

**CHEHALIS CITY COUNCIL AGENDA**  
 CITY HALL  
 350 N MARKET BLVD | CHEHALIS, WA 98532

Anthony E. Ketchum, Sr., District 3 Mayor	Kate McDougall, Position at Large No. 1 Kevin Carns, Position at Large No. 2 Robert J. Spahr, Mayor Pro Tem, Position at Large No. 3
Jerry Lord, District 1 Daryl J. Lund, District 2 Dr. Isaac S. Pope, District 4	

**Regular Meeting of Monday, August 28, 2023**

**5:00 p.m.**

***To access this meeting via Zoom:***

Meeting ID: 834 4212 6653

Pass Code: 674890

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| <ol style="list-style-type: none"> <li>1. <b><u>Call to Order</u></b> (Mayor Ketchum)</li> <li>2. <b><u>Pledge of Allegiance</u></b> (Mayor Ketchum)</li> <li>3. <b><u>Approval of Agenda</u></b> (Mayor Ketchum)</li> </ol> |
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<b>PRESENTATIONS/PROCLAMATIONS</b>
4. <b><u>Employee Introductions</u></b>

<b>CONSENT CALENDAR</b>	<b>ADMINISTRATION RECOMMENDATION</b>	<b>PAGE</b>
5. <b><u>Minutes of the Regular Meeting August 14, 2023</u></b> (City Clerk)	APPROVE	1
6. <b><u>Vouchers and Transfers- Accounts Payable in the Amount of \$453,594.15</u></b> (Finance Director)	APPROVE	5
7. <b><u>First Reading of Ordinance No. 1073-B, Granting Extension to the Comcast Franchise Agreement</u></b> (City Attorney and City Clerk)	APPROVE	7
8. <b><u>Appointment and Reappointment of Lodging Tax Advisory Committee (LTAC) Members</u></b> (City Manager and Councilor Lord)	APPROVE	55

<b>PUBLIC HEARINGS</b>	<b>ADMINISTRATION RECOMMENDATION</b>	<b>PAGE</b>
There is no public hearing to conduct.		

### CITIZENS BUSINESS (PUBLIC COMMENT)

Individuals wishing to provide public comments in general and on agenda items should submit comments by 4:00 pm on the day of the meeting. All comments received will be acknowledged by the Mayor under Citizens Business of this meeting agenda. Please use the following form to submit comments – <https://www.ci.chehalis.wa.us/contact>. If you do not have computer access or would prefer to submit a comment verbally, please contact City Clerk Kassi Mackie at 360-345-1042 or at [kmackie@ci.chehalis.wa.us](mailto:kmackie@ci.chehalis.wa.us). Public comments will be limited to five (5) minutes per person.

### UNFINISHED BUSINESS

ADMINISTRATION  
RECOMMENDATION

PAGE

There is no unfinished business to consider.

### NEW BUSINESS

ADMINISTRATION  
RECOMMENDATION

PAGE

9. First Reading of Ordinance No. 1072-B, Creating a New Chapter 2.30, Ambulance Transport (Fire Chief)

APPROVE

57

### ADMINISTRATION AND CITY COUNCIL REPORTS

ADMINISTRATION  
RECOMMENDATION

PAGE

#### Administration Reports

- City Manager Update
  - Update on Water Infrastructure Assessment
  - Review of the Interlocal Agreement with Napavine for Wastewater Services

INFORMATION  
ONLY

#### Councilor Reports/Committee Updates (City Council)

### EXECUTIVE SESSION

#### Pursuant to RCW:

- 42.30.110(1)(i) – Litigation/Potential Litigation

THE CITY COUNCIL MAY ADD AND TAKE ACTION ON OTHER ITEMS NOT LISTED ON THIS AGENDA.

#### NEXT REGULAR CITY COUNCIL MEETINGS

MONDAY, SEPTEMBER 11, 2023- 5:00 P.M.

MONDAY, SEPTEMBER 25, 2023 -5:00 P.M.

**Chehalis City Council**  
Regular Meeting Minutes  
August 14, 2023  
5:00 p.m.

**Council Present:** Mayor Ketchum, Mayor Pro-Tem Spahr, Councilor Lund, Councilor McDougall, Councilor Carns and Councilor Lord

**Council Absent:** Councilor Pope (excused)

**Staff Present:** Jill Anderson, City Manager; Kassi Mackie, City Clerk; Kevin Nelson, City Attorney; Susan Stayner, Administrative Assistant to the City Manager; Sally Saxton, Financial Analyst; Justin Phelps, Wastewater Superintendent; Lance Bunker, Public Works Director; Fritz Burle, Streets Superintendent; Randy Kaut, Police Chief; Ron Buckholt, City Planner; Brandon Rakes, Airport Director; Andrew Hunziker, Facilities Manager; Riley Bunnell, Water Superintendent; Lilly Wall, Parks and Recreation Director; Chun Saul, Financial Director

**Press Present:**

1. **Call to Order:**  
Mayor Ketchum called the meeting to order at 5:00 p.m.
2. **Pledge of Allegiance**  
Councilor Spahr led the flag salute.
3. **Approval of Agenda**  
The agenda was amended to remove agenda item no. 17 related to the proposed purchase of a RC Remote Mower for the Chehalis Airport.

***A motion was made by Mayor Pro Tem Spahr, seconded by Councilor Lund, to approve the agenda as amended. Motion carried unanimously.***

**PRESENTATIONS**

4. **Employee Introductions** (City Manager)  
City Manager Anderson introduced Planning Consultant, Todd Johnson of TRJ Planning, Inc.
5. **Ceremonial Swearing in of Firefighters Hired During the Pandemic**  
Fire Chief Adam Fulbright administered the Oath of Office for Firefighters Daniel Ford, Pat Glover, Shane Schow and Adam Miller.
6. **Recognition of Retired Fire Captain Steve Emrich**  
Fire Chief Adam Fulbright recognized Captain Steve Emrich for his years of service with the Chehalis Fire Department.

**CONSENT CALENDAR**

7. **Minutes of the Special City Council Meeting of July 24, 2023** (City Clerk)

8. **Minutes of the Regular City Council Meeting of July 24, 2023** (City Clerk)
9. **Vouchers and Transfers- Accounts Payable in the Amount of \$493,517.16** (Finance Director)
10. **Vouchers and Transfers- Payroll in the Amount of \$970,358.98** (Finance Director)
11. **Proposed Adjustment to Finance Director Pay Scale** (HR/Risk Manager)
12. **Resolution No. 16-2023, Surplus Property** (City Clerk)
13. **Acceptance and Closeout of Temporary/Interim Fire Station Relocation of Manufactured Mobile Structure Project** (City Manager)
14. **Budgeted Purchase of Fuel for Resale** (Airport Director)

*A motion was duly made and passed approving the remaining items on the Consent Calendar as though acted on individually.*

#### **PUBLIC HEARINGS**

*There were no public hearings to conduct.*

#### **CITIZENS BUSINESS**

Earl Spalding provided public comment regarding a possible pickleball court in the Chehalis city limits.

Edna Fund provided Council with an update on the Southwest Washington State Fair.

Arnold Haberstroh thanked the Council for expediting resolution for a request made at a previous meeting.

#### **UNFINISHED BUSINESS**

15. **Second Reading of Ordinance No. 1070-B, Changes to CMC 12.04.460 Water Service Connection** (Wastewater Supervisor)

*A motion was made by Councilor Lund, seconded by Councilor Lord to adopt Ordinance No. 1070-B. The motion carried unanimously.*

#### **NEW BUSINESS**

16. **Fire Department Staffing Model-Proposed Transition to Advanced Life Support Staffing** (Fire Chief)

*A motion was made by Councilor Lund, seconded by Councilor Carns, to approve the transition to the ALS staffing model, add the position of Firefighter/Paramedic to the Salary Schedule and authorize the hiring of two Firefighter/Paramedics to fill the two current vacancies. The motion carried unanimously.*

~~17. Procurement of a Tracked 60 inch R-60 RC Mower for the Chehalis Centralia Airport (Airport Director)~~

18. Agreement for Engineering Services-Chehalis Police Station Evidence Building Water Intrusion Evaluation Project (Facilities Manager)

*A motion was made by Mayor Pro Tem Spahr, seconded by Councilor Pope to authorize the City Manager to execute the engineering services contract to Gibbs & Olson in the amount of \$29,750 to provide an evaluation of the Police Evidence Room and attached retaining wall to identify the cause of the water intrusion and seepage issue, identifying options for stopping the water intrusion and seepage and provide a planning level project cost. The motion carried unanimously.*

## **ADMINISTRATION AND CITY COUNCIL REPORTS**

### **City Manager Update**

Finance Director Chun Saul presented the 2023 Second Quarter Financial Report.

City Manager Anderson provided a brief update regarding the upcoming Music in the Park, ChehalisFest, and Clean-up Day.

### **Councilor Reports/Committee Updates**

Mayor Pro Tem Spahr reported attendance at a SWAC meeting.

Councilor Lund commended the Fire Chief on the transition to ALS.

Councilor McDougall reported attendance at Experience Chehalis Homeless Meeting and participation in the pancake breakfast for ChehalisFest, Public Health and Social Services meeting, Budget Committee meeting and volunteer at the 3 on 3 Basketball Tournament.

Councilor Carns mentioned the coverage in the Chronicle regarding the FLOCK Cameras, and is encouraged by the crimes they are assisting to solve.

Mayor Ketchum reported attendance at Music in the Park, ChehalisFest, Pancake Breakfast, ribbon cutting for Chehalis Pharmacy, LEOFF Board Meeting and mentioned the sewer agreement with Napavine needed updating. Staff will place this item on an upcoming agenda.

## **EXECUTIVE SESSION**

*There was no executive session scheduled.*

## **ADJOURNMENT**

*Mayor Ketchum adjourned the meeting at 6:27 p.m.*

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Anthony Ketchum, Sr., Mayor

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Attest: Kassi Mackie, City Clerk

**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Chun Saul, Finance Director  
Clare Roberts, Accounting Tech III

**MEETING OF:** August 28, 2023

**SUBJECT:** 2023 Vouchers and Transfers – Accounts Payable in the Amount of \$453,594.15.

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**ISSUE**

City Council approval is requested for 2023 Vouchers and Transfers dated August 15, 2023.

**DISCUSSION**

The August 15, 2023 Claim Vouchers have been reviewed by a committee of three councilors prior to the release of payments. The administration is requesting City Council approval for Claim Vouchers including Electronic Funds Transfer Checks No. 3043 - 3083, 117 and Voucher Checks No. 137160 – 137261 in the amount of \$453,594.15 dated August 15, 2023 which included the transfer of:

- \$ 177,102.80 from the General Fund
- \$ 79,500.24 from the Street Fund
- \$ 1,875.75 from the LEOFF 1 OPEB Reserve Fund
- \$ 405.72 from the Garbage Fund
- \$ 60,854.73 from the Wastewater Fund
- \$ 40,875.75 from the Water Fund
- \$ 7,395.09 from the Storm & Surface Water Utility Fund
- \$ 57,886.40 from the Airport Fund
- \$ 2,106.31 from the Wastewater Capital Fund
- \$ 8,521.37 from the Water Capital Fund
- \$ 2,106.31 from the Stormwater Capital Fund
- \$ 4,345.50 from the Custodial Court Fund
- \$ 10,618.18 from the Custodial Other Agency Fund

**RECOMMENDATION**

It is recommended that the City Council approve the Claim Vouchers including Electronic Funds Transfer Checks No. 3043 - 3083, 117 and Voucher Checks No. 137160 – 137261 in the amount of \$453,594.15 dated August 15, 2023.

**SUGGESTED MOTION**

I move that the City Council approve the Claim Vouchers including Electronic Funds Transfer Checks No. 3043 - 3083, 117 and Voucher Checks No. 137160 – 137261 in the amount of \$453,594.15 dated August 15, 2023.



**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Kassi Mackie, City Clerk

**MEETING OF:** August 28, 2023

**SUBJECT:** Ordinance No. 1073-B, First Reading – Granting a Non-exclusive Franchise to Comcast

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**ISSUE**

The current franchise agreement with Comcast Cable Communications Management, LLC is nearing the end of the approved ten-year term in 2024. Comcast has requested that the City Council approve one additional five-year extension, which is presented here for consideration.

**DISCUSSION**

The City entered into a franchise agreement with Comcast Cable Communications Management, LLC in July of 2014 by passage of Ordinance No. 930-B to construct, operate, maintain, reconstruct, rebuild, and upgrade a cable communications system within Chehalis. The agreement provided for a term of 5 years which is set to expire in 2024. The contract provides for an option to extend an additional five years.

The administration has been working with Comcast to update the agreement. No changes are proposed aside from the additional five-year term. The agreement has been reviewed by the City Attorney and the Washington Cities Insurance Authority.

**FISCAL IMPACT**

There is no fiscal impact. Pursuant to RCW 35.21.860, the City may not impose a franchise fee; however, the city may recover actual administrative expenses from Comcast, such as the expense of publishing the ordinance in its entirety.

**RECOMMENDATION**

It is recommended that the City Council approve Ordinance No. 1073-B on first reading.

**SUGGESTED MOTION**

I move that the City Council approve Ordinance No. 1073-B on first reading.



**ORDINANCE NO. 1073-B**

**AN ORDINANCE OF THE CITY OF CHEHALIS, LEWIS COUNTY, WASHINGTON AUTHORIZING THE CITY COUNCIL TO EXTEND A CABLE TV FRANCHISE AGREEMENT WITH COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC.**

WHEREAS, the City of Chehalis (“the City”) entered into a cable TV franchise agreement with Comcast Cable Communications Management, LLC as authorized by Ordinance No. 930-B on July 28, 2014; and

WHEREAS, pursuant to Section 2.3 of the above referred to agreement, the agreement is five (5) years in duration and contains a provision that it may be extended by mutual agreement; and

WHEREAS, two five (5) year terms are nearly expired, and the City and Comcast Cable Communications management, LLC desire to extend the agreement for an additional five (5) years; and

WHEREAS, the City and Comcast Cable Communications Management, LLC have reached a mutual agreement for a five (5) year extension.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHEHALIS, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. That the Franchise Agreement with Comcast Cable Communications Management, LLC referred to in Ordinance No. 930-B shall be extended for an additional period of five (5) years, expiring five (5) years from the effective date of this ordinance.

Section 2. That the Franchise Agreement with Comcast Cable Communications Management, LLC referred to in Ordinance No. 930-B, shall be extended with the same terms and conditions except for the effective date and termination dates, which shall be as set forth in this ordinance.

Section 3. If any provision of this ordinance is determined to be invalid or unenforceable for any reason by federal, state, or local law, the remaining provisions of this ordinance and/or the provisions set forth in the Franchise Agreement with Comcast Cable Communications Management, LLC referred to in Ordinance No. 930-B will remain in force and affect.

Section 4. Upon the approval of the City Attorney, the City Clerk is authorized to make any necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

Section 5. Neither party waives any rights which it enjoys under law as a result of agreeing to this extension.

Section 6. This ordinance shall be in full effect on \_\_\_\_\_, 2023, which is more than five (5) days after publication in the City’s newspaper of record. A summary of this ordinance may be published in lieu of publishing the ordinance in its entirety.

PASSED BY THE CITY COUNCIL OF THE CITY OF CHEHALIS, WASHINGTON, at a regular meeting thereof this the \_\_\_\_\_ day of \_\_\_\_\_ 2023.

CITY OF CHEHALIS, WASHINGTON

\_\_\_\_\_  
Tony Ketchum

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Kassi Mackie, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kevin T. Nelson, City Attorney

**Franchise Extension Acceptance**

This acceptance of the Franchise Extension is unconditionally made without reservation. Grantee (Comcast Cable Communications Management, LLC) accepts this Ordinance passed by the City extending the term of the Franchise Agreement referred to in Ordinance No. 930-B.

Accepted and approved, \_\_\_\_\_.

Comcast Cable Communications Management, LLC

\_\_\_\_\_

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

Title: \_\_\_\_\_

**ORDINANCE NO. 930-B**

**AN ORDINANCE OF THE CITY OF CHEHALIS, WASHINGTON, APPROVING AND ADOPTING THAT CERTAIN CABLE TELEVISION SYSTEM FRANCHISE AGREEMENT BETWEEN THE CITY OF CHEHALIS, WASHINGTON, AND COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC; AND REPEALING ORDINANCE NO. 728-B, PASSED THE 28<sup>TH</sup> DAY OF OCTOBER, 2002.**

**WHEREAS**, the current cable television franchise agreement between the City of Chehalis, Washington, (the "City"), and Comcast Cable Communications Management, LLC. (Comcast), formerly TCI Cablevision of Washington, Inc./Comcast of Twin Cities, Inc., has expired; and

**WHEREAS**, the City has negotiated a new agreement with Comcast, granting a nonexclusive franchise to Comcast to construct, operate, maintain, reconstruct, rebuild and upgrade a cable communications system within the corporate limits of the City; now, therefore,

**THE CITY COUNCIL OF THE CITY OF CHEHALIS, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1.** The cable television franchise agreement between the City and Comcast, attached hereto and incorporated herein by this reference, shall be, and the same hereby is, approved and adopted.

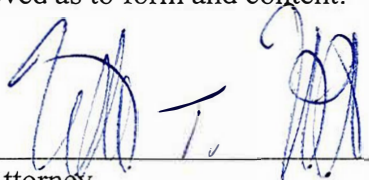
**PASSED** by the City Council of the city of Chehalis, Washington, and **APPROVED** by its Mayor, at a regularly scheduled open public meeting thereof this 28<sup>th</sup> day of July, 2014.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
City Clerk

Approved as to form and content:

  
\_\_\_\_\_  
City Attorney

**CABLE TELEVISION SYSTEM  
FRANCHISE AGREEMENT**

**Between**

**CHEHALIS, WASHINGTON**

**And**

**COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC**

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42  
43  
44  
45  
46  
47  
48

**CABLE TV FRANCHISE AGREEMENT**  
Between City of Chehalis & Comcast Cable Communications Management, LLC

**TABLE OF CONTENTS**

SECTION 1. DEFINITIONS .....6

"Access" .....6

"Access Center" .....6

"Access Channel" .....6

"Access Fees" .....6

"Activation" or "Activated" .....6

"Affiliated Entity" or "Affiliate" .....6

"Bad Debt" .....6

"Basic Service" .....7

"Broadcast Signal" .....7

"Cable Acts" .....7

"Cable Operator" .....7

"Cable Service" .....7

"Channel" .....7

"Connection" .....7

"Designated Access Provider" .....7

"Designated Distributor" .....7

"Downstream Channel" .....7

"Dwelling Unit" .....8

"Expanded Basic Service" .....8

"FCC" .....8

"Fiber Optic" .....8

"Franchise" .....8

"Franchise Area" .....8

"Franchise Fee" .....8

"Grantee" .....8

"Grantor" .....8

"Gross Revenues" .....8

"Headend" or "Hub" .....9

"Leased Access Channel" .....9

"Noncommercial" .....9

"Normal Business Hours" .....9

"Normal Operating Conditions" .....9

"Pay Service" or "Premium Service" .....10

"Person" .....10

"Rights-of-Way" .....10

"Road" .....10

"School" .....10



1	“Service Interruption” .....	10
2	"State" .....	10
3	"Subscriber" .....	10
4	"System" or “Cable System” .....	10
5	"Tier" .....	11
6	“Upstream Channel” .....	11
7	“Video Programming” .....	11
8		
9	SECTION 2. GRANT OF FRANCHISE.....	11
10	2.1 Grant .....	11
11	2.2 Use of Rights-of-Way .....	12
12	2.3 Duration .....	12
13	2.4 Effective Date .....	12
14	2.5 Franchise Nonexclusive .....	13
15	2.6 Grant of Other Franchises .....	13
16	2.7 Familiarity with Franchise .....	13
17	2.8 Effect of Acceptance .....	14
18	2.9 Police Powers .....	14
19	2.10 Franchise Area .....	14
20		
21		
22	SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS.....	15
23	3.1 Franchise Fee .....	15
24	3.2 Payments .....	15
25	3.3 Acceptance of Payment.....	15
26	3.4 Quarterly Franchise Fee Reports .....	15
27	3.5 Audits .....	15
28	3.6 Financial Records.....	15
29	3.7 Interest on Late Payments .....	16
30	3.8 Maximum Franchise Fee.....	16
31	3.9 Additional Commitments Not Franchise Fees .....	16
32	3.10 Payment on Termination .....	16
33		
34	SECTION 4. ADMINISTRATION AND REGULATION.....	16
35	4.1 General Provision.....	16
36	4.2 Rates and Charges.....	17
37	4.3 Rate Discrimination .....	17
38	4.4 Filing of Rates and Charges .....	17
39	4.5 Late Fees .....	18
40	4.6 Time Limits Strictly Construed .....	18
41	4.7 Performance Evaluation.....	18
42		
43	SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS.....	18
44	5.1 Indemnification .....	18
45	5.2 Insurance Requirements.....	20
46	5.3 Security .....	20
47		
48	SECTION 6. CUSTOMER SERVICE .....	21

1	6.1	Customer Service Standards.....	21
2	6.2	Subscriber Contracts.....	21
3	6.3	Subscriber Privacy.....	21
4	6.4	Customer Service Agreement and Manual.....	21
5			
6		SECTION 7. REPORTS AND RECORDS.....	22
7	7.1	Open Records.....	22
8	7.2	Confidentiality.....	22
9	7.3	Records Required.....	22
10	7.4	Copies of Federal and State Reports.....	23
11	7.5	Complaint File and Reports.....	23
12	7.6	Inspection of Facilities.....	23
13	7.7	False Statements.....	23
14			
15		SECTION 8. PROGRAMMING AND CHANNEL CAPACITY.....	24
16	8.1	Grantee Compliance.....	24
17	8.2	Broad Programming Categories.....	24
18	8.3	Obscenity.....	24
19	8.4	Parental Control Device.....	24
20	8.5	Complimentary Cable Service.....	24
21	8.6	New Developments.....	25
22			
23		SECTION 9. EDUCATIONAL AND GOVERNMENTAL ACCESS.....	25
24	9.1	Capital Fee.....	25
25	9.2	Access Reporting.....	25
26	9.3	Management and Control of Access Channel.....	25
27	9.4	Access Channel.....	25
28	9.5	Change in Technology.....	26
29	9.6	Access Channel on Lowest Level of Service.....	26
30			
31			
32		SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION.....	27
33	10.1	Construction.....	27
34	10.2	Relocation.....	28
35	10.3	Location of Facilities.....	28
36	10.4	Restoration of Rights-of-Way/Grantor Owned Property.....	28
37	10.5	Maintenance and Workmanship.....	29
38	10.6	Acquisition of Facilities.....	29
39	10.7	Discontinuing Use of Facilities.....	29
40	10.8	Undergrounding of Cable.....	30
41	10.9	Construction Codes.....	31
42	10.10	Construction and Use of Poles.....	31
43	10.11	Tree Trimming.....	31
44	10.12	Standards.....	31
45	10.13	Stop Work.....	32
46	10.14	Work of Contractors and Subcontractors.....	32
47			
48		SECTION 11. CABLE SYSTEM DESIGN AND CAPACITY.....	32

1	11.1	Equal and Uniform Service.....	32
2	11.2	Cable System Upgrade.....	33
3	11.3	Technical Performance .....	33
4	11.4	Cable System Performance Testing.....	33
5	11.5	Additional Tests.....	34
6			
7		SECTION 12. SERVICE EXTENSION.....	34
8	12.1	Service Availability .....	34
9			
10		SECTION 13. STANDBY POWER AND EAS.....	34
11	13.1	Standby Power .....	34
12	13.2	Emergency Alert Capability .....	35
13			
14		SECTION 14. FRANCHISE BREACHES; TERMINATION OF FRANCHISE .....	35
15	14.1	Informal Dispute Resolution.....	35
16	14.2	Procedure for Remediating Franchise Violations.....	35
17	14.3	Alternative Remedies.....	36
18	14.4	Assessment of Monetary Damages.....	37
19	14.5	Revocation .....	37
20	14.6	Removal .....	38
21			
22		SECTION 15. ABANDONMENT .....	39
23	15.1	Effect of Abandonment.....	39
24			
25		SECTION 16. FRANCHISE TRANSFER.....	39
26	16.1	Transfer of Ownership or Control.....	39
27			
28		SECTION 17. MISCELLANEOUS PROVISIONS.....	40
29	17.1	Preferential or Discriminatory Practices Prohibited .....	40
30	17.2	Notices .....	41
31	17.3	Costs to Be Borne by Grantee.....	41
32	17.4	Binding Effect.....	41
33	17.5	Authority to Amend .....	41
34	17.6	Venue .....	42
35	17.7	Governing Law .....	42
36	17.8	Captions .....	42
37	17.9	Construction of Franchise .....	42
38	17.10	No Joint Venture .....	42
39	17.11	Waiver.....	42
40	17.12	Severability .....	42
41	17.13	Entire Agreement .....	42
42	17.14	Compliance with Federal, State, and Local Laws.....	42
43	17.15	Customer Service Standards .....	43
44	17.16	Force Majeure .....	43
45			
46			
47			

1  
2  
3 **CABLE TV FRANCHISE AGREEMENT**

4 **SECTION 1. DEFINITIONS**

5 For the purposes of this Franchise and all exhibits attached hereto the following terms, phrases,  
6 words and their derivations shall have the meanings given herein. When not inconsistent with  
7 the context, words used in the present tense include the future, words in the plural include the  
8 singular, and words in the singular include the plural. Words not defined shall be given their  
common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

9 **"Access"**

10 means the availability for Noncommercial use by various governmental and educational  
11 agencies, including Grantor and its designees, of particular channels on the System to receive  
12 and distribute Video Programming to Subscribers, as permitted under applicable law, including,  
13 but not limited to:

14 (A) "Educational Access" means Access where Schools are the primary users having  
15 editorial control over programming and services.

16 (B) "Governmental Access" means Access where governmental institutions or their  
17 designees are the primary users having editorial control over programming and services; and

18 (C) "Access" means Educational Access and Governmental Access, collectively.

19 **"Access Center"**

20 means a facility or facilities where signals are managed and delivered to the Grantee for  
21 Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.

22 **"Access Channel"**

23 means any Channel, or portion thereof, designated for Noncommercial Access purposes or  
24 otherwise made available to facilitate or transmit Access programming.

25 **"Access Fees"**

26 means the Capital Fee paid to the Grantor by the Grantee in accordance with section 9.1 below.

27 **"Activation" or "Activated"**

28 means the status of any capacity on or part of the System wherein the use of that capacity or part  
29 thereof may be made available without further installation of system equipment other than  
30 Subscriber premise equipment, whether hardware or software.

31 **"Affiliated Entity" or "Affiliate"**

32 means when used in connection with Grantee any corporation, Person who owns or controls, is  
33 owned or controlled by, or is under common ownership or control with, Grantee and its  
34 successor corporations. Affiliated Entity or Affiliate also means any Person with whom Grantee  
35 contracts to provide Cable Services on the Cable System.

36 **"Bad Debt"**

37 means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Grantee,  
38 but not collected after reasonable efforts by Grantee.

1 **"Basic Service"**

2 means any Cable Service tier which includes, at a minimum, the retransmission of local  
3 television Broadcast Signals.

4 **"Broadcast Signal"**

5 means a television signal transmitted over the air to a wide geographic audience, and received by  
6 a System off-the-air by antenna, microwave, satellite dishes or any other means.

7 **"Cable Acts"**

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

11 **"Cable Operator"**

12 means any Person or groups of Persons, including Grantee, who provides Cable Service over a  
13 System and directly or through one or more Affiliates owns a significant interest in such System  
14 or who otherwise control(s) or is(are) responsible for, through any arrangement, the management  
15 and operation of such a System.

16 **"Cable Service"**

17 means the one-way transmission to Subscribers of Video Programming, or other programming  
18 service and Subscriber interaction, if any, which is required for the selection or use of such  
19 Video Programming or other programming service.

20 **"Channel"**

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

24 **"Connection"**

25 with regard to connections to public buildings, means installation of fiber optic or coaxial cable  
26 or other System related facilities through the outer wall of the building.

27 **"Designated Access Provider"**

28 means the entity or entities designated by the Grantor to manage or co-manage Educational or  
29 Governmental Access Channels and facilities. The Grantor may be a Designated Access  
30 Provider.

31

32 **"Designated Distributor"**

33 means any entity authorized by Grantor to distribute Access Programming.

34 **"Downstream Channel"**

35 means a Channel capable of carrying a transmission from the Headend to remote points on the  
36 System.

37 **"Dwelling Unit"**

38 means any residential building, or each portion thereof.

1 **"Expanded Basic Service"**

2 means cable programming services not included in the Basic Service and excluding premium or  
3 pay-per-view services.

4 **"FCC"**

5 means the Federal Communications Commission or its lawful successor.

6 **"Fiber Optic"**

7 means a transmission medium of optical fiber cable, along with all associated electronics and  
8 equipment capable of carrying Cable Service by means of electric lightwave pulses.

9 **"Franchise"**

10 means the document in which this definition appears, which is executed between Grantor and  
11 Grantee, containing the specific provisions of the authorization granted and the contractual and  
12 regulatory agreement created hereby.

13 **"Franchise Area"**

14 means the area within the jurisdictional boundaries of the Grantor.

15 **"Franchise Fee"**

16 includes any tax, fee or assessment of any kind imposed by the Grantor on the Grantee or  
17 Subscribers, or both solely because of their status as such. The term Franchise Fee does not  
18 include:

19 (A) Any tax, fee or assessment of general applicability, for example a utility tax.

20 (B) Capital costs which are required by the Franchise to be incurred by the Grantee  
21 for educational or governmental access facilities, including the support required in Section 9.1;

22 (C) Requirements or charges incidental to the awarding or enforcing of the franchise,  
23 including but not limited to, payments for bonds, letters of credit, insurance, indemnification,  
24 penalties or liquidated damages; or

25 (D) Any fee imposed under Title 17, United States Code.

26  
27 **"Grantee"**

28 Means Comcast Cable Communications Management, LLC or its lawful successor, transferee or  
29 assignee.

30  
31 **"Grantor"**

32 Means City of Chehalis.

33 **"Gross Revenues"**

34 means any and all revenue derived directly or indirectly by the Grantee, or by any other entity  
35 that is a Cable Operator of the Cable System including Grantee's Affiliates, from the operation  
36 of Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenues  
37 include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable  
38 Services including Basic Service, any expanded tiers of Cable Service, optional Premium  
39 Services; installation, disconnection, reconnection and change-in-service fees, Leased Access  
40 Channel fees, all Cable Service lease payments from the Cable System, late fees and  
41 administrative fees, revenues from rentals or sales of converters or other Cable System

1 equipment; advertising sales revenues (including local, regional and a pro rata share of national  
2 advertising carried on the Cable System in the Franchise Area) net of commissions due to  
3 advertising agencies that arrange for the advertising buy; the fair market value of consideration  
4 received by the Grantee for use of the Cable System to provide Cable Service and accounted for  
5 as revenue under GAAP; revenues from program guides, additional outlet fees, Franchise Fees,  
6 revenue from interactive services to the extent they are considered Cable Services under federal  
7 law, revenue from the sale or carriage of other Cable Services, and revenues from home  
8 shopping, and other revenue-sharing arrangements. Gross Revenues shall include revenue  
9 received by any entity other than the Grantee where necessary to prevent evasion or avoidance of  
10 the obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include  
11 (i) to the extent consistent with GAAP, Bad Debt, provided, however, that all or part of any such  
12 Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in  
13 the period collected; (ii) the Capital Fee specified in subsection 9.1; (iii) any taxes on services  
14 furnished by the Grantee which are imposed directly on any Subscriber or user by the State, City  
15 or other governmental unit and which are collected by the Grantee on behalf of said  
16 governmental unit. The Franchise Fee is not such a tax.

17  
18 The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent  
19 with existing applicable law. If there is a change in federal law subsequent to the effective date  
20 of this Franchise, such change shall not impact this Gross Revenues definition unless the change  
21 specifically preempts the affected portion of the definition above.

22 **"Headend" or "Hub"**

23 means any Facility for signal reception and dissemination on a System, including cable,  
24 antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast  
25 Signals or other signals, equipment for the interconnection of the System with adjacent Systems  
26 and interconnection of any networks which are part of the System, and all other related  
27 equipment and Facilities.

28 **"Leased Access Channel"**

29 means any Channel or portion of a Channel commercially available for programming in  
30 accordance with Section 612 of the Cable Act.

31 **"Noncommercial"**

32 means, in the context of Access Channels, that particular products and services are not promoted  
33 or sold. This term shall not be interpreted to prohibit an Access Channel operator or programmer  
34 from soliciting and receiving financial support to produce and transmit video programming on an  
35 Access Channel, or from acknowledging a contribution, in the manner of the Corporation for  
36 Public Broadcasting.

37 **"Normal Business Hours"**

38 means those hours during which most similar businesses in the community are open to serve  
39 customers.

40 **"Normal Operating Conditions"**

41 means those service conditions which are within the control of the Grantee. Those conditions  
42 which are not within the control of the Grantee include, but are not limited to, natural disasters,  
43 civil disturbances, power outages, telephone network outages, and severe or unusual weather

1 conditions. Those conditions which are ordinarily within the control of the Grantee include, but  
2 are not limited to, special promotions, rate increases, and maintenance or upgrade of the System.

3 **"Pay Service" or "Premium Service"**

4 means Video Programming or other programming service choices (such as movie channels or  
5 pay-per-view programs) offered to Subscribers on a per-channel, per-program or per-event basis.

6 **"Person"**

7 means any natural person, sole proprietorship, partnership, joint venture, association, or limited  
8 liability entity or corporation, or any other form of entity or organization.  
9

10 **"Rights-of-Way"**

11 means land acquired or dedicated for public streets or roads, highways, avenues, lanes, alleys,  
12 bridges, sidewalks, easements and similar public property located within the Franchise area.

13 **"Roads"**

14 means Rights-of-Way.

15 **"School"**

16 means any accredited educational institution including, for example, primary and secondary  
17 schools (K-12), colleges and universities and excluding home schools and residential facilities.

18 **"Service Interruption"**

19 means the loss of picture or sound on one or more cable channels.

20 **"State"**

21 means the State of Washington.

22 **"Subscriber"**

23 means any Person who lawfully receives Cable Services provided by Grantee by means of the  
24 System with Grantee's express permission.

25 **"System" or "Cable System"**

26 means a facility, consisting of a set of closed transmission paths and associated signal generation,  
27 reception and control equipment that is designed to provide Cable Service which includes video  
28 programming and which is provided to multiple Subscribers within a community, but such term  
29 does not include (1) a facility that serves only to retransmit the television signals of one or more  
30 television broadcast stations; (2) a facility that serves Subscribers without using any public right-  
31 of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions  
32 of Title II of the federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility  
33 shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. §  
34 541(c)) to the extent such facility is used in the transmission of video programming directly to  
35 Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4)  
36 an open video system that complies with federal statutes; or (5) any facilities of any electric  
37 utility used solely for operating its electric utility systems. When used herein, the term "Cable  
38 System" or "System" shall mean Grantee's Cable System in the Franchise Area.



1 **"Tier"**  
2 means a category of Cable Services provided by the Grantee for which a separate rate is charged.

3 **"Upstream Channel"**  
4 means a Channel capable of carrying a transmission to the Headend from remote points on the  
5 System.

6 **"Video Programming"**  
7 means programming provided by, or generally considered comparable to programming provided  
8 by, a television broadcast station.  
9

## 10 **SECTION 2. GRANT OF FRANCHISE**

### 11 **2.1 Grant**

12 (A) Grantor hereby grants to Grantee a nonexclusive and revocable authorization to  
13 make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct,  
14 operate, maintain, reconstruct, and upgrade a System for the purpose of providing Cable  
15 Services, subject to the terms and conditions set forth in this Franchise. This Franchise shall  
16 constitute both a right and an obligation to provide the Cable Services required by, and to fulfill  
17 the obligations set forth in, the provisions of this Franchise.

18 (B) The Grantee, through this Franchise, is granted the right to operate its System  
19 using the Grantor's Rights-of-Way within the Franchise Area in compliance with all lawfully  
20 enacted applicable Grantor construction codes and regulations. Nothing in this Franchise shall be  
21 deemed to waive the requirements of the other codes and ordinances of general applicability  
22 lawfully enacted, or hereafter lawfully enacted, by the Grantor to the extent that the provisions of  
23 the codes and ordinances do not have the effect of materially limiting the benefits or materially  
24 expanding the obligations of the Grantee that are granted by this Franchise. The Grantee  
25 specifically agrees to comply with the provisions of Grantor ordinances provided that in the  
26 event of a conflict between the provisions of ordinances and the Franchise, the express  
27 provisions of the Franchise shall govern. Grantee reserves the right to challenge provisions of  
28 any ordinance, rule, regulation, resolution or other enactment of the Grantor that conflicts with  
29 its contractual right granted herein.

30 (C) This Franchise shall not be interpreted to prevent the Grantor from imposing  
31 additional conditions, including additional compensation conditions for use of the Rights-of-  
32 Way, should Grantee provide service other than Cable Service, to the extent permitted by law.

33 (D) Grantee promises and guarantees, as a condition of exercising the privileges  
34 granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of  
35 Cable Service in the Franchise Area, or directly involved in the management or operation of the  
36 System in the Franchise Area, will also comply with the terms and conditions of this Franchise.

37 (E) No rights shall pass to Grantee by implication.

38 (F) This Franchise is intended to convey limited rights and interests only as to those  
39 Rights-of-Ways in which the Grantor has an actual interest. It is not a warranty of title or  
40 interest in any Rights-of-Way; it does not provide the Grantee with any interest in any particular

1 location within the Rights-of-Way; and it does not confer rights other than as expressly provided  
2 in the grant hereof.

3 **2.2 Use of Rights-of-Way**

4 (A) Subject to Grantor's supervision and control, Grantee may erect, install, construct,  
5 repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-  
6 Way within the Franchise Area, such wires, cables (both coaxial and fiber optic), conductors,  
7 ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other  
8 property and equipment as are necessary and appurtenant to the operation of a System for the  
9 provision of Cable Services within the Franchise Area. Grantee shall comply with all applicable  
10 construction codes, laws, ordinances, and regulations, now in effect or enacted hereafter. This  
11 grant does not include the installation, maintenance or construction, repair or replacement of any  
12 wireless telecommunications facilities or equipment within Rights-of-Way or otherwise on  
13 Grantor owned property or on property held in trust or used by the Grantor.

14 (B) Grantee must follow Grantor-established written requirements including all  
15 Grantor codes, ordinances and other regulations regarding placement of System facilities in  
16 Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any  
17 event install System facilities in a manner that minimizes interference with the use of the Rights-  
18 of-Way by others, including others that may be installing communications facilities. The  
19 Grantor may require that System facilities be installed at a particular time, at a specific place or  
20 in a particular manner as a condition of access to a particular Right-of-way; may deny access if  
21 Grantee is not willing to comply with Grantor's requirements; and may remove, or require  
22 removal of, any facility that is not installed in compliance with the requirements established by  
23 Grantor, or which is installed without prior Grantor approval of the time, place or manner of  
24 installation and charge Grantee for all the costs associated with removal; and may require  
25 Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through  
26 joint trenching and other arrangements. Grantee shall assume all Grantee's costs associated with  
27 any requirement of Grantor in the exercise of its police powers or in furtherance of any public  
28 improvement to move its System located in the Right-of-way.

29

30 **2.3 Duration**

31 The term of this Franchise and all rights, privileges, obligations and restrictions pertaining  
32 thereto shall be five (5) years from the effective date of this Franchise, unless terminated sooner  
33 as hereinafter provided. This Franchise may be extended by mutual agreement of the parties for  
34 five (5) additional years.

35 **2.4 Effective Date**

36 The provisions of this Franchise shall be effective upon the written acceptance of this Franchise  
37 by the Grantee, signed by its proper officers, filed with the Clerk of the Grantor within sixty days  
38 from July 28, \_\_\_\_\_, 2014.

39 **2.5 Franchise Nonexclusive**

40 This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or  
41 licenses granted by Grantor or its predecessors to any Person to use any property, Rights-of-  
42 Way, easement, right, interest or license for any purpose whatsoever, including the right of

1 Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed  
2 Grantee hereunder. Grantor may at any time grant authorization to use the Rights-of-Way for  
3 any purpose not incompatible with Grantee's authority under this Franchise and for such  
4 additional Franchises for Systems as Grantor deems appropriate.

5 **2.6 Grant of Other Franchises**

6 (A) The Grantee acknowledges and agrees that the Grantor reserves the right to grant  
7 one or more additional franchises to provide Cable Service within the Franchise Area; provided,  
8 the Grantor agrees that it shall amend this Franchise to include any material terms or conditions  
9 that it makes available to the new entrant within ninety (90) days of the Grantee's request, so as  
10 to ensure that the regulatory and financial burdens on each entity are materially equivalent.  
11 "Material terms and conditions" include but are not limited to: franchise fees; insurance; system  
12 build-out requirements; security instruments; public, education and government Access Channels  
13 and support; customer service standards; required reports and related record keeping; and notice  
14 and opportunity to cure breaches. If any such additional or competitive franchise is granted by  
15 the Grantor which, in the reasonable opinion of the Grantee, contains more favorable or less  
16 burdensome terms or conditions than this Franchise, the Grantor agrees that it shall amend this  
17 Franchise to include any more favorable or less burdensome terms or conditions in a manner  
18 mutually agreed upon by Grantor and Grantee.

19  
20 (B) In the event an application for a new cable television franchise is filed with the  
21 Grantor proposing to serve the Franchise Area, in whole or in part, the Grantor shall provide  
22 notice of such application.

23  
24 (C) In the event that a wireline multichannel video programming distributor provides  
25 video service to the residents of the Grantor under the authority granted by federal or State  
26 legislation or other regulatory entity, the Grantee shall have a right to request Franchise  
27 amendments that relieve the Grantee of regulatory burdens that create a competitive  
28 disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking  
29 to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline  
30 competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise  
31 place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be  
32 amended or repealed in order to eliminate the competitive disadvantage. The Grantor shall not  
33 unreasonably withhold consent to the Grantee's petition.

34  
35 **2.7 Familiarity with Franchise**

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

1 **2.8 Effect of Acceptance**

2 By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Grantor's legal right  
3 to issue and enforce the Franchise; (2) agrees that it will not oppose the Grantor's intervening in  
4 any legal or regulatory proceeding affecting the System; (3) accepts and agrees to comply with  
5 each and every provision of this Franchise; and (4) agrees that the Franchise was granted  
6 pursuant to processes and procedures consistent with applicable law, and that it will not raise any  
7 claim to the contrary.

8 **2.9 Police Powers**

9 Grantee's rights hereunder are subject to the police powers of Grantor to adopt and enforce  
10 ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to  
11 comply with all applicable laws, ordinances and regulations enacted pursuant to the police  
12 powers of Grantor, or hereafter enacted in accordance therewith, by Grantor or any other legally-  
13 constituted governmental unit having lawful jurisdiction over the subject matter hereof. Any  
14 conflict between the provisions of this Franchise and any other present or future lawful exercise  
15 of Grantor's police powers shall be resolved in favor of the latter.

16  
17 **2.10 Franchise Area**

18 Grantee shall provide Cable Service, as authorized under this Franchise, within the Franchise  
19 Area.  
20

21 **SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS**

22 **3.1 Franchise Fee**

23 As compensation for the use of Grantor's Rights-of-Way or Roads, Grantee shall pay as a  
24 Franchise Fee to Grantor, throughout the duration of this Franchise, an amount equal to five  
25 (5%) percent of Grantee's Gross Revenues associated with Grantee's operation of its System in  
26 the Franchise Area. Accrual of such Franchise Fee shall commence as of the effective date of  
27 this Franchise.

28 **3.2 Payments**

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

32 **3.3 Acceptance of Payment**

33 No acceptance of any payment shall be construed as an accord by Grantor that the amount paid  
34 is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of  
35 any claim Grantor may have for further or additional sums payable or for the performance of any  
36 other obligation of Grantee.

37 **3.4 Quarterly Franchise Fee Reports**

38 Each payment shall be accompanied by a written report to Grantor, verified by an officer of  
39 Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's  
40 Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross

1 Revenues of the System and shall be drafted in accordance with generally accepted accounting  
2 principles.

### 3 **3.5 Audits**

4 On an annual basis, upon thirty (30) days' prior written notice, Grantor shall have the right to  
5 conduct an independent audit of Grantee's records related to this Franchise and to re-compute  
6 any amounts determined to be payable under this Franchise. Provided Grantee cooperates in  
7 making all relevant records available upon request, Grantor will in good faith attempt to  
8 complete each audit within six (6) months, and the audit period shall not be any greater than the  
9 previous three (3) years, unless Grantor has information relating to previous years beyond the  
10 three (3) which raises doubt as to the accuracy of payments made under this or previous  
11 Franchises. Any additional amounts due to the Grantor as a result of the audit shall be paid  
12 within sixty (60) days following written notice to the Grantee by the Grantor, which notice shall  
13 include a copy of the audit findings. If the audit shows that Franchise Fees have been underpaid,  
14 by three percent (3%) in a calendar year or more, Grantee shall pay the total cost of the audit.

### 15 **3.6 Financial Records**

16 Grantee agrees to meet with a representative of the Grantor upon written request to review  
17 Grantee's method of record-keeping, financial reporting, the computing of Franchise Fee  
18 obligations and other procedures, the understanding of which the Grantor deems necessary for  
19 reviewing reports and records that are relevant to the enforcement of this Franchise.

### 20 **3.7 Interest on Late Payments**

21 In the event any payment is not received within forty-five (45) days from the end of the calendar  
22 quarter, Grantee shall pay, in addition to the payment or sum due, interest from the due date at an  
23 interest rate of 1%, beginning on the forty-sixth (46<sup>th</sup>) day after the end of the calendar quarter  
24 and continuing every day thereafter until the seventy-fifth (75<sup>th</sup>) day after the end of the calendar  
25 quarter, or until payment is made, whichever is earlier. If any payment is not received within  
26 seventy-five (75) days after the end of the calendar quarter, Grantee shall be assessed a late fee in  
27 the additional amount of two hundred dollars (\$200.00) per day, beginning on the seventy-sixth  
28 (76<sup>th</sup>) day after the end of the calendar quarter and continuing every day thereafter until paid.

### 29 **3.8 Maximum Franchise Fee**

30 The parties acknowledge that, at present, applicable federal law limits Grantor to collection of a  
31 Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the  
32 duration of this Franchise, Grantor is authorized to collect an amount in excess of five percent  
33 (5%) of Gross Revenues, then this Franchise may be amended unilaterally by Grantor to provide  
34 that such excess amount shall be added to the Franchise Fee to be paid by Grantee to Grantor  
35 hereunder, provided that all providers of Cable Service in the Franchise Area over which the  
36 Grantor has jurisdiction are treated in an equivalent manner, and Grantee has received sixty (60)  
37 days prior written notice from Grantor of such amendment.

### 38 **3.9 Additional Commitments Not Franchise Fees**

39 No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to  
40 pay Franchise Fees. Although the total sum of Franchise Fee payments and additional  
41 commitments set forth elsewhere in this Franchise may total more than five percent (5%) of  
42 Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional

1 commitments herein are not Franchise Fees, nor are they to be offset or credited against any  
2 Franchise Fee payments due to Grantor, nor do they represent an increase in Franchise Fees to be  
3 passed through to Subscribers pursuant to any federal law. Access Fees are not to be offset  
4 against and are not Franchise Fees.

### 5 **3.10 Payment on Termination**

6 If this Franchise terminates for any reason, the Grantee shall file with the Grantor within ninety  
7 (90) calendar days of the date of the termination, a financial statement, certified by an  
8 independent certified public accountant, showing the Gross Revenues received by the Grantee  
9 since the end of the previous fiscal year. Within sixty (60) days of the filing of the certified  
10 statement with the Grantor, Grantee shall pay any unpaid amounts as indicated. If the Grantee  
11 fails to satisfy its remaining financial obligations as required in this Franchise, the Grantor may  
12 do so by utilizing the funds available in a Letter of Credit or other security provided by the  
13 Grantee.

## 14 **SECTION 4. ADMINISTRATION AND REGULATION**

### 15 **4.1 General Provisions**

16 (A) Grantor shall be vested with the power and right to administer and enforce the  
17 requirements of this Franchise and the regulations and requirements of applicable law, including  
18 the Cable Act, or to delegate that power and right, or any part thereof, to the extent permitted  
19 under State and local law.

20 (B) Grantee shall comply with all applicable federal and state laws and regulations,  
21 including regulations of any administrative agency thereof, as well as all Grantor ordinances,  
22 resolutions, rules and regulations heretofore or hereafter adopted or established during the term  
23 of the Franchise. Nothing in this Franchise shall limit or expand the Grantor's right of eminent  
24 domain under State law.

25 (C) The Grantee and Grantor shall be entitled to all rights and be bound by all  
26 changes in local, State and federal law that occur subsequent to the effective date of this  
27 Franchise. The Grantee and the Grantor acknowledge that their rights and obligations under this  
28 Franchise are explicitly subject to all such changes. However, should such changes in law  
29 substantially reduce Grantee's obligation to pay or provide Franchise Fees, or any other support  
30 required in this Franchise, the Grantor and Grantee agree to enter into good faith negotiations for  
31 a six (6) month period, at the request of either party, to resolve the issues. If resolution is not  
32 reached within the six (6) month period, and the period has not been extended by mutual  
33 agreement, the term of this Franchise shall be reduced to three (3) years, and the parties shall  
34 commence the renewal process in accordance with the Cable Act.

### 35 **4.2 Rates and Charges**

36 All Grantee rates and charges related to or regarding Cable Services shall be subject to regulation  
37 by Grantor to the full extent authorized by applicable federal, State and local laws.

### 38 **4.3 Rate Discrimination**

39 All Grantee rates and charges shall be published (in the form of a publicly-available rate card),  
40 made available to the public, and shall be non-discriminatory as to all Persons of similar classes,  
41 under similar circumstances and conditions. Grantee shall apply its rates in accordance with

1 governing law. Grantee shall permit Subscribers to make any in-residence connections the  
2 Subscriber chooses without additional charge and without penalizing the Subscriber therefore.  
3 However, if any in-home connection requires service from Grantee due to signal quality, signal  
4 leakage or other factors, caused by improper installation of such in-home wiring or faulty  
5 materials of such in-home wiring, the Subscriber may be charged appropriate service charges by  
6 Grantee. Nothing herein shall be construed to prohibit:

7  
8 (A) The temporary reduction or waiving of rates or charges in conjunction with valid  
9 promotional campaigns;

10 (B) The offering of reasonable discounts to similarly situated Persons.

11 (C) The offering of rate discounts for either Cable Service generally, or data  
12 transmission to governmental agencies or educational institutions; or

13 (D) The offering of bulk discounts for Multiple Dwelling Units.

#### 14 **4.4 Filing of Rates and Charges**

15 (A) Throughout the term of this Franchise, Grantee shall maintain on file with Grantor  
16 a complete schedule of applicable rates and charges for Cable Services provided under this  
17 Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and  
18 charges under temporary reductions or waivers of rates and charges in conjunction with  
19 promotional campaigns. As used in this subsection, no rate or charge shall be considered  
20 temporary if Subscribers have the ability over a period greater than twelve (12) consecutive  
21 months (or such other period as may be approved by Grantor) to purchase Cable Services at such  
22 rate or charge.

23 (B) On an annual basis, Grantee shall provide a complete schedule of current rates  
24 and charges for any and all Leased Access Channels, or portions of such Channels, provided by  
25 Grantee.

#### 26 **4.5 Late Fees**

27 If the Grantee assesses any kind of penalty fee for late payment, such fee shall comply with  
28 applicable law.

#### 29 **4.6 Time Limits Strictly Construed**

30 Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall  
31 be deemed to be of the essence, and any failure of Grantee to perform within the allotted time  
32 may be considered a material breach of this Franchise. However, in the event that Grantee is  
33 prevented or delayed in the performance of any of its obligations under this Franchise by reason  
34 beyond the reasonable control of Grantee, Grantee shall have a reasonable time, under the  
35 circumstances, to perform the affected obligation under this Franchise or to procure a substitute  
36 for such obligation which is satisfactory to Grantor.

#### 37 **4.7 Performance Evaluation**

38 (A) Special evaluation sessions may be held at any time upon request by Grantor  
39 during the term of this Franchise.

1 (B) All evaluation sessions shall be open to the public and announced at least one  
2 week in advance in a newspaper of general circulation in the Franchise Area. Grantor may  
3 notify its Subscribers of evaluation sessions by announcement on its Access Channel.

4 (C) Topics which may be discussed at any evaluation session may include, but are not  
5 limited to, Cable Service rate structures; Franchise Fees; liquidated damages; free or discounted  
6 Cable Services; application of new technologies; system performance; Cable Services provided;  
7 programming offered; customer complaints; privacy; amendments to this Franchise; judicial and  
8 FCC rulings; line extension policies; and Grantor's or Grantee's rules; provided that nothing in  
9 this subsection shall be construed as requiring the renegotiation of this Franchise.

10 (D) During evaluations under this Section, Grantee shall fully cooperate with Grantor  
11 and shall provide such information and documents as Grantor may require to perform the  
12 evaluation.  
13

## 14 SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

### 15 5.1 Indemnification

16 (A) General Indemnification. Grantee shall indemnify, defend and hold Grantor, its  
17 officers, officials, boards, commissions, authorized agents and employees, harmless from any  
18 action or claim for injury including death, damage, loss, liability, cost or expense, including  
19 court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to  
20 Person or property, including, without limitation, copyright infringement, defamation, and all  
21 other damages in any way arising out of, or by reason of, any construction, excavation,  
22 operation, maintenance, reconstruction, or any other act done under this Franchise, by or for  
23 Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee its  
24 agents or its employees. Grantee shall consult and cooperate with the Grantor while conducting  
25 its defense of the Grantor.  
26

27 (B) Indemnification for Relocation. Grantee shall indemnify Grantor for any  
28 damages, claims, additional costs or expenses assessed against, or payable by, Grantor related to,  
29 arising out of, or resulting, directly or indirectly, from Grantee's failure to remove, adjust or  
30 relocate any of its facilities in the Streets in a timely manner in accordance with any relocation  
31 required by Grantor.  
32

33 (C) Additional Circumstances. Grantee shall also indemnify, defend and hold Grantor  
34 harmless for any claim for injury, damage, loss, liability, cost or expense, including court and  
35 appeal costs and attorneys' fees or expenses in any way arising out of:  
36

37 (1) The grant of this Franchise;

38  
39 (2) Any failure by Grantee to secure consents from the owners, authorized  
40 distributors or licensees/licensors of programs to be delivered by the System.  
41

42 (D) Procedures and Defense. If a claim or action arises, Grantor or any other  
43 indemnified party shall tender the defense of the claim to Grantee, which defense shall be at  
44 Grantee's expense. Grantor may participate in the defense of a claim and, in any event, Grantee  
45 may not agree to any settlement of claims affecting Grantor without Grantor's written approval.



1  
2 (E) Non-waiver. The fact that Grantee carries out any activities under this Franchise  
3 through independent contractors shall not constitute an avoidance of or defense to Grantee's duty  
4 of defense and indemnification under this Section.

5  
6 (F) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee  
7 timely written notice of any claim or of the commencement of any action, suit or other  
8 proceeding covered by the indemnity in this Section. In the event any such claim arises, the  
9 Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the  
10 Grantee shall have the obligation and duty to defend any claims arising thereunder, and the  
11 Grantor shall cooperate fully therein.

12  
13 (G) If separate representation to fully protect the interests of both parties is necessary,  
14 such as a conflict of interest between the Grantor and the counsel selected by Grantee to  
15 represent, the Grantor, Grantee shall pay expenses incurred by the Grantor in defending itself  
16 with regard to any action, suit or proceeding indemnified by Grantee. The Grantor's expenses  
17 shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the  
18 reasonable value of any services rendered by the Grantor attorney or his/her assistants or any  
19 employees of the Grantor or its agents but shall not include outside attorneys' fees for services  
20 that are unnecessarily duplicative of services provided the Grantor by Grantee.

21  
22 **5.2 Insurance Requirements**

23 (A) General Requirement. Grantee must have adequate insurance during the entire  
24 term of this Franchise to protect the Grantor against claims for injuries to Persons or damages to  
25 property which in any way relate to, arise from or are connected with this Franchise, or involve  
26 Grantee, its agents, representatives, contractors, subcontractors and their employees.

27 (B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance  
28 with the minimum insurance limits herein set forth by the Grantor from time to time. The  
29 Grantee shall obtain policies for the following initial minimum insurance limits:

- 30 (1) Commercial General Liability: Two million dollars (\$2,000,000)  
31 aggregate limit per occurrence for bodily injury, personal injury and property damage;  
32 (2) Automobile Liability: Two million dollars (\$2,000,000) combined single  
33 limit per accident for bodily injury and property damage; and  
34 (3) Employer's Liability: One million dollars (\$1,000,000).

35 (C) Endorsements.

- 36 (1) All policies shall contain, or shall be endorsed so that:  
37 (a) The Grantor shall be designated as additional insured.  
38 (b) The Grantee's insurance coverage shall be primary insurance with  
39 respect to the Grantor, its officers, officials, boards, commissions, employees and  
40 duly authorized agents. Any insurance or self-insurance maintained by the  
41 Grantor, its officers, officials, boards, commissions, employees and agents shall  
42 be in excess of the Grantee's insurance and shall not contribute to it; and

1 (c) Grantee's insurance shall apply separately to each insured against  
2 whom a claim is made or lawsuit is brought, except with respect to the limits of  
3 the insurer's liability.

4 (2) The insurance shall provide that the insurance shall not be cancelled or  
5 materially altered so as to be out of compliance with the requirements of this Section  
6 without thirty (30) days' written notice first being given to Grantor. If the insurance is  
7 cancelled or materially altered so as to be out of compliance with the requirements of this  
8 Section within the term of this Franchise, Grantee shall provide a replacement policy.  
9 Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts  
10 required, for the duration of this Franchise.

11 (D) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with  
12 insurers with a Best's rating of no less than "A."

13 (E) Verification of Coverage. The Grantee shall furnish the Grantor with certificates  
14 of insurance or a copy of the page of the policy reflecting blanket additional insured status. The  
15 certificates for each insurance policy are to be signed by a Person authorized by that insurer to  
16 bind coverage on its behalf. The certificates for each insurance policy are to be on standard  
17 forms or such forms as are consistent with standard industry practices, and are to be received and  
18 approved by the Grantor prior to the commencement of activities associated with this Franchise.  
19 The Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

### 20 **5.3 Security**

21 Upon the effective date of this Franchise, Grantee shall provide a performance bond in the  
22 amount of \$25,000.00 to ensure the faithful performance of its responsibilities under this  
23 Franchise and applicable law, including, by way of example and not limitation, its obligations to  
24 relocate and remove its facilities and to restore Grantor Rights-of-Way and other property.  
25

## 26 **SECTION 6. CUSTOMER SERVICE**

### 27 **6.1 Customer Service Standards**

28 Grantee shall, throughout the Franchise term, comply with FCC Customer Service Standards as  
29 set forth in 47 C.F.R. §76.309(c) as currently enacted or hereinafter amended.

### 30 **6.2 Subscriber Contracts**

31 Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with  
32 the terms of this Franchise.

### 33 **6.3 Subscriber Privacy**

34 Grantee will comply with privacy rights of Subscribers in accordance with applicable federal,  
35 State and local laws.

### 36 **6.4 Customer Service Agreement and Manual**

37 (A) Grantee shall provide to Subscribers an accurate, comprehensive service  
38 agreement and customer installation packet for use in establishing Subscriber service. This  
39 material shall, at a minimum, contain the following:

- 1 (1) Grantee's procedure for investigation and resolution of Subscriber service  
2 complaints.
- 3 (2) Services to be provided and rates for such services.
- 4 (3) Billing procedures.
- 5 (4) Service termination procedure.
- 6 (5) A description of the manner that will be used to provide notice of changes  
7 in rates, service or service terms and conditions.
- 8 (6) A complete statement of the Subscriber's right to privacy.
- 9 (7) Converter and cable modem equipment policy.
- 10 (8) The name, address and phone number of the Person identified by the  
11 Grantor as responsible for handling cable questions and complaints for the Grantor. This  
12 information shall be prominently displayed in the installation packet.

13 (B) A copy of the installation packet shall be provided to each Subscriber at the time  
14 of initial installation and any reconnection (excluding reconnections to the same Subscriber  
15 within twelve (12) months), and at any time the packet is requested by the Subscriber. Grantee  
16 shall make reasonable efforts to advise customers of any material changes in cable operation  
17 policies.  
18

## 19 **SECTION 7. REPORTS AND RECORDS**

### 20 **7.1 Open Records**

21 Grantor shall have access to, and the right to inspect, any books and records of Grantee, its  
22 parent corporations and Affiliated entities, necessary for the enforcement of the terms of this  
23 Franchise. Grantee shall not deny Grantor access to any of Grantee's records on the basis that  
24 Grantee's records are under the control of any parent corporation, Affiliated entity or a third  
25 party. Grantor may, in writing, request copies of any such records or books, and Grantee shall  
26 provide such copies within thirty (30) days of the transmittal of such request. One copy of all  
27 reports and records required under this or any other Section shall be furnished to Grantor at the  
28 sole expense of Grantee. If the requested books and records are too voluminous, or for security  
29 reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days,  
30 that Grantor inspect them at Grantee's local offices. If any books or records of Grantee are not  
31 kept in a local office and not made available in copies to Grantor upon written request as set  
32 forth above, and if Grantor determines that an examination of such records is necessary for the  
33 enforcement of this Franchise, then all reasonable travel and maintenance expenses incurred in  
34 making such examination shall be paid by Grantee.

### 35 **7.2 Confidentiality**

36 Grantor agrees to keep confidential any proprietary or confidential books or records to the extent  
37 permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the  
38 work confidential or proprietary, and shall provide a brief written explanation as to why such  
39 information is confidential and how it may be treated as such under State or federal law. If  
40 Grantor receives a demand from any Person for disclosure of any information designated by  
41 Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee  
42 and provide Grantee with a copy of any written request by the party demanding access to such

1 information within a reasonable time. If Grantee believes that the disclosure of such documents  
2 by Grantor would interfere with Grantee's rights under federal or state law, Grantee shall  
3 institute an action in the Lewis County Superior Court to prevent the disclosure by Grantor of  
4 such documents. Grantee shall join the Person requesting the documents to such an action.  
5 Grantee shall defend, indemnify and hold Grantor harmless from any claim or judgment  
6 including, but not limited to, any penalties or costs under RCW 42.56.

### 7 **7.3 Records Required**

8 Grantee shall at all times maintain:

9 (A) A full and complete set of plans, records and "as built" maps showing the  
10 exact location of all System equipment installed or in use in the Franchise Area, which is  
11 generated in Grantee's normal course of business;

12 (B) A copy of all FCC filings on behalf of Grantee, its parent corporations or  
13 Affiliates which relate to the operation of the System in the Franchise Area;

14 (C) A list of Grantee's Cable Services, rates and Channel line-ups;

15 (D) A statistical compilation of Subscriber complaints, actions taken and  
16 resolution, and a log of service calls.

### 17 **7.4 Copies of Federal and State Reports**

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

### 29 **7.5 Complaint File and Reports**

30 Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the  
31 System, and Grantee's actions in response to those complaints, in a manner consistent with the  
32 privacy rights of Subscribers. Those files shall remain open to Grantor during normal business  
33 hours and shall be retained for a period of one year. Upon request, Grantee shall provide a report  
34 to the Grantor which can, at Grantor's option, include the following information:

35 (A) Nature and type of customer complaints;

36 (B) Number, duration, general location and customer impact of unplanned service  
37 interruptions;

38 (C) Any significant construction activities which affect the quality or otherwise  
39 enhance the service of the System;

40 (D) Average response time for service calls;

- 1 (E) New areas constructed and available for Cable Service;
- 2 (F) Video programming changes (additions/deletions); and
- 3 (G) Such other information as reasonably requested by Grantor.

#### 4 **7.6 Inspection of Facilities**

5 Grantor may inspect any of Grantee's cable system facilities and equipment in the Rights-of-Way  
6 at any reasonable time during business hours upon at least forty-eight (48) hours notice, or, in  
7 case of emergency, upon demand without prior notice.

#### 8 **7.7 False Statements**

9 Any intentional false or misleading statement or representation in any report required by this  
10 Franchise shall be a material breach of this Franchise and may subject Grantee to all remedies,  
11 legal or equitable, which are available to Grantor under this Franchise or otherwise.

### 13 **SECTION 8. PROGRAMMING AND CHANNEL CAPACITY**

#### 14 **8.1 Grantee Compliance**

15 Grantee will provide the broad categories of programming and Channel capacity required in this  
16 Franchise, and in all applicable federal, State or local laws, statutes, regulations or standards.

#### 17 **8.2 Broad Programming Categories**

18 Grantee shall provide or enable the provision of at least the following initial broad categories of  
19 programming to the extent such categories are reasonably available:

- 20 (A) Educational programming;
- 21 (B) Sports programming;
- 22 (C) General entertainment programming;
- 23 (D) Children's programming;
- 24 (E) Information/news programming;
- 25 (F) National and local government programming.

#### 26 **8.3 Obscenity**

27 Grantee or Grantor shall not transmit, or permit to be transmitted, over any Channel subject to its  
28 editorial control any programming which is obscene.

#### 29 **8.4 Parental Control Device**

30 Upon request by any Subscriber, Grantee shall make available a parental control or lockout  
31 device traps or filters to enable a Subscriber to control access to both the audio and video  
32 portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the  
33 lockout device at the time of their initial subscription and periodically thereafter.

#### 34 **8.5 Complimentary Cable Service**

35 Grantee, upon written request, shall provide without charge, a Standard Installation and one

1 outlet of Basic and Expanded Basic Service to those administrative buildings owned and  
2 occupied or leased and occupied by the Grantor, fire station(s), police station(s), libraries and K-  
3 12 public school(s) that are within 125 feet aerial of its Cable System. In the case of leased  
4 facilities, recipient of service is responsible for securing approval for appropriate right of entry  
5 suitable to the Grantee at its sole discretion. The Cable Service provided shall not be distributed  
6 beyond the originally installed outlet without authorization from Grantee. The Cable Service  
7 provided shall not be used for commercial purposes, and such outlets shall not be located in areas  
8 open to the public. The Grantor shall take reasonable precautions to prevent any use of the  
9 Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or  
10 damage to the Cable System. The Grantor shall hold the Grantee harmless from any and all  
11 liability or claims arising out of the provision and use of Cable Service required by this Section.  
12 The Grantee shall not be required to provide an outlet to such buildings where a non-Standard  
13 Installation is required, unless the Grantor or building owner/occupant agrees to pay the  
14 incremental cost of any necessary Cable System extension and/or non-Standard Installation. If  
15 additional outlets of Cable Service are provided to such buildings, the building owner/occupant  
16 shall pay the usual installation and service fees associated therewith.

#### 17 **8.6 New Developments**

18 If there is a new technology which in Grantor's opinion would enhance substantially the quality  
19 or quantity of programming available to Subscribers on the System, Grantee shall, at the request  
20 of the Grantor, investigate the feasibility of implementing said technology and report to Grantor  
21 the results of such investigation.  
22

### 23 **SECTION 9. EDUCATIONAL AND GOVERNMENTAL ACCESS**

#### 24 **9.1 Capital Fee**

25 Within ninety (90) days after written request from Grantor to Grantee and continuing during the  
26 term of this Franchise, Grantee shall collect a Capital Fee for educational and government access  
27 capital expenditures in the amount up to twenty-five cents (\$.25) per Subscriber per month.  
28 Grantee shall make such payments quarterly, no later than thirty (30) days following the end of  
29 the quarter. The Grantor agrees that 47 C.F.R. §76.922 permits Grantee to add the cost of the  
30 Capital Fee to the price of Cable Services and to collect the Capital Fee from Subscribers. In  
31 addition, as permitted in 47 C.F.R. §76.985, all amounts paid as the Capital Fee may be  
32 separately stated on Subscriber's bills as a government access capital equipment fee.

#### 33 **9.2 Access Reporting**

34 Upon Grantee's written request the Grantor shall submit a report annually on the use of Access  
35 Channels and Capital Fee. The Grantor shall submit a report to Grantee within one hundred  
36 twenty (120) days of a written request. Grantee may review the records of the Grantor regarding  
37 the use of the Capital Fee.

#### 38 **9.3 Management and Control of Access Channel**

39 (A) Grantor may authorize Designated Access Providers to control, operate, and  
40 manage the use of any and all Access facilities provided by Grantee under this Franchise,  
41 including, without limitation, the operation of the Access Channel. The Grantor or its designee  
42 may formulate rules for the operation of the Access Channel, consistent with this Franchise.

1 Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access  
2 Provider.

3 (B) Grantee shall cooperate with Grantor and Designated Access Providers in the use  
4 of the System and Access facilities for the provision of the Access Channel.

5 **9.4 Access Channel**

6 (A) Within one hundred-eighty (180) of written request, Grantee shall provide at no  
7 charge, one (1) Channel for use by Grantor (said Channel to be capable of cable-casting both live  
8 and recorded programming).

9 (B) The assigned Access Channel can be used to transmit programming in any format  
10 which is technically compatible with the Cable System, including, by way of example and not  
11 limitation, video, audio only, secondary audio and/or text (character generated) messages. Such  
12 uses must be in furtherance of Access purposes. The above Channel may be digitized by the  
13 Grantee and must be capable of transmitting one standard analog or one standard digital video  
14 signal. Any Access Channel provided via digital or compressed video technology shall have at  
15 least the same transmission quality as is used to carry the commercial Channels that deliver  
16 programming on the System and shall be full motion video. The provision of Access Channel  
17 via digital or compressed video technology will not reduce the total Access Channel requirement  
18 herein.

19 **9.5 Change in Technology**

20 In the event Grantee makes any change in the System and related equipment and facilities or in  
21 Grantee's signal delivery technology, which directly or indirectly affects the signal quality or  
22 transmission of Access programming, Grantee shall at its own expense take necessary technical  
23 steps or provide necessary technical assistance, including the acquisition of all necessary  
24 equipment, and full training of Access personnel to ensure that the capabilities of the Access  
25 Channel are not diminished or adversely affected by such change. For example, this provision  
26 shall apply if Basic Service on the Cable System is converted from an analog to a digital format,  
27 such that the Access Channels must also be converted to digital in order to be received by  
28 Subscribers.

29 **9.6 Access Channel on Lowest Level of Service**

30 The Access Channel provided to Subscribers under this Franchise shall be included by Grantee,  
31 without limitation, as a part of the lowest level of service, subject to applicable law.  
32  
33

34 **SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION**

35 **10.1 Construction**

36 (A) Subject to applicable laws, regulations and ordinances of Grantor and the  
37 provisions of this Franchise, Grantee may perform all construction necessary for the operation of  
38 its System. All construction and maintenance of any and all Grantee's facilities within Rights-  
39 of-Way shall, regardless of who performs the construction, be and remain Grantee's  
40 responsibility.

1 (B) Prior to beginning any construction, Grantee shall provide Grantor with a  
2 construction schedule for work in the Rights-of-Ways.

3 (C) Grantee may make excavations in Rights-of-Way for any facility needed for the  
4 maintenance or extension of Grantee's System. Prior to doing such work, Grantee shall apply  
5 for, and obtain, appropriate permits from Grantor, and give appropriate notices to Grantor. As a  
6 condition of any permits so issued, Grantor officials may impose such conditions and regulations  
7 as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper  
8 restoration of such Rights-of-Way and structures, protection of the public and the continuity of  
9 pedestrian or vehicular traffic. When obtaining a permit, Grantee shall inquire in writing about  
10 other construction currently in progress, planned or proposed, in order to investigate thoroughly  
11 all opportunities for joint trenching or boring. Whenever it is possible and reasonably  
12 practicable to joint trench or share bores or cuts, Grantee shall work with other providers,  
13 licensees, permittees and franchisees so as to reduce so far as possible the number of Rights-of-  
14 Way cuts within the Franchise Area.

15 (D) In the event that emergency repairs are necessary, Grantee shall immediately  
16 notify Grantor of the need for such repairs. Grantee may initiate such emergency repairs, and  
17 shall apply for appropriate permits within forty-eight (48) hours after discovery of the  
18 emergency.

19 (E) Repair and Restoration of Property.

20 (1) The Grantee shall protect public and private property within the Rights-of-  
21 Way from damage.

22 (2) If public property is disturbed or damaged, the Grantee shall restore the  
23 property to its former condition. Public right-of-way or other Grantor property shall be  
24 restored in a manner and within a timeframe approved by the Grantor's Director of Public  
25 Works. If restoration of public right-of-way or other property of the Grantor is not  
26 satisfactorily performed within a reasonable time, the Director of Public Works may,  
27 after prior notice to the Grantee, or without notice where the disturbance or damage may  
28 create a risk to public health or safety, or cause delay or added expense to a public project  
29 or activity, cause the repairs to be made at the Grantee's expense and recover the cost of  
30 those repairs from the Grantee. Within forty-five (45) days of receipt of an itemized list  
31 of those costs, including the costs of labor, materials and equipment, the Grantee shall  
32 pay the Grantor. If suit is brought by Grantor upon Grantee's failure to pay for repair or  
33 restoration, the reasonable costs and expenses of the prevailing party will be paid by the  
34 non-prevailing party.

35 (F) Movement for Other Permittees.

36  
37 At the request of any Person holding a valid permit and upon reasonable advance notice,  
38 Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a  
39 building, vehicle, equipment or other item. The expense of such temporary changes must be paid  
40 by the permit holder, and Grantee may require the estimated payment in advance.

## 41 10.2 Relocation

42 (A) Facilities Relocation – Upon the receipt of a demand by the Grantor, within thirty  
43 days, or in the event of an emergency, upon such shorter notice period as the Grantor deems  
44 reasonable under the circumstances, Grantee, at its sole cost and expense, shall remove or



1 relocate any Facilities, if and when the removal or relocation of such Facilities is made necessary  
2 by the Grantor acting pursuant to any lawful governmental or proprietary purpose, including,  
3 without limitation, engaging in any lawful change of grade, alignment or width of any Rights-of-  
4 Way in the Franchise Area pursuant to any concern regarding health, safety and welfare, or in the  
5 installation or replacement of any street light pole. Whenever Grantee is required to remove  
6 Facilities or if Grantee desires to relocate Facilities, then the Grantor shall use its best efforts to  
7 accommodate Grantee by making another functionally equivalent property available for use in  
8 accordance with and subject to the terms and conditions of this Franchise. However, nothing in  
9 this Agreement shall be construed as creating an obligation of the Grantor to provide Grantee  
10 with such property.

11 (B) Relocation Costs – Whenever the removal or relocation of Facilities is required  
12 under this Franchise or otherwise by order of Grantor, and such removal or relocation shall cause  
13 the Rights-of-Way to be damaged, Grantee, at its sole cost and expense, shall promptly repair  
14 and return the Rights-of-Way, in which the Facilities are located, to the same condition as  
15 existed prior to such work in the sole determination of Grantor. If Grantee does not return the  
16 affected site to a safe and satisfactory condition, then Grantor shall have the option to perform or  
17 cause to be performed such reasonable and necessary work and charge Grantee for the proposed  
18 costs to be incurred or the actual cost incurred by Grantor. Upon the receipt of a demand for  
19 payment by the Grantor, Grantee shall reimburse Grantor for such costs within thirty days.

### 20 **10.3 Location of Facilities**

21 Within five (5) business days, unless otherwise specified in Grantee's regulations, after the  
22 Grantor or any franchisee, licensee or permittee of the Grantor notifies Grantee of a proposed  
23 Right-of-Way excavation, Grantee shall, at Grantee's expense:

24 (A) Mark on the surface all of its located underground facilities within the area of the  
25 proposed excavation;

26 (B) Notify the excavator of any unlocated underground facilities in the area of the  
27 proposed excavation; or

28 (C) Notify the excavator that Grantee does not have any underground facilities in the  
29 vicinity of the proposed excavation.

### 30 **10.4 Restoration of Rights-of-Way / Grantor Owned Property**

31 (A) Whenever Grantee disturbs the surface of any Rights-of-Way or Grantor owned  
32 property for any purpose, Grantee shall promptly restore the Rights-of-Way or Grantor owned  
33 property to a condition as good as its prior condition. When any opening is made by Grantee in a  
34 hard surface pavement in any Rights-of-Way or Grantor owned property, Grantee shall promptly  
35 refill the opening and restore the surface to a condition satisfactory to Grantor.

36 (B) If Grantee excavates the surface of any Rights-of-Way or Grantor owned  
37 property, Grantee shall be responsible for restoration in accordance with applicable regulations  
38 of the Rights-of-Way and its surface within the area affected by the excavation. Grantor may,  
39 after providing notice to Grantee, refill or repave any opening made by Grantee in the Rights-of-  
40 Way or on Grantor owned property, and the expense thereof shall be paid by Grantee. Grantor  
41 may, after providing notice to Grantee, remove and repair any work done by Grantee which, in  
42 the determination of Grantor, does not conform to applicable code. The cost thereof, including  
43 the costs of inspection and supervision shall be paid by Grantee. All excavations made by

1 | Grantee in Rights-of-Way or on Grantor owned property shall be properly safeguarded for the  
2 | prevention of accidents. All of Grantee's work under this Franchise, and this Section in  
3 | particular, shall be done in strict compliance with all rules, regulations and ordinances of  
4 | Grantor.

5 | **10.5 Maintenance and Workmanship**

6 | (A) Grantee's System shall be constructed and maintained in such manner as not to  
7 | interfere with sewers, water pipes or any other property of Grantor, or with any other pipes,  
8 | wires, conduits, pedestals, structures or other facilities that may have been laid in Rights-of-Way  
9 | by, or under, Grantor's authority.

10 | (B) Grantee shall provide and use any equipment and appliances necessary to control  
11 | and carry Grantee's signals so as to prevent injury to Grantor's property or property belonging to  
12 | any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to  
13 | keep them in good repair and safe and presentable condition.

14 | (C) The Grantee's transmission and distribution system, wires and appurtenances shall  
15 | be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or  
16 | to unnecessarily hinder or obstruct the free use of Rights-of-Way, alleys, bridges or other public  
17 | property.

18 | **10.6 Acquisition of Facilities**

19 | Upon Grantee's acquisition of facilities in any Grantor Rights-of-Way, or upon the addition or  
20 | annexation to the Grantor of any area in which Grantee owns or operates any facility, Grantee  
21 | shall, at Grantor's request, submit to Grantor a statement describing all facilities involved,  
22 | whether authorized by franchise, permit, license or other prior right, and specifying the location  
23 | of all such facilities to the extent Grantee has possession of such information. Such facilities  
24 | shall immediately be subject to the terms of this Franchise.  
25 |

26 | **10.7 Discontinuing Use of Facilities**

27 | Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee  
28 | shall submit for Grantor's approval a complete description of the facility and the date on which  
29 | Grantee intends to discontinue using the facility. Grantee may remove the facility or request that  
30 | Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility  
31 | remain in place, Grantor may require Grantee to remove the facility from the Rights of Way or  
32 | modify the facility to protect the public health, welfare, safety and convenience, or otherwise  
33 | serve the public interest. Grantor may require Grantee to perform a combination of modification  
34 | and removal of the facility. Grantee shall complete such removal or modification in accordance  
35 | with a schedule set by Grantor. Until such time as Grantee removes or modifies the facility as  
36 | directed by Grantor, or until the rights to and responsibility for the facility are accepted by  
37 | another Person having authority to construct and maintain such facility, Grantee shall be  
38 | responsible for all necessary repairs and relocations of the facility, as well as maintenance of the  
39 | Rights-of-Way, in the same manner and degree as if the facility were in active use, and Grantee  
40 | shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to  
41 | use such facilities for any purpose whatsoever including, but not limited to, Access Channel  
42 | purposes.  
43 |

1 **10.8 Undergrounding of Cable**

2 (A) Where electric and telephone utility wiring is installed underground at the time of  
3 System construction, or when such wiring is subsequently placed underground, all System lines,  
4 wiring and equipment shall also be placed underground with other wire line service at no  
5 expense to the Grantor. Related System equipment, such as pedestals, must be placed in  
6 accordance with applicable code requirements and rules as interpreted by the Grantor's Director  
7 of Public Works. In areas where either electric and telephone utility wiring are aerial, the  
8 Grantee may install aerial cable, except when a property owner or resident requests underground  
9 installation and agrees to bear the additional cost in excess of aerial installation.

10 (B) The Grantee shall utilize existing poles wherever possible.

11 (C) This Franchise does not grant, give or convey to the Grantee the right or privilege  
12 to install its facilities in any manner on specific utility poles or equipment of the Grantor or any  
13 other Person.

14 (D) The Grantee and the Grantor recognize that situations may occur in the future  
15 where the Grantor may desire to place its own cable or conduit for fiber optic cable in trenches or  
16 bores opened by the Grantee. If the Grantee upgrades in the future, the Grantee shall submit  
17 these plans to the Grantor in accordance with the Grantor's permitting process so that such  
18 opportunities may be explored. However, nothing set forth herein shall obligate the Grantee to  
19 slow the progress of the upgrade of the System to accommodate the Grantor. In addition, the  
20 Grantee agrees to cooperate with the Grantor in any other construction by the Grantee that  
21 involves trenching or boring. If sufficient space is reasonably available, the Grantee shall allow  
22 the Grantor to lay its cable, conduit and fiber optic cable in the Grantee's trenches and bores,  
23 provided the Grantor shares in the cost of the trenching and boring on the same terms and  
24 conditions as the Grantee at that time shares the total cost of trenches and bores. The Grantor  
25 shall be responsible for maintaining its respective cable, conduit and fiber optic cable buried in  
26 the Grantee's trenches and bores under this paragraph.

27 (E) The Grantor shall not be required to obtain easements for the Grantee.

28 (F) The Grantee shall participate with other providers in joint trench projects to  
29 relocate its overhead facilities underground and remove its overhead facilities in areas where all  
30 utilities are being converted to underground facilities.

31 **10.9 Construction Codes**

32 Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect.  
33 Grantee shall arrange its lines, cables and other appurtenances, on both public and private  
34 property, in such a manner as to cause no unreasonable interference with the use of said public or  
35 private property by any Person. In the event of such interference, Grantor may require the  
36 removal or relocation of Grantee's lines, cables and other appurtenances from the property in  
37 question.

38 **10.10 Construction and Use of Poles**

39 Whenever feasible, Grantee shall use existing poles when the installation of facilities above-  
40 ground is permitted. In the event Grantee cannot obtain the necessary poles and related facilities  
41 pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for  
42 Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying,  
43 maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any

1 other facility needed for the maintenance or extension of Grantee's System. All poles of Grantee  
2 shall be erected between the curb and the sidewalk unless otherwise designated by the proper  
3 authorities of Grantor, and each pole shall be set whenever practicable at an extension lot line.  
4 Grantor shall have the right to require Grantee to change the location of any pole, conduit,  
5 structure or other facility within Rights-of-Way when, in the opinion of Grantor, the public  
6 convenience requires such change, and the expense thereof shall be paid by Grantee.

### 7 **10.11 Tree Trimming**

8 Upon obtaining a written permit from Grantor, if such a permit is required, Grantee may prune or  
9 cause to be pruned, using proper pruning practices in accordance with such permit, any tree in  
10 the Rights-of-Way which interferes with the System.  
11

### 12 **10.12 Standards**

13 (A) All work authorized and required hereunder shall be done in a safe, thorough and  
14 worker-like manner. The Grantee must comply with all federal, State and Grantor safety  
15 requirements, rules, regulations, laws and practices, and employ all necessary devices as required  
16 by applicable law during construction, operation and repair of its System. By way of illustration  
17 and not limitation, the Grantee must comply with the National Electric Code, National Electrical  
18 Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

19 (B) Grantee shall ensure that all cable drops are properly bonded to the electrical  
20 power ground at the home, consistent with applicable code requirements. All non-conforming or  
21 non-performing cable drops shall be replaced by Grantee as necessary.

22 (C) All installations of equipment shall be permanent in nature, durable and installed  
23 in accordance with good engineering practices and of sufficient height to comply with all  
24 existing Grantor regulations, ordinances and State laws so as not to interfere in any manner with  
25 the right of the public or individual property owner, and shall not interfere with the travel and use  
26 of public places by the public during the construction, repair, operation or removal thereof, and  
27 shall not obstruct or impede traffic.

28 (D) In the maintenance and operation of its System in Rights-of-Way, alleys and other  
29 public places, and in the course of any new construction or addition to its facilities, the Grantee  
30 shall proceed so as to cause the least possible inconvenience to the general public; any opening  
31 or obstruction in the Rights-of-Way or other public places made by the Grantee in the course of  
32 its operations shall be guarded and protected at all times by the placement of adequate barriers,  
33 fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly  
34 designated by warning lights.

35 (E) In the event the Grantor shall relocate a Rights-of-Way, raise or lower a bridge, or  
36 make any other changes requiring the removal of utility installations, the Grantee shall remove or  
37 relocate its installations at said locations at no cost to the Grantor.

### 38 **10.13 Stop Work**

39 On notice from Grantor that any work is being conducted contrary to the provisions of this  
40 Franchise, or in an unsafe or dangerous manner as determined by Grantor, or in violation of the  
41 terms of any applicable permit, laws, regulations, ordinances or standards, the work may  
42 immediately be stopped by Grantor. The stop work order shall:

- 1 (A) Be in writing;
- 2 (B) Be given to the individual doing the work, or posted on the work site;
- 3 (C) Be sent to Grantee by mail at the address given herein;
- 4 (D) Indicate the nature of the alleged violation or unsafe condition; and
- 5 (E) Establish conditions under which work may be resumed.

6 **10.14 Work of Contractors and Subcontractors**

7 Grantee's contractors and subcontractors shall be licensed and bonded in accordance with  
8 Grantor's ordinances, regulations and requirements. Work by contractors and subcontractors is  
9 subject to the same restrictions, limitations and conditions as if the work were performed by  
10 Grantee. Grantee shall be responsible for all work performed by its contractors and  
11 subcontractors and others performing work on its behalf as if the work were performed by it, and  
12 shall ensure that all such work is performed in compliance with this Franchise and other  
13 applicable law, and shall be jointly and severally liable for all damages and correcting all damage  
14 caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other  
15 persons performing work on Grantee's behalf are familiar with the requirements of this Franchise  
16 and other applicable laws governing the work performed by them.  
17

18 **SECTION 11. CABLE SYSTEM DESIGN AND CAPACITY**

19 **11.1 Equal and Uniform Service**

20 The Grantee shall provide access to equal and uniform Cable Service offerings throughout the  
21 Franchise Area along public rights-of-way, provided that nothing shall prohibit the Grantee from  
22 activating additional Cable Services to Subscribers on a node by node basis during an upgrade of  
23 its Cable System.

24 **11.2 Cable System Upgrade**

25 Prior to the effective date of this Franchise, the Grantee undertook a voluntary upgrade of its  
26 Cable System to a fiber-to-the-node system architecture, with fiber-optic cable deployed from  
27 the Headend to the node and tying into a hybrid fiber-coaxial system already serving  
28 Subscribers. Active and passive devices are capable of passing a minimum of 750 MHz, and the  
29 Cable System is capable of delivering high quality signals that meet, or exceed, FCC technical  
30 quality standards regardless of a particular manner in which signal is transmitted. During the  
31 term of this Franchise, the Grantee agrees to maintain the Cable System in a manner consistent  
32 with, or in excess of these specifications.  
33

34 **11.3 Technical Performance**

35 The technical performance of the Cable System shall meet or exceed all applicable federal  
36 (including, but not limited to, the FCC), State and local technical standards, as they may be  
37 amended from time to time, regardless of the transmission technology utilized. Grantor shall  
38 have the full authority permitted by applicable law to enforce compliance with these technical  
39 standards.

1 **11.4 Cable System Performance Testing**

2 (A) Grantee shall, at Grantee's expense, perform the following tests on its Cable  
3 System:

- 4 (1) All tests required by the FCC;
- 5 (2) All other tests reasonably necessary to determine compliance with  
6 technical standards adopted by the FCC at any time during the term of this Franchise; and
- 7 (3) All other tests as otherwise specified in this Franchise.

8 (B) At a minimum, Grantee's tests shall include:

- 9 (1) Cumulative leakage index testing of any new construction;
- 10 (2) Semi-annual compliance and proof of performance tests in conformance  
11 with generally accepted industry guidelines;
- 12 (3) Tests in response to Subscriber complaints;

13  
14 (4) Cumulative leakage index tests, at least annually, designed to ensure that  
15 one hundred percent (100%) of Grantee's Cable System has been ground or air tested for  
16 signal leakage in accordance with FCC standards.

17 (C) Grantee shall maintain written records of all results of its Cable System tests,  
18 performed by or for Grantee. Copies of such test results will be provided to Grantor upon  
19 request.

20 (D) The FCC semi-annual testing is conducted in January/February and July/August  
21 of each year. If Grantor contacts Grantee prior to the next test period (*i.e.*, before December 15  
22 and June 15 respectively of each year), Grantee shall provide Grantor with no less than seven (7)  
23 days prior written notice of the actual date(s) for FCC compliance testing. If Grantor notifies  
24 Grantee by the December 15th and June 15th dates that it wishes to have a representative present  
25 during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative  
26 can be present. Notwithstanding the above, all technical performance tests may be witnessed by  
27 representatives of the Grantor.

28 (E) Grantee shall be required to promptly take such corrective measures as are  
29 necessary to correct any performance deficiencies fully and to prevent their recurrence as far as  
30 possible. Grantee's failure to correct deficiencies identified through this testing process shall be  
31 a material violation of this Franchise. Sites shall be re-tested following correction.

32 **11.5 Additional Tests**

33 Where there exists other evidence that in the judgment of Grantor casts doubt upon the reliability  
34 or technical quality of Cable Service, the Grantor shall have the right and authority to require  
35 Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully  
36 cooperate with the Grantor in performing such testing and shall prepare the results and a report,  
37 if requested, within thirty (30) days after testing. Such report shall include the following  
38 information:

- 39 (A) the nature of the complaint or problem which precipitated the special tests;
- 40 (B) the Cable System component tested;
- 41 (C) the equipment used and procedures employed in testing;

- 1 (D) the method, if any, in which such complaint or problem was resolved; and  
2 (E) any other information pertinent to said tests and analysis which may be required.  
3

4 **SECTION 12. SERVICE AVAILABILITY**

5 **12.1 Service Availability**

6 (A) In general, Grantee shall provide Service within seven (7) days of a request by  
7 any Person within its service area. For purposes of this Section, a request shall be deemed made  
8 on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written  
9 request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such  
10 service:

11 (1) At a non-discriminatory installation charge for a standard installation,  
12 consisting of a one hundred twenty-five (125) foot drop connecting to an inside wall,  
13 with additional charges for non-standard installations computed according to a non-  
14 discriminatory method for such installations, adopted by Grantee and provided in writing  
15 to Grantor.

16 (2) At non-discriminatory monthly rates for all Subscribers, excepting  
17 commercial customers, MDU Bulk customers and other lawful exceptions to uniform  
18 pricing.  
19

20 **SECTION 13. STANDBY POWER AND EAS**

21 **13.1 Standby Power**

22 Grantee shall provide standby power generating capacity at the System Headend capable of  
23 providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby  
24 power system supplies, rated for at least two (2) hours duration, throughout the trunk and  
25 distribution networks. In addition, throughout the term of this Franchise Grantee shall have a  
26 plan in place, along with all resources necessary for implementing such plan, for dealing with  
27 outages of more than two (2) hours.

28 **13.2 Emergency Alert Capability**

29 (A) In accordance with, and at the time required by, the provisions of FCC  
30 Regulations, as such provisions may from time to time be amended, EAS activation will be  
31 accomplished in compliance with the FCC approved Washington State EAS plan and the Local  
32 Area EAS plan that applies to City of Chehalis, which has already been submitted for approval to  
33 the Washington State Emergency Communications Committee (WSECC).

34 (B) Grantee shall ensure that the EAS system is functioning properly at all times. It  
35 will test the EAS system periodically, in accordance with FCC regulations.  
36

1 **SECTION 14. FRANCHISE BREACHES; TERMINATION OF**  
2 **FRANCHISE**

3 **14.1 Informal Dispute Resolution**

4 Prior to proceeding with the formal Procedure for Remediating of Franchise Violations process as  
5 set forth below (in subsection 14.2), Grantor agrees to provide Grantee informal verbal or  
6 electronic mail notice of any alleged material violation of this Franchise and allow Grantee a  
7 reasonable opportunity to cure the violation. If the alleged violation is investigated by Grantee  
8 and determined to be valid, Grantee agrees to exert good faith efforts to immediately resolve the  
9 matter. However, if the alleged violation is determined by Grantee to be invalid, or outside of  
10 Grantee's legal responsibilities, the Grantee promptly shall so advise Grantor. Grantee agrees to  
11 exert good faith efforts to expedite its investigation, determination and communications to  
12 Grantor so that the informal resolution process proceeds on an expedited basis. If Grantor  
13 believes that Grantee is unreasonably delaying the informal resolution process, it may commence  
14 the formal dispute resolution process.

15 **14.2 Procedure for Remediating Franchise Violations**

16 (A) If Grantor believes that Grantee has failed to perform any material obligation  
17 under this Franchise, or has failed to perform in a timely manner, Grantor shall notify Grantee in  
18 writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have  
19 thirty (30) days from the receipt of such notice to:

20 (1) Respond to Grantor, contesting Grantor's assertion that a default has  
21 occurred, and requesting a hearing in accordance with subsection (B), below;

22 (2) Cure the default; or

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

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



1 (C) If, after the public hearing, Grantor determines that a default still exists; Grantor  
2 shall order Grantee to correct or remedy the default or breach within fourteen (14) days or within  
3 such other reasonable time frame as Grantor shall determine. In the event Grantee does not cure  
4 within such time to Grantor's reasonable satisfaction, Grantor may:

- 5 (1) Assess and collect monetary damages in accordance with this Franchise;
- 6 (2) Commence procedures to terminate this Franchise; or,
- 7 (3) Pursue any other legal or equitable remedy available under this Franchise  
8 or applicable law.

9 (D) The determination as to whether a violation of this Franchise has occurred  
10 pursuant to this Section herein shall be within the sole discretion of the Grantor or its designee.  
11 Any such determination by Grantor shall be accompanied by a record, to which Grantee's  
12 contribution shall not be unreasonably limited by Grantor. Any such final determination shall be  
13 subject to appeal to a court of competent jurisdiction.

#### 14 **14.3 Alternative Remedies**

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

22 (B) The Grantor specifically does not, by any provision of this Franchise, waive any  
23 right, immunity, limitation or protection (including complete damage immunity) otherwise  
24 available to the Grantor, its officers, officials, Councils, boards, commissions, authorized agents,  
25 or employees under federal, state, or local law including by example Section 635A of the Cable  
26 Act. The Grantee shall not have any monetary recourse against the Grantor, or its officers,  
27 officials, Council, Boards, commissions, agents or employees for any loss, costs, expenses or  
28 damages arising out of any provision, requirement of this Franchise or the enforcement thereof.

#### 29 **14.4 Assessment of Monetary Damages**

30 (A) Upon completion of the procedures set forth above, and from the date of said  
31 violation pursuant to the procedures specified in this Franchise, Grantor may assess against and  
32 collect from Grantee monetary damages in amounts of up to five hundred dollars (\$500.00) per  
33 day or the Grantor's actual damages, whichever is greater, for general construction delays, and  
34 up to one hundred dollars (\$100.00) per day for any other material breaches. Grantor may  
35 collect the assessment as specified in this Franchise.

36 (B) Any assessment hereunder shall not constitute a waiver by Grantor of any other  
37 right or remedy it may have under this Franchise or applicable law, including its right to recover  
38 from Grantee any additional rights or claims Grantor might have to damages, losses, costs and  
39 expenses, after the period for collecting liquidated damages referenced in subsection (C) below  
40 has expired.

41 (C) The Grantor and the Grantee recognize the delays, expense and unique difficulties  
42 involved in proving in a legal proceeding the actual loss suffered by the Grantor as a result of the  
43 Grantee's breach of this Franchise. Accordingly, instead of requiring such proof, the Grantor and

1 the Grantee agree that the Grantee shall pay to the Grantor the sums set forth above for each day  
2 that the Grantee shall be in breach of the specific provisions of this Franchise, for a maximum of  
3 ninety (90) days. Such amounts are agreed by both parties to be a reasonable estimate of the  
4 actual damages the Grantor would suffer in the event of the Grantee's breach of such provisions  
5 of this Franchise, and are not intended as a penalty.

6 (D) The Grantee's maintenance of the Security required herein or by applicable code  
7 shall not be construed to excuse unfaithful performance by the Grantee of this Franchise; to limit  
8 the liability of the Grantee to the amount of the Security; or to otherwise limit the Grantor's  
9 recourse to any other remedy available at law or equity.

#### 10 **14.5 Revocation**

11 (A) This Franchise may be revoked and all rights and privileges rescinded if a  
12 material breach of the Franchise is not cured pursuant to Section 14.2, or in the event that:

13 (1) Grantee fails to perform any material obligation under this Franchise;

14 (2) Grantee attempts to evade any material provision of this Franchise or to  
15 practice any fraud or deceit upon the Grantor or Subscribers;

16 (3) Grantee makes a material misrepresentation of fact in the negotiation of  
17 this Franchise;

18 (4) Grantee or an Affiliate challenges the legality or enforceability of this  
19 Franchise in a judicial or administrative (for example, FCC) proceeding;

20 (5) Grantee fails to maintain required business offices as provided above;

21 (6) Grantee abandons the System, or terminates the System's operations;

22 (7) Grantee fails to restore service to the System after three consecutive days  
23 of an outage or interruption in service; except when approval of such outage or  
24 interruption is obtained from the Grantor, it being the intent that there shall be continuous  
25 operation of the System; or

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

30 (B) Additionally, this Franchise may be revoked one hundred twenty (120) days after  
31 the appointment of a receiver or trustee to take over and conduct the business of the Grantee (at  
32 the option of the Grantor and subject to applicable law) whether in a receivership, reorganization,  
33 bankruptcy or other action or proceeding, unless:

34 (1) The receivership or trusteeship is vacated within one hundred twenty (120)  
35 days of appointment; or

36 (2) The receivers or trustees have, within one hundred twenty (120) days after  
37 their election or appointment, fully complied with all the material terms and provisions of  
38 this Franchise, and has remedied all material defaults under the Franchise. Additionally,  
39 the receivers or trustees shall have executed an agreement duly approved by the court  
40 having jurisdiction, by which the receivers or trustees assume and agree to be bound by  
41 each and every term and provision of this Franchise.

42 (C) If there is a foreclosure or other involuntary sale of the whole or any part of the  
43 plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee

1 and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise  
2 shall be revoked thirty (30) days after service of such notice, unless:

3 (1) Grantor has approved the transfer of the Franchise, in accordance with the  
4 procedures set forth in this Franchise and as provided by law; and

5 (2) The purchaser has covenanted and agreed with Grantor to assume and be  
6 bound by all of the terms and provisions of this Franchise.

7 (D) Grantor shall provide Grantee written notice of its intent to consider revocation  
8 and hold a hearing in accordance with the provisions of this Franchise. Grantee shall submit any  
9 objection to revocation in writing to Grantor, stating with specificity its objections. Grantor shall  
10 hear any Persons interested in the revocation, and shall allow Grantee an opportunity to be heard,  
11 to cross-examine witnesses, to present evidence, and to make all reasonable additions to the  
12 hearing record.

13 (E) Grantor shall determine whether the Franchise shall be revoked. The Grantee  
14 may appeal such determination to a court of competent jurisdiction. Such appeal to the  
15 appropriate court shall be taken within thirty (30) days of the issuance of the determination of the  
16 Grantor. Grantor shall receive notice of any appeal concurrent with any filing to a court of  
17 competent jurisdiction.

#### 18 **14.6 Removal**

19 (A) In the event of termination, expiration or revocation of this Franchise, and after all  
20 appeals from any judicial determination are exhausted and final, Grantor may order the removal  
21 of the System facilities from the Franchise Area at Grantee's sole expense within a reasonable  
22 period of time as determined by Grantor. In removing its plant, structures and equipment,  
23 Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all  
24 Rights-of-Way, public places and private property in as good a condition as that prevailing prior  
25 to Grantee's removal of its equipment.

26 (B) If Grantee fails to complete any required removal to the satisfaction of Grantor,  
27 Grantor may cause the work to be done, and Grantee shall reimburse Grantor for the reasonable  
28 costs incurred within thirty (30) days after receipt of an itemized list of Grantor's expenses and  
29 costs, or Grantor may recover its expenses and costs from the Security, or pursue any other  
30 judicial remedies for the collection thereof. Any expenses incurred in the collection by Grantor  
31 of such obligation shall be included in the monies due Grantor from Grantee, including  
32 reasonable attorney fees, court expenses and attributed expenses for work conducted by  
33 Grantor's staff or agents.

### 35 **SECTION 15. ABANDONMENT**

#### 36 **15.1 Effect of Abandonment**

37 If the Grantee abandons its System during the Franchise term, or fails to operate its System in  
38 accordance with its duty to provide continuous service, the Grantor, at its option, may operate the  
39 System or; designate another entity to operate the System temporarily until the Grantee restores  
40 service under conditions acceptable to the Grantor, or until the Franchise is revoked and a new  
41 franchisee is selected by the Grantor. If the Grantor designates another entity to operate the  
42 System, the Grantee shall reimburse the Grantor for all reasonable costs, expenses and damages

1 incurred, including reasonable attorney fees, court expenses and attributed expenses for work  
2 conducted by Grantor's staff or agents.

### 3 **SECTION 16. FRANCHISE TRANSFER**

#### 4 **16.1 Transfer of Ownership or Control**

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

10 (B) The Grantee shall promptly notify the Grantor of any actual or proposed change  
11 in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control"  
12 as used herein is not limited to majority stockholders but includes actual working control in  
13 whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall  
14 make this Franchise subject to cancellation unless and until the Grantor shall have consented in  
15 writing thereto.

16 (C) The parties to the sale or transfer shall make a written request to the Grantor for  
17 its approval of a sale or transfer and furnish all information required by law and the Grantor.

18 (D) In seeking the Grantor's consent to any change in ownership or control, the  
19 proposed transferee shall indicate whether it:

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

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

26 (3) Has pending any material legal claim, lawsuit, or administrative  
27 proceeding arising out of or involving a cable system;

28 (4) Is financially solvent, by submitting financial data including financial  
29 statements that are audited by a certified public accountant who may also be an officer of  
30 the transferee, along with any other data that the Grantor may reasonably require; and

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

33 (E) The Grantor shall act by ordinance or resolution on the request within one  
34 hundred twenty (120) days of the request, provided it has received all requested information.  
35 Subject to the foregoing, if the Grantor fails to render a final decision on the request within one  
36 hundred twenty (120) days, such request shall be deemed granted unless the requesting party and  
37 the Grantor agree to an extension of time.

38 (F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by  
39 the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease or other  
40 written instrument evidencing such sale or transfer of ownership or control, certified and sworn  
41 to as correct by Grantee and the transferee, and the transferee shall file its written acceptance  
42 agreeing to be bound by all of the provisions of this Franchise, subject to applicable law. In the  
43 event of a change in control, in which the Grantee is not replaced by another entity, the Grantee

1 will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and  
2 will not be required to file an additional written acceptance. By agreeing to any transfer of  
3 ownership, Grantor does not waive any rights in this Franchise.

4 (G) In reviewing a request for sale or transfer, the Grantor may inquire into the legal,  
5 technical and financial qualifications of the prospective controlling party or transferee, and  
6 Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer  
7 upon such terms and conditions as it deems reasonably appropriate, provided, however, any such  
8 terms and conditions so attached shall be related to the legal, technical and financial  
9 qualifications of the prospective controlling party or transferee and to the resolution of  
10 outstanding and unresolved issues of noncompliance with the terms and conditions of this  
11 Franchise by Grantee.

12 (H) Notwithstanding anything to the contrary in this subsection, the prior approval of  
13 the Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable  
14 System to an entity controlling, controlled by or under the same common control as Grantee,  
15 provided that the proposed assignee or transferee must show financial responsibility as may be  
16 determined necessary by the Grantor and must agree in writing to comply with all of the  
17 provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the  
18 purpose of financing without the consent of the Grantor; provided that such pledge of assets shall  
19 not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations  
20 under the provisions of this Franchise.  
21

## 22 **SECTION 17. MISCELLANEOUS PROVISIONS**

### 23 **17.1 Preferential or Discriminatory Practices Prohibited**

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

### 29 **17.2 Notices**

30 Throughout the term of this Franchise, each party shall maintain and file with the other a local  
31 address for the service of notices by mail. All notices shall be sent to such respective address,  
32 and such notices shall be effective upon the date of mailing. At the effective date of this  
33 Franchise:

34  
35 Grantee's address shall be:

36 Comcast Cable  
37 410 Valley Ave. NW, Suite 9  
38 Puyallup, WA 98371  
39 Attention: General Manager  
40

41  
42 With a copy to:  
43 Comcast Cable

1 15815 25<sup>th</sup> Avenue West  
2 Lynnwood, WA 98087  
3 Attention: Franchise Department  
4

5 Grantor's address shall be:

6 City of Chehalis  
7 350 N Market Blvd., Room 101  
8 Chehalis, WA 98532  
9  
10

11 **17.3 Costs to be Borne by Grantee**

12 Grantee shall pay for all costs of publication of this Franchise, and any and all notices prior to  
13 not more than two (2) public meetings provided for pursuant to this Franchise.

14 **17.4 Binding Effect**

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

16 **17.5 Authority to Amend**

17 No provision of this Franchise Agreement Shall be amended or otherwise modified, in whole or  
18 in part, except by an instrument, in writing, duly executed by the Grantor and the Grantee, which  
19 amendment shall be authorized on behalf of the Grantor through the adoption of an appropriate  
20 resolution or order by the Grantor, as required by applicable law.

21 **17.6 Venue**

22 The Venue for any dispute related to this Franchise shall be with the United States District Court  
23 for the Western District of Washington or the Lewis County Superior Court, Tacoma,  
24 Washington.

25 **17.7 Governing Law**

26 This Franchise shall be governed in all respects by the laws of the State of Washington.

27 **17.8 Captions**

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

30 **17.9 Construction of Franchise**

31 The provisions of this Franchise shall be liberally construed to promote the public interest.

32 **17.10 No Joint Venture**

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

36 **17.11 Waiver**

37 The failure of either party at any time to require performance by the other of any provision  
38 hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall

1 the waiver by either party of any breach of any provision hereof be taken or held to be a waiver  
2 of any succeeding breach of such provision, or as a waiver of the provision itself or any other  
3 provision.

4 **17.12 Severability**

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

10 **17.13 Entire Agreement**

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

14 **17.14 Compliance with Federal, State, and Local Laws**

15 The Grantee shall comply with applicable federal, state and local laws, rules and regulations.

16 **17.15 Customer Service Standards**

17 The Grantee shall comply with any applicable customer service standards that are lawfully  
18 adopted by Grantor and are consistent with applicable Federal law.

19 **17.16 Force Majeure**

20 The Grantee shall not be held in default under, or in noncompliance with, the provisions of this  
21 Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where  
22 such noncompliance or alleged defaults occurred or were caused by circumstances reasonably  
23 beyond the ability of the Grantee to anticipate and control, including war or riots, civil  
24 disturbances, floods or other natural catastrophes, labor stoppages, slowdowns, or power outages  
25 exceeding back-up power supplies, work delays caused by waiting for utility providers to service  
26 or monitor their utility poles to which the Grantee's Cable System is attached as well as  
27 unavailability of materials irrespective of cost.

28  
29

1 **IN WITNESS WHEREOF**, and pursuant to the vote of approval of the qualified  
2 electors (if required) of the City of Chehalis, Washington this Franchise is signed in the name of  
3 the City of Chehalis, Washington, this 28<sup>th</sup> day of July, 2014.

4  
5  
6 **CITY OF CHEHALIS WASHINGTON**

7  
8   
9  
10 By: City Manager, City of Chehalis

11  
12  
13  
14 ATTEST:

15  
16   
17  
18

19  
20 ACCEPTED this 12<sup>th</sup> day of September, 2014, subject to applicable  
21 federal, state and local law.

22  
23 **Comcast Cable Communications Management, LLC,**

24   
25  
26 By: (Authorized Representative Signature)



**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Susan Stayner, City Manager Administrative Assistant

**MEETING OF:** August 28, 2023

**SUBJECT:** Appointment and Reappointment of Lodging Tax Advisory Committee (LTAC) Members

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**ISSUE**

Appointment of Lodging Tax Advisory Committee (LTAC) member to fill vacant hotelier position and reappointment of Committee members.

**BACKGROUND**

The LTAC reviews and makes funding recommendations to the City Council to fund various non-profit organizations or government entities for marketing, activities, operations, and expenditures designed to increase tourism.

In accordance with state law, the committee must have at least five members, appointed by the City Council. Membership must include at least two representatives of businesses required to collect hotel-motel tax, two people involved in activities that are authorized to be funded by the tax, and one elected official who serves as chairperson. The number of persons representing businesses that collect the tax and the number of persons involved in activities authorized to be funded by the tax must be equal. There is no established term of membership. Per state law (RCW 67.28.1817), members of the LTAC must have equal representation of hoteliers and receiving agencies.

In 2022, the City Council decided to review the membership and invite applications to serve on the 2022 LTAC. The City Council appointed Charles (Chip) Duncan, Executive Director of the Veterans Museum; Annalee Tobey, Executive Director of Experience Chehalis; to represent the organizations that receive the tax proceeds. The City Council appointed Lilly Wall, representing the City of Chehalis RV Park at Stan Hedwall and Jacob Blue, the now former manager of Holiday Inn Express, to represent organizations that collect the lodging tax.

Jacob Blue is no longer with the Holiday Inn Express, so a vacancy was created. In response to the need to fill the vacant position, staff reached out to eligible candidates and advertised the vacancy in the Chronicle. There was one applicant, Katie Blurton of The Best Western Plus hotel, who applied to fill the vacant position.

Ms. Blurton's application was reviewed by Councilor Lord, who represents the City Council on the LTAC. He believes that she would be an asset to the LTAC and recommends that the City Council appoint her to the Committee.

It is also necessary to formally reappoint the members that served in 2022 to serve again in 2023.

## **RECOMMENDATION**

It is recommended that the City Council:

- 1) Appoint Katie Blurton, representing The Best Western Plus Hotel, to fill the vacant hotel seat on the City's Lodging Tax Advisory Committee; and
- 2) Reappoint Chip Duncan, Executive Director of the Veterans Museum; Annalee Tobey, Executive Director of Experience Chehalis; Lilly Wall, Director of Recreation and Parks (City of Chehalis RV Park at Stan Hedwall Park) to serve on the City's 2023 Lodging Tax Advisory Committee.

## **SUGGESTED MOTION**

I move that the City Council:

- 1) Appoint Katie Blurton, representing The Best Western Plus Hotel, to fill the vacant hotel seat on the City's Lodging Tax Advisory Committee; and
- 2) Reappoint Chip Duncan, Executive Director of the Veterans Museum; Annalee Tobey, Executive Director of Experience Chehalis; Lilly Wall, Director of Recreation and Parks (City of Chehalis RV Park at Stan Hedwall Park) to serve on the City's 2023 Lodging Tax Advisory Committee.

**CHEHALIS CITY COUNCIL MEETING  
AGENDA REPORT**

**TO:** The Honorable Mayor and City Council

**FROM:** Jill Anderson, City Manager

**BY:** Adam Fulbright, Fire Chief

**MEETING OF:** August 28, 2023

**SUBJECT:** Ordinance No. 1072-B, Creating Chapter 2.30 of the Chehalis Municipal Code Relating to Ambulance Transport and Contract for Ambulance Billing Services with Systems Design West, LLC.

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**ISSUE**

The City of Chehalis does not currently recover costs associated with the provision of ambulance services. An ordinance that would enable the City Fire Department to recover costs associated with ambulance transportation has been prepared for City Council consideration.

If the City Council adopts the Ordinance, it is recommended that the City Council authorize the City Manager to enter into an agreement with Systems Design West, LLC to administer the processes needed to bill, collect, and document services related to ambulance transportation services.

**AMBULANCE SERVICES COST RECOVERY**

For decades the Fire Department has responded to the emergency medical needs of residents and non-residents of the City of Chehalis. The City provides these services at zero or limited cost to the third parties that call for these services. The cost of City resources used during these emergency incidents are absorbed by the Fire Department, which is funded by the City's General Fund. These services include the provision of transport to a hospital by ambulance.

In the past, the City has been able to absorb these costs because third party caused incidents that required Chehalis Fire Department to transport patients had been relatively low. This is no longer the case. The increasing demand for services and rising costs in healthcare supplies, equipment, and fuel, are becoming increasingly burdensome to the City's Fire Department Budget. RCWs 35A.11.020 and 35.27.0370 establish that the City Council has the authority to adopt an ordinance to establish a method of recovering costs for ambulance transport.

An Ordinance to allow the City to recover costs of providing ambulance services has been prepared for City Council consideration on first reading at the August 28, 2023 City Council meeting. The Ordinance sets forth the rates, authority, and billing information. If approved on first reading, the Ordinance would be scheduled for adoption on second and final reading.

## **ADMINISTRATION OF AMBULANCE BILLING**

If the City Council ultimately adopts the Ordinance for Ambulance Transport Cost Recovery, it is proposed that the City use a third party administrator to collect the amount due from the responsible party and/or the responsible party's insurance company, which would then be remitted to the City. Systems Design West, LLC is a company that specializes in providing ambulance billing, emergency management service (EMS) Billing and accounting services for Fire and Rescue organizations throughout the western United States. A proposed contract with Systems Design West has been prepared for consideration by the City Council.

## **KEY PROVISIONS OF THE ORDINANCE**

The main purpose of the Ordinance is to set forth the rates for transport and provide provisions allowing the City Manager or a designee to establish the applicable procedures relating to the implementation of the billing service. In addition, it delegates authority to the City Manager to contract for the ambulance billing and collection services, which will be discussed in more detail below.

There will be a lower rate for residents of Chehalis and residents will not be charged for services not covered by insurance because they pay for general fund services through various means, including the .50 cents per thousand property tax EMS Levy.

### ***Proposed Ambulance Transport Rates:***

The proposed ambulance billing rates were developed based on a study of ambulance rates established by surrounding agencies in Lewis County, neighboring Counties, and applicable State information. The proposed rates for ambulance transports performed by the City of Chehalis are:

- Basic Life Support Resident: \$975.
- Basic Life Support Non-Resident: \$1075.
- Advanced Life Support 1-E Resident: \$1275
- Advanced Life Support 1-E Non-Resident: \$1375.00
- Advanced Life Support 2 Resident: \$1475
- Advanced Life Support 2 Non-Resident: \$1575.00
- Mileage: \$20.00/mile

The proposed Ordinance provides that the rates would increase 3% annually in January. A copy of current rates would be maintained by the City Clerk and incorporated into the City's fee schedule.

## **BILLING AND COLLECTION OF AMBULANCE TRANSPORT FEES**

If the Ordinance is approved and adopted, the City Treasurer, designee, authorized agent, or contracted billing service would prepare and mail an invoice to each responsible party at

his/her last known address, or to an appropriate insurance company or authorized agent acting on behalf of a responsible party or an insurer of a responsible party. It is anticipated that the City would use a third party administrator to bill, recover and document the costs.

### ***Billing Process***

The responsible party would be any patient that receives emergency medical care and/or transport as the direct recipient of the services provided. In the case of emergency medical care and/or transport being provided to a minor, the responsible party shall be the parents or guardian of the minor.

The responsible party or the responsible party's insurance company would receive an invoice that sets forth that the full payment is due within thirty (30) days of billing. Typically, insurance companies pay 80% of the cost of transport. Residents of Chehalis would not be required to make up for the amount not paid by the insurance company because they directly or indirectly pay the .50 cent per thousand EMS Property Tax Levy. Therefore, if a Chehalis resident has insurance and the insurance company pays 80%, the remaining 20% of the ambulance transport rates not covered by patients' insurance, will not be billed.

Non-residents of Chehalis would be billed the non-resident rate for services, and the remaining 20% of the ambulance transport rates not covered by patients' insurance will be billed to the non-resident. After the insurance provider pays, amounts past due that remain unpaid for thirty (30) days after the date of billing would be assessed a late charge of one percent (1%) per month, or fraction thereof, until paid in full.

Patients that are not insured would be billed directly and are considered self-pay. City residents that are not insured would be billed the resident rates. Patients would also have the option of making monthly payment arrangements with the City or with the City's contracted administrator for any unpaid balance.

### ***Appeal Procedure***

Any responsible party who receives an invoice for services provided will be able to submit a written request for an appeal. The Fire Chief will be responsible for making findings regarding any requests for a modification of a bill for services, which will then be submitted to the City Manager for final approval. Criteria considered during the billing appeal period would include City of Chehalis residency, documented financial hardship; and/or other extenuating circumstances.

### ***Third Party Administrator - Systems Design West, LLC***

It is proposed that the City contract with Systems Design West to administer the billing and collection of ambulance transport fees. The firm specializes in this type of service and is used by several other agencies in Lewis County, including Riverside Fire Authority and Lewis County Fire Districts #4, #6, and #15.

There is a one-time, \$750.00 fee for enrollment services. Then, the City (aka provider) would be

billed per transport as set forth below.

\$35.00 per transport for total volume of 1-10 transports per quarter or month OR  
\$30.00 per transport for total volume of 11-20 transports per quarter or month, OR  
\$25.00 per transport for total transport volume greater than 21 transports per quarter  
or month.

The fees set forth are all inclusive for the services provided. There are no annual fees, no renewal fees, and there is no additional percentage charge of the fees collected by Systems Design West from the City or patients billed. This fee also includes quarterly reporting.

If the City would like to add additional services in the future, such as cost report consulting, those can be added separately via amendment.

The City Attorney has reviewed the proposed agreement.

### **FISCAL IMPACT**

The City transports 40 to 60 patients a year. Therefore, the costs of the services in the first year could be \$750 set-up fee plus \$2,100 (\$35 x 60) for a total of \$2,850, if 60 patients are transported and billed for service.

This cost would be offset by estimated revenue of \$46,800 which is 80% of \$58,500 (\$975 x 60), assuming 60 Chehalis residents are transported, and their insurance company pays 80% of the billed cost. While these estimates are high, they illustrate the potential cost recovery that could be made if the City pursues cost recovery, most likely from insurance companies that cover patients.

### **RECOMMENDATION**

It is recommended that the City Council:

- 1) Approve Ordinance #**1072-B** Establishing Chapter 2.30 of the Chehalis Municipal Code relating to Ambulance Transport on first reading.
- 2) Authorize the City Manager to execute the related documents, including an agreement with Systems Design West, LLC contingent upon the final approval of Ordinance #1072-B.

### **SUGGESTED MOTION**

I move that the City Council:

- 1) Approve Ordinance #**1072-B** Establishing Chapter 2.30 of the Chehalis Municipal Code relating to Ambulance Transport on first reading and schedule the second and final reading for September 11, 2023.
- 2) Authorize the City Manager to execute the related documents, including an agreement with Systems Design West, LLC contingent upon the final approval of Ordinance #1072-B.

**ORDINANCE NO. 1072-B**

**AN ORDINANCE OF THE CITY OF CHEHALIS, LEWIS COUNTY, WASHINGTON, CREATING A NEW CHAPTER 2.30 OF THE CHEHALIS MUNICIPAL CODE, RELATING TO AMBULANCE TRANSPORT; ESTABLISHING TRANSPORT RATES; AND THE PROMULGATION OF REGULATIONS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, pursuant to the authority provided in RCWs 35A.11.020 and 35.27.370 (15), the City is authorized to operate an ambulance service and to make charges for such services; and

**WHEREAS**, in order to meet the needs of the citizens for ambulance services, it is appropriate for the City to formally implement procedures for such services, as through this ordinance; and

**WHEREAS**, the City's current service provider is not always available to respond, leaving the residents without medical services and the Fire Department often provides ambulance transport for the Citizens and visitors of the City.

**WHEREAS**, The City has been licensed through the State Department of Health to provide ambulance transport service since 2019.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHEHALIS, WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** Adding New Chapter to CMC 2.30. That a new chapter 2.30 of the City of Chehalis, City Code, and the same is hereby created to read as follows:

**Chapter 2.30  
AMBULANCE TRANSPORT**

Sections:

- 2.30.120 Ambulance transport rates
- 2.30.130 Authority to promulgate regulations.
- 2.30.140 Billing functions and services

**2.30.120 Ambulance transport rates.**

The following rates are established for ambulance transports performed by the City of Chehalis:

- Basic Life Support Resident: \$975.
- Basic Life Support Non-Resident: \$1075.
- Advanced Life Support 1-E Resident: \$1275
- Advanced Life Support 1-E Non-Resident: \$1375.00

Advanced Life Support 2 Resident: \$1475  
Advanced Life Support 2 Non-Resident: \$1575.00  
Mileage: \$20.00/mile

**BE IT FURTHER RESOLVED** by the governance of the City Council that the rates will be adjusted by 3% increase effective January of each year. A copy of current rates shall be maintained by the City Clerk.

Basic Life Support or "BLS" means noninvasive emergency medical services requiring basic medical treatment skills as defined in WAC 388-546-0001

Advanced Life Support or "ALS" means invasive emergency medical services requiring advanced medical treatment skills as defined in WAC 388-546-0001

### **2.30.130 Authority to promulgate regulations.**

The City Manager or his/her designee, is hereby authorized to promulgate any and all regulations necessary to implement the provisions of this Chapter, including regulations related to billing, payment, collections and penalties for delinquent payments.

### **2.30.140 Billing Functions and Services**

The City Manager or his/her designee is authorized to provide or contract for billing services necessitated through passage of the Ordinance. The City Manager, or his/her designee, is authorized to enter into agreements with other governmental jurisdictions or private companies for the provisions of ambulance billing and collection services.

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

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

**PASSED** by the City Council of the City of Chehalis, Washington, and **APPROVED** by its Mayor, at a regularly scheduled open public meeting there of this \_\_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
Mayor



Attest:

---

City Clerk

Approved as to form and content:

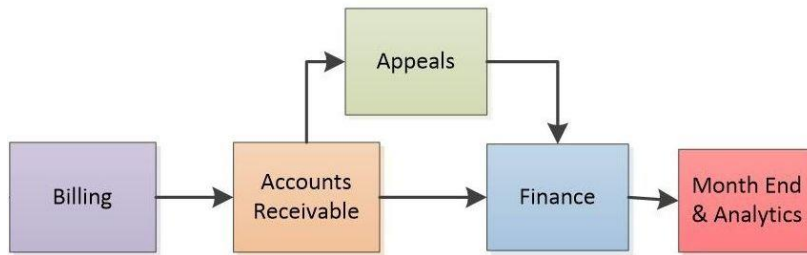
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City Attorney



## AMBULANCE BILLING INFORMATION FOR CITY OF CHEHALIS FIRE DEPARTMENT

Systems Design will deliver a high-quality, comprehensive billing program to the Chehalis Fire Department.



*Overview of Systems Design's customizable billing program.*

### **Cornerstones of Systems Design West's Billing Program**

- **Regional net collection rate of 91.1%**, which is at the very top of the industry.
- Seamless billing software integration. Our billing software can electronically import NEMSIS compliant XML files from **any** ePCR software, including First Due, ERS, ESO, and ImageTrend.
- Prompt, accurate and complete claims coding for Emergency and Non-emergency billing.
- Detailed and timely patient account reviews done by people, not computers.
- Tenacious appeals process to address denied claims.
- Month-end reports that provide detailed information of processed claims and insurance payer mix. Customizable reports are available to satisfy the organization's operational & financial needs.
- Web access to tickets and reporting tool, complete with financial and statistical analyses.
- Manage medical records requests from attorneys and patients.
- Work with the debt collection agencies to transfer accounts over in a thorough, timely manner.
- Regular newsletters and annual training workshops to keep clients informed.
- Documentation training for crews delivered from Systems Design West's Compliance staff.
- Cost Report Consulting services and assistance recovering funds from WA GEMT program via Public Consulting Group.

### **Benefits of Systems Design West's Billing Program to City of Chehalis Fire Department**

- Peace of mind.
- Accountability to your community.
- Improved front office productivity. Systems Design West will bear the administrative burden of the City's billing program.
- Fewer claim denials.
- Maximized revenue.
- Compliance with insurance policies and regulations.
- Staying up-to-date with the latest changes in payer policies, GEMT, and compliance.
- Accurate accounts reconciliation.



(800) 585-5242

P O BOX 3510 | SILVERDALE, WA | 98383-3510

March 15, 2023

### **Pricing for City of Chehalis Fire Department's Billing Program**

Systems Design West prices its services on a fixed fee per billable incident basis plus actual costs for postage.

1-10 transports in given quarter: \$35.00 per claim billed  
11-20 transports in given quarter: \$30.00 per claim billed  
21+ transports in given quarter: \$25.00 per claim billed

There is a one-time, \$750.00 fee for Enrollment services.

The fixed price is all-inclusive for all services provided by Systems Design West. There are no annual fees, renewal fees, or percentage of collection fees.

Chehalis Fire Department will gain all the benefits of Systems Design West's comprehensive billing program. This all-inclusive price covers the total cost of the City's billing program. Additional services, such as cost report consulting, are added separately via amendment.

#### **References**

Systems Design West partners with hundreds of public EMS agencies in Washington. Listed below are a few local references. Additional references available upon request.

#### **RIVERSIDE FIRE AUTHORITY**

Telephone: (360) 736-3975

Primary Contact: Mike Kytta, Fire Chief

#### **LEWIS COUNTY FIRE DISTRICT 6**

Telephone: (360)748-6019

Primary Contact: Ken Cardinale, Fire Chief

#### **CITY OF LONGVIEW**

Telephone: (360) 442-5514

Primary Contact: Eric Koreis, Battalion Chief

#### **LEWIS COUNTY FIRE DISTRICT 15**

Telephone: (360) 269-2887

Primary Contact: Rich Underdahl, Fire Chief

#### **LEWIS COUNTY FIRE DISTRICT 4**

Telephone: (360) 496-1283

Primary Contact: Sheli Harbaugh, EMS Captain

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (Effective Date) by and between, City of Chehalis ("**Provider**") having its principal location at \_\_\_\_\_ and Systems Design West, LLC a Delaware limited liability company having its principal place of business located at 19265 Powder Hill Place NE Poulsbo, Washington 98370 hereinafter referred to as the ("**Consultant**"). Collectively the Provider and the Consultant shall be known as the "PARTIES".

### RECITALS:

(a) WHEREAS, the Provider and the Consultant desire to enter into a "Professional Services Agreement",

(b) NOW, THEREFORE, in consideration for the mutual obligations contained herein the Provider and the Consultant, each intending to be legally bound by this agreement, hereby mutually covenant and agree as follows:

1. SCOPE OF SERVICES. The Consultant shall provide to the Provider specific services related to the billing and payment processing of EMS patient transport services that are provided to the general public by the Provider. The following Scope of Services shall be incorporated into this contract as general services performed by the Provider and the Consultant under this agreement.

1.1 The Provider, with assistance from Consultant, shall apply for Provider Status or updated Status with Medicare, Medicaid, and all public and private insurances which will be billed as a part of this Scope of Services. The Provider is responsible for informing the Consultant of any subsequent changes that necessitate updates (e.g. changing an Authorized Official) so that Consultant may complete its duties. The Provider shall assist the Consultant to obtain the necessary certifications, numbers and documentation needed for Consultant to provide the services identified in sections 1.2 and 1.3 below, obtain and maintain credentials for payer websites that require vendor access to be given only through a Provider representative and facilitate access for the Consultant's representatives. The Provider agrees to furnish and assist the Consultant with the following:

(a) The Provider agrees to provide a complete and legible "PCR" (Patient Care Report) to the Consultant including patient name, address and pertinent billing and insurance information from the field, including a copy of the patient signature for authorization of benefits and responsibility for payment, authorizing billing of Medicare, Medicaid and any insurance the patient is a subscriber to. The original patient signature must be maintained by the Provider and made available to the Consultant and/or insurance payers upon request. The amounts to be billed will be determined by the Provider in the form of a resolution or ordinance to be incorporated into this agreement as an attachment exhibit. Any subsequent increases to established fees must be communicated to the Consultant, in writing, prior to the submission of affected PCRs. "Automatic" annual increases should be communicated in writing as dollar amounts for confirmation each year. PCRs must be sent using a NEMESIS compliant XML format, or an additional fee may be charged.

(b) The Provider agrees to furnish the Consultant with hospital ER forms (face/admit sheets) with demographic and insurance information attached to the PCR if requested by Consultant. Copies of any payments made directly to the Provider will be forwarded to the Consultant for accounting purposes in a timely manner. The Provider agrees to generate any refund checks due to overpayments identified by the Consultant directly to the payer to which the refund is due, based on detailed information provided by the Consultant. The Provider shall provide additional information as may be required by insurance companies or other agencies in order to facilitate the Consultant's obligations to the Provider.

(c) The Provider agrees to furnish to the Consultant to be made part of this agreement as an attachment: resolutions pertaining to this Scope of Services; specific write off policies; collections procedures; rates and fees to be charged by the Provider and administered by Consultant as part of the Scope of Services performed under this agreement. Provider agrees to inform Consultant of any subsequent changes to these documents in writing in advance of when the new policies, procedures and/or rates take effect.

(d) The Provider agrees to complete registration with Consultant's vendors as applicable for Consultant to be able to fulfill its obligations to Provider. Such vendors may include e-payment and merchant services portal, remote deposit capture services, and clearinghouse registration.

1.2 Upon receipt of the PCRs from the Provider, the Consultant shall: set up a patient account in Consultant's proprietary software application and create a patient record; perform claim submissions, including follow up statements and any necessary rebilling of EMS patient transport services provided by the Provider to the subscriber's medical insurances, Medicare, Medicaid and any and all known secondary insurance providers; produce and forward CMS 1500 forms and/or electronic medical claims; produce and mail an initial invoice and subsequent statements to all private patient accounts on behalf of the Provider; file any applicable appeals to insurance payers and/or Medicare and Medicaid on behalf of the patient if necessary to pursue the claim. Provider shall maintain a system to reconcile the number of PCRs sent to Consultant monthly or quarterly, as agreed upon between the Parties.

1.3 The Consultant shall: receive at its facilities all payments (except those directly deposited into the Provider's account by insurances and Medicare/Medicaid via EFT) Explanations of Benefits and Electronic Remittance Advices; account for all payments; deposit all funds directly into the Provider's "deposit only" account; forward deposit information to the Provider within 24 hours of such deposit; initiate and forward refund information and adjustments made on behalf of the patient's account to the Provider. The Consultant shall provide to the Provider a minimum of four (4) standard reports each quarter or month including: a) Aged Accounts Receivable b) Month/Quarter End Summary c) Annual Collection Statistics d) Transaction Journal. These reports will include information related to amounts billed, amounts collected and uncollected, insurance and Medicare/Medicaid allowable and disallowable. For payments and remittances that are wholly electronic portal-based, Provider shall grant access to Consultant's representatives as needed for various payer portals.

1.4 The Consultant shall provide live customer service to Provider's patients via toll free phone numbers to answer patient billing questions Monday through Friday from 8:00am through 6:00 pm, Pacific Standard Time (except Federal holidays).

1.5 The Consultant shall provide all labor, materials and equipment necessary to perform the work specified in the above scope of services. The Consultant is responsible for ensuring any subcontractor or vendor agencies are fully licensed and qualified to perform such work. For subcontracted payment processing and merchant services, Consultant is responsible for ensuring subcontractor or vendor maintains PCI compliance, and that the vendor or Consultant must be able to provide a PCI compliance certificate to Provider annually, at most.

1.6 Additional services: Additional services not specified in this Scope of Services (e.g. transferred accounts, non-routine auditing, targeted trainings, paper PCRs) may be added for an additional fee agreed upon in writing.

2. FEES, EXPENSES, & PAYMENT. Providers will receive a quarterly or monthly invoice, as agreed upon between the Parties. For and in consideration of the services provided by the Consultant identified above, the Provider shall pay to the Consultant an amount not to exceed:

\$35.00 per transport for total volume of 1-10 transports per quarter or month OR

\$30.00 per transport for total volume of 11-20 transports per quarter or month, OR

\$25.00 per transport for total transport volume greater than 21 transports per quarter or month.

In addition, the Provider will pay actual postage at current USPS postage rates for patient invoices, statements, and Certified Mail PCS requests per the Scope of Services performed under this agreement. Provider shall remit payment for services rendered under this agreement to the Consultant within 30 days from receipt of Consultant's quarterly invoice to the Provider. Progress invoices may be sent if there are significant delays in PCR receipt from the Provider. A \$50.00 minimum applies to all invoices. Price adjustments may occur from time to time, no more than annually, and with written notification from Consultant at least 90 days in advance. If the Provider does not send a billable transport within 12 months of the effective date of this Agreement, Consultant will invoice Provider \$750.00 for enrollment services. Any re-enrollment services necessary due to lapsed enrollments shall result in a \$500.00 charge.

3. PAYMENT OF TAXES. The Consultant shall be liable for any and all federal, state, and local sales, excise taxes and assessments as a result of the payment for services rendered under this agreement.

4. TERM OF AGREEMENT. The Consultant shall commence the work called for in this agreement on the date of the agreement and perform such work uninterrupted and automatically renew upon the anniversary date unless the agreement is terminated by either party (see Section 7). This agreement may be amended by the parties upon mutual agreement of terms and conditions with the acknowledgement of an amendment to the Professional Services Agreement to be signed by both parties of the agreement.

5. SCHEDULE OF ATTACHMENT EXHIBITS. The following attachments are acknowledged by the parties and made part of this Agreement.

1. Rates to be charged per transport [to be provided by the Provider]
2. Billing & Collection Policies to be administered [to be provided by the Provider]
3. Consultant's Certificate of Liability Insurance
4. Business Associate Agreement, signed by both parties

6. INDEPENDENT CONSULTANT STATUS. The Consultant performs this Agreement as an independent Consultant, not as an employee of Provider. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither method of computation of payment nor any other provision contained herein nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Provider and an independent Consultant.

7. TERMINATION. Either party may terminate this agreement with a minimum of 60 days' written notice to the other party. The Consultant shall upon termination by either party provide 60 days of follow up service to the outstanding patient accounts including posting payments, making deposits, and two (2) months of follow up reports to the Provider. Consultant shall deliver and document the return of all documentation in Consultants possession as applicable.

8. INSURANCE. The Consultant shall maintain statutory minimum Worker's Compensation or Labor and Industry insurance as required by the laws of any state or country in which Services are performed. The Consultant will provide and make as part of this agreement as an attachment, a certificate of liability insurance with a minimum amount of commercial general liability of \$ 1,000,000 per occurrence and an aggregate of \$ 2,000,000 and maintain such insurance for the duration of this agreement. The Consultant shall provide an annual updated Certificate of Insurance to the Provider upon the policy expiration date. The Consultant shall provide notice to the Provider in the event the policy is cancelled or terminated for any reason prior to the policy expiration date.

9. END USER SOFTWARE LICENSE & CONFIDENTIAL INFORMATION. The term "CONFIDENTIAL INFORMATION AND SOFTWARE" shall mean: (i) any and all Information and proprietary software which is disclosed or provided by either party ("OWNER OF THE INFORMATION") to the other ("RECIPIENT") verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary; and (ii) Confidential Information may include, but not be limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, client lists, employee information, and financial information, confidential information concerning Provider and Consultant's business or organization, as the parties have conducted it or as they may conduct it in the future. In addition, Confidential Information may include information concerning any of past, current, or possible future products or methods, including information about research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software).

9.1 TREATMENT OF CONFIDENTIAL INFORMATION. Provider's Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient to any third party except to those third parties operating under non-disclosure provisions no less restrictive than in this Section and who have a justified business "need to know". Provider shall protect the deliverables resulting from Services with the same degree of care. This agreement imposes no obligation upon the Parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt



from Provider; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the Provider and provided further that diligent efforts are undertaken to limit disclosure.

9.2 CONFIDENTIALITY AND DISCLOSURE OF PATIENT INFORMATION. Use and Disclosure of Protected Health Information. The parties hereto agree that in order for the Consultant to perform its duties as expected by the Provider, it will be necessary for the Consultant to use and disclose Protected Health Information ("PHI"), as such term is defined at 45 CFR §164.501. The parties of this agreement further acknowledge and make part of this agreement as an attachment to this agreement a "Business Associate Agreement" to be maintained and updated whenever applicable by either party of this agreement.

9.3 PERMITTED AND REQUIRED USES AND DISCLOSURE OF PHI. The Parties hereto agree that the Consultant may use and disclose PHI in order to carry out any Payment function covered under the definition of "Payment" contained in 45 CFR §164.501. The Parties hereto further agree that the Consultant may use or disclose PHI for any use or disclosure that is required by law.

10. INDEMNITY. Each Party ("INDEMNIFYING PARTY") shall indemnify and hold the other Party ("INDEMNIFIED PARTY") harmless against any third party claim, including costs and reasonable attorney's fees, in which the Indemnified Party is named as a result of the negligent or intentional acts or failure to act by the Indemnifying Party, its employees or agents, while performing its obligations hereunder, which result in death, personal injury, or tangible property damage. This indemnification obligation is contingent upon the Indemnified Party providing the Indemnifying Party with prompt written notice of such claim, information, all reasonable assistance in the defense of such action, and sole authority to defend or settle such claim.

10.1 Notwithstanding any other provision of this agreement, no party shall be liable for (a) any special, indirect, incidental, punitive, or consequential damages, including loss of profits or business arising from or related to the services or other deliverables hereunder or a breach of this agreement, even if such party has been advised of the possibility of such damages; or (b) any damages (regardless of their nature) for any delay or failure by a party to perform its obligations under this agreement due to any cause beyond the such party's reasonable control.

10.2 Notwithstanding any other provision of this agreement, the Consultant's liabilities under this agreement under any theory of liability, whether based in contract law, tort law, negligence (active or passive), product liability, indemnification or otherwise shall be limited to the direct damages recoverable by the Provider under law not to exceed one times the aggregate amount of fees paid by the Provider to Consultant for the services or other deliverables that gave rise to the claim or that are otherwise the subject of such claim in the one (1) year period preceding the event giving rise to the claim.

11. SURVIVABILITY. The terms of Section 8 and 9 shall survive termination of this Agreement. If the Parties have executed a separate agreement that contains confidentiality terms prior to or contemporaneously with this Agreement, those separate confidentiality terms shall remain in full force to the extent they do not conflict. The “Business Associate Agreement” has terms incorporated to establish the continuance of covenants for the parties to disclose PHI for the continued operations of “Payment”.

12. WARRANTIES AND REPRESENTATIONS. Each party warrants that it has the right and power to enter into this Agreement and an authorized representative has executed this Agreement. Consultant warrants that the Services will be performed in a professional and workmanlike manner in accordance with recognized industry standards. To the extent Services provided by Consultant are advisory; no specific result is assured or guaranteed. Consultant EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED.

13. NOTICE. Any notice, demand, request, consent, approval, or other communication that either party desires or is required to give to the other party related to any of the content of this agreement shall be presented in writing and served personally or sent by prepaid, first class mail to the addresses set forth below. Either party may change its address by notifying the other party of its change of address in writing.

Provider: City of Chehalis  
\_\_\_\_\_  
\_\_\_\_\_

Consultant: Systems Design West, LLC  
19265 Powder Hill PI NE  
Poulsbo, WA 98370

14. NONWAIVER. No modification to this Agreement nor any failure or delay in enforcing any term, exercising any option, or requiring performance shall be binding or construed as a waiver unless agreed to in writing by both parties. No delay or omission of the right to exercise any power by either party shall impair any such right or power, or be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term or condition of this Agreement by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term or condition.

15. APPLICABLE LAW. The laws of the State of Washington shall govern the construction, validity, performance and enforcement of this Agreement. Venue as to any action, claim, or proceeding arising out of, or based upon this Agreement, including, but not limited to, any action for declaratory or injunctive relief, shall be the appropriate court in the State of Washington.

16. CONFLICT OF INTEREST. The Consultant covenants, warrants and represents that the Consultant or any employees of Consultant has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner with the subject matter or the performance of this Agreement. The Consultant further covenants, warrants and represents that in the performance of this Agreement, no person having any such interest shall be employed by the Consultant in the future.

17. ASSIGNMENT. This Agreement may be assigned by Consultant. Provider may assign this Agreement directly or by operation of law with the prior written consent of Consultant, which shall not be unreasonably withheld.

18. ENTIRE AGREEMENT. This Agreement and any schedules, appendices, attachments and exhibits attached hereto sets forth all of the covenants, promises, agreements, conditions and understandings between the parties hereto, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Except as herein otherwise expressly provided, no contemporaneous or subsequent agreement, understanding, alteration, amendment, change or addition to this Agreement, or any schedule, appendix, exhibit or attachment thereto shall be binding upon the parties of this Agreement hereto unless reduced to writing and signed by both parties. This Agreement constitutes a final, complete and exclusive statement of the agreement between the parties and supersedes any prior Agreements on the Effective Date.

The Parties hereby agree to all of the above terms, conditions, covenants and have executed this Agreement by a duly authorized representative.

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

City of Chehalis  
"Provider"

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

Print: \_\_\_\_\_

Title: \_\_\_\_\_

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

Systems Design West, LLC  
"Consultant"

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

Print: \_\_\_\_\_

Title: \_\_\_\_\_

## **Business Associate Agreement Between City of Chehalis and Systems Design West, LLC**

This Business Associate Agreement (“Agreement”) between City of Chehalis (“Covered Entity”) and Systems Design West, LLC (“Business Associate”) is executed to ensure that Systems Design West, LLC will appropriately safeguard protected health information (“PHI”) and personally identifiable information (“PII”) that is created, received, maintained, or transmitted on behalf of the City of Chehalis in compliance with applicable federal, state, and local statutes, regulations, rules and policies—including but not limited to, the provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended (“HIPAA”), and with the Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

### **A. General Provisions**

1. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

### **B. Catch-all Definition**

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

#### Specific definitions:

- (a) **Business Associate.** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Systems Design West, LLC.
- (b) **Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the City of Chehalis.
- (c) **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.



### C. **Obligations of Systems Design West, LLC**

Systems Design West, LLC agrees to:

1. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information (“e-PHI”) and electronic personally identifiable information (“e-PII”) as well as implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI and PII other than as provided for by this Agreement;
2. Report to the Covered Entity any use or disclosure of PHI and PII not provided for by this Agreement of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI and PII as required by 45 CFR §164.410. Breaches of unsecured PHI and PII shall be reported to the Covered Entity and affected parties without unreasonable delay but in no case later than 30 days after discovery of the breach;
3. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI and PII on behalf of Systems Design West, LLC agree to the same restrictions, conditions, and requirements that apply to Systems Design West, LLC with respect to such information;
4. Make PHI and PII in a designated record set available to the Covered Entity and to an individual who has a right of access in a manner that satisfies the Covered Entity’s obligations to provide access to PHI and PII in accordance with 45 CFR §164.524 within 30 days of a request;
5. Make any amendment(s) to PHI and PII in a designated record set as directed by the Covered Entity, or take other measures necessary to satisfy the Covered Entity’s obligations under 45 CFR §164.526;
6. Maintain and make available information required to provide an accounting of disclosures to the Covered Entity or an individual who has a right to an accounting within 60 days and as necessary to satisfy the Covered Entity’s obligations under 45 CFR §164.528.
7. To the extent that Systems Design West, LLC is to carry out any of the Covered Entity’s obligations under the HIPAA Privacy Rule, Systems Design West, LLC shall comply with the requirements of the Privacy Rule that apply to the Covered Entity when it carries out that obligation;
8. Make its internal practices, books, and records relating to the use and disclosure of PHI and PII received from, or created or received by Systems Design West, LLC on behalf of the Covered Entity, available to the Secretary of the Department of Health and Human Services for purposes of determining Systems Design West, LLC and the Covered Entity’s compliance with HIPAA and the HITECH Act;
9. Restrict the use or disclosure of PHI and PII if the Covered Entity notifies Systems Design West, LLC of any restriction on the use or disclosure of PHI and PII that the Covered Entity has agreed to or is required to abide by under 45 CFR §164.522; and

10. If the Covered Entity is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Systems Design West, LLC agrees to assist the Covered Entity in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 CFR §681.2); (b) taking all steps necessary to comply with the policies and procedures of the Covered Entity's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of the Covered Entity agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting the Covered Entity of any Red Flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to the Covered Entity of any threat of identity theft as a result of the incident.
11. Comply with all current rules and regulations pertaining to the OIG Compliance Program for ambulance suppliers and special bulletin regarding LEIE recommended screening of employees and any subcontractors.

**D. Permitted Uses and Disclosures by Systems Design West, LLC**

Systems Design West, LLC may use or disclose PHI and PII as required by law and consistent with the Minimum Necessary standard—specifically, the use and disclosure of PHI and PII will be limited to the minimum necessary for accomplishing the intended purpose of the use and disclosure. The specific uses and disclosures of PHI and PII that may be made by Systems Design West, LLC on behalf of the Covered Entity include:

1. The preparation of invoices to patients, carriers, insurers and others responsible for payment or reimbursement of the services provided by the Covered Entity to its patients;
2. Preparation of reminder notices and documents pertaining to collections of overdue accounts;
3. The submission of supporting documentation to carriers, insurers and other payers to substantiate the healthcare services provided by the Covered Entity to its patients or to appeal denials of payment for the same; and
4. Other uses or disclosures of PHI and PII as permitted by HIPAA necessary to perform the services that Systems Design West, LLC has been engaged to perform on behalf of the Covered Entity.

**E. Termination**

1. The Covered Entity may terminate this Agreement if the Covered Entity determines that Systems Design West, LLC has violated a material term of this Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, that party shall take

reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement if feasible.

3. Upon termination of this Agreement for any reason, Systems Design West, LLC shall return to the Covered Entity or destroy all PHI and PII received from the Covered Entity, or created, maintained, or received by Systems Design West, LLC on behalf of the Covered Entity that Systems Design West, LLC still maintains in any form. Systems Design West, LLC shall retain no copies of the PHI and PII. If return or destruction is infeasible, the protections of this Agreement will extend to such PHI.

Agreed to on this date: \_\_\_\_\_

Systems Design West, LLC

City of Chehalis

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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