



## City of Cashmere

101 Woodring Street  
Cashmere, WA 98815  
Ph (509) 782-3513 Fax (509) 782-2840  
Website [www.cityofcashmere.org](http://www.cityofcashmere.org)

**CITY OF CASHMERE  
REGULAR STUDY SESSION  
MONDAY, MAY 13, 2013  
6:00 P.M., CITY HALL**

**AGENDA**

BUSINESS ITEM

- **Follow up on options to providing law enforcement**

TO ADDRESS THE COUNCIL, PLEASE BE RECOGNIZED BY THE MAYOR AND STATE YOUR NAME WHEN YOU BEGIN YOUR COMMENTS  
**Americans with Disabilities Act (ADA) accommodations provided upon request (48-hour notice required)**

The City of Cashmere is an equal opportunity provider and employer.

To file a complaint of discrimination, write USDA, Director, Office of Civil rights, 1400 Independence Avenue SW, Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202)720-6382 (TDD).



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CASHMERE CITY COUNCIL MEETING  
MONDAY, MAY 13, 2013 7:00 P.M., CITY HALL

### AGENDA

#### CALL TO ORDER

#### FLAG SALUTE

#### EXCUSE ABSENCE

#### ANNOUNCEMENTS & INFORMATION

- April Financial reports are on the website
- Council members needed to review financial report

#### PUBLIC COMMENT PERIOD (For Items Not on the Agenda)

#### APPROVAL OF AGENDA

#### CONSENT AGENDA

1. Minutes of April 22, 2013 Regular Council Meeting
2. Minutes of May 2, 2013 Special Council Meeting
3. Payroll and Claims Packet Dated May 13, 2013

#### BUSINESS ITEMS

1. Cashmere Float Association requesting use of City logo on float driver and float walker shirts
2. Selection of contractor for the Aplets Way "Welcome to Cashmere" sign project
3. Selection of contractor for the Pioneer Avenue project
4. Ann Chipman Annexation Request
5. Invoice Cloud Biller-Submitter Agreement Terms and Conditions

#### PROGRESS REPORTS

#### EXECUTIVE SESSION

For the potential purchase of real estate

#### ADJOURNMENT

TO ADDRESS THE COUNCIL, PLEASE BE RECOGNIZED BY THE MAYOR AND STATE YOUR NAME WHEN YOU BEGIN YOUR COMMENTS  
**Americans with Disabilities Act (ADA) accommodations provided upon request (48-hour notice required)**

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**MINUTES OF THE CASHMERE SPECIAL CITY COUNCIL MEETING  
THURSDAY, MAY 2, 2013 AT CASHMERE CITY HALL**

OPENING

Mayor Jeff Gomes opened the special city council meeting at 5:30 p.m. at City Hall. Clerk-Treasurer Kay Jones took minutes.

ATTENDANCE

	<u>Present</u>	<u>Not Present</u>
Mayor:	Jeff Gomes	
Council:	Skip Moore Jim Fletcher Donna Wynne Derek Knutsen John Bryant	
Staff:	Bob Schmidt, Director Kay Jones, Clerk-Treasurer Mark Botello, Dir of Planning/Building Pete Fraley, City Attorney	

FLAG SALUTE

EXECUTIVE SESSION – POSSIBLE ACQUISITION OF REAL PROPERTY

At 5:31 p.m. Mayor Gomes closed the regular session to enter into an executive session for approximately 30 minutes to discuss the possible acquisition of real property. No action will be taken after the executive session.

Regular session was reconvened at 6:02 p.m.

ADJOURNMENT

Mayor Gomes adjourned the meeting at 6:03 p.m.

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Jeff Gomes, Mayor

Attest:

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Kay Jones, Clerk-Treasurer

**MINUTES OF THE CASHMERE CITY COUNCIL MEETING  
MONDAY, APRIL 22, 2013 AT CASHMERE CITY HALL**

OPENING

Mayor Jeff Gomes opened the regular city council meeting at 7:00 p.m. at City Hall. Secretary Teresa Prescott took minutes.

ATTENDANCE

	<u>Present</u>	<u>Not Present</u>
Mayor:	Jeff Gomes	
Council:	Skip Moore Jim Fletcher Donna Wynne Derek Knutsen John Bryant	
Staff:	Bob Schmidt, Director  Mark Botello, Dir of Planning/Building Teresa Prescott, Secretary	Kay Jones, Clerk-Treasurer

FLAG SALUTE

ANNOUNCEMENTS & INFORMATION

Councilor Fletcher updated the council on recent changes in the Link schedules that affect the Cashmere route. The route no longer goes to the fairgrounds, but it does go all the way to the Columbia Street station, which allows riders to get to the new Pybus Market without a transfer. The route from Leavenworth to Plain was canceled due to poor ridership. In addition, the rates were lowered to \$1 within one zone.

Director of Operations Bob Schmidt requested the council add the 2013 DOT striping contract to the agenda.

Mayor Gomes along with the mayors of Leavenworth, Entiat and Chelan will attend the Chelan County Commissioners meeting on May 6 at 2:00 p.m. to discuss law enforcement.

Mayors Gomes attended the Tri-commission meeting and informed council what was discussed on the lengthy agenda.

PUBLIC COMMENT

Nathan Munk of Organic Synergy Services informed the council that he has been working with Director Schmidt, Tree Top Inc., and Cashmere Investments on a plan to use the BVF tanks for storage of products made from fruit juice and shellfish waste. These organic products can be used for fertilizer and de-icer and are non-corrosive. Mr. Munk would like to do a presentation to council at a future date. His plan is to dispose of the existing product in the tanks, then use the tanks as storage. There seems to be some confusion as to who has responsibility for the existing waste.



APPROVAL OF AGENDA

MOVED by Councilor Bryant and seconded by Councilor Knutsen to approve the agenda with the addition of the DOT Striping Contract. Motion carried.

CONSENT AGENDA

Minutes of April 8, 2013 Regular Council Meeting  
Payroll and Claims Packet Dated April 22, 2013

Claim Check Nos. EFT 03/2013 and 33201 through 33233 totaling \$666,257.27

MOVED by Councilor Fletcher and seconded by Councilor Bryant to approve the consent agenda with the addition of the Study Session Minutes of April 8, 2013. Motion carried.

ORDINANCE 1212 ADDING CHAPTER 1.28 PUBLIC RECORDS

Councilor Knutsen had a question regarding Section 1.28.100 of the ordinance dealing with the charge per page that is allowed by RCW. The sentence established the minimum amount to be charged per page and Councilor Knutsen thought it should be the maximum amount. After further discussion it was decided to change the wording to maximum.

Moved by Councilor Bryant and seconded by Councilor Knutsen to adopt Ordinance 1212 Public Records with the change in wording. Motion carried.

DEPARTMENT OF TRANSPORTATION STRIPING CONTRACT

Director Schmidt informed council that the cost to stripe the streets has increased by \$200 over 2012 to \$2610.00. Pioneer Avenue and Tigner Road will not be striped because of the proposed overlay project this summer. Evergreen Drive will be striped for the first time.

MOVED by Councilor Fletcher and seconded by Councilor Wynne to authorize the mayor to sign the DOT Striping Contract for \$2,610.00. Motion carried.

PROGRESS REPORTS

Director Mark Botello presented a report showing the recent building permits, sign permits and business licenses, along with the plan for Ardetta Park and Planning Commission, Tree Committee and project bid dates for Pioneer Avenue and the new Welcome to Cashmere sign.

EXECUTIVE SESSION- To Discuss Purchase of Real Estate

At 7:36 p.m. Mayor Gomes closed the regular session to enter into an executive session for approximately 25 minutes to discuss the possible purchase of real estate. No action will be taken after the executive session.

At 8:05 Mayor Gomes announced the executive session would be extended an additional 15 minutes.

Regular session was reconvened at 8:20 p.m.

City Council Minutes  
April 8, 2013  
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ADJOURNMENT

Mayor Gomes adjourned the meeting at 8:21 p.m.

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Jeff Gomes, Mayor

Attest:

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Teresa Prescott, Secretary



# Cashmere Float Assn.

May 5, 2013

To: Cashmere City Council

Re: Use of the city logo

The Cashmere Float Assn would like to request that we be allowed to put a copy of the city logo on our float driver and float walker shirts for the calendar year 2013. The float theme is "Cashmere, The Heart of Washington" and we feel that the logo on the upper left chest area of our red polo shirts would be additional advertising for our community as we travel throughout the state this year.

Thank you for your attention to our request.

Sincerely,

Ben Ellis, President

# Staff Summary

**Date:** May 13, 2013  
**To:** Cashmere City Council  
Mayor Gomes

**From:** Mark Botello  
**RE:** Selection of Contractor for the Aplets Way "Welcome to Cashmere" sign project.

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The City of Cashmere utilized the Small Works Roster process from qualified contractors for the Aplets Way "Welcome to Cashmere" entrance sign project. The following contractors were notified, and the following quotes submitted:

Construction Company	Contact Name	Amount
Story Construction	Dale Story	No quote submitted
Overall Construction Services	Dan Dean	\$8,021.58
ROC General Contracting, LLC	Jared Novak	\$6,993.00
Apple Valley Construction	Rod Haverfield	\$6,492.00

This project is funded for and is part of the overall Riverside Park Improvement project.

**RECOMMENDATION:**

Select Apple Valley Construction for the Aplets Way "Welcome to Cashmere" entrance sign project and authorize Mayor Gomes to sign the attached small works construction contract.



**City of Cashmere**

**Small Public Works Construction Contract**

**Project:** APLETS WAY WELCOME TO CASHMERE SIGN PROJECT

THIS CONTRACT is entered into by and between the City of Cashmere, Washington (hereinafter the "City") and APPLE VALLEY CONSTRUCTION (hereinafter the "Contractor"), sometimes each individually referred to herein as a "party" or collectively referred to herein as the "parties".

In consideration of the terms and conditions contained herein, City and Contractor agree as follows:

**I. WSDOT STANDARD SPECIFICATIONS**

A. Except as may be otherwise specifically provided in this Contract, the definitions of terms used in this Contract and the other provisions set forth in the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, 2010 Edition (hereinafter "2010 WSDOT Standard Specifications"), shall apply to the standard of construction of the Project Work by the Contractor and shall apply with respect to all other matters not otherwise specifically identified in this Contract.

B. The City is the Contracting Agency.

**II. PROJECT WORK, PAYMENT, GUARANTEE**

A. The Contractor shall perform all Work and furnish all tools, materials and equipment for the construction of the Project in accordance with and as described in the City Request for bid and the Contractor Proposal and all other plans and specifications on file with the City for the bid amount. The aforementioned documents are by this reference incorporated herein and made a part of this Contract. The bid amount is inclusive of all applicable taxes, including Washington State Sales taxes and is: \$6,492.00.

B. The City shall pay the Contractor for performance of the Project Work according to the City Request for bid and the Contractor Proposal on file with the City.

C. The Project Work shall start within 10 calendar days after execution of this Contract and the issuance of a notice to proceed by City. The Project Work shall be



completed within 30 calendar/working days from the date of issuance of the notice to proceed by City.

D. If the Project Work is not completed within the time specified, the Contractor agrees to pay the City liquidated damages in the sum specified in Section 1.08.9 of the 2010 WSDOT Standard Specifications for each and every working day that Project Work remains uncompleted.

E. The Contractor shall provide and pay for all equipment and labor required to construct and complete the Project Work. The Contractor shall guarantee the completed Project Work and all components thereof for a period of one year following the Completion Date of the Project Work, except as may be otherwise specifically modified by the City in the City Request for bids, the plans, specifications, or other Project Work documents.

F. Contractor shall be responsible for all temporary functions associated with the Project Work, including but not limited to, lighting, wiring, protection, hoisting, scaffolding, rigging, flaggers, drinking water, dust control, storage, ventilation, and heating.

### **III. PREVAILING WAGE REQUIREMENT**

The Contractor shall pay prevailing wages for all Project Work and shall comply with Chapters 39.12 and 49.28 RCW. Notice of intent to pay prevailing wages and prevailing wage rates for the Project must be posted for the benefit of workers. At the completion of the Project, the Contractor and its subcontractors shall submit Affidavits of Wages Paid to the Department of Labor and Industries for certification. Final payment on the Contract shall be withheld until the City receives certification from the Department of Labor and Industries that prevailing wage requirements have been satisfied.

### **IV. CONTRACT BOND**

The Contractor shall provide a Contract Bond, in a form acceptable to the City, for the faithful performance and payment of all its obligations under this Contract. The Contract Bond shall remain in effect for the repair and replacement of defective equipment, materials, and workmanship and payment of damages sustained by the City on account of any such defects, discovered within one (1) year after the Completion Date.

### **V. PERMITS AND TAXES**

Contractor shall secure and pay for all permits, fees and licenses necessary for the performance of the Project Work. Contractor shall pay any and all applicable federal, state and municipal taxes, including sales taxes, associated with performance of the Project Work.

### **VI. INDEMNIFICATION**

Contractor shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, engineers, agents, and volunteers from and against all demands, claims,

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SMALL PUBLIC WORKS CONSTRUCTION CONTRACT

Page 2 of 4

losses, injuries, damages, liabilities, suits, judgments, attorneys' fees and costs, and other expenses of any kind incurred by the City on account of, relating to, or arising out of Contractor's Work under this Contract, except to the extent such injuries or damages are caused by the negligence of the City.

## VII. INSURANCE

A. The Contractor shall procure and maintain for the duration of the Project Work, and for a period of three (3) years thereafter, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Project Work by the Contractor, its agents, representatives, employees, or subcontractors.

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

C. Contractor shall maintain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy. The proof of insurance and identification of the City as an additional insured shall be provided on a form acceptable to the City.

D. Contractor shall maintain the following minimum insurance limit:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$1,000,000 general



aggregate and a \$1,000,000 products-completed operations aggregate limit.

E. Insurance shall be placed with insurers acceptable to the City.

**VIII. GENERAL PROVISIONS**

A. Venue for any legal action arising out of the existence of this Contract shall be in Chelan County Superior Court. Except as specifically provided otherwise herein, in any legal action commenced by either party to this Contract, each party shall pay its own attorneys' fees and costs, regardless of the outcome.

B. This Contract contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings between the parties with respect thereto. This Contract may be amended only by an agreement in writing signed by both parties.

C. The effective date of this Contract shall be the date the Contract is approved and signed by the City Mayor.

D. This Contract may be signed in counterparts, each of which shall be an original but all of which shall constitute one and the same document. Signatures transmitted by facsimile or PDF e-mail shall be deemed valid execution of this Contract, binding on the parties.

APPROVED the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by the City of Cashmere, Washington.

APPROVED the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by the Contractor.

\_\_\_\_\_  
Jeff Gomes, Mayor

Rod Haverfield  
(Signature)

ADDRESS:

Rod Haverfield Pres  
(Print Name and Title)

City of Cashmere  
101 Woodring Street  
Cashmere, WA 98815

POBox 356 Cashmere

Contractor Address:

Phone: (509) 782-3513

\_\_\_\_\_  
\_\_\_\_\_  
509 782 5000  
(Contractor Phone)



# City of Cashmere

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**APRIL 17, 2013**

## **REQUEST FOR SMALL WORKS ROSTER QUOTES:**

The City of Cashmere is seeking Small Works Roster Quotes from qualified contractors for the "Welcome to Cashmere" sign to be located at the west end of Riverside Park near the Aplets Way Bridge (see site plan).

## **CONTACT INFORMATION:**

Mark Botello is the designated contact person for questions related to this request for quotes. He may be reached at Cashmere City Hall, 101 Woodring Street, Cashmere, WA 98815 or by phone 509-782-3513.

## **SEALED QUOTE SUBMITTAL:**

Quotes must be submitted on or before 12:00 P.M., Wednesday, May 1, 2013 to: City of Cashmere, 101 Woodring Street, Cashmere, WA 98815. Late quotes will not be considered. Quotes must be valid for a period of not less than ninety (90) days after the submission deadline. Quotes must represent all costs associated with the project, sales tax, parts, materials and labor (at prevailing wage). Seal quotes may be hand delivered or mailed.

Sealed quotes will be opened at Cashmere City Hall at 12:01 pm. on Wednesday, May 1, 2013.

## **SCOPE OF WORK:**

- Construct concrete footings and concrete support columns and install rebar per plans and specifications.
- Concrete shall be minimum 3,000 PSI for footings and columns.
- Install new Yakima Style River Rock (Mfg by Eldorado Stone) on concrete columns with 18-inch by 18-inch column caps.
- Provide and install 4 metal mounting brackets for City provided sign. Mounting bracket shall be steel plate (3/8" X 2"), and be welded to rebar reinforcing in columns.
- All work shall be in compliance with attached plans & specifications which are provided with this quote package.
- Work and product shall be similar to the "Welcome to Cashmere" sign located at the Cotlets Way entrance near Rusty's Drive In.
- City of Cashmere will remove existing sign, fence, trees and garbage where sign is to be installed.
- City of Cashmere will compact ground and dig foundation footings for the proposed sign posts.
- Work to be completed within thirty (30) days of notice to proceed.
- Selected contractor will be required to enter into a "Small Public Works Construction Contract". (See attached Contract).

## **CITY REQUIREMENTS:**

- Quote shall include City of Cashmere sales tax when applicable.
- City of Cashmere will provide building permit and plans and specifications.
- At time of construction, City will indicate location for placement of sign.
- Contractor must be on, or apply to be on, the City's Small Works Roster. An application to be placed on the Small Works Roster is included in this Quote Packet.
- "Welcome to Cashmere" sign and sign frame to be installed by City selected sign manufacture.

## **PREVAILING WAGE FOR PUBLIC WORKS CONTRACTS:**

Prevailing wage requirements apply to this project. Please contact Washington State Department of Labor and Industries for requirements. The following information will be required by the City:

**The City of Cashmere reserves the right to reject all bids if project exceeds budget amount.**

Amount \$ 6,492.00

Company Name Apple Valley Construction

Authorized Representative (print) Dennis Chidester

Authorized Signature Dennis Chidester

Dated this 19 day of April, 2013.





WELCOME TO

# CASHMERE

HOME OF

LIBERTY ORCHARDS

## APLETS & COTLETS

Delightfully Soft Apple & Apricot Confections with Walnuts and All Natural Flavors



FINE FRUIT AND NUT CANDIES SINCE 1920

CASHMERE  
Founded 1904



# Staff Summary

**Date:** May 13, 2013  
**To:** Cashmere City Council  
Mayor Gomes

**From:** Mark Botello  
**RE:** Selection of contractor for the Pioneer Ave project

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Please see attached bid results for the Pioneer Ave pavement preservation project. The lowest bid received was from Hurst Construction, which was \$452,263.90 (tax included). This project consists of two (2) items, which are road work and water items. The cost breakdown is as follows:

Road Items: \$ 341,347 (Budget is short \$54,000)

Water items: \$ 110,916.90 (Budget is short \$61,000)

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SUMMARY OF QUANTITIES

ITEM NO.	TOTAL QTY.	UNIT	DESCRIPTION
			PREPARATION
1	LS	LS	MOBILIZATION GROUP 1
2	LS	LS	MOBILIZATION GROUP 2
3	LS	LS	REMOVAL OF STRUCTURE AND OBSTRUCTION
4	11430	SY	PLANING BITUMINOUS PAVEMENT
5	19	EACH	WATER SERVICE CONNECTION 1" DIAM.
6	1	EACH	WATER SERVICE CONNECTION 2" DIAM.
7	389	TON	CRUSHED SURFACING TOP COURSE
8	1,71	TON	ASPHALT FOR FOG SEAL
9	3000	LF	CRACK SEALING
10	80	TON	COMMERCIAL HMA
11	1570	TON	HMA CL. 1/2 IN. PG 64-28
12	1000	DOL	EROSION/WATER POLLUTION CONTROL
13	36	EACH	INLET PROTECTION
14	750	LF	CEMENT CONC. TRAFFIC CURB AND GUTTER
15	4060	LF	PAINT LINE
16	1680	SF	PAINTED CROSSWALK LINE
17	190	LF	PAINTED STOP LINE
18	LS	LS	PROJECT TEMPORARY TRAFFIC CONTROL
19	46	EACH	ADJUST MANHOLE
20	28	EACH	ADJUST VALVE BOX
21	20	EACH	ADJUST MONUMENT
22	1000	DOL	UNKNOWN UTILITY REPAIR
23	8	EACH	CEMENT CONC. SIDEWALK RAMP TYPE PARALLEL A
24	1	EACH	CEMENT CONC. SIDEWALK RAMP TYPE PARALLEL B
25	4	EACH	CEMENT CONC. SIDEWALK RAMP TYPE PERPENDICULAR A
26	17	EACH	CEMENT CONC. SIDEWALK RAMP TYPE SINGLE DIRECTION A
27	1	EACH	CEMENT CONC. SIDEWALK RAMP TYPE MODIFIED SINGLE DIRECTION
28	66	SY	CEMENT CONC. SIDEWALK
29	24	SY	CEMENT CONC. DRIVEWAY ENTRANCE TYPE 2
30	LS	LS	SPCC PLAN
31	LS	LS	SHORING OR EXTRA EXCAVATION CLASS B

Low Bidder

Engineer's Estimate	Unit Price	Bid
\$ 17,201.00	\$ 17,201.00	
\$ 5,898.00	\$ 5,898.00	
\$ 5,000.00	\$ 5,000.00	
\$ 2,15	\$ 24,574.50	
\$ 1,500.00	\$ 28,500.00	
\$ 1,750.00	\$ 1,750.00	
\$ 40.00	\$ 15,560.00	
\$ 1,000.00	\$ 1,710.00	
\$ 1.50	\$ 4,500.00	
\$ 150.00	\$ 12,000.00	
\$ 84.00	\$ 131,880.00	
\$ 1.00	\$ 1,000.00	
\$ 80.00	\$ 2,880.00	
\$ 25.00	\$ 18,750.00	
\$ 0.40	\$ 1,624.00	
\$ 2.25	\$ 3,780.00	
\$ 4.00	\$ 760.00	
\$ 20,000.00	\$ 20,000.00	
\$ 450.00	\$ 20,700.00	
\$ 400.00	\$ 11,200.00	
\$ 300.00	\$ 6,000.00	
\$ 1.00	\$ 1,000.00	
\$ 1,500.00	\$ 12,000.00	
\$ 1,200.00	\$ 1,200.00	
\$ 1,500.00	\$ 6,000.00	
\$ 1,200.00	\$ 20,400.00	
\$ 1,200.00	\$ 1,200.00	
\$ 55.00	\$ 3,630.00	
\$ 75.00	\$ 1,800.00	
\$ 500.00	\$ 500.00	
\$ 500.00	\$ 500.00	
Subtotal	\$383,497.50	

2nd Low

Hurst Construction	Unit Price	Bid
\$ 20,000.00	\$ 20,000.00	
\$ 3,400.00	\$ 3,400.00	
\$ 15,000.00	\$ 15,000.00	
\$ 2.20	\$ 25,146.00	
\$ 2,000.00	\$ 38,000.00	
\$ 2,500.00	\$ 2,500.00	
\$ 68.00	\$ 26,452.00	
\$ 2,500.00	\$ 4,275.00	
\$ 2.00	\$ 6,000.00	
\$ 150.00	\$ 12,000.00	
\$ 86.00	\$ 135,020.00	
\$ 1.00	\$ 1,000.00	
\$ 113.00	\$ 4,068.00	
\$ 25.00	\$ 18,750.00	
\$ 0.50	\$ 2,030.00	
\$ 3.20	\$ 5,376.00	
\$ 4.00	\$ 760.00	
\$ 24,000.00	\$ 24,000.00	
\$ 500.00	\$ 23,000.00	
\$ 200.00	\$ 5,600.00	
\$ 200.00	\$ 4,000.00	
\$ 1.00	\$ 1,000.00	
\$ 2,000.00	\$ 16,000.00	
\$ 2,000.00	\$ 2,000.00	
\$ 2,000.00	\$ 8,000.00	
\$ 2,000.00	\$ 34,000.00	
\$ 2,000.00	\$ 2,000.00	
\$ 44.00	\$ 2,904.00	
\$ 54.00	\$ 1,296.00	
\$ 280.00	\$ 280.00	
\$ 1.00	\$ 1.00	
Subtotal	\$443,858.00	

3rd Low

Central Washington Asphalt	Unit Price	Bid
\$30,000.00	\$30,000.00	
\$1.00	\$1.00	
\$18,200.00	\$18,200.00	
\$1.60	\$18,288.00	
\$3,070.00	\$58,330.00	
\$3,070.00	\$3,070.00	
\$32.00	\$12,448.00	
\$850.00	\$1,453.50	
\$0.60	\$1,800.00	
\$140.00	\$1,200.00	
\$78.00	\$122,460.00	
\$1.00	\$1,000.00	
\$46.00	\$1,656.00	
\$33.00	\$24,750.00	
\$0.50	\$2,030.00	
\$3.00	\$5,040.00	
\$4.00	\$760.00	
\$60,000.00	\$60,000.00	
\$310.00	\$14,280.00	
\$310.00	\$8,680.00	
\$415.00	\$8,300.00	
\$1.00	\$1,000.00	
\$1,820.00	\$14,560.00	
\$1,820.00	\$1,820.00	
\$1,610.00	\$6,440.00	
\$1,720.00	\$29,240.00	
\$1,610.00	\$1,610.00	
\$71.00	\$4,686.00	
\$94.00	\$2,266.00	
\$520.00	\$520.00	
\$1.00	\$1.00	
Subtotal	\$465,859.50	

Granite NW	Unit Price	Bid
\$45,024.04	\$45,024.04	
\$15,000.00	\$15,000.00	
\$30,000.00	\$30,000.00	
\$3.00	\$34,290.00	
\$2,000.00	\$38,000.00	
\$2,000.00	\$2,000.00	
\$75.00	\$29,175.00	
\$1.00	\$1.71	
\$2.50	\$7,500.00	
\$195.00	\$15,600.00	
\$90.00	\$141,300.00	
\$1.00	\$1,000.00	
\$100.00	\$3,600.00	
\$27.00	\$20,250.00	
\$0.65	\$2,639.00	
\$3.00	\$5,040.00	
\$4.00	\$760.00	
\$65,000.00	\$65,000.00	
\$350.00	\$16,100.00	
\$325.00	\$9,100.00	
\$325.00	\$6,500.00	
\$1.00	\$1,000.00	
\$1,100.00	\$8,800.00	
\$1,000.00	\$1,000.00	
\$1,200.00	\$4,800.00	
\$1,100.00	\$18,700.00	
\$1,100.00	\$1,100.00	
\$80.00	\$5,280.00	
\$80.00	\$1,920.00	
\$50.00	\$50.00	
\$0.25	\$0.25	
Subtotal	\$530,530.00	

Sales Tax (8.2%) \$6,528.68

Total \$390,026.18

Road Items \$303,879.50  
Water Items \$86,146.68

Sales Tax (8.2%) \$8,405.90

Total \$452,263.90

Road Items \$341,347.00  
Water Items \$110,916.90

Sales Tax (8.2%) \$10,537.16

Total \$476,396.66

Road Items \$337,357.50  
Water Items \$139,039.16

Sales Tax (8.2%) \$12,220.48

Total \$542,750.48

Road Items \$381,499.75  
Water Items \$161,250.73

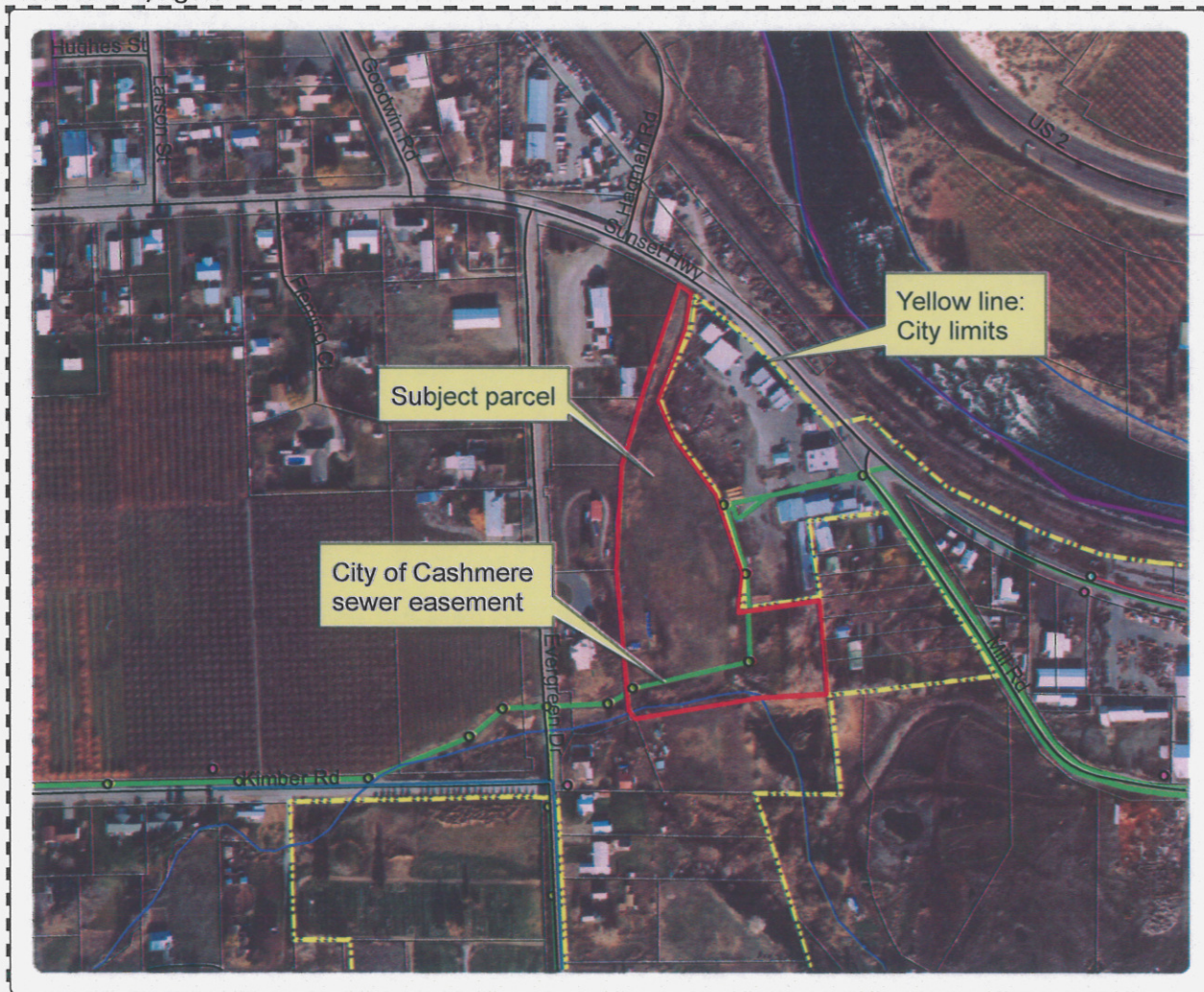


# Staff Summary

**Date:** May 13, 2012  
**To:** Cashmere City Council  
Mayor Gomes

**From:** Mark Botello  
**RE:** Ann Chipman Annexation Request

Please see Ann Chipman's annexation request for her property located at 5739 Sunset highway. On March 25, 2013 Cashmere Council adopted Ordinance No. 1211-*"relating to water rights and the transfer of the same from owners of property to the City upon annexation and/or development and providing for a fee in Lieu of transfer in certain conditions.* Staff and legal reviewed Ms Chipman's water claims associated with her property and have determined that Ms Chipman pay a "fee in lieu of" transfer of water claims/rights.



Below is a brief summary of Staff and Legal Council's interpretation of Ms Chipman's water right claims.

**Claims versus Certificates:**

As a starting point, water right claims are different than water right certificates (Ms Chipman has "water right claims"). A water right claim is simply a claim to water for a beneficial use which predates the water right permitting system. "Beneficial use" refers to a reasonable quantity of water applied to a non-wasteful use. The validity of a claim has not been confirmed through administrative or judicial process. Whereas a water right certificate has been confirmed by Ecology that the water right has been put to beneficial use as stated in a certificate of a water right.

In a change application involving a water right claim, the quantity of water claimed must be verified back to the date of first use or at least prior to the enactment of the water permitting system. Washington adopted the surface water code in 1917 and the ground water code in 1945. In this case, the water right claims involve claims to both surface and ground water.

Generally, water right claims are more difficult to transfer due to the increased factual information and the work required to prove consistent beneficial use of the water from the dated claimed until 2013.

**Water Use Declaration and Easement:**

An issue is raised by a Water Use Declaration and Easement ("Declaration") recorded by Ms Chipman to which the water right claims are believed to be appurtenant. The Declaration was recorded on September 10, 2008. The Declaration identified a well used to service the two parcels and seeks to apportion the use of the water. The Declaration does not identify the authorization for the water being withdrawn. Consequently, staff does not know whether the water withdrawn from the well is being done so under WRC 099018. The language in the Declaration and the proposed use raise some doubt that this is a well associated with WRC 099018. The Declaration allocates 0.5 acre-feet per year to four residences at a rate of 20 gallons per minute and no irrigation. WRC 099018 claims a use for one home and four acres of irrigations.

Further, the Declaration indicates that the two parcels are served by irrigation shares that are not part of the declaration. This creates an apparent conflict between acres of irrigation claimed under both WRC 099017 and WRC 099018 and the irrigation shares referenced in the Declaration.

In short, the Declaration appears to contradict the use of the water right claims on the property. Investigation of the actual system and the water use is needed to make a final determination of the validity of the water right.

**Property Ownership:**

Chelan County Short Plat No 2009-066; recorded 6/23/2010: Ms Chipman subdivided her lot (parcel 23-19-05-120-150) and subsequently created a new lot (parcel 23-19-05-120-152). These two parcels have been sold and a portion of the water right claims may encumber above mentioned parcels.

Chelan County Boundary Line Adjustment 2010-029; recorded 6/23/2010: It appears this boundary line adjustment was done to separate the domestic well from parcel "A" to Parcel "B".

In short, recent subdivision & boundary line adjustment activity and ownership transaction may have reduced the amount of water right claims and a portion of the subject claims may have two additional owners, since two (2) parcels have been sold. (i.e. A water right claim is consider real estate and it transfers with land and ownership, unless transferred to another parcel, which would have to be approved

---

Memo

by Ecology).

**Summary:**

There are many unanswered questions concerning the two claims presented to the City. The City should not rely on these two claims until the extent and validity of the water right claims have been reviewed in the context of a change application. Only after this is completed will the City have a clear picture that can be relied on for future domestic water services.

**RECOMMENDATION:**

Staff recommendations are to accept Ms Chipman's Annexation request and authorize Staff and Legal to proceed with the application process for annexation. Also, accept Staff's recommendation of charging Ms Chipman four (4) ERU's at \$1,700 per ERU for a total fee of \$6,800 for the "fee in Lieu of" water rights transfer plus additional fee of \$1,500 for application processing.

**Estimated density:**

- 5.27 acres = 229,561 Sq. ft.
  - Maximum lot coverage in multi-family zone district is 50%: (229,561 Sq. Ft. / .50 lot coverage) = 114,782.50 Sq. ft.
  - 35% for critical areas, infrastructure and easements (114,782.50 Sq. ft. X .35) = 40,173.87 Sq. ft.
  - Minimum lot size 8,500 Sq. ft: (40,173.86 Sq. ft. / 8,500 Sq. ft) = 4.72 density = **4 ERU's.**
-



**Ann L Chipman**  
P.O. Box 424  
Cashmere, WA 98815  
(509) 860-3344

August 3, 2012

Planning Commission  
City of Cashmere  
101 Woodring  
Cashmere, WA 98815

Dear Commission:

I would like to request an Urban Growth Area (UGA) amendment, and an Annexation and Zone change for 2 separate parcels.

The first request for the UGA Amendment is for Parcel # 23 19 06 140 280, located at 6226 Pioneer Drive, Cashmere (see enclosed map). It is located adjacent to the UGA, and currently zoned Rural Village by Chelan County. It is approximately 1.1 acres.

The second request for Annexation and Zone Change is for parcel #23 19 05 120 155, located at 5739 Sunset Hwy (see enclosed map). It is adjacent to the city limits of Cashmere, and is approximately 5 acres. Its current zoning is Multi Family, but I would like to change the zoning to Commercial.

If you have any questions, please do not hesitate to call.

Thank you,

Ann L Chipman

May be for the 2 lots recently subdivided.

- 5755 Evergreen Drive
- 5777 Evergreen Drive

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
WATER RIGHT CLAIMS REGISTRATION

**WATER RIGHT CLAIM**

RECEIVED  
DEPARTMENT OF ECOLOGY  
#141101577  
CASH OTHER NONE

1. NAME L. CROWL ALBIN

ADDRESS Route 1, Box 126  
Cashmere, Washington ZIP CODE 98815

2. SOURCE FROM WHICH THE RIGHT TO TAKE AND MAKE USE OF WATER IS CLAIMED: ground water  
(SURFACE OR GROUND WATER)  
W.R.I.A. (45)  
(LEAVE BLANK)

A. IF GROUND WATER, THE SOURCE IS a well

B. IF SURFACE WATER, THE SOURCE IS \_\_\_\_\_

3. THE QUANTITIES OF WATER AND TIMES OF USE CLAIMED:

A. QUANTITY OF WATER CLAIMED 13.75 PRESENTLY USED 13.75  
(CUBIC FEET PER SECOND OR GALLONS PER MINUTE)

B. ANNUAL QUANTITY CLAIMED \_\_\_\_\_ PRESENTLY USED \_\_\_\_\_  
(ACRE FEET PER YEAR)

C. IF FOR IRRIGATION, ACRES CLAIMED 4 PRESENTLY IRRIGATED 4

D. TIME(S) DURING EACH YEAR WHEN WATER IS USED: full time for domestic and seasonal for irrigation

4. DATE OF FIRST PUTTING WATER TO USE: MONTH \_\_\_\_\_ YEAR 1910

5. LOCATION OF THE POINT(S) OF DIVERSION/WITHDRAWAL: 995 FEET south AND 200 FEET east FROM THE northwest CORNER OF SECTION 2  
Government Lot 2  
BEING WITHIN Government Lot 2 OF SECTION 5 T. 23 N. R. 19 (E. OR W. 1/4)

IF THIS IS WITHIN THE LIMITS OF A RECORDED PLATTED PROPERTY, LOT \_\_\_\_\_ BLOCK \_\_\_\_\_ OF \_\_\_\_\_

(GIVE NAME OF PLAT OR ADDITION)

6. LEGAL DESCRIPTION OF LANDS ON WHICH THE WATER IS USED:  
Government Lot 2, Section 5, Township 23 North, Range 19, E.N.M.

COUNTY Chelan

7. PURPOSE(S) FOR WHICH WATER IS USED: Irrigation and 1 home

8. THE LEGAL DOCTRINE(S) UPON WHICH THE RIGHT OF CLAIM IS BASED: Appropriate

**DO NOT USE THIS SPACE**

THE FILING OF A STATEMENT OF CLAIM DOES NOT CONSTITUTE AN ADJUDICATION OF ANY CLAIM TO THE RIGHT TO USE OF WATERS AS BETWEEN THE WATER USE CLAIMANT AND THE STATE OR AS BETWEEN ONE OR MORE WATER USE CLAIMANTS AND ANOTHER OR OTHERS. THIS ACKNOWLEDGEMENT CONSTITUTES RECEIPT FOR THE FILING FEE.

DATE RETURNED: THIS HAS BEEN ASSIGNED WATER RIGHT CLAIM REGISTRY NO. Jan 675099018

*[Signature]*  
DIRECTOR - DEPARTMENT OF ECOLOGY

I HEREBY SWEAR THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.  
*[Signature]*  
DATE May 9, 1974

IF CLAIM FILED BY DESIGNATED REPRESENTATIVE, PRINT OR TYPE FULL NAME AND MAILING ADDRESS OF AGENT BELOW.

ADDITIONAL INFORMATION RELATING TO WATER QUALITY AND/OR WELL CONSTRUCTION IS AVAILABLE.

A FEE OF \$1.00 MUST ACCOMPANY THIS WATER RIGHT CLAIM

RETURN ALL THREE COPIES WITH CARBONS INTACT, ALONG WITH YOUR FEE TO:  
DEPARTMENT OF ECOLOGY  
WATER RIGHT CLAIMS REGISTRATION  
OLYMPIA, WASHINGTON 98504

ORIGINAL DWR

May be for irrigation for the  
5739 sunset Highway property.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
WATER RIGHT CLAIMS REGISTRATION

**WATER RIGHT CLAIM**

RECEIVED  
DEPARTMENT OF ECOLOGY  
MAY 14 10 1576  
CASH OTHER NONE

1. NAME L. CROWEL ALBIN  
ADDRESS Route 1, Box 126  
Cashmere, WA 98815

2. SOURCE FROM WHICH THE RIGHT TO TAKE AND MAKE USE OF WATER IS CLAIMED: surface  
(SURFACE OR GROUND WATER)  
W.R.I.A. (45)  
(LEAVE BLANK)

A. IF GROUND WATER, THE SOURCE IS \_\_\_\_\_  
B. IF SURFACE WATER, THE SOURCE IS Brender Creek - tributary of Wenatchee River

3. THE QUANTITIES OF WATER AND TIMES OF USE CLAIMED:  
A. QUANTITY OF WATER CLAIMED 100 g.p.m. PRESENTLY USED \_\_\_\_\_  
(CUBIC FEET PER SECOND OR GALLONS PER MINUTE) NOT always available  
B. ANNUAL QUANTITY CLAIMED 25 acre feet PRESENTLY USED because of low water  
(ACRE FEET PER YEAR)  
C. IF FOR IRRIGATION, ACRES CLAIMED 5 acres PRESENTLY IRRIGATED 5 acres  
D. TIME(S) DURING EACH YEAR WHEN WATER IS USED: Irrigation season only

4. DATE OF FIRST PUTTING WATER TO USE: MONTH \_\_\_\_\_ YEAR 1905  
See Vol. 1, page 353 Chelan County records

5. LOCATION OF THE POINT(S) OF DIVERSION/WITHDRAWAL: 1226 FEET south AND 200  
FEET east FROM THE NW CORNER OF SECTION Gov. Lot 2  
BEING WITHIN Government Lot 2 OF SECTION 5 T. 23 N. R. 19E (E.O.R.N.) W.M.  
IF THIS IS WITHIN THE LIMITS OF A RECORDED PLATTED PROPERTY, LOT \_\_\_\_\_ BLOCK \_\_\_\_\_ OF \_\_\_\_\_  
(GIVE NAME OF PLAT OR ADDITION)

6. LEGAL DESCRIPTION OF LANDS ON WHICH THE WATER IS USED:  
Government Lot 2, Section 5, Township 23 North Range 19, E.W.M.

COUNTY Chelan

7. PURPOSE(S) FOR WHICH WATER IS USED: \_\_\_\_\_

8. THE LEGAL DOCTRINE(S) UPON WHICH THE RIGHT OF CLAIM IS BASED: Appropriation.

**DO NOT USE THIS SPACE**  
THE FILING OF A STATEMENT OF CLAIM DOES NOT CONSTITUTE AN ADJUDICATION OF ANY CLAIM TO THE RIGHT TO USE OF WATERS AS BETWEEN THE WATER USE CLAIMANT AND THE STATE OR AS BETWEEN ONE OR MORE WATER USE CLAIMANTS AND ANOTHER OR OTHERS. THIS ACKNOWLEDGEMENT CONSTITUTES RECEIPT FOR THE FILING FEE.  
DATE RETURNED \_\_\_\_\_ THIS HAS BEEN ASSIGNED WATER RIGHT CLAIM REGISTRY NO. \_\_\_\_\_

HEREBY SWEAR THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.  
L. Crowel Albin  
DATE May 9, 1974  
IF CLAIM FILED BY DESIGNATED REPRESENTATIVE, PRINT OR TYPE FULL NAME AND MAILING ADDRESS OF AGENT BELOW.

AM 675099017  
DIRECTOR - DEPARTMENT OF ECOLOGY

ADDITIONAL INFORMATION RELATING TO WATER QUALITY AND/OR WELL CONSTRUCTION IS AVAILABLE.

A FEE OF \$1.00 MUST ACCOMPANY THIS WATER RIGHT CLAIM

ORIGINAL DWR

RETURN ALL THREE COPIES WITH CARBONS INTACT, ALONG WITH YOUR FEE TO:  
DEPARTMENT OF ECOLOGY  
WATER RIGHT CLAIMS REGISTRATION  
OLYMPIA, WASHINGTON 98504



Return Address:  
Ann Chipman  
5755 Evergreen Drive  
Cashmere, WA 98815

### WATER USE DECLARATION AND EASEMENT

Grantor (Declarant): Ann Chipman, single woman  
Abbreviated Legal Description of Property:  
Parcel A: Lot 1 of Short Plat No. 40 filed 6/5/1975 as amended by Boundary line Adjustment #756, filed 12/16/1980 under Auditor's File Number 819987, Chelan County, Washington.  
Assessor's Tax parcel I.D.# 23 19 05 120150  
Parcel B: Lot 4 of Short Plat No. 40 filed 6/5/1975 under Auditor's File Number 749703 as amended by Boundary line Adjustment #756, filed 12/16/1980 under Auditor's File Number 819987, Chelan County, Washington.  
Assessor's Tax parcel I.D.# 23 19 05 120155

Property recently subdivided and change in ownership. WRC may be in others ownership.  
3-property owners

The Grantor/Declarant, Ann Chipman, owns Parcel A and B legally described as follows:

Parcel A: Lot 1 of Short Plat No. 40 filed 6/5/1975 as amended by Boundary line Adjustment #756, filed 12/16/1980 under Auditor's File Number 819987, Chelan County, Washington.  
Assessor's Tax parcel I.D.# 23 19 05 120150  
Parcel B: Lot 4 of Short Plat No. 40 filed 6/5/1975 under Auditor's File Number 749703 as amended by Boundary line Adjustment #756, filed 12/16/1980 under Auditor's File Number 819987, Chelan County, Washington.  
Assessor's Tax parcel I.D.# 23 19 05 120155

These parcels have both been served water by a well located on parcel B approximately 150 feet north and 5 feet east of the Southwest corner of that parcel. The parcels are also served with irrigation shares that are not a part of this declaration. This declaration is intended to apportion the use of the well and provide for the operation and maintenance of the well and pipeline delivering the well water and provide for future utility easements to serve these parcels and any subdivision and development thereof.

Therefore this declaration establishes for the current owners of these parcels and their heirs and assigns to any subdivision thereof the right to develop underground utilities to include water, sewer, electrical, media and other similar utilities to serve only the subject parcels on easements burdening the above described real estate, situated in the County of Chelan, State of Washington, such that said easements will be accessible by all parties for the purpose of operating and maintaining the utilities installed or to be installed and be binding upon all successors in interest. These easements shall be located by agreement of the affected parties and

This declaration indicates that the two parcels are served by irrigation shares that are not part of the declaration. This creates conflict between acres of irrigation claimed under both WRC.

can be moved to a new agreed location at the expense of the requesting party so long as the function of the utility is not adversely affected and so long as the burdened property is restored to its condition prior to the move, again at the requesting parties expense. No party may withhold agreement to the development or moving of utilities without substantial reason. If a government agency requires as a condition of further development approval for one or more of the subject parcels a larger scope to this easement the scope of this easement shall increase accordingly.

Parcel A shall be allowed sufficient quantities to support the interior uses of four residences which shall be estimated at one half acre foot each annually and no more than 20 gallons per minute total from the well. The balance of the water available from the well within the authorized amounts shall be allocated to Parcel B.

WRC 099018 - claim states "full time for domestic + seasonal for irrigation". WRC 099018 is for one home

The cost of developing and maintaining the well and any portion of the delivery system used in common between the parcels shall be split evenly between the parcels occupying the area of Parcels A and B in existence at the time the cost is incurred. The party incurring a cost to operate and maintain the common portions of the well and delivery system shall have a lien on the other parcels benefiting from that system to the extent their portion of the cost is not paid within 30 days of a request for payment that includes paid invoices for the costs incurred.

Dated this Sept 8, 2008.

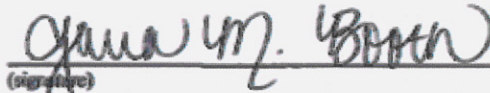
  
Ann Chipman

STATE OF WASHINGTON )  
County of Chelan ) ss.

I certify that I know or have satisfactory evidence that Ann Chipman is the person who appeared before me, and said persons acknowledged that they signed this instrument, on oath and stated that said person is authorized to execute the instrument and acknowledged it to be their free and voluntary act of such part for the uses and purposes mentioned in the instrument.

DATED Sept 8, 2008.



  
(signature)

Jana M. Booth  
(printed or typed name)

NOTARY PUBLIC, State of Washington

Residing at Cashmere WA

My Appointment Expires 10/18/2011





## Submitter Biller Order Form

Sales Information	Services	Products		
Software Partner: Vision	Invoice Presentment <input checked="" type="checkbox"/>	IVR <input checked="" type="checkbox"/>	Check21 <input type="checkbox"/>	Cloud Pay <input type="checkbox"/>
Invoice Cloud Sales Partner: Vision	ACH (EFT) <input checked="" type="checkbox"/>	Online Bank Direct <input type="checkbox"/>	Cloud Store <input type="checkbox"/>	
Invoice Cloud Sales Contact: Connie Hobbs <i>Insert name of sales rep here</i>	Credit Card Processing <input checked="" type="checkbox"/>	Credit Card Payment Methods: Visa <input checked="" type="checkbox"/> MC <input checked="" type="checkbox"/> Discover <input checked="" type="checkbox"/> Amex <input type="checkbox"/>		

GENERAL INFORMATION					
Ownership Type:	Government	CUSTOMER SERVICE / TRAINING CONTACT	TECHNICAL SUPPORT	MARKETING CONTACT	
Legal Name:	City of Cashmere <i>confirm that this is the legal name</i> Note: This name will have to match on ALL documents	Contact: Kay Jones	Contact: Kay Jones	Contact: Kay Jones	
Address 1:	101 Woodring Street	Phone: (509) 782-3513	Phone: (509) 782-3513	Phone: (509) 782-3513	
Address 2:		Email: <a href="mailto:kay@cityofcashmere.org">kay@cityofcashmere.org</a>	Email: <a href="mailto:kay@cityofcashmere.org">kay@cityofcashmere.org</a>	Email: <a href="mailto:kay@cityofcashmere.org">kay@cityofcashmere.org</a>	
City:	Cashmere				
State:	WA	Zip: 98815			
Phone:	(509) 782-3513	Fax: (509) 782-2840	Notes: <i>add any custom or contact notes here</i>		
Fed Tax ID:	91-6001408	Organization Start Date: July 1, 1904			
Name of Paperwork Signer:	Kay Jones Note: Signer must sign ALL documents	Signer Title: Clerk-Treasurer	Web Site URL: <a href="https://www.cityofcashmere.org">https://www.cityofcashmere.org</a>		
Signer Phone:	(509) 782-3513	Signer Email: <a href="mailto:kay@cityofcashmere.org">kay@cityofcashmere.org</a>	Virtual Path: <a href="https://www.invoicecloud.com/cityofcashmere">https://www.invoicecloud.com/cityofcashmere</a>		

INVOICE PRESENTMENT BILLER SETUP				
Ticketing System <input checked="" type="checkbox"/>	Biller initiated updates <input type="checkbox"/>	Address <input type="checkbox"/>	Phone <input type="checkbox"/>	Allow Customer to pay over the balance due <input checked="" type="checkbox"/>
Display Conveyance <input type="checkbox"/>	Customer initiated updates <input type="checkbox"/>	Address <input type="checkbox"/>	Phone <input type="checkbox"/>	Pay Total Balance from all outstanding Invoices <input type="checkbox"/>

PRICING			
Billor Portal Access Fee	\$ 75.00 Monthly	IC Payment Transaction Fee – EFT (if submitter absorbing EFT)	\$ Per Transaction
Additional Billor Portal Access Fee	\$ 10.00 Monthly      Quantity ____	IC Payment Transaction Fee - Check 21	\$ Per Transaction
Invoice Presentment (Includes 3 emails)	\$ 0.40 Per paperless invoice	Check Reader Quantity ____	\$ Monthly \$ Per Transaction
Additional Email Presentment	\$ Per Presentment	Online Bank Direct Access Fee	\$ per month
Monthly Presentment Fee	\$ Monthly	Online Bank Direct Transaction Fee	\$ per transaction
ACH Reject Fee	\$15.00 Per Transaction		

**BILLER BANK (MUST INCLUDE VOIDED BUSINESS CHECK FOR EACH ACCOUNT)**

Name of Checking Account (As it appears on check or Bank Letter):

Bank Name:

Physical Address:

Phone:

Depository	<i>Your Invoice payment collections will be electronically deposited into this account.</i>	Routing #	Account #
Fees	<i>Your Invoice and payment processing fees will be electronically deducted from this account.</i>	Routing #	Account #

**CERTIFICATION AND AGREEMENT**

- A. By signing below, the Biller hereby authorizes Invoice Cloud, Inc. ("Invoice Cloud") to initiate and execute debit/credit entries to its checking/deposit account(s) indicated above at the depository financial institution(s) named above and to debit/credit the same such account(s). The Biller acknowledges that the origination of ACH transactions to its account(s) must comply with the provisions of U.S. law. This authority is to remain in full force and effect until (i) Invoice Cloud has received written notification (by electronic or U.S. mail) from the Biller of its revocation in such time and manner as to allow Invoice Cloud a reasonable opportunity to act on it, but not less than 10 business days notice; and (ii) all obligations of the Biller to Invoice Cloud that have arisen under this Agreement and all other agreements have been paid in full. The Biller must also notify Invoice Cloud, in writing, (by electronic or U.S. mail) when a change in account number(s) or bank has occurred at which time this authorization shall apply to such new/changed account. This notification must be received within 10 business days of change. A fee will be charged for any returned ACH debits.
- B. By signing below, the Biller named: (1) has read, agreed to, and acknowledges receipt of the terms and conditions of the Submitter Biller Agreement, attached hereto and incorporated herein by reference (2) certifies to Invoice Cloud that he/she is authorized to sign this Order Form; (3) certifies that all information and documents submitted in connection with this Order Form are true and complete; (4) authorizes Invoice Cloud or its agent to verify any of the information given, including credit references, and to obtain credit; (5) agrees to pay the Monthly Access Fee through the last day of the month following the effective date of termination as provided in the Billing Agreement; (6) agrees that Biller and each transaction submitted will be bound by the Order Form and the Biller Agreement in its entirety; (7) agrees that Biller will submit transactions only in accordance with the information in this Order and Biller Agreement and will immediately inform Invoice Cloud, by email (contracts@invoicecloud.com) if any information in this Order Form changes. The terms and conditions and this Order and the Biller - Agreement constitute the entire integrated Biller Agreement by and between Biller and Invoice Cloud and (8) the Biller agrees and understands that outstanding sums due and owing to Invoice Cloud., will be charged daily or monthly and debited from its current depository account. Non-sufficient funds for these debits are grounds for a change in fees or termination of this Agreement. In the event of non-payment of any sums due, Invoice Cloud reserves the right to withdraw such sums from the current depository account at any time to ensure payment of the same.
- C. By signing below, the Biller hereby gives permission to Invoice Cloud to access his / her credit history via Trans Union, Equifax, or other credit-reporting agency
- D. The Submitter Biller Order Form and the Submitter Biller Agreement will become effective only when counter-signed by Invoice Cloud and upon execution by the Biller of such third party agreement required by Invoice Cloud to permit use of the payment function of the Service.

In WITNESS WHEREOF, the parties hereto have executed this Agreement as of this day \_\_\_\_\_

Biller Signature

X  
\_\_\_\_\_  
Corporate Officer

Accepted by Invoice Cloud:

Kay Jones                      Clerk- Treasurer  
\_\_\_\_\_  
Print Name                      Title

X \_\_\_\_\_

Biller Agreement included.

**INVOICING PARAMETERS**

Invoice Type: Water	Type of IC Service: Cloud Invoicing & Payment	Multi Invoice Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Enable Paperless Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Billing Software: Vision	Software Version: Utilities	Printer: In House	
Billing Frequency (How often bills are mailed) Monthly	Number of Installments: 1	Months Billed: Jan <input type="checkbox"/> Feb <input type="checkbox"/> Mar <input type="checkbox"/> Apr <input type="checkbox"/> May <input type="checkbox"/> Jun <input type="checkbox"/> Jul <input type="checkbox"/> Aug <input type="checkbox"/> Sep <input type="checkbox"/> Oct <input type="checkbox"/> Nov <input type="checkbox"/> Dec <input type="checkbox"/> All <input checked="" type="checkbox"/>	
Bill Mail Date: 1 <sup>st</sup> - 10 <sup>th</sup> <input checked="" type="checkbox"/> 11 <sup>th</sup> -20 <sup>th</sup> <input type="checkbox"/> 21 <sup>st</sup> -31 <sup>st</sup> <input type="checkbox"/>	Invoices per Cycle: 1200		
Highest Invoice Amount: \$4,000.00	Average Invoice Amount \$150.00		

**OPTIONS**

Allow Paperless Registration (Allows Consumer to opt out of receiving a paper bill) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Allow Customers to Request Paper (Allows the customer to convert back to receiving a paper statement after they have gone paperless) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Scheduled Payments (Allows consumers to schedule a one- time payment to pay their bill within the billing cycle) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Flex Pay (Allows consumers to schedule multiple payments to pay their bill within the billing cycle) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Minimum Flex Pay Days (days before due date) _____
Auto Pay (Allows Consumer to have their payment automatically taken out every bill cycles on day balance is due) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Shopping Cart (Allows Customer to batch multiple invoices of the same invoice type) Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Online Bank Direct – Automatic Match (Invoice Cloud will attempt an automatic match between check and open invoice(s)) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Check 21 – Automatic Match (Invoice Cloud will attempt an automatic match between check and open invoice(s)) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
IVR - Biller Absorbs IVR Fee (Biller pays for the fees related to IVR transaction) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

**SERVICE FEE PRICING**

Credit Card Convenience Fee	\$3.95
ACH Convenience Fee	\$0.95
Flex Pay ACH Convenience Fee	N/A
Flat Rate Credit Card Utility Convenience Fee	\$3.95
Max Cap for Credit Cards (On Utilities)	\$250.00
IVR Convenience Fee	Above Convenience Fee + \$1.95



# Billers – Submitter Agreement Terms and Conditions

## 1. License Grant & Restrictions

Subject to execution by Biller of the Invoice Cloud Biller Order Form - Submitter Model ("Order Form - Submitter Model") and these Terms and Conditions, Invoice Cloud hereby grants Biller a non-exclusive, non-transferable, worldwide right to use the Service described on the Order Form - Submitter Model until termination as provided herein, solely for the following purposes, and specifically to bill and receive payment from Biller's own customers, and not to resell the Service: real estate tax, personal property tax, excise tax, permit and other fees, utilities and fees and payment associated with municipal, government services. All rights not expressly granted to Biller are reserved by Invoice Cloud and its licensors.

Biller will tender to Invoice Cloud all Biller Data generated for Biller's Customers. Unless otherwise expressly agreed to in writing by Invoice Cloud to the contrary, Invoice Cloud will process all of Biller's Customers' Payment Instrument Transactions requirements related to the Biller Data and will do so via electronic data transmission according to our formats and procedures for each electronic payment type selected in the Order Form – Submitter Model. Biller will not use the services of any bank, payment processor, entity, or person other than Invoice Cloud for the presentment of Biller Data via electronic data transmission or the authorization or processing of Biller's Customers' Payment Instrument Transactions for each electronic payment type selected in the Order Form – Submitter Model throughout the term of this Agreement.

Biller shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) Recreate, "frame" or "mirror" any Content of the Service on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service or (v) copy any features, functions or graphics of the Service. Biller may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking purposes. Biller may not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or in violation of any third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

## 2. Privacy & Security; Disclosure

Invoice Cloud's privacy and security policies may be viewed at <http://www.invoicecloud.com/privacy.html>. Invoice Cloud reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Individual users, when they initially log in, may be asked whether or not they wish to receive marketing and other non-critical Service-related communications from Invoice Cloud from time to time. They may opt out of receiving such communications at that time or at any subsequent time by changing their preference under <http://www.invoicecloud.com/privacy.html>. Note that because the Service is a hosted, online application, Invoice Cloud occasionally may need to notify all users  
Biller Agreement- Submitter Model

of the Service (whether or not they have opted out as described above) of important announcements regarding the operation of the Service. If Biller becomes a paying customer of the Service, Biller agrees that Invoice Cloud can disclose the fact that Biller is a paying customer and the edition of the Service that Biller is using.

## 3. Biller's Responsibilities

Biller is responsible for all activity occurring under Biller's accounts and shall abide by all applicable laws, and regulations in connection with Biller's and/or its customers' and a payers' use of the Service, including those related to data privacy, communications, export or import of data and the transmission of technical, personal or other data. Biller shall: (i) notify Invoice Cloud immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Invoice Cloud and immediately stop any copying or distribution of Content that is known or suspected to be unauthorized by Biller or Biller's Users; and (iii) not impersonate another Invoice Cloud user or provide false identity information to gain access to or use the Service.

Invoice Cloud is not responsible for any Biller postings in error due to delayed notification from credit card processor, ACH bank and other related circumstances.

Biller is required to ensure that it maintains a fair policy with regard to the refund, return or cancellation of services and adjustment of Transactions. Biller is also required to disclose a refund, return or cancellation policies to Invoice Cloud and any applicable payment processors and Biller's Customers, as requested.

Any change in a return/ cancellation policy must be submitted to Invoice Cloud, in writing, not less than 21 days prior to the effective date of such change.

If Biller allows or is required to provide a price adjustment, or cancellation of services in connection with a Transaction previously processed, Biller will prepare and deliver to Invoice Cloud Transaction Data reflecting such refund/adjustment within 2 days of resolution of the request resulting in such refund/adjustment. The amount of the refund/adjustment cannot exceed the amount shown as the total on the original Transaction Data. Biller may not accept cash or any other payment or consideration from a Customer in return for preparing a refund to be deposited to the Customer's account; nor may Biller give cash/check refunds to a Customer in connection with a Transaction previously processed, unless required by applicable law.

## 4. Account Information and Data

Invoice Cloud does not own any Customer Data, in the course of using the Service. Biller, not Invoice Cloud, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Invoice Cloud shall not be responsible or liable for the Biller's or Invoice Cloud's deletion, correction, destruction, failure to protect, damage, loss or failure to store any Customer Data except where Invoice Cloud fails to use commercially reasonable safeguards. In the event this Agreement is terminated (other than by reason of Biller's breach), Invoice Cloud will make available to Biller a file of the Customer Data within 30 days of termination of these Terms and Conditions, if Biller so requests at the time of termination. Invoice Cloud reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, Biller's non-payment. Upon termination for cause,

Biller's right to access or use Customer Data immediately ceases, and Invoice Cloud shall have no obligation to maintain or forward any Customer Data.

## 5. Intellectual Property Ownership/Confidentiality

Invoice Cloud alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Invoice Cloud Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, integration components and application programming interfaces, recommendations or other information provided by Biller or any other party relating to the Service. In the event any such intellectual property rights in the Invoice Cloud Technology, the Content or the Service do not fall within the specifically enumerated works that constitute works made for hire under applicable copyright laws or are deemed inventions owned by Invoice Cloud, Biller hereby irrevocably, expressly and automatically assigns all right, title and interest worldwide in and to such intellectual property rights to Invoice Cloud. This Agreement is not a sale and does not convey to Biller any rights of ownership in or related to the Service, the Invoice Cloud Technology or the Intellectual Property Rights owned by Invoice Cloud. The Invoice Cloud name, the Invoice Cloud logo, and the product names associated with the Service are trademarks of Invoice Cloud or third parties, and no right or license is granted to use them.

Biller agrees that during the course of using or gaining access to the Service (or components thereof) it may be furnished with or otherwise have access to information that Invoice Cloud considers to be confidential including but not limited to technology, Invoice Cloud Technology, software (whether in source code, embedded, object code or in documentation), solutions, hardware, specifications, designs, plans, drawings, innovations, file specs, XML files, benchmark and evaluation testing and data and associated results and conclusions, data, prototypes, demonstration materials, customer and/or prospective customer information, pricing and financial information of the parties which are hereby deemed to be Invoice Cloud Confidential Information, including without limitation data, testing, analysis, outputs, modifications and derivative works of the Service, evaluations and conclusions created by the Biller resulting from the disclosure herein; or any other information by its very nature constitutes information of a type that any reasonable business person would conclude was intended by Invoice Cloud to be treated as proprietary, confidential, or private (the "Confidential Information"). Biller agrees to secure and protect the Invoice Cloud Confidential Information in a manner consistent with the maintenance of Invoice Cloud's rights therein, using at least as great a degree of care as it uses to maintain the confidentiality of its own confidential information, but in no event use less than reasonable efforts. Biller will not sell, transfer, publish, disclose, or otherwise make available any portion of the Confidential Information of the other party to third parties (and will ensure that its employee and agents abide by the requirements hereof), except as expressly authorized in this Agreement.

## 6. Third Party Interactions

Biller must enter into agreements with credit card processors, bank card issuers, payment associations, ACH and check processors, as required by Invoice Cloud including without limitation payment processing instructions and guidelines, card issuer and payment association agreements and guidelines, and convenience fee agreements with Biller's obligations under such agreements incorporated herein by reference, and deliver

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all such executed agreements to Invoice Cloud. Biller may also enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such agreements or activity, and any terms, conditions, warranties or representations associated with such agreements or activity is solely between Biller and the applicable third-party, even if required, referred or located through the Services. Invoice Cloud and its licensors shall have no liability, obligation or responsibility for any such agreement, activity, processing, correspondence, purchase or promotion between Biller and any such third-party. In the event that there are third party links in the Service, Invoice Cloud does not endorse any sites on the Internet that are linked through the Service. Invoice Cloud provides these links to Biller only as a matter of convenience, and in no event shall Invoice Cloud or its licensors be responsible for any content, products, or other materials on or available from such sites. Invoice Cloud provides the Service to Biller pursuant to the terms and conditions of this Agreement.

### 7. Biller Deposit Account Automatic Debit

Biller shall authorize Invoice Cloud's receipt of all fees and periodic fees referenced in the Order Form - Submitter Model from payments made by Customers, or from credit card processors, bank card issuers, payment associations, ACH and check processors, as applicable. Biller shall establish a Deposit Account(s) whereby Invoice Cloud will automatically withdraw from the Biller's account(s) used for this purpose ("Biller's Debit Account(s)") the fees and periodic fees referenced in the Order Form - Submitter Model and any Chargebacks, ACH rejects or reversals, refunds and other fees due hereunder resulting therefrom. Biller shall be responsible for and pay all fees or charges relating to Biller's Debit Account and the automatic debit facility, in accordance with the terms thereof. In addition, with respect to any invoices and/or payments that are processed through the Service, the Biller's agreements with all such credit card processors, bank card issuers, ACH and check processors shall require remittance and payment to Invoice Cloud, of all fees and to no other account.

Biller shall maintain sufficient funds in the Biller's Debit Account to pay all periodic fees, Chargebacks, ACH rejects, reversals refunds and other fees due hereunder resulting therefrom.

### 8. Chargebacks

Invoice Cloud may receive a Chargeback from a Transaction for a number of reasons. In the event that Invoice Cloud receives a Chargeback, Biller shall reimburse Invoice Cloud for such Chargebacks (which may include Invoice Cloud withdrawing such amounts from the Biller's Debit Account). The following are some of the most common reasons for Chargebacks; in no way is this intended to be an exhaustive list of possible Chargeback reasons:

- (1) Failure to issue a refund to a Customer as required.
- (2) Invoice Cloud did not receive Biller's response to a Retrieval Request within 7 days or any shorter time period required by the Payment Brand Rules.
- (3) A Customer disputes the Transaction, or claims that the Transaction is subject to a set-off, defense, or counterclaim.

If Biller is subject of an excessive amount of Chargebacks, as determined by Invoice Cloud from time

to time, in addition to our other remedies under this Agreement, Invoice Cloud may take the following actions: (i) request that Biller in every case commence issuing refund and related payments directly to Customer (ii) notify Biller of a new rate that will be charged to process Chargebacks; (iii) collect from Biller an amount reasonably determined by Invoice Cloud to be sufficient to cover anticipated Chargebacks and all related fees, penalties, expenses, and fines or request a Reserve Amount; or (iv) terminate the Agreement. Biller also agrees to pay any and all penalties, fees, fines and costs assessed against Invoice Cloud relating to your violation of this Agreement, or other agreement related thereto.

Biller has full liability if any Transaction, for which Invoice Cloud has provided Biller credit or paid Biller, is the subject of a Chargeback or ACH rejects or reversals or other refunds or credits. To the extent Invoice Cloud has paid or may be called upon to pay a Chargeback, refund or adjustment for or on the account of a Customer and Biller does not reimburse us as provided for in this Agreement, or has insufficient funds to draw from in the Billers Debit Account then for the purpose of our obtaining reimbursement of such sums paid or anticipated to be paid, Invoice Cloud has all of the rights and remedies of such Customer under applicable federal, state, or local laws and you authorize Invoice Cloud to assert any and all such claims in its own name for and on behalf of any such Customer individually or all such Customers as a class.

The Billers Debit Account will contain sufficient funds to cover any estimated exposure based on reasonable criteria for Chargebacks, ACH rejects or reversals, credits, returns, and all additional liabilities anticipated under this Agreement, including, but not limited to Chargebacks, fines, fees and penalties. Invoice Cloud may (but is not required to) apply funds in the Billers Debit Account toward, and set off any funds that would otherwise be payable to Biller against, the satisfaction of any amounts which are or may become due from Biller pursuant to this Agreement. Invoice Cloud may, at its sole discretion, collect fees related to Chargebacks and ACH rejects and reversals, or other refunds or credits from Biller's customers.

### 9. Customer Data Storage

Invoice Cloud reserves the right to establish or modify its general practices and limits relating to storage of Customer Data. Provided there is no prior termination or expiration of the Agreement, Invoice Cloud will retain invoice and payment history for up to 18 months. In the event of termination or expiration of the Agreement, Biller agrees and acknowledges that Invoice Cloud has no obligation to retain Customer Data, and that such Customer Data may be irretrievably deleted if Biller's account is 60 days or more delinquent.

### 10. Billing and Renewal

Invoice Cloud charges and collects for use of the Service. Invoice Cloud's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities. Invoice Cloud may assess and/or collect such taxes, levies, or duties against Biller and Biller shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Invoice Cloud's income. All payment obligations are non-cancellable and all amounts or fees paid are non-refundable. Biller agrees to provide Invoice Cloud with complete and accurate billing and contact information. This information includes Biller's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License

Administrator. Biller agrees to update this information within 30 days of any change to it. If the contact information Biller has provided is false or fraudulent, Invoice Cloud reserves the right to terminate Biller's access to the Service in addition to any other legal remedies.

Unless Invoice Cloud in its discretion determines otherwise, all fees will be billed in U.S. dollars. If Biller believes Biller's bill or payment is incorrect, Biller must contact Invoice Cloud in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit; otherwise such bill or payment will be deemed correct.

### 11. Non-Payment and Suspension

In addition to any other rights granted to Invoice Cloud herein, Invoice Cloud reserves the right to suspend or terminate this Agreement and Biller's access to the Service if Biller's account becomes in any way delinquent (falls into arrears) or if there are excessive Chargebacks. Delinquent invoices (accounts in arrears) are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. Biller will continue to be charged for period fees during any period of suspension. If Biller or Invoice Cloud initiates termination of this Agreement, Biller will be obligated to pay the balance due on Biller's account computed in accordance with the Charges and Payment of Fees section above. Biller agrees that Invoice Cloud may charge such unpaid fees to Biller's Debit Account or credit card or otherwise bill Biller for such unpaid fees.

Invoice Cloud reserves the right to impose a reconnection fee in the event Biller is suspended and thereafter requests access to the Service. Invoice Cloud reserves the right to modify any pricing with respect to fees owed by the Biller upon thirty days written notice to Biller based on increases on fees, assessments, and the like from credit card processors, bank card issuers, payment associations, ACH and check processors.

### 12. Term and Termination

(a) The initial term of this Agreement shall be for a period of 3 years ("**Initial Term**") commencing on the Effective Date on the Order Form - Submitter Model and will renew for each of additional successive 2 year terms ("**Renewal Term**") unless terminated as set forth below; (b) This Agreement may be terminated by either party effective at the end of the Initial or any Renewal Term by providing written notice to the other party of its intent not to renew no less than ninety (90) days prior to the expiration of the then-current term. Additionally, this Agreement may be terminated: (i) by Invoice Cloud at any time with or without cause upon 30 days written notice (except such shorter time frame in the event of exigent circumstances), and without prior notice including without limitation if termination is due to excessive Chargebacks, maintaining an adequate Billers Debit Account or Biller's financial insecurity, and (ii) by Biller in the event of a material breach of the terms of this Agreement by Invoice Cloud provided Biller provides Invoice Cloud written notice of the alleged breach and the breach remains uncured for a period of 30 days following receipt of written notice by the breaching party. (c) Upon any early termination of this Agreement by Biller, or by Invoice Cloud, should Biller breach any of the terms of this Agreement during the Initial Term or any Renewal Term, Biller shall pay to Invoice Cloud an early termination fee of \$195.00, plus any fees and costs for which Invoice Cloud is liable to third parties related thereto ("**Early Termination Fee**"). To the extent that applicable state law mandates lesser

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termination fees, the Early Termination Fee shall be the maximum allowed by applicable law. Biller shall remain liable for all fees and charges incurred, and all periodic fees owed through the end of the calendar month following the effective date of termination. In the event this Agreement is terminated (other than by reason of Biller's breach), Invoice Cloud will make available to Biller a file of the Customer Data within 30 days of termination if Biller so requests at the time of termination. Biller agrees and acknowledges that Invoice Cloud has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination.

### 13. Termination for Cause

Any breach of Biller's payment or other obligations under these Terms and Conditions or unauthorized use of the Invoice Cloud Technology or Service by Biller, its customers and/or payers, or any employee, agent, or contractor thereof will be deemed a material breach of this Agreement. Invoice Cloud, in its sole discretion, may terminate Biller's password, account or use of the Service if Biller breaches or otherwise fails to comply with this Agreement. In addition, Invoice Cloud may terminate a free account at any time in its sole discretion. Biller agrees and acknowledges that Invoice Cloud has no obligation to retain the Customer Data, and may delete such Customer Data, if Biller has materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

### 14. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Invoice Cloud represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online Invoice Cloud help documentation under normal use and circumstances. Biller represents and warrants that Biller has not falsely identified itself nor provided any false information to gain access to the Service and that Biller's billing information is correct.

As to all Transactions Biller submits to Invoice Cloud for processing, Biller represents and warrants that:

- (1) The Transaction Data represents payment or refund of payment, for a bona fide transaction.
- (2) The Transaction Data represents an obligation of the Customer for the amount of the Transaction and the accuracy of all Transaction Data.
- (3) The Transaction Data does not involve any element of credit for payment of a previously dishonored payment or for any other purpose than payment for a current transaction and future payments as agreed upon by the customer.
- (4) The Transaction Data is free from any material alteration not authorized by the Customer.
- (5) The amount charged for the Transaction is not subject to any dispute, setoff, or counterclaim.
- (6) Neither Biller nor its employees has advanced any cash to the Customer in connection with the Transaction, nor have you accepted payment for effecting credits to a Customer.

(7) Biller has made no representations or agreements for the issuance of refunds except as it states in your return/cancellation policy, which has been previously submitted to Invoice Cloud in writing, and which is available to the Customer.

(8) Any transaction submitted to Invoice Cloud to credit a Customer's account represents a refund or adjustment to a Transaction previously submitted to Invoice Cloud.

(9) Biller has no knowledge or notice of information that would lead it to believe that the enforceability or collectability of the subject Transaction Data is in any manner impaired. The Transaction Data is in compliance with all applicable laws, ordinances, and regulations. The Transaction Data is originated in compliance with this Agreement and any applicable agreements.

(10) For a Transaction where the Customer pays in installments or on a deferred payment plan, a Transaction Data record has been prepared separately for each installment transaction or deferred payment on the date(s) the Customer agreed to be charged. All installments and deferred payments, whether or not they have been submitted to Invoice Cloud for processing, shall be deemed to be a part of the original Transaction.

(11) Biller has not submitted any Transaction that it knows or should have known to be either fraudulent, illegal, or otherwise in violation of any provision of this Agreement or other applicable agreements.

(12) All Transaction Data is complete and accurate (including with respect to total due fields) and Invoice Cloud is not liable or responsible for any incomplete or inaccurate Transaction Data.

### 15. Indemnification

Invoice Cloud shall indemnify and hold Biller, employees, attorneys, and agents, harmless from any losses, liabilities, and damages (including, without limitation, Biller's costs, expenses, and reasonable attorneys' fees) arising out of any Chargeback for (i) failure by Invoice Cloud to implement commercially reasonable safeguards against the theft of the Customer's account information; (ii) its failure to deliver funds processed by Invoice Cloud as required hereunder (which relates to payments due from Invoice Cloud for Transaction Data), or (iii) any voluntary or involuntary bankruptcy or insolvency proceeding by or against Invoice Cloud. This indemnification does not apply to any claim or complaint relating to Biller's failure to resolve a payment dispute concerning debts owed to Biller or Biller's negligence or willful misconduct or violation of any applicable agreement or law.

Biller shall indemnify and hold Invoice Cloud, its licensors and Invoice Cloud's, subsidiaries, affiliates, officers, directors, employees, attorneys, agents, and payment processors harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with any claim, cause of action, lawsuit, administrative or criminal investigation, charge, action or claim alleging: (i) a Chargeback by any party, including without limitation Chargebacks claimed by any payment and credit card processors, bank, or other financial services organization (ii) that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (iii) a violation by Biller of Biller's representations and warranties or the breach by Biller or Biller's Users of this Agreement including without limitation incomplete or inaccurate Transaction

Data; or (iv) relating directly or indirectly to Biller's or its customers and/or payer's use of the Service.

### 16. Limited Warranty

Invoice Cloud warrants that the Services are implemented to provide the functions that the Biller has selected on the Order Form- Submitter Model. In addition, Invoice Cloud will, at its own expense, correct any Transaction Data to the extent that such errors have been caused by Invoice Cloud or by malfunctions of Invoice Cloud's processing systems, EXCEPT AS PROVIDED IN THIS SECTION, THE SERVICE AND ALL CONTENT AND CUSTOMER DATA IS PROVIDED TO BILLER AND ITS USERS WITHOUT ANY EXPRESS, OR IMPLIED WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY INVOICE CLOUD AND ITS LICENSORS. INVOICE CLOUD AND ITS LICENSORS AND PAYMENT PROCESSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET BILLER'S REQUIREMENTS OR EXPECTATIONS OR THAT THE SPECIFICATIONS, SIZING OR OTHER REQUIREMENTS OF THE BILLER LISTED ON THE ORDER FORM - SUBMITTER MODEL WILL BE MET, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE.

### 17. Internet Delays

Invoice Cloud's service may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Invoice cloud is not responsible for any delays, delivery failures, or other damage resulting from such problems.

### 18. Limitation of Liability

INVOICE CLOUD'S AGGREGATE LIABILITY SHALL BE UP TO AND NOT EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM BILLER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL INVOICE CLOUD AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 19. Additional Rights

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of

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damages, so the exclusions set forth above may not apply to Biller.

### 20. Local Laws and Export Control

The Invoice Cloud site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. The Biller and each User acknowledges and agrees that the none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Biller agrees to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

The Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

### 21. Notice

Invoice Cloud may give notice by electronic mail to Biller's email address on record in Invoice Cloud's account information, or by written communication sent by first class mail or pre-paid post to Biller's address on record in Invoice Cloud's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). Biller may give notice to Invoice Cloud (such notice shall be deemed given when received by Invoice Cloud) at any time by any of the following: letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Invoice Cloud at the following address: Invoice Cloud, Inc., 940 High Street, Suite 305, Westwood, MA 0209 Attention: Client Services.

### 22. Modification to Terms

Invoice Cloud reserves the right to modify the terms and conditions of these Terms and Conditions or its policies relating to the Service at any time, effective upon providing written notice to Biller. the Service or by providing written notice to Biller. Invoice Cloud or Biller may add or eliminate the payment types in the Order Form- Submitter Model, as either deems necessary upon thirty (30) days written notice to other party. Biller may terminate the Agreement with no early termination fee at Biller's sole discretion if the Terms and Conditions are modified by Invoice Cloud.

### 23. Assignment; Change in Control

This Agreement may not be assigned by Biller without the prior written approval of Invoice Cloud but may be assigned without Biller's consent by Invoice Cloud to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

### 24. General

This Agreement shall be governed by Washington state law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form - Submitter Model, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Biller and Invoice Cloud as a result of this agreement or use of the Service. The failure of Invoice Cloud to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Invoice Cloud in writing. All rights and obligations of the parties in Section 5, 8, 11, 12 13, 15, 18, 24 and 25 shall survive termination of this Agreement. This Agreement, together with any applicable Order Form - Submitter Model, comprises the entire agreement between Biller and Invoice Cloud and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral between the parties regarding the subject matter contained herein.

### 25. Definitions

As used in this Agreement and in any Order Form - Submitter Model now or hereafter associated herewith:

"Agreement" means these terms and conditions, any Order Form - Submitter Model, whether written or submitted online and any materials available on the Invoice Cloud website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by Invoice Cloud from time to time in its sole discretion;

"Biller Data" means invoices and bills of the Biller.

"Chargeback" is a reversal of a Transaction that Biller previously presented to Invoice Cloud under this Agreement.

"Content" means the audio and visual information, documents, software, products and services contained or made available to Biller in the course of using the Service;

"Customer" shall include customers, taxpayers and users of services of Biller.

"Customer Data" means any data, information or material provided or submitted by Biller or its Customers to the Service or the Biller's customers and/or payers in the course of using the Service;

"Effective Date" means the earlier of either the date these Terms and Conditions are accepted by executing an Order Form - Submitter Model;

"Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives, integration components and application programming interfaces thereof, and forms of protection of a similar nature anywhere in the world;

"Invoice Cloud" means collectively Invoice Cloud, Inc., a Delaware corporation;

"Invoice Cloud Technology" means all of Invoice Cloud's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Biller by Invoice Cloud in providing the Service;

"Payment Instrument Transaction" is transaction conducted between Biller and its Customers with respect to an account, or evidence of an account, authorized and established between a Customer and a credit card association or issuer, or representatives or members thereof that Biller accepts from Customers as payment. Payment Instrument Transactions include, but are not limited to, transactions processed by credit and debit cards, ACH, EFT and Check 21 transactions, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates and credit accounts.

"Order Form - Submitter Model(s)" means the form evidencing the initial subscription for the Service and any subsequent Order Form - Submitter Models submitted online or in written form, specifying, among other things, the services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form - Submitter Model to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form - Submitter Model, the terms of this Agreement shall prevail);

"Service(s)" means the specific edition of Invoice Cloud's billing and payment service, or other corporate services identified on the Order Form - Submitter Model, developed, operated, and/or maintained by Invoice Cloud, accessible via <http://www.InvoiceCloud.com> or another designated web site or IP address, or ancillary online or offline products and services provided to Biller by Invoice Cloud, to which Biller are being granted access under this Agreement, including the Invoice Cloud Technology and the Content;

"Transaction" is a transaction conducted between a Customer and Invoice Cloud (on behalf of Submitter) utilizing either a Payment Instrument or a bill presentation in which consideration is or to be exchanged or tax is or to be due between the Customer and Biller.

"Transaction Data" means is the written or electronic record of a Transaction, including but not limited to an authorization code or settlement record and Biller Data.

### 25. Check Reader Terms and Conditions

If the Order Form - Submitter Model includes a check reader device, Invoice Cloud will provide to Biller on loan for the fees outlined in the Order Form - Submitter Model, the check reader device(s) described in the Order Form - Submitter Model (the "Device"). Biller will be fully responsible for the Device including without limitation all risk of loss and damage to Device while in its possession or control, save normal wear and tear. Biller shall not, nor allow any third party to, modify, repair, relocate, sell, lease, assign, encumber, or otherwise tamper with any of the Device without Invoice Cloud's express written consent.

## Billers – Submitter Agreement Terms and Conditions

Upon expiration or termination of the service using the Device, outlined in the Order Form - Submitter Model, Biller shall be responsible to return the Device, to Invoice Cloud at the place from which Device was shipped (or as otherwise designated by Invoice Cloud) in as good condition as exists at the commencement of the term, reasonable wear and tear in respect thereto excepted. Biller shall use Device at all times in a workmanlike manner and in such manner as will not damage or injure the Device except by the ordinary wear and tear of such Device.

The Device shall retain its character as personal property and all right, title and interest thereto shall not pass to Biller but title and ownership shall remain exclusively with Invoice Cloud. Biller shall be and shall have the duties of a bailee of the Device. Upon expiration or termination of the service using the Device, Invoice Cloud may immediately and without notice take possession of Device and to remove and keep or dispose of the same and any unpaid rentals and fees shall at once become due and payable.

Invoice Cloud warrants that the Device pursuant to this Agreement will perform in accordance with Invoice Cloud's service description, if any. This warranty shall apply only to the original Biller. Should this Device fail to conform to Invoice Cloud's service description, Invoice Cloud will, at its option, repair or replace this Device at no additional charge except as set forth below. Repair parts and replacement Devices will be furnished on an exchange basis and will be either reconditioned or new. All replaced parts and Devices remain the property of Invoice Cloud. This limited warranty does not include service to repair damage to the Device resulting from accident, disaster, unreasonable use, misuse, abuse, Biller's negligence, or non-Invoice Cloud modification of the Device. Invoice Cloud reserves the right to examine the alleged defective Device to determine whether the warranty is applicable. Without limiting the generality of the foregoing, Invoice Cloud specifically disclaims any liability or warranty for Device modified, or altered, by Biller or others.

If there is a problem with a Device, an e-mail must be sent to [support@invoicecloud.com](mailto:support@invoicecloud.com) in order to receive support. The e-mail shall include Biller name, address, telephone number and e-mail address, serial number for the Device and a description of the problem. If the problem cannot be solved via telephone or e-mail support, Invoice Cloud may issue a Return Material Authorization (RMA) number. Upon issuance of a RMA, Biller shall deliver the Device to Invoice Cloud at 35 Briantree Hill Office Park Suite 100, Braintree, MA 02184 (or as otherwise designated by Invoice Cloud). If this Device is delivered by mail or by an equivalent shipping carrier, the Biller agrees to insure the Device or assume the risk of loss or damage in transit, to prepay shipping charges to the above location and to use the original shipping container or equivalent. If Invoice Cloud determines that the Device is non-conforming, Invoice Cloud will provide a replacement or repaired Device within one (1) week after the later of Invoice Cloud's determination of need for replacement, repair or return of the Device, and shall ship the replacement or repaired Device, prepaid, via a three (3) day shipping service. The Return Material Authorization (RMA) number must accompany all returns.

EXCEPT AS PROVIDED IN THE PARAGRAPH IMMEDIATELY ABOVE, INVOICE CLOUD MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND INVOICE CLOUD DISCLAIMS ANY WARRANTY OF ANY OTHER KIND, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FOR THE DEVICE OR ASSOCIATED SERVICE. THE BILLER

UNDERSTANDS THAT THE DEVICE IS OFFERED AS IS. IF THE DEVICE DOES NOT CONFORM TO INVOICE CLOUD'S SPECIFICATIONS, THE SOLE REMEDY SHALL BE REPAIR OR REPLACEMENT AS PROVIDED ABOVE.

### Questions or Additional Information:

If Biller has questions regarding this Agreement or wish to obtain additional information, please send an e-mail to [contracts@InvoiceCloud.com](mailto:contracts@InvoiceCloud.com).