

Next Ord: 1995-21
Next Res: 1077-21

CITY COUNCIL AGENDA
October 13, 2021
6:00 PM
Sedro-Woolley Municipal Building
Council Chambers
325 Metcalf Street

- a. Call to Order**
- b. Pledge of Allegiance**
- c. Roll Call**
- d. Approval of Agenda**
- e. Consent Agenda**

Note: Items on the Consent Agenda are considered routine in nature and may be adopted by the Council by a single motion, unless any Councilmember wishes an item to be removed. The Council on the Regular Agenda will consider any item so removed after the Consent Agenda.

- 1. Finance - Claim Checks and Payroll Checks
- 2. Professional Services Agreement- West Coast Consultants
- 3. Professional Service Agreement - Rhay Design, LLC
- 4. Authorization to Advertise for Bids - SR20/SR9-Township Intersection Improvements Project
- 5. 2022 Interlocal Agreement with Skagit County Public Health - Senior Services

f. Introduction of Special Guests and Presentations

- 1. Recognition and a thank you to Steve & Brenda Thompson & Thompson's Greenhouse.
- 2. Proclamation: 'National Prescription Drug Take Back Day'
- 3. Proclamation: Lions Club White Cane Day

g. Staff Reports

h. Councilmember and Mayor's Report

i. Proclamation(s)

j. Public Comments

Written comments or questions will be accepted by letter or via email at finance@ci.sedro-woolley.wa.us.

k. Public Hearing(s)

l. Unfinished Business

m. New Business

- 1. **1st Read** - Ordinance 1993-21: Franchise Renewal with Comcast Cable Communications Management, LLC

n. Information Only Items

- 1. Fire Department Monthly Data - September 2021

o. Good of the Order

p. Executive Session

q. Adjournment

There may be an Executive Session during or following the meeting.

Next Meeting(s) Council Meeting October 27th, 2021

The City of Sedro-Woolley assures that no person shall on the grounds of race, color, national origin, sex, age, disability, income, or Limited English Proficiency (LEP) as provided by Title VI of the Civil Right Act of 1964, Title II of the American with Disabilities Act of 1990, and related nondiscrimination authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any City of Sedro-Woolley sponsored program or activity. The City of Sedro-Woolley will make every effort to ensure non-discrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

Topic: Sedro-Woolley City Council Meeting

Join Zoom Meeting

<https://zoom.us/j/91786850179?pwd=Vys0Y29XalZmQTRmemJBM2txVDIUQT09>

Meeting ID: 917 8685 0179

Passcode: 091845

OR One tap mobile

+12532158782,,91786850179#,,,,*091845# US (Tacoma)

+16699006833,,91786850179#,,,,*091845# US (San Jose)

OR Dial by your location

+1 253 215 8782 US (Tacoma)

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

Meeting ID: 917 8685 0179

Passcode: 091845



Agenda
Item No.

Date: October 13, 2021

Subject: Finance - Claim Checks and Payroll
Checks

FROM:

Debbie Burton, Finance Director

RECOMMENDED ACTION:

Review information

ISSUE:

BACKGROUND/SUMMARY INFORMATION:

Claim Checks #196240 to #196299 & Payroll Checks #60488 to #60501

FISCAL IMPACT, IF APPROPRIATE:

Claim Checks in the amount of \$186,692.72 & Payroll Checks in the amount of \$425,161.88.

ATTACHMENTS:

1. Claims - Check Register for 10-13-2021

CHECK REGISTER

City Of Sedro-Woolley

Time: 13:58:51 Date: 10/06/2021

10/13/2021 To: 10/13/2021

Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
9129	10/13/2021	Claims	2	196240	All-Phase Electric	1,073.52	
					101 - 576 80 48 016 - City Hall	734.46	
					101 - 576 80 48 016 - City Hall	339.06	
9130	10/13/2021	Claims	2	196241	Aramark Uniform & Career Apparel Group	27.98	
					401 - 535 80 49 000 - Laundry	14.18	
					102 - 536 20 49 030 - Misc-laundry	1.04	
					412 - 537 80 49 000 - Misc-Laundry	3.97	
					103 - 542 30 49 000 - Misc-Laundry	8.79	
9131	10/13/2021	Claims	2	196242	Baker Septic Tank Pumping Inc.	77.66	
					101 - 576 80 47 090 - Portable Toilets	77.66	
9132	10/13/2021	Claims	2	196243	Birch Equipment Co Inc	1,395.15	
					101 - 576 80 45 001 - Equipment Rental	388.38	
					102 - 594 36 61 050 - Northern State Cemetery Capit	1,006.77	
9133	10/13/2021	Claims	2	196244	C.Hlth130, dba Cardinal Health 112 LLC	163.22	
					001 - 522 21 31 000 - Operating Supplies - Medical	163.22	
9134	10/13/2021	Claims	2	196245	Carl's Towing	499.10	
					001 - 521 20 41 001 - Professional Services	199.64	
					001 - 521 20 41 001 - Professional Services	299.46	
9135	10/13/2021	Claims	2	196246	ChemsearchFE	198.39	
					412 - 537 80 31 000 - Operating Supplies	198.39	
9136	10/13/2021	Claims	2	196247	Tim Reph Cleaner Guys	351.39	00 1152 DP - 1152 STATE ROUTE 20
					425 - 343 10 00 000 - Stormwater Fees	-1,000.00	
					412 - 343 70 00 000 - Garbage/Solid Waste Fees	69.74	
					412 - 343 70 00 010 - Utility Tax Collected	61.63	
					412 - 343 73 01 002 - Rolloff Dump Fees	403.00	
					412 - 343 74 00 000 - Equipment Rental	114.24	
9137	10/13/2021	Claims	2	196248	Comcast	414.92	
					001 - 518 80 42 021 - Internet Services	414.92	
9138	10/13/2021	Claims	2	196249	Donald Coggins	60.00	
					001 - 513 10 31 000 - Supplies	60.00	
9139	10/13/2021	Claims	2	196250	E & E Lumber, Inc.	838.88	
					412 - 537 80 31 000 - Operating Supplies	6.18	
					103 - 542 30 31 000 - Operating Supplies	39.54	
					103 - 542 30 31 000 - Operating Supplies	60.30	
					101 - 576 80 31 000 - Operating Sup - Tesarik Park	28.11	
					101 - 576 80 35 010 - Safety Equipment	68.32	
					101 - 576 80 35 010 - Safety Equipment	26.03	
					101 - 576 80 35 010 - Safety Equipment	26.03	
					101 - 576 80 48 007 - Bingham Park	24.98	
					101 - 576 80 48 007 - Bingham Park	20.08	
					101 - 576 80 48 015 - Library	19.75	
					101 - 576 80 48 015 - Library	519.56	
9140	10/13/2021	Claims	2	196251	Edge Analytical Inc	76.00	
					401 - 535 80 41 000 - Professional Services	52.00	
					401 - 535 80 41 000 - Professional Services	24.00	
9141	10/13/2021	Claims	2	196252	Emerald Services, Inc.	458.38	
					412 - 537 60 47 011 - Site Recycling Disposal	458.38	
9142	10/13/2021	Claims	2	196253	Fab-Tech	238.70	
					101 - 576 80 48 021 - Equipment	238.70	
9143	10/13/2021	Claims	2	196254	Fastenal Company	1,295.43	

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City Of Sedro-Woolley

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Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
					401 - 535 80 31 010 - Operating Supplies	89.36	
					401 - 535 80 31 010 - Operating Supplies	24.77	
					401 - 535 80 31 010 - Operating Supplies	43.03	
					412 - 537 80 31 000 - Operating Supplies	333.50	
					412 - 537 80 31 000 - Operating Supplies	256.20	
					412 - 537 80 31 000 - Operating Supplies	173.16	
					103 - 542 30 35 010 - Safety Equipment	163.09	
					103 - 542 30 35 010 - Safety Equipment	212.32	
9144	10/13/2021	Claims	2	196255	FirstNET/AT&T Mobility	45.79	
					001 - 518 80 42 020 - Telephone	45.79	
9145	10/13/2021	Claims	2	196256	Fremarek, Inc dba	913.57	
					401 - 535 80 31 010 - Operating Supplies	83.56	
					412 - 537 80 31 000 - Operating Supplies	210.49	
					412 - 537 80 31 000 - Operating Supplies	122.58	
					412 - 537 80 31 000 - Operating Supplies	496.94	
9146	10/13/2021	Claims	2	196257	Liquid Measure, Inc dba Furrow Pump	21.71	
					401 - 535 50 48 050 - Maint Of General Equip	21.71	
9147	10/13/2021	Claims	2	196258	Humane Society Of Skagit	372.00	
					001 - 521 20 41 021 - Humane Society	372.00	
9148	10/13/2021	Claims	2	196259	LeadsOnline LLC	1,528.00	
					001 - 521 20 41 001 - Professional Services	1,528.00	
9149	10/13/2021	Claims	2	196260	Les Schwab Tire Center	1,111.36	
					001 - 522 20 48 000 - Repairs/Maint-Equip	1,111.36	
9150	10/13/2021	Claims	2	196261	Loggers And Contractors	53.22	
					101 - 576 80 48 021 - Equipment	53.22	
9151	10/13/2021	Claims	2	196262	Preview Properties Moe Investments Properties LLC	257.68	JO 0436 00 - 436 CARTER; JO 0436 00 - 436 CARTER
					425 - 343 10 00 000 - Stormwater Fees	-61.84	
					425 - 343 10 00 000 - Stormwater Fees	-0.52	
					425 - 343 10 00 010 - Utility Tax Collected	-0.05	
					401 - 343 50 00 000 - Sewer Service Charges	-19.02	
					401 - 343 50 00 010 - Utility Tax Collected	-2.00	
					412 - 343 70 00 000 - Garbage/Solid Waste Fees	-169.75	
					412 - 343 70 00 000 - Garbage/Solid Waste Fees	-4.07	
					412 - 343 70 00 010 - Utility Tax Collected	-0.43	
9152	10/13/2021	Claims	2	196263	Motor Trucks International	542.20	
					425 - 531 50 48 000 - Repairs/Maintenance	302.99	
					412 - 537 80 31 000 - Operating Supplies	37.70	
					103 - 542 30 48 010 - Repair/Maintenance-Equip	201.51	
9153	10/13/2021	Claims	2	196264	Walter E Nelson Co. of N. WA	434.65	
					401 - 535 80 31 010 - Operating Supplies	138.35	
					101 - 576 80 31 006 - Operating Sup - City Hall	296.30	
9154	10/13/2021	Claims	2	196265	Nelson Dist, Inc. dba Nelson Petroleum	3,980.60	
					412 - 537 80 32 010 - Fuel Additive - DEF	340.43	
					501 - 548 30 31 000 - Operating Supplies	3,640.17	
9155	10/13/2021	Claims	2	196266	North Hill Resources Inc	403.23	
					102 - 536 20 48 050 - Repair/Maint-Northern State C	173.03	
					412 - 537 60 47 011 - Site Recycling Disposal	184.63	
					103 - 542 30 31 000 - Operating Supplies	45.57	
9156	10/13/2021	Claims	2	196267	Oliver Hammer, Inc	368.90	

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Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
			101 - 576 80 35 010 - Safety Equipment			368.90	
9157	10/13/2021	Claims	2	196268	PB Parent Holdco, LP dba	1,331.70	
			501 - 548 30 31 000 - Operating Supplies			893.33	
			101 - 576 80 48 004 - Community Center			211.05	
			101 - 576 80 48 005 - Senior Center			227.32	
9158	10/13/2021	Claims	2	196269	Pape' Group, dba Pape' Machinery Inc.	1,245.17	
			103 - 542 30 48 010 - Repair/Maintenance-Equip			281.70	
			101 - 576 80 48 021 - Equipment			394.89	
			101 - 576 80 48 021 - Equipment			70.97	
			101 - 576 80 48 021 - Equipment			325.49	
			101 - 576 80 48 021 - Equipment			123.73	
			101 - 576 80 48 021 - Equipment			48.39	
9159	10/13/2021	Claims	2	196270	ThompsonGas, LLC dba Propane Northwest	713.41	
			001 - 522 45 49 000 - Training Facilities			126.67	
			001 - 522 45 49 000 - Training Facilities			586.74	
9160	10/13/2021	Claims	2	196271	Protek, Inc. dba	157.03	
			001 - 521 20 48 010 - Repair & Maint - Auto			76.70	
			001 - 522 20 48 000 - Repairs/Maint-Equip			80.33	
9161	10/13/2021	Claims	2	196272	Pumptech Inc	3,765.00	
			401 - 594 35 64 401 - Machinery & Equip			3,765.00	
9162	10/13/2021	Claims	2	196273	Quiring Monuments Inc	180.00	
			102 - 536 20 34 000 - Liners			180.00	
9163	10/13/2021	Claims	2	196274	Red's Mobile 24-Hour Truck & Equip Repai	1,597.36	
			401 - 535 50 48 040 - Maintenance Of Vehicles			327.58	
			412 - 537 50 48 000 - Repairs/maint-equip			157.33	
			412 - 537 50 48 000 - Repairs/maint-equip			1,112.45	
9164	10/13/2021	Claims	2	196275	Colleen Rhay, dba Rhay Design, LLC	2,000.00	
			001 - 513 10 42 000 - Communication			2,000.00	
9165	10/13/2021	Claims	2	196276	Solid Waste Syst Inc dba SWS Equipment	978.88	
			412 - 537 50 48 000 - Repairs/maint-equip			978.88	
9166	10/13/2021	Claims	2	196277	Sedro-Woolley Auto Parts Inc	945.12	
			001 - 521 20 48 010 - Repair & Maint - Auto			57.46	
			412 - 537 50 48 000 - Repairs/maint-equip			190.95	
			412 - 537 50 48 000 - Repairs/maint-equip			-39.79	
			412 - 537 50 48 000 - Repairs/maint-equip			-23.87	
			412 - 537 50 48 000 - Repairs/maint-equip			11.20	
			412 - 537 50 48 000 - Repairs/maint-equip			100.48	
			412 - 537 50 48 000 - Repairs/maint-equip			53.31	
			412 - 537 50 48 000 - Repairs/maint-equip			83.48	
			412 - 537 80 31 000 - Operating Supplies			18.11	
			412 - 537 80 31 000 - Operating Supplies			6.50	
			412 - 537 80 31 000 - Operating Supplies			195.14	
			103 - 542 30 31 000 - Operating Supplies			20.70	
			103 - 542 30 48 010 - Repair/Maintenance-Equip			244.13	
			101 - 576 80 48 000 - Repairs/Maintenance			27.32	
9167	10/13/2021	Claims	2	196278	Sedro-Woolley Volunteer	18,771.25	
			001 - 522 20 11 010 - Salaries-Volunteers			18,771.25	
9168	10/13/2021	Claims	2	196279	Skagit 911	43,506.00	
			001 - 521 20 41 055 - 911 Contracted Services			38,981.00	

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Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
			001 - 522 20 41 020 - Central Dispatch			4,525.00	
9169	10/13/2021	Claims	2	196280	Skagit Cnty Auditor	100.00	
			631 - 389 90 01 631 - Unapplied Cash - Suspense			-100.00	
9170	10/13/2021	Claims	2	196281	Skagit Cnty Treasurer	56,951.27	
			114 - 523 60 41 022 - Jail Sales Tax Pass Through 2/1			56,868.22	
			635 - 589 30 05 635 - County Crime Victim Witness F			83.05	
9171	10/13/2021	Claims	2	196282	Skagit Farmers Supply	643.47	
			401 - 535 80 31 010 - Operating Supplies			20.37	
			401 - 535 80 31 010 - Operating Supplies			67.41	
			401 - 535 80 31 010 - Operating Supplies			35.33	
			401 - 535 80 31 010 - Operating Supplies			20.60	
			401 - 535 80 31 010 - Operating Supplies			326.49	
			412 - 537 80 31 000 - Operating Supplies			36.48	
			412 - 537 80 31 000 - Operating Supplies			14.08	
			101 - 576 80 31 006 - Operating Sup - City Hall			11.92	
			101 - 576 80 48 021 - Equipment			67.41	
			101 - 576 80 48 025 - Olmsted Park			43.38	
9172	10/13/2021	Claims	2	196283	PNG Media LLC, dba Skagit Publishing	380.00	
			101 - 576 80 41 001 - Advertising			380.00	
9173	10/13/2021	Claims	2	196284	Skagit Regional Health	92.00	
			103 - 542 30 49 040 - CDL Endorcement Fees			92.00	
9174	10/13/2021	Claims	2	196285	Skagit Valley Tulip Festival	100.00	
			108 - 557 30 41 012 - Tulip Festival			100.00	
9175	10/13/2021	Claims	2	196286	Sonsray Machinery	401.66	
			103 - 542 30 48 010 - Repair/Maintenance-Equip			-1,234.62	
			103 - 542 30 48 010 - Repair/Maintenance-Equip			1,636.28	
9176	10/13/2021	Claims	2	196287	Streuli Public Affairs LLC	2,000.00	
			001 - 513 10 41 001 - Professional Services-HR			2,000.00	
9177	10/13/2021	Claims	2	196288	Teleflex LLC	2,010.50	
			001 - 522 21 31 000 - Operating Supplies - Medical			2,010.50	
9178	10/13/2021	Claims	2	196289	Fifth Third Bank TrojanUV	2,290.87	
			401 - 535 50 48 050 - Maint Of General Equip			2,290.87	
9179	10/13/2021	Claims	2	196290	US Mower	8,646.19	
			425 - 531 50 48 000 - Repairs/Maintenance			8,646.19	
9180	10/13/2021	Claims	2	196291	HD Supp Facil. Maint, dba USA Blue Book	121.15	
			401 - 535 50 48 010 - Maintenance Of Lines			121.15	
9181	10/13/2021	Claims	2	196292	WA St Criminal Justice	3,404.00	
			001 - 521 40 49 000 - Tuition/Registration			3,404.00	
9182	10/13/2021	Claims	2	196293	WA St Dept of Ecology	589.81	
			505 - 594 35 60 010 - Capital Expenditures - WWTP L			294.90	
			505 - 594 48 60 010 - Capital Expenditures -PW Bulc			294.91	
9183	10/13/2021	Claims	2	196294	WA St Off of Minority & Women's	100.00	
			001 - 595 10 49 000 - Dues/Memberships			100.00	
9184	10/13/2021	Claims	2	196295	WA St Off of Treasurer	5,303.82	
			635 - 586 30 00 635 - State Court Fees Remittance			5,303.82	
9185	10/13/2021	Claims	2	196296	Woods Acquisition Corp	327.03	
			401 - 535 80 31 010 - Operating Supplies			207.26	

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City Of Sedro-Woolley

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Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
			102 - 536 20 35 000 - Small Tools/Minor Equip			43.84	
			412 - 537 50 48 000 - Repairs/maint-equip			35.42	
			101 - 576 80 48 010 - Office Equip			40.51	
9186	10/13/2021	Claims	2	196297	World Kinect Energy Services, dba	9,767.01	
			001 - 521 20 32 000 - Auto Fuel			3,081.90	
			001 - 522 20 32 000 - Auto Fuel/Diesel			72.60	
			425 - 531 50 32 000 - Vehicle Fuel			123.44	
			425 - 531 50 32 000 - Vehicle Fuel			72.30	
			425 - 531 50 32 000 - Vehicle Fuel			135.05	
			425 - 531 50 32 000 - Vehicle Fuel			100.26	
			401 - 535 80 32 000 - Auto Fuel/Diesel			102.15	
			401 - 535 80 32 000 - Auto Fuel/Diesel			22.03	
			401 - 535 80 32 000 - Auto Fuel/Diesel			159.50	
			102 - 536 20 32 000 - Auto Fuel/Diesel			108.02	
			412 - 537 80 32 000 - Auto Fuel/Diesel			1,634.08	
			412 - 537 80 32 000 - Auto Fuel/Diesel			507.13	
			412 - 537 80 32 000 - Auto Fuel/Diesel			2,205.19	
			412 - 537 80 32 000 - Auto Fuel/Diesel			113.38	
			103 - 542 30 32 000 - Auto Fuel/Diesel			55.91	
			103 - 542 30 32 000 - Auto Fuel/Diesel			20.39	
			103 - 542 30 32 000 - Auto Fuel/Diesel			472.20	
			103 - 542 30 32 000 - Auto Fuel/Diesel			161.65	
			103 - 542 30 32 000 - Auto Fuel/Diesel			198.29	
			103 - 542 30 32 000 - Auto Fuel/Diesel			256.82	
			101 - 576 80 32 000 - Auto Fuel/Diesel			122.58	
			101 - 576 80 32 000 - Auto Fuel/Diesel			42.14	
9187	10/13/2021	Claims	2	196298	NW Fiber LLC, dba Ziply Fiber	1,034.51	
			001 - 521 20 42 020 - Telephone			130.44	
			001 - 521 20 42 020 - Telephone			111.91	
			401 - 535 80 42 020 - Telephone			401.65	
			102 - 536 20 42 020 - Telephone			125.69	
			101 - 576 80 47 070 - City Hall			264.82	
9188	10/13/2021	Claims	2	196299	Mickey Zitkovich	36.88	
			001 - 512 50 31 000 - Supplies			36.88	
			001 Current Expense Fund			80,347.77	
			101 Parks & Facilities Fund			5,631.46	
			102 Cemetery Fund			1,638.39	
			103 Street Fund			2,936.57	
			108 Lodging Tax Fund			100.00	
			114 Law Enforcement Sales Tax			56,868.22	
			401 Sewer Operations Fund			8,379.37	
			412 Solid Waste Operations Fund			9,738.12	
			425 Stormwater Operations			10,442.64	
			501 Equipment Replacement Fund			4,533.50	
			505 Public Works Facility Fund			589.81	
			631 Suspense Fund			100.00	
			635 Custodial Fund			5,386.87	
							Claims:
						186,692.72	186,692.72
			* Transaction Has Mixed Revenue And Expense Accounts			186,692.72	

CHECK REGISTER

City Of Sedro-Woolley

Time: 13:58:51 Date: 10/06/2021

10/13/2021 To: 10/13/2021

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Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
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CERTIFICATION: I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described, or that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the City of Sedro Woolley, and that I am authorized to authenticate and certify to said claim.

_____ Finance Director	_____ Date
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_____ Finance Committee Member	_____ Date
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_____ Finance Committee Member	_____ Date
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_____ Finance Committee Member	_____ Date
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Agenda
Item No.

Date:

October 13, 2021

Subject:

Professional Services Agreement- West
Coast Consultants

FROM:

Frank Wagner, Fire Chief

RECOMMENDED ACTION:

Recommend that City Council approve the Professional Services Agreement with West Coast Consultants to allow for third party Plan Reviews.

ISSUE:

With increased development and plan reviews we are in need of flexibility to prevent processes from being delayed.

BACKGROUND/SUMMARY INFORMATION:

We utilized a third party contractor for these services years ago, but in recent years the Building Department, Tony Niskanen was handling these. Until Building Department is fully staffed, and/or Fire Department gets personnel certified this is a great way to transition and maintain current workload with adding future flexibility as needed in future.

FISCAL IMPACT, IF APPROPRIATE:

The cost of plan reviews that will be sent to West Coast Consultants will be invoiced to the individual developers, with little fiscal impact to the City.

ATTACHMENTS:

1. West Coast Consultants, Inc.



AGREEMENT FOR PROFESSIONAL FIRE PLAN REVIEW SERVICES

This Agreement is made and entered into as of the 7th day of September, 2021, by and between City of *City of Sedro-Woolley*, ("*Jurisdiction*") and *West Coast Code Consultants, Inc. (WC³)*, ("*Consultant*").

WHEREAS, *Consultant* is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

WHEREAS, *Consultant* is willing to render the professional services described herein on the following terms and conditions.

NOW, THEREFORE, the parties agree as follows:

1. **SCOPE OF SERVICES:** *Consultant* shall perform the services described in Exhibit "A" which is attached hereto and incorporated herein by reference. *Consultant* shall provide said services at the time, place, and in the manner specified in Exhibit "A", Scope of Services, attached hereto and incorporated by this reference, subject to the direction of the *Jurisdiction*.
2. **TIME OF PERFORMANCE:** The services of *Consultant* are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the *Jurisdiction*. *Consultant* shall not be responsible for delays caused by circumstances beyond its reasonable control.
3. **COMPENSATION:** Compensation to be paid to *Consultant* shall be in accordance with the Schedule of Fees set forth in Exhibit "B", Schedule of Fees, which is attached hereto and incorporated by this reference.
4. **METHOD OF PAYMENT:** *Consultant* shall submit monthly billings to *Jurisdiction* describing the work performed during the preceding month. *Consultant's* bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and a description of any reimbursable expenditures. *Jurisdiction* shall pay *Consultant* no later than 30 days after approval of the monthly invoice by *Jurisdiction* staff.
5. **OWNERSHIP OF DOCUMENTS:** All plans, studies, documents and other writings prepared by and for *Consultant*, its officers, employees, agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the *Jurisdiction* upon payment to *Consultant* for such work, and the *Jurisdiction* shall have the sole right to use such materials in its discretion without further compensation to *Consultant* or to any other party. *Consultant* shall, at *Consultant's* expense, provide such reports, plans, studies, documents, and other writings to *Jurisdiction* upon written request.



6. **INDEPENDENT CONTRACTOR:** It is understood that *Consultant*, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the *Jurisdiction*. *Consultant* shall obtain no rights to retirement benefits or other benefits which accrue to the *Jurisdiction* employees, and *Consultant* hereby expressly waives any claim it may have to any such rights.
7. **INTEREST OF CONSULTANT:** *Consultant* (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of *Consultant's* services hereunder. *Consultant* further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.
8. **PROFESSIONAL ABILITY OF CONSULTANT:** *Jurisdiction* has relied upon the professional training and ability of *Consultant* to perform the services hereunder as a material inducement to enter into this Agreement. *Consultant* shall, therefore, provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by *Consultant* under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in *Consultant's* field of expertise.
9. **INDEMNITY:** *Consultant* agrees to defend, indemnify and hold harmless the *Jurisdiction*, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, including attorney's fees, direct or indirect (including any and all costs and expenses in connection therein), arising out of the performance of this Agreement to the extent caused by the negligent acts, errors, or omissions of *Consultant*. *Jurisdiction* also agrees to defend, indemnify and hold harmless the *Consultant*, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, including attorney's fees, direct or indirect (including any and all costs and expenses in connection therein), arising out of the performance of this Agreement to the extent caused by the negligent acts, errors, or omissions of the *Jurisdiction*.
10. **INSURANCE:** *Consultant*, at *Consultant's* own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies with insurers possessing a Best's rating of no less than A-:
 - a. **Workers' Compensation Coverage:** *Consultant* shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees. In addition, *Consultant* shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the *State of Washington* for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the *Jurisdiction* at least thirty (30) days prior to such change.



- b. **General Liability Coverage:** *Consultant* shall maintain commercial general liability insurance in an amount not less than **two million dollars (\$2,000,000)** per occurrence and a **four million (\$4,000,000)** annual aggregate limit. The policy shall protect *Jurisdiction*, *Consultant* and any subcontractor from claims for damages for personal injury and from claims for property damage that may arise from *Consultant's* operations under this Agreement.
 - c. **Automobile Liability Coverage:** *Consultant* shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the *Consultant* arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than **one million dollars (\$1,000,000)** combined single limit for each occurrence.
 - d. **Professional Liability Coverage:** *Consultant* shall maintain professional errors and omissions liability for protection against claims alleging negligent acts, errors or omissions which may arise from *Consultant's* operations under this Agreement, whether such operations are by the *Consultant* or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than **two million dollars (\$2,000,000)** per occurrence or **four million dollars (\$4,000,000)** on a claims-made annual aggregate basis.
 - e. **Certificates of Insurance and Endorsements:** When requested, *Consultant* shall provide certificates of insurance with original endorsements to *Jurisdiction* as evidence of the insurance coverage required herein.
11. **COMPLIANCE WITH LAWS:** *Consultant* shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.
12. **LICENSES:** *Consultant* represents and warrants to *Jurisdiction* that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of *Consultant* to practice its profession. *Consultant* represents and warrants to *Jurisdiction* that *Consultant* shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of *Consultant* to practice its profession. *Consultant* shall maintain a *Jurisdiction* business license if required.
13. **CONTROLLING LAW VENUE:** This Agreement and all matters relating to it shall be governed by the laws of the *State of Washington* and any action brought relating to this Agreement shall be held exclusively in a state court in the appropriate Jurisdiction.



14. **WRITTEN NOTIFICATION:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc., shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to Jurisdiction: **City of Sedro-Woolley**
Chief Frank Wagner
325 Metcalf Street
Sedro-Woolley, WA 98284
Telephone: (360) 855-2252
Email: fwagner@sedro-woolley.gov

If to Consultant: **West Coast Code Consultants, Inc.**
Scott W. Adams
908 West Gordon Avenue - Suite #3
Layton, UT 84041
Telephone (435) 901-2891
Email : scotta@wc-3.com

15. **CONSULTANT'S BOOKS AND RECORDS:**

- a. **Consultant** shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to **Jurisdiction** for a minimum period of **three (3) years**, or for any longer period required by law, from the date of final payment to consultant to this Agreement.
- b. **Consultant** shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of **three (3) years**, or for any longer period required by law, from the date of termination or completion of this Agreement.
- c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the **Jurisdiction** Manager, **Jurisdiction** Attorney, **Jurisdiction** Auditor or a designated representative of these officers. Copies of such documents shall be provided to the **Jurisdiction** for inspection at **Jurisdiction** when it is practical to do so. Otherwise unless an alternative is mutually agreed upon, the records shall be available at **Consultant's** address indicated for receipt of notices in this Agreement.



16. **ENTIRE AGREEMENT:** This Agreement constitutes the complete and exclusive statement of Agreement between the *Jurisdiction* and *Consultant*. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.
17. **AMENDMENTS:** This Agreement may be modified or amended only by a written document executed by both *Consultant* and *Jurisdiction* and approved as to form by the *Jurisdiction* Attorney.
18. **WAIVER:** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
19. **LITIGATION EXPENSES AND ATTORNEY'S FEES:** If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorney's fees.
20. **EXECUTION:** This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
21. **ASSIGNMENT and SUBCONTRACTING:** The parties recognize that a substantial inducement to *Jurisdiction* for entering into this Agreement is the professional reputation, experience and competence of *Consultant*. Assignments of any or all rights, duties or obligations of the *Consultant* under this Agreement will be permitted only with the express consent of the *Jurisdiction*. *Consultant* shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the *Jurisdiction*. If *Jurisdiction* consents to such subcontract, *Consultant* shall be fully responsible to *Jurisdiction* for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between *Jurisdiction* and subcontractor nor shall it create any obligation on the part of the *Jurisdiction* to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.
22. **TERMINATION:** This Agreement may be terminated immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, *Consultant* shall be entitled to compensation for services performed up to the effective date of termination.



908 West Gordon Avenue - Suite #3
Layton, Utah 84041
OFFICE: (801) 547-8133
FAX: (801) 820-9089

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

JURISDICTION:

Jurisdiction Manager

CONSULTANT:

By:

Chris Kimball - Vice President / WC³

APPROVED AS TO FORM:

Jurisdiction Attorney

ATTEST:

Jurisdiction Clerk

Attachments: **Exhibit A - Scope of Services**
Exhibit B - Schedule of Fees



EXHIBIT “A”

SCOPE OF SERVICES

A. GENERAL

- a. **Comment Lists and Plans Delivery:** When plan reviews result in items that need to be addressed, a written comment letter will be provided which refers to specific building code, fire code or fire and life safety requirements. Comment lists are sent out to recipients designated by the *Jurisdiction* via email, FAX, and/or overnight delivery. Depending on the *Jurisdiction* preferred process, *Consultant* will transmit plan review comments and coordinate re-checks directly with the permit applicant/design team, or through the *Jurisdiction*. Once all comments have been addressed the completed construction documents will be returned to the *Jurisdiction* for final approval.
- b. **Turn-Around Schedules:** For most project types initial plan reviews are completed within approximately ten (10) working days from the date the plans are received by *Consultant*. Large, or unusually complex plan reviews may take up to fifteen (15) working days to complete. We are committed to completing plan reviews as prompt or sooner than the *Jurisdiction* own schedule and work hard to accommodate any turn-around schedule desired by the *Jurisdiction*.
- c. **Electronic Plan Review:** *Consultant* has more than ten (10) years of experience providing electronic plan reviews to many of its clients. Electronic plan review services incorporate “green” technology by reducing paper usage and eliminating shipping costs.

B. FIRE PLAN REVIEWS

- a. **Qualifications:** Persons(s) performing fire & life safety reviews, or reviews of fire protection systems, must possess and maintain a fire protection engineering license or appropriate fire plan review certifications from the International Code Council (ICC) or equivalent national or state agencies.
- b. **Plan Review:** *Consultant* shall provide complete fire and life safety plan reviews and fire protection systems to ensure general compliance to the fire and life safety provisions of the building, fire, mechanical and electrical codes as well as to their referenced standards, including any applicable state and local amendments.



EXHIBIT “B”

SCHEDULE OF FEES

A. GENERAL

- a. Invoices for work performed during the previous month will be sent out at the beginning of each month, unless requested otherwise by the *Jurisdiction*. Payment must be received within thirty (30) days of receipt of the invoice.
- b. The fees noted herein are good for the first two (2) years of the Agreement and may be renewed when mutually agreed upon.
- c. Reimbursable expenses will be billed at the actual rate incurred. These expenses include special equipment rentals, any public transportation costs, bridge tolls, parking, special equipment rentals, special shipping, or printing requirements.
- d. Expedited reviews, which are performed in half the time noted in Exhibit “A”, will be billed at of 150% of the fees listed herein contingent upon the availability of staff to perform these expedited reviews.

B. FIRE PLAN REVIEW SERVICES

- a. All fire plan reviews will be billed at the hourly rates noted in the “Table of Hourly Billing Rates” listed below. Expedited reviews, which are performed in half the time noted in Exhibit “A”, will be billed at of 150% of the above noted fees contingent upon the availability of staff to perform these expedited reviews. The fees noted herein are good for the first two (2) years of the Agreement and may be renewed when mutually agreed upon.

TABLE OF HOURLY BILLING RATES

<u>CLASSIFICATION</u>	<u>HOURLY BILLING RATE</u>
Fire Plans Examiner	\$120.00
Permit Technician/Clerical Support	\$55.00
Expedited Reviews	150% of Above Listed Rates



Agenda
Item No.

Date:

October 13, 2021

Subject:

Professional Service Agreement - Rhay
Design, LLC

FROM:

Doug Merriman, Ph.D, City Administrator

RECOMMENDED ACTION:

A motion to approve the professional service agreement with Rhay Design, LLC and authorize the Mayor to sign.

ISSUE:

Should the City contract with Rhay Design, LLC for presentation and editing work on the City Scene Magazine?

BACKGROUND/SUMMARY INFORMATION:

This professional services agreement is for Graphic Design services (publication,, design, and layout) for the Sedro-Woolley City Scene online magazine. Rhay Design, LLC provides template design, content layout, imagery placement, and other services required to publish the electronic magazine.

The term of the agreement is January 1, 2022 through December 31, 2022.

FISCAL IMPACT, IF APPROPRIATE:

The charges for service are outlined on Exhibit A to the agreement. The agreement contains a not to exceed value of \$20,000.

ATTACHMENTS:

1. Professional Service Agreement - Rhay Design, LLC

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF SEDRO-WOOLLEY, WASHINGTON
AND RHAY DESIGN, LLC**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Sedro-Woolley, Washington, a Washington State municipal corporation ("City"), and Rhay Design, LLC.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, the parties hereto agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to provide the City professional design services as described in Article II. The general terms and conditions of the relationship between the City and the Consultant are specified in this Agreement.

ARTICLE II. SCOPE OF SERVICES

The Scope of Services is attached hereto as **Exhibit "A"** and incorporated herein by this reference ("Scope of Services"). All services necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant's profession.

ARTICLE III. OBLIGATIONS OF THE CONSULTANT

III.1 MINOR CHANGES IN SCOPE. The Consultant shall accept minor changes, amendments, or revision in the detail of the Scope of Services as may be required by the City when such changes will not have any impact on the service costs or proposed delivery schedule. Extra work, if any, involving substantial changes and/or changes in cost or schedules will be addressed as follows:

Extra Work. The City may desire to have the Consultant perform work or render services in connection with each project in addition to or other than work provided for by the expressed intent of the Scope of Services in the scope of services. Such work will be considered as extra work and will be specified in a written supplement to the scope of services, to be signed by both parties, which will set forth the nature and the scope thereof. All proposals for extra work or services shall be prepared by the Consultant at no cost to the City. Work under a supplemental agreement shall not proceed until executed in writing by the parties.

111.2 WORK PRODUCT AND DOCUMENTS. The Scope of Work deliverables, and all other documents produced under this Agreement shall be furnished by the Consultant to the City, and upon completion of the work shall become the property of the City. Provided however, the Consultant may retain one copy of the work product and documents for its records. Provided further, all Images and rights relating to the deliverables referenced in the exhibit

In the event that the Consultant shall default on this Agreement or in the event that this Agreement shall be terminated prior to its completion as herein provided, all work product of the Consultant, along

with a summary of work as of the date of default or termination, shall become the property of the City. Upon request, the Consultant shall tender the work product and summary to the City. Tender of said work product shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost to the City.

City continues to own any and all proprietary information it shares with Designer during the term of this Agreement for the purposes of the Agreement. Designer has no rights to this proprietary information and may not use it except to complete the Graphic Design services. Upon completion of described projects, City will own the final graphic design Deliverable (PDF) and project native files.

Consultant will not be held liable for reuse of documents produced under this Agreement or modifications thereof for any purpose other than those authorized under this Agreement without the written authorization of Consultant.

111.3 TERM. The term of this Agreement shall commence on January 1, 2022 and shall terminate at midnight December 31, 2022. The parties may extend the term of this Agreement by written mutual agreement.

111.4 NONASSIGNABLE. The services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

111.5 EMPLOYMENT.

a. The term "employee" or "employees" as used herein shall mean any officers, agents, or employee of the of the Consultant.

b. Any and all employees of the Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of any said employees while so engaged, and any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Consultant or its employees while so engaged in any of the work or services provided herein shall be the sole obligation of the Consultant.

c. Consultant represents, unless otherwise indicated below, that all employees of Consultant that will provide any of the work under this Agreement have not ever been retired from a Washington State retirement system, including but not limited to Teacher (TRS), School District (SERS), Public Employee (PERS), Public Safety (PSERS), law enforcement and fire fighters (LEOFF), Washington State Patrol (WSPRS), Judicial Retirement System (JRS), or otherwise. *(Please indicate No or Yes below)*

_____ No employees supplying work have ever been retired from a Washington state retirement system.

_____ Yes. employees supplying work have been retired from a Washington state retirement system.

In the event the Consultant indicates "no", but an employee in fact was a retiree of a Washington State retirement system, and because of the misrepresentation the City is required to defend a claim

by the Washington State retirement system, or to make contributions for or on account of the employee, or reimbursement to the Washington State retirement system for benefits paid, Consultant hereby agrees to save, indemnify, defend and hold City harmless from and against all expenses and costs, including reasonable attorney's fees incurred in defending the claim of the Washington State retirement system and from all contributions paid or required to be paid, and for all reimbursement required to the Washington State retirement system. In the event Consultant affirms that an employee providing work has ever retired from a Washington State retirement system, said employee shall be identified by Consultant, and such retirees shall provide City with all information required by City to report the employment with Consultant to the Department of Retirement Services of the State of Washington.

111.6 INDEMNITY.

a. Indemnification / Hold Harmless. Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Consultant's liability shall be limited to the total amount of fees paid to the Consultant for the Graphic Design Services (publication project) or Extra Work project that caused the liability event.

b. Public Records Requests.
In addition to Paragraph N.3 b, when the City provides the Consultant with notice of a public records request per Paragraph IV. 3 b, Consultant agrees to save, hold harmless, indemnify and defend the City its officers, agents, employees and elected officials from and against all claims, lawsuits, fees, penalties and costs resulting from the consultant's violation of the Public Records Act RCW 42.56, or consultant's failure to produce public records as required under the Public Records Act.

c. The provisions of this section **111.6** shall survive the expiration or termination of this agreement.

111.7 DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION. The Consultant agrees to comply with equal opportunity employment and not to discriminate against City, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training, rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. The Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the City, and further that the Consultant will be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have been terminated and that recurrence of such action is unlikely.

111.8 UNFAIR EMPLOYMENT PRACTICES. During the performance of this Agreement, the Consultant agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.

111.9 LEGAL RELATIONS. The Consultant shall comply with all federal, state and local laws and ordinances applicable to work to be done under this Agreement. The Consultant represents that the firm and all employees assigned to work on any City project are in full compliance with the statutes of the State of Washington governing activities to be performed and that all personnel to be assigned to the work required under this Agreement are fully qualified-and properly licensed to perform the work to which they will be assigned. This Agreement shall be interpreted and construed in accordance with the laws of Washington. Venue for any litigation commenced relating to this Agreement shall be in Sedro-Woolley County Superior Court.

III.10 INDEPENDENT CONTRACTOR.

a. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants and agrees that his status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195 or as hereafter amended. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

b. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement, in keeping with Consultant's status as an independent contractor. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same within a reasonable period of time after receiving notification from the city.

c. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

d. Prior to commencement of work, the Consultant shall obtain a business license from the City.

III.11 CONFLICTS OF INTEREST. The Consultant agrees to and shall notify the City of any potential conflicts of interest in Consultant's City base and shall obtain written permission from the City prior to providing services to third parties where a conflict or potential conflict of interest is apparent. If the City determines in its sole discretion that a conflict is irreconcilable, the City reserves the right to terminate this Agreement.

111.12 CITY CONFIDENCES. The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate or advertise to third parties without specific prior written consent from the City in each instance, the confidences of the City or any information regarding the City or services provided to the City.

111.13 SUBCONTRACTORS/SUBCONSULTANTS.

a. The Consultant shall not subcontract any of the work or services to be performed pursuant to this agreement.

ARTICLE IV. OBLIGATIONS OF THE CITY

IV. 1 PAYMENTS.

a. The Consultant shall be paid by the City for services rendered under this Agreement as described in the Scope of Services and as provided in this section. In no event shall the compensation paid to Consultant under this Agreement exceed \$20,000.00 without the written agreement of the Consultant and the City. Such payment shall be full compensation for work performed and services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work. In the event the City elects to expand the scope of services from that set forth in Exhibit A, the City shall pay Consultant a mutually agreed amount.

b. The Consultant shall submit an invoice to the City for services performed at completion of the project in a format acceptable to the City. The Consultant shall maintain time and expense records and provide them to the City upon request.

c. The City will pay timely submitted and approved invoices received before the 10th of each month within thirty (30) days of receipt.

IV.2 CITY APPROVAL. Notwithstanding the Consultant's status as an independent contractor, results of the work performed pursuant to this Agreement must meet the approval of the City, which shall not be unreasonably withheld if work has been completed in compliance with the Scope of Services and City requirements.

IV.3 MAINTENANCE/INSPECTION OF RECORDS.

a. The Consultant shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

b. Public Records

The parties agree that this Agreement and records related to the performance of the Agreement are with limited exception, public records subject to disclosure under the Public Records Act RCW 42.56. Further, in the event of a Public Records Request to the City, the City may provide the Consultant with a copy of the Records Request and the Consultant shall provide copies of any City records in Consultant's possession, necessary to fulfill that Public Records Request. If the Public Records Request is large the Consultant will provide the City with an estimate of reasonable time needed to fulfill the

records request.

ARTICLE V. GENERAL

V.1 NOTICES. Notices to the City shall be sent to the following address:

City Administrator
City of Sedro-Woolley
325 Metcalf St
Sedro-Woolley, WA 98284

Notices to the Consultant shall be sent to the following address:

Rhay Design, LLC
6511 Chapin PI N.
Seattle, WA 98103

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

V.2 TERMINATION. The right is reserved by either party to terminate this Agreement in whole or in part at any time upon ten (30) calendar days' written notice to the other party. City will be responsible for all costs and expenses incurred prior to the date of cancellation.

If this Agreement is terminated in its entirety by the City for its convenience, the City shall pay the Consultant for satisfactory services performed through the date of termination in accordance with payment provisions of Section IV.1.

V.3 DISPUTES. The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

V.4 EXTENT OF AGREEMENT/MODIFICATION. This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

V.5 SEVERABILITY

a. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

b. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

V.6 NONWAIVER. A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail

itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

V.7 **FAIR MEANING.** The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

V.8 **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

V.9 **VENUE.** The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Skagit County, Washington.

V.10 **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

V.11 **AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT.** The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth below.

DATED this 1st day of January, 2022

CITY OF SEDRO-WOOLLEY

RHAY DESIGN, LLC

Julia Johnson, Mayor

Managing Member

Approved as to form:

Nikki Thompson, City Attorney

Exhibit A Scope of Services

PROJECT DESCRIPTION/SCHEDULES

City wishes to hire Designer to provide Graphic Design services (publication design and layout, production of final pdf). The specific document requested and the requirements/details required for this document as requested by the City are as follows (the "Deliverable"):

Sedro-Woolley City Online Magazine

- PDF file for online viewing or print
- Full color
- Native files for publication

SERVICES PRICING

- Revise Current Design/Templates - \$300 - 500
- Production of publication from established template/style sheets - \$125 per page
- Additional Graphic Design Services - Changes/additions to design/template after approval and extra work (Per Article HU) not associated with above project - \$95.00 per hour
- This pricing does not include printing, paper, postage, hosting, third-party artwork, licensing, or vendor charges.

MATERIALS

All content, images and fonts are to be supplied by the City. If advertisements are included, they will be supplied camera ready. Preflighting of ads and any necessary advertisement design adjustments/builds to ads will be billed additionally at \$95.00 per hour.

CITY APPROVAL AND PROOFING

City is responsible for all proofing and must approve all materials before project finalization. Designer will provide City up to three proofs. All changes and approvals must be made by City via email communication or in writing. Verbal changes and approval will not be accepted. Pdf files will not be released until final proof has been approved by City via email or signed proofs. City's approval of final proof will indicate acceptance of the project "as is" and city is responsibility for errors, omissions and legal compliance of the project. Should City require more than three proofs, such work will be billed additionally at \$95.00 per hour.



Agenda
Item No.

Date: October 13, 2021

Subject: Authorization to Advertise for Bids -
SR20/SR9-Township Intersection
Improvements Project

FROM:

Mark A. Freiburger, PE, Director of Public Works

RECOMMENDED ACTION:

Authorize Public Works to Advertise for Bids for the SR20-SR9-Township Intersection Improvements Project, subject to WSDOT approval.

ISSUE:

Should the city advertise for bids for the SR20-SR9-Township Intersection Improvements Project, subject to WSDOT approval?

BACKGROUND/SUMMARY INFORMATION:

On September 8, 2021, City Council committed funds for local match for the SR20-SR9-Township Intersection Improvements Project, and authorized the mayor to sign the documents required to request for construction phase funding from WSDOT. WSDOT has approved construction phase funding as of September 24, 2021. We have submitted a request to authorize advertisement to Local Programs and expect approval to advertisement for bids with an ad date of October 14, 2021. Federal rules require a 3-week advertisement period, which would result in a bid close on November 4, 2021. If the bids are response, we anticipate requesting award on November 10, 2021.

There have been no cost estimate revisions since the September 8, 2021 memorandum. After bids close, staff will prepare an award memorandum which will update the project budget.

This agenda item requests council approval to advertise the project, subject to final WSDOT approval.

FISCAL IMPACT, IF APPROPRIATE:

The following budget is as per the September 8, 2021 memorandum,

Funding Proposed

STPUS per LA 9392	\$ 716,220
City match from GMA Impact Fee and TBD per LA 9392	\$ 111,780
Additional City Match from GMA Impact and TBD	\$ 204,039
TOTAL	\$1,032,039

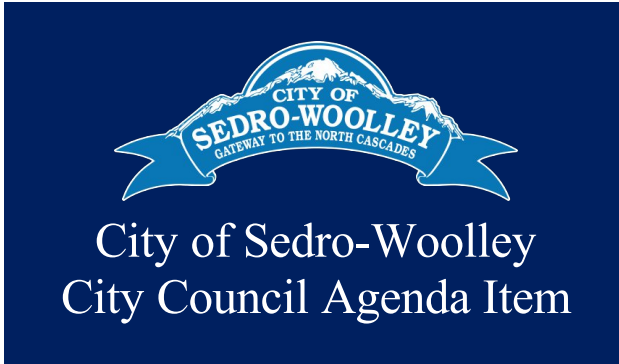
Expenditures Expected

PE Phase (in progress)	\$ 141,694
Right of Way Phase (complete)	\$ 2,215
Construction Engineering (2022)	\$ 121,330
Construction (2022)	\$ 766,800
TOTAL (per Supplement 2)	\$1,032,039

Schedule

Council approval to advertise for bids:	10/13/2021
Advertise for bids:	10/14/2021
Bids close:	11/4/2021
Award:	11/10/2021
Contract execution (20 calendar days)	11/30/2021
Notice to Proceed	12/6/2021
Suspension of Work for Materials Acquisition	12/7/2021
Resumption of Work (approx.6 months)	7/11/2022
Substantial Completion (45 working days):	9/9/2022
Final Completion:	9/30/2022

ATTACHMENTS:



Agenda Item No.	
Date:	October 13, 2021
Subject:	2022 Interlocal Agreement with Skagit County Public Health - Senior Services

FROM:

Doug Merriman, PhD, City Administrator

RECOMMENDED ACTION:

A motion to approve the 2022 interlocal agreement with Skagit County Public Health - Senior Services.

ISSUE:

Should the city renew its annual interlocal agreement with Skagit County Senior Services?

BACKGROUND/SUMMARY INFORMATION:

This agreement outlines the scope of services and related compensation for an interlocal agreement with Skagit County Public Health for Senior Services. The responsibilities of the County under the agreement are twofold:

- 1) To provide nutritional services: Congregate meals, home-delivered meals, and liquid supplement meals to seniors, and
- 2) Senior Center Program Services: The provision of senior services programs at the Senior Center. This component involves the needs and interest assessment of local senior citizens in the formulation of programs.

FISCAL IMPACT, IF APPROPRIATE:

The fee for these services is \$21,689.00. This amount reflects an increase of 1.5% over the previous year, and is included in the 2022 budget.

ATTACHMENTS:

1. Interlocal Cooperative Agreement

INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN

Skagit County
AND
The City of Sedro-Woolley

THIS AGREEMENT is made and entered into by and between City of Sedro-Woolley ("City") and Skagit County, Washington ("County") pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

1. **PURPOSE:** The County operates a **Senior Services Program, within the Skagit County Public Health Department**, and employs a staff of qualified and professional personnel to develop, direct and coordinate a comprehensive system for the delivery of services to seniors. For the purpose of this Agreement, a senior will be defined as any person 55 years of age or older. As a result of other contractual Agreements, some services may be limited to those over 60 years of age.

The City desires to enter into an Agreement whereby the County will provide to the City certain administrative and professional services and the City will pay for the services so performed. This Agreement is general in nature and reflects the broad responsibilities the County has for the provision of services to seniors.

2. **RESPONSIBILITIES:** It is agreed between the parties during the effective term of this Agreement, the County will provide administrative and professional services to the City; said services to consist primarily of the following **Program Services for seniors:**

A. Nutritional Services

1. Congregate meals: Hot, nutritionally balanced noon-time meals are served at the Senior Center.
2. Home-delivered meals: Individuals over the age of 60 who are homebound and unable to prepare meals for themselves or attend a Senior Center congregate meal service may have meals delivered to their homes. Volunteers deliver hot and frozen meals to homebound seniors on weekdays. Meal delivery can be a temporary or an on-going service especially helpful to individuals with disabilities or individuals recovering from illnesses. Staff members from the Skagit Nutrition Program make initial home visits to assess the extent of the need for home-delivered meal service, along with providing nutrition intervention when applicable. Meal delivery can be a temporary or on-going service, based on individual client needs. Annual assessments are conducted to re-evaluate eligibility.
3. Liquid Meal Supplement: The Skagit Nutrition Program has Ensure Plus available at the Skagit County Senior Centers available to older adults. Ensure Plus is a high-calorie liquid food for use when extra calories and nutrients, but a normal concentration of protein, are needed. A prescription or written statement of need from

a physician, registered nurse, or registered dietitian is required. Prescriptions can be kept on file with the nutrition program and must be renewed every 6 months.

B. Senior Center Program Services

1. The County provides comprehensive Senior Service programs at community focal points where older adults can conveniently access services and activities which support their independence, enhance their dignity, and encourage their involvement in and with their community. As part of a comprehensive community strategy to meet the needs of older persons, coordinated Senior Services programs will take place within and emanate from this facility. The Coordinator shall utilize local Senior Advisory Boards to assess needs and interests of local senior citizens in the formulation of programs.

C. Senior Center Operating Hours: 8:00 a.m. - 4:00 p.m. (Monday - Friday)

3. TERM OF AGREEMENT: The term of this Agreement shall be from January 1st, 2022 through December 31st, 2022.

4. MANNER OF FINANCING: The City shall pay for the services provided in this Agreement the sum of **twenty-one thousand, six hundred and eighty-nine dollars (\$21,689.00)**. The County has established the following GL code(s) 118-various, and any other GL codes necessary, which shall be included on all billings or correspondence in connection therewith. One-fourth of the amount shall be due at the end of each quarter, that being March 31, June 30, September 30, December 31, 2022 and payable after submission of a voucher and processing in the manner provided by the City for processing voucher and issuing warrants thereon. The total amount may be paid at the first quarter as desired by the City.

5. ADMINISTRATION: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

5.1 The County's representative shall be the Director of Public Health and the Senior Program Coordinator.

5.2 City's representative shall be the City Administrator.

6. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

7. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to the County by reason of entering into this contract except as expressly provided herein.

8. TERMINATION: Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance

rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

9. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS: The Agreement may be changed, modified, amended or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

10. SEVERABILITY: In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

11. ENTIRE AGREEMENT: This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

12. OTHER PROVISIONS:

A. REPORTS: County reports will be provided to the City on a quarterly basis. These reports will contain statistical information regarding the participation levels in senior service programs.

B. AUDITS: The City may audit the records to assure that it will receive full value in services for the consideration of services recited herein.

City of Sedro-Woolley:

Julia Johnson, Mayor

Date _____

ATTEST/AUTHENTICATED

Debbie Burton, Finance Director

APPROVED AS TO FORM:

Nikki Thompson, City Attorney

Mailing Address:

City of Sedro-Woolley
325 Metcalf Street Sedro-
Woolley, WA 98284

DATED this _____ day of _____, 2021.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Ron Wesen, Chair

Lisa Janicki, Commissioner

Attest:

Peter Browning, Commissioner

Clerk of the Board

For contracts under \$5,000:
Authorization per Resolution R20030146

Recommended:

County Administrator

Department Head

Approved as to form:

Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Risk Manager

Approved as to budget:

Budget & Finance Director



Agenda
Item No.

Date:

Subject:

October 13, 2021

Recognition and a thank you to Steve &
Brenda Thompson & Thompson's
Greenhouse.

FROM:

RECOMMENDED ACTION:

Recognition and a thank you to Steve & Brenda Thompson & Thompson's Greenhouse.

ISSUE:

BACKGROUND/SUMMARY INFORMATION:

FISCAL IMPACT, IF APPROPRIATE:

ATTACHMENTS:



Agenda
Item No.

Date: October 13, 2021

Subject: Proclamation: 'National Prescription
Drug Take Back Day'

FROM:

Sedro-Woolley Rise/Peer to Peer Sedro-Woolley High School Group via zoom

RECOMMENDED ACTION:

Proclamation for "National Prescription Drug Take Back Day" scheduled on October 23, 2021.

ISSUE:

BACKGROUND/SUMMARY INFORMATION:

This event will again be held at City Hall as a drive-thru drop off site on Metcalf St.

FISCAL IMPACT, IF APPROPRIATE:

ATTACHMENTS:

1. Proclamation

PROCLAMATION

A PROCLAMATION OF THE CITY OF SEDRO-WOOLEY DECLARING OCTOBER 23, 2021

AS

NATIONAL PRESCRIPTION DRUG TAKE BACK DAY

Whereas, National Prescription Drug Take-Back Day is a safe, convenient, environmentally friendly, and responsible way to dispose of unused or expired prescription drugs; and

Whereas, National Prescription Drug Take Back Day strives to educate the general public about the potential for abuse of medications; and

Whereas, opioid abuse is at epidemic levels in the United States, and remains a top public health concern; and

Whereas, over 12 million Americans age 12 and older misuse controlled prescription drugs and majority of the abused prescription drugs were obtained from family and friends; and

Whereas, misuse of prescription narcotic drugs (opioids) is a major public health concern and more than 130 people die each day from opioid overdoses; and

Whereas, unused or expired prescription medications are a public safety issue, leading to potential accidental poisoning, misuse, and overdose; and

Whereas, National Prescription Drug Take Back Day is a national initiative implemented to reduce prescription drug abuse and diversion; and

Whereas, proper disposal of unused drugs saves lives; and

Whereas, the City of Sedro-Woolley Police Department, United General Hospital District #304, and the Sedro-Woolley Community Coalition (Sedro-Woolley R.I.S.E.), will host a National Prescription Drug Take Back Day October 23rd, 2021, from 10:00 am-2:00 pm, to provide an opportunity for our community to prevent drug addiction and overdose deaths.

NOW, THEREFORE, BE IT PROCLAIMED, this 13th Day of October, 2021 by the Mayor and the City Council of the City of Sedro-Woolley, that October 23, 2021 is hereby declared to be "National Prescription Drug Take Back Day" and encourage all residents to participate by turning-in all of their unused or expired medication for safe disposal and helping to prevent drug addiction and overdose deaths.

IN WITNESS WHEREOF, I have here unto subscribed my name to be affixed this 13th day of October 2021.

Julia Johnson, Mayor



Agenda
Item No.

Date:

October 13, 2021

Subject:

Proclamation: Lions Club White Cane
Day

FROM:

Mayor Julia Johnson

RECOMMENDED ACTION:

A Proclamation setting aside October 15, 2021 as "White Cane Day", sponsored by the Sedro-Woolley Rotary Club.

ISSUE:

BACKGROUND/SUMMARY INFORMATION:

FISCAL IMPACT, IF APPROPRIATE:

ATTACHMENTS:

1. Proclamation: White Cane Safety Day October 15, 2021

PROCLAMATION

OCTOBER 15, 2021 INTERNATIONAL WHITE CANE SAFETY DAY

WHEREAS: Throughout the world the long white cane is used by people who are blind or visually impaired as a tool for safe and reliable navigation, and

WHEREAS: Blindness and severe visual impairment affect approximately 285 million blind or partially sighted people worldwide according to the World Blind Union, and

WHEREAS: The white cane allows every blind person to move freely and safely from place to place, making it possible for the blind to fully participate in and contribute to our society, and to live the lives they want, and

WHEREAS: The cane is a symbol of the user's skills, talents, mobility and independence, and the cane is a symbol to the sighted person that the user is visually impaired, and

WHEREAS: RCW 70.84.040 The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white in color (with or without a red tip), a totally or partially blind or hearing impaired pedestrian using a dog guide, a person with physical disabilities using a service animal, or a person with a disability using a wheelchair or a power wheelchair as defined in RCW [46.04.415](#) shall take all necessary precautions to avoid injury to such pedestrian or wheelchair user. Any driver who fails to take such precaution shall be liable in damages for any injury caused such pedestrian or wheelchair user. It shall be unlawful for the operator of any vehicle to drive into or upon any crosswalk while there is on such crosswalk such pedestrian or wheelchair user crossing or attempting to cross the roadway, if such pedestrian or wheelchair user is using a white cane, using a dog guide, using a service animal, or using a wheelchair or a power wheelchair as defined in RCW [46.04.415](#). The failure of any such pedestrian or wheelchair user so to signal shall not deprive him or her of the right-of-way accorded him or her by other laws.

WHEREAS: In 1925 Helen Keller challenged Lions Clubs International to be "Knights of the Blind", and

WHEREAS: In 1930 Lion George A. Bonham, President of the Peoria Lions Club, Illinois introduced the idea of using the white cane with a red band as a means of assisting the blind in independent mobility, and

WHEREAS: The Sedro-Woolley Lions, being a non-profit organization and part of Lions Clubs International strive to meet the needs and assist the blind, visually impaired and hearing impaired, and

WHEREAS: In 1964 the U.S. Congress approved a resolution authorizing the President of the United States to annually issue a proclamation designating October 15th as "National White Cane Safety Day" and

WHEREAS: In 1969 the International Federation of the Blind adopted October 15th as "International White Cane Safety Day"

NOW, THEREFORE BE IT RESOLVED that, I Mayor Julia Johnson on behalf of the residents of Sedro-Woolley, Washington, do hereby proclaim October 15, 2021 as

WHITE CANE SAFETY DAY in Sedro-Woolley and also acknowledge the importance of pedestrian safety year-round

IN WITNESS WHEREOF, I have here unto subscribed my name to be affixed this 13th day of October 2021.

Julia Johnson, Mayor



Agenda
Item No.

Date:

October 13, 2021

Subject:

1st Read - Ordinance 1993-21:
Franchise Renewal with Comcast Cable
Communications Management, LLC

FROM:

Nikki Thompson, City Attorney

RECOMMENDED ACTION:

1st read: On October 27, 2021, the following motion will be recommended, after the second review of this Ordinance:

"A motion to adopt Ordinance No. 1993-21 authorizing and granting Comcast Cable Communications Management, LLC, a non-exclusive franchise to construct, maintain, operate, repair and replace a cable franchise system."

ISSUE:

Council is asked to consider the renewal of the Cable Franchise Agreement with Comcast Cable Communications Management LLC

BACKGROUND/SUMMARY INFORMATION:

In 2010 the City Council adopted Ordinance 1692-10, which granted Comcast of Washington IV, Inc. (Comcast), a non-exclusive franchise to provide cable communication services to the entire incorporated area of the City of Sedro-Woolley. While the parties have been negotiating a new franchise, the franchise term has expired.

Comcast has requested the City grant it a non-exclusive franchise to install, maintain and operate a cable system (e.g., cable television) within the public right-of-way (ROW). RCW 35A.11.020 grants the City authority to regulate the public ROW and RCW 35A.47.040 grants the City authority to grant a non-exclusive franchise to use the ROW. Unlike other franchises, federal law authorizes the City to impose and collect a franchise fee in an amount not to exceed 5% of Comcast's gross revenues derived from operation of the cable system within the franchise area. Section 1.11 of the franchise defines "Gross Revenues" consistent with federal law, and Section 7.1 imposes the franchise fee.

The Council is requested to consider and adopt the proposed franchise ordinance, granting Comcast the right to install, operate and maintain a cable system within the public ROW.

FISCAL IMPACT, IF APPROPRIATE:

The proposed franchise specifies that Comcast shall pay the City a 5% franchise fee of gross revenue derived from the City customers. The franchise fees are affected by the number of Sedro-Woolley cable service subscribers, and whether cable service subscription increases or decreases per year.

ATTACHMENTS:

1. Ordinance 1993-21
2. Exhibit A - Franchise Agreement

ORDINANCE NO. 1993-21

**AN ORDINANCE OF THE CITY OF SEDRO-WOOLLEY,
WASHINGTON, GRANTING A NONEXCLUSIVE
FRANCHISE TO COMCAST CABLE COMMUNICATIONS
MANAGEMENT, 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 Management, 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, THE CITY COUNCIL OF THE CITY OF SEDRO-WOOLLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Grant of Franchise to Comcast Cable Communications, LLC. The City of Sedro-Woolley hereby grants a nonexclusive cable franchise to Comcast Cable Communications Management, LLC and authorizes the Mayor to execute the "Cable Franchise Agreement between Sedro-Woolley, Washington and Comcast Cable Communications Management, LLC" attached hereto as Exhibit A and by this reference fully incorporated herein.

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

Section 3. Corrections. The City Clerk is authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR THIS 27TH DAY OF OCTOBER, 2021.

ATTEST/AUTHENTICATED

Debbie Burton, Finance Director

APPROVED AS TO FORM:

Nikki Thompson, City Attorney

Exhibit A

CABLE FRANCHISE AGREEMENT

Between

SEDRO-WOOLLEY, WASHINGTON

And

**COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC**

Cable Franchise Agreement

This Cable Franchise Agreement (hereinafter, the "Franchise") is between Sedro-Woolley, WA (hereinafter, "City") and Comcast Cable Communications Management, LLC (hereinafter, "Grantee"). The City and Grantee may be individually referred to herein as a "party" and may be collectively referred to herein as the "parties".

The City, having determined that the financial and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

Section 1 - Definition of Terms

For the purpose of this Franchise, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

- 1.1 "Affiliate"
when used in connection with Grantee means any Person who owns or controls or is owned or controlled by Grantee.
- 1.2 "Basic" or "Basic Service"
means basic cable service as defined in the Cable Act.
- 1.3 "Cable Service(s)"
shall mean (1) the one-way transmission to Customers of (a) video programming, or (b) other programming service, and (2) Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 1.4 "Cable System"
shall mean the Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming, and which is provided within the Franchise Area.
- 1.5 "City"
means the City of Sedro-Woolley, a municipal corporation and Political Subdivision of the State of Washington, or the lawful successor, transferee, designee, or assignee thereof.
- 1.6 "Customer"
means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee's express permission.
- 1.7 "FCC"
means the Federal Communications Commission, or successor governmental entity thereto.
- 1.8 "Franchise"
shall mean this document and any amendments or modifications hereto.
- 1.9 "Franchise Area"
means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.
- 1.10 "Grantee"
shall mean Comcast Cable Communications Management, LLC

1.11 “Gross Revenues”

means and shall be construed to include all revenues derived by Grantee or an affiliated entity that is the cable operator of the Cable System from the operation of Grantee’s Cable System to provide Cable Services within the Franchise Area, calculated in accordance with generally 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 levels; fees paid to Grantee for channels designated for commercial lease 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; convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area; and revenues from programming guides.

1.11.1 Gross Revenues shall not include: advertising or home shopping revenue; 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; late fees, investment income; any taxes or fees on services furnished by Grantee imposed by any municipality, State or other governmental unit; other fees imposed by a municipality, State or other governmental unit on Grantee including launch fees and marketing co-op fees; and unaffiliated third party advertising sales agency fees of commissions which are reflected as a deduction from revenues.

1.11.2 To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as to inclusions in the bundled price at full rate card value. This calculation shall be applied to every bundle service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The City reserves its right to review and to challenge Grantee’s calculations.

1.11.3 Grantee reserves the right to change the allocation methodologies set forth in this Section 1.11 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee will explain and document the required changes to the City as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.11.4 below. If new Cable Service revenue streams develop from Grantee’s operation of its Cable System within the City, those new revenue streams shall be included within Gross Revenues, unless the parties agree otherwise.

- 1.11.4 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 City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.
- 1.12 "Person"
means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.
- 1.13 "Rights-of-Way"
means all public streets and property granted or reserved for, or dedicated to, public use for streets, together with public property granted or reserved for, or dedicated to public use for walkways, sidewalks, bikeways, or planter areas, whether improved or unimproved, including the air rights, subsurface rights and easements related thereto but only to the extent of the City's right, title interest. This term shall not include parks or any other property owned or utilized by the City that is not used or intended to be used for the benefit of the travelling public.
- 1.14 "State"
means the State of Washington.

Section 2 - Grant of Authority

- 2.1 Grant
The City hereby grants to the Grantee under the Cable Act a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with the City's Rights-of-Way within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Rights-of-Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Grantee accepts the use of the Rights-of-Way in an "as is" condition. Neither the Grantor nor the Grantee waive any rights they may have under Applicable Law as to the lawful use of the Cable System for other services and the regulatory obligations related to such services.
- 2.2 Other Ordinances
The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Grantee reserves the right to challenge provisions of any ordinance which conflict with its contractual rights, either now or in the future. In the

event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the City.

2.3 Term of Franchise

The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise and the Cable Act.

2.4 Effective Date

The effective date of this Franchise shall be the date of Grantee's signed acceptance following the adoption of this Franchise by the City, unless Grantee fails to file with the City an unconditional written acceptance of this Franchise within ninety (90) days of the date of adoption of this Franchise by the City Council, in which event this Franchise shall be voidable at the option of the City, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Franchise may be terminated.

2.5 Renewal

Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.6 Reservation of Authority

Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City (or City police power), or (C) be construed as a waiver or release of the rights of the City in and to the Rights-of-Way.

2.7 Competitive Equity.

2.7.1 Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to utilize the Rights-of-Way in order to provide Cable Services or similar video programming service within the City. If the City grants such an additional franchise or other similar lawful authorization to utilize the Rights-of-Way for Cable Services or similar video programming services containing material terms and conditions that differ from Grantee's material obligations under this Franchise, or declines to require such franchise or other similar lawful authorization where it has the legal authority to do so, then the City agrees that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that are imposed upon the new entrant, or provide relief from existing material terms or conditions, so as to insure 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; Access Channel and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the City which both Parties agree contains more favorable or less burdensome terms or conditions than this Franchise, the City agrees that it shall amend this Franchise to include any more favorable or

less burdensome terms or conditions in a manner mutually agreed upon by City and Grantee.

- 2.7.2 In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City will endeavor to provide notice to Grantee.
- 2.7.3 In the event that a non-franchised wireline multichannel video programming distributor provides video service to the residents of the City under the authority granted by federal or State legislation or other regulatory entity, the Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petition shall:
- (1) indicate the presence of such non-franchised wireline competitor;
 - (2) identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and
 - (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The City shall not unreasonably withhold consent to the Grantee's petition.

2.8 Conditions of Sale

- 2.8.1 If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the City lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.
- 2.8.2 The Grantee and the City agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the City or the Grantee.

Section 3 - Construction and Maintenance of the Cable System

3.1 Permits and General Obligations

The Grantee shall be responsible for obtaining, at its own cost and expense, all permits,

licenses, or other forms of approval or authorization necessary from all applicable jurisdictions to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity (with the exception of installations and general maintenance that involves no construction and with no disruption to the use of the Right-of-Way or other public property). Construction, installation, and maintenance of the Cable System shall be performed in a safe manner using materials that meet or exceed industry standards. All facilities, poles, conduits, cables, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise shall be located so as to minimize interference with the designated use of the Rights-of-Way at the time of Cable System facilities installation, and shall be installed to the reasonable satisfaction of the City.

3.2 Emergency Repairs

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

3.3 Conditions on Occupancy of Rights-of-Way

3.3.1 Relocation at request of the City

Upon thirty (30) days prior written notice to Grantee, the City shall have the right to require Grantee to relocate any part of Grantee's Cable System within the Rights-of-Way when the safety, health or welfare of the public requires such change (or to facilitate any public works project, subject to the terms of Section 3.2.6.1), and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by the City, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. This Section does not apply to overhead to underground conversions, see Section 3.2.6 "Aerial and Underground Construction". Grantee is responsible and liable for the timely performance of any reasonable request by the City for the relocation of any and all of Grantee's Cable System located within the Rights-of-Way (when the safety, health or welfare of the public requires such change, or to facilitate any public works project subject to 3.2.6.1), and Grantee further agrees to be liable and responsible for any and all costs, expenses, and/or damages suffered by the City arising from and/or related to any delay associated with Grantee's failure to relocate Grantee's Cable System within the Rights-of-Way, pursuant to the terms of this subsection.

3.3.2 Temporary Relocation at request of Third Party

The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the City to move any structure, temporarily move its facilities to permit the moving of such structure; provided:

- (1) the Grantee may impose a reasonable charge on any Person for the movement of its facilities, and such charge may be required to be paid in advance of the movement of its wires or cables; and
- (2) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.3.3 Restoration of Rights-of-Way

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

3.3.4 Safety Requirements

The Grantee 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 accidents that may cause damage or injuries. 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 Right-of-Ways.

3.3.5 Trimming of Trees and Shrubbery

The Grantee shall have the authority to trim trees or other natural growth interfering with, damaging, or restricting access to, any of its Cable System facilities in the Right-of-Ways. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

3.4 Undergrounding of Cable

- 3.4.1 To the extent practicable, all newly installed utility wiring shall be placed underground. Where electric and telephone utility wiring is installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines, wiring and equipment shall also be placed underground with other wireline service at no expense to the City. Related Cable System equipment, such as pedestals, must be placed in accordance with applicable City Code requirements and rules. In areas where electric or telephone utility wiring are aerial, Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. Any costs associated with a request by the City to underground wiring shall be borne by the Grantee.
- 3.4.2 This Franchise does not grant, give or convey to Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person.
- 3.4.3 Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for Fiber Optic cable in trenches

or bores opened by Grantee. Therefore, if Grantee constructs, relocates or places ducts or conduits in the Rights-of-Way it shall submit these plans to the City in accordance with the City's permitting process so as to provide the City with an opportunity to request that Grantee place additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070. Other than submission of plans in accordance with the City's permitting requirements, nothing set forth herein shall obligate Grantee to slow the progress of any future construction of the Cable System to accommodate the City. In addition, Grantee agrees to cooperate with the City in any other construction by Grantee that involves trenching or boring. The City shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in Grantee's trenches and bores under this paragraph.

3.4.4 The City shall not be required to obtain easements for Grantee.

3.4.5 Grantee may participate with other providers in joint trench projects to relocate its overhead facilities underground and remove its overhead facilities in areas where all utilities are being converted to underground facilities. If funds from a Utility Local Improvement District are provided to aerial providers to offset the cost of undergrounding, excluding any entity operating under a tariff, Grantee's costs shall be proportionality paid for out of such funds.

3.5 Underground Conversion

3.5.1 In the event of a City driven facilities relocations project that requires conversion of overhead facilities to underground, such as projects that may include, but not be limited to: road widening, surface grade changes, sidewalk installation, or beautification, Grantee agrees to bear the costs of converting Grantee's cable system from an overhead system to an underground system as follows:

- (1) Utility Trench Engineering. To ensure proper space and availability in the supplied joint trench, Grantee shall only pay for the work hours necessary to complete cable system related engineering coordination with the other utilities involved in the project.
- (2) Conduit and Vaults/Pedestals Placement. Grantee shall only pay for the direct cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench and/or solo cable trench as follows:
 - (a) If the City contractor is completing this task, Grantee shall only pay the direct costs in accordance with Grantee's approved labor and materials exhibits at the time of the project.
 - (b) If the direct costs of Grantee's approved labor and materials exhibits are not agreeable to the City or its contractor, Grantee shall have the option to hire its own contractor(s) to complete the work in accordance with Grantee's approved labor and materials exhibits at the time of the project.
 - (c) If Grantee chooses option (b), the City and its contractor(s) are responsible to coordinate with Grantee's contractor(s) to provide

reasonable notice and time to complete the placement of Grantee's conduits and vaults/pedestals in the supplied joint trench.

- (3) Within the conversion area, Grantee shall not be responsible for any on-site coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to solo cable trench. In those areas, Grantee shall pay the direct cost of labor and materials in accordance with the provisions listed in item (2) above.

3.5.2 In the event of a Local Improvement District (LID) project that requires relocation of Grantee's facilities, Grantee shall be reimbursed by the LID for all expenses incurred as a result of the project.

3.5.3 The Grantee shall, upon reasonable prior written request of any Person, relocate its wires or cables underground; provided

- (1) the Grantee may impose a charge for all time and material costs associated with the project on any Person for the relocation of its facilities, and such charge may be required to be paid in advance of the relocation of its wires or cables; and

- (2) Grantee is granted a permit for such work by the City.

3.5.4 In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new subdivision and/or planned development, the developer shall be responsible for all time and material costs associated with the underground conversion of cable facilities. Grantee and/or its authorized contractor is/are the only agent(s) allowed to complete the reconnection aspects of the conversion. Grantee shall be the responsible party for ensuring that developers pay Grantee for such time and materials.

3.6 Existing Poles and Conduits

The Grantee shall utilize existing poles and conduit wherever possible. With respect to any portion of the Cable System which is located underground within any Right-of-Way, nothing in this Franchise is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of the underground portions of the Cable System. Grantee shall identify, mark, and otherwise locate any and all underground Facilities located within the Franchise Area in accordance with and subject to Chapter 19.122 RCW (commonly known as the "call before you dig" law), and/or any other such subsequent and/or successor legislation. Grantee agrees to be liable and responsible for any and all costs, expenses, and/or damages suffered by the City arising from and/or directly related to any delay caused by Grantee's failure to locate its underground Facilities within the Franchise Area within the timeframes specified by Chapter 19.122 RCW (and/or any other subsequent and/or successor legislation), and/or otherwise pursuant to the terms of this Franchise.

Section 4 - Service Obligations

4.1 General Service Obligation

The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per strand mile in areas served by overhead facilities and sixty (60) dwelling units per strand mile in areas served by underground facilities. Subject to the density requirement, Grantee shall offer Cable Service at standard installation rates to all new homes or previously unserved homes located within one hundred twenty-five (125) aerial feet of the Grantee's aerial distribution cable, or within sixty (60) underground trench feet of either aerial or underground distribution facilities. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of the above standards. Any such additional charge shall be the fully allocated cost of the installation that exceeds the standards set forth above.

4.2 Programming

The Grantee shall offer to all Customers a diversity of video programming services.

4.3 No Discrimination

Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial, and other business obligations to the Grantee are satisfied. Grantee shall not however be required to continue service to a customer who is verbally or physically abusive, harassing, or threatening to Grantee or any of its employees, agents, representatives, contractors, subcontractors, or consultants. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.4 Customer Service in New Developments

In the event that a developer refuses to allow Grantee reasonable access to open trenches in a developer's new development for purposes of allowing Grantee to install cable facilities within such trenches (prior to the transfer of or dedication of any right[s]-of-way to the City at the completion of any such new development), then the Grantee shall not be required to provide cable service(s) to customers located within any such portion of the Franchise Area from which Grantee has been denied reasonable access to open trenches by a developer (and Grantee shall not be in default of the terms of this Franchise for any such refusal or failure to provide cable services to customers located within such area[s]).

4.5 Prohibition Against Reselling Service

No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

Section 5 - Fees and Charges to Customers

5.1 Rates, Fees, Charges and Deposits

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

Section 6 - Customer Service

6.1 Customer Service Standards

The City hereby adopts the customer service standards set forth in 47 CFR §76.309, as they may be amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2 Customer Bills

Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. The Grantee may, in its sole discretion, line item costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

6.3 Privacy Protection

The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

Section 7 - Oversight and Regulation

7.1 Franchise Fees

The Grantee shall pay to the City franchise fees in an amount equal to five percent (5%) of Gross Revenues. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period.

7.1.1 In the event any franchise fee payment is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay, in addition to the payment or sum due, interest on the amount due at one percent (1%) above the prime rate (as the prime rate is listed in The Wall Street Journal) from the date the payment was due until the date the City receives the payment.

7.1.2 The parties acknowledge that, at present, applicable federal law limits City to collection of a maximum Franchise fee of five percent (5%) of Gross Subscriber

Revenues in any twelve (12) month period. In the event that at any time during the duration of this Franchise applicable federal law changes the maximum allowable Franchise Fee, to be collected in any twelve (12) month period, then this Franchise shall be amended by the parties with sixty (60) days written notice by either party to the other party. The City agrees that all Cable operators in the Franchise Area over which the City has jurisdiction will be treated in an equivalent manner.

7.2 Franchise Fee Audit

On an annual basis, upon thirty (30) days' prior written notice, the City shall have the right to conduct an independent audit of Grantee's financial records necessary to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. Provided Grantee cooperates in making all relevant records available upon request, the City will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous five (5) years. Any additional amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to Grantee, and Grantee's agreement that the audit findings are correct, which notice shall include a copy of the audit findings. If a Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law calculated from the date the underpayment was originally due until the date the City receives the payment. If the audit shows that Franchise Fees have been underpaid, by five percent (5%) or more in a calendar year, Grantee shall pay the cost of the audit in an amount up to \$15,000 for the audit period. If Grantee disputes all or part of the audit findings, then that matter may be referred to nonbinding arbitration by either of the parties. Each party shall bear one-half of the costs and expenses of the arbitration proceedings. The decision of the arbitrator(s) shall be subject to judicial review at the request of either party.

7.2.1 In the event of there being an overpayment by Grantee, the City shall have the option of reimbursing Grantee within forty-five (45) days or of requesting in writing within forty-five (45) days that Grantee withhold fifty percent (50%) of each future Franchise Fee payment until such time as said overpayment is recovered and thereafter remitting the full amounts to the City.

7.3 Tax Liability

The franchise fees shall be in addition to any and all taxes which are now or hereafter required to be paid by businesses in general by any law of the City, County, State, or the United States including, without limitation, sales, use, utility and other taxes. Payment of the franchise fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee or tax on the business, occupation, property or income of Grantee that may be lawfully imposed by the City, County, State or the United States.

7.4 Inspection

In accordance with applicable law, the City shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Grantee's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Rights-of-Ways, as necessary to monitor Grantee's compliance with the provisions of this Franchise.

7.5 Technical Standards

The Grantee shall comply with all applicable technical standards as published in Subpart K of 47 CFR Part 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The City shall have, upon written request, the right to review tests and records required to be performed pursuant to the FCC's rules.

7.6 Maintenance of Books, Records, and Files

7.6.1 Books and Records

Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Grantee's compliance with the provisions of this Franchise at the Grantee's local business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. Such books and records shall include any records required to be kept in a public file by the Grantee pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of three (3) years.

7.6.2 File for Public Inspection

Throughout the term of this Franchise, the Grantee shall maintain at its local business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

7.7 Confidentiality

7.7.1 Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. That said, Grantee does agree to provide all information reasonably required to verify compliance with the material terms of the Franchise. If Grantee believes that any documents are confidential or proprietary, Grantee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law.

7.7.2 As a public agency, records and information provided to or otherwise used by the City may be subject to a request submitted under the state Public Records Act. If a request is received for records Grantee has submitted to the City and has identified as confidential, proprietary or protected trade secret material, the City will use its best efforts to provide Grantee with notice of the request in accordance with RCW 42.56.540 and a reasonable time (of no less than 10 business days) within which Grantee may seek an injunction to prohibit the City's disclosure of the requested record. Nothing in this Section 7.2 prohibits the City from complying with RCW 42.56, or any other applicable law or court order requiring the release of public records. The City is not required to assert on Grantee's behalf any exemption based on trade secret, proprietary or confidential

information, provided, however, the City may assert such exemption if the City itself believes in good faith that an exemption applies to the requested records. Grantee agrees to defend, indemnify and hold the City, its officers, officials, employees, agents, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the assertion of an exemption to disclosure under the Public Records Act based upon records claimed or identified by Grantee as confidential, proprietary or protected trade secret material. The provisions of this section shall survive the expiration or termination of this Franchise.

Section 8 - Transfer or Change of Control of Cable System or Franchise

8.1 Transfer or Change of Control

Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No change in control of the Grantee, defined herein as actual working control in whatever manner exercised, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the City shall, in accordance with federal rules and regulations, notify the Grantee, and the proposed transferee or new controlling party in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

Section 9 - Insurance, Indemnity and Environmental Liability

9.1 Insurance

9.1.1 Throughout the term of this Franchise, the Grantee shall, at its own cost and expense, maintain and provide evidence of self-insurance and/or an insurance certificate, that names the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insureds, to the City prior to the commencement of any further work or further installation of any Facilities pursuant to this Franchise. Such self-insurance and/or insurance certificate shall evidence the following minimum coverages:

9.1.2 General Requirement each of the following policies of insurance:

- (1) Commercial General Liability coverage for bodily injury, personal injury, and property damage with limits of no less than five million dollars

(\$5,000,000) per occurrence, five million dollars (\$5,000,000) general aggregate, and one million dollars (\$1,000,000) products/completed operations aggregate. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no endorsement or modification of the Commercial General Liability insurance to restrict coverage for liability arising from explosion, collapse or underground property damage to be more restrictive than the ISO CG 00 01 form. The Grantor shall be named by endorsement or blanket provision as an additional insured under the Grantee's Commercial General Liability insurance policy with respect to the work performed for the Grantor using ISO Additional Insured endorsement CG 20 10 and Additional Insured-Completed Operations endorsement CG 20 37 or substitute endorsements providing equivalent coverage.

- (2) Commercial Automobile Liability Insurance with minimum combined single limits of at least five million dollars (\$5,000,000). Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
- (3) Umbrella or excess liability insurance in the amount of five million dollars (\$5,000,000) each occurrence and five million dollars (\$5,000,000) policy limit. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.
- (4) Workers' Compensation insurance shall be maintained during the life of this Franchise to comply with State law for all employees.
- (5) Employer's Liability with a limit of one million dollars (\$1,000,000) which shall include stop gap liability.

- 9.1.3 Each policy shall provide that the insurance shall not be canceled or terminated so as to be out of compliance with these requirements without forty-five (45) days' written notice first provided to the City via mail, and ten (10) days' notice for nonpayment of any premium. If the insurance is canceled or terminated so as to be out of compliance with the requirements of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required under the terms of this Section for so long as Grantee utilizes the Rights-of-Way or upon renewal of this Franchise. This obligation is separate and apart from any construction related insurance obligation as required under a construction permit. Any failure of Grantee to comply with the claim reporting provisions of the policy(ies) or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect the City. However, if coverage is not afforded under these circumstances, Grantee will indemnify the City for losses the City otherwise would have been covered for as an additional insured. All insurance policies, except Workers Compensation, shall contain a waiver of

transfer rights of recovery (subrogation) against the City, its officers, officials, agents, and employees for any claims arising out of Grantee's work or service. Grantee solely shall be responsible for deductibles and/or self-insured retention, and the City, at its option, may require Grantee to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable letter of credit.

9.1.4 Endorsements

All policies shall contain, or shall be endorsed so that:

- (1) the City, and the City's officers, officials, boards, commissions, agents, representatives, and employees are to be covered as, and have the rights of, additional insured's with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or applicable law, or in the construction, operation, upgrade, maintenance, repair, replacement or ownership of the Cable System;
- (2) Grantee's insurance coverage shall be primary insurance with respect to the City, the City Council and the City's officers, officials, boards, commissions, agents, and employees. Any insurance or self-insurance maintained by the City, the City Council and the City's officers, officials, boards, commissions, agents, representatives, volunteers or employees shall be in excess of Grantee's insurance and shall not contribute to it, provided the occurrence arises out of Grantee's negligence; and
- (3) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

9.1.5 Verification of Coverage

Grantee shall furnish the City with certificates of insurance and an endorsement reflecting additional insured status upon the acceptance of this Franchise. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the City at the time of acceptance of this Franchise by Grantee with existing insurance coverage to be maintained by Grantee until that date. Grantee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

9.1.6 No Limitation of Liability

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

9.1.7 Subcontractors

Grantee shall ensure that each subcontractor and sub-subcontractors of every tier obtain insurance reasonably appropriate to the scope of such party's work.

- 9.1.8 Grantee's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit or otherwise alter the liability of the Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

9.2 Indemnification

- 9.2.1 The Grantee shall indemnify, defend and hold harmless the City, its appointed and elected officials, agents, officers, employees and volunteers from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees, on account of injury, harm, death or damage to persons or property which is caused, in whole, or in part, by the acts or omissions of Grantee or its agents, employees, contractors, or subcontractors in the exercise of the rights granted to Grantee by this Franchise.
- 9.2.2 The Grantee shall indemnify, defend and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided per this Franchise, Grantee waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees or other third party. This waiver has been mutually negotiated by the parties.
- 9.2.3 In the event any matter (for which the City intends to assert its rights under this Subsection 9.2) is presented to or filed with the City, the City shall promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such matter as it pertains to Grantee's responsibility to indemnify, defend and hold harmless the City, its agents, officials, officers, employees, and volunteers. In the event any suit or action is started against the City based upon any such matter, the City shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to Grantee's responsibility to indemnify, defend and hold harmless the City, its agents, officials, officers, employees, and volunteers. In any event, Grantee may not agree to any settlement of claims affecting the City without the City's written approval.

9.3 Security

- 9.3.1 Grantee shall provide a performance bond ("Performance Bond") in the amount of twenty-five thousand dollars (\$25,000) to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of

example and not limitation, its obligations to relocate and remove its facilities and to restore the City Rights-of-Way and other property. The Performance Bond shall be in a standard industry form and shall be reviewed and approved by the City Attorney. Grantee shall pay all premiums or costs associated with maintaining the Performance Bond and any other construction or maintenance bonds required by the City and shall keep the same in full force and effect at all times. Except as expressly provided herein, Grantee shall not be required to obtain or maintain other bonds as a condition of being awarded the Franchise or continuing its existence. The performance bond shall be with a surety with a rating no less than "A- VII" in the latest edition of "Bests Rating Guide," published by A.M. Best Company.

- 9.3.2 If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then the City may request and Grantee shall establish and provide within thirty (30) days from receiving notice from the City, to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an irrevocable letter of credit from a financial institution satisfactory to the City in the amount twenty thousand dollars (\$20,000).
- 9.3.3 If a letter of credit is furnished pursuant to Section 9.3.2, the letter of credit shall then be maintained at that same amount throughout the remaining term of this Franchise.
- 9.3.4 After the giving of notice by the City to Grantee and expiration of any applicable cure period, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:
 - (1) Failure of Grantee to pay the City sums due under the terms of this Franchise;
 - (2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee;
 - (3) Liquidated damages assessed against Grantee as provided in this Franchise.
- 9.3.5 The City shall give Grantee written notice of any withdrawal from the Performance Bond or letter of credit. Within thirty (30) days following notice that a withdrawal has occurred from the Performance Bond or letter of credit, Grantee shall restore the Performance Bond or letter of credit to the full amount required under this Franchise. Grantee's maintenance of the letter of credit shall not be construed to excuse unfaithful performance by Grantee or limit the liability of Grantee to the amount of the letter of credit or otherwise limit the City's recourse to any other remedy available at law or in equity.
- 9.3.6 Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise.

Any funds the City erroneously or wrongfully withdraws from the Performance Bond or letter of credit, as determined by either the City Council or judicial appeal, shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in The Wall Street Journal as of the date of such decision.

9.4 Environmental Liability

Grantee shall at its own cost, expense, and liability, comply with all applicable laws, statutes, rules, and regulations concerning Hazardous Substances that relate to Grantee's Cable System. "Hazardous Substances" shall mean any material or substance which does cause or may cause environmental pollution or contamination (and associated liability and clean-up costs related thereto) as defined under applicable state and federal laws, rules, and regulations. Grantee shall be solely and separately liable and responsible for the containment, remediation and/or clean-up of any release of Hazardous Substances directly arising from or relating to Grantee's Cable System. Grantee shall indemnify, defend and hold the City harmless from any fines, suits, procedures, claims, costs, damages, expenses, and actions of any kind arising out of or in any way connected with any release(s) of Hazardous Substances directly arising from or related to Grantee's Cable System. This indemnity includes, but is not limited to: (a) liability for a governmental agency's costs of removal or remedial action for Hazardous Substances; (b) damages to natural resources caused by Hazardous Substances, including the reasonable costs of assessing such damages; (c) liability for the City's costs of responding to Hazardous Substances; and (d) liability for any costs of investigation, abatement, mitigation, correction, remediation, cleanup, fines, penalties, or other damages arising under any environmental laws.

Section 10 - System Description

- 10.1 The Cable System is capable of delivering high quality signals that meet or exceed FCC technical quality standards regardless of a particular manner in which signal is transmitted. Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the term of the Franchise.

Section 11 - Enforcement and Termination of Franchise

11.1 Notice of Violation or Default

In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

11.2 Grantee's Right to Cure or Respond

The Grantee shall have thirty (30) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default

and notify the City of the steps being taken and the projected date that they will be completed.

11.3 Judicial Remedies

In the event the Grantee fails to respond to the City's notice or in the event that the alleged default is not remedied within thirty (30) days or the date projected by the Grantee, the City may commence judicial proceedings.

11.4 Enforcement

Subject to applicable federal and state law, the City may:

- (1) seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; and
- (2) seek monetary damages in a judicial proceeding; and
- (3) in the case of a default of a material provision of the Franchise, declare the Franchise to be revoked.

At the judicial proceeding regarding revocation, the court shall grant such relief as the court may deem proper.

11.5 Technical Violation

The City agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

- (1) in instances or for matters where a violation or a breach of the Franchise by the Grantee was a good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or
- (2) where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

11.6 Continued Performance During Dispute

Unless otherwise agreed by the parties in writing, the parties shall, as may be reasonably practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.

11.7 No Impairment of Grantee's Duties to Relocate Cable System

The timeframes specified within this Section 11 shall not alter, modify, or impair Grantee's duty to relocate Grantee's Cable System within the Rights-of-Way, and shall not alter, modify, or impair Grantee's duty to locate underground portions of Grantee's Cable System within the Rights-of-Way, pursuant to the terms of Section 3 of this Franchise.

11.8 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the City or Grantee to

seek or obtain judicial relief from a violation of any provision of the Franchise. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City or Grantee to recover monetary damages for such violations by the other party, or to seek and obtain judicial enforcement of the other party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

Section 12 - Miscellaneous Provisions

12.1 Force Majeure

The Grantee 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 (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, pandemic, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation (if Grantee is precluded from operating its Cable System) or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as other similar unforeseen circumstances completely outside of Grantee's control.

12.2 Notices

All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

Finance Director
City of Sedro-Woolley
325 Metcalf St
Sedro-Woolley, WA 98284

To the Grantee:

Government Affairs
Comcast Cable Communications Management, LLC
900 132nd Street SW
Everett, WA 98204

12.3 Entire Franchise

This Franchise embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.

12.4 Severability

If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

12.5 Governing Law

This Franchise shall be governed, construed and enforced in accordance with federal, State and local laws and any applicable rules, regulations and orders of the FCC (as such now exist, are later amended or subsequently adopted).

12.6 Modification

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

12.7 No Third-Party Beneficiaries

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

12.8 No Waiver of Rights

Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, the City or Grantee may have under Federal or state law unless such waiver is subsequently agreed to by the parties in writing.

12.9 Attorneys' Fees

If any action or suit arises in connection with this Franchise, excluding subsequent franchise renewal proceedings, the prevailing party shall be entitled to recover reasonable costs and expenses in connection therewith as allowed by the court, in addition to such other relief, such as reasonable attorneys' fees, as the court may deem proper.

12.10 Venue

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

12.11 Costs and Expenses to be Borne by Grantee

Costs and expenses to be borne by Grantee shall include the application fee and publication and hearing costs related to this Franchise.

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

DATED this _____ day of _____, 2021.

CITY OF SEDRO-WOOLLEY, WASHINGTON

Julia Johnson, Mayor

ATTEST:

Debbie Burton, Finance Director

APPROVED AS TO FORM:

Nikki Thompson, City Attorney

This acceptance of the Franchise is unconditionally made without reservation. Grantee (Comcast Cable Communications Management, LLC) accepts all of the rights and privileges of the Franchise subject to all of the terms, conditions, duties, and obligations of the Franchise.

Accepted and approved this _____ day of _____, 2021.

Comcast Cable Communications Management, LLC

Name: _____

Title: _____

City of Sedro-Woolley Fire Department

Monthly Incident Data

SEPTEMBER 2021

EMERGENCY RESPONSES	TOTALS
FALSE ALARM (FALSE CALLS)	6
FIRE	2
GOOD INTENT CALLS	29
HAZARDOUS CONDITIONS (NO FIRE)	15
RESCUE & EMERGENCY MEDICAL INCIDENTS	244
SERVICE CALLS	2
SPECIAL INCIDENT TYPE	1
TOTAL	299
TOTAL RESPONSES 2021	2669
TRANSPORTS FOR THE MONTH	TOTALS
ISLAND HOSPITAL	0
PEACEHEALTH UNITED GENERAL MEDICAL CENTER	89
SKAGIT VALLEY HOSPITAL	28
St Josephs Bellingham	3
AIRLIFT NW/LIFEFLIGHT	0
Total Month	120
Total Transports for 2021	1193
LOCATION / ZONE # INCIDENTS	TOTALS
Anacortes-City of Anacortes	0
Burlington- City of Burlington	7
Town of Concrete	2
Darrington	0
Fire District 2- McLean	0
Fire District 3- Conway/Cedardale	0
Fire District 4- Clear Lake	10
Fire District 5- Allen/Edison/Bow	0
Fire District 6- Bayridge	6
Fire District 7- Lake McMurray	0
Fire District 8E- Outside of City Limits East D8	8
Fire District 8N- Outside of City Limits North D8	21
Fire District 8S- Outside of City Limits South D8	49
Fire District 9- Big Lake	0
Fire District 10- Birdsvie	1
Fire District 11- Mt Erie	0
Fire District 12-Bayview	0
Fire District 13- Hope Island	0
Fire District 14- Alger	2
Fire District 15- Lake Cavanaugh	0
Fire District 16- Day Creek	4
Fire District 19- Marblemount	0
Hamilton- Town of Hamilton	3
LaConner- Town of	0
MV- City of Mount Vernon	2
Newhalem	1
SW- Inside the City of Limits of Sedro-Woolley	183
MONTHLY TOTAL:	299
MUTUAL AID	TOTALS
Given	1
Received	0