



CASHMERE CITY COUNCIL MEETING

MONDAY, JUNE 24, 2024, 6:00 P.M., CITY HALL

THE PUBLIC CAN ATTEND IN PERSON, CALL-IN OR LOG-IN TO ZOOM TO PARTICIPATE IN THE CITY COUNCIL MEETING. PLEASE CALL-IN OR LOGIN 5 MINUTES PRIOR TO THE MEETING.

To Join the Meeting Go To <https://zoom.us>
Meeting ID: 882 719 9871 Passcode: 788276
Audio Only: PH# 1-(253)-215-8782

AGENDA

CALL TO ORDER - ROLL CALL – FLAG SALUTE

ANNOUNCEMENTS

PUBLIC COMMENT PERIOD (For Items Not on the Agenda)

APPROVAL OF AGENDA

CONSENT AGENDA

1. Minutes of June 10, 2024, Regular Council Meeting
2. Payroll and Claims Packet Dated June 24, 2024

BUSINESS ITEMS

1. Public Hearing on Master Cable Franchise Agreement
2. Fire Chief Blake Larson - Fire Department Update
3. Interlocal Agreement with Chelan County for Fire Investigation
4. Tree Committee Discussion
5. Recreational Vehicle Parking Discussion

PROGRESS REPORTS

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)

MINUTES OF THE CASHMERE CITY COUNCIL MEETING
MONDAY JUNE 10, 2024, AT CASHMERE CITY HALL – In-Person and Digital

OPENING

Chris Carlson opened the regular City Council meeting at 6:01 p.m. at City Hall. Utility Clerk, Michelle Voie, took minutes.

The public can attend the council meeting in person, by phone, or by digital conference.

ATTENDANCE

	<u>Present</u>	<u>Not Present</u>
Mayor:		Jim Fletcher
Council:	John Perry Chris Carlson, Pro Tempore Jeff Johnson	Shela Pistorosi Jayne Stephenson
Staff:	Steve Croci, Director of Operations Michelle Voie, Utility Clerk Christie Bagley, Pool Manager	Kay Jones, Clerk-Treasurer

PUBLIC COMMENT

No Public Present

EXCUSED ABSENCES

MOVED by Councilor Johnson and seconded by Carlson to excuse the absence of Councilor Stephenson and the Mayor, Jim Fletcher. Motion carried 3-0

APPROVAL OF AGENDA

MOVED by Councilor Perry and seconded by Councilor Johnson to approve the agenda as presented. Motion carried 3-0.

CONSENT AGENDA

Minutes of May 13, 2024, Regular Council Meeting
Minutes of May 28, 2024, Meeting Canceled
Payroll and Claims Packet Dated May 28, 2024
Payroll and Claims Packet Dated June 10, 2024
Public Hearing June 24, 2024, at 6:00 PM on Master Cable Franchise Agreement

MOVED by Councilor Perry and seconded by Councilor Johnson to approve the items on the Consent Agenda. Motion carried 3-0.

BUSINESS ITEMS

Pool Manager Christie Bagley gave an update on the pool. She interviewed 15 new individuals. There are 8 returning guards, 13 new, and 3 cashiers. The pool will offer open swim, aerobics, and swim Lessons. Several groups will be renting out the pool at set times throughout the summer. Upper Valley Mend will be providing 50 swim lesson vouchers for Vale Elementary School.

NORTH CENTRAL EDUCATIONAL SERVICE DISTRICT (NCESD) - INTERNSHIP REIMBURSEMENT

Director Croci spoke about the NCESD and the internship reimbursement program. The city would like to hire a couple of student interns for the summer to work in Public Works.

MOVED by Councilor Johnson and seconded by Councilor Perry to approve the agreement with North Central Educational Service District (NCESD) for internship reimbursement and authorize the mayor to sign documents.

PROGRESS REPORTS

Vegetation Management is ongoing

The new Play Center at Riverfront Park is being installed

SCADA

Road Maintenance crack seal & patch

Director Croci spoke about the Planning Commission. Councilor Johnson would like to meet with the planning commission before October to talk about the Comprehensive Plan that is due June 26th, 2025.

ADJOURNMENT

Mayor Pro Tempore, Chris Carlson adjourned the meeting at 6:40 PM.

Chris Carlson, Mayor Pro Tempore

Attest:

Michelle Voie, Utility Clerk

ORDINANCE NO. 1328

AN ORDINANCE REPEALING ORDINANCE NO. 1073 AND ESTABLISHING A MASTER CABLE SERVICE AGREEMENT AND GRANTING NON-EXCLUSIVE CABLE FRANCHISES TO PROVIDE CABLE SERVICE IN THE CITY OF CASHMERE, WASHINGTON, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTS OF FRANCHISE.

WHEREAS, the City Council for the City of Cashmere (“City”) previously adopted Ordinance No. 1073, which established a Master Cable Service Agreement and Nonexclusive Cable Franchise for Grantee(s) to operate cable service in the City using the Chelan County Public Utility District’s (“District”) Broadband System; and

WHEREAS, the Franchise established pursuant to Ordinance No. 1073 has expired; and

WHEREAS, Grantee(s) have requested a new or revised Cable Franchise from the City to authorize the use of the City Rights-of-Way for the Grantee(s) to provide Cable Service; and

WHEREAS, the Grantee(s) intend to continue to utilize transmission capacity acquired through permit or license agreement the District’s Broadband System to provide Cable Service to the City; and

WHEREAS, Washington law, as well as the federal Cable Act of 1984, as amended, authorize the City to grant a nonexclusive Cable Franchise for the use and occupancy of Rights-of-Way for the provision Cable Service as hereinafter defined, and to adopt rules and regulations regarding the provision of such Cable Service; and

WHEREAS, the City seeks to promote the development of advanced broadband communications capabilities on a competitive basis within the City, while at the same time ensuring high quality customer service; and

WHEREAS, the City has determined that the Grantee(s) have the qualifications to meet the future cable related needs of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CASHMERE, WASHINGTON:

SECTION 1. DEFINITIONS

For the purpose of this Franchise, unless otherwise provided herein, the following terms, phrases, words, abbreviations and their derivations shall have the meaning set forth below. Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words “shall” and “will” are mandatory, and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

“Affiliate:” means an entity which owns or controls, is owned or controlled by, or is under common ownership with the Grantee.

“Basic Cable Service:” means the lawful retransmission of local broadcast television and radio signals and original cablecast programming by the Grantee.

“Broadband System:” means the District’s high-speed, high capacity, fiber optic system that is being utilized by the Grantee to provide Cable Service in the City.

“Cable Act:” means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

“Cable Service Franchise” or “Franchise:” means an initial Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the provision of Cable Service.

“Cable Services” or “Services:” means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“City:” means the City of Cashmere, Washington.

“Communications Infrastructure Right-Of-Way Use Agreement” or “District Use Agreement”: means the agreement between the City and the District under which the District is authorized to install, maintain and operate its Broadband System on a wholesale basis. See, Ordinance No. 1072 (as existing or amended/extended).

“Direct Incremental Costs:” means the costs actually incurred by each Grantee in meeting an obligation under its Franchise, including payment to the District, which it would not otherwise have incurred in order to provide Cable Service or meet another obligation of the Franchise.

“District”: means Public Utility District No. 1 of Chelan County, Washington.

“FCC:” means the Federal Communications Commission.

“Franchise Area:” means the entire geographic area within the City as it is now constituted or may in the future be constituted.

“Franchise Fee:” means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of its status as such. The term “Franchise Fee” does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment that is unduly discriminatory against cable operators or cable Subscribers); (ii) requirements or charges incidental to the awarding or enforcing of this Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (iii) any fee imposed under Title 17 of the United States Code.

“Grantee(s):” means the Person(s) authorized to provide Cable Services in the City pursuant to this Franchise Ordinance, and listed in Exhibit A, as may be amended from time to time, attached hereto, or the lawful successor(s), transferee(s), or assignee(s) thereof.

“Gross Revenues:” means any and all compensation and other consideration received directly by the Grantee from Subscribers for regularly furnished Cable Service in the Franchise Area; provided, however, that such phrase shall not include any taxes on Cable Service which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by a Grantee on behalf of such governmental unit or agency.

“Person:” means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

“Rights-of-Way:” means the surface of, and the space above and below, any public street, right-of-way, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communications or utility easement, now or hereafter existing as such within the Franchise Area.

“Subscriber:” means any Person, who or which lawfully receives Cable Service provided by the Grantee and who does not further distribute it.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant.

- A. In order to maintain competitive neutrality, administrative ease and economy, it is expressly agreed that the Person(s) proposing to utilize capacity on the District’s Broadband System to provide Cable Services, whose ownership are indicated in Exhibit A, shall be subject to this single common Master Cable Service Franchise.
- B. The Person(s) listed in Exhibit A, as existing or amended, are hereby granted Cable Service Franchise(s), subject to the terms and conditions of this Master Cable Service Agreement and Franchise Ordinance, as existing or amended (hereinafter also referred to as the “Franchise”). Although adopted pursuant to a single Franchise Ordinance, this grant provides any Grantee listed in Exhibit A the individual authority, right and privilege, to construct, reconstruct, operate and provide Cable Services within the City, as it is now or may in the future be constituted. The single and common Franchise Ordinance notwithstanding, the grant of this Franchise shall in no way create any liability, joint or otherwise, on

the part of the individual Grantees with respect to the obligations of such other Grantees authorized under this Franchise. Each Grantee authorized under this grant shall individually comply with all of the requirements and obtain all of the benefits of this Franchise. At such time during the term of this Franchise as additional providers seek to utilize capacity on the District's Broadband System to provide Cable Services, the City shall make such subsequent providers subject to this Franchise by amendment to Exhibit A.

2.2 Right of City to Grant Franchise/ Franchisee Fee.

Grantee(s) acknowledges and accepts the right of City to grant this Franchise by passage of an ordinance.

2.3 Term.

Unless earlier terminated as set forth herein, the initial Franchise granted by this Ordinance shall commence upon its acceptance pursuant to Section 2.4 below, and shall expire ten (10) years thereafter, unless extended, renewed, revoked or terminated sooner as provided for in this Franchise.

2.4 Effective Date.

Subject to the acceptance by the individual Grantee, the effective date of this Franchise Ordinance shall be the 30th day after its passage, approval and publication as provided by law. The Grantee(s) shall pay all required publication costs.

2.5 Written Notice.

All notices, reports or demands required to be given in writing under this Franchise Agreement shall be deemed to be given when delivered personally to the Person designated below, or when five (5) days have elapsed after it is deposited in United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to City of Cashmere, Attention: Mayor
101 Woodring
Cashmere, WA 98815

If to Grantee(s) at the address(es) listed in Exhibit A.

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

2.6 Franchise Not Exclusive.

- A. This Franchise granted herein is not exclusive, and shall not be construed as any limitation upon the right of City, through its proper offices, and in accordance with applicable law, to grant to other persons or corporations rights, privileges or authority similar to or different from the rights, privileges and authority herein set forth, in the same or other Rights-of-Ways or public places or other places the Grantee(s) is entitled to occupy by this Franchise Ordinance.
- B. The District's Broadband System being utilized by the Grantee(s), in accordance with the District's Communications Infrastructure Right-Of-Way Use Agreement with the City, shall be constructed and maintained so as not to unreasonably interfere with other uses of the Rights-of-Way.

2.7 Binding Contract.

This Franchise Ordinance (including all of Grantee(s)'s particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a legally binding contract between the City and Grantee(s), and as such, cannot be amended, modified or changed without the mutual consent of the parties in any manner whatsoever, provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

2.8 Federal, State, and City Jurisdiction.

- A. This Franchise Ordinance shall be construed in a manner consistent with all applicable federal and State laws.
- B. Grantee(s)'s rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantee(s) shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power.
- C. In the event of a change in state or federal law which by its terms would require the City to amend this Agreement, the parties shall negotiate in good faith to modify the Franchise in a mutually agreed upon manner. In the event of a dispute concerning any matter within the scope of the Agreement, the Parties agree to immediately meet and confer in good faith in an attempt to resolve the dispute. In the event the dispute cannot be resolved within (90) days, or whatever longer period may be mutually acceptable, either party may call for arbitration pursuant to RCW Chapter 7.04, et. seq. except as herein modified. If the parties agree to arbitration, such arbitration shall be before one disinterested arbitrator, if one can be agreed upon, otherwise before three disinterested arbitrators, one named by the City, one by the Cable Operator, and one by the two thus chosen. If all arbitrators have not been appointed within three (3) business days after written notice of demand for arbitration is given by one Party to the other, then either Party may apply to the Chelan County Superior Court, upon not less than three (3) business days written notice to the other, for appointment of the necessary arbitrators remaining to be appointed, and the judicial appointment shall be binding and final. If arbitration is selected by the parties, the arbitrator or arbitrators shall resolve all matters of disagreement in accordance with the laws of the State of Washington as applied to the facts found by him/her or them, if applicable. The

arbitrator or arbitrators shall resolve all disputes between the Parties and the decision of the arbitrator or arbitrators shall be final, conclusive and binding on the Parties. The Parties agree to share equally in the costs of arbitration and each Party shall be responsible for its own attorney's fees and costs.

D. This Franchise shall be construed and enforced in accordance with the substantive laws of the State of Washington. If the parties don't agree to arbitration as set forth herein, venue shall lie in the Superior Court of Chelan County, Washington.

2.9 Franchise Renewal.

Renewal of this Franchise shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. City and individual Grantee(s), by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise.

2.10 Operational Parity.

In the event the City grants an overlapping franchise for Cable Services within the Cable Franchise Area in which the material terms and conditions are either more favorable or less burdensome than the terms and conditions contained in this Franchise Ordinance, then the Grantee(s) may (individually) elect within six (6) months of the grant of such overlapping franchise agreement to negotiate with the City in good faith to modify the terms of the Agreement relative to said overlapping area to obtain terms and conditions that on the whole are similar to those contained in the overlapping franchise area, and if the parties fail to reach an agreement, the Grantee(s) may (individually) elect to obtain a new franchise agreement pursuant to the renewal provisions of this Agreement, and the then applicable provisions of state and federal law.

SECTION 3. GENERAL REQUIREMENTS

3.1 Annual Franchise Fee.

- A. As compensation for this Franchise and in consideration of permission to use the Rights-of-Way of the City for the provision of Cable Service, and to defray the costs of Franchise obligations, each Grantee shall pay to the City on a quarterly basis throughout the term of this Franchise, a Franchise Fee totaling five percent (5%) of the individual Grantee's Gross Revenues.
- B. Payments due City under this Section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed in the previous sentence. Each payment shall be accompanied by a written statement by Grantee(s) showing the basis for the computation. The written statement shall be in a form and manner mutually agreed by the individual Grantee(s) and the City.
- C. At the end of each calendar year either party may request a review of the Franchise Fees paid during the preceding year in order to determine that these Fees are being calculated on the same basis as franchise fees paid by all other Cable Service providers in the City. In the event that the Franchise Fees are found to be calculated on a different basis than other Cable providers the parties agree to "true-up" any under or over payment so as to provide competitive parity between all Cable Service providers in the City.

3.2 Liability Insurance.

- A. Each Grantee shall, at its sole expense, take out and maintain during the life of this franchise, commercial general liability insurance in the amount of one million dollars (\$1,000,000.00). Said insurance shall designate the City as an additional insured.

- B. The liability insurance required by this section shall be maintained at all times by the Grantee throughout the term of the Franchise. Each such insurance policy shall contain an endorsement which provides that the policy may not be cancelled, nor reduced in coverage except upon thirty (30) days prior written notice to the City. Each Grantee shall file a certificate of such insurance with the City Clerk upon acceptance of this Franchise.

3.3 Indemnification.

- A. Except as otherwise provided herein, each Grantee shall, at its sole cost and expense, indemnify, hold harmless, release and defend City, its officials, boards, commissions, agents, and employees from and against any and all lawsuits, claims, actions, demands, damages, disability, losses, expenses including reasonable attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person, from any cause whatsoever, arising out of or in any way connected with the operations, expressly authorized herein, the exercise of the Franchise pursuant to this Franchise, and/or the activities of the individual Grantee, its subcontractor, employees and agents hereunder, including copyright infringement or other program related liability.
- B. Grantee(s) shall not be required to indemnify City for damages to the extent arising from or caused by the sole negligence or gross negligence or willful misconduct of the City or its officials, boards, commissions, agents, or employees.
- C. With respect to any claims which are subject to indemnity hereunder, Grantee(s) shall immediately notify the City's Administrator of any such claims which have been filed against the individual Grantee or individual Grantee and City jointly, and shall provide the City with a copy of the same. Grantee's obligations hereunder shall be subject to the City giving the Grantee(s) written notice of its obligation to indemnify the City within ninety (90) calendar days of City's receipt of a claim or action pursuant to this Section. If the City determines that it is

necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

3.4 Bonds and Other Surety

Except as expressly provided herein, Grantee(s) shall not be required to obtain or maintain bonds or other surety as a condition of being awarded a Franchise. Provided that nothing herein shall preclude the City's ability to require bonds and other surety in such amounts and during such times as there is reasonably demonstrated need therefore or where required by State or local law. Initially no bond or surety will be required. In the event that the City determines that a bond or surety is required in the future, the City shall give the Grantee(s) at least sixty (60) days prior notice setting forth the reasons for the requirement.

3.5 Procedure for Remediating Franchise Violations.

- A. The City shall provide the individual Grantee with a detailed written notice of any material Franchise violation upon which it proposes to take action. Unless the nature of the violation requires a more rapid cure, the Grantee(s) shall have thirty (30) days from receipt of notice within which to demonstrate to the City's reasonable satisfaction that a violation does not exist, cure such violation, or, if the violation cannot be corrected in thirty (30) days, to submit and initiate a plan satisfactory to the City to correct the violation.
- B. If the individual Grantee fails to cure the violation within the applicable time period, or the Grantee's plan of correction is not reasonably effective, the City shall schedule a public meeting to investigate the default. Such public meeting shall be at the next regularly scheduled meeting of the City Council, which is scheduled at a time which is at least five (5) business days therefrom. The City shall notify the Grantee(s) of the time and place of such meeting and shall provide the Grantee(s) with an opportunity to be heard.

- C. Subject to applicable federal and Washington law, in the event the City, after such public meeting, determines that the Grantee is in default of any provision of this Franchise, the City may pursue any remedy available to it at law or in equity, including:
1. Foreclosure on all or any part of any security provided under this Franchise, if any, including without limitation, any bonds or other surety; provided, however, any such foreclosure shall be in amounts as the City reasonably determines is necessary to remedy the default;
 2. Commence an action at law for monetary damages or seek other equitable relief;
 3. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.
 4. In the case of a substantial default of a material provision of the Franchise, declare the Franchise to be revoked as against the individual Grantee(s) in default.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise by reason of any failure of the City to enforce prompt compliance. Provided that nothing herein shall limit the City's remedies under federal, State and local law.

- D. The Grantee shall have thirty (30) days to appeal any final decision of the City to the superior court. Any default action of the City shall be stayed pending the final resolution of the appeal process.
- E. In no event will a revocation or termination of an individual Grantee's Franchise impose any liability upon, or have the effect of revoking or terminating the rights of the District to maintain its Broadband System under its Communications Infrastructure Right-Of-Way Use Agreement with the City.

SECTION 4. SYSTEM CAPABILITIES

4.1 System Capabilities.

- A. The Grantee(s)'s Cable Service shall be delivered via the District's Broadband System. The System shall provide for a minimum bandwidth capacity of 50-870 MHz. A general System description is provided in Exhibit B hereto.
- B. Each Grantee shall comply with all customer service obligations with respect to customers whose premises are passed by portions of the District's Broadband System which are fully activated, tested and available for Service.

4.2 Amendments.

- A. This Franchise Agreement may only be amended by the mutual written consent of the City and the individual Grantee(s).
- B. It shall be the policy of the City to liberally amend this Franchise upon application of the Grantee(s), when necessary to enable the Grantee(s) to take advantage of new developments in the field of cable communications in order to more effectively or efficiently serve its Subscribers.
- C. Any changes requiring a modification of District's Broadband System will require the District's consent in its agreement with the Grantee(s) as well as a possible amendment of the District's Use Agreement.

SECTION 5. SERVICES AND PROGRAMMING

5.1 Programming

The City acknowledges that it is the Grantee(s)'s sole right to select the programming and services to be offered to Subscribers. The Grantee(s) shall give the City at least thirty (30) days advance written notice of any changes in its programming offerings.

5.2 Leased Commercial Access.

Grantee(s) shall make available to the public in a manner consistent with 47 U.S.C. §532 and associated FCC Rules and Regulations, a Channel or portion of a Channel from capacity leased from the District's Broadband System for commercial use by persons

other than Grantee(s), for a fee or charge.

SECTION 6. SUPPORT FOR LOCAL CABLE RELATED NEEDS

6.1 Emergency Override.

Grantee(s) shall at all times coordinate with the City and the District in order to ensure that Districts' Broadband System provides capabilities to comply with the FCC's Emergency Alert System rules and regulations, and that the City has the ability to insert emergency information and instructions on the System to be provided to Cable Subscribers. The City shall hold the Grantee(s) and the District and their respective agents, employees, officers and assigns harmless from any claims arising out of the emergency use of the facilities by the City.

6.2 Closed Captioning and Descriptive Audio Service.

Grantee(s) will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.

6.3 Parental Control Devices. Grantee(s) shall make available parental control devices as required by the Cable Act.

6.4 Non-Discrimination. Grantee(s) shall not as to rates, charges, services, facilities, rules or regulations, or in any other respect, make or grant any preferences or advantages to an Person or subject any Person to any prejudice or disadvantage, provided that nothing herein is intended to or shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any Subscriber, within such classification, would be entitled, and provided further that connection and/or service charges may be waived or modified during promotional campaigns of Grantee(s). Grantee will not deny access to Cable Services to any group of potential Subscribers based on the income of the residents of the local area in which the group resides.

SECTION 7. CONSTRUCTION AND SERVICE PROVISIONS

7.1 Obligations of District.

The City and the Grantee(s) recognize and agree that the Grantee(s) intend to provide Cable Service utilizing the fiber optic transport facilities of the District's Broadband System and therefore the Grantee(s) will have no direct control over the installation, operation or maintenance of the physical facilities located within the City's Rights-of-Way. In order to meet the City's construction and operational requirements the Grantee(s) agree to include within its use or license agreement with the District service level provisions and obligations, including compliance with all applicable FCC technical standards, as set out in Sections 4 and 5 of the District's Communications Infrastructure Right-Of-Way Use Agreement. The Grantee(s) agree that the failure of the District to reasonably meet these standards will constitute a default of this Franchise subject to the remedial provisions of this Franchise Ordinance

7.2 Construction Schedule.

It is understood and agreed by the parties that construction of the District's Broadband System is subject to the budget and planning process of the District.

7.3 Customer Service Standards.

Grantee(s) shall maintain a local office within Chelan or Douglas County which shall be open at least during Normal Business Hours. Grantee(s) shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week. The Grantee(s) shall at all times comply will all applicable FCC customers service standards. To the extent that specific customer service standards require the District to perform work on its Broadband System, such as responding to and remedying service disruptions, the Grantee(s) agree to include within its use or license agreement with the District service level provisions and obligations that would require compliance with such standards, as set out in Section 5 of the District's Communications Infrastructure Right-Of-Way Use Agreement. The Grantee(s) agree that

the failure of the District to reasonably meet these standards will constitute a default of this Franchise subject to the remedial provisions of this Franchise.

7.4 Rate Changes

Subscribers will be given thirty (30) days advance notice of any changes in rates, programming services, or channel positions, if the change is within the control of the Grantee. Notwithstanding the foregoing or any provision of this Franchise to the contrary, the Grantee(s) shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax assessment, or charge of any kind imposed by any government entity on the transaction between the Grantee(s) and the Subscriber.

SECTION 8. REGULATION

8.1 Franchise Regulation.

This Franchise shall be subject to regulation by City in accordance with the Cable Act and the City's lawful police powers.

8.2 Review of Books and Records.

The Grantee(s) agree that the City may review such Grantee books and records, during normal business hours and on a non-disruptive basis, as are reasonably necessary to monitor compliance with the terms hereof. Such records shall include, any public records required to be kept by the Grantee(s) pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by the Grantee(s) to it as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof.

8.3 Transfer or Sale.

A. The Grantee(s) shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of this Cable Franchise without the prior

consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and provide Cable Services so as to perform its obligations under the Cable Franchise. This Section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure any indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with the Grantee(s).

- B. In the case of any sale or transfer of ownership of an interest in or control of this Cable Franchise, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Code. If the City fails to render a final decision on the request within one hundred twenty (120) days after receipt by the City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period. The Transferee shall reimburse the City for its reasonable costs associated with the transfer review and approval.

8.4 Force Majeure.

In the event an individual Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise or the Cable Code is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof. Such causes beyond Grantee(s)'s reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil

emergencies and labor unrest or strikes, severe weather, unavailability of equipment or facilities during the initial construction of the District's Broadband System, untimely delivery of equipment, or the inability of Grantee(s) to obtain access to an individual's property.

8.5 Severability.

If any material section, sentence, phrase, provision, paragraph or term of this Franchise is held void or otherwise rendered unenforceable by any court of competent jurisdiction, such provision shall be deemed severable from this Franchise, and the remainder of this Franchise shall continue in full force and effect.

8.6 Acceptance.

Each Grantee shall, within five (5) days after the final passage and approval of this Ordinance, file with the City Clerk of the City its acceptance in writing of the provisions, terms and conditions of this Ordinance, in the form of as set forth on Exhibit A attached hereto, which Exhibit A may be signed in counterparts, each of which shall be an original but all of which shall constitute one and the same document, but such counterpart. If a Grantee shall fail to so file its written acceptance of the same within such period, then the rights and privileges granted hereunder shall be deemed forfeited and null and void with respect to that particular Grantee.

8.7 Conflicts.

In the event of any conflict between the terms and conditions of this Franchise and the provisions of City Codes and ordinances, the terms and conditions of this Franchise shall control.

[The remainder of this page left blank intentionally]

8.8 Ordinance No. 1073 Repeal. Ordinance No. 1073 is hereby repealed.

PASSED and adopted by the City Council the City of Cashmere, Washington this ____ day of April, 2024.

Attest:

City of Cashmere, a municipal corporation,

City Clerk, Kay Jones

Mayor James Fletcher

Approved as to Form:

Julie. K. Norton, City Attorney

Passed by the City Council:
Published:
Effective date:
Ordinance No:

EXHIBIT A

Master Cable Service Agreement and Franchise Ordinance GRANTEES AND ACCEPTANCE BY GRANTEES

We the representatives of the Grantees listed below hereby accept the terms and conditions of the Franchise granted pursuant to the Master Cable Service Agreement and Franchise Ordinance approved by the Cashmere City Council on the _____, 2024:

Grantee Name: Computer 5*, Inc. dba LocalTel Communications
Type of Entity: Corporation
State of formation: Washington
Address for Notice Purposes: 341 Grant Road, Wenatchee, WA 98802
Phone No.: (509) 884-0611
Fax No.: (509) 884-3557
E-mail Address: John@clandt.com

By: _____
John J. Seabeck, Vice President

Date: _____

EXHIBIT B

Master Cable Service Agreement and Franchise Ordinance SYSTEM DESCRIPTION

The Broadband System shall comply in all respects with the minimum standards established and updated periodically by the FCC relating to cable systems' technical operation and signal quality.

The Broadband System shall consist of a minimum of 77 channels including PEG channels.

Staff Summary

Date: June 24, 2024

To: City Council

From: Jim Fletcher, Mayor

RE: Interlocal Agreement with Chelan County for Fire Investigation

The purpose of this Agreement is to provide a means for the Parties, under certain circumstances, to provide the other Parties resources in the form of personnel for investigations of fire, explosion and release of hazardous materials.

The Requesting Party shall compensate the Responding Party for investigative services performed pursuant to this Agreement. Services shall be invoiced at an hourly rate of \$100.00, billed in \$25.00 increments.

Service by the County to the City is provided only upon request by a designated City official.

Staff Recommendation

MOVE to approve the Interlocal Agreement with Chelan County for fire investigation, authorizing the Mayor to sign.

**INTERLOCAL AGREEMENT BETWEEN CHELAN COUNTY AND THE CITY OF
CASHMERE FOR FIRE, EXPLOSION AND HAZARDOUS MATERIALS
INVESTIGATION SERVICES**

This Interlocal Agreement for Fire, Explosion and Hazardous Materials Investigation Services (the "Agreement") is entered into by and between Chelan County, a Washington municipal corporation, (the "County"), and the City of Cashmere, a Washington municipal corporation ("City") (collectively referred to as the "Parties").

RECITALS

WHEREAS, the Parties recognize that, on occasion, there is a need for investigative cooperation in suspected cases of arson or cases of fire, explosion or release of hazardous materials;

WHEREAS, the Parties desire to enter into this Agreement to authorize the Parties to provide each other with investigative assistance and services in connection with fires, explosions and release of hazardous materials so long as they do not thereby incur any legal responsibilities over and above the responsibilities presently required by law; and

WHEREAS, the Parties are authorized by the Interlocal Cooperation Act, Chapter 39.34 RCW, as well as RCW 19.27.110 and 43.44.050(3) to enter into such agreements;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and the terms and conditions set forth below, the Parties do hereby agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide a means for the Parties, under certain circumstances, to provide the other Parties resources in the form of personnel for investigations of fire, explosion and release of hazardous materials.

2. **Term.** This Agreement shall be effective on the date of execution by the Parties and shall continue to December 31, 2027.

3. **Investigative Services.**

a. Either Party, through its designated officials identified below, is authorized to request assistance from the other Party in the investigation of the origin, cause and circumstances of any fire, explosions or the unauthorized releases of hazardous materials. The responding Party agrees to furnish, in its sole discretion, those personnel the Responding Party deems available and necessary to assist in the investigation.

b. The term "designated officials" means the following:

- (i) For City: Fire Chief, Mayor or member of the City Council.
- (ii) For County: Chelan County Fire Marshal, Economic Services Director or member of the Board of County Commissioners.

c. Requests may be granted if the Requesting Party is committed to the investigation, and the Requesting Party's personnel that would normally undertake the investigative services contemplated herein are not immediately available or sufficient for purposes of the investigation.

d. Requests for assistance shall be by either letter or email and contain the following information: date and time of request; the assistance being requested; contact information, including name, title, telephone and email.

e. When requested, the Responding Party may provide an investigator who shall have requisite training in conducting the investigations contemplated herein. A Party shall assist only in situations for which it has determined it has available and qualified personnel.

f. While the Responding Party's investigator is in the service of the Requesting Party, they shall be an investigator of the Requesting Party and be under the command of the Requesting Party's fire chief/official or designee, with all the powers of a regular investigator of the Requesting Party, as fully as though they were within the territorial limits of the Responding Party. However, the Responding Party's investigator shall not be an employee of the Requesting Party but at all times will remain an employee of the Responding Party. (See section 5 below.)

g. A Responding Party shall have the right to withdraw some or all of its personnel from an investigation. Notice of intention to withdraw may be in either verbal or by email, and shall be communicated to the Requesting Party as soon as possible. If the notice is made verbally, it shall be confirmed by email, within three (3) business days of the original notice.

h. In performing under this Agreement, each Party will comply with all necessary federal, state and local laws and regulations.

4. Compensation.

a. The Requesting Party shall compensate the Responding Party for investigative services performed pursuant to this Agreement. Services shall be invoiced at an hourly rate of \$100.00, billed in \$25.00 increments.

b. The Requesting Party shall reimburse the Responding Party for costs incurred while performing investigative services pursuant to this Agreement, including cost of materials and other services (e.g. testing) as well as mileage to and from an inspection site. Mileage shall be reimbursed at the current IRS deductible rate.

c. The Responding Party shall invoice the Requesting Party for services performed and costs incurred pursuant to this Agreement upon completion of any investigation.

d. Invoices are subject to and shall comply with the notice provisions provided in Paragraph 8 of this Agreement.

e. Within thirty (30) days of service of an invoice, the Requesting Party shall either pay the amounts invoiced or inform the Responding Party in writing that a dispute exists concerning the invoice. Service of an invoice shall be deemed complete upon either of the following: (1) hand delivery of the invoice; or (2) upon the third day following the day upon which the invoice is placed in the mail, postage prepaid, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day.

f. Disputes concerning an invoice shall be subject to the dispute resolution provisions of Paragraph 9 of this Agreement.

5. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create the relationship of employer and employee between the Parties. Employees of the Responding Party remain employees of the Responding Party while performing functions and duties on behalf of the Requesting Party. All privileges, immunities, rights, duties and benefits of employees of the Responding Party shall apply while those employees are performing services on behalf of the Requesting Party, unless otherwise provided by law.

6. Indemnification. To the extent allowed by law and of its comparative liability, each party shall indemnify, defend, and hold harmless the other party, its departments, elected and appointment officials, employees, and agents from and against and all claims, damages, losses, and expenses for any bodily injury, sickness, disease, or death, or any damage to or destruction of property, including the loss of use resulting therefrom, which are alleged or proven to be caused in whole or in part by a negligent act or omission of its officers, directors, and employees. The duty to indemnify, defend and hold harmless as provided herein shall survive the expiration or termination of this Agreement.

7. Insurance. For the duration of this Agreement, each party shall maintain its own public liability and property damage insurance with amounts of coverage as solely determined by each respective party against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of this Agreement by its elected officials, officers, employees, or agents. This insurance requirement may be satisfied by a policy or policies of insurance or a self-insurance retention program adopted by a party.

8. Termination. A Party may withdraw from this Agreement without cause at any time upon 30 calendar day's written notice to the other Parties.

9. Notices. Required notices, with the exception of legal process, shall be given in writing to the following respective addresses:

To Chelan County:
Chelan County Fire Prevention &
Investigation Dept.
Attn: Fire Marshal
400 Washington St.
Wenatchee, WA 98801

To City of Cashmere:
Cashmere Fire Department
Attn: Fire Chief
101 Woodring St.
Cashmere, WA 98815

10. Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. Nothing in this paragraph shall preclude either party from bringing an action against the other party to enforce any of the terms of this Agreement.

11. Attorney's Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of the Agreement, each party shall pay for its own attorney's fees and costs.

12. Assignment. Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

14. Waiver. A waiver of any term or condition of this Agreement must be in writing and signed by the party. Any express or implied waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence, or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence, or omission.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties. There are no understandings or agreements between parties other than those set forth in this Agreement. No other statement, representation, or promise has been made to induce either party to enter into this Agreement.

16. Modifications. This Agreement may not be amended, supplemented, or otherwise modified unless expressly set forth in a written agreement signed by the parties and adopted by resolution of each party's legislative authority.

17. Governing Law and Venue. This Agreement shall be governed exclusively by the laws of the State of Washington. The Chelan County Superior Court shall be the sole proper venue for any and all suits brought to enforce or interpret the provisions of this Agreement.

18. Invalid Provisions. The invalidity or unenforceability of any particular term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement and shall be construed in all respects as if such invalid or unenforceable term or provision was omitted.

19. Filing and State Approval. Pursuant to RCW 39.34.040, this Agreement shall be filed with the Chelan County Auditors and City Clerk prior to its entry into force.

DATED at Wenatchee, Washington this ____ day of _____ 2024.

BOARD OF CHELAN COUNTY COMMISSIONERS

KEVIN OVERBAY, CHAIRMAN

ATTEST

TIFFANY GERING, COMMISSIONER

Anabel Torres
Clerk of the Board

SHON SMITH, COMMISSIONER

DATED at Wenatchee, Washington this ____ day of _____ 2024.

CITY OF CASHMERE

ATTEST

Kay Jones
Clerk-Treasurer

JIM FLETCHER, MAYOR

