



City Council Regular Meeting Agenda

Due to the restrictions related to public gatherings and the Open Public Meetings Act during the COVID-19 pandemic, the council meeting will occur remotely via Zoom and phone access. The meeting can be watched via livestream on the city website (cityofpuyallup.org/meetings) or joined via Zoom using this link: <https://bit.ly/31f0sR5> (passcode 740603). To listen by phone, call 253-215-8782 and enter webinar ID 926 1361 1142 and passcode 740603.

Written comments will be accepted at info@puyallupwa.gov until 5:30 p.m and be distributed to City Council prior to the meeting. For verbal comments during Citizen Comments, email your name and phone number to info@puyallupwa.gov and sign into the virtual meeting using the provided instructions.

Tuesday, April 6, 2021
6:30 PM

PLEDGE OF ALLEGIANCE

ROLL CALL

1. APPROVAL OF AGENDA

2. CONSIDERATION OF MINUTES

- 2.a Minutes of February 9, 2021 and February 23, 2021
[February 9, 2021 draft minutes](#)
[February 23, 2021 draft minutes](#)

3. PRESENTATIONS AND PROCLAMATIONS

- 3.a Poem "The Yellow Ballet of the Puyallup Valley" read by author Michelle Jasmer

CITIZEN COMMENTS

4. CONSENT AGENDA

- 4.a Accept a donation from Arts Downtown for the outdoor sculpture gallery
[Donation form](#)
[Photo](#)
- 4.b Award a public works contract to General Mechanical for the Corporate Yards Decant Facility project
- 4.c Accept emergency sanitary sewer repair work as done by Northwest Cascade, Inc.
[Contract](#)

- 4.d Award a professional services contract to BHC Consultants for the design of the 3rd Street SE sewer main replacement project
[Contract](#)
- 4.e Accept Emergency Management Performance Grant COVID supplemental funds in the amount of \$1,874
- 4.f Accept \$22,398.41 from the Federal Emergency Management Agency's (FEMA) Public Assistance program for reimbursement of emergency response activities associated with the COVID-19 pandemic

5. ORDINANCES

- 5.a Second reading of an ordinance approving a franchise agreement with Comcast Cable Communications Management, LLC
[Ordinance](#)

6. CONSIDERATIONS AND REQUESTS

- 6.a Library Space Planning
- 6.b Potential Location to Site a Bicycle Pump Track
[Pros and Cons of potential locations](#)

7. OTHER BUSINESS

- 7.a Frontage Improvement Code Changes--Continued Policy Discussion
[Staff report](#)

CITY MANAGER'S REPORT

COUNCIL REPORTS

MAYOR'S REPORT

EXECUTIVE SESSION: Real Estate

ADJOURNMENT



City Council Agenda Item Report

Submitted by: Cindy Huff

Submitting Department: City Clerk's Office

Meeting Date: 4/06/2021

Subject:

Minutes of February 9, 2021 and February 23, 2021

Presenter:

Recommendation:

Background:

Council Direction:

Fiscal Impacts:

ATTACHMENTS

- [February 9, 2021 draft minutes](#)
- [February 23, 2021 draft minutes](#)

Due to the Governor's orders related to public gatherings and the Open Public Meetings Act during the COVID-19 pandemic, the council meeting occurred remotely with Councilmember participation occurring by internet and phone access.

**City of Puyallup
Regular City Council Meeting
February 9, 2021**

COUNCILMEMBERS PRESENT: Mayor Door, Deputy Mayor Palmer, Councilmember Farris, Councilmember Jacobsen, Councilmember Kastama, Councilmember Johnson and Councilmember Witting

APPROVAL OF THE AGENDA

Council-Initiated Item: Amendments to the City Council Rules of Procedure for Agenda Preparation and Approval (Palmer/Door)

Council Action: A motion was made by Deputy Mayor Palmer and seconded by Councilmember Jacobsen to include the council-initiated item as 6.b and approve the agenda as amended. The motion passed 7-0.

CONSIDERATION OF MINUTES

Council Action: A motion was made by Councilmember Jacobsen and seconded by Councilmember Farris to approve the minutes of November 10, November 17 and December 8, 2020. The motion passed 7-0.

PRESENTATIONS AND PROCLAMATIONS

Proclamation honoring the Reverend Tom Slate

Mayor Julie Door read a proclamation honoring longtime resident Reverend Tom Slate and the many meaningful contributions he made to the Puyallup community.

Pierce Transit service and informational updates

Pierce Transit Executive Director of Planning and Community Development Ryan Wheaton and Principal Planner Lindsey Sehmel shared updates on the status of ongoing plans and developments at Pierce Transit. The updates included budget information; ridership and revenue trends; funding for an expanded study of the bus rapid transit system; current Pierce Transit services in Puyallup including statistics of vanpool, shuttle, and Orca services and noting that 400,000 trips originate in Puyallup each year; a bus stop balancing project which will remove a number of stops that are not providing sufficient levels of service to riders; a report on 2019/2020 ridership activity which notes five routes and 151 stops in the city; and March service changes which include resuming Sunday service hours and improving route frequencies.

Mr. Wheaton and Ms. Sehmel responded to questions relating to financial impacts and a request for a list of potential stops to be eliminated in the city.

Puyallup Education and Activities Kamp (PEAK) Program update

Recreation Coordinator Annamarie Burke provided an update on the PEAK program which was established last year to assist students and parents during virtual learning due to Covid-19 closures. The program is geared toward students in Kindergarten through 5th grade.

This program was based on the city's summer day camp model and modified to meet the needs of working parents. Ms. Burke reviewed the basics of the program such as structure, fees and program dates. She reported that the program received grants equaling \$37,000, which enabled the city to offer all participants a 50% scholarship on the fees.

Ms. Burke shared comments from parents who expressed their gratitude for the program. As students are now returning to school, the program will end on February 26th.

Proclamation honoring Dixie Gatchel

Mayor Julie Door read a proclamation honoring longtime resident Dixie Gatchel for her commitment to service and advocacy on behalf of others. Mayor Door praised Dixie's leadership and expressed gratitude for her selfless contributions.

CITIZEN COMMENTS

The City Clerk noted no written comments were submitted in advance of the meeting.

Verbal comments were accepted during the meeting via Zoom or telephone; the following individuals addressed the City Council:

Mr. Chris Chisholm commented on an offensive statue seen in the city and the proclamation issued by Council last year on equality and justice. He urged that an equity commission be created.

Ms. Jen Rittenhouse urged Council to prioritize racial justice in the city and establish a commission or board to ensure Puyallup is a safe place for everyone.

Ms. Davida Sharpe-Haygood referred to the offensive racist symbol on display and urged Council to rectify this situation.

Ms. Tiffani Young said it was inexcusable for Council to not support the creation of a diversity board or commission.

CONSENT AGENDA

Award a contract to Gray and Osborne, Inc. for the design and construction management of a clarifier unit at the Water Pollution Control Plant

Accept a \$3,000 grant from Washington STEM to expand knowledge of Science, Technology, Engineering and Mathematics via story time programming at the Puyallup Library

Approve an amendment to the contract with Murrey's Disposal Company pertaining to customer rates for solid waste collection and processing services

Accept a grant in the amount of \$10,000 from the Greater Tacoma Community Foundation, Pierce County Connected to fund scholarships for the Puyallup Education and Activities Kamp (PEAK)

Accept a \$4,850 grant from the Department of Commerce for the reinstallation of historical Route No. 1 signage at Maplewood Elementary

Approve a supplemental agreement to the contract with Fehr & Peers for the Downtown Parking Study, Phase 2

Council Action: A motion was made by Councilmember Jacobsen and seconded by Councilmember Witting to approve the consent agenda. The motion passed 7-0.

ORDINANCES

First reading of an ordinance relating to the application of zoning for the East Town Crossing Project, finalizing a 2016 Comprehensive Plan amendment request

Planning Manager Katie Baker explained that in 2016, Council approved a private Comprehensive Plan proposal to convert three parcels in the Shaw/Pioneer area from Auto-Oriented Commercial to High Density Residential. At that time, the zoning designation was deferred to a future development agreement. In 2020, the same property owner requested an additional three parcels be converted to High Density Residential and submitted a proposed development agreement which would allow flexibility from Puyallup Municipal Code as the project is developed.

Ms. Baker said in the past, parcels in this area have not been developed consistently with respect to land use and zoning designations. Staff recommends separating the zoning amendment action from consideration of the development agreement to allow staff to review it in tandem with the site plan review.

Council Action: A motion was made by Deputy Mayor Palmer and seconded by Councilmember Farris to approve first reading of the ordinance. The motion passed 7-0.

CONSIDERATIONS AND REQUESTS

Consideration of the City submitting a Conservation Futures grant application to facilitate City acquisition of five parcels located on 12th Avenue SE

Development Engineering Manager Ken Cook presented a proposal for the city to submit a grant application to the Conservation Futures Board to facilitate acquisition of property along 12th Avenue SE for the purpose of maintaining it as public open space.

Mr. Cook explained that five contiguous parcels totaling 20.12 acres are owned by LaBelle LLC. If a grant is secured, the property could be acquired without any funding obligation from the city. Mr. Cook noted that although the majority of the land is wetland and in the floodplain, a small portion of it may be suitable for development as a small neighborhood park.

The City's Parks and Recreation Department confirms that this acquisition would serve the Parks, Recreation and Open Space (PROS) plan which shows a need for a neighborhood park in this area. Maintenance of a small neighborhood park would likely be around \$10,000 per year.

Upon the conclusion of council comments regarding the submission of the grant application, council consensus was for the application process to proceed.

Council-Initiated Item: Amendments to the City Council Rules of Procedure for Agenda Preparation and Approval (Palmer/Door)

Deputy Mayor Palmer introduced a proposal to amend sections 2.6 (Agenda Preparation) and 2.7 (Items of Inclusion for Regular Council Meeting Agenda) of the City Council Rules of Procedure relating to the process for council requests to add items to the agenda, explaining the desire to clarify the process and eliminate confusion. Noting that a request to add an item to the agenda is usually required to be done no later than the Wednesday before agenda publication, he said the suggested amendments would require a super majority vote of council to add a previously-unannounced item to a council meeting agenda on the day of the meeting.

Council discussed their views and opinions on the proposed amendments including the use of majority/supermajority votes; allowing "day of" additions for time-sensitive issues only; including specific language in the rules discouraging "day of" additions; and use of the suspension of the rules privilege.

Council agreed to have the city attorney return with specific language to amend its rules with respect to this matter.

CITY MANAGER'S REPORT

Mr. Kirkelie acknowledged council in their recent recognition of Dixie Gatchel and Reverend Tom Slate.

COUNCIL REPORTS

Councilmember Witting reported on multiple topics discussed at the recent Puget Sound Regional Council (PSRC) growth management board.

Councilmember Jacobsen praised parks and recreation staff on the creativity and success of the PEAK program to assist families during virtual learning and applauded library staff for the many activities they created while their building is closed to the public. She spoke to the constitutional right of free speech and the limits governments must adhere to and voiced the goal to have a safe and welcoming city.

Councilmember Johnson expressed his enjoyment of meeting and speaking with citizens during the recent boards and commissions interviews and thanked colleagues for maintaining civility over the years.

Councilmember Farris echoed Councilmember Johnson's comments regarding the citizen interviews and encouraged citizens to get involved. Noting her agreement with Councilmember Jacobsen's comments on free speech, she emphasized that the racial equity issue must be addressed and shared that she had forwarded information to council on developing a diversity commission. She thanked the Public Works Director for a recent tour of the Milwaukee Bridge project and suggested holding a Zoom "Town Hall" event.

Deputy Mayor Palmer spoke in response to numerous citizen comments relating to racial diversity and expressed frustration that more can't be done when this kind of terrible thing happens. He said the call for a commission is not falling on deaf ears and shared that several councilmembers are looking at and working on a next step.

Councilmember Kastama recalled a similar racial situation from years past, agreed with the need to bring the community together, and suggested having a community event against racism.

MAYOR'S REPORT

Mayor Door also commented on the racist statue a resident had openly displayed, confirmed that council was working on ideas related to the topic of equality, and noted an upcoming meeting with neighboring cities to share and hear what others are doing regarding the issue.

EXECUTIVE SESSION

At 9:07 p.m. Mayor Door announced an executive session expected to last one hour to discuss real estate and the performance of a public employee with no action expected.

At 10:13 p.m. the meeting was extended for an additional 30 minutes.

At 10:45 p.m. the meeting was extended for an additional 20 minutes.

At 11:07 p.m. the meeting was extended for 10 additional minutes.

The executive session concluded with no action taken and the City Clerk adjourning the meeting at 11:17 p.m.

ADJOURNMENT – 11:17 p.m.

Due to the Governor's orders related to public gatherings and the Open Public Meetings Act during the COVID-19 pandemic, the council meeting occurred remotely with Councilmember participation occurring by internet and phone access.

**City of Puyallup
Regular City Council Meeting
February 23, 2021**

COUNCILMEMBERS PRESENT: Mayor Door, Deputy Mayor Palmer, Councilmember Farris, Councilmember Jacobsen, Councilmember Kastama, Councilmember Johnson and Councilmember Witting

APPROVAL OF THE AGENDA

Council Action: A motion was made by Councilmember Johnson and seconded by Councilmember Witting to approve the agenda. The motion passed 7-0.

CONSIDERATION OF MINUTES

Council Action: A motion was made by Councilmember Jacobsen and seconded by Councilmember Johnson to approve the minutes of January 5, 2021. The motion passed 7-0.

PRESENTATIONS AND PROCLAMATIONS

Proclamation Honoring Bill Franklin

Mayor Door read a proclamation recognizing Bill Franklin for his outstanding leadership of the Puyallup Food Bank and longstanding dedication to the community. She recognized the presence of Bill's brother Greg Franklin and expressed the city's sorrow at Bill's passing.

Councilmember Johnson shared his thoughts and several kind words about Bill, in particular his humility and his ability to connect with others.

Proclamation Honoring Davey Armstrong

Mayor Door read a proclamation recognizing the passing of David "Davey" Lee Armstrong, a professional boxer from Puyallup who, as a teenager, was selected to represent the United States at the 1972 Summer Olympics. Mr. Armstrong continued his boxing career and through his efforts became a role model for young athletes across the globe.

Puyallup Rotary LEAD Program

Renne Gilliam and Karissa Thompson provided a presentation on the Logistically Empowering and Advanced Development (LEAD) Program, sponsored by the Puyallup South Hill Rotary Club. Ms. Thompson reviewed the program's vision, partnerships and logistics. Alternating, Ms. Thompson and Ms. Gilliam described how the program focuses on life skills and provides professional development, networking, employable and future leader skills to high school students.

CITIZEN COMMENTS

Written comments were accepted by email until 5:30 p.m., on the day of the meeting. The following individuals shared a written comment:

Mr. Joshua Harem (received February 23, 2021 at 4:40 p.m.)

Ms. Meghan Baker (received February 23, 2021 at 5:18 p.m.)

Verbal comments were also accepted during the meeting via Zoom/telephone; the following individuals shared a verbal comment:

Mr. David Berg: encouraged council to support a Racial Equity Commission.

Ms. Paige Brauen: asked council to move forward on a Diversity and Equity Commission.

Ms. Jen Rittenhouse: asked council to prioritize racial justice within the community.

Ms. Yvonne Schindle: spoke of racism within the community and encouraged a Racism and Equity Commission.

Mr. Jon Goebel: spoke of the need for Diversity and Equality Commission.

Ms. Kimberlee Gerstmann: discussed reasons why the city should move forward with a Diversity and Equity Commission.

Ms. Mary Beth Doherty: shared her thoughts on racism in Puyallup and encouraged a Racial Equity Commission.

Ms. Julie Davidson: urged the creation of a Diversity and Equity Commission

CONSENT AGENDA

Approve a resolution declaring retiring Puyallup Police Department K9 Maverick to be surplus to the needs of the City and transferring ownership to Sergeant Kevin Karazus

Authorize the sale of vacant land located on 39th Ave SE, previously declared to be surplus to the City's needs

Adopt a resolution setting a public hearing date to consider a latecomer's agreement as requested by Viking JV, LLC

Approve accounts payable, payroll, and electronic fund transfers of \$17,458,005.59

Council Action: A motion was made by Councilmember Witting and seconded by Deputy Mayor Palmer to approve the consent agenda. The motion passed 7-0.

RESOLUTION NO. 2430

A RESOLUTION of the City Council of the City of Puyallup, Washington, declaring Police K9 “Maverick” as retired and surplus to the needs of the City of Puyallup and authorizing sale to Sergeant Karuzas for the sum of one dollar

RESOLUTION NO. 2431

A RESOLUTION of the City Council of the City of Puyallup, Washington, setting a public hearing regarding a latecomer’s agreement with Viking JV, LLC

PUBLIC HEARINGS**Public Hearing on Freeman Road Pre-Annexation Zoning**

Associate Planner Kendall Wals explained the proposal to establish a new overlay--the Freeman Road Overlay (FRO)--into Puyallup’s zoning code as well as the assignment of pre-annexation zoning for the Freeman Road area. She described the proposed overlay zone, shared a vicinity and aerial map of the area, and provided pertinent background information. Continuing, she shared the Planning Commission’s work to consider appropriate zoning for multiple parcels and outlined the next steps in the process.

Mayor Door opened the public hearing for citizen comments at 7:40 p.m.

The following individuals opted to share a written comment:

Mr. Steve Asbjornsen (received February 23, 2021 at 4:32 p.m.)

The following individuals opted to share a verbal comment:

Mr. Tyler Litzenberger: provided some insight into the history and current use of the Freeman Road area.

Mr. Jack McCullough: recognized the efforts made in preparing the overlay ordinance, flexibility and enhancement of the landscape requirements.

Ms. Alisha Lane: voiced appreciation for the city’s representation throughout the process.

Mr. Jeremy Lane: appreciated the process and felt the residents have been fairly represented.

Mr. Steve Asbjornsen: discussed the viability to engage in agricultural activity and questioned the ability for his mother to continue living in her home because of the Freeman Road improvements.

Ms. Kelli Asbjornsen: raised several questions regarding the expansion of Freeman Road and other commercial roadway projects expected to impact the area.

Mr. Richard Johnson: voiced appreciation for the city's support and discussed some of the upcoming changes expected for the neighborhood.

Mr. Mike Galloway: voiced appreciation for council's efforts to annex and rezone the Freeman Road area.

Recognizing that no one else wished to speak Mayor Door closed the public hearing at 7:54 p.m.

Public Hearing on Freeman Road Annexation

Mayor Door opened the public hearing for citizen comments at 7:54 p.m.

The following individuals opted to share a written comment:

Mr. Dennis Grelis (Received February 23, 2021 at 2:27 p.m.)

The following individuals opted to share a verbal comment:

Mr. Tyler Litzenberger: discussed the benefits of the annexation to the property owners.

Mr. Jack McCullough: echoed Mr. Litzenberger's comments and urged positive action on this matter.

Recognizing that no one else wished to speak Mayor Door closed the public hearing at 7:57 p.m.

ORDINANCES

First reading of an ordinance amending Puyallup Municipal Code Title 20 to establish a new "Freeman Road Overlay" zone

Ms. Wals introduced the first draft ordinance, to amend Title 20, "Zoning" and establish a new Freeman Road Overlay (FRO) Zone. She provided a brief synopsis of the legislation and shared that the Planning Commission recommends approval.

A motion was made by Deputy Mayor Palmer and seconded by Councilmember Jacobsen to amend the language regarding the expansion of Freeman Road to include "north of 50th" and approve first reading of the ordinance establishing the Freeman Road Overlay Zone as amended.

Ms. Wals responded to several concerns by Councilmember Farris regarding the expansion of Freeman Road, the impacts to the adjacent properties and the use of eminent domain. Councilmember Farris expressed appreciation to the developers and Ms. Wals for their efforts but stated that she would not support a motion to amend with no forewarning of the changes.

Deputy Mayor Palmer and Councilmember Jacobsen withdrew their motion. Councilmember Jacobsen felt the language sufficient to satisfy her concerns. Deputy Mayor Palmer asked that staff

consider the request, and if viable, that the amendment be added to the ordinance for consideration at second reading.

Council Action: A motion was made by Councilmember Kastama and seconded by Councilmember Johnson to approve first reading of the ordinance establishing a new Freeman Road Overlay zone. The motion passed 7-0.

First reading of an ordinance on pre-annexation zoning and annexing an area commonly referred to as the Freeman Road Annexation Area

Ms. Wals presented the second draft ordinance, to assign pre-annexation zoning and subsequent annexation of the Freeman Road area into the city. She shared a map and described the proposed zoning designations for the affected parcels, noting that the Planning Commission recommends approval of the legislation.

Ms. Wals responded to questions from councilmembers on several aspects of the process to include the traffic impact analysis and the anticipated right-of-way expansion of Freeman Road.

Council Action: A motion was made by Councilmember Johnson and seconded by Councilmember Farris to approve first reading of the ordinance assigning pre-annexation zoning and subsequent annexation of the Freeman Road area into the city. The motion passed 7-0.

Second reading and adoption of an ordinance relating to the application of zoning for the East Town Crossing Project, finalizing a 2016 Comprehensive Plan map amendment request

Council Action: A motion was made by Councilmember Johnson and seconded by Councilmember Witting to approve second reading of the ordinance. With a roll call vote, the motion passed 7-0.

ORDINANCE NO. 3226

AN ORDINANCE of the City Council of the City of Puyallup, Washington, amending the City of Puyallup Official Zoning Map

RESOLUTIONS

Resolution confirming appointments to citizen advisory boards and commissions

Deputy Mayor Palmer noted that many good candidates had applied for committee appointments this year; the Ad Hoc committee recommends proceeding with the recommendations in the resolution.

Council Action: A motion was made by Deputy Mayor Palmer and seconded by Councilmember Kastama to approve the resolution confirming the appointments. The motion passed 7-0.

RESOLUTION NO. 2432

A RESOLUTION of the City Council of the City of Puyallup, Washington, confirming appointments to the Arts and Culture Commission, Design Review and Historic Preservation Board and the Planning Commission

CONSIDERATIONS AND REQUESTS**Resolution amending the City Council Rules of Procedure**

Mr. Kirkelie explained that the proposed resolution responds to council's directive from the previous meeting. It amends the City Council Rules of Procedure to clarify the process for the addition of council-requested items to the agenda and addresses the process for the addition of late items on to the agenda on the day of the meeting.

Councilmember Farris questioned the meaning of the changes and shared her thoughts on how the policy should read. Mr. Kirkelie and City Attorney Joe Beck responded to several requests for clarification, outlined how the process would work and confirmed that a prior suggestion of a super majority support was not included.

Council Action: A motion was made by Councilmember Jacobsen and seconded by Deputy Mayor Palmer to approve the resolution as presented. The motion passed 6-1 (Farris).

RESOLUTION NO. 2433

A RESOLUTION of the City Council of the City of Puyallup, Washington, amending Section 2.6 and 2.7 of the City of Puyallup City Council Rules of Procedure

CITY MANAGER'S REPORT

Mr. Kirkelie reported that staff from the Parks and Recreation Activity Center and the city's emergency management division assisted several seniors with obtaining appointments for the upcoming community-wide vaccine event. On another subject, he said the community satisfaction survey is available on the city's website until February 28th.

COUNCIL REPORTS

Councilmember Johnson elaborated on the "Circle of Life" and spoke to living life to its full potential and for the need to value and appreciate life.

Councilmember Jacobsen expressed appreciation to staff for assisting at and with vaccine events, the planning staff for sorting through the Freeman Road annexation, and the citizens who volunteer to serve on citizen's boards and commissions. She also thanked citizens for providing comments and assured them that council values their opinions and is appreciative of the input.

Councilmember Farris applauded staff and the emergency management team for their efforts with the recent vaccine event. She spoke to council's lack of action towards a permanent solution for the homeless situation along with the lack of interest in her ideas for a diversity/inclusion coalition. She voiced frustration with council for delaying and not addressing the issues before them.

Councilmember Kastama viewed council's role as one which requires it to support things which benefit and heal the community. He clarified several historical points the media recently misrepresented, recalled past efforts to hold a unity rally and welcomed ideas intended to unite the community. He felt that council should retain the ability to address and respond to racial inequities.

Councilmember Witting acknowledged Councilmember Farris's frustration and voiced the need for a more in-depth discussion. He agreed that a commission might be helpful and should be considered, equated its creation to other boards and commissions, and discussed ways in which it could benefit the community.

Deputy Mayor Palmer reminded that South Sound Housing Affordability Partners will give a presentation at the March 9th meeting; the group is considering a multi-jurisdictional agreement to work on affordable housing/obtainability. Regarding the subjects of diversity and equity, he felt it important for council to stand behind its proclamation and embrace the issue positively. He believed prejudice to be present in Puyallup, voiced the importance to start a conversation and liked the idea of a festival. He noted staff's efforts to research what other cities are doing, and that council is working on the issue.

MAYOR'S REPORT

Mayor Door echoed Deputy Mayor Palmer's comments and said she personally has reached out to neighboring jurisdictions on this subject. She voiced the importance of determining what works and what is the best course of action and noted that the city is considering the use of a consultant for this effort.

Mayor Door reported that Central Pierce Fire and Rescue Fire Chief Olson will retire at the end of the year and South Sound 911 is preparing to move into their new building in April.

EXECUTIVE SESSION – Review the performance of a public employee

At 9:18 p.m. Mayor Door announced that the council would recess into executive session for approximately 30 minutes, to review the performance of a public employee with no action expected.

The executive session concluded, and the City Clerk adjourned the meeting at 9:34 p.m.

ADJOURNMENT – 9:34 p.m.



City Council Agenda Item Report

Submitted by: Brenda Fritsvold

Submitting Department: City Council

Meeting Date: 4/06/2021

Subject:

Poem "The Yellow Ballet of the Puyallup Valley" read by author Michelle Jasmer

Presenter:

Recommendation:

Background:

Poet Michelle Diane Jasmer was born in Puyallup and raised in Orting. She has taught in the Puyallup School District and volunteered with the Daffodil Festival which, since 1926, has gathered community to honor the tradition of the Puyallup valley's agricultural history.

Council Direction:

Fiscal Impacts:

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Brenda Fritsvold

Submitting Department: City Clerk's Office

Meeting Date: 4/06/2021

Subject:

Accept a donation from Arts Downtown for the outdoor sculpture gallery

Presenter:

Brenda Fritsvold, City Clerk

Recommendation:

Accept the donation of the art piece "Camp Harmony" for the City's permanent outdoor sculpture gallery.

Background:

Arts Downtown (ADT) is a local, all-volunteer organization established in 1995 for the purpose of bringing quality art to Puyallup. ADT curates Puyallup's outdoor art gallery, which has more than 50 pieces on public display throughout the downtown. Most of the pieces are in the permanent (i.e., city-owned) collection, with additional works contained in the two-year rotating gallery.

"Camp Harmony" by artist John Zylstra was added to the rotating gallery in 2019. Earlier this year, ADT successfully negotiated a mutually-acceptable purchase price for the art with the intention of donating it to the city for placement in the permanent collection.

"Camp Harmony" refers to the Japanese temporary assembly center located in and around the Washington State Fairgrounds in Puyallup in the early days of World War II. The design makes references to Japanese gardens and shoji screens as well as the barbed wire of such "camps."

According to Zylstra: "This sculpture is less about historical issues than it is about contemporary issues of ethnicity and profiling. It serves as a warning to be ever vigilant regarding conclusions drawn too quickly and specific assessments made of the human condition. We must be cautious to separate what is real from what is perceived with our actions driven by our sense of humanity and justice. It is not my purpose to condemn or point fingers historically; rather, encourage continued discussions of larger social issues of today."

At its meeting of March 19, 2021, the Puyallup Arts & Culture Commission reviewed the proposed donation per its authority and assigned duties, and advises that Council accept it.

Council Direction:

Fiscal Impacts:

ATTACHMENTS

- [Donation form](#)
- [Photo](#)



City of Puyallup

DONATION AGREEMENT

DONOR NAME: Arts Downtown

DONOR ADDRESS: PO Box 416
Puyallup, WA 98371

MONETARY DONATION:

The undersigned donor(s) hereby agree(s) to donate to the City of Puyallup the amount of \$_____, which donation shall be considered complete upon acceptance by the City Manager and receipt of the funds by the City.

NON-MONETARY OR IN-KIND DONATION:

The undersigned donor(s) hereby agree(s) to donate:

_____ to the City of Puyallup.
This item has a value between Twenty Five Dollars (\$25.00) and Five Hundred Dollars (\$500.00). The donation of this item shall be considered complete upon approval of the City Manager and receipt of the donation by the City.

The undersigned donor(s) hereby agree(s) to donate:

The sculpture "Camp Harmony" purchased for \$10,800 to the City of Puyallup.
This item has a value greater than Five Hundred Dollars (\$500.00). The donation of this item shall be considered complete upon approval of the City Council and receipt of the donation by the City.

The City represents that it is a duly organized and existing municipal corporation of the State of Washington and that the donation funds will be used to the extent possible only for the following purpose(s). *Attach a separate statement if more space is required.*

The City of Puyallup will make all reasonable efforts to fulfill the specific purposes as outlined above for this donation, but if the specified donation purposes are not feasible, substitutions for like purposes will be made. The donated fund/assets will be managed and accounted for by the City in accordance with City of Puyallup Ordinance No. 2501, dated December 16, 1996.

Becky Condra, Arts Downtown President 2-25-21
Donor Signature Date

Assigned Department Director's Signature
Final signature for budgeted in-kind donations

Date

City Manager's Signature
Monetary donation; Non-monetary with value between \$25 and \$500 only

Date

Mayor's Signature
Non-monetary donation with value greater than \$500 only

Date

FOR FINANCE USE ONLY

Date Donation Received:

TR #/Date

Deposit Account:





City Council Agenda Item Report

Submitted by: Michelle Gehring

Submitting Department: Engineering

Meeting Date: 4/06/2021

Subject:

Award a public works contract to General Mechanical for the Corporate Yards Decant Facility project

Presenter:

Hans Hunger, P.E.; City Engineer

Recommendation:

Authorize the City Manager to award a public works contract to General Mechanical for the Corporate Yards Decant Facility project in the amount of \$1,602,644, in a form as approved by the City Attorney.

Background:

On March 9th, 2021, the City held an online bid opening for the Corporate Yards Decant Facility project. Five bids were received with General Mechanical being deemed the lowest responsive and responsible bidder at \$1,456,948.79, including tax. The City is including a 10% contingency of \$145,695, which will bring the total award cost to \$1,602,644.

This project will construct a 120' by 54' pre-engineered metal building on a slab foundation at the City's Corporate Yards. The project will also include the construction of a new driveway enabling access to the new building; storm, sewer, and water service utility connections extending to the new facility; an oil water separator vault; and interior and exterior facility lighting.

Council Direction:

Fiscal Impacts:

This project will be paid for from Public Works Capital Improvement Project Budgets (storm and surface water funds, and sewer funds).

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Michelle Gehring

Submitting Department: Engineering

Meeting Date: 4/06/2021

Subject:

Accept emergency sanitary sewer repair work as done by Northwest Cascade, Inc.

Presenter:

Ken Davies; Public Works Director

Recommendation:

Authorize the City Manager to accept the emergency sanitary sewer repair done by Northwest Cascade, Inc. as complete.

Background:

While conducting a routine weekly inspection on the morning of Thursday, March 4th, the City came across a sewer main that was surcharged due to a blockage. This main is located in the 200 block of 9th Avenue SE and runs north through a Washington State Fair parking lot. City staff made multiple attempts to restore flows with little to no success, and the main was in danger of overflowing onto surrounding surfaces. After assessing the increasing failure of the pipe, the expertise required for resolution, and the imminent danger to public health and the environment, the City determined that repairs should be made as soon as possible.

Using the emergency work listings in the Municipal Research and Services Center's small works roster, the City located a contractor who would be the most responsive based on location and availability. The selected contractor, Northwest Cascade, Inc., had recently performed satisfactory work for the City and staff was confident in its ability to safely follow state law and City requirements.

Council Direction:

Fiscal Impacts:

The cost of this project was \$80,000 for time and materials.

ATTACHMENTS

- [Contract](#)



PUBLIC WORKS CONTRACT

1. Parties. This Public Works Contract is made by and between the City of Puyallup, a Washington State municipal corporation (City) and _____ (Contractor).

For and in consideration of the promises hereinafter made and exchanged, the City and Contractor agree as follows:

2. Contract. The word “Contract” as used throughout this document shall include the following:

- a. This Contract;
- b. Contractor’s submitted, and City accepted, bid packet which is on file with the City and incorporated herein by this reference. (The provisions of this Contract shall prevail over any conflicting provisions in the bid packet.); and
- c. The project manual & bid documents for the _____ project, which are on file with the City, and are incorporated herein by this reference.

3. Term. This Contract shall be effective when both parties have executed this Contract and shall terminate upon the City’s final acceptance of the Contract Work, or a valid exercise of termination rights under the provisions of this Contract.

4. Contract Work. The provision of goods and services identified in the Contract constitute the contract work (Contract Work). Contractor shall perform the Contract Work pursuant to the terms of the Contract. Contractor shall furnish all labor, materials, equipment, tools, transportation, services, appliances and appurtenances for the Contract Work in strict conformity with this Contract, within the time-period prescribed by the City.

5. Manner of Work & Qualifications. Contractor shall provide, perform and complete the Contract Work in its entirety in a proper and workmanlike manner, and in conformance with the standard of care required of Contractor by law, and in accordance with, and as described in the incorporated plans and specifications, which are by this reference incorporated herein and made part hereof and shall perform any changes in the Contract Work in accord with the Contract.

Contractor warrants that its employees or those persons or entities that perform the Contract Work have sufficient education, training, skill, knowledge, ability, and experience to competently perform the Contract Work. Contractor further warrants that its employees or those persons or entities that perform the Contract Work have satisfied all statutory and regulatory requirements that are necessary to perform the Contract Work.

6. Time of Completion. Contractor shall commence to perform the Contract Work after execution of this Contract and when directed by the City. The City's authority to direct commencement shall include the authority to delay commencement of the Contract Work. Contractor shall complete the Contract Work by: _____ of receiving a Notice to Proceed.

7. Compensation. The City shall pay Contractor an amount up to, but **not to exceed** _____ dollars and _____ cents (\$_____) plus any applicable Washington State sales tax. Contractor shall submit regular statements to the City describing the portion of the Contract Work that has been provided with any necessary corresponding or supporting records. The City, upon receipt of a completed invoice or billing statement, shall promptly process said claims for payment. Contractor shall be responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Contract.

- a. Retainage.** The City shall hold back a retainage in the amount of five percent (5%) of any and all payments made to Contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under RCW 60.28, whichever is later. If Contractor plans to submit a bond in lieu of the retainage specified above, the bond must be in a form acceptable to the City and submitted upon entering into this Contract and shall be issued from a bonding company that satisfies the City.
- b. Defective or Unauthorized Work.** The City shall be entitled to withhold payment from Contractor for any defective or unauthorized work. If Contractor is unable, for any reason, to satisfactorily complete any portion of the Contract Work, the City may complete the work by contract or otherwise, and Contractor shall be liable to the City for costs incurred by the City. The City is entitled to deduct the cost to complete the Contract Work from any amounts that may be due and payable to Contractor. Notwithstanding the terms of this section, the City's payment to Contractor shall not be a waiver of any claims the City may have against Contractor for defective or unauthorized work.
- c. Final Payment—Contractor's Waiver of Claims.** CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME REQUEST FOR FINAL PAYMENT IS MADE.

8. Changes. The City may issue a written change order for any change in the Contract Work during the performance of this Contract. Alternatively, if Contractor believes that a change order is necessary, Contractor must submit a written change order request to the City. If Contractor fails to request a change order before performing changes in the Contract Work, Contractor waives its right to make any claim or submit a subsequent change order request for that changed portion of the Contract Work. Contractor shall perform the change order work upon receiving either a

written change order from the City or an oral order from the City that precedes a written change order.

If the City issues or authorizes the change order and determines that the change increases or decreases Contractor's costs or time for performance, the City will make an equitable adjustment to the terms of this Contract, which may include, but shall not be limited to, a change in compensation or extension of time. The City will attempt, in good faith, to reach agreement with Contractor on all equitable adjustments. However, if the parties are unable to agree, the City is entitled to establish an equitable adjustment that it deems appropriate. Contractor shall complete the change order work but may elect to protest the adjustment and assert a claim as provided in this Contract.

Contractor accepts all requirements of a change order by: (1) endorsing it, (2) issuing a separate acceptance, or (3) by failing to protest in accordance with the requirements of this Contract. Acceptance of payment for change order work under a change order that is accepted by Contractor as provided in this section shall constitute full payment and final settlement of all claims for compensation or costs and expenses that are related to the change.

9. Change Order Protests and Claims. If Contractor disagrees with any requirement of a change order or oral order from the City, Contractor may file a protest and assert a claim as provided in this section. Contractor shall give written notice to the City of any protest and claim within fourteen (14) calendar days of the occurrence of the events giving rise to the protest and claim, or within fourteen (14) calendar days of the date Contractor knew or should have known of the facts or events giving rise to the protest and claim, whichever occurs first. Any protest and claim shall be conclusively deemed to have been waived by Contractor unless timely notice is provided pursuant to this section.

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL CONSTITUTE A WAIVER OF ANY CLAIMS ARISING FROM OR RELATED TO THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.

If Contractor chooses to file a protest and assert a claim, Contractor's written protest and claim shall include the following:

- a. Notice of Protest and Claim.** A signed written notice of protest and claim that provides the following information:
 - The date of the notice;
 - An accurate description of the nature of the claim and the circumstances that gave rise to the claim, including, if applicable, an analysis of the progress schedule showing the schedule impact or disruption;
 - The provisions in the Contract or change order that are the basis for, or apply to the claim; and
 - The proposed remedy, including, if any, the amount of the claim and the basis for its calculation;
- b. Records.** Complete copies of all records that support the claim.

10. Laws and Rules. Contractor shall comply with all applicable state, federal, or local laws, regulations, rules, or any other sources of authority, including, but not limited to, court orders, administrative rulings and the following:

- a. **Wage, Hour, Safety, and Health Laws.** Contractor shall comply with the rules and regulations of the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*, the Washington Industrial Safety and Health Act, RCW 49.17, and any other state or federal laws applicable to wage, hours, safety, or health standards.
- b. **Prevailing Wages.** Contractor shall file a “Statement of Intent to Pay Prevailing Wages”, which shall include Contractor’s registration certificate number and the prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020, and the estimated number of workers in each classification. Contractor shall pay prevailing wages and comply with RCW 39.12 as well as any other applicable prevailing wage rate provisions. Contractor shall obtain the most current prevailing wage rate revision issued by the Department of Labor and Industries. Contractor shall require all subcontractors to comply with RCW 39.12 and this section of the Contract.

11. Independent Contractor. Contractor shall be an independent contractor for all federal, state and other purposes.

12. Days and Time of Work. Contractor shall perform the Contract Work only during Monday through Friday and 7:00 a.m. to 5:00 p.m. unless otherwise authorized by the City or as identified in the contract specifications.

13. Audit of Contractor Records. Contractor shall maintain records which sufficiently and accurately reflect all the provision of goods and services and costs and expenses related to the performance of the Contract Work, and use such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Contract. Contractor shall make these records available to the City, at all reasonable times, for inspection, review or audit by the City, its authorized representative, the State Auditor or other governmental officials authorized by law to monitor this Contract.

14. Work Product. All originals and copies of work product related to the Contract Work, in whatever form, including, but not limited to, plans, sketches, layouts, designs, design specifications, records, files, computer disks, magnetic media or material, shall belong to the City. At the termination or expiration of this Contract, all originals and copies of any such work product in the possession of Contractor shall be delivered to the City. Contractor is entitled to retain copies of any work product for its own records.

15. Confidentiality. Contractor may use confidential information and other sensitive information gained by reason of its provision of services to the City, or by access to its property, when expressly authorized by the City, and only for City purposes. Contractor shall not disclose, transfer or sell any such information to any party except as provided by law or, in the case of personal information, without the prior written consent of the person to whom the personal

information pertains. Contractor shall maintain the confidentiality of all personal information and other information gained by reason of its provision of services to the City, or by access to its property.

16. Insurance. Contractor shall procure and maintain for the duration of the Contract or activity associated with the Contract, whichever is longer, insurance against claims for injuries to persons or damage to property which may arise from or occur in connection with the performance of the work hereunder by Contractor, their agents, representatives, employees or subcontractors. Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

a. **Minimum Scope of Insurance.** Contractor shall obtain insurance of the types described below:

- i. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- ii. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 05 09 or substitute endorsements providing at least as broad coverage. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
- iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- iv. Builders Risk insurance covering interests of the City, Contractor, Subcontractors and Sub-subcontractors in the work. Builders Risk insurance shall be on a special perils policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, or collapse. The Builders Risk insurance shall include coverage for temporary buildings, debris removal and damage to materials in transit or stored off site. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by Contractor and written acceptance by the City. Any increased

deductibles accepted by the City will remain the responsibility of Contractor. The Builders Risk insurance shall be maintained until the City has granted substantial completion of the project.

Builders Risk Insurance is is not required for this contract.

- b. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:
 - i. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 - ii. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
 - iii. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.
- c. Other Insurance Provision. Contractor's Automobile Liability, Commercial General Liability and Builders Risk insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any Insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of Contractor's insurance and shall not contribute with it.
- d. Contractor's Insurance for Other Losses. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment or motor vehicles owned or rented by Contractor, or Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.
- e. Waiver of Subrogation. Contractor and the City waive all rights against each other, any of their Subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.
- f. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- g. Verification of Coverage: Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Automobile Liability and Commercial General Liability insurance of Contractor before commencement of the work. Before any exposure to loss may occur, Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.
- h. Subcontractors: The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole

responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO Additional Insured endorsement CG 20 38 04 13.

- i. Notice of Cancellation. Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.
- j. Failure to Maintain Insurance. Failure on the part of Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due Contractor from the City. Contractor is to ensure that insurance coverage is adequate for the scope of work as defined in the RFP (Request for Proposal) and design drawings.
- k. City's Full Availability of Contractor's Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

17. Performance & Payment Bond. At such time as Contractor enters into this Contract, Contractor shall provide a performance and labor and materials payment bond in an amount that equals the Contract compensation as security for the faithful performance and payment of all Contractor's obligations under this Contract. The amount of the bond shall be increased for each change order in an amount that equals the amount of the change order. The bond shall be in a form that is acceptable to the City's attorney. The surety shall be licensed to conduct business in the State of Washington and shall be named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

In the event that the compensation called for in this Contract is less than \$150,000.00, which sum shall be determined after the addition of applicable Washington state sales tax, Contractor may, in lieu of the above mentioned bond, elect to have the City retain 10% of the contract amount for a period of either thirty (30) days after final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under RCW 60.28, whichever is later.

18. Warranty. Contractor warrants that it shall correct all defects in workmanship and materials that occur within two (2) years from the date of the City's final acceptance of the Contract Work, or within the product or manufacturer's warranty period, whichever is longer. The expiration of this warranty shall be tolled for any defects in workmanship and materials until the

defects are corrected. Thereafter, the warranty for the corrected portion of the Contract Work shall extend for two (2) years from the date that such correction is completed and accepted by the City. Contractor shall begin to correct any defects within the timeframe set forth in the notice of defect from the City. If Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and Contractor shall pay all costs incurred by the City to achieve the correction.

Upon the City's final acceptance of the Contract Work, Contractor shall, at the option and upon demand of the City, provide the City with a warranty bond in a form and amount that is acceptable to the City.

19. Debarment. Contractor certifies that it is neither excluded nor disqualified as defined in 2 CFR Part 180. Contractor shall refrain from becoming excluded or disqualified and shall fully comply with the requirements of Subpart C of 2 CFR Part 180 and any applicable parts of 2 CFR Parts 300 through 5899. Contractor shall require each person or entity with whom Contractor enters into a covered transaction at the next lowest tier, as defined in 2 CFR Part 180, to fully comply with the requirements of Subpart C of 2 CFR Part 180, and any applicable parts of 2 CFR Parts 300 through 5899. If Contractor or a person or entity with whom Contractor enters into a covered transaction is excluded or debarred, Contractor shall immediately notify the City in writing.

20. Indemnification and Hold Harmless. Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Contractor and the City, its officers, officials, employees and volunteers, Contractor's liability hereunder shall be only to the extent of Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Contract.

21. Work Performed at Contractor's Risk. Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of this Contract. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

22. Termination. The City shall be entitled to terminate this Contract for good cause. "Good cause" shall include, but shall not be limited to, any one or more of the following events:

- a. Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the Contract Work;

- b. Contractor's failure to make timely progress or complete the work within the timeframe required by the City;
- c. Contractor's failure to make full and prompt payment to subcontractors or for material or labor;
- d. Contractor's failure to comply with Federal, state or local laws, rules or regulations;
- e. Contractor's filing for bankruptcy or becoming adjudged bankrupt;
- f. Contractor's breach of any portion of this Contract; or
- g. Changes in budgetary allocations or funding.

23. Liquidated Damages. Contractor acknowledges and agrees as follows: The Contract Work is ultimately for the benefit of the public, and as such, there is a compelling need to complete the Contract Work in the time specified in the Contract. Due to the expenditure of public funds for the Contract Work, and the need to complete the Contract Work for the health, safety and welfare of the public, the failure to complete the Contract Work within the time specified in the Contract will result in loss and damage to the City. A delay will likely result in damages that arise as a consequence of, or are incidental to, the delay, additional costs and expenses to the City that are difficult to determine, tangible and intangible detriments to the City and loss of use and inconvenience to the public. However, damages for delay in the performance or completion of the Contract Work are and will be difficult to ascertain.

Although difficult to quantify and ascertain, the sum listed as liquidated damages represents a fair and reasonable forecast or estimation of the actual damage caused by a delay in the performance or completion of the Contract Work. In addition, the liquidated damages set forth below are intended to compensate the City for its loss and damage caused by delay. The liquidated damages are not intended to induce the performance of Contractor.

Accordingly, for each day that the Contract Work is not completed beyond the completion date specified in the Contract, or the completion date as directed by the City, the sum of \$_____ (calculated per WSDOT standard specification 1-08.9) shall be deducted from the amount to be paid Contractor and shall be retained by City as damages. In the event that the Contract is terminated by City for good cause pursuant to the general conditions of the Contract, this liquidated damages section shall apply, but only to the extent that the Contract Work is delayed. In addition to liquidated damages, City shall be permitted to recover from Contractor the cost of completion of the work if the cost of completion exceeds the original sum of money agreed upon.

24. Remedies Cumulative. Any remedies provided for under the terms of this Contract are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

25. Subcontractors. All subcontractors or use of subcontractors shall require the prior written approval of the City. Contractor shall incorporate the terms and conditions of this Contract into any subcontract used in connection with this project.

26. Assignment. Contractor shall not assign any interest in this Contract and shall not transfer any interest in same (whether by assignment or notation), without the prior written consent of the City thereto; provided, however, that claims for payment under this Contract may be

assigned.

27. Notices. Any notices required to be given by City to Contractor or by Contractor to City shall be in writing and delivered to the parties at the addresses listed at the end of this Contract.

28. Waiver. Failure of the City to insist upon strict compliance with any terms, covenants or conditions of this Contract shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

29. Applicable Law and Venue. This Contract shall be construed and interpreted in accordance with the laws of the State of Washington and, in the event of dispute, the venue of any action brought hereunder shall exclusively be in the Pierce County Superior Court.

30. Discrimination Prohibited. In all Contractor services, programs or activities, and all Contractor hiring and employment made possible, directly, indirectly, by or resulting from this Contract, Contractor shall not discriminate against any protected class or on any basis prohibited by federal or state law, including, but not limited to, sex, race, color, creed, religion, national origin, disability, use of a guide dog or service animal by a person with a disability, HIV/AIDS or hepatitis C status, sexual orientation, gender identity or honorably discharged veteran and military status.

31. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.

32. Equal Opportunity to Draft. The parties have participated and had an equal opportunity to participate in the drafting of this Contract, and the incorporated documents, if any. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

33. Severability. If any term, provision, covenant or condition of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated as a result of such decision, unless the purpose and intent of this Contract is made materially ineffective or destroyed.

34. Entire Agreement. The written provisions and terms of this Contract, together with any attachments, supersede all prior verbal statements by any representative of the City, and those statements shall not be construed as forming a part of or altering in any manner this Contract. This Contract and any attachments contain the entire Contract between the parties. Should any language in any attachment conflict with any language contained in this Contract, the terms of this Contract shall prevail.

35. Concurrent Originals. This Contract may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Contract.

IN WITNESS WHEREOF, the parties below have executed this Contract, and by doing so, acknowledge that they have read this Contract understand its terms, and enter this Contract in a knowing, intelligent, and voluntary manner.

Dated: _____

By: _____

Its: _____

City of Puyallup

Dated: _____

Steve Kirkelie
City Manager

Approved as to form:

Attest:

Joseph N. Beck
City Attorney

Brenda Fritsvold
City Clerk

Notices to be sent to:	Notices to be sent to:
	City of Puyallup
Attn:	Attn: Michelle Gehring
	Contract Specialist
	333 South Meridian
	Puyallup, WA 98371



City Council Agenda Item Report

Submitted by: Michelle Gehring

Submitting Department: Engineering

Meeting Date: 4/06/2021

Subject:

Award a professional services contract to BHC Consultants for the design of the 3rd Street SE sewer main replacement project

Presenter:

Hans Hunger P.E.; City Engineer

Recommendation:

Authorize the City Manager to award a professional services contract in the amount of \$79,660 to BHC Consultants for design services on the 3rd Street SE--7th to 9th sewer main replacement project, in a form as approved by the City Attorney.

Background:

The City of Puyallup owns and operates a sanitary sewer collection system composed of gravity sewer mains, pump stations and force mains. This particular 10-inch gravity sewer main, located between 9th Avenue SW and the Jack in the Box on 3rd Street and crossing through a Washington State Fair parking lot, is in need of replacement. This main, which measures approximately 500 feet in length, currently requires frequent cleaning due to grease and silt build-up. Conditions observed during routine maintenance activities suggest a break has occurred, likely from sagging pipe or severe corrosion. This project will replace the existing 10-inch gravity sewer main with a 12-inch pipe to improve reliability and alleviate frequent maintenance requirements.

The City advertised for a Request for Qualifications for design services on February 17th, 2021. In response, the City received three statements of qualifications. Staff recommends that BHC Consultants be awarded the contract for the needed design services on this project.

Council Direction:

Fiscal Impacts:

Award Amount: \$79,660 to be paid from Public Works Capital Improvement Project Sewer Fund.

ATTACHMENTS

- [Contract](#)



PROFESSIONAL SERVICES CONTRACT

1. Parties. This contract is entered into by and between the City of Puyallup (City), a municipal corporation in the State of Washington, and _____ (Consultant).

In consideration of the mutual promises identified herein, the parties agree as follows:

2. Scope of Work. Consultant shall provide professional services (“Services or Work Product or Contract Work”) to the City. The services are described in the document that accompanies this contract, which is entitled, “_____” (Scope of Work). The Scope of Work is incorporated herein by this reference. If the Scope of Work and this contract conflict, the provisions of this contract shall control. Consultant shall be responsible for producing work product in the time, manner and formats as requested by the City.

3. Term and Termination. This contract shall be effective when both parties have executed this contract and shall terminate once Consultant completes the contract work or _____, whichever is earlier. Either party may terminate this contract if the other party breaches this contract and then fails to cure the breach after the non-breaching party provides written notice of the breach and allows the breaching party a reasonable opportunity to cure, if such breach is curable. The City may suspend this contract, with or without cause, by providing written notice of suspension to Consultant.

4. Compensation and Payment Procedure. As compensation for its services performed under this contract, the City agrees to compensate Consultant in an **amount not to exceed** _____ dollars and _____ cents (\$_____). The City shall pay Consultant at a rate that is measured by the amount of time that Consultant expends in providing services for the City. The rate shall be Consultant’s usual and customary rate per hour of service. Consultant shall measure the time that Consultant expends in providing services for the City in a minimum amount of, and in increments of, one tenth of an hour. Consultant shall submit monthly or more frequent regular statements describing the services rendered with corresponding records of time expended by Consultant. The City, upon receipt of completed invoice statements, shall promptly process said claims for payment.

5. Reports and Information. Consultant shall maintain records that fully and accurately reflect the contract work, and any costs, expenses or other matters related to the performance of the contract work. Consultant, at such times and in such forms as the City may require, including after the cessation of the contract work or termination of this contract, shall make available to the City for audit and inspection any and all records that relate to the contract work. Consultant shall maintain accounting records in accordance with generally accepted accounting principles and practices.

6. Work Product. All originals and copies of work product, including plans, sketches, layouts, designs, design specifications, records, files, computer disks, magnetic media or material which may be produced or modified by Consultant while performing services hereunder shall belong to the City. At the termination or cancellation of this contract and upon Consultant's receipt of payment for its services performed in accordance with this contract, all originals and copies of any such work product remaining in the possession of Consultant shall be delivered to the City. Consultant is entitled to retain copies of any work product for its own record. Furthermore, any reuse of such work product by Consultant on or for any project other than that covered under this contract shall be without liability or legal exposure to Consultant. Data which is developed pursuant to this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976, as amended, and shall be owned by the City. Pursuant to 17 U.S.C. § 201, the City will be deemed the author of the data and will own all copyrights in the data. "Data" shall mean all work product to be provided by Consultant under this contract and shall include, but not be limited to, draft and final reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes and/or sound reproductions. Consultant shall obtain the City's written approval prior to the publication of any results of studies or services performed or to be performed for any purpose other than for City use. This provision shall not apply to any data that is developed independent of this Contract.

7. Confidentiality. Consultant may use confidential information and other sensitive information gained by reason of its provision of services to the City, or by access to its property, only for City purposes. Consultant shall not disclose, transfer or sell any such information to any party, except as provided by law, or in the case of personal information, with the prior written consent of the person to whom the personal information pertains. Consultant shall maintain the confidentiality of all personal information and other information gained by reason of its provision of services to the City, or by access to its property. Confidential information furnished in any form shall not be duplicated by Consultant except for purposes of this contract. Upon request of the City, Consultant shall immediately return all confidential information received in any form, including copies or reproductions to the City.

8. Qualifications. Consultant warrants that its employees or those persons or entities that perform the contract work have sufficient education, training, skill, knowledge, ability and experience to competently perform the contract work. Consultant further warrants that its employees or those persons or entities that perform the contract work have satisfied all statutory and regulatory requirements that are necessary to perform the contract work.

9. Independent Contractor. Consultant shall be an independent contractor for all federal, state and other purposes.

10. Defense, Hold Harmless and Indemnification. Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or lawsuits including attorney fees arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that

this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

11. Insurance. Consultant shall procure and maintain for the duration of this contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives or employees. Consultant's maintenance of insurance as required by this Contract shall not be construed to limit the liability of Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap, independent contractors and personal injury and advertising injury. The City shall be named as an insured under Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to Consultant's profession.

B. Minimum Amounts of Insurance. Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provision. Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as with respect to the City. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

D. Acceptability of Insurers. Insurance is to be placed with insurers that have a current

A.M. Best rating of not less than A:VII.

E. **Verification of Coverage.** Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to, the additional insured endorsement evidencing the insurance requirements of Consultant before commencement of the work.

F. **Notice of Cancellation.** Consultant shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

G. **Failure to Maintain Insurance.** Failure on the part of Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due Consultant from the City.

H. **City Full Availability of Consultant Limits.** If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

12. Notices. Any notices given by the City to Consultant or by Consultant to the City shall be in writing and delivered to the parties at the following addresses:

City of Puyallup 333 South Meridian Puyallup, WA 98371	
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13. Waiver. Failure to insist on strict compliance with any terms, covenants or conditions of this contract shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

14. Applicable Law and Venue. The venue for any legal action arising from this contract shall be Pierce County, Washington, and this contract shall be governed, construed and interpreted according to the laws of the State of Washington.

15. Compliance with Laws and Regulations. Consultant shall comply with all applicable laws, rules, regulations and orders from any and all authorities having jurisdiction.

16. Force Majeure. Neither party shall be liable to the other for, or be considered to be in breach of or default under this contract because of, any delay or failure in performance by such party under this contract to the extent such delay or failure is due to any cause or condition beyond such party's reasonable control, including, but not limited to, failure or threat of failure of facilities or equipment; fire, lightning, flood, earthquake, volcanic activity, wind, drought, storm and other acts of the elements; court order and act, or failure to act, of civil, military or governmental authority;

strike, lockout and other labor dispute; epidemic, riot, insurrection, sabotage, war and other civil disturbance or disobedience; labor or material shortage; and act or omission of any person or entity (other than such party, its contractors or suppliers of any tier or anyone acting on behalf of such party). Each party shall exercise reasonable diligence to overcome the cause of such delay provided, however, that to the extent the cause of such delay arises from any breach of, or failure by the other party to perform any of its obligations under this contract, the party that has delayed or failed in its performance under this contract to overcome the cause of such delay shall be responsible for the costs and expenses incurred by the other party. Nothing contained in this contract shall be construed to require either party to prevent or settle any strike, lockout or other labor dispute in which it may be involved. Notwithstanding the foregoing, nothing in this paragraph shall apply to any delay or failure by either party to pay any amounts due and owing to the other party pursuant to this contract.

17. Discrimination Prohibited. In all Consultant services, programs or activities, and all hiring and employment made possible, directly, indirectly, by or resulting from this contract, Consultant shall not discriminate against any protected class or on any basis prohibited by federal or state law including, but not limited to, sex, race, color, creed, religion, national origin, disability, use of a guide dog or service animal by a person with a disability, HIV/AIDS or hepatitis C status, sexual orientation, gender identity or honorably discharged veteran and military status.

18. Debarment. Consultant certifies that it is neither excluded nor disqualified as defined in 2 CFR Part 180. Consultant shall refrain from becoming excluded or disqualified and shall fully comply with the requirements of Subpart C of 2 CFR Part 180 and any applicable parts of 2 CFR Parts 300 through 5899. Consultant shall require each person or entity with whom Consultant enters into a covered transaction at the next lowest tier, as defined in 2 CFR Part 180, to fully comply with the requirements of Subpart C of 2 CFR Part 180, and any applicable parts of 2 CFR Parts 300 through 5899. If Consultant or a person or entity with whom Consultant enters into a covered transaction is excluded or debarred, Consultant shall immediately notify the City in writing.

19. Assignment and Subcontract. Consultant shall not assign or subcontract any portion of the service contemplated by this contract without the written consent of the City.

20. Mediation. If a dispute arises from or relates to this contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute through mediation before resorting to litigation. The mediator may be selected by agreement of the parties or through Judicial Dispute Resolution (JDR).

21. Cumulative Remedies. The rights and remedies of each party as set forth in any provision of this contract are in addition to and do not in any way limit any other rights or remedies afforded to such party by law.

22. Severability. The invalidity or unenforceability of any particular provision of this contract shall not affect the other provisions, and this contract shall be construed as if such invalid or

unenforceable provisions were omitted, unless such invalidity or unenforceability destroys the purpose and intent of this contract.

23. Time. Time is of the essence for the performance of every term of this contract.

24. Equal Opportunity to Draft. The parties have participated and had an equal opportunity to participate in the drafting of this Contract, and the incorporated documents, if any. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

25. Concurrent Originals. This contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

26. Entire Contract; Possible Amendments. This contract contains the entire agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this contract, shall be deemed to exist or bind any of the parties. Either party may request changes in the contract. Proposed changes mutually agreed upon will be incorporated by written amendments to this contract.

Dated: _____

By: _____
Its: _____

City of Puyallup

Dated: _____

Steve Kirkelie
City Manager

Approved as to form:

Attest:

Joseph N. Beck
City Attorney

Brenda Fritsvold
City Clerk



City Council Agenda Item Report

Submitted by: Kirstin Hofmann

Submitting Department: Emergency Management

Meeting Date: 4/06/2021

Subject:

Accept Emergency Management Performance Grant COVID supplemental funds in the amount of \$1,874

Presenter:

Kirstin Hofmann, Emergency Management Manager

Recommendation:

Authorize the City Manager to execute a contract, in a form as approved by the City Attorney, to accept Emergency Management Performance Grant COVID Supplemental (20EMPG-S) funds from the Washington State Military Department in the amount of \$1,874, and amend the budget as appropriate.

Background:

The City of Puyallup, as an independent emergency management organization, is eligible for Emergency Management Performance Grant COVID Supplemental (20EMPG-S) funds. The U.S. Department of Homeland Security (DHS)/Federal Emergency Management (FEMA) awards these funds to local jurisdictions to assist with the operation of emergency management programs.

The Washington State Military Department's Emergency Management Division is the recipient of the 20EMPG-S funds, and the City of Puyallup is a sub-recipient. A supplemental amount of funds was released to assist jurisdictions with their COVID-19 response. The City of Puyallup will use these funds to support current staffing and additional technology for our Emergency Operations Center.

Council Direction:

Fiscal Impacts:

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Kirstin Hofmann

Submitting Department: Emergency Management

Meeting Date: 4/06/2021

Subject:

Accept \$22,398.41 from the Federal Emergency Management Agency's (FEMA) Public Assistance program for reimbursement of emergency response activities associated with the COVID-19 pandemic

Presenter:

Kirstin Hofmann, Emergency Management Manager

Recommendation:

Authorize the City Manager to accept \$22,398.41 from the Federal Emergency Management Agency (FEMA) and amend the budget as appropriate.

Background:

The City of Puyallup is eligible for FEMA Public Assistance funds for reimbursement of emergency response activities associated with the City's response to the COVID-19 pandemic, and submitted an application for funds in May of 2020. The request for reimbursement was made after the first period of eligibility for this funding.

Council Direction:

Fiscal Impacts:

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Brenda Fritsvold

Submitting Department: Legal

Meeting Date: 4/06/2021

Subject:

Second reading of an ordinance approving a franchise agreement with Comcast Cable Communications Management, LLC

Presenter:

Joseph Beck, City Attorney

Recommendation:

Approve second reading of the recommended franchise agreement with Comcast allowing cable infrastructure in the City's right-of-way.

Background:

The City of Puyallup entered into a 25-year cable franchise agreement with Comcast's predecessor in 1986. Since the expiration of that franchise the City has been in on-again/off-again discussions with Comcast about entering into a new long-term agreement. During the period since the expiration of the original franchise both parties have been proceeding as if the agreement remained active.

In an effort to address expired or soon-to-be-expired franchises of its member jurisdictions, the Rainier Communications Commission (RCC) took the lead in coordinating group negotiations with Comcast with the goal of generating a template franchise agreement that all RCC member jurisdictions could use. The City of Puyallup is a member of the RCC and participated in this group negotiation. The City was represented in these negotiations by a group which included Council Member Witting, as the City's representative to the RCC, City Engineer Hans Hunger for public works related matters, and attorney Daniel Kenny at Ogden Murphy Wallace, PLLC.

Throughout the RCC group negotiations the City team took key sections of the agreement to City personnel to vet and for input on further revisions. This included conversations with public works, the City Attorney, the risk manager, and others. The attached draft franchise agreement is the final negotiated draft agreement from the RCC group negotiations.

In order to help in your review, a selection of the key franchise terms are included here:

Franchise Term (Section 2.3) – this is a 10-year franchise agreement.

Franchise Fee (Section 3.1) – The Franchise fee remains at 3.4% of Gross Revenues.

However, the language was revised to allow the City council to pass a resolution and increase this up to the maximum of 5% of Gross Revenues with notice to Comcast. These are general fund dollars.

Indemnification (Section 5.1) and **Insurance** (Section 5.2) – Both sections were vetted with the City’s Risk Manager and City Attorney to ensure the City is protected appropriately.

Programming (Section 8) and **Access** (Section 9) – RCC took the lead in negotiating the provisions in these sections to ensure that the RCC programming (the benefit of which the City receives) can continue as planned for the duration of the Agreement. This includes three standard definition (SD) access channels and two high definition (HD) access channels. In order to support the capital costs of the Public, Educational and Governmental (PEG) programming, Comcast will provide 0.375% of Gross Revenues per month to the City to be used solely for capital costs of the PEG programming. This corresponds to a component of the contribution that the City sends to RCC per the terms of a separate interlocal agreement. This PEG capital contribution was changed from the current model of collecting \$0.25 per customer because the Comcast customer base has gotten smaller. The change to a percentage of gross revenues should result in a larger PEG Contribution, but that is entirely contingent upon Comcast’s continued business success.

Right-of-Way Construction (Section 10) – This section was vetted with your City Engineer to ensure it was protective of the City. Some of the key terms include:

- *Permits* - Comcast must obtain permits for work and comply with applicable code/law for such work.
- *Undergrounding* - Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to Grantor or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way.
- *Relocation for Projects* - The City shall have the right to require Comcast to, at Comcast’s request, locate (which may include potholing) and survey Comcast’s facilities and equipment, relocate, remove, replace, modify or disconnect Comcast’s facilities and equipment located in the Rights-of-Way or on any other property of the City for public purposes, in the event of an emergency; or when the public health, safety, or welfare requires such change. Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this subsection shall be borne by Comcast.

Service Availability (Section 12) -- Comcast shall provide Cable Service within seven (7) days of a request by any Person within the Franchise Area.

All of the terms of the franchise were carefully considered by all RCC member jurisdictions

and negotiated to ensure the Cities had a solid template agreement to use.

Fiscal Impacts:

The draft franchise agreement preserves the existing Franchise Fees (3.4% of Comcast's Gross Revenues) but added a new provision that would allow the Council to pass a resolution to increase the Franchise Fee to 5% Gross Revenues with notice to Comcast. These fees go into the General Fund.

The PEG fee collected by Comcast for the City's use on PEG Capital costs was changed from a per subscriber model to a percentage of Gross Revenues model. Previously the City collected \$0.25 per subscriber and will now collect .375% Gross Revenues. RCC modeled this change and concluded that the City would collect more with this change than the historical model. Both models are dependent on Comcast's continued business success whether looking at the number of subscribers (old model) or the company's Gross Revenues in the City (new model) and the collected PEG Fee could go down if residents leave Comcast and Comcast's Gross Revenues go down. Note that these funds are specifically earmarked for PEG capital costs and are not general fund dollars. The entirety of the PEG Fee is passed along to RCC.

Council Direction:

Fiscal Impacts:

See above.

ATTACHMENTS

- [Ordinance](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PUYALLUP, WASHINGTON, GRANTING TO COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC AND ITS AFFILIATES, SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A CABLE NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF PUYALLUP, WASHINGTON.

WHEREAS, Comcast Cable Communications Management, LLC (the “Franchisee”) has requested that the City Council grant a nonexclusive franchise (this “Franchise”), and

WHEREAS, the City Council has the authority to grant Franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, DO ORDAIN AS FOLLOWS:

**COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC AND
THE CITY OF PUYALLUP, WASHINGTON**

**CABLE FRANCHISE AGREEMENT
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SECTION 1. DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely discretionary. A list that follows the use of the word "including" is intended to illustrate examples, not be an exhaustive list, unless the context clearly indicates otherwise. The Grantor and Grantee may be collectively referred to as the "Parties."

1.1 "Access" means the availability for non-commercial use by various agencies, institutions, organizations, groups, and individuals in the community, including the Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. "Educational Access" means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, "school" means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges, and universities.

b. "Government Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 "Access Channel" means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 "Activated" means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 "Affiliate" when used in connection with Grantee, means any Person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 "Applicable Law" means any statute, ordinance, judicial decision, executive order, or regulation having the force and effect of law that determines the legal standing of a case or issue.

1.6 "Bad Debt" means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 "Basic Service" is the level of programming service which includes the retransmission of local television Broadcast Channels, all EG SD Access Channels required in this Franchise, and any additional programming designated by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 “Broadcast Channel” means local commercial television stations, qualified low power stations and qualified local non-commercial educational television stations, as referenced under 47 USC § 534 and 535.

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

1.10 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.11 “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

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

1.13 “Cable System” means any facility, including Grantee’s, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.14 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 “City Manager” means the chief administrative officer of the City or designee.

1.16 “City” is the City of Puyallup, Washington, a body politic and corporate under the laws of the State of Washington.

1.17 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.18 “Designated Access Provider” means the entity or entities designated now or in the future by the Grantor to manage or co-manage Access Channels and facilities. The Grantor may be a Designated Access Provider.

1.19 “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.20 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.21 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation, and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units, unless the additional facilities are clearly accessory.

1.22 “FCC” means the Federal Communications Commission.

1.23 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.24 “Finance Director” means the director of the Grantor’s Finance Department or designee.

1.25 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the Grantor and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements, and other related matters.

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

1.27 “Franchise Fee” means that fee payable to the Grantor described in subsection 3.1.

1.28 “Grantee” means Comcast Cable Communications Management, LLC or its lawful successor, transferee, or assignee.

1.29 “Grantor” means the City of Puyallup, Washington.

1.30 “Grantor Council” means the Puyallup City Council, or its successor, the governing body of the City of Puyallup, Washington.

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

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium

Cable Services, digital Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);

- installation, reconnection, downgrade, upgrade, or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees, and administrative fees, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees;
- commissions from home shopping channels and other Cable Service revenue sharing arrangements, which shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area.

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

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion that is subsequently collected, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;
- any taxes and/or fees on services furnished by Grantee imposed by an

municipality, State, or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;

- fees imposed by any municipality, state, or other governmental unit on Grantee, including but not limited to Public, Educational and Governmental (hereinafter “EG”) Fees;
- launch fees and marketing co-op fees; and
- unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services that includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, State, or local law. The allocations shall be done for each bundled package separately, and updated and revised within sixty (60) days, each time an element within the package has its rate card changed, including when an element is substituted for another element within the bundled package. It is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee’s calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this subsection 1.31 in order to meet the standards required by governing accounting principles, as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”), and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee shall notify Grantor of any changes in allocation methodologies in its next quarterly franchise fee reports delivered to Grantor.

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

1.32 “Headend” means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks that are part of the Cable System, and all other related equipment and facilities.

1.33 “Leased Access Channel” means any Channel or portion of a Channel commercially

available for video programming by Persons other than Grantee, for a fee or charge.

1.34 “Municipal Code” means the Puyallup Municipal Code adopted for application and enforcement within the City of Puyallup, Washington.

1.35 “Person” means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.36 “Premium Service” means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program, or per-event basis.

1.37 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding Persons residing in such Multiple Dwelling Units to the extent Cable Services are billed on a bulk-billing basis.

1.38 “Right(s)-of-Way” means land acquired or dedicated for public roads and streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, but does not include:

(a) State highways where the Grantor does not have authority to grant permits related to Cable Systems;

(b) Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public, unless specifically used as a utility corridor;

(c) Structures, including poles and conduits, located within the right-of-way;

(d) Federally granted trust lands or forest board trust lands;

(e) Lands owned or managed by the state parks and recreation commission; or

(f) Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use.

“Right(s)-of-Way” also includes easements dedicated for compatible use and consistent with Section 621 of the Cable Act.

1.39 “State” means the State of Washington.

1.40 “Subscriber” means any Person who or which has entered into an agreement to receive Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who has not been disconnected for failure to adhere to Grantee's regular and non-discriminatory terms and conditions for receipt of service.

1.41 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.44 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.45 “Two-Way” means that the Cable System is capable of providing both Upstream and

Downstream transmissions.

1.46 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The Grantor hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way consistent with the requirements of 47 U.S.C. § 541(a)(2), within the Franchise Area to construct, operate, maintain, reconstruct, and rebuild a Cable System and to provide Cable Service subject to the terms and conditions set forth in this Franchise and Applicable Law.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Grantor ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Each and every term, provision, or condition herein is subject to the provisions of State law, federal law, and the generally applicable ordinances and regulations enacted by the Grantor Council pursuant thereto, portions of which may be codified in the Municipal Code. To the extent there is any conflict between this Franchise and any provision of the Grantor’s Code as it exists on the Effective Date of this Franchise, the terms of this Franchise shall control. Subject to the Grantor’s right to exercise its police power under subsection 2.5, the Grantor may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) If allowed under Applicable Law, this Franchise shall not be interpreted to prevent the Grantor from imposing additional lawful conditions, for use of the Rights-of-Way should Grantee provide service other than Cable Service, nor shall this Franchise be interpreted to either prevent or authorize Grantee from making any other lawful uses of the Cable System as permitted by Applicable Law related to Grantee’s non-Cable Service operations.

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

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

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Franchise Area that may be required by the ordinances and laws of the Grantor;

(2) Any permit, agreement, or authorization required by the Grantor for Right-

of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits and Right-of-Way use permits; or

(3) Any generally applicable permits or agreements for occupying any other property of the Grantor or private entities to which access is not specifically granted by this Franchise including, without limitation, permits, and agreements for placing devices on poles, in conduits, or in or on other structures.

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

2.2 Use of Rights-of-Way

(A) Subject to the Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Franchise Area.

(B) Grantee must follow Grantor's established non-discriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by the Grantor or others, including others that may be installing communications facilities. Within limits reasonably related to the Grantor's role in protecting public health, safety, and welfare, the Grantor may require that Cable System facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with Grantor's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the Grantor, or that is installed without prior Grantor approval of the time, place, or manner of installation, and charge Grantee for all the costs associated with removal and repair.

2.3 Effective Date and Term of Franchise

This Franchise and the rights, privileges, and authority granted hereunder shall take effect on _____, 2021 (the "Effective Date"), and shall terminate on _____, 2031, unless terminated sooner as hereinafter provided.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or licenses granted by the Grantor to any Person to use any property, Right-of-Way, right, interest,

or license for any purpose whatsoever, including the right of the Grantor to use the same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The Grantor may at any time grant authorization to use the Rights-of-Way for such additional franchises for Cable Systems as the Grantor deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the Grantor or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Grantor shall have the right to adopt, from time to time, such ordinances as it may deem necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the Grantor's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that the Grantor reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to utilize the Rights-of-Way in order to provide Cable Services within the Franchise Area. If the Grantor grants such an additional franchise or other similar lawful authorization to utilize the Rights-of-Way for Cable Services containing material terms and conditions that differ from Grantee's material obligations under this Franchise, or declines to require such franchise or other similar lawful authorization where it has the legal authority to do so, then the Grantor agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, following Grantee's request as described in subsection 2.6(B), so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The Parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent.

(B) The modification process of this Franchise as provided for in subsection 2.6(A) shall only be initiated by written notice by the Grantee to the Grantor regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the authorization granted in subsection 2.6(A) that are materially different from Grantee's obligations under this Franchise; (2) identifying the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; (3) identifying the Franchise terms and conditions for which Grantee is seeking amendments; and (4) providing text for any proposed Franchise amendments to the Grantor, with a written explanation of why the proposed amendments are necessary and consistent. Notwithstanding any modification of

this Franchise pursuant to the provisions of this subsection 2.6, should any entity, whose authorization to provide Cable Services or similar video programming service resulted in a triggering of the amendments under this Section, fail or cease to provide such services within the Franchise Area, the Grantor may provide ninety (90) days' written notice to Grantee of such fact, and the Grantor and Grantee shall enter into good faith negotiations to determine the original terms, conditions, and obligations of this Franchise shall be reinstated and fully effective.

(C) Upon receipt of Grantee's written notice as provided in subsection 2.6(B), the Grantor and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the Parties. If the Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Grantor shall amend this Franchise to include the modifications.

(D) Notwithstanding anything contained in subsection 2.6(A) through (D) to the contrary, the Grantor shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar video programming service available for purchase by Subscribers or customers under its franchise or similar agreement with the Grantor.

(E) In the event that a wireline multichannel video programming distributor, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or wireline video services within the Franchise Area without a Cable Service franchise or other similar lawful authorization granted by the Grantor, then Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to Grantee. In requesting amendments, Grantee shall file a petition seeking to amend this Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide the text of all proposed Franchise amendments to the Grantor, and (4) identify all material terms or conditions in the applicable state or federal authorization that are substantially more favorable or less burdensome to the competitive entity. The Grantor shall not unreasonably withhold consent to Grantee's petition.

2.7 Familiarity with Franchise

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

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the Grantor's Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the Grantor, throughout the duration of and consistent with this Franchise, an amount equal to three point four percent (3.4%) of Grantee's Gross Revenues. Such Franchise Fee may be increased by passage of a resolution by Grantor up to an amount equal to five percent (5%) of Grantee's Gross Revenues upon 90 days' written notice by Grantor for the then remaining duration of this Franchise, so long as all Cable Operators in the Franchise Area are also required to pay the same Franchise Fee amount.

3.2 Payments

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

3.3 Acceptance of Payment and Recomputation

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

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the Grantor, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.

3.5 Annual Franchise Fee Reports

Grantee shall, within ninety (90) days after the end of each year, furnish to the Grantor a

statement stating the total amount of Gross Revenues for the year and all payments, deductions, and computations for the period.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, the Grantor, including Grantor's Auditor or his/her authorized representative, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise for a period of time in accordance with state law (the "audit period"). Pursuant to subsection 1.31, as part of the Franchise Fee audit/review, the Grantor shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for the Grantor's subscribers during the audit period. To the extent that the Grantor does not believe that the relevant data supplied is sufficient for the Grantor to complete its audit/review, the Grantor may require other relevant data. For purposes of this subsection 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers), and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the Grantor to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the actual and verifiable cost of the audit/review, such cost not to exceed seven thousand five hundred dollars (\$7,500.00) for each year of the audit period. The Grantor's right to audit/review and Grantee's obligation to retain records necessary to complete any audit under this subsection shall expire consistent with the applicable statute of limitations period under State law; provided, however, that this would not apply to a time period covered under a pending audit.

3.7 Late Payments

In the event any payment due quarterly is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay interest on the amount due at the then current maximum rate set forth in RCW 19.52.020, calculated from the date the payment was originally due until the date the Grantor receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the then current maximum rate set forth in RCW 19.52.020, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Grantor.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the Grantor through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall comply with

any other Applicable Law related to the right to occupy the Grantor's Rights-of-Way and compensation therefor.

3.10 Maximum Legal Compensation

The Parties acknowledge that, at present, applicable federal law limits the Grantor to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the Grantor is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the Grantor, by resolution of Grantor Council, to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the Grantor hereunder, provided that Grantee has received at least ninety (90) days' prior written notice from the Grantor of such amendment, so long as all cable operators in the Franchise Area are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

(A) The EG Capital Contribution pursuant to subsection 9.5, as well as any charges incidental to the awarding or enforcing of this Franchise (including, without limitation, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damage) and Grantee's costs of compliance with Franchise obligations (including, without limitation, compliance with customer service standards and build out obligations) shall not be offset against Franchise Fees. Furthermore, the Grantor and Grantee agree that any local tax of general applicability shall be in addition to any Franchise Fees required herein, and there shall be no offset against Franchise Fees. Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The Grantor likewise reserves all rights it has under Applicable Law. Should Grantee elect to offset the items set forth herein, or other Franchise commitments such as complimentary Cable Service, against Franchise Fees in accordance with Applicable Law, including any Orders resulting from the FCC's 621 proceeding, MB Docket No. 05-311, Grantee shall provide the Grantor with advance written notice. Such notice shall document the proposed offset or service charges so that the Grantor can make an informed decision as to its course of action. Upon receipt of such notice, Grantor shall have up to one hundred twenty (120) days to either (1) maintain the commitment with the understanding that the value shall be offset from Franchise Fees; (2) relieve Grantee from the commitment obligation under the Franchise; or (3) pay for the services rendered pursuant to the commitment in accordance with Grantee's regular and non-discriminatory terms and conditions.

(B) Grantee's notice pursuant to subsection 3.11(A) shall, at a minimum, address the following: (1) identify the specific cash or non-cash consideration or obligations that must be offset from Grantee's Franchise Fee obligations; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide text for any proposed Franchise amendments to the Grantor, with a written explanation of why the proposed amendments are necessary and consistent with Applicable Law; (4) provide all information and documentation reasonably necessary to address how and why specific offsets are to be calculated and (5) if applicable, provide all information and documentation reasonably necessary to document how Franchise Fee offsets

may be passed through to Subscribers in accordance with 47 U.S.C. 542(e). Nothing in this subsection 3.11(B) shall be construed to extend the one hundred twenty (120) day time period for Grantor to make its election under subsection 3.11(A); provided however, that any disagreements or disputes over whether sufficient information has been provided pursuant to this Paragraph (B) may be addressed under subsections 13.1 or 13.2 of this Franchise.

(C) Upon receipt of Grantee's written notice as provided in subsection 3.11(B), the Grantor and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications and agree to what offsets, if any, are to be made to the Franchise Fee obligations. Such negotiation will proceed and conclude within a one hundred twenty (120) day time period, unless that time period is reduced or extended by mutual agreement of the Parties. If the Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Grantor shall amend this Franchise to include those modifications.

(D) If the Parties are unable to reach agreement on any Franchise Fee offset issue within one hundred twenty (120) days or such other time as the Parties may mutually agree, each party reserves all rights it may have under Applicable Law to address such offset issues.

(E) The Grantor acknowledges that Grantee currently provides one outlet of Basic Service and Digital Starter Service and associated equipment to certain Grantor owned and occupied or leased and occupied buildings, schools, fire stations, and public libraries located in areas where Grantee provides Cable Service. For purposes of this Franchise, "school" means all State-accredited K-12 public and private schools. Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Grantee's commitment to provide this service is voluntary, and may be terminated by Grantee, at its sole discretion.

- (i) Grantee's termination of complimentary services provided shall be pursuant to the provisions of subsection 3.11(A) through (E) above. Grantor may make a separate election for each account or line of service identified in the notice (for example, Grantor may choose to accept certain services or accounts as offsets to Franchise Fees, and discontinue other services or accounts), so long as all elections are made within one hundred twenty (120) days. Grantee shall also provide written notice to each entity that is currently receiving complimentary services with copies of those notice(s) sent to the Grantor.
- (ii) Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The Grantor likewise reserves all rights it has under Applicable Law.

(F) The Parties understand and agree that offsets may be required and agreed to as a result of the FCC's Order in what is commonly known as the 621 Proceeding, MB Docket No. 05-311, and that this Order is on appeal. Should there be a final Order in the appeal of the 621

Proceeding, which would permit any cash or non-cash consideration or obligations to be required by this Franchise without being offset from Franchise Fees, or would change the scope of the Grantor's regulatory authority over the use of the Rights-of-Way by the Grantee, the Parties shall, within one hundred twenty (120) days of written notice from the Grantor, amend this Franchise to reinstate such consideration or obligations without offset from Franchise Fees, and to address the full scope of the Grantor's regulatory authority.

3.12 Tax Liability

Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax, or charge on the business, occupation, property, or income of Grantee that may be lawfully imposed by the Grantor. Any other license fees, taxes, or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

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

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, signed by a representative of Grantee under penalty of perjury under the laws of the State of Washington, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in the letter of credit or other security provided by the Grantee, or any other manner authorized by Applicable Law.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The Grantor shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under federal, State, and local law, to any agent in its sole discretion.

(B) Nothing in this Franchise shall limit nor expand the Grantor's right of eminent domain under State law.

4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the Grantor to the full extent authorized by Applicable Law.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, gender identity, marital, military or economic status, physical or mental disability, or, where consistent with any requirement of federal or State law, geographic location within the Franchise Area. Nothing herein shall be construed to prohibit:

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

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and non-discriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the Grantor a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the Grantor, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.6 Reserved Authority

Both Grantee and the Grantor reserve all rights they may have under the Cable Act and any other relevant provisions of Applicable Law.

4.7 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise, and sufficient grounds for the Grantor to invoke any relevant remedy in accordance with subsection 13.1 of this Franchise.

4.8 Franchise Amendment Procedure

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, or such other time as the Parties may agree, the Grantor and Grantee shall meet to discuss the proposed amendment(s). If the Parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the Grantor Council for its approval. If so approved by the Grantor Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.9 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee, or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with Applicable Law.

(B) Nothing in this subsection shall be deemed to create, limit, or otherwise affect the ability of the Grantee to impose other assessments, charges, fees, or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule, or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be non-discriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the Franchise Area without regard to the neighborhood or income level of the Subscriber.

4.10 Force Majeure

In the event either party is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of such party, the delayed party shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation. Those conditions that are not within the control of a party include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, pandemics and epidemics, and severe or unusual weather conditions, all of which have a direct and substantial impact on the party's

ability to perform its commitments under this Franchise and were not caused and could not have been avoided by the party, who used its best efforts in its operations to avoid such results.

If a party believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, that party shall provide documentation as reasonably required by the other party to substantiate the claim. If the party claiming a force majeure condition has not yet cured the deficiency, it shall also provide the other party with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend, and hold the Grantor, its officers, officials, boards, commissions, agents, and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the Grantor while conducting its defense of the Grantor. Grantee shall not be obligated to indemnify the Grantor to the extent of the Grantor's negligence or willful misconduct. The provisions of this section shall survive the expiration or termination of this Franchise.

(B) RCW 4.24.115. However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the Grantor, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Franchise.

(C) Indemnification for Relocation. Grantee shall indemnify the Grantor for any damages, claims, additional costs, or reasonable expenses assessed against, or payable by, the Grantor resulting from, Grantee's failure to remove, adjust, or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by this Franchise.

(D) Additional Circumstances. Grantee shall also indemnify, defend, and hold the Grantor harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way resulting from:

- (1) The lawful actions of the Grantor in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

(E) Procedures and Defense. If a claim or action arises, the Grantor or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The Grantor's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. The Grantor may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses, or other costs the Grantor may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(G) is required. In that event, the provisions of Paragraph 5.1(G) shall govern Grantee's responsibility for Grantor's attorneys' fees, expenses, or other costs. In any event, Grantee may not agree to any settlement of claims affecting the Grantor without the Grantor's approval.

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

(G) Expenses. If separate representation to fully protect the interests of both Parties is or becomes necessary, such as a conflict of interest between the Grantor and the counsel selected by Grantee to represent the Grantor, Grantee shall select separate counsel that does not have such a conflict to represent Grantor. Provided, however, that in the event that such separate representation is or becomes necessary, and Grantor desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Grantor shall be required to obtain Grantee's consent to the engagement of such counsel, experts, or consultants, such consent not to be unreasonably withheld. The Grantor's expenses shall include all reasonable out-of-pocket costs and expenses, such as consultants' fees and court costs, and shall also include the reasonable value of any services rendered by the Grantor's attorney or his/her assistants or any employees of the Grantor or its agents, but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided to the Grantor by Grantee.

(H) Inspection. Inspection or acceptance by the Grantor of any work performed by Grantee at the time of completion of construction or maintenance projects shall not be grounds for avoidance of any of these covenants of indemnification.

(I) Damage to Grantee Facilities. Notwithstanding any other provisions of this subsection 5.1, Grantee assumes the risk of damage to its Cable System facilities located in or upon the Rights-of-Way from activities conducted by the Grantor, and agrees to release and waive any and all such claims against the Grantor except to the extent any such damage or destruction is caused by or arises from the negligence or criminal actions of the Grantor.

(J) Survival. The indemnification, defense, and hold harmless obligations contained in this subsection 5.1 shall survive the expiration, abandonment or termination of this Franchise.

5.2 Insurance

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than five million dollars (\$5,000,000.00) per occurrence and five million dollars (\$5,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by the current ISO CG 00 01 or its equivalent and include severability of interests with respect to each additional insured. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The Grantor shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect this Franchise Agreement using the current ISO endorsement CG 20 12 05 09.

(2) Commercial Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles, with a minimum combined single limit for bodily injury and property damage of five million dollars (\$5,000,000.00) per accident. The policy shall contain a severability of interests provision with respect to each additional insured.

(3) Excess or Umbrella Liability insurance shall be written with limits of not less than five million dollars (\$5,000,000.00) per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits. Such insurance shall name Grantor, its officers, officials, and employees as additional insureds.

(B) The insurance shall provide for notice of cancellation in accordance with policy provisions. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide notice of such cancellation or material alteration within two (2) business days of its receipt of such notice. Grantee shall additionally provide evidence of a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

(C) The Grantee shall cause each of its subcontractors to provide insurance coverage reasonably appropriate to the scope of each such subcontractor's work.

(D) Failure on the part of the Grantee to maintain the insurance as required shall constitute a material breach of this Agreement.

(E) Endorsements.

(1) All commercial general, automobile, and umbrella excess liability policies required herein shall contain, or shall be endorsed so that:

(a) Grantor, its officers, officials, boards, commissions, and employees are to be covered as, and have the rights of, additional insureds with respect to liability for which the Grantee is responsible herein;

(b) Grantee's insurance coverage shall be primary insurance with respect to each additional insured. Any insurance or self-insurance maintained by the additional insured shall be in excess of the Grantee's insurance and shall not contribute to it with respect to liability for which the Grantee is responsible hereunder; and

(c) Grantee's insurance shall provide for severability of interest with respect to each additional insured.

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

(G) Verification of Coverage. The Grantee shall furnish Grantor with certificates of insurance, evidencing the required endorsements, including but not limited to blanket additional insured status. The certificates are to be on standard forms or such forms as are consistent with standard industry practices.

(H) Adequacy of Limits and Coverage. It is agreed that these insurance requirements shall not in any way act to reduce or otherwise alter the liability of Grantee herein. No representation is made that the minimum insurance requirements of this Franchise are sufficient to cover the obligations of Grantee hereunder.

5.3 Letter of Credit

(A) If there is a claim by the Grantor of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the Grantor may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the Grantor, to the Grantor as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the Grantor in the amount of twenty five thousand dollars (\$25,000.00).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained at twenty-five thousand dollars (\$25,000.00) until the allegations of the uncured breach have been resolved. After all allegations have been resolved, the letter of credit may be withdrawn.

(C) After completion of the procedures set forth in subsection 13.1 or other applicable

provisions of this Franchise, the letter of credit may be drawn upon by the Grantor for purposes including, but not limited to, the following:

- (1) Failure of Grantee to pay the Grantor sums due under the terms of this Franchise;
- (2) Reimbursement of actual costs borne by the Grantor to correct Franchise violations not corrected by Grantee;
- (3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and,
- (4) Failure to comply with any Customer Service Standards of the Grantor, as the same may be amended from time to time by the Grantor Council acting by ordinance or resolution.

(D) The Grantor shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within fifteen (15) business days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

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

5.4 Bonds

Grantee, at its expense, shall comply with all of the applicable bonding requirements provided for in the Grantor's Code or construction / development standards officially adopted by the Grantor.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with customer service standards as provided in FCC Standards 47 C.F.R. Sections 76.309, 76.1602, 76.1603 and 76.1619, as amended, and any local standards adopted in accordance with applicable law. Grantee acknowledges the Grantor's ability to enact customer service standards that exceed those enacted by the FCC and the Grantor acknowledges Grantee's right to recover the costs associated with complying with such standards. The Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Franchise, or the requirements of any applicable customer service standards. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in Applicable Law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the Grantor a sample of the Subscriber contract or service agreement then in use.

6.4 Identification of Local Franchise Authority on Subscriber Bills

Within sixty (60) days after written request from the Grantor, Grantee shall place the Grantor's or Rainier Communications Commission's telephone number on its Subscriber bills.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Grantor. The Grantor, or its authorized representative shall have access to, and the right to inspect, books and records of Grantee, its parent corporations and Affiliates that are reasonably necessary to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate, or a third party. The Grantor may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the Grantor, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may, within ten (10) days of a request, require that the Grantor or its designee inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and are not made available in copies to the Grantor or its designee upon written request as set forth above, and if the Grantor determines that an examination of such records is necessary or appropriate for the performance of any of the Grantor's duties, administration, or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by the Grantee.

7.2 Confidentiality

The Grantor agrees to treat as confidential any books or records that constitute proprietary or confidential information under RCW 42.56, the Public Records Act ("PRA"), to the extent Grantee makes the Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information and shall provide a brief written explanation as to why such information

is confidential under the PRA. As a public agency, records and information may be subject to a request submitted under the PRA. If the Grantor receives a request under the PRA to inspect or copy the information so identified by Grantee and the Grantor determines that release of the information is required by the PRA or otherwise appropriate, Grantor will use its best efforts to promptly provide Grantee with notice of the request in accordance with RCW 42.56.540, and a copy of any written request by the party demanding access to such information, in order to have a reasonable time (of no less than ten (10) business days) within which Grantee may seek an injunction to prohibit the Grantor's disclosure of the requested record. If the Grantee fails to timely obtain a court order enjoining disclosure, the Grantor will release the requested information on the date specified. Grantee shall join the Person requesting the documents to such an action. Grantee shall defend, indemnify, and hold the Grantor harmless from any claim or judgment.

The Grantor has, and by this Section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the PRA. The Grantor shall not be liable to the Grantee for releasing records. The Grantor shall not be liable to the Grantee for any records that the Grantor releases in compliance with this Section or in compliance with an order of a court of competent jurisdiction.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall make available to the upon thirty (30) days prior written request and subject to Applicable Law:

(1) A complete set of maps showing the location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the Grantor's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the Grantor. These maps shall be certified as accurate by an appropriate representative of the Grantee;

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

(3) Number of current subscribers by Tier;

(4) A log of Cable Services added or dropped, Channel changes, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates, and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the Grantor is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Annual Reports

Within ninety (90) days of the Grantor's written request, Grantee shall submit to the Grantor a written report, in a form acceptable to the Grantor, which shall include, but not necessarily be limited to, the following information for the Grantor:

- (A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;
- (B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);
- (C) The number of homes passed, beginning and ending plant miles, and any technological changes occurring in the Cable System;
- (D) A statement of planned construction, if any, for the next year; and,
- (E) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

7.5 Copies of Federal and State Reports

Within sixty (60) days of a written request, Grantee shall submit to the Grantor copies of all regular reports maintained in the ordinary course of business submitted by Grantee or its parent corporation(s), to any federal, State, or local courts, regulatory agencies, and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall not claim confidential, privileged, or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.6 Complaint File and Reports

Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System for the previous twelve (12) months, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints, and shall provide such information to Grantor within sixty (60) days of a written request.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

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

- (A) Educational programming;

- (B) Washington news, weather, and information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture, and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather, and information; and,
- (J) Educational and Government Access, to the extent required by this Franchise.

8.2 Deletion or Reduction of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the Grantor.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming that is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming that is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps, or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

It shall be the right of all Subscribers to continue to receive Cable Service from Grantee

insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9. ACCESS

9.1 Designated Access Providers

(A) The Grantor shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself for Access purposes, to control and manage the use of any or all Access Channels provided by Grantee under this Franchise.

(B) Grantee shall cooperate with Grantor in Grantor's efforts to provide Access programming, but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

9.2 Channel Capacity and Use

(A) Grantee shall make available to the Grantor up to five (5) Downstream Channels for EG use as provided for in this Section. Subject to a change of Applicable Law that may occur during the Term of this Franchise, this requirement regarding the provision of Access Channels or the calculation and payment of Franchise Fees, shall be addressed pursuant to subsection 3.11 of this Franchise.

(B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Educational or Governmental Access use, within sixty (60) days after a written request for such use is submitted to Grantor, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of thirty-eight (38) hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two (2) times per day shall be considered "unduplicated programming." Character-generated programming shall be included for purposes of this subsection, with respect to the five (5) Channels provided to Grantor. If a Channel allocated for Educational or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to require the return of the Channel or portion thereof. Grantor shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(C) Standard Definition (“SD”) Digital Access Channels.

(1) Grantee shall provide three (3) Activated Downstream Channels for EG Access use in a standard definition (“SD”) digital format. Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio, and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the demarcation point. Grantee shall transport and distribute the SD Access Channels signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility and functionality, and to the application of any applicable FCC Rules & Regulations, including, without limitation, Subpart K Channel signal standards.

(2) With respect to signal quality, Grantee shall not be required to carry a SD Access Channel in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of subsection 9.2(C).

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the demarcation point which, for the purposes of this subsection 9.2(C)(3), shall mean up to and including the receiver where the Grantor signal is transmitted over a fiber connection to Grantee. The Grantor or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the demarcation point.

(4) SD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which SD channels are made available. Grantee is not required to provide free SD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(D) High Definition (“HD”) Digital Access Channels.

(1) After the Effective Date and within one hundred twenty (120) days’ written notice, Grantee shall activate two (2) HD Access Channels, for which the Grantor may provide Access Channel signals in HD format to the demarcation point. After the fourth (4th) anniversary of the Effective date, and with at least one hundred twenty (120) day written notice to Grantee, the Grantor may request, and Grantee shall provide on its Cable System, one (1) additional Activated Downstream Channel for EG Access use in a High Definition (“HD”) digital format (“HD Access Channel or Channels”). Activation of such HD Access Channels shall only occur after the following conditions are satisfied:

(a) The Grantor shall, in its written notice to Grantee as provided for in this Section, confirm that it or its Designated Access Provider has the capabilities to produce,

has been producing, and will produce programming in an HD format for the newly activated HD Access Channel; and,

(b) There will be a minimum of five (5) hours per-day, five (5) days per-week of HD EG programming available for the HD Access Channel. For the purposes of this subsection, character-generated programming (i.e., community bulletin boards) shall not satisfy, in whole or in part, this programming requirement, unless the character generated programming includes a video window with EG full motion video/audio content playing.

(2) The Grantor shall be responsible for providing the HD Access Channel signal in an HD digital format to the demarcation point for the HD Access Channel(s). For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

(3) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against the HD Access Channel(s) with respect to accessibility, functionality, and to the application of any applicable Federal Communications Commission Rules & Regulations, including, without limitation, Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry the HD Access Channel(s) in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signal provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio, and other elements associated with the Programming. Upon reasonable written request by the Grantor, Grantee shall verify signal delivery to Subscribers with the Grantor, consistent with the requirements of subsection 9.2(D).

(4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which the HD Channels are made available. Grantee is not required to provide free HD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(5) The Grantor or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(6) The Designated Access Provider shall be responsible for providing the Access Channel signals in an HD format to the demarcation point. Grantee shall provide all necessary equipment on its side of the demarcation point, at its Headend and throughout its distribution system to deliver the Access Channel(s) in the HD format to Subscribers.

(7) At such time as Grantee determines that all Channels on the Cable System shall be delivered only in an HD format, with respect to any Access Channels simulcast in SD and HD, there shall be no further obligations to provide those Access Channels in SD. For any Access Channel that may at such time only be in SD, Grantee shall provide an additional Channel in HD in order that the content may continue to be available on the Cable System.

(E) Grantee shall simultaneously carry the first two (2) HD Access Channels provided for in subsection 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the three (3) SD Access Channels provided pursuant to subsection 9.2(C). At such time as the third HD Access Channel is activated pursuant to subsection 9.2(D), Grantee shall be required to only simulcast two (2) of the SD Access Channels in addition to the three (3) HD Access Channels.

(F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise are otherwise met. Grantee may implement HD carriage of the EG channel(s) in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event the Grantor believes that Grantee fails to meet this standard, Grantor will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

9.3 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the jurisdictions served by the same Headend as the Grantor for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to Subscribers.

9.4 Relocation of Access Channels

Grantee shall provide the Grantor a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days' notice, prior to the time Educational and Governmental Access Channel designations are changed. Grantee, at Grantee's expense, will place the Grantor's notice of the Access Channel changes on or with its regular monthly billing, upon the Grantor's request. Such request shall be for one (1) notice per occurrence of Access Channel changes, whether one (1) or more channels are affected. The Grantor shall be responsible for the costs of printing its notice, which must conform to Grantee's reasonable mailing requirements and providing them to the Grantee. Grantee shall be provided an opportunity to review and approve all Access bill insertions.

9.5 Support for Access Costs

Within ninety (90) days of a written request, Grantee shall provide to the Grantor up to point three seven five percent (0.375%) of Grantee's Gross Revenues per month (the "EG Contribution") to be used solely for capital costs related to Educational and Governmental Access, or as may be permitted by Applicable Law. Grantee shall make EG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding

quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. The Grantor shall have sole discretion to allocate the expenditure of such payments for any capital costs related to EG Access.

9.6 Access Support Not Franchise Fees

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to Grantor. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise and federal law.

9.7 Access Channels On Basic Service or Lowest Priced HD Service Tier

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

9.8 Change In Technology

In the event Grantee makes any change in the Cable System, related equipment, Facilities, or in Grantee's signal delivery technology, that directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of Grantor's Access personnel, to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the Grantor implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then the Grantor shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's Headend for distribution to subscribers.

9.9 Technical Quality

Grantee shall maintain all Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules, and regulations for Residential Subscriber Channels. In no event shall the technical quality of any Access channels be lower than the quality of other commercial SD or HD channels carried on the Cable System.

9.10 Access Cooperation

Grantor may designate any Designated Access Provider to share in the use of any Access benefit due to Grantor hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access benefits and the application of any provision under this Section as Grantor in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by Grantor.

9.11 Return Lines/Access Origination

(A) As of the Effective Date of this Agreement, Grantor is not utilizing a dedicated Grantee return line or transport services to send Access programming from Grantor's location to Grantee's Headend.

(B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Residential Subscribers as requested in writing by the Grantor. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the Grantor or the Designated Access Provider. New return lines shall be completed within one (1) year from the request of the Grantor or its Designated Access Provider, or as otherwise agreed to by the Parties. If an emergency situation necessitates movement of production facilities to a new location, the Parties shall work together to complete the new return line as soon as reasonably possible.

9.12 Promotion of EG Access Schedule

The Grantee shall include appropriate designation of the EG channels on channel cards and other channel listings provided to Subscribers in a manner comparable to commercial channels on the Cable System.

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

10.1 Right to Construct

Subject to Applicable Law, regulations, rules, resolutions, and ordinances of the Grantor and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

10.2 Joint Trenching/Boring

Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the Franchise Area.

10.3 General Standard

(A) All work authorized and required hereunder shall be done in a safe, thorough, and

workmanlike manner. All installations of equipment shall be permanent in nature, durable, and installed in accordance with good engineering practice and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic. Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of bundles of unused cables.

(B) All construction shall be subject to the Grantor's permitting process.

(C) Grantee and Grantor shall meet, at the Grantor's request, to discuss the progress of the design plan and construction.

(D) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

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

10.4 Permits Required for Construction

Prior to doing any work in the Right-of-Way, Grantee shall apply for, and obtain, appropriate permits from the Grantor. As part of the permitting process, the Grantor may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite Grantor permits received by Grantee.

10.5 Emergency Permits

In the event that emergency repairs are necessary, Grantee may immediately initiate such emergency repairs, and shall notify Grantor prior, provided such emergency contact information has been provided. Grantee shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.6 Compliance with Applicable Codes

(A) Construction Codes. Grantee shall comply with all applicable industry, State and Grantor construction codes and standards.

(B) Safety Codes. Grantee shall comply with all federal, State, and Grantor safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by Applicable Law during construction, operation, and repair of its Cable System. By way of

illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.

10.7 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules, and regulations of the Grantor regarding geographic information mapping systems for users of the Rights-of-Way.

10.8 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Grantor, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the Grantor's authority. The Grantee's Cable System shall be located, erected, and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the Grantor may deem proper to make, or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic.

10.9 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change, and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

10.10 Hazardous Substances

(A) Grantee shall comply with all Applicable Laws, statutes, regulations, and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

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

(C) Grantee agrees to defend, indemnify, and hold the Grantor harmless against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by or assessed against the Grantor arising out of a release of hazardous substances caused by Grantee's Cable System.

10.11 Locates

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the Grantor and to the notification association established in Ch. 19.122 RCW, as amended.

Within forty-eight (48) hours after any Grantor employee, contractor, franchisee, licensee, or permittee notifies Grantee of a proposed Right-of-Way excavation or the need for a design locate, Grantee shall, at Grantee's expense:

- (A) Mark on the surface all of its located underground facilities within the area of the proposed excavation or design;
- (B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation or design; or
- (C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation or design.

10.12 Notice to Private Property Owners

Grantee shall give reasonable notice to private property owners of work on or adjacent to private property, consistent with the requirements of the permit authorizing such work.

10.13 Underground Construction and Use of Poles

(A) When required by general ordinances, resolutions, regulations, or rules of Grantor or applicable State or federal law, or Grantor project, Grantee's Cable System shall be placed underground at no expense to Grantor or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to Grantor or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with Grantor's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) The Grantee shall utilize existing poles wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee

to make all needed excavations in the Rights-of-Way for the purpose of undergrounding an extension of the Cable System or for placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. Grantor will reasonably determine the most appropriate option between undergrounding and erecting new poles considering site specific details and availability of space in the Right-of-Way. If poles are used, all poles of Grantee shall be located as designated by the proper Grantor authorities. Grantor will determine if such poles and related facilities may be placed based on reasonable availability of space within the right of way.

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

10.14 Cable Drop Bonding

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

10.15 Prewiring

Any ordinance or resolution of the Grantor which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

10.16 Repair and Restoration of Property

(A) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(B) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the Grantor may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within sixty (60) days of receipt of an itemized list of those costs, including the costs of labor, materials, and equipment, the Grantee shall pay the Grantor.

(C) Private Property. Upon completion of the work that caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed.

10.17 Acquisition of Facilities

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

10.18 Discontinuing Use/Abandonment of Cable System Facilities

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

10.19 Movement of Cable System Facilities For Grantor Purposes

(A) The Grantor shall have the right to require Grantee to, at the Grantor's request, locate (which may include potholing) and survey Grantee's facilities and equipment, relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the Grantor for public purposes, in the event of an emergency; or when the public health, safety, or welfare requires such change. For example, without limitation, this movement of or the request to locate Grantee's facilities may be needed by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the Grantor for public purposes. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third-party private entities. Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this subsection 10.19 shall be borne by Grantee. Such work shall be performed at Grantee's expense.

(B) Except when a shorter time is necessitated due to an emergency, Grantee shall, within sixty (60) days' written notice by the Grantor, or such longer period as the Grantor may specify, complete all work to temporarily or permanently relocate, remove, replace, modify, or disconnect any of its facilities and equipment located in the Rights-of-Way or on any other property of the Grantor. In the event of any capital improvement project exceeding five hundred thousand dollars (\$500,000.00) in expenditures by the Grantor, which requires the removal, replacement, modification, or disconnection of Grantee's facilities or equipment, the Grantor shall provide at least one hundred twenty (120) days' written notice to Grantee. Following notice by the Grantor, if other users of the Right-of-Way relocate aerial facilities underground as part of an undergrounding project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. If the Grantor requires Grantee to relocate its facilities located within the Rights-of-Way, the Grantor will work collaboratively with Grantee to identify available alternate locations within the Rights-of-Way for Grantee to relocate its facilities at Grantee's cost.

(C) If Grantee fails to complete this work within the time prescribed above and to the Grantor's satisfaction, the Grantor may cause such work to be done and bill the cost of the work to Grantee, including all costs and expenses incurred by the Grantor due to Grantee's delay. In such event, the Grantor shall not be liable for any damage to any portion of Grantee's Cable System. Within sixty (60) days of receipt of an itemized list of those costs, Grantee shall pay the Grantor. In any event, if Grantee fails to timely relocate, remove, replace, modify or disconnect Grantee's facilities and equipment, and that delay results in any delay damage accrued by or against the Grantor, Grantee will be liable for all documented costs of construction delays attributable to Grantee's failure to timely act. Grantee reserves the right to challenge any determination by the Grantor of costs for construction delays related to an alleged failure to act in accordance with this subsection 10.19.

10.20 Movement of Cable System Facilities for Other Entities

If any removal, replacement, modification, or disconnection of the Cable System is required to accommodate the construction, operation, or repair of the facilities or equipment of another entity with the rights to use the Rights-of-Way, Grantee shall, after at least sixty (60) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee shall require that the costs associated with the removal or relocation be paid by the benefited party.

10.21 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit (a "Permittee") and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the Permittee, and Grantee may require a reasonable deposit of the estimated payment in advance. The cost of such temporary change may be charged by the Grantee to the Permittee, and Grantee may require the estimated payment in advance. Such payment is an exchange between the Grantee and the Permittee, and the Grantor will not be the administrator of these transactions.

10.22 Reservation of Grantor Use of Right-of-Way

Nothing in this Franchise shall prevent the Grantor or public utilities owned, maintained, or operated by public entities other than the Grantor from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure, or prevent the use and operation of Grantee's Cable System but insofar as the Cable System, or any portion thereof, is required to be relocated to accommodate the construction of the Grantor or public utility, Grantee shall be solely responsible for the costs associated with relocation, in accordance with State law.

10.23 Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the Grantor's Rights-of-Way that interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulation of the Grantor regarding tree trimming except in emergencies. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.24 Inspection of Construction and Facilities

The Grantor may inspect any of Grantee's facilities, equipment, or construction located in the Rights-of-Way at any time upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice. If an unsafe condition is found to exist, the Grantor, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the Grantor establishes. The Grantor has the right to correct, inspect, administer, and repair the unsafe condition if Grantee fails to do so, and to charge Grantee for its costs.

10.25 Stop Work

(A) On notice from the Grantor that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the Grantor, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the Grantor.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and

- (5) Establish conditions under which work may be resumed.

Grantee shall be liable for all costs incurred by the Grantor and associated with Grantee's violation and the Grantor's issuance of the stop work order. Grantee reserves the right to challenge any Grantor determination of Grantee's obligations under this Section.

10.26 Removal of Facilities from Poles

If Grantee leases or otherwise utilizes a pole within the Rights-of-Way owned by a third party for attachment of Grantee's facilities, and such third party subsequently abandons the pole, for example by building a replacement pole, Grantee shall remove or relocate its facilities from such pole within ninety (90) days of notification from either the third party pole owner or the Grantor. If Grantee requires additional time to accomplish the removal and/or relocation, Grantee shall notify the Grantor in writing of the reasons for the additional time and its anticipated schedule.

10.27 Work of Contractors and Subcontractors

Grantee shall be responsible for all work performed by its contractors, subcontractors, and others performing work on its behalf, as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

(A) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver no less than two hundred (200) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

11.2 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation

resources shall be presented to the Grantor no later than thirty (30) days following receipt of a request.

11.3 Emergency Alert Capability

Grantee shall provide an operating Emergency Alert System (“EAS”) throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the Grantor shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

11.4 Technical Performance

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

11.5 Cable System Performance Testing

(A) Grantee shall provide to the Grantor a copy of its current written process for resolving complaints about the quality of the video programming services signals delivered to Subscribers and shall provide the Grantor with any amendments or modifications to the process at such time as they are made.

(B) Grantee shall, at Grantee’s expense, maintain all aggregate data of Subscriber complaints related to the quality of the video programming service signals delivered by Grantee in the Franchise Area for a period of at least one (1) year, and individual Subscriber complaints from the Franchise Area for a period of at least three (3) years, and make such information available to the Grantor at Grantee’s office upon reasonable request.

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

(D) Grantee shall perform any tests required by the FCC.

11.6 Additional Tests

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

- (A) the nature of the complaint or problem that precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis that may be required.

SECTION 12. SERVICE AVAILABILITY

(A) In General. Except as otherwise provided herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. The seven (7) day requirement shall be extended if necessary to comply with any underground construction permitting requirements. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement;

(2) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the Grantor; and

(3) At non-discriminatory monthly rates for Residential Subscribers consistent with subsection 4.3 above.

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

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remedying Franchise Violations

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

- (1) respond to the Grantor, contesting the Grantor's assertion that a default has

occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify the Grantor that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the Grantor in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Grantor may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the Grantor orders a meeting in accordance with subsection (A)(3), the Grantor shall set a meeting to investigate said issues or the existence of the alleged default. The Grantor shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the Grantor determines that a default exists, the Grantor shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Grantor shall determine. In the event Grantee does not cure within such time to the Grantor's reasonable satisfaction, the Grantor may:

(1) Withdraw an amount from the letter of credit as monetary damages imposed under subsection 13.8;

(2) If a material violation, recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,

(3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the Grantor, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

(E) It shall not be a violation of this Franchise if Grantee decides, on a company-wide basis, to cease providing Cable Services. Grantee shall provide a minimum of one (1) year's written notice to Grantor of the termination date, and upon that date, all rights, duties, and obligations of this Franchise shall terminate except for those that by their nature, should survive termination.

13.2 Revocation

(A) In addition to revocation in accordance with other provisions of this Franchise, the Grantor may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance, or document regarding the Grantor and Grantee;

(2) If Grantee fails to restore service to the Cable System after three (3) consecutive days of an outage or interruption in service; except in the case of an emergency or during a Force Majeure occurrence, or when approval of such outage or interruption is obtained from the Grantor, it being the intent that there shall be continuous operation of the Cable System;

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

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors; or

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

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

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

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

(D) Any proceeding under the paragraph above shall be conducted by the Grantor Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence,

and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the Parties. The Grantor Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the Grantor Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or, if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Grantor Council determines are reasonable under the circumstances. If the Grantor determines that the Franchise is to be revoked, the Grantor shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the Grantor's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The Grantor Council may, at its sole discretion, take any lawful action that it deems appropriate to enforce Grantor's rights under the Franchise in lieu of revocation of the Franchise.

13.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the Grantor may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the Grantor's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4 below; or

(3) Upon written request of Grantee, permit the Franchise term to continue pursuant to subsection 14.1(C), or commence the transfer provisions of subsection 14.2(C).

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the Grantor may order the removal of the above-ground Cable System facilities and such underground facilities from the Grantor at Grantee's sole expense within a reasonable period of time as determined by the Grantor. In removing its plant, structures, and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places, and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires

or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3(B) to the Grantor's satisfaction, after written notice to Grantee, the Grantor may cause the work to be done and Grantee shall reimburse the Grantor for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the Grantor may recover the costs through the letter of credit provided by Grantee.

(D) The Grantor may seek legal and equitable relief to enforce the provisions of this Franchise.

13.4 Purchase of Cable System

If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the Grantor shall have the option to purchase the Cable System in accordance with Sect. 627 of the Cable Act.

13.5 Receivership and Foreclosure

(A) At the option of the Grantor, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

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

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

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

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

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

13.6 No Monetary Recourse Against the Grantor

Grantee shall not have any monetary recourse against the Grantor or its officers, officials, boards, commissions, agents, or employees for any loss, costs, expenses, or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State, and local law. The rights of the Grantor under this Franchise are in addition to, and shall not be read to limit, any immunities the Grantor may enjoy under Applicable Law.

13.7 Alternative Remedies

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

13.8 Assessment of Monetary Damages

(A) The Grantor may assess against Grantee monetary damages of (i) up to five hundred dollars (\$500.00) per day for any general construction delays, (ii) up to two hundred fifty dollars (\$250.00) for failure to provide EG Channels, or (iii) up to one hundred dollars (\$100.00) per day for any other material breaches. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the Grantor in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by Grantor of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs, and expenses that are incurred by Grantor by reason of the breach of this Franchise.

13.9 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Grantor, at its option, may: operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Grantor, or until the Franchise is revoked and a new franchisee is selected by the Grantor; or obtain an injunction requiring the Grantee to continue operations. If the Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Grantor or its designee for all reasonable costs, expenses, and damages incurred.

13.10 What Constitutes Abandonment

The Grantor shall be entitled to exercise its options in subsection 13.9 if:

The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for three (3) consecutive days, unless in the case of Force Majeure event or if the Grantor authorizes a longer interruption of service.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement, and Grantee and Grantor are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the Franchise, and the Grantee and Grantor shall continue to comply with all obligations and duties under the Franchise.

14.2 Transfer of Ownership or Control

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

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

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

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

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

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

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

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

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

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

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

(G) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical, and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of

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

SECTION 15. SEVERABILITY

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

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State, and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the Grantor or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Comcast Cable Communications Management, LLC
410 Valley Ave. NW, Suite 9
Puyallup, WA 98371
Attention: Franchise Director

With a copy to:

Comcast Cable Communications Management, LLC
900 132nd Street SW
Everett, WA 98204
Attention: Franchising Department

The Grantor's address shall be:

City of Puyallup
333 S. Meridian
Puyallup, WA 98371
Attn: City Administrator

with a copy to:

City of Puyallup
333 S. Meridian
Puyallup, WA 98371
Attn: City Attorney

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse the Grantor for all costs incurred in publishing this Franchise.

16.5 Binding Effect

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

16.6 No Joint Venture

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

16.7 Waiver

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

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

16.9 Entire Agreement

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

16.10 Jurisdiction

Venue for any judicial dispute between the Grantor and Grantee arising under or out of this Franchise shall be in Pierce County Superior Court, Washington, or in the United States District Court for the Western District of Washington in Seattle.

16.11 No Third-Party Beneficiaries

Nothing in this Franchise is or was intended to confer third-party beneficiary status on any Person or any member of the public to enforce the terms of this Franchise.

16.12 Acceptance

Within sixty (60) days of receipt of an executed Franchise from the Grantor, this Franchise shall be executed by Grantee by filing with the Grantor Clerk. In addition to filing the executed Franchise, Grantee shall furnish the additional insured endorsements and certificates of insurance required pursuant to Section 5. The failure of Grantee to file the executed Franchise shall be deemed a rejection by Grantee and this Franchise shall then be voidable at the discretion of the Grantor.

16.13 Termination of Prior Franchise Grantee and the Grantor agree that this Franchise replaces and supersedes Ordinance 2072 (the “Prior Franchise”) with respect to Grantee; provided, however, that the grant of this Franchise shall have no effect on Grantee’s obligations to indemnify or insure the Grantor against acts and omissions occurring during the period(s) that the Prior Franchise was in effect, nor shall it have any effect upon liability to pay all Franchise Fees consistent with Washington State statute of limitations that were due and owed under a Prior Franchise.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Puyallup,
Washington this ____ day of _____ 2021.

APPROVED:

JULIE L.B. DOOR
MAYOR

ATTEST/AUTHENTICATED:

BRENDA FRITSVOLD
CITY CLERK

APPROVED AS TO FORM:

JOSEPH N. BECK
CITY ATTORNEY

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: _____

Accepted and approved this ____ day of _____, 2021.

COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC

Name/Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____ County)

On this _____ day of _____, 2021, before me personally appeared _____, known to me as the _____ of Comcast Cable Communications Management, LLC, and executed the foregoing instrument, acknowledging said instrument to be the free and voluntary act and deed of Comcast Cable Communications Management, LLC, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

Given under my hand and official seal hereto affixed the day and year last above written.

Notary Seal

(Signature)

(Print or type name)
Notary Public in and for the State of Washington
residing at _____
My commission expires _____

SUMMARY OF ORDINANCE NO.

City of Puyallup, Washington

On the ____ day of _____, 202__, the City Council of the City of Puyallup passed Ordinance No. _____. A summary of the content of said Ordinance, consisting of the title, is provided as follows:

AN ORDINANCE OF THE CITY OF PUYALLUP, WASHINGTON, GRANTING TO COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC AND ITS AFFILIATES, SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A CABLE NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF PUYALLUP, WASHINGTON.

The full text of this Ordinance will be mailed upon request.

CITY CLERK

FILED WITH THE CITY CLERK: _____, 202__
PASSED BY THE CITY COUNCIL: _____, 202__
PUBLISHED: _____, 202__
EFFECTIVE DATE: _____, 202__
ORDINANCE NO.: ____ (202__)



City Council Agenda Item Report

Submitted by: Patty Ross

Submitting Department: Library

Meeting Date: 4/06/2021

Subject:

Library Space Planning

Presenter:

Richard Grace, Troy Ainsworth, Amanda Hansen and Joseph Storr -- FFA Architecture and Interiors, Inc.

Recommendation:

Informational presentation. No action is expected.

Background:

The library has been working with FFA Architecture and Interiors Inc. on a new interior space plan. Three areas are being considered to incorporate into the building: a cafe space, art gallery, and teen zone. The consultant team will share potential design concepts for these three possible amenities.

Council Direction:

No action from Council is needed at this time.

Fiscal Impacts:

None

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Sarah Harris

Submitting Department: Parks, Recreation and Facilities

Meeting Date: 4/06/2021

Subject:

Potential Location to Site a Bicycle Pump Track

Presenter:

Sarah Harris, Parks & Recreation Director

Recommendation:

Provide direction to staff on location for a pump track.

Background:

On January 26, 2021, staff updated the Council on potential projects to be funded from the Parks Capital Budget. One of the options presented was a bicycle pump track, which is a circuit of rollers, banked turns and features designed to be enjoyed by riders who generate momentum by up and down body movements instead of pedaling or pushing. Council expressed interest in a bicycle pump track and identified two possible locations for further discussion: Van Lierop Park and the Puyallup Valley Sports Complex.

Staff will present the pros and cons of each location for Council discussion and direction.

Council Direction:

Fiscal Impacts:

ATTACHMENTS

- [Pros and Cons of potential locations](#)

Site Analysis of Van Lierop Park and Puyallup Valley Sports Center for a Pump Track

Site analysis was done collectively by Parks & Recreation, Traffic and City Engineering and Planning staff.

Puyallup Valley Sports Center

Pros

- ▶ Safe location for kids and families
- ▶ Space available to build Leavenworth size pump track (12,000 sq. ft. recommended)
- ▶ Restroom Facility onsite
- ▶ Other features on site
 - ▶ Playground, tennis courts, athletic fields
- ▶ More affordable to build quickly (infrastructure already in place)
- ▶ Lots of parking onsite
- ▶ Becomes the hub for outdoor sport competitions

Cons

- ▶ Traffic Impact Analysis required - Not a common land use and will likely require trip generation to be collected (This may be challenging to get accurate data due to COVID and the relatively new uses of Pump Tracks). Staff will reach out to other jurisdictions to review their studies
- ▶ No trail access to this site
- ▶ Access for kids via bicycle is not safe route
- ▶ Limited space for adding additional pump track features such as a kid's learning track, jumps
- ▶ Potential for competing events at the PRC and PVSC athletic fields creating traffic congestion and parking issues
- ▶ Loss of T-ball field for youth baseball program
- ▶ Heavy traffic on Valley Avenue makes commuting to the site more difficult
 - ▶ Major thoroughfare for trucks to the Port of Tacoma
 - ▶ Traffic should decrease when SR167 is completed
- ▶ No nearby amenities or services near site
 - ▶ Closest convenience store is at Valley/Meridian intersection (very heavy traffic)
- ▶ Track sites are close to Valley Avenue
 - ▶ Spectator seating on Option 1 would be limited if holding a major event

Van Lierop Park

Pros

- ▶ Safe location for kids and families
- ▶ Space available for pump track
- ▶ Space available to add additional pump track features such as a kid's learning track, jumps
- ▶ Space available to add parking
- ▶ Easy as well as safe access for kids riding their bikes via existing trail system to the site. (Riverwalk Trail, Foothills Trail, Sumner Link Trail)
- ▶ VLP could become bike hub of Pierce County
- ▶ Amenities or services near site (Pioneer Crossing and Farm 12)
- ▶ Easy driving access from all directions
- ▶ Site itself is safe as nothing there to impede line of vision within park
- ▶ View from the site is unmatched anywhere in the Puyallup Valley
- ▶ Historical significance of the Van Lierop property

Cons

- ▶ Traffic Impact Analysis Required - Not a common land use and will likely require trip generation to be collected (This may be challenging to get accurate data due to COVID and the relatively new uses of Pump Tracks). Staff will reach out to other jurisdictions to review their studies
- ▶ Future truck traffic associated with surrounding warehouse development may decrease safe access to the site
- ▶ COST of Potential Infrastructure that may be needed to support development
 - ▶ Traffic Mitigations – off site may be required
 - ▶ Frontage Improvements – Curb/gutter/sidewalk/planter strips/streetlights
 - ▶ Utilities to Site not yet readily available
 - ▶ Additional Paved Parking needed to serve new uses
 - ▶ Latecomers fees for sewer, water line and stormwater trunk line connection
- ▶ No restroom on site
- ▶ Utilize port-a-potty OR build restroom (COST)
 - ▶ Build would require utilities to site
 - ▶ Water connection
- ▶ No lights at this time
- ▶ Pump Track feature not included in initial masterplan
 - ▶ Revisit masterplan for the Park?



City Council Agenda Item Report

Submitted by: Brenda Fritsvold

Submitting Department: Engineering

Meeting Date: 4/06/2021

Subject:

Frontage Improvement Code Changes--Continued Policy Discussion

Presenter:

Hans Hunger

Recommendation:

Continue the policy discussion on potential changes to Puyallup Municipal Code relating to frontage improvement requirements.

Background:

Street frontage improvements are required when a property is developed or significantly improved. Required improvements can include curbs, gutters, sidewalks, storm drainage, and one-half street paving. For smaller developments and existing commercial tenant improvements, it can be challenging to determine if frontage improvements are required and, if so, how the cost of improvements should be assessed to adjacent property owners. To resolve these challenges, staff is proposing changes to our Code that will clarify when frontage improvements will be required and how costs will be assessed in three particular areas:

- Single family residential infill lot developments;
- Tenant improvements in existing commercial buildings; and
- The fee-in-lieu program.

The purpose of this discussion is to enable Council's continued policy development on this matter.

Council Direction:

Fiscal Impacts:

ATTACHMENTS

- [Staff report](#)

Background: Street Frontage Improvements are required as part of developing and/or improving a property. Required improvements can include curbs, gutters, sidewalks, storm drainage, and one-half street paving. Where there are existing improvements they are evaluated for damage or failure to meet current standards and may be required to be replaced.

The intent of this section is to mitigate the demand for public infrastructure incrementally generated by the development in a roughly proportional amount that is commensurate with the urban levels of infrastructure expected within a city for the safety and welfare of the citizens.

Under the constitution as interpreted by case law, when considering frontage improvements there is a *threshold determination* or *trigger*, to evaluate whether the applicant is required to construct frontage improvements. If the answer is yes, then there is a *proportionality* determination of what level of frontage improvements will be required. PMC 11.08.130 currently triggers frontage improvements for any new building or remodels more than \$150,000. In addition, for local roads (not collectors and arterials) there also needs to be existing curb, gutter, or sidewalk within 300 feet of the developing parcel. This is meant to facilitate curb, gutter, and sidewalk constructed by the development to function correctly both horizontally and vertically with future curb, gutter, or sidewalk. Meaning that when future curb is added the runoff will flow along the gutter smoothly without ponding or having to jog the alignment of curbing from one installation to another. Additionally, there is authority in 11.08.160 for the City Engineer to deviate from the requirements.

Issues: Frontage Improvement requirements for single family residents on infill lots or requirements for commercial tenant improvements take a considerable amount of effort to review by staff. Determinations whether improvements can reasonably be constructed correctly, both horizontally and vertically, and what is a proportionate amount of improvements is subjective. When staff determines that frontage improvements cannot be reasonably constructed, the requirement must be waived, and no pedestrian improvements are built. Also, the \$150,000 threshold is believed to be too low and captures small developments where the frontage improvement expenses can overburden the development.

Goal: To make frontage improvement requirements more practical and predictable for the developer and minimize subjective decision making by city staff. Additionally, to create tools to ensure each development is still contributing towards the city's goal of having a complete sidewalk network throughout the city.

Evaluation and Process:

In order to tackle these issues, the Puyallup Permitting Partnership formed a subcommittee to evaluate the options and come up with recommendations. The subcommittee was made up of members from Development Engineering, Public Works, Master Builder Association, and Commercial Realtor. The subcommittee met on Dec. 16th, Jan 11th, and Jan 28th. The recommendations were then discussed at the full Partnership meeting on Feb 17th. The tenant improvement discussion got the most discussion, but in-fill lots and Fee-In-Lieu topics were also discussed. South-Sound communities frontage codes were compiled to gather good ideas on

triggers and proportionality. The committee was able to reach consensus on a mix of adjustments that they felt struck a good balance and achieved the established goals.

Recommendations:

Staff makes the following recommendations:

In-fill lots

These are existing lots and while adding a new resident or expanding an existing residence can incrementally add to the need for safe pedestrian facilities, the improvements can be challenging to place and difficult to determine proportionality. Rather than waiving the requirements, as allowed in PMC 11.08.160, the following changes are recommended:

Trigger:

Frontage improvements will be required for new single family residences (SFRs) or substantial improvements (>50% of the Assessors building valuation) of existing residences on infill lots fronting collectors and arterials (same as streets shown on Priority Pedestrian Network, Map 7-8 in the City's Comprehensive Plan) AND on local streets where existing curb, gutter, and sidewalk are located within 150 feet of the proposed developing parcel. A policy option is to exempt same size replacement SFRs when they suffer fire damage. In-lieu fee will be an option when, in the discretion of the city engineer, siting the improvements correctly cannot be achieved.

Proportionality:

The costs of the frontage improvements will be determined by the city using standardized unit costs and will be capped at 15% of the new SFR or improvement or remodel valuation, however this limit shall not apply to projects that have frontage improvement requirements imposed by a SEPA, CUP, or other conditioning documents. In the case of corner lots or other development sites fronting more than one right-of-way, should the impact of the development be such that street system improvements would not be required on all rights-of-way fronting the development site, street system improvements shall be constructed on the right-of-way or rights-of-way selected by the City Engineer.

Commercial Tenant Improvements:

Existing retail buildings or shopping centers typically have frontage improvements that were constructed during the original development which were turned over to the city to maintain. The city does actively patrol, track, and respond to existing tripping hazards along its 182 miles of sidewalks within the city. Public Works averages over 300 grinds per year to mitigate defects however they don't catch them all and they prioritize the more severe cases to fix.

American Disabilities Act (ADA) standards were established in 1991 and updated in 2010 which can mean older improvements no longer meet these or city standards so tenant improvements at the site can provide an opportunity to bring the frontage up to current standards.

Staff believes that it is counterproductive to inhibit new tenants leasing of existing commercial space with costly or time-consuming frontage repairs. The code change recommendations are intended to scale frontage improvement more proportionally to the scale of the tenant improvements.

It is also proposed to increase the threshold in the downtown business core to recognize the unique nature of the older buildings and the city's desire to promote redevelopment in the area.

Trigger:

Frontage improvements required when both are true: remodel valuation exceeds \$500,000 and exceeds 50% of the value of the commercial unit being remodeled. This will be calculated using the Assessors building valuation or a prorated valuation when connected to a larger structure. Within the downtown CBD Core the valuation must exceed 75% of the commercial unit valuation to trigger frontage improvements. Remodel valuation excludes valuation of equipment, such as medical equipment, that would be removed when a tenant vacates the building.

Proportionality:

Limit the scope of the frontage improvements to no more than 10% of the remodel valuation, however this limit shall not apply to projects that have frontage improvement requirements imposed by a SEPA, CUP, or other conditioning documents. Cost of frontage improvements will be determined by the city using standardized unit costs.

Fee-In-Lieu

This is a voluntary program allowing an applicant to request to pay a fee rather to construct required frontage improvements. This would also be at the discretion of the city and could be denied if the city felt it was more of a benefit to the city to have the frontage improvements built in front of the development. The justification to allow use of the Fee-in-lieu program cannot be based on cost and that the use of the program will result in less cost to the applicant. Fees collected would be used towards improvements to pedestrian facilities ideally within 0.5 miles but up to 1 mile from the contributing parcel in order to be compliant with conditions on voluntary agreements as outlined in RCW 82.02.020 (1).

This program would be beneficial to the city because rather than waiving the requirement to build frontage improvements where they can't be reasonably sited, the city can use the funds to build sidewalk and other frontage improvements where the city determines there is a higher priority to add to the city's sidewalk and street frontage network.

Fees will be \$200/LF of frontage where no curb gutter exists and \$100/LF where curb already exists and only sidewalks need to be constructed. Fees would be tied to CPI so annual increases would be automatic.

Trigger:

The city engineer has discretion to grant upon written request from the applicant the permission to make a payment in lieu of building some or all required frontage improvements.

Proportionality:

The fees could be capped at 10% of remodel or project valuation. This would allow the cap to increase automatically over time. Dedication of necessary right-of-way may not be deferred or satisfied through payment of a fee-in-lieu.

Other Recommended Changes:

PMC 11.08.130 lists out zones where frontage improvements are required which hasn't been updated as new zones have been created. It is recommended that instead of listing the zones,

frontage improvements are required in all zones with the exception of RS-35, the lowest density residential zone, where standards don't require curb, gutter, or sidewalk.

The current code lists frontage improvements as curbs, gutters, sidewalks and paving for residential zones and curbs, gutters, sidewalks, storm drainage, and one-half street paving for commercial zones. We recommend that all zones have the same requirement of curbs, gutters, sidewalks, storm drainage, and one-half street paving (only required if the existing pavement condition is poor) and to add, planter strips, street trees, and street lighting.

Applicability:

These code changes do not change the requirements for subdivisions of land or for new or expansions of commercial buildings where all standards must be met.