Kelso City Council Agenda

Regular Meeting, 6:00 pm
December 15, 2015
City Hall, Council Chambers
203 South Pacific
Kelso, WA 98626

Special accommodations for the handicapped and hearing impaired are available by special arrangement through the City Clerk's Office at 360-423-0900

Invocation:

Pastor Marv Kasemeier from New Song Worship Center

Roll Call to Council Members:

1. Approve Minutes:

1.1. December 1, 2015 – Regular Meeting
1.2. December 8, 2015 – Special Meeting

2. Public Hearing:

2.1. 2016-2021 Capital Improvement Program

3. Consent Items:

3.1. Contract Renewal – Animal Control Services
3.2. Contract Closeout – NW 2nd Ave Water & Sewer Improvements
3.3. Auditing of Accounts

4. Citizen Business:

5. Council Business:

5.1. Agreement Amendment – City Manager Employment Agreement No.4
5.2. 2016 Lodging Tax Request
5.3. Proclamation of Civil Emergency
5.4. Council Position 3 Vacancy Discussion

Kelso City Council Agenda

Regular Meeting, 6:00 pm
December 15, 2015
City Hall, Council Chambers
203 South Pacific
Kelso, WA 98626

6. Action/Motion Items:

6.1. Ordinance, 1st Reading
- 6.1.1. Amend KMC 18.12 Floodplain Management

6.2. Ordinance, 2nd Reading
- 6.2.1. Vacate portion of 2nd Avenue

6.3. Ordinance, 2nd Reading
- 6.3.1. Comcast Franchise Agreement Renewal

6.4. Ordinance, 2nd Reading
- 6.4.1. 2015 Budget Amendment No. 2

6.5. Ordinance, 2nd Reading,
- 6.5.1. Interfund Loan to Airport

6.6. Ordinance, 2nd Reading
- 6.6.1. Amend KMC Chapter 5.05.120, Utility Taxes

6.7. Resolution
- 6.7.1. Amend Procurement Policy

6.8. Resolution
- 6.8.1. Adopt 2016 – 2021 Capital Improvement Program

Other Items:

- City Manager Report
- Staff/Dept Head Reports
- Council Reports
- Other Business
- Executive Session

KELSO CITY COUNCIL **December 1, 2015**
6:00 P.M. **REGULAR MEETING**

Pastor Nick Stumbo, East Hills Alliance Church, gave the invocation. Mayor David Futcher led the flag salute. The Regular Meeting of the Kelso City Council was called to order by Mayor Futcher. Councilmembers in attendance were Gary Schimmel, Todd McDaniel, Dan Myers, David Futcher, Rick Roberson, and Gary Archer. Councilmember Jared Franklin arrived at 6:48 p.m.

Minutes: Upon motion by Councilmember Schimmel seconded by Councilmember McDaniel, 'Approve the Minutes of the 11/17/15 Regular Meeting,' motion carried, all voting yes. Councilmember Franklin was not present for this vote.

PRESENTATIONS:

2016 Legislative Agenda: Gordon Thomas Honeywell Government Affairs Consultant Alex Soldano presented the proposed 2016 Legislative Agenda. **Upon motion by Councilmember Schimmel, seconded by Councilmember McDaniel, 'Approve the 2016 Legislative Agenda as presented.' Motion passed, all voting yes. Councilmember Franklin was not present for this vote.**

West Kelso Sub Area Plan: BERK Project Manager Jeff Arango presented three West Kelso Sub Area Plan alternatives and the results of two public workshops.

PUBLIC HEARINGS:

Vacate Portion of 2nd Avenue: Mayor Futcher opened the public hearing at 6:50 p.m. Community Development Director/City Engineer Mike Kardas briefed the Council on the proposition to vacate said property.

Chris Roewe, 208 Vine Street, spoke from the audience.

There being no further comments from the public, Mayor Futcher closed the public hearing at 6:51 p.m.

Comcast Franchise Agreement: Mayor Futcher opened the public hearing at 6:52 p.m. There being no comments from the public, Mayor Futcher closed the public hearing at 6:53 p.m.

CONSENT AGENDA:

1. **Re-appointments – Standing Boards & Committees**
   The re-appointments were as follows:
   - Kelso Housing Authority – Marjorie Pitcher
   - Lodging Tax Committee – Bill Marcum, Cindy Keeney, Pam Fierst, Syed Pasha

- Park Board – Pamela Jo Enbusk
- Highlander Festival – Cindy Keeney
- Library Board – Linda Curry
- Mosquito Board – Betty Wilson

2. **Contract Revision – Compass Lane, Inc.**
3. **Water Treatment Chemical Purchase Award Bids for 2016**

Upon motion by Councilmember McDaniel, seconded by Councilmember Myers, 'Approve the Consent Agenda,' motion carried, all voting yes.

CITIZEN BUSINESS:

Ron Madderra, 5400 Meeker Drive, Unit 77, spoke about water fluoridation.

COUNCIL BUSINESS:

Three Rivers Regional Wastewater Authority (TRRWA) Interlocal Agreement: Upon motion by Councilmember Schimmel, seconded by Councilmember Roberson, 'Authorize the City's participation within the TRRWA as a Joint Municipal Utility Authority,' motion passed, all voting yes.

MOTION ITEMS:

Ordinance No. (1st Reading) Vacate Portion of 2nd Avenue: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Archer, 'Pass on 1st reading, 'AN ORDINANCE OF THE CITY OF KELSO VACATING A PORTION OF 2nd AVENUE IN THE CITY OF KELSO TO ABUTTING PROPERTY OWNERS,' motion passed, all voting yes

Ordinance No. (1st Reading) Comcast Franchise Agreement Renewal: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Myers, Pass on 1st reading, 'AN ORDINANCE RENEWING THE GRANT OF A FRANCHISE TO COMCAST OF COLORADO/FLORIDA/MICHIGAN/NEW MEXICO/PENNSYLVANIA/ WASHINGTON LLC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF KELSO; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; AND TERMINATING ORDINANCE NO. 99-3444.' City Manager Taylor provided an overview on the revisions to the ordinance. Discussion followed. Motion passed, all voting yes.

Ordinance No. (1st Reading) 2015 Budget Amendment No. 2: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Schimmel, seconded by Councilmember Roberson, 'Pass on 1st reading, 'AN ORDINANCE OF THE CITY OF KELSO RELATING TO PUBLIC EXPENDITURES AND DECLARING AN EMERGENCY UNDER THE PROVISIONS OF RCW 35A.34.150, FIXING THE AMOUNT OF MONEY REQUIRED TO MEET SUCH EMERGENCIES AND AUTHORIZING THE EXPENDITURE OF MONEY NOT PROVIDED FOR IN THE 2015-2016 BIENNIAL BUDGET OF THE CITY.' Motion passed, all voting yes.

Ordinance No. (1st Reading) Interfund Loan to Airport: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Schimmel, 'Pass on 1st reading, 'AN ORDINANCE OF THE CITY OF KELSO AUTHORIZING THE TRANSFER OF FUNDS FROM THE GENERAL FUND TO THE AIRPORT FUND AND PROVIDING FOR THE REPAYMENT OF SUCH LOAN,' motion passed, all voting yes.

Ordinance No. (1st Reading) Amend KMC Chapter 5.05.120 Utility Taxes: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Myers, 'Pass on 1st reading, 'AN ORDINANCE OF THE CITY OF KELSO AMENDING KMC 5.05.120 TO INCREASE UTILITY BUSINESS TAX RATES ON CABLE TELEVISION ENTERPRISES FROM SIX TO EIGHT PERCENT IN ACCORDANCE WITH THE FRANCHISE AGREEMENT FOR SUCH SERVICES.' Motion passed, all voting yes.

Ordinance No. 15-3857 – 2016 Budget Revision No.1: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Archer, 'Adopt Ordinance No. 15-3857, 'AN ORDINANCE OF THE CITY OF KELSO RELATING TO PUBLIC EXPENDITURES AND DECLARING AN EMERGENCY UNDER THE PROVISIONS OF RCW 35A.34.150, FIXING THE AMOUNT OF MONEY REQUIRED TO MEET SUCH EMERGENCIES AND AUTHORIZING THE EXPENDITURE OF MONEY NOT PROVIDED FOR IN THE 2015-2016 BIENNIAL BUDGET OF THE CITY.' Motion passed, all voting yes.

Ordinance No. 15-3858 – Amend KMC Chapter 17.15 Land Use: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Myers, 'Adopt Ordinance No. 15-3858, 'AN ORDINANCE OF THE CITY OF KELSO, WASHINGTON AMENDING KELSO MUNICIPAL CODE CHAPTER 17.15.' Motion passed, all voting yes.

Ordinance No. 15-3859 – Amend KMC Chapter 17.15 Wireless Facilities: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Schimmel, seconded by Councilmember McDaniel, 'Adopt Ordinance No. 15-3859, 'AN ORDINANCE OF THE CITY OF KELSO, WASHINGTON, RELATING TO COLLOCATION, REMOVAL AND REPLACEMENT OF WIRELESS

FACILITIES; ADDING A NEW REGULATORY NOTE TO KELSO MUNICIPAL CODE CHAPTER 17.15.040; ESTABLISHING DEVELOPMENT REGULATIONS FOR COLLOCATION, REMOVAL AND REPLACEMENT OF WIRELESS TRANSMISSION FACILITIES TO CONFORM TO FEDERAL LAW AND REGULATIONS; ESTABLISHING AN APPLICATION SUBMITTAL AND APPROVAL PROCESS; PROVIDING FOR TERMINATION OF NON-CONFORMING STRUCTURES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE,' Motion passed, all voting yes.

Resolution No. 15-1146 – Amend Master Fee Schedule: The Deputy Clerk read the proposed resolution by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Myers, 'Pass Resolution No. 15-1146, 'A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO, WASHINGTON, AMENDING THE CITY'S MASTER FEE SCHEDULE.' Motion passed, all voting yes. Councilmember Franklin left the meeting at 7:40 p.m. and was not present for this vote. He returned to the meeting at 7:42 p.m.

MANAGER'S REPORT:

Steve Taylor: 1) Presented a request from the Cowlitz County Public Facilities District for the Association of Washington Cities to support legislation that will extend the tax rebate for the remodeling of theatres from 25 years to 40 years. 2) Reminded the Council that the AWC Elected Officials Essentials Training is this Saturday, Dec. 5th. 3) Commented that the Tree Lighting Festival is this Friday, Dec. 4th. 4) He commented that the Drinking Water Revolving Fund would keep the water rates lower for our customers. 5) He provided an update on the upcoming transition in management at the airport. Discussion followed.

COUNCIL REPORTS:

Gary Archer: No report.

Rick Roberson: Provided an update on the recent activities of the South Kelso Neighborhood Association.

Jared Franklin: No report.

Dan Myers: Provided updates on the Cowlitz Wahkiakum Council of Governments meeting and the Public Health Advisory Committee meeting that he recently attended.

Todd McDaniel: Announced that there will be a Lodging Tax Advisory Committee meeting tomorrow to consider the funding request from the Cowlitz County Black Bears.

Gary Schimmel: No report.

David Futcher: No report.

There being no further business, Mayor Futcher adjourned the meeting at 8:00 p.m.

MAYOR

CITY CLERK

KELSO CITY COUNCIL **December 8, 2015**
5:00 P.M. **SPECIAL MEETING**

The Special Meeting of the Kelso City Council was called to order by Mayor David Futcher. Councilmembers in attendance were David Futcher, Dan Myers, Rick Roberson, and Todd McDaniel Councilmembers absent were Gary Archer, Jared Franklin, and Gary Schimmel.

Others in attendance were City Manager Steve Taylor, Kenbrio, Inc. Chairman David Mercier, City Attorney Janean Parker, Jim Hill, Nancy Malone, and Larry Alexander.

DISCUSSION:

City Council Orientation: Mayor Futcher and City Manager Taylor conducted a workshop regarding the city government structure and the obligations of elected officials.

There being no further business, Mayor Futcher adjourned the meeting at 7:59 p.m.

_____
MAYOR

_____
CITY MANAGER

AGENDA SUMMARY SHEET

Business of the City of Kelso
City of Kelso, Washington

SUBJECT TITLE:
PUBLIC HEARING: FOR PROPOSED UPDATE TO THE CAPITAL IMPROVEMENT PLAN SPANNING 2016-2021

PRESENTED BY:
Michael Kardas, P.E.
Community Development Director/City Engineer

Agenda Item:_____

Dept. of Origin: Community Development

For Agenda of: December 15, 2015

Cost of Item:_____

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:
Public Hearing Notice

SUMMARY STATEMENT:
The 2016 to 2021 Six-Year Capital Improvement Program identifies budgets and proposed schedules for specific projects in Transportation, Water, Sewer, and Drainage. Overall this plan represents what can be accomplished within the proposed six year period. Each project listed is either funded or has a specific funding plan identified.

The six year program as presented totals $61,205,000 and composed by program as follows:

Water Capital	$ 9,370,000
Sewer Capital	$ 5,225,000
Transportation	$43,525,000
Drainage	$ 3,085,000

Most of the projects contained in this document originated from various City master plans or previous versions of the CIP. Staff will be developing a detailed process for prioritization in the coming year and apply it to the next version of the CIP.

FINANCIAL SUMMARY:
Approval of the CIP does not constitute a financial commitment by the Council. Project funding approval will still occur as part of the City's budget process.

RECOMMENDED ACTION:
The hearing will allow the city to receive public comment on the proposed plan and resolution to update the Capital Improvement Program.

NOTICE OF PUBLIC HEARING

Tuesday, December 15, 2015
6:00 P.M.

The City of Kelso, City Council will hold a public hearing on December 15 at 6:00 pm, in the City Council Chambers, Kelso City Hall, 203 South Pacific Avenue, Kelso, Washington, to consider revisions made to the Six Year Capital Improvement Plan, 2016-2021.

The public hearing on the above matter will be an open record hearing. As such, an official record will be created through testimony and the submission of evidence and information. If any future hearings are required, the record will be closed and no new information may be considered. Only persons commenting or submitting written material at the open record hearing will be parties of record. All decisions will be based on the record established at the open record hearing. Any persons having comments may appear at said time and place to be heard. Persons unable to attend who wish to comment may do so by mail, provided the information is received no later than 5:00 pm, December 14, 2015. The plan is available for review at the Engineering Department, 203 South Pacific Avenue, Kelso, Washington, 9:00 am-5:00 pm or by calling 360-423-6590.

Questions about the plan, call Michael Kardas, Community Development Director/City Engineer at 360-577-3376.

The Council Chambers room is handicap accessible. Arrangements to reasonably accommodate special needs, including handicap accessibility or interpreter, will be made upon receiving 48-hour advance notice by contacting Brian Butterfield, City Clerk, 360-423-0900.

Publish: December 4, 2015 – The Daily News

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: Agreement Regarding Animal Control Contract 2016.

Agenda Item:

Dept. of Origin: Finance Department

For Agenda of: December 15, 2015

Originator: Humane Society

PRESENTED BY:

Steve Taylor

City Attorney:

City Manager:

Agenda Item Attachments:

Humane Society Letter/Agreement

SUMMARY STATEMENT:

The contract rate for animal control services is $78,056.56 with a $6,000 yearly contribution for the Spay and Neuter Clinic, the total amount for the 2016 contact fee is $84,056.56.

RECOMMENDED ACTION:

Staff Takes No Position on the Requested Action.

"Where Pets and People Meet"
HUMANE SOCIETY
"Celebrating over 35 Years of Serving the Community"
P.O. Box 172 • 909 Columbia Blvd. • Longview, WA 98632
(360) 577-0151 Fax (360) 414-0520
email: hsccedir@qwest.net Website: cowlitzhumane.com

December 4, 2015

Kelso Finance
203 S. Pacific
Suite 217
Kelso, Wa. 98626

Dear Mr. Butterfield :

I have reviewed our contract with the City of Kelso for animal control services and pursuant to the terms, submit the following adjustments to the fees for the year 2016. Please review the adjustments and supporting information and let me know if you need any further information or clarification.

Our three year stray animal intake= 577 Animals

Contract rate @ $135.28 per stray animal= $78,056.56

License fees collected during 2014 = $13,328 with 50% to be credited from the stray animal intake rate.

Low income spay/neuter clinic payment= $6000

$78,056.56 - $6664 + $6000= $77,392.56

2016 contract fee = $77,392.56 or equal payments of $6,449.38.

Receipt of a countersigned copy of this letter will be considered acceptance of the adjusted terms herein outlined. Contact me if you have any questions.
Sincerely,

Keenan Harvey
Executive Director

City of Kelso_____

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE:
Closeout Contract for:
NW 2nd Ave Water & Sewer Improvements
Project #591504

Agenda Item:

Dept. of Origin: Community Development/Eng

For Agenda of: December 15, 2015

PRESENTED BY:
Michael Kardas, P.E.
Community Development Director / City Engineer

Cost of Item: $887,940.99

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:

Final Quantity Reconciliation

SUMMARY STATEMENT:

Council awarded the contract for NW 2nd Ave Water & Sewer Improvements to Nutter Corporation of Vancouver, WA during the July 7, 2015 council meeting in the amount of $966,425.22. Work commenced on July 29, 2015 and ended on November 6, 2015

The project consisted of the construction of 1,343 linear feet of ductile iron waterline, 3 fire hydrant assemblies, and miscellaneous appurtenances. The project also consisted of the construction of 2374 linear feet PVC sanitary sewer pipe, including side sewers, and 240 linear feet of PVC storm sewer pipe with all required appurtenances. Restoration included approximately 1,300 feet of road reconstruction as well as associated concrete curb and gutter, driveways and sidewalks.

FINANCIAL SUMMARY:

Original Contract Amount:	$966,425.22
Approved Change Orders:	$31,622.98
Quantity Underrun:	$-101,951.13
Change in Contract Amount:	$-78,484.23
Final Contract Total:	$887,940.99

This project was funded by the Water and Sewer Capital Reserve Funds.

RECOMMENDED ACTION:

Staff recommends Council make a motion to closeout the NW 2nd Ave Water and Sewer Improvements Project and authorize release of the retainage bond upon receipt of final approval from the State of Washington Department of Labor and Industries, Department of Revenue, and Employment Security Department.

NW 2ND AVE WATER & SEWER IMPROVEMENTS

Project # 591504

Nutter Corp.

FINAL QUANTITY RECONCILIATION - NOVEMBER 30, 2015

		Contract				This Estimate			Previous Estimate			Total to Date		
Item No.	Description	Quan		Unit Price	Bid Amount	Quantity		Pay Amount	Quantity		Pay Amount	Quantity		Pay Amount
1	Mobilization	1	LS	$ 85,228.17	$ 85,228.17		LS	$ -	1	LS	$ 85,228.17	1.00	LS	$ 85,228.17
2	Project Temporary Traffic Control	1	LS	$ 20,000.00	$ 20,000.00		LS	$ -	1	LS	$ 20,000.00	1.00	LS	$ 20,000.00
3	Crushed Surfacing Top Course - CSTC	6,500	TON	$ 12.00	$ 78,000.00		TON	$ -	4815.48	TON	$ 57,785.76	4815.48	TON	$ 57,785.76
4	Crushed Surfacing Base Course - CSBC	2,700	TON	$ 17.00	$ 45,900.00		TON	$ -	762.63	TON	$ 12,964.71	762.63	TON	$ 12,964.71
5	HMA for Pavement Repair Cl. 1/2" PG 64-22	840	TON	$ 130.00	$ 109,200.00		TON	$ -	746.58	TON	$ 97,055.40	746.58	TON	$ 97,055.40
6	8-inch Cement Concrete Pavement	60	SY	$ 175.00	$ 10,500.00		SY	$ -		SY	$ -	0.00	SY	$ -
7	PVC Storm Sewer Pipe 8-inch Dia.	260	LF	$ 38.00	$ 9,880.00		LF	$ -	260	LF	$ 9,880.00	260.00	LF	$ 9,880.00
8	Manhole 48-inch Dia.	8	EA	$ 3,000.00	$ 24,000.00		EA	$ -	8	EA	$ 24,000.00	8.00	EA	$ 24,000.00
9	Precast Catch Basin	2	EA	$ 1,200.00	$ 2,400.00		EA	$ -	7	EA	$ 8,400.00	7.00	EA	$ 8,400.00
10	Foundation Material	80	CY	$ 44.00	$ 3,520.00		CY	$ -		CY	$ -	0.00	CY	$ -
11	Shoring	1	LS	$ 4,000.00	$ 4,000.00		LS	$ -	1	LS	$ 4,000.00	1.00	LS	$ 4,000.00
12	Connect to Existing Sewer Main	4	EA	$ 2,200.00	$ 8,800.00		EA	$ -	4	EA	$ 8,800.00	4.00	EA	$ 8,800.00
13	Construction Surveying	1	LS	$ 5,500.00	$ 5,500.00		LS	$ -	1	LS	$ 5,500.00	1.00	LS	$ 5,500.00
14	Abandonment of Existing Sewer Facilities	1	LS	$ 9,000.00	$ 9,000.00		LS	$ -	1	LS	$ 9,000.00	1.00	LS	$ 9,000.00
15	Surface Restoration and Clean up	1	LS	$ 1,000.00	$ 1,000.00		LS	$ -	1	LS	$ 1,000.00	1.00	LS	$ 1,000.00
16	Ductile Iron Pipe for Water Main 8-inch Dia.	60	LF	$ 67.00	$ 4,020.00		LF	$ -	50	LF	$ 3,350.00	50.00	LF	$ 3,350.00
17	Ductile Iron Pipe for Water Main 10-inch Dia.	20	LF	$ 81.00	$ 1,620.00		LF	$ -	20	LF	$ 1,620.00	20.00	LF	$ 1,620.00
18	Ductile Iron Pipe for Water Main 12-inch Dia.	1,220	LF	$ 67.00	$ 81,740.00		LF	$ -	1273	LF	$ 85,291.00	1273.00	LF	$ 85,291.00
19	Connect to Existing Water Main	4	EA	$ 1,500.00	$ 6,000.00		EA	$ -	4	EA	$ 6,000.00	4.00	EA	$ 6,000.00
20	Abandonment of Existing Water Facilities	1	LS	$ 4,000.00	$ 4,000.00		LS	$ -	1	LS	$ 4,000.00	1.00	LS	$ 4,000.00
21	Gate Valve 8-inch	3	EA	$ 1,100.00	$ 3,300.00		EA	$ -	3	EA	$ 3,300.00	3.00	EA	$ 3,300.00
22	Gate Valve 12-inch	5	EA	$ 2,000.00	$ 10,000.00		EA	$ -	5	EA	$ 10,000.00	5.00	EA	$ 10,000.00
23	Fire Hydrant Assembly	3	EA	$ 5,000.00	$ 15,000.00		EA	$ -	3	EA	$ 15,000.00	3.00	EA	$ 15,000.00
24	Service Connection 3/4 Inch Dia.	34	EA	$ 1,500.00	$ 51,000.00		EA	$ -	34	EA	$ 51,000.00	34.00	EA	$ 51,000.00
25	PVC Sanitary Sewer Pipe 6-inch Dia.	1,150	LF	$ 109.00	$ 125,350.00		LF	$ -	884	LF	$ 96,356.00	884.00	LF	$ 96,356.00
26	PVC Sanitary Sewer Pipe 8-inch Dia.	440	L	$ 55.00	$ 24,200.00		L	$ -	440	L	$ 24,200.00	440.00	L	$ 24,200.00
27	PVC Sanitary Sewer Pipe 12-inch Dia.	1,050	LF	$ 69.00	$ 72,450.00		LF	$ -	1050	LF	$ 72,450.00	1050.00	LF	$ 72,450.00
28	Locate Side Sewers	60	EA	$ 470.00	$ 28,200.00		EA	$ -	60	EA	$ 28,200.00	60.00	EA	$ 28,200.00
29	Cement Concrete Curb & Gutter	810	LF	$ 33.00	$ 26,730.00		LF	$ -	722	LF	$ 23,826.00	722.00	LF	$ 23,826.00
30	Cement Concrete Driveway	90	SY	$ 85.00	$ 7,650.00		SY	$ -	89	SY	$ 7,565.00	89.00	SY	$ 7,565.00
31	Cemement Concrete Sidewalk	140	SY	$ 85.00	$ 11,900.00		SY	$ -	160	SY	$ 13,600.00	160.00	SY	$ 13,600.00
32	Cement Concrete Curb Ramp	50	SY	$ 95.00	$ 4,750.00		SY	$ -	37	SY	$ 3,515.00	37.00	SY	$ 3,515.00
				Sub Total	$894,838.17			$ -			$ 792,887.04			$ 792,887.04
				Sales Tax	$71,587.05									
				Contract Amount	$966,425.22									
	CHANGE ORDERS													
1	Increased costs due to unlocated utilities/repairs to main	1	LS	$ 22,499.60	$22,499.60				1	LS	$ 22,499.60	1	LS	$ 22,499.60
2	Increased costs due to additionla materials and material	1	LS	$ 2,586.43	$2,586.43				1	LS	$ 2,586.43	1	LS	$ 2,586.43
3	Increased costs due to additional pavement removal	1	LS	$ 4,194.51	$4,194.51				1	LS	$ 4,194.51	1	LS	$ 4,194.51
4	Quantity Reconciliation	1	LS	$ (101,951.13)										
	Change Order Subtotal			$ (72,670.59)										
	Sales Tax			$ (5,813.65)										
	Change Order Total			$ (78,484.24)										
	Revised Subtotal			$822,167.58										
	Revised Sales Tax			$65,773.41										

	Revised Contract Total	$887,940.99										
			Sub Total		$ -				$ 822,167.58			$ 822,167.58
			Sales Tax		$ -				$ 65,773.41			$ 65,773.41
		Due to Contractor this Estimate			$ -				$ 887,940.99			$ 887,940.99

City of Kelso

PROJECT MANAGER

Date 12-1-15

Nutter Corp

CONTRACTOR

Date 12-1-15

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: Amendment to City Manager Employment Agreement.

Agenda Item:

Dept. of Origin: City Council

For Agenda of: December 15th, 2015

Originator: David Futcher

PRESENTED BY:

Mayor David Futcher

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

Agenda Item Attachments:

Amendment No. 4 to City Manager Employment Agreement

SUMMARY STATEMENT:

The City Council conducted the annual performance evaluation of the City Manager on November 17th, 2015. In accordance with Section 5.2 of the City Manager's Employment Agreement, salary adjustments may be negotiated during the time of the evaluation process. The attached proposed amendment to the Employment Agreement increases the base salary 3% to $128,750, effective January 1, 2016 which reflects the same 3% adjustment applied to the 2016 Non-represented salary classification matrix.

All other terms of the Employment Agreement will remain in effect.

OPTIONS:

1) Move to approve the amendment to the City Manager Employment Agreement.
2) Do not approve the amendment.
3) Negotiate alternatives to the proposed amendment.

AMENDMENT NO. 4 TO EMPLOYMENT AGREEMENT
STEPHEN A. TAYLOR

THE AGREEMENT, made and entered into on the 1st day of September, 2012, by and between the City of Kelso, Washington, a municipal corporation, hereinafter called 'Employer', and Stephen A. Taylor, hereinafter called 'Employee', is hereby amended as follows:

Section 4. Salary

1. Employer agrees to pay Employee for his services rendered pursuant hereto a base salary of ~~$125,000~~ $128,750 annually. Adjustable pursuant to sections 4.2 and 5.2 of this agreement.

All other terms and conditions of the Agreement dated September 1st, 2012, and as subsequently amended, shall remain in full effect.

EFFECTIVE DATE OF THIS AMENDMENT: The 1st day of January, 2016.

EMPLOYER:
City Council

_____
David Futcher, Mayor

Date: _____

ATTEST:

_____
Brian Butterfield, Clerk Treasurer

EMPLOYEE:

_____
Stephen A. Taylor

Date:_____

APPROVED AS TO FORM ONLY:

_____
City Attorney

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE:

2016 Lodging Tax Request

PRESENTED BY:

Agenda Item:

Dept. of Origin: Lodging Tax Committee

For Agenda of: December 15, 2015

City Manager: Steve Taylor

AGENDA ITEM ATTACHEMENTS:
December 2, 2015 – Meeting Minutes (Draft)
Exhibit A – Cowlitz Black Bears Funding Application

SUMMARY STATEMENT:

On November 16, 2015 the City received an application from the Cowlitz Black Bears baseball team requesting $10,000 to help them host the 2016 West Coast League All Star Game in July of 2016. At the time the City was soliciting for funding applications (July of 2015) the team did not know if they had been awarded the event and was unable to submit an application for funding.

At the November 17, 2015 Council Meeting staff asked Council how they would like to handle the out of cycle application. Council directed staff to hold an LTAC meeting to review the application and provide a recommendation.

On December 2, 2015 the LTAC held a meeting to review the application, discuss funding and reserve levels and the regional nature of the event. The General Manager of the Cowlitz Black Bears was present to answer questions and provide additional information. The LTAC unanimously agreed to provide Council with a recommendation to fund the event with the requested amount.

RECOMMENDED ACTION(S):

Move to approve the recommended allocation of the City's Lodging Tax funds.

Lodging Tax Advisory Committee
Meeting Minutes
December 2, 2015
City of Kelso, Executive Session

Call to order:

Committee Chair Todd McDaniel called the meeting to order at 2:57pm.

Those present were as follows:

Lodging Tax Committee Members
Todd McDaniel, Council Rep
Cindy Keeney
Pam Fierst
Bill Marcum
Syed Pasha

Staff
Steve Taylor, City Manager
Brian Butterfield, Finance Director
Amy Mullerleile, Assistant to City Manager
Jessica Bronstein, Project Coordinator

Guests
Jim Appleby, General Manager of Cowlitz Black Bears

Minutes:
Bill Marcum made the motion to approve the minutes from the August 26, 2014, March 11, 2015, and August 11, 2015 meetings, seconded by Cindy Keeney. Motion carried, all voting 'yes'.

Funding Overview:
Jim Appleby gave a description of the 2016 West Cost All Star League Game, additional associated events, the criteria for being considered a qualified host, and the contents of the application. The application was submitted by Cowlitz Black Bears on behalf of the West Coast League.

The LTAC Committee reviewed the application and discussed funding availability, reserves, total amount of funding requested, and estimated revenue for 2016. The total cost of the event is estimated to be between $25,000-$30,000 additional funding will come from the West Coast League ($10,000) sponsorships, and requests to Longview and Cowlitz County.

Bill Marcum made the motion to forward a recommendation to the Kelso City Council for approval of the requested amount of $10,000. Syed Pasha seconded the motion. Motion passed, all voting 'yes'.

With no further comments, the meeting was adjourned at 3:16 pm.

Respectfully Submitted,

Amy Mullerleile, Recording Secretary

DRAFT

CITY OF KELSO
LODGING TAX FUNDING REQUEST
2016

Amount of Lodging Tax Requested: $ 10,000

Organization/Agency Name: Cowlitz Black Bears / West Coast League

Name of Event/Activity/Facility: 2016 WCL All Star Game - Story Field

Total Cost of Event/Activity/Facility: $50,000

Activity Start Date: July 18 + 19 - 2016

Activity End Date: —

Federal Tax ID Number: 20-1796875

Contact Name and Title: Jim Appleby - General Manager

Mailing Address: P.O. Box 1255

City: Longview

State: WA

Zip: 98632

Phone: 360 703 3195

Email Address: jappleby@cowlitzblackbears.com

Check all service categories that apply to this application:

✓ Tourism Promotion/Marketing
✓ Operation of a Special Event/Festival designed to attract tourists
___ Operation of a Tourism Promotion Agency
___ Operation of a Tourism-Related Facility owned or operated by non-profit organization
___ Operation and/or Capital Costs of a Tourism-Related Facility owned by a municipality

Check which one of the following applies to your agency:

✓ Non-Profit *(Attach copy of current non-profit corporate registration with Washington Secretary of State)*
___ Public Agency

CERTIFICATION

I am an authorized agent of the organization/agency applying for funding. I understand that:

- I am proposing a tourism-related service for 2016. If awarded, my organization intends to enter into a Municipal Services Contract with the City; provide liability insurance for the duration of the contract naming the City as additional insured and in an amount determined by the City; and file for a permit to use City property, if applicable.
- The City of Kelso will only reimburse those costs actually incurred by my organization/agency and only after the service is rendered, paid for if provided by a third party, and a signed Request for Reimbursement form (or other form acceptable to the City) has been submitted to the City, including copies of invoices and payment documentation.
- My agency will be required to submit a report documenting economic impact results in a format determined by the City.

Printed or Typed Name: Dennis Koho

Signature: Dennis Koho

Date: Nov 3, 2015

Supplemental Questions

(SEE ATTACHED WORKSHEET)

1. **Describe your tourism-related activity or event.**
   - **Describe why tourists will travel to Kelso to attend your event/activity/facility.**

2. ***(The estimates in question #2 are required by State law)***

As a direct result of your proposed tourism-related service, provide an estimate of:		
	Estimated Number of Attendees	Methodology*
a. Overall attendance at your proposed event/activity/facility		
b. Number of people who will travel more than 50 miles for your event/activity		
c. Of the people who travel more than 50 miles, the number of people who will travel from another country or state		
d. Of the people staying overnight, the number of people who will stay in ***PAID*** accommodations (hotel/motel/bed-breakfast) in Kelso		
e. Of the people staying overnight, the number of people who will stay in ***UNPAID*** accommodations in Kelso		
f. Number of paid lodging room nights resulting from your proposed event/ activity/facility *(example: 25 paid rooms on Friday and 50 paid rooms on Saturday = 75 paid lodging room nights)*		

***Please select the appropriate methodology from the list below.**

Direct Count
Indirect Count
Representative Survey
Informal Survey
Structured Estimate
Other – Please Describe

- **Direct Count:** Actual count of visitors using methods such as paid admissions or registrations, clicker counts at entry points, vehicle counts or number of chairs filled. A direct count may also include information collected directly from businesses, such as hotels, restaurants or tour guides, likely to be affected by an event.
- **Indirect Count:** Estimate based on information related to the number of visitors such as raffle tickets sold, redeemed discount certificates, brochures handed out, police requirements for crowd control or visual estimates.
- **Representative Survey:** Information collected directly from individual visitors/ participants. A highly structured data collection tool, based on a defined random sample of participants and the results can be reliably projected to the entire population attending an event and includes margin of error and confidence level.
- **Informal Survey:** Information collected directly from individual visitors or participants in a non-random manner that is not representative of all visitors or participants. Informal survey results cannot be projected to the entire visitor population and provide a limited indicator of attendance because not all participants had an equal chance of being included in the survey.
- **Structured Estimate:** Estimate produced by computing known information related to the event or location. For example, one jurisdiction estimated attendance by dividing the square footage of the event area by the international building code allowance for persons (3 square feet).
- **Other:** (please describe)

3. Describe the prior success of your event/activity/facility in attracting tourists.

4. Describe how you will promote your event/activity/facility to attract tourists.

5. Describe how you will promote, if applicable, lodging establishments, restaurants, and businesses located in the City of Kelso.

6. Are you applying for Lodging Tax funds from another community (yes or no)? If yes, list the other jurisdiction(s) and amount(s) requested.

7. What will you cut from your proposal or do differently if full funding for your request is not available or recommended?

Application Instructions and General Guidelines

Application Deadline: Friday, July 31, 2015 @ 5:00 p.m. – received at Kelso City Hall.
To be eligible for consideration, your complete proposal must be received by the deadline.

Please submit original AND 5 copies to:
Amy Mullerleile
Assistant to City Manager
203 S. Pacific # 218
P.O. Box 819
Kelso, WA 98626

- ⇒ **You must complete and sign the cover sheet with this packet.**
- ⇒ **You may type the questions and answers on separate sheets of paper.**
- ⇒ **Please number each page in your packet, except for the optional brochures/information.**

Attach:
1. Itemized budget for your event/activity/program/facility (income and expenses).
2. Description and budget showing how you intend to use the amount requested from the City of Kelso.
3. A copy of your agency's current non-profit corporate registration with the Washington Secretary of State.
4. A copy of your agency's City of Kelso business license, if applicable.
5. (Optional) Brochures or other information about your event/activity/program/facility, in particular items showing recent tourism promotion efforts.

General Information

The proposal and all documents filed with the City are public records. The City may choose to post on its website copies of the proposals and attached documents.

The Kelso City Council has created a Lodging Tax Advisory Committee to conduct an annual process to solicit and recommend Lodging Tax funded services for City Council consideration. The City of Kelso will only consider proposals for use of the Lodging Tax Fund from public and non-profit agencies.

HIGH PRIORITY will be given to tourism activities that:
- Have a demonstrated potential or high potential from the Committee's perspective to result in overnight stays by tourists in lodging establishments within the City of Kelso.
- Promote Kelso and/or events, activities, and places in the City of Kelso to potential tourists from outside Cowlitz County.
- Have demonstrated or high potential from the Committee's perspective to result in documented economic benefit to Kelso.
- Have a demonstrated history of success in Kelso, or are proposed by a group with a demonstrated history or high potential of success with similar activities.

- Minimize duplication of services where appropriate and encourage cooperative marketing and/or includes an element of cooperation or partnership.
- Provide, maintain, operate, or enhance City-owned tourism facilities or infrastructure.

Kelso Lodging Tax Advisory Committee Considerations

In developing its recommendations, the Committee considers:

- The estimated amount of Lodging Tax Funds available for the coming year.
- Thoroughness and completeness of the proposal.
- Percent of the proposal request to the event/facility promotions budget and overall revenues.
- Percent of increase over prior year Kelso Lodging Tax funded proposals, if any.
- Projected economic impact within the City of Kelso, in particular projected overnight stays in Kelso lodging establishments.
- The applicant's history of tourism promotion success.

State Law Excerpts

RCW 67.28.1816 – Use of Lodging Tax Fund.

Lodging tax revenue under this chapter may be used, directly by any municipality or indirectly through a convention and visitor's bureau or destination marketing organization for:

a. Tourism marketing;
b. The marketing and operations of special events and festivals designed to attract tourists;
c. Supporting the operations and capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district created under chapters 35.57 and 36.100 RCW; or
d. Supporting the operations of tourism-related facilities owned or operated by nonprofit organizations described under 26 U.S.C. Sec. 501(c)(3) and 26 U.S.C. Sec 501(c)(6) or the internal revenue code of 1986, as amended.

RCW 67.28.080 – Definitions.

- "Municipality" means any county, city or town of the state of Washington.
- "Operation" includes, but is not limited to, operation, management, and marketing.
- "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.
- "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.
- "Tourism promotion" means activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists.
- "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.
- "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture.

Lodging Tax Worksheet Draft

1. The West Coast League is a summer collegiate baseball league, with teams throughout Washington, Oregon and British Columbia. The League draws approximately 400,000 fans annually, and is recognized by national sporting publications such as *Baseball America* as one of the premier leagues in the country. Each season, the season takes a two-day break for the WCL All Star Game. The 2016 game will be the 6th annual event, and will be held at the home field of the Cowlitz Black Bears. The All Star Game includes players from each of the League's 11 teams, and the related festivities are attended by league and team staffs, scouts from professional and collegiate baseball, local, national and international media, and of course fans and families of the participants.

The date for the Game is Tuesday, July 19, with related events taking place on July 18 and 19. The festivities typically include the game itself, as well as a home run derby, scouting combine, All Star Luncheon, and other events. The specific event calendar will not be released until early 2016.

2a. 2,500 * Direct Count*

The average attendance for the last two WCL All Star Game, held in Victoria, B.C. and Bellingham, Washington, was 3,098. The Cowlitz facility is smaller, but the location is more central within the League. The estimate is based on attendance of the game itself, and does not include attendance of related events.

2b. 1,000 * Structured Estimate*

Given the League's makeup (with no market within 50 miles of the Black Bears), we believe that an estimate of 40% attendance from outside of the 50-mile radius is reasonable.

2c. 800 * Structured Estimate*

Based on experience, we expect that a majority of the fans coming from other states and countries will come from WCL markets in Oregon and Canada. However, the League draws player from throughout the US, and player families and friends are likely attendees.

2d. 500 * Structured Estimate*

Based on an estimate of approximately 50 attendees (players, coaches, staff, fans) attributable to each team other than the Black Bears.

2e. 50 * Structured Estimate*

Based on an estimate of people staying with friends, host families, etc.

2f. 200 paid rooms * Structured Estimate *

75 paid rooms x 2 nights = 150
50 paid rooms x 1 night = 50

3. As mentioned previously, this will be the 6th All Star Game. The Game continues to grow in participation, with the 2013 game setting league attendance records at 4,210 fans.

4. The host team promotes the Game regionally, and each team in the West Coast League is required to promote the event to its own fan base. In each market, promotions include program advertisements, newspaper advertisements, signage in each park, website and social media advertising, public address announcements, and game specific lineup card advertising. In addition, the League promotes the game on its website and social media announcements, as well as through individual invitations to members of the baseball community.

5. Links will include reference to participating hotels, restaurants and businesses, many of which we expect will be located in Kelso. Attendees requesting booking information from either the League or the Black Bears will be directed to businesses that will include Kelso businesses.

6. We are exploring available funding from the City of Longview and from Cowlitz County. The availability and the amounts have not been determined.

7. Expenses associated with the event already exceed our funding request for lodging tax dollars. The budget for advertisement and operations for the event would fall short if full funding is not available. This would include portable bleachers to accommodate the expected crowd, portable restroom and hand washing facilities, and numerous paid advertisements in our local community.

Summary:

Hosting the All Star weekend is an opportunity to showcase the local community to the attendees from our partner markets in Pacific Northwest, as well as player families and friends, scouts and media from throughout the country. We expect that, with the Black Bears' central location, member team participation will be high, and that proximity to PDX will draw more geographic diversity. We greatly appreciate your consideration, and are available to answer any questions or provide additional information as needed.

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: Confirming the Proclamation of Civil Emergency.

Agenda Item:_____

Dept. of Origin: City Council

For Agenda of: December 15th, 2015

Originator: Steve Taylor

PRESENTED BY:

City Manager Steve Taylor

City Attorney: Janean Parker

City Manager: Steve Taylor

Agenda Item Attachments:

Proclamation of Civil Emergency – December 9, 2015

SUMMARY STATEMENT:

In the wake of the heavy rains and flooding that occurred during the week of December 7th – 11th, the Cowlitz County Department of Emergency Management requested a formal declaration of civil emergency to better position the County for state and federal resources in responding to impacts of the hazardous conditions. KMC Chapter 2.92 authorizes the Mayor to issue of proclamation of civil emergency in the event of such emergency that is defined as follows:

A. "Civil emergency" means:

1. A riot or unlawful assembly characterized by the use of actual force or violence or any threat to use force if accompanied by immediate power to execute such force by three or more persons acting together without authority of law;

2. Any natural disaster or manmade calamity including, but not limited to, flood, conflagration, cyclone, tornado, earthquake, volcanic eruption or explosion occurring in a locality where the impact is manifested within the corporate limits of the city, which results, or would be likely to result, in death, injury or ill health of persons, or the destruction of property to such an extent that extraordinary measures must be taken to protect the public health, safety and welfare.

The Mayor issued the attached proclamation on December 9th and the City provided it to the County and the news media. The proclamation also allows the City to utilize the flexibility in contracting for services and equipment that is authorized by state statute without going through the formal acquisition processes prescribed by the law. Additionally, confirmation of the proclamation by the City Council is required to be considered by the time of the next regular or special meeting of the Council.

OPTIONS:

1) Move to confirm the Mayor's proclamation of civil emergency made on December 9th, 2015.
2) Do not confirm the proclamation.

A PROCLAMATION OF THE CITY OF KELSO, WASHINGTON DECLARING A CIVIL EMERGENCY IN ACCORDANCE WITH CHAPTER 2.92 OF THE KELSO MUNICIPAL CODE

WHEREAS, the Cowlitz County Director of Emergency Management has reported to the Board of County Commissioners, as to conditions beginning on December 8, 2015 created by heavy rainfall and flooding within Cowlitz County including the incorporated boundaries of the City of Kelso; and

WHEREAS, extensive injury has or will, likely occur to persons and/or there is the potential for considerable damage to property; and,

WHEREAS, there is a present emergency which necessitates activation of the Cowlitz County Comprehensive Emergency Management Plan (CEMP) and utilization of emergency powers granted pursuant to RCW 36.40.180 and RCW 38.52.070(2); and

WHEREAS, Chapter 2.92 of the Kelso Municipal Code authorizes the City's participation within the Cowlitz County Emergency Management Council and authorizes the Mayor to declare a civil emergency as that emergency is defined in KMC 2.92.010; and

WHEREAS, the declaration of a civil emergency must be confirmed by the Kelso City Council at its next regular or special meeting;

NOW, THEREFORE BE IT RESOLVED:

SECTION 1. It is hereby proclaimed by the Mayor of the City of Kelso that, in accordance with the terms and conditions of RCW 35A.38.010, there is an emergency due to the above stated conditions in Cowlitz County; therefore, designated departments are authorized to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster; and,

SECTION 2. Each designated department is authorized, in accordance with the terms and conditions of RCW 38.52.070(2), to exercise the powers vested under Section 1 of this resolution in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law, (excepting mandatory constitutional requirements), including but not limited to:

- budget law limitations
- requirements of competitive bidding and publication of notices
- provisions pertaining to the performance of public work
- entering into contracts
- the incurring of obligations

- the employment of temporary workers
- the rental of equipment
- the purchase of supplies and materials
- the appropriation and expenditures of public funds

SECTION 3. Each designated department may undertake contracting authority subject to the terms and conditions and provisions of RCW 39.04.280.

SECTION 4. Notwithstanding the authorizations set forth in Section 1 of this resolution, designated departments shall endeavor to secure the most competitive price available for goods and services, subject to the terms, conditions and provisions of RCW 39.04.280.

SECTION 5. Such authorization shall include unannounced entry and access onto and about private property, where such entry and access shall not violate those constitutional privacy and property rights under an emergency declaration.

PROCLAIMED and **SIGNED** by the Mayor this 8th day of

December, 2015.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

Press Release

FOR IMMEDIATE RELEASE:

For information contact: Amy Mullerleile
amullerleile@kelso.gov
(360) 577-3301

The City of Kelso Proclaims a State of Emergency

Kelso, WA – December 9, 2015

Kelso Mayor, David Futcher, has proclaimed a state of emergency effective December 9, 2015 related to the recent heavy rains and flooding. In accordance with Chapter 2.92 of the Kelso Municipal Code the City Council will confirm this proclamation at the December 15, 2015 regular meeting.

###

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: Council Vacancy

Agenda Item:_____

Dept. of Origin: City Manager's Office

For Agenda of: December 15, 2015

PRESENTED BY:

Originator: Steve Taylor

Steve Taylor

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

Agenda Item Attachments:

SUMMARY STATEMENT:
Council position #3 vacancy discussion.

RECOMMENDED ACTION:

None

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: Ordinance to amend KMC 18.12 Floodplain Management

Agenda Item:

Dept. of Origin: Engineering

For Agenda of: December 15, 2015

Cost of Item: None

City Manager: Steve Taylor

PRESENTED BY:

Michael Kardas, P.E.
Community Development Director/City Engineer

AGENDA ITEM ATTACHMENTS:

Proposed Ordinance with redline/strikeout of KMC 18.12.070

SUMMARY STATEMENT:

This is a minor housekeeping amendment for the City Code that if not completed could have significant consequences.

The Federal Emergency Management Agency (FEMA) requires that the title of the Flood Insurance Study and associated Flood Insurance Rate Maps (FIRM) that will become effective on December 16, 2015 be explicitly referenced in the City's code. A different title of this document is currently in the code. Updating the document title will meet the necessary requirements of the National Flood Insurance Program (NFIP).

If not adopted, FEMA can/will suspend the City from the NFIP for failure to adopt the new Flood Insurance Study and FIRM by their effective date, December 16, 2016. If a suspension does occur, flood insurance policies will become temporarily non-renewable until the new provision gets included.

FINANCIAL SUMMARY:

No financial impacts to the City budget

RECOMMENDED ACTION:

Staff recommends adoption of the Ordinance upon 1st reading to update the KMC 18.12 Floodplain Management chapter.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING SECTION 18.12.070 OF THE KELSO MUNICIPAL CODE RELATING TO FLOODPLAIN MANAGEMENT.

WHEREAS, the City is required to make the following changes to its code in order to be in compliance with FEMA regulations;

SECTION 1. KMC Section 18.12.070 Amended. Kelso Municipal Code Section 18.12.070 is hereby amended as follows:

18.12.070 Basis for establishing the areas of special flood hazard.
The areas of special flood hazard identified by the Federal Insurance Administration and recognized by the State Department of Ecology (DOE) in a scientific and engineering report entitled "Flood Insurance Study (FIS) for Cowlitz County, Washington and Incorporated Areas," dated December 16, 2015, and any revisions thereto, with accompanying Flood Insurance Rate Maps (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this chapter. The flood insurance study and the FIRM are on file at Kelso City Hall, 203 S. Pacific Avenue, Kelso, Washington, 98626. The best available information for flood hazard area identification as outlined in Section 18.12.150 of this chapter shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under Section 18.12.150 of this chapter.

SECTION 2. This Ordinance shall be in full force and effect five (5) days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of _____, 2015.

_____
MAYOR

ATTEST/AUTHENTICATION:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING SECTION 18.12.070 OF THE KELSO MUNICIPAL CODE RELATING TO FLOODPLAIN MANAGEMENT.

WHEREAS, the City is required to make the following changes to its code in order to be in compliance with FEMA regulations;

SECTION 1. KMC Section 18.12.070 Amended. Kelso Municipal Code Section 18.12.070 is hereby amended as follows:

18.12.070 Basis for establishing the areas of special flood hazard.
The areas of special flood hazard identified by the Federal Insurance Administration and recognized by the State Department of Ecology (DOE) in a scientific and engineering report entitled "Flood Insurance Study (FIS) for Cowlitz County, Washington and Incorporated Areas," dated December 16, 2015, ~~"Flood Insurance Study for the City of Kelso, Washington," dated December 20, 2001,~~ and any revisions thereto, with accompanying Flood Insurance Rate Maps (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this chapter. The flood insurance study and the FIRM are on file at Kelso City Hall, 203 S. Pacific Avenue, Kelso, Washington, 98626. The best available information for flood hazard area identification as outlined in Section 18.12.150 of this chapter shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under Section 18.12.150 of this chapter.

SECTION 2. This Ordinance shall be in full force and effect five (5) days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of _____, 2015.

_____
MAYOR

ATTEST/AUTHENTICATION:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

AGENDA SUMMARY SHEET

Business of the City of Kelso
City of Kelso, Washington

SUBJECT TITLE:

AN ORDINANCE OF THE CITY OF KELSO VACATING A PORTION OF 2ND AVENUE IN THE CITY OF KELSO TO ABUTTING PROPERTY OWNERS

Agenda Item:_____

Dept. of Origin: Community Development

For Agenda of: December 15, 2015

Cost of Item:_____

PRESENTED BY:
Michael Kardas, P.E.
Community Development Director/City Engineer

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:
Proposed Ordinance with attachments

SUMMARY STATEMENT:
As a result of the realignment of West Main, there is a portion of 2nd Avenue that is no longer to be used for street purposes. As a result, staff proposes vacating this portion of 2nd avenue back to the abutting property owners. The City would, as a part of the vacation process hold back an easement (as allowed by state law) for the public utilities and services that may remain in the vacated area.

Under state law at RCW 35.79, the process for vacation is by a petition of the abutting property owners (or a resolution of the legislative authority.) to initiate the process. Then a public hearing must be held on the vacation and the City may adopt an ordinance vacating the street or any part thereof.

The City adopted Resolution 15-1134 on November 3, 2015 initiating the vacation process and setting a hearing for December 1st. The City provided all the required notices for the hearing. The City did not receive any objections from the abutting property owners prior to the hearing date. The required public hearing was held in consideration of the proposed ordinance. The proposed ordinance vacates the right of way, conditioned upon the payment of compensation by abutting property owners and the reservation of necessary public utility easements as allowed by the statute. The ordinance also directs Community Development to effectuate the vacation and real property transfers.

FINANCIAL SUMMARY:
Under the statute, the City may provide that the vacation does not become effective until the abutting property owners compensate the City for an amount not in excess of one-half of the appraised value or in the case of a dedication over 25 years in the past to require compensation of the full appraised value. Because the City is the party initiating the vacation petition, staff is recommending payment of one half of the appraised value.

OPTIONS

Do nothing—under this option, this unused portion of the street would remain property of the city and subject to our control and responsibility for its use, repair, and maintenance.

Vacate the property to the abutting property owners—The City would maintain necessary easements and the property owners would share an access easement.

RECOMMENDED ACTION:

Move to pass the Ordinance on second reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO VACATING A PORTION OF 2nd AVENUE IN THE CITY OF KELSO TO ABUTTING PROPERTY OWNERS

WHEREAS, pursuant to RCW 35.79.010, the City Council has the authority to initiate the vacation of a public street or a portion thereof; and

WHEREAS, the City Council passed Resolution No. 15-1134 on November 3, 2015 initiating the procedure for vacating a portion of 2nd Avenue right of way in Kelso, which is legally described in Exhibit A and set a public hearing for the matter on December 1, 2015; and

WHEREAS, twenty days written notice of the time, place, and purpose of the hearing was published and posted in three of the most public places in the City and like notices were posted in conspicuous places at the proposed right-of-way vacation site; furthermore, written notice was given to the abutting property owners having an interest in the vacation; and

WHEREAS, the City did not receive any written objections from the property owners abutting upon that part of the street sought to be vacated prior to the time of the public hearing; and

WHEREAS, a public hearing was conducted by the City Council on December 1, 2015, where Council Members heard testimony, deliberated on the matter; and

WHEREAS, the City Council finds that it is in the public interest to vacate those portions of 2nd Avenue legally described in Exhibit A;

NOW, THEREFORE,
THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. Vacation of Street Right of Way. That the real property legally described in Exhibit A, attached hereto and fully incorporated by this reference, consisting of portions of 2nd Avenue, is hereby vacated upon the satisfaction of the conditions set forth in this ordinance.

SECTION 2. Compensation for Vacation. The vacation is conditioned upon and subject specifically to payment to the City of Kelso by the owners of the property abutting upon the street so vacated an amount equal to one half of the full appraised value of the area vacated. One half of the revenue received by the City for such vacation shall be dedicated to the acquisition, improvement,

development and maintenance of public opens space or transportation capital projects within the City.

SECTION 3. Reservation of Easements. The vacation is furthermore conditioned upon and subject specifically to the reservation by the City of a 30 foot easement across the property for public utilities and services, in a location to be determined by the City.

SECTION 4. Authorizing the Community Development Department to effectuate vacation. The Community Development Department is authorized and directed to prepare and execute all necessary documents to effectuate the street vacation, including but not limited to a preparation of an appraisal of the property to be vacated and preservation of a utilities easement in a form acceptable to the Community Development Director, and recording of the vacation upon the completion of the necessary conditions. .

SECTION 5. Severability. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 6. Effective Date. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____ _____, 2015.

_____

ATTEST/AUTHENTICATION: MAYOR

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY PUBLISHED: _____

Exhibit A

LEGAL DESCRIPTION

PORTION OF WEST SECOND STREET TO BE VACATED

FOR CITY OF KELSO, WA

AUGUST 14, 2015

A portion of West Second Street as shown on the Plat of River View Addition to Marysville as recorded in Volume 3 of Plats at Page 69, Cowlitz County Records, located in the Southeast Quarter of Section 27, Township 8 North, Range 2 West of the Willamette Meridian and more particularly described as follows:

Beginning at a point on the West line of Block 9, said Plat of River View Addition to Marysville, said point being North 17°18'37" East, 9.17 feet from the Southwest corner of said Block 9;

Thence along the West line of said Block 9, North 17°18'37" East, a distance of 215.30 feet to a point which is South 17°18'37" West, 4.96 feet from the Northwest corner of said Block 9;

Thence on a 284.00 foot radius circular curve to the left, through a central angle of 10°14'00" (the chord of which bears South 81°55'19" West, 50.65 feet), an arc distance of 50.72 feet to a point on the East line of Block 10, said Plat of River View Addition to Marysville;

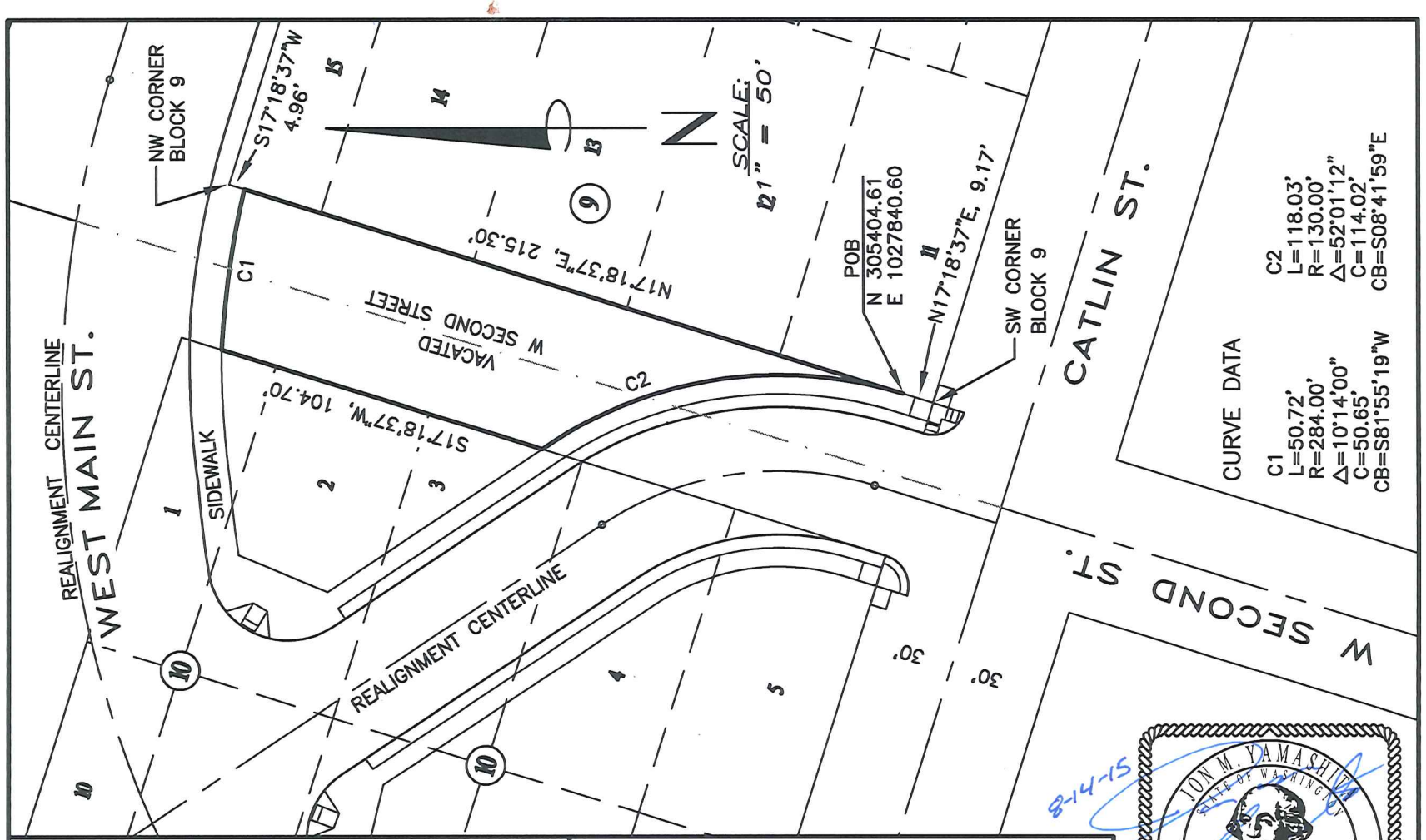
Thence along the East line of said Block 10, South 17°18'37" West, a distance of 104.70 feet to a point;

Thence on a 130.00 foot radius circular curve to the right, through a central angle of 52°01'12" (the chord of which bears South 08°41'59" East, 114.02 feet), an arc distance of 118.03 feet to the **Point of Beginning**.

Containing 7,027 square feet or 0.161 Acres, more or less.

8-14-15

JON M. YAMASHITA
STATE OF WASHINGTON
36814
REGISTERED
PROFESSIONAL LAND SURVEYOR



STREET VACATION
PORTION W. SECOND STREET
RIVER VIEW ADD. TO MARYSVILLE
SECTION 27, T8N, R2W, W.M.
CITY OF KELSO, COWLITZ COUNTY, WASHINGTON

otak

- SURVEYING
- CIVIL ENGINEERING
- PLANNING
- WATER & NATURAL RESOURCES
- WETLAND CONSULTING

WWW.OTAK.COM

S13564FB165.DWG

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: **AN ORDINANCE RENEWING THE GRANT OF A FRANCHISE TO COMCAST OF COLORADO/FLORIDA/ MICHIGAN/NEW MEXICO/ PENNSYLVANIA/WASHINGTON, LLC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF KELSO; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; AND TERMINATING ORDINANCE NO. 99-3444.**

Agenda Item:_____

Dept. of Origin: City Manager

For Agenda of: December 15, 2015

Originator: Steve Taylor, City Manager

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

PRESENTED BY:

Steve Taylor

Agenda Item Attachments:

Proposed Ordinance Granting Franchise to Comcast Cable

SUMMARY STATEMENT:

The City entered into a 13-year cable franchise agreement with Cowlitz Cablevision in December 1999. The franchise was subsequently transferred to Adelphia Communications, under whose management the agreement was extended three years which set an expiration date of December 2015. The franchise was transferred again to Comcast Cable when they purchased the system from Adelphia. The City has been in "informal" negotiations with Comcast representatives over the past year and both sides have reached an agreement that is now before Council for consideration.

General Highlights of new franchise:

- Renewed franchise agreement for ten (10) years
- Updated to conform to current federal and state law
- Updated wording and reorganized many provisions from earlier agreement
- Updated and expanded definitions, including the term "Gross Revenue" for fee and tax computation

Specific Changes

- Establishes new Public, Educational, Governmental (PEG) fee of $0.50/subscriber/month for purchase of capital equipment and structures (prior agreement issued varying levels of grant support during specific years of the franchise term)

- Sets franchise fee at 5% and incorporates an 8% cap on franchise fees and utility taxes combined, exclusive of PEG capital fees
- Added a competitive equity clause
- Removed provisions pertaining to an Institutional Network for the city to use and maintain at its own expense (City never took advantage of this option and currently uses Cascade Networks' high-quality, reliable fiber network)
- Updated remedies and penalties section as well as the indemnification provisions
- Updated the service line extension policies
- Added provisions and timelines for converting PEG channels to High Definition format
- Updates original programming requirements for KLTV to meet in order to retain all three public access channels
- Allows KLTV access to the cable program guide
- Removed the provision requiring a customer service office to be located within Cowlitz County as long as comparable customer service levels are maintained
- Allows Comcast the option to have the cost of providing gratis services to public institutions deducted from its franchise fees

The city charter requires that public notice of a franchise agreement be provided for three consecutive weeks before final adoption. That requirement will be met prior to the December 15th council meeting where this ordinance will be considered on second reading. Cowlitz County approved a franchise renewal with Comcast over a year ago. Kalama and Longview are in the early stages of negotiation with their renewals.

Comcast's representative, Tess Fields, will be at the Council meeting to answer questions about the franchise agreement from the company's perspective.

OPTIONS:

1) Move to approve the Ordinance on second reading renewing the franchise agreement with Comcast Cable for ten years.
2) Do not approve the Ordinance.
3) Delay action on the Ordinance and bring back for consideration following further revision.

RECOMMENDED ACTION:

Approve the ordinance on second reading renewing the cable franchise agreement with Comcast.

ORDINANCE NO. _____

AN ORDINANCE RENEWING THE GRANT OF A FRANCHISE TO COMCAST OF COLORADO/FLORIDA/MICHIGAN/NEW MEXICO/PENNSYLVANIA/WASHINGTON, LLC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF KELSO; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; AND TERMINATING ORDINANCE NO. 99-3444.

WHEREAS, Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC., ("Grantee") desires to continue operation of a Cable System in the rights-of-way of the City of Kelso "City" under the authority of Section 2.01 and 2.10 of the Kelso City Charter; and

WHEREAS, negotiations between Grantee and the City have been completed and the franchise renewal process followed in accordance with the guidelines established by the City Code and the federal Cable Act (47 U.S.C. 546); and

WHEREAS, the City Council has reviewed the qualifications of Grantee and the adequacy of its provision of services in the City of Kelso; and

WHEREAS, the franchise granted by Ordinance No. 99-3444 shall be terminated and be replaced by this Franchise; and

WHEREAS, pursuant to Section 2.11(b) of the City Charter, this Franchise was filed with the City Clerk and published once a week for three successive weeks in the City official newspaper; and

WHEREAS, a public hearing was held on the 1st day of December, 2015;

NOW, THEREFORE, THE CITY OF KELSO DOES ORDAIN AS FOLLOWS:

Section 1. Franchise Granted. That a franchise is hereby granted to Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC to operate and maintain a Cable System in the City of Kelso upon the terms and conditions set forth in the Cable Franchise Agreement between the City of Kelso and Comcast of Colorado/Florida/Michigan/New Mexico/ Pennsylvania/Washington, LLC., attached hereto as Exhibit "1" and incorporated fully by this reference.

Section 2. City Manager Authorization. That the City Manager is authorized to execute the Cable Franchise Agreement attached hereto as Exhibit "1" and to take such actions as are necessary to effect the Cable Franchise Agreement in accordance with this Ordinance.

Section 3. Ordinance Repealed. That Ordinance No. 99-3444 is hereby repealed and superseded by this Ordinance and the Cable Franchise Agreement attached hereto as Exhibit "1."

Section 4. Severability. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

Section 5. Effective Date. This Ordinance and the Franchise granted by this Ordinance and the Franchise Agreement attached hereto as Exhibit "1" shall be effective fifteen (15) days from date of final passage by City Council; provided, however, that Grantee shall have sixty (60) days to accept the Franchise and comply

with all conditions for such acceptance. This Franchise shall be voidable at the City's discretion if Grantee fails to accept within sixty (60) days.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____,

2015.

_____

ATTEST/AUTHENTICATION: MAYOR

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

PUBLISHED:_____

Exhibit "1"

Comcast Cable Television Franchise Agreement

Between

The City of Kelso

And

Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC

Table of Contents

SECTION 1. DEFINITIONS 7
1.1 “Access,” “Public, Educational, and Governmental Access” or “PEG Access,” 7
1.2 “Access Channel” 7
1.3 “Affiliate” 7
1.4 “Applicable Law” 7
1.5 “Basic or Basic Service” 7
1.6 "Cable Act” 7
1.7 "Cable Operator" 7
1.8 “Cable Service” 8
1.9 “Cable System” 8
1.10 “Channel” 8
1.11 “City” 8
1.12 “City Code” 8
1.13 “Designated Access Provider” ("DAP") 8
1.14 “Day” 8
1.15 “Effective Date” 8
1.16 “Expanded Basic Service” 8
1.17 “FCC” 8
1.18 “Franchise” “Franchise Agreement” or “Agreement” 8
1.19 “Franchise Fee” 8
1.20 “Grantee” 8
1.21 “Gross Revenues” 8
1.22 “Headend” 10
1.23 “Institutional Facilities” 10
1.24 “Normal Business Office Hours” 10
1.25 “Normal Operating Conditions” 10
1.26 “Person” 10
1.27 “Premium Service” 10
1.28 “Public Rights of Way” 10
1.29 “State” 10
1.30 “Subscriber” 10
1.31 "Video Services" 10

SECTION 2. FRANCHISE 11
2.1 Grant of Franchise 11
2.2 Police Powers 11
2.3 Franchise Term 11
2.4 Franchise Area 11
2.5 Franchise Nonexclusive 11
2.6 Franchise Acceptance 11
2.7 Competitive Equity 12
2.8 Mid-Term Franchise Review 12
2.9 Transfer or Change of Control 13
2.10 Renewal 13
2.11 Conditions of Sale 13
2.12 Right to Require Removal of Property 14
2.13 Continuity of Service Mandatory 14
SECTION 3. CONSTRUCTION AND OPERATION IN PUBLIC RIGHTS-OF-WAY 14
3.1 Use of Public Rights of Way 14
3.2 Non-Interference 14
3.3 Erection of Poles 14
3.4 Undergrounding 15
3.5 Maintenance, Repair, and Restoration 15
3.6 Tree Trimming 16
3.7 Removal and Relocation 16
3.8 Movement of Facilities 17
3.9 Major Street Improvements 17
3.10 As Builts 17
3.11 Emergencies 17
SECTION 4. CABLE SYSTEM CAPACITY AND COMPLIMENTARY SERVICE 17
4.1 Cable System Capacity 17
4.2 System Upgrade Requirements 18
4.3 Construction Plan and Schedule 18
4.4 Gratis Cable 18
4.5 Equal and Uniform Service 19
4.6 Cable System Specifications 19

4.7 Technical Standards 19
4.8 Performance Testing 19
4.9 Status Monitoring 20
SECTION 5. PROGRAMMING AND SERVICES 20
5.1 Categories of Programming Service 20
5.2 Changes in Programming Services 20
5.3 Parental Control Device 21
5.4 Closed Captioning 21
SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS 21
6.1 Access Channels 21
6.2 Control and Administration 21
6.3 Cable Guide for PEG 21
6.4 Noncommercial Use of PEG 22
6.5 PEG Channel Location 22
6.6 PEG Fees 22
6.7 Transition to HD Format 23
6.8 Use of PEG Channels 24
6.9 PEG Signals and Equipment 24
6.10 Technical Quality 24
6.11 Change in Technology 25
6.12 Relocation of Grantee's Headend 25
SECTION 7. REGULATORY PROVISIONS 25
7.1 Intent 25
7.2 Delegation of Authority to Regulate 25
7.3 Areas of Administrative Authority 26
7.4 Regulation of Rates and Charges 26
7.5 Franchise Violations, Remedies, and Revocation 26
7.6 Liquidated Damages 28
7.7 Removal of Cable Following Termination of Franchise 28
7.8 Failure to Enforce 28
7.9 Alternative Remedies 29
7.10 Compliance with the Laws; Eminent Domain 29
SECTION 8. REPORTING REQUIREMENTS 29

8.1 Quarterly Revenue Report 29
8.2 Complaint File and Reports 30
8.3 Annual Report 30
8.4 Monitoring and Compliance Reports 30
8.5 Additional Reports and Information 31
8.6 Grantee Report of Communications with State Regulatory Bodies or Committees 31
SECTION 9. CUSTOMER SERVICE POLICIES 31
9.1 Response to Customers and Cooperation with City 31
9.2 Customer Service 32
SECTION 10. LINE EXTENSION POLICY 32
10.1 Service and Installation 32
10.2 Annexed Areas and Requirements 33
SECTION 11. COMPENSATION AND FINANCIAL PROVISIONS 33
11.1 Franchise Fees 33
11.2 Auditing and Financial Records 34
11.3 Performance Bond 35
11.4 Validity of Bond 36
11.5 Indemnification by Grantee 36
11.6 Grantee Insurance 36
SECTION 12. MISCELLANEOUS PROVISIONS 37
12.1 Posting and Publication 37
12.2 Guarantee of Performance 37
12.3 Entire Agreement 37
12.4 Consent 37
12.5 Ordinances Terminated 37
12.6 Franchise Acceptance 37
12.7 Force Majeure 38
12.8 Work of Contractors and Subcontractors 38
12.9 Severability 38
12.10 Counterparts 38
12.11 No Waiver of Rights 38
12.12 No Third Party Beneficiaries 39
12.13 Modification 39

12.14 Notices 39
12.15 Governing Law 39
FRANCHISE ACCEPTANCE 41
EXHIBIT A - FRANCHISE FEE PAYMENT WORKSHEET 42
EXHIBIT B - FCC CUSTOMER SERVICE STANDARDS 43
EXHIBIT C- CHECKLIST OF NOTICES AND REPORTS 45
Exhibit D - Franchise Acceptance. 46

SECTION 1. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Where a term in the Franchise is not defined in this section and there is a definition for the term in the Cable Act, the Cable Act definition shall apply. Other terms in the Franchise which are not defined in this section shall be given their common and ordinary meaning.

1.1 “Access,” “Public, Educational, and Governmental Access” or “PEG Access,” refers to the availability, for non-commercial purposes, of a channel, or channels, on the Cable System for Public, Education or Government programming by various agencies, institutions, organizations, groups, and individuals, including the City.

(A) “Public Access” or “Public Use” means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their programming;

(B) “Education Access” or “Education Use” means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their programming; and

(C) “Government Access” or “Government Use” means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their programming.

(D) “PEG Access” means Public Access, Educational Access, and Governmental Access, collectively.

1.2 “Access Channel” means any Channel or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.

1.3 “Affiliate” means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee and its successor corporations. Affiliate also means any person with whom Grantee contracts to provide Cable Services on the Cable System.

1.4 “Applicable Law” means any federal, State or local statute, law, regulation, or other final legal authority governing any of the matters addressed in this Franchise.

1.5 “Basic or Basic Service” means a service tier which includes the retransmission of local television broadcast signals, or as such service tier may be further defined by federal law.

1.6 "Cable Act” means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as amended and any future federal cable television legislation.

1.7 "Cable Operator" means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly owns a significant interest in such Cable System, or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.

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

1.9 "Cable System" means the meaning specified in the definition of "Cable System" in the Cable Act. As used in this Franchise, unless otherwise specified, the term shall refer to the Cable System constructed and operated by the Grantee in the City under this Franchise.

1.10 "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.11 "City" means the City of Kelso of the State of Washington and all the territory within its present and future boundaries.

1.12 "City Code" means the Municipal Code of the City of Kelso, Washington, as may be amended from time to time.

1.13 "Designated Access Provider" ("DAP") means the entity or entities designated by the Grantor to manage or co-manage PEG Access Channels and Access Centers. The Grantor may be a Designated Access Provider, however, any entity designated by the Grantor shall not be a third party beneficiary under this agreement.

1.14 "Day" unless otherwise specified shall mean a calendar day.

1.15 "Effective Date" means this Franchise granted by this Ordinance shall be effective 15 days from date of final passage by City Council; provided, however, that Grantee shall have 60 days to accept the Franchise and comply with all conditions for such acceptance. This Franchise shall be voidable at the City's discretion if Grantee fails to accept within 60 days.

1.16 "Expanded Basic Service" means the next tier of service above the Basic Service tier excluding premium or pay-per-view services.

1.17 "FCC" means the Federal Communications Commission.

1.18 "Franchise" "Franchise Agreement" or "Agreement" means Ordinance No _____, and this Franchise Agreement and the conditions as set forth herein.

1.19 "Franchise Fee" means the fee the City may assess in accordance with Section 622 (g) of the Cable Act (47 U.S.C. 542(g)).

1.20 "Grantee" means Comcast of Colorado/Florida/Michigan/New Mexico, Pennsylvania, Washington, LLC and permitted successors and assigns.

1.21 "Gross Revenues" means, and shall be construed to include, all amounts in whatever form and from all sources derived directly or indirectly by Grantee and/or Affiliate from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area calculated in accordance with Generally Accepted Accounting Principles ("GAAP").

(A) Gross revenues include, by way of illustration and not limitation:

1) Fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial Subscribers, including revenues derived from the provision of all Cable Services

(including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Services);

2) Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service;
3) Converter, remote control, and other Cable Service Equipment rentals, leases, or sales;
4) Payments for pre-paid Cable Services and/or equipment;
5) Advertising revenues as defined herein;
6) Fees including, but not limited to ; (1) late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area; (2) Franchise fees; (3) the FCC user fee.
7) Revenues from program guides; and
8) Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area.

(B) "Gross Revenues" shall not be net of; (1) any operating expense; (2) any accrual, including without limitation, for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment.

(C) "Gross Revenues," however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Franchise.

(D) "Gross Revenues" shall include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates.

(E) "Gross Revenues" shall not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, “Gross Revenues" shall not include bad debt.

(F) “Advertising Revenues” shall mean amounts derived from sales of advertising that are made available to Grantee's Cable System Subscribers within the Franchise Area and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Whenever Grantee acts as the principal in advertising arrangements involving representation firms and /or advertising interconnects and/or other multichannel video providers, Advertising Revenues subject to Franchise fees shall include the total amount from advertising that is sold, and not be reduced by any operating expenses, (e.g., "revenue offsets" and "contra expenses" and "administrative expenses" or similar expenses), or by fees, commissions, or other amounts paid to or retained by National Cable Communications or Comcast Spotlight or similarly affiliated advertising representations firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.

(G) "Gross Revenues" shall not include:

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

2) any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise fee shall not be regarded as such a tax or fee;
3) launch fees and marketing co-op fees; and
4) revenues associated with the provision of managed network services provided under separate business contract; and
5) PEG capital fee collected from subscribers.

1.22 "Headend" means the Grantee's facility for Signal reception and dissemination on the Cable System, including cables, antennae, wires, satellite dishes, monitors, switches, modulators, processors, equipment for the interconnection of the Cable System with adjacent Cable Systems or other separate communications network, and all other related equipment and facilities.

1.23 "Institutional Facilities" means City Hall, public libraries, police stations (not including incarceration facilities), fire stations, and City owned buildings; provided however that the term shall not include buildings or sites owned by City that are not used for administrative purposes or by the public, or those buildings owned by the City but leased to third parties at which government administrative employees are not regularly stationed.

1.24 "Normal Business Office Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.25 "Normal Operating Conditions" means those Cable Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

1.26 "Person" means any individual, sole proprietorship, partnership, association, corporation, or any other form of organization authorized to do business in the State of Washington, and includes any natural person.

1.27 "Premium Service" means a Cable Service (such as movie channels or pay-per-view programs) offered to Subscribers on a per-channel, per-program, or per-event basis.

1.28 "Public Rights of Way" include, but are not limited to, streets, bridges, sidewalks, trails, paths, public utility easements, and all other public ways, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the Grantor's right, title, interest, or authority to grant a Franchise to occupy and use such streets and easements for Cable System facilities. "Public Rights of Way" shall also include any easement granted to or owned by the Grantor and acquired, established, dedicated, or devoted for public utility purposes. Nothing in this Agreement shall preclude Grantee's use of private easements as set forth in 47 U.S.C. 541(a)(2).

1.29 "State" means The State of Washington.

1.30 "Subscriber" means any Person who is lawfully receiving, for any purpose or reason, any Cable Service provided by Grantee by means of, or in connection with, the Cable System.

1.31 "Video Services" means programming provided by, or generally considered comparable to programming provided by a cable operator as the term "cable operator" is defined in the Cable Act.

SECTION 2. FRANCHISE

2.1 Grant of Franchise

The City hereby grants to the Grantee a non-exclusive and revocable Franchise to occupy or use City Public Rights of Way to construct, operate, and maintain a Cable System within the Franchise Area, subject to (A) the provisions of this Franchise to provide Cable Service within the City; and (B) all applicable provisions of the City Code and other Applicable Law. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from providing services other than Cable Services to the extent not prohibited by Applicable Law. The City hereby reserves all of its rights to regulate such other services to the extent consistent with Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

2.2 Police Powers

Notwithstanding any other provision of this Franchise, Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances of general applicability to protect or advance public safety, health, or welfare of the general public. Grantee agrees to comply with all applicable laws, regulations and ordinances enacted by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof; however, nothing herein shall limit Grantee's right to challenge said law, regulation and/or ordinance in the proper forum.

2.3 Franchise Term

The term of the Franchise shall be ten (10) years from the Effective Date, unless extended by mutual written consent or terminated sooner in accordance with this Franchise.

2.4 Franchise Area

The Franchise Area shall be that area within the present or future corporate limits of the City. Cable Service shall be provided to all Persons subject to the service and installation policy outlined in this Franchise Section 10.1.

2.5 Franchise Nonexclusive

The Franchise granted herein shall be nonexclusive and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by City to any Person to use any Public Rights of Way, easement, or property for any purpose whatsoever, including the right of Grantor to use for any purpose it deems fit, including the same or similar purposes allowed by Grantee hereunder. Grantor may at any time grant authorization to use the public rights of way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional Franchises for Cable Systems as City deems appropriate, upon such terms and conditions as City deems appropriate.

2.6 Franchise Acceptance

The Grantee, within sixty (60) days after the tender by the City to Grantee of the Franchise Agreement, adopted by the City, shall file with the City Clerk of the City a written acceptance executed by Grantee, in the form attached hereto as Exhibit "D" Franchise Acceptance. In the event Grantee fails to file the acceptance as required herein this franchise shall be voidable at the discretion of the City.

2.7 Competitive Equity

(A) The Grantee acknowledges and agrees that the City specifically reserves the right to grant, at any time, such additional franchises or similar lawful authorization for a Cable System or other wireline systems providing video services as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee. Provided, however, that City agrees that, within ninety (90) days of the Grantee's request, the City shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: franchise fees; insurance, system build-out requirements and line extension requirements, uniform service requirements, security instruments; customer service standards; required reports and related record keeping; PEG access channels and fees; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entry, so long as the regulatory and financial burdens on each entity are materially equivalent. The parties agree that, notwithstanding any provision of this subsection, the City shall not be obligated to comply with the provisions of this subsection to the extent doing so would cause the City to violate applicable laws or FCC rules. Video programming services delivered over wireless broadband networks are specifically exempted from the requirements of this section.

(B) In the event that a competitive franchise is granted by City as described in Section 2.7(A) above, which contains material terms and conditions that are more favorable or less burdensome than the terms of his Franchise, and notice thereof is duly provided to City, the Grantee shall submit to City in writing (1) the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage, (2) the provisions to be amended; and (3) specific language modifying any such Franchise provisions. City and Grantee shall negotiate in good faith such amendments to the Franchise within ninety (90) days, unless otherwise agreed to by the parties. In the event the parties are not able to reach agreement in information negotiations, Grantee may exercise its rights under subsection (C) below.

(C) In the alternative to Franchise modification negotiations as provided for in Section 2.7(B), or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another provider of Cable Services, so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Cable Services provider.

2.8 Mid-Term Franchise Review

(A) Grantor may conduct a Franchise review once every ten years during the term of this Agreement or any extensions of this Agreement. Grantor shall establish a procedure for ensuring an orderly review and full discussion of any matters for review, to include, but not be limited to (1) Grantee's performance; (2) compliance with federal and state laws and regulations; (3) PEG access and community needs and interests; and (4) new developments in cable regulation and technology.

(B) The purpose of the review shall be to insure, with the benefit of full opportunity for public comment that the Franchise continues to effectively serve the public, in light of new developments in cable law and regulation, cable technology, cable company performance, local regulatory environment, community needs and interests.

(C) Such review shall be open to the public and shall include at least one public hearing on all matters discussed during the review; which hearing shall be noticed at least one week in advance in a newspaper of general circulation in the Franchise Area.

(D) If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards, the Grantor, at its expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.

(E) During the evaluation under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable to the Grantor's review.

2.9 Transfer or Change of Control

This franchise shall be binding upon, and inure to the benefit of, the successors, legal representatives, and assigns of the Franchisee.

(A) Neither the Grantee nor any other Person may transfer the Franchise without the prior consent, by ordinance of the City; which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent, by ordinance of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (1) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (2) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the city shall, in accordance with the FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial, and technical qualifications of the transferee or new controlling party. If the City has not taken final action on the Franchisee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

(B) The City's approval shall be based upon the financial responsibility of the party unto whom the franchise is being proposed for sale, assignment, or transfer. The proposed assignee must show it has the financial capability, technical ability, and legal qualifications sufficient to comply with the terms of the franchise as determined by the City, and must agree to comply with all provisions of the franchise.

(C) The consent or approval of the City to any transfer of the franchise shall not constitute a waiver of release of rights of the City in and to the Public Rights of Way, and any transfer shall by its terms be expressly subordinate to the terms and conditions of this franchise.

(D) In no event shall a transfer of ownership or control of the franchise be approved without successor in interest becoming signatory to the franchise agreement.

2.10 Renewal

This Franchise shall be renewed in accordance with 47 U.S.C. 546.

2.11 Conditions of Sale

The City may acquire the Cable System as provided 47 U.S.C. 547.

2.12 Right to Require Removal of Property

At the expiration of the term for which the Franchise is granted provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee's own expense all or any part of the Cable System from all Public Rights of Way within the Franchise Area. If Grantee fails to do so, the City may perform the work and collect the cost thereof from Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Grantee effective upon filing of the lien with the Cowlitz County Auditor.

2.13 Continuity of Service Mandatory

Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted Cable Service so long as their financial obligations to Grantee are honored, in the event of purchase, lease-purchase, acquisition, sale, lease, or other transfer to any other Person, including any other operator of a cable communications franchise. Grantee shall cooperate fully to operate the Cable System in accordance with the terms and conditions of this Franchise Agreement through the transition, to maintain continuity of service to all Subscribers.

SECTION 3. CONSTRUCTION AND OPERATION IN PUBLIC RIGHTS-OF-WAY

3.1 Use of Public Rights of Way

Grantee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Public Rights of Way within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Without limiting the foregoing, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to Applicable Law.

3.2 Non-Interference

Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other use of the Public Rights of Way and the rights and reasonable convenience of property owners who own property that adjoin any such Public Rights of Way. Grantee shall, where possible in the case of above ground lines, make use of existing poles and other facilities available to Grantee. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, Grantee shall provide at least seventy-two (72) hours advance notice of the same to such affected residents.

3.3 Erection of Poles

If additional poles in an existing aerial utility system route are required, Grantee shall negotiate with the utility company or provider for the installation of the needed poles. Grantee shall not erect, for any reason, any pole on or along any Public Right of Way in an existing aerial utility system unless approved by the City, which approval shall not be unreasonably withheld. The Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, and shall comply with all

Applicable Law. In the event the utility company providing the poles moves its facilities underground, Grantee agrees to underground its facilities at that time.

3.4 Undergrounding

(A) Grantee shall place underground all of its transmission lines which are located or are to be located above the Public Rights of Way of the City in the following cases:

1) All other existing utilities are to be or have been placed underground;
2) Undergrounding of utilities are required by statute, resolution, policy or other Applicable Law;
3) Overhead utility lines are moved and placed underground (Grantee shall bear its proportional share of the cost of such movement of its facilities);
4) Grantee is unable to get pole clearance;
5) Underground easements are obtained from developers of new residential areas; or
6) Utilities are overhead but residents request underground service drops (Underground service drops provided at resident's expense, and undergrounding is technically feasible.

(B) If an ordinance is passed creating a local improvement district which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires within such district if requested to do so and place facilities underground. If such undergrounding of Grantee facilities is part of such a project, the costs thereof shall be included in such local improvement district.

(C) Grantee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for drops from pedestals to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used.

(D) Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

3.5 Maintenance, Repair, and Restoration

(A) City Codes Apply. Subject to Section 2.2 herein, in connection with the construction, operation or repair of the Cable System, Grantee shall, in all cases, comply with the City Code and all Applicable law.

(B) Grantee Responsible. All construction, maintenance, or repair of any and all of Grantee's facilities within City Public Rights of Way shall, regardless of who performs the construction, be and remain Grantee's responsibility.

(C) Permits. Grantee shall obtain, at Grantee's own cost and expense, all necessary permits, licenses, or approvals for construction, operation, maintenance, or repair of the Cable System facilities prior to the commencement thereof. All work shall be performed in a safe, thorough and reliable manner using materials of good and durable quality.

(D) Schedule and Inspection. Prior to beginning any construction, Grantee shall provide City with a construction schedule for work in the Public Right of Way. City shall have the right to inspect all construction or installation work performed within the Franchise Area and to make such tests as it shall find necessary to ensure compliance with construction or installation standards of this Franchise or Applicable Law.

(E) Restoration to Prior Condition. In the event Grantee's work causes any disturbance or damage of any street, pavement, sidewalk, driveway or other public or private property, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, landscaping or property, in as good condition as before said work was commenced and in accordance with standards for such work set by the City and the City Code.

(F) New Pavement. Grantee is prohibited from disturbing the paved surface of newly constructed or substantially improved streets for a period of five (5) years after completion of construction. In the event of extraordinary circumstances, the City may authorize such work subject to additional conditions for street repair and/or the negotiation of a non-discriminatory damage fee.

(G) Disputes. In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of the City of Kelso Department of Public Works subject to appeal by Grantee to Hearings Examiner consistent with Section 7.5 herein.

3.6 Tree Trimming

Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and Public Rights of Way so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee. Trimming shall be done only in accordance with Applicable Law.

3.7 Removal and Relocation

(A) Reservation of Rights. Nothing in this Franchise Agreement shall be construed to prevent any public work of the City, including without limitation grading, paving, repairing or altering any street or constructing, repairing or removing any water or sewer line. In addition, the City may vacate or discontinue use of any Public Right of Way. If any property of Grantee shall interfere with the construction or repair of any street or public improvement, or the vacation or abandonment of any street, then upon reasonable notice from City, all such property shall be removed, replaced or relocated in a timely manner as shall be directed by City; such work shall be at the expense of Grantee.

(B) Relocation of Facilities. In the event that at any time during the period of the Franchise, the city, county or state shall lawfully elect to alter or change the grade of any street, alley, or other Public Rights of Way, the Grantee, upon reasonable notice by the proper governmental entity, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures within the public right-of-way at its own expense.

(C) Failure by Grantee to Remove or Relocate. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee.

(D) Procedure for Removal of Cable. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the Public Rights of Way along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the Public Right of Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right of Way along the extension of cable to be removed. Subject to the City Code and other Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Public Right of Way along the extension

thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the Public Right of Way which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

3.8 Movement of Facilities

(A) Grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the City, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Grantee shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than fifteen (15) days' notice to the cable company to arrange for such temporary wire changes.

(B) If any removal, replacement, modification, or disconnection is requested by another franchise holder to accommodate the construction, operation or repair of the facilities or equipment of such other franchise holder, Grantee shall, after at least thirty (30) days' written notice, take action to effect the necessary changes requested by the responsible entity. Grantee and the other franchise holder shall determine how costs associated with the removal or relocation shall be allocated.

3.9 Major Street Improvements

Grantee is required to place conduit into the utility easements at the time new streets are being constructed or there are major improvements being made to existing streets, provided Grantee is provided reasonable notice of the construction or improvements.

3.10 As Builts

Grantee shall maintain "as built" drawings of the Cable System and make them available to the City for inspection upon request. The "as built" drawings shall be updated as changes occur to the System. The Grantee shall provide to City, upon request, a copy of drawings showing the location of the Grantee's facilities in the streets and Public Rights of Way.

3.11 Emergencies

In the event of a situation or circumstance which creates or is contributing to an imminent danger to health, safety, or property, the City may remove ore relocate Grantee's Cable System without prior notice.

SECTION 4. CABLE SYSTEM CAPACITY AND COMPLIMENTARY SERVICE

4.1 Cable System Capacity

During the term of this Franchise the Grantee's Cable System shall be capable of providing a minimum of 120 channels of video programming to its customers in the Franchise Area, including Basic Cable.

4.2 System Upgrade Requirements

In any rebuild or upgrade of the Cable System, Grantee shall use equipment and materials which meet or exceed general industry standards. The System, as upgraded, shall have the capacity to provide pay-per-view and other premium services with only installation of equipment where the subscriber connects to the system. In all its construction and service provision activities, Grantee shall meet or exceed the construction, extension, and service requirements set forth in this Franchise Agreement.

4.3 Construction Plan and Schedule.

A detailed construction plan and schedule shall be submitted to the City for review and comment no later than thirty (30) days prior to the commencement of any Cable System upgrade construction. At the request of the City, Grantee shall meet with City at any time during the construction period to report on construction progress and the fulfillment of the construction schedule.

4.4 Gratis Cable

(A) The Grantee, upon request, and as a voluntary initiative only, shall provide without charge, a Standard Installation and one outlet of Basic Cable and expanded basic service or its equivalent to those Institutional Facilities owned and occupied by the Franchising Authority, fire station, police station, public works shop, libraries, K-12 public school(s) and Designated Access Provider that are within the Service Area and within 125 feet of its Cable System; provided, however, those buildings or portions of buildings housing or occupied by prison/jail populations shall be excluded. Cable Service to the Franchising Authority described herein is a voluntary initiative of Grantee. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section 4.4. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable and expanded basic service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

(B) New Installations. For new installations or relocation of installations, if the drop line to such building exceeds a Standard Installation drop of one hundred twenty-five (125) feet, the Grantee will accommodate the drop up to two hundred fifty (250) feet if the City or other agency provides the necessary attachment point for aerial service or conduit pathway for underground service. If the necessary pathway is not provided the City or other agency agrees to pay the incremental cost of such drop in excess of one hundred twenty-five (125) feet or the necessary distribution line extension of the Cable System, including the cost of such excess labor and materials.

(C) Grantee does not waive any rights under applicable law regarding Gratis Cable, as set forth in Section 4.4(A). Should Grantee elect to begin offsetting the value of the Gratis Cable against franchise fees, Grantee shall first provide the City with ninety (90) days' prior notice. Upon receipt of such notice, the City shall have the right to waive the requirements of Section 4.4(A), Grantee shall cease to provide

such Gratis Cable, or in the event Grantee shall not cease to provide such Gratis Cable, Grantee shall not offset the value of such Gratis Cable against the franchise fees for those Institutional Facilities.

4.5 Equal and Uniform Service

Subject to Section 2.7 of this document, Grantee shall provide access to equal and uniform Cable Service throughout the Franchise Area to the extent required by applicable law.

4.6 Cable System Specifications

(A) Cable System Maintenance. In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise Agreement.

(B) Emergency Alert Capability. Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable Federal law and regulations including 47 C.F.R., Part 11, and any Washington State Emergency Alert System.

(C) Standby Power. Grantee shall provide standby power generating capacity at the Cable System control center and at all hubs. Grantee shall maintain standby power supplies, rated at least at two hours' duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours. This outage plan and evidence of requisite implementation resources shall be presented to the City upon request.

(D) Satellite Earth Stations. Grantee shall provide a sufficient number of earth stations or its equivalent to receive signals from operational communications satellites or its equivalent that carry cable television services accessible to the Grantee throughout the life of the Franchise to carry out its obligations under this Franchise

4.7 Technical Standards

The Grantee shall maintain technical performance of the Cable System in accordance with the Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted. The city may establish reasonable technical standards for the performance of the Cable System if permitted to do so under applicable law.

4.8 Performance Testing

Grantee shall perform all Cable System tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. Written records of all Cable System test results performed by or for Grantee shall be maintained and available for City inspection upon request.

The tests may be witnessed by representatives of the City, and Grantee shall inform the City of the time and place of each test no less than three weeks prior to the scheduled compliance test. Written test reports of compliance testing shall be submitted to the City. If more than one of the locations tested fail to meet the

performance standards, Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed. If a second test results in failure of one or more sites, then the City may seek remedies in accordance with Sections 7.5 and 7.6 unless the circumstances of the failure are caused by conditions which are beyond Grantee's control, as determined, acknowledged and verified by the City.

4.9 Status Monitoring

Grantee shall continue to utilize status monitoring of the Cable System which can continually monitor the system for signal quality on the forward and return spectrums of the System. In addition, the Grantee shall maintain status monitoring for all power supplies in its headend(s) and hub(s) as well as the distribution system. Status monitoring shall be capable of notifying the Grantee 24/7 of system problems including utility power outages that will negatively affect its customers.

SECTION 5. PROGRAMMING AND SERVICES

5.1 Categories of Programming Service

Grantee shall provide video programming services in at least the following broad categories:

News and Information
Sports
General Entertainment
Arts/Performance/Humanities
Science/Technology
Children/Family/Seniors
Foreign Language/Ethnic Programming
Public, Educational and Governmental Access Programming
Weather
Movies
Religious Programming
Washington State based News, Information, and Sports, as available
Travel Information

5.2 Changes in Programming Services

Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without notifying the City. Further, Grantee shall provide at least thirty (30) days' prior written notice to Subscribers and to the City of Grantee's intent to effectively delete any broad category of programming or any channel within its control including all proposed changes in channel allocation, including any new equipment requirements that may occur as a result of these changes.

Subscribers will be notified by Grantee of any changes in programming services or channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. The Grantee shall also give 30 days' written notice to both Subscribers and the City before implementing any service change. When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified.

For purposes of the carriage of digital broadcast signals, the operator need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain day parts.

5.3 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device that will enable the Subscriber to block all access to any and all channels without affecting those not blocked. Grantee shall inform Subscribers of the availability of the lockout device at the time of original subscription and annually thereafter.

5.4 Closed Captioning

Grantee shall at all times comply with the requirements of 47 C.F.R. § 79.1 by providing services for the disabled, including, but not limited to, passing through closed captioning for local programming if provided by City or Designated Access Provider.

SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

6.1 Access Channels

Grantee shall continue to provide three (3) Channels on the Cable System for PEG Access purposes, to be shared by the City of Kelso, the City of Longview, the City of Kalama, and Cowlitz County for so long as the three channels are programmed and utilized according to the franchise requirements contained within the current franchise agreements of those jurisdictions. The City and Grantee understand that the communities of Castle Rock and Woodland receive the Access Channels serving City.

In the event City loses access to all the public access channels it shares with Longview, Kalama, and Cowlitz County, and the City has sufficient original local or regional programming (which is defined as 50 hours per week and not duplicated more than twice per week) the Grantee shall provide to the City, for independent administration by the City or its designee throughout the term of this Franchise, one (1) PEG Channel to be cablecast through the Franchise Area. The channel may be used for a combination of Public, Educational, and Governmental programming based on policy or need. If the City does not provide sufficient original local or regional programming for a period of ten (10) consecutive weeks, Grantee may reclaim this channel for unrestricted use.

6.2 Control and Administration

The control and administration of the PEG access Channels shall rest with the City, and the City may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in City's sole discretion.

6.3 Cable Guide for PEG

To the extent the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will allow City or the Designated Access Provider to make arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The City or DAP will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and the parties agree that the costs related to such formatting shall be a PEG eligible fee.

6.4 Noncommercial Use of PEG

PEG Channels are for noncommercial programming to be promoted and administered by the City or its designee as allowed under Applicable Law. Permitted noncommercial uses of the PEG Channels shall include by way of example and not limitation: (A) the identification of financial supporters similar to what is provided on public broadcasting stations; or (B) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (C) programming offered by accredited, non-profit, educational institutions which may offer telecourses over a PEG Channel. Nothing in this Franchise shall prevent the City or its designee from carrying out fundraising activities to supplement access capital or operating funds consistent with applicable federal law and regulation and such fundraising activity shall not constitute a commercial use of Access channels.

6.5 PEG Channel Location

The PEG Channels will be located reasonably close in proximity to other broadcast Channels and/or other commercial video Channels, excluding pay-per-view programming offered by Grantee in the City. Grantee will give City at least 90 day notice prior to changing any PEG channel location or number.

6.6 PEG Fees

(A) PEG Fee Amounts. Grantee shall pay to the City as capital support for PEG Access facilities and equipment an amount of fifty cents ($0.50) per month per Subscriber in the Franchise Area ("PEG Fee"). Grantee shall make such payments quarterly, following the Effective Date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter.

(B) City's use of PEG Fees. In no event shall the City use any portion of the PEG Fee in a manner inconsistent with 47 U.S.C. § 542(g)(2)(C) or any other applicable provisions of the Cable Act and FCC regulations. The City and Grantee agree that the PEG Fee is in addition to the Franchise Fee, and falls within one or more of the exceptions in 47 U.S.C. § 542. Such costs may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Law.

(C) City Annual Report to Grantee of PEG Fee Purchases. City or the City's designee shall provide to Grantee, upon Grantee's written request, within ninety (90) days following the end of each calendar year, a report detailing the City's PEG related capital expenditures. If Grantee alleges that City has inappropriately used PEG fees, Grantee agrees to first notify the City of its concern prior to taking any legal action or withholding payment against any other fees owed City.

(D) Grantee payment of PEG Fees. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise fees required as a result of its obligation to remit the PEG Funds or the

PEG Fee. Should Grantee continue to provide Cable Service after the scheduled expiration of this Franchise, until and unless this Franchise is superseded by a renewed franchise in accordance with Applicable Law, Grantee shall continue to make monthly PEG Fee payments for, and in support of PEG Channels as specified hereinabove. Any PEG Access capital support amounts owing pursuant to this Franchise which remain unpaid more than thirty (30) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at the legal interest rate in the State of Washington.

6.7 Transition to HD Format

Grantee shall provide and activate the Government Access Channel in HD format, for a total of one (1) HD channel, in the manner and conditions set forth in Section 6.7 below:

(A) The City shall notify Grantee in writing of its need to activate the High Definition (HD) format Access Channel under this section and shall provide notice to Grantee that the following criteria have been met:

1) At least 80% (eighty percent) of the basic service tier channels excluding PEG Access Channels are provided in HD format;

2) At least 80% (eighty percent) of the Access programming carried on Standard Definition (SD) format Channel, which the Grantor has identified as the Channel to be carried in a HD format Channel, has been produced in an HD format for any three-month time period prior to notice provided under this Section;

3) Not more than 50% (fifty percent) of the Access Programming carried on the SD format Channel, which the City has identified as the Channel to be carried in a HD format Channel, is character-generated only Programming for any three-month time period prior to the notice provided under this Section 6.7(A).

(B) Each HD format Access Channel provided under this Section will replace one (1) of the SD format Access Channels provided for in Section 6.1. The total number of PEG Access Channels provided in this franchise represents the total number of PEG Access channels available for combined use by the City of Kelso, the City of Longview, the City of Kalama, and Cowlitz County.

(C) Grantee shall have no more than 120 days from the date of the written notice under Section 6.7(A) to fully activate the Access Channel from the Designated Access Provider to Subscribers in the HD format. Grantee shall verify HD Channel Signal delivery to Subscribers with the Designated Access Provider. The SD format Access Channel being converted to HD format shall be simulcast for at least ninety (90) days following activation of the HD format Access Channel.

(D) The City acknowledges that receipt of a HD format Access Channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to HD services. Grantee shall not be obligated to provide complimentary HD receiving equipment to institutional or courtesy accounts as a result of the obligations set forth in this Section 6.7.

(E) Grantee shall provide up to two (2) additional Access Channels in HD, replacing the remaining SD format Access Channels, as long as criteria in Section 6.7(A) is met in addition to the criteria below:

1) At least twenty-five percent (25%) of Grantee's cable subscribers within the franchise area regularly views programming carried on the SD format Channel, which the Grantor has identified as the Channel to be carried in a HD format. For the purpose of this subsection, "regularly views" means viewing programs on the Channel at least twice per month. A

survey of Grantee and City may be conducted, and the cost of the survey shall be shared equally between City and Grantee. In lieu of the survey, the parties may mutually agree to utilize viewership data as may become available to Grantee on its cable system.

6.8 Use of PEG Channels

At any time during the term of this franchise, the Grantee may reclaim one PEG channel, upon 90 days written notice, if the following conditions for programming have not been met:

1) Public Access Channels: During any eight (8) consecutive weeks, the Public Access channel is not utilized for Locally Produced, Locally Scheduled Original Programming 60% of the time, seven days per week, for any consecutive six (6) hour block during the hours from 12:00pm to 12:00am; or,

2) Educational Access channels: During any eight consecutive weeks, the Educational Access Channel is not in use for Locally Scheduled Original Programming 60% of the time, five (5) days per week, for any consecutive six (6) hour block during the hours from 6:00am to 11:00pm; or

3) Governmental Access channels: During any eight (8) consecutive weeks, the Governmental Access channel is not in use for Locally Scheduled Original Programming 60% of the time, five (5) days per week, for any consecutive six (6) hour block during the hours from 6:00am to 11:00pm.

For the purpose of this section:

"Locally Produced" means programming produced in the Cowlitz County, Longview, Kelso, Kalama area; and,

"Original Programming" means Programming in its initial cablecast on the System or in its first or second repeat; and,

"Locally Scheduled" means that the scheduling, selection and or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the Designated Access Provider or, with respect to programming received from and Interconnection, the provider transmitting the programming over the Interconnection. However, carriage on any Access channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by Grantee as a part of its basic or expanded basic Cable Services shall not be considered "Locally Scheduled."

6.9 PEG Signals and Equipment

(A) All PEG Channels shall be provided as part of Basic Service in accordance with applicable law. All PEG Channels may be delivered by the City to Grantee in standard digital format or in an HD format in accordance with Section 6.7 herein.

(B) Any and all costs associated with any modification of the PEG Channels or signals after the PEG Channels/signals leave the Designated Access Provider's side of fiber termination panel, or any designated playback center authorized by the City, shall be borne entirely by Grantee and provided free of charge to the City and its designees.

6.10 Technical Quality

(A) Grantee shall maintain all Upstream and Downstream Access Channels and interconnections of Access Channels at the same or better level of technical quality and reliability provided for its Residential Network and required by this Franchise and all other applicable laws, rules and regulations for Residential Subscriber Channels, Grantee shall provide routing maintenance and shall repair and replace all transmission equipment, including modulators, associated cable and equipment in use upon the effective date of this Franchise, necessary to carry a quality signal to and from Grantor's facilities.

(B) Grantee shall have no responsibility for the technical production quality of the Access programming distributed on the Access Channels.

(C) The Grantee shall not cause any programming other than emergency alert signals to override Access Programming on any Access Channel except by specific written permission from the Designated Access Provider.

6.11 Change in Technology

In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantees signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access Programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment at its facilities to ensure that the capabilities of Designated Access Providers are not diminished or adversely affected by such change. Designated Access Providers shall be responsible for acquisition of necessary equipment at their respective facilities.

6.12 Relocation of Grantee's Headend

In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated connection at Grantee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards without additional costs to the City.

SECTION 7. REGULATORY PROVISIONS

7.1 Intent

The City retains the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law.

7.2 Delegation of Authority to Regulate

The City reserves the right to delegate its regulatory authority wholly or in part to agents of the City, including, but not limited to, an agency which may be formed to regulate several franchises in the Cowlitz County region.

7.3 Areas of Administrative Authority

(A) In addition to any other regulatory authority granted to the City by law or franchise, the City or its designee shall have administrative authority in the following areas:

1) Administering and enforcing the provisions of this Franchise Agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
2) Coordinating the operation of PEG Channel programming.
3) Planning expansion and growth of public access programming.
4) Formulating and recommending long-range cable communications policy for the Franchise area.
5) Disbursing and utilizing Franchise revenues paid to the City.

(B) Grantee shall cooperate fully in facilitating the City's discharge of its administrative authority.

7.4 Regulation of Rates and Charges

(A) Notice of Change in Rates and Charges. Throughout the term of this Franchise, Grantee shall give the City and all Subscribers within the City of Kelso at least thirty (30) days' notice of any intended change to Subscriber rates or charges. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers.

(B) Rate Discrimination Prohibited. Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any Cable Service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations.

7.5 Franchise Violations, Remedies, and Revocation

(A) Remedies

The City shall have the right to assert the remedies set out below in the event Grantee violates any provision of this Franchise. These remedies are intended to embody the City's and/or the public's rights under Washington state law to the extent permitted by Applicable Law.

1) To the extent the City deems necessary to remedy the default, proceed against all or any part of any security provided under the City Code or this Franchise, including, without limitation, any bonds, security funds, or other surety;

2) Impose liquidated damages as set forth in Section 7.6, but only after the due process provisions outlined herein have been completed;

3) Commencing an action at law for monetary damages or seeking equitable relief, including specific performance; or

4) In the case of a Grantee's default as to a material provision of the Franchise, undertake the proceeding to revoke the Franchise.

Grantee shall be responsible for all direct and actual costs related to the enforcement action including, but not limited to, legal and administrative costs. In determining which remedy or remedies for Grantee's violation are appropriate, the City shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether Grantee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances.

(B) Revocation

The City has the right to revoke this Franchise, and all rights and privileges pertaining thereto, in the event that:

1) Grantee is in violation of any material provision of the Franchise Agreement or has demonstrated a pattern of Franchise violations and fails to correct the violation(s) after written notice of the violation(s) and proposed forfeiture and a reasonable opportunity thereafter to correct the violation(s) as noted in section 7.5 (c); or

2) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, to the extent permitted by Applicable Law; or

3) Grantee is found to have engaged in any or attempted fraud or deceit upon the City, Persons, or Subscribers; or

4) Grantee fails to post a performance bond as required under the terms of this Franchise.

(C) Enforcement Procedures

1) Notice of Violation or Default. In the event the City believes that the Grantee has not complied with the material terms of the Franchise or has demonstrated a pattern of Franchise violations, it shall first make contact with Grantee to informally discuss the issue. This informal discussion may be via telephone, email or other electronic means and is intended as a courtesy to Grantee prior to issuing a notice of violation. Thereafter the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default ("Violation Notice").

2) Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the Violation Notice to: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed. The City shall not unreasonably refuse to accept the Grantee's proposed cure date but such decision shall be the City's alone to make.

3) Contested Hearings. In the event the Grantee fails to respond to the Violation Notice or in the event that the alleged default is not remedied as required under this Section 7.5 (c), the City may refer the matter to the City's hearing examiner in accordance with Chapter 2.14 of the City Municipal Code. The Grantee will be provided an opportunity to present evidence to contest the alleged violation. City shall notify Grantee of the hearing in writing. The determination as to whether Grantee is in default of this Franchise shall be determined by the hearing examiner, but any such written decision shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be filed within thirty (30) days of the issuance of the written decision of the hearing examiner. City shall receive notice from Grantee of any appeal concurrent with any filing to a court of competent jurisdiction.

4) In the event the hearing examiner determines that Grantee is in non-compliance with any provision of the Franchise, the City may impose any of the remedies set out in section 7.5(A).

7.6 Liquidated Damages

(A) Because Grantee's failure to comply with the provisions of this Franchise will result in damage to the City and because it will be impractical to determine the actual amount of such damages, the City and Grantee hereby agree upon and specify certain amounts set forth hereafter in this section which represent both parties' best estimate of the damages.

(B) The City shall specify any damages subject to this section and shall include such information in the Violation Notice sent to Grantee required under Section 7.5(C)(1). Such Violation Notice may provide for damages sustained prior to the Violation Notice where so provided, and subsequent thereto pending compliance by Grantee.

(C) To the extent that the City elects to assess liquidated damages as provided in this section and such liquidated damages have been paid, the parties agree that the assessment of liquidated damages does not constitute a waiver by the City of any other right or remedy it may have under the Franchise or Applicable Law.

(D) Unless otherwise provided, liquidated damages shall accrue once the thirty (30) day cure period has expired following Grantee's receipt of the Violation Notice, unless the City has agreed to extend the thirty (30) day cure period. If Grantee fails to cure within the thirty (30) days, then the liquidated damages accrue from the date of the Violation Notice for a maximum of one hundred-twenty (120) days, whereupon the City shall pursue alternate remedies as provided herein. Nothing in this section prevents the parties from settling any dispute relating to liquidated damages by mutual stipulation.

(E) Grantee may cure the breach or violation within the time specified in Section 7.5(C)(2) to the City's satisfaction, whereupon no liquidated damages are assessed.

(F) Schedule of Liquidated Damages. Nothing requires the City to assess liquidated damages, acting in its sole discretion, but such non-assessment does not operate as waiver or estoppel upon the City. Liquidated damages are set as follows:

1) For any non-continuing violation of any material provision, up to $250.00 per incident.
2) For any continuing violation up to $500 per incident, not to exceed $5,000 per year.

7.7 Removal of Cable Following Termination of Franchise

Any order by the City to remove cable or conduit shall be mailed to Grantee not later than thirty (30) calendar days following the final determination of revocation of Grantee's right to occupy public right of way. Grantee shall file written notice with the City not later than thirty (30) calendar days following the date of termination of the Franchise of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed no later than twelve (12) months following the date of expiration of the Franchise.

7.8 Failure to Enforce

Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance, and City's failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee's conduct.

7.9 Alternative Remedies

(A) As an alternative to the remedy set forth herein, the parties may mutually agree to submit any alleged violation of the provisions of this franchise to arbitration. The matter shall be determined by a board of three arbitrators, all of whom shall be citizens and taxpayers of the State of Washington, and shall be selected as follows: one by the City Council, one by the Grantee, and one by the two so appointed. Should the two arbitrators be unable to name a third, such third arbitrator shall be named by a judge of the Superior Court for Cowlitz County. Said board shall make its decision in writing and file its decision with the parties within sixty (60) days from the date of the appointment of the final arbitrator. The decision of the board shall be by a majority vote and signed by at least two arbitrators. The written decision shall be final and binding upon the parties.

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

7.10 Compliance with the Laws; Eminent Domain

Grantee shall comply with all applicable federal and State laws and regulations, including regulations of any administrative agency thereof, as well as all generally applicable ordinances, resolutions, rules and regulations of the City heretofore or hereafter adopted or established during the term, of this Franchise. Nothing in the Franchise shall expand or limit the City's right of eminent domain under State law. Nothing in the Franchise shall be deemed to waive the requirements of any lawful code, ordinance or resolution of the City requiring permits, fees to be paid, or regulation of construction.

SECTION 8. REPORTING REQUIREMENTS

8.1 Quarterly Revenue Report

Grantee shall submit to the City along with its franchise fee payment a report showing the basis for computation of such fees showing the basis for the computation of the franchise fees and PEG fees paid during that period in a form and substance substantially equivalent to Exhibit A attached hereto. This report shall separately indicate revenues received by Grantee within the City including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 1.21 of this Franchise.

8.2 Complaint File and Reports

Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the Cable System, in a manner consistent with privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those files shall remain open to the City during normal business hours. Upon written request, Grantee shall provide, an executive summary report quarterly (within 45 days of the end of the preceding quarter) to City, which shall include the following information:

1) Nature and type of customer complaint;

2) Number, duration, general location and customer impact of unplanned service interruptions

3) Any significant construction activities which affect the quality or otherwise enhance the service the Cable System;

4) Average response time for service calls;

5) Phone activity report that includes use of automated response unit or voice response unit in answering and distributing calls from Subscribers at all call centers whether the calls are answered by a live representative, by an automated attendant or abandoned after thirty (30) seconds of call waiting;

6) New areas constructed and available for Cable Service, including multiple dwelling units;

7) Video programming changes (additions/deletions);

8) Such other information about special problems, activities, or achievements as Grantee may want to provide the City.

8.3 Annual Report

Upon written request, on or before May 31st of each year during the term of this Franchise, Grantee shall present a written report to the City or the City's designee which shall include:

1) A summary of gross revenue and franchise fee calculations for the previous year.

2) A summary of the previous year's activities for the Franchise Area served by Grantee including, but not limited to, the total number of Subscribers for each category of service, the number of homes passed, miles of overhead and underground cable plant.

3) A description of all significant changes and modifications to the system or services that have been implemented in the previous year.

8.4 Monitoring and Compliance Reports

Upon written request, but no more than once a year, Grantee shall provide FCC proof of performance test results. Upon written request, Grantee shall make available for City's review, any other technical testing results related to the system serving the City.

8.5 Additional Reports and Information

(A) Grantee shall at all times maintain and allow the City access and the right to review a full and complete set of plans, records and "as built" maps showing the exact location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard format and medium agreed upon by the City and the Grantee.

(B) Confidentiality. The City agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously marking or identifying as "Confidential" on each page that contains confidential or proprietary information. If the City believes it must release any such books and records marked or identified as "Confidential" in the course of enforcing this Agreement, in response to a public record request, subpoena or other court order, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time so Grantee may take appropriate steps to protect the information from disclosure.

8.6 Grantee Report of Communications with State Regulatory Bodies or Committees

Grantee shall notify the City whenever the Grantee names the City in any filings which Grantee may submit to the State of Washington that bear relevance on the terms of this Franchise. Upon request, copies of responses from the State of Washington related to Grantees submittal pertaining to the Cable System serving the City shall likewise be filed.

In addition, Grantee shall within 10 days of any communication to or from any judicial or regulatory agency regarding any alleged or actual violation of a law, regulation or other requirement relating to the City's administration of this Franchise, provide the City a copy of the communication.

SECTION 9. CUSTOMER SERVICE POLICIES

9.1 Response to Customers and Cooperation with City

Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints.

9.2 Customer Service

(A) The Grantee shall comply with all applicable customer service standards established in the Cable Act or federal rules and regulations, including and not limited to FCC Rules and Regulations, Part 76, Subpart H and Subpart T, and Grantor has the authority to enforce such standards. Nothing in this Section shall limit the rights of the Grantor to establish additional or different standards in accordance with deferral law and regulations. Grantee will comply with privacy rights of Subscribers in accordance with federal, state, and local law.

(B) Throughout the Agreement term, the Grantee must maintain, at a minimum, one (1) customer service center conveniently located in the City of Longview/Cowlitz County Franchise Area which will be open during normal business hours, as defined by the FCC, to provide Subscribers the opportunity for the receipt and pickup of Subscriber equipment and for bill payments and complaints. Grantee shall install telephones and other equipment so that customer complaints and service requests can be received by Grantee on a 24-hour basis at a toll-free telephone number. Grantee shall have the option to substitute the service center requirement by providing for pick up or drop off of equipment free of charge in any one of the following manners:

1) by having Grantee representative going to the customer's residence, or
2) by using a prepaid mailer.

(C) Grantee also has the option to provide payment drop off locations within the Franchise Area. Grantee shall provide City and Subscribers with at least sixty (60) days' notice of election to discontinue the service center.

(D) City hereby adopts the customer service standards set forth in §76.309 of the FCC's rules and regulations, as included in Exhibit B.

SECTION 10. LINE EXTENSION POLICY

10.1 Service and Installation

Grantee shall make service available at standard installation and service rates, for every potential subscriber, pursuant to the following requirements:

(A) In newly developing underground service areas, where a shared trench is provided, Grantee shall extend and make cable television service available to every dwelling unit in areas having at least twenty (20) dwelling units per trench mile, or any proportionate subset thereof, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines when this density requirement is met.

(B) In any area served by overhead facilities Grantee shall extend and make cable television service available to every dwelling unit in areas having at least twenty (20) dwelling units per strand mile, or any proportionate subset thereof, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines when this density requirement is met.

(C) In any area served by underground facilities that has existing homes that are not served by Grantee, Grantee shall extend and make cable television service available to every dwelling unit in areas having

at least one-hundred twenty (120) dwelling units per trench mile, or any proportionate subset thereof, as measured from the existing system.

(D) Grantee must extend and make cable television service available to any resident requesting connection at the standard connection charge if the connection to the resident would require no more than a standard 125' aerial drop line.

(E) With respect to requests for connection requiring an aerial drop line in excess of 125', the Grantee must extend and make available cable television service to such residents at a connection charge not to exceed the actual installation costs incurred by the company for the distance exceeding 125'.

(F) The Grantee, in its application, may propose a line extension policy which will result in serving more residents of city than as required.

10.2 Annexed Areas and Requirements

(A) City Notice of Annexation. In the event the City annexes any area which is being provided cable service by Grantee, the City shall provide to Grantee, within (10) ten working days of passage by City Council, a copy of the City ordinance, legal description, if not found in the ordinance, addresses and a map defining the annexed area.

(B) Grantee Update of Subscriber Information Following Annexation. Grantee shall provide written notice to the City, within one hundred-twenty (120) days following an annexation, indicating that subscriber addresses within the annexation area have been updated to reflect the City as the franchising authority. Grantee shall provide revenue for new subscribers effective from the date of annexation.

(C) Grantee service to newly annexed areas. Upon the annexation of any additional land area by the City, the following conditions apply:

1) If the annexed area is not currently served by a cable operator, Grantee will be subject to the other provisions of this franchise.
2) If the annexed area is served by a cable operator other than Grantee, the Grantee has the option to extend its Cable System to the newly annexed area if Grantee determines that it is economically feasible to do so.

SECTION 11. COMPENSATION AND FINANCIAL PROVISIONS

11.1 Franchise Fees

(A) Fee amount. During the term of the Franchise, in consideration of the grant of this Franchise and permission to use the Public Rights of Way in the Franchise Area, Grantee shall pay to the City a franchise fee of 5% of Gross Revenues. If any such law, regulation or valid rule alters the 5% franchise fee enacted by the Cable Act, then the City shall have the authority to increase or decrease the franchise fee accordingly, provided such change is for purposes not inconsistent with Applicable Law, and Grantee agrees to pay the maximum permissible amount. In the event franchise fee is modified by the City, City agrees to provide Grantee with prompt written notice of such modification.

(B) Bundling. In the event Grantee bundles or combines Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee) so that Subscribers pay a single fee for more than one class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the franchise fee, it shall allocate Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

(C) Fee Payment

1) Franchise fees shall be paid quarterly for the preceding quarter ending March 31, June 30, September 30, and December 31. At the time of the quarterly payment, the Grantee shall submit a written report to the City, verified by and officer of Grantee, which shall contain and accurate statement of all Gross Revenues related to operation of the cable system franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee payments. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.

2) Neither current nor previously paid franchise fees shall be subtracted from the Gross Revenue amount upon which franchise fees are calculated and due for any period, unless otherwise required by Applicable Law. Nor shall copyright fees or other license fees paid by Grantee be subtracted from Gross Revenues for purposes of calculating franchise fees.

3) In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate in the State of Washington.

(D) Additional Commitments not Franchise Fees.
No term or condition in this Franchise Agreement shall in any way modify or affect Grantee's obligation to pay Franchise Fees to City. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to City. Payment of the Franchise Fees under this Franchise Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee, or other generally applicable fee, tax, or charge on the business, occupation, property, or income of Grantee that may be lawfully imposed by City.

(E) City Utility or Business & Occupational Taxes.
In addition to the franchise fee, or as an alternative to all or any part of the Franchise Fee, the City may impose a utility or other tax on the Grantee's Gross Revenues, provided that such utility tax is non-discriminatory. In such event, the City agrees that Grantee's total annual payment obligation to the City, exclusive of any PEG capital fee set forth under this agreement, shall not exceed eight percent (8%) of Grantee's Gross Revenues.

11.2 Auditing and Financial Records

(A) Grantee shall manage all of its operations in accordance with a policy of keeping relevant books and records open and accessible to the City. The City shall have the right as necessary for effectively enforcing the Franchise, to inspect at any time during Normal Business Office Hours

upon reasonable notice, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records required to be kept by Grantee and any parent company pursuant to the rules and regulations of the FCC and other regulatory agencies, and other like materials of Grantee and any parent company which relate to the enforcement of the Franchise. Access to the aforementioned records shall not be denied by Grantee to representatives of the City on the basis that said records contain "proprietary" information. However, to the extent allowed by Washington law, the City shall protect the trade secrets and other confidential information of Grantee and any parent company.

(B) Grantee agrees to meet with representatives of the City upon request to review its methodology of record-keeping, financial reporting, computing franchise fee obligations, and other procedures the understanding of which the City deems necessary for understanding the meaning of reports and records.

(C) The City or its designee may conduct an audit of other inquiry in relation to payments made by Grantee no more than once every three (3) years during the Term. As a part of the audit process, the City or its designee may inspect Grantee's books and records relative to the Franchise at any time during regular business hours and after thirty (30) calendar days' written notice. All books and records deemed by the City or its designee to be reasonably necessary for such audit or inquiry shall be made available by Grantee in a mutually agreeable format and location within the service area. Grantee agrees to give its full cooperation in any audit or inquiry and shall provide responses to inquiries within thirty (30) calendar days of written request. Grantee may provide such responses after the expiration of the response period above if the City agrees in writing to provide additional time.

(D) Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. Enforcement of any overpayment or underpayment shall be undertaken in accordance with Section 7.5 of this Franchise. In the event Grantee has underpaid the City by an amount greater than five percent (5%) underpayment, Grantee agrees to pay the cost of the audit in an amount up to seven thousand five hundred($7,500). No such payment shall be required of Grantee until Grantee has exhausted all of its Legal and administrative remedies.

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

(F) The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement of the Franchise.

11.3 Performance Bond

Within thirty (30) days after the Grantee's acceptance of this Franchise, Grantee shall post a performance bond, in the amount of fifty thousand dollars ($50,000.00), to ensure Grantee's faithful performance of the terms of this Franchise. Neither the provisions of this section, any bond accepted by the City pursuant thereto, nor any damages recovered by the City thereunder shall be construed to excuse faithful performance by Grantee or to limit liability of Grantee under the Franchise or for damages, either to the full amount of the bond or otherwise, except as otherwise provided herein.

11.4 Validity of Bond

If, at any time during the term of the Franchise, the condition of the entity issuing the bond shall change in such a manner as to render the bond unsatisfactory to the City, Grantee shall replace such bond by a bond of like amount and similarly conditioned, issued by an entity satisfactory to the City.

11.5 Indemnification by Grantee

Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the City or its employees; for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of, or alleged to arise out of, any claim for damages for Grantee's invasion of the right of privacy, defamation of any person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation; arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington or any local agency applicable to Grantee in its business. Nothing herein shall be deemed to prevent the City, its officers, or its employees, from participating in the defense of any litigation by their own counsel, at such parties' expense. Such participation shall not, under any circumstances, relieve Grantee from its duty of defense against liability, or of paying any judgment entered against the City, its officers, or its employees.

Notwithstanding, this Section (11.5) does not include PEG Access programming, operations, administration, or facilities, Access Channel(s), or Designated Access Provider(s), all of which is the City's sole responsibility.

11.6 Grantee Insurance

(A) Grantee shall maintain, throughout the term of the Franchise, liability insurance in the minimum amounts of:

1) Commercial General Liability: Two-million dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a two-and-one-half million dollars ($2,500,000) aggregate limit;

2) Automobile Liability: Two-million dollars ($2,000,000) combined single limit per accident for bodily injury and property damage; and

3) Two-million dollars ($2,000,000) for all other types of liability, including claims for damages for invasion of the right of privacy; for defamation of any person, firm, or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or, for damage to any other person, firm, or corporation arising out of or alleged to arise out of failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington, or any local agency with jurisdiction.

(B) Such insurance shall specifically name as additional insured the City of Kelso, its officers, employees and agents, shall further provide that the policy shall not be modified or canceled during the life of this Franchise without giving 30 days written notice to the City.

(C) Grantee shall file with the City a certificate of insurance showing up-to-date coverage and additional insured coverage, as set forth above. Coverage shall not be changed or canceled without approval of the City.

SECTION 12. MISCELLANEOUS PROVISIONS

12.1 Posting and Publication

Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee's filing of acceptance of this Franchise.

12.2 Guarantee of Performance

Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a 10-year Franchise. Performance pursuant to the terms and conditions of this Franchise agreement is guaranteed by Grantee.

12.3 Entire Agreement

This Franchise Agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

12.4 Consent

Wherever the consent or approval of either Grantee or the City is specifically required in this Franchise Agreement, such consent or approval shall not be unreasonably withheld.

12.5 Ordinances Terminated

The cable television franchise as originally granted by Ordinance Nos. 99-3444 is hereby terminated.

12.6 Franchise Acceptance

This Franchise granted by this Ordinance shall be effective fifteen (15) days from date of final passage by City Council; provided, however, that Grantee shall have sixty (60) days to accept the Franchise and

comply with all conditions for such acceptance. This Franchise shall be voidable at the City's discretion if Grantee fails to accept within sixty (60) days.

12.7 Force Majeure

If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Washington, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; partial or entire failure of utilities; documented work delays caused by waiting for utility providers to service or monitor utility poles to which grantee's facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary; and similar occurrences outside the control of the Grantee. The Grantee agrees, however to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this Franchise Agreement.

12.8 Work of Contractors and Subcontractors

Work by contractors and subcontractors are subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the City Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.

12.9 Severability

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

12.10 Counterparts

This Franchise Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

12.11 No Waiver of Rights

Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, either City or Grantee may have under Federal or state law unless such waiver is expressly stated herein.

12.12 No Third Party Beneficiaries

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

12.13 Modification

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

12.14 Notices

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

To the City:

City Manager
City of Kelso
203 Pacific Avenue
P.O. Box 819
Kelso, WA 98626

Non-binding courtesy copy to:
City Attorney
City of Kelso
203 South Pacific Avenue
P.O. Box 819
Kelso, WA 98626

To the Grantee:

Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC.
Attention: Government Affairs
9605 SW Nimbus Ave.
Beaverton, Oregon 97008

12.15 Governing Law

Franchise shall be deemed to be executed in the State of Washington, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Washington, as applicable to contracts entered into and performed entirely within the State.

FRANCHISE ACCEPTANCE

The undersigned, Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington LLC, does hereby accept the Franchise granted pursuant to Ordinance No. _____ passed and approved on _____, 201_ and does hereby agree that it will comply with and abide by all of the provisions, terms, and conditions of the Franchise subject to applicable federal, state, and local law.

Comcast of Colorado/Florida/Michigan/
New Mexico/Pennsylvania/Washington, LLC

By:_____

Name: _____

Its: _____

Date:_____

City of Kelso

By:_____

Name: Stephen Taylor

Its: City Manager

Date: _____

EXHIBIT A - FRANCHISE FEE PAYMENT WORKSHEET

	Month/Year	Month/Year	Month/Year	Total
Subscriber Revenue				
Basic Service				
Expanded Basic Service				
Bad Debt/Write-offs				
Bulk Revenue				
Digital Cable/Services				
Equipment Revenue				
FCC Fee Revenue				
Franchise Fee Revenue				
Guide Revenue				
Inside Wiring				
Installation Charge				
Late Fee Revenue				
Other Revenue				
Premium Service				
Pay-per-view				
Processing Fees				
Allocated Revenue				
Home Shopping Revenue				
Leased Access				
Other Revenue				
Tower & Rental Income				
Local Advertising				
National Advertising				
Bad Debt on Advertising				
TOTAL REVENUE				
Fee Calculated				

Fee Factor: 5%

EXHIBIT B - FCC CUSTOMER SERVICE STANDARDS

Grantee shall comply in all respects with the following customer service requirements established by the §76.309 of the FCC's rules and regulations:

(1) Cable System office hours and telephone availability:

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

(B) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(ii) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(iii) The operator shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(v) Customer service center and bill payment locations will be open at least during Normal Business Office Hours and will be conveniently located.

(2) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

(i) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The cable operator must begin actions to correct other Service problems the next business day after notification of the Service problem.

(iii) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (The operator may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between Cable operators and Subscribers:

(i) Refunds. Refund checks will be issued promptly, but no later than either:

(A) The customer’s next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits. Credits for Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

EXHIBIT C - CHECKLIST OF NOTICES AND REPORTS

This Exhibit provides excerpts from this Agreement related to regular notice and reporting requirements of this document. Other less-routine notice requirements are described in relevant sections of this Agreement and are not listed below.

Reports and notice requirements – Cross-reference – City to Grantee

Section 4.8 – Performance Testing – Grantee shall inform the City of the time and place of each test no less than three weeks prior to the scheduled compliance test

Section 5.2 – Changes in Programming Services – Grantee shall provide at least thirty (30) day's prior written notice to Subscribers and to the City of Grantee's intent to effectively delete any broad category of programming or any channel… including all proposed changes in channel allocation, including any new equipment requirements…. The Grantee shall also give 30 days. written notice to both Subscribers and the City before implementing any service change.

Section 6.5 – PEG Channel Location – Grantee will give the City at least 90 day notice prior to changing any PEG channel location or number.

Section 7.4 – Regulation of Rates and Charges – Grantee shall give the City and all Subscribers within the City of Kelso at least thirty (30) days' notice of any intended change to Subscriber rates or charges.

Section 8.1 – Quarterly Revenue Report

Section 8.2 – Complaint File and Reports

Section 8.3 – Annual Report

Section 8.8 – Grantee report of communications with State regulatory bodies or committees - Grantee shall notify the City whenever the Grantee names the City in any filings which Grantee may submit to the State of Washington that bear relevance on the terms of this Franchise… Grantee shall within 10 days of any communication to or from any judicial or regulatory agency regarding any alleged or actual violation of a law, regulation or other requirement relating to the City's administration of this Franchise, provide the City a copy of the communication

Section 10.2 – Annexed Areas and Requirements - Grantee shall provide written notice to the City, within one hundred-twenty (120) days following an annexation, indicating that subscriber addresses within the annexation area have been updated to reflect the City as the franchising authority.

Reports and notice requirements – Cross-reference – City to Grantee

Section 6.6 – PEG Fees – City annual report to Grantee of PEG fee purchases - City shall provide to Grantee, within ninety (90) days following the end of each calendar year, a report detailing the City's PEG related capital expenditures.

Section 10.2 – Annexed Areas and Requirements - In the event the City annexes any area which is being provided cable service by Grantee, the City shall provide to Grantee, within (10) ten working days of passage by City Council, a copy of the City ordinance, legal description, if not found in the ordinance, addresses and a map defining the annexed area.

Exhibit D - Franchise Acceptance.

The undersigned, Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington LLC, does hereby accept the Franchise granted pursuant to Ordinance No. _____ passed and approved on _____, 201_ and does hereby agree that it will comply with and abide by all of the provisions, terms, and conditions of the Franchise subject to applicable federal, state, and local law.

Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington LLC

By: _____

Its: _____

Date: _____

AGENDA SUMMARY SHEET

AGENDA ITEM: Ordinance 2nd reading. Budget revision #2 for the 2015 fiscal year.

SUBMITTED BY: Brian Butterfield

AGENDA ITEM #

FOR AGENDA OF: 12/15/2015

ORIGINATING DEPT: Finance

DATE SUBMITTED: 11/24/2015

COST OF ITEM:

AMT. BUDGETED

CITY ATTY. APPROVAL

CITY MGR. APPROVAL

AGENDA ITEM PAPERWORK:

See attached Ordinance

SUMMARY STATEMENT/DEPT. RECOMMENDATION:

Revisions include the following:

General Fund

- $150,000 temporary loan to Southwest Washington Regional Airport.

Kelso Station Fund

- $6,000 to fund monthly maintenance of the HVAC system.

OPTIONS:

1) Move to approve ordinance.
2) Do not approve ordinance.
3) Provide direction to staff regarding desired changes.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO RELATING TO PUBLIC EXPENDITURES AND DECLARING AN EMERGENCY UNDER THE PROVISIONS OF RCW 35A.34.150, FIXING THE AMOUNT OF MONEY REQUIRED TO MEET SUCH EMERGENCIES AND AUTHORIZING THE EXPENDITURE OF MONEY NOT PROVIDED FOR IN THE 2015-2016 BIENNIAL BUDGET OF THE CITY.

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That by reason of the inability of the City and its officials to foresee and compute with accuracy the actual revenue and necessary expenditures of public funds for the current expenses of the City, it is deemed necessary to make the following amendment to the budget by increasing the following line items by the amounts set forth below for the 2015 Budget, to-wit:

GENERAL FUND

Revenues			
001-00-381-10-00	Interfund Loan Repayment	$	150,000.00
Expenditures			
001-01-511-60-10-1	Salaries	$	3,000.00
001-01-511-60-20-1	Benefits		1,000.00
001-02-512-50-49-0	Contract Services – Muni Court		(8,000.00)
001-03-513-10-10-1	Salaries		3,000.00
001-03-513-10-20-1	Benefits		1,000.00
001-09-581-10-00-0	Interfund Loan Disbursement		150,000.00

KELSO STATION FUND

Revenues

105-15-308-00-00	Beginning Fund Balance	$	6,000.00

Expenditures

106-15-547-60-48-0	Repairs and Maintenance	$	6,000.00

SECTION 2. It is hereby ordered that the aforesaid sum be and the same is hereby appropriated in excess of the budget of the City of Kelso for 2015 and further that said budget be and the same is hereby amended accordingly.

SECTION 3. This Ordinance shall be in full force and effect five days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of December, 2015.

_____
MAYOR

ATTEST/AUTHENTICATION:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

PUBLISHED: _____

AGENDA SUMMARY SHEET

AGENDA ITEM: An ordinance authorizing an interfund loan from the General Fund to the Airport Fund for the purpose of providing working capital for Airport Improvements.

2nd reading.

SUBMITTED BY: Brian Butterfield

AGENDA ITEM #

FOR AGENDA OF: 12/15/2015

ORIGINATING DEPT: Finance

DATE SUBMITTED: 11/25/2015

COST OF ITEM: N/A

AMT. BUDGETED N/A

CITY ATTY. APPROVAL

CITY MGR. APPROVAL

AGENDA ITEM PAPERWORK:

See attached ordinance.

SUMMARY STATEMENT/DEPT. RECOMMENDATION:

Expenditures for various airport improvements may require substantial monies up front to complete the various tasks. However, at this time, the Airport has insufficient funds available to cover all of the expected costs. This temporary loan will provide sufficient funds for such costs. Ultimately, most Airport Improvement expenditures will be reimbursed to the Airport from grants.

Staff recommends adopting the ordinance on second reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AUTHORIZING THE TRANSFER OF FUNDS FROM THE GENERAL FUND TO THE AIRPORT FUND AND PROVIDING FOR THE REPAYMENT OF SUCH LOAN

WHEREAS, the Southwest Washington Regional Airport Board ("Board"), of which the City is a member, operates the Southwest Washington Regional Airport located in Kelso and owned by the City; and

WHEREAS, the Board has contracted with the City to provide finance and administrative services for the Board, including the requirement for a separate City agency fund for processing of Airport finances; and

WHEREAS, the City has historically provided interfund loan transfers to the Airport fund for purposes of meeting short term Airport capital improvement obligations pending reimbursement from federal grants to the City for such purposes; and

WHEREAS, the Board has requested the interfund loan transfer of $150,000 pending federal reimbursement; and

WHEREAS, the City finds that certain monies need to be expended from said Airport Fund to cover "Airport Improvement" expenditures for 2015 and 2016; and

WHEREAS, the City, as the Airport sponsor, property owner, and grant recipient, has been approved for grant funding for these "Airport Improvement" expenditures and said funds are only available on a reimbursement basis; and

WHEREAS, the City desires to transfer monies from the General Fund to the Airport Fund to cover said expenditures with the intent of repaying the General Fund when said grant funds are received;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1 That the City is authorized to transfer the sum of not more than $150,000 from the Water/Sewer Fund to the Airport Fund to cover expenditures for 2015 & 2016.

SECTION 2 That the City agrees to repay the General Fund in full from monies the City will receive from Grant Funds dedicated for Airport Improvement Projects. Interest shall be charged on said loan at the rate set by the Local Government Investment Pool (LGIP).

SECTION 3 This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this 17th day of December, 2015.

_____

ATTEST/AUTHENTICATION: MAYOR

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

PUBLISHED:

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE: **AN ORDINANCE OF THE CITY OF KELSO AMENDING KMC 5.05.120 TO INCREASE UTILITY BUSINESS TAX RATES ON CABLE TELEVISION ENTERPRISES FROM SIX TO EIGHT PERCENT IN ACCORDANCE WITH THE FRANCHISE AGREEMENT FOR SUCH SERVICES.**

Agenda Item:_____

Dept. of Origin: City Manager

For Agenda of: December 15, 2015

Originator: Steve Taylor, City Manager

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

PRESENTED BY:

Steve Taylor

Agenda Item Attachments:

Proposed Ordinance Amending KMC 5.05.120

SUMMARY STATEMENT:

The City has negotiated a final draft of an agreement that renews the franchise with Comcast Cable. (Consideration of the ordinance which adopts the new franchise agreement is also an item on the December 15th Council Agenda.) The previous franchise agreement provided an option for the City to levy a 5% franchise fee on the cable enterprise's gross revenues collected within the local franchise area (LFA).

Additionally, the agreement provided for Comcast to pay out an additional 2% of its gross revenues to support Public, Educational, and Governmental (PEG) program operations. The City contracts with KLTV to provide PEG services. Under Washington State law, the City is also able to assess utility taxes on cable services as long as those taxes are reasonably comparable to the rates charged to other utilities. Both the previous and proposed agreements allow the City to charge utility taxes in lieu of the franchise fees, and the City has done so for the duration of the existing franchise.

KMC Section 5.05.120(D) assesses a six percent (6%) utility tax on cable services. Five percent (5%) is retained by the City for general operating expenses and one percent (1%) is remitted to KLTV for PEG programming services. Coupled with Comcast's contribution, KLTV receives a total of three percent (3%) of cable gross operating revenues within the LFA. Under the new franchise agreement, Comcast will no longer provide its two percent (2%) contribution for PEG operations,

so staff is proposing an increase in the cable utility tax from six to eight percent (8%) to retain the financial status quo for PEG. Five percent (5%) of the utility tax would remain within the City's General Fund, and three percent (3%) would be paid to KLTV. Both franchise agreements placed a cap of eight percent (8%) on any combination of utility taxes assessed or franchise fees collected. An eight percent (8%) tax is estimated to generate $180,000, of which $67,000 is remitted to KLTV.

Staff will be reviewing the KLTV PEG programming agreements and offering amendments for Council's consideration in the first quarter of 2016.

OPTIONS:

1) Move to approve the Ordinance on second reading amending KMC 5.05.120 which increases the cable utility tax from 6% to 8%.
2) Do not approve the Ordinance.
3) Delay action on the Ordinance and bring back for consideration following further revision.

RECOMMENDED ACTION:

Approve the ordinance on second reading amending KMC 5.05.120.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING KMC 5.05.120 TO INCREASE UTILITY BUSINESS TAX RATES ON CABLE TELEVISION ENTERPRISES FROM SIX TO EIGHT PERCENT IN ACCORDANCE WITH THE FRANCHISE AGREEMENT FOR SUCH SERVICES.

WHEREAS, the cable franchise agreement between the City and Comcast Cable has been renewed and adopted by Ordinance No. _____, and the agreement provides for the payment of franchise fees to the City for the right to locate cable facilities within the right-of-way; and

WHEREAS, the franchise agreement allows the City to levy a business & occupation utility tax on the gross revenues of the cable enterprise in lieu of the franchise fees authorized therein; and

WHEREAS, the City under the provisions of the previous franchise agreement levied a six percent (6%) utility tax in lieu of franchise fees, of which one percent (1%) was earmarked by the City for Public, Educational, and Governmental (PEG) programming; and

WHEREAS, the previous franchise agreement provided for Comcast Cable to dedicate an additional two percent (2%) of its gross revenues to support PEG operational costs; and

WHEREAS, the new franchise agreement provides for the City to collect franchise fees and levy utility taxes not to exceed eight percent (8%) of gross revenues;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT OF KMC 5.05.120. That Kelso Municipal Code Section 5.05.120—Imposition of the tax—Tax levied, Subsection D is hereby amended to provide as follows:

5.05.120 Imposition of the tax—Tax levied.
Upon every person engaging within the city in any one or more of the businesses hereinafter mentioned, as to such person the license fee shall be equal to the gross operating revenue of the business multiplied by the rate set forth after the business, as follows:

[…]

D. The business of selling and furnishing coaxial cable and fiber optic cable subscriber systems for television and other signal distribution: eight ~~six~~ percent of the total gross revenue. For the purpose of this subsection, "gross revenue" and "total gross revenue" shall be defined as the terms are defined in the current franchise agreement for such services, it being authorized by Ordinance No. _____ ~~99-3444.~~

SECTION 3. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be in full force and effect January 1, 2016.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of December, 2015.

_____
MAYOR

ATTEST/AUTHENTICATION:

_____
CITY CLERK
APPROVED AS TO FORM:

_____
CITY ATTORNEY
PUBLISHED:

AGENDA SUMMARY SHEET
Business of the City Council
City of Kelso, Washington

SUBJECT TITLE:

A Resolution of the City of Kelso, Washington Revising Resolution No. 13-1095 and the Corresponding Exhibit A

Agenda Item:

Dept. of Origin: Com. Development-Engineering

For Agenda of: December 15, 2015

Cost of Item: $240.00

City Manager: Steve Taylor

PRESENTED BY:
Michael G. Kardas, P.E.
Community Development Director/City Engineer

AGENDA ITEM ATTACHMENTS:
Exhibit A – Redlined Purchasing Procedures
Exhibit B – Contract with MRSC for Roster Maintenance Services
Exhibit C – Resolution adopting the revised Purchasing Procedures

SUMMARY STATEMENT:
The City is required to make purchases and procure services in accordance with the Revised Code of Washington. The City desires to update the policies and procedures to show the update in maintenance of a small works and consultant rosters used to procure services within the limits already outlined in the the policy. The maintenance of these two rosters will now be provided by Municipal Research and Services Center "MRSC" under an annual contract

Federal procurement requirements are more stringent. Therefore, the has also been revised to note that any project being funded with federal dollars of any amount must follow 2 Code of Federal Regulations (CFR): Uniform Administrative Requirements.

FINANCIAL SUMMARY:
The cost of this service is based on the total annual capital expenditures each year ranging from $120 for less than $5 million to $900 for more than $50 million. Our Capital Expenditures have been ranging between $5 - $10 million so we will pay a fee of $240.00 for 2016 maintenance services.

RECOMMENDED ACTION:
Make a motion to approve the revised resolution and purchasing procedures.

City of Kelso

Procurement Policies & Procedures

Adopted ~~September 3, 2013~~ December 15, 2015
Resolution 13-1095

This document supersedes any and all previous purchasing/procurement policies.

City of Kelso
Procurement Policies & Procedures

Table of Contents

POLICY **3**

PROCUREMENT OF GOODS AND SERVICES **3**

QUOTE/BID REQUIREMENTS 3
PUBLIC WORKS PROJECTS AND PREVAILING WAGE LAWS 4
VERBAL QUOTES 4
SOLE SOURCE PURCHASES 4
CONFLICTS OF INTEREST 4

PURCHASE OF PROFESSIONAL AND TECHNICAL SERVICES **4**

BID PROCEDURES **5**

EXEMPTIONS TO COMPETITIVE BIDDING REQUIREMENTS 6
SMALL WORKS ROSTER 9

CHANGE ORDERS **9**

TRAVEL EXPENSES **10**

PAYMENT PROCESSING **10**

APPROVALS 10
ACCOUNTS PAYABLE 10
HAND-ISSUED CHECKS 10
STORE-ISSUED CHARGE CARDS 10
BANK CREDIT CARDS 11
PETTY 11
CASH 11
BUDGET ADJUSTMENTS 11

EXHIBITS **12**

PURCHASE QUOTATION SHEET 12
SOLE SOURCE VENDOR STATEMENT 13
RESOLUTION 14
WASHINGTON STATE PREVAILING WAGE LAW 15

Policy

All employees must follow established policies and procedures for procurement of equipment, materials, and services. Adherence to policies and procedures will ensure that public purchases and contracts are open, fair, and at the best value to the public.

Procedures are divided into four major areas: 1) Procurement of Goods and Services, 2) Bidding Requirements, 3) Reimbursement of Expenses, and 4) Other Issues.

Procurement of Goods and Services

City purchases are subject to authorization & quote/bid requirements as follows:

General Purchases: **
≤ $7,500 No Competitive Bids Required, Department Head Approval if budgeted
> $7,500 ≤ $15,000 Competitive Bid Required, Department Head Approval if budgeted
> $15,000 ≤ $65,000 Competitive Bid Required, City Manager Signs Approves if budgeted
Over $65,000 Competitive Bid Required, City Council Approves

Public Works Projects: (when small works roster procedure is NOT used) **(RCW 35.22.620)** **
≤ $2,500 No Competitive Bids Required, Department Head Approval if budgeted
> $2,500 ≤ $15,000 Written Quotes Required, City Manager Approves if budgeted
> $15,000 ≤ $65,000 Competitive Bid Required, City Manager Signs Approves if budgeted
Over $65,000 Competitive Bid Required, Council Approves

One Craft or Trade, or Street Signalizing or Street Lighting: **
≤ $2,500 No Competitive Bids Required, Department Head Approval if budgeted
> $2,500 ≤ $15,000 Written Quotes Required, City Manager Approves if budgeted
> $15,000 ≤ $40,000 Competitive Bid Required, City Manager Signs Approves if budgeted
Over $40,000 Competitive Bid Required, Council Approves

Two or More Crafts or Trades: **
≤ $2,500 No Competitive Bids Required, Department Head Approval if budgeted
> $2,500 ≤ $15,000 Written Quotes Required, City Manager Approves if budgeted
> $15,000 ≤ $65,000 Competitive Bid Required, City Manager Signs Approves if budgeted
Over $65,000 Competitive Bid Required, Council Approves

Professional and Personal Services Contracts: (Ongoing contracts must be approved by Council every 3 years) **
No Competitive bid required, Department Head Selection
$0 ≤ $65,000 Department Head Approves, City Manager Approves
Over $65,000 Council Approves

Architectural & Engineering Services: **(RCW 39.80)** (Contract cannot exceed 3 years without new RFQ) **
Firms can be chosen dependent upon qualifications from the Shared Consultant Roster – no competitive bid or Open Request for Qualifications required– A contract and price is then negotiated based on scope of work and value.
$0 ≤ $65,000 Department Head Approves, City Manager Approves
Over $65,000 Council Approves

** If the project will be federally funded for any portion regardless of amount, please see 2 Code of Federal Regulations 200; Uniform Administration Requirements.

NOTE: Purchases may not be broken into multiple projects or purchases to avoid compliance with state statutes and City policies.

Public Works Projects and Prevailing Wage Laws

Public works projects ("...all work, construction, alteration, repair or improvement that is executed at the cost of the state or any other local public agency...") including maintenance when performed by contract, are governed by chapter 39.12 RCW Prevailing Wages on Public Works requirements, *regardless of contract amount.* It is the *responsibility of the contracting employer to notify the vendor of prevailing wage requirements and obtain compliance documentation prior to awarding any public works contract.* Public works contracts will only be awarded to contractors who document compliance with the Washington State Prevailing Wage Law. The department head or designee managing the project is responsible for collecting compliance documents. *Failure to follow prevailing wage laws will result in delayed or denied payment to the vendor. The City CANNOT pay for public works projects that are in violation of prevailing wage laws.* (See Exhibit 7.)

Professional and Personal Services

Professional or personal services are those services involving specialized skill, education, and special knowledge. These services include, but are not limited to, architectural, engineering, design services, accounting, art, bond brokerage, insurance brokerage, legal, real estate appraisal, relocation assistance, title abstracts, surveying, soils analysis, and core testing. Procurement of professional and personal services will be in accordance with RCW 39.80 and RCW 39.29.

A competitive process is not required for professional or personal services, other than professional engineering or architectural services for the design of City improvements.

Non-Architectural and Non-Engineering Services (RCW 39.29)

Professional and technical services include disciplines such as attorneys, computer programmers, financial analysts, bond counsels, artists, planners, and real estate appraisers.

Purchase of professional services requires completion of a City professional services contract that describes services to be performed and negotiated price.

Prior experience with the City, time-frame for completing projects, and the value of a negotiated agreement will be considered when choosing a consultant/firm to perform professional services, as defined in this section.

Architectural, Engineering and Design Services (RCW 39.80)

State statutes require advance notice of the requirement for architectural, engineering and design services, evaluation of firms' qualifications and performance, and negotiation with firms in accordance with adjudged qualifications. Architectural, engineering and design services contracts will be reviewed by the City Attorney to ensure RCW compliance.

Verbal Quotes

Purchases requiring verbal quotes must be documented by a properly completed verbal quote log. Verbal quote logs may be obtained from Engineering. (Exhibit 1)

Sole Source Purchases

A "sole source" is characterized as meeting one or more of the following standards: (a) the City department has conducted a screening process whereby it can justify purchase of a specific product; (b) the City requires legitimate specifications to which only one vendor can successfully respond; or (c) the product is available only through one manufacturer (or distributor) and the manufacturer so certifies. In any such case where the purchase exceeds $5,000, the vendor shall certify that the City is getting the

lowest price it offers anyone. Purchases in excess of $5,000 from a sole source vendor require prior approval of the Department Director or designee. (Exhibit 2)

Unauthorized Purchases
Except as provided in this policy, no city employee shall purchase or contract for any supplies, materials, equipment or contractual service or make any contract with the purview of this policy other than through the office designated in this chapter, and its staff. Any purchase or contract made contrary to the provisions of this policy shall not be approved by any city officer and the city shall not be bound thereby, except as may be required or provided by law.

Responsibility for Unauthorized Purchases
Any city employee making a purchase or contract contrary to the provisions of this policy or accepting for delivery to the city any items purchased contrary to the provisions of this policy shall be personally responsible for payment of same. To the extent that the city may be required to pay for same, the city shall be entitled to recover the full amount of such payment from such employee.

Conflicts of Interest
The City will not accept donations of materials or services in return for a commitment to continue or initiate a purchasing agreement. No employee will participate in procurement when they are aware of a conflict of interest, or accept gifts or gratuities from existing or potential vendors in return for a commitment to continue or initiate a purchasing relationship.

Bid Procedures

1. Authorization Request
Request from Department Head the authorization to call for bids. In special circumstances, the City Manager may waive portions of the bid procedures. The "special circumstances" are limited to items where publication of bids may impinge on the safety of staff or City assets (Drug Task Force vehicles for example).

2. Publication of Notice (when not using the small works roster process)
After City Manager authorization, the requesting department director (or designee) will publish the Call for Bids in the official newspaper or a newspaper of general circulation most likely to bring responsive bids and ensure notice is posted on the City web page, at least 14 days prior to bid submittal deadline.

3. Notice Contents
Notice (or advertisement) for bids should contain definite specifications and procedures for bidders to use to estimate their bids. At a minimum, a bid notice for public works must include:

- Project title;
- Nature and scope of work;
- Where contract documents (plans and specifications) can be reviewed or obtained;
- Cost to obtain a set of contract documents;
- Place, date, and time that bids are due;
- Statement that a bid bond must accompany the bid;
- Statement that the City retains the right to reject any and all bids and to waive minor irregularities in the bidding process;
- Statement that the contract involves "public work," and that workers shall receive the prevailing rate of wage pursuant to the Prevailing Wages on Public Works Act (Chapter 39.12 RCW);
- List of the applicable prevailing wage rates; and
- Statement that the City is an equal opportunity employer and invites responsive bids from all qualified responsible bidders.

In addition, provide evaluation criteria; minimum qualifications; date, time, and location of pre-bid conference (if applicable); name, address, and telephone number of the project contact; and number of required copies will help bidders prepare responsive submittals.

4. Bid Opening

Bids are submitted to the City Clerk or designee, where they are time and date stamped and processed. Bid opening will be announced to Mayor, City Manager and department heads by department head or designee responsible for the project when required.

5. Report on Bids

The responsible department head or designee will prepare a report and recommendation on all bids received over $65,000.00 for Council review and approval.

6. Bid Award

The City may select the qualified contractor whose proposal is most advantageous to the City.

7. Rejection of Bids

The City reserves the right to reject any bid not in substantial compliance with the bid documents, or all prescribed public bidding procedures and requirements and may reject for good cause any or all bids upon a finding of the City that it is in the public interest to do so.

The following shall apply to bid solicitations:

- Selection of a winning offer is based primarily on lowest responsive bid. Quality and expertise, however, must also be a consideration.

- To ensure consistency and fair process, the City will use standard forms, documents, contracts, and terms and conditions, when practical. The Engineering Department will maintain templates for bid-related documents for use by departments.

- Minimum qualifications are stated to ensure respondents are reasonably qualified. Minimum qualifications cannot be used to eliminate qualified vendors. Minimum qualifications should be tested against the marketplace to ensure they aren't overly restrictive.

- When practical, the City will conduct a pre-bid conference to allow a thorough discussion of the City's intent, scope, specifications, and terms. Interested companies should be encouraged to attend.

Exemptions to Competitive Bidding Requirements

Section 39.04.280 RCW provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases.

Competitive bidding requirements may be waived for:

1. Purchases clearly and legitimately limited to a single source of supply (Sole Source Vendor):

   If, after conducting a good faith review of available resources, the requesting department director determines that there is only one source of the required materials, supplies, or equipment, a purchase contract may be awarded without complying with established bid requirements. The requesting department director will submit a written request for sole source procurement to the City Manager for approval, and conduct price, terms, and delivery negotiations, as appropriate. The vendor must certify in writing that the City is getting the lowest offered price.

2. Noncompetitive and special purchases

The finance director shall be authorized to make open market purchases when not prohibited by state law without obtaining competitive bids. Therefore, under the following conditions:

A. Items of Special Design. When an item required is of special design, shape, or manufacture to match or fit in with an existing installation and competitive bidding is impracticable;

B. Surplus or Distress Sale. When it is possible to procure obvious bargains in surplus or distress material, supplier, or equipment;

C. Items for Quick Delivery. When the obtaining of competitive bids will cause delay resulting in an appreciable loss to the city;

D. Small Items Not Stocked-Monthly Purchase Orders. The department head or his/her designee shall be authorized to establish monthly purchase orders with vendors for the purchase of items costing less than one hundred dollars or perishable items which cannot be stocked by the departments and are available at usual market prices. Such vendors shall be selected on the basis of best overall price policies, breadth and depth of stocks, and delivery service.

3. Open Market Purchases.

All purchases of materials, supplies, equipment, and contractual services for which competitive bidding is not required may be made on the open market. All open market purchases shall be based on competitive prices or bids solicited by the department head or his/her designee by direct mail request to prospective vendors, by personal contact, or by any other appropriate means. The department head or his/her designee shall award the bid on open market purchases to such bidder as shall be determined to be the lowest and best responsible bidder.

4. Purchases involving special facilities or market conditions:

The City Manager may waive established bidding requirements if an opportunity arises to purchase favorably-priced equipment at an auction, or supplies or used goods that will be sold before the City can conduct the bid process.

5. Surplus Property:

The City may acquire surplus property from another government without the use of bids (RCW 39.33.010).

6. Purchases in the event of an emergency:

"Emergency" is defined as "...unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken." If an emergency situation has been declared, the City Manager may waive competitive bidding requirements and the City may award all necessary contracts to purchase goods, materials, or services to address the emergency situation. Purchase order(s) must be properly documented as pertaining to an emergency as soon as possible following the event. If a contract is awarded without competitive bidding due to a declared emergency, the City Council must adopt a resolution certifying the emergency situation existed no later than two weeks following the award of the contract.

7. Interlocal Agreements

Interlocal Cooperative Purchasing Agreements

Pursuant to RCW 39.34, bidding is not required when purchases of materials, supplies, or equipment are made under State standard contracts or similar contracts executed by and through

other local governments which have complied with state bidding requirements. The other government's bid process must have been conducted within the previous 12 month period to be valid for use by the City of Kelso. In addition, the City of Kelso must conduct a screening process whereby it can justify the purchase through an Interlocal Agreement. The screening process and results must be clearly documented in writing. All other procurement approval requirements must be met.

Approval and authority for entering into an Interlocal Cooperative Purchasing Agreement will be determined by the anticipated cost of the procurement. Blanket Interlocal Cooperative Purchasing Agreements where the costs of the potential purchases are not known will be treated as purchases over $15,000 as described under the General Purchases.

In addition, the City may make a bid call with another government entity as a joint purchase complying with the bid requirements of the participating jurisdictions. Purchases made pursuant to any such agreement shall be separately invoiced to the respective purchasers in accordance with the purchases made by each; and each such purchaser shall be responsible for payment for its own purchases only. Purchases made for the City under a purchasing contract executed by a state, or agency or subdivision thereof, or by another governmental unit or public benefit nonprofit corporation shall be exempt from competitive bidding and related requirements.

When practical, the City should include language in its solicitations that allows other public agencies to purchase from the City of Kelso's bids or quotations, provided that the other agencies allow similar rights and reciprocal privileges to the City of Kelso.

Purchasing Cooperatives That Meet Washington State Revised Code of Washington and City Bidding Requirements

Pursuant to chapter 39.34 RCW, bidding is not required when purchases of materials, supplies, or equipment are made under State standard contracts or similar contracts executed by and through purchasing cooperatives which have complied with state bidding requirements. The purchasing cooperative's bid process must have been conducted within the previous 12 month period to be valid for use by the City of Kelso. In addition, the City of Kelso must conduct a screening process whereby it can justify the purchase through a purchasing cooperative. The screening process and results must be clearly documented in writing. All other procurement approval requirements must be met.

6. Competitive Negotiations

Telecommunication Systems/Services

Competitive negotiation can be used as an alternative to the competitive bidding procedures for the acquisition of electronic data processing and telecommunications systems; energy saving or energy related equipment or services; or when it is determined in writing that the use of competitive bidding is neither practical nor advantageous to the City.

"Electronic data processing" includes, but is not limited to, systems that comprise a combination of equipment or units to provide input of source data, and storage and processing of data and output in predetermined form, including a central processing unit (CPU) or main frame (RCW 36.92.020). In other words: hardware, software, firmware, "smart cards" or any combination thereof.

Eligible purchases (RCW 39.35A.030) are those for "equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies, including but not

limited to design, engineering, financing, installation, project management, guarantees, operations, and maintenance." (RCW 39.35A.020(1)) The procurement may be structured on a performance basis, rather than a design specification, so that the City may specify a result, rather than the type or model of equipment. (RCW 39.35A.020(3))

The approval requirements found in Authorization & Quote/bid requirements as listed on page 3 also apply to procurement by competitive negotiation. The approving officer shall determine in writing that competitive bidding is either not practical or not advantageous to the City.

Requisitions for electronic data processing systems shall be routed through and approved by the Finance Director or designee for compatibility certification prior to purchase. This will allow for the appraisal of the present supply of devices, and the possible elimination of an unnecessary expenditure of City funds.

A request for proposals should be prepared and submitted to enough qualified sources, to permit reasonable competition consistent with the requirements of the purchase. The request for proposal should identify significant evaluation factors, including price, and their relative importance. The City reserves the right to determine the number of sources considered to be adequate.

The City will provide procedures for technical evaluation of the proposals received, identification of qualified sources, and selection criteria for awarding the contract.

The City may select the qualified vendor whose proposal is most advantageous to the City, with price and other factors considered. If the City is unable to negotiate a contract successfully, the City may terminate negotiations and proceed to negotiate with the second most advantageous proposer, and so on.

Small Works Roster

RCW 39.04 provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property. The Small Works Roster may be used for public works projects valued below $300,000.

The Small Works Roster maintained by the ~~Community Development Department/Engineering Division~~Municipal Research and Services Center of Washington ("MRSC") allows the City to evaluate the professional qualifications on file when a proposed project is scheduled.

Use of the Small Works Roster allows the City to preclude the advertisement requirements of the formal competitive process. *All other bidding requirements are the same.*

- ☐ For each project, the City will secure telephone or written quotations from (whenever possible) at least three appropriate contractors on the Roster. Whenever possible, at least one of the contractors invited to submit a proposal will be a minority- or woman-owned firm. The City may invite proposals from more than three or all appropriate contractors on the Roster and is, in fact, encouraged to invite proposals from all contractors in the related category of work.
- ☐ The contract must be awarded to the contractor submitting the lowest responsible quote.
- ☐ Once a contractor has been invited to submit a proposal, that contractor will not be offered another opportunity until all other appropriate contractors on the Roster have been given the opportunity to submit a proposal on a project. (to assure fairness in opportunity, always send to all contractors in the appropriate category of work).

Vendors/contractors selected from the Small Works Roster are not relieved from observing applicable legal requirements such as Performance Bond, Prevailing Wage, Labor and Material Bonding, etc.

Payment Bond and Performance Bond may be waived on project less than $35,000.00.

Change Orders

For Change Orders Within City Council Authorized Budget Appropriations
Upon recommendation of the project/contract manager, and demonstration that a Change Order is necessary and reasonable, the City Manager is authorized to approve any and all Change Orders subject to the following limitations:

1. The total amount of any one change order shall not exceed $65,000.
2. The total amount of all change orders under any one contract not yet ratified by the City Council shall not exceed ten percent of the initial contract price or $300,000, whichever is less.
3. The total amount of the contract with all approved change orders is within the City Council authorized budget appropriation for the project.

For Change Orders in Excess of City Council Authorized Budget Appropriations
Upon recommendation of the project/contract manager, and demonstration that a Change Order is necessary the City Manager shall submit to the City Council, a Change Order Request to include the amount of requested funds and a written justification describing why the additional funds are necessary and the benefits to be derived.

If the City Council approves the Change Order Request, the City Manager shall take the necessary actions to enact the Change Order and complete the work in an expeditious manner in accordance with the City Council's direction.

If the City Council denies the Change Order Request, the City Manager shall report back to the Mayor and City Council with options as to how to accomplish the project/contract within the funds allocated.

In the event of an emergency or the need to take immediate or expeditious action necessary to protect or maintain the public health, safety, or welfare; or to prevent damage to public or private property, and with approval of the Mayor, the City Manager is authorized to enact Change Orders in excess of the legally authorized expenditure level. The City Manager shall timely report such actions to the City Council.

Travel Expenses

All expense payments or reimbursements for travel and/or subsistence expenses must meet the requirements set forth in the City of Kelso Travel Policy, which establishes policy and procedure related to obtaining travel authorization, advance travel funds, and expenditure or reimbursement for travel and subsistence expenses incurred in conduct of business of the City. Refer to the City of Kelso Travel Policy and Procedures for details.

Payment Processing

Approvals
Vendor invoices shall be signed for approval by the department head or designee. Reimbursements payable to City employees shall be signed for approval as follows:

- ☐ Council – approved by the Mayor, City Manager, or designee.
- ☐ Mayor – approved by the City Manager or designee.
- ☐ City Manager – approved by the Mayor or designee.
- ☐ Department Director – approved by the City Manager.

□ Other employees – approved by the direct supervisor or Department Director or designee. *Employees may not approve their own reimbursement.*

Accounts Payable

Invoices that are received by accounts payable via the US Postal Service will be date-stamped and routed to department heads or designee the day that they are received. Other invoices may be received directly by the department head or other staff, such as when items are picked up at will-call or services are performed on-site. For all invoices, department heads or designees will verify that the invoiced items have been received and that the invoiced amount is correct. There is one accounts payable check cycle scheduled each month, generally on the Thursday following the 3rd Tuesday of each month. All claims submitted not later than the 5th of the month will be processed in this cycle.

Hand-Issued Checks

Departments should avoid requests for hand-issued checks by submitting approved invoices to Accounts Payable as soon as invoices are received. If extenuating circumstances exist, a check may be hand-issued to avoid incurring penalties, interest, or late charges. Submit requests for hand-issued checks to Finance. Manual checks must be pre-approved by the Finance Director.

Store-Issued Charge Cards

Store-issued charge cards are not permitted.

Bank Credit Cards

Bank credit cards may be issued with the approval of the City Manager. They are to be used solely for City-authorized business purposes. Please see Credit Card Policy for additional details.

Petty Cash

Petty cash funds cover minor disbursements. Employees may be reimbursed from petty cash funds for authorized purchases that do not exceed the established petty-cash limit. Refer to Petty Cash Policy for additional details.

Budget Adjustments

Each department's authorizing staff must ensure that purchases are initiated only when departmental appropriations are sufficient to cover the anticipated cost. Expenditures that exceed departmental appropriations require the City Manager's approval.

Exhibit 1

PURCHASE QUOTATION SHEET

Company Name	Company Name	Company Name
_____	_____	_____
Phone #_____	Phone #_____	Phone #_____
Contact name	Contact Name	Contact Name
_____	_____	_____
Date _____	Date _____	Date _____

Description	Qty Req'd	Unit Unit Quote	Total Quote	Unit Quote	Total Quote	Unit Quote	Total Quote
ESTIMATED FREIGHT CHARGES							
		Subtotal					
		Sales Tax					
		TOTAL					

Signature of Person Receiving Quote _____ Date _____
Purchases of $5,000 or more require three (3) quotations which will become a part of the purchase request.

Exhibit 2

Sole Source Vendor Statement

Date: _____

To: Finance Director & Accounts Payable

From: _____(dept. name & name of person signing this form)

To Whom It May Concern:

This form justifies the proposed sole source purchase described below. In accordance with State of Washington regulations, City of Kelso must procure material, equipment, supplies and services by competitive means when the purchase is in excess of $7,500. However, in unusual circumstances the competitive process may be waived and sole source purchasing approved, provided the requesting party can adequately justify its use. In any such case where the purchase exceeds $7,500, the vendor shall certify in writing that the City is getting the lowest price it offers. Purchases in excess of $7,500 from a sole source vendor require prior approval of the Department Director or designee.

"Sole Source" means the product is unique and can be purchases from only one vendor.

If one of the reasons 1 through 4 below applies to this purchase, you need only to check the applicable reason and describe item being purchased below. If reasons 5 or 6 apply, please provide the item description and explanation below.

1. [ ] Proprietary. The item is under patent, copyright, or proprietary design.

2. [ ] Replacement part. The purchase is for replacement parts or components.

3. [ ] Technical service. The purchase is for technical service in connection with the assembly installation or servicing of equipment of a technical or specialized nature.

4. [ ] Continuation of work. We now require additional work, additional item or additional service, but we did not know it would be needed when the original order was placed.

5. [ ] Urgent requirement. Need must be met immediately. Please explain below the nature of the urgency, including an explanation of why the purchase is critical and why only the suggested vendor can meet it. (if this item is checked, there must be a resolution following within 2 weeks ratified by City Council)

6. [ ] Exclusive capability. Only one supplier qualified. No other suppliers known. Please explain below.

Item Description:

If explanations 5 or 6 were used, please provide an explanation below. Explain why the identified vendor is recommended:

_____

_____
Department Director or Designee

_____
Finance Director

Exhibit 3

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO DECLARING _____ AS THE SOLE SUPPLIER OF _____ FOR _____

WHEREAS, state law (cite), and the City's own purchasing ordinance requires purchases of materials and supplies over Seven Thousand Five Hundred dollars ($7,500.00) to be competitively bid; and

WHEREAS, the City must purchase _____ at a cost over _____; and

WHEREAS, the City has found _____; and

WHEREAS, a competitive bidding process would likely only produce one bid; and

WHEREAS, RCW 35.23.352(9) authorizes sole source purchasing without calling for bids; and

WHEREAS, the (statute) requires a resolution by Council declaring an exemption from bidding under the sole source provision.

NOW, THEREFORE, THE CITY COUNCIL DO HEREBY RESOLVE:

_____ Is the sole source for _____.

ADOPTED by City Council and **SIGNED** by the Mayor this _____ day of _____, 2013.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

Exhibit 4

Washington State Prevailing Wage Law

The Prevailing Wages on Public Works Act (Chapter 39.12 RCW) requires that employees of government contractors be paid prevailing wages for all public work. Agencies awarding public works contracts include state agencies, counties, municipalities and all political subdivisions of the state.

All public agencies, contractors performing public work, and construction workers on public works construction should be aware of their rights and legal responsibilities. Failing to comply with the provisions of Chapter 39.12
RCW may subject contractors and/or public agencies to liability for all unpaid prevailing wages and penalties.

The Department of Labor and Industries (L&I) administers the prevailing wage law. The Office of the Attorney General provides legal counsel to L&I and prosecutes violators. The State Auditor's Office ascertains if a public agency's policies, procedures and practices meet the requirements of the law.

Do not rely on this plain language description without reading the laws and regulations. The informal discussions below are meant to be helpful when read in conjunction with the laws and WAC rules. They are not meant to be a substitute for reading and understanding the laws. After reading the laws and regulations, please do not hesitate to contact the Prevailing Wage Office with any questions you may have.

The Prevailing Wages on Public Works Act

Enacted in 1945, the Washington State Public Works Act, also known as the "prevailing wage law", is a worker protection act. It requires that workers be paid prevailing wages when employed on public works projects, and on public building service maintenance contracts. (RCW 39.04.010, RCW 39.12.010, and RCW 39.12.020)

The Public Works Act is modeled after the federal Davis-Bacon Act, which was enacted to protect the employees of contractors performing public works construction from substandard earnings, and to preserve local wage standards.

The Public Works Act regulates wages paid to workers, laborers and mechanics performing public work. It does not apply to work that is clerical, executive, administrative or professional in nature. For example, the Act does not apply to the work of a secretary, engineer or administrator, unless they are performing construction work, alteration work, repair work, etc. Prevailing Wage application depends on the work that is performed, regardless of the worker's job title. Any doubts or questions regarding the applicability of the prevailing wage law should be directed to the Prevailing Wage Office. (RCW 39.12.020 and WAC 296-128-510 through 530)

What Is Public Work?

Public work is all work, construction, alteration, repair or improvement that is executed at the cost of the state or any other local public agency. This includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, ferry construction and utilities construction. (RCW 39.04.010)

What Is Prevailing Wage?

Prevailing Wage is defined as the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers, and mechanics. Prevailing wages are established, by the Department of Labor and Industries, for each trade and occupation employed in the performance of public work. They are established separately for each county, and are reflective of local wage conditions.

Awarding Agencies' Responsibilities

A. Contracts for Public Work: Employers are not responsible for making the legal determination of whether a contract does or does not meet the definition of a "public works" contract. Public agencies, in awarding a contract, must make the determination of whether that contract involves "public work" and communicate it to the employers in the bid specifications and contracts. The law does not allow public agencies to place this burden upon the employer. For example, it is insufficient to state, "Contractors shall comply with the prevailing wage law, if applicable". Agencies should seek the advice of legal counsel regarding when a contract is for public work. Before acting on advice that a contract is not for public work, agencies should contact the Prevailing Wage Office for a determination of the applicability of the statute. (RCW 39.04.010, RCW 39.12.030, RCW 39.12.040, and RCW 39.12.042)

B. Prevailing Wage Provisions: Awarding agencies must stipulate in bid specifications and contracts for public work that workers shall receive the prevailing rate of wage. Those documents must also contain a list of the applicable prevailing wage rates. Compliance with the law is not met by referring contractors to the department or other sources to obtain wage rate information. RCW 39.12.030

C. Public Building Service Maintenance Contracts: Public building service maintenance (janitorial) contracts of more than one year duration must include wage language recognizing the potential for future variance in applicable prevailing wages each year after the first year of the contract. RCW 39.12.020 and WAC 296-127-023

D. Disbursal of Public Funds: Agencies may not make any payments where employers have not submitted an Intent form that has been approved by the Industrial Statistician. Agencies may not release retainage until all employers have submitted an Affidavit form that has been certified by the Industrial Statistician. The requirement to submit these forms should also be stated in the contract. RCW 39.12.030, RCW 39.12.040 and RCW 39.12.042

E. Turnkey Projects (lessee/lessor relationships between public and private parties): Prevailing wages must be paid for any work, construction, alteration, repair or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities. RCW 39.04.260. It is the responsibility of the awarding agency to make an accurate determination as to whether the entire project falls within RCW 39.04.260 prior to entering into a lease relationship for space in a privately owned building. The determination is based on whether the awarding agency is causing the work to be performed and when at least fifty percent of the leased space is going to be occupied by one or more public agencies. If RCW 39.04.260 applies, all work performed in conjunction with the project is covered, not just the tenant improvements, and the project is subject to all provisions of RCW 39.12. Should the awarding agency fail to comply with all the provisions of RCW 39.04.260 and RCW 39.12.040, the awarding agency can be held responsible for any unpaid prevailing wages.

F. Contract Administration: Though not legally required, the following activities are recommended to ensure compliance with the Public Works Act.

I. Job site inspections should be performed on a routine or periodic basis to verify compliance. These inspections should include checking to see that a copy of the Intent is posted at the job site. Workers should be randomly interviewed to verify that prevailing wages are received. Apprentice workers should be asked to show their registration cards.

II. References should be checked when the agency is empowered to select the lowest responsible bidder. The department can advise an agency regarding an employer's history of wage claims. Check the Contractor Debarment List to find out if a contractor is debarred from bidding on public works projects.

III. Verify Contractor Registration Status and Verify Workers' Compensation Premium Status. Find out whether a contractor or other employer has an industrial insurance (workers' compensation) account with L&I and that their premiums are up to date.

Washington Public Agency Contract
Small Works and Consultant Rosters

This contract (the "Contract") is made by and between Municipal Research and Services Center of Washington ("MRSC"), a not-for-profit corporation, and the Washington local government (the "Public Agency"), City of Kelso.

1. Purpose. The purpose of this Contract is to provide the Public Agency with membership in MRSC Rosters.

2. Scope of Services. MRSC shall host the entire Public Agency's individual Small Public Works Roster ("Small Works Roster") and individual Consultant Roster ("Consultant Roster"), (collectively "Rosters"). MRSC shall advertise at least annually for the Small Works Roster and Consultant Roster in accordance with statutory requirements on behalf of the Public Agency. MRSC will assist small public works and consultant business (collectively, "businesses") with roster registration throughout the year, receive applications, review applicant eligibility for compliance with basic statutory eligibility requirements, and maintain business applications in an online database.

3. Effective Date and Term. This Contract shall be effective in the year in which it is signed on either May 1 if signed prior to May 1 or December 1 if signed prior to December 1, for a period of one year.

4. Access to MRSC Rosters by Public Agency Prior to Legal Notice. As of the Contract effective date, the Public Agency may access the MRSC Rosters database at www.mrscrosters.org by entering its account login information, as will be provided by MRSC. The Public Agency may search for and view business applications as of the effective date of the Contract, but it may not contact businesses about roster projects until after the legal notice is posted.

5. Notification of Transition to MRSC Rosters. As of the contract effective date, the Public Agency may begin notifying interested businesses that they may register with the Public Agency at any time in the MRSC Rosters, but that the Public Agency will not begin using the hosted rosters until after the legal notice is posted.

6. Roster Legal Notice. MRSC shall post the statutorily-required roster legal notice on behalf of the Public Agency in a newspaper of general circulation relative to the location of the Public Agency. The notice will occur the first Monday of January or June, or during the week of the first Monday of January or June for weekly newspapers.

7. Use of MRSC Rosters by Public Agency. As of the date of the applicable legal notice in January or June, all departments of the Public Agency will discontinue use of any previously-maintained rosters and begin using the MRSC Rosters exclusively when choosing to follow a roster contracting process, in accordance with the following statutory requirements:

(a) Small Works Roster. The Public Agency will use the Small Works Roster to select businesses for public work projects in accordance with RCW 39.04.155, as now or hereafter amended. The Public Agency shall be responsible for its own and the selected businesses' compliance with all other laws and regulations governing public works contracting, including retainage and bonds, prevailing wages, and any other applicable requirements.

(b) Consultant Roster. The Public Agency will use the Consultant Roster to select businesses for consultant projects in accordance with the laws and ordinances applicable to the Public Agency, including Chapter 39.80 RCW when contracting for architectural and engineering services. The Public Agency shall be responsible for its own and the selected businesses' compliance with all laws and regulations governing the purchase of services.

8. Compensation of Businesses. The Public Agency shall be responsible for payments to any business that it selects as a result of its use of MRSC Rosters. The Public Agency shall make all such payments directly to the businesses selected by the Public Agency.

9. Annual Membership Fee. The Public Agency will pay MRSC an annual membership fee based on the five-year average of the Public Agency's total capital expenditures. Payment of the annual membership fee is due within thirty (30) days of the Contract effective date.

Based on the following Membership Fee Scale, the Public Agency will pay an annual membership fee of $240.

Total Capital Expenditures	Annual Membership Fee
Less than 5 million	$120
5 to 10 million	$240
10 to 15 million	$360
15 to 25 million	$480
25 to 50 million	$600
More than 50 million	$900

10. Relationship of Parties. MRSC will perform the services under this Contract as an independent contractor and not as an agent, employee, or servant of the Public Agency. Nothing in this Contract shall be construed to render the parties partners or joint venturers.

11. Limitation of MRSC Liability. MRSC shall not be, directly or impliedly, a party to any contract with small works, consulting, or vendor businesses which the Public Agency may enter into as a result of the Public Agency's use of the MRSC Rosters. MRSC does not accept responsibility or liability for the performance of any business used by the Public Agency as a result of its use of the MRSC Rosters.

12. Hold Harmless and Indemnification. Each party shall defend, indemnify, and hold the other party harmless from any and all claims, injuries, damages, losses, or suits, including attorney fees, to the extent arising from any negligent act or omission of that party's officers, employees, volunteers, and agents in connection with the performance of this Contract.

13. Termination. This Contract may be terminated, with or without cause, by written notice of either party to the other. Termination shall be effective thirty (30) days after written notice. Termination of the contract by the Public Agency does not entitle the Public Agency to a refund of the membership fee prorated as to the time remaining in the contract term following termination.

14. Renewal. This Contract may be renewed annually by completing the online renewal process that includes confirming that the Public Agency will continue abiding by the terms outlined in this Contract and making payment within thirty (30) days from the effective date of either May 1 or December 1.

15. Non-assignment. MRSC shall contract with Upwards Technologies for the hosting of the Public Agency rosters in the online database. MRSC shall not otherwise subcontract or assign any of the rights, duties, or obligations imposed upon it by this Contract without the prior express written consent of the Public Agency.

16. Governing Law and Venue. This Contract shall be governed by the laws of the State of Washington.

18. Severability. Should any clause, phrase, sentence or paragraph of this Contract be declared invalid or void, the remaining provisions of this Contract shall remain in full force and effect.

19. Complete Agreement. This Contract constitutes the entire understanding of the parties. Any written or verbal agreements that are not set forth herein or incorporated herein by reference are expressly excluded.

20. Public Agency Information. For purposes of Contract administration, the Public Agency provides the following information:

Official Public Agency Name: City of Kelso

Common Public Agency Name (if different): _____

Mailing Address: PO Box 819
Kelso, WA 98626

County: Cowlitz

Type of Public Agency: City

Website: www.kelso.gov

Primary Contact:		Additional Contact:	
Name:	Michael G. Kardas	Name:	Nina Caulfield
Title:	Community Development Director/City Engineer	Title:	Project Coordinator
Email:	mkardas@kelso.gov	Email:	ncaulfield@kelsol.gov
Telephone:	360-577-3376	Telephone:	360-577-3373
Facsimile:	360-423-6591	Facsimile:	360-423-6591

21. Signatures. By signing this Contract, the Public Agency signatory below certifies that he/she has the authority to enter into this Contract on behalf of the entire Public Agency.

PUBLIC AGENCY

[Signature]

City Manager

[Title]

11-12-2015

[Date]

MRSC

[Signature]

MRSC Rosters Manager

[Title]

11/25/2015

[Date]

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF KELSO AMENDING THE PROCUREMENT POLICIES AND PROCEDURES.

WHEREAS, the City has maintained its own local small works and consultant roster for purposes of public works projects wishes to transfer to the roster maintained by Municipal Research Services Center to take advantage of greater efficiencies and a wider pool of contractors; and

WHEREAS, the City wishes to amend the Procurement Policies and Procedure adopted by Resolution 13-1095 to reflect the change in the maintenance of a small works and consultant roster from the Community Development/Engineering Department to Municipal Research and Services Center "MRSC".

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO RESOLVE AS FOLLOWS:

Section 1. The City Council of the City of Kelso hereby amends the "Procurement Policies and Procedures", dated December 15, 2015, a copy of which is attached as Exhibit A and incorporated herein by this reference as if set forth in full.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of _____, 2015.

_____
MAYOR

ATTEST/AUTHENTICATION:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

AGENDA SUMMARY SHEET

Business of the City Council
City of Kelso, Washington

SUBJECT TITLE:
Resolution to adopt the 2016-2021 Capital Improvement Program

Agenda Item:

Dept. of Origin: Com Dev/Engineering

For Agenda of: December 15, 2015

PRESENTED BY:
Michael Kardas, P.E.
Community Development Director/City Engineer

Cost of Item:

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:
Resolution
CIP Summary Spreadsheet

SUMMARY STATEMENT:
The attached 2016 to 2021 Six-Year Capital Improvement Program identifies budgets and proposed schedules for specific projects in Transportation, Water, Sewer, and Drainage. Overall this plan represents what can be accomplished within the proposed six year period. Each project listed is either funded or has a specific funding plan identified.

The six year program as presented totals $61,205,000 and composed by program as follows:

Water Capital	$ 9,370,000
Sewer Capital	$ 5,225,000
Transportation	$43,525,000
Drainage	$ 3,085,000

Most of the projects contained in this document originated from various City master plans or previous versions of the CIP. Staff will be developing a detailed process for prioritization in the coming year and apply it to the next version of the CIP.

FINANCIAL SUMMARY:
Approval of the CIP does not constitute a financial commitment by the Council. Project funding approval will still occur as part of the City's budget process.

RECOMMENDED ACTION:
Staff recommends Council to make a motion to pass the resolution adopting the 2016-2021 CIP.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO RELATED TO CAPITAL IMPROVEMENTS AND ESTABLISHING THE CITY'S CAPITAL IMPROVEMENT PROGRAM FOR THE PERIOD OF 2016 – 2021.

WHEREAS, the Council finds that the formal adoption of a process for the formulation of a Capital Improvement Program will effectuate and insure that the City's Capital Improvement needs as properly determined, given the limited resources available; and

WHEREAS, Staff has prepared a Capital Improvement Program to identify and implement the City's Capital Improvement needs for the period of 2016 – 2021; and

WHEREAS, the Council finds that the Plan submitted is consistent with its assessment of the needs and priorities for the period slated, and by the Resolution seeks to formally adopt such plan as the official Capital Improvement Plan of the City of Kelso, Washington; and

WHEREAS, the Council, further by this Resolution, seeks to formulate a six (6) year Capital Improvement Plan that will qualify as a condition for the submission of various grant and loan requests to include the Washington State Department of Community Development Public Works Trust Fund Loan Program; now, therefore,

IT IS HEREBY RESOLVED that the document entitled "City of Kelso, Washington, Capital Improvement Projects 2016 – 2021," marked as Exhibit A and attached hereto, is adopted as the official Capital Improvement Program for the City of Kelso, Washington, superseding and replacing any prior edition of the Capital Improvement Program. Staff is directed to implement the City's Capital Improvements in accordance with said Plan.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of _____**,** 2015.

_____
MAYOR

ATTEST/AUTHENTICATION:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

2016 - 2021 CIP Summary Spreadsheet

Water Projects		2016	2017	2018	2019	2020	2021	Program/Project Total
Annual Small Dia/AC Replacement	W-1	$ 150,000	$ 150,000	$ 200,000	$ 200,000	$ 250,000	$ 250,000	$ 1,200,000
WTP Backwash Recovery Evaluation	W-2			$ 50,000				$ 50,000
Water Infrastructure Mapping	W-3	$ 50,000						$ 50,000
S. Kelso Drive -Haussler to Carrols Rd Ph.I	W-4	$ 1,000,000						$ 1,000,000
Minor Road Reservoir Replacement	W-5	$ 4,800,000						$ 4,800,000
Alternative Source Analysis	W-6		$ 175,000					$ 175,000
4th Avenue-Allen to Oak	W-7			$ 100,000				$ 100,000
N. Kelso-Pacific-Redpath to Dirk	W-8		$ 75,000	$ 475,000				$ 550,000
Water System Plan Update	W-9		$ 200,000					$ 200,000
Paxton Supply Line Ph. ll	W-10				$ 620,000			$ 620,000
Grade Supply Line Ph. lll	W-11					$ 500,000		$ 500,000
Auxiliary Power Improvements	W-12			$ 125,000				$ 125,000
		$ 6,000,000	**$ 600,000**	**$ 950,000**	**$ 820,000**	**$ 750,000**	**$ 250,000**	**$ 9,370,000**

Sewer Projects		2016	2017	2018	2019	2020	2021	Program/Project Total
Annual Sewer Replacement	S-1	$ 550,000	$ 400,000	$ 400,000	$ 400,000	$ 400,000	$ 400,000	$ 2,550,000
Manasco Interceptor Flooding Study	S-2	$ 25,000						$ 25,000
Allen Street Pump Station	S-3		$ 200,000					$ 200,000
Donation Pump Station	S-4				$ 250,000	$ 2,200,000		$ 2,450,000
		$ 575,000	**$ 600,000**	**$ 400,000**	**$ 650,000**	**$ 2,600,000**	**$ 400,000**	**$ 5,225,000**

Transportation		2016	2017	2018	2019	2020	2021	Program/Project Total
Citywide Pavement Preservation	T-1	$ 545,000	$ 150,000	$ 150,000	$ 150,000	$ 150,000	$ 200,000	$ 1,345,000
Sidewalk Improvement Program	T-2	$ 50,000	$ -	$ 50,000	$ -	$ 50,000	$ -	$ 150,000
CHAP Street Overlay/Minor Road Restoration	T-3	$ 400,000	$ 400,000	$ 200,000	$ 200,000	$ 200,000	$ 200,000	$ 1,600,000
Yew Street Reconstruction/Construction	T-4	$ 30,000	$ 1,500,000					$ 1,530,000
S. Kelso RR Crossing Environmental Permitting	T-5	$ 400,000	$ 500,000					$ 900,000
S. Kelso RR Crossing Design	T-6			$ 1,600,000				$ 1,600,000
S. Kelso RR Crossing Construction	T-7				$ 7,500,000	$ 7,500,000	$ 7,500,000	$ 22,500,000
Talley Way Bridge Scour Repair	T-8	$ 100,000						$ 100,000
West Main Revitalization Project/Construction	T-9	$ 850,000						$ 850,000
Functional Classification Study	T-10	$ 100,000						$ 100,000
Streetlight Upgrades and Enhancements	T-11		$ 50,000	$ 250,000				$ 300,000
5th Avenue Streetscape	T-12		$ 130,000	$ 520,000				$ 650,000
Oak Street Revitalization	T-13			$ 100,000	$ 400,000			$ 500,000
Grade Street Corridor Enhancements	T-14					$ 400,000	$ 1,500,000	$ 1,900,000
W. Main St. Phase 2 Design	T-15			$ 500,000				$ 500,000
W. Main St. Phase 2 Right of Way Acquisition	T-16				$ 4,500,000			$ 4,500,000
W. Main St. Phase 2 Construction	T-17					$ 2,000,000		$ 2,000,000
Talley Way Corridor & Bridge Design	T-18						$ 2,500,000	$ 2,500,000
		$ 2,475,000	**$ 2,730,000**	**$ 3,370,000**	**$ 12,750,000**	**$ 10,300,000**	**$ 11,900,000**	**$ 43,525,000**

Drainage		2016	2017	2018	2019	2020	2021	Program/Project Total
Annual Drainage Upgrades	D-1	$ 25,000	$ 50,000	$ 50,000	$ 50,000	$ 50,000	$ 75,000	$ 300,000
Minor Road Storm Drain Evaluation /Repair	D-2	$ 35,000						$ 35,000
Chestnut Street PH 1 - Construction	D-4	$ 400,000						$ 400,000
Minor Road Storm Drain PH 1	D-3		$ 350,000					$ 350,000
Chestnut Street PH 2	D-6			$ 400,000				$ 400,000
Minor Road Storm Drain PH 2	D-5				$ 400,000			$ 400,000
Minor Road Storm Drain PH 3	D-7						$ 400,000	$ 400,000
Chestnut Street PH 3	D-8					$ 400,000		$ 400,000
Minor Road Storm Drain PH 3	D-7						$ 400,000	$ 400,000
		$ 460,000	**$ 400,000**	**$ 450,000**	**$ 450,000**	**$ 450,000**	**$ 875,000**	**$ 3,085,000**

	$ 61,205,000