



City Council Study Session Agenda
Virtual Platform
October 6, 2020 at 5:00 p.m.

A. Call to Order

- Pledge of Allegiance

B. Study Agenda

1. 2021 Budget – Presented by Finance Director Aaron BeMiller

C. Adjourn

Shelton City Council
Meeting Agenda
October 6, 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. Voucher numbered 103023 in the amount of \$11,642.59
2. Vouchers numbered 103024 through 103077 in the total amount of \$183,043.31
3. Vouchers numbered 103080 through 103130 in the total amount of \$234,126.55
4. Vouchers numbered 103143 through 103193 in the total amount of \$148,097.91
5. Payroll warrants numbered 3885 through 3886 and 5930 through 5973 and 5974 through 6080.
Warrants 102966 through 102986 in the amount of \$749,780.43

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

D. Presentations

1. Clean Energy Community Proclamation

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

1. LTAC Grant Recommendations – Presented by City Manager Jeff Niten

F. Action Agenda (Action/Public Comment Taken)

1. Resolution No. 1173-0920 Cancelling 2020 Chip Seal Contract and Rejecting All Bids – Presented by City Engineer Ken Gill
2. Public Hearing – Ordinance No. 1955-0820 Refunding Debt – Presented by Finance Director Aaron BeMiller
3. Public Hearing – Ordinance No. 1956-0920 Cable Television Franchise Agreement – Presented by City Manager Jeff Niten

4. CARES Act Contract Supplemental – Presented by City Manager Jeff Niten

G. Administration Reports

1. City Manager Report

H. Announcement of Next Meeting – October 20, 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.*



2020/21 Looking Ahead

(Items and dates are subject to change)

Fri. 10/9		Notice to The Journal of Public Hearing on 11/3 to be published on 10/15	N/A
Tues. 10/20 5:00 p.m.	Special Meeting Study Session	2021 Budget Work Session	Packet Items Due: Fri. 10/9 – 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 	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"> • Water Cross-Connection Program Update Business Agenda <ul style="list-style-type: none"> • Public Hearing – Consideration of the 2021 Ad Valorem (Property) Tax Levy • Public Hearing – 2021 Preliminary Budget • Resolution No. 1174-0920 MTA Parking Lot Project Final Acceptance Action Agenda <ul style="list-style-type: none"> • LTAC Grant Recommendations • Civic Center Rotating Art Gallery Recommendations Administration Report <ul style="list-style-type: none"> • 	Packet Items Due: Fri. 10/9 – 5:00 p.m.
Fri. 10/23		Notice to The Journal of Public Hearings on 11/17 to be published on 10/29	N/A
Tues. 11/3 5:00 p.m.	Special Meeting Study Session	2021 Budget Work Session	Packet Items Due: Fri. 10/23 – 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 <ul style="list-style-type: none"> • Business Agenda <ul style="list-style-type: none"> • Public Hearing Ordinance No. 1950-0320 Budget Amendment for 2020 • Franchise Agreement – PUD #3 • Franchise Agreement - Mason County Action Agenda	Packet Items Due: Fri. 10/23 – 5:00 p.m.

		<ul style="list-style-type: none"> Resolution No. 1174-0920 MTA Parking Lot Project Final Acceptance 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 <ul style="list-style-type: none"> Street Maintenance Business Agenda <ul style="list-style-type: none"> Action Agenda <ul style="list-style-type: none"> Public Hearing 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 <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> Business Agenda <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> Action Agenda <ul style="list-style-type: none"> Administration Report 	Packet Items Due: Fri. 12/4 – 5:00 p.m.
Tues. 12/15 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 <ul style="list-style-type: none"> Stormwater Update 	Packet Items Due: Fri. 12/4 – 5:00 p.m.

		<ul style="list-style-type: none"> • Business Plan Business Agenda <ul style="list-style-type: none"> • Action Agenda <ul style="list-style-type: none"> • Administration Report <ul style="list-style-type: none"> • 	
Tues. 12/15 @ end of regular mtg.	Special Council Meeting	Executive Session <ul style="list-style-type: none"> • Performance of a Public Employee 	N/A
Tues. 1/5 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"> • Action Agenda <ul style="list-style-type: none"> • Administration Report <ul style="list-style-type: none"> • 	Packet Items Due: Th. 12/31 – 5:00 p.m.
Tues. 1/19 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"> • Action Agenda <ul style="list-style-type: none"> • Administration Report <ul style="list-style-type: none"> • 	Packet Items Due: Fri. 1/8 – 5:00 p.m.

Other – TBD

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

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 numbered 103023 in the amount of \$11,642.59 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 11TH 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

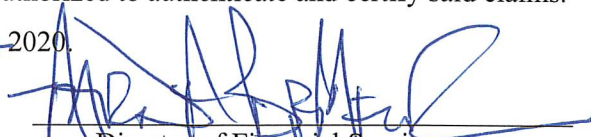
Councilmember Eric Onisko

Councilmember Joe Schmit

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 103024 through number 103077 in the total amount of \$183,043.31 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 14TH 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

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 103080 through number 103130 in the total amount of \$234,126.55 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 17th of September, 2020.

Peri Schmitz
for Director of Financial Services *Accounting Manager*

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

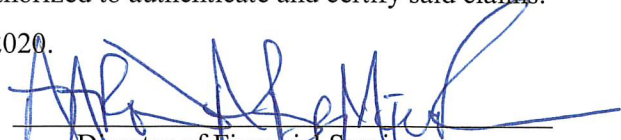
Councilmember Eric Onisko

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 103143 through number 103193 in the total amount of \$148,097.91 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 25th 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

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 within payroll warrants numbered 3885 through 3886 and 5930 through 5973 and 5974 through 6080. Warrants 102966 through 102986 in the amount of \$749,780.43 and that the claims are just and due obligations against the City of Shelton, and that I am authorized to authenticate and certify said claims.

Signed this 10th of Sept, 2020.



Administrative Services Director

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

Signed this _____ of _____, 2020.

Mayor Dorcy

Deputy Mayor Peterson

Councilmember Boad

Councilmember Fiess

Councilmember McDowell

Councilmember Onisko

Councilmember Schmit



City of Shelton
DESIGNATING THE CITY OF SHELTON A CLEAN ENERGY COMMUNITY
PROCLAMATION

WHEREAS, Washington State continues to be a national leader in clean energy policy and recognizes the benefits for our climate, our planet, and our residents; and

WHEREAS, Washington State has set a goal to be powered by 100% clean energy by 2045; and

WHEREAS, the City receives its energy from Mason County PUD No. 3, whose fuel mix consists of resources that are already on average 98% or more carbon free; and

WHEREAS, Mason County, the City of Shelton, and the entire Pacific Northwest, have benefitted for over 80 years from the low cost, preference hydropower that makes up the majority of our public utility districts' energy resources, thus making Shelton a more affordable place to live and conduct business; and

WHEREAS, the City intends to continue to stimulate and recruit economic development to expand the City's tax base, providing jobs and public services for Shelton families; and

WHEREAS, the City recognizes the role that clean, affordable energy plays in the ability to effectively sustain our economy; and

WHEREAS, there are approximately 1,060 kilowatts (dc) of solar that are interconnected with PUD 3's power grid; and

WHEREAS, PUD 3 has offered energy efficiency programs that have helped save its customers more than 64,081,579 kilowatt hours in energy costs over the last decade which is enough to power approximately 4,755 homes; and

WHEREAS, PUD 3 and the City of Shelton have converted all of the city's street lights from High Pressure Sodium (HPS) fixtures to energy efficient Light-Emitting Diodes (LED) Luminaires; and

WHEREAS, the City is committed to helping Washington State achieve its clean energy goals and reduce its overall energy consumption; and

WHEREAS, The term "clean energy" encompasses many thriving business sectors including energy efficiency, renewable energy, electric vehicles, clean fuels, energy storage, and advanced grid technologies that are critical to the health and economic growth of Shelton and its citizens.

NOW, THEREFORE, BE IT RESOLVED, that:

- The City of Shelton pledges to collaborate with Mason County PUD No. 3 to help facilitate the permitting of rooftop solar arrays; and
- The City of Shelton pledges to collaborate with Mason County PUD No. 3 to help facilitate the deployment of zero emission vehicle charging infrastructure within the City limits; and
- The City of Shelton pledges to add the consideration of electric vehicles when replacing City fleet; and
- The City of Shelton pledges to seek financial rebates for weatherization and energy efficiency upgrades, when appropriate, at City-owned facilities; and
- The City of Shelton is hereby designated as a "Clean Energy Community" and shall help Mason County PUD Nos. 1 & 3 facilitate the installation of signs at designated entrances to the City to highlight this designation to visitors and residents.

Signed this 6th day of October 2020.

Mayor Kevin Dorcy



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

Touch Date: 09/02/2020
Brief Date: 10/06/2020
Action Date: 10/20/2020

Department: Administration
Presented By: Jeff Niten

APPROVED FOR COUNCIL PACKET:

Action Requested:

ROUTE TO:

REVIEWED:

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

PROGRAM/PROJECT TITLE:
LTAC Grant Recommendations

ATTACHMENTS:
N/A

- Ordinance
- Resolution
- Motion
- Other

DESCRIPTION OF THE PROGRAM/PROJECT AND BACKGROUND INFORMATION:

Each year the City accepts applications requesting funding from a dedicated revenue source provided by the collection of lodging taxes for motels/hotels in the City. The City's tourism budget is a fund that may only be used on facilities or events as specifically authorized under State Law (RCW 67.28). Also, as directed by State law, the City has appointed a Lodging Tax Advisory Committee (LTAC), with the Mayor serving as chairperson of the committee.

Tourism grants awarded in 2020:

- Kristmas Town Kiwanis – Bluegrass from the Forest \$ 7,000.00
- Mason County Forest Festival \$ 9,900.00
- Mason County Historical Museum/Visitor Services \$12,500.00
- Mason County Historical Society Downtown Car Show \$ 1,980.00
- NW Event Organizers – Christmas Town 2019 \$13,700.00
- NW Event Organizers – Santa Claus/Beauchamp \$ 9,700.00
- Shelton-Mason County Chamber of Commerce \$20,000.00

Total grant award for 2020 - \$74,780.00

The LTAC met on September 25, 2020 to review grant applications submitted for 2021 tourism grant funding. In attendance were LTAC Chair/Mayor Kevin Dorcy, David Dally (Mason County Historical Society Museum and the Downtown Car Show), Duane Wilson (Kristmas Town Kiwanis), and Kary Holloway (Secretary). Sky Kim (Shelton Inn) and Jason and/or Jong Kim (Super 8 Motel) were not present. Seven grant applications were received. Six grant applications were for on-going events or services, and one grant application was specific to gateway signage along Highway 101.

Tourism grant applications submitted in 2021:

- Kristmas Town Kiwanis Bluegrass from the Forest \$ 7,000.00
- Mason County Forest Festival Association \$12,000.00
- Mason County Historical Museum/Visitor Center \$15,000.00
- Mason County Historical Society – Car Show/Ice Cream \$ 2,500.00

- Social
- NW Event Organizers/Kristmas Town Kiwanis – \$22,000.00
Christmas Town 2020
- Shelton-Mason County Chamber of Commerce – \$28,400.00
Visitors Center
- Shelton-Mason County Chamber of Commerce – \$10,059.04
WSDOT Gateway Signage Project

Total grant requests for 2021 - \$96,959.04

The LTAC is recommending 2021 tourism grant funds be awarded as follows:

- Kristmas Town Kiwanis Bluegrass from the Forest \$ 6,300.00
- Mason County Forest Festival Association \$ 8,910.00
- Mason County Historical Museum/Visitor Center \$11,250.00
- Mason County Historical Society – Downtown Car Show \$ 1,782.00
Ice Cream Social
- NW Event Organizers/Kristmas Town Kiwanis – Christmas \$12,330.00
Town 2020
- Shelton-Mason County Chamber of Commerce Visitors \$18,000.00
Center
- Shelton-Mason County Chamber of Commerce WSDOT \$ 3,307.50
Gateway Signage Project

Total grant recommendations for 2021 - \$61,879.50

ANALYSIS/OPTIONS/ALTERNATIVES:

State law declares that the legislative body (City Council) may only choose recipients from the list of candidates presented, and approve the recommended amounts provided by the local Lodging Tax Advisory Committee. There is not a requirement to fund the full list as recommended by the Lodging Tax Advisory Committee. The City Council may make awards in the recommended amounts to all, some, or none of the applicants on this list.

BUDGET/FISCAL INFORMATION:

The Lodging Tax Advisory Committee is recommending a total award of \$61,879.50.

PUBLIC INFORMATION REQUIREMENTS:

Completed applications may be viewed by the public by contacting the City of Shelton, Kary Holloway at (360) 432-5131.

STAFF RECOMMENDATION/MOTION:

Staff is requesting City Council concur to move this item to the action agenda for October 20, 2020.



**CITY OF SHELTON
COUNCIL BRIEFING REQUEST
(Agenda Item F1)**

Touch Date: 09/15/20
Brief Date:
Action Date: 10/06/20
Resolution

Department: Public Works
Presented By: Ken Gill

APPROVED FOR COUNCIL PACKET:

Action Requested:

ROUTE TO:

REVIEWED:

PROGRAM/PROJECT TITLE:

Ordinance

Dept. Head

JOH

**Resolution No 1173-0920
Cancelling the 2020 Chip Seal
Project Contract Award and
Rejecting All Bids**

Resolution

Finance Director

Attorney

ATTACHMENTS:

Motion

City Clerk

Resolution 1173-0920

Other

City Manager

DESCRIPTION OF THE PROGRAM/PROJECT AND BACKGROUND INFORMATION:

The Council awarded the 2020 Chip Seal Project–Schedule A to Doolittle Construction on September 1, 2020. Following the award, Doolittle Construction expressed concerns that the forecasted weather would not be ideal to provide a quality product, and requested the City allow them to complete the project in 2021.

Initial bidding documents included an Alternate Bid Item of completing the project in 2021 instead of 2020. After bidders raised concern on how to provide a bid price, not knowing the economic conditions for the next year, the City released Addendum #1, removing the Alternate Bid Item.

If the City were to extend the performance period of the contract and allow Doolittle Construction to complete the project next year, this would be considered materially different terms than the bid documents and be against Washington State bid laws.

The City relayed this information to Doolittle Construction and they have agreed to cancel the contract. Typically, if the low bidder fails to enter into the contract, the City can move on to the next lowest bidder to offer them the contract. Due to the time of year, the City does not have enough time to award the project to the next lowest bidder and is requesting the Council cancel the Contract Award with Doolittle Construction and reject all bids.

City staff plans to re-bid the project next year with the same two schedules, with the goal to award both schedules of chip seal, using the unspent funds from 2020 along with additional funds from the 2021 budget.

ANALYSIS/OPTIONS/ALTERNATIVES:

N/A

BUDGET/FISCAL INFORMATION:

The Transportation Benefit District (TBD) funds that were going to be utilized to complete the 2020 chip seal project will remain in the fund and will be reallocated to projects in the approved 2021 budget.

PUBLIC INFORMATION REQUIREMENTS:

Information can be obtained from the Public Works Department.

STAFF RECOMMENDATION/MOTION:

Staff recommends a reading of Resolution No. 1173-0920 and: *"I move to adopt Resolution No. 1173-0920, a resolution canceling the 2020 Chip Seal Contract Award and rejecting all bids".*

RESOLUTION NO. 1173-0920

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SHELTON, WASHINGTON, CANCELLING THE
2020 CHIP SEAL CONTRACT AWARD AND REJECTING ALL BIDS**

WHEREAS, the City Council awarded the 2020 Chip Seal Project to Doolittle Construction on September 1, 2020, after selecting a contractor through the Small Works Roster process; and

WHEREAS, after Award, Doolittle Construction requested the City grant them an extension to complete the project in 2021 due to their concern over impending weather conditions; and

WHEREAS, Washington State bid laws do not allow Public Works Contracts to have materially different terms than the bid documents; and

WHEREAS, the City finds allowing the extension would be unfair to the other bidders, as well as those who would have potentially bid on the project knowing it would have been allowed to be performed next year; and

WHEREAS, there is not enough time to take the second lowest bidder to Council for award to complete the project this year.; and

WHEREAS, Doolittle Construction has agreed to the cancellation of its contract.

THEREFORE, BE IT RESOLVED by the City Council of the City of Shelton that the 2020 Chip Seal Contract Award is cancelled and all bids are rejected.

Passed by the City Council at its regular meeting held on the 6th day of October 2020.

Mayor Dorcy

ATTEST:

City Clerk Nault



**CITY OF SHELTON
COUNCIL BRIEFING REQUEST
(Agenda Item F2)**

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:

- | | | |
|-------------------------------------|------------------|-------|
| <input type="checkbox"/> | Dept. Head | _____ |
| <input checked="" type="checkbox"/> | Finance Director | _____ |
| <input type="checkbox"/> | Attorney | _____ |
| <input checked="" type="checkbox"/> | City Clerk | _____ |
| <input type="checkbox"/> | City Manager | _____ |

PROGRAM/PROJECT TITLE:

Bond Refunding

ATTACHMENTS:

Ordinance No. 1955-0820

- | | |
|-------------------------------------|------------|
| <input checked="" type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | Motion |
| <input type="checkbox"/> | 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. Currently savings are estimated to be \$2.5 million (Net Present Value savings of \$1.5 million) or 16% over the life of the bonds.

PUBLIC INFORMATION REQUIREMENTS:

Information can be obtained through the City Clerk.

STAFF RECOMMENDATION/MOTION:

"I move to approve Ordinance No. 1955-0820, authorizing and approving the issuance of one or more series of Limited Tax General Obligation Bonds for the purpose of refunding certain outstanding obligations of the City as described in the ordinance."

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 F2)

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

Resolution

Motion

Other

Dept. Head

Finance Director

Attorney

City Clerk

City Manager

JN

ATTACHMENTS:

- Ordinance 1956-0920
- Comcast Cable Communications Franchise Agreement
- Hood Canal Communications Franchise Agreement

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. City Council conducted a first reading on this Ordinance on September 15, 2020.

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 recommends City Council adopt Ordinance No. 1956-0920 as presented by making the following motion:

"I move to approve Ordinance 1956-0920 as presented".

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 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 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 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 F4)**

Touch Date: 09/28/20
Brief Date: 10/06/20
Action Date: 10/06/20

Department: Executive
Presented By: Jeff Niten

APPROVED FOR COUNCIL PACKET:

Action Requested:

ROUTE TO:

REVIEWED:

PROGRAM/PROJECT TITLE:
Coronavirus Relief Funds for Local Government

ATTACHMENTS:
Dept. of Commerce Interagency Agreement

Dept. Head

Finance Director

Attorney

City Clerk

City Manager

JN

Ordinance

Resolution

Motion

Other

DESCRIPTION OF THE PROGRAM/PROJECT AND BACKGROUND INFORMATION:

The CARES Act approved by the Federal Government earlier this year provided for direct funding to States and Local Governments with populations over 500,000 people. Washington State then shares the funding they received with local municipal governments based on a formula developed by the U.S. Department of the Treasury. Shelton's initial share of the funding was \$306,600.00. This supplemental contract provides and additional \$153,300.00 for a total of \$459,900.00.

Guidance issued by the U.S. Department of the Treasury on April 22nd and May 28th and includes several different categories including "...Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions." and "...payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency." The city is exploring every avenue for use of these allocated funds.

In order to request reimbursement for expenses the attached contract must be executed between the Department of Commerce and the City of Shelton. The contract is attached to this staff report. Funds under the contract are made available and are subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and Title V and VI of the CARES Act. The city shall receive reimbursement for allowable expenses as identified in the Scope of Work or as authorized in advance by COMMERCE as reimbursable. Don Kuisimi, Finance Specialist with the City of Shelton, will be the authorized contact for this agreement and is authorized to request reimbursements from Department of Commerce.

ANALYSIS/OPTIONS/ALTERNATIVES:

N/A

BUDGET/FISCAL INFORMATION:

The funds made available under the CARES Act will be accounted for as revenue in the 2020 City of Shelton financials.

PUBLIC INFORMATION REQUIREMENTS:

Information can be obtained through the City Clerk.

STAFF RECOMMENDATION/MOTION:

Staff recommends: *"I move to approve the Interagency Agreement with the Washington Department of Commerce, Amendment "A", by authorizing the City Manager to sign the attached agreement".*

Amendment

Contract Number: 20-6541C-318
Amendment Number: A

**Washington State Department of Commerce
Local Government Division
Community Capital Facilities Unit
Coronavirus Relief Fund for Local Governments**

1. Contractor City of Shelton 525 West Cota Street SHELTON, Washington 98584-2239		2. Contractor Doing Business As (optional)	
3. Contractor Representative (only if updated) Don Kuismi Finance Specialist (360) 432-5155 Don.Kuismi@Sheltonwa.gov		4. COMMERCE Representative (only if updated) Tryg Hoff Project Manager (360) 725-2779 Fax 360-586-5880 tryg.hoff@commerce.wa.gov	
5. Original Contract Amount (and any previous amendments) \$306,600.00	6. Amendment Amount \$153,300.00	7. New Contract Amount \$459,900.00	
8. Amendment Funding Source Federal: X State: Other: N/A:		9. Amendment Start Date Date of Execution	10. Amendment End Date November 30, 2020
11. Federal Funds (as applicable): \$459,900.00	Federal Agency: US Dept. of the Treasury	CFDA Number: 21.019	
12. Amendment Purpose: To provide additional funding for costs incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) during the period of March 1, 2020 thru November 30, 2020. Final invoices must be received by December 15, 2020.			

COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract As Amended and attachments and have executed this Contract Amendment on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract As Amended are governed by this Contract Amendment and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Budget & Invoicing, Attachment "C" – A-19 Certification, Attachment "D" – A-19 Activity Report. A copy of this Contract Amendment shall be attached to and made a part of the original Contract between COMMERCE and the Contractor. Any reference in the original Contract to the "Contract" shall mean the "Contract as Amended".

FOR CONTRACTOR	FOR COMMERCE
_____ Jeff Nitén, City Manager	_____ Mark K. Barkley, Assistant Director, Local Government Div
_____ Date	_____ Date
	APPROVED AS TO FORM ONLY
	_____ Sandra Adix Assistant Attorney General
	_____ 3/20/2014 Date

Amendment

This Contract is **amended** as follows:

Contract amount has been increased by \$153,300.00.

Contract end date has been extended from October 31, 2020 to November 30, 2020.

Final reimbursement request must be received by December 15, 2020.

ALL OTHER TERMS AND CONDITIONS OF THIS CONTRACT REMAIN IN FULL FORCE AND EFFECT.