Shaping our community together

CITY OF LACEY

LACEY CITY COUNCIL WORKSESSION

THURSDAY, SEPTEMBER 8, 2022
6:00 P.M. –8:00 P.M.
REMOTE AND IN PERSON

The Lacey City Council Worksession will be conducted both remote and in person.

The public may attend the meeting in person in the Council Chambers at Lacey City Hall, 420 College Street SE, Lacey, Washington, or you may view or listen to the meeting by using one of the following platforms:

Live through Zoom: https://us02web.zoom.us/j/86364171054
Live or as a recording on YouTube: https://youtu.be/d-R2AZ-34w8
Listen via telephone: **(888) 788-0099** or **(877) 853-5247 (Webinar ID 863 6417 1054)**

The public may submit written public comments by email to publiccoment@ci.lacey.wa.us. Written comments will be provided to the City Council electronically prior to the meeting. Comments will not be addressed during the meeting; however, comments received will be added to the official record. The comment period will close at **4:00 p.m. on September 8, 2022.**

AGENDA

6:00 CAPITAL FACILITIES PLAN BRIEFING
RYAN ANDREWS, PLANNING MANAGER
(PRESENTATION)

6:45 HISTORICAL COMMISSION TERMS
JENNIFER BURBIDGE, PARKS, CULTURE & RECREATION DIRECTOR
(STAFF REPORT)

7:15 FLAG POLICY REVIEW
SHANNON KELLEY-FONG, ASSISTANT CITY MANGER
(STAFF REPORT)

7:45 RFP FOR PEG SERVICES
SHANNON KELLEY-FONG, ASSISTANT CITY MANAGER
(STAFF REPORT)

8:00 ADJOURN

LACEY CITY COUNCIL WORKSESSION
September 8, 2022

SUBJECT: **Lacey Historical Commission Term Change Proposal**

RECOMMENDATION: **Review proposed Historical Commission Term Change Proposal.**

STAFF CONTACT: Scott Spence, City Manager
Jen Burbidge, Parks, Culture & Recreation Director

ORIGINATED BY: Parks, Culture & Recreation Department

ATTACHMENTS: 1. Lacey Historical Commission Term Change Proposal

FISCAL NOTE: N/A

PRIOR REVIEW: Historical Commission reviewed and approved at their April 20, 2022 meeting.

BACKGROUND:

The Lacey Historical Commission was formed in 1979. At the time, there were nine Commissioners. Terms were staggered to ensure consistency; every year three Commissioners' terms would expire. That first year three people had a one-year term, three people had a two-year term and three people had a three-year term. Thereafter, terms were for three years. Over the years, a number of events occurred that created a situation where in 2022, there are five Commissioners' terms expiring in 2022, two expiring in 2023 and none had expired in 2021.

In order to correct the situation and return to regularly staggered expiration dates, staff proposed term updates, and the Historical Commission approved (see attached).

Staff are now seeking approval from the City Council for the term updates.

ADVANTAGES:

1. Returns the expiration dates to the original intention.
2. Ensures consistency for the board with staggered term expiration dates.

DISADVANTAGES:

1. No disadvantages identified.

Lacey Historical Commission Term Change Proposal

Name	Current Term Exp.	Proposed Term Exp.	Length on Commission
Erich Ebel	9/13/2022	9/13/2022	8 years, in second term (expired + 2 terms)
Alan Tyler	9/13/2022	9/13/2022	7 years, in second term (expired + 2 terms)
Kimberly Goetz	9/13/2022	9/13/2023	5 years, in first term (expired + 1 term)
David Black	9/13/2022	9/13/2023	2 years, in 1st term
Jim Keogh	9/13/2023	9/13/2023	1 year, in 1st full term
Sarah Thirtyacre	9/13/2022	9/13/2024	3 years, in 1st term, going in to 2nd term
VACANT	9/13/2023	9/13/2024	New person will be filling unexpired term

LACEY CITY COUNCIL WORKSESSION
September 8, 2022

SUBJECT:	**Flag Policy Review**
RECOMMENDATION:	**No action necessary. Pending direction of the Lacey City Council, staff may bring the updated Flag Policy to the 09.15.2022 Regular Meeting for consideration through a resolution.**
STAFF CONTACT:	Scott Spence, City Manager Shannon Kelley-Fong, Assistant City Manager
ATTACHMENTS:	Attachment 1 - Draft update of the City of Lacey's City Council Policy and Procedures Manual Section 5.12, Flag Policy
PRIOR REVIEW:	May 23, 2022 – Commission on Equity June 6, 2022 – City Council Community Relations Committee (Juneteenth Flag) June 9, 2022 – City Council Worksession (Juneteenth Flag) July 25, 2022 – Commission on Equity

BACKGROUND:

The Commission on Equity's (COE) 2022 Workplan identified the following task:

"City Recognitions Review & Recommendations | Heritage Month Recognitions"

Within this task, at the May 23, 2022, meeting, the COE reviewed the City of Lacey's ("City") City Council Policy and Procedures Manual ("Manual") Section 5.12, Flag Policy, and Section 5.09, Reviewing Public Requests for Proclamations. Given the limited time before the upcoming Juneteenth holiday and 41st Juneteenth Celebration event, at this meeting, the COE recommended moving forward with seeking Lacey City Council approval to fly the Juneteenth Flag at the Regional Athletic Center (RAC) or City Hall on June 18 and 19, 2022. At this meeting, the COE decided to consider a comprehensive flag policy update recommendation at a future COE meeting.

After review by the Community Relations Committee, the Lacey City Council approved displaying the Juneteenth Flag at the RAC in 2022, at the Worksession meeting on June 9, 2022. In addition, the Lacey City Council requested that the COE continue to comprehensively review the existing Flag Policy and make recommendations on potential updates.

At the July 25, 2022, meeting, the COE recommended that the Lacey City Council adopt the draft updated Flag Policy, see **Attachment 1**.

In its current form, the Flag Policy reads:

> **5.12 Flag Policy**
> The flag policy shall apply to all City-owned locations at which the City flag is displayed.
>
> The Lacey Council may choose to fly a different flag in place of the City flag. Any decision to fly a different flag must be made independently by the Council. The approval to fly a flag in place of the City flag must be made by a majority of the Council at any regular Council meeting. The decision can be made to fly the flag for a specific period of time or on a recurring annual basis.
>
> Any flag flown by the City must be purchased and owned by the City.
> *Council Approved Flags*
>
> - Sister City Flag: The flag of Lacey's sister city may be flown during the visit of a sister city delegation to City Hall.
>
> - The Pride Flag: The Pride Flag will be flown annually from June 1 to June 30.

The City has flag poles at the following City-owned facilities:

TABLE A		
Location	**# of Flag Poles**	**Flags Presented**
City Hall	3	US Flag POW Flag Washington State City of Lacey
Public Works Shop (commonly referred to as “the Shop”)	1	US Flag City of Lacey
RAC	1	US Flag City of Lacey
Lacey Civic Plaza	1	US Flag POW Flag Washington State City of Lacey
Woodland Community Center	1	US Flag City of Lacey
Hawks Prairie (near Home Depot)	2	US Flag Washington State (Poles are not tall enough to fly two flags on a pole)

Figure 1: Flag Poles at City Hall.

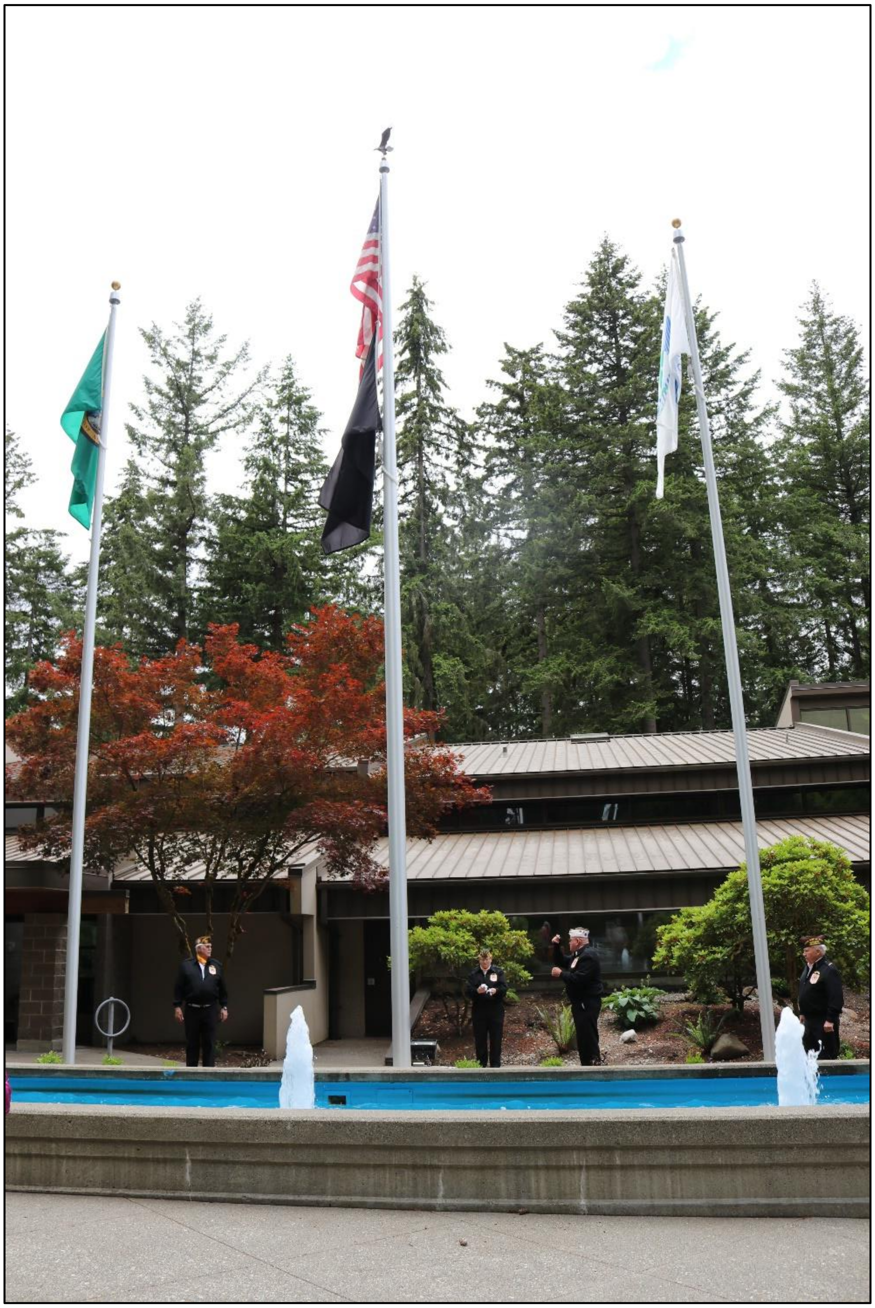
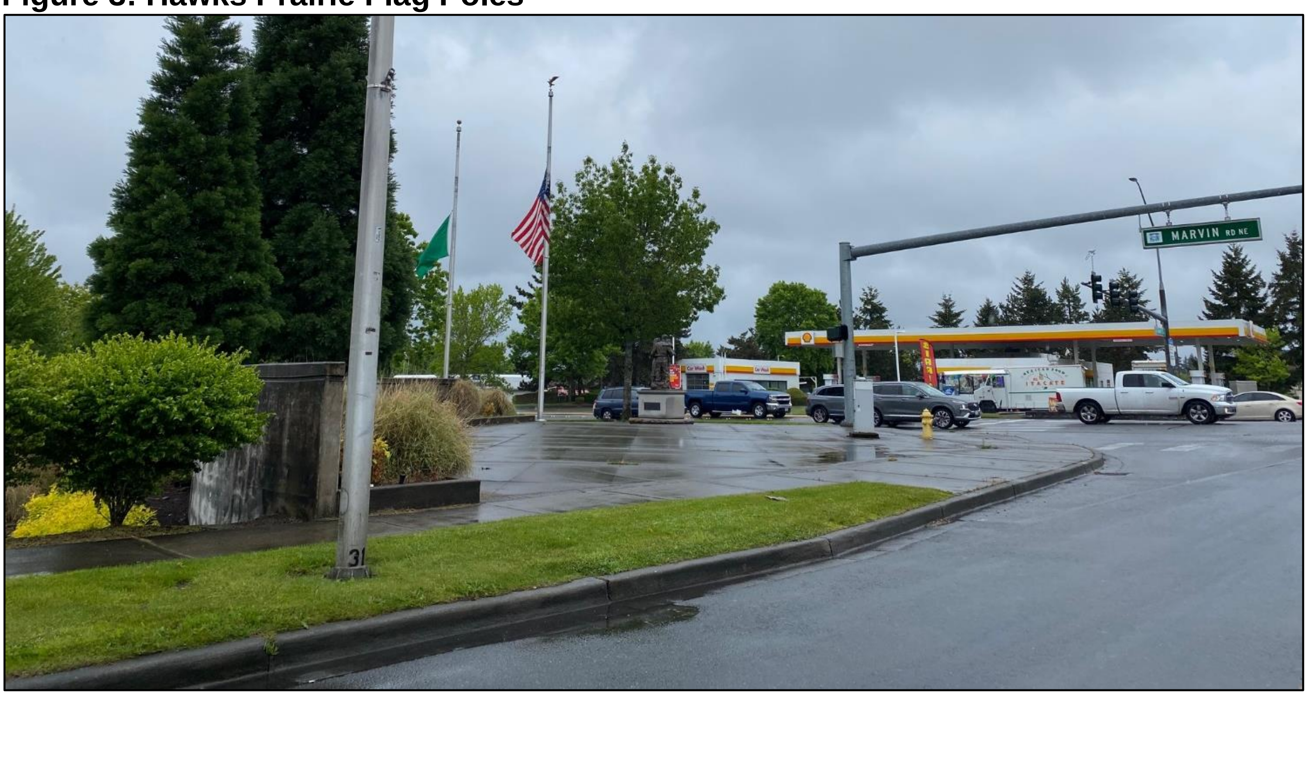


Figure 2: Flag Poles at Lacey Civic Plaza

Figure 3: Hawks Prairie Flag Poles



Statutory Requirements for Flag Display: In Washington, code cities, like the City of Lacey, must prominently install, display, and maintain the U.S. and Washington State flags on city buildings, see RCW 35A.21.180.

Per RCW 1.20.017, every city, town, and county in Washington must display the U.S. flag, the Washington State Flag, and the POW-MIA flag near its principal buildings on the following days:

- **April 9** (Former Prisoners of War Recognition Day)
- **March 30** (Welcome Home Vietnam Veterans Day)
- **Third Saturday in May** (Armed Forces Day)
- **Last Monday in May** (Memorial Day)
- **June 14** (Flag Day)
- **July 4** (Independence Day)
- **July 27** (Korean War Veterans Armistice Day)
- **Third Friday in September** (POW/MIA Recognition Day)
- **November 11** (Veterans' Day)
- **December 7** (Pearl Harbor Remembrance Day)

Flag Etiquette: The display of the American flag should generally follow the protocol in the United States Flag Code (4 U.S.C. Ch. 1). However, courts have interpreted the Flag Code to be advisory only and there are no penalties for violating it.

The Flag Code states that:

- The U.S. flag should be displayed every day of the year, except on days of inclement weather, on or near the main administration building of every public institution.
- It is custom to fly the U.S. flag only during daylight hours, but it may be flown permanently if properly illuminated at night.
- The U.S. flag should fly in the highest position of honor, and no flag may be flown higher.
- The U.S. flag should be hoisted briskly and lowered ceremoniously.

Per the Washington Secretary of State, the Washington State flag should be displayed in the highest position of honor after the U.S. flag and the flags of any other nations. It should be displayed in a higher position of honor than the flags of other states, counties, cities, or any other entity. When the U.S., Washington State, and POW-MIA flags are flown on a single pole, the U.S. flag should be on top, followed by POW-MIA flag and then the state flag. If there are two poles, the POW/MIA flag should be flown under the U.S. flag while the state flag is on the other pole. For more information, see MRSC's Flag Display: What Every Jurisdiction Should Know: MRSC - Flag Display: What Every Jurisdiction Should Know.

TABLE B	
Flag Etiquette Display	
Single Flag Pole	**Two Flag Poles**
	
	 
	

Recommendations: At the July 25, 2022, meeting, the COE recommended incorporating the following flag displays into an updated Flag Policy, see **Attachment 1.**

A. Display the Progress Pride Flag rather than Rainbow Pride Flag

In 2016, the City first displayed the Rainbow Pride flag, see **Figure 4**. The City did not display the Pride flag in 2017. However, the City adopted a flag policy in 2018 standardizing the display of the Pride flag during the month of June.

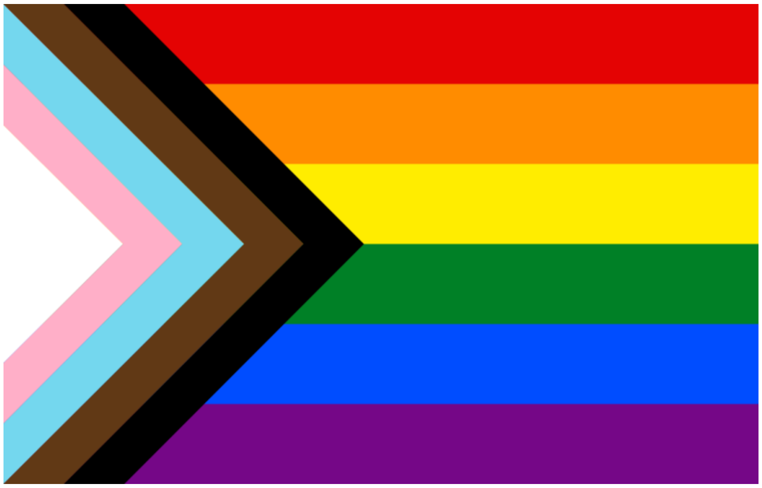
The Rainbow Pride flag is designed to represent the Lesbian, Gay, Bisexual, Transgender, Questioning/Queer, Asexual, and all other identities that fall into the LGBTQA+ community. The Rainbow flag was created by Gilbert Baker in 1978. Commonly, the Rainbow flag consists of horizontal stripes of red, orange, yellow, green, indigo, and violet. The colors often represent the following:

- **Red:** Life
- **Orange:** Healing
- **Yellow:** Sunlight
- **Green:** Nature
- **Blue:** Harmony/Peace
- **Violet:** Spirit

Figure 4: Rainbow Pride Flag

Like the Rainbow Pride flag, the Progress Pride flag is designed to represent the LGBTQIA+ community, see **Figure 5**. In addition, the Progress Rainbow flag, created in 2018 by Daniel Quasar, recognizes, centers, and supports voices that have historically been marginalized members of the Queer community, with an emphasis on People of Color, the Transgender community, and community members lost to, or living with AIDs and HIV, with the integration of the forward-facing chevron on the left side of the flag.

Figure 5: Progress Pride Flag



COE Recommendation: Display the Progress Pride Flag annually from June 1 to June 30, with the exception of when the Juneteenth Flag is displayed (see below).

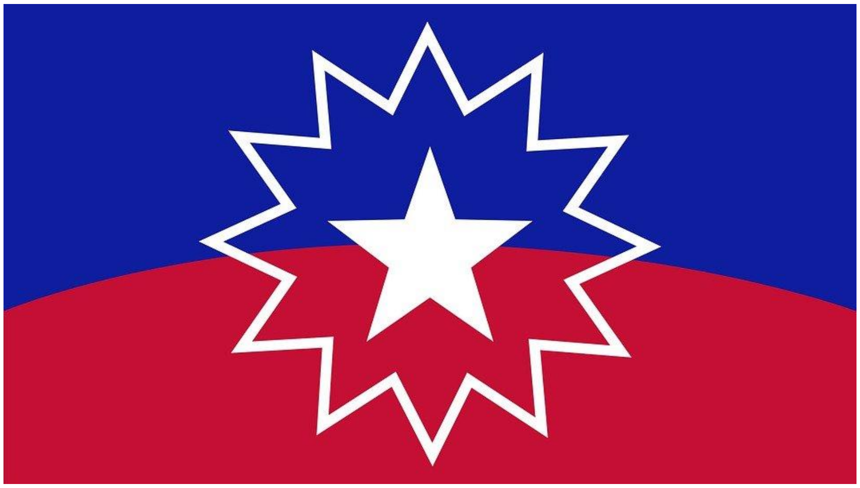
B. **Display the Juneteenth Flag:** In 2022, the Lacey City Council approved displaying the Juneteenth Flag at the RAC during the 41st Juneteenth Celebration to celebrate the federal and state holiday.

The Juneteenth Flag's creation was led by activist Ben Haith, founder of the National Juneteenth Celebration Foundation (NJCF). In 1997, Haith and other collaborators, including Lisa Jeanne Graf, designed the flag, see **Figure 6**.

In brief, the symbols incorporated into the Juneteenth flag represent:

- White Star – Texas and the last remaining enslaved people
- Burst – A new beginning for African Americans in the United States
- Red Arc – New opportunities for black Americans on the horizon
- Red, White, and Blue colors – the American flag and a reminder that slave and descendants are Americans.

Figure 6: Juneteenth Flag



COE Recommendation: Display the Juneteenth Flag annually from June 19 to the third weekend of June <u>or</u> the third weekend of June to June 19 depending on which comes first, at City Hall and the RAC.

C. Display Nisqually Indian Tribe and Squaxin Island Tribe Flags. Display these flags provided the Nisqually Indian Tribe and Squaxin Island Tribe respectively approve.

Figure 5: Nisqually Indian Tribe Flag

Figure 6: Squaxin Island Tribe Flag (Displayed at City of Olympia City Hall)

COE Recommendation: During Indigenous Peoples Heritage Month (November), also known as Native American Heritage Month, display the Nisqually Indian Tribe Flag from November 1 to November 15 provided the City annually receives consent from the Nisqually Indian Tribe. Display the Squaxin Island Tribe Flag annually from November 16 to November 30 provided the City annually receives consent from the Squaxin Island Tribe.

Attachment 1 provides a draft of an updated Manual Section 5.12, Flag Policy, that integrates the above recommendations. In addition, the draft also adds the following elements:

- purpose of the policy;
- how flags are to be displayed;
- that City flagpoles are to be used exclusively by the City as a form of government expression;
- the Commission on Equity's role in the process; and
- approval information.

ATTACHMENT 1

Draft Update to the City's Flag Policy:

5.12 Flag Policy

The purpose of the policy is to establish guidelines in order to ensure that the flags are used only for government speech and that they reflect the views, values, and goals of the city. The City's flagpoles are not intended to serve as a forum for free expression by the public. The City will not display a ceremonial flag based on a request from a third party, nor will the City use its flagpoles to sponsor the expression of a third party.

Flags shall be displayed in conformance with Federal and State laws and policies, as stated in the Federal "The Flag" publication of the Congress, Title 4, Chapter, 1 of the United States Code, and the State of Washington Revised Code of Washington 35A.21.180 and RCW 1.20.017.

Based on guidance from the Washington Secretary of State, the Washington State flag should be displayed in the highest position of honor after the U.S. flag and the flags of any other nations. The Washington State flag should be displayed in a higher position of honor than the flags of other states, counties, cities, or any other entity. When the U.S., Washington State, and POW-MIA flags are flown on a single pole, the U.S. flag should be on top, followed by POW-MIA flag and then the Washington State flag. If there are two poles, the POW/MIA flag should be flown under the U.S. flag while the Washington State flag is on the other pole.

Any flag flown by the City must be purchased and owned by the City.

Alternatives to Displaying the City Flag:
~~The flag~~ This policy shall apply to all City-owned locations at which the City flag is displayed, unless otherwise noted.

Location	# of Flag Poles	Flags Presented
City Hall	3	US Flag POW Flag Washington State City of Lacey
Public Works Shop (commonly referred to as “the Shop”)	1	US Flag City of Lacey
RAC	1	US Flag City of Lacey
Lacey Civic Plaza	1	US Flag POW Flag Washington State City of Lacey
Woodland Community Center	1	US Flag City of Lacey
Hawks Prairie (near Home Depot)	2	US Flag Washington State (Poles are not tall enough to fly two flags)

The City’s flagpoles are to be used exclusively by the City, where the Lacey City Council may display a commemorative flag as a form of government expression. The Lacey Council may choose to fly a different flag in place of the City flag. Any decision to fly a different flag must be made independently by the Council. The Lacey City Council may request the Commission on Equity to review and provide recommendations on flag displays. The approval to fly a flag in place of the City flag must be made by a majority of the Council at a~~ny~~ regular Council meeting. ~~The decision can be made to fly the flag for a specific period of time or on a recurring annual basis.~~ The Lacey City Council approval will include a description of the flag to be displayed and the dates for display of the particular flag, including if the flag will be displayed on an annual basis. Flags authorized by the Lacey City Council to be displayed on an annual basis should be incorporated into this policy.

Council Approved Flags

- **Sister City Flag:** The flag of Lacey’s sister city may be flown during the visit of a sister city delegation to City Hall.

- **The Progress Pride Flag:** The Progress Pride Flag will be flown annually from June 1 to June 30, with the exception of when the Juneteenth Flag is flown (see below).

- **The Juneteenth Flag:** The Juneteenth Flag will be flown annually from June 19 to the third weekend of June or the third weekend of June to June 19 depending on which comes first, at City Hall and the Regional Athletic Complex.

- **The Nisqually Indian Tribe Flag:** The Nisqually Indian Tribe Flag will be flown annually from November 1 to November 15 provided the City annually receives consent from the Nisqually Indian Tribe.

- **Squaxin Island Tribe Flag:** The Squaxin Island Tribe Flag will be flown annually from November 16 to November 30 provided the City annually receives consent from the Squaxin Island Tribe.

LACEY CITY COUNCIL WORKSESSION
September 8, 2022

SUBJECT:	**Public, Education, and Government (PEG) Television Production and Access Update**
RECOMMENDATION:	**No action at this time. Informational only.**
STAFF CONTACT:	Scott Spence, City Manager Shannon Kelley-Fong, Assistant City Manager
ORIGINATED BY:	City Manager's Department
ATTACHMENTS:	1. Interlocal Agreement between Thurston County, City of Lacey, City of Olympia and City of Tumwater for Public, Education, Government services Request for Proposal 2. AG-09.0005 - Comcast Franchise, Section 3, Franchise Fee, and Section 9, Access.
FISCAL NOTE:	To be determined.
PRIOR REVIEW:	None

BACKGROUND:

The City of Lacey, City of Olympia, City of Tumwater, and Thurston County ("Jurisdictions") are working together through an Interlocal Agreement (ILA), **Attachment 1**, to solicit proposals for qualified contractors to become the Designated Service Provider for Public, Education, and Government (PEG) television production and programming services for each respective jurisdiction through a Request for Proposal (RFP) process.

The City anticipates the RFP will be issued mid to late September and, if a contract is awarded, it would be executed no later than mid-December. It is anticipated that services under a contract would commence on January 1, 2023. Notably, each jurisdiction reserves the right to select its own contractor through this process, as well as the right to not enter into an agreement through this process. Regarding the latter, in addition to this RFP, the City of Lacey ("City") will be researching in-house options for government television services as well.

CABLE FRANCHISE AGREEMENTS:

Each of the Jurisdictions have 10-year franchise agreement with Comcast Cable Communications, LLC ("Comcast") to provide cable television services to residents. The current franchise agreements expire in 2031. These cable franchises are non-exclusive, and as such, the Jurisdictions may enter into additional cable franchise agreements in the future with other cable providers.

The Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 authorize cable franchising authorities, like the Jurisdictions, to establish franchise requirements for facilities and equipment, and to require channel capacities for public, educational, and governmental (PEG) use from franchised cable companies. Lacey's existing franchise agreement with Comcast outlines the provision of these types of services in Section 9, Access, **Attachment 2**. Pursuant to Section 9.5 of the Comcast franchise agreement, Comcast provides the City with "thirty cents ($0.30) per month per Residential Subscriber (the "PEG Contribution") to be used solely for capital costs related to Public, Educational and Governmental Access, or as may be permitted by Applicable Law."

Public, Educational and Governmental Access (PEG): PEG is described by the Federal Communication Commission (FCC)[1] as the following:

> "Pursuant to Section 611 of the Communications Act, local franchising authorities may require cable operators to set aside channels for public, educational, or governmental ("PEG") use.
>
> **Public** access channels are available for use by the general public. They are usually administered either by the cable operator or by a third party designated by the franchising authority.
>
> **Educational** access channels are used by educational institutions for educational programming. Time on these channels is typically allocated among local schools, colleges and universities by either the franchising authority or the cable operator.
>
> **Governmental** access channels are used for programming by local governments. In most jurisdictions, the local governments directly controls these channels.
>
> ***PEG channels are not mandated by federal law, rather they are a right given to the franchising authority, which it may choose to exercise.*** The decision whether to require the cable operator to carry PEG channels is up to the local franchising authority. If the franchise authority does require PEG channels, that requirement will be set out in the franchise agreement between the franchising authority and the cable operator.
>
> Franchising authorities may also require cable operators to set aside channels for educational or governmental use on institutional networks, i.e., channels that are generally available only to institutions such as schools, libraries, or government offices.
>
> Franchising authorities may require cable operators to provide services, facilities, or equipment for the use of PEG channels.

[1] Public, Educational, and Governmental Access Channels ("PEG Channels") | Federal Communications Commission (fcc.gov)

In accordance with applicable franchise agreements, local franchising authorities or cable operators may adopt on their own, non-content-based rules governing the use of PEG channels. For example:

- Rules may be adopted for allocating time among competing applicants on a reasonable basis other than the content of their programming.

- Minimum production standards may be required.

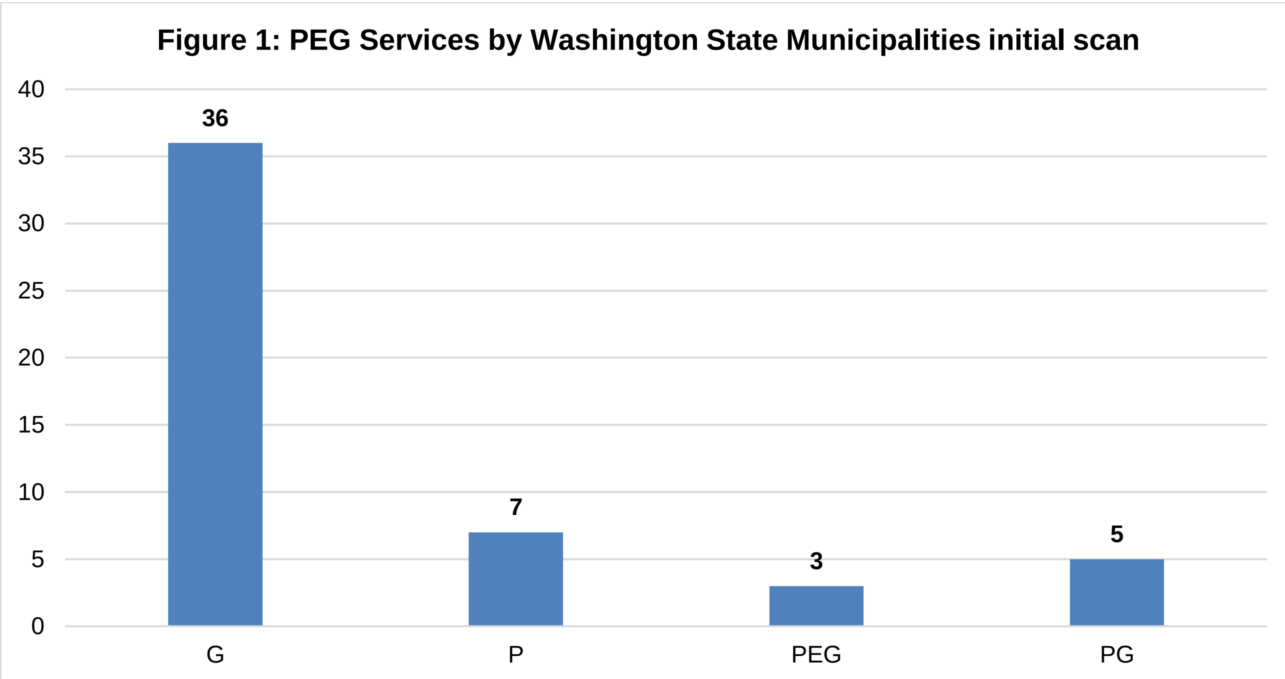
- Users may be required to undergo training.

Federal law permitted a cable operator to prohibit the use of a PEG channel for programming that contains obscene material, sexually explicit conduct, indecency, nudity, or material soliciting or promoting unlawful conduct. However, the U.S. Supreme Court determined that this law was unconstitutional. Therefore, cable operators may not control the content of programming on public access channels with the exception that the cable operator may refuse to transmit a public access program, or a portion of the program, which the cable operator reasonably believes contains obscenity.

PEG channel capacity that is not in use for its designated purpose may, with the franchising authority's permission, be used by the cable operator to provide other cable services. Franchising authorities are directed by federal law to prescribe rules governing when this use is permitted."

(***Emphasis*** added by City staff)

Figure 1 and **Table A** provide a preliminary scan from readily available data on PEG services offered by different municipalities in Washington State.[2]



[2] Preliminary Staff research including websites, municipal codes, readily available franchise agreements, and List of public-access TV stations in the United States (Utah–Wyoming) - EverybodyWiki Bios & Wiki

Table A					
PEG Services, Franchise Fees and Utility Taxes in Peer Municipalities in Washington State (initial scan)					
Municipality	**Population**	**PEG*[3]** P = Public E = Education G =Government N = None U= Unknown	**Franchise Fee[4]** U= Unknown	**Utility Tax[5]**	**Utility Tax Rate** N = None
Yakima	98,200	PG	Y	Y	1%
Bellingham	93,910	PG	Y	Y	6%
Kirkland	93,570	G	Y	Y	6%
Auburn (all)	88,750	G	Y	Y	6%
Kennewick	85,320	U	U	Y	7%
Pasco	80,180	G	Y	Y	8.5%
Redmond	75,270	G	Y	Y	6%
Marysville	72,380	G	Y	N	N
Sammamish	68,150	G	Y	N	N
Lakewood	63,800	N	Y	Y	6%
Richland	62,220	EG	Y	Y	7.5%
Shoreline	60,320	EG	Y	Y	6%
Lacey	**58,180**	**PEG**	**Y**	**N**	**N**
Olympia	56,370	PEG	Y	Y	6%
Burien	52,490	G	Y	Y	6%
Bothell (all)	48,940	G	Y	Y	8%
Bremerton	45,220	PG	Y	Y	6%
Puyallup	43,260	G	Y	Y	2.2%
Edmonds	42,980	G	Y	Y	6%
Issaquah	40,950	G	Y	Y	3%

[3] Preliminary Staff research including websites, municipal codes, readily available franchise agreements, and List of public-access TV stations in the United States (Utah–Wyoming) - EverybodyWiki Bios & Wiki

[4] Cable television franchise agreements are governed by federal law rather than state law and are negotiated with the cable company. Cable TV franchise fees may be levied at a rate up to 5% of gross revenues from the franchise area every year (47 U.S.C. §542(a) and (b)).

[5] Utility taxes are levied on the gross operating revenues that public and private utilities earn from operations within the boundaries of a jurisdiction. This applies to electric, natural gas, water, sewer, surface water, solid waste, telephone, and cable TV utilities. Legislation passed in 1982 limits the tax rate on electric, gas, steam, and telephone utilities to six percent. The Cable Communication Policy Act of 1984 states that cable tax rates should not be higher than tax rates on other utilities (Tax rate may not be "unduly discriminatory" see 47 U.S.C. §542(g)(2)(A)).

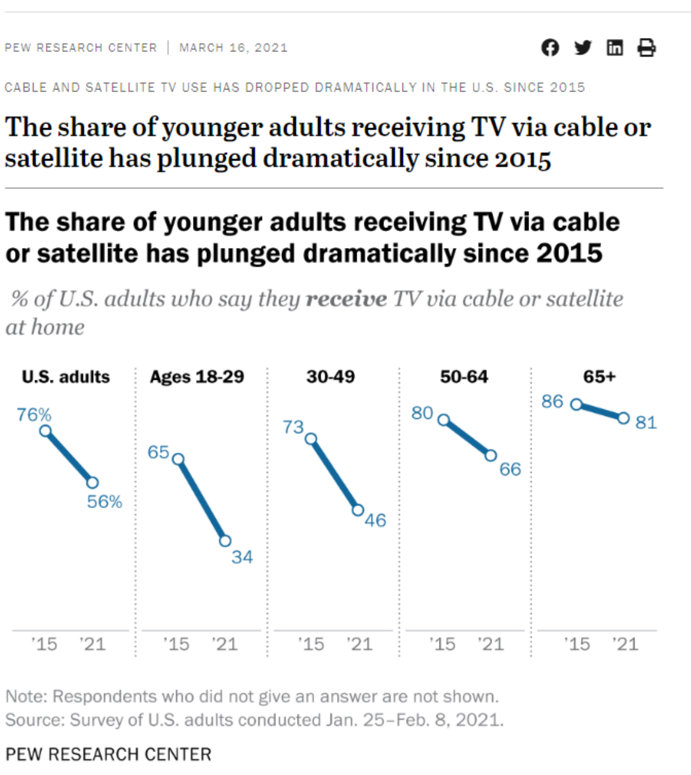
In 1986, the cities of Lacey, Olympia and Tumwater, and later Thurston County, contracted with TCMedia to be the designated PEG service provider. Under the current agreement, TCMedia operates a public access facility, Thurston Community Television (TCTV), and provides video production services for the City (e.g., helps support the filming of Lacey City Council meetings and large City events, like the Lighted Parade). The Jurisdiction's current operating agreement with TCMedia for PEG services expires on December 31, 2022. Over the past decade plus, cable and community access television has rapidly changed with the advent of smartphones and other accessible video technologies, as well as the proliferation of social media platforms for communication. At the same time, cable subscribers have declined as more and more consumers are going "cordless" with subscriptions to streaming services.

Per the Pew Research Center in 2021:

> "The share of Americans who say they watch television via cable or satellite has plunged from 76% in 2015 to 56% this year, according to a new Pew Research Center survey of U.S. adults. Some 71% of those who do not use cable or satellite services say it's because they can access the content they want online, while 69% say the cost of cable and satellite services is too high and 45% say they do not often watch TV."[6]

The Pew Research Center found that young adults have the lowest rate of Cable use, see **Figure 2**.

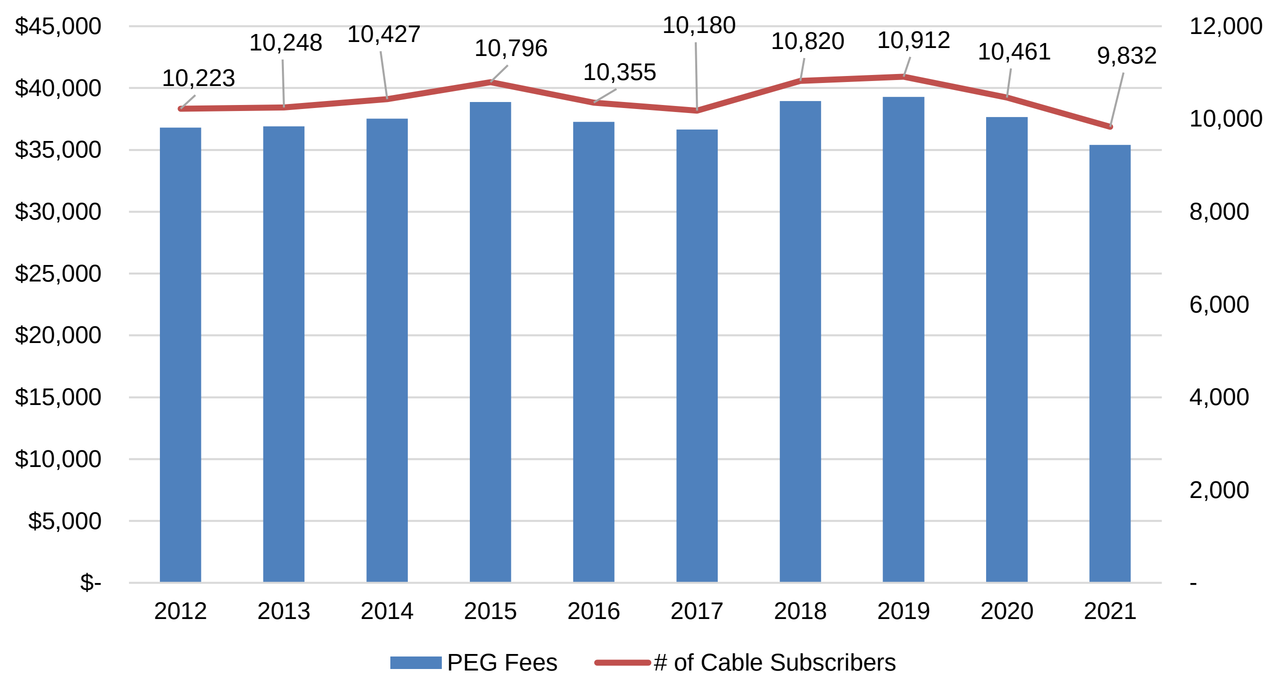
Figure 2: Pew Research Center Graph on Cable Users



[6] Cord cutting has grown since 2015 | Pew Research Center

Based on PEG fee data, in Lacey, the total number of Comcast subscribers declined from a ten-year high of approximately 10,912 subscribers in 2019 to approximately 10,461 subscribers in 2020 and 9,832 subscribers in 2021, see **Figure 3**. This equates to cable subscription declines of 4.1% and 6% for 2020 and 2021, respectively.

Figure 3: Comcast PEG Fees & Total Comcast Subscribers



RFP Process: Given the proliferation of accessible video capturing technologies, the rise of new video streaming services, and the end of the current PEG designated service provider contract, going through an RFP process allows the City to comprehensively evaluate these services for the City. As part of this overall process, City staff will also be evaluating in-house options as well.

The RFP will be design in an “à la carte” style where potential Designated Service Providers will be asked to identify what PEG-related services they are interested in providing for the Jurisdictions and their associated annual costs. Importantly, potential Designated Service Providers do not need to provide all elements of PEG services to be considered. The Jurisdictions will determine what services provide the best fit for their respective municipality.

ADVANTAGES:

1. Allows the Jurisdictions the opportunity to comprehensively evaluate PEG services and future service needs.

DISADVANTAGES:

1. None identified at this time.

2022
INTERLOCAL AGREEMENT
BETWEEN THURSTON COUNTY, CITY OF LACEY, CITY OF OLYMPIA, & CITY OF TUMWATER

This Agreement is entered into in duplicate originals this 18 day of July 2022 between the CITIES OF LACEY, OLYMPIA, TUMWATER, municipal corporations (hereinafter "Lacey, Olympia, and Tumwater, or Cities"), and THURSTON COUNTY, a municipal corporation (hereinafter "County"), collectively referred to as "parties" and individually as "party" pursuant to RCW 39.34.

WHEREAS, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, it is to the mutual advantage of Thurston County and the Cities of Lacey, Olympia, and Tumwater to cooperate as described herein in order to make the most efficient use of their resources to collaborate on soliciting the request for proposals for service provider or service providers to manage public, education, and government (PEG) access funds and PEG access channels, facilities and equipment, and provide noncommercial PEG access services to the parties; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service, activity, or undertaking each public agency is authorized by law to perform.

NOW THEREFORE, by virtue of RCW 39.34.080 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

I.
GENERAL

1. It is the purpose of the Agreement to permit the parties to make the most efficient use of their resources by enabling them to collaborate on soliciting a request for proposals to enter into separate contracts with a designated service provider or service providers to manage public, education, and government (PEG) access funds and operate PEG access channels, facilities, and equipment, and provide noncommercial PEG access services. Noncommercial PEG access services include: public access programming; education access programming; and government access programming; and cable-casting public, educational and governmental programming on access channels. All jurisdictions represented in this Agreement shall: 1) work together to create the request for proposal, which shall include that vendors provide proposals for each party to this agreement, and 2) review the applications submitted through the request for proposal process. Each party reserves the right to select and enter into contracts with a vendor at their own discretion based on the needs of their respective jurisdiction. Each party also reserves the right to not enter into an agreement through this process.

II.
DURATION

2. This Agreement shall become effective on the date written above and shall remain in effect for one (1) year and automatically renew for an additional one (1) year unless changed, modified, amended, or terminated sooner as provided for herein. The total duration of this Agreement shall not exceed two (2) years. Prior to commencement, this Agreement shall be filed or posted in accordance with RCW 39.34.040.

III.
SERVICES

For the duration of the coordinated project, Lacey will serve as the lead agency. The lead agency will create a draft request for proposals, which shall include that vendors provide proposals for each party to this agreement. The non-lead jurisdictions will review the draft request for proposals. All jurisdiction will agree to the draft request for proposals in writing prior to finalizing and publishing the request for proposal. The request for proposal shall include, but is not limited to: scope of services, solicitation and review schedule, a defined process for answering questions, evaluation criteria, desired qualifications, and submission requirements. Should the parties be unable to agree on the draft request for proposals, each jurisdiction may move forward with separate request for proposals concurrently with terminating this Agreement.

The lead agency agrees to collect submitted requests for proposals. The lead agency will coordinate the review of submitted requests for proposals with each party to this agreement. The non-lead jurisdictions agree to review the submitted requests for proposals with the lead agency.

Each party is responsible for selecting and entering into contracts with a vendor at their own discretion based on the needs of their respective jurisdiction. Each party also reserves the right to not enter into an agreement through this process.

IV.
RECORDS RETENTION AND AUDIT

3. During the progress of the work and for a period not less than six (6) years from the final date of December 31, 2022, the records and accounts pertaining to the work and accounting therefore are to be kept available for inspection and audit by either party and/or the Federal Government and copies of all records, accounts, documents, or other data pertaining to the work will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 6-year retention period. Each party will promptly notify the other of any such litigation hold on records.

V.
RELATIONSHIP OF THE PARTIES

4. The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party. This Agreement is for the benefit of the parties, and no third-party beneficiary relationship is intended. No separate legal entity is created by this Agreement. No joint organization is created. No common budget is to be established. No payments shall be made between any party to this agreement. No personal or real property is to be jointly acquired or held.

VI.
TERMINATION

5. Any party may terminate this Agreement upon ninety (90) calendar days prior written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

VII.
LEGAL RELATIONS

6. No liability shall attach to the parties by reason of entering into this Agreement except as expressly provided herein.

VIII.
FORCE MAJEURE

7. Neither party will be liable to the other or deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure will include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, epidemics, civil or public disturbances, or other similar occurrences. If any party is unable to perform under this Agreement due to a force majeure event, upon giving notice and reasonably full particulars to the other party, such obligation or condition will be suspended only for the time and to the extent commercially practicable to restore normal operations.

IX.
ADMINISTRATION

8. The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement Wherever written notice is required under this Agreement, such notice shall be provided to the representatives designated below, In the event such representatives are changed, the party making the change shall notify the other party, the County's representative shall be the Public Information Supervisor (360)490-0562, the City of Lacey’s representative shall be the Assistant City Manager (360)412-2891, the City of Olympia’s representative shall be Kellie Purce Braseth (360)753-8361, and the City of Tumwater’s representative shall be Ann Cook (360)754-4123.

X.
CHANGES, MODIFICATIONS, AND AMENDMENTS

9. This Agreement may be changed, modified, amended, or waived only by written agreement executed by each party's authorized governing authority .

XI.
GOVERNING LAW AND VENUE

10. This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington both as to its interpretation and performance, Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in a court of competent jurisdiction in Thurston County, Washington or, if against Thurston County, in the superior court of either of the two nearest judicial districts..

XII.
WAIVER

11. A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement

XIII.
SEVERABILITY

12. If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THURSTON COUNTY

DocuSigned by:
Ramiro Chavez
9362CD30FC57477...

Ramiro Chavez, County Manager

Approved as to form:

DocuSigned by:
Jon Tunheim
36D4D75900B44E9...

Jon Tunheim, Prosecuting Attorney

CITY OF LACEY

DocuSigned by:
Scott Spence
30853B87F4BF42E...

Scott Spence, City Manager

Approved as to form:

DocuSigned by:
David Schneider
E60EBB47FF4C4D1...

David Schneider, Lacey City Attorney

CITY OF OLYMPIA

DocuSigned by:
Steven J Burney
BEF065DD5C7B4A7...

Steven J. (Jay) Burney

Approved as to form:

DocuSigned by:
Michael M. Young
EA9A0505053F40D...

Michael Young, Deputy City Attorney

CITY OF TUMWATER

DocuSigned by:
Debbie Sullivan
945DD615DE7D4C0...

Debbie Sullivan, Mayor

Approved as to form:

DocuSigned by:
karen kirkpatrick
9C2747F30AD6419...

Karen Kirkpatrick, City Attorney

Attachment 2

Select Sections (3 and 9) of the Comcast Franchise Agreement (2021-2031)

The full Comcast franchise agreement can be accessed here: https://cityoflacey.org/wp-content/uploads/sites/3/2021/09/Ordinance-1583-Comcast-Cable-Franchise-Agreement-Renewal-02.04.2021.pdf

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use Grantor's Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to Grantor, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to Grantor shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by the Grantee was due or such shorter period if required by Applicable Law.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to Grantor, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Grantee shall, within ninety (90) days after the end of each year, furnish to Grantor a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, Grantor, including Grantor’s Auditor or his/her authorized representative, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise. Pursuant to subsection 1.28, as part of the Franchise Fee audit/review Grantor shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, “relevant data” shall include, at a minimum, Grantee’s records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for Grantor subscribers during the audit period. To the extent that Grantor does not believe that the relevant data supplied is sufficient for Grantor to complete its audit/review, Grantor may require other relevant data. For purposes of this Section 3.6, the “other relevant data” shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow Grantor to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit/review, such cost not to exceed five thousand dollars ($5,000) for each year of the audit period, with such amount to increase upon the annual anniversary of the Effective Date, by an amount equal to the most recent semi-annual Seattle-Tacoma-Bellevue CPI-U as published by the US Department of Labor, Bureau of Labor Statistics. The Grantor’s right to audit/review and Grantee’s obligation to retain records necessary to complete any audit under this subsection shall expire consistent with the applicable statute of limitations period under State law; provided, however, that this would not apply to a time period covered under a pending audit.

3.7 Late Payments

In the event any quarterly Franchise Fee payment is not received within forty-five (45) days from the date the payment was due to the Grantor, Grantee shall pay interest on the amount due in the amount of one percent (1%) per month (twelve percent (12%) per annum) on any unpaid balance of the Franchise Fee due, until all payments due are paid in full. Any unpaid fee or interest due under this Franchise that remains unpaid shall constitute a debt to the Grantor, collectible in accordance with the Grantor Code.

3.8 Underpayments and Overpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest as applicable for late payments under Section 3.7 of this Franchise, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Grantor. If an overpayment is discovered, Grantee may take an offset against future Franchise Fee payments, with no interest or other cost to the Grantor.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate Grantor through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall comply with any other Applicable Law related to the right to occupy the Grantor's Rights-of-Way and compensation therefor.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits Grantor to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, Grantor is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by Grantor to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to Grantor hereunder, provided that the Grantor adopts such increase at a public hearing and Grantee has received at least ninety (90) days prior written notice from Grantor of such amendment, so long as all cable operators in the Franchise Area are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

(A) The PEG Capital Contribution pursuant to Section 9.6, as well as any charges incidental to the awarding or enforcing of this Franchise (including, without limitation, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damage) and Grantee's costs of compliance with Franchise obligations (including, without limitation, compliance with customer service standards and build out obligations) shall not be offset against Franchise Fees. Furthermore, the Grantor and Grantee agree that any local tax of general applicability shall be in addition to any Franchise Fees required herein, and there shall be no offset against Franchise Fees. Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The Grantor likewise reserves all rights it has under Applicable Law. Should Grantee elect to offset the items set forth herein, or other Franchise commitments such as complimentary Cable Service, against Franchise Fees in accordance with Applicable Law, including any Orders resulting from the FCC's 621 proceeding, MB Docket No. 05-311, Grantee shall provide the Grantor with advance written notice. Such notice shall document the proposed offset or service charges so that the Grantor can make an informed decision as to its course of action. Upon receipt of such notice Grantor shall have up to one hundred twenty (120) days to either (1) maintain the commitment with the understanding that the value shall be offset from Franchise Fees; (2) relieve Grantee from the commitment obligation under the Franchise; or (3) pay for the services rendered pursuant to the commitment in accordance with Grantee's regular and nondiscriminatory term and conditions.

(B) Grantee's notice pursuant to Section 3.11(A) shall, at a minimum, address the following: (1) identify the specific cash or non-cash consideration or obligations that must be offset from Grantee's Franchise Fee obligations; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide text for any proposed Franchise amendments to the Grantor, with a written explanation of why the proposed amendments are necessary and consistent with Applicable Law; (4) provide all information and documentation reasonably necessary to address how and why specific offsets are to be calculated and (5) if applicable provide all information and documentation reasonably necessary to document how Franchise Fee offsets may be passed through to Subscribers in accordance with 47 U.S.C. 542(e). Nothing in this Section 3.11(B) shall be construed to extend the one hundred twenty (120) day time period for Grantor to make its election under Section

3.11(A); provided however, that any disagreements or disputes over whether sufficient information has been provided pursuant to this Paragraph (B) may be addressed under Sections 13.1 or 13.2 of this Franchise.

(C) Upon receipt of Grantee's written notice as provided in Section 3.11 (B), the Grantor and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications and agree to what offsets, if any, are to be made to the Franchise Fee obligations. Such negotiation will proceed and conclude within a one hundred twenty (120) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Grantor shall amend this Franchise to include those modifications.

(D) If the parties are unable to reach agreement on any Franchise Fee offset issue within one hundred twenty (120) days or such other time as the parties may mutually agree, each party reserves all rights it may have under Applicable Law to address such offset issues.

(E) The Grantor acknowledges that Grantee currently provides one outlet of Basic Service and Digital Starter Service and associated equipment to certain Grantor owned and occupied or leased and occupied buildings, schools, fire stations and public libraries located in areas where Grantee provides Cable Service. For purposes of this Franchise, "school" means all State-accredited K-12 public and private schools. Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Grantee's commitment to provide this service is voluntary, and may be terminated by Grantee, at its sole discretion.

(1) Grantee's termination of complimentary services provided shall be pursuant to the provisions of Section 3.11(A)-(D) above. Grantor may make a separate election for each account or line of service identified in the notice (for example, Grantee may choose to accept certain services or accounts as offsets to Franchise Fees, and discontinue other services or accounts), so long as all elections are made within one hundred twenty (120) days. Grantee shall also provide written notice to each entity that is currently receiving complimentary services with copies of those notice(s) sent to the Grantor.

(2) Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with Applicable Law. The Grantor likewise reserves all rights it has under Applicable Law.

(F) The parties understand and agree that offsets may be required and agreed to as a result of the FCC's Order in what is commonly known as the 621 Proceeding, MB Docket No. 05-311, and that this Order is on appeal. Should there be a final Order in the appeal of the 621 Proceeding, which would permit any cash or non-cash consideration or obligations to be required by this Franchise without being offset from Franchise Fees, or would change the scope of the Grantor's regulatory authority over the use of the rights-of-way by the Grantee, the parties shall, within one hundred twenty (120) days of written notice from the Grantor, amend this Franchise to reinstate such consideration or obligations without offset from Franchise Fees, and to address the full scope of the Grantor's regulatory authority.

3.12 Tax Liability

Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by Grantor. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of Grantor upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which Grantor deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to Grantor by utilizing the funds available in the letter of credit or other security provided by the Grantee.

SECTION 9. ACCESS

9.1 Designated Access Providers

(A) Grantor may authorize Designated Access Providers to control, operate, and manage the use of any and all Access Facilities provided by Grantee under this Franchise, including, without limitation, the operation of Access Channels. The Grantor or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise, the FCC, federal and State law. Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access Provider. As used in this Section, such "Access Facilities" includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise, which is used or useable by and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access").

(B) Grantee shall cooperate with Grantor and Designated Access Providers in the use of the Cable System and Access facilities for the provision of Access Channels.

9.2 Channel Capacity and Use

(A) Grantee shall make available to Grantor up to five (5) Downstream Channels for PEG use as provided for in this Section.

(B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Public, Educational, or Governmental Access use, within one hundred eighty (180) days after a written request for such use is submitted to Grantor, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times shall be considered "unduplicated programming." Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to the Channels provided to Grantor. If a Channel allocated for Public, Educational, or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to require the return of the Channel or portion thereof. Grantor shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within one-hundred eighty (180) days after receipt by Grantee of such written notice.

(C) Standard Definition ("SD") Digital Access Channels.

Grantee shall provide the existing three (3) Activated Downstream Channel for PEG Access use in a standard definition ("SD") digital format. Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio, and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the demarcation point at the designated point of origination for the SD Access Channels. At such time as the HD Access Channels described in subsection (C) below are activated, the Designated Access Provider will provide only an HD Access Channel Signal in an HD format. At that time, Grantee will broadcast the HD signal on the HD Access Channels and also down-convert the HD signal for additional broadcast on the SD Access Channels. Grantee shall transport and distribute the SD Access Channels signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility and functionality, and not unreasonably discriminate as to the application of any applicable FCC Rules & Regulations.

With respect to signal quality, Grantee shall not be required to carry SD Access Channels in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute all SD Access Channel signals without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this subsection 9.2(C).

Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the demarcation point, which for the purposes of this subsection 9.2 (C)(3), shall mean up to but not including the modulator where the Grantor signal is converted into a format to be transmitted over a fiber connection to Grantee. The Grantor or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the demarcation point.

SD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those Tiers of Cable Service, upon which SD Channels are made available. Grantee is not required to provide free SD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(D) High Definition ("HD") Digital Access Channels.

(1) After the return lines have been upgraded in accordance with Section 9.11 and within one hundred twenty (120) days' written notice, Grantee shall activate one (1) HD Access Channels, for which the Grantor may provide Access Channel signals in HD format to the demarcation point at the designated point of origination for the Access Channel. After the first anniversary of the first HD Channel activation, and with at least one hundred twenty (120) days written notice to Grantee, Grantor may request, and Grantee shall provide on its Cable System, one (1) additional Activated Downstream Channel for PEG Access use in HD") digital format.

The Grantor shall, in its written notice to Grantee as provided for in this Section, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing and will produce programming in an HD format for any newly activated HD Access Channel; and,

There will be a minimum of five (5) hours per-day, five days per-week of HD PEG programming available for each HD Access Channel. For the purposes of this subsection, character-generated programming (i.e., community bulletin boards) shall not satisfy, in whole or in part, this programming requirement.

Grantor shall be responsible for providing HD Access Channel signals in an HD digital format to the demarcation point at the designated point of origination for the HD Access Channels. For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

Grantee shall transport and distribute the HD Access Channel signals on its Cable System and shall not discriminate against the HD Access Channels with respect to accessibility, functionality, and to the application of any applicable FCC Rules & Regulations. With respect to signal quality, Grantee shall not be required to carry the HD Access Channels in a higher quality format than that of the HD Access Channel signals delivered to Grantee, but Grantee shall distribute the HD Access Channel signals without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by Grantor, Grantee shall verify signal delivery to Subscribers with the Grantor, consistent with the requirements of this subsection 9.2(D).

HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those Tiers of Cable Service, upon which the HD Channels are made available. Grantee is not required to provide free HD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

Grantor or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

The Designated Access Provider shall be responsible for providing the Access Channel signals in an HD format to the demarcation point at the designated point of origination for each Access Channel. Grantee shall provide all necessary equipment outside the demarcation point at the Designated Access Provider Channel origination point, at its Headend and throughout its distribution system to deliver the Access Channel(s) in the HD format to Subscribers.

(E) Grantee shall simultaneously carry the two (2) HD Access Channels provided for in Section 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels provided pursuant to Subsection 9.2(C).

(F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event Grantor believes that Grantee fails to meet this standard, Grantor will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

9.3 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the served by the same Headend as Grantor for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to Subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to Subscribers.

9.4 Relocation of Access Channels

Grantee shall provide Grantor a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days' notice, prior to the time Public, Educational, and Governmental Access Channel designations are changed. Grantee, at Grantee's expense, will place the Grantor's notice of the Access Channel changes on or with its regular monthly billing, upon the Grantor's request. Such request shall be for one notice per occurrence of Access Channel changes, whether one or more channels are affected. Grantor shall be responsible for the costs of printing its notice which must conform to Grantee's reasonable mailing requirements and providing them to the Grantee. Grantee shall be provided an opportunity to review and approve all Access bill insertions.

9.5 Support for Access Costs

(A) As of the Effective Date of this Franchise Agreement, Grantee is providing thirty cents ($0.30) per month per Residential Subscriber (the "PEG Contribution") to be used solely for capital costs related to Public, Educational and Governmental Access, or as may be permitted by Applicable Law. Upon ninety (90) days written notice from the Grantor, the PEG Contribution may be increased to up to fifty cents ($0.50) per month per Residential Subscriber. Any written request by Grantor to increase the PEG Contribution from its then current level shall be effective ninety (90) days after the date of such written request. Grantee shall make PEG Contribution 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. Grantor shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access.

(B) During the term of this Franchise, Grantee may inquire of Grantor about the PEG Contribution being collected at that time. Upon Grantee's request, Grantor shall meet with Grantee to discuss issues related to the PEG Contribution in good faith and the parties may mutually agree to adjust the PEG fee accordingly.

9.6 Access Support Not Franchise Fees

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to Grantor. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise and federal law.

9.7 Access Channels On Basic Service or Lowest Priced HD Service Tier

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

9.8 Change In Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of Grantor's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If Grantor implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then Grantor shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

9.9 Technical Quality

Grantee shall maintain all Upstream and Downstream Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. In no event shall the technical quality of any Access channels be lower than the quality of other commercial SD or HD channels carried on the Cable System. Grantee shall provide routine maintenance for all transmission equipment on its side of the demarcation point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from Grantor's facilities for the Access Channels provided under this Franchise Agreement. Grantee shall also provide, if requested in advance by Grantor, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on Grantor's side of the demarcation point. Grantee shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment. Grantor shall also be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Grantor staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantor's equipment that is damaged by the gross negligence or intentional acts of Grantee's staff.

9.10 Access Cooperation

Grantor may designate any other jurisdiction to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as Grantor in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by Grantor.

9.11 Return Lines/Access Origination

(A) Grantee shall maintain the return line from the existing Access origination site to the Headend in order to enable the distribution of Access programming to Subscribers on the Access Channels. To the extent that the return line upgrades are required in order to facilitate delivery of Access Programming in HD, such upgrades shall be completed within one (1) year of a written request from Grantor; provided however, that Grantee may recover the costs of such upgrades from Subscribers in the Franchise Area in accordance with Applicable Law and that in so doing the PEG Contribution does not exceed fifty ($.50) cents in total. If such costs result in exceeding fifty ($.50) cents then the Grantor shall reduce the existing PEG Contribution amount so as to allow for the recoupment of all upgrade costs without exceeding the cap of fifty ($.50) cents over a period of three (3) years. Grantee shall continuously maintain the return line throughout the term of the Franchise, unless this location is no longer used in the future to originate Access programming or are not upgraded as part of the HD conversion. The existing return line facilities are noted as "exterior" to reflect a return line on the physical property but not extending into the building, or "interior" where the return line connection extends into the building itself. The Access origination site is:

Lacey City Hall, 420 College Street SE, Lacey, WA (interior)

(B) Within eighteen (18) months of written request by the Grantor, Grantee shall construct and maintain additional return lines to other locations within the Franchise Area; provided however, that all Grantee's construction costs shall be paid by the Grantor or its Designated Access Provider(s).

9.12 Promotion of PEG Access Schedule

The Grantee shall include appropriate designation of the PEG channels on channel cards and other channel listings provided to Subscribers in a manner comparable to commercial channels on the Cable System.