

**ORDINANCE NO. 2021-16**

**AN ORDINANCE**, amending Ordinance No. 2021-07 granting a cable franchise to Computer 5, Inc. d/b/a LocalTel Communications.

**WHEREAS**, on March 11, 2021, the City Council of the City of Wenatchee approved Ordinance No. 2021-07 (“the Ordinance”) granting a non-exclusive cable franchise to provide cable service in the City; and

**WHEREAS**, Section 6.5 of the Ordinance incorrectly stated, in part, that Grantee (LocalTel) had “formerly made a one-time capital contribution to the City in the amount of one hundred thousand dollars (\$100,000), and Grantee shall continue to collect from and bill each subscriber an amount of eight cents (\$0.08) per month per subscriber for recovery of the one-time capital contribution...”; and

**WHEREAS**, Section 6.5 of the Ordinance should have read, in pertinent part, “formerly made a one-time capital contribution to the City in the amount of ten thousand dollars (\$10,000), and Grantee shall continue to collect from and bill each subscriber an amount of eight cents (\$0.08) per month per subscriber for recovery of the one-time capital contribution... .”

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE DO ORDAIN** as follows:

**SECTION I**

That Section 6.5 of the Franchise Agreement approved in Ordinance No. 2021-07 shall be, and hereby is, amended to read as follows:

“Financial Support for PEG Access. Grantee formerly made a one-time capital contribution to the City in the amount of ten thousand dollars (\$10,000), and Grantee shall continue to collect from and bill each Subscriber an amount of eight cents (\$0.08) per month per Subscriber for recovery of the one-time capital contribution. Grantee shall, annually and at the request of the City, provide the City with the amount of capital contribution collected and the amount remaining to be collected. Once the Grantee has been fully reimbursed for the ten thousand dollar (\$10,000) capital contribution, Grantee shall continue collecting the amount of eight cents (\$0.08) per month per Subscriber, and the amount shall be remitted to the City, payable on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. In the event of a dispute, the City, if it so requests, shall be furnished a statement of said payment, reflecting the PEG capital support collected from Subscribers. At any time, the Grantee may request a report of how the capital dollars are being used. City and Grantee acknowledge that PEG funds are only to be used for capital costs and not for operational costs. PEG capital support shall be for the exclusive use of the City and shall not be used for purposes other than as described under Section 13 herein. The City shall be responsible for installing, operating, maintaining, and replacing the equipment purchased as necessary.”

## **SECTION II**

As modified herein, Ordinance No. 2021-07 shall remain in full force and effect.

## **SECTION III**

If any section, clause, or provision of this Ordinance or its application to any person or circumstance is declared by a court to be invalid, the remainder of this Ordinance or

the application of the provision to other persons or circumstances shall not be affected.

**SECTION IV**

This ordinance shall take effect thirty (30) days from and after publication as provided by law.

**PASSED BY THE CITY COUNCIL OF THE CITY WENATCHEE**, at a regular meeting thereof, this 22<sup>nd</sup> day of April, 2021.


CITY OF WENATCHEE

By:  \_\_\_\_\_  
FRANK KUNTZ, Mayor

ATTEST:

By:  \_\_\_\_\_  
TAMMY STANGER, City Clerk

APPROVED:

By:  \_\_\_\_\_  
STEVE D. SMITH, City Attorney

ACCEPTED AND APPROVED BY GRANTEE:

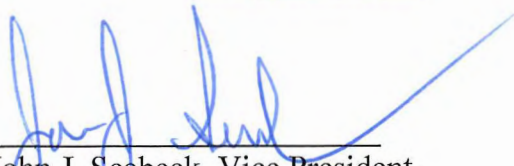
**Grantee Name:** Computer 5\*, Inc. dba LocalTel Communications

**Type of Entity:** Washington for-profit corporation

**Address for Notice Purposes:** 341 Grant Road, Wenatchee, WA 98802

**Phone No.:** (509) 884-0611

**E-mail Address:** [John@clandt.com](mailto:John@clandt.com)

By:  \_\_\_\_\_  
John J. Seabeck, Vice President  
Date: 6/1/21

**ORDINANCE NO. 2021-07**

AN ORDINANCE GRANTING A NON-EXCLUSIVE CABLE FRANCHISE TO PROVIDE CABLE SERVICE IN THE CITY OF WENATCHEE, WASHINGTON, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE.

**WHEREAS**, Computer 5, Inc., dba LocalTel Communications, (Grantee) has requested a Cable Franchise from the City of Wenatchee (“City”) to authorize the use of the City Rights-of-Way for the Grantee to provide Cable Service; and

**WHEREAS**, the Grantee intends to utilize transmission capacity acquired through a permit or license agreement on the Chelan County Public Utility District’s (“District”) Broadband System to provide Cable Service to the City; and

**WHEREAS**, the City entered into a Communications Infrastructure Right-of-Way Use Agreement with the District dated January 27, 2005 that requires, inter alia, that any retail internet service provider providing cable services over the District’s Broadband System to obtain a cable franchise from the City; and

**WHEREAS**, Washington law, as well as the federal Cable Act of 1984, as amended, authorize the City to grant a Cable Franchise for the use and occupancy of Rights-of-Way for the provision of Cable Service; and

**WHEREAS**, the City is authorized to and has established standards in Chapter 5.04, Wenatchee City Code, Ordinance No. 3125 (hereinafter referred to as the “Cable Code”) to grant and renew one or more nonexclusive revocable Cable Franchises in the City; and

**WHEREAS**, the City seeks to promote the development of Cable Services on a competitive basis within the City, while at the same time ensuring high quality customer service; and

**WHEREAS**, the City, after due evaluation of the Grantee's application for a Franchise, has determined that the Grantee meets the City's requirements for a cable franchise.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE, WASHINGTON, DO ORDAIN** as follows:

### **SECTION 1. DEFINITIONS**

For the purpose of this Franchise, unless otherwise provided herein, the terms, phrases, words, abbreviations and their derivations shall have the meaning given in Chapter 5.04 of the Wenatchee City Code ("Cable Code"). Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

"Basic Cable Service" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Cable Code or this Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).

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

"Communications Infrastructure Right-Of-Way Use Agreement" or "District Use Agreement" means the agreement, as it now exists or as it hereafter may be amended, between

the City and the District under which the District is authorized to install, maintain and operate its Broadband System in the City's rights-of-way on a wholesale basis.

“Direct Incremental Costs” means the costs actually incurred by the Grantee in meeting an obligation under its Franchise, including payment to the District, which it would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

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

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

“Grantee” means Computer 5, Inc., dba LocalTel Communications, or the lawful successor(s), transferee(s), or assignee(s) thereof.

“Gross Revenues” shall have the meaning as given in Chapter 5.04 of the City Cable Code.

“Rights-of-Way” means the surface of and the space above and below any street, road, highway, path, sidewalk, alley, court, or easement, now or hereafter dedicated for utility or other similar public use compatible with cable system operations.

## **SECTION 2. GRANT OF FRANCHISE**

### 2.1 Grant.

- A. Grantee is hereby granted a Cable Service Franchise, subject to the terms and conditions of this Cable Service Agreement and Franchise Ordinance (hereinafter referred to as the “Franchise”).
- B. This grant provides Grantee the individual authority, right and privilege, to provide Cable Services within the City of Wenatchee, Washington, as it is now or may in the future be constituted.

2.2 Right of City to Grant Franchise.

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

2.3 Term.

The initial Franchise granted by this Ordinance shall commence upon its acceptance pursuant to Section 8.5, and shall expire ten (10) years thereafter, unless extended, renewed, revoked or terminated sooner as provided for in this Franchise.

2.4 Application.

Grantee has satisfied, or the City hereby waives, the requirements of Sections 5.04.110 through 5.04.140 of the Cable Code, with respect to the application for and granting of this Franchise, except Grantee shall pay City an application fee pursuant to WCC 5.04.140(2) in the amount of \$5000.

2.5 Franchise Not Exclusive.

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

2.6 Binding Contract.

- A. This Franchise Ordinance (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof shall constitute a legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed without the mutual consent of the parties in any manner whatsoever, provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.
- B. This Franchise Ordinance shall be construed in a manner consistent with all applicable federal and State laws.
- C. Grantee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power.
- D. The provisions of Chapter 5.04 of the City Code, "Cable Code," as in effect on the effective date of this Franchise Ordinance, are hereby incorporated herein by reference as if set out in full, and form part of the terms and conditions of this Franchise, unless otherwise provided for in this Franchise. In the event of any conflict between the terms and conditions of this Franchise and the provisions of the Cable Code, the Franchise shall control.
- E. In the event of a change in state or federal law which by its terms would require the City to amend this Agreement, the Parties shall negotiate in good faith to modify the Franchise in a mutually agreed upon manner. In the event of a dispute

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

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

2.7 Franchise Renewal.

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

2.8 Competitive Neutrality.

In the event the City grants an overlapping franchise for Cable Services within the Cable Service Territory under terms and conditions materially different from those terms applied to the Grantee pursuant to this Franchise that puts the Grantee at a competitive disadvantage and substantially impairs the value of this Franchise Agreement to the Grantee, then the Grantee may elect within six (6) months of the grant of such overlapping franchise agreement to negotiate with the City in good faith to modify the terms of the Agreement relative to said overlapping area, and if the Parties fail to reach an agreement, the Grantee may elect to obtain a new franchise agreement pursuant to the renewal provisions of this Agreement, the Cable Code, and the then applicable provisions of state and federal law.

**SECTION 3. GENERAL REQUIREMENTS**

3.1 Annual Franchise Fee.

As compensation for this Franchise and in consideration of permission to use the Rights-of-Way of the City for the provision of Cable Service, and to defray the costs of Franchise obligations, the Grantee shall pay to the City on an annual basis throughout the

term of this Franchise, a sum totaling five percent (5%) of the Grantee's Gross Revenues derived from the provision of Cable Services, or the maximum percentage of Gross Revenues allowed by the Cable Communications Act of 1984, as it may be amended. Consistent with federal law, such franchise fees shall not be applicable to Gross Revenues for non-Cable Services, including but not limited to Internet access and telecommunications services as defined under federal law.

- A. Payments due City under this Section shall be computed and paid by Grantee as set forth in the City Cable Code, Sections 5.04.170(2),(3) and (4) as now exist or as may be hereafter amended. Each payment shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after the dates listed in the previous sentence.
- B. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further sums payable under the provisions of this Franchise. City's right to audit, and Grantee's obligations to retain records related to the franchise fee audit, shall expire three (3) years from the date on which each Franchise Fee payment by the Grantee is due.

### 3.2 Liability Insurance.

- A. Upon the effective date of this Franchise, the Grantee shall, at its sole expense, take out and maintain during the life of this Franchise commercial general liability insurance with a company licensed to do business in the State of Washington that

shall protect the Grantee, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Franchise, whether such operations are by the Grantee, its officers, directors, employees and agents, or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all of Grantee's operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be two million dollars (\$2,000,000.00) per occurrence and five million dollars (\$5,000,000.00) in the annual aggregate. The following endorsements shall attach to the liability policy:

- (1) The policy shall cover Personal Injury as well as Bodily Injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad Form property damage liability shall be afforded.
- (4) The City shall be named as an additional insured on the policy.
- (5) An endorsement stating that the policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days advance written notice of such event being given to the City.

Grantee shall provide City with a certificate of insurance verifying the above coverages at the commencement of this franchise and thereafter upon reasonable request of the City.

3.3 Indemnification.

- A. Except as otherwise provided herein, the Grantee shall, at its sole cost and expense, indemnify, hold harmless, release and defend City, its officials, boards, commissions, agents, and employees from and against any and all lawsuits, claims, actions, demands, damages, disability, losses, expenses including reasonable attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person, from any cause whatsoever, arising out of or in any way connected with the operations, expressly authorized herein, the exercise of the Franchise pursuant to this Franchise, and/or the activities of Grantee, its subcontractors, employees and agents hereunder, including copyright infringement or other program related liability.

The indemnification obligation of Grantee shall not be limited in any way by the application of any workmen's compensation acts, disability benefit acts or other employee benefit acts and the Franchisee expressly waives the protection afforded by such laws. The foregoing indemnification obligations are a material inducement to the City to grant this Franchise and it has been mutually negotiated.

- B. City does not, and shall not, waive any rights against Grantee which it may have by reason of this indemnification, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.

- C. This indemnification obligation of Grantee shall apply to all damages and claims for damages of any kind suffered by reason of any of the operations referred to in this Section, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- D. Grantee shall not be required to indemnify City for damages to the extent arising from or caused by the sole negligence or gross negligence or willful misconduct of the City or its officials, agents, or employees.
- E. With respect to any claims which are subject to indemnity hereunder, Grantee shall immediately notify the City's Executive Services Director of any such claims which have been filed against the Grantee or Grantee and City jointly, and shall provide the City with a copy of the same. City shall give the Grantee written notice of its obligation to indemnify the City within a reasonable time of City's receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

3.4 Procedure for Remediating Franchise Violations.

- A. The City shall provide the Grantee with a detailed written notice of any Franchise violation upon which it proposes to take action. Unless the nature of the violation requires a more rapid cure, the Grantee shall have sixty (60) days within which to demonstrate to the City's reasonable satisfaction that a violation does not exist, cure such violation, or, if the violation cannot be corrected in sixty (60) days, to submit a plan satisfactory to the City to correct the violation. Said sixty (60) day cure period shall not apply to the payment of franchise fees.

- B. If the Grantee fails to cure the violation within the applicable time period, or the Grantee's plan of correction is not reasonably effective, the City may pursue any remedy available to it at law or in equity; provided, however, that any revocation or termination of the Franchise shall be governed by Section 5.04.220 of the Cable Code.
- C. The Grantee shall have thirty (30) days to appeal any final decision of the City to the Chelan County Superior Court.
- D. All notices, reports or demands required to be given in writing under this Franchise Agreement shall be deemed to be given when delivered personally to the Person designated below, or when five (5) days have elapsed after it is deposited in United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to City: Mayor  
City of Wenatchee  
129 S. Chelan  
Wenatchee, WA 98801

If to Grantee: LocalTel Communications  
341 Grant Road  
Wenatchee, WA 98801

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

## SECTION 4. SYSTEM CAPABILITIES

### 4.1 System Capabilities

- A. The Grantee's Cable Service shall be delivered via the District's Broadband System. The System shall provide for a minimum bandwidth capacity of 50-870 MHz.
- B. The Grantee shall comply with all customer service obligations with respect to customers whose premises are passed by portions of the District's Broadband System which are fully activated, tested and available for Service.
- C. Grantee agrees to cooperate with City from time to time in a periodic review, relating to change in law, technology, and services and agrees to furnish City with information relating to services and technological changes including plans and developments within the industry.

### 4.2 Periodic Evaluation, Review and Modification.

City and Grantee acknowledge and agree that the field of cable service is a rapidly changing one that may experience many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, to provide for the maximum degree of flexibility in this Franchise, and to help achieve a continued, advanced and modern System, the following evaluation and review provisions will apply:

- A. The City may request evaluation and review sessions at any time sixty (60) months after the acceptance of the Franchise, and every two (2) years thereafter during the term of this Franchise, and Grantee shall cooperate in such review and evaluation. The City shall use its best efforts to coordinate such evaluation and

review sessions with other municipalities in the metropolitan area which are receiving Cable Service from Grantee.

- B. Cable Service topics which may be discussed at any evaluation and review session include, but are not limited to, channel capacity, system performance, programming, PEG access, node capacity, high definition television, local office, technology, trends in industry, changes in the multi-channel video market, municipal uses of cable, subscriber complaints, judicial rulings, FCC rulings and any other relevant topics that may arise.
- C. During an evaluation and review session, Grantee shall fully cooperate with the City and shall provide without cost such reasonable information and documents which are in the possession of Grantee as the City may reasonably request to perform the evaluation and review.
- D. As a result of an evaluation and review session, Grantee and the City shall, in good faith, review the terms of any proposed change and any proposed amendment to this Franchise and seek to reach agreement on such change or amendment.
- E. The City and Grantee shall act in good faith during such negotiations and shall be obligated to agree to the reasonable requests of the other party for changes in the Cable Services or amendment to the Franchise when the change or amendment is not inconsistent with the other terms of the Franchise or with applicable law or regulations; and, is technically feasible and economically reasonable; and, will not result in a material alteration of the rights and duties of the parties under the Franchise or rights of the District. Any changes requiring a modification of

District's Broadband System will require the District's consent in its agreement with the Grantee as well as a possible amendment of the District's Use Agreement.

## **SECTION 5. SERVICES AND PROGRAMMING**

### 5.1 Programming.

- A. Grantee shall not delete or change the mix, level, or quality of programming and services, or so limit as to effectively eliminate any broad category of programming within its control without complying with the modification procedures required under federal law, including notice requirements.
- B. In the event of a modification proceeding under federal law, the mix, level, and quality of services provided by the Grantee during its first year of actively providing Cable Service under this Franchise shall be deemed the mix and quality of services required under this Franchise throughout its term.

### 5.2 Leased Commercial Access.

Grantee shall make available to the public in a manner consistent with 47 U.S.C. §532 and associated FCC Rules and Regulations, a Channel or portion of a Channel of the Cable System for commercial use by persons other than Grantee, for a fee or charge.

## **SECTION 6. SUPPORT FOR LOCAL CABLE RELATED NEEDS**

### 6.1 Public, Educational and Governmental Access.

- A. Access Channels. The Grantee shall provide two (2) Access Channels for use by the City for original, non-commercial video programming for Public, Educational and Governmental (PEG) Access programming and subject to the conditions set forth below.

B. Additional Channel. In addition to the two (2) PEG Access Channels described above, if desired by the City, the Grantee shall make one (1) additional PEG Access Channel available to the City within one hundred eighty (180) days of a written request by the City for either educational, governmental or public access purposes. Any such request for an additional PEG Access Channel must meet the following conditions:

- (1) The City has made a determination, after notice and opportunity for public comment, that the use of the first two dedicated Access Channels is consistent with community needs and interests, and that an additional dedicated PEG Access Channel is required to meet more fully such community needs and interests.
- (2) The first two dedicated PEG Access Channels provided under this Franchise are in use and programmed with PEG Access programming during at least eighty percent (80%) of the time during any consecutive thirteen (13) hour period for ten (10) consecutive weeks. For purposes of this computation, all time allocated to character generated or similar programming shall be excluded from the determination of the aggregate time such channel is in use and programmed with PEG Access programming during the period in question.
- (3) At least one-third (1/3) of the programming presented during such ten (10) week period is produced within or relates directly to the City.

- (4) At least two-thirds (2/3) of the aggregate hours utilized for PEG Access programming on any one of the two (2) existing channels during such ten (10) week period represents programming that is not repeat programming.
- C. Grantee Use of Additional Channel. Upon thirty (30) days written notice to the City, the Grantee may make use of such additional PEG Access Channel for its own programming purposes if at any time after one hundred eighty (180) days of its operation the City cannot meet the above criteria justifying the need for said channel for a period of ten (10) consecutive weeks.
- D. Unused Channels. If demand for use of the PEG Access Channels does not warrant activation of any or all such channels, City and Grantee (upon the mutual written agreement of City and Grantee), reserve the right to have the PEG Access Channel(s) returned to the Grantee for the Grantee's use if the City shall provide consent in writing to the Grantee. In such event, the Grantee shall notify its customers of Grantee's intention to utilize the PEG Access Channel by providing Subscribers with a thirty (30) day prior written notice. Subject to the above circumstances, the Grantee may in any manner use the PEG Access Channel during those hours that the City or other governmental, public or educational entity is not using the channels(s).
- E. Access Channel Designations. Grantee acknowledges and agrees that it will use reasonable efforts to retain the same channel number designations for Access Channels as those that are currently utilized as of the acceptance date of this Franchise. Subject to subsection 6.1(G), Grantee reserves all rights under the Cable Act to specify channel locations.

F. Non-Commercial Use. PEG Access Channels shall be non-commercial, not-for-profit, and non-competitive. The PEG Access Channels shall not be used for commercial purposes, such as leasing capacity, advertising, or any use whatsoever that may generate revenue (subject to the permissible uses as outlined in this subsection) for the Grantor or any other Person, or compete with current or future services provided by the Grantee, its designee or assignee. Notwithstanding the foregoing, City and Grantee agree that the City may receive and acknowledge financial support for the provision of PEG Programming for charitable, educational or governmental access purposes with a fifteen (15) second video and/or audio acknowledgment window at the beginning and end of the sponsored program. This window may only contain the name and logo of each sponsor.

G. Analog or Digital Format. Grantee has the option to air the PEG Access Channels in analog, digital or other format, provided that the PEG Access Channels shall be kept in analog format if Grantee has a tier or service in analog format. The PEG Access Channels may be placed on any tier or service available to all Subscribers, including the digital tier provided, however, that PEG Access Channels shall be carried on the lowest tier or service, as distinguished from premium service tiers. Each PEG Access Channel shall contain distinct content not aired on other channels.

6.2 Indemnification and Restrictions. The City shall indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the City's use of the two-way insertion points under subsection 6.3 and the aforementioned PEG channels whether City operates the PEG Channels from a third party's Facilities or from Grantee's

Facilities. Grantee shall not be responsible for operating and managing the PEG Channels including approving any PEG programming and/or for obtaining releases from programmers for any PEG programming. City reserves the right to permit a third party to operate and manage the PEG Channels on the City's behalf.

6.3 Insertion Points. Upon written request, Grantee shall provide, at no cost to the City, up to seven (7) insertion points at City Hall, City Planning Department, Police Station, up to two fire stations, the City library and the City Public Works Department, provided that users of such insertion points shall hold the Grantee harmless from any and all liability or claims arising out of their use. City shall provide the addresses of the foregoing insertion points to Grantee. Grantee shall not be required to provide an insertion point to such buildings where the drop line between the building and City's feeder cable exceed two hundred (200) feet, unless the City agrees to pay the Direct Incremental Cost of extending such drop line beyond two hundred (200) feet. The City shall not request the Grantee to provide any insertion point unless the same is required of all Cable Operators in the Service Area. If, at any time, the City requests that the insertion point be moved from its original location to another location, City shall pay the entire cost for the move.

6.4 Technical Support from Grantee. Upon receipt of a call or other communication from the City to Grantee identifying a technical problem and requesting assistance, Grantee shall provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible, and if so, Grantee shall take corrective action. If the problem persists and there is a dispute about the cause, then the parties shall convene a meeting or telephone call with personnel from Grantee and City in order to determine the course of action to remedy the problem.

6.5 Financial Support for PEG Access. Grantee formerly made a one-time capital contribution to the City in the amount of one hundred thousand dollars (\$100,000), and Grantee shall continue to collect from and bill each Subscriber an amount of eight cents (\$0.08) per month per Subscriber for recovery of the one-time capital contribution. Grantee shall, annually and at the request of the City, provide the City with the amount of capital contribution collected and the amount remaining to be collected. Once the Grantee has been fully reimbursed for the one hundred thousand dollar (\$100,000) capital contribution, Grantee shall continue collecting the amount of eight cents (\$0.08) per month per Subscriber, and the amount shall be remitted to the City, payable on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. In the event of a dispute, the City, if it so requests, shall be furnished a statement of said payment, reflecting the PEG capital support collected from Subscribers. At any time, the Grantee may request a report of how the capital dollars are being used. City and Grantee acknowledge that PEG funds are only to be used for capital costs and not for operational costs. PEG capital support shall be for the exclusive use of the City and shall not be used for purposes other than as described under Section 13 herein. The City shall be responsible for installing, operating, maintaining and replacing the equipment purchased as necessary.

6.6 Free Drops. Subject to the availability of the District's Broadband System to the Grantee, Grantee may provide on a voluntary basis, without charge and within the Service Area, one drop activated for Basic Cable Service to all elementary and secondary public school classrooms and public libraries. Additionally, Grantee shall provide, without charge, one drop of Basic Cable Service, at a location designated by the City, so that City may view

and monitor PEG Access programming. The drop shall be within one hundred twenty-five (125) feet of Grantee's feeder cable.

- 6.7 PEG Fees Not Franchise Fees. Grantee agrees that the PEG Fee in Section 6 in no way modifies or otherwise affects Grantee's obligation to pay Franchise Fees to the City. Grantee agrees that although the sum of Franchise Fees and PEG Fee may total more than five percent (5%) of Grantee's Gross Revenues in any twelve-month period, the PEG Fee is not to be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise.

## **SECTION 7. CONSTRUCTION AND SERVICE PROVISIONS**

### 7.1 Obligations of District

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

7.2 Construction Schedule

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

7.3 Line Extension

Subject to the availability of the District's Broadband System to the Grantee, the Grantee agrees to extend service at no additional cost to all areas within the City having a density of twenty-five (25) or more homes per linear mile. In less dense areas lines will be extended upon request of the home owners at the incremental cost of all Parties seeking to have the distribution line so extended, and subject to the availability of the District's Broadband System to the Grantee in that area.

7.4 Customer Service Standards.

The Grantee shall at all times comply will all applicable FCC customer service standards and the service standards set out in the City's Cable Code. To the extent that specific customer service standards require the District to perform work on its Broadband System, such as responding to and remedying service disruptions, the Grantee agrees to include within its use or license agreement with the District service level provisions and obligations that would require compliance with such standards, as set out in Section 5 of the District's Communications Infrastructure Right-Of-Way Use Agreement. The Grantee agrees that the failure of the District to reasonably meet these standards will constitute a default of this Franchise subject to the remedial provisions of this Franchise.

## SECTION 8. REGULATION

### 8.1 Franchise Regulation.

This Franchise shall be subject to regulation by City in accordance with all of the lawful provisions of the Cable Code.

### 8.2 Transfer or Sale.

- A. The Grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of this Cable Franchise or its Cable Service without the prior consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable Service so as to perform its obligations under this Franchise. This Section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a Grantee.
- B. In the case of any sale or transfer of ownership of an interest in or control of this Franchise or Cable Service, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Code. If the City fails to render a final decision on the request within one hundred twenty (120) days after receipt by the

City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.

8.3 Force Majeure.

In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise or the Cable Code is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof. Such causes beyond Grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes, severe weather, unavailability of equipment or facilities during the initial construction of the Cable System, untimely delivery of equipment, or the inability of a Grantee to obtain access to an individual's property.

8.4 Severability.

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

8.5 Acceptance.

Grantee shall, within 15 days after the effective date of this Ordinance, file with the City Clerk of the City its acceptance in writing of the provisions, terms and conditions of this Ordinance. If Grantee shall fail to so file its written acceptance of the same within such

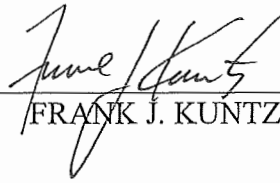
period, then the rights and privileges granted hereunder shall be deemed forfeited and null and void with respect to Grantee.

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE,**

WASHINGTON this 14<sup>th</sup> day of March 2021.

CITY OF WENATCHEE, a municipal corporation,

By:

  
FRANK J. KUNTZ, Mayor

ATTEST:

By:

  
TAMMY L. STANGER, City Clerk

APPROVED:

By:

  
STEVE D. SMITH, City Attorney

ACCEPTED AND APPROVED BY GRANTEE:

**Grantee Name:** Computer 5\*, Inc. dba LocalTel Communications

**Type of Entity:** Corporation

**State of formation:** Washington


**Address for Notice Purposes:** 341 Grant Road, Wenatchee, WA 98802

**Phone No.:** (509) 884-0611

**Fax No.:** (509) 884-3557

**E-mail Address:** John@clandt.com

By:

  
John J. Seabeck, Vice President

Date:

3/18/21