

ORDINANCE 1631

AN ORDINANCE OF THE CITY OF LEAVENWORTH GRANTING A FRANCHISE TO COMPUTER 5, INC. D/B/A LOCALTEL COMMUNICATIONS, ITS SUCCESSORS AND ASSIGNS TO ERECT, CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF LEAVENWORTH, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE PROVIDING FOR THE CITY REGULATION AND USE OF THE CABLE TELEVISION SYSTEM.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LEAVENWORTH:

FRANCHISE AGREEMENT

This Franchise Agreement is between the City of Leavenworth, Washington, hereinafter referred to as the “Grantor” or the “City” and Computer 5, Inc. d/b/a LocalTel Communications, hereinafter referred to as the “Grantee.”

WHEREAS, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs and interests of the community; and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein; and

WHEREAS, the Grantor and Grantee have complied with all Federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

NOW, THEREFORE, the City Council of the City of Leavenworth, Washington do ordain as follows:

Section 1: Ordinance 1271 Franchise Agreement is hereby repealed and replaced.

Section 2: A franchise as set out in Exhibit A attached is granted to Computer 5, Inc. d/b/a LocalTel Communications by the City of Leavenworth.

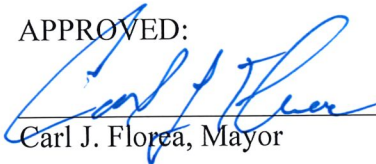
Section 3: This ordinance shall be in effect and be in full force from such date of acceptance by Grantee recorded on the signature page of the Franchise Agreement.

Section 4: Approve, adopt and authorize the Mayor to sign the Franchise agreement in Exhibit A.

Passed by the City Council of the City of Leavenworth and approved by the Mayor this 27th day of July, 2021.

CITY OF LEAVENWORTH

APPROVED:



Carl J. Florea, Mayor

ATTEST:



Chantell R. Steiner, Finance Director/City Clerk

Approved as to form:



Thomas H. Graafstra, City Attorney

EXHIBIT A
FRANCHISE AGREEMENT

This Franchise Agreement is between the City of Leavenworth, Washington, hereinafter referred to as the "Grantor" or the "City" and Computer 5, Inc. d/b/a LocalTel Communications, hereinafter referred to as the "Grantee."

WHEREAS, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise as established by Ordinance 1271 and under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs and interests of the community, and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein; and

WHEREAS, the Grantor and Grantee have complied with all Federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

NOW, THEREFORE, the Grantor and Grantee agree as follows:

SECTION 1
Definitions

1.1 Definitions. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the "Cable Act"), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with the Grantee.
- B. "Basic Cable Service:" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any other programming lawfully required by this Franchise to be carried on the basic tier and provided to all Subscribers. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).
- C. "Broadband System:" means the Chelan County Public Utility District's high-speed, high capacity, fiber optic system that is being utilized by the Grantee to provide Cable Service in the City.

- D. "Cable System," "Cable Service," and "Basic Cable Service" shall be defined as set forth in the Cable Act
- E. "Council" shall mean the governing body of the Grantor.
- F. "Cable Act" shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- G. "FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.
- H. "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Service Area.
- I. "Gross Revenues" shall mean all revenues, as determined in accordance with generally accepted accounting principles, received by Grantee or its Affiliates from the operation of the Cable System to provide Cable Services in the Service Area; provided, however, that such phrase shall not include: (1) revenues received from any national advertising; (2) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including the Franchise Fee, utility fee and the FCC user fee; (3) bad debt; (4) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law.
- J. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- K. "Service Area" shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means, subject to the exception in subsection 6.1 hereto.
- L. "State" shall mean the State of Washington.
- M. "Street", "Right of Way", and "Public Way" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights-of-way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.

N. "Subscriber" shall mean any Person lawfully receiving Cable Service from the Grantee.

SECTION 2 **Grant of Franchise**

2.1 Grant. The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any wires, cable, underground conduits, utility poles, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by Federal, State or Local law. Grantee(s) acknowledges and accepts the right of City to grant this Franchise. This Franchise shall not be construed as any limitation upon the right of City, through its proper offices, and in accordance with applicable law, to grant to other persons or corporations rights, privileges or authority similar to or different from the rights, privileges and authority herein set forth, in the same or other Rights-of-Ways or public access or other places the Grantee(s) is entitled to occupy by this Franchise.

2.2 Term. The Franchise and the rights, privileges and authority hereby granted shall be for a term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in subsection 14.15.

2.3 Police Powers and Conflicts with Franchise. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local resolution or ordinance, to the extent that the provisions of the resolution or ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by the Grantee and the Grantor. In the event of any conflict between this Franchise and any Grantor resolution or ordinance or regulation, this Franchise shall prevail. The District's Broadband System being utilized by the Grantee(s), in accordance with the District's Communications Infrastructure Right-Of-Way Use Agreement with the City, shall be constructed and maintained so as not to unreasonably interfere with other uses of the Rights-of-Way.

2.4 Cable System Franchise Required. No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Service Area or be allowed to operate without a Cable System Franchise.

SECTION 3
Franchise Renewal

3.1 Procedures for Renewal. The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

SECTION 4
Indemnification and Insurance

4.1 Indemnification. The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor which shall include payment of costs for Grantee's legal defense of Grantor, its officers, boards, commissions, agents, and employees from all claims for injury or damages to any Person or property arising out of this franchise or caused by the negligence of Grantee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, judgment, growing out of any injury to any Person or property as a result of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder, subject to the Grantor's approval, which shall not be unreasonably denied, and the Grantor shall cooperate fully herein. Should the Grantor object to Grantee's selection of legal counsel in the defense of Grantor due to potential conflict of interest, Grantee agrees to select a different counsel which Grantor shall not unreasonably deny. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System.

4.2 Insurance.

- A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate

Auto Liability including coverage on all owned, non-owned and hired autos \$1,000,000 per occurrence C.S.L.

Umbrella Liability \$1,500,000 per occurrence C.S.L.

- B. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

4.3 Bonds. Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other assurance as a condition of being awarded the Franchise or continuing its existence. The Grantor agrees to require construction bonds only for new construction projects in such amounts and during such times as there is a reasonably demonstrated need or where required by state or local law. Initially, no bond or surety will be required. In the event that a construction bond is required, the Grantor agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement. The construction bond shall be canceled upon completion of the new construction project and the Grantor's return of the original bond or its release consent shall not be delayed. . Provided that nothing herein shall preclude the City's ability to require bonds and other surety in such amounts and during such times as there is reasonably demonstrated need therefore or where required by State or local law. In the event that the City determines that a bond or surety is required in the future, the City shall give the Grantee(s) at least sixty (60) days prior notice setting forth the reasons for the requirement.

SECTION 5 **Service Obligations**

5.1 No Discrimination. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.

5.2 Privacy. The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

SECTION 6 **Service Availability**

6.1 Service Area. The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least thirty (30) unserved residences per linear strand mile of aerial cable as

measured from Grantee's closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of such request for the service. If such residence is located within one hundred twenty-five (125) feet of Grantee's existing distribution system, the Cable Service will be provided at Grantee's published rate for standard installations. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service or into any annexed area which is not contiguous to the present Service Area of the Grantee. Grantee shall not be obligated to provide Cable Service to any area which is financially or technically infeasible.

6.2 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 6.1 above, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence.

6.3 New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by Grantee.

6.4 Annexation and Address Changes. In the event the Grantor modifies the Service Area by annexation or any other means, the Grantor shall provide notice to Grantee in writing to the address set forth below by U.S. certified mail, return receipt requested. Grantor shall provide detail and information, including address files and maps in sufficient detail and in a digital format. Grantee shall begin to collect Franchise Fees from Subscribers in any annexed area within ninety (90) days of such notice and address information as described above. Grantee shall not be obligated to collect and remit Franchise Fees until such notice and information has been received by Grantee.

The Grantor shall also notify Grantee of all new street address assignments or changes within the Service Area.

All notices provided under this subsection shall be delivered to the Grantee at the following addresses:

Computer 5, Inc. d/b/a LocalTel Communications
341 Grant Road
Wenatchee, WA 98802
(509) 888-8888

Grantee shall provide Grantor thirty (30) days written notice of address changes affecting this subsection pursuant to section 14.5.

SECTION 7

Construction and Technical Standards

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electrical Safety Code, National Electric Code and all Occupational Safety and Health Administration (OSHA) regulations.

7.2 Construction Standards and Requirements. All of the Grantee's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.3 Network Technical Requirements. The Cable System shall be designed, constructed and operated so as to meet those technical standards relating to Cable Systems contained in Part 76 of the federal's rules and regulations as may, from time to time, be amended.

7.4 Performance Monitoring. Grantee shall test the Cable System consistent with FCC regulations.

SECTION 8

Conditions on Street Occupancy

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

District shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor. Should Grantor develop its own system it shall adhere to the Conditions on Street Occupancy in this Section 8.

8.2 Underground Construction. Except for high voltage lines, the facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground consistent with state and federal law. In the event that any other utilities or Persons in the Right of Way, including telephone, cable, and broadband companies, are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as allowed by state and federal law.

8.3 Construction Codes and Permits. Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Grantor as to public utility companies and other entities operating in the Service Area.

8.4 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8.5 Restoration of Public Ways. Grantee shall, at its own expense, restore any damage or disturbance caused to the Public Way or public property as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets or Public Way immediately prior to such damage or disturbance within 30 days, or such longer time provided by the Grantor in the event of weather or other events beyond Grantee's control. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for

preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public, which may include but not be limited to placing a temporary patch, installing a trench plate or making other temporary repairs until the Street or Public Way is restored. Completion of the Grantor Street restoration in a manner consistent with Grantor permits and approved plans shall satisfy the Grantee's restoration obligations under this section.

In the event that the Grantee or its contractors should fail to restore any Grantor Streets consistent with Grantor codes and ordinances, Grantor may, after forty five (45) days' prior written notice make such repairs or restorations as are necessary to return the Grantor Streets to their pre-work condition, except if in the opinion of the Grantor, the Grantee's deficient restoration causes an emergency situation resulting in an immediate hazard to public safety, health, or property, the Grantor may repair the deficiency without prior notice to the Grantee. The Grantee shall be responsible for reimbursing the Grantor for any and all costs and expenses incurred by the Grantor to correct any deficiency in the Grantee's restoration of the Street, whether with notice as set out above or on an emergency basis. Upon presentation of an itemized bill for repairs or restorations, including the costs of labor and equipment, and an explanation of the basis for the Grantor's determination that emergency restoration action was required to remove an immediate hazard to public safety, health or property, the Grantee shall pay the bill within sixty (60) days. Standards and conditions acceptable to the Grantor shall be equally and uniformly applied to Grantee as to any other Person in the Street and consistent with all applicable Grantor codes as they may apply to the Grantor's police powers.

8.6 Removal in Emergency. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.

8.7 Tree Trimming. Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

8.8 Relocation for the Grantor. The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities.

8.9 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is give reasonable advance written notice to prepare for such

changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

8.10 Reimbursement of Costs. If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall notify Grantee in writing and make application for such funds on behalf of the Grantee if the same is made for any other Person using the Street, conditioned upon the availability of such funds to Cable Operators and reimbursement is allowed under state and federal law.

8.11 Joint Trenching/Boring. To the extent it is technically, commercially and economically feasible, Grantee shall joint trench or share bores or cuts and work with other providers (such as, but not limited to, other cable, telecommunications, gas, and electric companies), licensees, permittees and franchisees so as to reduce the number of right-of-way cuts within the Service Area.

8.12 Emergency Override. Grantee shall comply with Federal Emergency Alert System ("EAS") rules and regulations.

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

SECTION 9 **Service and Rates**

9.1 Customer Service Standards. Grantee shall comply with the customer service standards set forth in Section 76.309 of Federal Regulations, as such may be amended from time to time.

9.2 Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor thirty (30)

days prior notice of any rate increases, channel lineup or other substantive service changes.

9.3 Rate Regulation. Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC.

9.4 Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to Grantee's rights under 6.1 of this Agreement.

9.5 Public, Educational and Government ("PEG") Access Programming. Upon 90 days prior written notice from Grantor, Grantee shall provide one (1) channel on the Cable System for the use by the Grantor for original, locally-produced, non-commercial, video programming for Public, Education and Government ("PEG") access programming. Programming shall be produced in the State of Washington. The PEG channel may be placed on any tier of service available to all Subscribers, including the digital tier. The Grantor shall utilize the PEG channel as follows: the Grantor shall provide programming on the channel to occupy seventy percent (70%) of the hours between 11 a.m. and 9 p.m. for any twelve (12) consecutive week period. A program may be repeated no more than three (3) times for any twelve (12) consecutive week period, unless authorized by written consent of Grantee. Time allocated to character-generated or similar programming shall be excluded from the determination of when such channel is in use and programmed.

9.6 Grantee's Use. In the event the programming levels set forth herein are not maintained or if the Grantor does not adequately use the channel, Grantee reserves the right to have the channel returned to the Grantee for the Grantee's use upon sixty (60) days prior written notice to the Grantor. The Grantor may exercise its right to again utilize said PEG channel by providing a sixty (60) day written notice to the Grantee that includes an explanation of the Grantor's plan to utilize the channel according to the conditions set forth herein. The Grantee may use the designated channel during those hours that the Grantor or other governmental, public or educational entity is not using the channel.

9.7 Indemnification and Restrictions. The Grantor shall indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the Grantor's use of the aforementioned PEG channel whether Grantor operates the PEG channel from Grantor's facilities or a third party's facilities or from Grantee's facilities. Grantee shall not be responsible for operating and managing the PEG channel including approving any PEG programming and/or for obtaining releases from programmers for any PEG programming. The PEG Channel shall be non-commercial, not-for-profit, and non-competitive. The PEG Channel shall not be used for commercial purposes, such as leasing capacity, advertising, or any use whatsoever that may generate revenue (subject to the permissible uses as outlined in this subsection) for the Grantor or any other Person, or

compete with current or future services provided by the Grantee, its designee or assignee. Notwithstanding the foregoing, Grantor and Grantee agree that the Grantor may receive and acknowledge financial support for the provision of PEG Programming for charitable, educational or governmental access purposes with up to a thirty (30) second video and/or audio acknowledgment window at the beginning and end of the sponsored program. The acknowledgement shall only contain the name, logo, address or general location, and an image of the building or property in lieu of a logo of each sponsor.

SECTION 10 **Franchise Fee**

10.1 Amount of Fee. Grantee shall pay to the Grantor an annual franchise fee in an amount equal to three and one-half percent (3 ½ %) of the annual Gross Revenue. Grantee may credit against any such franchise fee payments any tax, fees (other than Franchise Fees) or assessment of any kind imposed by the Grantor or other governmental entity on a Cable Service provider or a Subscriber, or both, solely because of their status as such. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with Federal law.

10.2 Payment of Fee. Payment of the fee due the Grantor shall be calculated on an annual basis consistent with Federal law. Grantee agrees to pay Franchise Fees to the Grantor within forty-five (45) days of the close of each quarter and transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise. Grantor shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges. Grantee shall continue to make Franchise Fee payments under the terms of the former Franchise during the interim period.

10.3 Accord and Satisfaction. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

10.4 Limitation on Recovery. The period of limitation for recovery of any franchise fee payable hereunder shall be six (6) years from the date on which payment by the Grantee was due. Upon thirty (30) days written notice to Grantee, the Grantor shall have the right to audit the books and records of Grantee to determine whether Grantee has paid the franchise fees owed. If there is a dispute as to whether a particular item of revenue is within the scope of the term Gross Revenues and Grantee withholds revenue records on the ground that the revenues are not subject to the franchise fee, Grantee agrees that it will provide a certified statement describing the nature of the revenues contained in the records withheld. Said audit shall be conducted no more often than annually, and the audit period shall not be any greater than the previous six (6) years. The audit shall not last longer than six (6) months. Any undisputed additional amounts due to the Grantor as a result of the audit shall be paid within sixty (60) days following written notice to Grantee by the Grantor, which notice shall include a copy of the audit findings.

10.5 Increased Franchise Fee. The Grantor may unilaterally, upon sixty days advance written notice to Grantee, increase the Franchise Fee up to five percent (5%) of Grantee's Gross Revenues by amendment of this Franchise, provided that any such fee increase is also assessed on all other Cable Service providers within the Service Area. In no event, shall the Franchise Fee payments exceed five percent (5%) of the Gross Revenues received by Grantee in any twelve (12) month period, consistent with federal law.

SECTION 11 **Transfer of Franchise**

11.1 Franchise Transfer. The Franchise granted hereunder and Cable System shall not be assigned, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior written consent of the Grantor, and such consent shall not be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request including an FCC form 394, consent by the Grantor shall be deemed given.

SECTION 12 **Records, Reports and Maps**

12.1 Reports Required. The Grantee's schedule of charges, contract or application forms for regular Subscriber service, policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Grantor upon request.

12.2 Records Required.

The Grantee shall at all times maintain:

- A. A record of all written complaints received regarding interruptions or degradation of Cable Service for one (1) year.
- B. A full and complete set of plans, records and strand maps showing the location of the Cable System.

12.3 Inspection of Records. Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice to examine during normal business hours and on a nondisruptive basis any and all records that are legally permissible for

release and that are reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and Federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. The Grantor, its agents, employees, representatives or any other Person who has access to records provided by the Grantee shall sign Grantee's nondisclosure agreement prior to records review for any review of confidential information.

SECTION 13 **Enforcement or Revocation**

13.1 Notice of Violation. If the Grantor believes that the Grantee has not complied with the terms of the Franchise, including federal customer service standards under Section 9.1, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

13.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

13.3 Public Hearing. If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the City Council shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the City in accordance with subsection 14.6 hereof. The Grantee shall have the right to present evidence and to question witnesses. The Grantor shall determine if the Grantee has committed a violation and shall make written findings

of fact relative to its determination. If a violation is found, the Grantee may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

13.4 Enforcement. Subject to applicable Federal and State law, in the event the Grantor, after the hearing set forth in subsection 13.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 13.5 below.

13.5 Revocation.

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating Grantor's intent to revoke the Franchise.
- B. At the hearing, the City Council shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City Council shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City Council *de novo*. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.
- C. Notwithstanding the above provisions, neither the Grantee nor Grantor waives any of its rights under Federal law or regulation.
- D. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.

13.6 Alternate Dispute Resolution.

As an alternate to the dispute provisions in 13.1 to 13.5 of this Section, the Parties may agree to immediately meet and confer in good faith in an attempt to resolve the dispute. In the event the dispute cannot be resolved within (90) days, or whatever longer period may be mutually acceptable, the parties may call for arbitration pursuant to RCW Chapter 7.04, et. seq. except as herein modified. If the parties agree to arbitration, such arbitration shall be before one disinterested arbitrator, if one can be agreed upon, otherwise before three disinterested arbitrators, one named by the City, one by the Cable Operator, and one by the two thus chosen. If all arbitrators have not been appointed within three (3) business days after the parties agree to arbitration, then either Party may apply to the Chelan County Superior Court, upon not less than three (3) business days written notice to the other, for appointment of the necessary arbitrators remaining to be appointed, and the judicial appointment shall be binding and final. If arbitration is selected by the parties, the arbitrator or arbitrators shall resolve all matters of disagreement in accordance with the laws of the State of Washington as applied to the facts found by him/her or them, if applicable. The arbitrator or arbitrators shall resolve all disputes between the Parties and the decision of the arbitrator or arbitrators shall be final, conclusive and binding on the Parties. The Parties agree to share equally in the costs of arbitration and each Party shall be responsible for its own attorney's fees and costs.

SECTION 14 **Miscellaneous Provisions**

14.1 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

14.2 Minor Violations. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fine, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area.

14.3 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

14.4 Equal Protection. If any other wireline provider of Cable Services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or Federal governmental entity to provide

such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall within thirty (30) days of a written request from Grantee, modify this Franchise to the mutual satisfaction of Grantor and Grantee to ensure that the obligations applicable to Grantee are no more burdensome than those imposed on any competing provider. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor and to take in its place the same franchise of a competing provider of Cable Services or video services authorized by the Grantor. Grantee may also choose to obtain a replacement franchise, license, consent, certificate or other authorization with any lawfully authorized state or federal governmental entity. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity if allowed at any time under state or federal law. At no time, however, shall Grantee be allowed to occupy or use the streets or public rights-of-way of the Grantor or be allowed to operate without a franchise or other lawful authorization.

14.5 Notices. Unless otherwise provided by Federal, State or Local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested or by nationally or internationally recognized courier service such as Federal Express. Grantee shall provide thirty (30) days written notice of any changes in rates, programming services or channel positions using any reasonable written means.

Notice served upon the Grantor shall be delivered or sent to:

City of Leavenworth
Attn: City Clerk
PO Box 287
Leavenworth, WA 98826
(509) 548-5275

And every notice served upon Grantee shall be delivered or sent to:

Computer 5, Inc. d/b/a LocalTel Communications
341 Grant Road
Wenatchee, WA 98802
(509) 888-8888

14.6 Public Notice. Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative buildings of the Grantor.

14.6.1 Grantor shall provide written notice within ten (10) days of Grantor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Paragraph 14.6 above.

14.7 Periodic Evaluation, Review

- A. Upon at least sixty (60) days advance written notice to Grantee, the Grantor may require review sessions within thirty (30) days of the third and sixth anniversary dates of the effective date of this Franchise.
- B. The notice to Grantee shall include the specific topics to be addressed, the reasons for the topics to be addressed during a public forum, and the relevant subsections of the Franchise that may pertain. Grantee shall not be required to release or discuss any information that may be proprietary or confidential, including Subscriber information in violation of Section 631 of the Cable Act. Release of any information by Grantee to Grantor, whether in writing or verbally communicated, is subject to Section 12.

14.8 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

14.9 Entire Agreement. This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the subject matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and are superseded hereby and thereby.

14.10 Amendments. This Franchise is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein except for the lawful exercise of the City's police powers and with the exception of Section 10.5, subject to the foregoing, any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee.

14.11 Governing Laws.

- A. This Franchise shall be construed in a manner consistent with all applicable Federal and Washington State laws and Grantor's regulations under Grantor's police powers.
- B. In the event of a change in State or Federal law which by its terms would require the Grantor to amend this Agreement, the parties shall negotiate in good faith to modify the Franchise in a mutually agreed upon manner and subject to Section 14.8.
- C. Venue for appeal or other action shall lie in a tribunal with jurisdiction over the parties and the subject matter of this franchise.

14.12 Cumulative Rights. All rights and remedies given to the City by this franchise agreement shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City.

14.13 Non - Waiver. The failure of the City at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the City to hereafter enforce the same.

14.14 Binding Effect. This franchise shall be binding upon the parties hereto, their permitted successors and assigns.

14.15 Effective Date. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Agreement. This Franchise shall expire on July 27, 2031.

Considered and approved this 27th day of July, 2021

City of Leavenworth, Washington

By: 

Carl J. Flores, Mayor

Accepted this 4th day of August, 2021, subject to applicable federal and State law.

By: 

John J. Senback V.P.
Printed Name and Title