

AGENDA - Monday, March 21, 2022

6:00 p.m. Executive Session 6:30 p.m. Workshop 7:00 p.m. City Council Meeting

> In Person and Zoom Webinar Meeting ID: 831 6447 0113 Password: 12345678

6:00 Executive Session – RCW 42.30.110 Performance of a Public Employee

6:30 WORKSHOP

WS 22-06

State of the Library - Updates from Timberland Library - TAB A

7:00 p.m. CALL TO ORDER; PLEDGE OF ALLEGIANCE; AND ROLL CALL

Call to order

Mayor Phillips, Council Member Svendsen, Council Member McGuire,

And roll call

Council Member Murry, Council Member Reddy & Council Member Coleman

PROCLAMATION - FAIR HOUSING ACT TAB - B

PUBLIC COMMENT

At this time, the Mayor will call for any comments from the public on any subject whether it is on the agenda for any item(s) the public may wish to bring forward and discuss. Preference will be given to those who must travel. Please limit your comments to three minutes. The City Council does not take any action or make any decisions during public comment. To request Council action during the Business portion of a Council meeting, contact the City Administrator at least one week in advance of a meeting.

CONSENT AGENDA – TAB C

All matters, which are listed within the consent section of the agenda, have been distributed to each member of the Long Beach City Council for reading and study. Items listed are considered routine by the Council and will be enacted with one motion unless a Council Member specifically requests it to be removed from the Consent Agenda to be considered separately. Staff recommends approval of the following items:

- Minutes, March 7, 2022
- Payment Approval List for Warrant Registers 60756-60782 & 89293-89355 for \$230,487.30
 - AB 22-21 Fireworks Contract for the 4th of July TAB D
 - AB 22-22 Surplus Bid Award TAB E
 - AB 22-23 Wahkiakum West Fiber Connection TAB F

DEPARTMENT HEAD ORAL REPORTS CORRESPONDENCE AND WRITTEN REPORTS – TAB G

- Police Chief's Report for February 2022
- ChargePoint Report
- Charter Rates for 2022

FUTURE CITY COUNCIL MEETING SCHEDULE

The Regular City Council meetings are held the 1st and 3rd Monday of each month at 7:00 PM and may be preceded by a workshop.

April 4, 2022, April 18, 2022 & May 4, 2022

ADJOURNMENT

American with Disabilities Act Notice: The City Council Meeting room is accessible to persons with disabilities. If you need assistance, contact the City Clerk at (360) 642-4421 or advise City Administrator at the meeting.

TAB - A



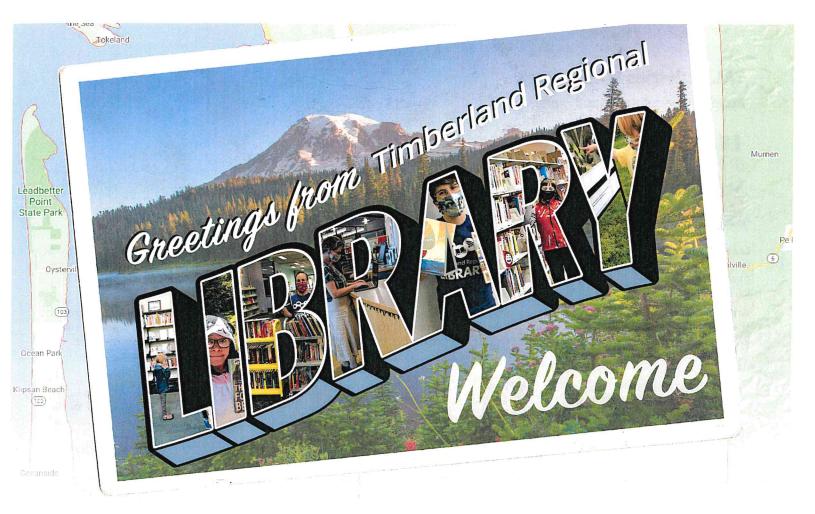
CITY COUNCIL WORKSHOP BILL

WS 22-06

Meeting Date: March 21, 2022

SUBJECT: Update from		Originator:
the Timberland Library	Mayor	
die innbenand Library	City Council	
	City Administrator	DG
	City Attorney	
	City Clerk	
	City Engineer	
	Community Development Director	
	Events Coordinator	
	Finance Director	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
COST: N/A Water/Wastewater Supervisor		
	Timberland Library wanted to give	the Council and the
public an update on the State	of the Library.	

Workshops are public meetings with the purpose of allowing the City Council to discuss topics. No formal decisions are made at workshops. While almost every meeting when a majority of the city council is present is considered a public meeting, that doesn't necessitate the Council allowing public comment. If the Mayor and Council request more information or clarification they may seek input from the audience.



Connecting people, places, and ideas

Congratulations on your recent move! As a Pacific County resident, you can sign up (online or in-person) for a free Timberland Regional Library card, opening the doors to a vibrant world of possibilities!

The TRL collection includes books, eBooks, CDs, DVDs, eAudiobooks, eMagazines, Library of Things, Assistive Devices (WATAP), Zines, Birding Backpacks, online resources, and much more!

During COVID our in-person services reflect the current guidelines, please check with your location before your visit at **TRL**.org/plan.

Don't delay, start using your online library card today!

Sign up online at TRL.org/how/get-library-card

 Online eCard: eBooks, eAudiobooks, eMagazines, Stream Movies, and online resources/databases

Timberland Regional LIBRARY

TRL.org

TRL Activities & Resources

Access these resources and more!













Learn, Play, Grow: Weekly live, interactive virtual classes focus on songs, rhymes, movements, and stories. Each program is led by talented library staff.

Grab Bags: Library staff will put together a Library Grab Bag of materials we think you'll love! Request online at TRL.org/grab-bag

Anywhere Book Club: Read, listen, or watch with no waiting on selected titles. Titles change monthly. Variety of levels available.

Virtual Online Events: Programs moved from in-person to online. Check out our calendar for upcoming programs and register for zoom invites. events.TRL.org

Take & Make Activity Bag: Enjoy a craft, with supplies and directions, to complete at home. Variety of ages and available at selected locations, while supplies last.

Summer Library Program: June 1 - August 31 Programs and activities for the whole family. Complete the reading log to earn a prize!

















OverDrive: Offers a wide range of ebooks, audiobooks and digital magazines in all genres and works with almost any device

Libby: Download the app on Google Play or Apple App to borrow ebooks and audiobooks powered by OverDrive

Kanopy: Stream over 30,000 indie and classic films

Consumer Reports: Magazine website with buying guides, reviews, and user ratings

Creativebug: Art & craft video classes taught by design experts and artists

Lynda.com: Online classes with topics on software, technology, creative, and business skills

MyTRL: Special student digital account allow students to login to TRL all without needing a physical card

Worksource: Partnership helping job seekers, entrepreneurs and small business owners

Plan your visit!

Services will vary by location, check with your library or TRL.org/plan



TRL library card gives you access to these locations and an additional twenty-two locations in Grays Harbor, Lewis, Mason, and Pacific Counties. For complete list of locations, visit TRL.org/locations

- Ilwaco Timberland Library 158 1st Avenue North; 360.642.3908
- **Naselle Timberland Library** 4 Parpala Road; 360.484.3877
- Ocean Park Timberland Library 1308 256th Place; 360.665.4184
- Raymond Timberland Library 507 Duryea Street; 360.942.2408
- South Bend Timberland Library 1st and Pacific; 360.875.5532

Events Calendar

Bookmark our online event calendar for free upcoming programs at events.TRL.org

Bookdrops

As a convenience to you, most checked out items can be returned to any TRL bookdrop. A few specific marked items need to be returned to the location on the item.

Social Media 😝 💟 📵 🕡



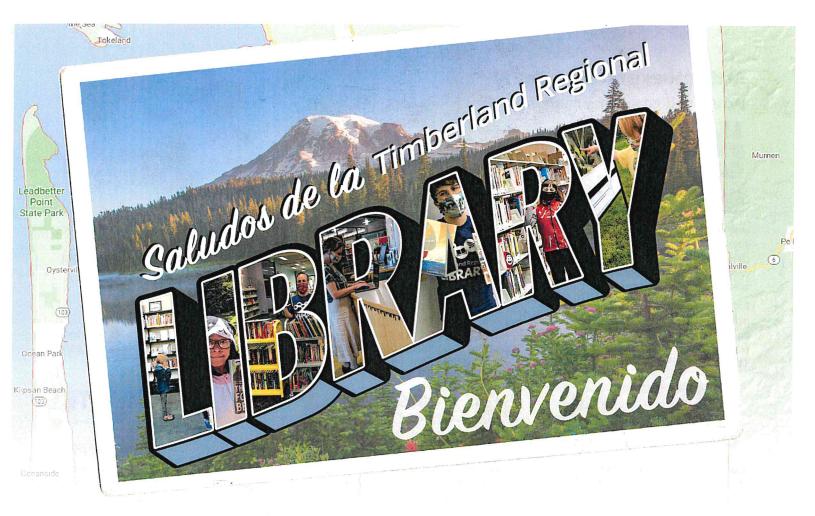






Follow our district news on Facebook, Twitter, Instagram and YouTube.

Individual branches are also on social media, varies by location.



Conectando personas, lugares e ideas

¡Felicidades por tu reciente mudanza! Como residente del condado Pacific, ¡puedes inscribirte (en línea o en persona) para obtener una tarjeta gratuita de Timberland Regional Library que te abre las puertas a un vibrante mundo de posibilidades!

La colección TRL incluye libros, eBooks, CDs, DVDs, eAudiobooks, eMagazines, Biblioteca de las Cosas, Dispositivos Asistidos (WATAP), Zines, Birding Backpacks, recursos en línea, ¡y mucho más!

Como nuestros servicios en persona cumplen con las instrucciones actuales de seguridad durante la pandemia de la COVID, consulta con tu biblioteca antes de tu visita en la página web **TRL**.org/plan.

¡No demores, comienza a usar tu tarjeta de biblioteca en línea hoy mismo!

Inscríbete en línea en TRL.org/how/get-library-card

 Tarjeta electrónica en línea: libros electrónicos, eAudiobooks, eMagazines, películas en transmisión directa y recursos/bases de datos en línea

Timberland Regional LIBRARY

TRL.org

Actividades y recursos de TRL

¡Accede a estos recursos y mucho más!







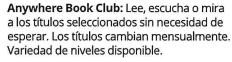






Learn, Play, Grow: Clases virtuales interactivas semanales en vivo enfocadas en canciones, rimas, movimientos y cuentos. Cada programa está dirigido por personal talentoso de la biblioteca.

Bolsas con materiales para llevar: El personal de la Biblioteca preparará una Bolsa para llevar de la Biblioteca con materiales que pensamos serán de tu agrado! Pídela en el sitio web TRL.org/grab-bag



Eventos virtuales en línea: Nuestros programas pasaron de la opción presencial a la de distancia y en línea. Echa un vistazo a nuestro calendario para ver los próximos programas e inscríbete para recibir invitaciones y eventos por Zoom. events.TRL.org

Bolsa Take & Make Activity Bag: Disfruta de las artes manuales, con suministros e instrucciones para realizar en casa. Para varias edades y disponibles en lugares seleccionados, mientras duren los suministros.

Programa de Verano: 1 de junio - 31 de agosto. Programas y actividades para toda la familia. ¡Llena el registro de lectura para ganar un premio!

















OverDrive: Ofrece una variedad de libros electrónicos, audiolibros, y revistas digitales en muchas temas y funciona con casi cualquier dispositivo

Libby: Descarga la aplicación en Google Play o Apple App para pedir prestados libros electrónicos y audiolibros con tecnología OverDrive

Kanopy: Puedes ver en directo más de 30.000 películas independientes y clásicas

Consumer Reports: El sitio de web de una revista con guías de compra, comentarios y calificaciones de usuarios

Creativebug: Clases en video de artes y manualidades impartidas por expertos en diseño y artistas visuales

Lynda.com: Clases en línea con temas sobre software, tecnología, habilidades creativas y empresariales

MyTRL: La cuenta digital especial para estudiantes les permite iniciar una sesión en TRL sin necesidad de la tarjeta física

Worksource: Alianza que ayuda a solicitantes de empleo, empresarios y propietarios de pequeñas empresas

¡Planifica tu visita!

Como los servicios variarán según el lugar, consulta con tu biblioteca o visita la página web TRL.org/plan

Condado de Pacific County

La tarjeta de biblioteca TRL te da acceso a estas bibliotecas y a veintidós más en los condados Grays Harbor, Lewis, Mason y Pacific. Para obtener una lista completa de las bibliotecas, visita visita TRL.org/locations

- Ilwaco Timberland Library 158 1st Avenue North; 360.642.3908
- Naselle Timberland Library 4 Parpala Road; 360.484.3877
- Ocean Park Timberland Library 1308 256th Place; 360.665.4184
- Raymond Timberland Library 507 Duryea Street; 360.942.2408
- South Bend Timberland Library 1st and Pacific; 360.875.5532

Calendario de Eventos

Marca nuestro calendario de eventos en línea para que participes en próximos programas y eventos gratuitos. events. TRL. org

Devolución de libros

Para tu comodidad, la mayoría de los artículos prestados se pueden devolver en cualquier depósito de libros TRL.

Algunos artículos considerados como específicos se deben devolver a la biblioteca original que los prestó.

Redes sociales 😝 💟 📵 🕡









Sigue las noticias de nuestro distrito en Facebook, Twitter, Instagram y YouTube.

Las ramas individuales también están en las redes sociales, varía según la ubicación.

TAB - B

The City of Long Beach, WA.

Proclamation

WHEREAS On April 11, 1968, the Fair Housing Act was enacted into law, recognizing that no American should have their right to purchase or rent shelter of choice abridged because of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

WHEREAS The City of Long Beach is committed to the mission and intent of Congress to provide fair and equal housing opportunities for all; and

WHEREAS equality of opportunity for all is a fundamental policy of this nation and our state and our community; and

WHEREAS the location that people live has a direct impact on the quality of their health, education, and access to economic opportunities; and

WHEREAS Discriminatory housing practices create racial and economic segregation in communities that can lead to disparate outcomes in overall quality of life; and

WHEREAS the City of Long Beach believes that access to fair housing laws have made our communities stronger and more vibrant in Washington State; and

WHEREAS we are committed to programs that will help educate the public about the right to equal housing in the State of Washington; and

WHEREAS we are committed to promoting housing choices and fostering inclusive communities free from housing discrimination

NOW THEREFORE, BE IT RESOLVED, that the City of Long Beach celebrate and Proclaim the Month of April 2022 as Fair Housing Month and thank the many people in our communities who aspire to open the doors of opportunity of housing to all people free from any discrimination.

Signed this 21st day of March 2022

Jerry Phillips

Mayor, Long Beach, Washington

TAB - C

LONG BEACH CITY COUNCIL MEETING

March 7, 2022

6: 30 COUNCIL WORKSHOP

Mayor Phillips, C. Svendsen, C. McGuire, C. Reddy, and C. Coleman were in attendance remotely. C. Murry was absent.

WS 22-05 - Dedication Parks and Other City Properties

David Glasson, City Administrator, facilitated a discussion about dedicating the public parks and facilities. A draft resolution is included in the workshop bill.

No decisions were made at this time.

7: 00 CALL TO ORDER

Mayor Phillips called the meeting to order.

ROLL CALL

David Glasson, City Administrator, called roll with Mayor Phillips, C. Svendsen, C. McGuire, C. Reddy, and C. Coleman in attendance remotely. C. Murry was absent.

PUBLIC COMMENT

No comments

CONSENT AGENDA

Minutes, February 22, 2022

Payment Approval List for Warrant Registers - 60724-60755 & 89246-89292 for \$230,763.72

C. Coleman made the motion to approve the Consent Agenda. C. Reddy seconded the motion; 4 Ayes; 1 Absent (C. Murry), motion passed.

BUSINESS

AB 22-18 - Department of Ecology Agreement Amendment No. 5

David Glasson, City Administrator, presented the Agenda Bill. This is the last amendment of the contract. It closes out the loan and reallocates funds within the project to reflect actual expenditures vs. budget.

C. Svendsen made the motion to authorize the City Administrator to execute the agreement amendment. C. McGuire seconded the motion; 4 Ayes; 1 Absent (C. Murry), motion passed.

AB 22-19 – 2022 PCTB Agreement

David Glasson, City Administrator, presented the Agenda Bill. Included in the agenda bill, is the agreement with the Pacific County Tourism Bureau for marketing services. The objectives of this agreement are listed explicitly as are the expectations.

C. Coleman made the motion to authorize Mayor Phillips to execute the agreement. C. Reddy seconded the motion; 4 Ayes, 1 Absent (C. Murry), motion passed.

AB 22-20 – WCIA Delegate and Alternate

David Glasson, City Administrator, presented the Agenda Bill. As members of the Washington Cities Insurance Authority, we are required to select a delegate and alternate to coordinate training, timely responses to claims and be a primary contact among other duties. The City Administrator has served in this capacity for years. However, as duties and responsibilities have evolved at city hall, the City Administrator wishes to assign that duty to the Deputy City Administrator.

C. Svendsen made the motion to appoint Ariel Smith as the delegate and Helen Bell as the alternate delegate. C. Reddy seconded the motion; 4 Ayes; 1 Absent (C. Murry), motion passed.

DEPARTMENT HEAD ORAL REPORTS

CORRESPONDENCE AND WRITTEN REPORTS

- Sales Tax Collections
- Lodging Tax Collections
- Transportation Benefit District Collections
- Congressional Record Long Beach Celebrates 100 years
- PCEDC Marine Industry Legislative Priorities 2022

ADJOURNMENT

Mayor Phillips adjourned the meeting at 7:16 p.m.

		•
	Mayor	
City Clerk		



Warrant Register

Check Periods: 2022 - March - First

I, THE UNDERSIGNED DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN AND THAT THE CLAIM IS A JUST, DUE AND UNPAID OBLIGATION AGAINST THE CITY OF LONG BEACH, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND CERTIFY T

Council Member	Council Member Co	Council Member	Clerk/Treasurer	
60756	Bell, Helen S	COUCINIE		
60757	Binion, Jacob M	3/4/2022		\$428.36
<u>60758</u>	Booi, Kristopher A			\$2,136.95
69/09	Goulter, John R			92.007.14
09209	Huff, Timothy M			\$2,382.38
60761	Kaino, Kris A			41,986.99
79/09	Kemmer, Larry L			\$1,013.02
00/03	Luethe, Paul J			62 172 40
<u>60764</u>	McGuire, Tina M			\$2,122.49 \$266.24
00700	Murry, Del R			\$200.21 \$266.24
90700	Padgett, Timothy J			\$200.21 64 604 63
79/09	Quittner, Jonathan H			\$1,001.0Z
00/08	Reddy, Patrick E			60.00 60.00
90/09	Svendsen, Sue M			\$25.50 \$26.51
0//09	Wright, Flint R			\$2,00.21 \$3,123,17
1.7/09	AFLAC	3.5		40,123.17
60/72	Association of WA Cities			08.7040
60773	Awc - ST & Life			\$31,788.46
60//4	City of Long Beach - Fica			18.86.4
60775	City of Long Beach - FWH			\$14,065.12
<u>80776</u>	Council Gift Fund			\$9,969.33
60777	Dept of Labor & Industries			\$60.00
60778	Dent of Refreement Systems			\$1,531.47
60779	Dept of Definering Systems			\$13,937.24
60780	Dept of Retirement Systems Def Con			\$3,285,30
60781	Towns I will be but			\$228.70
60782	l earnsters Local #58			\$197.50
89293	WEX Health, Inc.			\$125.00
89294	Grav Karan	3/7/2022		\$196.33
		3/7/2022		\$165.00

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\$373.32 \$55.25 \$45.00 \$1,443.68 \$20,793.60 \$997.26 \$467.40 \$575.76 \$63.23 \$1,60.13 \$1,027.77 \$1,60.13 \$1,027.77 \$1,60.13 \$1,027.77 \$1,48.28 \$1,027.77 \$1,48.28 \$5,608.32 \$1,18.37 \$1,148.28 \$5,000 \$13,48.77 \$1,182.14 \$1,182.14 \$1,182.14 \$1,182.14 \$1,182.14 \$1,182.14 \$1,182.14 \$1,182.14 \$11,823.20 \$34.55 \$550.00 \$11,823.20 \$34.55 \$593.12 \$1,200.00 \$113.72	\$6,434.72 \$6,434.72 \$83.03 \$2,371.19 \$1,867.71 \$9,166.66
3/7/2022 3/8/2022 3/8/2022 3/11/2022 3/11/2022 3/14/2022 3/17/2022	3/17/2022 3/17/2022 3/17/2022 3/17/2022 3/17/2022
Ostgaard, Loretta Miller, Matt Washington State Parks Jewell, Kyle Coastal AG LLC Coastal AG LLC Coastal AG LLC Cutting, Jeff Meling, Casey Gray, Karen Active Enterprises, Inc. Airgas USA LLC Argus Pacific, Inc. Astoria Ford Astoria Janitor & Paper Supply Bailey's Saw Shop Carroft-Top Industries Inc. Cascade Columbia Distribution CO Cascade Fire & Safety CenturyLink Chinook Observer Cintas Communications Northwest CresComm Wifi, LLC. Day Wireless Systems Dept of Ecology Englund Marine Supply Evergreen Septic Inc Evergreen Septic Pumping LLC Fastenal Company FedEx Furrow Pump Gray & Osborne Hach Company HARRINGTON INDUSTRIAL PLASTICS Iron Mountain Jacoby, Rich L.N. Curtis & Sons Lancaster Safety Consulting, Inc. MANSFIELD ALARM CO, INC	Mosca Design Municipal Emergency Services Oman & Son Builders Pacific County Auditor Peninsula Sanitation Peninsula Visitors Bureau
89295 89295 89296 89290 89300 89300 89300 89310 89311 89321 89321 89322 89323 89332 89333 8933	89335 89336 89337 89338 89339

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\$7,962.50 \$1,764.14 \$639.76 \$325.27 \$2,645.00 \$294.55 \$1,315.07 \$729.68 \$170.09 \$48.36 \$3,457.83 \$5,000.00 \$611.90 \$445.50	\$230,487.30	\$230,487.30
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3/17/2022 3/17/2022 3/17/2022 3/17/2022 3/17/2022 3/17/2022 3/17/2022 3/17/2022 3/17/2022 3/17/2022 3/17/2022 3/17/2022	Total	Grand Total
· ·		
Prothman Company Public Utility District 2 Quadient Finance USA, Inc. Quill Corporation SDS Municipal Consulting LLC STAPLES BUSINESS CREDIT SUNSET AUTO PARTS, INC Tangly Cottage Garden Traffic Safety Supply Co. Usa Blue Book Visa Western Display Fireworks Western Systems Wet Health, Inc.		

89341 89342 89343 89344 89346 89346 89346 89348 89350 89351 89352 89353 89353 89353

\$230,487.30

TAB - D



CITY COUNCIL AGENDA BILL

AB 22-21

Meeting Date: March 21, 2022

A	AGENDA ITEM INFORMATION		
SUBJECT: 2022 4th of		Originator:	
July Fireworks Show	Mayor		
	City Council		
Contract	City Administrator	DG	
	City Attorney		
	City Clerk		
	City Engineer		
	Community Development Director		
	Finance Director		
	Fire Chief		
	Police Chief		
	Streets/Parks/Drainage Supervisor		
COST: \$20,000	Water/Wastewater Supervisor		
Ψ20,000	Other:		

SUMMARY STATEMENT: Attached to this agenda bill is the agreement for the 4th of July fireworks show.

RECOMMENDED ACTION: Authorize Mayor Phillips to execute the agreements.



March 7, 2022

Dave Glasson City of Long Beach PO Box 310 Long Beach, WA 98631

Dear Dave,

Thank you for allowing Western Display Fireworks the opportunity to be a part of your upcoming celebration. We are pleased to present our proposal for the 2022 Long Beach 4th of July fireworks displays.

Please review the enclosed program and call us if you have any questions or if we can be of further assistance at this time. If the show is approved as written, please sign the enclosed Display Agreement and Purchase Order, and return to Western by March 15th via fax or e-mail. This will allow us to proceed with all other arrangements for your shows.

We appreciate your business and look forward to providing spectacular fireworks display for your events.

Sincerely,

Heather Gobet President



Fireworks Display Proposal Summary

City of Long Beach Long Beach 4th of July July 4, 2022

Your display proposal includes the following services to be provided by Western Display Fireworks, Ltd:

- Provide display liability insurance with sponsors and property owners listed as additional insured
 - o \$5,000,000 (per occurrence) general liability
- Prepare the Washington State Display permit application to be approved by the local fire authority
- Provide transportation by a properly licensed vehicle and a CDL hazmat driver for all pyrotechnics to the display site
- Provide transportation of equipment to and from the display site
- Provide \$5,000,000 commercial auto insurance to cover transportation
- Supply all necessary labor to conduct the display including a state certified pyrotechnician, assistant and crew covered under worker's compensation insurance
- Supply all pyrotechnics as listed on the attached detailed proposal
- Provide all necessary mortars and firing equipment required to pre-load and fire the display

HEHELLE THE TENT FIREWORKS IND SHOW SCRIPT

Proposal #: 22-6942

Quantity Description

- 1 4" (36) Sunny Assortment Package C 2020 (2 Each)
 - 4" Red Glitter w/ Tail
 - 4" Green to Silver Peony w/ Tail
 - 4" Orange Glitter Tail w/ Tail
 - 4" Lemon Peony w/ Tail
 - 4" Silver Strobe w/ Tail
- 4" Purple Tail Peony w/ Tail
- 4" Variegated Color w/ Tail
- 4" Golden Wave to Blue Chrysanthemum w/ Silver Tail
- 4" Green Palm Tree w/ Tail
- 4" Silver to Popping Flower w/ Tail
- 4" Green to Gold Strobe w/ Tail
- 4" Purple to Lemon Peony
- 4" Super Yellow glitter Trail w/ Tail
- 4" Glitter Silver to Red Chrysanthemum w/ Tail
- 4" Variegated Color w/ Tail
- 4" Yellow Glitter
- 4" Red to Popping Flower
- 4" Variegated Color w/ Tail
- 1 4" (36) Sunny Assortment Package B 2020 (2 Each)
 - 4" Green to Silver Strobe
 - 4" Purple Peony to Popping Flower w/ Tail
 - 4" Red to Blue Peony w/ Silver Palm Core w/ Tail
 - 4" Red Mag Dahlia w/ silver Tail
 - 4" Purple Dahlia w/ Silver Tail
- 4" Blue Peony w/ Silver Tail
- 4" Red & Blue & Spangle w/ Tail
- 4" Red Glitter w/ Big Silver Palm w/ Tail
- 4" Red Chrysanthemum w/ Silver Palm w Tail
- 4" Green & Purple Dahlia w/ Tail
- 4" Variegated Color w/ Tail
- 4" Green Crossette w/ Tail
- 4" Green Glitter w/ Tail
- 4" Variegated Peony w/ Tail
- 4" Variegated Color w/ Tail
- 4" Lemon to Crackling Flower
- 4" Red & Green Palm w/ Tail
- 4" Variegated Color w/ Tail
- 1 FIVE INCH SHELLS

HOW SCRIPT

Proposal #: 22-6942

Quantity Description

- 2 5" (18) Crown Assorted Shells C w/Tail (18 Effects)-Fancy 2 of Each
 - 5" Brocade Crown to Red Crossette w/Blue Pistil RT-Red
 - 5" Gold Titanium Willow RT-Silver
 - 5" Double Brocade Crown Rings w/Red to Blue to White Strobe Pistil RT-Silver
 - 5" Brocade Crown Coco. Ring to Silver Swimming Star Ring w/Colorful Swimming Star RT-Red
 - 5" Gold Chrys.to White to Green w/ Green to Red Pistil RT-Green
 - 5" Gold Cycas to Colorful RT- Green
 - 5" Silver Coco. Chrys. to Crackling w/Crackling Pistil RT-Silver
- 5" Red Glittering Ring w/Brocade Crown Waterfall Bow Tie Pistil RT-Red
- 5" Red&Green&Blue&Purple w/Crackling Pistil RT-Green
- 5" Gold Wave to Red Ring Alternating w/Blue Ring RT-Silver
- 5" Gold Blink Willow & Blue RT-Green
- 5" Gold Blink Willow & Red RT-Red
- 5"Red & White & Blue Mixed Peony w / Crackling Pistil RT-Red
- 5"Red Coco. w/Crackling RT-Red
- 5"Red Crossette w/ White Blink Pistil RT-Silver
- 5" Sunflower RT-Silver (Double Brocade Rings Ending Red Tips w/Red Strobe Pistil)
- 5" Time Rain Willow Waterfall RT-Silver
- 5"Gold Chrys to Red & Silver Coco RT-Green
- 1 5" (18) Sunny Assortment Package V25 (1 Each)
 - 5" Red Peony
 - 5" Yellow Peony
- 5" Orange Peony
- 5" Blue Glitter
- 5" Variegated Glitter
- 5" Green Dahlia
- 5" Purple Dahlia
- 5" Red Crossette
- 5" Orange Crossette
- 5" White Chrysanthemum
- 5" Purple to Super Gold Flitter
- 5" Glitter Silver to Yellow Chrysanthemum
- 5" Silver Wave to Blue Chrysanthemum
- 5" Blue Chrysanthemum to Crackling Flower w/ Red Pistil
- 5" Red to Popping Flower
- 5" Green to Popping Flower
- 5" Blue to Red Chrysanthemum
- 5" 4 Color Change Chrysanthemum
- 1 MID SHOW VOLLEY
- 1 2.5" (25 Shot) FANNED Brocade Kamuro
- 1 2.5" (30 Shot) Fanned Glitter Coconut w/Glitter Tail
- 1 3" (25 Shot) FANNED Silver Glitter to Green Strobe
- 1 3" (24 Shot) Fanned Turquoise Peony / Orange Shiny Peony / Silver Palm w/Tourbillion Tail

DISPLAY AGREEMENT AND PURCHASE ORDER

THIS AGREEMENT ("Agreement") is entered into on this	day of	, 2022 by
and between Western Display Fireworks, Ltd., an Oregon corporati	ion, whose address is s	et forth above,
("Western") and City of Long Beach, whose address is PO Box 310	0, Long Beach, OR 986	31 ("Sponsor").
Western and Sponsor are sometimes individually referred to as a "Par	rty" and collectively as t	he "Parties."

In consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Proposal.** Western agrees to supply, and Sponsor agrees to pay for, a fireworks display on the following designated date(s) and location: July 4, 2022 from the beach between Bolstad & Syd Snyder Dr, Long Beach, WA 98361, as detailed in Proposal #22-6942, which is attached hereto and incorporated herein by this reference, (the "Display") in accordance with the program approved by both Parties.
- 2. **Price and Payment Terms.** Total price of TWENTY THOUSAND DOLLARS AND NO/100 (\$20,000.00) is to be paid as follows: 25% of the total price, \$5,000.00 is due by MARCH 15, 2022; 25% of the total price, \$5,000.00 is due by JUNE 4, 2022; the remaining balance of the price, \$10,000.00, is due in full on or before JULY 14, 2022. Interest will accrue at 1½% per month (an annual percentage rate of 18% per annum) on all unpaid amounts from the date on which the payment was due.
- 3. Western Duties. As part of the total price Western agrees to the following:
 - a. To supply all shells and other pyrotechnics listed on the Proposal;
 - b. Mortars, firing equipment and all other required materials necessary to perform its services hereunder;
 - c. Proper delivery, set-up, firing and presentation by pyrotechnic operator and crew covered under workers compensation insurance;
 - d. To remove all equipment and spent pyrotechnic devices and clean up debris from the immediate Display site. Sponsor acknowledges that additional debris may remain in the fallout zone after Western's responsibilities of Display site cleanup have been completed; and
 - e. To comply with all local and federal guidelines and obtain any necessary permits to perform the Display, unless otherwise notes in Sponsor duties.

4. Sponsor Duties.

- a. Sponsor shall comply with all duties as detailed under the Compliance with Laws/Sponsor Responsibilities portion of this Agreement.
- b. Sponsor to provide at least 3 monitors for security and crowd control during show setup, execution and cleanup;
- c. Sponsor to provide backhoe and operator to dig trenches as directed by pyrotechnician;
- d. Sponsor to complete any required Washington State Parks permits
- 5. Insurance. Western agrees to provide, at its expense, commercial general liability insurance coverage in an amount not less than \$5,000,000. If requested in writing, Western shall provide Sponsor with a certificate of insurance within two weeks of the Display. All entities/individuals listed on the certificate of insurance will be deemed as additional insured pursuant to this Agreement.

A STEEL DISTANTENORISE

the date of the Display, Sponsor agrees to pay 100% of the total price (\$20,000.00). By providing notice of not less than 30 days from the original Display date, Sponsor may elect to reschedule the Display to a mutually agreeable date. This date must be within 90 days of the original display date. Western agrees to facilitate this rescheduling and Sponsor agrees to reimburse Western for new permits and other additional costs associated with this change. Sponsor understands that permitting requirements, burn bans and other factors beyond Western's control may prohibit rescheduling of a display. If these factors prohibit the rescheduled Display from taking place then the standard cancellation schedule applies.

9. Safety / Weather Forced Cancellation. Western agrees that it shall be the responsibility of the pyrotechnic operator in charge, acting on Western's behalf or the Authority Having Jurisdiction, to cancel or delay the Display if in the operator's judgment circumstances beyond the control of either Party pose an extraordinary risk to the health and safety of any persons or property within the vicinity of the Display.

If the product has been damaged as an attempt to execute the Display and cannot be safely reused, 100% of the price is due and Western has no further obligation under this Agreement. If the product is intact and reusable, Western agrees to store the product and execute the Display on a mutually agreeable future date. Sponsor agrees to reimburse Western for reasonable costs associated with the rescheduling of the event.

- 10. Force Majeure. Sponsor assumes the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of Western which may prevent the Display from being safely performed on the scheduled date, which may cause the cancellation of the event for which Sponsor has purchased the Display, or which may affect or damage such portion of the Display as must be replaced and exposed a necessary time before the Display.
- 11. **Product Performance.** Sponsor recognizes and acknowledges that due to the nature of fireworks, an industry accepted level of 3% of the product used in any display may not function as designed and this level of nonperformance is acceptable as full performance.
- 12. Limitation on Damages. In the event that Sponsor claims that Western has breached this Agreement or was negligent in performing its duties hereunder, Sponsor shall not be entitled to claim or recover monetary damages from Western beyond the amount that Sponsor has paid Western under this Agreement and shall not be entitled to a claim for or recover of consequential damages from Western, including, but not limited to, damages for lost income, business, or profits. Additionally, Western's liability for matters covered by the insurance set forth herein shall be limited to the limits of said insurance.
- 13. Time. Time is of the essence in this agreement. The Parties expressly recognize that in the performance of their respective obligations, each Party is relying on timely performance by the other Party and will schedule operations and incur obligations to third parties in reliance upon timely performances by the other Party and may sustain substantial losses by reason of any failure of timely performance.

TAB - E



CITY COUNCIL AGENDA BILL AB 22-22

Meeting Date:

March 21, 2022

AGENDA ITEM INFORMATION		
SUBJECT: Surplus Bid		Originator:
Award	Mayor	
Awaiu	City Council	
	City Administrator	DG
	City Attorney	
	City Clerk	
	City Engineer	
	Community Development Director	
	Fire Chief	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
COST: N/A	Water/Wastewater Supervisor	
0031. N/A	Other:	

SUMMARY STATEMENT: The city received bids for the equipment on the following page, the high bidder is highlighted in yellow. There was no bid on the Seagraves firetruck; the city is looking at alternative ways of selling it.

RECOMMENDED ACTION: Approve the sales of surplus equipment to the highest bidder.

		Surplus Bid Items	ms		
Year	Make	Model	Minimum Bid	Bid Amout	Bidder
2006	Ford	Crown Victoria	\$300	\$757	Kris Booi
2006	Ford	Crown Victoria	\$300	\$600	Candelario Viveros

TAB - F



CITY COUNCIL
AGENDA BILL

AB 22-23

Meeting Date:

March 21, 2022

AGENDA ITEM INFORMATION		
SUBJECT: Wahkiakum		Originator:
West Fiber Connections	Mayor	
west riber Connections	City Council	
	City Administrator	DG
	City Attorney	
	City Clerk	
	City Engineer	
	Community Development Director	
	Fire Chief	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
COST: \$595 Monthly	Water/Wastewater Supervisor	
CCS1. \$393 Monthly	Other:	

SUMMARY STATEMENT: The City is working with Wahkiakum West to install fiber links and communications equipment between City Hall, the Fire Hall, the Police Station and City Shops. This creates a dedicated link between those city structures. Included in this agreement is the replacement of phones at City Hall, City Shops and the Firehall.

RECOMMENDED ACTION: Authorize Mayor Phillips to sign the agreements to have Wahkiakum West provide communications services to the city.

SERVICE EXHIBIT

Customer Information		
Legal Name of Company ("Customer"):	Doing Business As (d/b/a):	
Term and Exhibit Effective Date		
As of the day of, 202("Exhibit Effect	ctive Date"), Wahkiakum West Television, Inc. ("WWest") and Customer	
enter into this Service Exhibit. This Service Exhibit is hereb		
on the Exhibit Effective Date. The Master Services Agreeme amendments are collectively the "Agreement".	ent and this Service Exhibit together with any other Exhibits or	
This Service Exhibit shall commence on the Exhibit Effective	e Date and shall continue for a period of 5 years from the	
	natically renew for successive <u>1-year</u> periods (" Renewal Term ") unless	
written notice is given by either Party of its intent not to rene	ew for the forthcoming term not less than ninety (90) days prior to the	
expiration of the then-current Initial Term or Renewal Term.	The Initial Term and Renewal Term shall together be referred to as the	
	st invoices Customer for the Services provided under this Service Exhibit	
(not including any invoices for one-time set-up fees).		
West shall provide the following services:		
500Mbps Internet service		
IP addresses as needed and justified – minimum of four (4) IP addresses Provided the second se		
 Direct fiber connections between City Hall, Police 	The state of the s	
Replacement telephone services to replace Spe		
Replacement telephone handsets as needed and	d site-to-site 10Gbps Ethernet switching devices	
Pricing is set out on Schedule 1, attached and incorporated by this reference as if fully set forth herein.		
The figure and the content of the first state of th		
West agrees to sell to Customer, and Customer agrees to purchase from WWest, the Services described in this Service Exhibit, according to the terms and conditions set forth herein. Services and service providers are subject to change without notice. Continued see of the Services after a change constitutes acceptance and agreement to the change. This Service Exhibit shall consist of this cover heet, the Exhibit Terms and Conditions. This Service Exhibit hereby incorporates the terms of the Agreement ("Agreement Terms") and the terms of this Service Exhibit ("Exhibit Terms"). West and Customer (each a "Party" or collectively "Parties") agree that each Party has read and understands the Agreement and grees to be bound thereby. In the event of a conflict between the Agreement Terms and the Exhibit Terms, the Exhibit Terms shall		
	nd dated by a duly authorized representative of WWest. The Parties have	
ahkiakum West Television, Inc. (WWest)	(0	
	(Customer)	
gnature:	Signature:	
me:	Name:	
le:	Title:	
day's Date: Today's Date:		

Service Exhibit Terms and Conditions

- Scope. This Service Exhibit sets forth the terms and conditions under which WWest shall provide to Customer during the Term the services ("Services") described on the preceding page.
- Customer Prerequisites and Obligations. Customer qualifies for the Services under this Service Exhibit only if it continuously meets all of the following contractual conditions for the Term: Customer may not resell the Services to any third party of any nature whatsoever.
- Taxes. All amounts due hereunder are net amounts to be received by WWest. With the exception of taxes due on WWest's income, Customer shall be solely responsible for any and all local, state, and federal taxes, duties, fees, and charges of whatever kind imposed by any governmental or quasi-governmental bodies (including, without limitation, any sales tax, services tax, withholding tax, excise tax, ad valorem tax, use tax, value added tax, consumption tax, gross receipts tax, foreign withholding tax (which will be grossed up), excise tax, access tax, bypass tax, franchise tax or other charges) applicable to, imposed on or arising from Customer's operations or the sale or use of any Service provided by WWest under the Agreement (such charges collectively referred to herein as "Taxes"). Unless otherwise agreed by the Parties in writing, Customer shall be solely responsible for the determination and calculation of all Taxes and shall pay such Taxes directly to the taxing body. In the event WWest (or its agents or affiliates) are required to pay any Tax, Customer shall reimburse WWest for such payments upon invoice from WWest. Reimbursement charges for Taxes may be changed or added by WWest without notice as a result of any change in the applicable tax law or tax rates. Customer will also be solely responsible to pay any Taxes that become applicable retroactively. Notwithstanding the foregoing, WWest shall calculate and remit federal Universal Service Fund ("USF") fees and shall invoice Customer for same. Customer may present WWest a valid exemption certificate (in a form to be provided by WWest upon request) confirming Customer's status as a direct USF contributor. Upon receipt and acceptance of the certificate, WWest shall cease charging USF fees to Customer and Customer shall be solely responsible for the payment of USF fees. To the extent Customer wishes to maintain such exemption status, it shall renew the certificate annually or at such other times as WWest may require.
- 4. Regulatory and Legal Changes. If any change or clarification in applicable law, regulation, rule or order materially affects delivery of Services, the Parties will negotiate appropriate changes to this Agreement. If the Parties are unable to reach agreement within 30 days after either Party's delivery of written notice requesting renegotiation, then WWest may terminate Services without liability or pass any increased costs relating to delivery of Voice Services through to Customer and Customer shall have the option of either agreeing to pay the additional costs or to terminate this Service Exhibit without penalty with a ninety (90) day notice.

5. Termination.

5.1. In the event that this Service Exhibit, or the Agreement, is terminated for any reason other than material breach of this Service Exhibit by WWest, subject to Customer providing WWest thirty (30) days from receipt of written notice by Customer and an opportunity to cure during such thirty (30) day period, Customer shall remain liable

- to, and Customer shall, pay WWest for the termination fees related to this Service Exhibit in addition to all charges accrued but not paid for as of the termination date.
- 5.2. The termination fees related to this Service Exhibit shall be the greater of (i) the highest monthly recurring fees invoiced to Customer over the six (6) month period immediately preceding termination multiplied by the number of months remaining in the Term; or (ii) \$15,000.00.
- 5.3. The termination fees, in addition to all charges accrued but not paid for, shall be due and payable on the date of termination.
- 5.4. Upon any termination or expiration of this Service Exhibit for any reason, all rights and obligations of the Parties under this Service Exhibit shall cease except for the rights and obligations of the Parties pursuant to Section 6 and all provisions that should survive in order to fulfill the provision.

6. Sale or Disposal.

- 6.1. In the event Customer sells or otherwise disposes of a system or set of systems that are being served under this Service Exhibit and the Agreement is not assumed by the purchaser of the affected system(s), the Customer agrees to pay WWest the sale/disposal fee related to this Service Exhibit, in addition to all charges accrued but not paid for as of the sale/disposal date.
- 6.2. The sale/disposal fees related to this Service Exhibit shall be the highest monthly recurring fee invoiced to Customer over the six (6) month period immediately preceding sale/disposal multiplied by the number of months remaining in the Term.
- **6.3.** The sale/disposal fees, in addition to all charges accrued but not paid for, shall be due and payable on the date of sale/disposal.
- Compliance With Laws. This Service Exhibit and its continuance hereof is contingent upon the obtaining and the continuance of such approvals, consents, governmental and regulatory authorizations, licenses and permits as may be required or deemed necessary by the Parties, and the Parties shall use commercially reasonable efforts to obtain and continue same in full force and effect throughout the term of the Agreement. Customer shall not use, and WWest shall not provide, the Services in any manner or for any purpose, which constitutes a violation of applicable laws in any jurisdiction in which the Services are being provided and each Party shall indemnify the other Party against any such unlawful use of the Services arising from its use or provision of the Services. Based on the facts and circumstances of the violation, either Party's non-compliance with any law or legal obligation may be deemed a material breach, entitling either Party to immediately terminate the Agreement or any and all services without penalty.

Page 2 of 3 Customer Initials:

Schedule 1: Additional Pricing Terms and Conditions

1.	Installation Charge for Implementation Services: A one-time installation and set-up fee of	\$0.00	(\$ 0.00) will
	be invoiced on the first of the month following the Effective Date of the Agreement.			

- 2. Monthly Charges: The monthly recurring charges for the Services shall be Five hundred and ninety-five dollars (\$595.00).
- 3. <u>Invoicing</u>. WWest will invoice Customer in advance on the first day of the month for Services provided for that month plus amounts not invoiced previously, including, but not limited to, pro-rated charges for the prior month. Payment is due thirty (30) days after date of invoice. WWest shall have the right to set off any amounts due hereunder which are not paid when due against any amounts owed to Customer by WWest or any of its affiliates pursuant to any other agreement or arrangement.
- 4. <u>Disputes</u>. Customer agrees to follow the billing dispute procedures set forth in the Agreement and recognizes that it may withhold from payment only the disputed amount. Customer remains responsible for timely paying the invoiced amount less the disputed amount. Disputed amounts exclude any Customer claims that the Services do not perform as warranted and consist exclusively of Customer's claim of mistakes in WWest's billings.
- 5. <u>Late Payments</u>. WWest shall have the right, after giving Customer ten (10) days written notice ("Late Payment Notice"), to cancel or suspend any or all portions of the Services until Customer has paid any arrearages, including any late fees.
- 6. <u>Additional Services</u>. In the event that Customer requests, and WWest is able to provide, additional services that are not specified herein, the Parties agree that such additional services will be charged at WWest's standard rates at time of purchase.
- 7. Other Work. Should Customer request any work not specified in this Service Exhibit or any of the associated documents, WWest may, at its discretion, agree to commit to additional, un-scoped work. Any such request for evaluation will carry a non-refundable charge of \$145.00/hour for evaluation. If the work is accepted, then this amount will be applied to the work itself after it is scoped. The base rate for any such un-scoped work is \$145.00 per hour with a minimum block of 4 hours.

Customer	Initialar	
Customer	initials:	

MASTER SERVICES AGREEMENT

_	Cı	ustomer Information	
'	Legal Name of Company ("Customer"):	Doing Business	As (d/b/a):
-	Type of Entity:		
Ī	Federal ID #:	State ID #:	
F	Primary Address (physical address only):	City, State and Z	ip Code:
F	Primary Authorized Contact Person:	Title:	
7	Felephone & Facsimile:	E-Mail:	
(T) (F)		
E	Billing Address:	City, State and Zi	ip Code:
E	Billing Contact Person:	Billing Telephone	e and/or E-mail Address:
		(T)	(E)
Mas in th shal Part WW here	of theday of, 202 ("Effective Date") ster Services Agreement. WWest agrees to sell to Custom is Agreement and the applicable Service Exhibits, accord Il consist of this cover sheet, the General Terms and Coties (collectively "Agreement"). This Agreement shall not be effective until signed a	ner, and Customer agrees to purchase ling to the terms and conditions set for anditions and the Service Exhibits, at Party has read and understands the	e from WWest, the Services described th herein and therein. This Agreement tached hereto or later signed by both e Agreement and agrees to be bound
	cuted this Agreement as of the Effective Date.		
War	nkiakum West		(Customer)
Sign	nature:(Signature above)	Signature:	(Signature above)
Nam	ne:(Print)	Name:	(Print)
Title		Title:	
Date	e Signed:	Date Signed:	

Page 1 of 8

Customer Initials _____

General Terms and Conditions

- 1. SCOPE. WWest shall provide to Customer the Services specified in the exhibits attached hereto (the "Service Exhibits") during the Term (as defined herein). As used hereinafter, the "Services" may, depending on the context and nature of Customer's orders with WWest, refer singularly or collectively to WWest's residential, commercial, voice, or other services offering that currently or in the future is identified as a service of WWest as specified in the Service Exhibits attached to this Agreement and those from time to time signed by both Parties in the future. The Agreement may be amended, modified, supplemented, updated and terminated, from time to time, by the mutual written agreement of the Parties. Customer may request new services from WWest and WWest may offer new services to Customer and following the mutual written agreement of the Parties for such services, the Parties shall make such revisions or additions as are necessary to this Agreement and its exhibits. All Services are subject to ongoing availability, including WWest's ability to offer a Service in compliance with all applicable laws and regulations. All Service Exhibits, as amended and added from time to time by the mutual written agreement of Customer and WWest, shall be subject to the terms of this Agreement. This Agreement will cover the Services as the Services may be modified, altered, improved or changed by WWest and Customer from time to time. WWest is entitled to modify, alter, improve and change the Services and the parties providing the Services without notice. No such change shall be to the detriment of Customer or Service(s) provided under the terms of this Agreement. Customer will be deemed to have agreed to the modification, alteration, improvement or change by continuing to use the Service.
- 2. TERM. This Agreement commences on the Effective Date of this Agreement and shall remain in full force and effect as long as there is a Service Exhibit in effect ("Term"). As used hereinafter, "Term" may, depending on the context and nature of Customer's orders with WWest, refer singularly or collectively to the term of WWest's residential, commercial, voice, or other services offering to Customer. The term of a Service Exhibit shall begin on the Exhibit Effective Date of that Service Exhibit and continue in effect for the agreed term stated in that Service Exhibit. Customer acknowledges that each Service Exhibit may be terminated only in accordance with its express terms or the terms of this Agreement.
- 3. <u>CUSTOMER RIGHTS AND OBLIGATIONS</u>. WWest's obligation to provide the Services is conditioned upon Customer fulfilling its obligations and the timely payment of all amounts owed pursuant to this Agreement. Customer specifically agrees that each of the obligations set forth in this <u>Section 3</u> are material and that its failure to comply with any of these obligations shall constitute a material breach of Agreement permitting WWest to exercise its termination rights pursuant to <u>Section 10</u>. In the event Customer fails to perform such obligations on a timely basis, the time period during which WWest is obligated to perform any of the Services impacted by Customer's failure shall be extended to the extent so impacted.
 - A. If needed, WWest shall have unrestricted Internet access to Customer's equipment that is necessary for WWest to perform the Services, including, without

- limitation, logins, related passwords and IP addresses (collectively, "Customer Equipment"). Both Parties agree not to make changes to any Customer Equipment without prior written notice to (which may be in electronic or email form) and consent by the other Party, such consent not to be unreasonably withheld.
- B. Customer shall not engage in any activities, practices or business endeavors that would: (i) prevent WWest's ability to perform its obligations hereunder; (ii) adversely impact the reputation of WWest or its suppliers; or (iii) constitute a false or misleading representation regarding WWest or its suppliers or the Services.
- C. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall limit or in any way affect WWest's right to provide any services to other parties.
- D. WWest reserves the right to modify the rates and charges or eliminate certain components of the Services in the event of any material change in any law, rule, regulation, or any change in the interpretation, application, enforcement thereof, or in either Party's authorization to provide services or conduct business upon not less than thirty (30) days prior written notice to Customer or any shorter notification period necessitated by the change.
- E. Notwithstanding anything to the contrary, Customer shall be solely responsible for its compliance with all other federal, state and local laws, rules and regulations, including without limitation CALEA, applicable to Customer. WWest shall comply with all applicable laws, rules and regulations relating to the responsibilities expressly assumed by WWest in the delivery of Service under this Agreement. Each Party ("indemnifying party") agrees to indemnify, defend and hold harmless the other Party, its Affiliates and their officers, directors, employees and agents from and against any third-party claim related to or arising out of the indemnifying party's breach of its obligation under this Section 3E.
- F. Customer shall obtain, pay for and maintain during the Term all insurance that is required in any of the applicable Service Exhibits executed by Customer.
- G. Customer represents and warrants:
 - i. Customer has a non-transferrable right to use WWest software and shall not allow any third parties or third-party providers use of the software without the express written consent of WWest.
 - ii. Customer's use of the Services will comply with all applicable laws, rules and regulations applicable to its respective uses and performance obligations under this Agreement or any related terms and conditions, acceptable use policy, privacy policy or other policy applicable to each particular Service;
 - iii. Customer will use commercially reasonable efforts to implement reasonable physical,

technical and administrative safeguards for Customer's information technology systems (including but not limited to as required by law), including without limitation preventing any virus, Trojan horse, worm or other disabling code from being transmitted to or introduced into the WWest systems that provide the Services;

- iv. Both Parties agree not to make changes to any Customer Equipment without prior written notice to (which may be in electronic or email form) and consent by the other Party, such consent not to be unreasonably withheld.
- H. Customer will use all commercially reasonable efforts to prevent unauthorized use of the Services, and to terminate any unauthorized use. Customer will promptly notify WWest of any unauthorized use of, or access to, the Services of which it becomes aware. In any event, Customer shall be responsible for all use of the Services provided to it regardless of whether it is authorized or if Customer provides notice to WWest.
- Customer is solely responsible for obtaining all local permits, landlord consents, access licenses and permissions, letters of authorization, and other consents and waivers necessary for installation and activation of all network, systems, facilities, and equipment necessary for WWest to provide the Services.

4. PAYMENTS; RIGHT TO CANCEL OR SUSPEND SERVICES.

- A. Customer agrees to pay WWest's fees in accordance with the terms of this <u>Section 4</u> and the Service Exhibits for all Services provided hereunder and all applicable taxes and fees in accordance with <u>Section 5</u>. WWest will invoice Customer either in advance or arrears pursuant to the pricing terms in the respective Service Exhibit.
- B. All payments to WWest must be in U.S. funds and shall be made without deduction or set-off.
- C. Any amount due but unpaid within thirty (30) days of the invoice due date will be charged a late payment fee equal to the lesser of: (i) 1.5% of the unpaid balance per month or (ii) the maximum lawful rate and such late fee will be immediately due and payable without necessity of demand by WWest. Disputed amounts exclude any Customer claims that the Services do not perform as warranted and consist exclusively of Customer's claim of mistakes in WWest's billings.
- D. WWest shall also have the right, after giving Customer ten (10) days written notice ("<u>Late Payment Notice</u>"), to cancel or suspend any and all Services until Customer has paid any arrearages, including any late fees.
- E. If Customer objects to any portion of an invoice, the Customer shall so notify WWest by providing a written notice of dispute within thirty (30) days of the invoice date so long as the invoice is delivered to Customer within three business days of its date, otherwise the period for response will be extended on a day by day basis.

Customer shall identify the specific cause of the disagreement and the amount in dispute. If notice of dispute is not given within the time required by this section, then the invoice is deemed to be accepted as submitted. Customer shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Interest as stated above shall be paid by the Customer on all unpaid disputed invoice amounts that are subsequently resolved in WWest's favor and shall be calculated on the unpaid balance from the due date of the invoice. Any dispute over invoiced amounts due that cannot be resolved within thirty (30) calendar days of the notice of dispute by direct negotiation between the Parties shall be resolved within thirty (30) days in accordance with the Adjudication provision of this Agreement.

- F. If any dispute relating to this Agreement arises which is not resolved under paragraph 4.E., above, that dispute shall be submitted for mediation to the judicial mediation service known as JAMS or such other mediation service as the Parties to the dispute may agree. If mediation is unsuccessful, the dispute shall be submitted for arbitration to JAMS. Arbitration, shall be conducted in accordance with Title 7.04A RCW; provided, the Parties to the arbitration may conduct discovery pursuant to the Superior Court Rules of Civil Procedure. The arbitrator's decision shall be final and shall award reasonable attorney's fees and costs of arbitration to the substantially prevailing party. Requests for reconsideration or modification may be submitted as provided by Superior Court Rules of Civil Procedure. The arbitrator's decision shall be reduced to judgment as provided by Title 7.04A RCW
- G. In the event of any default, Customer shall pay all costs incurred by WWest in collecting any amounts that are due and payable under this Agreement, including reasonable attorneys' fees and costs.
- H. Customer's execution of this Agreement signifies Customer's acceptance of WWest's initial and continuing credit review and approval. WWest reserves the right to condition provision of Services on such credit review and/or reasonable assurance of payment.
- I. No acceptance of partial payment(s) by WWest shall constitute a waiver of any rights to collect the full balance owed under the Agreement. WWest reserves the right to: (a) vary the billing frequency at any time upon mutual agreement of the Parties; and (b) re-issue any bill if any error is subsequently discovered. If a payment is dishonored or cancelled, Customer shall reissue such payment in a form acceptable to WWest and pay to WWest any: (a) resulting bank or other charges incurred by WWest; and (b) associated reasonable administration charge imposed by WWest.
- J. The remedies set forth herein are in addition to and not in limitation of any other rights and remedies available to WWest under the Agreement or at law or in equity.

- 5. TAXES. All amounts due hereunder are net amounts to be received by WWest. With the exception of taxes due on WWest's income, Customer shall be solely responsible for any and all local, state, and federal taxes, duties, fees, and charges of whatever kind imposed by any governmental or quasi-governmental bodies (including, without limitation, any sales tax, services tax, withholding tax, excise tax, ad valorem tax, use tax, value added tax, consumption tax, gross receipts tax, foreign withholding tax (which will be grossed up), excise tax, access tax, bypass tax, franchise tax or other charges) applicable to, imposed on or arising from Customer's operations or the sale or use of any Service provided by WWest under the Agreement (such charges collectively referred to herein as "Taxes"). Unless otherwise agreed by the Parties in writing, Customer shall be solely responsible for the determination and calculation of all Taxes and shall pay such Taxes directly to the taxing body. In the event WWest (or its agents or affiliates) are required to pay any Tax, Customer shall reimburse WWest for such payments upon invoice from WWest. Reimbursement charges for Taxes may be changed or added by WWest without notice as a result of any change in the applicable tax law or tax rates. Customer will also be solely responsible to pay any Taxes that become applicable retroactively.
- 6. LIMITED WARRANTY; DISCLAIMERS. WWest represents and warrants to Customer that WWest has the right to furnish the Services to Customer as provided hereunder. The warranties with regard to any equipment provided by WWest for Customer's use are extended solely by the manufacturer(s) of such equipment to the extent such warranties are assignable to Customer. The warranties with regard to any third-party software provided by WWest for Customer's use in connection with the Services are extended solely by the licensor(s) of such SOFTWARE IN ACCORDANCE WITH THE WARRANTY, IF ANY, OF SUCH LICENSOR. EXCEPT FOR THE LIMITED WARRANTY CONTAINED IN THE FIRST SENTENCE OF THIS SECTION 6, THE SERVICES (INCLUDING WITHOUT LIMITATION ALL PROPRIETARY SOFTWARE OF WWEST AND ITS THIRD PARTY PROVIDERS THAT CUSTOMER MAY HAVE THE RIGHT TO USE IN CONNECTION WITH SUCH SERVICES) ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND WWEST AND ITS THIRD PARTY PROVIDERS DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF LATENCY OR DELAY, OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS. USE OF THE SERVICES IS AT CUSTOMER'S SOLE RISK. WWEST DISCLAIMS ALL WARRANTIES, EXPRESSED, IMPLIED STATUTORY REGARDING THE SERVICES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

7. INDEMNIFICATION.

A. Customer shall indemnify, defend and hold harmless WWest and its third party Providers and their officers, managers, members, representatives, agents, suppliers, and employees ("Indemnified Parties") from and against all damages, losses, fines or forfeitures, costs and expenses, including reasonable attorneys' fees, penalties and interest (collectively, "Costs"), arising from

- or relating to Customer's use of the Services, including without limitation: (i) any fraud or unauthorized use of the Services; (ii) any claim by Customer, or any third party relating to the use of the internet by Customer, or any third party, including (a) unauthorized access of any data or files sent or received, (b) receipt of files or software containing virus or other damaging or destructive attributes, (c) access to content on the internet that is infringing, inaccurate, abusive, obscene, profane or sexually offensive or (d) failure of any blocking or filtering software, (iii) problems resulting from the Customer combining or integrating the Services with other products, services, systems or software; (iv) any infringement, misappropriation or violation of the intellectual property rights resulting from any use of the Services (including without limitation the software that is provided by WWest in connection with the Services and its graphical user interface) or modification thereof by the Customer or any agent, employee, representative, or transferee of the Customer; and (v) any use of the Services (including without limitation Customer modification or configuration of the Services to manage network traffic) in violation of federal law, policy or regulation or the terms of this Agreement, or Customer's gross negligence or willful act or omission arising out of or related to the Agreement; provided that Customer is given prompt written notice of such claim by WWest. In addition, Customer shall indemnify, defend and hold harmless the Indemnified Parties against Costs that arise out of or relate to Customer's failure to make payments under this Agreement when due. Notwithstanding the foregoing, Customer shall have no indemnification obligation for Costs to the extent that such Costs (i) were caused by the gross negligence or willful misconduct of WWest, its agents, employees, officers or subcontractors, or (ii) arise from a claim that the Services, in the form originally furnished by WWest. infringe any third party's proprietary rights.
- B. WWest will defend, indemnify and hold Customer harmless against any damages awarded in a final judgment by a court of competent jurisdiction arising out of any suit, claim, or proceeding (collectively referred to as a "Claim") that alleges (i) gross negligence or willful misconduct of WWest in the performance of its obligations hereunder; (ii) the Services in the form originally furnished by WWest violate federal law; or (iii) the Services in the form originally furnished by WWest infringe or misappropriate any U.S. patent, U.S. copyright, U.S. trademark, or U.S. trade secret of any third party; provided, that (i) Customer promptly notifies WWest in writing of any such Claim; (ii) Customer makes no admission of liability and gives WWest sole authority, at its expense, to direct and control all defense, settlement or compromise negotiations; (iii) Customer provides WWest with full information and assistance that may be reasonably required to defend any such Claim. WWest will have no obligation or liability with respect to any Claim based upon (i) any Service (including any software related thereto) that has been altered at the request of Customer; (ii) any customer proprietary information or Marks; (iii) the combination, operation or use of any Service with products not furnished by WWest when such combination is part of any allegedly infringing process; or (iv) use of the Services in breach of this Agreement. If the Services become, or in WWest's opinion is likely to become, the subject of a Claim. WWest may at its option (i) procure for Customer the

- right to continue using the Services, or (ii) provide Customer a replacement or modified Service that is non-infringing. If neither of the foregoing alternatives is reasonably available to WWest as determined by WWest, then WWest may terminate this Agreement upon thirty (30) days written notice to Customer, and WWest will repay any amounts WWest received from Customer for the Services provided the thirty (30) days immediately preceding the date of termination. The foregoing states the entire liability of WWest and the sole and exclusive remedy of Customer with respect to indemnification for patent, trademark, copyright and trade secret infringement or misappropriation related to the Services.
- **LIMITATION OF LIABILITY**. WITH THE EXCEPTION OF SECTION 7B INDEMNIFICATION AND SECTION 9 CONFIDENTIALITY, THE ENTIRE LIABILITY OF WWEST AND ITS THIRD PARTY PROVIDERS OF WHATEVER NATURE ARISING IN CONNECTION WITH THIS AGREEMENT AND ITS RESPECTIVE SERVICE EXHIBITS. SHALL NOT EXCEED AN AMOUNT EQUAL TO THE MONTHLY RECURRING FEES ACTUALLY PAID BY CUSTOMER TO WWEST FOR THE SERVICES THAT WERE PROVIDED PURSUANT TO THE SERVICE EXHIBIT FROM WHICH THE LIABILITY AROSE DURING THE SIX (6) MONTH PERIOD PRIOR TO WHICH THE EVENT OR ACTION GIVING RISE TO A CLAIM OCCURS. IN NO EVENT SHALL WWEST OR ITS THIRD PARTY PROVIDERS (OR THEIR OFFICERS, MANAGERS, MEMBERS, AGENTS, AFFILIATES, REPRESENTATIVES AND EMPLOYEES) BE LIABLE TO CUSTOMER, OR AFFILIATES (AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, **AGENTS** REPRESENTATIVES) FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES, OR LOST TIME, SAVINGS, PROPERTY, DATA, PROFITS OR GOODWILL, WHICH MAY ARISE IN CONNECTION WITH THE SERVICES OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER WWEST OR ITS THIRD PARTY PROVIDERS HAVE BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGE OCCURRING OR WHETHER CLAIMS ARE BASED OR REMEDIES ARE SOUGHT IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, PRODUCTS LIABILITY OR OTHERWISE. In no event shall WWest be liable for any loss, damage or claim arising out of or related to: (i) any act or omission of any third party, including but not limited to Customer; (ii) any unlawful, tortious, or unauthorized use of the Services; (iii) infringement of patents, trade secrets, or copyrights arising from or in connection with the transmission of communications by means of the Services; (iv) breach in the privacy or security of communications transmitted using the Services; (v) any noncompletion of communications due to network or other conditions; or (vi) failures or breach of protective measures on Customer's network.
- 9. CONFIDENTIALITY. Neither Party shall disclose the terms of this Agreement except (i) as required by applicable law or regulation, (ii) to its employees and agents with a need to know such terms, or (iii) in connection with a potential merger or sale of all or substantially all of its assets; provided that the receiving Party agrees in writing to be bound by substantially similar restrictions to the ones contained in this Agreement.

- A. For the purposes of this Agreement, "Confidential Information" means any and all (i) technical and nontechnical information including patent, trade secret and proprietary information, software, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment and algorithms related to the Services, and related documentation, (ii) information relating to costs, prices (including prices under this Agreement) and names, finances, marketing plans, business opportunities, personnel, research, development or know-how; (iii) all non-public Customer information; (iv) information designated Confidential Information pursuant to this Agreement; (v) trade secrets, and (vi) information designated by either Party as confidential in writing or, if disclosed orally, reduced to writing within thirty (30) days. Notwithstanding the foregoing, the confidentiality restrictions contained in Section 9B shall not apply to Confidential Information of a disclosing Party that: (1) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving Party; (2) is previously known and has been reduced to tangible form by the receiving Party at the time of disclosure, as shown by contemporaneous written documentation, and is not subject to restriction; (3) is independently developed or learned by either Party, without any reliance upon any Confidential Information of the other Party; (4) is lawfully obtained from a third party who has the right to make such disclosure; or (5) is released for publication in writing.
- B. Each Party agrees that it will not and will ensure that its employees, agents and contractors will not make use of, disseminate, or in any way disclose any Confidential Information of the other Party or a third party Provider of the other Party to any person, firm or business, except (i) as may be reasonably necessary for such Party's performance of its obligations and exercise of its rights under this Agreement, and (ii) for any purpose the disclosing Party may hereafter authorize in writing or as mandated to be disclosed by law. Each Party's obligations under this Section 9 will continue in effect during the Term and for three (3) years thereafter, provided however, each Party's obligations with respect to information that is a trade secret shall continue so long as such information is deemed a trade secret under applicable law. If the Confidential Information is mandated to be disclosed by law then the disclosing Party will give the other Party immediate notice to allow that Party time to attempt to enjoin the production of such information unless explicitly prohibited by law. Each Party agrees that it will treat all Confidential Information with the same degree of care as it accords to its own Confidential Information, and each Party represents that it exercises reasonable care to protect its own Confidential Information.

10. SUSPENSION AND TERMINATION.

A. In addition to any other rights at law or in equity, WWest may immediately suspend the delivery of any or all Services and/or terminate this Agreement or the applicable Service Exhibit at any time in the event that Customer (i) becomes insolvent or bankrupt or ceases paying its debts to third-parties or is the subject of any proceedings related to its liquidation, insolvency or for

the appointment of a receiver or similar officer for it; or (ii) breaches any material term of this Agreement, except for breaches for non-payment, and fails to remedy such breach within thirty (30) days after receipt of written notice from WWest; or (iii) fails to pay any arrearages, including any late fees, within the appropriate time frame after WWest has provided Customer with a Late Payment Notice

- B. Customer may terminate: (i) the Service Exhibit of this Agreement for breach of that Service Exhibit by WWest subject to Customer providing WWest thirty (30) days after receipt of written notice from Customer and an opportunity to cure during such thirty (30) day period (other than for any Service related claims, which shall be governed by the remedies set forth in this Agreement); or (ii) the Agreement for breach of a material term of the Agreement by WWest, except where such term is only applicable under a Service Exhibit, and fails to remedy such breach within thirty (30) days after receipt of written notice from Customer and an opportunity to cure during such thirty (30) day period; (iii) the Service Exhibit at the end of the Exhibit Term by providing the proper notice pursuant to the terms the Agreement; or (iv) upon WWest filing for bankruptcy or appointment of a receiver or otherwise becoming insolvent should WWest become unwilling or unable to continue to provide the Services under the term of this Agreement. Customer is not entitled to terminate the entire Agreement based on a default in some but not all of the Service Exhibits. Customer shall submit to WWest formal written notice of termination to WWest in accordance with the Section 17 of this Agreement and such notice shall contain the reason for and date of termination.
- C. In the event of termination or expiration of the Term of this Agreement: (i) each Party shall immediately either return all Confidential Information of the other Party that has been furnished to it or destroy such materials and certify in writing to the other Party that such Party has complied with the provisions of this section; and (ii) Customer shall be immediately liable for all amounts owed under the Agreement up to and including on the date of termination and such amount will become due and payable subject to payment terms in this Agreement. Upon any termination or expiration of this Agreement for any reason, all rights and obligations of the Parties under this Agreement shall cease except for: (i) the obligations of either Party to make any payments to the other which have accrued as of the effective date of such termination or expiration and (ii) the rights and obligations of the Parties pursuant to Sections 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 19, 20, 21, 22, and 23 of this Agreement and all provisions of the Service Exhibits that either (a) expressly state they will survive or (b) should survive in order to fulfill the provision.
- D. In the event that any Service Exhibit or this Agreement is terminated for any reason other than pursuant to <u>Section</u> <u>10B</u>, Customer shall remain liable to pay WWest for the termination fees related to that Service Exhibit or this Agreement in addition to all charges accrued but not paid for as of the termination date.

- E. In the event Customer sells or otherwise disposes of a system or set of systems that are being served under this the Agreement, and the Agreement is not assumed by the purchaser of the affected system(s), the Customer agrees to pay WWest the sale/disposal fees as outlined in each of the Service Exhibit in addition to all charges accrued but not paid for as of the sale/disposal date.
- F. Both Parties agree that no termination shall be effective unless formal notice is delivered by the terminating Party to the other Party pursuant to the <u>Section 17</u> of this Agreement.
- 11. NON-RECRUITMENT OF EMPLOYEES. WWest and Customer recognize and acknowledge that their employees possess special, unique and extraordinary technical talents which are in great demand in the present economy and further recognize and acknowledge that each Party has incurred substantial expense in recruiting and training such employees and would incur even greater expense if required to replace any such employee. Therefore, both Parties agree not to recruit or employ, either directly or indirectly, a present employee of the other Party during the Term and 1 year after without the other Party's prior written consent.
- 12. PROPRIETARY RIGHTS. This Agreement shall not be construed to grant to Customer, or any other third party any ownership right, title or interest in any intellectual property rights embodied in or associated with the Services (including without limitation the software that may be provided by WWest in connection with the Services and its graphical user interface and any modifications or enhancements thereto) other than a non-exclusive, limited right and license to use and access such software and user interfaces as may be necessary to utilize the Services during the term of this Agreement. All intellectual property rights, title and interest in the methodology, technology and know-how that WWest uses to perform the Services shall remain exclusively with WWest and its licensors, as applicable. Customer shall not and shall not permit any third party to disassemble, reverse engineer or similarly manipulate all or any portion of such software, or create derivative works based on such software. Unless the Parties mutually agree otherwise in writing, as between Customer and WWest, WWest will own all rights. title, and interest in any custom developments relating to the Services or any related software, including all rights, title, and interest in all worldwide copyrights, trade secrets, trademarks, service marks, patents, utility models, industrial designs, confidential and proprietary rights or any other intellectual property category known or to be known, therein. Customer acknowledges that any breach by it of Section 8 or this Section 12 will result in irreparable harm to WWest for which remedies other than injunctive relief may be inadequate, and that WWest shall be entitled to receive from a court of competent jurisdiction injunctive or other equitable relief to restrain such breach, without posting a bond, in addition to other appropriate remedies.
- 13. <u>PUBLICITY</u>. WWest will have the right to include Customer's name in its list of clients, for both internal and external use. Subject to Customer's prior written consent, WWest shall also have the right to use the Customer name and logo in sales and marketing collateral, press releases, and in WWest presentations.

14. ASSIGNMENT; AMENDMENT.

- A. Neither Party hereto may assign, subrogate or transfer any interest, obligation or right under this Agreement, whether voluntarily, by operation of law or otherwise, without the prior consent of the other Party (which consent shall not be unreasonably withheld, delayed or conditioned), and any such attempt shall be null and void. Notwithstanding the foregoing, (i) WWest may assign this Agreement, in its entirety, without the other Party's consent, to any direct or indirect wholly-owned subsidiary of WWest, and (ii) either Party shall assign this Agreement to any legal entity which acquires all or substantially all the assets and business of such Party, whether by merger, sale of stock, sale of all or substantially all the assets and business of such Party, reorganization, recapitalization, or other form of business combination or consolidation ("Acquiring Party"), and that Acquiring Party shall be legally bound by the terms and conditions of this Agreement, and the assigning. selling or reorganizing Party shall remain liable under this Agreement also. This Agreement will bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Upon the effective date of any assignment by Customer, Customer shall be liable to WWest for all taxes and surcharges unless and until Customer submits new exemption certificates, even if WWest fails to bill such charges.
- **B.** WWest is entitled to delegate the performance of the Services to other parties and to change those parties from time to time in its discretion.
- C. No additional terms, consent, waiver, alteration or modification of any provision of this Agreement shall be binding unless both Parties agree in writing.
- 15. NO WAIVER; SEVERABILITY. Failure by either Party to enforce at any time any of the provisions of this Agreement shall not constitute a waiver of such provision and shall not in any way affect the validity of this Agreement or any part thereof or the right of the other Party thereafter to enforce the provisions hereof. The provisions of this Agreement are severable, and any provision of this Agreement that is determined to be void or unenforceable by a court of competent jurisdiction shall not affect the enforceability of the remaining provisions herein, and the remaining provisions shall be enforced as if this Agreement was originally written without the invalid provision.
- 16. FORCE MAJEURE. Notwithstanding anything herein to the contrary, neither Party shall be liable to the other or any third party for any failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, failure in operation of the relevant portion of the Internet due to a technology failure (other than arising out of the neglect or mishandling by either Party) or failure in the performance of a third-party or its equipment, acts of any governmental body, declared and /or undeclared war or any act of war or resemblance thereto, terrorism, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability or

interruption or delay in telecommunications or third party services, cable cut, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision or Services.

17. NOTICES. Except as otherwise provided herein, all required notices shall be in writing, transmitted to the Parties' addresses specified in the cover page of this Agreement or such other addresses as may later be specified by written notice, and will be considered given either: (i) when delivered by facsimile or e-mail, so long as duplicate notification is sent via regular U.S. Mail or overnight delivery; (ii) when delivered in person to the Party; (iii) when deposited in either registered or certified U. S. Mail, return receipt requested, postage prepaid; or (iv) when delivered to a nationally recognized overnight courier service.

For Customer, Notices shall be sent to the address provided in the Customer Information section, unless specified differently herein:

Physical address only:	
City, State and Zip Code	
Attention:	

For WWest, Notices shall be addressed to:

WWest Communications 19 Miller Point Rd. Roseburg, WA 98643 Attention: Kenneth Johnson

- 18. <u>CONTRACTORS</u>. WWest may engage third parties to provide certain services in connection with this Agreement. Regardless of whether any services are subcontracted to third parties, WWest shall be responsible for performing its obligations under this Agreement. To the extent that WWest engages third party subcontractors, WWest shall be solely responsible for any payments due to such subcontractors.
- 19. NO PARTNERSHIP; GOVERNING LAW:

ADJUDICATION. This Agreement will not be construed as constituting either Party as partner, joint venture, fiduciary or employee, or employer of the other or to create any other form of legal association that would impose liability on one Party for the act or failure to act of the other or as providing either Party with the right, power or authority (express or implied) to create any duty or obligation of the other. This Agreement is governed by and shall be construed according to Washington law. Both Parties agree to waive trial by jury for the adjudication of any disputes arising under or related to this Agreement. Any disputes arising under or related to this Agreement may be adjudicated in any court that has personal jurisdiction of the Parties and subject matter jurisdiction of the dispute. The substantially prevailing Party shall be entitled to recover all costs of the adjudication, including attorneys' fees and expenses, from the nonprevailing Party in any adjudication under this Agreement.

20. <u>NO THIRD-PARTY BENEFICIARIES</u>. Except for the third-party providers to which WWest may from time to time delegate the terms, representations, warranties and

agreements of the Parties set forth in this Agreement are not intended for, nor shall they be for the benefit of or enforceable by, any person or entity that is not a party to this Agreement.

- 21. <u>COUNTERPARTS</u>. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument. Each Party agrees that the execution and delivery of this Agreement by facsimile or by e-mail shall have the same force and effect as delivery of original signatures and that each Party may use such facsimile or e-mail signatures as evidence of the execution and delivery of this Agreement by the Parties to the same extent that an original signature could be used.
- 22. <u>CONFLICT</u>. In the event of any conflict between General Terms and Conditions of the Agreement and the terms and conditions of any Service Exhibit or other attachments to this Agreement, the order of precedence is as follows: (1) the

- Services Exhibits attached hereto or hereafter signed by Customer and WWest, (2) the General Terms and Conditions of this Agreement, (3) all other attachments provided herein. In the event of any conflict between the terms and conditions of any Service Exhibit, with another Service Exhibit or another part of this Agreement, the terms and conditions of the Service Exhibit shall control and govern over the other Service Exhibits and the other portions of this Agreement with respect to the Services described in that Service Exhibit.
- 23. ENTIRE AGREEMENT. This Agreement, including any Service Exhibit executed hereunder, constitutes the entire and final agreement and understanding between the Parties with respect to the Services and supersedes all prior agreements, understandings, proposals, or representations relating to the Services, which are of no further force or effect.

TAB - G

Long Beach Police

P.O. Box 795 Long Beach, WA 98631 Phone 360-642-2911 Fax 360-642-5273

03-01-22

Page 1 of 2

To: Mayor Phillips and Long Beach City Council

From: Chief Flint R. Wright

Ref.: Monthly Report for February 2022

During the month of February the Long Beach Police Department handled the following cases and calls:

Long Beach

<u>Ilwaco</u> (Includes 18 Calls At Port)

447 Total Incidents274 Total IncidentsAid Call Assists: 0Aid Call Assists: 0Alarms: 4Alarms: 5

arms: 4 Alarms: 3
himal Complaints: 4 Animal Complaints: 2

Animal Complaints: 4 Animal Con Assaults: 7 Assaults: 3 Assists: 88 Assists: 25

(Includes 7 PCSO, 0 WSP And 0 Other Agency Assists Outside City Boundaries)

Burglaries: 0
Disturbance: 21
Drug Inv.: 2
Fire Call Assists: 2
Follow Up: 72

Burglaries: 0
Disturbance: 10
Drug Inv.: 0
Fire Call Assists: 2
Follow Up: 39

Found/Lost Property: 8 Found/Lost Property: 3

Harassment: 3

Malicious Mischief: 0

MIP – Alcohol: 0

MIP – Tobacco: 0

Missing Persons: 1

Harassment: 4

Malicious Mischief: 0

MIP – Alcohol: 1

MIP – Tobacco: 0

Missing Persons: 3

Prowler: 0 Prowler: 0 Runaway: 0 Runaway: 0

Security Checks: 136 Security Checks: 123 Suspicious: 19 Suspicious: 14

Suspicious: 19 Suspicious: 14 Thefts: 13 Thefts: 6

Traffic Accidents: 2
Traffic Complaints: 14
Traffic Tickets: 2
Traffic Tickets: 0
Traffic Tickets: 0

Traffic Warnings: 1
Trespass: 25
Trespass: 16
Warrant Contacts: 4
Warrant Contacts: 0

Welfare Checks: 9 Welfare Checks: 12

Monthly Report Continued:

Page 2 of 2

Officer Jeff Cutting assisted with a student from the high school in a job shadow on February 1st. Officer Cowsert had a job shadow student on the 2nd.

On February 2nd and 3rd I attended training. The course title was "Use of Force: Core Principles". This was the same course that Deputy Chief Meling attended in January. Use of force can be one of the biggest legal exposures for law enforcement so I felt that it was important to attend this class as well. By way of reminder, the course dealt with the current and emerging use of force standards in Washington State, force reporting, and understanding the critical analysis of force.

On the 5th the city had a fireworks show to celebrate its 100th anniversary, Deputy Chief Meling and myself provided security for the show. There were no problems.

Officer Mike Parker attended training on February 21st-24th. The course title was, "Practical Mobil Surveillance for Narcotics". Mike is currently assigned to the Pacific County Narcotics Task Force and surveillance is a necessary tool for him. This class is designed to provide officers with the knowledge and skills to successfully conduct and properly document their surveillance activities.

I met with the Sheriff and local Chiefs of Police for our quarterly Drug Task Force Administrators meeting on the 24th. Since starting up last fall the task force has served a number of search warrants, has made approx. 15 arrests and charged over 40 different cases.

I had the privilege to meet with Representative Herrera Beutler for an hour on the 25th. She met with me and the Sheriff to discuss concerns we have regarding law enforcement. I discussed my concern with our inability to help people in mental health crises due to the current laws and lack of mental hospital facilities. It was a very good conversation.

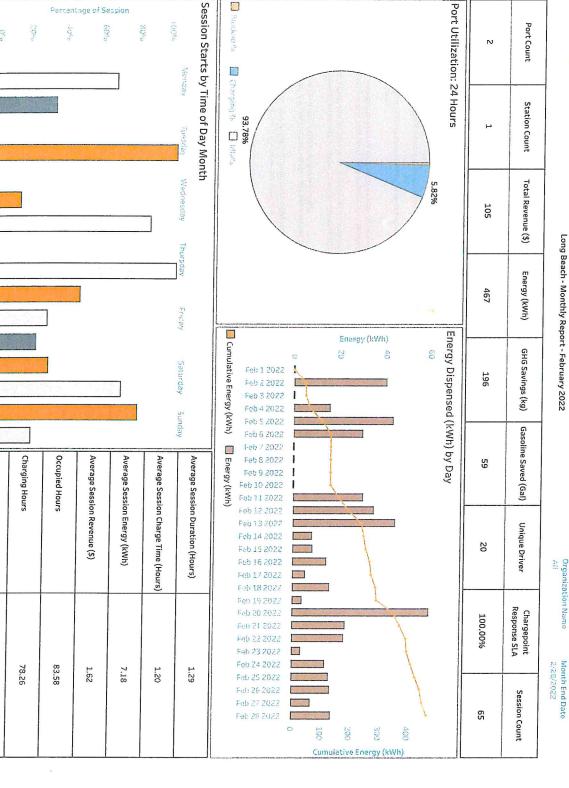
Flint R. Wright Chief of Police

-chargepoin+

Assure Station Metrics Monthly Reporting

Company Id 16335

Port Level



00:00-06:00

00:06-12:00

12:00-18:00

18:00-24:00

Service Tickets

2.00

-chargepoin+

Assure Station Metrics Reporting Appendix

- Port Utilization Chart: This is a view of station utilization during common business hours.
 You can use this information to determine if updates need to be made to pricing / access policies or if stations should be added.
- Session Start Distribution Chart: This is a view (by day) of what times drivers start sessions. You can use this information to fine tune time of day pricing policy rules.
- Station / Port Count: In order to be counted, a station must have the "Assure" entitlement applied This is the number of stations / ports that currently have the "Assure" entitlement.
- Total Revenue: This is the sum of session fees generated by your "Assure" stations minus the ChargePoint service fee (10%).
 This is based on session dates (not transaction date which may differ). Your Flex Billing reports should be used for financial reporting.
- Energy (kWh): All energy dispensed through your "Assure" stations.
 This data point can be useful in reconciling station energy against energy bills.
- GHG Savings (kg): All the green house gasses (95% CO2) that would have been released had the miles provided by your stations come from gasoline. This data point can be useful in sustainability reporting.
- Unique Drivers: The number of unique drivers that used your stations this month (a driver would be counted only once even if they used different RFID cards) An understanding of the number of unique drivers visiting may be useful in creating station messaging / video ads.
- Gasoline (Gal) Saved: All the gasoline that would have been burned had the miles provided by your stations come from gasoline. This data point can be useful in sustainability reporting.
- ChargePoint Response SL: Percentage of tickets to which ChargePoint responded within Service Level (1 business day). ChargePoint holds itself accountable to our Service Level commitment.
- Uptime: Percentage of time that your ports were capable of dispensing power.
- ChargePoint is committed to keeping your ports dispensing power 98% of the time or better
- Sessions: Total session count.
- An understanding of the number of times your stations authorize a session can be useful creating station messaging / video ads.
- Average Session Duration: Average amount of time drivers occupy your stations. This data point can be useful in fine tuning length of stay pricing policy rules,
- Average Charging Time: Average amount of time per session energy is flowing.
 This data point can be useful in fine tuning length of stay pricing policy rules.
- Average Session Energy: Average amount of energy dispensed.
- This data point can be useful in fine tuning price per kW pricing policy rules
- Average Session Revenue: Average session fee 10%.
- This data point can be useful in fine tuning minimum & maximum values for pricing policy rules.
- Total Hours Occupied: Sum of all session durations This is used in part to determine utilization.
- Total Hours Charging: Sum of all session charging durations. This is used in part to determine utilization
- New Service Tickets: Count of trouble tickets tracking issues with a "Assure" station created this month.
 This will help in keeping track of station fault issues raised with ChargePoint Support.

David Glasson

From: Sent:

sent: Subject:

Trautmann, Cara <Cara.Trautmann@charter.com> Wednesday, March 16, 2022 12:03 PM

Spectrum Pacific West, LLC ("SPECTRUM") Upcoming Changes 03.16.2022

[External Email]

Dear Franchise Official:

We value our customers and are committed to providing them with the latest products and technology. Programming fees charged by TV networks we carry are the greatest single factor in higher cable prices, and they continue to rise. Despite our best efforts, programming fees and other rising costs have impacted our pricing, resulting in in changes to the rates we charge our customers. Customers are being noticed via bill message regarding the following pricing changes that take effect on or after April 15, 2022. Note that these increases will not affect current customers' promotional rates until the end of the promotional period.

Services/Products/Equipment	Change
Broadcast TV Surcharge	Will increase by \$3.01/month.
Spectrum TV Select	Will increase by \$3.00/month.
Spectrum TV Silver	Will increase by \$8.00/month.
Spectrum TV Gold	Will increase by \$8.00/month.
Spectrum TV Latino Tier	Will increase by \$2.01/month.
Spectrum Mi Plan Latino	Will increase by \$5.00/month.
Spectrum TV Choice	Will increase by \$5.00/month.
Spectrum Lifestyle Plan	Will increase by \$5.00/month.
Spectrum TV Bundle Discount	Discount will decrease by \$6.00/month.
Legacy Charter Digital Home	Will increase by \$5.00/month.
Spectrum Digital Receivers	Will increase by \$1.00/month.
Spectrum Digital Terminal Adapters	Will increase by \$1.00/month.
Cable Cards	Will increase by \$0.95/month.

We remain committed to providing excellent communications and entertainment services in your community.

If you have any questions about this change, please feel free to contact me at 360.936.0522 or via email at stafford.strong@charter.com.

Sincerely,



Charter

Stafford Strong | Senior Manager, State Government Affairs - Washington | C: 360-936-0522 222 NE Park Plaza Drive, #231 | Vancouver, WA 98684

please immediately alert the sender by reply e-mail and then delete this message and any attachments. If you are not the intended recipient, you are notified confidential and/or legally privileged information. If you are not the intended recipient of this message or if this message has been addressed to you in error, E-MAIL CONFIDENTIALITY NOTICE: The contents of this e-mail message and any attachments are intended solely for the addressee(s) and may contain that any use, dissemination, distribution, copying, or storage of this message or any attachment is strictly prohibited.

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