (10) days following receipt of such written notice, Comcast shall restore the letter of credit to the amount required under this Franchise. Comcast's maintenance of the letter of credit shall not be construed to excuse unfaithful performance by Comcast or limit the liability of Comcast to the amount of the letter of credit or otherwise limit the City's recourse to any other remedy available at law or in equity.

Comcast agrees to maintain continuous uninterrupted letter of credit and bonds in the amounts required for the duration of this Franchise or as otherwise specified in this Franchise.

Comcast shall have the right to appeal to the City Council for reimbursement in the event Comcast believes that the letter of credit was drawn upon improperly. After a determination by the City Council, Comcast shall also have the right of judicial appeal if Comcast believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Comcast with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Comcast shall provide its service under Normal Operating Conditions and shall comply with Customer Service Standards as provided in FCC Standards 47 C.F.R. Sections 76.309, 76.1602, 76.1603 and 76.1619. Comcast shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Franchise, or the requirements of any applicable Customer Service Standards.

6.2 Subscriber Privacy

Comcast shall comply with privacy rights of Subscribers in accordance with applicable law.

6.3 Customer Service Agreement and Manual

Comcast shall provide to Subscribers an accurate, comprehensive service agreement (which may be available via Comcast's website or in writing upon Subscriber request) and Customer installation packet (currently called the Install Package) for use in establishing Subscriber service. This material shall, at a minimum, contain the following:

Comcast's procedure for investigation and resolution of Subscriber service complaints.

Services to be provided and rates for such services.

Billing procedures.

Service termination procedure.

A description of the manner that will be used to provide notice of changes in rates, service or service terms and conditions.

A complete statement of the Subscriber's right to privacy.

Equipment policy.

The name, address and phone number of the Customer care department that is responsible for handling cable questions and complaints for Comcast.

A copy of the installation packet shall be available to each Subscriber at the time of initial installation and any reconnection or Cable Service upgrade requiring a home visit by Comcast (excluding reconnections to the same Subscriber within twelve (12) months), and at any time the packet is requested by the Subscriber. Within thirty (30) days following material policy changes, information regarding the changes will be provided to Subscribers.

SECTION 7. REPORTS AND RECORDS

7.1 Books and Records

Throughout the term of this Franchise Agreement, Comcast agrees that the City, upon reasonable prior written notice to Comcast, may review such of Comcast's books and records reasonably necessary to determine compliance with the terms of this Franchise at Comcast's business office, during Normal Business Hours, and without unreasonably interfering with Comcast's business operations. Such books and records shall include any records required to be kept in a public file by Comcast pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by Comcast for a minimum period of six (6) years.

7.2 File for Public Inspection.

Throughout the term of this Franchise Agreement, Comcast shall maintain at its business office, in a file available for public inspection during Normal Business Hours, those documents required pursuant to the FCC's rules and regulations.

7.3 Confidentiality

Notwithstanding anything to the contrary set forth in this Section, Comcast shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. During any such audit the City shall be provided with all reasonable records and/or information to verify calculation of the City's Franchise Fees. The City agrees to treat any information disclosed by Comcast as confidential, and specifically labeled as proprietary or confidential, and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information, unless compelled by law, and then, only on prior notice to Comcast so that an

injunction can be sought, if desired. Comcast shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by Comcast to be competitively sensitive. In the event that the City receives a public records request under Chapter 42.56 RCW for the disclosure of information Comcast has designated as confidential, trade secret, or proprietary, the City shall notify Comcast of such request promptly and provide a copy of any written request by the party seeking the information and provide Comcast with a minimum of ten (10) business days to seek a court order to enjoin that disclosure pursuant to Chapter 42.56.540 RCW. Notwithstanding the foregoing, nothing in this Section 7.5.3 prohibits the City from complying with Chapter 42.56 RCW, or any other applicable law or court order requiring the release of public records.

7.4 Records Required

Comcast shall at all times maintain:

Access to a full and complete set of plans, records and “route” maps showing the location of all Cable System equipment installed or in use in the Rights-of-Way, that are generated in Comcast’s normal course of business;

A copy of all FCC filings on behalf of Comcast, its parent corporations or Affiliates that relate to the operation of the Cable System in the Franchise Area;

A list of Comcast’s Cable Services, rates and Channel line-ups;

A compilation of written Subscriber complaints, actions taken and resolution, and log of service calls.

Financial records as referred to in Section 3.

7.5 Copies of Federal and State Reports

Upon written request, Comcast shall submit to the City copies of any pleadings, applications, notifications, communications and documents of any kind, submitted by Comcast or its Affiliates to any federal, State, or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Comcast’s Cable System within the Franchise Area. Comcast shall submit such documents to the City no later than thirty (30) days after receipt of the City’s request. Comcast shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all other reports, documents, and notifications provided to any federal, State, or local regulatory agency as a routine matter in the due course of operating Comcast’s Cable System within the Franchise Area, Comcast shall make such documents available to City upon City’s written request.

7.6 Complaint File and Reports

Comcast shall keep an accurate and comprehensive compilation of any and all Customer complaints received and Comcast's actions in response to those complaints, in a manner consistent with the privacy rights of Subscribers. On written request by the City, Comcast shall provide an executive summary report to the City on an annual basis within ninety (90) days of the end of each year that shall include the following information:

Nature and type of Customer written complaints;

Average response time for service calls;

Phone activity report;

A summary of the previous year's activities regarding the development of the Cable System, including, beginning and ending plant miles constructed, any technological changes occurring in the Cable System and the number of Subscribers for each class of Cable Service (i.e., Basic, Expanded Basic Service, premium, etc.);

Complaint and resolution of any individual Subscriber will be made available to the City upon written request.

7.7 False Statements

Any intentional false or misleading statement or representation in any report required by this Franchise shall be a material breach of this Franchise and may subject Comcast to all remedies, legal or equitable, that are available to the City under this Franchise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Comcast shall provide at least the following initial broad categories of programming to the extent such categories are reasonably available:

Educational programming;

News, weather, and information;

General entertainment including movies;

Foreign language programming.

8.2 Deletion of Broad Programming Categories

Comcast shall not delete or so limit as to effectively delete any broad category of programming

within its control without prior written notice to the City.

In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Comcast shall follow the guidelines of Federal law.

8.3 Obscenity

Comcast shall not transmit, or knowingly permit to be transmitted, over any Channel subject to its editorial control any programming which is obscene under applicable federal, State or local laws.

8.4 Services for the Disabled

Comcast shall comply with the Americans With Disabilities Act and any amendments or successor legislation thereto.

8.5 Parental Control Device

Upon request by any Subscriber, Comcast shall make available at no charge a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any Channels. Comcast shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

SECTION 9. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

9.1 Construction

Comcast shall perform all maintenance, construction, repair, upgrade and reconstruction necessary for the operation of its Cable System in accordance with applicable laws, regulations, ordinances, and provisions of this Franchise. To the extent practicable and economically feasible, Comcast's construction and location of its facilities shall be of minimal impact to City streets and sidewalks located within the Rights-of-Way. All construction and maintenance of any and all of Comcast's facilities within Rights-of-Way shall, regardless of who performs the construction, be and remain Comcast's responsibility.

Prior to beginning any construction, Comcast shall provide the City with a construction schedule for work in the Rights-of-Ways as required by the City's permitting regulations.

Comcast may make excavations in Rights-of-Way for any facility needed for the maintenance or extension of Comcast's Cable System. Prior to doing such work, Comcast shall apply for, and obtain, appropriate permits from City, and give appropriate notices. Comcast shall pay all applicable fees upon issuance of the requisite construction permits by the City. As a condition of any permits so issued, City officials may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, protection of the public and the continuity of pedestrian or vehicular traffic. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Comcast shall work with other providers, permittees and franchisees so as to reduce so far as

possible the number of Rights-of-Way cuts within the Franchise Area.

In the event that emergency repairs are necessary, Comcast may initiate such emergency repairs, and shall apply for appropriate permits within two business days after discovery of the emergency.

9.2 Location of Facilities

Within three (3) business days, unless otherwise specified in federal, State, or local regulations, after the City or any franchisee or permittee of the City provides written notice to Comcast of a proposed Right-of-Way excavation, Comcast shall, at Comcast's expense, mark on the surface all of its located underground facilities within the area of the proposed excavation;

9.3 Restoration of Rights-of-Way

When any opening is made by Comcast in a hard surface pavement in any Rights-of-Way, Comcast shall promptly refill the opening and restore the surface as required by its construction permit.

If Comcast excavates the surface of any Rights-of-Way, Comcast shall be responsible for restoration in accordance with City Public Works restoration standards. If the City determines that the restoration does not meet City Public Works standards, the City may, after providing written notice to Comcast, and Comcast's failure to respond within the agreed upon time, refill or repave any non-conforming opening made by Comcast in the Rights-of-Way, and the expense thereof shall be paid by Comcast. The City may, after providing written notice to Comcast, and Comcast's failure to respond within the agreed upon time, remove and repair any work done by Comcast that, in the determination of the City, does not conform to City standards in the municipal code, public works standards, or other adopted standards. The cost thereof, including the costs of inspection and supervision shall be paid by Comcast. All of Comcast's work under this Franchise, and this Section in particular, shall be done in compliance with all laws, regulations and ordinances of the City and State.

9.4 Maintenance and Workmanship

Comcast's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in Rights-of-Way by, or under, City's authority.

Comcast shall provide and use any equipment and appliances necessary to control and carry Comcast's signals so as to prevent injury to the City's property or property belonging to any Person. Comcast, at its own expense, shall repair, renew, change and improve its facilities to keep them in a safe condition.

Comcast's transmission and distribution Cable System, wires and appurtenances shall be located, erected, and maintained so as not to endanger or interfere with the lives of Persons, or to unnecessarily hinder or obstruct the free use of Rights-of-Way, or other public property.

Comcast will maintain membership in good standing with the Utility Coordinating Board One Call Center, or other similar or successor organization designated to coordinate underground equipment locations and installations. Comcast shall abide by Washington State's "Underground Utilities" statutes and will further comply with and adhere to procedures relating to the one call locator service program.

Comcast shall give reasonable notice to private property owners of construction work in adjacent Rights-of-Way.

9.5 Acquisition of Facilities

Upon Comcast's acquisition of facilities in any Rights-of-Way, or upon the addition or annexation to the City of any area in which Comcast owns or operates any facility, such facilities shall immediately be subject to the terms of this Franchise.

9.6 Movement of Cable System For and By City

The City may remove or disconnect Comcast's facilities and equipment located in the Rights-of-Way or on any other property of the City in the case of fire, disaster or other emergency. Except during an emergency, the City shall provide reasonable written notice to Comcast prior to taking such action and shall provide Comcast with the opportunity to perform such action. Following written notice by the City, Comcast shall remove, replace, relocate, modify or disconnect any of its facilities or equipment within any Rights-of-Way, or on any other property of the City, except that the City shall provide at least ninety (90) days' written notice of any major capital improvement project that would require the removal, relocation, replacement, modification or disconnection of Comcast's facilities or equipment. If Comcast fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to Comcast. Comcast shall remit payment to City within thirty (30) days of receipt of an itemized list of those costs.

9.7 Movement for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance written notice, Comcast shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The cost of such temporary change must be paid by the permit holder, and Comcast may require the estimated payment in advance.

9.8 Rights-of-Way Vacation

If any Rights-of-Way or portion thereof used by Comcast is vacated by the City during the term of this Franchise, unless the City specifically reserves to Comcast the right to continue the use of vacated Rights-of-Way, Comcast shall, without delay or expense to City, remove its facilities from such Rights-of-Way, and restore, repair or reconstruct the Rights-of-Way where such removal has occurred. In the event of failure, neglect or refusal of Comcast, after ninety (90) days' written notice by City, to restore, repair or reconstruct such Rights-of-Way, the City may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the City, shall be

paid by Comcast within thirty (30) days of receipt of an invoice and documentation.

9.9 Removal of Discontinued Facilities

Whenever Comcast intends to discontinue using any facility within the Rights-of-Way, Comcast shall submit to the City a complete description of the facility and the date on which Comcast intends to discontinue using the facility. Comcast may remove the facility or request that the City allow it to remain in place. Notwithstanding Comcast's request that any such facility remain in place, the City may require Comcast to remove the facility from the Rights of Way or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest. The City may require Comcast to perform a combination of modification and removal of the facility. Comcast shall complete such removal or modification in accordance with a schedule set by City. Until such time as Comcast removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Comcast shall be responsible for the facility, as well as maintenance of the Rights-of-Way, in the same manner and degree as if the facility were in active use, and Comcast shall retain all liability for such facility. If Comcast abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access Channel purposes.

9.10 Hazardous Substances

Comcast shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances within the Rights-of-Way.

Upon reasonable written notice to Comcast, the City may inspect Comcast's facilities in Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Comcast's Cable System. In removing or modifying Comcast's facilities as provided in this Franchise, Comcast shall also remove all residue of hazardous substances related thereto.

9.11 Undergrounding of Cable

Wiring. Where electric and telephone utility wiring is installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines, wiring and equipment shall also be placed underground with other wireline service at no expense to the City. Related Cable System equipment, such as pedestals, must be placed in accordance with applicable City Code requirements and rules. In areas where electric or telephone utility wiring are aerial, Comcast may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

Comcast shall utilize existing poles and conduit wherever possible.

This Franchise does not grant, give or convey to Comcast the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person.

Comcast and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit in trenches or bores opened by Comcast. Therefore, if Comcast further upgrades its Cable System, Comcast shall use commercially reasonable efforts to submit these plans to the City in accordance with the City's permitting process so that such opportunities may be explored. However, nothing set forth herein shall obligate Comcast to slow the progress of any future upgrade of the Cable System to accommodate the City. In addition, Comcast agrees to cooperate with the City in any other construction by Comcast that involves trenching or boring. If sufficient space is reasonably available, Comcast shall allow the City to lay its cable, conduit in Comcast's trenches and bores, provided the City shares in the cost of the trenching and boring on the same terms and conditions as Comcast at that time shares the total cost of trenches and bores. The City shall be responsible for maintaining its respective cable, conduit buried in Comcast's trenches and bores under this paragraph.

The City shall not be required to obtain easements for Comcast.

Comcast may participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where all utilities are being converted to underground facilities.

9.12 Codes

Comcast shall strictly adhere to all building and zoning codes in effect at the time of construction. Comcast shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference, the City may require the removal or relocation of Comcast's lines, cables and other appurtenances from the property in question.

9.13 Construction and Use of Poles

Whenever feasible, Comcast shall use existing poles when the installation of facilities above-ground is permitted. In the event Comcast cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Comcast to make all needed excavations in the streets for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any other facility needed for the maintenance or extension of Comcast's Cable System.

9.14 Tree Trimming

Upon obtaining a written permit from City, if such a permit is required, Comcast may prune or cause to be pruned, using proper pruning practices in accordance with such permit, any tree in the Rights-of-Way that interferes with the Cable System.

9.15 Standards

Comcast must comply with all federal, State, and local safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction,

operation and repair of its Cable System. By way of illustration and not limitation, Comcast must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

All installations of equipment shall be permanent in nature, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic.

9.16 Stop Work

On written notice from the City that any work is being conducted contrary to the provisions of this Franchise, or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by the City. The stop work order shall:

Be in writing;

Be given to the Person doing the work, or posted on the work site;

Be sent to Comcast by mail at the address given herein;

Indicate in reasonable detail the nature of the alleged violation or unsafe condition; and

Establish conditions under which work may be resumed.

9.17 Work of Contractors and Subcontractors

Comcast's contractors and subcontractors shall be bonded in accordance with local ordinances, regulations and requirements. Work by contractors and subcontractors shall be subject to the same restrictions, limitations and conditions as if the work were performed by Comcast. Comcast shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages caused by them. It is Comcast's responsibility to ensure that contractors, subcontractors or other persons performing work on Comcast's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

9.18 GIS Mapping

Comcast shall upon thirty (30) days written request, provide paper copies of Comcast's route maps in a GIS format to the City.

SECTION 10. CABLE SYSTEM DESIGN

Comcast agrees to maintain the Cable System in a manner that meets or exceeds FCC technical quality standards regardless of a particular manner in which the signal is transmitted throughout the term of the Franchise.

Equipment must be installed so that all closed captioned programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards.

Comcast's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

Comcast acknowledges that the minimum Cable System design and performance requirements set forth in this Franchise are enforceable, to the extent allowed by law.

SECTION 11. TECHNICAL STANDARDS

The technical performance of the Cable System shall meet or exceed all applicable technical standards authorized or required by law, including, FCC technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

SECTION 12. SERVICE EXTENSION

Comcast may provide Cable Service in the entire Franchise Area, except that it is not required to furnish Cable Service to those areas being served by another franchise holder. In those parts of the Franchise Area which are adjacent to an un-served part, the franchise holder with the nearest trunk and/or distribution line will be responsible to furnish Cable Service subject to the conditions of this Franchise.

In general, except as otherwise provided herein, Comcast shall provide a standard aerial installation of Cable Service within seven (7) days of a request by any Person within its Franchise Area. For standard underground installations scheduling shall be done within seven (7) days of a request for service. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Comcast, receipt of a written request by Comcast or receipt by Comcast of a verified verbal request. Comcast shall provide such service:

With no line extension charge except as specifically authorized elsewhere in this Franchise.

At a non-discriminatory installation charge for a Standard Installation, consisting of a one hundred twenty-five (125) foot aerial drop or sixty (60) foot underground drop connecting to the exterior demarcation point for Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations.

At non-discriminatory monthly rates for all Subscribers, excepting commercial Customers, MDU Bulk Customers and other lawful exceptions to uniform pricing.

No Customer shall be refused service arbitrarily. However, for non-Standard Installations of service to Customers, or a density of less than twenty five (25) residences per 5280 aerial cable-

bearing strand feet of trunk or distribution cable, or sixty (60) residences per 5280 underground trench feet of trunk or distribution cable, Cable Service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. Comcast may require that the payment of the capital contribution in aid of construction be borne by such potential Customers be paid in advance.

Comcast shall provide Cable Service to Multiple Dwelling Units in accordance with an agreement with the property owner or owners, this Franchise and all applicable laws.

SECTION 13. STANDBY POWER AND EAS

13.1 Standby Power

Comcast shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Comcast shall maintain standby power supplies that will supply back-up power of at least two (2) hours duration throughout the distribution networks, and four (4) hours duration at all nodes and hubs. In addition, throughout the term of this Franchise, Comcast shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request therefore.

13.2 Emergency Alert Capability

In accordance with, and at the time required by, the provisions of FCC Regulations or other federal or state requirements, as such provisions may from time to time be amended, Emergency Alert System (“EAS”) implementation will be accomplished in compliance with the Washington State EAS Plan and to be in compliance with or further Homeland Security requirements or applications.

Comcast shall ensure that the EAS is functioning properly at all times in accordance with FCC regulations.

SECTION 14. FRANCHISE BREACHES; TERMINATION OF FRANCHISE

14.1 Procedure for Remediating Franchise Violations

If the City believes that Comcast has failed to perform any material obligation under this Franchise or has failed to perform in a timely manner, City shall notify Comcast in writing, stating with documented specificity the nature of the alleged default. Comcast shall have thirty (30) days from the receipt of such written notice to:

Respond to the City, contesting the City’s assertion that a default has occurred, and requesting a hearing in accordance with subsection (B), below;

Cure the default; or

Notify the City that Comcast cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Comcast shall promptly take all reasonable steps to cure the default and notify City in writing and in detail as to the exact steps that will be taken and the projected completion date. Upon five (5) business days' prior written notice, either the City or Comcast may call an informal meeting to discuss the alleged default. In such case, if matters are not resolved at such meeting, the City may set a hearing in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Comcast's proposed completion schedule and steps are reasonable.

If Comcast does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a hearing in accordance with subsection (A)(1), or the City orders a hearing in accordance with subsection (A)(3), City shall set a public hearing to investigate said issues or the existence of the alleged default. City shall notify Comcast of the hearing in writing and such hearing shall take place no fewer than seven (7) days after Comcast's receipt of written notice of the hearing. At the hearing, Comcast shall be provided an opportunity to be heard, to present and question witnesses, and to present evidence in its defense. At any such hearing, the City shall not unreasonably limit Comcast's opportunity to make a record that may be reviewed should any final decision of the City be appealed to a court of competent jurisdiction. The determination as to whether a default or a material breach of this Franchise has occurred shall be within the City's sole reasonable discretion, but any such determination shall be subject to appeal to a court of competent jurisdiction.

If, after the public hearing, the City determines that a default still exists, the City shall order Comcast to correct or remedy the default or breach within fourteen (14) days of the City's written notification or within such other reasonable timeframe as the City shall determine. In the event Comcast does not cure within such time to City's reasonable satisfaction, City may:

Assess and collect monetary damages in accordance with this Franchise; and
Terminate this Franchise; and

Pursue any other legal or equitable remedy available under this Franchise or applicable law.

The determination as to whether a violation of this Franchise has occurred pursuant to this Section herein shall be within the sole discretion of the City or its designee. Any such determination by City shall be accompanied by a record, to which Comcast's contribution shall not be limited by City (i.e., City shall hear any interested Persons and shall allow Comcast an opportunity to be heard, to cross examine witnesses, to present evidence and to make additions to the hearing record). Any such final determination shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be taken within thirty (30) days of the issuance of the determination of the City. City shall receive notice from Comcast of any appeal concurrent with any filing to a court of competent jurisdiction.

14.2 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of either party to seek or obtain

judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement of obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the City, its officers, officials, Boards, boards, commissions, agents, or employees under federal, State, or local law including by example Section 635A of the Cable Act. Comcast shall not have any monetary recourse against the City, or its officers, officials, Council, Boards, commissions, authorized agents or employees for any loss, costs, expenses or damages arising out of any provision, requirement of this Franchise or the enforcement thereof, subject to applicable law.

14.3 Assessment of Liquidated Damages and Letter of Credit

Subject to Section 5.3(b):

Comcast shall deliver to the City an irrevocable and unconditional Letter of Credit, in a form and substance acceptable to the City, from a National or State bank subject to reasonable approval by the City, in the amount of twenty-five thousand dollars (\$25,000.00).

The Letter of Credit shall provide that funds will be paid to the City and in an amount for liquidated damages charged pursuant to this Section, in payment for any monies owed by Comcast to the City or any Person as a result of any material acts or material omissions by Comcast pursuant to this Franchise or a pattern of repeated violations of any provisions of this Franchise.

In addition to the recovery of any monies owed by Comcast to the City or any Person or damages to the City or any Person as a result of any material acts or material omissions by Comcast pursuant to the Franchise; the City in its sole discretion may, after written notice and opportunity to cure as provided in Section 16.1, charge to and collect from the Letter of Credit the following liquidated damages.

For failure to provide data, documents, reports or information or to cooperate with the City during an application process or Cable System review or as otherwise provided herein, the Liquidated Damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.

For failure of Comcast to comply with construction, operation or maintenance standards or the provision of the scrambled Channel as provided in Section 12.1, the Liquidated Damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.

For Comcast's breach of any written contract or agreement with or to the City, the Liquidated Damages shall be \$150.00 per day for each day, or part thereof, such breach occurs or continues.

For failure to comply with any of the provisions of this Franchise or Customer service standards, or other City ordinance for which a liquidated damages is not otherwise specifically provided pursuant to this paragraph (C), the liquidated damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.

Each violation of any material provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed. Any liquidated damages for any given violation shall be imposed upon Comcast for a maximum of 90 days.

If any subsequent Letter of Credit delivered pursuant thereto expires prior to twelve (12) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than twelve (12) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in paragraph (A) of this Section.

The City and Comcast recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of Comcast's breach of this Franchise. Accordingly, instead of requiring such proof, the City and Comcast agree that Comcast shall pay to the City the sums set forth above for each day that Comcast shall be in breach of the specific provisions of this Franchise. Such amounts are agreed by both parties to be a reasonable estimate of the actual damages the City would suffer in the event of Comcast's breach of such provisions of this Franchise.

The bond(s) and Letter of Credit referred to in Section 5.3 (A) and (B) may be drawn upon by the City for breach of a material provision after written notice and opportunity to cure.

The City shall give Comcast written notice of any intent to withdraw under this subsection. Within seven (7) days following receipt of such written notice, Comcast shall restore the bond(s) and Letter of Credit to the amount required under this Franchise. Comcast's maintenance of the bond(s) and Letter of Credit shall not be construed to excuse unfaithful performance by Comcast or to limit the liability of Comcast to the amount of the bond(s) and Letter of Credit or otherwise to limit the City's recourse to any other remedy available at law or in equity.

Comcast shall have the right to appear to the City Council for reimbursement in the event Comcast believes that a bond or Letter of Credit was drawn upon improperly. Comcast shall also have the rights of judicial appeal if Comcast believes a bond or letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the bond(s) or Letter of Credit shall be returned to Comcast with interest from the date of withdrawal.

The assessment of liquidated damages does not constitute a waiver by the City of any other right or remedy it may have under the Franchise or applicable law, including its right to recover from Comcast any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise.

Comcast's maintenance of the security required herein or by applicable code shall not be construed to excuse unfaithful performance by Comcast of this Franchise; to limit liability of Comcast to the amount of the security; or to otherwise limit the City's recourse to any other remedy available at law.

14.4 Revocation

This Franchise may be revoked and all rights and privileges rescinded if a material breach of the Franchise is not cured pursuant to Section 16.1, or in the event that:

Comcast attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers;

Comcast makes a material misrepresentation of fact in the negotiation of this Franchise;

Comcast fails to maintain the required Customer service location within the City limits as provided in this Franchise in accordance with Section 6.3;

Comcast abandons the Cable System, or terminates the Cable System's operations;

Comcast fails to restore service to the Cable System after three consecutive days of an outage or interruption in service; except in the case of an emergency or during a force majeure occurrence, or when approval of such outage or interruption is obtained from the City, it being the intent that there shall be continuous operation of the Cable System); or

Comcast becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, there is an assignment for the benefit of Comcast's creditors, or all or part of Comcast's Cable System is sold under an instrument to secure a debt and is not redeemed by Comcast within thirty (30) days from said sale.

Additionally, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Comcast (at the option of the City and subject to applicable law) whether in receivership, reorganization, bankruptcy or other action or proceeding, unless directed otherwise by a court of competent jurisdiction.

If there is a foreclosure or other involuntary sale of the whole or any material part of the plant, property and equipment of Comcast, the City may serve written notice of revocation on Comcast and to the purchaser at the sale, and the rights and privileges of Comcast under this Franchise shall be revoked thirty (30) days after service of such written notice, unless:

City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and, the purchaser has covenanted and agreed with City to assume and be bound by all of the terms and provisions of this Franchise.

14.5 Acquisition of the Cable System

The City and Comcast shall be subject to the provisions of Section 627 of the Cable Act as amended

from time to time. Any provision of this Agreement that purports to diminish the rights of either the City or Comcast under Section 627 of the Act shall be deemed superseded by the Act.

SECTION 15. FRANCHISE TRANSFER

The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council, acting by ordinance or resolution.

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

The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer or change in control and shall furnish all information required by law.

In seeking the City's consent to any change in ownership or control, the proposed transferee or controlling entity shall indicate whether it:

Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a Cable System;

Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee or controlling entity, along with any other data that is lawfully required; and

Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

The City shall act by ordinance or resolution on the request within one hundred twenty (120) days of receipt of the FCC Form 394 application, provided it has received a complete application. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

Within thirty (30) days of any transfer or sale or change in control, if approved or deemed granted by the City, Comcast shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Comcast and the transferee or controlling entity, and the transferee or controlling entity shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which Comcast is not replaced by another entity, Comcast will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and will not be required to file an additional written acceptance. The approval of any change in control shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise. For purposes herein to the extent that a change of control involves an entity that was not an Affiliate prior to the contemplated transaction, the City's consent shall be required for such change in control.

In reviewing a request for sale or transfer or change in control, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Comcast shall assist the City in so inquiring. The City may condition said sale or transfer or change in control upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Comcast.

Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an intra-company entity controlling, controlled by or under the same common control as Comcast, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise. Further, Comcast may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Comcast's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 16. PROHIBITED PRACTICES, LOCAL EMPLOYMENT EFFORTS AND NOTICES

16.1 Preferential or Discriminatory Practices Prohibited

Comcast shall not discriminate in hiring, employment or promotion on the basis of race, color, ethnic or national origin, religion, age, sex, marital status, sexual orientation, or physical or mental disability. Throughout the term of this Franchise, Comcast shall fully comply with all equal employment and non-discrimination provisions and requirements of federal, State and local laws, and rules and regulations relating thereto.

16.2 Notices

Throughout the term of this Franchise, each party shall maintain and file with the other a local

address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:

Comcast's address shall be:
Comcast Cable Communications Management, LLC
410 Valley Ave. NW, Suite 9
Puyallup, WA 98371
Attn: Franchise Department

with copy to:

Comcast Cable Communications Management, LLC.
15815 25th Avenue West
Lynnwood, WA 98087
Attention: Government Affairs Department

City's address shall be:
City of Shelton
525 West Cota Street
Shelton, WA 98584 Attention: CityManager

SECTION 17. MISCELLANEOUS PROVISIONS

17.1 Cumulative Rights

Subject to applicable law, all rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

17.2 Costs to be Borne by Comcast

Comcast shall pay for all reasonable costs of publication of this Franchise, and any and all notices prior to any public meeting or hearing provided for pursuant to this Franchise.

17.3 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

17.4 Authority to Amend

This Franchise may be amended at any time by Ordinance once a written agreement between the parties is reached.

17.5 Venue

The venue for any dispute related to this Franchise shall be Mason County, Superior Court or the United States District Court for the Western District of Washington.

17.6 Governing Laws

This Franchise shall be governed, construed and enforced in accordance with the laws of the State of Washington (as amended), the Cable Act as amended, any applicable rules, regulations and orders of the FCC, as amended, and any other applicable local, State and federal laws, rules, and regulations, as amended. Except as provided in Section 2.4(C) or otherwise in this Franchise, Shelton Municipal Code Chapter 5.44 is superseded.

17.7 Captions

The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

17.8 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

17.9 Waiver

The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

17.10 Severability

If any section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

17.11 Compliance with Federal, State, and Local Laws

Comcast shall comply with applicable federal, state and local laws, now existing or hereafter adopted.

17.12 Force Majeure

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

17.13 Entire Agreement

This Franchise and Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties.

17.14 Attorneys' Fees

If any action or suit arises in connection with this Franchise, either the City or Comcast, the parties shall bear their own costs of suit, including attorney fees.

17.15 Action of the City or Comcast

In any action by the City or Comcast mandated or permitted under the terms hereof, it shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

17.16 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Comcast, such time shall be deemed to be of the essence, and any failure of Comcast to perform within the allotted time may be considered a breach of this Franchise.

17.17 Acceptance

Within sixty (60) days of receipt of the Franchise after its execution by the City, this Franchise shall be accepted by Comcast by filing with the Clerk of the Board of City Commissioners an unconditional, written acceptance of all of the terms, provisions and conditions of this Franchise, along with all required evidence of insurance coverage and bonds. The failure of Comcast to file such an acceptance shall be deemed a rejection by Comcast and this Franchise shall then be voidable at the discretion of the City.

PASSED, adopted and effective this ___ day of _____, 2020, subject to applicable federal, state and local law.

CITY OF SHELTON

By: _____
Mayor

Approved as to Form:

City Attorney

Attest:

City Clerk

ACCEPTED this ____ day of _____, 2020, subject to applicable federal, state and local law.

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC.

By: _____

ATTACHMENT B

FRANCHISE AGREEMENT BETWEEN THE CITY OF SHELTON, WASHINGTON AND HOOD CANAL COMMUNICATIONS

This Cable Television Franchise is entered into in Shelton, Washington, this ____ day of 2020, by and between the City of Shelton, Washington, a municipal corporation, hereinafter (“City”) and Hood Canal Communications (“HCC”). The City and HCC are sometimes referred to hereinafter collectively as the “parties.”

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SECTION 1. DEFINITIONS

For the purposes of this Franchise and all Exhibits attached hereto the following terms, phrases, words, and their derivations shall have the meanings given herein when indicated with the text of the Franchise by being capitalized. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined, or those defined, but not capitalized within the text shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely directory.

1.1 “Affiliated Entity” or “Affiliate” when used in connection with HCC means any Person who owns or controls, is owned or controlled by, or is under common ownership or control of HCC.

1.2 “Bad Debt” means amounts lawfully owed by a Subscriber and accrued as revenues on the books of HCC, but not collected after reasonable efforts by HCC.

1.3 “Basic Service” means any Cable Service Tier that includes, at a minimum, the retransmission of local television Broadcast Signals.

1.4 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System off-the-air by antenna, microwave, satellite dishes, or any other means.

1.5 “Cable Act” means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and as amended by the Telecommunications Act of 1996, and any amendments thereto.

1.6 “Cable Operator” means any Person or group of Persons, including HCC, who provide(s) Cable Service over the Cable System and directly or through one or more Affiliates own(s) a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for,

through any arrangement, the management and operation of the Cable System.

1.7 “Cable Service” means the one-way transmission to Subscribers of Video Programming, or other programming service and Subscriber interaction, if any, that is required for the selection or use of such Video Programming or other programming service.

1.8 “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. Section 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. Section 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Cable Act; or (5) any facilities of any electric utility used solely for operating its electric utility systems. When used herein, the term “Cable System” shall mean HCC’s Cable System in the Franchise Area, unless the context indicates otherwise.

1.9 “Channel” means a portion of the frequency band capable of carrying a Video Programming Service or combination of Video Programming Services, whether by analog or digital signal, on a twenty-four (24) hour per day basis or a portion thereof.

1.10 “City” means City of Shelton, Washington, a municipal corporation, of the State of Washington.

1.11 “Dwelling Unit” means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy.

1.12 “FCC” means the Federal Communications Commission or its lawful successor.

1.13 “Franchise” means the document in which this definition appears, that is executed between City and HCC, containing the specific provisions of the authorization granted and the contractual and regulatory agreement created hereby.

1.14 “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by City during the term of this Franchise.

1.15 “Franchise Fee” includes fees and assessments up to 5% of Gross Revenues imposed by the City on HCC or Subscribers, or both, solely because of their status as such. The term Franchise Fee does not include:

Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment on

both utilities and Cable Operators or their services;

Requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or

Any fee imposed under Title 17, United States Code.

1.16 “HCC” means Hood Canal Communications, its lawful successors, transferees, or assignees.

1.17 “Gross Revenues” means, and shall be construed broadly to include, all revenues derived directly or indirectly by HCC and/or an Affiliated Entity that is the Cable Operator of the Cable System from the operation of HCC’s Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade, or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to HCC for channels designated for commercial/leased access use, which shall be allocated on a pro rata basis using total Cable Service subscribers within the City;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees, and administrative fees, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees;
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to HCC’s Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, HCC agrees that Gross Revenues subject to Franchise Fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications and HCC Effectv or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual Bad Debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- any taxes on services furnished by HCC which are imposed directly on any Subscriber or user by the State, City, or other governmental unit, and which are collected by HCC on behalf of said governmental unit; and
- unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by HCC for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, HCC shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state, or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which HCC derives revenues in the City. The City reserves its right to review and to challenge HCC’s calculations.

(D) HCC reserves the right to change the allocation methodologies set forth in this Section in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). HCC will explain and document the required changes to the City as part of any audit or review of Franchise Fee payments, and any such changes shall be subject to subsection (E) below. If new Cable Service revenue streams develop from HCC’s operation of its Cable System within the City, those new revenue streams shall be included within Gross Revenues, unless the parties agree otherwise.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the parties, but should no resolution be reached, the parties agree that reference shall be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the FASB, EITF and/or the SEC. Notwithstanding the forgoing, the City reserves

its right to challenge HCC's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.18 "Headend" or "Hub" means any facility for signal reception and dissemination on a Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, and all other related equipment and Facilities.

1.19 "Leased Access Channel" means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.

1.20 "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve Customers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some hours on Saturday.

1.21 "Normal Operating Conditions" means those service conditions that are within the control of HCC. Those conditions that are not within the control of HCC include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, severe or unusual weather conditions, and availability of materials, equipment or labor. Those conditions that are ordinarily within the control of HCC include, but are not limited to, regular peak or seasonal demand periods and routine maintenance or upgrade of the Cable System.

1.22 "Person" means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.

1.23 "Rights-of-Way" means land acquired for or dedicated to the public or hereafter acquired or dedicated to the public and maintained under public authority, including but not limited to public streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks, and areas behind sidewalks, easements, and similar public property, located within the Franchise Area.

1.24 "State" means the State of Washington.

1.25 "Subscriber" or "Customer" means any Person who lawfully receives Cable Services provided by HCC by means of the Cable System with HCC's express permission. Said permission may be withdrawn and customer disconnected by HCC at HCC's discretion.

1.26 "Tier" means a category of Cable Services provided by HCC for which a separate rate is charged.

1.27 "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, or cable programming provider.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

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

HCC, through this Franchise, is granted the right to operate its Cable System using the Rights-of-Way within the Franchise Area in compliance with the City Right of Way Standards, as amended and all lawfully enacted applicable construction codes and regulations. HCC specifically agrees to comply with the provisions of City ordinances provided that in the event of a conflict between the provisions of ordinances and this Franchise, the express provisions of the Franchise shall govern. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to any ordinance, rule, regulation, resolution, or other enactment of City, except in the lawful exercise of City's police powers.

This Franchise shall not be interpreted to prevent the City from imposing other conditions, to the extent permitted by law.

HCC agrees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of HCC that is a Cable Operator of the Cable System in the Franchise Area, as defined herein, or directly involved in the management or operation of the Cable System in the Franchise Area, will comply with the terms and conditions of this Franchise.

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

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

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

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

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

2.2 Use of Rights-of-Way

HCC may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon,

across, through, below, and along the Rights-of-Way within the Franchise Area, such wires, cables, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment, as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. HCC shall comply with all lawfully enacted and applicable construction codes, laws, ordinances, regulations, and procedures regarding placement and installation of Cable System facilities in the Rights-of-Way.

HCC must follow City-established requirements, including all City codes, ordinances, and other regulations regarding placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way. HCC must in any event install Cable System facilities in a manner that reasonably minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. To protect public health, safety, and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to particular Rights-of-Way; may deny access if HCC is not willing to comply with City's reasonable requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by City, or that is installed without prior City approval of the time, place, or manner of installation and charge HCC for all costs associated with removal; and City may ask HCC to cooperate with others to reasonably minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements. HCC shall assume its private costs (in accordance with applicable law) associated with any requirement of City in the exercise of its police powers, to relocate its Cable System facilities located in the Rights-of-Way.

2.3 Term

This Franchise shall have a term of ten (10) years, from the effective date specified in Section 2.4.

2.4 Effective Date

This Franchise and the rights, privileges, and authority granted hereunder, and the contractual relationship established hereby shall take effect and be in force from and after the effective date of this Franchise as specified in this Section and for the duration of the term as specified in Section 2.3.

The effective date of this Franchise shall be five business days after its adoption by the City Council and publication of the ordinance.

The grant of this Franchise shall have no effect on any ordinance in effect prior to the effective date of this Franchise to indemnify or insure the City against acts and omissions occurring during the period that the prior Franchise was in effect, nor shall it have any effect upon liability to pay all Franchise Fees (for any prior years) that were due and owed under a prior franchise and the franchise ordinance.

2.5 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or

franchises granted by City or its predecessors to any Person, to use any property, Right-of-Way, and easement, including the right of City to use same for any purpose it lawfully deems but not incompatible with HCC's rights granted under this Franchise, including the same or similar purposes allowed HCC hereunder. City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with HCC's authority under this Franchise and for such additional franchises for cable systems, as City deems appropriate.

2.6 Grant of Other Franchises

HCC acknowledges and agrees that the City reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, the City agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of HCC's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include but are not limited to: Franchise Fees; insurance; system build-out requirements; security instruments; education and government Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word-for-word identical franchise or authorization so long as the regulatory and financial burden on each franchisee is materially equivalent. If any such additional or competitive franchise is granted by City which, in the reasonable opinion of HCC, contains more favorable or less burdensome terms or conditions than this Franchise, City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by City and HCC.

In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall provide notice of such application.

In the event that a wireline multichannel Video Programming distributor provides video service to the residents of the City under the authority granted by federal or State legislation or other regulatory entity, HCC shall have a right to request Franchise amendments that relieve HCC of regulatory burdens that create a competitive disadvantage to HCC. In requesting amendments, HCC shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the basis for HCC's belief that certain provisions of the Franchise place HCC at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. City shall not unreasonably withhold consent to HCC's petition.

2.7 Familiarity with Franchise

HCC acknowledges and warrants by acceptance of the rights, privileges, and agreement granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions, terms and conditions herein. HCC further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time and consistent with all local, State, and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, HCC: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the City's intervening to the extent it is legally entitled to do so in any legal or regulatory proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.9 Police Powers

HCC's rights hereunder are subject to the police powers of City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and HCC agrees to comply with all generally applicable laws, ordinances, and regulations lawfully enacted pursuant to the police powers of City, or hereafter, enacted in accordance therewith, by City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City reserves the right to exercise its police powers, notwithstanding anything in this Franchise to the contrary.

2.10 Franchise Area

HCC shall provide Cable Services, as authorized under this Franchise, within the Franchise Area in accordance with line extension and density provisions as provided herein.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the use of City's Rights-of-Way, HCC shall pay as a Franchise Fee to City, throughout the duration of this Franchise, an amount equal to five percent (5%) of HCC's Gross Revenues. Accrual of such Franchise Fee shall commence as of the effective date of this Franchise.

3.2 Payments

HCC's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

3.3 Acceptance of Payment

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of HCC. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by HCC was due or such shorter period of, if

so provided by law.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to City on a form commonly used by HCC, verified by an officer of HCC, containing an accurate statement in summarized form, of HCC's Gross Revenues and the computation of the payment amount. Such reports shall include all Gross Revenues of the Cable System.

3.5 Audits

On an annual basis, upon thirty (30) days' prior written notice, City shall have the right to conduct an independent audit on a non-contingent fee basis of HCC's financial records necessary to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. Provided HCC cooperates in making all relevant records available upon request (subject to the execution and delivery of an appropriate confidentiality agreement), City will in good faith attempt to complete each audit within six (6) months, and the review period shall not be any greater than the previous three (3) years or such shorter period of time if so provided by law unless the City has information relating to previous years beyond the three (3) years which, in its reasonable judgment, raises doubt as to the accuracy of payments made under this or previous franchises, in which case an additional three (3) years may be audited. Any additional amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to HCC, and HCC's agreement that the audit findings are correct, which written notice shall include a copy of the audit findings. If a Franchise Fee underpayment is discovered as the result of an audit, HCC shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law calculated from the date the underpayment was originally due until the date the City receives the payment. If the audit shows that Franchise Fees have been underpaid by five percent (5%) or more during the period of time audited, HCC shall pay the cost of the audit in an amount up to \$7,500 per reviewed year.

3.6 Financial Records

HCC agrees to meet with a representative of the City upon request to review HCC's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records that are relevant to the enforcement of this Franchise.

3.7 Interest on Late Payments

In the event any payment is not received within forty-five (45) days from the end of the scheduled payment period, HCC shall pay, in addition to the payment or sum due, interest from the due date at the prime rate as listed in the Wall Street Journal on the date the payment was due, until the date the City receives the payment.

3.8 Maximum Franchise Fee

The parties acknowledge that, at present, applicable federal law limits the City to collection of a Franchise Fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that at any time throughout the term of this Franchise, City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues in any twelve (12) month period, the parties hereby agree to amend the Franchise after written notice to HCC, and a public meeting to discuss the same, provided that all wireline cable systems in the Franchise Area over which the City has jurisdiction are treated in an equivalent manner. In the event that at any time throughout the term of this Franchise, City is limited by federal law to collecting an amount which is less than five percent (5%) of Gross Revenues in any twelve (12) month period, HCC may reduce the Franchise Fee payments to the City in accordance with federal law, and the parties hereby agree to amend the Franchise unless the City would be covered under grandfathered provisions under federal law to keep the Franchise Fee at 5% of Gross Revenues.

3.9 Payment on Termination

If this Franchise terminates for any reason, HCC shall file with the City within one hundred twenty (120) calendar days of the date of the termination a financial statement, certified by an Officer of HCC, showing the Gross Revenues received by HCC since the end of the previous fiscal year. Within forty-five (45) days of the filing of the certified statement with the City, HCC shall pay any unpaid amounts as indicated. If HCC fails to satisfy its remaining financial obligations as required in this Franchise, the City may do so by utilizing the funds available in a Letter of Credit or other security provided by HCC.

3.10 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State, or the United States, including, without limitation, sales, use, utility and other taxes, or business license fees.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Rates and Charges

Before any new or modified rate, fee, or charge is imposed, HCC shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

4.2 No Rate Discrimination

All HCC rates and charges shall be published (in the form of a publicly available rate card), made available to the public, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances and conditions, subject to applicable law. HCC shall apply its rates in accordance with governing law. Nothing herein shall be construed to require or prohibit:

The temporary reduction or waiving of rates or charges in conjunction with promotional campaigns;

The offering of reasonable discounts to similarly situated Persons;

The offering of rate discounts for either Cable Service generally; or

The offering of bulk discounts for Multiple Dwelling Units.

4.3 Filing of Rates and Charges

Throughout the term of this Franchise, HCC shall maintain on file with the City (which may be accomplished by providing the City with a current website address or URL) a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require HCC to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

On written request of the City, HCC shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by HCC. The schedule shall include a description of the price, terms and conditions established by HCC for Leased Access Channels.

4.4 Performance Evaluation

Special evaluation sessions may be held at any time upon written request by City during the term of this Franchise following HCC's repeated failure to comply with the terms of this Franchise.

All evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the Franchise Area.

Topics that may be discussed at any evaluation session may include those issues surrounding HCC's alleged failure to comply with the terms of the Franchise, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision therein and further provided that this subsection need not be followed before other legal or equitable remedies within this Franchise.

4.5 Leased Access Channel Rates

Upon bona fide written request pursuant to FCC regulations, CFR 76.970, HCC shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by HCC.

4.6 Late Fees

For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that HCC imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with applicable local, state and federal laws.

HCC's late fee and disconnection policies and practices shall be nondiscriminatory, and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the neighborhood or income level of the Subscribers.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

General Indemnification. HCC, at its sole cost and expense, shall indemnify, defend, and hold the City, its officers, officials, boards, commissions, authorized agents, representatives, and employees, harmless from any action or claim for injury, damage, loss, liability, settlement, proceeding, judgment, or cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, erection, operation, maintenance, repair, or reconstruction, or any other act done under this Franchise, by or for HCC, its authorized agents or subcontractors, or by reason of any neglect or omission of HCC, its authorized agents, or its employees.

Indemnification for Relocation. Subject to applicable law, HCC shall indemnify the City for any damages, payable by the City related to, arising solely out of or resulting solely from HCC's failure to properly install, remove, adjust, or relocate any of its facilities in the Rights-of-Way, in accordance with any lawful relocation required by City under this Franchise. It is further specifically and expressly understood that the indemnification provided in this section constitutes HCC's waiver of immunity under industrial insurance and Title 51 RCW solely for the purposes of this indemnification solely as to any City claim against HCC, and this waiver was mutually negotiated by the parties.

Concurrent Negligence. In the event that a particular activity conducted under this Franchise is subject to RCW 4.24.115, liability for damages arising out of bodily injury to persons, death, or damages to property caused by or resulting from the concurrent negligence of HCC and the City, HCC's liability shall be only to the extent of HCC's negligence.

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

Procedures and Defense. If a claim or action arises, City or any other indemnified party shall tender the defense of the claim or action to HCC, which defense shall be at HCC's expense. HCC shall consult and cooperate with the City while conducting its defense of the City. The City may participate in the defense of a claim and, in any event, HCC may not agree to any settlement of claims financially affecting the City without the City's written approval that shall not be

unreasonably withheld.

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

Duty to Give Notice. The City shall give HCC timely written notice of any claim or of the commencement of any action, suit, or other proceeding covered by the indemnity in this Section. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to HCC and HCC shall have the obligation and duty to defend any claims arising thereunder, and the City shall cooperate fully therein.

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

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

5.2 Insurance Requirements

HCC shall procure and maintain for the duration of the Agreement and as long as HCC has Facilities in the rights-of-way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Agreement and use of the rights-of-way.

A. No Limitation

HCC's maintenance of insurance as required by the Agreement shall not be construed to limit or otherwise alter the liability of HCC to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

B. Minimum Scope of Insurance

HCC shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be included as an additional insured under HCC's Commercial General Liability insurance policy with respect this Franchise Agreement using ISO endorsement CG 20 12 if the franchise agreement is considered a master permit, or CG 20 26 if it is not, or substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Excess or Umbrella Liability insurance shall be excess HCC's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on HCC's Excess or Umbrella Liability insurance policy.

C. Minimum Amounts of Insurance

HCC shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.
2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.
3. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through HCC's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

D. Other Insurance Provisions

HCC's Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City with respect to losses for which HCC is responsible hereunder. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of HCC's insurance and shall not contribute with it with respect to such losses.

E. Acceptability of Insurers

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

F. Verification of Coverage

HCC shall furnish the City with certificates evidencing the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, and evidencing the insurance requirements of the Agreement.

G. Subcontractors

HCC shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of HCC-provided insurance as set forth herein, except HCC shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. HCC shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 2026.

H. Notice of Cancellation

HCC shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance

Failure on the part of HCC to maintain the insurance as required shall constitute a material breach of Agreement, upon which the City may, after giving five business days notice to the HCC to correct the breach, terminate the Agreement.

5.3 Security

HCC shall provide a performance bond in the amount of twenty-five thousand dollars (\$25,000) to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its facilities and to restore City Rights-of-Way and other property. HCC may be required to obtain additional bonds, such as generally applicable construction bonds, in accordance with the City's ordinary practices. The construction bond and performance bond shall be in a standard industry form. HCC shall pay all premiums or costs associated with maintaining the bond(s), and shall keep the same in full force and effect at all times. Except as expressly provided herein, HCC shall not be required to obtain or maintain other bonds as a condition of being awarded the Franchise or continuing its existence.

If there is uncured breach (following written notice and a reasonable opportunity to cure, and in accordance with Section 14.3) by HCC of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may request and HCC shall establish and provide within thirty (30) days from receiving written notice from the City, to the City as security for the faithful performance by HCC of all of the provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the City in the amount of twenty-five thousand dollars (\$25,000).

After the giving of written notice by the City to HCC, and expiration of any applicable cure period (which shall be no less than 30 days), the letter of credit may be drawn upon by the City for purposes that include, but are not limited to the following:

Failure of HCC to pay the City sums due under the terms of this Franchise;

Reimbursement of costs borne by the City to correct Franchise violations not corrected by HCC; and

Liquidated damages assessed against HCC as provided in this Franchise.

The City shall give HCC written notice of any withdrawal under this subsection upon such withdrawal. Within ten (10) days following receipt of such written notice, HCC shall restore the letter of credit to the amount required under this Franchise. HCC's maintenance of the letter of credit shall not be construed to excuse unfaithful performance by HCC or limit the liability of HCC to the amount of the letter of credit or otherwise limit the City's recourse to any other remedy available at law or in equity.

HCC agrees to maintain continuous uninterrupted letter of credit and bonds in the amounts required for the duration of this Franchise or as otherwise specified in this Franchise.

HCC shall have the right to appeal to the City Council for reimbursement in the event HCC believes that the letter of credit was drawn upon improperly. After a determination by the City Council, HCC shall also have the right of judicial appeal if HCC believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to HCC with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

HCC shall provide its service under Normal Operating Conditions and shall comply with Customer Service Standards as provided in FCC Standards 47 C.F.R. Sections 76.309, 76.1602, 76.1603 and 76.1619. HCC shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Franchise, or the requirements of any applicable Customer Service Standards.

6.2 Subscriber Privacy

HCC shall comply with privacy rights of Subscribers in accordance with applicable law.

6.3 Customer Service Agreement and Manual

HCC shall provide to Subscribers an accurate, comprehensive service agreement (which may be available via HCC's website or in writing upon Subscriber request) and Customer installation packet (currently called the Install Package) for use in establishing Subscriber service. This material shall, at a minimum, contain the following:

HCC's procedure for investigation and resolution of Subscriber service complaints.

Services to be provided and rates for such services.

Billing procedures.

Service termination procedure.

A description of the manner that will be used to provide notice of changes in rates, service or service terms and conditions.

A complete statement of the Subscriber's right to privacy.

Equipment policy.

The name, address and phone number of the Customer care department that is responsible for

handling cable questions and complaints for HCC.

A copy of the installation packet shall be available to each Subscriber at the time of initial installation and any reconnection or Cable Service upgrade requiring a home visit by HCC (excluding reconnections to the same Subscriber within twelve (12) months), and at any time the packet is requested by the Subscriber. Within thirty (30) days following material policy changes, information regarding the changes will be provided to Subscribers.

SECTION 7. REPORTS AND RECORDS

7.1 Books and Records

Throughout the term of this Franchise Agreement, HCC agrees that the City, upon reasonable prior written notice to HCC, may review such of HCC's books and records reasonably necessary to determine compliance with the terms of this Franchise at HCC's business office, during Normal Business Hours, and without unreasonably interfering with HCC's business operations. Such books and records shall include any records required to be kept in a public file by HCC pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by HCC for a minimum period of six (6) years.

7.2 File for Public Inspection.

Throughout the term of this Franchise Agreement, HCC shall maintain at its business office, in a file available for public inspection during Normal Business Hours, those documents required pursuant to the FCC's rules and regulations.

7.3 Confidentiality

Notwithstanding anything to the contrary set forth in this Section, HCC shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. During any such audit the City shall be provided with all reasonable records and/or information to verify calculation of the City's Franchise Fees. The City agrees to treat any information disclosed by HCC as confidential, and specifically labeled as proprietary or confidential, and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information, unless compelled by law, and then, only on prior notice to HCC so that an injunction can be sought, if desired. HCC shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by HCC to be competitively sensitive. In the event that the City receives a public records request under Chapter 42.56 RCW for the disclosure of information HCC has designated as confidential, trade secret, or proprietary, the City shall notify HCC of such

request promptly and provide a copy of any written request by the party seeking the information and provide HCC with a minimum of ten (10) business days to seek a court order to enjoin that disclosure pursuant to Chapter 42.56.540 RCW. Notwithstanding the foregoing, nothing in this Section 7.5.3 prohibits the City from complying with Chapter 42.56 RCW, or any other applicable law or court order requiring the release of public records.

7.4 Records Required

HCC shall at all times maintain:

Access to a full and complete set of plans, records and “route” maps showing the location of all Cable System equipment installed or in use in the Rights-of-Way, that are generated in HCC’s normal course of business;

A copy of all FCC filings on behalf of HCC, its parent corporations or Affiliates that relate to the operation of the Cable System in the Franchise Area;

A list of HCC’s Cable Services, rates and Channel line-ups;

A compilation of written Subscriber complaints, actions taken and resolution, and log of service calls.

Financial records as referred to in Section 3.

7.5 Copies of Federal and State Reports

Upon written request, HCC shall submit to the City copies of any pleadings, applications, notifications, communications and documents of any kind, submitted by HCC or its Affiliates to any federal, State, or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of HCC’s Cable System within the Franchise Area. HCC shall submit such documents to the City no later than thirty (30) days after receipt of the City’s request. HCC shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all other reports, documents, and notifications provided to any federal, State, or local regulatory agency as a routine matter in the due course of operating HCC’s Cable System within the Franchise Area, HCC shall make such documents available to City upon City’s written request.

7.6 Complaint File and Reports

HCC shall keep an accurate and comprehensive compilation of any and all Customer complaints received and HCC’s actions in response to those complaints, in a manner consistent with the privacy rights of Subscribers. On written request by the City, HCC shall provide an executive summary report to the City on an annual basis within ninety (90) days of the end of each year that shall include the following information:

Nature and type of Customer written complaints;

Average response time for service calls;

Phone activity report;

A summary of the previous year's activities regarding the development of the Cable System, including, beginning and ending plant miles constructed, any technological changes occurring in the Cable System and the number of Subscribers for each class of Cable Service (i.e., Basic, Expanded Basic Service, premium, etc.);

Complaint and resolution of any individual Subscriber will be made available to the City upon written request.

7.7 False Statements

Any intentional false or misleading statement or representation in any report required by this Franchise shall be a material breach of this Franchise and may subject HCC to all remedies, legal or equitable, that are available to the City under this Franchise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

HCC shall provide at least the following initial broad categories of programming to the extent such categories are reasonably available:

Educational programming;

News, weather, and information;

General entertainment including movies;

Foreign language programming.

8.2 Deletion of Broad Programming Categories

HCC shall not delete or so limit as to effectively delete any broad category of programming within its control without prior written notice to the City.

In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by HCC shall follow the guidelines of Federal law.

8.3 Obscenity

HCC shall not transmit, or knowingly permit to be transmitted, over any Channel subject to its editorial control any programming which is obscene under applicable federal, State or local laws.

8.4 Services for the Disabled

HCC shall comply with the Americans With Disabilities Act and any amendments or successor legislation thereto.

8.5 Parental Control Device

Upon request by any Subscriber, HCC shall make available at no charge a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any Channels. HCC shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

SECTION 9. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

9.1 Construction

HCC shall perform all maintenance, construction, repair, upgrade and reconstruction necessary for the operation of its Cable System in accordance with applicable laws, regulations, ordinances, and provisions of this Franchise. To the extent practicable and economically feasible, HCC's construction and location of its facilities shall be of minimal impact to City streets and sidewalks located within the Rights-of-Way. All construction and maintenance of any and all of HCC's facilities within Rights-of-Way shall, regardless of who performs the construction, be and remain HCC's responsibility.

Prior to beginning any construction, HCC shall provide the City with a construction schedule for work in the Rights-of-Ways as required by the City's permitting regulations.

HCC may make excavations in Rights-of-Way for any facility needed for the maintenance or extension of HCC's Cable System. Prior to doing such work, HCC shall apply for, and obtain, appropriate permits from City, and give appropriate notices. HCC shall pay all applicable fees upon issuance of the requisite construction permits by the City. As a condition of any permits so issued, City officials may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, protection of the public and the continuity of pedestrian or vehicular traffic. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, HCC shall work with other providers, permittees and franchisees so as to reduce so far as possible the number of Rights-of-Way cuts within the Franchise Area.

In the event that emergency repairs are necessary, HCC may initiate such emergency repairs, and shall apply for appropriate permits within two business days after discovery of the emergency.

9.2 Location of Facilities

Within three (3) business days, unless otherwise specified in federal, State, or local regulations,

after the City or any franchisee or permittee of the City provides written notice to HCC of a proposed Right-of-Way excavation, HCC shall, at HCC's expense, mark on the surface all of its located underground facilities within the area of the proposed excavation;

9.3 Restoration of Rights-of-Way

When any opening is made by HCC in a hard surface pavement in any Rights-of-Way, HCC shall promptly refill the opening and restore the surface as required by its construction permit.

If HCC excavates the surface of any Rights-of-Way, HCC shall be responsible for restoration in accordance with City Public Works restoration standards. If the City determines that the restoration does not meet City Public Works standards, the City may, after providing written notice to HCC, and HCC's failure to respond within the agreed upon time, refill or repave any non-conforming opening made by HCC in the Rights-of-Way, and the expense thereof shall be paid by HCC. The City may, after providing written notice to HCC, and HCC's failure to respond within the agreed upon time, remove and repair any work done by HCC that, in the determination of the City, does not conform to City standards in the municipal code, public works standards, or other adopted standards. The cost thereof, including the costs of inspection and supervision shall be paid by HCC. All of HCC's work under this Franchise, and this Section in particular, shall be done in compliance with all laws, regulations and ordinances of the City and State.

9.4 Maintenance and Workmanship

HCC's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in Rights-of-Way by, or under, City's authority.

HCC shall provide and use any equipment and appliances necessary to control and carry HCC's signals so as to prevent injury to the City's property or property belonging to any Person. HCC, at its own expense, shall repair, renew, change and improve its facilities to keep them in a safe condition.

HCC's transmission and distribution Cable System, wires and appurtenances shall be located, erected, and maintained so as not to endanger or interfere with the lives of Persons, or to unnecessarily hinder or obstruct the free use of Rights-of-Way, or other public property.

HCC will maintain membership in good standing with the Utility Coordinating Board One Call Center, or other similar or successor organization designated to coordinate underground equipment locations and installations. HCC shall abide by Washington State's "Underground Utilities" statutes and will further comply with and adhere to procedures relating to the one call locator service program.

HCC shall give reasonable notice to private property owners of construction work in adjacent Rights-of-Way.

9.5 Acquisition of Facilities

Upon HCC's acquisition of facilities in any Rights-of-Way, or upon the addition or annexation to the City of any area in which HCC owns or operates any facility, such facilities shall immediately be subject to the terms of this Franchise.

9.6 Movement of Cable System For and By City

The City may remove or disconnect HCC's facilities and equipment located in the Rights-of-Way or on any other property of the City in the case of fire, disaster or other emergency. Except during an emergency, the City shall provide reasonable written notice to HCC prior to taking such action and shall provide HCC with the opportunity to perform such action. Following written notice by the City, HCC shall remove, replace, relocate, modify or disconnect any of its facilities or equipment within any Rights-of-Way, or on any other property of the City, except that the City shall provide at least ninety (90) days' written notice of any major capital improvement project that would require the removal, relocation, replacement, modification or disconnection of HCC's facilities or equipment. If HCC fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to HCC. HCC shall remit payment to City within thirty (30) days of receipt of an itemized list of those costs.

9.7 Movement for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance written notice, HCC shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The cost of such temporary change must be paid by the permit holder, and HCC may require the estimated payment in advance.

9.8 Rights-of-Way Vacation

If any Rights-of-Way or portion thereof used by HCC is vacated by the City during the term of this Franchise, unless the City specifically reserves to HCC the right to continue the use of vacated Rights-of-Way, HCC shall, without delay or expense to City, remove its facilities from such Rights-of-Way, and restore, repair or reconstruct the Rights-of-Way where such removal has occurred. In the event of failure, neglect or refusal of HCC, after ninety (90) days' written notice by City, to restore, repair or reconstruct such Rights-of-Way, the City may do such work or cause it to be done, and the reasonable cost thereof, as found and declared by the City, shall be paid by HCC within thirty (30) days of receipt of an invoice and documentation.

9.9 Removal of Discontinued Facilities

Whenever HCC intends to discontinue using any facility within the Rights-of-Way, HCC shall submit to the City a complete description of the facility and the date on which HCC intends to discontinue using the facility. HCC may remove the facility or request that the City allow it to remain in place. Notwithstanding HCC's request that any such facility remain in place, the City may require HCC to remove the facility from the Rights of Way or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest. The City

may require HCC to perform a combination of modification and removal of the facility. HCC shall complete such removal or modification in accordance with a schedule set by City. Until such time as HCC removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, HCC shall be responsible for the facility, as well as maintenance of the Rights-of-Way, in the same manner and degree as if the facility were in active use, and HCC shall retain all liability for such facility. If HCC abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access Channel purposes.

9.10 Hazardous Substances

HCC shall comply with all applicable State and federal laws, statutes, regulations and orders concerning hazardous substances within the Rights-of-Way.

Upon reasonable written notice to HCC, the City may inspect HCC's facilities in Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to HCC's Cable System. In removing or modifying HCC's facilities as provided in this Franchise, HCC shall also remove all residue of hazardous substances related thereto.

9.11 Undergrounding of Cable

Wiring. Where electric and telephone utility wiring is installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines, wiring and equipment shall also be placed underground with other wireline service at no expense to the City. Related Cable System equipment, such as pedestals, must be placed in accordance with applicable City Code requirements and rules. In areas where electric or telephone utility wiring are aerial, HCC may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

HCC shall utilize existing poles and conduit wherever possible.

This Franchise does not grant, give or convey to HCC the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person.

HCC and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit in trenches or bores opened by HCC. Therefore, if HCC further upgrades its Cable System, HCC shall use commercially reasonable efforts to submit these plans to the City in accordance with the City's permitting process so that such opportunities may be explored. However, nothing set forth herein shall obligate HCC to slow the progress of any future upgrade of the Cable System to accommodate the City. In addition, HCC agrees to cooperate with the City in any other construction by HCC that involves trenching or boring. If sufficient space is reasonably available, HCC shall allow the City to lay its cable, conduit in HCC's trenches and bores, provided the City shares in the cost of the trenching and boring on the same terms and conditions as HCC at that time shares the total cost of trenches and bores. The City shall be responsible for maintaining its respective cable, conduit buried in HCC's trenches and bores under

this paragraph.

The City shall not be required to obtain easements for HCC.

HCC may participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where all utilities are being converted to underground facilities.

9.12 Codes

HCC shall strictly adhere to all building and zoning codes in effect at the time of construction. HCC shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference, the City may require the removal or relocation of HCC's lines, cables and other appurtenances from the property in question.

9.13 Construction and Use of Poles

Whenever feasible, HCC shall use existing poles when the installation of facilities above-ground is permitted. In the event HCC cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for HCC to make all needed excavations in the streets for the purpose of placing, erecting, laying, maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any other facility needed for the maintenance or extension of HCC's Cable System.

9.14 Tree Trimming

Upon obtaining a written permit from City, if such a permit is required, HCC may prune or cause to be pruned, using proper pruning practices in accordance with such permit, any tree in the Rights-of-Way that interferes with the Cable System.

9.15 Standards

HCC must comply with all federal, State, and local safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, HCC must comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

All installations of equipment shall be permanent in nature, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic.

9.16 Stop Work

On written notice from the City that any work is being conducted contrary to the provisions of this

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

Be in writing;

Be given to the Person doing the work, or posted on the work site;

Be sent to HCC by mail at the address given herein;

Indicate in reasonable detail the nature of the alleged violation or unsafe condition; and

Establish conditions under which work may be resumed.

9.17 Work of Contractors and Subcontractors

HCC's contractors and subcontractors shall be bonded in accordance with local ordinances, regulations and requirements. Work by contractors and subcontractors shall be subject to the same restrictions, limitations and conditions as if the work were performed by HCC. HCC shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages caused by them. It is HCC's responsibility to ensure that contractors, subcontractors or other persons performing work on HCC's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

9.18 GIS Mapping

HCC shall upon thirty (30) days written request, provide paper copies of HCC's route maps in a GIS format to the City.

SECTION 10. CABLE SYSTEM DESIGN

HCC agrees to maintain the Cable System in a manner that meets or exceeds FCC technical quality standards regardless of a particular manner in which the signal is transmitted throughout the term of the Franchise.

Equipment must be installed so that all closed captioned programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards.

HCC's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

HCC acknowledges that the minimum Cable System design and performance requirements set forth in this Franchise are enforceable, to the extent allowed by law.

SECTION 11. TECHNICAL STANDARDS

The technical performance of the Cable System shall meet or exceed all applicable technical standards authorized or required by law, including, FCC technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

SECTION 12. SERVICE EXTENSION

HCC may provide Cable Service in the entire Franchise Area, except that it is not required to furnish Cable Service to those areas being served by another franchise holder. In those parts of the Franchise Area which are adjacent to an un-served part, the franchise holder with the nearest trunk and/or distribution line will be responsible to furnish Cable Service subject to the conditions of this Franchise.

In general, except as otherwise provided herein, HCC shall provide a standard aerial installation of Cable Service within seven (7) days of a request by any Person within its Franchise Area. For standard underground installations scheduling shall be done within seven (7) days of a request for service. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by HCC, receipt of a written request by HCC or receipt by HCC of a verified verbal request. HCC shall provide such service:

With no line extension charge except as specifically authorized elsewhere in this Franchise.

At a non-discriminatory installation charge for a Standard Installation, consisting of a one hundred twenty-five (125) foot aerial drop or sixty (60) foot underground drop connecting to the exterior demarcation point for Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations.

At non-discriminatory monthly rates for all Subscribers, excepting commercial Customers, MDU Bulk Customers and other lawful exceptions to uniform pricing.

No Customer shall be refused service arbitrarily. However, for non-Standard Installations of service to Customers, or a density of less than twenty five (25) residences per 5280 aerial cable-bearing strand feet of trunk or distribution cable, or sixty (60) residences per 5280 underground trench feet of trunk or distribution cable, Cable Service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. HCC may require that the payment of the capital contribution in aid of construction be borne by such potential Customers be paid in advance.

HCC shall provide Cable Service to Multiple Dwelling Units in accordance with an agreement with the property owner or owners, this Franchise and all applicable laws.

SECTION 13. STANDBY POWER AND EAS

13.1 Standby Power

HCC shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. HCC shall maintain standby power supplies that will supply back-up power of at least two (2) hours duration throughout the distribution networks, and four (4) hours duration at all nodes and hubs. In addition, throughout the term of this Franchise, HCC shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request therefore.

13.2 Emergency Alert Capability

In accordance with, and at the time required by, the provisions of FCC Regulations or other federal or state requirements, as such provisions may from time to time be amended, Emergency Alert System (“EAS”) implementation will be accomplished in compliance with the Washington State EAS Plan and to be in compliance with or further Homeland Security requirements or applications.

HCC shall ensure that the EAS is functioning properly at all times in accordance with FCC regulations.

SECTION 14. FRANCHISE BREACHES; TERMINATION OF FRANCHISE

14.1 Procedure for Remedying Franchise Violations

If the City believes that HCC has failed to perform any material obligation under this Franchise or has failed to perform in a timely manner, City shall notify HCC in writing, stating with documented specificity the nature of the alleged default. HCC shall have thirty (30) days from the receipt of such written notice to:

Respond to the City, contesting the City’s assertion that a default has occurred, and requesting a hearing in accordance with subsection (B), below;

Cure the default; or

Notify the City that HCC cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, HCC shall promptly take all reasonable steps to cure the default and notify City in writing and in detail as to the exact steps that will be taken and the projected completion date. Upon five (5) business days’ prior written notice, either the City or HCC may call an informal meeting to discuss the alleged default. In such case, if matters are not resolved at such meeting, the City may set a hearing in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether HCC’s proposed completion schedule and steps are reasonable.

If HCC does not cure the alleged default within the cure period stated above, or by the projected

completion date under subsection (A)(3), or denies the default and requests a hearing in accordance with subsection (A)(1), or the City orders a hearing in accordance with subsection (A)(3), City shall set a public hearing to investigate said issues or the existence of the alleged default. City shall notify HCC of the hearing in writing and such hearing shall take place no fewer than seven (7) days after HCC's receipt of written notice of the hearing. At the hearing, HCC shall be provided an opportunity to be heard, to present and question witnesses, and to present evidence in its defense. At any such hearing, the City shall not unreasonably limit HCC's opportunity to make a record that may be reviewed should any final decision of the City be appealed to a court of competent jurisdiction. The determination as to whether a default or a material breach of this Franchise has occurred shall be within the City's sole reasonable discretion, but any such determination shall be subject to appeal to a court of competent jurisdiction.

If, after the public hearing, the City determines that a default still exists, the City shall order HCC to correct or remedy the default or breach within fourteen (14) days of the City's written notification or within such other reasonable timeframe as the City shall determine. In the event HCC does not cure within such time to City's reasonable satisfaction, City may:

Assess and collect monetary damages in accordance with this Franchise; and
Terminate this Franchise; and

Pursue any other legal or equitable remedy available under this Franchise or applicable law.

The determination as to whether a violation of this Franchise has occurred pursuant to this Section herein shall be within the sole discretion of the City or its designee. Any such determination by City shall be accompanied by a record, to which HCC's contribution shall not be limited by City (i.e., City shall hear any interested Persons and shall allow HCC an opportunity to be heard, to cross examine witnesses, to present evidence and to make additions to the hearing record). Any such final determination shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be taken within thirty (30) days of the issuance of the determination of the City. City shall receive notice from HCC of any appeal concurrent with any filing to a court of competent jurisdiction.

14.2 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of either party to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement of obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the City, its officers, officials, Boards, boards, commissions, agents, or employees under federal, State, or local law including by example Section 635A of the Cable Act. HCC shall not have any monetary

recourse against the City, or its officers, officials, Council, Boards, commissions, authorized agents or employees for any loss, costs, expenses or damages arising out of any provision, requirement of this Franchise or the enforcement thereof, subject to applicable law.

14.3 Assessment of Liquidated Damages and Letter of Credit

Subject to Section 5.3(b):

HCC shall deliver to the City an irrevocable and unconditional Letter of Credit, in a form and substance acceptable to the City, from a National or State bank subject to reasonable approval by the City, in the amount of twenty-five thousand dollars (\$25,000.00).

The Letter of Credit shall provide that funds will be paid to the City and in an amount for liquidated damages charged pursuant to this Section, in payment for any monies owed by HCC to the City or any Person as a result of any material acts or material omissions by HCC pursuant to this Franchise or a pattern of repeated violations of any provisions of this Franchise.

In addition to the recovery of any monies owed by HCC to the City or any Person or damages to the City or any Person as a result of any material acts or material omissions by HCC pursuant to the Franchise; the City in its sole discretion may, after written notice and opportunity to cure as provided in Section 16.1, charge to and collect from the Letter of Credit the following liquidated damages.

For failure to provide data, documents, reports or information or to cooperate with the City during an application process or Cable System review or as otherwise provided herein, the Liquidated Damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.

For failure of HCC to comply with construction, operation or maintenance standards or the provision of the scrambled Channel as provided in Section 12.1, the Liquidated Damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.

For HCC's breach of any written contract or agreement with or to the City, the Liquidated Damages shall be \$150.00 per day for each day, or part thereof, such breach occurs or continues.

For failure to comply with any of the provisions of this Franchise or Customer service standards, or other City ordinance for which a liquidated damages is not otherwise specifically provided pursuant to this paragraph (C), the liquidated damages shall be \$150.00 per day for each day, or part thereof, such failure occurs or continues.

Each violation of any material provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed. Any liquidated damages for any given violation shall be imposed upon HCC for a maximum of 90 days.

If any subsequent Letter of Credit delivered pursuant thereto expires prior to twelve (12) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term

of this Franchise to provide that it will not expire earlier than twelve (12) months after the expiration of this Franchise. The renewed or replaced Letter of Credit shall be of the same form and with a bank authorized herein and for the full amount stated in paragraph (A) of this Section.

The City and HCC recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of HCC's breach of this Franchise. Accordingly, instead of requiring such proof, the City and HCC agree that HCC shall pay to the City the sums set forth above for each day that HCC shall be in breach of the specific provisions of this Franchise. Such amounts are agreed by both parties to be a reasonable estimate of the actual damages the City would suffer in the event of HCC's breach of such provisions of this Franchise.

The bond(s) and Letter of Credit referred to in Section 5.3 (A) and (B) may be drawn upon by the City for breach of a material provision after written notice and opportunity to cure.

The City shall give HCC written notice of any intent to withdraw under this subsection. Within seven (7) days following receipt of such written notice, HCC shall restore the bond(s) and Letter of Credit to the amount required under this Franchise. HCC's maintenance of the bond(s) and Letter of Credit shall not be construed to excuse unfaithful performance by HCC or to limit the liability of HCC to the amount of the bond(s) and Letter of Credit or otherwise to limit the City's recourse to any other remedy available at law or in equity.

HCC shall have the right to appear to the City Council for reimbursement in the event HCC believes that a bond or Letter of Credit was drawn upon improperly. HCC shall also have the rights of judicial appeal if HCC believes a bond or letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the bond(s) or Letter of Credit shall be returned to HCC with interest from the date of withdrawal.

The assessment of liquidated damages does not constitute a waiver by the City of any other right or remedy it may have under the Franchise or applicable law, including its right to recover from HCC any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise.

HCC's maintenance of the security required herein or by applicable code shall not be construed to excuse unfaithful performance by HCC of this Franchise; to limit liability of HCC to the amount of the security; or to otherwise limit the City's recourse to any other remedy available at law.

14.4 Revocation

This Franchise may be revoked and all rights and privileges rescinded if a material breach of the Franchise is not cured pursuant to Section 16.1, or in the event that:

HCC attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers;

HCC makes a material misrepresentation of fact in the negotiation of this Franchise;

HCC fails to maintain the required Customer service location within the City limits as provided in this Franchise in accordance with Section 6.3;

HCC abandons the Cable System, or terminates the Cable System's operations;

HCC fails to restore service to the Cable System after three consecutive days of an outage or interruption in service; except in the case of an emergency or during a force majeure occurrence, or when approval of such outage or interruption is obtained from the City, it being the intent that there shall be continuous operation of the Cable System); or

HCC becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, there is an assignment for the benefit of HCC's creditors, or all or part of HCC's Cable System is sold under an instrument to secure a debt and is not redeemed by HCC within thirty (30) days from said sale. Additionally, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of HCC (at the option of the City and subject to applicable law) whether in receivership, reorganization, bankruptcy or other action or proceeding, unless directed otherwise by a court of competent jurisdiction.

If there is a foreclosure or other involuntary sale of the whole or any material part of the plant, property and equipment of HCC, the City may serve written notice of revocation on HCC and to the purchaser at the sale, and the rights and privileges of HCC under this Franchise shall be revoked thirty (30) days after service of such written notice, unless:

City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and, the purchaser has covenanted and agreed with City to assume and be bound by all of the terms and provisions of this Franchise.

14.5 Acquisition of the Cable System

The City and HCC shall be subject to the provisions of Section 627 of the Cable Act as amended from time to time. Any provision of this Agreement that purports to diminish the rights of either the City or HCC under Section 627 of the Act shall be deemed superseded by the Act.

SECTION 15. FRANCHISE TRANSFER

The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council, acting by ordinance or resolution.

HCC shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of HCC. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of HCC shall make this Franchise subject to cancellation

unless and until the City shall have consented in writing thereto.

The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer or change in control and shall furnish all information required by law.

In seeking the City's consent to any change in ownership or control, the proposed transferee or controlling entity shall indicate whether it:

Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a Cable System;

Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee or controlling entity, along with any other data that is lawfully required; and

Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

The City shall act by ordinance or resolution on the request within one hundred twenty (120) days of receipt of the FCC Form 394 application, provided it has received a complete application. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

Within thirty (30) days of any transfer or sale or change in control, if approved or deemed granted by the City, HCC shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by HCC and the transferee or controlling entity, and the transferee or controlling entity shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a change in control, in which HCC is not replaced by another entity, HCC will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and will not be required to file an additional written acceptance. The approval of any change in control shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise. For purposes herein to the extent that a change of control involves an entity that was not an Affiliate prior to the contemplated transaction, the City's consent shall be required for such change in control.

In reviewing a request for sale or transfer or change in control, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and HCC

shall assist the City in so inquiring. The City may condition said sale or transfer or change in control upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by HCC.

Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an intra-company entity controlling, controlled by or under the same common control as HCC, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise. Further, HCC may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate HCC's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 16. PROHIBITED PRACTICES, LOCAL EMPLOYMENT EFFORTS AND NOTICES

16.1 Preferential or Discriminatory Practices Prohibited

HCC shall not discriminate in hiring, employment or promotion on the basis of race, color, ethnic or national origin, religion, age, sex, marital status, sexual orientation, or physical or mental disability. Throughout the term of this Franchise, HCC shall fully comply with all equal employment and non-discrimination provisions and requirements of federal, State and local laws, and rules and regulations relating thereto.

16.2 Notices

Throughout the term of this Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:

HCC's address shall be:
Hood Canal Communications
2218 Olympic Highway North
Shelton, WA 98584

City's address shall be:
City of Shelton
525 West Cota Street
Shelton, WA 98584 Attention: City Manager

SECTION 17. MISCELLANEOUS PROVISIONS

17.1 Cumulative Rights

Subject to applicable law, all rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

17.2 Costs to be Borne by HCC

HCC shall pay for all reasonable costs of publication of this Franchise, and any and all notices prior to any public meeting or hearing provided for pursuant to this Franchise.

17.3 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

17.4 Authority to Amend

This Franchise may be amended at any time by Ordinance once a written agreement between the parties is reached.

17.5 Venue

The venue for any dispute related to this Franchise shall be Mason County, Superior Court or the United States District Court for the Western District of Washington.

17.6 Governing Laws

This Franchise shall be governed, construed and enforced in accordance with the laws of the State of Washington (as amended), the Cable Act as amended, any applicable rules, regulations and orders of the FCC, as amended, and any other applicable local, State and federal laws, rules, and regulations, as amended. Except as provided in Section 2.4(C) or otherwise in this Franchise, Shelton Municipal Code Chapter 5.44 is superseded.

17.7 Captions

The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

17.8 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

17.9 Waiver

The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

17.10 Severability

If any section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

17.11 Compliance with Federal, State, and Local Laws

HCC shall comply with applicable federal, state and local laws, now existing or hereafter adopted.

17.12 Force Majeure

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

17.13 Entire Agreement

This Franchise and Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties.

17.14 Attorneys' Fees

If any action or suit arises in connection with this Franchise, either the City or HCC, the parties shall bear their own costs of suit, including attorney fees.

17.15 Action of the City or HCC

In any action by the City or HCC mandated or permitted under the terms hereof, it shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

17.16 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by HCC, such time shall be deemed to be of the essence, and any failure of HCC to perform within the allotted time may be considered a breach of this Franchise.

17.17 Acceptance

Within sixty (60) days of receipt of the Franchise after its execution by the City, this Franchise shall be accepted by HCC by filing with the Clerk of the Board of City Commissioners an unconditional, written acceptance of all of the terms, provisions and conditions of this Franchise, along with all required evidence of insurance coverage and bonds. The failure of HCC to file such an acceptance shall be deemed a rejection by HCC and this Franchise shall then be voidable at the discretion of the City.

PASSED, adopted and effective this ___ day of _____, 2020, subject to applicable federal, state and local law.

CITY OF SHELTON

By: _____
Mayor

Approved as to Form:

City Attorney

Attest:

City Clerk

ACCEPTED this ____ day of _____, 2020, subject to applicable federal, state and local law.

HOOD CANAL COMMUNICATIONS

By: _____



**CITY OF SHELTON
COUNCIL BRIEFING REQUEST
(Agenda Item F1)**

Touch Date: 08/11/2020
Brief Date: 09/01/2020
Action Date: 09/15/2020

Department: Public Works
Presented By: Brooke Kilts

APPROVED FOR COUNCIL PACKET:

Action Requested:

ROUTE TO:

REVIEWED:

PROGRAM/PROJECT TITLE:
**FCS Group Rate Study
Amendment No. 3**

- Ordinance
- Resolution
- Motion
- Other

Dept. Head _____

Finance Director _____

Attorney _____

City Clerk _____

City Manager _____

ATTACHMENTS:

- Resolution No. 1169-0820
- Rate Studies Amendment No. 3

DESCRIPTION OF THE PROGRAM/PROJECT AND BACKGROUND INFORMATION:

In late 2018 the City was informed by the Department of Ecology, that after review, the City would be issued a new NPDES Phase II Permit. This permit came with significant increases in workload and capital improvements to the Stormwater Utility, and with that, increased costs. In February of 2019 the Council approved having Financial Consulting Solutions Group, Inc. (FCS Group) complete a Stormwater Rate Study to address cost implications associated with the increased workload and capital improvement plan requirements. This approval came in the form of Amendment No. 1 to a previous rate study contract with the FCS Group, authorizing \$27,380 to be expended on the study of Stormwater utility rates.

After reviewing the initial rate assessment prepared by FCS Group, Staff requested that FCS Group research a modified approach to the current rate structure. This added effort brought forth Amendment No. 2, which Council approved on November 5, 2019.

Over the last 9 months, FCS Group has held numerous virtual meetings in order to bring new Staff members up to date on study results and to formulate next steps in the study. During this time, it also became apparent that a complete audit of our multi-family, commercial, and industrial stormwater accounts was needed. City staff has asked FCS Group to complete this effort by measuring the impervious surface area for all developed multi-family, commercial, and industrial parcels, (approximately 500 parcels), pairing each of those parcels with City customer billing account numbers, and identifying any developed parcels that do not correspond to an existing customer billing account. Additionally, Staff has requested FCS Group virtually attend two Council meetings, both meetings to take place around the beginning of 2021. This added effort brings forth Contract Amendment No. 3 for Council consideration.

All expenditures for the Stormwater Rate Study, including the added tasks, will be 100% reimbursed by a Department of Ecology Stormwater Capacity Grant, (up to \$95,000), which the Council accepted on October 15, 2019.

ANALYSIS/OPTIONS/ALTERNATIVES:

Council has the option to not approve the Contract Amendment, but Staff does not recommend this as the

outdated rate structure, as well as the requirements of the new NPDES permit, have current and future financial impacts to the Stormwater utility fund. The added tasks in this amendment will identify any non-single family resident parcels being billed for the incorrect impervious surface area, as well as any that are not in the City's billing system.

BUDGET/FISCAL INFORMATION:

Stormwater Related Tasks (Contract Amend. No. 1)	Original Amount: \$27,380	Total Contract Amount
Amend. No. 2	+ \$7,680	\$35,060
Amend. No. 3	+ \$44,860	\$79,920

Amendment No. 3 will increase the current contract by \$44,860 for a new, not to be exceeded, total of \$79,920. All expenditures for the Stormwater Rate Study, including the added tasks, will be reimbursed by a \$95,000 Department of Ecology Stormwater Capacity Grant the Council accepted on October 15, 2019.

PUBLIC INFORMATION REQUIREMENTS:

Information can be obtained through the Public Works Department.

STAFF RECOMMENDATION/MOTION:

Staff recommends a reading of Resolution No. 1169-0820 and: *"I move to adopt Resolution No. 1169-0820, a resolution authorizing the City Manager to sign Amendment No. 3 to the Rate Studies Contract with FCS Group".*

CONTRACT AMENDMENT NO. 3

BETWEEN

**FINANCIAL CONSULTING
SOLUTIONS
GROUP, INC.**
Redmond Town Center
7525 – 166th Ave. NE, Suite D-215
Redmond, Washington 98052

AND **City of Shelton, WA**
525 West Cota Street
Shelton, WA 98584

PROJECT: Rate Studies

Whereas the City has requested additional services, the Sewer & Water Rate Study contract is amended as described herein.

The performance of the professional services herein described and authorized by the **City of Shelton**, as well as payment for such services, shall be in accordance with the terms and conditions presented in the original Agreement, dated August 7, 2017 and the following Exhibits which are attached and incorporated by reference.

Exhibit A - Changes to Scope of Work & Budget

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this _____ day of _____, 20_____.

APPROVED:
**FINANCIAL CONSULTING
SOLUTIONS GROUP, INC.**

APPROVED:
CITY OF SHELTON, WA

John Ghilarducci
Principal

Date: _____

Date: _____

Exhibit A - Changes to Scope of Work & Budget: Amendment No. 3**Added Tasks:**

Due to City staff turnover over the past 6-8 months, additional time was spent across multiple virtual meetings briefing new staff on study results to-date and formulating the next steps in the study. Some time was also spent researching NPDES permit holder credit policies for other jurisdictions across the state. Additionally, the revenue requirement analysis prepared in January 2020 assumed a mid-year rate increase – now that implementation timeline has been pushed to March/April 2021 which impacts the analysis and presentation materials. Due to these factors, additional budget is required to complete the study as originally planned.

The City has also requested that FCS GROUP provide an additional rate design scenario that incorporates new rate credits and a new equivalent service unit (ESU) value. The results of this scenario would be presented at a second City Council meeting, to follow the Revenue Requirement City Council presentation.

Lastly, the City has requested that FCS GROUP perform the following tasks in support of evaluating / augmenting the City's customer billing data – this data would also be incorporated into the recommended alternative rate structure:

- Measurement of impervious area for developed multi-family, commercial, and industrial parcels (estimating 500 parcels);
- Pairing the parcel numbers for these developed multi-family, commercial, and industrial parcels with the City's customer billing account numbers; and
- Identifying which developed multi-family, commercial, and industrial parcel numbers do not correspond to an existing customer billing account number to evaluate whether any of these existing parcels are not currently being billed a stormwater charge.

Added Budget:

The following table includes a request for an additional authorized budget of **\$44,860**, bringing the total stormwater utility rate study budget to **\$79,920**.

City of Shelton
Stormwater Rate Study
BUDGET

Task Budget	Principal	Project Manager	Project Consultant	Analyst	Admin. Support	Total Estimated Hours	Total Budget
<i>Hourly Billing Rates:</i>	\$260	\$185	\$165	\$130	\$80		
TECHNICAL TASKS							
Task 1 Data Collection & Validation							
1a - Review and Validate Study Data	-	-	-	6	-	6	\$ 780
1b - Customer Statistics Revenue Reconciliation	-	-	-	8	-	8	\$ 1,040
Task 2 Revenue Requirement & Rate Plan (3 Scenarios)	4	16	-	35	-	55	\$ 8,550
TOTAL TECHNICAL	4	16	0	49	0	69	\$ 10,370
PROCESS TASKS							
Task 3 Meetings/Presentations							
3a - Kick-off Meeting (1 on-site)	-	4	-	4	-	8	\$ 1,260
3b - Review Meetings (3 Ring Central)	-	6	-	6	-	12	\$ 1,890
3c - City Council Presentation (1 on-site)	-	8	-	8	-	16	\$ 2,520
Task 4 Documentation							
4a - Technical Memorandum	2	8	-	24	-	34	\$ 5,120
4b - Presentation Materials	2	8	-	24	-	34	\$ 5,120
Project Administration	-	4	-	-	2	6	\$ 900
TOTAL PROCESS TASKS	4	38	0	66	2	110	\$ 16,810
Expenses (2 onsite meetings)							\$ 200
ORIGINAL BUDGET (AMENDMENT NO. 1)	8	54	0	115	2	179	\$ 27,380
Task 5 ESU Rate Design and Update to 2019 & 2020 Financials	4	12	-	34	-	50	\$ 7,680
AMENDMENT NO. 2	4	12	0	34	-	50	\$ 7,680
ORIGINAL BUDGET + AMENDMENT NO. 2	12	66	0	149	2	229	\$ 35,060
<u>Tasks for Amendment 3</u>							
Impervious Area Measurement (MFR, comm., & ind. parcels - est. 500 parcels)	1	2	125	2	-	130	\$ 21,515
Linking of Measured Parcels with Customer Billing Account	1	2	15	4	-	22	\$ 3,625
Identification of Parcels Not Linked to Existing Account	1	2	10	-	-	13	\$ 2,280
Update Rate Design Using City's Proposed Credit Policy & New Impervious Data	1	4	-	10	-	15	\$ 2,300
Update Revenue Requirement with 2020 YE est. & 2021 Prelim. Budget	1	2	-	16	-	19	\$ 2,710
Update Revenue Requirement PowerPoint	1	2	-	4	-	7	\$ 1,150
Give Revenue Requirement Presentation to City Council (Virtual)	2	2	-	2	-	6	\$ 1,150
Create Rate Design PowerPoint	2	4	-	12	-	18	\$ 2,820
Give Rate Design Presentation to City Council (Virtual)	2	2	-	2	-	6	\$ 1,150
Draft & Final Rate Study Report	2	8	-	32	-	42	\$ 6,160
AMENDMENT NO. 3	14	30	150	84	0	278	\$ 44,860
ORIGINAL BUDGET + AMENDMENTS NO. 2 + 3	26	96	150	233	2	507	\$ 79,920

RESOLUTION NO. 1169-0820

A RESOLUTION OF THE COUNCIL OF THE CITY OF SHELTON, WASHINGTON, AUTHORIZING THE CITY MANAGER TO APPROVE CONTRACT AMENDMENT NO. 3 TO THE PROFESSIONAL SERVICES AGREEMENT WITH FINANCIAL CONSULTING SOLUTIONS GROUP, INC. FOR THE COMPLETION OF THE STORMWATER RATE STUDY

WHEREAS, the City Manager entered into a Contract on August 7, 2017 with Financial Consulting Solutions Group, Inc. ("FCS Group") for the completion of Sewer and Water Rate Updates; and

WHEREAS, on February 19, 2019 the City Council approved Amendment Number 1 to include the Stormwater utility in the FCS Group Rate Study Contract in order to prepare for the increased tasks and costs associated with the new NPDES Phase II Permit; and

WHEREAS, on November 5, 2019 the City Council approved Amendment Number 2 to the Contract, authorizing additional tasks and expenditures to evaluate a change in the stormwater rate structure; and

WHEREAS, City staff also recognized the need for a full evaluation of the multi-family, commercial, and industrial parcels within the City; measuring each parcel's impervious surface and pairing the data with the City's customer billing account numbers; and identifying any parcels that do not correspond to an existing customer billing account; and

WHEREAS, City staff has requested FCS Group complete those tasks, as well as allow for two virtual Council Meeting presentations to take place; and

WHEREAS, FCS Group has provided Contract Amendment Number 3, increasing the budget by \$44,860 in order to include the requested tasks.

THEREFORE, BE IT RESOLVED by the City Council of the City of Shelton that the City Manager is authorized to sign Amendment No. 3 to the Rate Studies Contract with FCS Group.

Passed by the City Council at its regular meeting held on the 15th day of September, 2020.

Mayor Dorcy

ATTEST:

City Clerk Nault



**CITY OF SHELTON
COUNCIL BRIEFING REQUEST
(Agenda Item F2)**

Touch Date: 08/26/2020
Brief Date:
Action Date: 09/15/2020

Department: Executive
Presented By: Jeff Niten

APPROVED FOR COUNCIL PACKET:

Action Requested:

ROUTE TO:

REVIEWED:

PROGRAM/PROJECT TITLE:
Purchasing Authority

Ordinance

Dept. Head

ATTACHMENTS:
Resolution No. 1170-0820

Resolution

Finance Director

Motion

Attorney

Other

City Clerk

City Manager

JN

DESCRIPTION OF THE PROGRAM/PROJECT AND BACKGROUND INFORMATION:

In order to stream line and make purchases in a more cost efficient manner city staff has drafted Resolution No. 1170-0820. This Resolution delegates purchasing authority to the City Manager up to \$30,000.00 when the expenditure has been previously approved by City Council during the adoption of the annual city budget. Similarly, Department Heads shall have authority up to \$15,000.00, and may authorize superintendents and/or subordinate managers authority up to \$5,000.00.

To simplify a complex purchasing process the city will draft a comprehensive purchasing policy in conjunction with the overall policy development work currently underway.

Additionally, purchases over the authority outlined above will be brought to City Council for consideration on the Action agenda.

ANALYSIS/OPTIONS/ALTERNATIVES:

An option is to leave the current purchasing policy in place, which is a complex matrix of purchasing types and spending authority based on type.

BUDGET/FISCAL INFORMATION:

N/A

PUBLIC INFORMATION REQUIREMENTS:

Information can be obtained through the City Clerk.

STAFF RECOMMENDATION/MOTION:

Staff recommends a reading of Resolution No. 1170-0820 and: *"I move to adopt Resolution No. 1170-0820, a resolution authorizing the City Manager to execute contracts, purchases, and procure professional services up to \$30,000.00 if previously approved in the annual budget, and to direct staff to draft a comprehensive purchasing and contracting policy"*.

RESOLUTION NO. 1170-0820

**A RESOLUTION OF THE CITY OF SHELTON, WASHINGTON, AUTHORIZING
STAFF SIGNING AUTHORITY FOR CONTRACTS**

WHEREAS, the Shelton City Council has an established process for reviewing and approving the City's annual budget, which authorizes expenditures for various types of contracts including purchases, public works, and professional services; and

WHEREAS, RCW 35A.11.020 gives the City Council authority over contracting; however, the Council may delegate this authority to the City Manager or staff via ordinance or resolution; and

WHEREAS, it is in the best interests of the City of Shelton that the Council delegate its contracting authority over smaller contracts when the Council has already approved the expenditure in the annual budget; and

WHEREAS, in 2011 the Shelton City Commission adopted Resolution 1019-0311, which delegated to City staff some signing authority over contracts; and

WHEREAS, the 2011 Resolution is now significantly outdated; and

WHEREAS, the City Council desires in the near future to revise and adopt a comprehensive purchasing and contracting policy.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Shelton, Washington as follows:

Section 1. The City Council delegates contracting authority to the City Manager and staff subject to the limits set forth in this Resolution. It is the responsibility of the City Manager to ensure that all applicable laws concerning competitive bidding and competitive negotiations are followed, and that compliance with bidding laws is appropriately documented.

Section 2. The City Manager shall have authority to execute contracts for public works, purchases, and professional services with a maximum per contract amount of thirty thousand dollars (\$30,000) when the Council has pre-approved the expenditure and allocated funds in the annual budget. As necessary to respond to an emergency, as determined by the City Manager, the City Manager shall have contracting authority up to thirty thousand dollars (\$30,000) per contract without pre-authorization in the annual budget. However, the expenditure may require a budget amendment.

Section 3. Department directors shall have authority to execute contracts for public works, purchases, and professional services with a maximum per contract amount of fifteen thousand dollars (\$15,000) when the Council has pre-approved the expenditure and allocated funds in the annual budget. Department directors may authorize superintendents and managers to contract for public works, purchases, and professional services to a maximum per contract amount of five thousand dollars (\$5,000).

Section 4: This Resolution supersedes Resolution No. 1019-0311, dated April 11, 2011.

Section 5: The City Manager or his designee is directed to draft a comprehensive purchasing and contracting policy for the Council's consideration.

Passed by the City Council at its regular meeting held on the 15th day of September, 2020.

Mayor Dorcy

ATTEST:

City Clerk Nault



**CITY OF SHELTON
COUNCIL BRIEFING REQUEST
(Agenda Item F3)**

Touch Date: 08/26/2020
Brief Date:
Action Date: 09/15/2020

Department: Public Works
Presented By: Jay Harris

APPROVED FOR COUNCIL PACKET:

Action Requested:

ROUTE TO:

REVIEWED:

PROGRAM/PROJECT TITLE:
Resolution No. 1171-0820 Roller
Purchase

Ordinance

Dept. Head

JOH

ATTACHMENTS:

Resolution

Finance Director

- Resolution No. 1171-0820
- Sonsray Equipment Sourcewell
Roller Quote
- Purchase Order #PO2035

Motion

Attorney

City Clerk

Other

City Manager

DESCRIPTION OF THE PROGRAM/PROJECT AND BACKGROUND INFORMATION:

The adopted 2020 budget included an expenditure of \$70,000 out of the Equipment Maintenance & Repair (EM&R) fund for new compaction rollers; these rollers are to replace the existing roller, which is over 24 years old and beyond the useful life of 15 years.

In May, due to budget concerns over the impact of Covid-19, the City Council authorized staff to utilize a small portion of the budgeted amount by purchasing only one of the two needed rollers, postponing the purchase of the second roller.

Covid-19 has had less of an impact on the EM&R fund than anticipated; therefore, staff is requesting authorization to purchase the second roller that was authorized in the 2020 budget.

This roller is the same Bomag brand, just a larger size, and will be purchased the same way as the previous purchase by utilizing the Sourcewell Contract.

RCW 39.34.030 allows for cooperative purchasing for the procurement of any goods or services. Similar to purchasing off of a State Contract, Sourcewell is a cooperative purchasing source that holds hundreds of competitively solicited cooperative contracts ready for use by government, education, and nonprofit organizations, saving city staff valuable time and money. Staff has reviewed the means by which Sourcewell obtained the contract with Bomag, ensuring that all purchasing laws and regulations were followed appropriately. To utilize the Sourcewell Contract, staff contacted the local Bomag dealer, Sonsray Machinery, and requested a Sourcewell quote for the desired equipment.

ANALYSIS/OPTIONS/ALTERNATIVES:

N/A

BUDGET/FISCAL INFORMATION:

The smaller roller was purchased in May for \$17,523; this larger roller is \$40,361.20. Combined, both rollers will be purchased for \$12,115.80 under the \$70,000 budgeted amount.

PUBLIC INFORMATION REQUIREMENTS:

Information can be obtained through the Public Works Department.

STAFF RECOMMENDATION/MOTION:

Staff recommends a reading of Resolution Number 1171-0820 and: *"I move to adopt Resolution Number 1171-0820, a resolution authorizing the City Manager to sign Purchase Order number PO2035 for the purchase of a Bomag Roller"*.

RESOLUTION NO. 1171-0820

A RESOLUTION OF THE COUNCIL OF THE CITY OF SHELTON, WASHINGTON, AUTHORIZING THE CITY MANAGER TO SIGN A PURCHASE ORDER FOR THE ACQUISITION OF A COMPACTION ROLLER

WHEREAS, the 2020 adopted budget included an expenditure of \$70,000 out of the Equipment Maintenance & Repair (EM&R) fund for new compaction rollers; and

WHEREAS, in May 2020, the City Council authorized staff to purchase one of the rollers and postpone the purchase of the second roller due to rising budget concerns over the impact of Covid-19; and

WHEREAS, Covid-19 has had less of an impact on the EM&R fund than anticipated; and

WHEREAS, City Staff has obtained a quote for the desired 47" Bomag compaction roller utilizing a Sourcewell Contract; and

WHEREAS, RCW 39.34.030 allows for cooperative purchasing for the procurement of any goods or services; and

WHEREAS, Sourcewell is a cooperative purchasing source that hold hundreds of competitively solicited cooperative contracts ready for use by government, education, and nonprofit organizations.

THEREFORE, BE IT RESOLVED by the City Council of the City of Shelton that the City Manager is authorized to sign purchase order #PO2035 for the purchase of a Bomag compaction roller.

Passed by the City Council at its regular meeting held on the 1^{5th} day of September, 2020.

Mayor Dorcy

ATTEST:

City Clerk Nault



SONSRAY MACHINERY LLC
 2702 West Valley Highway N • Auburn, WA 98001
 800-562-8261 • Fax: 253-735-3664
 www.sonsraymachinery.com

Ship To: City of Shelton

Invoice To: CITY OF SHELTON
 PUBLIC WORKS DEPARTMENT
 525 WEST COTA STREET
 SHELTON WA 98584

Branch 08		
08 - AUBURN		
Date	Time	Page
08/27/2020	13:05:36 (O)	1
Account No	Phone No	Est No 01
SHELT001	3604325112	007797-08
Ship Via	Purchase Order	
	BW120 SL-5	
Tax ID No		
	Salesperson	
	284	

ESTIMATE EXPIRY DATE: 09/26/2020

PARTS ESTIMATE - NOT AN INVOICE

Part#	Description	U	Qty	Price	Amount
SOURCEWELL PRICING					
* LEAD TIME: IN STOCK IN AUBURN					
* PRICE INCLUDES FREIGHT AND PDI					
*					
BW120 SL-5	3 TON ROLLER		1	36692.00	36692.00
				Subtotal:	36692.00
				Tax:	3669.20
Authorization: _____				TOTAL:	40361.20

Thank You!
 For Your Business

THESE ARE THE STANDARD TERMS FOR ALL ESTABLISHED SONSRAY MACHINERY LLC. CREDIT ACCOUNTS IN GOOD STANDING AT THE TIME OF PURCHASE.

PARTS & SERVICE: NET 30 DAYS

RENTALS: PAYMENT IN ADVANCE

MACHINE SALES: IN FULL UPON DELIVERY

TERMS AND CONDITIONS

A 1.5% SERVICE CHARGE WILL BE IMPOSED ON ALL PAST DUE BALANCES.

UNIT PRICES ARE BASED UPON SELLING PRICES IN EFFECT AT TIME OF SHIPMENT NOT AT DATE OF YOUR ORDER.

NO PARTS MAY BE RETURNED WITHOUT PERMISSION FROM SONSRAY MACHINERY LLC. AND IN NO CASE WILL ANY RETURNED PARTS BE ACCEPTED IF RETURN DATE IS IN EXCESS OF 10 DAYS FROM PURCHASE DATE. ALL PARTS ARE SUBJECT TO 15% RESTOCKING CHARGE. PARTS WHICH ARE NON-RETURNABLE TO THE FACTORY ARE NON-RETURNABLE TO SONSRAY MACHINERY LLC. IT IS THE RESPONSIBILITY OF THE PURCHASER TO NOTIFY SONSRAY MACHINERY LLC. IN WRITING OF ANY DAMAGES OR DEFECTIVE MERCHANDISE WITHIN 10 DAYS OF DELIVERY OR PICKUP. IF NOTIFICATION IS NOT RECEIVED IN WRITING WITHIN 10 DAYS OF DELIVERY, SONSRAY MACHINERY LLC. SHALL NOT BE HELD LIABLE FOR ANY CLAIMS.

IN THE EVENT ANY LEGAL PROCEEDING IS COMMENCED FOR THE PURPOSE OF INTERPRETING OR ENFORCING ANY PROVISION OF THIS INVOICE OR TO COLLECT ANY INDEBTEDNESS EVIDENCED HEREBY, THE PREVAILING PARTY IN SUCH PROCEEDING SHALL BE ENTITLED TO RECOVER REASONABLE ATTORNEY FEES IN THE PROCEEDING, OR ANY APPEAL THEREOF, TO BE SET BY THE COURT WITHOUT THE NECESSITY OF HEARING TESTIMONY OR RECEIVING EVIDENCE, IN ADDITION TO THE COSTS AND DISBURSEMENTS ALLOWED BY LAW. SUCH SUM SHALL INCLUDE AN AMOUNT ESTIMATED BY THE COURT AS THE REASONABLE COSTS AND FEES TO BE INCURRED BY THE PREVAILING PARTY IN COLLECTING ANY MONETARY JUDGEMENT OR AWARD OR OTHERWISE ENFORCING ANY ORDER, JUDGEMENT OR DECREE ENTERED IN SUCH SUIT OR ACTION. IN ADDITION, IN THE EVENT OF NON-PAYMENT BY THE CUSTOMER, THE CUSTOMER AGREES TO PAY ALL REASONABLE ATTORNEY FEES AND LEGAL EXPENSES INCURRED BY SONSRAY MACHINERY LLC. IN COLLECTING ANY SUCH SUMS DUE HEREUNDER EVEN THOUGH NO LITIGATION IS FILED.

ANY DISPUTE IN REGARDS TO PARTS OR SERVICE MUST BE SUBMITTED IN WRITING TO SONSRAY MACHINERY LLC. WITHIN 30 DAYS. ALL PORTION OF ACCOUNT NOT IN DISPUTE MUST BE PAID BEFORE DISPUTED ITEMS ARE ADDRESSED.

SONSRAY WARRANTY: CASE AND NON-CASE PRODUCT WORKMANSHIP ONLY, IS COVERED BY A 90 DAY WARRANTY AS LONG AS THE OEM PARTS WERE BOUGHT AT OUR DEALERSHIP. IF CASE PARTS USED HAVE LONGER WARRANTY THEN WORKMANSHIP LABOR WARRANTY FOLLOWS THE SAME COVERAGE LENGTH. IF NON-CASE PARTS USED HAVE LONGER WARRANTY THEN WORKMANSHIP WILL FOLLOW SAME WARRANTY COVERAGE LENGTH. WORKMANSHIP WARRANTY ONLY APPLIES TO THE RECOMMENDED SOLUTION BY THE SONSRAY SHOP. WORKMANSHIP WARRANTY COVERAGE WILL BE VOIDED IF THE ORIGINAL WORK ORDER INVOICE BALANCE HAS NOT BEEN PAID IN FULL.



PURCHASE ORDER

VENDOR NAME & ADDRESS:			SHIP TO NAME & ADDRESS:		
Sonsray Machinery LLC. 2702 West Valley HWY N. Auburn, WA 98001			City of Shelton 1000 West Pine Street Shelton, WA 98584		
P.O. #	P.O. DATE	REQUISTIONER	SHIP VIA	F.O.B. POINT	TERMS
PO2035	09/15/20	Mike Albaugh			
QTY	UNIT	DESCRIPTION	BARS #	UNIT PRICE	TOTAL
1		Bomag BW120 SL-5 Double Drum Roller (47")	503-300-000-59448-6400	36,692.00	36,692.00
					0.00
					0.00
					0.00
					0.00
PURCHASE JUSTIFICATION				SHIPPING	
Sourcewell Contract #2438 purchase request for second double drum roller compactor. The approved budget ask was for \$70,000 total. The first purchase of the smaller roller was approved and ordered in April 2020. The purchase of the first roller and this second roller will be under the budgeted amount by \$12,115.80.				SUBTOTAL	36,692.00
				Tax (8.8%)	3,669.20
APPROVING MANAGER				TOTAL	40,361.20

Enter this order in accordance with the prices, terms, delivery method, and specifications listed above. Please notify the Department Contact immediately if you are unable to ship as specified.

Please send a copy of your invoice attention of:

City of Shelton
Public Works Department
525 W. Cota Street
Shelton, WA 98584



**CITY OF SHELTON
COUNCIL BRIEFING REQUEST
(Agenda Item F4)**

Touch Date: 08/26/2020
Brief Date:
Action Date: 09/15/2020

Department: Public Works
Presented By: Jay Harris

APPROVED FOR COUNCIL PACKET:

Action Requested:

ROUTE TO:

REVIEWED:

PROGRAM/PROJECT TITLE:

Mower Purchase

Ordinance

Dept. Head

JOH

ATTACHMENTS:

Resolution

Finance Director

- Resolution No 1172-0820

- Quote for PO2020

Attorney

- Purchase Order #PO2020

- Quote for PO2036

Motion

City Clerk

- Purchase Order #PO2036

Other

City Manager

DESCRIPTION OF THE PROGRAM/PROJECT AND BACKGROUND INFORMATION:

The City's present mower is 20 years old, beyond the useful life of 15 years, and numerous shop hours are consumed maintaining this piece of equipment. Roadside vegetation maintenance is a vital function for sight visibility and community aesthetics. Also, the present mower has a "side stow" boom mower configuration, whereas the requested "rear stow" boom mower allows for safe roadway travel due to the shorter overall width. For these reasons, the adopted 2020 budget included an expenditure of \$215,000 out of the Equipment Maintenance & Repair (EM&R) fund for a new John Deere Cab Tractor with boom mower attachment.

The purchase of the mower initiated in May but was postponed due to budget concerns over the unknown impact of Covid-19.

Covid-19 has had less of an impact on the EM&R fund than anticipated, therefore, staff is requesting authorization to proceed with the purchase of the mower and attachment, as previously approved in the 2020 budget.

Utilizing the Washington State Procurement list (State Contract), staff contacted Washington Tractor and requested an updated quote for the desired equipment. Washington Tractor facilitates the purchase of the equipment, the tractor coming from Deere & Company and the boom mower attachment coming from Alamo Industrial, Washington Tractor then assembles the boom mower to the tractor prior to final delivery. Even though Washington Tractor coordinates the purchases under the same State Contract Number (#05218), the purchase orders must be made out to the individual suppliers.

ANALYSIS/OPTIONS/ALTERNATIVES:

N/A

BUDGET/FISCAL INFORMATION:

Quoted purchase prices:

Cab Tractor: \$ 93,722.19

Boom Mower: \$ 81,219.30

Trade-In: - \$ 13,800.00

Tax: \$ 14,180.45

Total Purchase: \$175,321.94

Amount approved in 2020 Budget: \$215,000

PUBLIC INFORMATION REQUIREMENTS:

Information can be obtained through the Public Works Department.

STAFF RECOMMENDATION/MOTION:

Staff recommends a reading of Resolution No. 1172-0820 and: *"I move to adopt Resolution No. 1172-0820, a resolution authorizing the City Manager to sign Purchase Order numbers PO2020 and PO2036 for the purchase of a John Deere tractor and Alamo rear stow boom mower attachment".*

RESOLUTION NO. 1172-0820

A RESOLUTION OF THE COUNCIL OF THE CITY OF SHELTON, WASHINGTON, AUTHORIZING THE CITY MANAGER TO SIGN PURCHASE ORDERS FOR THE ACQUISITION OF A TRACTOR AND MOWER ATTACHMENT

WHEREAS, the 2020 adopted budget included an expenditure of \$215,000 out of the Equipment Maintenance & Repair (EM&R) fund for a new tractor and mower attachment; and

WHEREAS, the purchase of the mower initiated in May 2020 but was postponed due to rising budget concerns over the impact of Covid-19; and

WHEREAS, Covid-19 has had less of an impact on the EM&R fund than anticipated; and

WHEREAS, utilizing the Washington State Procurement List, City Staff has obtained an updated quote for the desired John Deere tractor with Alamo boom mower attachment; and

WHEREAS, RCW 39.34.030 allows for cooperative purchasing for the procurement of any goods or services; and

WHEREAS, the Washington State Procurement List is a cooperative purchasing source for the use of state, local, and tribal governments.

THEREFORE, BE IT RESOLVED by the City Council of the City of Shelton that the City Manager is authorized to sign purchase orders #PO2020 and PO2036 for the purchase of a John Deere tractor and Alamo rear stow boom mower attachment.

Passed by the City Council at its regular meeting held on the 15th day of September, 2020.

Mayor Dorcy

ATTEST:

City Clerk Nault

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

Deere & Company
 2000 John Deere Run
 Cary, NC 27513
 FED ID: 36-2382580; DUNS#: 60-7690989

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

Washington Tractor, Inc.
 2700 136th Ave Ct E
 Sumner, WA 98390
 253-863-4436
 sumner@washingtontractor.org

Quote Summary

Prepared For:

CITY OF SHELTON
 1000 W PINE ST
 SHELTON, WA 98584
 Business: 360-432-5187

Delivering Dealer:

Washington Tractor, Inc.
 Andrew-s0421 Steers
 2700 136th Ave Ct E
 Sumner, WA 98390
 Phone: 253-863-4436
 Mobile: 206-890-9762
 asteers@washingtontractor.com

Quote ID: 21539561
Created On: 05 April 2020
Last Modified On: 28 August 2020
Expiration Date: 25 September 2020

Equipment Summary	Selling Price	Qty	=	Extended
JOHN DEERE 6110M Cab Tractor - 1L06110MHKX950831	\$ 93,722.19	1	=	\$ 93,722.19
Contract: WA Lawn and Grounds 05218 (PG 4S CG 22)				
Price Effective Date: March 25, 2020				

Equipment Total	\$ 93,722.19
------------------------	---------------------

Trade In Summary	Qty	Each	Extended
2000 JOHN DEERE 6410 - L06410V276213	1	\$ 13,800.00	\$ 13,800.00
PayOff			\$ 0.00
Total Trade Allowance			\$ 13,800.00
Trade In Total			\$ 13,800.00

* Includes Fees and Non-contract items

Quote Summary

Equipment Total	\$ 93,722.19
Trade In	\$ (13,800.00)
SubTotal	\$ 79,922.19
Sales Tax - (8.80%)	\$ 7,033.15
Est. Service Agreement Tax	\$ 0.00
Total	\$ 86,955.34

Salesperson : X _____

Accepted By : X _____



JOHN DEERE

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

Deere & Company
2000 John Deere Run
Cary, NC 27513
FED ID: 36-2382580; DUNS#: 60-7690989

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

Washington Tractor, Inc.
2700 136th Ave Ct E
Sumner, WA 98390
253-863-4436
sumner@washingtontractor.org

Down Payment	(0.00)
Rental Applied	(0.00)
Balance Due	\$ 86,955.34

Salesperson : X _____

Accepted By : X _____

Selling Equipment

Quote Id: 21539561 Customer Name: CITY OF SHELTON

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

Deere & Company
 2000 John Deere Run
 Cary, NC 27513
 FED ID: 36-2382580; DUNS#: 60-7690989

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

Washington Tractor, Inc.
 2700 136th Ave Ct E
 Sumner, WA 98390
 253-863-4436
 sumner@washingtontractor.org

JOHN DEERE 6110M Cab Tractor - 1L06110MHKX950831

Hours:

Stock Number: 306645

Contract: WA Lawn and Grounds 05218 (PG 4S CG 22)

Selling Price *

Price Effective Date: March 25, 2020

\$ 93,722.19

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
4228L	6110M Cab Tractor	1	\$ 102,909.00	22.50	\$ 23,154.53	\$ 79,754.47	\$ 79,754.47
Standard Options - Per Unit							
0202	United States	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
0409	English	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
0501	No package	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
873U	Light Package - Standard	1	\$ 456.00	22.50	\$ 102.60	\$ 353.40	\$ 353.40
878H	Multi Power Outlet Strip	1	\$ 92.00	22.50	\$ 20.70	\$ 71.30	\$ 71.30
878T	Roof Hatch with Glass	1	\$ 647.00	22.50	\$ 145.58	\$ 501.42	\$ 501.42
1500	CommandQuad Plus - 24/24, 40 km/h	1	\$ 7,880.00	22.50	\$ 1,773.00	\$ 6,107.00	\$ 6,107.00
2072	Economy Cab	1	\$ 2,073.00	22.50	\$ 466.43	\$ 1,606.57	\$ 1,606.57
2127	Economy Seat	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
2511	Mirrors - Left-hand and Right-hand Manual Telescopic	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
2631	Panorama Front Windshield	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
2663	Radio (Business Radio Package)	1	\$ 337.00	22.50	\$ 75.83	\$ 261.17	\$ 261.17
3232	Hydraulic Pump - 80 l/min	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
3319	2 Mechanical SCVs (2 SCV 200 Series)	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
3810	Rear Independent 540rpm PTO	1	\$ -826.00	22.50	\$ -185.85	\$ -640.15	\$ -640.15
4120	Draft Links with Telescopic Ball End - Category 2	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
4210	Center Link with Ball End - Category 2	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
4410	Sway Control Blocks	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00

Selling Equipment

Quote Id: 21539561 Customer Name: CITY OF SHELTON

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

Deere & Company
 2000 John Deere Run
 Cary, NC 27513
 FED ID: 36-2382580; DUNS#: 60-7690989

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

Washington Tractor, Inc.
 2700 136th Ave Ct E
 Sumner, WA 98390
 253-863-4436
 sumner@washingtontractor.org

5010	Flange-Type Rear Axle	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
5093	2-Position Steel Wheels	1	\$ -601.00	22.50	\$ -135.23	\$ -465.77	\$ -465.77
5237	Rear Wheels Size 480/80R38 - Special Profile	1	\$ 3,704.00	22.50	\$ 833.40	\$ 2,870.60	\$ 2,870.60
5915	Rear and Front Tire Brand - Nokian	1	\$ 200.00	22.50	\$ 45.00	\$ 155.00	\$ 155.00
6045	4WD Front Axle - Unsprung	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
6091	2-position steel wheels	1	\$ -601.00	22.50	\$ -135.23	\$ -465.77	\$ -465.77
6237	Front Wheels Size 440/80R24 - Special Profile	1	\$ 1,530.00	22.50	\$ 344.25	\$ 1,185.75	\$ 1,185.75
7702	Shipment Preparation - by Ship Overseas	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
8380	Preparation for Front Auxiliary Drive	1	\$ 639.00	22.50	\$ 143.78	\$ 495.22	\$ 495.22
8725	Beacon Light	1	\$ 221.00	22.50	\$ 49.73	\$ 171.27	\$ 171.27
8742	Alternator 14V/200A	1	\$ 280.00	22.50	\$ 63.00	\$ 217.00	\$ 217.00
8747	Battery 12V/174AH	1	\$ 126.00	22.50	\$ 28.35	\$ 97.65	\$ 97.65
8763	Heavy Duty Rear Wheel Brakes	1	\$ 136.00	22.50	\$ 30.60	\$ 105.40	\$ 105.40
8765	Powerfill Brake	1	\$ 531.00	22.50	\$ 119.48	\$ 411.52	\$ 411.52
8782	Backup Alarm	1	\$ 507.00	22.50	\$ 114.08	\$ 392.92	\$ 392.92
Standard Options Total			\$ 17,331.00		\$ 3,899.50	\$ 13,431.50	\$ 13,431.50
Technology Options/Non-Contract/Open Market							
1834	Less Greenstar Ready	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
1835	Less StarFire Receiver	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
1867	Less Software	1	\$ 0.00	22.50	\$ 0.00	\$ 0.00	\$ 0.00
Technology Options Total			\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00
Dealer Attachments/Non-Contract/Open Market							
AL173569	Unsprung Instructional Seat With Seat Belt	1	\$ 691.90	22.50	\$ 155.68	\$ 536.22	\$ 536.22
Dealer Attachments Total			\$ 691.90		\$ 155.68	\$ 536.22	\$ 536.22
Value Added Services Total			\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00
Total Selling Price			\$ 120,931.90		\$ 27,209.71	\$ 93,722.19	\$ 93,722.19

YOUR CONTRACT. YOUR QUOTE. YOUR HELP REQUESTED.

**Ensure your equipment arrives with no delay.
Issue your Purchase Order or Letter of Intent.**

To expedite the ordering process, please include the following information in Purchase Order or Letter of Intent:

For any questions, please contact:

- Shipping address
- Billing address
- Vendor: Deere & Company
- 2000 John Deere Run
Cary, NC 27513
- Contract name and/or number
- Signature
- Tax exempt certificate, if applicable

Andrew-s0421 Steers

Washington Tractor, Inc.
2700 136th Ave Ct E
Sumner, WA 98390

Tel: 253-863-4436

Mobile Phone: 206-890-9762

Fax: 253-863-1523

Email: asteers@washingtontractor.com



PURCHASE ORDER

VENDOR NAME & ADDRESS:			SHIP TO NAME & ADDRESS:		
Deere & Company 2000 John Deere Run Cary, NC 27513			City of Shelton 1000 West Pine Street Shelton, WA 98584		
P.O. #	P.O. DATE	REQUISTIONER	SHIP VIA	F.O.B. POINT	TERMS
PO2020	9/15/20	Mike Albaugh			
QTY	UNIT	DESCRIPTION	BARS #	UNIT PRICE	TOTAL
1		John Deere 6110M Cab Tractor	503-300-000-59448-6400	93,722.19	93,722.19
1		Trade In Allowance		13,800.00	13,800.00
					0.00
					0.00
					0.00
PURCHASE JUSTIFICATION				SHIPPING	
Washington State Contract #05218 through Washington Tractor. Total pricing includes a \$13,800 trade in allowance for the old mower.				SUBTOTAL	79,922.19
				Tax (8.8%)	7,033.15
APPROVING MANAGER				TOTAL	86,955.34

Enter this order in accordance with the prices, terms, delivery method, and specifications listed above. Please notify the Department Contact immediately if you are unable to ship as specified.

Please send a copy of your invoice attention of:

City of Shelton
Public Works Department
525 W. Cota Street
Shelton, WA 98584

Quote Summary

Prepared For:
 CITY OF SHELTON
 1000 W PINE ST
 SHELTON, WA 98584
 Business: 360-432-5187

Prepared By:
 Andrew-s0421 Steers
 Washington Tractor, Inc.
 2700 136th Ave Ct E
 Sumner, WA 98390
 Phone: 253-863-4436
 Mobile: 206-890-9762
 asteers@washingtontractor.com

Quote is based on the Washington State Contract 05218. Price is subject to audit by Alamo Industrial. Total price may change due to historical pricing and sales tax calculations used. Purchase orders must be made out to Alamo Industrial, 1502 E Walnut, Seguin, TX 78155. Please submit purchase orders to Andy Steers, asteers@washingtontractor.com, for sales processing.

Quote Id: 21539568
Created On: 05 April 2020
Last Modified On: 27 August 2020
Expiration Date: 25 September 2020

Equipment Summary	Selling Price	Qty	Extended
ALAMO MV2-24 Boom Mower	\$ 81,219.30 X	1 =	\$ 81,219.30
Equipment Total			\$ 81,219.30

Quote Summary	
Equipment Total	\$ 81,219.30
LICENSE FEES	\$ 0.00
SubTotal	\$ 81,219.30
Sales Tax - (8.80%)	\$ 7,147.30
Est. Service Agreement Tax	\$ 0.00
Total	\$ 88,366.60
Down Payment	(0.00)
Rental Applied	(0.00)
Balance Due	\$ 88,366.60

Salesperson : X _____

Accepted By : X _____

Selling Equipment

Quote Id: 21539568

Customer: CITY OF SHELTON

ALAMO MV2-24 Boom Mower

Hours: 0

Stock Number:

				Selling Price
				\$ 81,219.30
Code	Description	Qty	Unit	Extended
04802440	24' Maverick2 Boom	1	\$ 63,256.00	\$ 63,256.00
Standard Options - Per Unit				
02998068	60" HD Grass Flail Cutting Head, w/Ctr Door,Swivel	1	\$ 21,282.00	\$ 21,282.00
Standard Options Total				\$ 21,282.00
Dealer Attachments				
00888888	Dealer Mounting Labor & Oil	1	\$ 8,262.00	\$ 8,262.00
00888888	Tire Ballast Rear Tire	1	\$ 650.00	\$ 650.00
00888888	Delivery to Shelton from Dealer	1	\$ 450.00	\$ 450.00
Dealer Attachments Total				\$ 9,362.00
Suggested Price				\$ 93,900.00
Customer Discounts				
Customer Discounts Total			\$ -12,680.70	\$ -12,680.70
Total Selling Price				\$ 81,219.30



PURCHASE ORDER

VENDOR NAME & ADDRESS:			SHIP TO NAME & ADDRESS:		
Alamo Industrial 1502 E Walnut Sequin, TX 78155			City of Shelton 1000 West Pine Street Shelton, WA 98584		
P.O. #	P.O. DATE	REQUISTIONER	SHIP VIA	F.O.B. POINT	TERMS
PO2036	9/15/20	Mike Albaugh			
QTY	UNIT	DESCRIPTION	BARS #	UNIT PRICE	TOTAL
1		Alamo MV2-24 Boom Mower Attachment	503-300-000-59448-6400	81,219.30	81,219.30
				0.00	0.00
					0.00
					0.00
					0.00
PURCHASE JUSTIFICATION				SHIPPING	
Washington State Contract #05218 through Washington Tractor.				SUBTOTAL	81,219.30
				Tax (8.8%)	7,147.30
APPROVING MANAGER				TOTAL	88,366.60

Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
Please notify the Department Contact immediately if you are unable to ship as specified.

Please send a copy of your invoice attention of:

City of Shelton
Public Works Department
525 W. Cota Street
Shelton, WA 98584