CITY OF WASHOUGAL
CITY COUNCIL WORKSHOP AGENDA
Monday, August 12, 2024
5:00 PM

MEETING INFORMATION

Please click the link below to join the webinar:
https://us02web.zoom.us/j/84696490392

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC COMMENTS

IV. NEW BUSINESS

- **A. Public Works: Contract Agreement with Western United Civil Group, LLC. for 2024 Paving Improvements**
- **B. City Manager's Office: Comcast Franchise Agreement Renewal**
- **C. Finance: Emergency Utility Assistance Program Update**
- **D. City Manager's Office: Updated Student Representative Guidelines**

V. REPORTS AND COMMUNICATIONS

- **A. CITY MANAGER**
- **B. MAYOR**
- **C. CITY COUNCIL**

VI. ADJOURNMENT

UPCOMING MEETINGS: Monday, August 26, 2024 - Workshop at 5:00 pm and Council at 7:00 pm

BUSINESS OF THE CITY COUNCIL
City of Washougal, Washington

FOR AGENDA OF:
8/12/2024

SUBJECT:

MEETING INFORMATION

Please click the link below to join the webinar:
https://us02web.zoom.us/j/84696490392

DEPT. OF ORIGIN:
Administration

REVIEWED AT:

TO BE RETURNED TO COUNCIL:
No

EXPENDITURE REQUIRED: **BUDGETED:** **APPROPRIATION REQUIRED:**

SUMMARY STATEMENT

RECOMMENDED ACTION

Workshop Coversheet

BUSINESS OF THE CITY COUNCIL

City of Washougal, Washington

FOR AGENDA OF:
8/12/2024

SUBJECT:
Contract Agreement with Western United Civil Group, LLC. for 2024 Paving Improvements

DEPT. OF ORIGIN:
Public Works

REVIEWED AT:

TO BE RETURNED TO COUNCIL:
Yes

ATTACHMENTS:

- **2024 Paving Improvements (2).pdf**
- **Contractor's Agreement: 2024 Paving Improvements**

EXPENDITURE REQUIRED:	BUDGETED:	APPROPRIATION REQUIRED:
$1,448,932.50	$739,325.00	$709,607.50

SUMMARY STATEMENT

2024 Paving Improvements is comprised of three City capital projects: Main Street Overlay Project, 2024 Pavement Maintenance Project, and Traffic Calming Project. These paving projects provide much needed pavement rehabilitation along City streets, ADA curb ramp upgrades, drainage improvements, and installation of traffic calming devices.

RECOMMENDED ACTION

This item will be on this evening's regular council meeting consent agenda.

2024 Paving Improvements

August 12, 2024 – City Council Workshop| Presented by Scott Collins, City Enigneer

City of Washougal

Our mission is to provide leadership and effective, fiscally responsible services that achieve our community's vision.

Background

- Project is comprised of 3 existing capital improvement projects
  - Main Street Overlay Project
  - 2024 Pavement Maintenance
  - Traffic Calming
- Combined for cost of scale

Main Street Overlay

Description:

This project will provide pavement rehabilitation and pedestrian improvements along Main Street.

Location:

Main Street from Washougal River Road to 27th Street

Improvements:

- Grind/Inlay
- ADA Curb Ramps
- Drainage Improvements
- Striping

2024 Pavement Maintenance

Description:

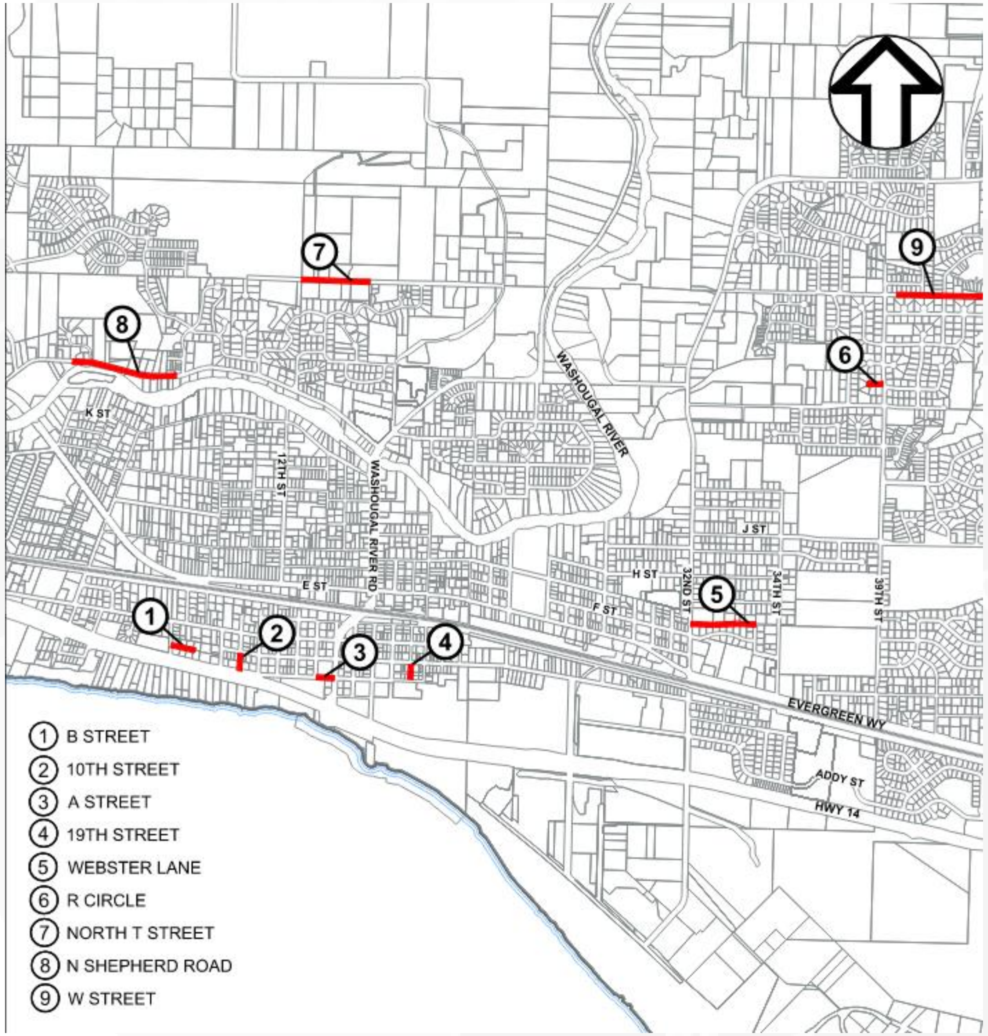
Pavement management is the process of reconstructing, rehabilitating, and maintaining streets to optimize roadway conditions throughout the City's network, as measured by the Pavement Condition Index (PCI).

Location:

Various City Streets

Improvements:

- Grind/Inlay
- Concrete Intersection
- Striping



City of Washougal

Traffic Calming

Description:

The city will be looking at traffic calming to support the livability and vitality of residential and commercial areas through improvements in non-motorist safety, mobility, and comfort. These objectives are typically achieved by reducing vehicle speeds or volumes on a single street or a street network. Traffic calming measures consist of horizontal and/or vertical lane narrowing, roadside amenities, and other features that use self-enforcing physical or psycho-perception means to produce desired effects.

Location:

- W Street from 39th to 44th
- Shepherd Road from N 8th to N 4th Court

Improvements:

- Speed Cushions

Bidding Process

- Request for bids posted June 27th.
- 2 qualified bids received on July 18th.
- Lowest responsible bidder was Western United Civil Group for a construction amount of $1,448,932.50

Budget & Funding

Traffic Calming

Existing Funding
Local - $60,000

Expenditures
Contractor - $65,880

Additional Funding Needed
**Local - $5,880*

Main Street Overlay

Existing Funding
TIB - $628,426
Local - $110,899
Subtotal - $739,325

Expenditures
Design - $119,429
Contractor - $832,875
CM - $15,278
Contingency - $83,288
Subtotal - $931,441

Additional Funding Needed
TIB - $94,264
**Local - $217,281*

2024 Pavement Maintenance

Existing Funding
Local - $1,100,000

Expenditures
Design - $83,020
Contractor - $550,178
CM - $6,323
Contingency - $55,018
Subtotal - $694,539

Encumbrances
PCI - $18,830
Crack/Mastic - $166,100
Chip - $298,777

Additional Funding Needed
**Local - $78,246*

Next Steps

- Staff would recommend that the City Council authorize the City Manager to execute a contract with Wester United Civil Group for the 2024 Paving Improvements Project in the amount of **$1,448,932.50**
- This item will be on the August 12, 2024, council consent agenda as an action item.

Questions?

City of Washougal
PUBLIC WORKS PURCHASING

Contract Information Form *(THIS FORM MUST ACCOMPANY EVERY CONTRACT)*

Contract Title: 2024 Paving Improvements Vault Filing Number: ____________

Vendor Name: Western United Civil Group LLC. Vendor Number: 3992

Contract Overview: 2024 Paving Improvements Contract Total: $1,448,932.50

Project Manager: Scott Collins Ext: 230 Department: Public Works

Project Number: PM-2024-01

Budget Code(s): 106-08-595-315-5063

Engineer's Project Estimate: $ ____________

Contract Price: $ $1,448,932.50

Type of Procurement Method: Formal Sealed Bid Solicitation

Project specifically identified in approved budget: N/A ☐ YES ☐ NO ☑ * if NO see below if project cost is greater than **$50,000** for public works, professional services, and personal services.

Does project change exceed administrative discretion threshold? N/A ☐ YES ☑ NO ☐

If project exceeds administrative threshold, was it approved by Council? YES ☐ NO ☐ Click here to enter a date.

City of Washougal, Washington

Contractor Agreement

Project Name: 2024 Paving Improvements

THIS CONTRACT, effective this ____________ day of ____________, 2024, is entered into by and between Contractor Western united Civil Group LLC. hereinafter referred to as the Contractor, and the City of Washougal, a municipal corporation of the State of Washington, hereinafter referred to as the Owner.

1. **Contractor's Obligation**: The Contractor, for and in consideration of the sum to be paid to it by the Owner in the manner and at the times provided, hereinafter and in the Specifications, and in consideration of the covenants and agreements herein contained, which documents are incorporated into and made a part of this contract, hereby agrees to furnish all materials, labor, tools, machinery and implements of every description necessary for construction and installation of the following improvements:

   PROJECT NAME: 2024 Paving Improvements

   All work shall be done in accordance with the Contract on file with the City of Washougal, and in accordance with such alterations or modifications as may be made by the Owner. The Contractor agrees to do the work and furnish the materials in a most substantial and workmanlike manner and within the time limits stated in the Contract. The Contractor agrees that it will make all necessary arrangements for the obtaining of permits from the United States, State of Washington, and/or any of its agencies as may be necessary to do the work required and covered by this Contract.

2. **E-Verify Program:** The Contractor will certify their participation in the E-Verify Program by submitting a Declaration of Participation Form. If the Contractor described herein uses a subcontractor in connection with the performance of the Contract, the subcontractor shall, as a condition of the Contract, certify their participation in the E-Verify Program by submitting a Declaration of Participation Form. The Contractor and any subcontractors will not knowingly employ or contract with an unauthorized alien. The Contractor shall provide verification of their

compliance immediately upon any City request. Failure by the Contractor to comply with such requests may be considered a breach of contract.

3. **<u>Subcontractor Responsibility</u>**: The Contractor shall include the language of this section in each of its tier subcontracts and shall require all of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier.

At the time of subcontract execution, the Contractor shall verify that each tier subcontractor meets the following bidder responsibility criteria:

1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
2. Have a current Washington Unified Business Identifier (UBI) number;
3. Have a current City of Washougal General Business License;
4. If applicable, have
    a. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
    b. A Washington Employment Security Department reference number, as required in Title 50 RCW;
    c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
    d. An electrical contractor license, if required by Chapter 19.28 RCW;
    e. An elevator contractor license, if required by Chapter 70.87 RCW.
5. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
6. Have received training on the requirements related to public works and prevailing wage under RCW 39.04.350 and RCW 39.12. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory

committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its web site. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption.

4. **Owner's Obligation**: In consideration of the promises and agreements of the Contractor as set forth herein, and in consideration of the faithful performance and furnishing of the work and materials required by this Contract to the satisfaction of the Washougal City Council, the Owner agrees to pay to the Contractor in the manner and at the times provided hereinafter and in the Contract Documents, and in accordance with the ordinances of the City of Washougal and the laws of the State of Washington, the following sum as indicated:

Including 8.5% Washington State Sales Tax (if applicable)

The total amount paid to the Contractor by the City may not exceed $1,448,932,and 50/100 Dollars ($One Million Four Hundred Forty-Eight Thousand Nine Hundred Thirty-Two Dollars and Fifty Cents).

The amount finally to be paid is, however, variable upon the work actually done and final payment will be made upon the basis of the amount of work done and the materials furnished and at the lump sum or unit prices fixed in the Contractor's Proposal or as modified by any or all approved Change Orders.

5. **Contractor's Insurance**: Contractor's liability insurance shall include completed operations and product liability coverage including:

1.	General Aggregate	$2,000,000.00
2.	Completed Operations Aggregate	$2,000,000.00
3.	For Each Occurrence *(Bodily Injury and Property Damage)*	$1,000,000.00
4.	Property Damage Liability Insurance will include Explosion, Collapse and Underground coverage where applicable	$2,000,000.00

5. Automobile Liability for one (1) Bodily Injury:

$1,000,000.00 per each person

$2,000,000.00 per each accident

6. Property Damage $1,000,000.00 each accident

Subcontractors shall also be required to maintain insurance at the above stated limits.

The City of Washougal shall be named as an additional insured under all insurance required herein.

6. **Contractor's Bond**: The Contractor agrees that before it undertakes performance of this Contract, it will file with the City of Washougal a Contract Performance Bond and Payment Bond, in the forms prescribed by the City of Washougal, in the full amount of the Contract price executed by itself as principal and by a surety company authorized to do business in the State of Washington as surety. The bonds shall comply with the laws of the State of Washington, and especially with the provisions of Revised Code of Washington, Chapter 39.08.

7. **Employment of Labor**: The Contractor agrees that all persons employed in it and by any of its subcontractors in work done pursuant to this Contract shall be in accordance with all federal, state and local laws.

8. **Payment of Labor**: The Contractor agrees that all laborers, workers, or mechanics employed by it or by any subcontractor in the work of this Contract will be paid not less than the prevailing rate of wage for an hours work in accordance with the provisions of the Revised Code of Washington, Chapter 39.12, and all rules and regulations promulgated pursuant thereto. The State of Washington prevailing wage rates applicable for this public works project, which is located in Clark County, may be found at the following website address of the Department of Labor and Industries: https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx. Based on the bid submittal deadline for this project, the applicable effective date for prevailing wages for this project is 7/18/2024.

In case any dispute arises as to what the prevailing rates of wages for work of a similar nature are and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the director of the Department of Labor and Industries of the State of Washington for arbitration, and the director's decision therein shall be final and conclusive and binding on all parties involved in the dispute.

9. **Payment to the Contractor**: Payment to the Contractor of the Contract price by the Owner shall be made in checks drawn on the fund provided, therefore. Payment shall be in the manner provided below unless another manner has been specified in Special Provisions.

Progress payments to the Contractor shall be made within 30 days of receipt of the signed progress payment request, as approved by the Owner, for work completed during the previous month. There will be reserved and retained from monies earned by the Contractor on estimates during the progress of the improvements of work, a sum equal to 5 percent of all such estimates. Said retained amount shall be held in trust in accordance with the Specifications and Revised Code of Washington Ch. 60.28.

Payment of the retained percentage shall be withheld, by the owner, for a period of 45 days following the completion of all Contract work, as defined by WSDOT Section 1-01.3, and shall be paid the Contractor at the expiration of 60 days per RCW 39.12 and RCW 60.28, in the event no claims, as provided by law, have been filed against such funds; and provided further, that releases or certificates have been obtained from the State Department of Labor and Industries, from the State Department of Revenue, and the Employment Security Department and all other departments and agencies having jurisdiction over the activities of the Contractor. In the event such claims are filed, the Contractor shall be paid such retained percentages less an amount sufficient to pay any such claims, together with a sum sufficient to defray the cost of foreclosure action and to cover attorney fees as determined by the Owner.

Every person performing labor or furnishing supplies toward the completion of said improvement of work shall have a lien upon said monies so reserved; provided, that such notice of the lien of such claimant shall be given in the manner provided in Revised Code of Washington 39.08.030 and within the time provided in RCW 60.28 as now existing and in accordance with any amendments that may hereafter be made thereto.

No payment shall be made to the Contractor, however, until the Contractor and all subcontractors who have performed work shall have filed, with Procurement Services, the Labor and Industries executed Statement of Intent to Pay Prevailing Wage as required by Revised Code of Washington 39.12.040. Said Contractor and all subcontractors shall also keep accurate payroll records for three years from the date of acceptance as described in WAC 296-127-320 *Payroll.* A Contractor and all subcontractors shall, within ten days after it receives a written request, as defined by RCW 39.12.010(4) file a certified copy of the payroll records with the Owner. A contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.

10. **Indemnity**:

A. CONTRACTOR'S RESPONSIBILITY. Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the negligent performance of services by Contractor pursuant to this Agreement. This indemnification shall not include personal injury claims by outside third parties, except insofar as the claim relates to a latent condition not disclosed to the City.

1. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the Contractor, the City retains the right to participate in said suit.

11. **Ownership of Records and Documents – Public Disclosure:** All materials, writings and products produced by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Contract, the Contractor hereby further assigns all copyright interests in such materials, writings and products to the City. A copy may be retained by the Contractor. In the event the City receives a public record request for such materials, writings of products the City may, in its discretion, notify the Contractor of such request and withholds disclosure of such information for not less than five (5) business days to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney feels, or penalty assessment under Ch.42.56 RCW.

12. **Liquidated Damages:** The Owner and the contractor recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss of the Work is not completed within the times specified in paragraph (a) below, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. They also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the Owner Two Thousand Four Hundred Fifteen dollars ($2415) for each day that expires after the time specified in Article 2 (a) for Completion until the Work is fully complete and Owner issues notice of Final Completion.

(a) *Time of Performance: In accordance with the Specifications the Contractor further agrees to plan the Work and to prosecute it with diligence and shall commence the Work within ten (10) days after the date established in Notice to Proceed from the Owner and shall Finally Complete the Work within Ninety (90) calendar days from date of commencement in the Notice to Proceed.*

(b) *The Contractor expressly waives its immunity under industrial insurance, Title 51 RCW or any other similar state or federal workers' compensation or industrial insurance law. The parties stipulate and represent that this waiver has been mutually negotiated, is a material provision in this Agreement and that each indemnitee has relied upon such waiver.*

13. **Assignment:** This Contract is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party without express written authorization.

14. **Termination for Convenience:** The City, at its sole discretion, may terminate this Contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

14. **Bid Documents & Contract**: The complete Contract includes these parts: the Contract Form, Bidder's complete Proposal Form, Contract Plans, Contract Provisions, Standard Specifications, Standard Plans, Addenda, various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any). These parts complement each other in describing a complete Work. Any requirement in one part binds as if stated in all parts.

15. **Coordination of Contract Documents, Plans, Special Provisions, Specifications and Addenda**: As defined in section 1-04.2 in the 2024 Standard Specifications for Road, Bridge and Municipal Construction as published by the Washington State Department of Transportation as modified by the Special Provisions, provided that this contract form shall supersede in the event of conflict.

16. Force Majeure: If either party fails to fulfill its obligations hereunder (other than an obligation for the payment of money), when such failure is due to an act of God, or other circumstances beyond its reasonable control, including but not limited to fire, flood, civil commotion, riot, war (declared and undeclared), revolution, or embargoes, then said failure shall excuse both party's performance for the duration of such event and for such a time thereafter as is reasonable to enable the parties to resume performance under this Agreement, provided however, that in no event shall such time extend for a period of more than one hundred eighty (180) days

17. **Notices**: Whenever in this written Contract written notices are to be given or made, they may be sent to the following people at the addresses as shown herein unless a different address is designated in writing or delivered to the respective party hereto:

[SPACE INTENTIONALLY LEFT BLANK]

Owner: City of Washougal | **Contractor Name: Western United Civil Group LLC.**

1701 "C" Street | **Street Address: PO Box 236**

Washougal, WA 98671 | **City, State, Zip: Yacolt, WA 98675**

Original signed at Washougal, Washington, on the dates listed below.

CITY OF WASHOUGAL, a municipal corporation

By: ______________________________

City Manager, Date

Attest: ______________________________

City Clerk

CONTRACTOR: Western United Civil Group LLC.

____

By: (Proprietor, Partner, or corporate

President must sign)

(Title) ______________Date ______________

Approved as to form:

____

City Attorney, Date

BID PROPOSAL FORM

TO;	**City of Washougal**	**FROM:**	Western United Civil Group LLC
	1701 "C" Street		PO Box 236
	Washougal, WA 98671		Yacolt, WA 98675

The undersigned, as bidder, declares that we have examined all of the contract documents and that we will contract with the City of Washougal to do everything necessary to complete the work as outlined on the plans and specification for the 2024 Paving Improvements Project.

We acknowledge that the addenda numbers shown on this form have been delivered to us and have been examined as part of the contract documents. We agree that the bid Bond and the Qualification of Bidder shall form a part of this proposal.

Attached is a bid bond duly completed by a guaranty company authorized to carry on business in the State of Washington, in the amount of no less than five percent (5%) of the total amount of our proposal, or alternatively, there is attached a certified or cashier's check payable to the City of Washougal in the amount of no less than five percent (5%) of the total amount of our proposal.

If our BID is accepted, we agree to sign the contract form and to furnish the contract bond and the required evidences of insurance within ten (10) calendar days after receiving written notice of the award of contract.

We further agree, if our BID is accepted and a contract for performance of work is entered into with the City of Washougal, to so plan the work and to prosecute it with such diligence that all the work shall be completed within the time period stated in the contract. We understand that the City of Washougal reserves the right to reject any or all bids and to determine which proposal is, in the judgment of the City of Washougal, the lowest responsible bid, and which proposal, if any, should be accepted in the best interests of the City of Washougal and that the city of Washougal also reserves the right to waive any informalities in any proposal or bid.

We further state that we have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.

We propose to perform the work at the prices listed in the following bid schedules:

Notes:

(1) Bid items shall include all applicable fees and permits.
(2) For detailed description and/or explanation, see specifications.

Base Bid Schedule 'A' – Main Street Paving Improvements					
Item No.	Qty	Unit	Description / Manufacturer	Unit Price	Total Cost
1.	1	FA	Minor Change	**$10,000.00**	**$10,000.00**
2.	1	LS	Mobilization	$ $80,000.00	$ $80,000.00
3.	1	LS	Project Temporary Traffic Control	$ $60,000.00	$ $60,000.00
4.	660	SY	Roadway Excavation Incl. Haul	$ $70.00	$ $46,200.00
5.	10	CY	Boulder Excavation	$ $150.00	$ $1,500.00
6.	6100	SY	Planing Bituminous Pavement	$ $6.50	$ $39,650.00
7.	170	SY	Permanent Asphalt Restoration, Full Depth	$ $75.00	$ $12,750.00
8.	1620	TN	HMA Cl. 1/2 Inch, PG 70-22	$ $160.00	$ $259,200.00
9.	7	EA	Catch Basin Type 1	$ $4,500.00	$ $31,500.00
10.	3	EA	Adjust Catch Basin	$ $1,000.00	$ $3,000.00
11.	16	EA	Adjust Manhole	$ $1,000.00	$ $16,000.00
12.	21	EA	Adjust Valve or Box	$ $600.00	$ $12,600.00
13.	1	LS	Trench Safety System	$ $4,000.00	$ $4,000.00
14.	1	LS	Roadside Restoration	$ $10,000.00	$ $10,000.00
15.	410	LF	Cement Conc. Traffic Curb and Gutter	$ $113.00	$ $46,330.00
16.	150	LF	Cement Conc. Traffic Curb	$ $115.00	$ $17,250.00
17.	200	LF	Cement Conc. Pedestrian Curb	$ $84.00	$ $16,800.00
18.	400	SY	Cement Concrete Sidewalk and Curb Ramp	$ $220.00	$ $88,000.00
19.	220	SF	Detectable Warning Surfaces	$ $60.00	$ $13,200.00
20.	1	LS	Induction Loop Vehicle Detector Replacement	$ $7,500.00	$ $7,500.00
21.	7	EA	Remove and Reinstall Existing Signs	$ $1,050.00	$ $7,350.00
22.	2650	LF	Paint Line	$ $1.30	$ $3,445.00
23.	600	LF	Plastic 12-inch Wide Line	$ $20.00	$ $12,000.00
24.	2	EA	Plastic Shared Lane Marking	$ $550.00	$ $1,100.00
25.	1000	SF	Plastic Crosswalk Line	$ $18.00	$ $18,000.00
			TOTAL BID SCHEDULE A (Sum of Items 1 through 25)	$ $817,375.00	

ADDITIVE ALTERNATIVE A1 – PENDLETON WAY INTERSECTION					
Item No.	**Qty**	**Unit**	**Description / Manufacturer**	**Unit Price**	**Total Cost**
A1.1	1	LS	Project Temporary Traffic Control	$ 15,000.00	$ $15,000.00
A1.2	459	SY	Remove Existing Precast Concrete Pavers and Upper Subgrade, 6" Depth	$ 60.00	$ $27,540.00
A1.3	1	LS	Remove Existing Cement Concrete Impact Slabs	$ 20,000.00	$ $20,000.00
A1.4	175	TN	HMA Cl. 1/2 Inch, PG 70-22	$ 160.00	$ $28,000.00
A1.5	1	LS	Cement Concrete Intersection	$ 115,000.00	$ $115,000.00
A1.6	10	SY	Restore Precast Concrete Paver Section	$300.00	$3,000.00
A1.7	85	LF	Paint Line	$0.50	$42.50
			TOTAL ADDITIVE ALTERNATIVE 'A1' (Sum of Items A1.1 through A1.7)	$ 208,582.50	

ADDITIVE ALTERNATIVE A2 – NIGHT PAVING					
Item No.	**Qty**	**Unit**	**Description / Manufacturer**	**Unit Price**	**Total Cost**
A2.1	1	LS	Night Work for Pavement Milling and Paving	$ 15,500.00	$ 15,500.00
			TOTAL ADDITIVE ALTERNATIVE 'A2' (Sum of Items A2.1 through A2.1)	$ 15,500.00	

PREFERENCE #1: **TOTAL BASE BID SCHEDULE 'A' + ADDITIVE ALTERNATIVE 'A1' + ADDITIVE ALTERNATIVE 'A2'**	$ $1,041,457.50
PREFERENCE #2: **TOTAL BASE BID SCHEDULE 'A' + ADDITIVE ALTERNATIVE 'A1'**	$ $1,025,957.50
PREFERENCE #3: **TOTAL BASE BID SCHEDULE 'A' + ADDITIVE ALTERNATIVE 'A2'**	$ $832,875.00
PREFERENCE #4: **TOTAL BASE BID SCHEDULE 'A'**	$ $817,375.00

			Bid Schedule 'B' – 2024 Paving Improvements		
Item No.	Qty	Unit	Description / Manufacturer	Unit Price	Total Cost
1.	1	FA	Minor Change	**$10,000.00**	**$10,000.00**
2.	1	LS	Mobilization	$$20,000.00	$ $20,000.00
3.	1	LS	Project Temporary Traffic Control	$$15,000.00	$ $15,000.00
4.	2500	SY	Shaping and Compacting Subgrade for HMA Pavement	$$7.00	$ $17,500.00
5.	1050	SY	Subgrade Stabilization, 12-inch Depth	$$45.00	$ $47,250.00
6.	50	TON	Crushed Surfacing Top Course	$$80.00	$ $4,000.00
7.	4890	SY	Planing Bituminous Pavement	$$8.50	$ $41,565.00
8.	640	SY	Pavement Repair, 2-inch Depth	$$20.00	$ $12,800.00
9.	1100	TN	HMA Cl. 1/2 Inch, PG 58H-22	$$145.00	$ $159,500.00
10.	4	EA	Asphalt Concrete Speed Hump	$$5,500.00	$ $22,000.00
11.	2	EA	Adjust Manhole	$$1,000.00	$ $2,000.00
12.	8	EA	Adjust Valve or Box	$$600.00	$ $4,800.00
13.	1	LS	Roadside Restoration	$$5,200.00	$ $5,200.00
14.	360	LF	Extruded Curb	$$32.00	$ $11,520.00
15.	280	LF	Cement Conc. Traffic Curb	$$75.00	$ $21,000.00
16.	4	EA	Install New Sign, Post and Anchor	$$500.00	$ $2,000.00
17.	32	EA	Plastic Traffic Letter	$$180.00	$ $5,760.00
18.	8	EA	Plastic Speed Bump Symbol	$$450.00	$ $3,600.00
19.	60	LF	Plastic Stop Line	$$33.00	$ $1,980.00
			TOTAL BID SCHEDULE 'B' BID (Sum of Items 1 through 19)	$ $407,475.00	

Bid Schedule 'A' Preference Total		Bid Schedule 'B' Total		Bid Total
#1 $1,041,457.50	+	$407,475.00	=	$1,448,932.50
#2 $1,025,957.50	+	$407,475.00	=	$1,433,432.50
#3 $832,875.00	+	$407,475.00	=	$1,240,350.00
#4 $817,375.00	+	$407,475.00	=	$1,224,850.00

BIDDER acknowledges receipt of the following ADDENDUMS:

Addendum No*.	Addendum Receipt Date	Signed Acknowledgement
1	None	
2		
3		
4		

*if applicable

	07.18.2024
Authorized Official (Signature)	Date
Josiah Thomas	Owner
Print Name of Authorized Official	Title of Authorized Official
Western United Civil Group LLC	360.450.7378
Company Name	Telephone Number
PO Box 236	Yacolt, WA 98675
Address	City, State, Zip
Josiah@Westernucg.com	000-355630-00-6
Email Address	Employment Security Reference No.
WESTEUC798PR	604-721-623
WA State Contractors License Number	UBI #

Workshop Coversheet

BUSINESS OF THE CITY COUNCIL

City of Washougal, Washington

FOR AGENDA OF:
8/12/2024

SUBJECT:
Comcast Franchise Agreement Renewal

DEPT. OF ORIGIN:
Administration

REVIEWED AT:

TO BE RETURNED TO COUNCIL:
Yes

ATTACHMENTS:

- **Comcast Franchise Agreement Presentation.pdf**
- **Ordinance adopting Comcast Cable Franchise.docx**
- **Comcast_DRAFT_ Franchise Agmt FINAL 2024 (002).docx**

EXPENDITURE REQUIRED: **BUDGETED:** **APPROPRIATION REQUIRED:**

SUMMARY STATEMENT

RECOMMENDED ACTION

Comcast Franchise Agreement Renewal

08/12/2024 | Presented by Joe Walsh, Strategic Initiatives Manager

City of Washougal

What is a cable television franchise agreement?

A cable television franchise agreement is a legal agreement between the City and a cable provider that is required by federal law.

These franchise agreements allow the cable provider access to the City’s right of way to deliver its services while addressing issues such as public access channels, rates for customers, permitting, notice requirements, and payment of applicable costs and fees.

Agreement Highlights

- This agreement is for a 10-year term with an option for an additional 5 years.
- It is non-exclusive.
- Comcast pays a franchise fee of 5% of its gross revenues.
- Restoration of Public Rights of Way (Comcast to replace and restore at its own cost and expense)
- Trimming of trees and shrubbery (Comcast authorized to trim at its own expense)
- Customer service standards set by the FCC

Questions?

City of Washougal

ORDINANCE #XXXX

AN ORDINANCE OF THE CITY OF WASHOUGAL, WASHINGTON, GRANTING A NONEXCLUSIVE FRANCHISE TO COMCAST CABLE COMMUNICATIONS, LLC, FOR THE PURPOSE OF PROVIDING CABLE SERVICES, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City has a legitimate and necessary regulatory role to ensure the availability of cable communications service and reliability of cable systems in its jurisdiction, the availability of local programming (including public, educational and governmental access programming) and quality customer service; and

WHEREAS, diversity in cable service programming is an important policy goal and Comcast Cable Communications, LLC offers a wide range of programming services; and

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

NOW, THEREFORE, BE IT ORDAINED by the Council for the City of Washougal, Washington, as follows:

SECTION I

Grant of Franchise. The City of Washougal hereby grants a nonexclusive cable franchise to Comcast Cable Communications, LLC and authorizes the City Manager to execute the Cable Franchise Agreement between City of Washougal, Washington and Comcast Cable Communications, LLC," which is attached hereto as Exhibit A and by this reference fully incorporated herein.

SECTION II

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

SECTION III

Effective Date. This ordinance or an approved summary thereof consisting of its title shall be published in the City's official newspaper of record and shall take effect and be in full force five (5) days following its publication.

ADOPTED by the Council for the City of Washougal, Washington and requested by its Mayor at a regular meeting of said Council on the XXth day of **August, 2024.**

CITY OF WASHOUGAL

____

Mayor

ATTEST:

____

Finance Director / City Clerk

REQUESTED AS TO FORM:

____

City Attorney

Attachment A
To Ordinance No. XXXX

CABLE FRANCHISE AGREEMENT

BETWEEN

THE CITY OF WASHOUGAL, WASHINGTON

AND

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the City of Washougal, a duly organized City under the applicable laws of the State of Washington (the Local Franchising Authority or "LFA") and Comcast Cable Communications Management, LLC (the "Franchisee").

WHEREAS, the LFA wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend, and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, the LFA is a "franchising authority" in accordance with Title VI of the Communications Act *(see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises;

WHEREAS, Franchisee owns and operates a Cable System in the Franchise Area for the transmission of Cable Services and other services;

WHEREAS, the LFA has identified the future cable-related needs and interests of the community, has considered the financial, technical, and legal qualifications of Franchisee, and has determined that Franchisee's Cable System meets the cable related needs and interests of the community, in a full public proceeding affording due process to all parties;

WHEREAS, the LFA has found Franchisee to be financially, technically, and legally qualified to operate the Cable System;

WHEREAS, the LFA has determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, the LFA and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the LFA's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of the LFA pursuant to and consistent with Tite VI of the Communications Act (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **<u>DEFINITIONS</u>**

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1 *Affiliate:* Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, the Franchisee.

1.2 *Additional Service Area:* Shall mean any such portion of the Service Area added pursuant to Section 3.1.2 of this Agreement.

1.3 *Basic Service:* Any service tier, which includes the retransmission of local television broadcast signals and other programming provided by Franchisee.

l .4 *Cable Service* or *Cable Services:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6).

1.5 *Cable System* or *System:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7).

1.6 *Channel:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4).

1.7 *Communications Act:* The Communications Act of 1934, as amended.

1.8 *Control:* The ability to exercise *de facto* or *de Jure* control over day-to-day policies and operations or the management of Franchise's affairs.

1.9 *FCC:* The United States Federal Communications Commission or successor governmental entity thereto.

1.10 *Force Majeure* An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, pandemics, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's Cable System is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.11 *Franchise Area:* The incorporated area (entire existing territorial limits) of the LFA and such additional areas as may be included by annexation into the corporate (territorial) limits of the LFA during the term of this Franchise.

1.12 *Franchisee:* Comcast Communications Management, LLC. and its lawful and permitted successors, assigns and transferees.

1.13 *Gross Revenues:* means, and shall be construed broadly to include, all revenues derived directly or indirectly by Franchisee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Franchisee's Cable System to provide Cable Services within the Franchise Area. Franchisee will calculate gross revenues in accordance with General Accepted Accounting Principles ("GAAP"). 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;
- fees for service calls;
- fees for additional outlets;
- fees paid to Franchisee 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 in this Section;
- late fees, convenience fees, administrative fees and other multiservice 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;
- Revenue from the lease of the Cable System to provide Cable Services in the Franchise Area.
- Payments or other consideration received from programmers for carriage of programming on the Cable System and recognized as revenue under GAAP.

1.13.1 "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Franchisee's Cable System subscribers within the Franchise Area and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Additionally, Franchisee agrees that Gross Revenues subject to franchise fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications and Comcast EffecTV or their successors or other affiliated advertising agencies 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.

1.13.2 "Gross Revenues" shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;

- any taxes/or fees on services furnished by Grantee which are imposed directly on any Subscriber or user by the State, Local Franchise Authority, or other governmental unit and which are collected by Grantee on behalf of said governmental unit
- Public, Educational and Governmental (PEG) Fees;
- Launch fees and marketing co-op fees; and
- unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

1.13.3 For the purposes of this definition, if the Cable Service is bundled or integrated functionally with other services, capabilities, or applications, the Franchise Fee shall be applied only to the Gross Revenue attributable to the Cable Service. If Franchisee bundles, integrates, ties, or combines Cable Services with nonvideo services creating a bundled package so that Subscribers pay a single fee for more than one class of service or receive a discount on video services, Gross Revenues shall be determined based on an equal allocation of the package discount, that is, the total price of the individual classes of service at advertised rates compared to the package price, among all classes of service comprising the package. If Grantee does not offer any component of the bundled package separately, Grantee shall declare a stated retail value for each component based on reasonable comparable prices for the product or service for the purpose of determining Franchise Fees based on the package discount described above. It is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value.

1.13.4 Franchisee reserves the right to change the allocation methodologies set forth in this Section 1.13 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"). Franchisee will document any changes to such allocation methodologies and Grantee will explain and document the required changes to the Local Franchise Authority as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.28(E) below. If new Cable Service revenue streams develop from Grantee's operation of its Cable System within the Franchise Area, those new revenue streams shall be included within Gross Revenues, unless the parties agree otherwise.

1.13.5 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 GAAP as promulgated and defined by the FASB, EITF and/or the SEC. Notwithstanding the forgoing, the Local Franchise Authority reserves its right to challenge Franchisee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.14 *Local Franchise Authority (LFA):* The City of Washougal or the lawful successor, transferee, or assignee thereof.

1.15 *Normal Operating Conditions:* Those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. *See* 47 C.F.R. § 76.309(c)(4)(ii).

1.16 *Person:* An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.17 Public Rights-of-Way: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the LFA.

1.18 Service Area: All portions of the Franchise Area where Franchisee's Cable Service is being offered including any Additional Service areas.

1.19 Service Interruption: The loss of picture or sound on one or more cable channels.

1.20 Subscriber: A Person within the Service Area who lawfully receives Cable Service over Franchisee's Cable System with Franchisee's express permission.

1.21 Transfer of the Franchise:

1.21.1 Any transaction in which: an ownership or other interest in excess of 50% in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that control of Franchisee is transferred; or the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

1.21.2 However, notwithstanding Sub-subsection 1.21.1 above, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

1.22 Video Programming: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20).

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

2.1. Grant of Authority: Subject to the terms and conditions of this Agreement and Title VI of the Communications Act, the LFA hereby grants the Franchisee the right to construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2. Term: This Franchise shall become effective on ______________ (the "Effective Date"). The term of this Franchise shall be for ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein. Franchisee shall have the right, at its sole discretion, to extend the Franchise by a single five (5) year term by providing written notice to the LFA at least ninety (90) days prior to the expiration of the initial term.

2.3. Grant Not Exclusive: The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and LFA reserves the right to grant other franchises for similar uses or for other uses of the Public

Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System.

2.4. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to FCC Orders and the Communications Act.

2.5. *No Waiver:*

2.5.1. The failure of LFA on one or more occasions to exercise a right or to require compliance or performance under this Franchise, Title VI of the Communications Act or any other applicable State or Federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the LFA, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.5.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse LFA from performance, unless such right or performance has been specifically waived in writing.

2.6. *Construction of Agreement:*

2.6.1 The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.6.2 Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.6.3 Should any change to state law have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modifications shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.7. *Police Powers:* Nothing in the Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of LFA's police powers. However, if the reasonable, necessary and lawful exercise of LFA's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modifications shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

3. **PROVISION OF CABLE SERVICE**

3.1. Service Area:

3.1.1. Service Area: Franchisee shall offer Cable Service to Subscribers in residential areas within the Franchise Area, subject to the density requirements set forth below, except: (A) for periods of Force Majeure; (B) for periods of delay caused by LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of- way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in areas, developments or buildings where Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; and (F) in developments or buildings that Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density requirements set forth in Sub-section 3.1.1.1.

3.1.1.1. Density Requirement: Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than fifteen (15) occupied residential dwelling units per one-quarter cable mile as measured in strand footage from the nearest technically feasible point on the active Cable System trunk or feeder line. Should, through new construction, an area within the Service Area meet the density requirements after the Effective Date of this Franchise, Franchisee shall provide Cable Service to such area within twelve (12) months of receiving notice from LFA that the density requirements have been met.

3.1.2. Additional Service Areas: Except as may be required by Section 3.1.1.1, Franchisee may, but shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any Renewals thereof. If Franchisee desires to add Additional Service Areas within the Franchise Area, Franchisee shall notify LFA in writing of such Additional Service Area at least ten (10) days prior to providing Cable Services in such areas.

3.2 Availability of Cable Service: Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee provides Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred twenty-five (125) feet from a serviceable location on the Cable System trunk or distribution lines. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred twenty-five (125) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

4. SYSTEM OPERATION

4.1 The parties recognize that the jurisdiction of the LFA extends only to the Cable System to the extent used to provide Cable Services within the Franchise Area. The jurisdiction of the LFA over telecommunications and information facilities and services is restricted by federal and state law, and the LFA does not and will not assert jurisdiction over Franchisee's Cable System in contravention of those limitations.

4.2 *Conditions of Street Occupancy.*

4.2.1. *New Grades or Lines*. If the grades or lines of any Public Right of Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then if necessary the Franchisee shall, upon reasonable advance written notice from the LFA (which shall not be less than ninety (90) days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Right of Way for the purpose of defraying the cost of any of the foregoing, the LFA shall notify Franchisee of such funding and make available such funds to the Franchisee.

4.2.2. *Relocation at request of Third Party*. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the LFA to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than ninety (90) days advance written notice to arrange for such temporary relocation.

4.2.3. *Restoration of Public Rights of Way*. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Right of Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Right of Way to a condition reasonably comparable to the condition of the Public Right of Way existing immediately prior to the disturbance.

4.2.4. *Safety Requirements.* The Franchisee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area. Franchisee's policy is for cable repair and installation personnel to use company-marked vehicles when conducting normal business activities. Pursuant to this policy, Franchisee will ensure that all company and sub- contractor vehicles bear company identification when conducting business activities in the franchise area.

4.2.5. *Trimming of Trees and Shrubbery.* The Franchisee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. The Franchisee shall be responsible for any damage to property caused by such trimming.

4.2.6. Aerial and Underground Construction. If all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

4.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Rights of Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Franchisee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Rights of Way.

5. **SYSTEM FACILITIES**

5.1. System Characteristics: The parties acknowledge that Franchisee's Cable System meets or exceeds the following requirements:

5.1.1. The System was constructed with an initial analog and digital carrier passband between 50 and 750 MHz.

5.1.2. The System is designed as an active two-way plant for subscriber interaction, if any, required for selection or use of Cable Service.

5.1.3 The System has protection against outages due to power failures, so that back-up power is available at a minimum for at least twenty-four (24) hours at each headend, and conforms to industry standards, and is in no event rated for less than four (4) hours, at each power supply site.

5.1.4 Interconnection. Franchisee shall not be required to Interconnect with any other cable system owned and operated by Franchisee or an affiliate of Franchisee but will not restrict any other cable system from connecting to a LFA designated point of origin at which PEG programming can be received, if applicable and technically feasible without undue hardship on Franchisee. The other cable system shall bear the reasonable, actual cost of Interconnection.

5.2 Emergency Alert System:

5.2.1 Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

6. **FRANCHISE REVIEW.**

Within sixty (60) days of the sixth (6^{th}) anniversary of the effective date of this Franchise, or one of the subsequent anniversaries of this agreement, the LFA may, but is not required to, conduct a limited review of the Franchise. The purpose of this public review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in light of new developments in cable technology together with related developments in cable law and regulation, and community needs and interests, with consideration of all financial, technological, and operational impacts that may affect the Grantee, including access capital support. Both the LFA and Grantee agree to make a full and good faith effort to participate in the review.

If, after completion of the review, the LFA and Grantee agree that the public interest will be served by modifying certain franchise obligations and extending the term of the Franchise, the Franchising Authority, with the expressed agreement of the Grantee, shall modify the obligations and extend the term of the Franchise accordingly.

7. **FRANCHISE FEES**

7.1 Payment to LFA: Franchisee shall pay to the LFA a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within 90 days following the close of the calendar year for which such payments were applicable.

Any franchise fee payment not received by LFA on or before the due date shall be subject to interest at the then-current rate set forth in RCW 19.52.020, which as of the effective date of this Agreement is twelve percent (12%) per annum from the due date to the date that such payment is made.

7.2 Supporting Information: Each Franchise fee payment shall be accompanied by a brief report (which may be delivered separately) prepared by a representative of Franchisee showing the basis for the computation.

7.3 Limitation on Franchise Fee Actions: The parties agree that the period of limitation for recovery of any Franchise fee payable hereunder shall be three (3) years from the date on which payment by Franchisee is due.

7.4 Audit of Franchise Fee Payments:

7.4.1. LFA, or its designee, may conduct an audit or other inquiry in relation to payments made by Franchisee no more than once every three (3) years during the Term. As a part of the audit process, LFA or LFA's designee may inspect Franchisee's books of accounts relative to LFA at any time during regular business hours and after thirty (30) calendar days prior written notice.

7.4.2. All records reasonably necessary for such audit shall be made available by Franchisee in a mutually agreeable format and location. Franchisee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of a written request. Franchisee may provide such responses within a reasonable time after the expiration of the response period above so long as Franchisee has made a good faith effort to procure any such tardy response.

7.4.3. If the results of any audit indicate that Franchisee (i) paid the correct franchise fee, (ii) overpaid the franchise fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by four percent (4%) or less, then LFA shall pay the costs of the audit. If the results of the audit indicate Franchisee underpaid the franchise fee by more than four percent (4%), then Franchisee shall pay the reasonable, documented, third-party costs of the audit, which costs shall be limited to Five Thousand Dollars ($5,000). If the results of the audit indicate an overpayment or underpayment of franchise fees, the parties agree that such overpayment or underpayment shall be returned or offset against future payments if applicable, to the proper party within sixty (60) days, unless the audit findings are in dispute; provided, however, that Franchisee shall be required to remit underpayments to LFA together with interest at the rate specified in Subsection 7.1.

7.4.4. Any auditor employed by LFA shall not be compensated on a success-based formula, e.g., payment based on a percentage on underpayment, if any. Franchisee shall be provided a reasonable opportunity to review the results of any audit and to dispute any audit results which indicate an underpayment to LFA.

7.5 *Bundled Services:* If Cable Services subject to the Franchise fee required under this Article 7 are provided to Subscribers in conjunction with other services, the Franchise fee shall be applied only to the value of the Cable Services Gross Revenues, as defined in Section 1.13 above.

8. **CUSTOMER SERVICE**

Grantee shall comply in all respects with the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended from time to time.

9. **REPORTS AND RECORDS**

9.1 *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the LFA shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a non-disruptive basis, as are reasonably necessary *to* ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise, which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. The LFA shall treat any information disclosed by Franchisee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

9.2. *Records Required:* Franchisee shall at all times maintain:

9.2.1. Records of all written complaints sent by LFA for a period of ninety (90) days after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, except for selection of programming and related matters, including complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.2.2. Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.2.3. Records of service calls for repair and maintenance for a period of ninety (90) days after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved; and

9.2.4. Records of installation/reconnection and requests for service extension for a period of three years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended.

10. **INSURANCE AND INDEMNIFICATION**

10.1 *Insurance:*

10.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.1.1.1. Commercial General Liability Insurance in the amount of two million dollars ($2,000,000) combined single limit for property damage and bodily injury, and two and a half million dollars ($2,500,000) in the aggregate.

10.1.1.2. Automobile Liability Insurance in the amount of one million dollars ($2,000,000) combined single limit for bodily injury and property damage coverage.

10.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of Washington.

10.1.1.4. Employers' Liability Insurance in the following amounts:

(A) Bodily Injury by Accident: $100,000; and
(B) Bodily Injury by Disease: $100,000 employee limit; and
(C) Bodily Injury by Disease: $1,000,000 policy limit.

10.1.2. The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance.

10.1.3. Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

10.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of Washington, with an A.M. Best Financial Strength rating of A- or better.

10.1.5. Upon written request, Franchisee shall deliver to LFA Certificates of Insurance showing evidence of the required coverage.

10.2. Indemnification:

10.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend the LFA, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System, provided that the LFA shall give Franchisee written notice of its obligation to indemnify the LFA within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA, for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with EAS, or the distribution of any Cable Service over the Cable System.

10.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 10.2.1, Franchisee shall provide the defense of any claims brought against the LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the LFA, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the LFA and the LFA does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the LFA shall in no event exceed the amount of such settlement.

10.2.3. LFA shall hold harmless and defend Franchisee from and against and shall be responsible for damages, liability or claims resulting from or arising out of the willful misconduct or negligence of the LFA.

10.2.4. The LFA shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the LFA for which the LFA is legally responsible, subject to any and all defenses and limitations of liability provided by law. The

Franchisee shall not be required to indemnify the LFA for acts of the LFA which constitute willful misconduct or negligence, on the part of the LFA, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

11. **<u>TRANSFER OF FRANCHISE</u>**

Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or otherwise for transactions otherwise excluded under Section 1.21 above.

12. **<u>RENEWAL OF FRANCHISE</u>**

12.1. The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

12.2. In addition to the procedures set forth in said Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. The LFA further agrees that such assessments shall be provided to Franchisee promptly so that Franchisee has adequate time to submit a proposal under 47 U.S.C 546 and complete renewal of the Franchise prior to expiration of its term.

12.3. Notwithstanding anything to the contrary set forth herein, Franchisee and the LFA agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the LFA and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the LFA may grant a renewal thereof.

12.4. Franchisee and the LFA consider the terms set forth in this Article 12 to be consistent with the express provisions of 47 U.S.C. 546.

13. **<u>ENFORCEMENT AND TERMINATION OF FRANCHISE</u>**

13.l. *Performance Bond:* Within forty-five (45) days following the effective date of this Agreement, Franchisee agrees to provide LFA a performance bond for the faithful performance by Franchisee of all material provisions of this Agreement. Franchisee shall maintain the performance bond at $25,000 throughout the term of this Agreement; provided that, LFA shall require all other cable operators in the Franchise Area to provide competitively equitable security in any renewal or initial granting of such franchises after the effective date of this Agreement. LFA agrees to sign all documents necessary to release performance bond within a reasonable period of time when longer required under this Agreement.

13.2. Notice of Violation: If at any time the LFA believes that Franchisee has not complied with the terms of the Franchise, the LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem in a reasonable time, the LFA shall then notify Franchisee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article, the "Noncompliance Notice").

13.3. Franchisee's Right to Cure or Respond: Franchisee shall have thirty (30) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such thirty (30) day period, initiate reasonable steps to remedy such noncompliance and notify the LFA of the steps being taken and the date by which cure is projected to be completed. Upon cure of any noncompliance, LFA shall provide written confirmation that such cure has been affected.

13.4 Public Hearing. The LFA shall schedule a public hearing if the LFA seeks to continue its investigation into the alleged noncompliance in the event that: (1) Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (2) in the event that Franchisee has not remedied the alleged noncompliance within thirty (30) days or the date projected pursuant to Section 13.3(iii) above. The LFA shall provide Franchisee at least thirty (30) business days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

13.5 Enforcement: Subject to applicable federal and state law, in the event the LFA, after the public hearing set forth in Section 13.3, determines that Franchisee is in default of any material provision of this Franchise, the LFA may:

13.5.1 Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

13.5.2 Commence an action at law for monetary damages or seek other equitable relief; or

13.5.3 In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.5.

13.6 Revocation: Should the LFA seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 13.3., the LFA shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the material noncompliance. The Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the LFA has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a second public hearing. The LFA shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise

13.6.1 At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the LFA, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

13.6.2 Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the LFA shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Franchisee. The LFA shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to affect any cure. If the LFA determines that the Franchise shall be revoked, the LFA shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate.

13.6.3 The LFA may, at its sole discretion, take any lawful action which it deems appropriate to enforce the LFA's rights under the Franchise in lieu of revocation of the Franchise.

14. **MISCELLANEOUS PROVISIONS**

14.1. Actions of Parties: In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed, or conditioned.

14.2. Binding Acceptance: This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3. Preemption: In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the LFA.

14.4. Force Majeure: Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

14.4.1. Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to enforcement proceedings including revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by the LFA and/or Subscribers.

14.5. Notices: Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. General updates may be communicated electronically as appropriate and agreed to by both parties. Each party may change its designee by providing written notice to the other party.

14.5.1. Notices to Franchisee shall be mailed to:

Comcast Cable
Attention: Government Affairs
11308 SW 68th Pkwy
Tigard, OR 97223

14.5.2. Notices to the LFA shall be mailed to:

City Clerk
City of Washougal
1701 C Street
Washougal, WA 98671

14.6. Entire Agreement: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the LFA, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

14.7. Amendments: Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.8. Captions: The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.9. Severability: If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.10. Recitals: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.11. Modification: This Franchise shall not be modified except by written instrument executed by both parties.

14.12. Independent Review: Agreement. LFA and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

14.13 Competitive Equity

14.13.1 The Grantee acknowledges and agrees that the LFA reserves the right to grant one (l) or more additional franchises or other similar lawful authorization to provide Cable Services within the Service Area; provided, the LFA agrees that, within ninety (90) days of the Grantee's request, it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, or provide relief from existing material terms or conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include but are not limited to: Franchise Fees; insurance; System build-out requirements; security instruments; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

14.13.2 Notwithstanding any provision to the contrary, at any time that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of Video Programming within the Franchise Area without a franchise or other similar lawful authorization granted by the LFA, then Grantee may seek modification as per Sub-section 14.14.1 above, or in the event the parties are not able to reach agreement to modify the franchise as per Sub-section 14.13.1 above, then the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date six (6) months from the first day of the month following the date of Grantee's notice.

14.14 EG Programming

The LFA agrees that the Educational and Governmental Access programming provided on Grantee's Cable System as part of the Clark County regional lineup adequately meets the needs of the community. Grantee agrees to continue all regional Access Channels across the Franchise Area throughout the term of this Franchise, provided that the Channels remain programmed by the applicable Access provider(s).

AGREED TO THIS ____________ DAY OF ________________, 2024.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

City of Washougal, Washington

By: ____

Name: ____

Title: ____

Date: ____

Comcast Cable Communications Management, LLC

By: ____

Name: ____

Title: ____

Date: ____

BUSINESS OF THE CITY COUNCIL

City of Washougal, Washington

FOR AGENDA OF:
8/12/2024

SUBJECT:
Emergency Utility Assistance Program Update

DEPT. OF ORIGIN:
Finance

REVIEWED AT:

TO BE RETURNED TO COUNCIL:
Yes

ATTACHMENTS:

- **Emergency Utility Assistance Program Update**

EXPENDITURE REQUIRED: **BUDGETED:** **APPROPRIATION REQUIRED:**

SUMMARY STATEMENT

RECOMMENDED ACTION

Emergency Utility Assistance Program Update

8/12/2024 | Presented by Daniel Layer

City of Washougal

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Agenda

- Background
- Emergency Utility Assistance (UA) Program:
  - Eligibility
  - Credit
  - Fund Balance
- Recommendations
- Next Steps & Questions

City of Washougal

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Background

- Low Income Assistance Fund (631) was established within the 2013 Adopted Budget using $95,000 from utility reserves
- Resolution No. 1072 established the Emergency Utility Assistance Program on August 12, 2013
- Resolution No. 1119 established the future funding sources of the program effective June 27, 2016

Emergency UA Program: Eligibility

- Household is billed by the city for water services as a residential, single-family account
- Household has been verified by the city:
  - To have annual income (all members) that meets eligibility standards for the Low-Income Home Energy Assistance Program (LIHEAP) ~ $45,000 for a family of four in 2024
  - To not receive subsidized housing assistance
- Household has received disconnection notice from city

Emergency UA Program: Credit

- Maximum of $250 to be applied towards the delinquent bill
- The household may receive such a credit only once in a twelve (12) calendar month period

- 2023 19 approved applications totaling $4,541.57
- 2024 to date 11 approved applications totaling $2,618.08

- Average bill $293.06 (7/31/2024 billing cycle)

City of Washougal

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Emergency UA Program: Fund Balance

- 2024 Revenues (2023 penalties):
  - Water ~ $2,000
  - Sewer ~ $2,000
  - Stormwater ~ $1,000
- Fund Balance as of 7/31/2024 ~ $6,880

City of Washougal

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Recommendations

- Change time limitation to apply from only once in a twelve (12) calendar month period to only once in a six (6) calendar month period
- Increase the transfers of penalty revenues from each utility from 5% to 10% to fund the program

City of Washougal

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Next Steps & Questions

- Resolution to modify the Emergency UA Program will be placed under New Business on 8/26/2024 Council Agenda for approval
- Questions?

City of Washougal

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Workshop Coversheet

BUSINESS OF THE CITY COUNCIL

City of Washougal, Washington

FOR AGENDA OF:
8/12/2024

SUBJECT:
Update Student Representative Guidelines

DEPT. OF ORIGIN:
Administration

REVIEWED AT:

TO BE RETURNED TO COUNCIL:
Yes

ATTACHMENTS:

- **Student Representative Guidelines 2024 Draft.pdf**

EXPENDITURE REQUIRED: **BUDGETED:** **APPROPRIATION REQUIRED:**

SUMMARY STATEMENT

RECOMMENDED ACTION

Adopt the Updated Student Representative Guidelines through the August 12, 2024 council agenda.

City Council Student Representative Guidelines
~~Adopted August 12, 2019~~
~~To Be Effective for the 2019-2020 School Year~~

~~Selection Committee~~Community Engagement Committee

The Student Representative and Alternate are selected by ~~a five-member Student Representative Selection Committee~~Community Engagement Committee ~~comprised of the Mayor, one Councilmember appointed by Council, the incumbent Student Representative and two Washougal School District educators selected by the WHS Principal (can include the Principal).~~ And vetted by the Washougal School District to ensure the applicants are viable candidates.

Eligibility Criteria

- The Student Representative shall be a Junior or Senior. The Alternate shall be a Junior or Senior.
- The Alternate may apply to become the Representative the next year pursuant to the normal process.
- The Student Representative and Alternate shall reside within the boundary of the Washougal School District or Washougal city limits.
- The Student Representative shall meet general academic eligibility requirements as prescribed by the District.

Selection Process

- The selection process will occur each year between ~~March-May.~~May and June. Term will begin in September.
- Interested students shall complete a formal application on forms developed and provided by Washougal City. ~~and District staff~~.
- The ~~Selection Committee~~Community Engagement Committee will determine which applicants to interview as finalists pursuant to guidelines adopted by the Committee. The Committee may establish other screening and selection processes, which may include a public presentation.
- After interviewing the finalists and conducting its screening and selection process, the ~~Selection Committee~~Community Engagement Committee shall select the Alternate and Representative.

Term

- The term shall commence the ~~second~~ first Council meeting in ~~June~~ September for one year and may be extended for a second year~~.~~

Selection Process

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- The Representative shall attend workshop and~~each~~ regular Council meeting and will be provided an agenda and supporting documentation in advance of each meeting so they may be informed and able to participate in Council discussions. The Alternate is encouraged to attend ~~all~~ Workshops and Council meetings as an audience member and shall attend at least one meeting per month. The Alternate will serve as Representative in the absence of the Representative.

- The Student Representative shall be advisory in nature; participation in discussion is encouraged.

- The Student Representative and Alternate are expected to contact the City Clerk or Deputy City Clerk for an excused absence.

- The Student Representative and Alternate will not be permitted to vote on the matters before the Council.

- Executive Sessions are not open to the public, therefore, the Student Representative and Alternate will be excused from this portion of the meeting.

- Attendance at ~~workshops,~~ town halls, and other Council activities is encouraged but not required.

- The Student Representative and Alternate are not expected to stay at meetings past 10:00 pm.

- The Student Representative and Alternate are encouraged to keep their respective student body apprised of issues of interest to the youth community to obtain broad based opinions on issues before the Council.

Removal

- The Student Representative or Alternate shall be removed for failure to meet any eligibility criteria. Exceptions may be made at the discretion of the ~~Selection Committee~~Community Engagement Committee~~.~~

- The Student Representative or Alternate may be removed for cause by the Community Engagement Committee.~~Selection Committee.~~

- In the event of the removal of the Representative, the Alternate shall become the Representative, and the ~~Selection Committee~~Community Engagement Committee shall solicit applications for and select a new Alternate. An Alternate who becomes Representative pursuant to this section may apply to serve as Representative in their Senior year. In the event of the removal of the Alternate, the Community Engagement Committee ~~Selection Committee~~ shall solicit applications for and select a new Alternate.